IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

AP No. 491 of 2021

LEONINE ESTATES PVT. LTD. & ORS.

vs.

RITMAN INFRA LTD & Ors.

For the petitioners	: Mr. Debnath Ghosh, Sr. Adv., Mr. Sarosij Dasgupta, Adv., Mr. Aditya Mondal, Adv., Ms. Shomrita Das, Adv., Mr. Shomrik Das, Adv.
For the Respondent No.1	: Mr. Rajarshi Dutta, Adv., Mr. Abheshek Sikdar, Adv.
For the Respondent Nos. 2 -7	: Mr. Bhaskar Roy, Adv.
Judgment reserved on	: 10.09.2026
Judgment pronounced on	: 25.11.2026

Shampa Sarkar, J.

1. This is an application under Section 34 of the Arbitration and Conciliation Act, (hereinafter referred to as the said Act), for setting aside the award dated October 16, 2017, (herein after referred to as the said award) passed by a named arbitrator Mr. Dipak Chakraborty, learned Advocate in ARB case No. RT/006 of 2017.

2. M/s Ritman Infra Limited (in short the claimant), the respondent No. 1, herein, invoked the arbitration clause for resolution of disputes arising out of a sale agreement dated December 8, 2014, (hereinafter referred to as the said agreement). The said agreement was allegedly entered into between the petitioners, respondent Nos. 2 to 7 and the claimant. According to the claimant, the dispute resolution mechanism under clause 7 of the said agreement provided that in the event the parties to the agreement failed to perform the covenants agreed upon, then such non-performance would be settled by way of arbitration and Mr. Deepak Chakraborty, Advocate, would act as the sole arbitrator.
3. Mr. Debnath Ghosh, Learned Senior Advocate appeared on behalf of the petitioners. The petitioners were some of the respondents in the arbitral proceeding. They have assailed the award on various grounds.
4. According to Mr. Ghosh, the award had not been served upon the petitioners by the learned Arbitrator. The application under Section 34 of the said Act was filed upon deriving knowledge of such award from an application filed in connection with a civil suit. The period of limitation to file the application under Section 34 had not begun to run and the application was not barred by limitation.
5. The petitioners had filed a suit in the court of the learned Civil Judge, Senior Division, 4th Court at Alipore, which was registered as Title Suit No. 818 of 2018. The suit was filed for partition of the premises which was also the subject matter of the arbitration.
6. Ghanshyam Das Sharma, alias G.D. Sharma, had filed an application for rejection of the plaint in the said suit on behalf of the respondent No. 2 to

7, herein, (some of the respondents in the arbitral proceeding), under Order 7, Rule 11 of the Code of Civil Procedure. The said application was rejected by an order dated July 25, 2022. Upon perusal of the said application which was served upon the petitioners on March 23, 2021, the petitioners came to know about the purported award and the purported unregistered agreement dated December 8, 2014. A photocopy of the purported award and the purported unregistered agreement for sale was annexed to the application for rejection of the plaint. Upon gaining such knowledge, the application for setting aside the award was filed under Section 34 of the said Act on November 26, 2021.

7. According to Mr. Ghosh, the award was bereft of any reasons. The same was perpetuated by fraud and misrepresentation. The learned arbitrator failed to act impartially and the proceeding stood vitiated. The petitioners were not served with a notice of arbitration. They were not informed about the proceeding before the learned arbitrator. The purported agreement which contained the arbitration clause was also a product of fraud, inasmuch as, the petitioners did not sign the said agreement. G.D. Sharma was not authorized to sign the agreement for sale on behalf of the petitioners. G.D. Sharma relied on a resolution of the Board of Directors of the Companies, which was fraudulently obtained. His contention that he was the authorized signatory for all the petitioners was untrue. The petitioners were companies and had separate identity. As the arbitration clause was also a product of fraud, the award was liable to be set aside. Neither the statement of claim nor the statement of defense were served upon the petitioners. They were not heard. The award was published

upon considering admissions of the petitioners and the respondents Nos. 2 to 7 which were allegedly made in the written statement of defense purportedly filed by them. Whereas, no such written statement of defense had ever been filed by the petitioners.

8. It was urged that, G.D. Sharma did not have any authority under the law to make any admissions on behalf of the petitioners, thereby, accepting the claimant's version that was put forward before the learned arbitrator in the statement of claim. As fraud vitiated the entire process, the purported award was a nullity and deserved to be set aside. Violation of the principles of natural justice also rendered the award to be bad in law and against the fundamental policy of India.

9. According to Mr. Ghosh, G.D. Sharma was a director of the petitioner/companies up to August 11, 2017. By a resolution adopted by the 12 petitioner companies, G.D. Sharma was removed from directorship. The Forms DIR. 12 recorded such removal of G.D. Sharma from directorship of the companies. The respondent No. 1 (claimant) was owned and controlled by one Parag Majumdar. The respondent Nos. 2 to 7 were owned and controlled by G.D. Sharma. Parag Majumdar and G.D. Sharma acted in collusion with each other in order to obtain the fraudulent award, as they were directors of multiple companies under the Ritman Group.

10. The registered office of the petitioner companies shifted to suite No. 8 -1 Chatterjee International Centre, 9th floor, 33A, Jawaharlal Nehru Road, with effect from August 1, 2017, and Forms INC 22 were duly submitted before the Register of Companies. Immediately after the

issuance of the notice proposing removal to G.D. Sharma, the respondent No. 1 issued a letter dated July 17, 2017, to the petitioners and the respondent Nos. 2 to 7, demanding execution of the purported agreement for sale dated December 8, 2014, and execution of the deed of conveyance on the basis of the said agreement upon acceptance of balance consideration. The letter was delivered on July 19, 2017, at the previous registered office address of the petitioners and by letter dated August 3, 2017, the petitioners informed the respondent No. 1 that they were not aware of the existence of the purported sale agreement and that a copy of the sale agreement should be served upon the petitioners.

11. According to Mr. Ghosh, after removal from directorship, G.D. Sharma hatched up a conspiracy with Parag Majumdar to grab the landed property which was jointly purchased by the petitioners and the respondents Nos. 2 to 7, being land measuring about 128 cottahs, 12 chittacks and 33 square feet, under Mouza Madurdaha, popularly known as premises No. 736 Madurdaha, Kolkata 700107. Such land was purchased by 14 deeds of conveyance, and each of the petitioners and the respondent Nos. 2 to 7 had 1/18th share.

12. The petitioners were unaware of the arbitral proceeding and the arbitral award. Referring to the contents of the alleged deed of sale, Mr. Ghosh submitted that the fraudulent activity of G.D. Sharma would be available from the e-mail address of the companies mentioned in the purported agreement. The said e-mail address belonged to the son of G.D. Sharma. Referring to the award, it was further submitted that all the companies were represented by their authorized signatory Mr. G.D.

Sharma, and the address in the award was mentioned as 3, Dr. Rajendra Road, Police Station, Bhawanipore, Kolkata, 700020, which was the residential address of G.D. Sharma. Thus, the appearance of G.D. Sharma on behalf of the petitioner companies through a learned advocate before the learned arbitrator, was a collusive act and G.D. Sharma had acted adverse to the interest of the petitioner companies. Thus, prayer was made to set aside the award on the above grounds.

13. The respondent Nos. 2 to 7 and the respondent No. 1 filed their respective affidavits-in-opposition in the proceeding before this court. Mr. Bhaskar Roy, learned Advocate appeared on behalf of the respondent Nos. 2 to 7 and Mr. Rajarshi Dutta, learned Advocate appeared on behalf of the respondent No. 1.

14. In the affidavit filed on behalf of the respondent No. 1 (claimant), it had been stated that, the petitioners and the respondent numbers 2 to 7 had entered into the said agreement on December 8, 2014, whereby and whereunder the respondent No. 1 agreed to purchase and the petitioners as also the respondent No. 2 to 7 agreed to sell land along with a tin shed, bearing Municipal Premises No.736, Madurdaha, Ward No. 108, under Police Station Anandapur, within the jurisdiction of the Kolkata Municipal Corporation on certain terms and conditions. It was stated that, simultaneously with the signing of the agreement the petitioners and the respondent Nos. 2 to 7 had handed over possession of the premises in question to the respondent No. 1. The respondent No. 1 had been managing the premises, paying the bills raised by the security guards, and was responsible for overall supervision of the said premises. A sum of

Rs. 55, 31, 808 as advance, had been paid out of the total consideration money to the petitioners and the respondent Nos. 2 to 7. Sometime in August 2015, a letter was issued by one Jitendra Kumar Thirani, upon perusal of an advertisement published in the Aaj Kaal, by the respondent No. 1. The letter stated that, one Rajesh Agarwala, alias Jalan, on behalf of M/s Leonine Private Limited, owed 40% of the total stake in the project undertaken by the 17 companies at 736 Madhurdaha, in lieu of funds that had been invested in the following companies:-

a) Thirani Enterprises Private Limited,
b) Lucky Dhan Vyapaar Private Limited,
c) Hi-Tech Holdings Private Limited,
d) Supermax Vinimay Private Limited,
e) Jaygopal Fiscal Services Private Limited. and that until, Rajesh Agarwalla, alias Jallan, for settlement of dues.

15. The respondent No. 1, by a letter dated July 17, 2017, addressed to the petitioners and the respondent Nos. 2 to 7, requested for execution of the deed of conveyance, upon receipt of the balance consideration. Therefore, the allegation of the petitioners that they did not have any knowledge about the said agreement for sale, was unfounded and false.

16. Upon receipt of the advance payment, the petitioners and the respondent Nos. 2 to 7 failed to act on the basis of the covenants of the said agreement and hence the arbitration clause was invoked. The learned arbitrator by a letter dated September 15, 2017, had informed the petitioners and the respondent Nos. 2 to 7 that he had entered upon reference. The said arbitral tribunal proceeded on the basis of the said Act

and passed the award on October 16, 2017. By a letter dated October 16, 2017, the award was communicated to the respondent No. 1, to the petitioners and also to the respondent Nos. 2 to 7. With regard to the removal of GD. Sharma as a director of M/s. Leonine and other 11 companies, a complaint was lodged by GD. Sharma against Arun Kumar Mohta and Rajshri Mohta. An FIR was registered vide Beniapukur P. S. Case No. 462 of 2017 under Sections 465, 467, 468, 471 and 420 of the Indian Penal Code. Newspaper publications were made with regard to the arbitration proceeding and the award. Thus, Mr. Roy and Mr. Dutta categorically submitted that, all the parties were aware of the proceeding. The petitioners were making up a false and concocted story by faking ignorance in respect of the agreement for sale and the passing of the award.

17. According to Mr. Roy and Mr. Dutta, the investigation by the police revealed that GD. Sharma was wrongly and illegally removed from directorship by the accused persons, namely Arun Kumar Mohta and Rajshri Mohta and the investigation resulted in the filing of a charge sheet. Thus, the contention of the petitioners that G.D. Sharma acted adverse to the interest of the petitioner companies, after being removed from the post of director of the said companies and thereby encumbered and parted with the assets of the companies, had not been established. The learned Advocates further submitted that the award was published on October 16, 2017 and copies thereof were communicated to all concerned. The application for setting aside the award was hopelessly barred by limitation because the award was communicated to all

concerned by the learned arbitrator vide letter dated October 16, 2017. A copy of the said letter formed a part of the annexures to the affidavit-in-oppositions filed by the respondents. The specific case of the respondents was that, the petitioners were well aware of the agreement for sale in respect of the subject premises. They had acted on the basis thereof, by handing over possession of the said premises. Reference was made to various letters of August and November 2015 in support of the contention that the parties were negotiating over settlement of the finances. It was finally alleged that the said application was wrongly filed in the non-commercial division, although the dispute was covered by the definition of a commercial dispute under the Commercial Courts Act, 2015. To support such contention, reference was made to the fact that the agreement for sale mentioned a prior development agreement.

18. Considered the rival contention of the parties. With regard to the point of limitation, it appears that the specific allegation of the petitioners was that the award was never served upon them. The petitioners filed Title suit No. 818 of 2018 before the Learned Civil Judge, Senior Division, 4th Court at Alipore for partition of the subject property. In the said suit, an order of status quo was passed by the Learned District Judge in Misc. appeal No. 193 of 2018. The parties to the suit were directed to maintain status quo with regard to the property in question. The said order of status quo was continued.

19. The Respondent Nos. 2 to 7 filed an application under Order 7, Rule 11 of the Code of Civil Procedure for rejection of the plaint. A copy of the said application along with the annexures was served upon the learned

Advocate for the petitioners on March 23, 2021. In the said application, a photocopy of the purported agreement dated December 8, 2014 and the application for execution of the award in tabular form had been annexed.

20. Upon receipt of copy of the application filed in connection with the sujit, the petitioners came to know about the award dated October 16, 2017.

21. The provision of Section 31(5) of the 1996 Act with regard to delivery of a signed copy of the award to the petitioners had not been complied with. Neither the respondents, nor the learned Arbitrator could establish service of the award upon the petitioners. Despite directions to produce the records of the arbitral proceeding, the learned Arbitrator failed to produce the same.

22. Under such circumstances, the period of limitation to file an application under Section 34 of the said Act did not start to run. Although the respondents have relied upon a letter issued by the Learned Arbitrator, it appears that the said letter was addressed to the petitioner companies as also the Respondent Nos. 2 to 7 through G.D. Sharma and the residential address of G.D. Sharma was mentioned. By then, G.D. Sharma had already been removed from directorship of the petitioner companies and the petitioners companies had shifted their registered office.

23. Even if it is assumed that the award was sent to G.D. Sharma, that was not sufficient compliance of Section 31(5) of the Arbitration and Conciliation Act 1996. Under such circumstances, the application cannot be treated to be barred by limitation. The petitioners came to know about

the award on March 23, 2021 and they filed the application sometime in November 26, 2021.

24. The Hon'ble Apex Court in ***Cognizance for extension of limitation, In Re*** reported in ***(2022) 3 SCC 117*** had clearly held that the period between March 15, 2020 to February 28, 2022 shall be excluded in computing the period of limitation for initiation of any proceeding, including a proceeding under the Arbitration and Conciliation Act. Under such circumstances, the application cannot be held to be barred by law.

25. Reference is made to the decision of the Hon'ble Apex Court in the matter of ***M/s Motilal Agarwala Vs. State of West Bengal*** reported in ***2025 INSC 1062*** and ***State of Maharashtra & Ors. Vs. ARK Builders Pvt. Ltd.*** reported in ***(2011) 4 SCC 616.*** The relevant portions of the decision in ***M/s Motilal Agarwala (supra)*** are quoted below:-

> "**12.** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the delivery of the true/xerox copy of the Arbitral Award duly signed by the Arbitrator to an authorised representative of the State on 12.11.2013 would constitute delivery upon the respondent herein in accordance with Section 31(5) of the Act 1996?
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> **13.** The limitation period under the Act 1996 for the Section 34 application is three months from the date of "receipt" of an Arbitral Award or from the date on which request under Section 33 of the Act is disposed.
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> **14.** The proviso to sub-section (3) gives an additional 30 days to a party provided it can satisfy the Court that it was prevented in filing on time for sufficient reasons. Sub-section (1) and Sub- section (3) of Section 34 of the Act 1996 are reproduced below:
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> "34. Application for setting aside arbitral award- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with subsection (2) and sub-section (3) ……..

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:
Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter." (emphasis supplied)

15. Section 31(1) and (5) of the Act 1996 respectively read as under:

"31. Form and contents of arbitral award.—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
xxx xxx xxx (5) After the arbitral award is made, a signed copy shall be delivered to each party."

16. Thus, Section 31 of the Act 1996 sets forth the form and content of an Arbitral Award. Sub-section (1) of Section 31 states that an arbitral Award shall be drawn out in the manner as prescribed by the Section and is to be signed by all members of the Arbitral Tribunal.

17. Sub-section (5) of Section 31 of the Act 1996 provides that once an Award is made, a signed copy shall be delivered to each 'party'.

18. A "party" is defined by Clause (h) of sub-section (1) of Section 2 of the Act 1996 as a party to an Arbitration Agreement.

19. The analysis of the provisions above shows that an Application for setting aside an Arbitral Award may be made by such party within three months from the date of its receipt unless the proviso is applicable and that limitation under Sub-section (3) of Section 34 of the Act 1996 commences on the date when the party has received the Arbitral Award.

20. The facts are not in dispute. At the cost of repetition, we state that the authorised representative, in fact, had collected a xerox copy of the award on 12.11.2013 and that too, duly signed by the Arbitrator. But the fact remains that the authorised representative in this case would not fall within the ambit of "party" as defined by Clause (h) of Sub-Section (1) of Section 2 of the Act 1996 to an arbitration agreement. The application for setting aside an arbitral award in accordance with the provisions of the Act 1996 has to be preferred by such party within three months from the date of its receipt unless the proviso is applicable and that limitation, under Sub-section 3 of Section 34 of the Act 1996 commences from the date when the party has received the arbitral award.

21. What exactly constitutes a "party", in the context of Government, has been interpreted by this Court in Union of India vs. Tecco Trichy Engineers & Contractors, reported in (2005) 4 SCC 239. In the said decision, this Court held that in order to constitute an effective service, a copy of an award, where such party is the Ministry of a particular Department, is to be delivered to a person who has the knowledge and is the best person to understand and appreciate an award and more particularly, to take decision for its challenge. We are of the view that the authorised representative of the State could not have taken the final decision to challenge the award. It is only the Secretary of the concerned Department or the Executive Engineer, who could be said to be the competent authority to take a decision as to whether the award could be challenged or not.

22. As held by this Court, the delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. The delivery by the Arbitral Tribunal and receipt by the party sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. The delivery of the copy of the award has the effect of conferring certain rights on the party bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of the award by the Tribunal the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

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25. We take notice of the fact that Tecco Trichy (supra) has been relied upon by this Court in Benarsi Krishna Committee and others v. Karmyogi Shelters Private Limited, reported in (2012) 9 SCC 496, wherein this Court held that the expression "party", as defined in Section 2(1)(h) of the 1996 Act would be a person who is a "party" to an arbitration agreement. The relevant extract from the decision in Benarsi Krishna Committee (supra), more particularly the observations made in para 15 therein reads thus:

"15. Having taken note of the submissions advanced on behalf of the respective parties and having particular regard to the expression "party" as defined in Section 2(1)(h) of the 1996 Act read with the provisions of Sections 31(5) and 34(3) of the 1996 Act, we are not inclined to interfere with the decision of the Division Bench of the Delhi High Court impugned in these proceedings. The expression "party" has been amply dealt with in Tecco Trechy Engineers's case (supra) and also in ARK Builders (P) Ltd. case (supra), referred to hereinabove. It is one thing for an advocate to act and plead on behalf of a party in a proceeding and it is another for an Advocate to act as

the party himself. The expression "party", as defined in Section 2 (1)(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or advocate empowered to act on the basis of a Vakalatnama. In such circumstances, proper compliance with Section 31 (5) would mean delivery of a signed copy of the Arbitral Award on the party himself and not on his advocate, which gives the party concerned the right to proceed under Section 34(3) of the aforesaid Act." (emphasis supplied)

26. In the overall view of the matter, we have reached the conclusion that we should not disturb the impugned judgment and order passed by the High Court."

26. The relevant portions of the ***ARK Builders (supra)*** are quoted below:-

"12. We are supported in our view by the decision of this Court in Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239; in paragraph 8 of the decision it was held and observed as follows:

"8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings."

(emphasis added)

13. The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under section 34(1) of the Act. The legal position on the issue may be stated thus. If the law prescribes that a

copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law.

14. We may here refer to a decision of the Patna High Court in Dr. Sheo Shankar Sahay v. Commissioner, Patna Division and Ors., 1965 BLJR 78. Section 18(1) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1947 prescribed a period of limitation of 15 days for filing an appeal against an order of the House Controller and provided as follows:

"any person aggrieved by an order passed by the Controller may, within fifteen days from the date of receipt of such order by him, prefer an appeal in writing to the appellate authority"

It was contended on behalf of the petitioner before the High Court that the order-sheet of the House Controller was shown to the lawyer of the respondent on June 10, 1959 and therefore, that would be the starting point of limitation under section 18(1) of the Bihar Building (Lease, Rent and Eviction) Control Act, 1947. A division bench of the High Court consisting of Chief Justice V. Ramaswami (as his Lordship then was) and Justice N.L. Untwalia (as his Lordship then was) rejected the submission observing as follows:

"2. ... But we shall assume that the petitioner is right in alleging that the order was shown to the lawyer on the 10th June, 1959. Even so, we are of opinion that the appeal preferred by respondent no.4 before the Collector of Shahabad was not barred by limitation. The reason is that Sec. 18(1) provides limitation of fifteen days "from the date of receipt of the order"

and not from the date of communication of the order. It is significant that Sec. 14 of the Bihar House Rent Control Order, 1942, had provided that "any person aggrieved by an order of the Controller may, within fifteen days from the date on which the order is communicated to him, present an appeal in writing to the Commissioner of the division". Sec. 18(1) of Bihar Act III of 1949 is couched in different language. In our opinion, Sec. 18(1) implies that the Controller is bound, as a matter of law, to send a written copy of his order to the person aggrieved, and limitation for filing an appeal does not start unless and until the copy of the order is sent. In the present case it is not disputed that no copy of the order was sent to respondent no.4. It is true that the respondent himself applied for a copy of the order on the 11th December, 1959, and obtained a copy on the 14th December, 1959. In any event, therefore, limitation will not start running against respondent no.4 under Sec. 18(1) of the Act till the 14th December,

> 1959, and as the appeal was filed on the 26th December, 1959, there is no bar of limitation in this case...."
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> (emphasis added)
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> 15. We are in respectful agreement with the view taken by the Patna High Court in the case of Dr. Sheo Shankar Sahay.
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> 16. In light of the discussions made above we find the impugned order of the Bombay High Court unsustainable. The High Court was clearly in error not correctly following the decision of this Court in Tecco Trichy Engineers & Contractors and in taking a contrary view. The High Court overlooked that what section 31(5) contemplates is not merely the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the members of the arbitral tribunal.
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> 17. In the facts of the case the appellants would appear to be deriving undue advantage due to the omission of the arbitrator to give them a signed copy of the award coupled with the supply of a copy of the award to them by the claimant-respondent but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case."

27. Upon considering the facts of the present case and the discussions of the law laid down by the Hon'ble Apex Court, this court is of the considered opinion that the application is not time barred. The decision in ***Union of India through Ministry of Road Vs. Bhola Prasad Agarwal and Another*** reported in ***2022 SCC Online Chh 1644*** shall not be applicable in this case. In the case referred to by Mr. Dutta, the award debtor had not raised any objection with regard to non-service of the copy of the award in the application under section 34 of the said Act, which was filed before the District Judge. It was raised for the first time before the Hon'ble Apex Court. Such plea was not accepted at such a belated stage by the Hon'ble Apex Court. Secondly, the Hon'ble Apex Court was of the considered view that, when the proceedings for enhancement of compensation on the basis of the arbitral award was within the knowledge

of the award debtor, the award debtor should have filed the application within the period prescribed by law at least from the date of acquiring knowledge of the said proceeding.

28. ***Anilkumar Jinabhai Patel (dead) through legal representatives Vs. Pravinchandra Jinabhat Patel & Ors.*** reported in ***(2018) 15 SCC 178,*** does not apply to the facts of this case, inasmuch as, in the said decision it was held that, in the event the head of the family or the power of attorney holder representing any party was served with a copy of the award, service of the award could be accepted. The facts of this case are completely contrary to what the Hon'ble Apex Court had laid down in the said decision.

29. The second contention of Mr. Dutta, that AP No. 491 of 2021 ought to have been filed before the commercial division and should not be entertained by this court due to lack of jurisdiction, is not acceptable. The dispute is with regard to an unregistered agreement for sale of immovable property and not an agreement for sale of an immovable property which was being used exclusively for trade or commerce at the time of entering into such agreement. Thus, the definition of a commercial dispute under Section 2(1)(c)(vii) is not applicable in the instant case. The definition is quoted below:-

> "2(1)(c)(vii)- agreements relating to immovable property used exclusively in trade or commerce;"

30. In the sale agreement, the description of the property has been mentioned. It appears from the schedule of the said agreement that the property was described as a land. Schedule of the property is as below:-

"All that piece and parcel of land together with tin Shed and Darwan room measuring about 1000 Sq.ft. constructed thereon being known and numbered as Municipal Premises No. 736, Madurdaha having Assesse Number: 31-108-05-1832-1 measuring around 120 Cottahs 4 Chittanks alongwith un-assessed contiguous parcel of 8 Cottahs 8 Chittaks 33 Sq. ft. together jointly measuring around 128 Cottahs 12 Chittanks and 33 Sq.ft. more or less delineated in annexed map bordered in Green colors comprising in the portion of R.S. khatian no. 153/1, R.S. Dag No. 417, under Mouza Madurdaha, J.L. No. 12, P.S. Formarly Tiljala Now P.S. Anandapur, under The Kolkata Municipal Corporation Ward No. 108, butted and bounded as follows:
ON THE NORTH: BY 399, Madurdaha And partly by Road.
ON THE SOUTH: 50 ft. wide K.M.C. Road
ON THE EAST: Road
ON THE WEST: Partly by 399, Madurdaha and partly by Road."

31. The property was described as land along with a tin shed and a Darwan's room measuring around 1000 square feet. Reference is made to the decision of ***Ambalal Sarabhai Enterprises Ltd. Vs. Infraspace LLP & Anr.*** reported in ***(2020) 15 SCC 585***. The relevant portions are quoted below :-

"**13.** The learned Senior Advocate for the appellant would however, contend that a strict interpretation as in the case of taxing statutes would not be appropriate in the instant case where the issue relates to jurisdiction. In that regard, the learned Senior Advocate has referred to the Statement of Objects and Reasons with which the Commercial Courts Act, 2015 is enacted so as to provide speedy disposal of high value commercial disputes so as to create the positive image to the investors world about the independent and responsive Indian legal system. Hence, he contends that a purposive interpretation be made. It is contended that a wider purport and meaning is to be assigned while entertaining the suit and considering the dispute to be a commercial dispute. Having taken note of the submission we feel that the very purpose for which the CC Act of 2015 has been enacted would be defeated if every other suit merely because it is filed before the Commercial Court is entertained. This is for the reason that the suits which are not actually relating to commercial dispute but being filed merely because of the high value and with the intention of seeking early disposal would only clog the system and block the way for the genuine commercial disputes which may have to be entertained by the Commercial Courts as intended by the lawmakers. In commercial disputes as defined a special procedure is provided for a class of litigation and a strict procedure will have to be followed to entertain only that class of litigation in that jurisdiction. If the same is strictly interpreted it is not as if those excluded will be non-suited

without any remedy. The excluded class of litigation will in any event be entertained in the ordinary civil courts wherein the remedy has always existed.

14. In that view it is also necessary to carefully examine and entertain only disputes which actually answers the definition "commercial disputes" as provided under the Act. In the instant case, as already taken note neither the agreement between the parties refers to the nature of the immovable property being exclusively used for trade or commerce as on the date of the agreement nor is there any pleading to that effect in the plaint. Further the very relief sought in the suit is for execution of the mortgage deed which is in the nature of specific performance of the terms of Memorandum of Understanding without reference to nature of the use of the immovable property in trade or commerce as on the date of the suit. Therefore, if all these aspects are kept in view, we are of the opinion that in the present facts the High Court was justified in its conclusion arrived through the order dated 1-3-2019 [*K.S. Infraspace LLP* v. *Ambalal Sarabhai Enterprises Ltd.*, 2019 SCC OnLine Guj 1926] impugned herein. The Commercial Court shall therefore return the plaint indicating a date for its presentation before the Court having jurisdiction.

37. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (*vii*) of Section 2(1)(*c*) of the Act viz. "the agreements relating to immovable property used exclusively in trade or commerce". The words "used exclusively in trade or commerce" are to be interpreted purposefully. The word "used" denotes "actually used" and it cannot be either "ready for use" or "likely to be used" or "to be used". It should be "actually used". Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.

38. On 3-11-2017, a Memorandum of Understanding was executed between the appellant-plaintiff, respondent-defendant and Ketan Bhailalbhai Shah, second respondent. As per the terms of MoU, parties executed a deed of conveyance of the land. A mortgage deed was executed simultaneously along with the MoU with respect to the part of the land admeasuring 15,000 sq ft in favour of the plaintiff. It was understood between the parties that Respondent 1 would apply for change of land use permission for the land in question on signing of the MoU. Mortgage deed was executed by Respondent 1 in favour of the appellant in order to ensure performance of obligations under the MoU. But the said mortgage deed was not presented for registration.

39. It appears that the trial court has proceeded under the footing that the parties to the suit more particularly, the appellant-plaintiff seems to be carrying on business as estate agent and to manage land, building, etc. and the very object as enumerated in Memorandum and Articles of Association of the appellant-plaintiff company established that the property in question is being used exclusively in trade or commerce rather in the business of the plaintiff. As rightly pointed out by the High Court, there is nothing on record to show that at the time when agreement to sell came to be executed in 2012, the property was

being exclusively used in trade and commerce so as to bring dispute within the ambit of sub-clause (*vii*) of Section 2(1)(*c*) of the Act. Merely because, the property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the Commercial Court.

40. In *Ujwala Raje Gaekwar* v. *Hemaben Achyut Shah* [*Ujwala Raje Gaekwar* v. *Hemaben Achyut Shah*, 2017 SCC OnLine Guj 583] , Special Civil Suit No. 533 of 2011 was instituted for declaration that the sale deed valued at Rs 17.76 crores executed by the appellant-original Defendant 1 in favour of Respondent 4 be declared illegal and also, for permanent injunction with respect to the land in question. The appellants-defendants thereon filed an application that in sale deed, it has been clearly mentioned that the agreement relating to immovable property used exclusively in trade or commerce and falls within the meaning of Section 2(1)(*c*)(*vii*) of the Commercial Courts Act and that the matters above, the value of rupees one crore are to be transferred to the Commercial Court. Trial court rejected the said application which was challenged before the Gujarat High Court. The Gujarat High Court held that the aim, object and purpose of establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigant, and if such a suit which is as such arising out of the probate proceedings and/or is dispute with respect to the property are transferred to the Commercial Division/Commercial Court, there shall not be any difference between the regular civil courts and the Commercial Division/Commercial Courts and the object for the establishment of the Commercial Division/Commercial Courts shall be frustrated.

41. In *Vasu Healthcare (P) Ltd.* v. *Gujarat Akruti TCG Biotech Ltd.* [*Vasu Healthcare (P) Ltd.* v. *Gujarat Akruti TCG Biotech Ltd.*, 2017 SCC OnLine Guj 724 : AIR 2017 Guj 153] , referred to in extenso by my learned Brother, it was held that: (SCC OnLine Guj para 33)

"*33.* … On plain reading of the relevant clause, it is clear that the expression "used" must mean "actually used" or "being used". If the intention of the legislature was to expand the scope, in that case the phraseology used would have been different as for example, "likely to be used" or "to be used". The word "used" denotes "actually used" and it cannot be said to be either "ready for use" or "likely to be used"; or "to be used"."

We entirely agree with the above purposive interpretation adopted by the Gujarat High Court.

42. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure

provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed Brother A.S. Bopanna, J."

32. Agreements relating to immovable property which were already in use for commercial purpose would come within the definition of commercial dispute and not when such property may in some remote future be put to commercial use. In this case the land had not been put to commercial use and was primarily vacant and only had a tin shed and darwan's room. The said agreement was not a development agreement with the owners to commercially exploit the property. This was an agreement for sale of land and the payment was to be made intermittently upon constructions being raised. Thus, the agreement between the parties was not for commercial exploitation.

33. Under such circumstances, the decision of the Hon'ble Division Bench of this court in ***Kedarnath Tradecomm LLP & Ors. Vs. Mayank Agarwal & Ors.*** decided in ***APO No. 41 of 2024*** does not help the respondents. In the said decision, the admitted case was that the dispute was a commercial dispute. Paragraph 40 of the said decision is quoted below:-

> "40. Parties have agreed that the subject matter of the two petitions under Section 9 of the Act of 1996 was the partnership firms and that subject matter fell under Section 2(1)(c)(xv) of the Act of 2015. Independent of such agreement, we find that the subject matter of the disputes and the value of such disputes involved in the petitions under Section 9 of the Act of 1996, had fallen within the ambit of the Commercial Division of this Hon'ble Court."

34. Here, the agreement is for sale of land with a tin shed and a Darwans room measuring around 1000 square feet. In the affidavit-in-opposition as well, affirmed by G.D. Sharma, such fact finds admission and the relevant pleading is quoted herein below:-

> "iii. The petitioners along with the respondent Nos 2 to 7 herein had jointly entered into an agreement for sale dated 8th December 2014 with the respondent No 1 whereby and where under the respondent No 1 agreed to purchase and the petitioners and the respondent Nos 2 to 7 agreed to sale land with tin shed at Municipal Premises No 736, Madurdaha bearing Assessee No 31108051832 under Kolkata Municipal Corporation Ward No 108, under Anandapur Police station (Hereinafter called and referred to as the "said premises")on certain terms and conditions and for such consideration as set out in the agreement for sale. A copy of such agreement for sale dated 8th December 2014 is annexed hereto and marked with letter P-1."

35. With regard to the contention of Mr. Ghosh, that the award should be set aside on the ground of the same being perpetuated by fraud and misrepresentation, the following discussion is necessary. Under Section 34 of the said Act, recourse to court against an arbitral award may be made by filing an application for setting aside the said award on the grounds stated therein. Although, it is a disputed question as to whether the petitioners were aware of the purported agreement for sale or not and of the invocation of the arbitration clause, the fact remains that there is no evidence on record which indicates that the petitioners were in receipt of any notice under Section 21 of the said Act. The respondent No. 1 has not been able to satisfy the court with regard to the invocation of the arbitration clause.

36. Similarly, there is nothing on record which would show that the petitioners were aware of the filing of the statement of claim or were served with a copy of the statement of claim. The fact that G.D. Sharma

was no longer the director of the company is available from the records. Forms D.I.R. 12 stands as evidence to such claim. The statement of claim has not been produced before this court.

37. The respondents have admitted that G.D. was removed from directorship of the 12 petitioner companies. All communications by the arbitrator were made to G.D. Sharma and at the residential address of G.D. Sharma. Thus, the claim of the petitioners that they were not aware of the proceeding before the learned arbitrator or of the passing of the award, could not be disproved by the respondents. The records do not support the case of the respondents. The authority of G.D. to represent the petitioner companies is not available from the records.

38. When the court wanted to peruse the documents and records of the arbitral proceeding, including the statement of claim and the written statement of defense on the basis of which the arbitral award was passed by invoking Order 12 Rule 6 of the Code of Civil Procedure, the claimant/respondent No. 1 and the respondent Nos. 2 to 7 could not produce copies of those documents. G.D. Sharma affirmed the affidavit on behalf of the respondent Nos. 2 to 7, but failed to produce the records of the arbitral proceeding, although called upon to do so. The respondents were not in a position to file copies of the pleadings exchanged before the learned arbitrator.

39. Repeated opportunities were granted to the learned Arbitrator to file records of proceeding relating to ARB case No. RT/006 of 2017, by orders dated 5th August, 2025, 26th August, 2025 and 17th September, 2025.

40. Mr. Dutta had prayed for time to file a compilation of the documents of the arbitral proceeding, but his client (claimant) failed to do so. This court had directed the entire records to be produced, but the learned arbitrator, vide a letter addressed to the Registrar Original Side stated that the said records had been destroyed. The said letter is quoted below :-

"**...**

Dated: 11th September, 2025

To
The Registrar,
Original Side
High Court at Calcutta
Dear Sir,
In re: AP/491/2021
Leonine Estate (P) Pvt. Ltd. & Ors.
Versus
Ritman Infra Ltd. & Ors.

In pursuance of the order passed by Hon'ble Justice Sampa Sarkar on 5th August, 2025, I received the information from section officer, original Side, writ and execution department to immediate supply of the entire records of the Arbitration proceeding in the matter of ARB Case No. No. RT/006 of 2017 between Ritman Infra Limited and Leonine Estates Pvt. Ltd. to you.

In this context I received your letters dated 8th August, 2025 and duly answered the same that the ARB Case No.RT/006 of 2017 which is more than 8 (Eight) years back and I destroyed all the Arbitral Proceeding and not available in my office.

The said matter as above referred to came on 26th August, 2025 passed by the Hon'ble Justice Shampa Sarkar which was received by my office on 3rd September, 2025 while I was out of Calcutta due to my treatment of my heart in Narayana Hospital at Bangalore, since I have implanted a stent in my heart with other ailments as I am octogenarian person.

In the said letter you once again requisitioned to immediate supply of the Arbitral Proceeding in the matter of ARB Case No. RT/006 of 2017, I repeat and reiterate what I have stated in my letter dated 12th August, 2025 received by you on 13th August, 2025.

I beg sorry for your letter in delayed.

Thanking you,

Yours faithfully,

Sd/-

(Dipak Chakraborty)

Advocate"

41. Under such circumstances, this court holds that the petitioners have been able to establish that they were not aware either of the arbitral proceeding or of the award. The award was passed behind their back and they were not heard. When the court wanted to peruse the admissions made in the written statement of defense filed on behalf of the petitioners and the respondent Nos. 2 to 7 by G.D. Sharma, the same could not be produced either by the arbitrator or the claimant, or the respondent Nos. 2 to 7. Under such circumstances, this court holds that the arbitral proceeding was vitiated by procedural defect and non-compliance of the fundamental policy of the Indian law. Proper service of notice upon all parties was not done and the parties were not allowed to contest the proceeding in the manner prescribed by law. The award was passed in violation of the principles of natural justice.

42. The award cannot be sustained in fact and law. The agreement for sale is unregistered and insufficiently stamped. The award is thus, contrary to the Indian Law. The purported admission by G.D. Sharma was not legally binding on the petitioners. Moreover, such written statement of defense containing the admission has not seen the light of the day. An

adverse presumption can be drawn with regard to the said document, as the parties who were supposed to be in possession of the statement of claim and the written statement of defense have withheld the same from the court. The learned arbitrator has also failed to produce the records of the proceeding. The learned arbitrator has further failed to produce any record to show that the petitioners had been actually served with the copy of the award.

43. Under such circumstances, making of the award was induced and affected by fraud. It was passed in violation to the fundamental policy of Indian law, behind the back of the petitioners and at the instance of a party who was not authorized to either represent the petitioners or file any written statement of defense on behalf of the petitioners, thereby making admissions on behalf of the petitioners.

44. Reliance is placed on the decision of ***Oil and Natural Gas Corporation Limited Vs. Western Geco International Limited*** reported in ***(2014) 9 SCC 263***, in support of the contention that the expression fundamental policy of Indian law would include all fundamental principles that provide the basis for administration of justice and enforcement of law in India. The arbitrator had the duty to adopt a judicial approach, comply with the principles of natural justice, particularly with regard to application of mind on the attending facts and circumstances. In this case, the arbitral proceedings continued behind the back of the petitioners and was vitiated on account of violation of the principles of natural justice.

45. ***Associate Builders Vs. Delhi Development Authority*** reported in ***(2015) 3 SCC 49*** is relied upon on a similar proposition, Paragraphs 19 to 22 and 28 are quoted below:-

> **"19.** When it came to construing the expression "the public policy of India" contained in Section 34(2)(*b*)(*ii*) of the Arbitration Act, 1996, this Court in *ONGC Ltd.* v. *Saw Pipes Ltd.* [(2003) 5 SCC 705 : AIR 2003 SC 2629] held : (SCC pp. 727-28 & 744-45, paras 31 & 74)
> "*31*. Therefore, in our view, the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in *Renusagar case* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be—award could be set aside if it is contrary to:
> (*a*) fundamental policy of Indian law; or
> (*b*) the interest of India; or
> (*c*) justice or morality, or
> (*d*) in addition, if it is patently illegal.
> 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 the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.
>
> 46. ***
>
> *74*. In the result, it is held that:
> (*A*)(*1*) The court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof that:
> (*i*) a party was under some incapacity, or
> (*ii*) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
> (*iii*) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
> (*iv*) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.
> (*2*) The court may set aside the award:

(*i*)(*a*) if the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties,
(*b*) failing such agreement, the composition of the Arbitral Tribunal was not in accordance with Part I of the Act,
(*ii*) if the arbitral procedure was not in accordance with:
(*a*) the agreement of the parties, or
(*b*) failing such agreement, the arbitral procedure was not in accordance with Part I of the Act.
However, exception for setting aside the award on the ground of composition of Arbitral Tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part I of the Act from which parties cannot derogate.
(*c*) If the award passed by the Arbitral Tribunal is in contravention of the provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.
(*3*) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:
(*a*) fundamental policy of Indian law; or
(*b*) the interest of India; or
(*c*) justice or morality; or
(*d*) if it is patently illegal.
(*4*) It could be challenged:
(*a*) as provided under Section 13(5); and
(*b*) Section 16(6) of the Act.
(*B*)(*1*) The impugned award requires to be set aside mainly on the grounds:
(*i*) there is specific stipulation in the agreement that the time and date of delivery of the goods was of the essence of the contract;
(*ii*) in case of failure to deliver the goods within the period fixed for such delivery in the schedule, ONGC was entitled to recover from the contractor liquidated damages as agreed;
(*iii*) it was also explicitly understood that the agreed liquidated damages were genuine pre-estimate of damages;
(*iv*) on the request of the respondent to extend the time-limit for supply of goods, ONGC informed specifically that time was extended but stipulated liquidated damages as agreed would be recovered;
(*v*) liquidated damages for delay in supply of goods were to be recovered by paying authorities from the bills for payment of cost of material supplied by the contractor;
(*vi*) there is nothing on record to suggest that stipulation for recovering liquidated damages was by way of penalty or that the said sum was in any way unreasonable;
(*vii*) in certain contracts, it is impossible to assess the damages or prove the same. Such situation is taken care of by Sections 73 and 74 of the Contract Act and in the present case by specific terms of the contract."

20. The judgment in *ONGC Ltd.* v. *Saw Pipes Ltd.* [(2003) 5 SCC 705 : AIR 2003 SC 2629] has been consistently followed till date.

21. In *Hindustan Zinc Ltd.* v. *Friends Coal Carbonisation* [(2006) 4 SCC 445] , this Court held : (SCC p. 451, para 14)

"*14*. The High Court did not have the benefit of the principles laid down in *Saw Pipes* [(2003) 5 SCC 705 : AIR 2003 SC 2629] , and had proceeded on the assumption that award cannot be interfered with even if it was contrary to the terms of the contract. It went to the extent of holding that contract terms cannot even be looked into for examining the correctness of the award. This Court in *Saw Pipes* [(2003) 5 SCC 705 : AIR 2003 SC 2629] has made it clear that it is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India."

22. In *McDermott International Inc.* v. *Burn Standard Co. Ltd.* [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181] , this Court held : (SCC pp. 209-10, paras 58-60)

"*58*. In *Renusagar Power Co. Ltd.* v. *General Electric Co.* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] this Court laid down that the arbitral award can be set aside if it is contrary to (*a*) fundamental policy of Indian law; (*b*) the interests of India; or (*c*) justice or morality. A narrower meaning to the expression 'public policy' was given therein by confining judicial review of the arbitral award only on the aforementioned three grounds. An apparent shift can, however, be noticed from the decision of this Court in *ONGC Ltd.* v. *Saw Pipes Ltd.* [(2003) 5 SCC 705 : AIR 2003 SC 2629] (for short 'ONGC'). This Court therein referred to an earlier decision of this Court in *Central Inland Water Transport Corpn. Ltd.* v. *Brojo Nath Ganguly* [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103] wherein the applicability of the expression 'public policy' on the touchstone of Section 23 of the Contract Act, 1872 and Article 14 of the Constitution of India came to be considered. This Court therein was dealing with unequal bargaining power of the workmen and the employer and came to the conclusion that any term of the agreement which is patently arbitrary and/or otherwise arrived at because of the unequal bargaining power would not only be ultra vires Article 14 of the Constitution of India but also hit by Section 23 of the Contract Act, 1872. In *ONGC* [(2003) 5 SCC 705 : AIR 2003 SC 2629] this Court, apart from the three grounds stated in *Renusagar* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] , added another ground thereto for exercise of the court's jurisdiction in setting aside the award if it is patently arbitrary.

59. Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Where the arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute would come within the purview of Section 34 of the Act. However, we would consider the applicability of the aforementioned principles while noticing the merits of the matter.

60. What would constitute public policy is a matter dependent upon the nature of transaction and nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the court to judge what is in public good

or public interest, and what would otherwise be injurious to the public good at the relevant point, as contradistinguished from the policy of a particular Government. (See *State of Rajasthan* v. *Basant Nahata* [(2005) 12 SCC 77] .)"

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28. In a recent judgment, *ONGC Ltd.* v. *Western Geco International Ltd.* [(2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held : (SCC pp. 278-80, paras 35 & 38-40)

"*35.* What then would constitute the 'fundamental policy of Indian law' is the question. The decision in *ONGC* [(2003) 5 SCC 705 : AIR 2003 SC 2629] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression 'fundamental policy of Indian law', we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The *first and foremost* is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a '*judicial approach*' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

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38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated *audi alteram partem* rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by

recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

47. Relevant paragraphs of ***Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI)*** reported in ***(2019) 15 SCC 131*** are also quoted below:-

"**22.** However, this Court, in *Saw Pipes* [*ONGC* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705] , added yet another ground, namely, that of "patent illegality" to the three grounds mentioned in *Renusagar* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] in order to set aside an award under Section 34 of the 1996 Act. This ground was added in the following terms:

"*31*. … [Patent] 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 the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."

23. Given this interpretation of the law, insofar as Section 34 was concerned, this Court, in *DDA* v. *R.S. Sharma and Co.* [*DDA* v. *R.S. Sharma and Co.*, (2008) 13 SCC 80] , summarised the law as it stood at that point of time, as follows: (SCC pp. 91-92, para 21)

"*21*. From the above decisions, the following principles emerge:

(*a*) An award, which is

(*i*) contrary to substantive provisions of law; or

(*ii*) the provisions of the Arbitration and Conciliation Act, 1996; or

(*iii*) against the terms of the respective contract; or

(*iv*) patently illegal; or

(*v*) prejudicial to the rights of the parties;

is open to interference by the court under Section 34(2) of the Act.

(*b*) The award could be set aside if it is contrary to:

(*a*) fundamental policy of Indian law; or

(*b*) the interest of India; or

(*c*) justice or morality.

(*c*) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

(*d*) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India."

24. Yet another expansion of the phrase "public policy of India" contained in Section 34 of the 1996 Act was by another judgment of this Court in *Western Geco* [*ONGC* v. *Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , which was explained in *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] as follows: (SCC pp. 73-77, paras 28-34)

"*28*. In a recent judgment, *ONGC* v. *Western Geco International Ltd.* [*ONGC* v. *Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held: (SCC pp. 278-80, paras 35 & 38-40)

'*35*. What then would constitute the "fundamental policy of Indian law" is the question. The decision in *ONGC* [*ONGC* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "fundamental policy of Indian law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The *first and foremost* is the principle that in every determination, whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "*judicial approach*" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and

that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

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38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated *audi alteram partem* rule, one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at, the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of *Wednesbury* [*Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corpn.*, (1948) 1 KB 223 (CA)] principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.'

29. It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.

30. The *audi alteram partem* principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in Sections 18 and 34(2)(*a*)(*iii*) of the Arbitration and Conciliation Act. These sections read as follows:

'**18. *Equal treatment of parties***.—The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

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48. In view of the above discussions, the award is set aside. The application is allowed and accordingly disposed of.

49. Urgent Photostat certified copies of this judgment, if applied, for be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)