IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION
ORIGINAL SIDE
(ASSIGNED MATTERS)

Present:

The Hon'ble Justice Ajay Kumar Gupta

EC/231/2021

INDIA MEDIA SERVICES PRIVATE LIMITED

VS

SBPL INFRASTRUCTURE LIMITED

WITH

EC/255/2022

IA NO: GA/1/2022

SBPL INFRASTRUCTURE LIMITED

VS

INDIA MEDIA SERVICES PVT LTD.

WITH

AP-COM/191/2024

IA NO: GA/1/2023

INDIA MEDIA SERVICES PRIVATE LIMITED

VS

SBPL INFRASTRUCTURE LIMITED

For India Media Services Pvt. Ltd.	:	Mr. Krishnaraj Thaker, Ld.Sr.Adv. Mr. Pradeep Sancheti, Adv. Mr. Dhruv Chanda, Adv. Mr. Aurin Chakraborty, Adv. Ms. Trisha Lahiri, Adv.

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For SBPL Infrastructure Ltd.: Mr. Ratnanko Banerji, Ld. Sr. Adv.
Mr. G. Khaitan, Adv.
Mr. Jishnu Chowdhury, Adv.
Mr. Ratul Das, Adv.
Mr. Srinjoy Bhattacharya, Adv.

Reserved on : 30.07.2025

Judgment on : 24.09.2025

Ajay Kumar Gupta, J:

1. The application being A.P. No. 54 of 2021, renumbered as AP-COM/191/2024 is filed by petitioner, India Media Services Private Limited (IMSPL) under Section 34 of the Arbitration & Conciliation Act, 1996 (in short 'the Act of 1996') praying for setting aside an Award dated October 27, 2020 published by Sole Arbitrator (hereinafter referred to as 'the Arbitrator').

2. G.A. 1 of 2023 in AP-COM/191/2024 is filed by the petitioner, praying to adduce additional evidence. G.A. 1 of 2022 in EC/255/2022 is filed by Petitioner praying for an order for dismissal/rejection of the execution proceeding filed by the respondent (SBPL Infrastructure Limited) and/or alternatively, stay of the execution of the Award dated 27th October, 2020. The Petitioner alleged that the impugned Award is illegal, void, non-est and unenforceable until pendency of A.P. No.422 of 2021.

3. It would be relevant to mention here that the petitioner has filed an application under Section 14 of the Act of 1996, being A.P. No.422 of

2021, before the Hon'ble High Court, praying for a declaration that the mandate of the Learned Arbitrator stood terminated on August,31, 2020, but the Award was made and published on the aforesaid date i.e., 27th October, 2020. AP No.422 is pending for adjudication.

4. Execution case being EC 255 of 2022 has been preferred by the Respondent, praying for execution of the Award dated October 27, 2020, made and published by the Arbitrator. Another Execution case has been preferred by the Petitioner, being EC 231 of 2021, seeking leave to examine the respondent through its officers in accordance with Order XXI of the Code of Civil Procedure, 1908, together with the prayer mentioned in Column 10 of the Execution petition.

5. All the applications are being heard analogously with the consent of the parties, and are being taken up for consideration and disposal by passing a common judgment, for the sake of convenience and to avoid repetition.

THE AWARD:

6. By the impugned Award, the Sole Arbitrator allowed the Counterclaim filed by the Respondent for Specific Performance of the Nomination Agreement, by directing the Petitioner/Claimant to execute a sale deed in favour of the Respondent within two months from the date of receipt of the Award in respect of the property mentioned in the First Schedule (Schedule Property) of the Nomination Agreement as hereunder:

> "Property known as Indian Express Building, bearing Municipal Nos. 1-2-528 to 1-2-591, Lower Tank Bund Road, Hyderabad - 560029,

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under Town Survey Nos.6/1, 6/2 and 6/3, Block-A, Ward-55, Gagan Mahal Village, Musheerabad Taluka, Himayatnagar Mandal, Hyderabad District, admeasuring 4.844 Acres equivalent to 23,466.56 sq.yards equivalent to 19,601.32 sq. meters with all structures standing thereon, delineated on the Plan annexed hereto and bordered in color Red thereon and butted and bounded as follows:

North : Domalguda Road
East : Pranavanand Vidyalaya and Cement Road
South : Masjid and small shops of neighbours
West : Lower Tank Bund Road"

7. It was further directed that the petitioner/claimant would accept the balance sum of Rs. 14 crores from the Respondent. The Respondent had already paid Rs. 1 crore as Earnest Money. Although the said amount (1 crore) had been returned by the Claimant by a cheque dated 25th March, 2009, the Respondent has not encashed the same, and thus, the amount is still lying in the account of the Claimant.

8. The Claimant was also directed to convey its Bank Account number to the Respondent within 45 days from the date of receipt of the Award by speed post at the registered address of the Respondent, and the Respondent would deposit the said amount in the Bank Account of the Claimant within one week from the date of Receipt of the bank account number from the Claimant by RTGS. The Interim order passed by the Hon'ble High Court at Calcutta on an application under Section 9 of the Arbitration and

Conciliation Act, 1996, which is now subsisting, would continue till the execution of the Deed in favour of the Respondent by the petitioner.

9. The Arbitrator allowed the Counterclaim lodged by the Respondent with costs assessed at Rs. 8,15,73,616/-(Rupees Eight Crore Fifteen Lakh Seventy-three Thousand Six hundred and sixteen only), payable by the petitioner, with interest at the rate of 18% per annum, from the date of Award till actual payment, in terms of Section 31(6)(b) the Arbitration and Conciliation Act, 1996 as it stood before the amendment introduced by the Amending Act of 2015 came into operation.

10. The Tribunal did not pass any separate order of costs in favour of the petitioner for the dismissal of the Statement of Claim filed by the Claimant/petitioner, as both the Claim and the Counterclaim were heard together. The costs assessed by the Arbitrator are based on the ledger copies, payment vouchers and the invoices separately sent by the parties, while disclosing the statement of costs. The entire amount had been paid by cheques, and the details of such costs have been furnished. Consequently, the Tribunal did not find any reason to disbelieve the veracity of the statements contained in the statement of account filed by the parties.

FACTS OF THE CASE:

11. Originally, the disputes and differences arose out of a Nomination Agreement dated 5th December, 2005, executed between Indian Media

Services Private Limited (IMSPL), the Petitioner herein, and SBPL Infrastructure Limited, the Respondent herein. In the said Nomination Agreement, the petitioner approached the respondent and offered to the respondent to get the conveyance of the schedule property situated at Lower Tank Bund Road, Hyderabad - 500 029, Block A Town Survey Nos. 6/1, 6/2 & 6/3, Ward No. 55, Gagan Mahal Village, Mursheerabad Taluka, Himayatnagar Mandal, Hyderabad (earlier known as Rose Biscuit Factory) measuring 4,844 acres (23,466.56 sq. yards) (hereinafter referred to as the "the said Property"), in favour of the respondent upon payment of full and final consideration amount of Rs. 15 crores. The payment of the agreed consideration of Rs. 15 crores shall be paid by the respondent/nominee to the petitioner/grantor in the following manner:

a) A sum of Rs. 1 Crore simultaneously with the execution of nomination agreement.

b) On the day when the conveyance is executed, the balance of the consideration amount, Rs. 14 crores.

12. According to the Petitioner, the facts that led to the institution of the instant application under section 34 of the Arbitration and Conciliation Act, EC 231 of 2021 and EC 255 of 2022, respectively, are as follows: -

a. M-Real Corporation, Finland (part of Metsälitto Cooperative), supplied newsprint to Express Publications (Madurai) Ltd through its agents in India and Singapore. To streamline operations in India, M-Real

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incorporated two subsidiaries- India Media Services Pvt. Ltd. and M-Real India Pvt. Limited, both wholly and beneficially owned by M-Real.

b. Express Madurai defaulted on newsprint payments amounting to Rs. 21.1 crores. To settle the dues, Express Madurai entered into an agreement for sale of property in favour of the Petitioner.

c. In 2002, Price and Pierce (a subsidiary) formally assigned all outstanding invoices to the petitioner. When Express Madurai refused to execute conveyance, the Petitioner, filed C.S. no. 486 of 2002 in the Calcutta High Court against Express Madurai and others for recovery of the amount outstanding under the various invoices. By the order dated 14th February 2003 made in GA Nos. 4200 and 4203 of 2002 in connection with CS No. 486 of 2002, this Hon'ble High Court restrained Express Madurai from selling, transferring, alienating and or encumbering several properties including the property at Hyderabad.

d. After negotiations, Express Madurai agreed to honour its obligations under the sale agreement. The compromise decree dated 17th March 2004 required Express Madurai to register conveyance of the Hyderabad property in favour of the petitioner, against payment of 21.1 crores to Price and Pierce, but it once again failed to comply.

e. The petitioner filed Execution Case no. 8 of 2005 for auction sale of the property, but the High Court dismissed the application on 21st

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November 2005, leaving the Petitioner without an effective remedy at that stage.

f. Subsequently, Mr. G. S. Gupta, Managing Director of the respondent, offered to use his connections to resolve the dispute.

g. On 5th December, 2005, the Petitioner entered into a Nomination Agreement, allowing the respondent to secure conveyance from Express Madurai in exchange for Rs. 15 crores payable to the Petitioner. Petitioner received earnest money of Rs. 1 crore at the time of execution of Nomination Agreement, but they resisted, filing an application (G.A. 3995/2005) to vary the decree and discharge itself from property transfer obligations.

h. The respondent failed to convince Express Madurai to comply; hence, the Petitioner filed Execution Case no. 1 of 2006. On 18th May, 2007, the High Court ordered Express Madurai to execute the conveyance and hand over possession.

i. The Petitioner terminated the Nomination Agreement in November 2007, offering to refund the 1 crore deposited by the Respondent. However, in May the following year, having received no response, the Petitioner forfeited the deposit.

j. The respondent, meanwhile, explored alternative deals, negotiating with DLF for partial equity, proposing joint development, and even suggesting new agreements, but all fell through.

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k. Express Madurai tried to rescind the 2004 compromise decree in GA 1349 of 2008. The Hon'ble Supreme Court dismissed its SLP on 7th April 2008. The High Court dismissed recission attempts on 30th July 2008, which was upheld by the Division Bench on 17th December 2009.

l. The conveyance was ultimately executed in favour of the Petitioner, with Indian Express Newspapers (Bombay) Ltd. as a confirming party. The Respondent assisted in registration formalities but continued to make new proposals (joint development, hotel project), all of which were rejected. On 13th October 2011, for the first time, the respondent attempted to revive and enforce the already-terminated Nomination Agreement, despite its expiry and legal inoperability.

13. Based on these facts, in October 2011, the petitioner invoked the arbitration agreement, and the previous Arbitrator, Hon'ble Justice U.C. Banerjee (Retd.), entered, upon reference in November 2011. The statement of claim was filed by the petitioner on 22nd November, 2011, praying for the following reliefs:

> *"25.01. A declaration that the Nomination Agreement dated 5th December 2005 is null and void, non-est and/or incapable of performance.*
>
> *25.02. A declaration that the Nomination Agreement has stood terminated and/or repudiated and/or is no longer valid or subsisting.*

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25.03. A declaration that the Nomination Agreement dated 5th December, 2005 is not specifically enforceable at the instance of the Respondent.

25.04. Delivery up and cancellation of the Nomination Agreement dated 5th December, 2005 which has stood terminated and/or repudiated and/or is no longer valid or subsisting.

25.05. Injunction restraining the Respondent, its servant, agents and men from taking any step or further steps in connection with or pursuant to or in respect of the Nomination Agreement dated 5th December, 2005.

25.06. Such further order as the Learned Arbitrator may deem fit and proper in the nature and circumstances of the case.

25.07. Costs and Expenses, including legal costs and interest thereupon."

14. The respondent contested the claim application by filing a statement of defence and counterclaim on 07.12.2011. A rejoinder was filed by the Respondent on 24.12.2011.

15. The respondent, in the counterclaim, has prayed for relief of specific Performance of the Nomination agreement and other consequential reliefs, and subsequently, by way of amendment, has added the prayer of damages. The prayer after amendment is set out herein below:

"The respondent claims-

a) An award for specific performance of the Nomination Agreement dated 5th December, 2005 and/or the object thereof,

that is to cause the subject property to be transferred to the respondent, in the following manner:

i) Transfer of the subject property by the claimant to the respondent by execution of a Conveyance Deed against payment of the consideration amount as specified in the Nomination Agreement.

ii) By transfer of the entire share capital of the claimant by its existing share-holders to the respondent or its nominees at and for the agreed consideration mentioned in the Nomination Agreement, such that the respondent and/or its nominee become the absolute owner of all the assets and properties of the claimant, by virtue of its 100% share holding and control of the claimant Company.

iii) In the alternative and only if the consideration amount as specified in the Nomination Agreement is not accepted by the Learned Arbitrator, then the consideration amount for both (a) or (b) be increased to Rs. 27,00,00,000.00, in place and stead of that mentioned in the Nomination Agreement.

iv) Handing over of vacant and peaceful possession of the subject property by the claimant to the respondent.

v) Execution of all other documents that the respondent may require the claimant and/or its management to execute, for completing the transfer of the subject property to the respondent and for ensuring the

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peaceful possession and occupation of the subject property by the respondent;

b) If the claimant fails and/or refuses to specifically perform the said agreement in terms of prayer (a) above, a person be authorized by the Learned arbitrator and do all things needful in terms of prayer (a) above on behalf of the claimant:

c) Mandatory injunction directing the claimant to do the following:

i) Transfer of the subject property by the claimant to the respondent by execution of a Conveyance Deed against payment of the consideration amount as specified in the Nomination Agreement.

ii) Alternatively transfer of the entire share capital of the claimant by its existing share-holders to the respondent or its nominees at and for the agreed consideration mentioned in the Nomination Agreement, such that the respondent and/or its nominee become the absolute owner of all the assets and properties of the claimant, by virtue of its 100% share holding and control of the claimant Company.

iii) In the alternative and only if the consideration amount as specified in the Nomination Agreement is not accepted by the Learned Arbitrator, then the consideration amount for both (a) or (b) be increased to Rs. 27,00,00,000.00, in place and stead of that mentioned in the Nomination Agreement.

iv) Handing over of vacant and peaceful possession of the subject property by the claimant to the respondent.

v) Execution of all other documents that the respondent may require the claimant and/or its management to execute, for completing the transfer of the subject property to the respondent and for ensuring the peaceful possession and occupation of the subject property by the respondent;

d) Declaration that the respondent has become or deemed to have become the absolute owner of the subject property;

e) Declaration that the claimant is holding the subject property for and on behalf of the respondent and is under an obligation to cause transfer of the property to the respondent;

ee) An award for a sum of Rs. 992.47 and further award as per paragraph 22B above, in the alternative, an enquiry into damages and upon such enquiry being made, an award in terms thereof.

eee) Interim interest and Interest on award @ 18% per annum.

f) Receiver;

g) Injunction;

h) Attachment;

i) Cost

j) Such further and/or other relief."

16. The Arbitration Agreement fixed a time for making the award by the Learned Arbitrator, which had expired, and his mandate stood terminated. None of the parties applied for an extension.

17. On 11th April 2012, the respondent applied for nomination of an Arbitrator under Section 11 & 15 of the Arbitration and Conciliation Act, 1996, and the Hon'ble High Court at Calcutta, by an order dated 20.07.2016, appointed Justice Jayanta Kumar Biswas (Retd.) as another Sole Arbitrator.

18. Before the said Arbitrator, Justice Jayanta Kumar Biswas (Retd.), the pleadings filed earlier were directed to be treated as pleadings being duly filed. After the Tribunal was reconstituted in 2016, there were further directions to update the pleadings, as the respondent made an application to amend the counterclaim. The amended counterclaim was filed on 30th August, 2016. Additional and further defence was filed on 5th September, 2016, to which a further sur rejoinder was filed by the respondent on 12th September, 2016.

19. The issues, framed by the former Sole Arbitrator based on the statement of claim and counterclaim of the parties in the arbitration proceedings, are as follows: -

    i. Is the Nomination Agreement dated 5th December, 2005 valid?

    ii. Is the Arbitration Agreement recorded in Clause 12 of the Nomination Agreement valid?

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iii. Are the disputes between the parties arbitrable?

iv. Did IMS (the claimant) serve notice or intimate SBPL (Respondent/Nominee) for execution the Conveyance? Can the provisions of clause 10 of the Nomination Agreement be invoked or the contract terminated or can both be done in the absence of such a notice?

v. Was the Nomination Agreement frustrated? If not did the Nomination Agreement expire on January 4, 2006, if not on March 4, 2006?

vi. If the Issue No. 5 is answered in negative, was the Nomination Agreement cancelled on November 27, 2007?

vii. Did the SBPL (The Respondent) become absolute owner of the property under the Nomination Agreement subject to payment according to the Agreement?

viii. Did IMS discharge its obligation under the Nomination Agreement?

ix. Is the counter claim of SBPL (the Respondent) or any part thereof maintainable, or does the counter claim arise out of the Nomination Agreement dated 5th December, 2005?

x. Is SBPL (The Respondent) stepped from enforcing the Nomination Agreement? Is the cause of action of SBPL (The Respondent) under the Nomination Agreement dated December 5, 2005 barred by the Principles of Waiver, Acquiescence or Principles analogous thereto?

xi. Is the cause of action of SBPL (The Respondent) for the counter claim barred by Laws of Limitation or any other law or both?

xii. Is the Nomination Agreement dated December 5, 2005 specifically enforceable?

xiii. Did SBPL (The Respondent) discharge its obligation under the Nomination Agreement?

xiv. Is SBPL (The Respondent) entitled to any relief claimed in the counterclaim?

xv. What reliefs?

PROCEEDING BEFORE THE ARBITRATOR AND PROCEEDING OF SECTION 9 OF THE ACT,1996.

20. The Petitioner examined two witnesses whose evidence was taken on record by the Arbitrator, Justice Jayanta Kumar Biswas (Retd.). The respondent's sole witness was examined before the Arbitrator. Thereafter, the final argument commenced on 31st March, 2019. After three sittings of oral argument, the respondent addressed a letter to the sole Arbitrator, calling upon him to recuse himself on certain allegations. By an order dated 3rd April, 2019, the Sole Arbitrator rejected all the charges levelled against him, stating that all the charges had been wrongfully levelled against him. He invalidated the charges. The Arbitrator, however, recused himself from the arbitration proceeding by an order dated 3rd April, 2019.

21. In the interregnum, the Respondent had filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court at Calcutta, which was dismissed by a judgment and order dated 03.05.2013 by the Hon’ble Single Bench, on the ground of lack of territorial jurisdiction, as the said property was situated at Hyderabad, outside the jurisdiction of the Hon'ble High Court at Calcutta.

22. Consequently, the Respondent preferred an appeal being APO no.170 of 2013 after being aggrieved by and dissatisfied with the judgment and order dated 03.05.2013 before the Division Bench**,** contending therein that it had given up any relief towards title and possession in respect of the said property in the Section 9 application proceeding, which led the Hon'ble High Court to have jurisdiction to try and determine the proceeding.

23. The Hon’ble High Court, after hearing, recorded the Respondent's contention not to claim possession of the said property and requested the Learned Trial Court to dispose of the said application. By an order dated 20th July, 2016, the Learned Single Judge of the Hon'ble Calcutta High Court allowed the Section 9 application filed by the Respondent. However, in the appeal preferred from the judgment and order dated 20th July, 2016, the petitioner again pointed out that in the Section 9 application, the Respondent had not given up the title of the said property. The said

Appeal is pending. The respondent gave an undertaking, stating that they would not seek possession or title in the arbitral proceedings.

24. In course of hearing of G.A. 3862 of 2014, seeking review arising out of A.P.O. 170 of 2013, and G.A. 364 of 2014, the Respondent pointed out that it had undertaken that it would not claim title or possession of the said property in the arbitral reference but were misleading the arbitral tribunal as to the scope of the Undertaking given to the Hon'ble High Court.

25. Accordingly, the respondent furnished an affidavit of its CEO, Mr. Manoj Sharma, giving up possession or title to the property, which was accepted by the Hon'ble High Court. This was recorded in the order of the Court dated 18th February, 2020. The respondent had filed an affidavit dated 17th February, 2020, whereby it could not seek any relief for taking over title and possession of the property.

26. The Respondent filed another application under sections 11 & 15 of the Arbitration and Conciliation Act, 1996, before this Hon'ble High Court. By an order dated 28th January, 2020, a new sole Arbitrator, namely, Justice Bhaskar Bhattacharya (Retd.), was appointed, and the Hon'ble Court directed that the award should be made and published by the end of August 2020.

27. Justice Bhaskar Bhattacharya (Retd.), the newly appointed Arbitrator, entered upon reference. It was decided with the consent of the parties that

the new Arbitrator will proceed with the arbitration proceedings on the basis of the pleadings already filed and the evidence already adduced. Thus, only arguments were required to be made before the newly appointed sole Arbitrator.

28. The Learned Arbitrator made and published the award on 27th October, 2020 after considering the arguments, materials facts, and documents produced before the arbitral proceedings. All claims of the petitioner were rejected, and the claim for specific performance of the nomination agreement dated 5th December, 2005 was allowed together with costs as aforesaid.

ARGUMENTS AND SUBMISSION ON BEHALF OF THE PETITIONER:

29. Learned Sr. Counsel, Mr. Krishnaraj Thaker, appearing on behalf of the Petitioner/Award debtor, has vehemently argued and further put forward the following submissions: -

a. Disputes are non-arbitrable on account of the Nomination Agreement being vitiated by perpetration of fraud, bribery and criminal offences by respondent. The Tribunals wrongful refusal to consider and mark the transcription of the officials of the High Court at Calcutta render the Award as vitiated by Sections 28(1)(a), 34(2)(a)(iii), 34(2)(a)(iv), 34(2)(b)(ii) r/w Expl. 1(ii), 1(iii) and 34(2A) of the 1996 Act.

b. The Tribunal's findings on the cause of action of the Respondent in filing counter claim is not being barred by the law of Limitation render

the Award as vitiated by Sections 28(1)(a), 34(2)(a)(iii), 34(2)(a)(iv), 34(2)(b)(ii) r/w Expl. 1(ii), 1(iii) and 34(2A) of the 1996 Act.

c. The Tribunal's findings on the Nomination Agreement are beyond the scope and domain of the Learned Arbitrator to interpret the same as an Agreement for Sale and failure to consider the refusal of Hon'ble High Court to grant consent to Nomination was the end of Nomination Agreement render the Award vitiated by Sections, 34(2)(a)(iii), 34(2)(a)(iv) 34(2)(a)(v) 34(2)(b)(ii) r/w Expl. 1(ii), 1(iii) and 34(2A) of the 1996 Act.

d. The principles of natural justice were violated by the Tribunal as it was decided principles of law although not argued or raised by either parties and further incorrectly placed on reliance on various judgements /judicial precedents, new points of law and other material without putting the parties to notice and behind the back of Petitioner are render the Award liable to be set aside under Sections 34(2)(a)(iii), 34(2)(a)(iv), 34(2)(b)(ii) r/w Expl. 1(iii) and 34(2A) of the 1996 Act.

e. The Tribunal failure to consider and/or deal with the evidence, both oral and documentary evidence as well as ignored the contentions and arguments made by the petitioner and judgments cited by the Respondent in the course of arguments have no manner of application renders the Award liable to be set aside for violating Sections 34(2)(b)(ii) r/w Expl. 1 (iii) and 34(2A) of the 1996 Act.

f. The Tribunal's failure to consider the subsequently Respondent's offer and intention to purchase 100% of the equity of the Petitioner proving that the Agreement was frustrated and/or had ended, rendering the Award vitiated by Sections 34(2)(b)(ii) r/w Expl. 1(iii) and 34(2A) of the 1996 Act.

g. The Tribunal's findings on the first pure question of law, that the amendments to the Specific Relief Act 1963 are retrospective in nature and the Tribunal could accordingly not exercise discretion in awarding specific relief, render the Award vitiated by Sections 34(2)(a)(iii), 34(2)(a)(iv), 34(2)(b)(ii) r/w Expl. 1(ii), 1(iii) and 34(2A) of the 1996 Act.

h. The Tribunal's findings on the second pure question of law, that even in the absence of a declaration to set aside the notice of termination a prayer for specific relief is maintainable render the Award vitiated by Sections 34(2)(a)(iii), 34(2)(a)(iv), 34(2)(b)(ii) r/w Expl. 1(ii), 1(iii) and 34(2A) of the 1996 Act.

i. The Tribunal's findings on the third pure question of law, that the Undertaking given to the Hon'ble High Court by the Respondents, not to claim title or possession, was not violated by obtaining by award for conveyance of the subject property render the Award vitiated by Sections 28(1)(a), 34(2)(a)(iii), 34(2)(a)(iv), 34(2)(b)(ii) r/w Expl. 1(ii), 1(iii) and 34(2A) of the 1996 Act.

j. The Tribunals Award costs in favour the respondent render the Award as vitiated by Sections 34(2)(a)(v), 34(2)(b)(ii) r/w Expl. 1(ii), 1(iii) and 34(2A) of the 1996 Act.

k. The Tribunal had become Functus Officio on 31.8.2020, and thus the writing and publishing of the Award on 27.10.2020 is not an Award and it ought to be set aside under Sections 34(2)(a)(v) and 34 (2A) of the 1996 Act.

ARGUMENTS AND SUBMISSION ON BEHALF OF THE RESPONDENT:

30. Learned Sr. Counsel, Mr. Banerjee, appearing on behalf of the respondent/award holder, has vehemently argued and opposed the prayer of the Petitioner. He further put forward the following submissions: -

a. The scope of an application for setting aside an award under section 34 of the Arbitration & Conciliation Act, 1996, is very limited. The court cannot look into an Award like an appellate court. The Award Debtor has to satisfy the grounds stipulated in section 34(2)(a) or (c) of the Arbitration and Conciliation Act.

b. An award should not be set aside by reason that there can be another plausible view or interpretation of the contractual terms and conditions stipulated in the Nomination Agreement or by reason of the Court's appreciation of evidence or re-appreciation of factual findings arrived at by the Learned Arbitrator.

c. An award can be set aside only on the ground of perversity of a finding in an award or on total non-consideration of any material evidence as has been held in the ratio of the decision of the Hon'ble Supreme Court.

d. An award is a well-reasoned based on consideration and analysis of the factual issues raised by petitioner, particularly, the issue of interpretation of the Nomination Agreement being an Agreement for Sale.

e. The issue regarding the allegation of a bribe to Mr. Kaj Appelberg in the matter of entering into an agreement on 5th December, 2005 is denied, and it is further submitted that it is a totally false and fabricated allegation. The allegation could not have been proved before the Learned Arbitrator; rather, the alleged tape recording or tape-recording transcription was subsequently withdrawn by the Petitioner and the same was recorded in minutes in 72 meetings.

31. The learned Sr. Counsel has relied upon the following decisions and the ratios of such decisions to bolster his aforesaid contention are as follows: -

i. ***Consolidated Construction Consortium Limited VS. Software Technology Parks of India***[1] particularly in paragraph no. 23 thereof;

[1] 2025 SCC Online SC 956

ii. ***National Highways Authority of India vs. Hindustan Construction Company Limited***[2] particularly in paragraph nos. 16 to 18 thereof;

iii. ***Punjab State Civil Supplies Corporation Limited & Anr. Vs. Sanman Rice Mills & Ors.***[3] Particularly in paragraph nos. 10, 11, 15 and 20 to 23 thereof;

iv. ***UHL Power Company Limited vs. State of Himachal Pradesh***[4] particularly in paragraph nos. 15, 16, 18 and 22 thereof;

v. ***Birla Education Trust & Ors. Vs. Birla Corporation Limited & Ors.***[5] Particularly in paragraph no. 21 thereof;

vi. ***Siddamsetty Infra Projects Private Limited Vs. Katta Sujatha Reddy & Ors.***[6] Particularly in paragraph nos. 32 and 42 thereof;

vii. ***Hindustan Construction Company Limited Vs. Union of India***[7] particularly in paragraph no. 63 thereof;

viii. ***Gayatri Balasamy Vs. ISG Novasoft Technologies***[8] particularly in paragraph nos. 32 to 49, 85 thereof.

POINTS/ISSUES ARE TO BE CONSIDERED:

32. Having heard the arguments and submissions advanced by the learned Sr counsels representing the respective parties extensively and elaborately and analysing the award and judgments referred on behalf of the parties, this court finds that the following issues are revolved around in the present case and are required to be addressed by this court one by one, to

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[2] *(2024) 6 SCC 809*
[3] 2024 SCC Online SC 2632
[4] (2022) 4 SCC 116
[5] 2013 SCC OnLine Cal 8765
[6] 2024 SCC OnLine SC 3214
[7] (2020) 17 SCC 324
[8] 2025 SCC OnLine SC 986

resolve the disputes between the parties. The issues framed by this court are as under:

I. Whether the nomination agreement would be vitiated or award can be set aside on allegation that the respondent committed fraud, bribery and criminal offence upon the petitioner for having the nomination agreement executed by paying Rs. 1 crore to Mr. Appelberg?

II. Whether the counterclaim filed by the respondent (SBPL) is barred by the laws of limitation?

III. Whether the Arbitrator has the power to interpret the clauses of the nomination agreement in different manner other than the specific averments?

IV. Whether the respondent (SBPL) is entitled to relief on account of the undertaking given to court that the respondent would not claim title and possession of the property in question involved in relation to the arbitration proceedings?

V. Whether the arbitrator Violated the principal of natural justice by not allowing to controvert the cited judgements/judicial precedents relied upon by the arbitrator behind the back of the petitioner (IMSPL)?

VI. Whether the arbitrator ignored the material evidence place at the time of proceeding or not considered while coming to a final decision in favour of the respondent?

VII. Whether the arbitrator had discussed pure question of law in accordance with law or violated the same?

VIII. Whether the arbitrator has power to award costs in favour of the respondent without having evidence?

DISCUSSION, ANALYSIS AND CONCLUSION OF THE COURT:

33. Before dealing with, and entering into the merits of the case, it would be appropriate to consider first the nature and scope of Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'the said Act'). Therefore, it is essential to bring on record the views of the Hon'ble Supreme Court in the case of**: -**

(i) ***Consolidated Construction Consortium Limited (supra)***, the Hon'ble Supreme Court held that Section 34 of the Arbitration and Conciliation Act is not appellate in nature; an award may be set aside only on the limited grounds in Section 34(2)/ (2A). Courts cannot interfere merely because the award is illegal or erroneous in law if that requires reappraisal of evidence, and where two views are possible, the arbitrator's view must ordinarily prevail. Paragraph 23 and 24 are as under: -

23. *Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.*

24*. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act."*

(ii) ***National Highways Authority of India (supra)***, the Hon'ble Supreme Court held that the scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 is limited, as the court does not sit in appeal over the arbitrator's findings; if the arbitrator's view is plausible, it need not be re-examined, and the interpretation of contractual terms falls squarely within the domain of the arbitral tribunal. Paragraphs 16 to 18 read as under: -

> *"**16.** Now, we turn to the issue of whether the claim for the construction of embankment forms part of the activity of clearing and grubbing and was not payable as embankment work. We may note here that two expert members of the Arbitral Tribunal held in favour of the respondent on this point, whereas the third member dissented. There cannot be any dispute that as far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34 does not sit in appeal over the findings of the arbitrator.*
>
> ***17.** The Division Bench has adverted to the findings recorded by the two members of the Arbitral Tribunal. After considering the view taken by the Arbitral Tribunal, the High Court observed that the real controversy was whether the work of backfilling had been done and whether the said work was liable to be excluded from the work of the embankment construction by the respondent.*
>
> ***18.** The Division Bench held that nothing is shown that indicates that the construction of the embankment can be said to have been done in a manner where the lower part of the embankment is*

made only by carrying out the activity of backfilling. The High Court also noted that the appellant sought to make deductions after initially paying the amounts for the embankment. The Division Bench was right in holding that the majority opinion of technical persons need not be subjected to a relook, especially when the learned Single Judge had also agreed with the view taken by the Arbitral Tribunal. We have also perused the findings of the majority in the award. We find nothing perverse or illegal about it."

(iii) ***Punjab State Civil Supplies Corporation Limited (supra)***, the Hon'ble Supreme Court held that the scope of judicial review under Section 34 of the Arbitration and Conciliation Act, 1996 is strictly confined to the grounds specified in the statute; where two views are possible and the arbitrator has adopted one, the award cannot be set aside, and interference is permissible only if the award is against the public policy of India or conflicts with basic notions of morality and justice, making court intervention virtually prohibited beyond the Act's framework. Paragraphs 10, 11, 15 and 20 to 23 read as under: -

*"**10.** Section 34 of the Act provides for getting an arbitral award set aside by moving an application in accordance with sub-Section (2) and sub-Section (3) of Section 34 of the Act which inter-alia provide for the grounds on which an arbitral award is liable to be set aside. One of the main grounds for interference or setting aside an award is where the arbitral award 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 with the fundamental*

policy of Indian law or it is in conflict with most basic notions of morality and justice. 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 find out if the award is good or bad.

11. *Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.*

15. In Dyna Technology Private Limited v. Crompton Greaves Limited[5]*, the court observed as under:*

*"**24.** There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*

25. *Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if*

the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

20. *In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.*

21. *It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is*

much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.

22. *In the case at hand, the arbitral award dated 08.11.2012 is based upon evidence and is reasonable. It has not been found to be against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of morality and justice. It is not held to be against any substantive provision of law or the Act. Therefore, the award was rightly upheld by the court exercising the powers under Section 34 of the Act. The Appellate Court, as such, could not have set aside the award without recording any finding that the award suffers from any illegality as contained in Section 34 of the Act or that the court had committed error in upholding the same. Merely for the reason that the view of the Appellate Court is a better view than the one taken by the arbitral tribunal, is no ground to set aside the award.*

23. *Thus, in our opinion, the Appellate Court committed manifest error of law in setting aside the order passed under Section 34 of the Act and consequently the arbitral award dated 08.11.2012……."*

(iv) ***UHL Power Company Limited (supra)***, the Hon'ble Supreme Court reaffirmed that the jurisdiction of the court under Section 34 of the Arbitration and Conciliation Act, 1996 is narrowly confined, and the interpretation of contractual clauses falls within the exclusive domain of the arbitral tribunal; the court does not act as an appellate forum and may only ascertain whether the arbitrator's interpretation is plausible

and possible, in which case no interference is warranted. Paragraphs 15, 16, 18 and 22 read as under:

> *"**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. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163: (2019) 2 SCC (Civ) 293], the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words: (SCC pp. 166-67, para 11)*
>
> *"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 this 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 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 Ltd. 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."

18. *It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1], the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus: (SCC p. 12, para 24)*

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."

> ***22.*** *In the instant case, we are of the view that the interpretation of the relevant clauses of the implementation agreement, as arrived at by the learned sole arbitrator, are both, possible and plausible. Merely because another view could have been taken, can hardly be a ground for the learned Single Judge to have interfered with the arbitral award. In the given facts and circumstances of the case, the appellate court has rightly held that the learned Single Judge exceeded his jurisdiction in interfering with the award by questioning the interpretation given to the relevant clauses of the implementation agreement, as the reasons given are backed by logic."*

34. The arbitrator has the power to deal with all facts and law placed before it. The arbitral tribunal is not strictly bound by procedural law, i.e., the Code of Civil Procedure or the Indian Evidence Act, 1872 in the case of arbitration. Under the law, the parties have the right to agree on the procedural rules applicable to the arbitral proceedings. The Parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings, and when the parties fail to agree on a procedure, then the arbitral tribunal may conduct the proceedings in the manner it considers appropriate and proper for fair and effective disposal.

35. The power of the arbitral tribunal under section 19(3) includes the power to determine the admissibility, relevance, materiality, and weight of any evidence. It is relevant to mention that the procedure devised by the parties or the tribunal must meet the basic principles of an adjudicatory

process, such as the parties must be treated with equality and each party must be given a full opportunity of presenting his/her case.

36. Keeping in view the aforesaid proposition of law and power applied by the Arbitral Tribunal, this Court would now deal with the findings of the Arbitrator one by one on the issues raised by the Petitioner herein.

ISSUE NO.1- FRAUD AND BRIBERY:

37. The Petitioner's primary argument was that the arbitral award stood vitiated because the nomination agreement itself had been procured through fraud and bribery. It was alleged that Rs. 1 crore, in cash, had been paid to Mr. Kaj Appelberg, CEO of Price and Pearce, in order to acquire a property valued at over 175 crores for only 15 crores. This bribe, said to have been paid before the signing of the nomination agreement, allegedly increased to five crores by 2014. The petitioner argued that such conduct rendered the agreement non-arbitrable and brought the award within the scope of challenge under Section 34 of the Arbitration and Conciliation Act, 1996, on ground of public policy.

38. It was further submitted that the Petitioner was unaware of such payment. Therefore, the question that arises is as to whether the Respondent really paid Rs. 1 crore to Mr. Appelberg as a bribe. It was argued that non-disclosure of such payment to the directors, prior to execution of the nomination agreement, was contrary to law and violates public policy under section 23 of the Indian Contract Act, 1872.

39. Learned counsel contended that in 2018, for the first time, Mr. Gupta brought to their notice and alleged that sometime in 2004-2005, he had paid a sum of Rs. 1 Crore in cash to Mr. Kaj Appelberg. Mr. Gupta sought to use this allegation to persuade M-Real to accept the validity of the Nomination agreement. Mr. Gupta was unfamiliar with the working practices of a large corporation based in Finland.

40. That was one of the important reasons, CW I was instructed to take the steps for recording the conversation. Mr. Gupta has admittedly recorded a conversation in tape-recorder, wherein it has been stated that Mr. Kaj Appelberg, an employee of M-Real group in the relevant years, has been paid a bribe of Rs. 1 crore, to induce M-Real to enter into the nomination agreement. This would, in effect, amount to unlawful inducement to reduce the consideration amount and obtain the signature in the nomination agreement, though the property is of high valuation.

41. It was further alleged that Mr. Gupta admitted on various occasions that Mr. Appelberg was paid Rs. 1 crore, in cash, to swing the deal in favour of the respondent, and the sequence of events is partly recorded in the various communications or letters between the parties. The respondent confirmed several times that the said payment was made between 2004 and 2016, and the claimant initiated a criminal proceeding in Hyderabad. M-Real also took action against Mr. Kaj Appelberg and removed him from employment. CW 1 further stated its knowledge of the misdemeanour

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being reported to the Police and that Mr. Appelberg's payments were withheld.

42. The petitioner also relied upon the tape-recorded conversation between the respondent's Managing Director and the petitioner's then Director. It was transcribed by a High Court officer in 2012. However, the arbitrator refused to treat this as proven evidence, holding that the petitioner had failed to discharge its initial burden of proof. Exhibits C-32, C-39, C-46, R-2, R-10, and R-25, all directly relevant to bribery, were also claimed to have been ignored.

43. Similarly, documents like Exhibit C-45 (letter dated 27.10.2009 by the respondent's advocate admitting ₹1 crore cash payment), Exhibit C-33 (letter dated 25.09.2011 admitting payment "in addition to other payments"), and Exhibit C-38 (sworn statement of the Respondent's General Manager in 2014 admitting ₹5 crores paid in addition to the cheque) were not considered.

44. In November 2014, Exhibit C-28, a criminal petition filed before the Telangana High Court, also contained an admission of ₹1 crore in cash paid in the presence of an overseas partner.

45. Other evidence included Exhibit C-39, a sworn statement describing "several crores" paid in cash to Appelberg, CEO of Price & Pearce Asia Pacific, Singapore, a wholly owned subsidiary of M-Real, Finland. The transcript of the 2012 conversation, the testimony of CW-1, and Exhibit

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C-27 (order of the Hyderabad Magistrate taking cognizance of bribery) were also alleged to have been disregarded. According to the petitioner, these materials established fraud and bribery, requiring intervention under Section 34.

46. The respondent, however, categorically denied the allegations. It contended that the petitioner had failed to prove bribery either by oral or documentary evidence. Importantly, the tape-recorded transcript was later withdrawn by the petitioner itself. The respondent emphasized that the burden of proof lay upon the party asserting fraud and bribery.

47. Now, a question emerges as to whether this Court can analyse the evidence brought before the Arbitrator and/or re-appreciate whether the allegation of bribery had been made out by the petitioner with cogent and reliable evidence.

48. The petitioner never claimed Appelberg was its agent, nor did the agreement show any agency relationship. On the contrary, Appelberg was merely an employee of M-Real, which was not a party to the agreement. Even if money was paid to him such payment cannot be treated as a bribe unless it proved with cogent and reliable evidence, it could not enable avoidance of the contract, as his conduct did not amount to fraud, undue influence, or coercion within the meaning of the Contract Act.

49. While the law is clear that contracts founded on fraud, coercion, or undue influence are vitiated, the petitioner had miserably failed to prove its

allegations. The Court finds it impossible to believe that ₹1–5 crores bribes could have secured a nomination agreement only on ₹15 crores, when the property itself was allegedly valued above ₹175 crores, although only ₹21.10 crores were involved under litigation.

50. Filing numerous documents before the arbitrator could not by itself establish bribery. The letters from the respondent's advocate also did't conclusively show that any payments were made solely as bribes for the agreement. No authenticated proof of payment was ever produced. Documents of other proceedings pending in Hyderabad and taking cognizance also do not aid the petitioner's claim in proving fraud and bribery committed prior to execution of the Nomination agreement. By order dated 23rd December, 2015, the criminal proceeding, being Criminal petition no. 14668 of 2014, before the Learned court at Hyderabad, was dismissed as withdrawn, as appears from the record. The transcription of the tape-recorded conversation was also withdrawn by the Petitioner as not pressed at the 72nd Sitting held on 12th June, 2017, and the Arbitrator has held that the timelines and statements of the CW-1 are inconsistent with the Petitioner's pleadings. Furthermore, the Petitioner did not take steps to prove the contents of the voice recorder, further weakening the case of the petitioner.

51. The Learned Arbitrator's findings on this issue demonstrated due application of mind to the pleadings, evidence, and counterclaims. He

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rightly concluded that the petitioner failed to establish fraud or bribery as required under Order VI Rule 4 CPC. The only "vital evidence" was the alleged tape-recorded conversation, which was not proven in accordance with law, and was ultimately withdrawn on 12th June, 2017, and the same was recorded in the 72nd meeting held on 12th June,2017. Production of numerous documents without supporting actual deal or bribe, and without admissibility, is not sufficient to declare that the payment was a bribe or that fraud was committed upon the petitioner. Vague or general claims of fraud, bribe, or misrepresentation are insufficient under this rule. Even the petitioner failed to prove the same as per the applicable rules. The contention on behalf of the petitioner made before the Tribunal are quoted herein below: -

> **"***Mr Sancheti has submitted that the Claimant has decided not to press its application dated 13th April,2027; that the claimant does not propose to take any step for proving the contents of the tape-recorder by playing it. He has requested the Tribunal to fix the date of argument.*
>
> *.....***"**

52. In addition, the petitioner had failed to disclose any higher offers for the property involved in the Nomination Agreement despite public advertisement, nor did any other buyers come forward due to pending litigations and encroachments. It was not proved by the petitioner that

there were offers higher than the offer made by the respondent. The allegation raised by the petitioner toward fraud and bribery upon the respondent prior to signing and execution of the nomination agreement is baseless and afterthought since it was simply alleged that 1 crore had been paid to Mr. Appelberg without pleading who, what, when, where, how and purpose cannot be said to be instance of fraud and bribe. If anyone claims of fraud or misrepresentation or payment of bribe by simply stating, is insufficient in the absence of any plea or proof of fraud and bribe. Finding of the arbitrator on this issue does not suffer from any infirmity or perversity.

53. Judgements relied on by the arbitrator in the case of ***Gherulal Parakh v. Mahadeodas Maiya***[9] and ***Bishundeo Narain and Anr. Vs. Seogeni Rai and Ors.***[10] are basically on Section 23 of the Contract Act, definition of the word "immoral" and pleadings taken by the Petitioner in the claim on the issue of fraud, coercion, undue influence. Finding of arbitrator was that the claimant/petitioner asserts about the bribery but unable to prove the same with substantial evidence, either oral or documentary. Judgments are only in support of his discussion and final conclusion. The final conclusion was based on the materials placed before the Arbitrator. It is not that the whole findings are based on judgments itself.

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[9] **AIR 1959 SC 781**
[10] ***AIR 1951 SC 280***

54. The judgements relied upon by the petitioner in the case of ***DMRC Limited v Delhi Airport Metro Express (P) Ltd***[11]**,** particularly paragraphs no.54 and 66 thereof, and in the case of ***Ssangyong Engineering V National Highways***[12] at paragraph 41 thereof, are totally in different contexts and have no manner of application in the present facts and circumstances of this case. This court is conscious that the Evidence Act is not strictly applied in the arbitration proceedings; even then, the burden would lie upon the petitioner to prove the allegation of bribery and fraud with cogent and reliable evidence. The learned counsel for the petitioner agitated that the transcription ought to have been accepted by the Arbitrator since it falls under Section 32 of the Evidence Act. This view is totally absurd as the tape-recording transcribed by the officer of the High Court is not the statement of the deceased. Actually, it was a transcription of a conversation between two people. Subsequetly, the same was withdrawn by the petitioner. Therefore, there is no scope to interfere with the findings of the Arbitrator on the material brought on record and discarded the same in accordance with law. Hence, findings of the arbitrator on this issue call for no interference and same is hereby affirmed.

[11] **(2024) 6 SCC 357**
[12] **(2019) 15 SCC 131**

ISSUE NO.2: - LIMITATION

55. On the issue of limitation in connection with the respondent's counterclaim, the arbitrator held that it was not barred by limitation and decided in favour of the respondent. The Learned Arbitrator relied on several Supreme Court judgments, including the decision of ***Union of India v. West Coast Paper Mills Ltd***[13], noting that the petitioner had repeatedly changed its stance on cancellation of the nomination agreement and even returned earnest money only on 25 March 2009, making the respondent's counterclaim maintainable. Reliance placed by the petitioner on the decision of ***Thankamma Mathew v M. Azamathulla Khan and Ors.***[14] was found inapplicable.

56. The Learned Senior counsel for the petitioner vehemently argued that the Award dated 27.10.2020 declared by the Arbitrator is liable to be set aside on the point i.e. the counter claim of the respondent was/is barred by limitation. It was wrongly entertained by the arbitrator in wrong finding that the counter claim is not barred by limitation. The respondent had filed its counter claim on 07.12.2011 in response to the statement of claim dated 22.11.2011. According to the petitioner cause of action

[13] **(2004) 2 SCC 747**

[14] **AIR 1993 SC 1120**

actually arose as far back as 2006 and thus, it should have dismissed on the ground of limitation.

57. No sufficient explanation, whatsoever, was assigned by the respondent. Despite such facts the arbitrator wrongly came to the conclusion that the counter claim is not barred by limitation.

58. It was submitted that the Arbitrator has confused himself with a "claim barred by limitation" and "constitution of an arbitral tribunal being barred by limitation" The fact that substantives claim of the respondent were already barred by efflux of time is fact, never considered by the Arbitrator.

59. The learned Arbitrator further wrongly held that the time for filing a counterclaim starts from the date of the statement of claim. The petitioner asserts that the time starts from the actual cause of action. It does not start from the date of filing statement of claim by the Petitioner, which sought declaration that the agreement was void.

60. The learned counsel has placed reliance of the judgment passed in the case of ***Voltas Limited vs. Rolta India Ltd.***[15] particularly paragraph no. 9.2 as under: -

> *"**9.2.** The limitation for a counterclaim has to be strictly in accordance with Section 43(1) of the Act read with Section 3(2)(b) of the Limitation Act, 1963 and any deviation therefrom is required to be authorised by any other provision of law. The only other provision of law which can depart from Section 43(1) of the Act read with Section 3(2)(b) of the Limitation Act is the*

[15] **(2014) 4 SCC 516**

provision contained in Section 21 of the Act, where the respondent to the claimant's claim invokes arbitration in regard to specific or particular disputes and further makes a request for the said disputes to be referred to arbitration and in that event alone, the date of filing of the counterclaim would not be the relevant date but the date of making such request for arbitration would be the date for computing limitation. The Division Bench has not kept itself alive to the requisite twin tests and has erroneously ruled that the counterclaim as filed by the respondent is not barred by limitation."

61. According to him, any decision on the point of limitation can be challenge under section 34 of the said Act and court can interfere under such section in view of the proposition laid down in the case of ***India Farmer Fertilisers Cooperative Limited vs. Bhadra Products***[16]. The said judgment later followed by ***Arif Azim Company vs. Aptech Limited***[17].

62. As per the petitioner the date reckoned from 07.08.2006, when the respondent came to the fact that the petitioner has refused to perform the contract. Therefore, the time starts on and from the date of knowledge of the respondent regarding refusal to perform contracts although the petitioner refused to perform specific performance on 05.01.2006 by filing of the execution application being EC.1 of 2006 seeking direction for execution of deed of conveyance in its favour by Express Publication (Madurai) Limited as per the preliminary decree. In terms of this

[16] **(2018) 2 SCC 534**
[17] **(2024) 5 SCC 313**.

application the Hon'ble High Court passed an order for execution of Deed of Conveyance on 18th May, 2017. The filing date was 05.01.2006. The first-time knowledge came to the respondent in January, 2006 itself but a first contemporaneous recording of this in any document is found in document dated 07.08.2006 and that was the latest date, when the respondent came about the refusal of performance of nomination agreement. Therefore, the time starts from there and it cannot be disputed by the respondent.

63. It was further argued that even for the sake of argument, that date would not start for its limitation then also it would fall under the limitation period because the petitioner's notice of cancellation of Nomination Agreement dated 28.11.2007 was served upon the respondent, which is exhibited as C-13. The notice of cancellation was sent by registered post and same was delivered to the respondent on 01.02.2007. It is evidenced by the postal acknowledgement card signed by the chief executive officer of the respondent in the same exhibit.

64. The validity of this letter of cancellation dated 28.11.2007 was repeated and affirmed in subsequent letter dated 02.02.2008 which is Exhibit R-16. The Respondent never responded to either of the two letters. Refusal to accept or respond does not affect the validity of the notice. The agreement was cancelled long before the knowledge of bribery in 2009.

65. After expiry of three years from the receipt of this notice, the end of the limitation period would be on 1st December, 2010, and any claim based on the cause of action of cancellation of the agreement is to be preferred within the time prior to the expiry of the three years, and this not having been done, the claim would automatically bar by limitation. Therefore, the counterclaim filed on 7th December, 2011, was barred by limitation.

66. The notice of cancellation was neither withdrawn nor waived, but was acknowledged in 2009, and is recorded in the letter sent by the Respondent on 27th October, 2009 exhibited as C- 45 in the following words:

> *"The above contract dated 5.12.2005 is still binding between yourself and my client and is quite operative and has not been frustrated."*

67. The Respondent argued that time never started because no notice as contemplated under clause 9 of the Nomination Agreement was given and thus the counterclaim is not barred by limitation. The intimation was given and has been proved but, in any event, it does not stop the running of the time as set out in pleading.

68. A contentious issue as per the petitioner was not decided by the arbitrator which goes to the root of the case as per the contention of the petitioner. The Award should be set aside for this very reason. The Hon'ble Supreme

Court in ***I-Pay Clearing Services vs. ICICI Bank Limited***[18] at para 41 held:

> *"if there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself."*

69. The High Court of Bombay in an appeal in the case of ***Ivory Properties vs. Bhanumati Jaisukhbhai***[19] confirmed the setting aside of an Arbitral Award stating at paragraph 47 that:

> *"Therefore, the Appellant would be said to have had the knowledge of the breach in 1995. That being so, the period of three years would begin to run from 1995 under Article 54. Therefore, the Appellant invoking the arbitration... would have to be regarded as being barred by limitation."*

70. It is a case of perverse appreciation of facts by the Arbitral Tribunal. The appreciation of facts by arbitration cannot be re-appreciated by the Court but the court is entitled to examine any perversity in the appreciation of evidence. Perverse and wrong appreciation of evidence by the Arbitrator led to setting aside the Award by the court. This has also been postulated and propounded in the case of ***Delhi Metro Rail Corporation Ltd. vs. Delhi Airport Metro Express Pvt. Ltd.***[20] particularly at para 66:

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[18] **(2022) 3 SCC 121**
[19] **2024 SCC Online Bom 1900**
[20] **(2024) 6 SCC 357**

> *"66.....the Arbitral Tribunal ignored vital evidence on the record, resulting in perversity and patent illegality, warranting interference.*

71. Section 43 of the Arbitration & Conciliation Act 1996 specifically provides that limitation applies to arbitration as it applies to court proceedings.

72. The Law of Limitation is a public policy as well as a fundamental policy of Indian law. Breach of the fundamental policy entails a death knell to the award. The above principle of fundamental policy of India has been reconfirmed by the Supreme court of India in the case of ***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI)***[21], at paragraph 34 and is a good ground to set aside the Arbitral Award under Section 34 (2)(b)(ii) Explanation 1 (1) and (iii) of the Act because the insurrection of a dead claim to grant of specific performance is unlawful. There is a breach of Natural Justice as well. It is also patently illegal, which goes to the root of the matter under Section 34(2A) of the Arbitration & Conciliation Act 1996.

73. On the question of the Counterclaim of the Respondent being barred by the laws of limitation or not, the Learned Arbitrator has come to the following findings: -

> *"Thus, in this case, the time of limitation would really stop running for such qualified return of earnest money. But*

[21] **(2019) 15 SCC 131**

> *again, within 3 years from that day when the Claimant lodged statement of claim there being praying for annulment of the Agreement, the refusal to perform was again clear and there was no doubt about its intention not to perform the contract. Therefore, the period of limitation would start from the last of the above dates and the Counterclaim was filed on 7th December, 2011 which was very much within the period of limitation.* Therefore, this Tribunal holds that the Counterclaim is not barred by limitation and this Issue is accordingly decided in favour of the Respondent."

74. The Learned Arbitrator, while coming to the aforementioned findings, had considered whether time was of the essence in the present case and interpreted clauses 9 & 10 of the Nomination Agreement and whether the actions of the Petitioner had given rise to obligations under the aforementioned clause. If such a situation did not arise, the cause of action putting in motion the period of limitation would not start.

75. The Learned Arbitrator, according to this court, rightly held that no time was fixed for performance of the Agreement in the nomination agreement dated 5th December,2005.

76. In respect of the Respondent's counterclaim, Article 54 of Schedule I of the Limitation Act would be applicable. Further, it was held by the Arbitrator that the period of Limitation would not commence from the first breach, as argued by Petitioner, but from when the refusal of performance is made known to the Respondent. Such a condition was not fulfilled prior

to the filing of statement of claim. The Learned Arbitrator laid specific emphasis on the legislative intent in not including the word 'first' in Article 54 being material in the present facts.

77. The Learned Arbitrator's finding is that on filing of the Statement of claim on 23rd November 2011, Petitioner for the first time definitively refused performance by seeking termination, annulment or recession of the contract in its Statement of Claim, giving rise to cause of action for filing of suit.

78. The respondent became aware of the prayer of the petitioner and thereafter filed his counterclaim seeking some relief as prayed for, in the prayer portion within the limitation period.

79. The terms and conditions of the nomination agreement does not specify the final date of expiry in clear terms. Therefore, the counterclaim was filed within 15 days after the filing statement of claims by the petitioner, so it was found by the arbitrator that the counterclaims filed within the period of limitation. In respect of other pleas, giving rise to cause of action reflecting the intention of refusal to perform based on circumstantial facts, have been considered by the Learned Arbitrator as under: -

> **Firstly,** oral notice given by CW-1 on the date of execution of agreement was negated on consideration of clause 9 mentioning future notice, **Secondly**, oral notice on 5th December, 2005 and execution case filed in January, 2006 are inconsistent with

clause 10, as per such clause petitioner was duty bound not to take steps till expiry of 90 days and **thirdly**, if oral notice was given after expiry of 90 days, there would be automatic termination and earnest deposit was to be returned but it was complied for the first time on 25th March, 2009 under cover of letter dated 25th April, 2009. These findings are well reasoned and plausible view which could not be dispelled by the petitioner.

80. The Learned Arbitrator concluded that the petitioner's plea of oral notice was unsupported and not legally permissible, and that the Petitioner itself had invoked the contract in 2011 by seeking annulment, thereby acknowledging its arbitrariness. Distinguishing the decision of ***Thankamma Mathew (Supra)*** as factually different, the Learned arbitrator held that the counterclaim was within time.

81. Therefore, the Learned Arbitrator has arrived at the aforesaid findings after considering the materials available on records, arguments and contentions of the parties. As the petitioner failed to show that the Learned Arbitrator's findings were perverse, contrary to law, or falling under any Section 34 ground, there can be no reappraisal of evidence. This Court therefore affirms that the respondent's counterclaim was within limitation, and the award on this point calls for no interference.

ISSUE NO. 3 and 4

III. **Whether the Arbitrator has the power to interpret the clauses of the nomination agreement in different manner other than the specific averments?**

IV. **Whether the respondent (SBPL) is entitled to relief on account of the undertaking given to the court that the respondent would not claim title and possession of the property in question involved in relation to the arbitration proceedings?**

82. Both issues are taken up together as they are interlinked, for the sake of convenience, and to avoid repetition. The Tribunal held that the nomination agreement executed between the parties is enforceable and that there is no bar to granting a decree for specific performance of a contract in a suit filed by the purchaser, whereas the petitioner disputed that such an interpretation by the arbitrator is contrary to law. The Nomination Agreement is not enforceable as it is not an Agreement for sale. However, the Learned Arbitrator erroneously interpreted the Nomination Agreement as an Agreement for sale. The Petitioner is only a guarantor, and the respondent is denoted as a nominee. None of the original owners of the property has been involved or entered as a party into the Nomination Agreement. The actual purpose of the Nomination

agreement, and its contents have not been considered in letter and spirit by the Arbitrator. Therefore, the same is liable to be set aside.

83. The learned counsel for the petitioner argued that the Calcutta High Court lacked jurisdiction, as the disputed property was situated in Hyderabad. The issue arose in proceedings filed by the respondent under section 9 of the Arbitration and Conciliation Act, as regards the same Nomination Agreement. The Petitioner raised a jurisdictional objection before the Single Bench, wherein the respondent's application was dismissed by upholding the Petitioner's contentions.

84. The respondent chose not to claim either title or possession of the property situated at Hyderabad, only to create jurisdiction as regards the appeal filed by the respondent. As per the contention of the petitioner, the Respondent confined its claim only to the extent of damages, having expressly given up its right over the said property.

85. The relief was available to the respondent only to be able to pursue either damages or a refund of the one crore which was paid at the time of signing of the Nomination Agreement. Since the Petitioner's registered office is situated in Calcutta, the Respondent's claim for damages and/ or refund could fall within the Territorial Jurisdiction of the Calcutta High Court.

86. Relying on the Respondent's undertaking, the Hon'ble High Court disposed of the proceeding, overruling the objection of territorial

jurisdiction raised by the petitioner. The High Court thus recognised that the Respondent's entitlement under the Nomination agreement was restricted only to a claim for damages.

87. The Arbitrator, however, later negated this position. Contrary to the Petitioner's contention and the earlier understanding, the Arbitrator allowed a decree for specific performance of the Nomination Agreement. The award directed the claimant to execute a sale deed in favour of the respondent within 2 months of receipt of the award, upon acceptance of the balance sum of Rs. 14 crores from the Respondent, in respect of the scheduled property mentioned in the Nomination Agreement.

88. It is an admitted fact that the respondent had given an undertaking before the Hon'ble High Court in a proceeding under Section 9 of the Act,1996 and also filed an affidavit to that effect. In paragraphs 9 and 10 thereof, the respondent specifically stated that the immovable property situated in Hyderabad would fall outside the jurisdiction of the Calcutta High Court, in accordance with the jurisdictional limits prescribed by law. The paragraphs are set out below:

> ***Paragraph 9***
>
> *"....the appellant undertakes not to proceed with its claim for possession and title of the said premises in the arbitral reference at the present stage and reserves it's right to make such claim for possession and title after conclusion of the reference."*
>
> ***Paragraph 10***
>
> *"....in order to avoid any controversy as to the jurisdiction of this Hon'ble Court to entertain the arbitration petition, is restricting the*

prayers made in the counterclaim before the Learned Arbitral Tribunal to those which can be enforced by an order/award in personam and reserves it's right to make its claim for possession and title after the conclusion of the reference."

89. This undertaking was recorded in the order of the Hon'ble High Court in its order dated 18.02.2020, and the same undertaking was subsequently accepted by the court and the Petitioner as well. Based on an affidavit, the Arbitral proceedings were continued and heard on these issues separately with other issues.

90. The arguments on behalf of the Petitioner, before the Arbitral Tribunal and also before this Court, are in the following terms: -

a. According to the petitioner, the effect of granting a decree for specific performance of contract amounts to passing of title from the Claimant to the Respondent and therefore, passing of decree for specific performance will amount to violation of undertaking given to the Division Bench of the High Court.

b. The Undertaking must be read and understood in the context of the jurisdiction of Calcutta High Court and the relevant High Court proceedings which led to and required the claim for title and possession in the property at Hyderabad to be given up. The claim to title of a property in Hyderabad by transfer or conveyance or declaration in relation to the property is prohibited under the Undertaking because

without title and possession decree of specific performance is not permissible in law.

c. A jurisdictional objection was taken in the Hon'ble High Court by the petitioner before the single bench of this Hon'ble High Court, and ultimately, dismissed the application filed by the respondent by a single bench.

d. The Respondent being aggrieved by and dissatisfied with the order of Single Bench, appealed before the Division Bench with an Undertaking giving up any claim to possession or title of the property in the arbitral proceedings. The Undertaking had such effect that the title and possession of the property in Hyderabad was excluded from the domain of arbitration by the respondent because seeking the conveyance or specific performance is actually transfer of title. It is the case of the Petitioner that the Arbitrator exceeded his jurisdiction and allowed the claim to the title of the property, indirectly is outside of the jurisdiction of the arbitrator by his Award under challenge.

e. Any money claims or any declarations sought will remain within the jurisdictional limits of the Calcutta High Court. The Respondent had a money claim for damages to the tune of Rs.992.47 crores as against the Petitioner but the Arbitrator ignored the same and travel beyond his jurisdiction.

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f. The Undertaking was placed before the Arbitral Tribunal for restricting the prayers to the money claims as submitted and understood in the High Court proceedings. However, the Respondent sought specific performance of the Nomination Agreement. This was in spite of the Undertaking given to the Hon'ble High Court.

g. The Arbitral Tribunal tried to distinguish as if claim for specific performance to execute a conveyance does not amount to transfer of title or possession in the property. Giving up "title" and "possession" means and its implies that title and possession will not be sought by direct or indirect means in the arbitral proceedings. Directing execution of a conveyance by the Arbitrator in the Award would be directly or indirectly directing the transfer of title in the land.

91. In deciding the issues, the Learned Tribunal relied upon the following decisions:

i)**. *Balusham Aiyar v. Lakshmna Aiyar*[22]** held as under:-

> *"Where a person sues for specific performance of an agreement to convey and simply impleads the party bound to carry out to the agreement there is no necessity to determine the question of the vendor's title and the fact that the title which the purchaser may acquire might be defeasible by a third party is no ground refusing specific performance if the purchaser is willing to take such title as the vendor has."*

[22] ***AIR 1921 Mad 172 (FB)***

92. The Petitioner further contended that the judgment relied upon by the Arbitrator is confined to the context of the Specific Relief Act 1877 and pertains only to defects in title which have no application to the present case. According to the Petitioner, this judgment does not suggest abandonment of any claim to title, nor does it involve raising questions about the title.

93. Furthermore, there is no reference within the judgment to any undertaking given to the Hon'ble High Court being capable of breach in a particular manner. In fact, another judgment of Madras High Court affirmed by the Hon'ble Supreme Court of India cited by the Petitioner during the oral arguments as well as placed in writing in connection with the Specific Relief Act 1963 has not even been referred to and dealt with by the Arbitral Tribunal. This case not only distinguishes the 1921 full bench decision but is the present authority under the Specific Relief Act 1963. This is cited in ***Harsha Estates v. Dr. P. Kalyana Chakravarthy and Ors.***[23].

ii). ***Arun Prakas Boral v Tulsi Charan Bose***[24] held as under:

> *"...The purchaser is also entitled to a reference as to title where he is the plaintiff in an action for specific performance as in the present case before me. But inasmuch as in the purchaser's suit he and not the vendor is calling on the Court*

[23] ***2018 SCC OnLine Mad 14053***
[24] ***AIR 1949 Cal 510***

to act he does so at his own risk. (fry on Specific Performance, 6th Edn., p. 610, Art. 1320)

9. If this was not the law then the purchaser would be without the remedy for specific performance when the defendant refused to satisfy the purchaser on the question of title and relied on his own default and failure as debarring the plaintiff from bringing in a suit for specific performance, in my judgment the purchaser in a suit for specific performance is entitled to call for an enquiry and reference with regard to title even before the stage of his acceptance of the title. It is common justice to allow a purchaser every opportunity to be satisfied on a question of title."

iii). ***Namburi Basava Subrahmanyam v. Alapati Hymavathi***[25] held as under: -

"3…….It is true, as rightly contended by Smt. K. Amareshwari, the learned Senior Counsel for the respondents, that the nomenclature of the document is not conclusive. The recitals in the document as a whole and the intention of the executant and acknowledgement thereof by the parties are conclusive. The Court has to find whether the document confers any interest in the property in praesenti so as to take effect intra vivos and whether an irrevocable interest thereby, is created in favour of the recipient under the document, or whether the executant intended to transfer the interest in the property only on the demise of the settlor

[25] ***(1996) 9 SCC 388***

Those could be gathered from the recitals in the document as a whole....."

94. The Petitioner next contends that the judgment in question deals with the nature of a document and does not suggest that relinquishing a claim to title is restricted merely to raising questions about the title, and does not involve any question of interpretation of a document. It is further submitted that the judgment contains no reference to any Undertaking given to the Hon'ble High Court that could be breached in a particular manner, nor does it provide any reasoning as to why it should be connected with such an Undertaking.

iv). ***State of Orissa v. Titaghur Paper Mills Co. Ltd.***[26] held as under:

"that real nature of a document and the transaction thereunder have to be determined with reference to all the terms and clauses of that document and all the rights and results flowing therefrom."

95. It was further contended that if the Petitioner did not have title, it would be absurd for the respondent to claim specific performance and seek registration of conveyance in its favour upon payment of the balance amount of Rs. 14 crores and even at an enhanced rate of Rs. 27 crores in terms of prayer a(iii) of the counter claim. In fact, there is no prayer in the counterclaim for adjudication of the Petitioner's title. The meaning

[26] ***1985 Supp SCC 280***

ascribed to the Undertaking by the Tribunal has rendered the Undertaking otiose.

96. It was also argued that the Arbitrator, being bound by the Undertaking given to the High Court as much as the parties, was confined to award damages. By decreeing specific performance instead, the Arbitrator acted in excess of jurisdiction. The Arbitrator, having no legislative powers, could not extend either the jurisdiction of the Court or his own jurisdiction to adjudicate a claim relating to a property situated outside the jurisdiction of the Calcutta High Court. In doing so, and by publishing the Award dated 27th October, 2020, the Tribunal acted beyond the scope of its authority.

97. Additionally, the Petitioner relied on a recent decision of the Hon'ble Supreme Court, in the case ***Balwantbhai Somabhai Bhandari v Hiralal Somabhai Contractor and others***[27] in, which dealt critically with breach of undertaking. The said judgment held that not only must the party committing the breach be punished, but also that any reluctant act done in breach of the undertaking should be declared void. Based on this reasoning, the Petitioner submitted that the entire Award is liable to be declared void. The relevant paragraphs are at paragraph 117, relevant portions of judgment are set out below:

[27] ***(2023) 17 SCC 545***

Paragraph 117.2

"There exists a distinction between an undertaking given to a party to the lis and the undertaking green to a court……. the breach and disobedience would definitely attract the provisions of the 1971 Act."

Paragraph 117.3

".....declare such transactions to be void in order to maintain the majesty of law."

98. Learned Senior Counsel further submitted that the Respondent, during argument on 12.02.2025, reiterated its claim for both title and possession. However, in the undertaking, the Respondent had already given up any such claim to title and possession. By continuing to advance these claims, the Respondent is effectively blowing hot and cold at the same time, which undermines the consistency and credibility of its position. In similar circumstances, in the case of ***Mumbai International Airport Private Limited Vs. Golden Chariot Airport and Anr. WITH Airports Authority of India Vs. Golden Chariot Airport and Anr.***[28], the Hon'ble Supreme Court of India held in the following words at paragraph 42, 43, and 50 referring to a Judgment by J. Ashutosh Mookerjee:

At paragraph 42

"Respondent has taken a stand and also got the benefit as a result"

[28] ***(2010) 10 SCC 422***

At paragraph 43

"Complete volte face of the previous stand……The answer has to be firmly in the negative."

at paragraph 50

"It is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold to a approbate and reprobate."

99. The Respondent, during argument, stated that there was no question of territorial jurisdiction, contending that the rights being sought were not *rights in rem*. The Undertaking was given precisely for the purpose of establishing territorial jurisdiction, as the Section 9 petition was dismissed in 2013 for lack of jurisdiction, and the Application under Sections 9 and 11 was renewed after the undertaking was given.

100. Furthermore, it was asserted that all the rights in immovable property are indeed "*rights in Rem*." The authority for this is the decision of a five-Judge Bench of the Calcutta High Court. ***Moulvi Ali Hossain Mian v. Rajkumar Haldar***[29].

Paragraph 24

"All interests in property - whether full ownership or an interest carved out or full ownership are "rights in Rem.

[29] ***AIR 1943 Cal 417***

101. It was further contended that the Calcutta High Court lacked jurisdiction under the Letters Patent and Section 16(d)CPC to entertain a suit concerning the property in Hyderabad or to appoint an Arbitrator for the dispute. The Arbitrator, despite being aware of the law and the Undertaking, exceeded his jurisdiction, making the Award dated 27.10.2020, which, according to the Petitioner, is liable to be set aside under Section 34(2)(a)(iv) for excess of jurisdiction, Section 34(2)(b) Explanation 1(ii) and (iii) for conflict with justice and breach of fundamental policy of Indian law, and Section 34(2A) for patent illegality.

102. This Court, having carefully gone through the Award, found that the Arbitrator acted within its authority by interpreting the Nomination Agreement, holding it to be an agreement to convey right, title and interest on the basis of the decree obtained by Petitioner from Express Group.

103. The Learned Arbitrator considered the question as to whether the agreement is for creation of a nomination or for conveying its right over the subject matter of the decree against Express Group upon respondent and came to the following finding which is as follows: -

> *"From the above terms and considerations mentioned in the Nomination Agreement there is no trace of doubt that the object of the parties was to convey the right of the Claimant in the subject matter of the agreement by virtue of the right accrued in its favour from the decree of sale passed by the*

Hon'ble High Court at Calcutta, against the Express Group at the price of Ra. 15 Crore in respect of First Schedule a mentioned in the agreement in favour of the Respondent. Otherwise, it was preposterous to suggest that it was merely a nomination in favour of the Respondent. No nominee would pay Rs. 15 Crore for becoming a nominee to have a deed in its favour without having acquired any right in the property. The decisions cited by the Claimant as regards the effect of nominations are thus of no avail to the Claimant as the Nomination Agreement in this case to convey the right of the Claimant as mentioned above in favour of the Respondent"

104. The Learned Arbitrator examined the contents of the Nomination Agreement and observed that the consideration amount reflected the intention to convey rights rather than merely nominate the Respondent since agreeing to a simple nomination for such a huge amount would be preposterous. Unlike the decision in the case of ***SBPL Infrastructure Limited & Anr. Vs. State of West Bengal & Ors.***[30], which did not address the real intention of the parties, the Arbitrator analysed the agreement in detail and concluded that it was not limited to nomination but intended conveyance in favour of the Respondent upon payment of the balance ₹14 crores to the Petitioner to be as guarantor. The terms were clear, explicit, and supported by the initial payment of ₹1 crore as earnest money.

[30] ***2018 SCC OnLine Cal 6679***

105. It was also emphasised that nomenclature or caption of an agreement does not determine the parties' true intention and purpose. The case of ***Punjab National Bank v. Sanchaita Investments & Ors.***[31], cited by the Petitioner, was considered but found distinguishable. The Arbitrator acted within his powers in interpreting the contract, as such interpretation falls squarely within his domain. Headings or labels cannot override the actual terms agreed upon, and disputes must be resolved in accordance with the substantive provisions of the agreement. Indeed, it was the Petitioner who first approached the Tribunal seeking cancellation of the Nomination Agreement with ancillary reliefs.

106. The Tribunal's finding was a plausible one, reached within its jurisdiction, and not contrary to substantive law or the grounds under Section 34. Interference is therefore unwarranted. While the Petitioner argued that the Respondent was barred from relief other than damages pursuant to its Undertaking before the High Court, the Arbitrator considered the Undertaking, the facts, and the amended reliefs sought, and delivered his final finding accordingly. Relevant extract whereof is set out hereinbelow:

> *"As pointed out earlier, title here means the title of the Claimant in the property. In other words, even if the Claimant has acquired no title over the property by virtue of its decree against Express Group, in this Counter claim, the*

[31] **89 CWN 509**

Respondent would not raise such question in terms of its undertaking. Thus, the undertaking given by the Respondent does not oust the jurisdiction of this Tribunal to award specific performance if the Respondent proves the other requirements of getting a decree for specific performance of contract in accordance with law without deciding the issue of title of the Claimant in the property covered by the sale-decree against the Express Group and without granting any order of possession."

107. For the purpose of arriving at the aforementioned findings, the Learned Arbitrator has cited some other reasons and findings as stated hereinbelow: -

(i) Firstly, the real intention of the Nomination Agreement was to convey right, title and interest in the Hyderabad property pursuant to a decree against Express Group. Since the Respondent did not question the Petitioner's title, it accepted the risk of proceeding on that basis, and thus no adjudication of title was necessary. Accordingly, the matter would not fall within the meaning of a "suit for land," and the relief in the counterclaim was confined to execution of a deed of conveyance. Because the Section 9 petition for interim relief was filed in the Original Side of the Calcutta High Court while the property was located in Hyderabad, the Respondent had furnished an Undertaking before the Division Bench to maintain its interim relief application, which was accepted by the Court.

(ii) It was also held that at no stage did the Respondent abandon its claim for specific performance of the Nomination Agreement, either before the Court or the Tribunal. The Undertaking only reflected that the Respondent would not pursue claims of title and possession in the arbitral reference, while reserving the right to make such claims after conclusion of the proceedings. Thus, there was no abandonment as alleged by the Petitioner.

(iii) On the effect of granting specific performance where the Respondent had given up claims to possession and title, the Arbitrator relied on Sections 13 and 17 of the Specific Relief Act. He held that specific performance cannot be refused merely because the vendor claims to have no title or a defective one.

(iv) Finally, as the Respondent was satisfied with the Petitioner's title, the Arbitrator was not required to adjudicate title. The award was confined to specific performance of the Respondent's accrued right to obtain conveyance from the Petitioner. During the pendency of the arbitration, the Express Group had already conveyed the property to the Petitioner pursuant to a compromise decree and executing court order, making the Petitioner's title undisputed.

108. In support of the argument, Learned Counsel has relied on the decisions of ***Rohit Kochhar vs. Vipul Infrastructure Developers Limited***[32] and

[32] **2024 SCC Online SC 3584**

Super Smelt Industries Private Limited vs. Singular Infrastructure Private Limited & Ors. dated 30th November, 2022 in C.S. No. 270 of 2022 with IA No. GA 1 of 2022.

109. The judgments cited are distinguishable, as the Respondent only seeks enforcement of its right to obtain conveyance of the Hyderabad property under the Nomination Agreement, which does not violate the Undertaking given before the Hon'ble Court. The Respondent has not disputed the Petitioner's title. The arbitral determination is confined to the enforcement of this right under the Agreement. If the reference was not about the Nomination Agreement, the Petitioner would not have itself sought cancellation of that Agreement with consequential reliefs, fully aware of the consequences of its refusal to perform.

110. Furthermore, the Petitioner has already secured directions from the Hon'ble High Court for execution and registration of the Deed of Conveyance dated 13th July, 2010, as reflected in the document itself. In terms of order passed by this Hon'ble High Court in respect of the said property, Deed of conveyance executed in favour of the petitioner by Express publication and Indian Express (Bombay) Limited as confirming Party.

111. The order of the Hon'ble High Court of Calcutta directing registration of conveyance deed within 7 days with the Registrar of Assurances, Hyderabad. It is relevant to note that Petitioner has also obtained the

registered conveyance in respect of the Hyderabad property by reason of an order of the Hon'ble High at Calcutta. Therefore, the award, if it is upheld, can be executed by reason of orders of this Hon'ble High Court.

112. Registration of the conveyance Deed made in Hyderabad. The initial stamp duty and registration charges of Rs.3,08,00,071/- were paid by the respondent through its own bank account. It is not denied by the Petitioner.

113. payment receipt of balance stamp duty assessed at Rs. 3,07,99,649/- in the collection of Stamp duty Account, Registration & Stamps department, paid by the respondent.

114. Payment of Stamp duty by the respondent in respect of the same property for which there is a subsisting Nomination Agreement would clearly show that the respondent was ready and willing to obtain conveyance of the property after the conveyance was made in favour of the petitioner otherwise there was no reason for the respondent to volunteer to pay stamp duty and registration charges. The petitioner has also accepted such stamp duty and registration fee from the respondent without any objection or demur. There is no explanation as to why they received the stamp duty and registration fee from the respondent.

115. Statement of claim filed by the petitioner invoking the arbitration clause being clause 12 of the Nomination Agreement. The bad intention of the petitioner reflects not to convey the property in favour of the respondent,

when it is only after the petitioner had obtained the conveyance of the Hyderabad property in its favour that it finally decided not to go ahead with the Nomination Agreement for conveyance of the property to the respondent and which led to disputes between the parties in terms of the arbitration agreement in the Nomination Agreement.

116. Tribunal was quite conscious that if the Respondent had not approached the Original Side of the Hon'ble High Court at Calcutta with an application under Section 9 of the Arbitration and Conciliation Act, 1996 in order to get an interim order, there would not have been any impediment in the way of the respondent to press all the reliefs claimed in the counterclaim. But only to get the benefit of the interim order from the Hon'ble High Court at Calcutta, the Respondent offered to give the undertaking, and the Division Bench maintained the interim order on being satisfied with the form of undertaking given by the Respondent.

117. It is clear from the undertaking that the Respondent has never undertaken to abandon the prayer of Specific Performance of the agreement, but has only undertaken not to proceed with its claim for possession and title of the said property in the arbitral reference. Reserving its right to make such a claim for possession and title after conclusion of the reference. Accordingly, the Respondent specifically abandoned the prayer for title and possession in the arbitral proceedings but reserved its right to claim the same later.

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118. The Petitioner argued that a decree of specific performance necessarily involves transfer of title from Petitioner to Respondent, which would indirectly amount to a violation of the undertaking given to the Division Bench.

119. The Arbitrator, however, addressed this issue by referring to Sections 13 and 17 of the Specific Relief Act, 1963. These provisions clarify that:

   i) If a person executes an agreement to transfer title in immovable property, the vendor cannot later claim absence or defect in his own title as a defence in a suit for specific performance filed by the purchaser.

   ii) In contrast, the purchaser can resist specific performance by contending that the vendor had no title or defective title in a suit filed by the vendor.

120. On this reasoning, the Arbitrator rejected the Petitioner's objection that a decree of specific performance would breach the undertaking, holding that the Respondent had confined its claim strictly in line with its undertaking and reserved rights.

121. It is very clear and explicit that in a suit for specific performance of contract filed by the respondent, he may be satisfied with title of the vendor/petitioner and in that situation, the Court dealing with such suit will not go into the question of adjudication of the title of the vendor/petitioner.

122. On the other hand, the respondent, at his own risk, can pray for adjudication of the title of the petitioner in the suit property after adjudication of the proceeding. Now by virtue of the undertaking given by the Respondent, in this proceeding, he has abandoned such right in this arbitral proceeding and consequently, it would not be entitled to pray for adjudication of such title or possession in this proceeding.

123. Therefore, there is no bar to pray a decree for specific performance in a suit filed by the respondent/purchaser without adjudicating the question of title and possession of the vendor in the property when the plaintiff does not insist on adjudication of such question.

124. Similarly, if the Respondent/Purchaser decides not to pray for title and possession in this proceeding reserving it's right to make such claim for possession and title after conclusion of the reference, it is for the Respondent to do the same, if law permits and therefore, the Tribunal rightly not gone into that question in the proceeding. Therefore, in a suit for specific performance of contract filed by a respondent can raise the question of title of the purchaser in the property in question at its risk and in view of the undertaking given by the respondent/purchaser, it is precluded from raising such question of title and possession in the proceeding after reserving its right make such claim for possession and title after the conclusion of the arbitration proceeding, if law so permits.

125. The Tribunal rejected decisions relied upon by the Petitioner that were precedents based on “SUIT FOR LAND”, holding that those decisions were irrelevant since the Division Bench had accepted the Respondent’s undertaking without requiring abandonment of specific performance. The Tribunal, therefore, dealt with the prayer for specific performance of the contract without considering the claim for possession and title of the said premises in the arbitral reference.

126. As pointed out earlier, title here means the title of the Claimant/petitioner in the property. Even for the sake of argument, if the petitioner has acquired no title over the property by virtue of its decree against Express Group, in this Counterclaim, the Respondent would not raise such question in terms of its undertaking.

127. Thus, the undertaking given by the Respondent does not oust the jurisdiction of this Tribunal to award specific performance if the Respondent proves the other requirements of getting a decree for specific performance of contract in accordance with law without deciding the issue of title of the Claimant in the property covered by the sale-decree against the Express Group and without granting any order of possession.

128. It appears that the Respondent has prayed for specific performance of the Nomination Agreement in the following manner:

a) An award for specific performance of the Nomination Agreement dated 5th December, 2005 and/or the object

thereof, that is to cause the subject property to be transferred to the respondent, in the following manner:

> *"Transfer of the subject property by the claimant to the respondent by execution of a Conveyance Deed against payment of the consideration amount as specified in the Nomination Agreement."*

129. The Tribunal found the Respondent had performed its obligations, while the Claimant obstructed performance by falsely alleging notice under Clause 9 and by taking the Express Group deed in its own name to frustrate the agreement.

130. Relying on ***Durga Prasad v. Deep Chand***[33], the Tribunal directed the petitioner to re-convey rights obtained under the sale decree to the Respondent against balance payment, without granting possession or ruling on title, leaving the Respondent bound by its undertaking before the Division Bench. The plea that the Nomination Agreement became infructuous was rejected, with reliance on **Namburi *Basava Subrahmanyam v. Alapati Hymavathi***[34] that substance, not nomenclature, governs interpretation.

131. Therefore, without deciding the question as to whether the Petitioner acquired title over the property by virtue of the decree for sale against

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[33] ***AIR 1954 SC 75***
[34] ***(1996) 9 SCC 388***

Express Group, bound to grant a decree for Specific Performance of the Nomination Agreement admittedly executed by the parties.

132. Therefore, it has been rightly held by the Arbitrator that there is no bar in granting a decree for specific performance in a suit filed by the purchaser/respondent without adjudication of title. The observations and findings of the Learned Arbitrator are plausible and possible views which would not require interference of the Hon'ble Court, in the present proceedings filed under Section 34 of the Act.

133. The judgments relied upon by the respondent in the case of ***National Highways Authority of India (supra)***, ***Punjab State Civil Supplies Corporation Limited (supra)*** and similarly, in the case of ***UHL Power Company Limited (supra)***, are squarely applicable in the present facts and circumstances of the present case is concerned that if the arbitrator's view is plausible and possible, it need not be re-examined, and the interpretation of contractual terms falls squarely within the domain of the arbitral tribunal and where two views are possible and the arbitrator has adopted one, the award cannot be set aside, and interference is permissible only if the award is against the public policy of India or conflicts with basic notions of morality and justice, making court intervention virtually prohibited beyond the Act's framework, the court does not act as an appellate forum and may only ascertain whether the arbitrator's interpretation is plausible and possible.

134. This court also relies a decision passed in the case of ***Adcon Electronics pvt. Ltd.v. Daulat and Another***[35], particularly paragraph Nos. 10 to 12 and 14 to 19 thereof as under:-

> *"**10.** The learned Single Judge while dismissing the chamber summons took the view that so far as the High Court of Bombay was concerned the law was well settled that suits for specific performance, even though they might relate to the land, were not suits for land. On appeal the order of the learned Single Judge was confirmed by the Division Bench opining that the suit for specific performance of an agreement for sale was not a "suit for land".*
>
> ***11.** The question then arises as to what is meant by "suit for land". This expression has been interpreted by different High Courts as well as by the Federal Court.*
>
> ***12.** In His Highness Shrimant Maharaj Yashvantrav Holkar of Indore v. Dadabhai Cursetji Ashburner [ILR (1890) 14 Bom 354] a Division Bench of the Bombay High Court held that a suit for specific performance would not fall within the meaning of that expression. There the suit was filed for specific performance of an agreement to mortgage certain immovable property. The agreement was made in Bombay between the parties on 8-1-1883. The Divisional Court held, "it had jurisdiction" and granted decree. On appeal a Division Bench referred to an earlier judgment of that Court in Yenkoba Balshet Kasar v. Rambhaji [(1872) 9 Bom HCR 12] which laid down that suit for land was a suit which asked for delivery of land to the plaintiff. The High Court also referred to the view of the Calcutta High Court in Delhi and London Bank v. Wordie [ILR (1876) 1 Cal 249] (ILR at p. 263) construing that expression to mean, "substantially for land" — "that is, for the purpose of acquiring title to, or control over, land". It also noticed the view of a learned Single Judge of the Calcutta High Court in Sreenath Roy v. Cally Doss Ghose [ILR (1880) 5 Cal 82] holding that the court had no jurisdiction to make a decree in a suit for specific performance.*

[35] ***(2001) 7 SCC 698***

The Division Bench of the Bombay High Court held that the suit was within the jurisdiction whether regarded as a suit for specific performance or to enforce equitable mortgage by deposit of title deeds as a court of equity in England could entertain it.

14. *In Debendra Nath Chowdhury v. Southern Bank Ltd. [AIR 1960 Cal 626 : 64 CWN 439] a Division Bench of the Calcutta High Court took the view that the suit for specific performance of the contract to execute and register a lease with alternative claims for damages is not a "suit for land" within the meaning of clause 12 of the Letters Patent.*

15. *From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land". We are in respectful agreement with the view expressed by Mahajan, J. in Moolji Jaitha case [AIR 1950 FC 83 : 1949 FCR 849] .*

16. *In a suit for specific performance of contract for sale of immovable property containing a stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract. But in this connection it is necessary to refer to Section 22 of the Specific Relief Act, 1963 which runs:*

"22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief."

17. *It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.*

18. *In the instant case the suit is for specific performance of the agreement for sale of the suit property wherein relief of delivery of the suit property has not been specifically claimed, as such it cannot be treated as a "suit for land".*

19. *We cannot also accept the contention of Mr Chitale that the suit is for acquisition of title to the land and is a "suit for land". In its true sense, a suit simpliciter for specific performance of contract for sale of land is a suit for enforcement of terms of contract. The title to the land as such is not the subject-matter of the suit."*

135. In the light of above discussion and finding of the arbitrator and upon relying on the aforesaid judgments, this court is fully convinced with findings of the Arbitrator since there is no perversity or illegality and hence, call for no interference under Section 34 of the Act.

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ISSUE NO.5: - VIOLATION OF PRINCIPAL OF NATURAL JUSTICE

136. Insofar as the question of Violation of natural justice by the arbitrator by citing decisions/judicial precedents while considering the issues framed in the arbitral proceeding without noticing the parties or behind the back of the petitioner is serious breach of the public policy of Indian law and same required to be set aside. It was vehemently argued by the learned Sr. counsel for the petitioner and further submitted that the learned Arbitrator has relied numerous judgments to arrive at a conclusion that the claim of the petitioner fails and counter claim of the respondent succeeds and finally allowed the counterclaim of the respondent together with costs as aforesaid.

137. According to him more or less 70 judgments were relied upon by the Arbitrator without notice to the Petitioner, which amounts to serious violation of principles of natural justice, and the petitioner is highly prejudiced as no chance was afforded to revert or distinguish the same. If the petitioner had been allowed 'Audi alterum partem', the final result would have been changed. The Award dated 27th October, 2020 is in serious breach of the Principles of natural justice and therefore, the same is liable to set aside.

138. The grievance of the Petitioner is that the Arbitrator went on a wandering of his own on several issues, or did personal research or investigation, and made findings based on multiple cases, and definitions and legal

provisions which neither party had relied upon or referred to the Tribunal in oral or written arguments. All of them are new points, many of which were not even argued, and are practically not applicable in the facts and circumstances of the proceeding pending before the Tribunal.

139. It was argued on behalf of the Petitioner that the Arbitrator is prohibited from travelling outside of the pleadings or the arguments made by the parties, and/or even the cases, unless referred by the parties.

140. Even in the High Court and the Hon'ble Supreme Court, when a Judge wishes to express a view or relies upon a case not cited by the parties at the hearing then the judge puts the parties on notice of such a binding precedent or provision of law is relevant to the arguments put forward and asks the parties to consider the issue and address the court accordingly.

141. It was further argued that if an Arbitrator bases findings on personal knowledge or material not placed by the parties—including dictionaries, laws, or judicial decisions—it amounts to miscarriage of justice. This is contrary to the fundamental policy of Indian law, which requires that parties must always have the right to comment on all factual and legal circumstances relevant to the decision.

142. The Petitioner has placed reliance of Judgments on this issue are cases mentioned hereunder written:

Ssangyong Engineering (supra) at paragraph 74:

> *"..... these guidelines were never, disclosed in the arbitration proceedings..... the appellant could have argued, without prejudice to the argument that linking is dehors the contract.....For this reason the majority award needs to be set aside under Section 34(2)(a)(iii)"*

Delta International Limited & Ors. Vs. Smt. Nupur Mitra & Ors.[36], at paragraphs 39/40/41:

> **Paragraph 39.**
>
> *".....decision is made on the basis of a judicial precedent not referred to in course of the arguments, it would amount to breach of the most elementary canons of natural justice."*
>
> **Paragraph 40:**
>
> *"Indeed, the miscarriage of justice that may be occasioned by a judgment referring to judicial authorities without such precedent being brought to the notice of the parties or the part likely to be affected thereby"*
>
> **Paragraph 41:**
>
> *"It is, therefore held that it is generally undesirable that judicial precedents be referred to or made the basis for any finding in a judgment without the attention of the*

[36]2017 SCC OnLine Cal 13094

> *parties represented before the court first being drawn to them."*

143. Consequently, the Division Bench of the Calcutta High Court laid down the law allowing the appeal and setting aside the decision of the Single Judge.

144. The Respondent has furthermore relied upon a Single Bench decision of 2013 in the case of ***Birla Education Trust (supra)*** in a company law matter, the relevant portion is set out below:

> *"In the event, however, a new point of law, not argued by any of the parties, is introduced in a judgment referring to authorities not cited by any of the parties, that would constitute violations of the principles of natural justice."*

145. Another oral argument was made by the Respondent that the law and cited case of the court is supposed to be known to everyone, therefore it is not a breach of natural justice. The arbitration law as enshrined in Sections 18 and 24 read together with exposition in ***Ssangyong Engineering (supra)*** requires that an Arbitrator is confined to documents and cases before him. Even if the 70 cited judgements and several dictionaries are divided into two groups, one which was in relation to the argued issues and the other on new legal issues, then also almost 40 cases will fall in the category of new cases on new points which were not even argued by any of the parties. The Petitioner is aggrieved by these new cases which are on new and different principle of law without notice. The

Petitioner is also aggrieved by the introduction of several dictionaries and the taking of judicial notices on multiple issues by the Arbitrator.

146. The Petitioner further relied on the 2017 Division Bench judgment in ***Delta International (supra),*** *particularly at paragraph 39*, which set aside the single judge's decision, thereby limiting the proposition relied on by the Respondent. Additionally, the Petitioner cited the Delhi High Court's decision in ***Microsoft Corporation vs. Zoai Founder***[37] where an arbitral award was set aside on similar grounds in a Section 34 application, reinforcing the claim that the Award here is unsustainable. At paragraph 48 citing a decision of the Madras High Court, **M/s *Tribol Engineering Pvt. Ltd., rep. By its Managing Director Mr. K. Venkat, Bangalore – 560 070 Vs. Indian Oil Corporation Limited, rep. By its Deputy General Manager (Engineering), Indian Oil Bhavan, Chennai 34 and Anr.***[38]***:***

> *"48. It is not the duty of the arbitrator to go to the aid of the parties and state what they could and should have done from themselves. His function is to not supply his special knowledge, but to play the role of an impartial arbitrator.....*

147. The Petitioner argued that the Arbitrator displayed a predisposition against it, breaching natural justice and the principle of equal treatment, since each breach ultimately benefited only the Respondent. According to

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[37] ***2023 SCC OnLine Del 3800***

[38] ***(1998) 3 CTC 385 : 1998 SCC OnLine Mad 698***

the Petitioner, the Award lacked judicial fairness, violated the substantive provisions of the Arbitration and Conciliation Act, 1996, and must therefore be set aside under Section 34(2)(b)(ii), Explanation 1(ii) & (iii), and distinctly Section 34(2A) for patent illegality.

148. In reply, the Respondent strongly opposed, maintaining that the Arbitrator decided the case strictly on the statute, evidence—oral, documentary, and oral and written arguments—submitted by both parties. While it is true some judgments and definitions were referred to, these were only supplementary clarifications and did not prejudice either party.

149. The Respondent emphasized that the findings were based squarely on the materials brought before the Tribunal, and even if the impugned judgments were excluded, the outcome would remain unchanged. Further, as judgments of the High Court and Supreme Court constitute binding law in India, an arbitrator may rely on them without notifying the parties unless such precedents are wholly irrelevant and no manner of application in the issue decided by the Arbitrator. It should be demonstrated by the Petitioner while considering the case under Section 34 of the Act,1996.

150. In the course of reply, the Petitioner has relied on the decisions of ***Microsoft Corporation (supra),*** particularly paragraphs 21 to 25, but this judgment is distinguishable on facts as the Learned Court in that

case had brought on record material evidence by conducting its research which is not equivalent to placing judicial precedents and/or settled legal propositions. The said judgment is factually distinguishable, relying on paragraph 20 as the Arbitrator proceeded to conduct his own research on 'material evidence' available on the records and it is permissible in law if same comes within the four corners of the statute.

151. In support of its submissions, the respondent has relied on a same judgment of the Hon'ble High Court at Calcutta in ***Birla Education Trust (supra)***, particularly paragraph 21 thereof to support the proposition that judicial precedents can be relied upon by Court.

152. This court is of the considered view that none of the judgments cited by the Arbitrator would alter the result of the proceedings, even if excluded. No illegality, perversity, or prejudice was found in the reliance of such precedents. The Paragraph no. 21 of the ***Birla Education Trust (Supra)*** is set out herein under:

> *"21. While testing the validity of the order impugned, I will also have to examine the issue of reference to decisions in an order which was not cited by any of the parties to a litigation. Before me, no case was made out by any of the parties that these judgments were cited by way of them. In my opinion, however, if certain established principle of law is clarified by the Court itself on the basis of judicial authorities found by the Court by making its own research, that would not constitute an illegality, provided there was argument before the Court on such principle. In the event, however, a new point of law, not argued by any of the parties, is introduced in a judgment referring to authorities not cited by*

> *any of the parties, that would constitute violations of the principles of natural justice. The judgment of the Division Bench of this Court in the case of Damodar Valley Corporation (supra), does not hold in absolute term that such reference in all cases would be illegal and invalidate the judgment itself. In the judgment impugned, the six decisions referred to by the CLB deal with the principles for granting interim order, which was an issue before the Board. As such, I do not consider such exercise on the part of the CLB to be erroneous to that degree that the same would invalidate the order itself."*

153. The Petitioner herein has also failed to show before this court as to how the learned arbitrator or as judicial authority can be estopped from relying on the precedents of the higher Court in support of his findings, which have already been arrived thereat. All inferior courts or Tribunal are bound by the precedents of the Hon'ble Supreme Court and the High Courts. As much as it would have been preferable for the Arbitrator to notify the parties, the failure to do so, has caused no injustice or prejudice; those judgment and research are based on his judgment on materials placed by the parties before the Tribunal. On that note, this Court finds the Petitioner's objection is unsustainable and requires no interference.

ISSUE NO 6 : **IGNORANCE OF THE MATERIAL EVIDENCE PLACED BEFORE THE TRIBUNAL**

154. The Petitioner argued that the Arbitrator either ignored or failed to consider material evidence it had placed on record, and that proper

consideration of such evidence would have resulted in a different outcome, favourable to the Petitioner.

155. This court, however, is of the view that the arbitrator has in fact considered all the relevant material evidence placed by the parties in the arbitral proceedings in connection with the crux of the subject matter of disputes as referred, and assessed them correctly before concluding his findings that the Petitioner's claims were devoid of merit and while allowing the Respondent's counter claim thereof. Therefore, this court, under Section 34, does not and cannot say that the Learned Arbitrator has either ignored and/or not considered the material evidence; rather, that it is correctly assessed.

156. This court has limited scope to consider/set aside the impugned Award under Section 34 as already discussed herein above.

157. This Court is of the considered view that the Arbitrator had not ignored evidence but had thoroughly examined it in detail while deciding the issues framed therein. The Award, running nearly 300 pages, dealt comprehensively with matters such as notices issued by the Petitioner for termination or cancellation of the contract, oral and documentary evidence with regard to allegations of fraud and bribery, alleged tape-recorded transcriptions, terms and conditions of the Nomination Agreement, negotiations between the parties, court proceedings, the compromise decree as discussed above, and undertaking given by the

respondent with regard to title and possession etc. Therefore, contention of the petitioner on this issue of serious violation of principle of natural justice and non-consideration of material evidence, is unsustainable and, therefore, contention of the petitioner is liable to be rejected.

ISSUE NO.7:- PURE QUESTIONS OF LAW

158. Two remaining pure questions of law as raised by the petitioner are as herein under to be considered by this court: -

a. Whether the 2018 amendment to the Specific Relief Act, 1963, was prospective or retrospective in its application?

b. Whether a proceeding for specific performance of an executory contract, in which the Petitioner had pleaded termination of the contract, would be maintainable in the absence of a prayer declaring such termination to be illegal?

159. On behalf of the Petitioner, it was submitted that the amendment to Specific Relief Act 1963 contained no indication of retrospective application, either by express words or necessary implication. The Gazette notification of 19.09.2018 merely fixed 01.10.2018 as the date on which the amendment would take effect, and both the text of the amendment and the parliamentary debates were silent on any retrospective operation.

160. The Petitioner further contended that the Tribunal's conclusion stood vitiated because it relied on five Supreme Court decisions of its own accord, introducing new points of law without giving notice to the

Petitioner. This denial of opportunity to respond amounted to a violation of natural justice. These decisions formed the basis of the tribunal's conclusion, which are noticed in the following words:

> *"Applying the above principles laid by the Supreme Court in the facts of the present case this Tribunal holds that the amended provisions of the Specific Relief Act, which are all procedural in nature will be applicable to the present proceedings".*

161. It was further submitted that the Tribunal wrongly decided that the Specific Relief Act is procedural law, which was not argued by either of the parties. This is not a finding in view of the judgment of the Hon'ble Supreme Court in the case of ***Hungerford Investment Trust Ltd. (In Voluntary Liquidation) Vs. Haridas Mundhra & Ors.***[39] cited by the Tribunal. The case of ***Anant Gopal Sheorey Vs. State of Bombay***[40], on which the Tribunal relies for its finding, is a purely criminal matter relating to Criminal Procedure and has nothing to do with the Specific Relief Act. The case of ***Garikapati Veeraya v. N. Subbiah Choudhury***[41] does not relate to Specific Relief law and says nothing different from the very recent decision of the Supreme Court in the case of ***Rajesh Mitra alias Rajesh Kumar Mitra and Anr. Vs. Karnani Properties Ltd.***[42], which does not lead to the conclusion that the Specific Relief Act

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[39] ***AIR 1972 SC 1826 : (1972) 3 SCC 684***
[40] ***AIR 1958 SC 915***
[41] ***AIR 1957 SC 540***
[42] ***2024 SCC OnLine SC 2607***

amendment is retrospective. The Tribunal wrongly applied that the litigant has no vested right in procedural law, citing and relying upon paragraph 26(iii) of the case ***H.V. Thakur v State of Maharashtra***[43], when the correct and applicable paragraphs are 26(iv) and 26(v) of the same judgment, which are set out below.

> *"(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or impose new duties in respect of transactions already accomplished.*
>
> *(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."*

162. It was further vociferously argued that the law set out is crystal & clear in the paragraphs set out above. The amendment created new obligation and duties upon the Petitioner, while simultaneously conferring new rights upon the Respondent. Hence, the unamended continued to apply. The Tribunal's finding that the amendment applied retrospectively, based on certain decisions, was erroneous and constituted a direct breach of Sections 18 and 24 of the Arbitration and Conciliation Act, 1996, since it deprived the Petitioner of an opportunity to present its case and thereby violated natural justice.

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[43] ***(1994) 4 SCC 602***

163. In support, the Petitioner relied on ***Mehboob Ur Rehman v Ahsanul Ghani***[44], which clearly held that the amended Act would not apply to arbitral proceedings.

164. The Supreme Court itself subsequently relied upon this very precedent in two later cases: ***C. Haridasan v. Anitha***[45], particularly para 64 and ***Sangita Sinha v. Bhawana Bhardwaj & Ors.***[46], particularly para 18E, both reaffirming the principle that the Specific Relief (Amendment) Act, 2018 applies prospectively. The Tribunal, in ignoring these binding precedents, acted contrary to the fundamental policy of Indian law. The Petitioner contended that the Tribunal also failed to distinguish between substantive law and substantive rights.

165. A full bench of Calcutta High Court has held that the Specific Relief Act is an adjective law in the context of the 1877 Act, [***Moulvi Ali (supra)***]. It is therefore incorrect to say that entirety of the Specific Relief Act 1963 is only procedural.

166. The parties when entering into a contract in 2005 had certain rights and expectation. Any application of amended law by the Arbitrator would change the existing rights and obligation of the parties as they existed in 2005. This is prohibited and unfair.

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[44] ***(2019) 19 SCC 415***
[45] ***2023 SCC OnLine SC 36***
[46] ***2025 SCC OnLine SC 723***

167. Indeed, the Supreme Court in ***Katta Sujatha Reddy v. Siddamsetty Infra Projects Limited and Ors.***[47] para 13, held that Section 10 of the 1963 Act is substantive, not procedural. Thus, the Tribunal's contrary finding, that the entire Act is procedural, was perverse.

168. The Petitioner further argued that when the contract was entered into in 2005, the parties had specific rights and obligations. Application of the amended law would unfairly alter these settled rights and expectations, which is impermissible. Reliance was also placed on ***Saradamani Kandappan v. S Rajalakshmi and Ors.***[48] and ***Satya Jain and Ors. v. Anis Ahmed Rushdie and Ors.***[49], where the Hon'ble Supreme Court held that after long delay, any decree for specific performance must be at the market price of the property at the date of the decree. Despite the Petitioner raising this point, the Tribunal failed to address or apply this settled law.

169. It was further contended that the Respondent's prayer for specific performance was not maintainable, as it was made without seeking declaratory relief. This is simply because there cannot be a specific performance of an Agreement that has been terminated and is therefore non-existent unless the Agreement is revived by a declaration that the termination was invalid.

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[47] ***(2023) 1 SCC 355***
[48] ***(2011) 12 SCC 18***
[49] ***(2013) 8 SCC 131***

170. The Supreme Court of India has consistently held that absent of a prayer for declaratory relief, that termination/cancellation of the agreement is bad in law; a suit for specific performance is not maintainable. The Petitioner relied on binding precedents: ***I.S. Sikander v. K. Subramani***[50], particularly paragraph Nos. 37–38 thereof and ***Mohinder Kaur v. Sant Paul Singh***[51], particularly paragraph no. 4 thereof, both of which affirm that, without setting aside termination, specific relief is barred. Despite these citations, the Arbitral Tribunal rejected the authority of ***I.S. Sikander (supra)*** and ignored ***Mohinder Kaur (supra)***, instead relying on ***Ganesh Shet v. Dr. C.S.G.K. Setty***[52] which the Petitioner contended was inapplicable.

171. The Tribunal ignored these two binding precedents on the specious plea that this issue was decided in the case of ***Ganesh Shet (supra)***.

172. The finding of the Arbitrator of the Award in the Award is set out herein below:

> "the Supreme Court did not lay down as a proposition of law that in every case of specific performance of contract where the defendant has alleged termination of contract, a prayer for declaration of invalidity of the termination must be sought"

173. It was further held by the Tribunal as hereinbelow:-

> *"in all suits for Specific Performance of Contract, if the defendant takes a stance that the agreement in question has been terminated*

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[50] ***(2013) 15 SCC 27***
[51] ***(2019) 9 SCC 358***
[52] ***(1998) 5 SCC 381***

by him, the plaintiff must make a prayer for declaration that such termination is illegal and that in the absence of such prayer, the suit must be dismissed, such view is inconsistent with the earlier view taken by another two Judges-bench in the case of ***Ganesh Shet v. C.S.G.K. Setty (Dr) (supra)*** *and thus, is not binding as a valid precedent."*

174. According to the Petitioner the ratio of ***Ganesh Shet (Supra)*** is not applicable in the facts of the case. In that case, the dispute concerned whether specific performance could be granted for an agreement (Agreement B) not pleaded in the plaint but emerging from the evidence, when the original pleaded contract (Agreement A) was found non-existent. The Supreme Court held that relief in a suit for specific performance cannot be granted for an agreement not specifically pleaded particularly paragraph Nos.8–20. The question of declaratory relief against termination never arose in ***Ganesh Shet.*** Thus, the Tribunal's reliance on it not only prejudiced the Petitioner but also muddled the correct legal position.

175. On the contrary, the settled law, reiterated most recently in ***Sangita Sinha (supra)***, particularly at paragraph 18E, is that in all suits for specific performance where termination is alleged, the claimant must also seek a declaration that such termination is invalid. This proposition has been laid down as absolute, regardless of factual variations.

176. In view of the above, it is the contention of the Petitioner that the Tribunal, by refusing to follow binding precedents, ignoring applicable authorities, and rendering findings contrary to the settled legal position,

has acted in violation of the fundamental policy of Indian law. The Award is therefore vitiated both under Section 34(2)(b) Explanation 1(ii) of the Arbitration and Conciliation Act, 1996, being in conflict with the public policy of India, and under Section 34(2A), as it suffers from patent illegality on the face of the record. Accordingly, the impugned Award is liable to be set aside.

177. With regard to the first pure question of law, the Peitioner's case is that the Learned Arbitrator's finding is incorrect on account of the judgment of ***Katta Sujatha (Supra)***. This judgment has been set aside by the Hon'ble Supreme Court in the judgment of ***Siddamsetty Infra Projects Private Limited (supra)***.

178. Even otherwise, the Learned Arbitrator has held that the Nomination agreement dated 5th December, 2005 is in effect an agreement to convey right, title and interest to the Respondent by the Petitioner, which the petitioner obtained by virtue of the decree against Express Group, on payment of consideration.

179. The Learned Arbitrator has independently disregarded the case made out by the Petitioner and held that the judgments referred by the petitioner have no manner of application to the facts of the present case.

180. The Petitioner argues that the Arbitrator's finding that the 2018 Amendment to the Specific Relief Act applies retrospectively is perverse. Reliance on ***Katta Sujata (Supra)*** is misplaced as it was later set aside in

review in ***Siddamsetty Infra Projects (Supra)***. Under this decision, even under the unamended Act, if the ingredients for specific performance are satisfied, courts are bound to grant specific performance for immovable property due to the mandatory nature of the word "shall" in the Explanation to Section 10.

181. Thus, under both the unamended and amended Specific Relief Act, an agreement for transfer of immovable property mandates specific performance, since breach of such a contract cannot be adequately compensated by damages. The Arbitrator's conclusion to grant specific performance would therefore remain unchanged under either regime.

182. The Tribunal further held that while substantive rights of the parties' stem from the Contract Act, the procedure for enforcement is governed by the Specific Relief Act, which is not exhaustive in itself. This view aligns with the Supreme Court's ruling in ***Hunger ford Investments Trust (supra)*** page 1832 and similarly a Full bench Judgment of Calcutta High Court in the case of ***Moulavi Ali Hussain Mian (supra)***.

183. On the second pure question of law, the Petitioner argued that since the Respondent did not seek a declaration that the termination of the Nomination Agreement was illegal, null and void, no relief of specific performance could be granted. In the absence of such declaratory relief, a prayer for specific performance is not maintainable.

184. The Learned Arbitrator dealt with this issue in detail in its Award, this court does not find it necessary to quote such details herein. The Learned Arbitrator has firstly noticed that there were specific issues which were framed in the arbitration on the question of whether the Nomination Agreement was cancelled or terminated by any notice in writing.

185. Referring to paragraphs 9 and 10 of the Nomination Agreement, the Arbitrator held that the contract prohibited unilateral termination except upon the happening of specified contingencies where the agreement would automatically lapse. The essential pre-condition was that the claimant must serve a 30-day notice for execution of the conveyance deed, and if the Respondent failed to arrange funds within 90 days, the contract would terminate automatically. The Respondent contended no such notice was served, whereas the Petitioner argued CW1 orally conveyed such intimation immediately after execution of the agreement.

186. The Arbitrator further held that in other words, if in the contract, there is no clause specifying rescission of a contact unilaterally at the instance of one or the other of the parties, the same must be done either by the agreement of the parties or through adjudication either by way of suit for Specific Performance of Contract filed by one who dispute the termination or by suit for rescission of contract by the party who allegedly terminated the contract.

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187. Consequentially, in a suit for specific performance of contract, if the petitioner herein takes a plea that he has, of his own, terminated the contract and as such, the contract, the specific performance of which is sought, is not in existence, the court or tribunal dealing with such proceeding is required to specifically come to a conclusion, first, as to whether the contract in question allows the petitioner to unilaterally terminate the same and if the answer is in affirmative, then the next question would be whether the contract imposes any condition precedent which is sin qua non for exercise of such right of termination by the petitioner.

188. If any such condition is prescribed, the Court or Tribunal will decide whether such circumstances are existing justifying termination of the contract by the petitioner. If the Court or Tribunal finds that the Contract in question does not permit unilateral termination of contract at the instance of the petitioner, it will answer the issue in favour of the respondent. Similarly, if it finds that the circumstances in which such termination is permissible do not exist, in that case, it will reject the defence of the petitioner and will grant a decree for Specific Performance provided of course that the respondent proves other conditions necessary for getting a decree for specific performance.

189. Therefore, when the Court or Tribunal passes a decree for specific performance of contract, in effect, it declares such right in favour of the

respondent based on its findings in the proceedings that the defences of the petitioner were not tenable. There is, therefore, no necessity of separately praying for declaration that all the defences taken by the petitioner opposing the prayer for specific performance are illegal or not tenable.

190. The Arbitrator further noted that the Petitioner itself had sought relief declaring that the Nomination Agreement stood terminated, and also prayed for its cancellation. On that basis, the issue of validity of termination was squarely framed and adjudicated.

191. Having led evidence on the issue, the Petitioner could not later argue that a separate declaratory prayer was mandatory. The Arbitrator, relying inter alia on ***Ganesh Shet (Supra)***, concluded that Respondent's prayer for specific performance was maintainable notwithstanding the absence of an explicit declaratory prayer. It was submitted that the Learned Arbitrator cannot be faulted for relying on this case as the Learned Arbitrator has applied his mind and discussed the issue and, he has noted that-

> "there are specific issues regarding the alleged termination and the parties have led evidence on such issue and the same is also relevant for the purpose of grant of decree of specific performance. Thus, the suit cannot be dismissed merely on the ground that no declaration has been prayed for holding the termination by the claimant as illegal...."

192. Therefore, this court does not find that there is any impediment to allow the specific performance of contract in absence of an explicit declaratory prayer.

ISSUE NO. 8: -COSTS

193. It was argued that the arbitrator cannot award costs in an arbitral proceeding without any prayer and unless the parties otherwise agree.

194. Learned Sr. Counsel representing the petitioner argued that the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall not apply to

i. the arbitral proceedings commenced before the commencement of the Act;

ii. court proceedings arising out of or in relation to such arbitral proceedings, irrespective of whether such court proceedings are commenced prior to or after the commencement of the Act;

195. The amendments shall apply only to arbitral proceedings commenced on or after the commencement of the Act and to court proceedings arising out of, or in relation to, such arbitral proceedings. In the instant case, the Learned Arbitrator awarded huge costs without varying and/or hearing the parties, along with exorbitant interest @ 18 % per annum is not tenable in law.

196. In reply, the Learned counsel for the respondent vehemently denies the contention of the Petitioner and further drew attention to section 31(8) of

the pre-amendment Act, which gives power to the Arbitrator to award costs on the basis of expenses incurred by the respondent in the proceeding prior to, or during the arbitration proceedings. An arbitrator can even award costs for future contingency if required.

197. The Tribunal herein awarded costs only in favour of the Respondent, noting that the advocate's fees and incidental expenses had already been paid by cheque, supported by ledger copies, vouchers, and invoices.

198. The Learned Arbitrator has come to a factual finding that there was no reason to disbelieve the costs incurred by the Respondent in connection with the arbitration proceedings, when it was paid through and only through cheques. The Petitioner did not deny this; rather, it was agreed between the parties that pursuant to the Arbitrator's directions on the last sitting, both parties would have submitted their respective statement of costs.

199. Section 19 (2) of the said Act permits the parties to agree on the procedure to be followed by the Arbitrator Tribunal. Pursuant to the procedure agreed, both parties submitted their statement of costs. It will appear from the cost statements that both parties have prayed for costs incurred for their Learned Advocates.

200. It is submitted that section 31(8) of the said Act and the explanation as it stood before the 2015 amendment also included costs for expenses incurred in connection with the arbitration proceedings. The phrase 'in

connection with' is very wide and will include within its ambit any cost incurred in connection with the subject matter of disputes.

201. There was no bar in the earlier Section 31(8) for awarding of costs incurred in Court proceedings, which was connected to the arbitration proceeding. Therefore, even if the Learned Arbitrator was to follow Section 31(8) of the pre-amendment section, there is no reason why costs for the court proceedings could not have been granted.

202. It was further submitted that section 31A, which has been introduced by the Amendment Act of 2015, is a salutary amendment and only particularises the element of cost which will be included. This does not in any manner restrict the provision of cost which was there in the original Section 31(8) of the said Act.

203. The petitioner has placed reliance on Section 87 of the said Act, which was brought in by amendment in 2019. However, the said amendment was struck down by the Hon'ble Supreme Court in the case of ***Hindustan Construction (supra)*** particularly paragraph 63 thereof, which is set out hereinbelow: -

> *"63. Also, it is important to notice that the Srikrishna Committee Report did not refer to the provisions of the Insolvency Code. After the advent of the Insolvency Code on 1-12-2016, the consequence of applying Section 87 is that due to the automatic stay doctrine laid down by judgments of this Court—which have only been reversed today by the present judgment—the award-holder may become insolvent*

> *by defaulting on its payment to its suppliers, when such payments would be forthcoming from arbitral awards in cases where there is no stay, or even in cases where conditional stays are granted. Also, an arbitral award-holder is deprived of the fruits of its award—which is usually obtained after several years of litigating—as a result of the automatic stay, whereas it would be faced with immediate payment to its operational creditors, which payments may not be forthcoming due to monies not being released on account of automatic stays of arbitral awards, exposing such award-holders to the rigors of the Insolvency Code. For all these reasons, the deletion of Section 26 of the 2015 Amendment Act, together with the insertion of Section 87 into the Arbitration Act, 1996 by the 2019 Amendment Act, is struck down as being manifestly arbitrary under Article 14 of the Constitution of India."*

204. The question of interference by this court under Section 34 is limited. In the same judgment at paragraph 66 indicates that the law laid down in ***BCCI v. Kochi Cricket Pvt. Ltd.***[53] is stated to be the correct law, and also holds that the salutary amendments of the Act, 2015, will apply to all court proceedings.

205. Insofar as the cost is concerned, this court finds that the Tribunal has awarded costs assessed at Rs. 8,15,73,616/-, out of which Rs. 5,07,99,632 is on account of the arbitration and Rs. 3,07,73,984, on account of court proceedings as decided in the Award. The said total cost

[53] ***(2018) 6 SCC 287***

was to be paid by the Petitioner with interest @ 18% from the date of the Award, till the actual payment.

206. The Act was/is very clear on the costs, that the arbitrator has the power to impose costs. Both Section 31 of the Arbitration Act, 1996 (unamended) prior to 2015 as well as post the amendment of 2015, Section 31A are very clear on awarding costs in the proceedings pending before the Tribunal.

207. The relevant provisions stipulated in the Said Act with regard to the cost of the arbitral proceedings are set out hereunder for the sake of convenience:

208. Section 31 (pre-amendment) of the Arbitration and conciliation Act, 1996 reads as follows:

> *"**Form and contents of arbitral award.** — (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.*
> *(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.*
> *(3) The arbitral award shall state the reasons upon which it is based, unless—*
> *(a) the parties have agreed that no reasons are to be given, or*
> *(b) the award is an arbitral award on agreed terms under section 30.*

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation. —The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]

[(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.] Explanation. —For the purpose of clause (a), "costs" means reasonable costs relating to—

(i) the fees and expenses of the arbitrators and witnesses,

(ii) legal fees and expenses,

(iii) any administration fees of the institution supervising the arbitration, and

(iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award."

209. Section 31A (post-amendment) of the Arbitration and conciliation Act, 2015 reads as follows:

*"**31A. Regime for costs. —** (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—*

(a) whether costs are payable by one party to another;

(b) the amount of such costs; and

(c) when such costs are to be paid.

Explanation. —For the purpose of this sub-section, "costs" means reasonable costs relating to—

(i) the fees and expenses of the arbitrators, Courts and witnesses;

(ii) legal fees and expenses;

(iii) any administration fees of the institution supervising the arbitration; and

(iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs, —

(a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or

(b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—

(a) the conduct of all the parties;

(b) whether a party has succeeded partly in the case;

(c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings; and

(d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

(4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—

(a) a proportion of another party's costs;

(b) a stated amount in respect of another party's costs;

(c) costs from or until a certain date only;

(d) costs incurred before proceedings have begun;

(e) costs relating to particular steps taken in the proceedings;

(f) costs relating only to a distinct part of the proceedings; and (g) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen."

210. Therefore, from the above provisions, it is crystal clear that the Tribunal has had the power to award costs, both under the pre- and post-amendment law. However, the process to calculate the actual costs

depends on the expenses incurred by the parties in the proceedings, either before or even during arbitral proceedings.

211. The calculating of costs may be done with discretion vested in the Arbitrator, to be exercised judicially and based on evidence. Cost should be awarded in favour the successful party and if the costs are fixed in an extravagant or exorbitant manner, that may amount to misconduct sufficient for setting aside the award. Arbitrator should record his reasons for the same. In this case the respondent became successful.

212. As has been rightly submitted that it is the duty of the Arbitrator to quantify the costs assessed in an award. The Respondent herein, being successful, was awarded costs supported by proof. The Petitioner did not dispute these payments. The Arbitrator allowed costs with interest @18% per annum from the date of the award, till actual payment.

CONCLUSION AND DIRECTIONS:

213. In the light of aforesaid discussion and analysis, this court is of the opinion that the finding of the Arbitrator corrects, legal and without any perversity. The application filed under Section 34 of the Act,1996 by the petitioner is devoid of merits. The Award dated October 27, 2020 made and published by the Arbitrator is hereby affirmed.

214. Consequentially, **A.P (Com) No.191 of 2024 (A.P.No. 54 of 2021)** and **EC/231/2021**, are, thus, **dismissed** with above observations.

215. There shall be no order as to costs.

216. Connected application(s) being **GA 1 of 2022 in EC/255/2022** and **G.A 1 of 2023 in AP-COM/191/2024** are also, thus, **dismissed**.

217. Execution case being **EC 255 of 2022** is, thus, **allowed** with the above observations.

218. The Petitioner is directed to strictly comply with the directions mentioned in the Award dated October 27, 2020, made and published by the Arbitrator in letter and spirit in the timeframe therein. In default, the Registrar or his nominated officer, not below the rank of Assistant Registrar, Original side, High Court at Calcutta, is directed to execute the deed of conveyance in favour of the respondent (SBPL), if the petitioner fails to do as directed by the Arbitrator in the Award, within a fortnight.

219. All the costs and expenses, for effecting the deed of conveyance at the office of the Registrar of Assurance, Hyderabad, shall be borne by the respondent.

220. Parties to act on the server copy of the judgment and order, duly downloaded from the website of this Hon'ble High Court.

221. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

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Later:

After pronouncement of the Judgment, the learned counsel appearing on behalf of the petitioner prays for stay of the operation of the Judgment and Order.

Such prayer is considered and rejected.

(Ajay Kumar Gupta, J.)

P.A.