A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

ARBA No.22 of 2023

Along with

ARBA No.23 of 2023

(Judgment dated 11.9.2023 passed by the Ld. District Judge, Kalahandi Bhawanipatna in Arbitration Petition No. 4 of 2022 and Arbitration Petition No. 5 of 2022 arising out of awards dated 25.10.2021 passed by the Ld. Sole Arbitrator in Arbitration Proceeding No. 62 of 2009 and Arbitration Proceeding No. 63 of 2009)

National Agricultural Cooperative Federation of India Limited (NAFED), Bhubaneswar Branch and Anr. .... ***Appellant (s)***
(In both the ARBAs)

-versus-

M/s. Siddharth Rice Mill, Kesinga .... ***Respondent (s))***
(In ARBA No.22 of 2023)
M/s. Kalinga Rice Mill Lvt. Ltd. Kesinga
(In ARBA No.23 of 2023)

Advocates appeared in the case through Hybrid Mode**:**

For Appellant (s) : *Mr. S.P. Mishra, Sr. Adv.*
Along with
Mr. S.Rout, Adv.

For Respondent (s) : *Mr. Trilochan Nanda, Adv.*

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI
DATE OF HEARING:15.09.2025
DATE OF JUDGMENT:-31.10.2025

Dr. Sanjeeb K Panigrahi, J.

1. Since both the appeals are identical and the subject matter of dispute is the same, the matters were heard together and are being dealt with analogously in this common judgment.

2. These Appeals under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A&C Act") have been filed against the separate judgments both dated 11.9.2023 passed by the Ld. District Judge, Kalahandi Bhawanipatna in Arbitration Petition No. 4 of 2022 and Arbitration Petition No. 5 of 2022 arising out of awards dated 25.10.2021 passed by the Ld. Sole Arbitrator in Arbitration Proceeding No. 62 of 2009 and Arbitration Proceeding No. 63 of 2009.

I. FACTUAL MATRIX OF THE CASE:

3. For the sake of brevity, the facts involved in the appeals are pithily discussed herein:

a. NAFED, a Government of India enterprise and an instrumentality of the Union Government, functions as an apex cooperative organization engaged in the marketing and distribution of agricultural produce across the country. It was appointed by the Food Supplies and Consumer Welfare Department as the designated agency for procurement of paddy under the Price Support Scheme from farmers and for ensuring the subsequent delivery of custom-milled rice to the Food Corporation of India (FCI).

b. Under the said scheme, NAFED, acting as an agent of the State, procured paddy from farmers and allotted specific lots to various rice millers, including the present Respondents, for the purpose of custom milling. The present Respondents, as participating millers, were required to process the allotted paddy into rice and deliver the resultant custom-milled rice (CMR) to the FCI at its nominated godowns on behalf of NAFED. The payments for such operations

were structured such that upon delivery of rice to the FCI, NAFED would receive the sale proceeds and thereafter deduct the cost of paddy, storage expenses, and an additional administrative charge of ₹20 per quintal on the delivered quantity to cover its overhead expenditures, before releasing the milling charges to the miller.

c. The parties executed a formal agreement on 22 May 2006, which was subsequently renewed until the Kharif Marketing Season (KMS) 2008–09. As per the terms of the agreement, the present Respondents was obligated to furnish a cash security deposit equivalent to 5% of the ordered value of custom-milled rice as a safeguard for performance of contractual obligations. The agreement also provided that various ancillary expenditures—such as mandi labour charges, transportation from purchase centres to storage points, custody and maintenance charges, and the cost of gunny bags—would be reimbursed by NAFED on an actual basis, subject to production of bills and certificates as prescribed by the Government of India.

d. The present controversy originated from deductions made by NAFED from the bills of the present Respondents for the period 2008–09. Amounts of ₹8,28,550/- and ₹6,70,964, representing "society commission charges," were deducted from the Respondent in the present ARBA No. 22 of 2023 and ARBA No. 23 of 2023 respectively, on the ground that excess payment under this head had been disbursed to the present Respondents in earlier years. The said deduction was based on audit observations of the Comptroller and Auditor General (CAG), pursuant to which FCI had recovered the

corresponding sum from NAFED's bills for KMS 2008–09. The audit report revealed that the present Respondents had not engaged any registered cooperative society in the procurement operations for the KMS years 2004–05 to 2007–08, yet had claimed and received the society commission amount. In light of the CAG's observation, FCI deducted the said commission from the subsequent year's bill, and NAFED, being the intermediary agent, recovered the same amount from the present Respondents.

e. Subsequently, a dispute arose between the parties with regard to the legitimacy of the said deduction. The present Respondents had first approached instituted separated civil actions seeking recovery of the deducted amount along with interest. Upon receipt of summons, the present Appellant entered appearance in the proceedings and filed an application under Section 8 of the A&C Act, seeking reference of the dispute to arbitration. Thereafter, the Respondents approached this Court under Section 11 of the A&C Act, 1996, in ARBP No. 91 of 2017 and ARBP No. 92 of 2017. This Court was pleased to allow the application and appointed the Ld. Sole Arbitrator to adjudicate upon the dispute between the parties. Pursuant to the directions of this Court, arbitral proceedings were conducted under the aegis of the Orissa High Court Arbitration Centre, culminating in the impugned arbitral award.

f. The Ld. Sole Arbitrator, after considering the submissions and evidence on record, concluded that there was no express provision in the agreement authorizing NAFED to deduct society commission from the bills of the present Respondents, particularly in the absence

of any direct contractual link between the FCI's audit adjustments and the present Respondents' entitlement under the agreement. Consequently, the Arbitrator held that the deductions were unjustified and directed NAFED and its co-Respondents to refund the deducted amounts of ₹8,28,550/- and ₹6,70,964 to the present Respondents respectively along with interest at the rate of 9% per annum from 15.10.2019—the date of commencement of the arbitral proceedings—till 25.10.2021. The award further stipulated that in case of non-payment within the stipulated time, the amount would thereafter carry interest at the enhanced rate of 12% per annum until actual realization.

g. Aggrieved, the Appellants approached the Ld. District Judge, Kalahandi Bhawanipatna in Arbitration Petition No. 4 of 2022 and Arbitration Petition No. 5 of 2022 arising out of awards both dated 25.10.2021 passed by the Ld. Sole Arbitrator in Arbitration Proceeding No. 62 of 2009 and Arbitration Proceeding No. 63 of 2009. The same was rejected vide impugned order and judgments dated 11.9.2023.

4. Now that the facts leading up to the instant Appeals have been laid down, this Court shall endeavour to summarise the contentions of the Parties and the broad grounds that have been raised to seek the exercise of this Court's limited jurisdiction available under S. 37 of the A&C Act.

II. APPELLANTS' SUBMISSIONS:

5. The Ld. Counsel for the Appellants contended that the impugned arbitral award suffers from patent illegality and is contrary to the fundamental policy of Indian law. It was submitted that NAFED merely

acted as an intermediary and implementing agency under the Price Support Scheme, facilitating procurement and milling operations between the Food Corporation of India (FCI) and participating rice millers. The Appellants argued that the deduction of ₹6,70,964 towards society commission was fully justified, as it was made pursuant to the CAG's audit observations and subsequent recovery by FCI, which found that no registered society was engaged by the respondent miller during the relevant Kharif Marketing Seasons. As the reimbursement of such charges was conditional upon proof of actual expenditure, the Arbitrator erred in awarding the amount despite the respondent's failure to produce any supporting documents.

6. The Appellants further contended that the Ld. Sole Arbitrator misconstrued and misapplied Clauses 17 and 19 of the agreement, which clearly stipulated that reimbursement of any expenditure required submission of certificates and bills, and that the miller would be bound by changes in Government policy without entitlement to damages unless supported by strict proof. The award, it was argued, amounted to a rewriting of the contract by imposing liability on NAFED beyond the agreed terms. Moreover, by disregarding binding policy directives, the CAG report, and FCI's deductions, the Arbitrator's findings were said to be perverse and in violation of the "public policy of India." The award, according to the Appellants, not only ignored material evidence but also offended the most basic notions of justice and fairness, thereby warranting interference under Sections 37 of the A&C Act.

III. RESPONDENT'S SUBMISSIONS:

7. *Per contra*, the Ld. Counsel for the Respondents submitted that the deductions made by the Appellants towards "society commission" were wholly arbitrary, illegal, and without any contractual or statutory basis. It was contended that the agreements executed between the parties contained no clause authorizing NAFED to deduct any amount on account of society commission, nor was there any provision obligating the respondent to engage a cooperative society in the procurement process. The Respondent emphasized that it had performed its contractual obligations in full, without any complaint or deficiency being recorded against it. The unilateral deductions by NAFED, therefore, constituted a clear violation of the express terms of contract, the principles of natural justice, and the doctrine of fairness binding on government instrumentalities.

8. The Respondent further argued that both the Ld. Arbitrator and the District Judge rightly found the deductions to be baseless, as NAFED's own witnesses (R.W.1 and R.W.2) admitted in their depositions that the term "society commission" did not appear anywhere in the agreement and that the claimant was never instructed to engage any society in the procurement process. It was also pointed out that NAFED failed to challenge the official communication dated 5.7.2012 from the General Manager, District Industries Centre, Kalahandi, directing payment of the miller's legitimate dues, thereby accepting its correctness. The Respondent contended that NAFED's attempt to justify its action by shifting responsibility to the Food Corporation of India was misconceived, since the contractual relationship existed solely between

the parties. Hence, the arbitral award—based on sound appreciation of evidence and proper interpretation of contractual terms—was legal, just, and consistent with public policy, warranting no interference under Section 37 of the A&C Act.

IV. ISSUE FOR CONSIDERATION

9. Having heard the parties and perused the materials available on record, this court here has identified the following solitary issue to be determined:

A. Whether the order of the Ld. District Judge warrants interference keeping in mind the limitations of this court's powers under Section 37 of the A&C Act?

V. ISSUE A: WHETHER THE ORDER OF THE LD. DISTRICT JUDGE WARRANTS ANY INTERFERENCE KEEPING IN MIND THE LIMITATIONS OF THIS COURT'S POWERS UNDER SECTION 37 OF THE A&C ACT?

10. First things first, it would be apposite to refer to the provisions of Section 34 & 37 of the Act, which provisions read as under:

> *"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).*
>
> *(2) An arbitral award may be set aside by the Court only if-*
>
> *(a) the party making the application establishes on the basis of the record of the arbitral tribunal 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:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v.) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an 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.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than 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:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action

as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

37. Appealable orders.—(1) (Notwithstanding anything contained in any other law for the time being in force, an appeal) shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

((a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under Section 9;

(c) setting aside or refusing to set aside an arbitral award under Section 34.)

(2) An appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section(3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

11. On a careful perusal of Section 34 of the Act, it is clear that an arbitral award can only be set aside by moving an application on grounds mentioned under sub-section (2) and sub-section (3) of Section 34 of the Act. An award can be interfered with where it is in conflict with the public policy of India, i.e., if the award is induced or affected by fraud or corruption or is in contravention of the fundamental policy of Indian law, or if it is in conflict with basic notions of morality and justice.

12. On a careful perusal of Section 34 of the Act, it is clear that an arbitral award can only be set aside by moving an application on grounds mentioned under sub-section (2) and sub-section (3) of Section 34 of the Act. An award can be interfered with where it is in conflict with the public policy of India, i.e., if the award is induced or affected by fraud or corruption or is in contravention of the fundamental policy of Indian law, or if it is in conflict with basic notions of morality and justice.

13. A plain reading of Section 34 reveals that the scope of interference by the Court with the arbitral award under Section 34 is very limited, and the Court is not supposed to travel beyond the aforesaid scope to determine whether the award is good or bad. Even an award that may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the Courts.

14. It is also a well settled proposition in law that the jurisdiction of the Court under Section 34 of the Act is neither in the nature of an appellate remedy or akin to the power of revision. It is also well ordained in law that an award cannot be challenged on merits except on the limited grounds that have been spelt out in sub-sections (2), (2-A) and (3) of Section 34 of the Act, by way of filing an appropriate application.

15. Having regard to the contentions urged and the issues raised, it shall also be apposite to take note of the principles enunciated by the Hon'ble Supreme Court in some of the relevant decisions cited by the parties on the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the 1996 Act.

16. 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.

17. The phrase "fundamental policy of Indian law" entered arbitral discourse long before the 2015 amendments, when ***Renusagar Power Co. Ltd. v. General Electric Co.***[1] confined "public policy" challenges to three narrow heads: (i) fundamental policy of Indian law, (ii) interests of India, and (iii) justice or morality.

18. Subsequent decisions—most notably ***ONGC v. Western Geco***[2]—stretched that first head by equating "fundamental policy" with Wednesbury-style reasonableness review, permitting courts to re-enter the merits on the pretext of testing arbitral reasoning. Because that approach threatened the speedy, final nature of arbitration, Parliament rolled it back through the Arbitration and Conciliation (Amendment) Act, 2015.

19. Explanation 1 to Section 34(2)(b)(ii) and 48(2)(b) now insists that an award offends public policy 'only' if it violates India's "fundamental policy," a concept deliberately narrower than "contrary to the policy of Indian law." ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[3] crystallised the post-amendment position: "fundamental policy" reverts to the ***Renusagar*** (supra) standard, and ***Western Geco's*** (supra) judicial-

[1] (1984) 4 SCC 679
[2] (2014) 9 SCC 263
[3] (2019) 15 SCC 131

review expansion "no longer obtains." Mere statutory error—or even an award at odds with substantive Indian law—will not suffice unless the breach strikes at bedrock norms that undergird the administration of justice, such as disregard of natural-justice guarantees, wilful disobedience of binding precedents, or flouting statutes integrally linked to public interest. Crucially, courts must respect Explanation 2, which bars merits review under this ground; their scrutiny stops at identifying systemic, structural affronts to India's legal order, not re-weighing evidence or legal interpretation.

20. To determine whether an award crosses that threshold, courts apply a two-step lens. First, they must ask whether the complained-of rule is itself "fundamental": does it form part of the basic architecture that sustains the rule of law—e.g., *audi alteram partem*, jurisdictional competence, adherence to superior-court decrees, etc. Second, they ought to examine whether the tribunal's conduct amounts to 'contravention', not merely imperfect application. Thus, failure to supply any reasons, refusal to hear a party on pivotal issues, or adjudicating matters wholly outside the reference may qualify; but a plausible yet contestable contractual construction, or even wrongful exclusion of a document, ordinarily will not.

21. ***Associate Builders v. DDA***[4] had assimilated ***Western Geco*** (supra) -style "perversity" and "judicial approach" tests into public-policy analysis; ***Ssangyong*** (supra) decisively excised those limbs, ruling that courts may not treat facial misinterpretations of law or contract as "fundamental-

[4] (2015) 3 SCC 49

policy" breaches. Likewise, contraventions of statutes unconnected to public interest—say, stamp-duty underpayment—lie outside this head. The result is a calibrated, high-bar standard: intervention is warranted only where the award undermines essential legal tenets that any fair-minded observer would recognise as indispensable to India's justice system. By retrenching the scope, the 2015 amendments realign Indian arbitration with the UNCITRAL model and global best practice, ensuring that "fundamental policy" remains an exceptional filter, not a backdoor appeal on facts and law.

22. The "morality or justice" limb, present since ***Renusagar*** (supra), was likewise tightened in 2015. Explanation 1 now demands conflict with the "most basic notions" of morality or justice—language intentionally inserted to prevent subjective or elastic expansion. Indian courts have long recognised that justice and morality are context-sensitive; what shocks one era may not perturb another. Therefore, post-amendment jurisprudence treats this ground as a safety valve for truly egregious awards—those that outrage the court's conscience because they subvert elementary fairness intelligible to any reasonable layperson, whether legally trained or not. The Law Commission's 246th Report, echoed by ***Ssangyong*** (supra), emphasised that importing Wednesbury or proportionality tests here would "open the floodgates," defeating legislative intent. Consequently, an award may be annulled under this head only if it institutionalises manifest injustice—e.g., sanctions fraud, enforces a contract obtained by duress, or imposes liabilities that blatantly contradict mutual assent—thereby eroding society's faith in adjudicatory fairness.

23. In practice, Indian courts deploy a conscience-shock test grounded in universal principles rather than parochial moral codes. For instance, in ***Ssangyong*** (supra), the majority of an arbitral tribunal unilaterally rewrote a price-adjustment formula by applying an internal NHAI circular never agreed to by the contractor, effectively creating a new bargain. The Supreme Court held that foisting a unilateral modification on an unwilling party violated "the most basic notions of justice," as voluntariness lies at the heart of contract law. Similarly, awards enforcing contracts tainted by corruption or transactions forbidden by law (e.g., betting agreements) would offend basic morality. By contrast, awards involving commercial hardship, uneven economic results, or arguable legal mistakes ordinarily pass muster, for equity courts cannot rewrite bargains ex post. The guiding principle is restraint: morality-oriented intervention is reserved for circumstances where a lay observer would perceive the outcome as plainly unconscionable—where the tribunal's decision legitimises wrongdoing rather than merely errs in quantification or interpretation. This cautious approach upholds arbitral autonomy, protecting parties' bargain to accept a chosen tribunal's view, while ensuring that arbitration does not become a cloak for fundamental injustice. It mirrors international jurisprudence thereby strengthening India's reputation as an arbitration-friendly jurisdiction that simultaneously safeguards core ethical minima.

24. Section 34(2-A), inserted in 2015, introduced "patent illegality appearing on the face of the award" as a separate annulment ground for domestic awards (it does not apply to foreign or Part II enforcement). The provision codifies and confines the doctrine earlier derived from ***ONGC***

v. Saw Pipes[5], which had blended patent illegality with public policy. Parliament's aim was twofold: (i) retain a mechanism to nullify awards that flout obvious legal mandates, yet (ii) bar disguised appeals on facts or law. Accordingly, the proviso forbids setting aside "merely on the ground of erroneous application of law" or "re-appreciation of evidence." ***Ssangyong*** (supra) interprets patent illegality as errors that "go to the root of the matter" but are not subsumed within fundamental policy—thus covering blatant violations of substantive statutes, the Arbitration Act itself, or contract terms, provided they are manifest on the award's face. Notable examples include deciding disputes beyond the contract's scope, granting relief contrary to an express prohibition, or ignoring mandatory statutory caps. The test is objective and record-based: the error must be apparent without forensic excavation; hidden or debatable mistakes remain immune.

25. Courts evaluating patent illegality utilise the "perversity" benchmarks articulated in ***Associate Builders*** (supra) and reaffirmed in ***Delhi Metro Rail Corporation v. DAMEPL***[6]. An award is perverse—and hence patently illegal—when (i) findings rest on no evidence, (ii) irrelevant factors decisively influence the outcome, (iii) vital evidence is ignored, (iv) reasons are wholly absent, or (v) the tribunal addresses matters beyond its jurisdiction. However, even these indicators must reveal themselves plainly on the award or arbitral record; courts cannot marshal new material or conduct painstaking re-evaluation. The focus is procedural and jurisdictional fidelity, not substantive correctness.

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[5] (2003) 5 SCC 705

[6] 2024 INSC 292

Importantly, patent illegality is unavailable in international commercial arbitration seated in India—reflecting India's commitment to align with the UNCITRAL Model Law and minimise judicial intrusion where foreign parties are involved. Taken together, the 2015 framework establishes a tiered control system: "fundamental policy" and "most basic notions of morality or justice" guard systemic and ethical frontiers applicable to all awards, while "patent illegality" offers an additional, carefully cabined safeguard for domestic awards to weed out egregious but non-fundamental legal flaws. This architecture balances finality with legitimacy, ensuring Indian courts remain sentinels of legality without morphing into appellate arbiters, thereby promoting efficiency and investor confidence in India-seated arbitration.

26. In ***MMTC Ltd. v. Vedanta Ltd***.[7], the Supreme Court took note of various decisions including that in ***Associate Builders*** (supra) and exposited on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the 1996 Act, particularly when dealing with the concurrent findings (of the arbitrator and then of the Court). The Supreme Court, inter alia, held as under :

> *"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of the Hon'ble Supreme Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of*

[7] (2019) 4 SCC 163

patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic

arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same 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.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

27. In ***Ssangyong Engg.*** (supra), the Supreme Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words :

"37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, 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.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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. Thus, 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 on the ground of patent illegality. Additionally, 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."

28. The limited scope of challenge under Section 34 of the Act was once again highlighted by the Supreme Court in ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust***[8] and the Supreme Court particularly explained the relevant tests as under :

> *"40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the Court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the Court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.*
> *41. A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its*

[8] 2021 SCC OnLine SC 508

decision would be perverse and liable to be set aside on the ground of patent illegality.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus : (SCC pp. 75-76)

> *'31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law 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.*

29. In ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[9] , the Supreme Court again surveyed the case law and explained the contours of the Courts' power to review the arbitral awards. Therein, the Supreme Court not only reaffirmed the principles aforesaid but also highlighted an area of serious concern while pointing out "a disturbing tendency" of the Courts in setting aside arbitral awards after dissecting and reassessing factual aspects. The Supreme Court also underscored the pertinent features and scope of the expression "patent illegality" while reiterating that the Courts do not sit in appeal over the arbitral award. The relevant and significant passages of this judgment could be usefully extracted as under :

[9] (2022) 1 SCC 131

"26. A cumulative reading of the Uncitral Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455 : (2020) 1 SCC (Civ) 570] , Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] .)

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28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as

perverse or patently illegal without appreciating the contours of the said expressions.

29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression "public policy of India" and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or

corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.

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42. The Division Bench referred to various factors leading to the termination notice, to conclude that the award shocks the conscience of the Court. The discussion in SCC OnLine Del para 103 of the impugned judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] amounts to appreciation or reappreciation of the facts which is not permissible under Section 34 of the 1996 Act. The Division Bench further held [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] that the fact of AMEL being operated without any adverse event for a period of more than four years since the date of issuance of the CMRS certificate, was not given due importance by the Arbitral Tribunal. As the arbitrator is the sole Judge of the quality as well as the quantity of the evidence, the task of being a Judge on the evidence before the Tribunal does not fall upon the Court in exercise of its jurisdiction under Section 34. [State of Rajasthan v. Puri Construction Co. Ltd., (1994) 6 SCC 485] On the basis of the issues submitted by the parties, the Arbitral Tribunal framed issues for consideration and answered the said issues. Subsequent events need not be taken into account."

30. The position in ***Associate Builders*** (supra) was recently summarised as hereinbelow recorded by ***Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum***[10]:

"42. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204 (two-Judge Bench)] , this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances:

[10] (2022) 4 SCC 463

42.1. When an award is, on its face, in patent violation of a statutory provision.

42.2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.

42.3. When an award is in violation of the principles of natural justice.

42.4. When an award is unreasonable or perverse.

42.5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.

42.6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."

31. In ***Haryana Tourism Ltd. v. Kandhari Beverages Ltd.***[11], the Supreme Court yet again pointed out the limited scope of interference under Sections 34 and 37 of the Act; and disapproved interference by the High Court under Section 37 of the Act while entering into merits of the claim in the following words :

"8. So far as the impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to : (a) fundamental policy of

[11] (2022) 3 SCC 237

Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court is hence not sustainable."

32. As regards the limited scope of interference under Sections 34/37 of the Act, this Court also considers it apposite to refer to the following observations of a three-Judge Bench of the Supreme Court in ***UHL Power Co. Ltd. v. State of H.P***.[12]:

"15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed."

[12] (2022) 4 SCC 116

33. As noticed, arbitral award is not an ordinary adjudicatory order so as to be lightly interfered with by the Courts under Sections 34 or 37 of the 1996 Act as if dealing with an appeal or revision against a decision of any subordinate Court. The expression "patent illegality" has been exposited by the Supreme Court in the cases referred hereinbefore. The significant aspect to be reiterated is that it is not a mere illegality which would call for interference, but it has to be "a patent illegality", which obviously signifies that it ought to be apparent on the face of the award and not the one which is culled out by way of a long-drawn analysis of the pleadings and evidence.

34. Of course, when the terms and conditions of the agreement governing the parties are completely ignored, the matter would be different and an award carrying such a shortcoming shall be directly hit by Section 28(3) of the Act, which enjoins upon an Arbitral Tribunal to decide in accordance with the terms of contract while taking into account the usage of trade applicable to the transaction. As said by the Supreme Court in ***Associate Builders*** (supra), if an arbitrator construes the term of contract in a reasonable manner, the award cannot be set aside with reference to the deduction drawn from construction. The possibility of interference would arise only if the construction of the arbitrator is such which could not be made by any fair-minded and reasonable person.

35. Keeping in view the aforementioned principles enunciated by the Supreme Court with regard to the limited scope of interference in an arbitral award by a Court in the exercise of its jurisdiction under Section 34 of the Act, which is all the more circumscribed in an appeal under

Section 37, this Court may examine the rival submissions of the parties in relation to the matters dealt with by the High Court.

36. *Prima facie*, this Court is of the opinion that the statutory framework under Sections 34 and 37 of the Arbitration and Conciliation Act, 1996 permits only narrowly circumscribed interference with an arbitral award; judicial scrutiny must therefore be deferential and confined to the exceptional grounds expressly enumerated in the statute. On the record before this Court, the arbitral tribunal conducted a full hearing, admitted documentary and oral evidence, and furnished reasoned findings addressing the principal disputes — notably, whether any society had been engaged, whether the agreement authorised society commission deductions, and whether documentary proof of payment existed.

37. Mere disagreement with the tribunal's contractual construction does not suffice for annulment; where an award rests upon a plausible interpretation supported by evidence, it must be respected. The arbitral tribunal's analysis, as reflected in the award, advanced a coherent explanation for holding the deductions impermissible in the absence of contractual authority and supporting bills.

38. This Court is of the opinion that the allegations framed as "patent illegality" merely reflect contested questions of contractual interpretation and evidence appraisal. Section 34(2-A) requires an illegality that is manifest on the face of the award — not a debatable legal view or an arguable misapplication of policy. The tribunal's reasoning does not evince a legal error of the kind that goes to the root of the matter; instead, it reflects an interpretive stance that a reasonable

tribunal could adopt. Accordingly, the invocation of patent illegality is unavailing in the circumstances of this dispute.

39. The Ld. Sole Arbitrator did not manifestly disregard material evidence or decide matters outside the scope of the submission. The award engages with the core documentary and testimonial record and explains why society commission could not be lawfully retained in absence of contractual entitlement and supporting bills. The criticisms that the Ld. Sole Arbitrator "ignored" policy or audit materials mistake a difference in factual evaluation for legal infirmity. On the materials, the tribunal's choice between competing inferences is one the Act assigns to arbitrators rather than to reviewing courts.

40. This Court is of the belief that the Appellant's reliance on external administrative actions cannot supplant the contractual matrix between the parties in a manner that justifies annulment. Even if FCI or audit agencies undertook subsequent recoveries, that fact alone does not create an unassailable contractual right to deduct the miller's dues absent express agreement or proof of outlay. The tribunal's conclusion — that reimbursement demanded documentary substantiation and contractual linkage — accords with commercial sense and statutory obligations governing evidence of expenditure, and does not amount to a judicially cognisable public-policy breach.

41. The Ld. District Judge has also acted consistently with the requirement that courts ought to support awards when no manifest error is apparent. He reviewed the arbitral issues and findings, noted that the arbitral tribunal addressed each contested point, and concluded that the conclusion reached was a tenable construction of the contract and

evidence. This judicial restraint avoids opening arbitration to de facto appeals and preserves the finality and commercial efficacy Parliament intended. The Ld. Trial Court therefore rightly dismissed the Section 34 petition for lacking the narrowly-defined statutory grounds required for setting aside.

42. The doctrine of finality and party autonomy inherent in the A&C Act demands restraint; and courts must strive to avoid converting Section 34 proceedings into courts of appeal.

VI. CONCLUSION:

43. For these reasons, the Ld. District Court's orders dismissing the Section 34 petitions should be sustained. Its disposition reflects disciplined application of the law governing judicial review of arbitral awards, careful engagement with the arbitral record and reasons, and proper deference to the tribunal's domain over factual and contractual appraisal. Upholding that order guards arbitration's finality, prevents judicial back-door appeals on merits, and accords with the statutory architecture that confines annulment to the exceptional categories enumerated in Section 34 of the A&C Act. The trial court's reasoning is therefore sound and fit for affirmation.

44. Consequently, judgments dated 11.9.2023 passed by the Ld. District Judge, Kalahandi -Bhawanipatna in Arbitration Petition No.4 of 2022 and Arbitration Petition No.5 of 2022 arising out of awards dated 25.10.2021 passed by the Ld. Sole Arbitrator in Arbitration Proceeding No. 62 of 2009 and Arbitration Proceeding No. 63 of 2009 are upheld.

45. ARBA Nos. 22 and 23 of 2023 are dismissed. No order as to costs.

46. Interim order, if any, passed earlier in any of the afore-mentioned ARBAs stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 31st Oct., 2025