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

% ***Judgment reserved on: 22.05.2026***
Judgment pronounced on: 06.07.2026

\+ O.M.P. 3/2024 & I.A. 3246/2024 (Stay)

VINAY MAWANDIA .....Petitioner
Through: Mr. Amit Bhagat and Ms. Arzoo Raj, Advocates.

versus

BIMAL MAWANDIA & ANR. .....Respondents
Through: Ms. Niyati Kohli, Mr. Rishabh Parikh and Mr. Pratham Vir Agarwal, Advocates.

\+ EX.P. 82/2023 & EX.APPL.(OS) 1564/2023 (Ex.)

BIMAL MAWANDIA & ANR. .....Decree Holders
Through: Ms. Niyati Kohli, Mr. Rishabh Parikh and Mr. Pratham Vir Agarwal, Advocates.

versus

VINAY MAWANDIA. .....Judgement Debtor
Through: Mr. Amit Bhagat and Ms. Arzoo Raj, Advocates.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The **Execution Petition being EX.P. 82/2023** [1] has been instituted under Section 36 of the **Arbitration and Conciliation Act,**

[1] Execution Petition

1996[2], read with Order XXI and Section 151 of the **Code of Civil Procedure, 1908**[3], seeking the execution and enforcement of the **Interim Award dated 13.11.2021**[4] passed by the learned Arbitral Tribunal.

2. The **Objection Petition being O.M.P. 3/2024**[5], has been preferred under Section 34 of the A&C Act seeking the setting aside of the aforesaid Interim Award, whereby the learned Arbitral Tribunal issued directions in respect of two immovable properties, *namely*, **property bearing No. A-175 Sushant Lok, Phase 1, Gurugram, Haryana**[6], and **property bearing No. 24/25 Dobson Road, Howrah, West Bengal**[7].

3. Since both the petitions arise out of the same Interim Award and involve interconnected questions of fact and law, they were, with the consent of the parties, heard together and are being disposed of by this common judgment.

4. For the sake of clarity, convenience and brevity, the parties shall hereinafter be referred to in accordance with their array in the Objection Petition. Accordingly, Shri Vijay Mawandia shall be referred to as the "***Petitioner***", whereas Shri Bimal Mawandia and Shri Bijay Mawandia shall be referred to collectively as the "***Respondents***", unless the context otherwise requires.

5. Since the Execution Petition seeks enforcement of the very Award which is under challenge in the Objection Petition, the maintainability and outcome of the execution proceedings are

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[2] A&C Act
[3] CPC
[4] Impugned Award
[5] Objection Petition
[6] Subject Property
[7] Second Property

necessarily contingent upon the adjudication of the challenge under Section 34 of the A&C Act. This Court, therefore, considers it appropriate to first examine and decide the Objection Petition, whereafter the Execution Petition shall be dealt with in accordance with the findings returned therein.

BRIEF FACTS:

6. Shorn of unnecessary details, the facts germane to the institution of the present Petition are as follows:

a. The parties herein are brothers, having a common ancestor, Late Mr. Bala Presad Mawandia.

b. The Parties were jointly carrying out their family business; however, in or around the year 2019, the Petitioner and the Respondents agreed to divide a few of the properties owned by the Mawandia family or by their group companies and for the said purposes, a **Memorandum of Understanding dated 27.02.2019**[8] was executed between the Parties, wherein the details of the properties to be divided, along with the manner of their division, were delineated.

c. Certain disputes arose pertaining to the terms of the MoU as between the parties and the same was not acted upon. Pursuant to the disputes that had arisen *inter se* the parties, they jointly, with the aim to resolve the said disputes, entered into an **Arbitration Agreement dated 13.06.2021**[9]**,** whereby it was agreed between the parties that the disputes be referred to arbitration, to be adjudicated by a tribunal consisting of three

[8] MoU
[9] Arbitration Agreement

arbitrators, who were specifically named in the Arbitration Agreement.

d. Upon entering into the reference, the learned Arbitral Tribunal conducted a meeting through Video Conferencing and heard the parties, and thereafter, passed the said Award.

e. It is stated that the Impugned Award came to be passed without there being any presentation of the claims or counterclaims on behalf of the parties.

f. It is stated that the unsigned copy of the said Award was posted on the WhatsApp group of the parties along with the learned Arbitral Tribunal, on 13.11.2021.

g. It is stated that the signed copy of the Award came to the knowledge of the Petitioner only upon receiving the Execution Petition preferred by the Respondents, and that too, bore the signatures of only 2 out of the 3 members of the learned Arbitral Tribunal.

h. Aggrieved by the Award passed by the learned Tribunal, the Petitioner has assailed the Award by way of the present Objection Petition.

SUBMISSIONS ON BEHALF OF THE PARTIES:

7. Learned counsel appearing on behalf of the Petitioner would impugn the Award stating it to be perverse and illegal on the ground that the same is contrary to the provisions of the A&C Act and has been passed without following any procedure.

8. It would be submitted that the learned Arbitrators failed to seek any claims or counterclaims on behalf of the parties, which is contrary to and in violation of the provisions of the A&C Act.

9. It would further be submitted that the Award that has come to be passed is bereft of any reasoning and has been passed in a completely arbitrary manner without any application of mind, contrary to the provisions of Section 31 of the A&C Act.

10. It would also be submitted by the learned counsel for the Petitioner that by way of the said Award, the learned Arbitral Tribunal has adjudicated upon and given directions for the transfer of ownership rights in respect of subject property which is admittedly co-owned by Mrs. Madhu Mawandia, Mrs. Uma Mawandia and Mr. Vikash Mawandia, none of whom are either signatory to the Arbitration Agreement nor were parties before the learned Arbitral Tribunal. Therefore, passing an order giving directions to Mrs. Madhu Mawandia, who is not even a party to the Arbitration Agreement, for transfer of her ownership in a property clearly shows that the learned Tribunal, while passing the Impugned Award, has exceeded its authority and therefore, the Award is liable to be set aside.

11. It would also be submitted by the learned counsel for the Petitioner that the Impugned Award passed by the learned Tribunal is also contrary to the provisions of Sub-Sections (1) and (2) of Section 31 of the A&C Act, which states that an award is to be made in writing and shall be signed by all the members of the arbitral tribunal, the only exception being that the signature of the majority of members shall be sufficient as long as the reason for any omitted signature is stated in the award. It is submitted that the Impugned Award only contains the signatures of 2 of the 3 members of the learned Arbitral Tribunal and the Impugned Award is silent on the omission of the signature of the third member. No reason for the omission of the signature of the third member is mentioned in the Impugned Award.

Thus, the Impugned Award is not a proper award in terms of the provisions of the A&C Act and is therefore also liable to be set-aside.

12. ***Per Contra,*** learned counsel appearing on behalf of the Respondents would, at the very outset, seek to challenge the present Petition on its maintainability on the ground of it being barred by limitation. She would submit that the Impugned Award came to be passed on 13.11.2021; however, the present Petition has only come to be filed as late as in January 2024. She would submit that the Petitioner, despite being aware of the Award having been passed, chose to impugn the same only after the filing of the Execution Petition, which clearly shows that the same is an afterthought and a means to avoid its obligations under the Impugned Award.

13. It would also be submitted by the learned counsel for the Respondents that the Petition is also not accompanied by an application seeking condonation of the delay of more than 3 years, nor has any sufficient cause in this respect been shown in the pleadings.

14. She would further submit that the Impugned Award, when it came to be passed by the learned Tribunal, was shared on the WhatsApp group created, which group comprised the members of the family and who were/ are parties herein, and the same was acknowledged by the Petitioner. It would be submitted that after having received and acknowledged the Impugned Award, the Petitioner slept over their rights for approximately three years before challenging the Award.

15. It would further be submitted that not only has the Petitioner acknowledged the Impugned Award, but steps have been taken by both the parties to enforce the Award and carry out its terms. It would be contended that after having accepted the Award and reaping

benefits out of the same, the Petitioner cannot now be allowed to step back from the performance of its obligations under the Impugned Award and challenge the same. She would seek to rely upon the transcript of the WhatsApp chat as between the parties wherein the acknowledgement of the Impugned Award has been accorded, and steps to be carried thereof have been discussed between the parties and carried out, which are as follows:

> [22/04/21, 2:58:47 PM] Mawandia family setlm: You created group "Mawandia family settelme"
>
> ****
>
> [22/04/21, 3:14:57 PM] Bimal Mawandia: Sri vedaprkash desired All 3 brothers to give required papers to Sri mahesh ji
> Regarding below
> 1 - secured loan with bank n situation
> 2 - first initial understanding of three brothers
> 3 - remaining properties with value etc
> 4 - unsecured Loan update situation
> 5 - detail of properties sold in last 2/3 years n
> how the fund utilized
> 6 - upto date all company n all persona files including all faimily members up to 31/3/21
> 7 - Poddar ji account detail and how the money reed and used
> 8 – details of jewellery n other valuables of the group
>
> After receipt of papers Mahesh ji will examine n give his findings to Vedprakash ji n Jawaharji or if any informations /papers R required by Mahesh ji he will write in this group or wil ask directly to the brothers
> For info to all
>
> ****
>
> [22/06/21, 10:54:33 AM] Vinay Ji Correct No: Sub: Sushantlok home:-we are paying 1271000.00 EMI every month which is not workable by paying group and I m not interested by paying my share. Brokers are around to buy home in approx 12.00 crore or more. Bimal stopped showing home to home buyers., by selling the home we reduce our bank liabilities and monthly burdens of money
>
> ****
>
> [25/06/21, 2:54:38 PM] Vinay Ji Correct No: SLOK
> We reduced liabilities earlier by selling properties, similarly SLOK house to be sold and pay DB immediately. Balance amount to be FD and used by permission of arbitrator. If Bimal and Bijay want to retain the house, they can take it for 12cr. Or otherwise all 3 brothers have to decide to sell the property.

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[08/07/21, 4:52:53 PM] Vinay Ji Correct No : 1.1 offereei home 12.90 cr for land and building only, all movable items which are common will be distributed

2. Payment terms 3 months only,10% advance to be given with in 15 days times ., this is the norms
3. EMI will not be paid by me any
4. Gift transaction possible as MADHUS share can be possible capital I want to to gift . But capital earn and losses will be set by bm and Bkm
6. All transactional expenses to be Bourne by the buyer as usual and the group will not bear the cost of transferring as sellers.

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[13/11/21, 5:47:48 PM] Jawaharji : : 1st Interim Award.pdf • 2 pages <attached:
00000198-1st Interim Award.pdf>
[13/11/21, 5:49:03 PM] Jawaharji : Dear All
pls find above 1st award, pls act accordingly .
Regards
Jawahar
[13/11/21, 6:31:49 PM] Vinay ji Correct No: Noted thanks 🙏
[16/11/21, 11:15:07 AM] Bimal Mawandia: We wil send below gift deed by afternoon to
vinay ji n then Tom or day after registry is possible
1) madhu ji to vinay ji
2) vinay ji to Bimal n bijay
Court is closed 19-21/11
N then we r away till night of 26/11
Once we send gift deed to them wil confirm in this group n then after checking
vinay ji to advise if to book registry as above
Rgds Bimal

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[16/11/21, 1:35:20 PM] Bijay Ji X Watsup chacha: Respected punches Kolkatta property for missing documents letter wasn't allowed to give physically to local police station only online.

We had lodged online complaint on police station site and set papers to Vinay ji by email and a printout also attached herewith
Rgds/bijay
[16/11/21, 1:35:20 PM] Bijay Ji X Watsup chacha: Resent attachment.
[16/11/21, 2:03:47 PM] Bimal Mawandia : <attached:
00000219-PHOTO-2021 – 11 – 16 – 14 – 03 – 47.jpg>
[16/11/21, 2:04:08 PM] Bimal Mawandi: <attached:
00000220-PHOTO-2021 - 11- 16 – 14 – 04 – 08.jpg>

[16/11/21, 3:07:55 PM] Bijay Ji X Watsup chacha: Scan 16 Nov 21 . 01·22·58.pdf •
1 page <attached: 00000221 -Scan 16 Nov 21 .01·22·58.pdf>

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[19/11/21, 7:41:22 PM] Vinay Ji Correct No : <attached: 00000240-AUDIO-2021-11-19-19-41-23.opus>

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[22/11/21, 9:10:03 AMI Vinay Ji Correct No: Jift deed draft .. pdf • 2 pages
<attached: 00000246-gift deed draft .. pdf>
[22/11/21, 9:10:47 AM] Vinay Ji Correct No: According to many recent texts, a bhabhi can gift to devar. Maheshji please check and confirm, so only one deed is made. I have gone thru the gift deed and attaching first request on changes.
Gift deed will be signed only when:
1. All the things from SLOK is cleared by us.
2. We have a clear NOC from the bank that Vinay and Madhu are exiting the loan and
no longer liable for this loan or no type of persona] guarantee.
3. Due to so many travel plans BMB, the timelines to prepare and register documents
cannot be rushed. We need to satisfy ourselves before signing the deed, receiving the compensation and gjving the possession.

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[23/11/21, 10:32:46 AM] Bimal Mawandia: Mahesh ji called after his discussion with
ved prakash ji
We had sent a mail last week to deutch bank t o give noc they need a draft of gift deed t o check with there legal department n then wil give noc
Meantime discusd with lawyers for all points raised by vinay ji n afresh gift deed draft wil b shared soon n after is approved wil send to bank fr required noc
Rgds Bimal bijay
[29/11/21, 9:33:53 AM] Bimal Mawandia : Mahesh ji called as per his talk with Chiripal ji
Since there was no news I have some meetings i n first half tday n available 4 pm onwards if vishal wants to come he might come to see things

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[29/11/21, 8:18:21 PM] Bimal Mawandia: Transfer Deed 2 Bimal Ji.docx <attached:
00000253 - Transfer Deed 2 Bimal Ji.docx>
[29/11/21, 8:18:21 PM I Bimal Mawandia : Transfer Deed Plot DLF III (4) .doc
<attached: 00000254-Transfer Deed Plot DLF III (4) . doc>
[29/11/21, 8:19:08 PM] Bimal Mawandia : Two transfer deeds r attached once given ok

wil send to deutch bank to give noc
[29/11/21, 8:21:40 PM] Bimal Mawandia : db repy.pdf • 1 page <attached: 00000256 - db
repy . pdf>
[29/11/21, 8:21:40 PM] Bimal Mawandia: A 175 A. docx <attached : 00000257-A 175A.doc x>

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For Sushantlok home respected punches had given an award as well some comments r also from them and accordingly movable furniture etc can b taken away by vishal and this Sd b in one go n in a period of 1-2 days

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[08/12/21} 7:05:23 PM] Vinay Ji Correct No: draft 2.pdf • 3 pages <attached:
00000262-draft 2.pdf>

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[10/12/21, 2:53:11 PM] Bimal Mawandia: Transfer Deed Plot DLF III (4) (l).doc
<attached: 00000267-Transfer Deed Plot DLF III (4) (1).doc>
[10/12/21, 2:53:11 PM] Bimal Mawandia : Transfer Deed 2 Bimal Ji.docx <attached:
00000268-Transfer Deed 2 Bimal Ji.docx>

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[13/02/22, 11:31:12 AM] Bimal Mawandia : Sushantlok home
Vishal has come to collect first round goods from here
[13/02/22, 8:00:33 PM] Bimal Mawandia: Vishal visited Sushantlok home n took partial things from home in one truck n two cars
Just FYI only
[17/02/22, 11:25:25 AM] Bimal Mawandia: From second floor vishal had taken
everything n emptied the room except one bed which he can take any time
He also wants to take fixed treys in Almiras in the dressing area of his room n he
can take these treys also any time
Basement n Vinay's ji room is still with them”

16. It would further be submitted that the Impugned Award has been passed with the consent of the parties and after deliberations between the parties, taking into consideration the original MoU that was entered into between them and therefore, the Petitioner cannot now seek to challenge the Impugned Award that he himself consented to.

17. As regards the objections pertaining to Mrs. Madhu Mawandia, it would be submitted by the learned counsel on behalf of the Respondents that not only was Mrs. Madhu Mawandia aware of the arbitral proceedings, but she also participated and made submissions before the learned Tribunal. It would further be argued that just like the Petitioner herein, Mrs. Madhu Mawandia has reaped benefits from the Impugned Award and the doctrine of approbate and reprobate would squarely apply to Mrs. Madhu Mawandia as after accepting the Award and deriving benefit thereunder, they cannot be permitted to challenge the same on any ground.

18. It would lastly be submitted that the reliance of the Petitioner on the fact that the signed copy of the Award was never received by Mr. Vinay Mawandia cannot be considered as a ground to extend limitation when despite possessing knowledge of the Award and having acknowledged the same on the WhatsApp and even receiving benefit of the same, Mr. Vinay Mawandia did not make any attempt to seek a signed copy of the Award from the learned Arbitral Tribunal.

19. Even otherwise, it would be submitted that this objection cannot now be canvassed after having accepted the Award and after having taken steps in furtherance of its terms and having reaped benefits from the same.

ANALYSIS:

20. This Court has carefully considered the submissions advanced on behalf of both sides and, with their able assistance, perused the Impugned Award as well as the materials placed before this Court.

21. At the outset, it is apposite to note that this Court remains conscious of the limited scope of its jurisdiction while examining an

objection petition under Section 34 of the A&C Act. There is a consistent and evolving line of precedents whereby the Hon'ble Supreme Court has authoritatively delineated and settled the contours of judicial intervention in such proceedings.

22. In this regard, a three-Judge Bench of the Hon'ble Supreme Court, after an exhaustive consideration of a catena of earlier judgments, in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[10], while dealing with the grounds of conflict with the public policy of India and patent illegality, grounds which have also been urged in the present case, made certain pertinent observations, which are reproduced hereunder:

> *"**Relevant legal principles governing a challenge to an arbitral award***
> **30.** Before we delve into the issue/sub-issues culled out above, it would be useful to have a look at the relevant legal principles governing a challenge to an arbitral award. Recourse to a court against an arbitral award may be made through an application for setting aside such award in accordance with sub-sections (2), (2-A) and (3) of Section 34 of the 1996 Act. Sub-section (2) of Section 34 has two clauses, (*a*) and (*b*). Clause (*a*) has five sub-clauses which are not relevant to the issues raised before us. Insofar as clause (*b*) is concerned, it has two sub-clauses, namely, (*i*) and (*ii*). Sub-clause (*i*) of clause (*b*) is not relevant to the controversy in hand. Sub-clause (*ii*) of clause (*b*) provides that if the Court finds that the arbitral award is in conflict with the public policy of India, it may set aside the award.
> ***Public policy***
> **31.** "Public policy" is a concept not statutorily defined, though it has been used in statutes, rules, notification, etc. since long, and is also a part of common law. Section 23 of the Contract Act, 1872 uses the expression by stating that the consideration or object of an agreement is lawful, unless, inter alia, opposed to public policy. That is, a contract which is opposed to public policy is void.
> *****
> **37.** What is clear from above is that for an award to be against public policy of India a mere infraction of the municipal laws of India is not enough. There must be, inter alia, infraction of

[10] (2025) 2 SCC 417

fundamental policy of Indian law including a law meant to serve public interest or public good.

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The 2015 Amendment in Sections 34 and 48

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

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

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

46. The 2015 Amendment adds two Explanations to each of the two sections, namely, Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*), in place of the earlier Explanation. The significance of the newly inserted *Explanation 1* in both the sections is two-fold. First, it does away with the use of words : (*a*) "*without prejudice to the generality of sub-clause (ii)*" in the opening part of the pre-amended Explanation to Section 34(2)(b)(ii); and (b) "*without prejudice to the generality of clause (b) of this section*" in the opening part of the pre-amended Explanation to Section 48(2)(*b*); secondly, it limits the expanse of public policy of India to the three specified categories by using the words "*only if*". Whereas, *Explanation 2* lays down the standard for adjudging whether there is a contravention with the fundamental policy of Indian law by providing that a review on merits of the dispute shall not be done. This limits the scope of the enquiry on an application under either Section 34(2)(*b*)(*ii*) or Section 48(2)(*b*) of the 1996 Act.

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

application of the law or by reappreciation of evidence.

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

(*i*) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(*ii*) it is in contravention with the fundamental policy of Indian law; or

(*iii*) it is in conflict with the most basic notions of morality or justice.

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

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

(*a*) "in contravention with the fundamental policy of Indian law";

(*b*) "in conflict with the most basic notions of morality or justice"; and

(*c*) "patent illegality" have been construed.

In contravention with the fundamental policy of Indian law

51. As discussed above, till the 2015 Amendment the expression "in contravention with the fundamental policy of Indian law" was not found in the 1996 Act. Yet, in ***Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644**, in the context of enforcement of a foreign award, while construing the phrase "contrary to the public policy", this Court held that for a foreign award to be contrary to public policy mere contravention of law would not be enough rather it should be contrary to:

(*a*) the fundamental policy of Indian law; and/or

(*b*) the interest of India; and/or

(*c*) justice or morality.

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

Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

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

(*a*) violation of the principles of natural justice;

(*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(*c*) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

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

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Patent illegality

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

66. In ***ONGC Ltd.* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705**, while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

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

(*a*) substantive provisions of law of India;

(*b*) provisions of the 1996 Act; and

(*c*) terms of the contract [See also three-Judge Bench decision of this Court in ***State of Chhattisgarh* v. *SAL Udyog (P) Ltd.*, (2022) 2 SCC 275**].

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

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

Perversity as a ground of challenge

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

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

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

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

(*iii*) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

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

71. In ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was

also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse [See ***Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131**].

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

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

> "*39.* In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liabe to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice."

Scope of interference with an arbitral award

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

75. In ***Dyna Technologies (P) Ltd.* v. *Crompton Greaves Ltd.*, (2019) 20 SCC 1**, paras 27-43, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root

> of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law."
> e to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law."

23. The principal questions that arise for consideration in the present Petition are: (i) whether the present Petition under Section 34 of the A&C Act is barred by limitation; and (ii) if not, whether the Interim Award dated 13.11.2021 suffers from any infirmity warranting interference under Section 34 of the A&C Act.

24. Since the issue of limitation goes to the very root of the maintainability of the present Petition, this Court considers it appropriate to first examine whether the Petition has been instituted within the period prescribed under Section 34(3) of the A&C Act. Section 34 of the Act reads as under:

> "**34. Application for setting aside arbitral award**.—
> ****
> (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:
> Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter…."

25. The language employed by the legislature is explicit and mandatory. The expression "but not thereafter" occurring in the proviso to Section 34(3) places a complete embargo on the power of the Court to condone delay beyond the additional period of thirty

days. This Court is guided by the Judgment of the Apex Court in **U*nion of India v. Popular Construction Co.*[11]** wherein it has been held as follows:

> "**12.** As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."
>
> ****
>
> **16.** "Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. Consequently, by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed."

26. This Court is further guided by the Judgment of the Hon'ble Supreme Court in ***Simplex Infrastructure Ltd. v. Union of India*[12]**, wherein the following has been held:

> "**18.** A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be

[11] (2001) 8 SCC 470
[12] (2019) 2 SCC 455

condoned. To do so, as the High Court did, is to breach a clear statutory mandate.

19. The respondent received the arbitral award on 31-10-2014. Exactly ninety days after the receipt of the award, the respondent filed an application under Section 34 of the 1996 Act before the District Judge, Port Blair on 30-1-2015. On 12-2-2016, the District Judge dismissed the application for want of jurisdiction and on 28-3-2016, the respondent filed an application before the High Court under Section 34 of the 1996 Act for setting aside the arbitral award. After the order of dismissal of the application by the District Judge, the respondent took almost 44 days (excluding the date of dismissal of the application by the District Judge and the date of filing of application before the High Court) in filing the application before the High Court. Hence, even if the respondent is given the benefit of the provision of Section 14 of the Limitation Act in respect of the period spent in pursuing the proceedings before the District Judge, Port Blair, the petition under Section 34 was filed much beyond the outer period of ninety days."

27. Section 34(3) of the A&C Act prescribes that an application for setting aside an arbitral award may not be made after three months have elapsed from the date on which the party making the application had received the arbitral award. The proviso empowers the Court to condone a further delay of only thirty days upon sufficient cause being shown, but expressly prohibits condonation beyond the said period. It is now well settled that the limitation prescribed under Section 34(3) is mandatory and admits of no further extension.

28. The principal contention of the Petitioner is that no signed copy of the Award was ever delivered to him in terms of Section 31(5) of the A&C Act and, therefore, the period of limitation never commenced. It has further been contended that the Petitioner became aware of the signed Impugned Award only upon receipt of the Execution Petition filed by the Respondents.

29. This contention, though attractive at first blush, does not merit acceptance in the peculiar facts of the present case. The material placed on record unmistakably demonstrates that immediately after

the Award was uploaded in the WhatsApp group created for resolution of the disputes, the Petitioner acknowledged receipt thereof by responding "Noted thanks". Such acknowledgement was not a mere formal response but was followed by continuous discussions amongst the parties regarding the implementation of the Award.

30. The WhatsApp conversations placed on record reveal that subsequent to the Impugned Award dated 13.11.2021, the parties actively deliberated upon preparation of gift deeds, transfer deeds, obtaining No Objection Certificates from the lending bank, removal of movables from the subject property and other consequential steps necessary for implementation of the Impugned Award.

31. Significantly, these discussions were not unilateral communications by the Respondents but involved active participation of the Petitioner, who not only raised conditions regarding execution of the transfer documents but also suggested modifications to the draft deeds. Such conduct unequivocally establishes that the Petitioner had accepted the existence of the Impugned Award and consciously acted upon the same.

32. Even assuming that the Petitioner had not received a signed copy of the Impugned Award, the conduct of the Petitioner assumes considerable significance. Having admittedly become aware of the Impugned Award in November, 2021, the Petitioner neither addressed any communication to the learned Arbitral Tribunal seeking a signed copy of the Impugned Award nor raised any grievance regarding non-compliance with Section 31(5) of the A&C Act for nearly two years. The plea regarding non-delivery of the signed Impugned Award surfaced only after the Respondents initiated execution proceedings.

Such conduct disentitles the Petitioner from invoking the equitable jurisdiction of this Court.

33. The doctrine that a litigant cannot approbate and reprobate is founded upon the elementary principle that one who knowingly accepts benefits flowing from a transaction cannot subsequently challenge the validity of the very transaction. The material on record demonstrates that the Petitioner actively participated in implementing the Award, negotiated the modalities of transfer, insisted upon fulfilment of conditions before execution of deeds and permitted implementation of various directions contained therein. Having elected to act upon the Impugned Award and derive benefits therefrom, it does not now lie in the mouth of the Petitioner to contend that the Impugned Award is void or *non est*.

34. Further, the material on record also indicates that the arbitral proceedings were initiated mutually and with the consent of all the parties. The Parties have, in the Arbitration Agreement, also stated that the decision of the learned Tribunal would be final and binding on the parties. Therefore, it cannot now be canvassed by the Petitioner that there was no *consensus ad idem* as to the arbitral proceedings and the resultant Award. This Court is guided by the judgment in ***Midpoint Commodeal Private Limited v Fidatocity Homes Private Limited & Ors.***[13] wherein it has been held as under:

> "**35.** More particularly, this Court is required to examine whether there existed a mutual and unequivocal intention on the part of the parties not only to undertake defined contractual obligations *inter se*, but also to submit any disputes arising therefrom to arbitration in terms of a valid arbitration agreement within the meaning of Section 7 of the A&C Act. At this juncture, this Court deems it appropriate to reproduce Section 7 of the A&C Act, which reads as follows:

[13] 2026 SCC OnLine Del 4476

> **"7. Arbitration agreement**. - (1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
> (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
> (3) An arbitration agreement shall be in writing.
> (4) An arbitration agreement is in writing if it is contained in-
>
> (*a*) a document signed by the parties;
>
> (*b*) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
>
> (*c*) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
>
> (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

36. At this stage, it would be apposite to advert to the foundational principles embodied in the **Indian Contract Act, 1872**[14], which govern the formation and enforceability of contracts in law. Section 2(e) of the ICA defines an "agreement" to mean "every promise and every set of promises, forming the consideration for each other." The statutory definition itself makes it abundantly clear that the existence of reciprocal promises founded upon mutual assent forms the very basis of a legally recognizable agreement.

37. Further, Section 2(b) of the ICA stipulates that when a proposal is accepted, it becomes a promise. Thus, the essence of a legally binding agreement lies in the existence of a lawful proposal meeting with an absolute, unconditional, and unequivocal acceptance. The statutory scheme under Section 2 of the ICA clearly postulates that contractual obligations arise only where there exists a clear manifestation of assent by the parties to the same proposal. For ready reference, the relevant extracts of Section 2 of the ICA are reproduced herein below:

[14] ICA

> **"2. Interpretation clause**. - In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—
> (*a*) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
> (*b*) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;
> (*c*) The person proposing is called the "promisor", and the person accepting the proposal is called the "promisee";
> (*d*) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;
> (*e*) Every promise and every set of promises, forming the consideration for each other, is an agreement;
> (*f*) Promises which form the consideration or part of the consideration for each other, are called reciprocal promises;
> (g) An agreement not enforceable by law is said to be void;
> (h) An agreement enforceable by law is a contract;
> (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;
> (*j*) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable."
>
> ***(emphasis supplied)***

38. In continuation thereof, Section 10 of the ICA provides that all agreements become enforceable in law only when they are made with the free consent of parties competent to contract, for lawful consideration and with a lawful object. The expression "*free consent*" assumes considerable significance in the present context, for consent in the eyes of law cannot be equated with a unilateral understanding, subjective assumption, or uncommunicated intention of one of the parties. The statutory requirement is one of *consensus ad idem*, *namely*, meeting of minds between the parties upon the same thing in the same sense, as expressly postulated under Section 13 of the ICA. Sections 10 and 13 of the ICA read as follows:

> **"10. What agreements are contracts**. - All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration

> and with a lawful object, and are not hereby expressly declared to be void.
> Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed, by which any contract is required to be made in writing[2] or in the presence of witnesses, or any law relating to the registration of documents."
>
> *****
>
> **"13. "Consent" defined.-** Two or more persons are said to consent when they agree upon the same thing in the same sense."
>
> ***(emphasis supplied)***
>
> **39.** The doctrine of *consensus ad idem* constitutes the very foundation and soul of binding terms between them. Unless it is demonstrated that the parties had mutually agreed upon the essential and material terms governing the transaction with certainty, clarity, and finality, no concluded agreement can be said to exist in the eyes of the law."

35. Tested upon that anvil and in view of the material placed on record, this Court is of the considered opinion that the Impugned Award was not the outcome of a contested adjudicatory process but was rendered upon the *consensus* and mutual understanding arrived at between the parties. The Arbitration Agreement itself records the parties' intention to amicably resolve their *inter se* disputes through the named Arbitrators, and the material placed before this Court, particularly the contemporaneous WhatsApp exchanges and the conduct of the parties after the passing of the Impugned Award, clearly establishes that the Impugned Award embodied the mutually agreed terms of settlement.

36. The parties thereafter proceeded to act upon the Impugned Award by exchanging draft transfer deeds, discussing modalities of implementation, seeking No Objection Certificates from the lending bank and taking steps towards transfer of possession and ownership in accordance with the directions contained therein.

37. Having consciously accepted the Impugned Award as a consensual resolution of their disputes and having acted upon the same without protest, the Petitioner cannot now be permitted to approbate and reprobate by questioning the very Award which had been accepted and sought to be implemented.

38. A consensual and mutually accepted award carries with it a higher degree of sanctity, and absent any allegation of fraud, coercion or vitiating circumstances, a party cannot be permitted to resile from the settlement merely because it has subsequently had a change of heart. The present challenge, therefore, is not only barred by limitation but is also contrary to the Petitioner's own conduct, which unequivocally demonstrates acceptance of the Impugned Award as a binding and consensual determination of the disputes.

39. Equally significant is the fact that the present Petition is not accompanied by any application seeking condonation of delay. Even in the body of the Petition, no satisfactory explanation has been furnished accounting for the inordinate delay of more than two years from the date on which the Petitioner admittedly acquired knowledge of the Impugned Award and acknowledged the same. The pleadings are conspicuously silent as to why no steps whatsoever were taken during this entire period either to obtain a signed copy or to challenge the Impugned Award. The complete absence of any explanation further reinforces the Respondents' contention that the present challenge is merely an afterthought devised after the institution of execution proceedings.

40. The conduct of the parties subsequent to the passing of the Impugned Award also assumes relevance. The record reveals that transfer documents were prepared, draft gift deeds were exchanged,

discussions with Deutsche Bank were undertaken for obtaining necessary clearances and possession of movable assets was partially acted upon. These acts unmistakably indicate that the parties themselves treated the Award as binding and proceeded to implement the same. The Petitioner's participation in such implementation is wholly inconsistent with his present stand questioning the legality of the Impugned Award.

41. The submission of the Petitioner that the Impugned Award is liable to be set aside as it contains directions affecting the rights of Mrs. Madhu Mawandia also deserves rejection.

42. The Respondents have specifically placed on record that Mrs. Madhu Mawandia was fully aware of the arbitral proceedings and had participated therein. More importantly, the material on record indicates that she too accepted and acted upon the Impugned Award. Even otherwise, the present challenge has been instituted by the Petitioner and not by Mrs. Madhu Mawandia. The Petitioner cannot be permitted to assail the Impugned Award on behalf of a third person who has herself chosen not to question the Award.

43. Likewise, the contention that the Impugned Award bears only two signatures cannot assist the Petitioner at this belated stage. Assuming that any procedural irregularity existed, the same was well within the Petitioner's knowledge immediately upon receipt of the Award in November, 2021. Having accepted the Award and proceeded to implement it without demur, the Petitioner cannot raise such technical objections after an inordinate lapse of time solely because execution proceedings have been initiated.

44. This Court is of the considered view that the entire course of conduct adopted by the Petitioner establishes acquiescence in the

Impugned Award. The challenge has been mounted only after the Respondents sought enforcement of the Award through execution proceedings. Such conduct militates against the principles governing challenges to arbitral awards and is wholly inconsistent with the object of the A&C Act, which seeks to ensure finality and expeditious enforcement of arbitral awards.

45. In view of the foregoing discussion, this Court holds that the Petitioner had complete knowledge of the Impugned Award immediately upon its pronouncement, acknowledged the same, actively participated in its implementation and accepted benefits flowing therefrom. The present Petition, instituted only after commencement of execution proceedings and unsupported by any application seeking condonation of delay or any satisfactory explanation for the prolonged inaction, is hopelessly barred by limitation under Section 34(3) of the A&C Act.

46. Consequently, the present Objection Petition is liable to be dismissed as being barred by limitation alone.

DECISION:

I. O.M.P. 3/2024

47. In view of the foregoing discussion and having held that the present Objection Petition is barred by limitation, this Court does not consider it either necessary or appropriate to examine the merits of the various grounds urged by the Petitioner for setting aside the Impugned Award under Section 34 of the A&C Act.

48. Consequently, the Objection Petition, along with all pending application(s), if any, stands dismissed as being barred by limitation.

49. No Order as to costs.

II. EX.P. 82/2023

50. In view of the judgment rendered in the connected Objection Petition dismissing the challenge to the Interim Award, this Court finds no legal impediment to proceeding further with the present Execution Petition.

51. Consequently, the Judgment Debtor is directed to transfer the property bearing No. A-175, Sushant Lok, Phase-I, Gurugram, being the subject property, in favour of the Decree Holders in terms of Direction No. 2 of the Interim Award and in accordance with the procedure and mechanism stipulated in Directions 2(A) to 2(F) thereof, within a period of six weeks from today.

52. List the matter before the Roster Bench on 20.08.2026 for necessary compliance.

HARISH VAIDYANATHAN SHANKAR, J.

JULY 06, 2026/va