

M/S Durga Agro Seeds Farm vs M/S National Seeds Corporation Ltd on 6 March, 2023

IN THE COURT OF SH. AJAY KUMAR JAIN:
DISTRICT JUDGE COMMERCIAL COURT 03 – SOUTH EAST
DISTRICT SAKET COURTS, NEW DELHI.

IN THE MATTER OF:
OMP (COMM) No. 101/19

M/S DURGA AGRO SEEDS FARM
Through Sh. Rahul Singh,
S/o Satya Ketu Singh.
Proprietor of Durga Agro Seeds Farm
At : Faizabad Road, Daliganj,
Lucknow-20, Uttar Pradesh

....Petitioner

Versus

M/S NATIONAL SEEDS CORPORATION LTD.
Through its Director/Authorized Signatory,
Beej Bhavan, Pussa Complex,
New Delhi- 110012

....Res

Date of Institution	: 20.09.2019
Date of Arguments	: 28.02.2023
Date of Judgment	: 06.03.2023

JUDGMENT

1. Vide this judgment, I shall dispose of the application filed under Section 34 of the Arbitration and Conciliation Act for modifying the impugned arbitral award dated 13.06.2019 passed by the Ld. Arbitrator.

2. The brief facts as per petition that the respondent corporation had authorized the petitioner to sell the seeds to the farmer in the different M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 notified districts of state of Uttar Pradesh vide distribution agreement dated 17.02.2011. The petitioner also agreed with respondent to undertake to sell the certified seeds of approved varieties with subsidies at the retail price fixed by the Corporation by reducing the admissible amount of subsidy and thereafter claim the eligible trade discount as fixed from time to time. In this regard, the petitioner has to maintain separate register for beneficiary farmers and sell the seeds to them after reducing the amount of subsidy from retail price on proper cash memos. The soon after, the sale is over by the petitioner, the petitioner has to collect all the records, cash memos, registers, subsidized sale details on the approved format and submit the same to the office of Department of Agriculture. The dealer agreement has been extended time to time and the petitioner had been working as a distributor as dealer to the Corporation for the last 16 years.

3. That in terms of the agreement and its execution by the petitioner to the full extent satisfactorily with respondent, the petitioner got entitlement of outstanding commission of Rs. 35,73,855.01/- (Rupees Thirty Five Lakhs Seventy Three Thousands Eight Hundred Fifty Five and One Paise Only) as on July, 2017 against the seeds distributed during the year 2011-2015. The petitioner repeatedly made genuine demands and requested for release of commission but respondent has failed to make available of the agreed commission amount till date even though the respondent admitted the said outstanding amount. The petitioner has made various representations for outstanding payments M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 and submitted all the relevant documents to the respondent. The respondent have addressed to the petitioner that they have duly received and acknowledged the representation made by petitioner in respect of demand made by the petitioner of pending commission amount Rs. 35,73,855.01/- (Rupees Thirty Five Lakhs Seventy Three Thousands Eight Hundred Fifty Five and One Paise Only). The respondent in his letter dated 21.05.2016 stated that the said amount pending to receive the subsidy from the Government and the petitioner was advised to approach the District Agriculture office to request to release the pending commission.

4. The respondent has not made the payment, therefore, petitioner vide legal notice dated 26.08.2017 raised demand of outstanding amount of Rs. 35,73,855.01/-. Thereafter, the petitioner vide notice dated 10.10.2017, called upon the respondent to appoint the Sole Arbitrator as per the terms of the distributorship agreement for adjudication of the dispute between the parties. Pursuant to which, the respondent appointed the Sole Arbitrator. After the proceedings, Ld. Arbitrator vide its final order dated 13.06.2019 pronounced the award and allowed the claim of the petitioner in part, however, erred in calculating the final amount without taking into consideration the total amount claimed i.e Rs. 35,73,855.01/- which was not disputed but only allowed a part claim and awarded Rs. 10,43,595.01/- (Rupees Ten Lakhs Forty Three Thousand Five Hundred Ninety Five and One Paise Only).

M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023

5. In written submission, respondent denied the claim amount of Rs. 35,73,855.01/- and submitted that Ld. Sole Arbitrator has correctly observed that the petitioner failed to make its case regarding amount of Rs. 25,30,262/- (Rupees Twenty Five Lakh thirty Thousand Two Hundred Sixty Two Only). Respondent also submitted that the claim of the petitioner for the amount due before 10.10.2014 was the barred by the limitation. Respondent has continuously reiterated vide its letter dated 21.05.2016 and 29.06.2017 that the petitioner will be entitled to receive subsidy only upon receipt of the same from concerned State Government.

6. Ld. counsel for the petitioner submits that the petitioner has demanded a total sum of Rs. 35,73,855.01/-, however, Ld. Arbitrator wrongly granted of Rs. 10,43,595.01/- only particularly when respondent has not denied the total amount. Ld. Counsel submits that the petitioner sent the legal notice, however, respondent not denied the total amount of Rs. 35,73,855.01/- but only raised the defense that the payment will be made when the subsidy will be released by the State Government. Ld. Arbitrator only relying upon the letter of acknowledgment dated 29.06.2017, and allowed the claim in part in granting Rs. 10,43,595.01/- without noticing the statement of account

maintained for the year 2013-2014. The respondent witnesses not categorically denied the ledger amount of Rs. 25,30,260/- however, Ld. Arbitrator wrongly observed the said facts. Therefore, the impugned M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 award is liable to be modified and the petitioner be granted total Rs. 35,73,855.01/- along with interest.

7. Ld. counsel for the respondent on the other hand submits that this court has no power to modify the award. (relied on Angle Broking Ltd Vs. Sharda Kapur, FAO No. 435/2016, 2017 SCC OnLine Del 8211, dated 09.05.2017). Ld. Counsel for the respondent further submits that the petitioner has not filed the any invoices regarding the payment for Rs. 25,30,260/- therefore, the Ld. Arbitrator has rightly denied the said claim. Ld. Counsel submits that even otherwise this court has no power to re-appreciate the evidence. Ld. Counsel submits that award of the Tribunal can be set aside only on the grounds specified in Section 34 of the Act and not on any other ground. The Court cannot act as an Appellate Court to examine the legality of award nor it can examine the merits of claim by entering in factual arena like an Appellate Court. Reliance is placed upon the following:

i. P. R. Shah, Shares and Stock Brokers Private Limited Vs. B.H.H. Securities Private Limited, (2012) 1 SCC 594;

ii. Associate Builders Vs. Delhi Development Authority, AIR 2015 SC 620; iii. Venture Global Engineering LLC and Ors Vs. Tech Mahindra Ltd. and Ors., (2017) 13 SCALE 91 (SC).

It is, further submitted that it is a settled law that even otherwise the Award is not open to challenge on the ground that the Arbitral Tribunal has reached a wrong conclusion. The Court in the case of Ssangyong Engineering & Construction Vs. National Highways Authority of India, 240 (2017) DLT 711 observed that the Courts could M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 not substitute its view over that of the Arbitrators and that it is not permissible for a Court to examine the correctness of the findings of the Arbitral Tribunal, as if it were sitting in appeal over the findings. Each Arbitrator is legitimately entitled to take the view which he holds correct. Rather, in the present case petitioner has utterly failed to demonstrate even a single wrong conclusion by the Ld. Sole Arbitrator.

8. Argument heard. Record perused.

9. The relevant portion of impugned arbitral award reproduced as under :

IV THE ISSUE

9. The issues which arise for consideration in the present case are as follows:

i. Whether the Claimant is entitled to the claimed amount? ii. Whether the claims of the Claimant are barred by law of limitation?

iii. Whether the distribution commission/benefits/subsidies as provided for in the contract is payable to the Claimant only on receipt of the subsidies by the Respondent from the concerned State Government?

iv. Whether Respondent is entitled to the counter claim?

V ANALYSIS
10. ISSUE NO. I

10.1 At the outset, it is pertinent to note that the Claimant in the Statement of Claim has claimed the amount of Rs. 35,73,855.01/-

(Rupees Thirty Five Lakhs Seventy Three Thousand Eight Hundred Fifty Five and One Paisa only) as on July, 2017 against the seed distributed by the Claimant during the year 2011-2015. However, the Respondent has disputed the said amount and stated that as per its records the amount which is due to be payable to the Claimant is Rs. 10,43,595/- (Rupees Ten Lakhs Forty Three Thousand Five Hundred Ninety Five only), that too only on receipt of subsidy amount by Respondent from the concerned State Government. Thus, the first issue which needs to be determined is as to the actual amount payable to the Claimant by Respondent under the subject Agreement. 10.2 The Claimant, in support of its claim, has relied on (i) letter dated 21.05.2016 (Exht. CW1/126 Pg. 181 of SOC) issued by M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 Respondent in response to the representations submitted by the Claimant for release of outstanding amount; (ii) reply dated 04.10.2017 (Exht. CW1/131 Pg. 194 to 197 of SOC) of Respondent to the legal notice sent by the Claimant; (iii) ledger accounts of Claimant for the financial year 1st April, 2014 to 31st March, 2018 (Pg. 34 to 51 of SOC); (iv) ledger accounts of Respondent for the financial year 1st April, 2014 to 31st March, 2016 (Pg. 59 to 60 of SoC); (v) Subsidiary Ledger purportedly issued by Respondent for the financial year 1st April, 2013 to 31st March, 2014 (Pg. 54 to 58 of SoC); & (v) invoices issued by Respondent for the period from 13.04.2013 to 10.02.2015 (Exhbt. CW1/9 to Exht. CW1/125 Pg. 61 to 180 of SOC respectively). Claimant has also relied on the representations dated 08.04.2016, 04.05.2016, 19.08.2016, 28.01.2017, 24.03.2017 & 18.04.2017 (Exht. CW-1/2 to CW-1/7 Pg. 24 to 33 of SoC respectively) submitted by it to the Respondent regarding payment of said outstanding sum of Rs. 35,73,855.01/- (Rupees) Thirty Five Lakh Seventy Three Thousand Eight Hundred Fifty Five and One Paisa only) 10.2 The Respondent, on the other hand, has relied upon letter dated 29.06.2017 addressed to the Claimant (Exht. RW/4 Pg. 27 of SoD) wherein the Respondent admitted that a sum of Rs. 10,43,595/- (Rupees Ten Lakhs Forty Three Thousand Five Hundred Ninety Five only) is due for payment to the Claimant towards dealer's commission. It was however clarified in the said letter that the payment is to be made to the dealer subject to receipt of payment from Agriculture Department, Uttar Pradesh and this is in accordance with the Clause 8 of the Agreement executed by the dealer/Claimant with NSC/Respondent.

10.3 A perusal of the representations (Exht. CW-1/2 to CW-1/7) submitted by the Claimant to Respondent shows that the Claimant in its said representations had claimed the amount of Rs. 35,73,855.01 /- and had also given year-wise break-up of the said claimed amount. It is pertinent to mention that as per the said representations, for the year 2013-2014 a sum of Rs. 24,51,200/- was claimed, stating that said amount is being claimed against the subsidy amount (i.e. of Rs.

25,30,260/-) received by Respondent on 13.11.2013 for the year 2011- 2012. The said amount of Rs. 25,30,260/- has been shown as "Recovery Subsidy 2011-12" in the ledger account filed by Claimant for the year 2013-2014 at Pg. 36 of SoC. The Claimant has also filed "Subsidiary Ledger" purportedly issued by Respondent (Pg. 54-58 of SoC) which also reflects the entry of said amount of Rs. 25,30,260/- as "Recovery of State Subsidy against Bill No. 21021 Dt. 13.11.2013". 10.4 The Respondent replied to the above representations (dated 08.04.2016 and 04.05.2016) vide letter dated 21.05.2016 (Exht. CW1/126), inter alia, stating that the matter had been forwarded to the concerned authority and that payment of Rs. 8,63,512.00/- (Rupees M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 Eight Lakh Sixty Three Thousand Five hundred Twelve only) is yet to be received from them and as soon as the said pending payment is received, the amount towards dealer's commission and credit balance could be paid to Claimant. This letter of Respondent, however, does not dispute or deny in any manner the amount claimed by Claimant in its representations.

10.5 Further, the Claimant in its legal notice dated 26.08.2017 (Exht. CW-1/128 Pg. 186-191 of SoC) had specifically stated that a sum of Rs. 35,73,855.01 /- is due and payable by Respondent as on July 2017 against the seeds distributed by Claimant during the year 2011-2015 and called upon the Respondent to make the payment of said amount to Claimant. The Respondent in its reply dated 04.10.2017 (Exht. CW- 1/131 Pg. 194-197) to the said legal notice again did not dispute in any manner the amount claimed by the Claimant. It was however, inter-alia, stated that "...as on date more than Rs. 7.83 crore subsidy against sale of seed by your client are pending in different Districts of UP and as per terms and conditions, the same will be released only after receipt of subsidy from Deptt. Of Agriculture.....". 10.6 A perusal of the Statement of Defence filed by the Respondent shows that the Respondent has specifically denied the amount of Rs. 35,73,855.01/- as claimed by the Claimant in the Statement of Claim. According to the Respondent, the only outstanding payable to Claimant towards dealer's commission is a sum of Rs. 10,43,595.01 (Rupees Ten Lakh Forty Three Thousand Five Hundred Ninety Five and one paise only) which, according to the Respondent, can be paid to the Claimant only on receipt of subsidy amount from the concerned State Government. The Ld. Counsel for Respondent, while reiterating the above stand, submits that the Claimant has not filed any documentary evidence to show that the said amount of Rs. 35,73,855.01/- is payable to it by Respondent. Rather, the letter dated 29.06.2017 of Respondent (Exht. RW/4 Pg. 27 of SoD) sent to the Claimant clearly shows that only an amount of Rs. 10,43,595/- is outstanding to be paid to Claimant by Respondent that too only on receipt of subsidy amount from the concerned State Government. The Ld. Counsel for Respondent further submits that the letter dated 21.05.2016 (Exht. CW1/126) as relied upon by the Claimant cannot be said to be an acknowledgment on the part of Respondent of alleged liability of Rs. 35,73,855.01 /- towards Claimant. 10.7 The Ld. Counsel for Claimant however submits that the Respondent in its said letter dated 21.05.2016 had clearly acknowledged the amount of Rs. 35,73,855.01/- as claimed by the Claimant in its representations and did not dispute the same in any manner. Further, the reply dated 04.10.2017 of Respondent to the legal notice served upon it by the Claimant does not dispute the said outstanding amount. It is only at the stage of filing of SOD, the M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 Respondent as an afterthought has sought to deny its liability towards Claimant which is not tenable. It is further contended by the Ld. Counsel for the Claimant that the documents filed by it including the ledger accounts, invoices and correspondence, clearly shows that the

Respondent is liable to pay the above said amount of Rs. 35,73,855.01 /- to the Claimant.

10.8 A perusal of the documents relied upon by the Claimant shows that although the claim of the Claimant for Rs. 35,73,855.01 /- pertains to the years 2011 to 2015, however the ledger accounts filed by Claimant are for the period 1st April, 2013 to March, 2018. Similarly, the supporting invoices filed by Claimant pertain only to the period from 13.04.2013 to 10.02.2015. Claimant has not filed any ledger account or invoices prior to March, 2013. The total amount of Rs. 35,73,855.01/- as claimed by the Claimant includes a sum of Rs. 25,30,260/-, which amount, according to the Claimant, is "recovery of subsidy" for the year 2011-2012 and has been duly reflected in ledger accounts of Claimant for the financial year 1st April, 2013 to 31st March, 2014 (Pg. 36 of SoC). The entry of said amount of Rs. 25,30,260/- is also reflected as "Recovery of State Subsidy against Bill No. 21021 dt. 13.11.2013" in the document filed by Claimant titled as "Subsidiary Ledger" (Pg. 57), purportedly issued by the Respondent. Ld. Counsel for Claimant, during the cross examination of the Respondent's witness RW-1 (Mr. Aseem Gangwar) held on 24.01.2019, confronted RW-1 with the above said document i.e. "Subsidiary Ledger" (Pg. 57), which was denied by RW-1. The questions put to said witness and answer give by it are reproduced below:

"Ques 1: Whether the ledger appearing at Pg. 57 was prepared by NSC?

Ans 1 : This document was not issued by NSC.

Ques 2: I put it you, that NSC received Rs. 25 Lakh from the State Government against General Voucher bearing no.100240/201311/0002 with respect to the transactions relating to the Claimant.

Ans 2: I can answer this question only after going through the account."

10.9 The Claimant has also admittedly not filed any invoice in respect of said amount of Rs. 25,30,260/- pertaining to the years 2011- 2012. Further, the ledger accounts of Respondent for the years 1st April, 2014 to 31st March, 2016 as filed by the Claimant do not contain any entry of said amount either. The purported "Subsidiary Ledger" reflecting the entry of said amount of Rs. 25,30,260/-, as relied by Claimant has also been denied by Respondent's witness. Further, the ledger accounts of Respondent as filed by Claimant shows that the only outstanding amount payable to Claimant is Rs.

M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 10,43,595.01/- only, which amount is also reflecting in the ledger account of Claimant for the financial year 1st April, 2014 to 31st March, 2015 and also in the ledger account for the financial year 1 April, 2015 to 31st March, 2016. Thus, in so far as this amount of Rs. 25,30,260/- is concerned, the Claimant has not been able to prove that it is entitled to receive the said amount from the Respondent. 10.10 As far as the remaining claimed amount of Rs. 10,43,595.01/- is concerned, there is no dispute that the said amount is payable to the Claimant by Respondent, as is evident from the letter dated 29.06.2017 of the Respondent addressed to the Claimant. The only objection qua said amount as raised by the Respondent is that the same can be paid to the Claimant only on receipt of subsidy

amount from concerned State Government.

10.11 In view of the above, this Arbitral Tribunal is of the opinion that the Claimant is entitled to a sum of Rs. 10,43,595.01/- (Rupees Ten Lakhs Forty Three Thousand Five Hundred Ninety Five and One Paisa Only) out of the total claimed amount of Rs. 35,73,855.01/- (Rupees Thirty Five Lakhs Seventy three Thousand Eight Hundred Fifty Five and One Paisa Only). This issue is decided accordingly.

11.1 This Arbitral Tribunal has already determined that the Claimant is entitled to sum of Rs. 10,43,595.01/- (Rupees Ten Lakhs Forty Three Thousand Five Hundred Ninety Five and One Paisa Only) out of the total claimed amount of Rs. 35,73,855.01/- (Rupees Thirty Five Lakhs Seventy three Thousand Eight Hundred Fifty Five and One Paisa Only). Thus, the issue as to limitation as raised by Respondent has to be confined to and decided only with respect to the said amount of Rs. 10,43,595.01/-. According to the Respondent, the claims of the Claimant are barred by time as the same have been filed beyond the period of 3 years as prescribed under Article 18 and 113 of Schedule to the Limitation Act, 1963.

11.2 A perusal of the ledger accounts of both, the Claimant and the Respondent as filed by the Claimant for the financial year 1st April, 2014 to 31st March, 2015, show that the total outstanding balance payable to Claimant by Respondent is Rs. 10,43,595.01/- as on 31st March, 2015. The said outstanding was carried forward and shown as balance outstanding payable in the following financial year 1st April 2015 to 31st March 2016. The Claimant invoked the arbitration clause vide its notice dated 10.10.2017 under Section 21 of the Arbitration and Conciliation Act, 1996. This brings the claims of Claimant for Rs. 10,43,595.01/- within the prescribed period of limitation. Even otherwise, the letter dated 29.06.2017 of Respondent wherein the Respondent has clearly acknowledged its liability towards Claimant for a sum of Rs. 10,43,595.01/-, amounts to acknowledgement within M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 the meaning of Section 18 of the Limitation Act, 1963 and would extend the period of limitation.

11.3 The aforesaid letter dated 29.06.2017 of Respondent addressed to Claimant, as contended by counsel for Claimant, would also be treated as 'promise to pay' within the meaning of Section 25(3) of Indian Contract Act, 1872. Section 25 of the Indian Contract Act, 1872 reads as under:

"25. Section 25 in The Indian Contract Act, 1872:

Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law. -An Agreement made without consideration is void, unless-

(1) it is expressed in writing and registered under the law for the time being in force for the registration of 1[documents], and is made on account of natural love and affection between parties standing in a near relation to each other; or unless (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done

something for the promisor, or something which the promisor was legally compellable to do; or unless.

(3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an Agreement is a contract."

11.4 The Hon'ble Delhi High Court in the case of State Bank of India vs. Kanahiya Lal & Anr. reported as 2016 SCC OnLine Del 2639, while explaining the distinction between the provisions of Section 18 of Limitation Act, 1963 and Section 25 of Indian Contract Act, 1872. The relevant para of said decision are reproduced below:

"24. No doubt, there is a distinction between an acknowledgement under Section 18 of the Limitation Act and a promise under Section 25 (3) of the Indian Contract Act inasmuch as though both have the effect of giving a fresh lease of life to the creditor to sue the debtor, but, for an acknowledgement under Section 18 of the Limitation Act to be applicable, the same must be made on or before the date of expiry of the period M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 of limitation whereas such a condition is non-existent so far as the promise under Section 25 (3) of the Indian Contract Act is concerned. A promise under Clause 3 of Section 25 of the Indian Contract Act, even made after the expiry of the period of limitation would be applicable and would cause revival of the claim, notwithstanding the limitation. Under Section 25(3) of the Indian Contract Act, a promise in writing to pay in whole or in part, a time barred debt is not void."

11.5 It is also noteworthy that Section 29 of the Limitation Act, 1963 contains a saving clause in respect of Section 25 of the Indian Contract Act, 1872 Section 29(1) of Limitation Act provides as follows:

"29. Savings- (1) Nothing in this Act shall affect section 25 of the Indian contract Act, 1872 (9 of 1872)"

11.6 Thus, in view of the above, this Arbitral Tribunal holds that the claim of Claimant for the above said admitted sum of Rs. 10,43,595.01/- (Rupees Ten Lakhs Forty Three Thousand Five Hundred Ninety Five and One Paisa Only) is within the period of limitation.

12.1 The Id. Counsel for Respondent submits that as per Clause 8 of the Agreement between the parties, the Respondent is not required to pay any amounts to the Claimant unless it is in receipt of the subsidy amounts from the concerned State Government. It is submitted by the Id. counsel for the Respondent that the Respondent has been writing to the State Government for the release of subsidies for the transaction in question however the said subsidies have not yet been released by the State Government. Therefore, the Respondent is not able to make the payment of above said admitted trade discounts/commission to the Claimant. In SOD, Respondent refers to purported

Clause 8 as follows:

"The second party full agrees and undertakes to sell the seeds only in the notified Districts under NFSM/ISOPOM/MMA as per Guidelines of the appropriate authority. If any sales are made by the second party against the provisions of the said schemes and the subsidy is not released to the first party the losses incurred on this account will be M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 compensated by the second party to the Corporation in addition to refund of subsidy."

12.2 The Ld. counsel for Claimant submits that the above contention of the Respondent is contrary to the terms of the Agreement and the replies/ letters issued by Respondent to the Claimant. The Ld. Counsel also points out that there is no Clause 8 in the subject Agreement dated 17.02.2011 as relied by Respondent.

12.3 A perusal of the Agreement dated 17.02.2011 (Exht. CW-1/1) between the parties reveals that there is no such Clause 8 as relied upon and reproduced by Respondent in its Statement of Defence. Clause 8 of this Agreement deals with "Procedure for indenting of Seeds". The Respondent, however, does not deny or dispute the above said Agreement dated 17.02.2011 as filed and relied upon by the Claimant, which fact is also evident from the reading of para 12 of the Statement of Defence. In para 12 of Statement of Defence, the Respondent has replied to the averments made by the Claimant with regard to said Agreement dated 17.02.2011 in para 6(i) of the statement of claim.

12.3 Be that as it may, the fact that Claimant has performed its part of the obligation under the contract and a sum of Rs. 10,43,595.01/- is payable to Claimant by Respondent for the same is not disputed. The ledger accounts and invoices filed by Claimant showing the said outstanding amount as amount payable to Claimant by Respondent is also not in dispute. The only plea which has been taken by Respondent for not releasing the said amount of Rs. 10,43,595.01/- to the Claimant is that unless and until the Respondent receive the subsidy amount from the concerned State Government in respect of transaction in question, the Respondent cannot release any amount to Claimant. 12.4 A bare reading of the Agreement dated 17.02.2011 (Exht. CW- 1/1) shows that there is no clause which prohibits the release of subsidy/trade. discount/dealer commission to the Claimant upon discharge of its performance under the contract. It is neither the case of Respondent nor is there any document to show that Claimant has not discharged its contractual obligation under the subject Agreement dated 17.02.2011. Even the reliance placed by Respondent to Clause 8 of another Agreement of 2010 as reproduced in Statement of Defence, though the same is not related to present case as noted hereinabove, the same does not support the case of Respondent. Even as per said Clause 8, the release of subsidy amount by concerned State Government/Authorities to Respondent is not a condition precedent for payment of trade discount/dealer commission to the distributor/Claimant by Respondent as held by this Arbitral Tribunal in another arbitration case titled as Satya Ketu Singh Vs. National Seeds Corporation Limited.

M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 12.5 Thus, as observed above, admittedly there is no such clause in the Agreement dated 17.02.2011 which

stipulates that payment of trade discount shall be made by Respondent to Claimant only on receipt of subsidy from the concerned State Government. This tribunal is of the view that any such precondition cannot be implied in absence of any express provision to this effect. Nor can this tribunal add any words to the contract. The contract has to be read as it is. The Claimant cannot be deprived of its rightful claims, that too in perpetuity, when it is otherwise entitled to the same under the contract.

12.6 It is pertinent to note that Section 46 of the Indian Contract Act, 1872 provides that if no time for performance of a contract is specified, it has to be performed within a "reasonable time". The Hon'ble Delhi High Court in the case of North Delhi Municipal Corporation & Anr. Vs. Amit Tanwar reported as 2018 SCC OnLine Del 8035 while dealing with provisions of Section 46, inter alia, held as under:

"37. It is slightly unfathomable as to how the Corporation can postpone the payment to the Contractor, indefinitely. The issuance of the tender and the work order in favour of the Contractor has to be on the pre-condition that funds are available with the Corporation. To ask the Contractor to wait endlessly for his payment is wholly arbitrary. The Corporation which hands over the works contract to the Contractor cannot say "Do the work now will pay when I have the money". Even if such a clause has been signed and accepted by the Contractor, it does not make the clause valid inasmuch as it would render a fundamental condition of contract being hit by provisions of the Indian Contract Act, 1872 (hereinafter, Contract Act"). Every contract, to be valid, has to have consideration and the indefinite postponement of consideration would be wholly unconscionable."

38. to 40, XXXX

41. Corporations which form a part of the State as envisaged under Article 12 of the Constitution have to conduct their activities in accordance with law and public policy. Instrumentalities of States ought to be saddled with a higher responsibility to behave reasonably and not arbitrarily. It can be no justification for a Corporation to claim that it would float the tender, it would issue the works contract, it would get the work executed, its Engineer would M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 supervise the work, the Engineers would pass the bills, but yet no payment would be made. Such a luxury ought not to be available to anyone, even a private individual/corporation who enters into a contract, let alone a State Corporation.

42. to 46. XXXX

47. In the present case, the combined effect of the Clauses and the Circular and amendments, set out above, is that if the Corporation does not procure funds, it is not liable to even pay the Contractor any interest and the Contractor has no remedy. This by itself would mean that such a Clause could be read as leading to a contract without consideration and hence unlawful under Section 23 of the Contract Act. The Corporation being an instrumentality of State, such a contract would also be opposed to public policy under Section 23 of the Contract Act. Section 46 of the Contract Act is also

clear that if no time for performance of a contract is specified, it has to be performed within a reasonable time.

Reading these provisions together, it is clear that an open ended Clause which in effect says that the payment shall be made at an undetermined time in the future, subject to availability of funds, in a particular head of accounts is wholly unreasonable and such a term would also be unfair.

48. It is equally strange that the Corporation seeks to justify the non-payment on the ground of non-availability of funds for medicines or hospital items or pensions or salaries of the Corporation. Running the Corporation is not the business of the Contractor. It is for the Corporation to manage its affairs as per the funds available with it and it cannot be a defense that the Contractor should bear the brunt of non-payment for years, of works executed by him."

12.7 In view of the above, the contention of Respondent that it is not required to make any payment to Claimant until the subsidy amount is received by it from concerned State Government, cannot be sustained and is rejected being contrary to the terms of contract between the parties and settled law. In any case, the Claimant who is a distributor and has discharged its part of obligation under the Agreement, cannot be expected to wait for its lawful dues/outstanding payment endlessly without any provisions in the contract to this effect.

M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 Respondent has not placed on record any documentary evidence to show that Claimant has not discharged its part of obligation under the contract.

12.8 In view of the above, the Respondent is liable to release the admitted outstanding sum of Rs. 10,43,595.01/- (Rupees Ten Lakhs Forty Three Thousand Five Hundred Ninety Five and One Paisa Only) to the Claimant.

Xxx xxx xxx xxx xxx

VI CONCLUSION

14 Thus, in conclusion, this Arbitral Tribunal holds and

determines that Claimant is entitled to the sum of Rs. 10,43,595.01/- (Rupees Ten Lakhs Forty Three Thousand Five Hundred Ninety Five and One Paisa Only) and directs the Respondent to make the payment of said sum to the Claimant.

INTEREST

15. 15.1 The Claimant in its Statement of Claim has prayed for interest on the claim amount @ 24% p.a. It has been stated by Claimant in para 6(xv) of its Statement of Claim that it has borrowed loan for Rs. 2,54,40,557/- (Rupees Two Crore Fifty Four Lakhs Forty Thousand Five hundred Fifty Seven Only) from different financial institution for the purpose of his business, on which the Claimant has paid interest on the principal amount and huge debt remains. Claimant has filed document relating to loan availed by it as Exhbt. CW1/135.

15.2 The Agreement dated 17.02.2011 between the parties does not contain any provision for grant of interest. At the same time, there is also no provision which prohibits grant of interest. It is settled law that arbitral tribunals can award interest for pre-lite, pendent-lite and post-lite periods. Section 3 of Interest Act, 1978 which contains provisions for payment of interest, takes care of such a situation. The Constitution Bench of the Hon'ble Supreme Court in Secretary, Irrigation Department, Government of Orissa and Others vs. G.C. Roy, reported as (1992) 1SCC 508 held as under:

"A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 there is no reason or principle to hold otherwise in the case of arbitrator..."

In case of Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Others vs. N.C. Budharaj (deceased) by LRS and Others, (2001) 2 SCC721, another Constitution Bench of the Hon'ble Supreme Court held as under:

"26. For all the reasons stated above, we answer the reference by holding that the arbitrator appointed with or without the intervention of the court, has jurisdiction to award interest, on the sums found due and payable, for the pre-reference period, in the absence of any specific stipulation or prohibition in the contract to claim or grant any such interest....."

15.3 It is pertinent to note that the Claimant vide its legal notice dated 26.08.2017 served upon the Respondent, while demanding the outstanding amount, had for the first time stated that Respondent is liable to pay interest on the said outstanding amount @ 24%. 15.4 Accordingly, in the opinion of this Arbitral Tribunal, it would be appropriate that Claimant is granted a reasonable interest on the aforesaid sum of Rs. Rs. 10,43,595.01/- (Rupees Ten Lakh Forty Three Thousand Five hundred Ninety Five and one paisa only) at the rate of 12% per annum from 26.08.2017.

Accordingly, This Arbitral Tribunal holds and determines that the Claimant is entitled to interest on the aforesaid sum of Rs. 10,43,595.01/- (Rupees Ten Lakh Forty Three Thousand Five hundred Ninety Five and one paisa only) at the rate of 12% per annum with effect from 26.08.2017 (i.e. the date of notice claiming interest on outstanding sum). The interest amount from 26.08.2017 till the date of Award comes to Rs. 2,25,073.42/- (Rupees Two Lakh Twenty Five Thousand Seventy Three and Forty Two paise only). Hence as on the date of the award total amount payable by the Respondent to the Claimant comes out to be Rs. 12,68,669/- (Rupees Twelve Lakh Sixty Eight Thousand Six Hundred and Sixty Nine only). This amount of Rs. 12,68,669/- (Rupees Twelve Lakh Sixty Eight Thousand Six Hundred and Sixty Nine only) will carry further interest @12% from the date of the award till the date of actual payment/realisation.

10. Ld. counsel for the petitioner submits that the respondent has not disputed the liability of Rs. 35,73,855.01/- however, at the stage of filing M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 of statement of defense sought to deny its liability which is not permissible.

11. The Ld. Arbitrator in the impugned award observed that the documents relied upon by the claimant pertains to year 2011-2015, however, the ledger account filed by the claimant for the period 1 st April 2013 to March, 2018 and invoices pertains only to the period 13.04.2013 to 10.02.2015. The claimant not filed any ledger account for invoices prior to March 2013. The claimant admittedly not filed any invoices in respect to said amount of Rs. 25,30,260/-. The purported subsidiary ledger reflecting the said entry amount of Rs. 25,30,260/- has been denied by the respondent, therefore, the said amount was not granted to claimant. Thus, there is no inherent infirmity committed by the Ld. Arbitrator in rejecting the claim of Rs. 25,30,260/- as it is not corroborated through any invoices nor admitted by the respondent witness (RW1).

12. Apex court in case title Delhi Airport Metro Express Pvt. Ltd. vs. Delhi Metro Rail Corporation Ltd. Civil Appeal No. 5627/21 dated 09.09.2021 MANU/SC/0623/2021 have delineated the contours of the courts power to review arbitral awards, the relevant paras are reproduced as under:-

"20. The 1996 Act was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and also to define the law relating to conciliation and for matters connected therewith, by taking into account the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 Arbitration and the UNCITRAL Conciliation Rules. One of the principal objectives of the 1996 Act is to minimize the supervisory role of courts in the arbitral process. With respect to Part I of the 1996 Act, Section 5 imposes a bar on intervention by a judicial authority except where provided for, notwithstanding anything contained in any other law for the time being in force. An application for setting aside an arbitral award can only be made in accordance with provisions of Section 34 of the 1996 Act. Relevant provisions of Section 34 (as they were prior to the Arbitration and Conciliation (Amendment) Act, 2015) read as under:-

"34. Application for setting aside arbitral award. (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if

(a) the party making the application furnishes proof that

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

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

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

(b) the Court finds that

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

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

M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 Explanation. Without prejudice to the generality of sub-clause

(ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81. ..."

21. An amendment was made to Section 34 of the 1996 Act by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter, 'the 2015 Amendment Act '). A perusal of the statement of objects and reasons of the 2015 Amendment Act would disclose that the amendment to the 1996 Act became necessary in view of the interpretation of the provisions of the 1996 Act by courts in certain cases which had resulted in delay of disposal of arbitration proceedings and increase in interference by courts in arbitration matters, which had the tendency to defeat the object of the 1996 Act. Initially, the matter was referred to the Law Commission of India to review the shortcomings in the 1996 Act in detail. The Law Commission of India submitted its 176th Report, recommending various amendments to the 1996 Act. However, the Justice Saraf Committee on Arbitration constituted by

the Government, was of the view that the proposed amendments gave room for substantial intervention by the court and were also contentious. Thereafter, on reference, the Law Commission undertook a comprehensive study of the amendments proposed by the Government, keeping in mind the views of the Justice Saraf Committee and other stakeholders. The 246th Report of the Law Commission was submitted on 05.08.2014. Acting on the recommendations made by the Law Commission in its 246th Report, amendments by way of the 2015 Amendment Act were made to several provisions of the 1996 Act, including Section 34. The amended Section 34 reads as under: -

"34. Application for setting aside arbitral award.

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if--

(a) the party making the application furnishes proof that--

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

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

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

(b) the Court finds that

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

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

Explanation 1. --For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

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

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

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

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

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

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

..."

22. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited to the grounds in Section 34. While deciding applications filed M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 under Section 34 of the Act, courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or re-appreciation of matters of fact as well as law. (See: Uttarakhand Purv Sainik Kalyan Nigam Limited. v. Northern Coal Field Limited.², Bhaven Construction Through Authorised Signatory Premjibhai K. Shah v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. and Another³ and Rashtriya Ispat Nigam Limited v. Dewan Chand Ram Saran⁴).

. For a better understanding of the role ascribed to courts in reviewing arbitral awards while considering applications filed under Section 34 of the 1996 Act, it would be relevant to refer to a judgment of this Court in Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)⁵ wherein R.F. Nariman, J. has in clear terms delineated the limited area for judicial interference, taking into account the amendments brought about by the 2015 Amendment Act. The relevant passages of the judgment in Ssangyong (supra) are noted as under: -

"34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] ,as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 :

(2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2) (a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 is contained in para 30 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204].

35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204], or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 :

(2015) 2 SCC (Civ) 204] . Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] ,as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with.

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

not linked to public policy or public interest, cannot be brought in M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 by the backdoor when it comes to setting aside an award on the ground of patent illegality.

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

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

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

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 evidence led by the parties, and therefore, would also have to be characterised as perverse. "

24. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by courts while examining the validity of the arbitral awards. The limited grounds available to courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds

available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

25. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'.

26. Section 34 (2) (b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression 'public policy of India' and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice. In *Ssangyong (supra)*, this Court held that the meaning of the expression 'fundamental policy of Indian law' would be in accordance with the understanding of this Court in *Renusagar Power Co. Ltd. v. General Electric Co.*⁶ In *Renusagar (supra)*, this Court observed that violation of the Foreign Exchange Regulation Act, 1973, a statute enacted for the 'national economic interest', and disregarding the superior courts in India would be antithetical to the fundamental policy of Indian law. Contravention of a statute not linked to public policy or public interest cannot be a ground to set at naught an arbitral award as

being discordant with the fundamental policy of Indian law and neither can it be brought within the confines of 'patent illegality' as discussed above. In other words, contravention of a statute only if it is linked to public policy or public interest is cause for setting aside the award as being at odds with the fundamental policy of Indian law. If an arbitral award shocks the conscience of the court, it can be set aside as being in conflict with the most basic notions of justice. The ground of morality in this context has been interpreted by this Court to encompass awards involving elements of sexual morality, such as prostitution, or awards seeking to validate agreements which are not illegal but would not be enforced given the prevailing mores of the day.⁷⁾

13. The Ld. Arbitrator has passed the award on a detailed scrutiny of facts, appreciating the evidence and in the context of the contemporary M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 legal situation, which is not obnoxious to the settled position of law or the principles of interpretation/appreciation of evidence.

14. A judicial appreciation of the impugned award goes to show that the Ld. Sole Arbitrator has properly appreciated the facts of the case; has done a due analysis of the evidence led by the parties and has rendered his findings after due consideration, application of mind and on the touchstone of the law.

15. The Ld. Sole Arbitrator has drawn inferences and conclusions after the factual appreciation in the light of the legal principles. The views of the Ld. Sole Arbitrator can not be found fault with only for the reason that some other views can emerge by appreciating the same set of facts and evidence, until and unless it is shown that such a view is totally obnoxious and unsupported by the sound legal principles.

16. This Court cannot substitute its own views or the views of the parties with the view taken by the Ld. Arbitral Tribunal, if the view taken by the Ld. Arbitrator is not in conflict with the settled legal position. There is nothing to suggest that the findings and conclusions rendered by the Ld. Arbitrator are per-se perverse, illegal or non-sustainable.

17. The challenge to the impugned award is purely on merits which also impermissible and there is no ground to state that the award is against the public policy of Indian Law.

18. By this petition, the petitioner sought the modification of the award which is otherwise also not permissible in law. (relied on "The Project M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023 Director, National Highway no. 45E and 220, NHAI Vs. M. Hakeem & Anr, SLP (Civil) 13020 of 2020 dated 20.07.2021).

19. Accordingly, the present petition under section 34 of the Arbitration and Conciliation Act, 1996, as pressed into service by the petitioner is therefore not sustainable within the scope and ambit of the provision, therefore, liable to be dismissed and accordingly dismissed and disposed of.

File be consigned to record room after necessary compliance.

(Ajay Kumar Jain) District Judge, Comm-03 South-East, Saket Courts, Delhi M/s Durga Agro Seeds Farm Vs. National Seeds Corporation Ltd. dt. 06.03.2023