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

% **Reserved on : 27th April, 2023**
Pronounced on: 12th June, 2023

\+ O.M.P. (COMM) 419/2020 & I.A. 3513/2020

M/S. A.G. ENVIRO INFRA PROJECTS PVT. LTD.....Petitioner
Through: Mr. Arvind Varma, Sr. Advocate with Mr. Ashish Verma, Ms. Debopriya Moulik, Ms. Smriti Sharma and Mr. Sanidhya Gupta, Advocates

versus

M/S. J.S. ENVIRO SERVICES PVT. LTD.....Defendants
Through: Mr. Jitin Singhal and Mr. S. D. Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The petitioner vide the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as „the Act") has been filed by the petitioner seeking the following prayers:

> *"a. Set aside Impugned Original Award read with Impugned Final Award passed by the Arbitral Tribunal comprising of Hon'ble Mr. Justice S.P. Garg (Retd.) dated 30.10.2019 and further be pleased to allow the counter claim raised by the Petitioner as against the Respondent for Rs. 4,14,42,192 /towards excess amount charged contrary to the Escalation clause under the agreement with 18% interest thereupon.*

b. Pass an award in favour of the Respondent against the Respondent for a sum of Rs.2,00,00,000/- towards loss of goodwill caused to the Respondent Company.
c. Grant 18% interest from the date of filing of the instant counter claim till the date of actual payment.
d. Any other relief which this Hon'ble court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner."

FACTUAL MATRIX

2. The present petition is filed under Section 34 of the Act challenging the Arbitral Award dated 30th October, 2019 (hereinafter referred as „Impugned Award") read with the order dated 17th January, 2020 (hereinafter referred as Impugned Final Award) passed by the learned Arbitral Tribunal in the matter titled as ***M/s J.S. Enviro Infra Projects Ltd. v. M/s. A.G. Enviro Services Pvt. Ltd.*** and dismissed the application filed by the petitioner under section 33(2) of the Act and found no errors in the Award.

3. The petitioner and respondent are registered companies under the Companies Act, 1956 and are in business with regard to the Collection, Segregation, Transportation and Disposal of solid waste in different zones of the National Capital Region of Delhi. A Concession Agreement was entered between the petitioner and the Municipal Corporation of Delhi (MCD) for the Collection of Municipal Solid Waste (MSW) on 31st January, 2005 which is provided for under Clause 5.5 of the Agreement. The Agreement was for Collection, Segregation, Transportation and Disposal of MSW.

4. As per Clause 5.7 of the Agreement between the petitioner and the MCD, the petitioner was permitted to engage a sub-contractor in accordance with the Operations and Maintenance Requirements. Thereafter, an Agreement was signed between the petitioner and respondent dated 1st May, 2015 whereby the petitioner on the basis of the contract entered with the MCD, further assigned the services to the claimant for transportation and disposal of MSW from municipal areas of Delhi to the identified landfill sites of MCD. The respondent was entitled to receive a "tipping fee" at the rate of Rs.475/- (excluding taxes) per tonne. The said "tipping fees" could be increased at the rate of 3.5% per annum after the completion of the first year of the contract. However, the legality of this Agreement is challenged by the petitioner who further submitted that the respondent company colluded with the employees of the petitioner with the intention to defraud the petitioner.

5. The invoices from April 2016 to January 2017 were paid by the petitioner. The said invoices included payment for both primary and secondary garbage collection. Further, TDS was deducted on the entire amount invoiced to the petitioner by the respondent till March 2017. The respondent has also raised the bills for the month of February 2017, March 2017 and April 2017 for Rs.3,58,32,470/- and out of the said amount only Rs.89,34,716/- has been paid by the petitioner on 3rd April, 2017 and the balance amount of Rs.2,49,79,751/- has not been paid by the petitioner, however, they have deducted and deposited TDS on the total amount of Rs.3,58,32,470/-. The said amount is also reflected in the list of creditors of the petitioner company.

6. Consequently, the respondent filed a Civil Suit (Comm.) 33 of 2018 dated 21st December, 2017 before this Court claiming therein an amount of Rs.2,49,79,751/- towards the sum due to it from the petitioner company towards the invoices raised. The petitioner also filed an application before this Court under Section 8 of the Act read with Order VII Rule 11 of the Code of Civil Procedure, 1908. Thereafter, by an order dated 5th December, 2018, this Court allowed the Application and appointed an Arbitrator for adjudication of the disputes between the petitioner and respondent.

7. The learned Arbitrator passed Impugned Award dated 30th October, 2019 and granted the claim of the respondent for a sum of Rs.2,49,79,751/-(Rupees Two Crores Forty-Nine Lakhs Seventy Nine Thousand Seven Hundred and Fifty One Only) with interest at the rate of 9% payable from the date filing of the claim till the date of Impugned Award and further interest at the rate of 9% from the date of the Impugned Award till the date of realization failing payment within one month from the date of the award.

8. In light of the aforementioned facts and aggrieved by the Impugned Award, the petitioner has approached this Court and prayed for setting aside the Original Award read with Impugned Final Award passed by the Arbitral Tribunal dated 30th October, 2019 and further be pleased to allow the counterclaim raised by the petitioner as against the respondent for Rs.4,14,42,192/- towards excess amount charged contrary to the Escalation clause under the agreement with 18% interest thereupon.

SUBMISSIONS

(Submissions on behalf of the petitioner)

9. The learned senior counsel on behalf of the petitioner challenged the Arbitral Award passed by the learned Arbitral Tribunal dated 30th October, 2019. The Impugned Award granted the claim of the respondent for a sum of Rs. 2,49,79,751/- (Rupees Two Crore Forty-Nine Lakhs Seventy-Nine Thousand Seven Hundred and Fifty One Only) sought for primary garbage collection and secondary garbage collection under an agreement dated 1st May, 2015 entered into between the parties for secondary garbage collection.

10. The learned senior counsel on behalf of the petitioner argued that the agreement dated 31st January, 2005 executed between the petitioner and MCD for the collection, segregation, transportation, and disposal of MSW in Karol Bagh Zone and Sadar Paharganj Zone indicates that the same was only for secondary garbage collection for the aforesaid areas. It is argued that there is no mention of primary garbage collection in the Agreements, and as such primary garbage collection does not form a part of the Agreement containing the arbitration clause and thus, the learned Arbitral Tribunal could not have awarded the amount charged as primary garbage collection being outside the pale of the Agreement dated 1st May, 2015.

11. Supporting his contention, the learned senior counsel on behalf of the petitioner relied upon the judgment of the Hon‟ble Supreme Court in ***New India Civil Erectors Pvt. Ltd. v. Oil and Natural Gas Corporation* (1997), 11 SCC 75** which held as follows:

> *"9. ... It is axiomatic that the arbitrator being a creature of the Agreement must operate within the four corners of the Agreement and cannot travel beyond it. More particularly he cannot award any amount which is ruled out or prohibited by the terms of the Agreement."*

12. The petitioner has also relied upon the judgment of the Supreme Court in the case of ***PSA SICAL Terminals (P) Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin*, 2021 SCC OnLine SC 508,** wherein it was observed that:

> *"87. As such, as held by this Court in Ssangyong Engineering and Construction Company Limited (supra), the fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract has been foisted upon an unwilling party. This Court has further held that a party to the Agreement cannot be made liable to perform something for which it has not entered into a contract. In our view, re-writing a contract for the parties would be a breach of fundamental principles of justice entitling a Court to interfere since such a case would be one which shocks the conscience of the Court and as such, would fall in the exceptional category."*

13. The learned senior counsel on behalf of the petitioner submitted that the respondent did not bring on record any evidence to prove that they had in fact collected primary garbage or had the necessary infrastructure to execute the work of primary garbage collection. The learned Arbitral Tribunal on the sole ground that the respondent had issued certain work orders for primary garbage collection and corresponding sales invoices were raised proceeded to hold that the respondent was entitled to payment for primary garbage collection,

without once looking into the scope of the Agreement. Furthermore, they have submitted that the payment of invoices for April 2016 to January 2017 or deduction of TDS for invoices till March 2017 cannot be held against the petitioner.

14. Hence, the learned senior counsel submitted that the Impugned Award is liable to be set aside under section 34 of the Act.

(Submissions on behalf of the respondent)

15. *Per contra*, it is submitted by the learned counsel on behalf of the respondent that the respondent has entered into an Agreement dated 1st May, 2015 with the petitioner for transportation and disposal of Municipal Solid Waste in Karol Bagh and Sadar Paharganj zones of the National Capital Region of Delhi. The said Agreement has also been signed by Sh. Tito Varghese, one of the Directors and shareholder of the petitioner company (now only shareholder of the company as per cross-examination of Sh. Gaurav Kapur-RW1). The petitioner had discussed the work awarded to the respondent vide emails exchanged between the top management of the petitioner company consisting of Mr. Tito Varghese (Director and shareholder), Mr. Jose Jacob (MD and shareholder), Mr. Tarjinder Singh (COO), Mr. Kalpesh Shah (DGM Finance and Commercial) and Mr. N.G. Subramaniyam (Financial Advisor from investor side).

16. The petitioner, thereafter, issued work orders to the respondent company for the period May, 2015 to April, 2017 duly approved by Sh. Tarjinder Singh, COO of the petitioner company. Moreover, based on the work orders issued by the petitioner company, the respondent company

had issued sales invoices to the petitioner company, after getting work done, which had been accepted and not disputed by the petitioner. The respondent submitted that the petitioner was making the payment after verifying the same and bills had been fully cleared till the month of January, 2017.

17. The respondent had also raised the bills for the month of February 2017, March 2017 and April 2017 for Rs.3,58,32,470/- and out of the said amount only Rs.89,34,716/- had been paid by the petitioner on 3rd April, 2017 and the balance amount of Rs.2,49,79,751/- had not been paid by the petitioner, however, they had deducted and deposited TDS also on the total amount of Rs.3,58,32,470/-. The said amount is also reflected in the list of creditors of the petitioner company. They had submitted that as far as the issue relating to validity and enforceability of the agreement in question is concerned which has been decided by the learned Arbitral Tribunal in favour of the respondent, the petitioner had not argued the same during the course of arguments before this Court.

18. They have submitted that on the one hand despite alleged fraud played by Sh. Jiban Kumar, the petitioner wanted to take help from Sh. Jiban till the audit of the accounts. It is pertinent to note that, if a person has played fraud, then the company should not ask for the person‟s to help to audit the account. This clearly shows that no fraud has been played by Sh. Jiban Kumar. It is further submitted that the petitioner got to know about the alleged fraud in January, 2017 of the respondent, still the payments have been remitted of approx. Rs.4.5 crore and for the balance amount TDS has been deducted and deposited (TDS returns have also been filed) and in the list of creditors, the payment of Rs.2.49 crore

is mentioned. It is submitted that the argument of the petitioner that Sh. Jiban Kumar asked the petitioner not to take any criminal action against him is frivolous and wrong inasmuch as the same is not supported by any evidence.

19. The learned counsel on behalf of the respondent submitted that it is well-settled law that the scope of section 34 is narrow and very limited. They placed a reliance on the judgment passed by this Court in the case of ***Hughes Communications India Pvt. Ltd. v. Imaging Solutions Pvt. Ltd*. in O.M.P. (Comm) No. 28 of 2019,** dated 26th April, 2023 which has placed reliance upon the judgment passed by the Hon"ble Supreme Court of India in the case of ***UHL Power Co. Ltd. Vs State of Himachal Pradesh*, (2022) 4 SCC 116** and ***Delhi Airport Metro Express Pvt. Ltd. v. DMRC*, (2022) 1 SCC 131.**

20. Hence, the learned counsel submitted that the Impugned Award is not liable to be set aside under section 34 of the Act.

ANALYSIS AND FINDINGS

21. The matter was heard at length with arguments being advanced by learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied by the parties, pleadings presented and arguments advanced by the learned counsel of the parties. After carefully analysing the materials relied by the parties, this court has framed the following two broad issues for our consideration:

> *1. Whether the impugned award in question dated 30th October, 2019 suffers from patent illegality as well as is in conflict with the public policy of India and thus suffers from infirmities enshrined in S. 34 of the Arbitration and*

Conciliation Act?
2. Whether the Learned arbitrator appreciated and evaluated the material evidence placed on record and gave the reasons for awarding compensation?

The bonafide spirit and intent of the Arbitration Act

22. Before embarking on the technical paraphernalia of the case, it is pertinent to understand the context and legislative intent behind the passing of the Act. The Arbitration and Conciliation Act, 1996 has been enacted to consolidate and amend the law relating to domestic arbitration as well as international commercial arbitration in India after taking into account the United Nations Commission On International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, 1985.

23. The Hon‟ble Supreme Court in ***Union of India v. Varindera Constructions Ltd.*, (2018) 7 SCC 794,** while discussing the object of arbitration held as under:

> *"12. The primary object of the arbitration is to reach a final disposition in a speedy, effective, inexpensive and expeditious manner. In order to regulate the law regarding arbitration, the legislature came up with legislation which is known as Arbitration and Conciliation Act, 1996.* ***In order to make the arbitration process more effective, the legislature restricted the role of courts in case where matter is subject to the arbitration. Section 5 of the Act specifically restricted the interference of the courts to some extent. In other words, it is only in exceptional circumstances, as provided by this Act, the court is entitled to intervene in the dispute which is the subject matter of arbitration.*** *Such intervention may be before, at or after the arbitration proceeding, as the*

case may be. In short, court shall not intervene with the subject-matter of arbitration unless injustice is caused to either of the parties."

(emphasis supplied)

24. Arbitration is a private dispute resolution process or a procedure and part of an alternative dispute resolution mechanism, where a dispute in respect of any agreement between the parties is proposed for a solution to one or more arbitrators, who after going through the facts and evidence, makes binding decisions in relation to such dispute. The alternative dispute mechanism is not only advantageous for the people involved in disputes but also aides in the effective disposal and release of the burden on the courts of the country. Therefore, expeditious and effective disposal of matters is most certainly considered the primary objective of the enactment of the Arbitration Act. To fulfill the objectives of introducing the Act, it has been deemed necessary by the legislature as well as the Hon"ble Supreme Court to limit interference by the courts in the process of arbitration, whether before, during or after the conclusion of the proceedings.

ISSUE 1 : WHETHER THE IMPUGNED AWARD IN QUESTION DATED 30TH OCTOBER, 2019 SUFFERS FROM PATENT ILLEGALITY AS WELL AS IS IN CONFLICT WITH THE PUBLIC POLICY OF INDIA AND THUS SUFFERS FROM INFIRMITIES ENSHRINED IN S. 34 OF THE ARBITRATION AND CONCILIATION ACT?

25. Considering the factual matrix of the case, this Court has framed certain issues for consideration. In this issue, this Court shall test the

Impugned Award dated 30th October, 2019 read with the order dated 17th January, 2020 on tenets of the tests laid down by the constitutional courts with respect to the patent illegality and public policy. This court shall look into the spirit of section 34 of the Act and the scope of powers of interference by courts in the mandate of the Arbitral Tribunal. This Court shall also look into the fetters imposed on the powers of the courts under Section 34 of the Arbitration Act in light of the legislative mandate of the Act.

Legislative Mandate, Scope and Spirit of S. 34 of the Act

26. The statutory scheme under Section 34 of the Arbitration Act, 1996 is in line with the UNCITRAL Model Law and the legislative policy of minimal judicial interference in arbitral awards. It is important to remember that Section 34 is modeled on the UNCITRAL Model Law on International Commercial Arbitration, 1985, under which no power to modify an award is given to a Court hearing a challenge to an Award. The relevant portion of the Model Law reads as follows:

> *"Article 34. Application for setting aside as exclusive recourse against the arbitral award*
>
> *(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (2) of this article.*
>
> *xxx xxx xxx*
>
> *(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside 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 arbitral tribunal"s opinion will eliminate the grounds for setting aside."

27. **Redfern and Hunter on International Arbitration (6th edition),** states that the Model Law does not permit modification of an award by the reviewing court (at page 570) as follows:

"10.06 The purpose of challenging an award before a national court at the seat of arbitration is to have that court declare all, or part, of the award null and void. ***If an award is set aside or annulled by the relevant court, it will usually be treated as invalid, and accordingly unenforceable, not only by the courts of the seat of arbitration, but also by national courts elsewhere. This is because, under both the New York Convention and the Model Law, a competent court may refuse to grant recognition and enforcement of an award that has been set aside by a court of the seat of arbitration. It is important to note that, following a complete annulment, the claimant can recommence proceedings because the award simply does not exist-that is, the status quo ante is restored.*** *The reviewing court cannot alter the terms of an award nor can it decide the dispute based on its own vision of the merits. Unless the reviewing court has the power to remit the fault to the original tribunal, any new submission of the dispute to arbitration after annulment has to be undertaken by the commencement of a new arbitration with a new arbitral tribunal."*

(emphasis supplied)

28. It is to be noted that the underlying philosophy of Section 34 of the Act strives to bring a balance between the party autonomy and

judicial interference into an arbitral proceedings. Thus, the section envisages a position whereby an Arbitral Award can be challenged for the purpose of setting aside the same at the first instance without much delay.[1] The Hon"ble Supreme Court enunciating the nature of section 34, in the judgment of ***Indu Engg & Textiles Ltd v. D.D.A.*** **(2001) 5 SCC 691 : 2001 SCC OnLine SC 800** at page 698 held as under:

> *"7. This Court, while dealing with the power of courts to interfere with an award passed by an arbitrator, had consistently laid stress on the position* ***that an arbitrator is a Judge appointed by the parties and as such the award passed by him is not to be lightly interfered with. In the case on hand, the only question that arose for consideration was whether the appellant was entitled to claim the enhanced price of hard coke for the quantity supplied by it to the respondent.*** *Under the contract a specific quantity of the material was to be supplied during the period fixed under the agreement. Right from the beginning while submitting the tender the appellant had included a price escalation clause in which it was stipulated that any escalation of the price after submission of the tender will entitle the supplier to claim a higher price from the other party. This clause was subsequently revised only to the effect that the price escalation will be applicable when there is a statutory enhancement in the price of the commodity. No dispute was raised before the arbitrator or the court that the escalated price claimed by the appellant was not the statutorily enhanced price of hard coke. It was also not in dispute that even accepting the appellant's claim for the escalated price of the commodity, it was entitled to the claim only in respect of a part of the quantity supplied and not the entire quantity.* ***In these circumstances, the arbitrator had not attached importance to the non-mention***

[1]Dr. Avtar Singh. Law of Arbitration & Conciliation, 9th Edition, (Eastern Book Company, Lucknow,), 2009, 392.

of the enhanced price of hard coke in the course of negotiations between the parties. The view taken by the arbitrator, in the circumstances of the case, was a plausible one and the same could not be said to be suffering from any manifest error on the face of the award or wholly improbable or perverse one. As such it was not open to the Court to interfere with the award within the statutory limitations laid down in Section 30 of the Act. *The Single Judge, therefore, rightly declined to interfere with the award passed by the arbitrator and made it rule of the court.*

8. As noted earlier, the Division Bench in an appeal filed under Section 39 of the Act, reversed the order passed by the Single Judge and set aside the award holding that there was no material before the arbitrator for accepting the claim of the appellant. The Division Bench exceeded the limits of its jurisdiction in entering into the facts of the case and in interpreting the agreement between the parties and correspondence which was a part of the said agreement. What was the price of the commodity to be paid by the respondent to the appellant was essentially a question of fact. Even assuming that the arbitrator had committed an error in coming to the conclusion that the appellant was entitled to the claim of the escalated price of the commodity (hard coke) under the terms of the agreement and the Division Bench felt that the conclusion should have been otherwise, it was not open to it to interfere with the award on that score. Another fallacy committed by the Division Bench in the judgment is recording the finding that the escalation clause in the agreement had the prospective operation with effect from 14-5-1981 i.e. the date on which the agreement was entered into by the parties. As noted earlier, under the agreement a specified quantity of the commodity was to be supplied by the appellant to the respondent within the period specified in the agreement and the appellant, while submitting its tender, had made it clear that any subsequent upward change in the price of the commodity will entitle it to claim at such rate and subsequently the price escalation clause was modified in a manner not relevant for deciding

> *the dispute referred to the arbitrator, the question of the price escalation clause having prospective effect was of no consequence. If the claimant was entitled to the enhanced price the respondent was liable to pay the same for the entire stock supplied. If the position was otherwise, the claim of the appellant was to be rejected in toto."*
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> *(emphasis supplied)*

29. The parties have more hands-on involvement in an Arbitration process and play an active role in the adjudication process. Due to the party autonomy and efficacious dispute resolution process envisaged under the Act, there is a limited canvass where the courts can interfere with the mandate of the Arbitral Tribunal and supplant its reasoning. The legislative mandate and spirit of Section 34 of the Act clearly elucidate that there is a limited scope of interference by the courts inside the field of the Arbitrator.

Exploring the Ambit of constitutional courts under Section 34 of the Arbitration Act

30. After looking into the legislative mandate of Section 34 of the Act, this Court shall look into the ambit of constitutional courts under Section 34 of the Act. This Court has looked into the observations made by the Hon"ble Supreme Court in the case of ***U.P. Hotels* v. *U.P. SEB,* (1989) 1 SCC 359,** it was observed as follows:

> *"17. It appears that the main question that arises is: whether the decision of this Court in the* ***Indian Aluminium Co. v. Kerala SEB case, (1975) 2 SCC 414*** *was properly understood and appreciated by the learned umpire and whether he properly applied the agreement between the parties in the light of the aforesaid decision. It was*

contended that the question was whether the sums payable under clause 9 included discounts. On the aforesaid basis it was contended that there was an error of law and such error was manifest on the face of the award. Even assuming, however, that there was an error of construction of the agreement or even that there was an error of law in arriving at a conclusion, such an error is not an error which is amenable to correction even in a reasoned award under the law. Reference may be made to the observations of this Court in ***Coimbatorem District Podu Thozillar Samgam v. Balasubramania Foundry, (1987) 3 SCC 723, where it was reiterated that an award can only be set aside if there is an error on its face. Further, it is an error of law and not the mistake of fact committed by the arbitrator which is justiciable in the application before the court. Where the alleged mistakes or errors, if any, of which grievances were made were mistakes of facts if at all, and did not amount to an error of law apparent on the face of the record, the objections were not sustainable and the award could not be set aside.*** *See also the observations of this Court in* ***Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497]*** *where* ***this Court reiterated that the reasonableness of the reasons given by an arbitrator in making his award cannot be challenged. In that case before this Court, there was no evidence of a violation of any principle of natural justice and in this case also there is no violation of the principles of natural justice. It may be possible that on the same evidence, some court might have arrived at some different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award of an arbitrator.*** *Also see the observations in Halsbury's Laws of England, 4th Edn., Vol. 2, at pp. 334 and 335, para 624, where it was reiterated that an* ***arbitrator's award may be set aside for error of law appearing on the face of it, though that jurisdiction is not lightly to be exercised. If a specific question of law is submitted to the arbitrator for his decision and he decides it, the fact that the decision is erroneous does not make the***

> ***award bad on its face so as to permit it being set aside; and where the question referred for arbitration is a question of construction, which is, generally speaking, a question of law, the arbitrator's decision cannot be set aside only because the court would itself have come to a different conclusion; but if it appears on the face of the award that the arbitrator has proceeded illegally, as, for instance, by deciding on evidence which was not admissible, or on principles of construction which the law does not countenance, there is error in law which may be ground for setting aside the award.***
>
> *18. It was contended by Mr F.S. Nariman, counsel for the appellant, that a specific question of law being a question of construction had been referred to the umpire and, hence, his decision, right or wrong, had to be accepted. In view of clause 18, it was submitted that in this case a specific reference had been made on the interpretation of the agreement between the parties, hence, the parties were bound by the decision of the umpire. Our attention was drawn to the observations of this Court in* ***Hindustan Tea Co. v. K. Sashikant & Co. 1986 Supp SCC 506*** *where this Court held that* ***under the law, the arbitrator is made the final arbiter of the dispute between the parties, referred to him. The award is not open to challenge on the ground that the arbitrator has reached a wrong conclusion or has failed to appreciate facts. Where the award which was a reasoned one was challenged on the ground that the arbitrator had acted contrary to the provisions of Section 70 of the Contract Act, it was held that the same could not be set aside."***
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> *(emphasis supplied)*

31. The conclusion of an Arbitrator on facts, even if erroneous in the opinion of the Court cannot be interfered with. Where the view of the arbitrator is a plausible view and cannot be ruled as one which is impossible to accept, the court should not substitute its own view in

place of that of the arbitrator.[2] After following the discussion mentioned above, it is evident that there are certain fetters imposed on the powers of the courts under Section 34 of the Act in light to the legislative mandate of the Arbitration Act.

Delineating the "Laxman Rekha" for constitutional courts under the Section 34 of the Act

32. Extrapolating the discussion followed above, it is pertinent to note that a bare perusal of Section 34 clearly elucidates that it is not in nature of an appellate provision, it provides only for setting aside awards on very limited grounds, such grounds being contained in sub-sections (2) and (3) of Section 34 of the Act, 1996. Secondly, as the marginal note of Section 34 indicates, "recourse" to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-sections (2) and (3). "Recourse" is defined by **P Ramanatha Aiyar's Advanced Law Lexicon (3rd Edition)** as the enforcement or method of enforcing a right. Where the right is itself truncated, enforcement of such truncated right can also be only limited in nature. It is clear from a reading of the said provisions is that, given the limited grounds of challenge under sub-sections (2) and (3), an application can only be made to set aside an award. This becomes even clearer when we see sub-section (4) under which, on receipt of an application under sub-section (1) of Section 34, the court may adjourn the Section 34 proceedings and allow the arbitral tribunal to resume the

[2] Vikram Sopan Yadav, *Recourse against arbitral award U/S 34 of the arbitration and conciliation act, 1996: An analytical appraisal,* International Journal of Law, ISSN: 2455-2194, Vol 2 Issue 2.

arbitral proceedings or take such action as will eliminate the grounds for setting aside the arbitral award.

33. It is a settled law that under Section 34 of the Act, 1996, the Award cannot be challenged on the merits. This position of law has been crucified in the Hon"ble Supreme Court"s judgment of ***MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC 163,** at 167 as follows:

> *"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 Section37 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."***
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> *(emphasis supplied)*

34. Likewise, in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131**, the Hon"ble Supreme Court under the caption "Section 34(2)(a) does not entail a challenge to an arbitral award on merits" referred to Hon"ble Supreme Court"s judgment in ***Renusagar Power Co. Ltd. v. General Electric Co.*, 1994 Supp (1) SCC644,** the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 [the "New York Convention"] and various other authorities to conclude that there could be no challenge on merits under the grounds mentioned in Section 34. The Hon"ble Supreme Court also held, in ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar***

***Switchgear Ltd.*, (2018) 3 SCC 133 at 170,** that the court hearing a Section 34 petition does not sit in an appeal.

35. As a matter of fact, it is to be noted that the point raised in the appeals stands concluded in ***McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181**, wherein the Hon"ble Supreme Court held as under:

> *"51. After the 1996 Act came into force, under Section 16 of the Act the party questioning the jurisdiction of the arbitrator has an obligation to raise the said question before the arbitrator. Such a question of jurisdiction could be raised if it is beyond the scope of his authority. It was required to be raised during arbitration proceedings or soon after initiation thereof. The jurisdictional question is required to be determined as a preliminary ground. A decision taken thereupon by the arbitrator would be the subject-matter of challenge under Section 34 of the Act. In the event the arbitrator opined that he had no jurisdiction in relation thereto an appeal there against was provided for under Section 37 of the Act.*
>
> *52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness.* ***Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct the errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at a minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."***
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> *(emphasis supplied)*

36. Considering the embargo imposed on the constitutional courts under the ambit of Section 34 of the Act, the decision of the Hon"ble Supreme Court in ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*****, (2019) 20 SCC 1,** is of utmost relevance. The Hon"ble Supreme Court held as under:

> *"36. At this juncture, it must be noted that the legislative intent of providing Section 34(4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.*
>
> *37. In case of absence of reasoning the utility has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case, such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced."*
>
> *(emphasis supplied)*

37. A Coordinate Bench of this Court, while considering the pertinent issue under Section 34 of the Act, held in ***Cybernetics Network Pvt. Ltd. v. Bisquare Technologies Pvt. Ltd.*****, 2012 SCC OnLine Del 1155,** as under:

"47. The next question that arises is whether the above claims as mentioned in para 44 that have been erroneously rejected by the learned Arbitrator can be allowed by this Court in the exercise of its powers under Section 34(4) of the Act?

48. Under Section 34(4) of the Act, the Court while deciding a challenge to an arbitral award, can either "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 the arbitral tribunal will eliminate the grounds for setting aside the arbitral award". This necessarily envisages the Court having to remit the matter to the Arbitral Tribunal. This is subject to the Court finding it appropriate to do so and a party requesting it to do so.

49. In ***Union of India v. Arctic India, 2007 (4) Arb LR 524 (Bom),*** *a learned Single Judge of the Bombay High Court opined that the Court can modify the Award even if there is no express provision in the Act permitting it. The Court followed the decision of the Supreme Court in* ***Krishna Bhagya Jala Nigam Ltd. v. Harischandra Reddy, (2007) 2 SCC 720.*** *A similar view has been taken by a learned Single Judge of this Court in* ***Union of India v. Modern Laminators, 2008 (3) Arb LR 489 (Del).*** *There the question was whether in light of the arbitrator having failed to decide the counter claim of the respondent in that case the Court could itself decide the counter claim. After discussing the case law, the Court concluded that it could modify the award but only to a limited extent. It held (Arb LR p. 496):*

"Such modification of award will be a species of „setting aside" only and would be„ setting aside to a limited extent". ***However, if the courts were to find that they cannot within the confines of interference permissible or on the material before the arbitrator are unable to modify and if the same would include further fact-finding or adjudication of intricate questions of law the parties ought to be left to the***

forum of their choice i.e.to be relegated under Section 34(4)of the Act to further arbitration or other civil remedies."

50. However, none of the above decisions categorically hold that where certain claims have been erroneously rejected by the Arbitrator, the Court can in the exercise of its powers under Section 34(4)of the Act itself decide those claims. The Allahabad High Court has in ***Managing Director v. Asha Talwar 2009 (5) ALJ 397,****held that while* ***exercising the powers to set aside an Award under Section 34 of the Act the Court does not have the jurisdiction to grant the original relief which was prayed for before the Arbitrator. The Allahabad High Court referred to the decision of the Supreme Court in McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181****,and ruled.*

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51. The view of the Allahabad High Court in ***Managing Director v. Asha Talwar 2009 (5) ALJ 397,*** *appears to be consistent with the scheme of the Act, and in particular* ***Section 34 thereof which is a departure from the scheme of Section 16 of the 1940 Act which perhaps gave the Court a wider amplitude of powers. Under Section 34(2) of the Act, the Court is empowered to set aside an arbitral award on the grounds specified therein. The remand to the Arbitrator under Section 34(4) is to a limited extent of requiring the Arbitral Tribunal "to eliminate the grounds for setting aside the arbitral award". There is no specific power granted to the Court to itself allow the claims originally made before the Arbitral Tribunal where it finds the Arbitral Tribunal erred in rejecting such claims. If such a power is recognised as falling within the ambit of Section 34(4) of the Act, then the Court will be acting no different from an appellate court which would be contrary to the legislative intent behind Section 34 of the Act.*** *Accordingly, this Court declines to itself decide the claims of CNPL that have been wrongly rejected by the learned Arbitrator."*

(emphasis supplied)

38. Following the discussion mentioned above, the *dictum* laid by the Hon‟ble Supreme Court in the case of ***NHAI v. M. Hakeem*, (2021) 9 SCC 1** is of utmost relevance. In the said case as well, the Hon‟ble Supreme Court reiterated the embargo imposed on the Constitutional Courts under the ambit of Section 34 of the Act, 1996. The Hon‟ble Court held as follows:

> *"46. Quite* ***obviously if one were to include the power to modify an award in Section 34, one would be crossing the Lakshman Rekha and doing what, according to the justice of a case, ought to be done.*** *In interpreting a statutory provision, a Judge must put himself in the shoes of Parliament and then ask whether Parliament intended this result Parliament very clearly intended that no power of modification of an award exists in Section 34 of the Arbitration Act, 1996. It is only for Parliament to amend the aforesaid provision in the light of the experience of the courts in the working of the Arbitration Act, 1996, and bring it in line with other legislations the world over."*
>
> *(emphasis supplied)*

39. The legislative mandate behind the advent of the Arbitration Act, the Spirit & Scope of Section 34 of the Act and the categorical judicial pronouncements on the ambit of Section 34 of the Act, clearly elucidate that the constitutional courts do not possess the unbridled power to interfere unnecessarily with the award. The embargo imposed on constitutional courts under the Section 34 of the Act is in tune with the legislative intent of the Act. Keeping in view the legislative history of the Act and the *bonafide* objective that the Act seeks to achieve, certain fetters are imposed on the powers of the constitutional courts. It is the intention of the legislature that the powers of the courts to entertain the

challenge to the Award under Section 34 of the Act should not be unbridled.

Construing the ambit of "Patent Illegality" and "Public Policy" ground under Section 34 of the Arbitration Act

40. The Hon'ble Supreme Court in the landmark case of ***Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd.*, (2020) 7 SCC 167** construed the ambit of "Patent Illegality" as a ground for setting aside the Arbitral Award under Section 34 of the Arbitration Act. The court ruled that:

> *"19. Pursuant to the recommendations of the Law Commission, the 1996 Act was amended by Act 3 of 2016, which came into force w.e.f. 23-10-2015. The ground of "patent illegality" for setting aside a domestic award has been given statutory force in Section 34(2-A) of the 1996 Act. The ground of "patent illegality" cannot be invoked in international commercial arbitrations seated in India. Even in the case of a foreign award under the New York Convention, the ground of "patent illegality" cannot be raised as a ground to resist enforcement, since this ground is absent in Section 48 of the 1996 Act. The newly inserted sub-section (2-A) in Section 34, reads as follows:*
>
> *„34. (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."'"*

41. This Court has looked into the discussion of patent illegality ground in the case of ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI,* (2019) 15 SCC 131**, wherein the Hon‟ble Supreme Court relied upon the decision of ***Associate Builders v. Delhi Development Authority,* (2015) 3 SCC 49**, wherein, it was held that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes a contract in a manner which no fair-minded or reasonable person would take i.e. if the view taken by the arbitrator is not even possible view to take. The Hon‟ble Supreme Court held in ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI* (Supra)** that:

> *"39. To elucidate, para 42.1 of* ***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. However, 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 v. DDA (2015) 3 SCC 49,*** *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)."***
>
> *(emphasis supplied)*

42. The aspect of patent illegality has also been discussed in the case of ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.*****, 2021 SCC Online SC 695,** wherein the Hon‟ble Supreme Court held that:

> *"26. 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 re-appreciate 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."*
>
> *(emphasis supplied)*

43. It is clear from the discussion above that there is limited ground for patent illegality enshrined in the tenets of Section 34 of the Act. It shall be applicable only when the arbitrator shall construe the terms of

the contract which cannot be construed in accordance with the eyes of the reasonable person. The error should be so apparent that it should shock the conscience of the court.

44. After looking into the "patent illegality" ground, this court has also embarked on the journey of traversing the genesis of the public policy ground. With respect to the "public policy of India" in the context of arbitration cases are concerned, the Hon"ble Supreme Court examined the meaning, scope and ambit of this expression for the first time in the case of ***Renusagar Power Co. Ltd. v. General Electric Co.,*** **1994 Suppl (1) SCC 644,** in the context of Foreign Awards (Recognition & Enforcement) Act, 1961. It was then examined in the case of ***Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.,*** **(2003) 5 SCC 705 [ONGC(I)]** and then again in another case of ***Oil & Natural Gas Corporation Ltd. v. Western Geco International Ltd.,*** **(2014) 9 SCC 263 [ONGC (II)].** It was recently examined in ***Associate Builders v. Delhi Development Authority,*** **(2015) 3 SCC 49** in the context of Section 34 of the Act.

45. However, in ***Associate Builders"s case*** (supra), the Hon"ble Supreme Court held that the juristic principle of the "judicial approach" demands that a decision be fair, reasonable and objective. In other words, a decision which is wholly arbitrary and whimsical would not be termed as fair, reasonable or objective determination of the questions involved in the case. It was also held that observance of *audi alteram partem* principle is also a part of the juristic principle which needs to be followed. It was held that if the award is against justice or morality, it is

against public policy. It was held that if there is a patent illegality noticed in the Award, it is also against public policy.

46. Considering the factual scenario of the case, the learned Arbitrator has been appointed by this very court and passed the Award on 30th October, 2019. The Tribunal has framed the following broad issues for consideration as mentioned on Page 9 of the Impugned Award:

> *"1. Whether the claimant is entitled. to claim Rs.2,49,79,751/- as per para No. 17(a) of the Statement of Claim? OPC*
>
> *2. Whether the claimant is entitled to claim Rs.2,50,00,000/- as per para No. 17(b) of the Statement of Claim? OPC*
>
> *3. Whether the claimant is entitled to the award of pendente lite and future interest? If so, at what rate? OPC*
>
> *4. Whether the agreement dated 1.05.15 is not legally executed and binding upon the respondent? OPR*
>
> *5. Whether the respondent is entitled to recover from the claimant Rs.4,14,42,192/- towards excess amount charged contrary to the escalation clause? OPR*
>
> *6. Whether the respondent is entitled to recover Rs. 2,00,00,000/- from the claimant towards loss of goodwill? OPR*
>
> *7. Whether the respondent is entitled to interest? If so, at what rate and for what period? OPR*
>
> *8. Relief"*

47. While dealing with the abovementioned Issue No. 1 and 4, the Tribunal considered the claims of both the parties and also recorded its

reasoning for checking the legality of the Agreement dated 1st May, 2015. The relevant portion of the Impugned Award is reproduced herein:

> *"23 The agreement dated 1st May 2015 was acted upon and several payments for the work done by the claimant were made after approval from Mumbai office till January 2017.* ***The claimant had admittedly executed the work for February 2017 to April2017 also but payment was not made. The contract with the claimant was impliedly terminated with effect from April, 2017. No civil or criminal proceedings were ever initiated by the respondent either, against Jiban Upadhaya or anyone else for allegedly committing fraud. Record reveals that the Jiban Upadhaya had submitted resignation on 9th March 2017 by e-mail (Ex. CW1/R7) sent to Prasad with copies to Tito Verghese, Tarjinder Singh and Jose Jacob. Praful Prasad sent e-mail dated 15th March 2017 to Jiban Kumar Upadhaya regarding acceptance of his resignation. Jiban Upadhaya was however requested to prepare within 2-3 days 'handover list' and details of the pending work or the work which was required to be attended. Tito Verghese by an e-mail dated 15th March 2017 sent to Praful Prasad informed that services of Jiban Upadhaya be continued till the audit completion period.*** *Jiban Upadhayay was relieved by a letter dated 6th April2017 (Page 76 of Rejoinder) signed by Tito Verghese, Director of the respondent w.e.f. 08.04.2017.* ***Jiban Upadhayay handed over charge to Subhash Yadav (Page 77 of Rejoinder); 'No Dues Certificate' (Page 78 of Rejoinder) was given by all concerned. Needless to say, at the time of acceptance of resignation of Jiban Upadhayay and relieving him on 8th April 2017, the respondent had no objection regarding his work and conduct.*** *No*

departmental enquiry was ever initiated against Jiban Upadhaya. It is on record that Jiban Upadyayay has filed civil proceedings against respondent to get his unpaid 'dues' despite acceptance of resignation. The allegations of committing fraud are without any foundation and can't the basis to deny the claimant of its outstanding dues for the work done it in terms of the agreement dated 1st May 2015.

24. This Tribunal also finds no sufficient reason to infer commission of fraud merely because Jiban Upadhaya, while in employment with the respondent had floated M/s J. S. Enviro Services Private Limited (the claimant herein) without intimation to the respondent. Record reveals that the claimant company came into existence in 2011 and is duly incorporated with the Registrar of Companies (The Certificate of Incorporation is Ex. CW1/C2). Claimant's case is that the said company was being run by his wife and he used to assist her after office hours. CW1 Upadhaya informed that he had given intimation orally to the respondent and this fact was in the knowledge of the respondent.

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26. In the cross-examination, RW2 Subhash Yadav was specifically asked that he had assisted Jiban Kumar Upadhayay, Director of the claimant company to get Service tax registration number of the claimant company. Though. he denied it, but the claimant documents RZ 1 to RZ3 to show that money was received by RW2 Subhash Yadav in his bank account for the services provided by him. Apparently, RW2 Subhash Yadav was aware of the claimant company and its relation Jiban Upadhaya. In the rejoinder, the claimant averred that Gaurav Mahender Kapoor was simultaneously drawing salary from the respondent and M/s Antony Road Transport Solutions Private Limited.

> *27. The respondent has not divulged as to on what exact grounds the contract with the claimant has been terminated/stopped from April 2017.* ***Nothing is on record to show if Upadhayay being Director in the claimant company was the only cause to terminate the contract. The respondent did not examine any Director including Tito Verghese who was well aware of the functioning of the respondent company to reveal if he was ignorant that Jiban Upadhayawas not Director in claimant company. Adverse inference is to be drawn against the respondent for withholding material witnesses.*** *The claimant has filed e-mails (Ex.CW1/C-5) (Page 119 to 123 of SOC) exchanged among Jose Jacob, Tito Verghese,Tarjinder, Kalpesh Shah and Jiban which demonstrate that all the relevant officers of the respondent were aware of the negotiations of the contract with the claimant company. This Tribunal is of the firm view that the agreement dated 1st May 2015 is legal and enforceable."*

48. The Tribunal considered the validity of the Agreement dated 1st May, 2015 entered between the parties. While dealing with the validity of the Agreement, the Tribunal considered the documents relied on by the parties, testimonies and cross-examination of witnesses namely CW1 Sh. Jiban Upadhayay, RW 1 Sh. Gaurav Kapoor, RW 2 Sh. Subash Yadav etc. The Tribunal has also dealt with the allegation of fraud committed by Sh. Jiban Upadhyaya as contended by the petitioner that he colluded with the respondent company with the intention to defraud the petitioner company.

49. The learned Arbitrator also gave the reasoning while ruling on the validity of the agreement dated 1st May, 2015 that the petitioner had not

divulged as to on which exact grounds the contract with the respondent had been terminated/stopped from April 2017. The Tribunal also noted that nothing was found on record to show if Sh. Upadhayay being Director in the respondent company was the only cause to terminate the contract. The Tribunal has also perused that the petitioner did not examine any Director including Sh. Tito Verghese who was well aware of the functioning of the petitioner company to reveal if he was ignorant that Sh. Jiban Upadhayay was not a Director in the respondent company. The Tribunal considered the e-mails exchanged among Sh. Jose Jacob, Sh. Tito Verghese, Sh. Tarjinder, Sh. Kalpesh Shah and Sh. Jiban which demonstrate that all the relevant officers of the respondent were aware of the negotiations of the contract with the claimant company. The learned Arbitrator had also analysed the evidence placed on record namely the agreement, email exchanges, documents relied upon and other material evidence placed by the parties.

50. As followed from the discussion mentioned above, it is manifestly clear that the Courts have a very limited scope of interference under Section 34 of the Act. The grounds for patent illegality and public policy have been carefully crystallized by the judicial pronouncements of various courts. In these circumstances, this Court is of the opinion that the petitioner had neither been able to point out any error apparent on the face of the record, nor otherwise been able to make out a case for interference with the Award by the learned Arbitrator with respect to this issue. Thus, this Court comes to the conclusion that the Award passed by the learned Arbitrator passed the muster of patent illegality and public policy enshrined in Section 34 of the Arbitration Act. Moreover, the

Impugned Award is also not in conflict with the public policy of India and thus does not suffer from any infirmities enshrined under Section 34 of the Arbitration Act.

ISSUE 2: WHETHER THE LEARNED ARBITRATOR APPRECIATED AND EVALUATED THE MATERIAL EVIDENCE PLACED ON RECORD AND GAVE THE REASONS FOR AWARDING COMPENSATION?

51. The learned counsel appearing on behalf of the petitioner has also contested that the learned Tribunal has not appreciated the evidence led by the parties. In this issue, this Court shall now analyse the scope of powers of constitutional courts to look into the evidence placed before the learned Arbitrator and the ambit of the abovementioned powers.

52. It is to be noted that the courts must keep in mind while deciding objections under this section that the intention of the legislature in repealing the 1940 Act and substituting it with the 1996 Act was primarily to attach finality to arbitration proceedings and interference by the courts were intended to be curtailed drastically.[3] This Court has relied upon the observations made by the Hon"ble Supreme Court in the judgment of ***NTPC Ltd. v. M/s Deconar Services Pvt. Ltd.*, 2021 SCC OnLine SC498,** wherein the Court observed that it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record

[3] P.C. Markanda, Law relating to Arbitration And Conciliation: Commentary on the Arbitration And Conciliation Act, 1996, 7th Edition, (LexisNexis Butterworths publications, Nagpur,) at 2009, 651.

is insufficient to allow for interference by the Court. A similar rationale has also been observed in the judicial pronouncements of ***State of U.P. v. Allied Constructions*, (2003) 7 SCC 396; *Ravindra Kumar Gupta and Company v. Union of India*, (2010) 1 SCC 409; *Oswal Woollen Mills Limited v. Oswal Agro Mills Limited*, (2018) 16 SCC 219.**

53. The observations made by the Hon‟ble Supreme Court in the case of ***Associate Builders v. Delhi Development Authority (Supra)*** are of pertinent relevance. For the sake of clarification, the ratio of the Hon‟ble Supreme Court is reproduced herein, whereby the court held that:

> *"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.*
>
> *32. A good working test of perversity is contained in two judgments. In **Excise and Taxation Officer-cum Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312]** it was held: (SCC p. 317, para 7)*

"7.… It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In ***Kuldeep Singh v. Commr. of Police*** **[(1999) 2 SCC 10 : 1999 SCC (L&S) 429]**, *it was held:*

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. ***If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."***

33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. ***A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score*** *[Very often an arbitrator is a layperson not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:"General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation,*

in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong". It is very important to bear this in mind when awards of lay arbitrators are challenged.]. ***Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts.*** *In* ***P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] ,*** *this Court held:*

"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. *The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.""*

(emphasis supplied)

54. The Hon‟ble Supreme Court in the case of ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.*, (2018) 3 SCC 133** observed and held that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of the evidence on record are not to be scrutinized as if the Court was sitting in an appeal. In para 51 of the judgment, it was observed and held as under:

> *"51 Categorical findings are arrived at by the Arbitral Tribunal to the effect that insofar as Respondent 2 is concerned, it was always ready and willing to perform its contractual obligations, but was prevented by the appellant from such performance. Another specific finding which is returned by the Arbitral Tribunal is that the appellant had not given the list of locations and, therefore, its submission that Respondent 2 had adequate lists of locations available but still failed to install the contract objects was not acceptable. In fact, on this count, the Arbitral Tribunal has commented upon the working of the appellant itself and expressed its dismay about lack of control by the Head Office of the appellant over the field offices which led to the failure of the contract. These are findings of facts which are arrived at by the Arbitral Tribunal after appreciating the evidence and documents on record. From these findings it stands established that there is a fundamental breach on the part of the appellant in carrying out its obligations, with no fault of Respondent 2 which had invested whopping amount of Rs.163 crores in the project. A perusal of the award reveals that the Tribunal investigated the conduct of the entire transaction between the parties pertaining to the work order, including withholding of DTC locations, allegations and counter allegations by the parties concerning installed*

objects. The arbitrators did not focus on a particular breach qua particular number of objects/class of objects. Respondent 2 is right in its submission that the fundamental breach, by its very nature, pervades the entire contract and once committed, the contract as a whole stands abrogated. It is on the aforesaid basis that the Arbitral Tribunal has come to the conclusion that the termination of contract by Respondent 2 was in order and valid. ***The proposition of law that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinised as if the Court was sitting in appeal now stands settled by a catena of judgments pronounced by this Court without any exception thereto."***

55. This Court while deciding on the question whether the constitutional courts have the power to reappreciate the evidence placed on the Arbitral Tribunal in the case of ***Scholastic India (P) Ltd. v. Kanta Batra*****, 2022 SCC OnLine Del 2351,** held that:

"23. The principal question to be addressed is whether the decision of the learned court to interfere with the impugned award is sustainable. The learned court had referred to the decisions in ***Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] and Ssangyong Engg. and Construction Co. Ltd. case [Ssangyong Engg. and Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and had rightly concluded that the scope of interference with an arbitral award under Section 34 of the A&C Act is limited. It is now well settled that a court cannot reappreciate or reevaluate the evidence and supplant its opinion over that of the Arbitral Tribunal in proceedings under Section 34 of***

> ***the A&C Act.*** *This Court is of the view that having correctly noted the law, the learned commercial court committed precisely the same error of reappreciating and revaluating the evidence. First, it found that the lessor's income tax returns and the statement of bank accounts were not supported by any certificate under Section 65-B of the Evidence Act, 1872 and, therefore, were not admissible. Second, that no liability could be fastened on Scholastic the basis of the entry in the books of accounts."*
>
> *(emphasis supplied)*

56. It is also pertinent to note the observations made by this very Court in the case of ***Delhi Development Authority v. Uppal Engineering Construction Co.*** **1982 SCC OnLine Del 67,** wherein this Court held as follows:

> *"23. We would once again emphasize what has often been said before, that the award of the arbitrator is final and conclusive. Wrong or right the decision is binding, if it be reached fairly or after giving adequate opportunity by the parties to place their grievance. The Court cannot re-examined and reappraise the evidence which has been considered by the arbitrator and sit in appeal over the conclusion of the arbitrator in proceedings to set aside the award. The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the award for the purpose of finding out whether or not the arbitrator has committed an error of law. (**N. Challapan v. Secretary Kerala State Electricity Board, (1975) 1 SCC 289 : A.I.R. 1975 S.C. 230)***
>
> *24. If the arbitrator makes a non-speaking award and has not given reasons the Court cannot probe into the mental*

processes of the arbitrator. ***If the arbitrator makes a speaking award and gives reasons the Court cannot set aside the award merely because the Court would have come to a different conclusion. The mere dissent of a court from the arbitrator's conclusion is not enough to set aside the award unless it can be shown by anything appearing from the face of the award that the arbitrator has tied himself down to some special legal proposition which is unsound."***

57. After embarking on the fetters of the constitutional courts and limited power of the courts to interfere with the mandate of the Arbitral Tribunal, this Court shall look into the findings of the Arbitral Tribunal. The findings of the Tribunal are reproduced herein, whereby the Arbitrator while passing the Award dated 30th October, 2019 noted that:

"19. On perusal of the evidence and documents on record, this Tribunal is of the view that agreement dated 1st May 2015 (Ex.CW1/C1) was validly executed between the parties. The agreement was entered into with the claimant company by the respondent through its representative Rajesh Pujari. The agreement also bears signatures of Tito Verghese, Director of the respondent company. Apparently, execution of the agreement was in the knowledge of the respondent company as Tito Verghese was witness to it. Execution of the agreement was never disputed by the respondent prior to the filing of CS (COMM) No. 33/2018 by the claimant before Delhi High Court.

20. Admittedly, Concession Agreement (Ex.R2) was executed between the respondent and MCD on 31st January 2005 for the collection, segregation, transportation and disposal of MSW. This agreement was extended from time to time. This agreement was entered into with the MCD on behalf of the

respondent by Tito Verghese and it bears his signatures on each page. Rajesh Pujari was a witness to this agreement too. The claimant has placed on record an agreement dated 1st April 2014 entered into by the respondent with M/s R S Enterprises in similar manner. This agreement was also entered into by Rajesh Pujari as representative of the respondent. Tito Verghese, Director of the respondent company had put his signatures as a witness on all the pages. Similarly, a contract/agreement was executed on 3rd June 2011 between MCD and M/s K L Invitech Pvt. Ltd. Rajesh Pujari entered the agreement on behalf of M/s K L Invitech Pvt. Ltd. and put his signatures on all the pages. It is relevant to note that M/s K L Invitech Pvt. Ltd. is subsidiary of M/s Antony Waste Handling Cell Private Limited. After the termination of the contract with the claimant, the respondent had executed an agreement with M/s Spic and Span Life Management Private Limited on 6th June 2017 and it was entered into by Prabhat Kumar Panda, Project Head (North Zone) as an authorized representative of the respondent. The respondent has not placed on record any document if any resolution of Board of Directors was passed prior to the execution of all these contracts/agreements. The claimant examined Rajesh Pujari as CW2 and he supported the claimant in the evidence by way of affidavit Ex. PY. In the cross- examination, he disclosed that Tito Verghese had authorized him to sign the agreement verbally. Nothing was suggested to CW2 Rajesh Pujari that he had no legal authority to enter into such agreements on behalf of the respondent. Apparently, there was no practice to pass any resolution of Board of Directors prior to the execution of the agreements. The respondent has placed on record a document (Ex.CW2/R1) whereby Tito Verghese, Director of K L Invitech Private Limited had sent

an „Authorization Letter" in favour of Rajesh Pujari to enter into an agreement dated 1st June 2011 with the Municipal Corporation of Delhi. Letter (Ex. CW2/R1) can't be termed a resolution by Board of Directors of the respondent."

58. Apart from the reasoning mentioned above by the learned Arbitrator, the Arbitral Tribunal has also dealt with the issue of escalation of the tipping fee price from Rs.475/- per tonne to Rs.775/- per tonne and the scope of the primary garbage collection under the contours of the agreement dated 1st May 2015 entered between the petitioner and the respondent company. While dealing with the contention of escalation of the tipping fee price from Rs.475/- per tonne to Rs.775/- per tonne, the learned Arbitrator has recorded the contentions raised by the parties as well as examined the material evidence produced by the parties. The operative portion of the Award is reproduced herein, wherein the learned Arbitrator ruled that:

"30. On perusal of several documents on record and scrutinizing the testimonies of the witnesses examined by both the parties, this Tribunal is of the view that initially the claimant was entitled to receive payment @ Rs.475/- per tonne as garbage collection charges in terms of the agreement dated 1st May2015. As observed above, the respondent has failed to establish that the agreement dated 1st May 2015 was not legally enforceable. The claimant has placed on record work orders issued by the respondent (Ex.CW1/C3 (colly)) giving details of quantity of the garbage collection and the rate at which the gross amount was calculated. The quantity of the garbage collection varies from month to month. The claimant has placed on record work order (at page72 of SOC) issued by the respondent for

Garbage Collection Charges @ Rs.475/- per tonne and Garbage Collection Charges - Primary @ Rs.300/- per tonne. The gross amount has been calculated to be Rs.2,40,63,750/-. It is accompanied by Receipt Note (page 73 of SOC). Similar are other work orders both for Garbage Collection Charge and Garbage Collection Charges - Primary. The claimant has also produced the documents of the respondent whereby the payments were approved by Tarjinder Singh, COO of the respondent company as EPR System came into existence. It is not in dispute that the payments for both garbage collection and garbage collection - Primary were made without any objection to the claimant till January, 2017.

31. The claimant has also filed Sales- Invoices (Ex. CW1/C4 (colly)) (page No. 95-118 of SOC). The invoices raised during the relevant period specifically describe charges for Primary Garbage Collection and Secondary Garbage Collection. At no stage, the respondent or any of its official objected to the raising of the invoices by the claimant both for primary and secondary garbage collection.

32. The claimant was to raise its bills on the total quantity of the garbage collected either as Primary or Secondary or both. Since work orders have been issued by the respondent for Primary Garbage Collection also from April, 2016 to March, 2017, the respondent is liable to make payment to the claimant @ total rate of Rs.775/- per tonne. The respondent has not examined any witness to deny that the work orders were procured by fraud or were not issued by the respondent Tito Verghese, who was having direct control over the affairs of the company was not examined by the respondent to inform as to what kind of work i.e. Primary or Secondary or both was carried out by the claimant during the relevant

period. It is not the case of the respondent that Primary Garbage Collection was got done from any different agency or it was performed by the respondent itself. The respondent did not examine any official from the MCD to disclose if no Primary Garbage Collection was carried out during the disputed period by the claimant in area of Karol Bagh and Paharganj. It is not the case of the respondent, that besides the claimant, it had hired any other agency to collect garbage in both these areas. The respondent has not placed on record as to what were the bills raised by it to claim payment from the MCD for the disputed period, Material documents have been withheld by the respondent and adverse inference is to be drawn against it. The claimant has given details of the total garbage collection, Primary and Secondary. The respondent has not revealed as to how much payment for how much total quantity was charged by it from the MCD. The claimant has filed several documents showing that during the period the work orders were issued to the claimant, income of the respondent had increased substantially. Admitted position is that the respondent paid Rs.89,34,716/- on 3rd April, 2017 to the claimant out of the outstanding dues of Rs.3,58,32,470/-. The respondent did not explain as to for which period payment pertained. It is unbelievable that the respondent would pay a substantial amount of Rs.89,34,716/- on 03.04.2017 after detection of alleged fraud by the claimant in connivance with Rajesh Pujari.

33.Another indication to substantiate the claimant's claim is deduction of TDS by the respondent Admittedly, the respondent had deducted and deposited TDS on the total payment of Rs.3,58,32,470/-. The claimant has filed copies of Form 16A (1stApril, 2015 to 30th June, 2017) and Farm - 26AS (2016-17 and 2017-18) (Ex.CW1/C6 (colly)). The

> *deduction of TDS on the total amount claimed by the claimant indicates that the respondent was liable to make payment to the claimant@ Rs. 475/- and Rs.775/- per tonne as urged."*

59. The Tribunal has duly considered the issue of escalation of the tipping fee price from Rs.475/- per tonne to Rs.775/- per tone and the statements made by Sh. Tito Verghese, Sh. Rajesh Pujari and other witnesses produced by the parties were also placed on record. The learned Arbitrator has also considered the work orders issued by the petitioner giving details of the quantity of the garbage collection and the rate at which the gross amount was calculated. The learned Arbitrator has also considered the sale invoices issued by the respondent to the petitioner during the relevant period for the primary and secondary garbage collection and analysed that the petitioner company has never raised any iota of doubt over the invoices raised.

60. Similarly, while deciding the application filed by the petitioner under Section 33(1) of the Act to clarify the computation errors in the Impugned Award dated 30th October, 2019. The contention/application of the petitioner before the Tribunal was that:

> *"Applicant"s contention is that the amount for March, 2017 has been wrongly calculated and exact amount is Rs.1,40,89,619/- as per the sale invoice (Page 117). The figure/amount of Rs.1,48,89,619/- needs to be corrected."*

While adjudicating on this application under Section 33(2) of the Act, 1996 filed by the petitioner, the learned Tribunal ruled on the merits of the Argument.

61. The learned Tribunal passed the decision on the abovementioned application under Section 33(2) of the Act in the Award dated 17th January, 2020 and held as under that:

> *"7. It is admitted ease of the parties that the payment for the month of February, 2017 (Rs.1,39,01,117/-), March, 2017 (Rs.1,40,89,619/-) and April, 2017(Rs.70,41,734/-) was payable as per the invoices (Ex.CW1/C-4) raised by the claimant. It is also admitted case of the parties that the applicant had deposited TDS amounting to Rs.6,09,261/- and had also made partial payment of Rs.89,34,716/-.* ***If the amount for the month of March, 2017 is taken as Rs. 1,40,89,619/- as urged by the applicant, the total amount payable by the applicant to the non-applicant would be Rs. 2,54,88,493/-. The claimant/non-applicant has filed Statement of Claim only for a sum of Rs.2,49,79,751/- which is less than the amount of Rs.2,54,88,493/- awarded by the Tribunal. Even if Rs.8 lacs are deducted from the Award dated 30th October, 2019 as urged by the applicant, the claimant still would be entitled to Rs.2,49,79,751/-.***
>
> *8. It is true that in a review petition only Clerical errors, calculations or typographical errors can be corrected and the Award on merits cannot be reviewed.*
>
> *9. In the present proceedings, the calculations/computations which are not disputed between the parties have been taken into consideration while arriving at the figure of Rs.2,49,79,751/-. In fact, in the Statement of Defense,*

the applicant had never denied the liability of the applicant to pay this amount to the non-applicant. Moreover, in the List of Creditors (Ex. CW1/CR-7) (Page 73 of rejoinder), the applicant had reflected this amount payable to the non-applicant. Similarly, in the ledger details (Ex.CW1/C-7) (Page 137 to 154) the details of the amount Rs.2,47,79,751/- has been given.

10. Under Section 33 of the Act, the Tribunal is empowered to make the necessary computation to consider if any error has occurred therein.

11. Since claimant/non-applicant is admittedly entitled for Rs.2,49,79,751/-, merely because due to typographical mistake in Para No. 10 of the Statement of claim Rs.1,48,89,617/- has been mentioned instead of Rs.1,40,89,619/-, it would not impact the overall calculations of the amount after deducting TDS and partial payment made.

12. In view of above discussion, this Tribunal finds no valid reasons to review the Award dated 30.10.2019. The application is accordingly dismissed."

It is clear from the prima facie view of the Arbitral Award dated 17th January, 2020, while considering the application filed by the petitioner under Section 33(2) of the Act, the learned Arbitrator has considered the invoices raised in the month of February, 2017, March, 2017 and April, 2017. Before coming to the conclusion, the Tribunal has also considered the TDS deposited by the petitioner amounting to Rs.6,09,261/-. The Tribunal has also considered the list of creditors as well as the ledger details.

62. Thus, it is clear from the above-mentioned extracts of the Arbitral Award passed by the learned Arbitrator that the he has duly appreciated the evidence placed on record. In the Arbitral award dated 30th October, 2019, the learned Arbitrator has considered all the evidence adduced by the parties. The learned Arbitrator has passed the order after considering the evidence placed by the petitioner regarding the validity of the agreement. Considering the factual scenario of the matter and looking at the *prima facie* view of the Award, this court comes to the conclusion that the learned Arbitrator has considered all the evidence adduced by the parties and meticulously drafted the Award. The Award is not devoid of reasoning and thus muster the challenges imposed under Section 34 of the Act. Moreover, following the catena of the abovementioned judicial pronouncements, the spirit of the Act is very clear that Arbitration is the alternate dispute resolution process, and the entire ballgame is between the parties and the Arbitrator.

63. The Arbitrator is the sole umpire of that game and the legislative mandate clearly propounds that the constitutional courts cannot unnecessarily interfere in the reasoning and decision of the Arbitrator. Additionally, the embargo is also imposed on the constitutional courts by the catena of judgments that it is outside the purview of the powers of the court to reappreciate and re-access the evidence produced before the Arbitral Tribunal. Once the Award is passed by the Arbitral Tribunal, it can only be challenged on the basis of the very limited grounds enshrined under Section 34 of the Act. Therefore, this Court comes to the conclusion that the learned Arbitrator while passing the Impugned Award dated 30th October, 2019 and the decision on the application filed

by petitioner under Section 33(2) of the Act considered the material evidence placed on record and is not devoid of any reasoning.

CONCLUSION

64. In recent times as a result of the dynamic growth of industrialization and globalization the excessive burden of the judiciary that has been the consequence of a large number of pending cases due to lengthy court procedures has resulted in making arbitration a time-efficient and dependable way for dispute resolution not only in India but throughout the globe.

65. Moreover, arbitration by providing flexibility to the procedure of dispute resolution also establishes a much extensive and wider room for negotiation between the parties having a dispute. The main focus behind introducing arbitration as a dispute redressal mechanism was to provide a fast and speedy dispute-resolving process as well as make it cost-effective as compared to general court proceedings.

66. Thus, it is high time that constitutional should keep in mind the *„Lakshman Rekha"* imposed on the powers of the courts while addressing the challenge to the Arbitral Award under Section 34 of the Act. This check on the powers of the constitutional courts is in light of the legislative mandate of the Arbitration Act.

67. It is also a cardinal duty of the constitutional courts to adhere to this check on the powers of the court and always keep in mind that the Arbitral Award which has been passed by respecting the mandate of the disputing parties, should not be set aside unless and until it suffers from a grave error that shocks the entire conscience of the court.

68. Considering the factual matrix of the case, authorities cited, pleadings presented and arguments advanced, this court comes to the conclusion that the Arbitral Award dated 30th October, 2019 passed by the learned Arbitral Tribunal in the matter titled as ***M/s J.S. Enviro Infra Projects Ltd. v. M/s. A.G. Enviro Services Pvt. Ltd.*** does not suffer from any infirmities enshrined in Section 34 of the Arbitration Act. The Impugned Award is not patently illegal and is not in conflict with the public policy of India.

69. The petition is thus dismissed along with pending applications, if any.

70. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JUNE 12, 2023
SV/AS