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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 21.04.2026
Judgment pronounced on: 13.07.2026

+ O.M.P. (COMM) 115/2016 & I.A. 28880/2025 (For release of interest)

SUPREME ADVERTISING PRIVATE LIMITEDPetitioner

Through: Mr. Dharmesh Misra, Senior Advocate along with Mr. Prateek Gupta, Mr. Pulkit Agarwal and Ms. Vishakha Kaushik, Advocates.

versus

GENUS POWER INFRASTRUCTURES LIMITED

.....Respondent

Through: Dr. Amit George, Mr. Ruchir Mishra, Mr. Sanjiv Kr. Saxena, Mr. Mukesh Kr. Tiwari, Ms. Reba Jena Mishra and Ms. Poonam Shukla, Advocates.

+ O.M.P. (COMM) 159/2016

GENUS POWER INFRASTRUCTURES LTDPetitioner

Through: Dr. Amit George, Mr. Ruchir Mishra, Mr. Sanjiv Kr. Saxena, Mr. Mukesh Kr. Tiwari, Ms. Reba Jena Mishra and Ms. Poonam Shukla, Advocates.

versus

SUPREME ADVERTISING PVT LTDRespondent

Through: Mr. Dharmesh Misra, Senior Advocate along with Mr. Prateek Gupta, Mr. Pulkit Agarwal and Ms. Vishakha Kaushik, Advocates.



CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. These cross Petitions, being *O.M.P. (COMM.) 115/2016* and *O.M.P. (COMM.) 159/2016*, have been instituted under Section 34 of the **Arbitration and Conciliation Act, 1996**¹, challenging different portions of the **Arbitral Award dated 07.03.2014 read with the Modified Award dated 17.05.2014**² rendered by the learned **Arbitral Tribunal comprising two members, namely, Justice P.C. Jain (Retd.) and Justice Jasraj Chopra (Retd.)**³.

2. It is pertinent to note that the Impugned Award arises out of disputes pertaining to a series of interconnected contractual arrangements, Memoranda of Understanding and Joint Venture Agreements entered into between **Supreme Advertising Pvt Ltd.**⁴ (*formerly Hythro Engineers Pvt. Ltd./Hythro Power Corporation Ltd.*) and **Genus Power Infrastructure Limited**⁵ (*formerly Genus Overseas Electronics Ltd.*), in relation to electrification and infrastructure projects awarded by **Uttar Pradesh Power Corporation Limited**⁶ and **Jaipur Vidyut Vitran Nigam Limited**⁷.

3. Although the disputes pertain to multiple projects and work orders, the findings returned by the learned Arbitral Tribunal in the

¹ A&C Act

² Impugned Award

³ Arbitral Tribunal

⁴ Supreme Advertising

⁵ Genus Power

⁶ UPPCL

⁷ JVVNL



Impugned Award are substantially interconnected, particularly with respect to the issues raised in the present Petitions by the respective parties.

4. **O.M.P. (COMM.) 115/2016** has been instituted by Supreme Advertising challenging specific findings returned by the learned Arbitral Tribunal in favour of Genus Power, *inter alia*, with respect to its constitution, findings returned under Issue No. 13 [*Counterclaim No. 1*], Issue Nos. 14, 14(i) and 14(ii) [*Counterclaim No. 2*], Issue No. 9 [*Counterclaim No. 3*].

5. **O.M.P. (COMM.) 159/2016** has been instituted by Genus Power challenging those portions of the Impugned Award whereby certain claims raised by Supreme Advertising came to be allowed by the learned Arbitral Tribunal. The challenge in the said Petition principally pertains to the findings of the learned Arbitral Tribunal concerning execution of works, entitlement under the final bills raised by Supreme Advertising, interpretation of the **Minutes of Meeting/Memorandum of Understanding dated 08.10.2006**⁸ and the evidentiary basis underlying the claims allowed in favour of Supreme Advertising.

6. Since both Petitions arise out of the same arbitral proceedings, concern the same contractual relationship and challenge different portions of the same Impugned Award, they were heard together with the consent of the parties.

7. However, notwithstanding the commonality of the arbitral proceedings and the Impugned Award under challenge, this Court finds that the controversies arising in the two Petitions are distinct and

⁸ MOM/MOU



require independent consideration. The grounds urged, the findings assailed and the reliefs sought by the respective parties are materially different and necessitate separate examination.

8. Accordingly, for the sake of convenience, clarity, and comprehensive adjudication, and in order to arrive at an intelligible and reasoned determination of the issues arising for consideration, this Court deems it appropriate to examine the rival challenges in the two Petitions sequentially under the following separate heads:

A. O.M.P. (COMM.) 115/2016 and

B. O.M.P. (COMM.) 159/2016.

9. Needless to state, wherever common facts, documents or arbitral findings arise for consideration, the same shall be referred to only to the extent necessary for adjudication of the respective Petitions.

BRIEF FACTS:

10. Before proceeding to record the respective contentions advanced by the parties in the respective Objection Petitions and to examine the same on merits, this Court considers it apposite to briefly set out the factual background giving rise to the present proceedings, which is common and germane to the adjudication of both Petitions, as follows:

- (a) The case set up by Supreme Advertising before the learned Arbitral Tribunal was that Supreme Advertising claimed to possess expertise in survey, erection, testing and commissioning of electrical transmission and electrification projects, whereas Genus Power is a company engaged, *inter alia*, in the



manufacture and supply of electrical equipment, energy meters and allied infrastructure products.

- (b) In or around the year 2005, UPPCL floated tenders for electrification and renovation works in various towns of the State of Uttar Pradesh, including Agra, Jhansi, Hardoi, Etawah, Varanasi, Firozabad and Shikohabad.
- (c) According to Supreme Advertising, since Genus Power did not independently possess the requisite technical capability for execution of erection and civil works, the parties entered into a **Memorandum of Understanding dated 27.08.2005⁹**, effective from 11.07.2005, whereby Genus Power was to act as the lead entity for bidding and procurement purposes, while Supreme Advertising was to undertake execution of erection, survey, engineering and allied project works.
- (d) Pursuant thereto, UPPCL awarded seven projects to Genus Power in relation to the aforesaid towns and corresponding work/purchase orders came to be issued in favour of Supreme Advertising for execution of erection and civil works. The value of the erection and civil works to be executed by Supreme Advertising was stated to be approximately INR 59,05,00,000/-.
- (e) During the subsistence of the aforesaid arrangement, the parties also entered into a Joint Venture Agreement dated 02.09.2005 in relation to projects floated by JVVNL under the Rajiv Gandhi Gramin Vidyutikaran Yojana in the State of Rajasthan. Consequent thereto, projects relating to Dholpur, Dausa, Alwar, Bundi and Kota were awarded and corresponding work orders

⁹ MoU



for execution of erection and civil works were issued in favour of Supreme Advertising.

- (f) Supreme Advertising alleged before the learned Arbitral Tribunal that upon issuance of the work orders, it established project offices, deployed technical personnel and machinery and undertook substantial execution work at the project sites. According to Supreme Advertising, disputes subsequently arose on account of delayed supply of materials, withholding of payments against running account bills and failure on the part of Genus Power to honour its financial obligations under the contractual arrangements.
- (g) Genus Power, on the other hand, disputed Supreme Advertising's assertions and contended that Supreme Advertising had failed to execute the works in accordance with the agreed timelines and contractual specifications and had not furnished requisite approvals, measurement books, certifications and related documents from the concerned electricity authorities. It was further the case of Genus Power that Supreme Advertising abandoned the project works on or about 19.08.2006, thereby causing serious disruption in execution of the UPPCL and JVVNL projects resulting in financial and contractual liabilities upon Genus Power.
- (h) In view of the disputes which had arisen between the parties, a series of meetings took place during September and October 2006 with a view to resolve the disputes concerning execution of works, reconciliation of materials, pending bills, handing over of project sites/stores and financial liabilities arising out of



the UPPCL and JVVNL projects. The parties ultimately executed MOM/MOU, which sought to record certain modalities concerning execution of works, reconciliation of accounts, handing over of materials and project sites and other related matters.

- (i) Since the disputes could not be amicably resolved, arbitration came to be invoked. Initially, Hon'ble Mr. Justice P.C. Jain (Retd.) was appointed as the Sole Arbitrator pursuant to proceedings before the Rajasthan High Court. Subsequently, in terms of further orders passed by the Rajasthan High Court, the disputes came to be adjudicated by a learned Arbitral Tribunal comprising Hon'ble Mr. Justice J.R. Chopra (Retd.) and Hon'ble Mr. Justice P.C. Jain (Retd.).
- (j) Before the learned Arbitral Tribunal, Supreme Advertising raised claims relating to alleged outstanding payments, dues arising out of execution of erection and civil works, final bills and other consequential reliefs. Genus Power contested the said claims and also raised counterclaims alleging loss and misappropriation of materials, losses arising out of dismantled materials, delayed payments from project authorities, incomplete execution of works and financial liabilities allegedly suffered on account of abandonment of projects by Supreme Advertising.
- (k) The learned Arbitral Tribunal, after completion of pleadings and upon appreciation of the oral and documentary evidence placed on record by the parties, rendered the Arbitral Award dated 07.03.2014 adjudicating the claims and counterclaims of



the parties, including the counterclaims forming subject matter of challenge in the present Petitions. Thereafter, on proceedings initiated under Section 33 of the A&C Act, certain modifications/corrections came to be carried out by the learned Arbitral Tribunal *vide* Modified Award dated 17.05.2014.

- (l) Since both parties claimed to be aggrieved by different portions of the Impugned Award, the present Petitions under Section 34 of the A&C Act came to be instituted before this Court.

A. *O.M.P. (COMM.) 115/2016 [SUPREME ADVERTISING'S PETITION]*

11. The present Petition, instituted by Supreme Advertising, has challenged specific findings recorded by the learned Arbitral Tribunal.

12. The challenge is confined to the constitution of the learned Arbitral Tribunal, the findings returned under Issue No. 13 [*Counterclaim No. 1*], Issue Nos. 14, 14(i) and 14(ii) [*Counterclaim No. 2*], Issue No. 9 [*Counterclaim No. 3*], the findings relating to the issue of limitation insofar as the counterclaims are concerned; and also, the extent and validity of the modifications made to the Arbitral Award dated 07.03.2014 by way of the Modified Award dated 17.05.2014.

13. This Court shall now proceed to examine each of the aforesaid challenges by first noticing the respective contentions of the parties and thereafter considering their merits.

Contentions on Behalf of the Parties:

14. In support of the challenge laid in *O.M.P.(COMM.) 115/2016*, learned Senior Counsel appearing on behalf of Supreme Advertising



would assail the Arbitral Award dated 07.03.2014 to the extent it allowed certain counterclaims raised by Genus Power and also challenged the Modified Award dated 17.05.2014. The principal submissions advanced on behalf of Supreme Advertising are delineated hereinafter.

15. Learned Senior Counsel appearing on behalf of Supreme Advertising would, at the outset, challenge the constitution of the learned Arbitral Tribunal and contend that the disputes between the parties ultimately came to be adjudicated by a two-member Arbitral Tribunal comprising Hon'ble Mr. Justice J.R. Chopra (Retd.) and Hon'ble Mr. Justice P.C. Jain (Retd.). According to Supreme Advertising, the constitution of an even-numbered Arbitral Tribunal was contrary to the mandate of Section 10 of the A&C Act and consequently vitiated the arbitral proceedings culminating in the Impugned Award.

16. Insofar as Issue No. 13 [*Counterclaim No. 1*] is concerned, learned Senior Counsel for Supreme Advertising would contend that the findings returned by the learned Arbitral Tribunal suffer from patent inconsistency and are unsupported by the evidentiary record. It would be submitted that while the learned Arbitral Tribunal accepted claims relating to execution and erection works undertaken by Supreme Advertising, it simultaneously upheld allegations of shortage and misappropriation of materials in relation to the very same works. According to Supreme Advertising, the said findings are mutually destructive and incapable of standing together.

17. Learned Senior Counsel would further submit that the counterclaim relating to alleged loss and misappropriation of materials



was founded substantially upon assumptions, estimates and schedules prepared by Genus Power without any cogent evidence establishing actual shortage, diversion or misappropriation of materials by Supreme Advertising. It would be contended that no complete inventory, reconciliation statement or contemporaneous documentary record was produced demonstrating the quantity of material supplied, utilised, returned or allegedly misappropriated.

18. Learned Senior Counsel for Supreme Advertising would additionally contend that the findings returned under Issue No. 13 [*Counterclaim No. 1*] are based primarily upon calculations reflected in schedules relied upon by Genus Power and not upon any independent material evidencing actual diversion, misappropriation or unauthorised retention of materials by Supreme Advertising. According to Supreme Advertising, the learned Arbitral Tribunal failed to identify any contemporaneous documentary material establishing the alleged shortages and, therefore, the findings suffer from perversity and patent illegality.

19. Learned Senior Counsel would further submit that the learned Arbitral Tribunal failed to appreciate the true scope and effect of the MOM/MOU. According to Supreme Advertising, the said arrangement governed reconciliation of accounts, materials and project sites and expressly contemplated handing over of materials on an “as is where is basis”. It would be contended that once the parties had consciously agreed to such an arrangement, Genus Power could not thereafter maintain claims premised upon alleged shortages and reconciliation of materials.



20. In relation to Issue Nos. 14, 14(i) and 14(ii) [*Counterclaim No. 2*] concerning alleged losses arising out of dismantled materials, learned Senior Counsel for Supreme Advertising would contend that the findings returned by the learned Arbitral Tribunal are speculative and unsupported by evidence. It would be submitted that Genus Power failed to establish any actual financial loss, departmental recovery or monetary deduction suffered on account of the alleged dismantling of materials and yet the learned Arbitral Tribunal proceeded to allow the counterclaim without any satisfactory evidentiary foundation.

21. Learned Senior Counsel for Supreme Advertising would further submit that the learned Arbitral Tribunal awarded damages under Counterclaim No. 2 in the absence of proof of actual loss and on an *ad hoc* basis unsupported by any cogent evidentiary record. Reliance would be placed upon *Aneja Constructions (India) Private Limited v. Grim-Tech Projects (I) Private Limited*¹⁰, to contend that damages cannot be awarded in the absence of satisfactory proof of loss.

22. Learned Senior Counsel would further submit that the learned Arbitral Tribunal failed to appreciate that, after execution of the MOM/MOU, the question of any continuing liability in relation to dismantled materials did not survive in view of the agreed mechanism regarding reconciliation and handing over of project sites and materials.

23. Insofar as Issue No. 9 [*Counterclaim No. 3*] is concerned, learned Senior Counsel for Supreme Advertising would contend that Genus Power failed to place any material on record demonstrating that the alleged delay in release of payments by the concerned project

¹⁰ 2022 SCC OnLine Del 452



authorities was attributable to any act or omission on the part of Supreme Advertising. It would be submitted that no communication, record or other documentary material was produced establishing any causal nexus between the alleged withholding of payments and the conduct of Supreme Advertising.

24. Learned Senior Counsel would further contend that the material available on record demonstrated that delays in release of payments arose on account of factors independent of Supreme Advertising's conduct and, therefore, the learned Arbitral Tribunal erred in fastening liability upon Supreme Advertising under the said counterclaim.

25. Learned Senior Counsel for Supreme Advertising would subsequently contend, during the course of oral submissions, that the counterclaims preferred by Genus Power before the learned Arbitral Tribunal were *ex facie* barred by limitation and therefore could not have been entertained or allowed.

26. It would be submitted that, although the issue of limitation was not expressly raised before the learned Arbitral Tribunal, there was nonetheless a statutory obligation to independently examine whether the counterclaims had been instituted within the prescribed period of limitation. It would be contended that, in view of Section 3 of the Limitation Act, 1963, the question of limitation goes to the very root of the matter, and the learned Arbitral Tribunal was duty-bound to consider the same *suo motu*, irrespective of whether any specific plea or objection had been raised by either of the parties.

27. It would be argued that claims barred by limitation cannot be validated by consent, acquiescence or waiver and that an arbitral tribunal is equally bound to reject a claim which is *ex facie* time-



barred. To bolster the said argument, reliance would be placed upon the judgment in *Sealand Shipping and Export Pvt. Ltd. v. Kinship Services Pvt. Ltd.*¹¹, contending that the issue of limitation can be examined even at a subsequent stage, as it raises a pure question of law in the facts of the present case. It would further be contended that the relevant factual aspects are undisputed herein and, therefore, the issue does not require any further enquiry or determination of facts.

28. It would also be submitted that the counterclaims allowed by the learned Arbitral Tribunal were liable to be rejected as being beyond limitation and that the Impugned Award, to that extent, suffers from patent illegality and warrants interference under Section 34 of the A&C Act.

29. Lastly, learned Senior Counsel for Supreme Advertising would contend that the learned Arbitral Tribunal, under the guise of exercising powers under Section 33 of the A&C Act, impermissibly reviewed the Arbitral Award dated 07.03.2014 despite having become *functus officio* upon publication of the Arbitral Award dated 07.03.2014. It would be submitted that the A&C Act permits correction only of computational, clerical or typographical errors and does not confer any power to revisit, modify or review the substantive determinations already made by the learned Tribunal.

30. According to the learned Senior Counsel on behalf of Supreme Advertising, the learned Arbitral Tribunal exceeded its jurisdiction by entertaining Genus Power's application and altering the amounts awarded under counterclaims through the Modified Award dated 17.05.2014.

¹¹ 2011 SCC OnLine Bom 638



31. It would be further contended by the learned Senior Counsel that the reductions made in the amounts awarded were not mere corrections of accidental slips or arithmetical mistakes but amounted to a fresh determination of the claims themselves.

32. Learned Senior Counsel for Supreme Advertising would submit that a jurisdictional error cannot be cured under the guise of correction and that once the learned Tribunal had quantified and awarded particular sums in the Arbitral Award dated 07.03.2014, any subsequent modification thereof necessarily constituted an impermissible review. The Modified Award dated 17.05.2014 is therefore stated to be without jurisdiction and liable to be set aside.

33. On the aforesaid grounds, it would thus be prayed that the Arbitral Award dated 07.03.2014 and the Modified Award dated 17.05.2014 be set aside to the extent challenged in this Petition.

34. **Per contra**, learned counsel appearing on behalf of Genus Power would support the Impugned Award, to the extent it has been challenged by Supreme Advertising in the present Petition, and contend that the learned Arbitral Tribunal, after exhaustive consideration of the pleadings, oral evidence and documentary material placed on record by the parties, rendered a detailed and reasoned Award which does not warrant interference within the limited scope of jurisdiction vested in this Court under Section 34 of the A&C Act.

35. In response to the challenge laid to the constitution of the learned Arbitral Tribunal, learned counsel would contend that the objection raised by Supreme Advertising is wholly untenable and barred by waiver. It would be submitted that the constitution of the



learned Arbitral Tribunal pursuant to orders passed by the Rajasthan High Court was never challenged by Supreme Advertising during the arbitral proceedings by way of any application under Section 16 of the A&C Act. According to Genus Power, having participated in the arbitral proceedings without *demur* and having invited adjudication on merits, Supreme Advertising is precluded from questioning the constitution of the learned Tribunal for the first time in proceedings under Section 34 of the A&C Act.

36. In support of the contention, reliance would be placed upon the judgment of the Hon'ble Supreme Court in ***Narayan Prasad Lohia v. Nikunj Kumar Lohia***¹² to contend that objections relating to the composition of an arbitral tribunal stand waived in terms of Section 4 of the A&C Act, in the absence of a timely objection under Section 16 of the A&C Act and cannot be permitted to be raised after culmination of the arbitral proceedings.

37. In relation to the contention regarding limitation of the counterclaims, learned counsel for Genus Power would contend that no plea regarding limitation of the counterclaims was ever raised by Supreme Advertising before the learned Arbitral Tribunal. It would be submitted that no such objection formed part of the pleadings, issues, evidence or arguments before the learned Arbitral Tribunal and consequently no finding on such issue came to be rendered in the Impugned Award.

38. It would be further submitted that even in the present Petition under Section 34 of the A&C Act, no ground challenging the counterclaims on the basis of limitation has been pleaded. According

¹² (2002) 3 SCC 572



to the learned counsel for Genus Power, the said contention has been urged for the first time during oral arguments before this Court and therefore cannot be permitted to be raised at this belated stage. Learned counsel would submit that the plea now sought to be raised is not a pure question of law but a mixed question of law and fact and in the absence of pleadings, evidence and findings on such factual aspects, the issue cannot be adjudicated for the first time in proceedings under Section 34 of the A&C Act.

39. Reliance would be placed upon *National Highways Authority of India v. Oriental Structural Engineers Ltd.*¹³, *Union of India v. Susaka Pvt. Ltd.*¹⁴, *Ramesh B. Desai v. Bipin Vadilal Mehta*¹⁵, *Delhi Transco Ltd. v. Hindustan Urban Infrastructure Ltd.*¹⁶ and *Municipal Corporation of Greater Mumbai v. RV Anderson Associates Pvt. Ltd.*¹⁷ in support of the aforesaid contentions.

40. In response to the challenge laid to Issue No. 13 [*Counterclaim No. 1*], learned counsel would contend that the findings returned by the learned Arbitral Tribunal are based upon a detailed examination of the documentary record, reconciliation statements, project records and evidence led by the parties during the arbitral proceedings. It would be submitted that Genus Power specifically established shortages and non-accounting of materials supplied for execution of the project works and that the learned Arbitral Tribunal, upon appreciation of the evidentiary material, rightly upheld the counterclaim to the extent proved.

¹³ 2018 SCC OnLine Del 12087

¹⁴ (2018) 2 SCC 182

¹⁵ (2006) 5 SCC 638

¹⁶ 2025: DHC: 8941-DB

¹⁷ 2026 SCC OnLine SC 354



41. Learned counsel would further contend that the argument advanced by Supreme Advertising regarding alleged inconsistency in the findings returned by the learned Arbitral Tribunal is fundamentally misconceived. According to Genus Power, the fact that certain claims relating to execution of works came to be accepted by the learned Arbitral Tribunal did not *ipso facto* establish utilisation or accounting of the entirety of the materials supplied for the projects. It would be submitted that acceptance of certain erection claims and findings regarding shortages, non-return or non-accounting of materials operate in distinct fields and are not mutually destructive, as sought to be contended by Supreme Advertising.

42. It would further be submitted that the learned Arbitral Tribunal correctly appreciated the evidence relating to supply, utilisation and reconciliation of materials and returned findings upon consideration of the entire evidentiary record. According to Genus Power, the challenge mounted by Supreme Advertising is, in essence, an invitation to this Court to undertake a fresh appraisal of the evidence, which exercise falls outside the permissible scope of review under Section 34 of the A&C Act.

43. In response to the reliance placed upon the MOM/MOU, learned counsel would contend that the said arrangement did not amount to a novation of the contractual relationship nor did it extinguish the liabilities and defaults allegedly committed by Supreme Advertising prior thereto. It would be submitted that the said arrangement merely provided a framework for disengagement and reconciliation between the parties and could not be construed as absolving Supreme Advertising of liabilities arising from shortages of



materials, dismantled materials, incomplete works or other contractual breaches. According to Genus Power, the learned Arbitral Tribunal rightly appreciated the scope and effect of the said arrangement while adjudicating the disputes between the parties.

44. In relation to Issue Nos. 14, 14(i) and 14(ii) [*Counterclaim No. 2*], learned counsel would contend that the learned Arbitral Tribunal, upon consideration of the evidence placed on record, rightly appreciated the losses suffered by Genus Power on account of dismantled materials and the consequences flowing therefrom. It would be submitted that the findings returned by the learned Arbitral Tribunal are based upon appreciation of the evidentiary material and do not suffer from perversity, irrationality or patent illegality.

45. Learned counsel would further submit that the findings returned under Issue Nos. 14, 14(i) and 14(ii) are intrinsically connected with the factual position that Supreme Advertising had abandoned the project works, compelling Genus Power to undertake additional obligations and incur financial and contractual consequences in relation to completion of the projects. According to Genus Power, the learned Arbitral Tribunal rightly appreciated the surrounding circumstances and the documentary material while adjudicating the said counterclaim.

46. Insofar as Issue No. 9 [*Counterclaim No. 3*] is concerned, learned counsel would contend that the learned Arbitral Tribunal rightly appreciated the evidence and surrounding circumstances demonstrating that Genus Power suffered financial exposure and commercial consequences on account of delays and disruptions arising during execution of the projects. It would be submitted that the



findings returned by the learned Arbitral Tribunal present a plausible conclusion based upon the material available on record and are not amenable to interference merely because another view may also be possible.

47. In response to the challenge laid to the Modified Award dated 17.05.2014, Genus Power would submit that the challenge proceeds on an incorrect understanding of the scope and nature of the modifications carried out by the learned Tribunal. It would be contended that the application under Section 33 of the A&C Act merely pointed out computational, clerical and typographical mistakes apparent from the record and that the learned Arbitral Tribunal corrected only such errors which had inadvertently crept into the Arbitral Award dated 07.03.2014. According to the learned counsel on behalf of Genus Power, no finding on liability, entitlement or merits was reconsidered and the corrections were confined strictly to matters falling within the ambit of Section 33 of the A&C Act.

48. It would further be submitted that the learned Arbitral Tribunal itself examined the limits of its jurisdiction under Section 33 of the A&C Act and consciously rejected several corrections sought by Genus Power which were found to be beyond the scope of the provision. This, according to Genus Power, would clearly demonstrate that the learned Arbitral Tribunal did not undertake any review of the Arbitral Award dated 07.03.2014 but merely rectified accidental slips and computational errors borne out from the record. Learned counsel would therefore submit that the Modified Award dated 17.05.2014 constitutes a lawful exercise of corrective jurisdiction and calls for no interference under Section 34 of the A&C Act.



49. Learned counsel would further contend that the findings assailed by Supreme Advertising are essentially findings of fact returned by the learned Arbitral Tribunal upon appreciation of oral and documentary evidence. According to Genus Power, the view adopted by the learned Arbitral Tribunal is a plausible and reasoned view arising from the material available on record and cannot be interfered with merely because another view may also be possible on the same evidence.

50. Learned counsel would lastly submit that the present Petition, though couched as a challenge under Section 34 of the A&C Act, is in substance an attempt to seek re-appreciation of evidence and reconsideration of factual findings returned by the learned Arbitral Tribunal. Since the findings contained in the Impugned Award neither suffer from patent illegality nor disclose any ground falling within the parameters of Section 34 of the A&C Act, the present Petition is liable to be dismissed.

Analysis:

51. This Court has heard the learned counsel appearing for the parties at length and, with their able assistance, carefully perused the Impugned Award and the material placed on record.

52. At the outset, it is apposite to note that this Court remains conscious of the limited scope of its jurisdiction while examining an objection petition under Section 34 of the A&C Act. There is a consistent and evolving line of precedents whereby the Hon'ble Supreme Court has authoritatively delineated and settled the contours of judicial intervention in such proceedings.



53. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in *OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd.*¹⁸, while dealing with the grounds of conflict with the public policy of India and patent illegality, grounds which have also been urged in the present Petitions, made certain pertinent observations, which are reproduced hereunder:

“Relevant legal principles governing a challenge to an arbitral award

30. Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (a) and (b). Clause (a) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (b) is concerned, it has two sub-clauses, namely, (i) and (ii). Sub-clause (i) of clause (b) is not relevant to the controversy in hand. Sub-clause (ii) of clause (b) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.

Public policy

31. “Public policy” is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.

35. In *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 **Supp (1) SCC 644**, a three-Judge Bench of this Court observed that the doctrine of public policy is somewhat open—textured and flexible. By citing earlier decisions, it was observed that there are two conflicting positions which are referred to as the “narrow view” and the “broad view”. According to the narrow view, courts cannot create new heads of public policy whereas the broad view countenances judicial law making in these areas. In the field of private international law, it was pointed out, courts refuse to apply a rule of foreign law or recognise a foreign judgment or a foreign

¹⁸ (2025) 2 SCC 417



arbitral award if it is found that the same is contrary to the public policy of the country in which it is sought to be invoked or enforced. However, it was clarified, a distinction is to be drawn while applying the rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. It was observed that the application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. It was held that contravention of law alone will not attract the bar of public policy, and something more than contravention of law is required.

37. What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of fundamental policy of Indian law including a law meant to serve public interest or public good.

40. In *ONGC Ltd. v. Western Geco International Ltd.*, (2014) 9 SCC 263, paras 35, 38 & 39, which also related to the period prior to the 2015 Amendment of Section 34(2)(b)(ii), a three-Judge Bench of this Court, after considering the decision in *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705, without exhaustively enumerating the purport of the expression “fundamental policy of Indian law”, observed that it would include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. The Court thereafter illustratively referred to three fundamental juristic principles, namely:

- (a) that in every determination that affects the rights of a citizen or leads to any civil consequences, the court or authority or quasi-judicial body must adopt a judicial approach, that is, it must act bona fide and deal with the subject in a fair, reasonable and objective manner and not actuated by any extraneous consideration;
- (b) that while determining the rights and obligations of parties the court or Tribunal or authority must act in accordance with the principles of natural justice and must apply its mind to the attendant facts and circumstances while taking a view one way or the other; and
- (c) that its decision must not be perverse or so irrational that no reasonable person would have arrived at the same.

41. In *Associate Builders v. DDA*, (2015) 3 SCC 49, a two-Judge Bench of this Court, held that *audi alteram partem* principle is undoubtedly a fundamental juristic principle in Indian law and is enshrined in Sections 18 and 34(2)(a)(iii) of the 1996 Act. In



addition to the earlier recognised principles forming fundamental policy of Indian law, it was held that disregarding:

(a) orders of superior courts in India; and

(b) the binding effect of the judgment of a superior court would also be regarded as being contrary to the fundamental policy of Indian law.

Further, elaborating upon the third juristic principle (i.e. qua perversity), as laid down in **ONGC Ltd. v. Western Geco International Ltd.**, (2014) 9 SCC 263, it was observed that where:

(i) a finding is based on no evidence; or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse [**Associate Builders case**, (2015) 3 SCC 49, para 31].

To this a caveat was added by observing that when a court applies the “public policy test” to an arbitration award, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected; and a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score. Thus, once it is found that the arbitrator's approach is not arbitrary or capricious, it is to be taken as the last word on facts.

The 2015 Amendment in Sections 34 and 48

42. The aforementioned judicial pronouncements were all prior to the 2015 Amendment. Notably, prior to the 2015 Amendment the expression “in contravention with the fundamental policy of Indian law” was not used by the legislature in either Section 34(2)(b)(ii) or Section 48(2)(b). The pre-amended Section 34(2)(b)(ii) and its Explanation read:

44. By the 2015 Amendment, in place of the old Explanation to Section 34(2)(b)(ii), *Explanations 1 and 2* were added to remove any doubt as to when an arbitral award is in conflict with the public policy of India.

45. At this stage, it would be pertinent to note that we are dealing with a case where the application under Section 34 of the 1996 Act was filed after the 2015 Amendment, therefore the newly substituted/added Explanations would apply [**Ssangyong Engg. & Construction Co. Ltd. v. NHAI**, (2019) 15 SCC 131].

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(b)(ii) and Section 48(2)(b), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it



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does away with the use of words : (a) “*without prejudice to the generality of sub-clause (ii)*” in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) “*without prejudice to the generality of clause (b) of this section*” in the opening part of the pre-amended Explanation to Section 48(2)(b); secondly, it limits the expanse of public policy of India to the three specified categories by using the words “*only if*”. Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(b)(ii) or Section 48(2)(b) of the 1996 Act.

47. The 2015 Amendment by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

48. *Explanation 1* to Section 34(2)(b)(ii), specifies that an arbitral award is in conflict with the public policy of India, *only if*:

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

49. In the instant case, there is no allegation that the making of the award was induced or affected by fraud or corruption, or was in violation of Section 75 or Section 81. Therefore, we shall confine our exercise in assessing as to whether the arbitral award is in contravention with the fundamental policy of Indian law, and/or whether it conflicts with the most basic notions of morality or justice. Additionally, in the light of the provisions of sub-section (2-A) of Section 34, we shall examine whether there is any patent illegality on the face of the award.

50. Before undertaking the aforesaid exercise, it would be apposite to consider as to how the expressions:

- (a) “in contravention with the fundamental policy of Indian law”;
- (b) “in conflict with the most basic notions of morality or justice”;
- and
- (c) “patent illegality” have been construed.

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression “in contravention with the fundamental policy of Indian law” was



not found in the 1996 Act. Yet, in *Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC 644, in the context of enforcement of a foreign award, while construing the phrase “contrary to the public policy”, this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

- (a) the fundamental policy of Indian law; and/or
- (b) the interest of India; and/or
- (c) justice or morality.

55. The legal position which emerges from the aforesaid discussion is that after “the 2015 Amendments” in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase “in conflict with the public policy of India” must be accorded a restricted meaning in terms of *Explanation 1*. The expression “in contravention with the fundamental policy of Indian law” by use of the word “fundamental” before the phrase “policy of Indian law” makes the expression narrower in its application than the phrase “in contravention with the policy of Indian law”, which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

- (a) violation of the principles of natural justice;
- (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
- (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(b)(ii).

Patent illegality

65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

66. In *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705, while dealing with the phrase “public policy of India” as used in Section



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34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

67. In *Associate Builders v. DDA*, (2015) 3 SCC 49, this Court held that an award would be patently illegal, if it is contrary to:

- (a) substantive provisions of law of India;
- (b) provisions of the 1996 Act; and
- (c) terms of the contract [See also three-Judge Bench decision of this Court in *State of Chhattisgarh v. SAL Udyog (P) Ltd.*, (2022) 2 SCC 275].

The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

68. In *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131 this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that “patent illegality appearing on the face of the award” refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to “public policy” or “public interest”, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131].

Perversity as a ground of challenge

69. Perversity as a ground for setting aside an arbitral award was recognised in *ONGC Ltd. v. Western Geco International Ltd.*, (2014) 9 SCC 263. Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In *Associate Builders v. DDA*, (2015) 3 SCC 49 certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:

- (i) a finding is based on no evidence; or



- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. In *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131].

72. The tests laid down in *Associate Builders v. DDA*, (2015) 3 SCC 49 to determine perversity were followed in *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131 and later approved by a three-Judge Bench of this Court in *Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd.*, (2020) 7 SCC 167.

73. In a recent three-Judge Bench decision of this Court in *DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd.*, (2024) 6 SCC 357, the ground of patent illegality/perversity was delineated in the following terms: (SCC p. 376, para 39)

“39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of “patent illegality”. An award without reasons would suffer from patent



illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice.”

Scope of interference with an arbitral award

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1, paras 27-43, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

Scope of interference with the interpretation/construction of a contract accorded in an arbitral award

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere [See: *SAIL v. Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63; *Pure Helium India (P) Ltd. v. ONGC*, (2003) 8 SCC 593; *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163]. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference [South



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East Asia Marine Engg. & Constructions Ltd. v. Oil India Ltd., (2020) 5 SCC 164].

Whether unexpressed term can be read into a contract as an implied condition

85. Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of arbitration, where party autonomy is the *ground norm*, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used [BALCO v. Kaiser Aluminium Technical Services Inc., (2016) 4 SCC 126].

86. However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by the parties thereto. An unexpressed term can be implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract [Adani Power (Mundra) Ltd. v. Gujarat ERC, (2019) 19 SCC 9].

87. But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:

(a) it must be reasonable and equitable;

(b) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;

(c) it must be obvious that “it goes without saying”;

(d) it must be capable of clear expression;

(e) it must not contradict any terms of the contract [Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508, followed in Adani Power case, (2019) 19 SCC 9].

(emphasis supplied)

54. In light of the aforesaid principles, the challenges raised by Supreme Advertising, as well as the responses thereto by Genus Power, are required to be examined within the scope of Section 34 of the A&C Act, without re-appreciating the evidence or reassessing the findings returned by the learned Arbitral Tribunal. The objections urged by the parties shall therefore be considered issue-wise, having



regard to the grounds raised in the present Petition and the settled principles governing interference with arbitral awards.

Issue No. 1: Whether the Constitution of the Two-Member Arbitral Tribunal Vitiates the Impugned Award?

55. Before advertng to the merits of the challenge laid to the Impugned Award, this Court considers it appropriate to first examine the objection raised by Supreme Advertising with respect to the constitution of the learned Arbitral Tribunal. Supreme Advertising has contended that the Arbitration Agreement contemplated adjudication by a Tribunal consisting of three arbitrators and, therefore, the constitution of a two-member Arbitral Tribunal comprising Hon'ble Mr. Justice J.R. Chopra (Retd.) and Hon'ble Mr. Justice P.C. Jain (Retd.) was contrary to the contractual arrangement between the parties as well as the provisions contained in Part-I of the A&C Act. According to Supreme Advertising, the very composition of the learned Arbitral Tribunal being contrary to law, the arbitral proceedings stood vitiated and consequently the Impugned Award is liable to be set aside.

56. This Court is unable to subscribe to the aforesaid contention for more than one reason.

57. At the outset, it deserves to be noted that the constitution of the learned Arbitral Tribunal was not brought about unilaterally by either party *dehors* the arbitral framework or in contravention of any judicial order. The record reveals that initially Hon'ble Mr. Justice P.C. Jain (Retd.) came to be appointed as Sole Arbitrator pursuant to proceedings before the Rajasthan High Court. Subsequently, upon



further proceedings before the said Court, the learned Arbitral Tribunal comprising Hon'ble Mr. Justice J.R. Chopra (Retd.) and Hon'ble Mr. Justice P.C. Jain (Retd.) came to be constituted for adjudication of disputes between the parties. The learned Arbitral Tribunal, therefore, derived its constitution pursuant to judicial proceedings and the parties thereafter consciously participated before the said Tribunal without demur.

58. Significantly, Supreme Advertising participated in the arbitral proceedings over a prolonged period extending across several years. Supreme Advertising filed its statement of claims, documentary evidence, affidavits and written submissions, examined witnesses, cross-examined witnesses produced by Genus Power, and invited adjudication on merits before the learned Arbitral Tribunal.

59. At no stage during the pendency of arbitral proceedings did Supreme Advertising raise any jurisdictional objection under Section 16 read with Section 4 of the A&C Act questioning the competence or composition of the learned Arbitral Tribunal. Supreme Advertising, having voluntarily and consciously submitted itself to the jurisdiction of the learned Arbitral Tribunal and having sought adjudication on merits, cannot now be permitted to assail the composition of the learned Tribunal merely because the Impugned Award has ultimately not resulted entirely in its favour. The relevant provisions contained in Sections 4 and 16 of the A&C Act are reproduced herein below:

- “4. Waiver of right to object.** - A party who knows that-
- (a) any provision of this Part from which the parties may derogate, or
 - (b) any requirement under the arbitration agreement,
- has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection,



within that period of time, shall be deemed to have waived his right to so object.

16. Competence of arbitral tribunal to rule on its jurisdiction. -

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,-

- (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
- (b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.”

60. In this context, it becomes necessary to examine the scheme of the A&C Act. Section 10(1) of the A&C Act provides that parties are free to determine the number of arbitrators, provided that such number shall not be an even number. However, the legal consequence flowing from the constitution of an arbitral tribunal consisting of an even number of arbitrators has been conclusively settled by judicial precedents. The prohibition contained in Section 10 of the A&C Act is not treated as an absolute or non-derogable mandate going to the inherent jurisdiction of the tribunal. Rather, it is regarded as a



procedural and derogable requirement capable of waiver by the conduct of parties.

61. The aforesaid position stands authoritatively settled by the judgment of the Hon'ble Supreme Court in **Narayan Prasad Lohia** (*supra*).

62. In the said case, the Hon'ble Supreme Court was dealing with a challenge to an arbitral award rendered by a two-member arbitral tribunal. The contention raised therein was substantially similar to the contention urged in the present proceedings, namely that Section 10 of the A&C Act prohibited constitution of an arbitral tribunal comprising an even number of arbitrators and, therefore, the said arbitral award stood vitiated. Rejecting the said contention, the Hon'ble Supreme Court held that the requirement contained in Section 10 of the A&C Act is a derogable provision and that objection with respect to composition of the arbitral tribunal must be raised before the tribunal itself in accordance with Sections 16 and 4 of the A&C Act.

63. The Hon'ble Supreme Court in **Narayan Prasad Lohia** (*supra*) further observed that the A&C Act consciously classifies certain provisions as non-derogable while others remain capable of waiver by agreement or conduct. It was specifically held that Section 10 of the A&C Act does not fall within the category of non-derogable provisions and consequently an objection relating to an even-numbered arbitral tribunal cannot be permitted to be raised for the first time at the stage of challenge under Section 34 of the A&C Act after parties have consciously participated in the proceedings.

64. The Hon'ble Supreme Court further held that where a party proceeds with arbitration with full knowledge of the composition of



the tribunal and fails to raise a timely objection, such party shall be deemed to have waived its right to object by virtue of Section 4 of the A&C Act. The relevant observations of the above-mentioned Judgment bearing upon the issue involved in the present case are reproduced hereinbelow:

“16. It has been held by a Constitution Bench of this Court, in the case of *Konkan Rly. Corpn. Ltd. v. Rani Construction (P) Ltd.* [(2002) 2 SCC 388] that Section 16 enables the Arbitral Tribunal to rule on its own jurisdiction. It has been held that under Section 16 the Arbitral Tribunal can rule on any objection with respect to existence or validity of the arbitration agreement. It is held that the Arbitral Tribunal's authority under Section 16, is not confined to the width of its jurisdiction but goes also to the root of its jurisdiction. Not only this decision is binding on this Court, but we are in respectful agreement with the same. Thus, it is no longer open to contend that, under Section 16, a party cannot challenge the composition of the Arbitral Tribunal before the Arbitral Tribunal itself. Such a challenge must be taken, under Section 16(2), not later than the submission of the statement of defence. Section 16(2) makes it clear that such a challenge can be taken even though the party may have participated in the appointment of the arbitrator and/or may have himself appointed the arbitrator. Needless to state a party would be free, if it so chooses, not to raise such a challenge. Thus, a conjoint reading of Sections 10 and 16 shows that an objection to the composition of the Arbitral Tribunal is a matter which is derogable. It is derogable because a party is free not to object within the time prescribed in Section 16(2). If a party chooses not to so object there will be a deemed waiver under Section 4. Thus, we are unable to accept the submission that Section 10 is a non-derogable provision. In our view Section 10 has to be read along with Section 16 and is, therefore, a derogable provision.

18. Even otherwise, under the said Act the grounds of challenge to an arbitral award are very limited. Now an award can be set aside only on a ground of challenge under Sections 12, 13 and 16 provided such a challenge is first raised before the Arbitral Tribunal and has been rejected by the Arbitral Tribunal....”

65. The principle laid down in *Narayan Prasad Lohia (supra)* applies on all fours to the facts of the present case. Supreme Advertising was fully aware, from the very inception, that the learned



Arbitral Tribunal consisted of two learned Arbitrators. Despite such knowledge, Supreme Advertising neither objected to the composition of the learned Arbitral Tribunal before commencement of proceedings nor invoked Section 16 of the A&C Act at any subsequent stage. On the contrary, Supreme Advertising actively invoked and participated in the arbitral process and invited adjudication upon its claims on the merits. Such conduct clearly constitutes acquiescence and waiver within the meaning of Section 4 of the A&C Act. Consequently, even assuming that the constitution of the learned Arbitral Tribunal was not in strict conformity with Section 10 of the A&C Act, such objection stood waived upon Supreme Advertising consciously participating in the arbitral proceedings without raising any objection at the appropriate stage.

66. It is also pertinent to note that Supreme Advertising had full knowledge of the constitution of the learned Arbitral Tribunal. The Orders dated 25.07.2008 and 21.08.2009 passed by the Rajasthan High Court specifically dealt with and examined the issue relating to the constitution of the learned Arbitral Tribunal, pursuant to which the learned Arbitral Tribunal came to be constituted for adjudication of the disputes between the parties. The proceedings before the learned Arbitral Tribunal thereafter culminated in the passing of the Impugned Award.

67. However, despite being fully aware of the aforesaid Orders and the constitution of the learned Arbitral Tribunal pursuant thereto, Supreme Advertising did not avail of any legal remedy to challenge the said Orders of the Rajasthan High Court before the appropriate forum. Having failed to assail those orders at the relevant stage,



Supreme Advertising cannot now be permitted to indirectly question the constitution of the learned Arbitral Tribunal in the present proceedings.

68. This Court also finds merit in the contention urged on behalf of Genus Power that the present objection is an afterthought raised only after rendition of the Impugned Award. A party cannot be permitted to approbate and reprobate simultaneously by participating in arbitral proceedings without protest and thereafter, upon being dissatisfied with the outcome, challenge the very jurisdiction or composition of the learned Arbitral Tribunal. Permitting such conduct would defeat the foundational objective of the A&C Act, namely expeditious and final resolution of disputes through arbitration with minimal judicial interference.

69. Reference may also be made to the judgment rendered by the Division Bench of this Court in *S.N. Malhotra & Sons v. Airport Authority of India*¹⁹, wherein the Court reiterated the principle that objections concerning composition or jurisdiction of the arbitral tribunal are liable to be deemed waived if not raised at the appropriate stage before the tribunal itself. The legislative intent underlying Sections 4 and 16 of the A&C Act clearly mandates that such objections must be raised at the earliest available opportunity so that arbitral proceedings are not rendered vulnerable to belated technical challenges after conclusion of adjudication. The relevant portion of the above-mentioned Judgment is reproduced hereinbelow:

“31. To conclude, although ordinarily, we would have been inclined to hold that in so far as jurisdictional issues are concerned, the contours of Section 34 are wide enough to enable the Court to consider such issues though not raised before the arbitrator, apart

¹⁹ 2008 SCC OnLine Del 442



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from other issues. But in the teeth of the statutory provisions mandating time limits for the setting up of such pleas [Section 16(2), 16(3), 16(4)] and in the teeth of Section 4 of the Act and in view of the law laid by the Supreme Court, jurisdictional objections, in our view, cannot be permitted to be raised at a later point of time, even under Section 34. To hold otherwise, would be to render otiose the provisions of sub-sections (2) to (6) of Section 16 as well as Section 4 of the Act, and may even result in making a serious inroad into the provisions of Section 5 of the Act; which is aimed at cabining and confining judicial intervention in the arbitration process to the very minimum.”

70. Quite apart from the aspect of waiver, this Court also finds that no demonstrable prejudice has been shown by Supreme Advertising on account of the learned Arbitral Tribunal consisting of two learned Arbitrators. The arbitral proceedings were conducted over several sittings; both parties were afforded full opportunity to file pleadings, lead evidence, cross-examine witnesses and advance submissions, and the Impugned Award itself reflects detailed consideration of the rival contentions, documentary evidence and contractual arrangements between the parties. In the absence of any material demonstrating failure of natural justice or miscarriage of adjudicatory fairness, an objection to the numerical composition of the Tribunal cannot *ipso facto* invalidate the arbitral proceedings.

71. It is equally well settled that proceedings under Section 34 of the A&C Act do not constitute appellate proceedings and this Court does not sit in appeal over the procedural decisions adopted during arbitration unless the same strike at the root of fairness, jurisdiction or public policy. In the facts of the present case, the constitution of the learned Arbitral Tribunal neither occasioned failure of justice nor caused prejudice warranting interference under Section 34 of the A&C Act.



72. In view of the aforesaid discussion, this Court is of the considered opinion that the challenge laid by Supreme Advertising to the constitution of the learned Arbitral Tribunal is wholly devoid of merit. The objection, even if otherwise available, stood waived by virtue of Sections 4 and 16 of the A&C Act, having never been raised before the learned Arbitral Tribunal despite full knowledge of its composition. The said challenge is therefore barred by waiver, acquiescence and the consistent conduct of Supreme Advertising throughout the arbitral proceedings.

73. Accordingly, Issue No. 1 is answered against Supreme Advertising and in favour of Genus Power.

Issue No. 2: Whether the Findings of the learned Arbitral Tribunal on Issue No. 13, Allowing Counterclaim No. 1 Towards Loss/Unaccounted Material and Awarding INR 20,18,64,000/- (Subsequently Modified to INR 18,39,00,000/-), are Liable to be Set Aside under Section 34 of the A&C Act on the Ground of Patent Illegality, Perversity, or Non-Application of Mind?

74. Supreme Advertising assails the findings of the learned Arbitral Tribunal on Counterclaim No. 1 on the ground that the Impugned Award is allegedly based on no evidence and that Genus Power failed to establish either the quantity of material supplied, the quantity allegedly unaccounted for, or the quantum of loss suffered by it. The principal submission of Supreme Advertising is that Genus Power did not produce inventories, challans, **MRHOV**²⁰ records or other primary documents evidencing supply of material and, therefore, the learned

²⁰ Material Receipt and Handing Over Voucher



Arbitral Tribunal could not have awarded the counterclaim merely on the basis of the schedules filed by Genus Power.

75. This Court has carefully examined the documents forming part of the record and submissions made by the parties. Upon such examination, this Court finds itself unable to agree with Supreme Advertising's contention that the impugned findings are based on no evidence or suffer from patent illegality.

76. At the outset, it is necessary to notice that the very foundation of Supreme Advertising's challenge proceeds on an incorrect assumption that Genus Power's counterclaim was based solely upon self-serving schedules prepared by it.

77. A reading of the Impugned Award demonstrates that the learned Arbitral Tribunal accepted Genus Power's case that the schedules and reconciliation statements relied upon by it were prepared from Supreme Advertising's own records, including the erection bills and statements filed by Supreme Advertising before the learned Arbitral Tribunal.

78. This Court is of the considered opinion that the learned Arbitral Tribunal did not proceed merely on the basis of self-generated schedules prepared by Genus Power. A reading of the discussion under Issue No.13 of the Impugned Award shows that the learned Arbitral Tribunal examined the quantities reflected in the erection bills, RA Bills and Final Bills submitted by Supreme Advertising itself and compared the same with the quantities which could be verified through approvals, measurements, departmental records and site inspections.



79. The learned Arbitral Tribunal specifically recorded that the quantities reflected in Schedules RY-4, RY-5 and RY-6 were derived from the figures claimed by Supreme Advertising itself and thereafter subjected to reconciliation. The learned Arbitral Tribunal further found that upon reconciliation of those figures with the quantities actually traceable and verifiable at site, substantial discrepancies emerged. It was on the basis of such discrepancy that the counterclaim came to be examined and ultimately allowed.

80. The challenge raised by Supreme Advertising is therefore not a case of absence of evidence but, in substance, a challenge to the manner in which the learned Arbitral Tribunal appreciated and evaluated the evidence before it.

81. Significantly, the learned Arbitral Tribunal also found that despite repeated opportunities, Supreme Advertising failed to furnish any satisfactory reconciliation explaining the difference between the quantities claimed by it in its erection bills and the quantities which could actually be traced and verified. The Impugned Award further reveals that the learned Arbitral Tribunal attached considerable significance to the evidence emerging from the cross-examination of Supreme Advertising's own witnesses.

82. The learned Arbitral Tribunal noted that Mr. G.S. Rawat (CW-1), when confronted with discrepancies between the quantities claimed as utilised and the quantities reflected in the RA Bills and Final Bills, admitted that reconciliation was required on the basis of records and further stated that if any shortage was found, the corresponding amount could be recovered from the erection cost payable to Supreme Advertising.



83. Likewise, the learned Arbitral Tribunal noticed that Mr. Rajeev Jain (CW-2) resiled from portions of his affidavit and admitted that Genus Power had continued insisting upon material reconciliation even after the period during which Supreme Advertising claimed that reconciliation had already been completed. The learned Arbitral Tribunal was entitled to rely upon these admissions while assessing the credibility of the rival cases and while determining whether the material stood duly accounted for.

84. Once Genus Power demonstrated the discrepancy by relying upon Supreme Advertising's own records and statements, the burden clearly shifted upon Supreme Advertising to explain the difference. Supreme Advertising cannot simultaneously rely upon its erection bills for sustaining its monetary claims and yet disown the very figures contained therein when those figures are utilised for reconciliation of material. The learned Arbitral Tribunal was therefore justified in drawing an adverse inference from Supreme Advertising's failure to furnish any satisfactory explanation or reconciliation.

85. The contention that Genus Power was required to independently prove each entry in the schedules by producing inventories, challans, MRHOV records and other documents also does not persuade this Court to interfere. The learned Arbitral Tribunal accepted Genus Power's explanation that the counterclaim was founded substantially upon Supreme Advertising's own declarations regarding material allegedly erected and utilised at site. Once the learned Arbitral Tribunal found that the relevant figures emanated from Supreme Advertising's own records, it was open to the learned Arbitral Tribunal



to treat the same as a valid evidentiary foundation for determining the extent of material which remained unaccounted for.

86. It is equally important to note that the Impugned Award records that Supreme Advertising never specifically controverted the figures reflected in the schedules relied upon by Genus Power. The challenge mounted before this Court seeks to question the methodology adopted by the learned Arbitral Tribunal and the sufficiency of evidence relied upon by it. Such a challenge necessarily falls within the realm of appreciation of evidence. It is well settled that a Court exercising jurisdiction under Section 34 of the A&C Act does not sit as a Court of appeal and cannot reassess the evidentiary value of material which has already been considered by the learned Tribunal.

87. This Court also finds no infirmity in the learned Arbitral Tribunal's rejection of Supreme Advertising's plea that material reconciliation had already been completed prior to the meeting dated 08.10.2006. The learned Arbitral Tribunal expressly recorded that such a plea did not form part of the pleadings and was not supported by the evidence led on behalf of Supreme Advertising. The learned Arbitral Tribunal further found that the said contention stood contradicted by the Minutes of Meeting dated 08.10.2006, the subsequent correspondence exchanged between the parties in December 2006 and the admissions elicited during cross-examination. Having regard to the contemporaneous documentary record relied upon by the learned Arbitral Tribunal, this Court is unable to hold that the said finding is either perverse or based on no evidence.

88. This Court is unable to accept Supreme Advertising's contention that an adverse inference ought to have been drawn against



Genus Power on account of non-production of inventories or challans. The learned Arbitral Tribunal was fully conscious of the evidentiary record before it and nevertheless found that Genus Power had discharged its burden by relying upon Supreme Advertising's own records, the reconciliation statements prepared therefrom and the oral evidence led before the learned Arbitral Tribunal. The sufficiency of such evidence is a matter squarely within the domain of the learned Tribunal and cannot be reopened in proceedings under Section 34 of the A&C Act.

89. Supreme Advertising's submission that the Impugned Award suffers from an inherent contradiction because certain claims relating to erection works were allowed whereas the counterclaim towards loss of material was simultaneously accepted is likewise misconceived.

90. The learned Arbitral Tribunal was dealing with two distinct questions. The first concerned entitlement for execution and erection of works. The second concerned accounting and reconciliation of material supplied for execution of those works. Acceptance of a claim relating to execution of work does not automatically establish that the entirety of the material reflected in the corresponding bills stood duly accounted for. The learned Arbitral Tribunal was entitled to independently examine whether the quantities claimed to have been utilised by Supreme Advertising were actually traceable and verifiable.

91. The findings returned on the counterclaim are therefore not inconsistent with the findings returned on the claims relating to execution of work. The contention that the quantum awarded under Counterclaim No.1 was arbitrary is equally untenable. The Impugned



Award records that material valued at INR 53,31,67,000/- was claimed by Supreme Advertising to have been erected and utilised. Upon reconciliation, material worth INR 26,99,89,000/- was found supported by approvals, measurements and verifications, while material worth INR 6,13,14,000/- was independently found during site inspections undertaken by Genus Power.

92. The learned Arbitral Tribunal accepted the reconciliation exercise reflected in Schedules RY-4 to RY-7 and quantified the unaccounted material accordingly. Whether a different methodology could have been adopted for valuation is not a question that falls for examination under Section 34 of the A&C Act. The Court is concerned only with whether the view adopted by the learned Arbitral Tribunal was a possible view based upon the material before it. In the facts of the present case, the answer must necessarily be in the affirmative.

93. The challenge founded upon Rajasthan works is also devoid of merit. The Impugned Award does not reveal any patent contradiction or mutually destructive finding. What Supreme Advertising seeks is a re-evaluation of the factual conclusions drawn by the learned Tribunal on the basis of the evidence before it. Such an exercise is plainly beyond the permissible scope of Section 34 of the A&C Act.

94. The submission that Genus Power failed to establish procurement cost, replacement cost or actual loss also cannot be accepted. The learned Arbitral Tribunal accepted the methodology adopted by Genus Power for valuation of the unaccounted material and quantified the claim accordingly. Whether another methodology would have been more appropriate is not a ground available under



Section 34 of the A&C Act. The Court cannot substitute its own assessment for that of the learned Tribunal merely because another view may appear possible.

95. This Court also cannot lose sight of the fact that the learned Arbitral Tribunal subsequently reconsidered the quantification while deciding the application leading to the Modified Award dated 17.05.2014. Upon such reconsideration, the amount awarded under Counterclaim No.1 was reduced from INR 20,18,64,000/- to INR 18,39,00,000/-. The Modified Award dated 17.05.2014 itself demonstrates conscious application of mind to the issue of quantification and effectively dispels Supreme Advertising's contention that the claim was granted mechanically or without scrutiny of the underlying material.

96. The entire challenge raised by Supreme Advertising ultimately seeks a re-appreciation of evidence, a re-evaluation of the reconciliation exercise undertaken by the learned Arbitral Tribunal and a reconsideration of the conclusions drawn on the basis of the material placed before the learned Arbitral Tribunal. Such an exercise is impermissible in proceedings under Section 34 of the A&C Act.

97. Having considered the reasoning contained in the Impugned Award, this Court is unable to conclude that the findings returned under Issue No.13 are such as no reasonable arbitral tribunal could have arrived at. The learned Arbitral Tribunal considered the documentary record, oral evidence, admissions of witnesses, reconciliation statements and site verification reports before arriving at its conclusions. The view adopted by the learned Arbitral Tribunal



is undoubtedly a plausible view arising from the material placed before it.

98. Even assuming that another view may also have been possible, the same would not justify interference under Section 34 of the A&C Act. The findings therefore cannot be characterised as perverse, patently illegal, based on no evidence, or suffering from such irrationality as would warrant setting aside of the Impugned Award.

99. Accordingly, this Court finds no ground warranting interference with the findings returned by the learned Arbitral Tribunal on Issue No.13 or with Counterclaim No.1 as modified by the Modified Award dated 17.05.2014. The challenge raised by Supreme Advertising to Counterclaim No.1 is therefore rejected.

Issue No. 3: Whether the Findings Returned by the learned Arbitral Tribunal on Issue Nos. 14, 14(i) and 14(ii), Allowing Counterclaim No. 2 in Respect of Dismantled Material and Awarding INR 40,80,000/- in Favour of Genus Power under the Modified Award Dated 17.05.2014, Suffer from Patent Illegality, Perversity, or Otherwise Warrant Interference under Section 34 of the A&C Act?

100. The rival submissions of the parties in relation to Issue Nos. 14, 14(i) and 14(ii) have already been noticed in detail hereinabove and are not being reproduced again for the sake of brevity. Suffice it to note that Supreme Advertising's challenge is essentially founded on the contention that Counterclaim No. 2 concerning dismantled material was allowed without any independent evidence establishing either liability or quantification and that the learned Arbitral Tribunal erroneously relied upon Schedule RY-8 and obligations allegedly arising from contracts executed with the Electricity Authorities.



Supreme Advertising further assails the valuation adopted by the learned Arbitral Tribunal and contends that the Impugned Award under this head is arbitrary and unsupported by the record.

101. However, Genus Power maintains that the findings are founded upon the contractual framework governing the project, documentary evidence, admissions emanating from Supreme Advertising's own correspondence, oral testimony led before the learned Tribunal and the reconciliation statement reflected in Schedule RY-8. According to Genus Power, the learned Arbitral Tribunal, upon appreciation of the material available on record, returned a reasoned finding which does not warrant interference within the limited scope of Section 34 of the A&C Act.

102. Having considered the record, the Impugned Award, the pleadings, evidence and the submissions advanced on behalf of the parties, this Court is unable to agree with Supreme Advertising's challenge to the findings returned by the learned Arbitral Tribunal on Issue Nos. 14, 14(i) and 14(ii).

103. The principal plank of challenge raised by Supreme Advertising is that the counterclaim relating to dismantled material was allegedly based on no evidence and merely on Schedule RY-8 prepared by Genus Power. The contention does not withstand scrutiny.

104. A perusal of the Impugned Award demonstrates that the learned Arbitral Tribunal did not award the claim merely on the basis of Schedule RY-8. The learned Tribunal examined the contractual obligations governing the execution of the project and specifically noticed the clauses requiring dismantling, transportation and deposit of dismantled material in the designated stores of the Electricity



Authorities. Upon consideration of the contractual framework, the learned Arbitral Tribunal concluded that the obligation to account for dismantled material formed part of Supreme Advertising's responsibilities while executing the works.

105. The learned Arbitral Tribunal further took into consideration Supreme Advertising's own communication dated 02.01.2007 wherein Supreme Advertising represented that the dismantled material had already been deposited with the Electricity Authorities. The learned Arbitral Tribunal treated the said communication as a significant admission. Once Supreme Advertising itself had asserted that the dismantled material stood deposited with the concerned authorities, the learned Arbitral Tribunal found it difficult to accept the subsequent stand that such material remained lying at project sites, stores or with subcontractors. This Court finds no perversity in the learned Arbitral Tribunal drawing such an inference.

106. The submission that there was no evidence whatsoever before the learned Arbitral Tribunal is therefore demonstrably incorrect. The Impugned Award is founded upon contractual documents, correspondence exchanged between the parties, admissions emanating from Supreme Advertising's own record, oral testimony and the reconciliation statement contained in Schedule RY-8. The challenge raised by Supreme Advertising is thus not a case of "no evidence" but, at its highest, a challenge to the manner in which the evidence was appreciated by the learned Arbitral Tribunal.

107. It is well settled that the sufficiency, adequacy or weight to be attached to evidence falls exclusively within the province of the learned Arbitral Tribunal. A Court exercising jurisdiction under



Section 34 of the A&C Act cannot reassess the evidentiary record to determine whether another conclusion may also have been possible. Once the view adopted by the learned Arbitral Tribunal is a plausible one arising from the material placed before it, interference is impermissible.

108. Supreme Advertising's challenge founded upon the alleged non-production of inventories, challans and other supporting documents is equally unpersuasive. The Impugned Award records that Genus Power's claim was supported through Schedule RY-8 and the testimony of RW-1. The learned Arbitral Tribunal further noted that the correctness of the said Schedule was not effectively demolished during cross-examination. Whether additional documentary material ought to have been produced or whether an adverse inference ought to have been drawn are matters relating to appreciation of evidence and cannot furnish an independent ground for setting aside an arbitral award.

109. Supreme Advertising's contention that the learned Arbitral Tribunal wrongly relied upon obligations contained in the project contracts with the Electricity Authorities also deserves rejection. The learned Arbitral Tribunal did not seek to enforce rights of third parties. Rather, it examined the contractual structure governing execution of the project for the limited purpose of determining responsibility for dismantled material. Such an exercise plainly fell within the jurisdiction of the learned Arbitral Tribunal and cannot be characterised as travelling beyond the contract or beyond the scope of reference.



110. Equally devoid of merit is the challenge to quantification. The Impugned Award reveals that the learned Arbitral Tribunal did not mechanically accept the valuation suggested by Genus Power. On the contrary, the learned Arbitral Tribunal independently examined the nature of dismantled material and concluded that the same could only be valued as scrap. Proceeding on that basis, the learned Arbitral Tribunal substantially reduced the value claimed by Genus Power and restricted the Impugned Award accordingly. The process adopted by the learned Arbitral Tribunal clearly reflects an independent adjudicatory exercise and not a mechanical acceptance of Genus Power's claim.

111. A perusal of the Modified Award dated 17.05.2014 also does not lend support to the contention advanced by Supreme Advertising that the learned Arbitral Tribunal mechanically allowed the counterclaims without independently appreciating the material available on record.

112. On the contrary, the modifications incorporated in the Modified Award dated 17.05.2014, which rectified the computational errors and resulted in a substantial reduction of the amount originally awarded, clearly demonstrate that the learned Arbitral Tribunal revisited the quantification of the claims, re-examined the underlying calculations, and corrected the arithmetical mistakes to ensure that the Impugned Award accurately reflected the figures and findings accepted by it.

113. Such an exercise is wholly inconsistent with the Petitioner's allegation that the counterclaims were allowed mechanically or without independent application of mind. Rather, the Arbitral Award dated 07.03.2014 as well as the Modified Award dated 17.05.2014,



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when read together, manifest a conscious and reasoned consideration of the quantification of the amounts awarded, thereby reinforcing that the learned Arbitral Tribunal had duly scrutinised the material on record before arriving at its final determination.

114. Learned Senior Counsel for Supreme Advertising has also placed reliance upon the decision in *Aneja Constructions (India) Pvt. Ltd.* (*supra*) to contend that a claim cannot be awarded merely on the basis of self-serving statements, schedules or tabulations prepared by a party in the absence of independent proof establishing liability and quantification. There can be no quarrel with the proposition laid down in the said decision. However, the reliance is misplaced in the facts of the present case.

115. A perusal of the Impugned Award demonstrates that the learned Arbitral Tribunal has not awarded the counterclaim merely on the basis of Schedule RY-8 or upon Genus Power's unilateral assertions. The learned Arbitral Tribunal has examined the contractual provisions governing dismantled material, considered Supreme Advertising's own correspondence including its communication dated 02.01.2007, evaluated the oral evidence led by the parties and thereafter assessed the reconciliation statement relied upon by Genus Power. The finding returned by the learned Arbitral Tribunal is thus founded upon a cumulative appreciation of documentary and oral evidence available on record.

116. The decision in *Aneja Constructions (India) Pvt. Ltd.* (*supra*) was rendered in a factual context where the claim was found to be unsupported by adequate evidentiary material and rested substantially upon unilateral assertions.



117. In the present case, however, the learned Arbitral Tribunal has relied upon multiple pieces of evidence, including admissions emanating from Supreme Advertising's own record. The challenge therefore is not one of absence of evidence, but of sufficiency and appreciation of evidence. Such an exercise lies squarely within the domain of the learned Arbitral Tribunal and cannot be reopened in proceedings under Section 34 of the A&C Act. The said decision is consequently distinguishable and does not advance Supreme Advertising's case.

118. This Court is therefore satisfied that the findings returned by the learned Arbitral Tribunal on Issue Nos. 14, 14(i) and 14(ii) are based on material available on record, represent a plausible view of the evidence and do not suffer from patent illegality, perversity or conflict with the fundamental policy of Indian law.

119. The challenge to Counterclaim No. 2 is accordingly rejected.

Issue No. 4: Whether the Findings Returned by the learned Arbitral Tribunal on Issue No. 9, Partly Allowing Counterclaim No. 3 of Genus Power Towards Interest on Account of Delayed Payments, Warrant Interference under Section 34 of the A&C Act?

120. Supreme Advertising challenges the findings returned by the learned Arbitral Tribunal on the ground that the counterclaim was unsupported by evidence and that the Impugned Award rests merely upon Schedule RX-7 without any material establishing either the alleged delay in payments or the quantum of loss suffered by Genus Power. According to Supreme Advertising, the learned Arbitral Tribunal awarded compensation on assumptions and conjectures,



thereby rendering the Impugned Award vulnerable to interference under Section 34 of the A&C Act.

121. Genus Power, on the other hand, contends that the claim was supported by documentary and oral evidence, including the fourteen (14) complaints made by Supreme Advertising, the material relating to withholding of payments, and the computation contained in Schedule RX-7. It is contended that details of all fourteen (14) complaints made by Supreme Advertising were specifically pleaded and proved through Annexure R-20. It is further submitted that the calculation was duly proved through the testimony of RW-1 and remained substantially unchallenged during cross-examination.

122. Having considered the rival submissions and examined the Impugned Award, this Court finds no ground warranting interference with the findings returned by the learned Arbitral Tribunal.

123. At the outset, it is necessary to note that the challenge proceeds substantially on the assertion that the Impugned Award is based on “no evidence”. However, a perusal of the Impugned Award demonstrates that the learned Arbitral Tribunal considered the material placed before it in support of Genus Power’s claim, such as Annexure R-20, and arrived at a factual finding that Genus Power had suffered delay in receipt of payments did not grant the counterclaim merely on the basis of Schedule RX-7 in isolation.

124. The learned Arbitral Tribunal further recorded that Schedule RX-7, containing the computation of interest, stood proved through the testimony of RW-1 and that the said computation was not effectively challenged during cross-examination. Upon consideration of the evidence on record, the learned Arbitral Tribunal accepted the



claim only in part and awarded interest at a reduced rate of 12% per annum instead of the rate originally claimed. The Impugned Award therefore rests not merely upon a schedule of calculations, but upon a combination of documentary material, oral testimony and the inferences drawn therefrom by the learned Arbitral Tribunal.

125. The principal submission advanced by Supreme Advertising is that the evidence relied upon by the learned Tribunal was insufficient to sustain the Impugned Award. However, once it is found that the learned Arbitral Tribunal's conclusion is founded upon material available on record, the sufficiency or adequacy of such evidence falls outside the scope of examination under Section 34 of the A&C Act.

126. Supreme Advertising's contention that no evidence was produced to establish delayed payments is, in substance, an invitation to re-appreciate the evidentiary record and to substitute the factual conclusions of the learned Arbitral Tribunal with another possible view. Such an exercise falls outside the limited scope of interference available under Section 34 of the A&C Act.

127. It is well settled that once the arbitral tribunal has considered the evidence before it and adopted a plausible view, the Court does not sit in appeal over the award and cannot reassess the sufficiency or adequacy of evidence merely because another conclusion may also be possible.

128. This Court also finds no merit in the submission that Genus Power, if aggrieved by delayed payments, could only have proceeded against the concerned electricity authorities and not against Supreme Advertising. The learned Arbitral Tribunal accepted Genus Power's case that the delay was occasioned by complaints made by Supreme



Advertising and that the resulting financial consequences flowed therefrom.

129. Whether such causal connection stood established on the evidence was a matter squarely within the domain of the learned Arbitral Tribunal. Once the learned Arbitral Tribunal, upon appreciation of the evidence led before it, arrived at such a finding, the same cannot be reopened in proceedings under Section 34 of the A&C Act unless shown to be perverse or based on no evidence whatsoever. No such case is made out in the present matter.

130. The findings returned by the learned Arbitral Tribunal are findings of fact based upon appreciation of the evidence placed before it and the learned Arbitral Tribunal duly considered the pleadings, documentary material, oral evidence and the conduct of the parties during trial before arriving at its conclusion. Supreme Advertising has been unable to demonstrate that the findings suffer from perversity, patent illegality, jurisdictional error, or are based on no evidence whatsoever. The challenge, in substance, seeks a reconsideration of the evidentiary record and substitution of the learned Arbitral Tribunal's view with that of the Court, which is impermissible in proceedings under Section 34 of the A&C Act.

131. Accordingly, the objections raised by Supreme Advertising to the Impugned Award rendered on Issue No. 9 are rejected and the findings of the learned Arbitral Tribunal on the said issue warrant no interference.

Issue No. 5: Whether Supreme Advertising Can Be Permitted to Contend, for the First Time During Oral Arguments in the Present Petition under Section 34 of the A&C Act, that the counterclaims



Preferred by Genus Power Before the learned Arbitral Tribunal Were Barred by Limitation?

132. Having considered the rival submissions on this particular issue, this Court is of the opinion that the contention sought to be raised by Supreme Advertising cannot be entertained in the facts of the present case.

133. At the outset, this Court is conscious of the settled position that limitation is not a mere technical defence and that claims barred by limitation cannot ordinarily be decreed merely because an objection was not raised. Equally, there can be no quarrel with the proposition that an arbitral tribunal is expected to decide disputes in accordance with law.

134. However, the issue before this Court is not whether limitation is important, but whether the present objection can be permitted to be raised for the first time in proceedings under Section 34 of the A&C Act in the absence of any foundational pleadings and factual determination before the learned Arbitral Tribunal.

135. It is equally well settled that the plea of limitation is ordinarily a mixed question of law and fact. In **Ramesh B. Desai** (*supra*), the Hon'ble Supreme Court observed that a plea of limitation cannot be decided as an abstract proposition of law divorced from facts and that determination of limitation necessarily requires ascertainment of the starting point of limitation, which is itself a question of fact. The Hon'ble Supreme Court further held that unless the issue is apparent on the face of the record, the question of limitation ordinarily requires pleadings, framing of issues and appreciation of evidence. The



relevant portion of the above-mentioned Judgment is reproduced hereinunder:

“19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words “barred by law” occurring in Order 7 Rule 11(d) CPC would also include the ground that it is barred by law of limitation has been recently considered by a two-Judge Bench of this Court to which one of us was a member (Ashok Bhan, J.) in ***Balasaria Construction (P) Ltd. v. Hanuman Seva Trust*** [(2006) 5 SCC 658, below] it was held: (SCC p. 661, para 8)

“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time.”

This principle would be equally applicable to a company petition. Therefore, unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(d) CPC.”

136. In the present case, this Court finds that the objection now sought to be urged by Supreme Advertising would require examination of several foundational facts.

137. Determination of the issue would necessarily require the Court to examine, *inter alia*, when the causes of action underlying the respective counterclaims accrued, whether the claims were continuing in nature, the effect of the Minutes of Meeting dated 08.10.2006, the impact of subsequent correspondence exchanged between the parties, whether any acknowledgements existed, and whether any facts existed which extended, postponed or otherwise affected the computation of



limitation. None of these factual aspects were ever placed in issue before the learned Arbitral Tribunal by Supreme Advertising.

138. Significantly, no issue on limitation of the counterclaims was framed before the learned Arbitral Tribunal. No evidence was led by either party specifically directed towards such a plea. More importantly, the present Petition under Section 34 of the A&C Act also contains no foundational pleadings raising any challenge to the counterclaims on the ground of limitation.

139. The decision of this Court in *National Highways Authority of India* (*supra*) assumes significance in this regard. While considering a similar contention, it was held that where limitation was never raised before the arbitral tribunal and consequently never decided by it, such a plea cannot ordinarily be permitted to be raised for the first time in proceedings under Section 34 of the A&C Act. The Court observed that once the arbitral award contains no determination on limitation owing to absence of such a plea, it would be wholly misconceived to contend that the arbitral tribunal erred in deciding an issue which was never raised before it. That the relevant portion of the judgment is reproduced hereinunder:

“**10(ii).** The learned senior counsel for the respondent/contractor argues that no doubt the issue of limitation is an issue of law, however an issue of limitation can always be waived by a person in whose favour the right to plead the bar of limitation arises. It is argued on behalf of the respondent/contractor that admittedly at no stage in the arbitration proceedings, i.e. either in the pleadings of the petitioner/employer, or during the course of evidence, or even during the course of final arguments, the petitioner/employer ever urged before the AT this ground of limitation, and the same is now urged for the first time in this petition under Section 34 of the Act.

11. In my opinion, the argument urged on behalf of the respondent/contractor is justified that the plea of limitation if not raised, is deemed to be waived. In my opinion, an issue of limitation cannot be raised for the first time in a petition



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under Section 34 of the Act because a petition under Section 34 of the Act has to challenge the Award on the ground that what the award decides is violative of the provisions and ingredients of Section 34 of the Act. Once there is nothing decided in the Award with respect to the issue of limitation, then how can the petitioner/employer argue that Award is wrong on the ground of awarding time barred claims. The Award has not decided this issue of limitation as this issue was admittedly never raised by the petitioner/employer in the arbitration proceedings. An issue before being argued as wrongly decided, has to first be decided on raising of such a defence, and once there is no decision on the issue of limitation, as it was not raised by the petitioner/employer, then how can the petitioner/employer urge that the issue of limitation is wrongly decided. This argument of the petitioner/employer is wholly misconceived and is therefore rejected.

12. In view of the aforesaid facts, I do not find that the impugned Awards in any manner violate any provisions of law or the contract between the parties, or that the Awards can be said to be in any manner wholly perverse, for this Court to interfere under Section 34 of the Act.”

140. Similar principles were reiterated by the Hon'ble Supreme Court in *Susaka Pvt. Ltd. (supra)*, wherein it was observed that a plea available to a party, whether on facts or in law, must be raised at the appropriate stage and, if not raised, the party may be precluded from asserting the same at a later stage on principles analogous to waiver and procedural fairness. The rationale underlying the principle is self-evident. Permitting an entirely new contention at a belated stage deprives the opposite party of the opportunity to meet the case and causes manifest prejudice which is irreparable and against the settled principles of law. The relevant portion of the judgment is reproduced hereinunder:

“**27.** If a plea is available, whether on facts or law, it has to be raised by the party at an appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case.”



141. This Court also finds considerable force in the observations of the Division Bench of this Court in ***Delhi Transco Ltd.*** (*supra*) wherein it was held that while a pure question of law requiring no factual enquiry may in an appropriate case be permitted to be urged at a later stage, such latitude cannot be extended where adjudication would necessitate examination of foundational facts. The Court specifically cautioned that appellate or supervisory jurisdiction under Sections 34 and 37 of the A&C Act cannot be converted into a forum for conducting a fresh factual enquiry in the absence of pleadings and supporting material. That the relevant portion of the judgment is reproduced hereinunder:

“65. While it is true that a pure legal issue for which no additional enquiry or proof is required may be raised in proceedings under Section 37, as held by this Court in *Union of India v. Inland World Logistics Pvt. Ltd.*²¹, it is evident that, in the present case, no such averments were made in the Section 34 petition, nor were any supporting details provided. Similarly, the present Section 37 proceedings contain neither specific averments nor any factual or documentary material to lend even a semblance of support to this contention.

66. Even assuming, arguendo, that this proposition were to be examined, a foundational basis would at the very least need to be established. This Court, in its exercise of jurisdiction under Section 37, cannot engage in a fresh appreciation of the entire matter that would require delving into the factual gamut. In the considered opinion of this Court, the present case falls squarely within the latter category. The objection sought to be urged is not a pure question of law capable of determination on admitted facts. Rather, it is a mixed question of law and fact requiring investigation into matters which were never put in issue before the learned Arbitral Tribunal and on which no findings exist.”

142. The observations of the Hon’ble Supreme Court in ***Municipal Corporation of Greater Mumbai*** (*supra*) are also apposite. The Court cautioned against permitting parties to keep what it described as a

²¹ 2025 SCC OnLine Del 2735



“jurisdictional ace” up their sleeve and thereafter seek to deploy it at a belated stage after having participated in the proceedings without demur. The principle applies with equal force in the facts of the present case. A party cannot consciously allow proceedings to proceed on a particular footing, invite adjudication on merits, and thereafter seek to introduce an entirely new challenge requiring adjudication on a mixed question of law and facts for the first time at the stage of final arguments. The relevant portion of the judgment is reproduced hereinunder:

“67. ... In such a fact situation, no party can be permitted to take the dispute resolution process, the nominee arbitrators or the opposite party for a ride. A party cannot keep a ‘jurisdictional ace’ up their sleeve and then claim that filing of the jurisdictional challenge under Section 16 would go back in time and wipe out the past conduct and acquiescence of the party which would clearly evince how the contractual terms were viewed by the parties. If the same is permitted, it will erode the basic principles of alternative dispute resolution and ethos of arbitration.”

143. This Court is, therefore, of the considered view that the plea sought to be raised by Supreme Advertising for the first time before this Court, by way of oral submissions, regarding the limitation of the counterclaims is not a pure question of law capable of being determined solely on the basis of the existing record.

144. It is an admitted position that the aforesaid plea was neither raised before the learned Arbitral Tribunal nor specifically pleaded in the present Petition under Section 34 of the A&C Act.

145. In these circumstances, permitting Supreme Advertising to raise the said contention for the first time at the stage of final arguments would necessarily require this Court to undertake an enquiry into factual issues, including the determination of foundational facts and, if necessary, the appreciation of evidence which ought to have been led



before the learned Arbitral Tribunal. Such an exercise is clearly impermissible within the limited scope of judicial review under Section 34 of the A&C Act.

146. Accordingly, the objection raised by Supreme Advertising regarding limitation of the counterclaims is therefore rejected.

Issue No. 6: Whether the Modified Award Dated 17.05.2014 Amounts to an Impermissible Review of the Arbitral Award Dated 07.03.2014 or Constitutes a Permissible Correction under Section 33 of the A&C Act?

147. The challenge to the Modified Award dated 17.05.2014 proceeds on the assumption that the learned Arbitral Tribunal exercised a power of review which is not available under the A&C Act.

148. There can be no dispute with the proposition that an arbitral tribunal does not possess any substantive power of review. Once an award is rendered, the learned Tribunal becomes *functus officio* except to the limited extent preserved under the A&C Act. Section 33 of the A&C Act constitutes one such statutory exception and permits correction of computational, clerical, typographical and similar errors occurring in the award. The controversy, therefore, is whether the modifications carried out by the learned Arbitral Tribunal fall within the corrective jurisdiction recognised under Section 33 of the A&C Act or amount to a reconsideration of the award on the merits.

149. Section 33 of the A&C Act permits correction of computational errors, clerical errors, typographical mistakes and other errors of a similar nature occurring in an arbitral award. The provision is intended to enable rectification of accidental slips and mistakes so that



the award correctly reflects the adjudication actually rendered by the learned Tribunal. What is prohibited is a reconsideration of the merits of the dispute, reassessment of evidence, alteration of findings or substitution of conclusions already reached.

150. A perusal of the Modified Award dated 17.05.2014 demonstrates that the learned Arbitral Tribunal was fully conscious of this distinction. The learned Arbitral Tribunal expressly considered the scope of Section 33 of the A&C Act and examined the objection raised by Supreme Advertising that the application sought an impermissible review of the Impugned Award. The learned Arbitral Tribunal thereafter scrutinised each correction sought by Genus Power individually. Significantly, the learned Arbitral Tribunal did not allow every request made by Genus Power. Several proposed modifications were expressly rejected on the ground that they did not constitute clerical, typographical or computational errors and would fall outside the scope of Section 33 of the A&C Act. This approach itself indicates that the learned Arbitral Tribunal did not proceed as a reviewing authority but remained confined to the limited corrective jurisdiction available under the statute.

151. The corrections ultimately allowed by the learned Tribunal were founded upon errors apparent from the record, including mistakes in figures, calculations and transcription. The learned Arbitral Tribunal specifically recorded that certain mistakes had occurred while transcribing the Arbitral Award dated 07.03.2014 and that the corrected figures were borne out from the underlying material already available on record. The exercise undertaken was therefore one of rectification and not re-adjudication.



152. Equally significant is the fact that no finding on liability, entitlement or merits was altered. The learned Arbitral Tribunal did not revisit its conclusions regarding the parties' rights and obligations. The learned Arbitral Tribunal neither revisited the evidence nor re-evaluated the merits of the controversy. No fresh reasoning was introduced and no conclusion previously reached was substituted by another. The modifications were confined to the figures ultimately reflected in the Arbitral Award dated 07.03.2014 and arose from discrepancies between the amounts claimed, the calculations recorded and the amounts inadvertently awarded. A reduction in the amount awarded, by itself, does not establish that the learned Arbitral Tribunal reviewed its earlier decision. The determinative test is not whether the numerical outcome changed, but whether the learned Tribunal reopened the adjudicatory process. On the material available, no such reopening is discernible. The exercise was therefore corrective rather than adjudicatory in nature.

153. This Court is therefore unable to accept Supreme Advertising's contention that the learned Arbitral Tribunal exercised a power of substantive review. The Modified Award dated 17.05.2014 reflects an exercise of correction expressly contemplated under Section 33 of the A&C Act and cannot be equated with a rehearing or reconsideration of the dispute on merits.

154. Viewed thus, this Court finds no merit in the contention that the learned Arbitral Tribunal exercised a power of review unknown to the Act. The modifications carried out under the Modified Award dated 17.05.2014 were confined to correction of errors falling within the ambit of Section 33 of the A&C Act and did not entail any



reconsideration of the merits of the dispute. The challenge founded upon alleged review of the Arbitral Award dated 07.03.2014 is therefore liable to fail.

155. Accordingly, the objection raised as against the Modified Award dated 17.05.2014 is rejected.

B. O.M.P. (COMM.) 159/2016 /GENUS POWER'S PETITION/

156. The present Petition, instituted by Genus Power, has assailed the Impugned Award insofar as it relates to the findings of the learned Arbitral Tribunal concerning the execution of the works, Supreme Advertising's entitlement under the final bills, the interpretation of the MOM/MOU dated 08.10.2006, and the claims allowed in its favour.

157. Genus Power has contended that the learned Arbitral Tribunal failed to correctly appreciate the contractual framework, the documentary evidence, and the material on record, resulting in findings that are contrary to the evidence and liable to be set aside under Section 34 of the A&C Act.

158. At the outset, it is necessary to note that although the present Petition was heard along with *O.M.P.(COMM.) 115/2016* and arises out of the same Impugned Award, no independent oral submissions were advanced on behalf of Genus Power in support of the challenge during the course of oral hearing.

159. Nevertheless, this Court has independently examined the pleadings, the grounds urged in the Petition, and the Reply filed by Supreme Advertising.

160. The principal challenge raised by Genus Power, as discernible from the grounds set out in the present Petition, pertains to the



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findings of the learned Arbitral Tribunal in relation to the claims concerning business loss and the Rajasthan Bills. Supreme Advertising has opposed the Petition by contending that the Impugned Award, to the extent challenged in the present Petition, is a reasoned and well-considered Award rendered after a comprehensive appreciation of the pleadings, the documentary and oral evidence adduced by the parties, as well as the contractual terms regulating their rights and obligations.

161. It has further been contended that the grounds urged by Genus Power seek nothing more than a re-appreciation of facts, evidence, and contractual interpretation, which falls outside the limited scope of judicial interference under Section 34 of the A&C Act. According to Supreme Advertising, the findings recorded by the learned Arbitral Tribunal are based on a plausible and reasonable appreciation of the material on record and, therefore, do not warrant interference.

162. Having considered the pleadings of the parties, the rival contentions, the material placed before the learned Arbitral Tribunal, and the Impugned Award, this Court is of the considered opinion that the present Petition does not disclose any ground warranting interference under Section 34 of the A&C Act.

163. The objections raised by Genus Power essentially assail the learned Arbitral Tribunal's appreciation of evidence, interpretation of the contractual documents, and findings on facts. As already discussed, while adjudicating O.M.P.(COMM.) 115/2016, the jurisdiction of this Court under Section 34 of the A&C Act is supervisory and not appellate. This Court cannot undertake a fresh



evaluation of the evidence or substitute its own interpretation merely because another view is possible.

164. This Court has, while deciding the connected Petition, already undertaken a detailed examination of the contractual documents, the evidence led by the parties, and the reasoning adopted by the learned Arbitral Tribunal. The findings recorded therein equally govern the issues raised in the present Petition. The Impugned Award neither suffers from patent illegality nor discloses any perversity, jurisdictional error, or violation of the fundamental policy of Indian law so as to justify interference under Section 34 of the A&C Act. No independent ground has been demonstrated by Genus Power in its Petition that merits a different conclusion.

165. Accordingly, this Court is of the considered opinion that the present Petition is devoid of merit and is, therefore, liable to be dismissed.

CONCLUSIONS ON BOTH PETITIONS:

(a) In O.M.P. (COMM.) 115/2016

166. Having examined each of the challenges raised by Supreme Advertising in the light of the limited scope of interference available under Section 34 of the A&C Act, this Court finds no merit in the objections urged against the Impugned Award.

167. Insofar as the challenge to the constitution of the learned Arbitral Tribunal is concerned, this Court has already held that the objection was never raised before the learned Arbitral Tribunal in accordance with law and, therefore, cannot be permitted to be urged at this belated stage.



168. The challenge to the findings returned under Issue No. 13 [*Counterclaim No. 1*] has also been found to be devoid of merit. The findings returned by the learned Arbitral Tribunal are based upon appreciation of the material placed on record and cannot be characterised as perverse, unsupported by evidence or suffering from patent illegality warranting interference under Section 34 of the A&C Act.

169. Similarly, the objections directed against the findings under Issue Nos. 14, 14(i) and 14(ii) [*Counterclaim No. 2*] do not disclose any ground falling within the limited contours of Section 34 of the A&C Act. The view adopted by the learned Arbitral Tribunal is a plausible view arising from the material available on record and does not call for interference.

170. The challenge to the findings returned under Issue No. 9 [*Counterclaim No. 3*] has also been found to be unsustainable. The findings returned by the learned Arbitral Tribunal cannot be said to suffer from perversity, patent illegality or any infirmity going to the root of the matter.

171. Insofar as the contention regarding limitation of the counterclaims is concerned, this Court has already held that the said plea was neither raised before the learned Arbitral Tribunal nor forms part of the pleadings in the present Petition. The same, being a mixed question of law and fact, cannot be permitted to be raised for the first time during oral submissions in proceedings under Section 34 of the A&C Act.

172. This Court had further found no merit in the challenge to the Modified Award dated 17.05.2014. The corrections carried out by the



learned Arbitral Tribunal fall squarely within the ambit of Section 33 of the A&C Act and do not amount to an impermissible modification of the Arbitral Award dated 07.03.2014.

173. Consequently, no ground is made out for interference with either the Arbitral Award dated 07.03.2014 or the Modified Award dated 17.05.2014 under Section 34 of the A&C Act. Accordingly, *O.M.P. (COMM.) 115/2016* is dismissed.

174. Pending Application(s), if any, shall also stand disposed of accordingly.

175. No Order as to costs.

(b) *O.M.P. (COMM.) 159/2016*

176. This Court finds that Genus Power has failed to make out any ground warranting interference under Section 34 of the A&C Act. Accordingly, *O.M.P. (COMM.) 159/2016* is dismissed.

177. Pending Application(s), if any, shall also stand disposed of.

178. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.
JULY 13, 2026/ma