IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.24 OF 2016

J. S. Cotton Industries ... Petitioner
versus
C. A Galiakotwala and Compnay Private Limited ... Respondent

Mr.Vishal Kanade a/w Mr.J. K. Shah a/w Namrata Thakur, Advocates i/by R.J. Law.

Mr.Malhar Zatakia a/w Mr.Sheroy M. Bodhanwalla a/w Sayali Puri a/w Mr. Akash Singh a/w Mr.Shreyas Tahkur a/w Saniya Ahir, Advocates i/by Bodhanwalla & Co.

CORAM: AARTI SATHE, J.

RESERVED ON: 13th August 2026
PRONOUNCED ON: 27th August 2026

JUDGMENT:-

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") challenges the arbitral award dated 26th June 2015 (hereinafter referred to as the "impugned arbitral award") passed by the Board of Directors of the Cotton Association of India (hereinafter referred to as the Board) in an appeal filed by the Petitioner and cross-appeal filed by the Respondent (Original Claimant) under the provisions of Byelaw No. 38(E) of the Cotton Association of India (Association) Byelaws (hereinafter referred to as the "Byelaws"). By way of the impugned arbitral award, the Board has awarded an amount of Rs. 41,58,948/- to the Respondent (Original Claimant), to be paid by the Petitioner along with the

interest thereon at the rate of 15% p.a. from 2nd August 2012 till payment or realization of cost of Rs. 85,000/-, as awarded by the learned Sole Arbitrator in the award dated 2nd August 2012.

2. Briefly, the facts are as follows:

i. The Petitioner is in the business of supplying cotton and is a member of the Association. The Respondent (Original Claimant) also is a member of the Association. On 11th August 2010, the Respondent (Original Claimant) and the Petitioner entered into a purchase contract for 600 bales of cotton to be supplied by the Petitioner to the Respondent (Original Claimant) between 28th November 2010 to 5th December 2010. It is the Respondent's (Original Claimant's) contention that delivery period as per the said purchase contract was from the period 28th November 2010 to 5th December 2010.

ii. It is Respondent's (Original Claimant's) contention that as the Petitioner failed to deliver cotton as per the agreed timeline in the purchase contract, the Respondent (Original Claimant), after repeated follow-ups, sent a reminder letter dated 1st December 2010 to the Petitioner, requesting the Petitioner to deliver the pending bales of cotton to the Respondent (Original Claimant). The Respondent (Original Claimant) in the said letter also wrote to the Petitioner that the Petitioner had not given delivery of the cotton in spite of repeated reminders, and that the Petitioner had to deliver cotton to the Respondent (Original Claimant) in time as per the contracted period. On account of Petitioner's failure to deliver cotton as per the date agreed upon, the Respondent (Original Claimant) addressed another letter to the Petitioner, once again requesting the Petitioner to perform their contractual obligations, and the Petitioner was further expressly informed that should it fail to supply the aforesaid cotton, the Respondent (Original Claimant) would be constrained to invoice back the cotton to the Petitioner as per the Byelaws of the Association, as per the price prevalent on the date of invoicing back. Between the period December 2010 to May 2011, the Respondent's (Original Claimant's) representative repeatedly followed up with the Petitioner for the delivery of the cotton but, however, despite repeated follow-ups, the Petitioner failed to effect delivery of the same.

iii. On account of non-fulfilment of the Petitioner of their contractual obligations, and further on account of incessant/considerable delay on part of the Petitioner to perform their part of the contractual obligations, the Respondent (Original Claimant) addressed another letter dated 06th May 2011 to the Petitioner, once again calling upon the Petitioner to fulfil the contract by 13th May 2011. The Respondent (Original Claimant) informed the Petitioner that failure to do so would constrain the Respondent (Original Claimant) to invoice back the cotton as per the Byelaws of the Association.

iv. On 31st May 2011, as the Petitioner failed to supply the cotton to the Respondent (Original Claimant), the Respondent (Original Claimant), by referring to their earlier letters dated 1st December 2010, 6th December 2010, and 6th May 2011, informed the Petitioner that it was applying to the Association to fix the invoice back rate under Byelaw No. 34A(1)(a) of the Association.

v. On 16th August 2011, the Respondent (Original Claimant) addressed another letter to the Petitioner and informed that the Association had fixed invoice back rate as on 13th May 2011 at Rs. 44,800/- per candy. Considering the aforesaid rate fixed by the Association, the Respondent (Original Claimant) sent a debit note dated 21st July 2011 of an amount of Rs. 41,58,948/- to the Petitioner towards invoicing back of cotton as on 13th May 2011. The Respondent (Original Claimant) therefore requested the Petitioner to send them a payment of Rs. 41,58,948/- along with the interest at 15% p.a. till date by demand draft in their favour, payable at Mumbai towards settlement of the above debit note. It was further informed in the said letter that if the Petitioner failed to pay the aforesaid amount to the Respondent (Original Claimant), they would be forced to initiate arbitration proceedings against the Petitioner.

vi. On 23rd January 2012, as the Petitioner failed to pay the amount of Rs. 41,58,948/- to the Respondent (Original Claimant), as demanded under the debit note dated 21st July 2011 towards the invoicing back of cotton as on 13th May 2011, the Respondent (Original Claimant) filed a Statement of Claim before the learned Sole Arbitrator appointed by the Association.

vii. On 2nd August 2012, an award was passed by the learned Sole Arbitrator, *inter-alia* directing the Petitioner to pay a sum of Rs. 32,69,783/- with interest thereon to be calculated at the rate of 15% p. a., on the basis of the invoice back rate being of 6th December 2010.

viii. On 18th August 2012, the Petitioner filed an appeal before the Board against the award dated 2nd August 2012 as per Byelaw No. 38(E) of the Association. The Respondent (Original Claimant) also filed a cross appeal on 6th October 2012 against the award dated 2nd August 2012.

ix. On the aforesaid appeals, the impugned arbitral award dated 26th June 2015 came to be passed, which is the subject-matter of challenge in the present petition, whereby the Board modified the award dated 2nd August 2012 and allowed invoicing back of the cotton to the Respondent (Original Claimant) as on 13th May 2011, and awarded an amount of Rs. 41,58,948/- to be paid to the Respondent (Original Claimant) by the Petitioner. It is in the backdrop of the aforesaid facts that the present petition has been filed by the Petitioner under Section 34 of the Act.

3. Learned counsel Mr. Vishal Kanade along with Mr. J.K. Shah and Ms. Namrata Thakur, instructed by R.J. Law appeared on behalf of the Petitioner, and learned counsel Mr. Malhar Zatakia, along with Mr. Sheroy M. Bodhanwalla, Ms. Sayali Puri, Mr. Akash Singh, Mr. Shreyas Thakur, and Ms. Saniya Ahir, instructed by Bodhanwalla & Co. appeared on behalf of the Respondent (Original Claimant).

4. The core challenge to the impugned arbitral award, as sought to be contended by learned counsel on behalf of the Petitioner is on the following counts:

i. That the impugned arbitral award has been passed in total breach of principles of natural justice.

ii. That the invoicing back procedure as laid down in Byelaw No. 34A of the Association, on the basis of which the Respondent (Original Claimant) has raised their claim, has not been followed, and the impugned arbitral award has failed to take into consideration the aforesaid.

iii. The Respondent (Original Claimant) had not annexed any document/report along with their Statement of Claim in support of their claim of Rs. 41,58,948/- being the rate fixed by the Association. The Petitioner was never given a copy of the documents/reports by which the invoicing back rate was fixed, either by the Respondent (Original Claimant) or by the learned Sole Arbitrator, and thus the Petitioner was denied their right to appeal against the invoicing back rate, a right which was available to the Petitioner in Byelaw No. 34A(1)(e). The Petitioner was rendered *fait accompli* by the impugned arbitral award, thereby taking away their right to appeal.

iv. The Respondent (Original Claimant) had filed the claim as a counter-blast to the dispute that had arisen between the parties regarding their transaction, and the refusal of the Respondent (Original Claimant) to handover the 'H' forms to the Petitioner.

v. There was no oral or documentary proof to show that the contract period came to be extended beyond the period as stipulated in the contract.

vi. If the Board was inclined to rely on any material other than what was produced by the parties and at the instance of the learned Sole Arbitrator, such course of action ought to have been placed before the parties. In such a situation, the Petitioner would have had an opportunity to advance their submissions on the aspect (i) under the Byelaws, only a party can apply for invoicing back under Byelaw 34A(1)(a) (ii). The rate which was fixed allegedly by the Invoicing Back Committee (hereinafter referred to as the "Committee") ought not be relied upon, since the Petitioner would have invoked their right to file an appeal under Byelaw 34A(1)(e). However, grave prejudice was caused to the Petitioner by the learned

Sole Arbitrator's unilateral referral to the Committee to the fix the invoicing back rate.

vii. There was no document, either produced by the Respondent (Original Claimant), or any document placed before the Board which demonstrates that any Committee, as required under Byelaw 34A, was ever formed, and that it followed the process. It was submitted that curiously, in the present proceedings, the Respondent (Original Claimant) has been unable to show such process being undertaken towards the alleged invoicing back initiated by the Committee of the Association at the instance of the Respondent (Original Claimant). Admittedly, no such document was produced before the Board by the Respondent (Original Claimant). The burden of proof to show that the invoicing back rate was fixed by the Committee of the Association was solely on the Respondent (Original Claimant). On a failure to produce any such report, the only conclusion that can be drawn is that there was, in fact, no invoicing back rate fixed on application of the Respondent (Original Claimant).

viii. Rule 12 of the Arbitration Rules of the Association requires a claimant to submit all documents along with its Statement of Claim, yet the Respondent (Original Claimant) did not file any document/report to show the alleged fixing of rates as per Byelaw No. 34A, and therefore the Board has committed an error in not considering that an adverse inference was required to be drawn against the Respondent (Original Claimant). Further, the Respondent (Original Claimant) also did not lead any evidence whatsoever in in support of their claim.

ix. The Board did not even consider the case of the Petitioner that the Petitioner was not given a chance to appeal the invoicing back rate on both the occasions, i.e., once when the Respondent (Original Claimant) allegedly got the rate fixed, and the second time when the learned Sole Arbitrator *suo moto* got the rate fixed, which became evident only after passing of the award dated 2nd August 2012. It was submitted that the Board had failed to pinpoint any provision in the Byelaws by which the learned Sole Arbitrator had the authority to *suo moto* refer the issue of invoicing back to the Committee under Byelaw No. 34A.

5. On the aforesaid grounds, learned counsel on behalf of the Petitioner, Mr. Kanade, vehemently submitted that the impugned arbitral award is liable to be set aside and cannot be acted upon. Insofar as his contention on the breach of principles of natural justice while passing the impugned arbitral award is concerned, learned counsel for the Petitioner strenuously argued that at no point of time was the Petitioner made aware of the invoicing back of the cotton, and further that the Petitioner was never given a report or shown a document which showed that the invoicing back rate had been fixed by the Committee of the Association by following the process as per Byelaw No. 34A of the Byelaws, on which the learned Sole Arbitrator sought to place reliance for fixing the award dated 2nd August 2012. He further submitted that at no point of time did the learned Sole Arbitrator or the Board supply to the Petitioner a copy of the invoicing back rate or any document supporting the invoicing back of cotton while deciding the claim amount in the award dated 2nd August 2012.

6. It is further his submission that only when the Sole Arbitrator's award dated 2nd August 2012 was supplied to the Petitioner, was the Petitioner made aware that such an invoicing back had actually taken place at the rate fixed. He therefore submitted that the Petitioner was in complete dark as to how the fixation of such rate of invoicing back was arrived at, on which the impugned arbitral award sought to place reliance to decide the quantum of the award. It was further contended that as per Byelaw No. 34A of the Association, the invoicing back rate was fixed as on 13th May 2011, however, as to how the said date had been arrived at was never disclosed to the Petitioner. He further submitted that the learned Sole Arbitrator in the award dated 2nd August 2012 had absolutely given no findings on the invoicing back procedure not being followed, and also had *suo moto* got an inquiry conducted for fixation of invoicing back rate as on 6th December 2010 as against the date of 13th May 2011 as claimed by the Respondent (Original Claimant), without giving the Petitioner an opportunity to appeal against the invoicing back rate so fixed as on 6th December 2010.

7. He further submitted that the learned Sole Arbitrator could not make an application to the Committee under Byelaw No. 34A(1)(a) of the Association for fixing the rate for invoicing back, and the same could be acted upon only on application of either of the parties to the contract. He vehemently sought to contend that the non-following of the procedure of Byelaw No. 34A of the Association vitiates the entire proceedings, and the impugned arbitral award therefore needs to be set aside.

8. He further submitted that the contention of the Respondent (Original Claimant) that the date of delivery was mutually extended from 6th December 2010 to 13th May 2011 was an incorrect contention, inasmuch as the same was never extended by the Petitioner and therefore, the impugned arbitral award fixing the invoicing back rate as on 13th May 2011 was an erroneous view. He further submitted that in fact, the first award dated 2nd August 2012 passed by the learned Sole Arbitrator had rejected the extension of time to 13th May 2011, and therefore, the impugned arbitral award had been erroneously passed without considering the aforesaid findings. He further submitted that since no document/report was submitted to the Petitioner which made them aware of the invoicing back rate even after the application for fixation of rates was made, the right of appeal of the Petitioner under Byelaw No. 34A(1)(e) could not be exercised by the Petitioner in respect of price fixation. He further submitted that the Respondent (Original Claimant) while following up in the letters dated 1st December 2010, 6th December 2010 and 6th May 2011 referred to the delivery of 600 bales of Brahma cotton as opposed to Barshitakli cotton, which is the description of cotton as mentioned in the contract dated 11th August 2010. He therefore submitted that the entire claim of the Respondent (Original Claimant) that the delivery of the cotton was not made by the Petitioner is in itself erroneous, as the Respondent (Original Claimant) itself had sought delivery of cotton which was not mentioned in the contract dated 11th August 2010. He also submitted that Respondent (Original Claimant) had not exercised the option in respect of invoicing back under Byelaw No. 74 of the Association, which specifically deals with failure on part of the seller

in respect of the delivery order for cotton of delivery contracts which were permitted to be traded in by the Board under Byelaw Nos. 66(A)(a)(4) and 66(A)(b), under which the present cotton goods fall, and had instead sought to invoke the provisions of Byelaw No. 34A of the Association. He therefore submitted that considering that the impugned arbitral award had not considered any of the submissions as made by the Petitioner, the said impugned arbitral award is liable to be set aside.

9. *Per contra*, learned counsel on behalf of the Respondent (Original Claimant) has submitted that there was no breach of principles of natural justice as contended by the Petitioner, inasmuch as both the Petitioner and the Respondent (Original Claimant) were members of the Association, and therefore, were well aware of the Byelaws and also the rate of cotton as fixed by a panel of experts which is published weekly and is available to all members of the Association, as also in various other associations. The relevant byelaws are Byelaw Nos. 34A and 74 of the Association. Further, the Respondent (Original Claimant), by various letters dated 1st December 2010, 6th December 2010, 6th May 2011, 31st May 2011, and 16th August 2011 had consistently followed up with the Petitioner to deliver the cotton bales as contracted, to which the Petitioner did not respond. Learned counsel on behalf of the Respondent (Original Claimant) further submitted that in those letters, the Petitioner was made aware that on account of non-delivery of the cotton bales, the Respondent (Original Claimant) would be constrained to invoice back the same as per the Byelaws of the Association. It is therefore his submission that there was absolutely no breach of principles of natural justice, and the impugned

arbitral award was passed correctly and had to be upheld. He further submitted that even otherwise, even if the learned Sole Arbitrator by the award dated 2nd August 2012 had directed that the invoice back rate be fixed as on 6th December 2010, yet the Board, which passed the impugned arbitral award, on an appreciation of the facts had come to the conclusion that the invoicing back rate was to be fixed as on 13th May 2011. He further submitted that such a view was taken as a plausible view arising from the evidence before the Board, and hence did not call for interference by this court under the provisions of Section 34 of the Act. He contended that what the Petitioner was seeking to do by the present petition was to initiate a re-appreciation of the correspondence and the facts of the case, which was not permissible in a petition under Section 34 of the Act.

10. He further contended that the submission of the Petitioner that there was an inconsistency between the type of cotton contracted under the contract dated 11th August 2010, and the one which the Respondent (Original Claimant) sought delivery of is a completely erroneous submission, and the same has been dealt with in the impugned arbitral award by the findings reproduced below:-

> Another contention of the Respondent is that the delivery of cotton demanded by the Appellant from the Respondent against the Contract dated 11th August 2010 was not in accordance with the provisions contained in Section 35 of the Sales of Goods Act. It is the case of the Respondent that the Contract dated 11 August 2011 provides for delivery of Barshi Takali cotton, while the Appellant had demanded delivery of Brahma cotton from the Respondent. The Appellant has denied that the demand of delivery of cotton by the Appellant against the Contract dated 11th August 2010 was not in accordance with the provisions contained in Section 35 of the Sales of Goods Act.
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> The cotton contracted for is on the basis of description. The word 'Barshi Takali" concerns the station to which the contracted cotton belongs while ICS 105 stipulated in the said Contract stands for the Indian Cotton Standard Number 105 as provided in the Schedule of Descriptions of Indian Cotton published by the Association in accordance with By-law 66. The trade names of cottons set out in the Schedule of Descriptions of Indian Cottons under ICS 105 include Brahma. So, according to this

> Appeal Board, the contention of the Respondent that the Appellant demanded delivery of other cotton than what was purchased by it under the Contract dated 11 August 2010 has no merit.
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> This Appeal Board also finds no merit in the contentions of the Respondent that since the quality descriptions of cotton stipulated in the Contract dated 11 August 2010 differ from those provided for the trade name Brahma in the Schedule of Descriptions of Indian Cotton under ICS 105, the delivery of cotton viz. Brahma demanded by the Appellant from the Respondent vide its various letters was for other cotton than what is stipulated in the said Contract. It is a common knowledge that the cotton is a natural commodity and its quality parameters even for the cotton known with the same trade name such as Brahma differ depending on the climatic conditions. This means that the quality parameters of cotton known with the same trade name will be different depending on agro climatic conditions. Thus, cotton known with the trade name Brahma can have the quality parameters stipulated in the Schedule of Descriptions of Indian Cottons as also the quality parameters stipulated in the Contract dated 11h August 2010 and the same cannot be the basis for contending that the delivery of cotton demanded by the Appellant from the Respondent and the cotton provided under the Contract dated 11th August 2010 are different.
>
> Besides, the Respondent never raised this issue at the material time. The letters written by the Appellant to the Respondent seeking delivery of cotton contained the Contract Number and other particulars from which it can be comprehended that the same relates to the Contract dated 11th August 2010 entered into by and between the Appellant and the Respondent. Therefore, this Appeal Board is of the view that the cotton contracted for and the cotton requested by the Appellant from the Respondent through its various communications are the same and above contention of the Respondent is nothing but an afterthought. In view of this, it is also clear that there was no occasion or necessity for substitution of variety as wrongly alleged by the Respondent and this Appeal Board finds no merit in that.

He therefore submitted that the impugned arbitral award is a well-reasoned award passed after an appreciation of the facts and evidence and therefore does not require to be interfered with under Section 34 of the Act.

ANALYSIS AND FINDINGS

11. I have heard learned counsel on behalf of the parties extensively and have perused the papers and proceedings and the impugned arbitral award with their assistance. At the outset I am of the view that the provisions of Section 34 of the Act, which are now well-settled by various decisions of the Supreme Court and this Court, allow interference in an arbitral award only in exceptional

circumstances, as set out in Section 34 of the Act. It is in this limited scope of interference as envisaged under Section 34 of the Act that I proceed to consider the competing considerations presented by the Petitioner and the Respondent (Original Claimant).

12. The primary ground on which learned counsel on behalf of the Petitioner seeks to assail the impugned arbitral award is that the same is in conflict with the public policy of India and hence can be set aside under the provision of Section 34(2)(b)(ii) of the Act. To invoke this provision, learned counsel on behalf of the Petitioner has extensively argued on the point that there has been a breach of principles of natural justice, inasmuch as, the base document on which the invoicing back of the cotton, which related to the price fixation, was not shown to the Petitioner, the same vitiated the entire arbitration proceedings, and therefore the impugned arbitral award falls in the category of being in contravention of public policy of India under the provisions of Section 34(2)(b)(ii) of the Act.

13. The Supreme Court in multiple judgments has held that if an arbitral award is to be regarded as an award in conflict with public policy of India, it should be one which has been induced or affected by fraud or corruption, or is in violation of Section 75 or Section 81 of the Act, or is such which is in conflict with the most basic notions of morality or justice and which shocks the conscience of the Court. Further, Explanation (2) to Section 34(2)(b)(ii) also provides that the test as to whether an arbitral award is in contravention with the fundamental policy of Indian law, should not entail a review on the merits of the dispute. It will be important to reproduce the relevant findings of the Supreme Court in the context

of arbitral awards being in contravention of public policy of India in the cases of **Ssangyong Engg. & Construction Co. Ltd. v. NHAI**[1] and **Associate Builders v. DDA**[2], wherein Supreme Court has held as under:

Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131

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 i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco expansion has been done away with. In short, Western Geco, as explained in paras 28 and 29 of Associate Builders, 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 is contained in para 30 of Associate Builders.

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, 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, or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders. 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, as understood in Associate Builders, and paras 28 and 29 in particular, is now done away with.

(Emphasis supplied)

Associate Builders v. DDA, (2015) 3 SCC 49

18. In Renusagar Power Co. Ltd. v. General Electric Co., the Supreme Court construed Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961:

"7. Conditions for enforcement of foreign awards.—(1) A foreign award may not be enforced under this Act-

(b) if the Court dealing with the case is satisfied that-

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1 (2019) 15 SCC 131

2 (2015) 3 SCC 49

(i) the enforcement of the award will be contrary to the public policy."

In construing the expression "public policy" in the context of a foreign award, the Court held that an award contrary to
(i) The fundamental policy of Indian law,
(ii) The interest of India,
(iii) Justice or morality,
would be set aside on the ground that it would be contrary to the public policy of India. It went on further to hold that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India in that the statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation (see SCC p. 685, para 75). Equally, disregarding orders passed by the superior courts in India could also be a contravention of the fundamental policy of Indian law, but the recovery of compound interest on interest, being contrary to statute only, would not contravene any fundamental policy of Indian law (see SCC pp. 689 & 693, paras 85 & 95).

27. Coming to each of the heads contained in Saw Pipes judgment, we will first deal with the head "fundamental policy of Indian law". It has already been seen from Renusagar judgment that violation of the Foreign Exchange Act and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. To this it could be added that the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law.

...

Justice
36. The third ground of public policy is, if an award is against justice or morality. These are two different concepts in law. An award can be said to be against justice only when it shocks the conscience of the court. An illustration of this can be given. A claimant is content with restricting his claim, let us say to Rs 30 lakhs in a statement of claim before the arbitrator and at no point does he seek to claim anything more. The arbitral award ultimately awards him Rs 45 lakhs without any acceptable reason or justification. Obviously, this would shock the conscience of the court and the arbitral award would be liable to be set aside on the ground that it is contrary to "justice".

Morality
37. The other ground is of "morality". Just as the expression "public policy" also occurs in Section 23 of the Contract Act, 1872 so does the expression "morality". Two illustrations to the said section are interesting for they explain to us the scope of the expression "morality":

> "(j) A, who is B's Mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1000 rupees to A. The agreement is void, because it is immoral.
> (k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Penal Code, 1860."

38. In Gherulal Parakh v. Mahadeodas Maiyal9, this Court explained the concept of "morality" thus : (SCR pp. 445-46 : AIR pp. 797-98)

"Re. Point 3 — Immorality: The argument under this head is rather broadly stated by the learned counsel for the appellant. The learned counsel attempts to draw an analogy from the Hindu law relating to the doctrine of pious obligation of sons to discharge their father's debts and contends that what the Hindu law considers to be immoral in that context may appropriately be applied to a case under Section 23 of the Contract Act. Neither any authority is cited nor any legal basis is suggested for importing the doctrine of Hindu law into the domain of contracts. Section 23 of the Contract Act is inspired by the common law of England and it would be more useful to refer to the English law than to the Hindu law texts dealing with a different matter. Anson in his Law of Contracts states at p. 222 thus:

> The only aspect of immorality with which courts of law have dealt is sexual immorality...'
>
> Halsbury in his Laws of England, 3rd Edn., Vol. 8, makes a similar statement, at p. 138:
>
> 'A contract which is made upon an immoral consideration or for an immoral purpose is unenforceable, and there is no distinction in this respect between immoral and illegal contracts. The immorality here alluded to is sexual immorality!
>
> In the Law of Contract by Cheshire and Fifoot, 3rd Edn., it is stated at p. 279:
>
> 'Although Lord Mansfield laid it down that a contract contra bonos mores is illegal, the law in this connection gives no extended meaning to morality, but concerns itself only with what is sexually reprehensible.'
>
> In the book on the Indian Contract Act by Pollock and Mulla it is stated at p. 157:
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> 'The epithet "immoral" points, in legal usage, to conduct or purposes which the State, though disapproving them, is unable, or not advised, to visit with direct punishment.'
>
> The learned authors confined its operation to acts which are considered to be immoral according to the standards of immorality approved by courts. The case law both in England and India confines the operation of the doctrine to sexual immorality. To cite only some instances : settlements in consideration of concubinage, contracts of sale or hire of things to be used in a brothel or by a prostitute for purposes incidental to her profession, agreements to pay money for future illicit cohabitation, promises in regard to marriage for consideration, or contracts facilitating divorce are all held to be void on the ground that the object is immoral.

The word 'immoral' is a very comprehensive word. Ordinarily it takes in every aspect of personal conduct deviating from the standard norms of life. It may also be said that what is repugnant to good conscience is immoral. Its varying content depends upon time, place and the stage of civilisation of a particular society. In short, no universal standard can be

> laid down and any law based on such fluid concept defeats its own purpose. The provisions of Section 23 of the Contract Act indicate the legislative intention to give it a restricted meaning. Its juxtaposition with a equally illusive concept, public policy, indicates that it is used in a restricted sense; otherwise there would be overlapping of the two concepts. In its wide sense what is immoral may be against public policy, for public policy covers political, social and economic ground of objection. Decided cases and authoritative textbook writers, therefore, confined it, with every justification, only to sexual immorality. The other limitation imposed on the word by the statute, namely, 'the court regards it as immoral', brings out the idea that it is also a branch of the common law like the doctrine of public policy, and, therefore, should be confined to the principles recognised and settled by courts. Precedents confine the said concept only to sexual immorality and no case has been brought to our notice where it has been applied to any head other than sexual immorality. In the circumstances, we cannot evolve a new head so as to bring in wagers within its fold."

39. This Court has confined morality to sexual morality so far as Section 23 of the Contract Act, 1872 is concerned, which in the context of an arbitral award would mean the enforcement of an award say for specific performance of a contract involving prostitution. "Morality" would, if it is to go beyond sexual morality necessarily cover such agreements as are not illegal but would not be enforced given the prevailing mores of the day. However, interference on this ground would also be only if something shocks the court's conscience.

(Emphasis supplied)

14. Considering the aforesaid settled principles on an arbitral award being in contravention of public policy, the argument of the Petitioner on breach of principles of natural justice in the present case fails, inasmuch as the Byelaws of the Association provide for a full-fledged mechanism insofar as invoicing back is concerned, when an application is made by either of the parties to a contract. This invoicing back is primarily done when one of the parties approaches the Committee under the Byelaws to consider the invoicing back. It is undisputed in the facts of the present case that the Petitioner did not deliver the 600 bales of cotton as per the contract dated 11th August 2010 entered into between the Petitioner and the Respondent (Original Claimant). In fact, in the letters dated 1st December 2010, 6th December 2010, 6th May 2011, 31st May 2011 and 16th August 2011 sent by the Respondent (Original Claimant) to the Petitioner, it was

categorically mentioned that the Respondent (Original Claimant) would be forced to invoice back the cotton as per the Byelaws of the Association at the price prevalent on the day of invoicing back, as the Petitioner had failed to deliver the said cotton bales to the Respondent (Original Claimant). It is on the basis of these communications that the invoicing back under the Byelaws invoking Byelaw No. 34A of the Association was done. Further, the contention of learned counsel on behalf of the Petitioner that the learned Sole Arbitrator, prior to passing the first award dated 2nd August 2012, had asked the Committee to invoice back the cotton and fix the price without keeping the Petitioner in the loop is a bald assertion made by learned counsel on behalf of the Petitioner without any basis. In fact, this plea was never raised, even when there were consistent reminders being sent to the Petitioner for delivery of the cotton bales, and also for invoicing back the cotton under Byelaw No. 34A of the Association by the Petitioner, and the same has been succinctly dealt with in the impugned arbitral award by making the following findings:

> "It is also alleged by the Respondent that the procedure for invoicing back as laid down in the By-laws of the Association has not been followed: According to the Respondent, the learned Arbitrator has got the invoice back rate fixed by the By-law 34A Committee as on 6th December 2010. It is the contention of the Respondent that it was not made aware of such procedure adopted by the learned Arbitrator.
>
> Further, according to the Respondent, the learned Arbitrator is not authorised or empowered to make the application to the Committee for fixing the rate for invoice back under the provisions of the By-laws of the Association and Rules of Arbitration made thereunder.
>
> Another contention of the Respondent is that the Appellant has not followed the procedure for invoicing back. According to the Respondent, the Appellant was required to invoice back cotton immediately on completion of delivery period at the spot rate of the cotton contracted for fixed by the Daily Rates Committee of the Association on due date. However, the Appellant has not done so. Thus, according to the Respondent, the Appellant has waived its right of invoicing back. However, this Appeal Board does not find any merit in this.

Curiously, the Respondent never raised this issue at the material time. In fact, the Respondent did not raise any issue at all at the material time. The Appellant continued to write letter after letter to the Respondent seeking for delivery of the contracted cotton. The letters from the Appellant clearly mention that it was the Respondent, which sought extension in delivery period and that both the parties have mutually agreed to extend the period of delivery. However, the Respondent did not care to either respond to any of the letters to refute the above fact or tender delivery of the cotton contracted for."

(Emphasis supplied)

15. This contention of the Petitioner therefore cannot be accepted, and hence the breach of principles of natural justice as contended by the Petitioner is not something which finds favour with this Court. Further, Byelaw No. 34A of the Association does not mandate anywhere that a hearing or a report needs to be forwarded to any of the concerned parties before the invoicing back, and the method of price fixation also has been prescribed in the said Byelaw. The Byelaw further also provides for a provision of appeal in the event either or both the parties are aggrieved by the price fixation, on payment of the fees prescribed therein. It would be relevant to reproduce Byelaw No. 34A of the Association:-

"34A - (1) The Board shall appoint a Committee consisting of not less than five and not more than seven persons chosen from the members of the Association or their duly authorised or nominated representatives to fix :-

(a) On the application of either of the parties to a contract entered into subject to these By-laws -

(i) special rates for invoicing back cotton sold on private types or sealed samples or stamped bales or any description;

(ii) special rates for invoicing back cotton permitted to be traded in Delivery Contracts under By-law 66;

(iii) the difference in value between the staple length and/or grade and/or micronaire and/or strength (g/tex) of the cotton contracted for and the staple length and/or grade and/or micronaire and/or strength (g/tex) of the cotton tendered as awarded in Survey Certificate.

(iv) On an application forwarded through the Secretary, any rate which is required to be fixed under By-law 31, but not fixed;

(v) On an application forwarded through the Secretary, any other rate or rates;

(vi) any other rate or rates which the Board may direct the Committee to fix;

(vii) value of cotton awarded as country damaged, watered or water patched, false or fraudulently packed, or containing extraneous matters etc.

(viii) value for variations in mechanical tests beyond contracted terms in respect of cottons contracted on such terms.

(b) Three members of the Committee shall form a quorum.

(c) On an application to fix special rates under By-law 34A (1) (a) (i) to (viii) above the applicant shall pay a fee of Rs. 1,000/- per every sample for every rate and for each date.

(d) The Committee in fixing such rate for Indian cotton, shall take into account the then prices at which cotton was sold in the Mumbai spot market and the then spot prices of cotton in the interior markets and, in fixing any such rate for foreign cotton, the then prices at which such cotton or cotton of an equivalent growth was sold in the Mumbai spot market and in the foreign market.

(e) A rate fixed under this By-law subject to a right of appeal to the Board, provided it be lodged with the Secretary before 1 p.m. on the seventh day in case where both the parties are in India and fifteenth day when either or both the parties are out of India following the date of fixation of the rate appealed against and on payment of an appeal fee of Rs.2,000/- per every sample for every rate and for each date, shall be final and binding on the parties concerned. In the event of an appeal to the Board, as provided by this By-law being successful, one half of the fees shall be refunded to the applicant."

16. It is therefore clear that procedure in the aforesaid Byelaw No. 34A of the Association is a self-contained method, which provides for price fixation, and there is no necessity for giving any notice or a report to any of the parties before fixing the price regarding invoicing back of cotton. The Committee, which is empowered with the task of fixing the prices is an expert committee, which is well aware of the methodology to fix the rate for invoicing back of cotton and price fixation. The Committee, in fixing such rate, is required to take into account the

price at which the cotton was sold in Mumbai's spot market, as also the prices in the interior markets, and further, Byelaw No. 34A(1)(e) provides an opportunity to appeal if any party is aggrieved by the price fixation. Considering that the aforesaid Byelaw is a self-contained procedure, I am of the view that the argument as made by learned counsel on behalf of the Petitioner that the principles of natural justice have been breached, inasmuch as the base document or any other document fixing the price and the invoicing back of the cotton being not provided to the Petitioner, is an argument which requires to be rejected. The Petitioner at no stage has disputed that they had failed to deliver the 600 bales of cotton to the Respondent (Original Claimant), and further, despite the consistent follow-ups by letters dated 1st December 2010, 6th December 2010, 6th May 2011, 31st May 2011 and 16th August 2011, the Petitioner did not honour their commitment, and did not raise a bogey of incorrect or arbitrary invoicing back of the cotton. The Petitioner, if at all was aggrieved by the aforesaid invoicing back of cotton, could have preferred an appeal under Byelaw No. 34A(1)(e) of the Association, however, the same was not done by the Petitioner. The Petitioner's contention that it was unable to file the aforesaid appeal because the base document/ report or any other document prior to price fixation was not provided to them is an incorrect interpretation of Byelaw No. 34A of the Association, inasmuch as the Committee is under no obligation to provide the same to the Petitioner. Therefore, there has been no breach of principles of natural justice as sought to be contented by learned counsel on behalf of the Petitioner, thereby making the impugned arbitral award an award which is not in conflict with the public policy of India. Applying the settled principles of law in the case of **Ssangyong** (supra) and **Associate Builders v. DDA** (supra), in the facts of the present case this Court is of the view that the impugned arbitral award is not such as to shock the conscience of the Court or in contravention of any Indian laws.

17. I am also inclined to not accept the contention on behalf of learned counsel on behalf of the Petitioner that the date of fixation of the price and the invoicing back of the cotton could not be as on 13th May 2011, inasmuch as the Respondent (Original Claimant) itself, through repeated reminders, had implored the Petitioner to supply the 600 bales of cotton to it, and had specifically by letter dated 31st May 2011 informed the Petitioner that it was applying for fixation of invoice back rate as on 13th May 2011. All these facts have been gone into before passing the impugned arbitral award, and considering the limited scope of interference under Section 34 of the Act, I am of the view that coming to a different conclusion insofar as the fixation of prices and the date of fixation of prices would amount to reappreciating evidence, which is not the mandate of this court under Section 34 of the Act. The relevant finding in the impugned arbitral award in respect of the invoicing back and fixation of prices as on 13th May 2011 is reproduced below:-

> 11. FINDINGS OF THE APPEAL BOARD
>
> It is an admitted fact that the Contract bearing No. AL/10-11/001 dated 11* August 2010 has been entered into by and between the Appellant and the Respondent and it bears the signatures of both the Appellant and the Respondent. It is also an admitted fact that this Contract, inter alia, provides as follows:-
>
> *"We have pleasure to confirm having purchased from you this day, the following. subject to the Bylaws of the Cotton Association of India Mumbai which contains amongst other things, provision for settlement of quality and other disputes by Arbitration:"*

> It is clear from this wording that dispute if any arising from the Contract is required to be referred to arbitration under the By-laws of the Association.
>
> However, it is the case of the Respondent that in view of the extension in delivery period allegedly sought by the Respondent and allegedly agreed to by both parties mutually, novation takes place and as per the provisions contained in Section 62 of the Indian Contracts Act, 1872, the parties are not required to perform the terms of the original Contract. It is also the case of the Respondent that there is no written agreement witnessing the modified period of delivery and that an oral agreement cannot be the basis for arbitration. Thus, according to the Respondent, the learned Arbitrator did not have jurisdiction to adjudicate the present dispute.
>
> However, the Appellant's contention is that the present dispute has arisen from the Contract dated 11 August 2010 duly executed by both parties having valid arbitration agreement. Besides, both parties being members of the Association, any cotton transaction entered into by and between both of them is subject to the By-laws of the Association and in accordance with the provisions contained in By-law 38 of the By-laws of the Association, dispute if any arising out of such cotton transactions is required to be referred to arbitration under the By-laws of the Association. The Appellant has also contended that mere change in delivery period does not amount to novation. In the Judgement delivered by the Hon'ble Supreme Court of India in M/s. Purbanchal Cables and Contractors Pvt. Ltd. versus Assam State Electricity Board and Another (Civil Appeal No. 2351 of 2003) which has been cited by the Appellant, the Apex Court relying on its the earlier Judgement in M/s. Shakti Tubes Ltd. (supra) has held that extension of date of supply order from time to time does not amount to novation. This Appeal Board is of the view that the ratio laid down by the Hon'ble Court applies to the present case.
>
> (Emphasis supplied)

18. This finding in my view ought not to be interfered with or set aside, as the same has been made on a proper appreciation of facts, and it is only a bald assertion on the part of the Petitioner that the date of 13th May 2011 for fixation of invoice back rate has been incorrectly made by way of the impugned arbitral award. In fact, the Respondent (Original Claimant) by their letter dated 31st May 2011 had informed the Petitioner that it was invoicing back the cotton to the Petitioner as on 13th May 2011 according to the Byelaws of the Association. It was also categorically informed to the Petitioner that the Respondent (Original Claimant) was applying to the Association to fix the invoice back rate under Byelaw No. 34A(1)(a).

Therefore, the contention of the Petitioner that it was made aware of the price fixation and invoicing back of cotton only after the learned Sole Arbitrator had passed the award dated 2nd August 2012 is an erroneous and incorrect submission which deserves to be rejected.

19. I am also of the view that the decisions on which the Respondent (Original Claimant) seeks to place reliance to canvas their proposition with regard to extension of delivery period for supply of cotton and invoicing back are apposite to the facts of the present case. In fact, the decisions are in respect of the same Respondent, and are based on similar facts and are apposite to the facts of the present case. The following decisions support the case of the Respondent (Original Claimant) :

i. **Bhavani Cotex vs. CA Galiakotwala and Co**.[3]

ii. **M/s. Radhe Cotton Traders vs. CA Galiakotwala and Co. Pvt. Ltd**.[4]

20. The relevant paragraphs in the decision of Bhawani Cotex (supra) are reproduced below:

> **11. Construing this as an extension of period to supply cotton, further correspondence needs to be considered. The Respondent wrote a letter on 28 February 2011 urging the Petitioner to supply the cotton and avoid the situation of invoicing back. There is no denial that this letter was received but the Respondent simply did not care to respond. Again a letter on 6 May 2011 was issued to which there is no response from the Petitioner. Letters of 31 May 2011, 27 June 2011 and 27 August 2011 have gone unanswered. Explanation sought to be given is that there were discussions between the parties. One fails to understand that when the Respondent was repeatedly issuing letters what stopped the Petitioner from writing a letter back. The explanation of Dr. Saraf that the Petitioner is a rustic trader is not convincing at all. As per the Petitioner's own say, the Petitioner is in the business of cotton since several years. The Petitioner has in fact written a letter dated 6 December 2010. Bare perusal of this letter in perfect english shows that there is nothing rustic about the Petitioner. There is absolutely no reason why the Petitioner could not reply any of the letters of the Respondent. In the circumstances, the Respondent kept reminding the Petitioner to supply the cotton and ultimately**

3 (Arbitration Petition No. 314 of 2013)

4 (Arbitration Petition No. 262 of 2013)

invoked the provision invoicing back. If the argument of Dr. Saraf is to be accepted, it would mean that a supplier, inspite of entering into a contract, would neither inform the purchaser conclusively about the delivery or non-delivery and a purchaser must guess and presume what the suppliers intentions are. If such conduct is allowed, it would encourage a trader to be dishonest its dealing and avoid responsibility to deliver the goods on time. It will be difficult for the purchasers to rely on the promises made which will affect the chain of the transactions. As stated above, this finding of the learned Arbitrator that the contract stood extended and the delivery period stood extended cannot be faulted with. The argument that the Respondent delayed invoicing back as prices of the cotton were rising equally applies to the Petitioner for not supplying the cotton on time.

12. As far as non-consideration of the oral evidence is concerned, what was the oral evidence led needs to be examined. The Petitioner has filed an affidavit of one Rakesh G. Patel its Proprietor. Firstly it has to be noted that this affidavit is filed on 17 July 2012 after the parties had exchanged their pleadings before the Arbitrator. By this time, the parties had ample opportunity to think over as against the letter dated 6 December 2010 which was written at the time the dispute had not arisen between the parties as such. In this affidavit, the Petitioner has stated that on 26 November 2010 and 29 November 2010, the Petitioner had contacted the Respondent to approve the cotton however inspite of the communication, no such approval was given. It is stated that since there was no response to the letter dated 6 December 2010, the Petitioner was under impression that the Respondent abandoned both the contracts. It is stated that since the Respondent did not take delivery in respect of second contract and the Petitioner presumed that it was forfeited. It is stated in the affidavit that if the Respondent was interested in taking delivery, it would have done so and at no point of time prior to 1 December 2010, the Respondent never approached for seeking delivery. It is the case of the Petitioner in the affidavit is that the Respondent did not take delivery of cotton and did not come for approval.

13. Thus the Petitioner nowhere states that it had refused to deliver the cotton neither the Petitioner states that it had terminated the contract. Now as far the theory of not coming for approval, this would have been the first ground taken by the Petitioner in response to the letter of the Respondent dated 1 December 2010. If the delivery was not being given because the Respondent had not approved the cotton, naturally, the grievance would have been made when the Petitioner wrote a letter on 6 December 2010. There is not a whisper in the letter about the entire theory which was now sought to be made in the oral evidence. Dr. Saraf made a grievance that this evidence has not been considered. This evidence has in fact considered by the Arbitrator and he has found that in the face of the letter dated 6 December 2010, which was a contemporaneous material, this affidavit is an after thought. It is also to be noted that in the reply filed by the Petitioner before the Arbitrator, the Petitioner has in fact specifically stated that by letter dated 6 December 2010, it had called upon the Respondent to approve the sample and take delivery. The letter dated 6 December 2010 does not state anything to that effect. The rules of evidence do not apply strictly in the arbitration proceedings. It is open to the Arbitrator to consider preponderance of the probabilities and normal human conduct. The Arbitrator found that the theory put up in the affidavit filed during the arbitration proceedings is belied by the written communication written by the Petitioner. What the learned Arbitrator has done is weighing of the evidence. Evidence on affidavit is weighed with the documentary evidence and the Arbitrator has gone by the documentary evidence on record. This weighing of evidence by the learned Arbitrator is well within his jurisdiction. It is settled law that the assessment of the evidence is the province of the Arbitrator. It is not for me to hold that the

Arbitrator should have discarded everything else and should have relied only upon the affidavit of the Petitioner because there is no cross-examination.

14. Thus to conclude, the finding of the Arbitrator that delivery date stood extended based on interpretation of the letter dated 6 December 2010 is a possible construction of the documentary evidence and if two views are possible, this Court will not interfere under Section 34 of the Act. Furthermore, the approach of the Arbitrator in giving more importance to the letter dated 6 December 2010 being a contemporaneous record over the affidavit of the Petitioner is in the realm of the assessment of the evidence and is well within the jurisdiction of the Arbitrator to do so. In this context, the observations of the Apex Court in Arosan Enterprises Ltd. (supra) need to be noticed. The relevant paragraphs are reproduced as under :-

> "38. It is on the basis of this well settled proposition that the learned Single Judge came to a conclusion that the findings of the Arbitrators in regard to the extension of delivery period and failure to fix the fresh date has resulted in breach of the contract on the part of the Government and the same being purely based on appreciation of material on record by no stretch it can be termed to be an error apparent on the face of the record entitling the court to interfere. The Arbitrators have, in fact, come to a conclusion on a closer scrutiny of the evidence in the matter and re-appraisal of evidence by the Court is unknown to a proceeding under Section 30 of the Arbitration Act. Re-appreciation of evidence is not permissible and as such we are not inclined to appraise the evidence ourselves save and except what is noticed herein before pertaining to the issue as the time being the essence of the contract. In this context, reference may be made to a decision of this Court in the case of M. Chellappan v. Secretary, Kerala State Electricity Board and Anr. : [1975]2SCR811. Mathew, J. speaking for the Three Judge Bench in paragraph 12 and 13 observed as below:
>
>> "12. The High Court did not make any pronouncement upon this question in view of the fact that it remitted the whole case to the arbitrators for passing a fresh award by its order. We do not think that there is any substance in the contention of the Board. In the award, the umpire has referred to the claims under this head and the arguments of the Board for disallowing the claim and then awarded the amount without expressly adverting to or deciding the question of limitation. From the findings of the umpire under this head it is not seen that these claims were barred by limitation. No mistake of law appears on the face of the award. The umpire as sole arbitrator was not bound to give a reasoned award and if in passing the award he makes a mistake of law or of fact, that is no ground for challenging the validity of the award. It is only when a proposition of law is stated in the award and which is the basis of the award, and that is erroneous, can the award be set aside or remitted on the ground of error of law apparent on the face of the record:
>>
>> Where an arbitrator makes a mistake either in law or in fact in determining the matters referred, but such mistake does not appear on the face of the award, the award is good notwithstanding the mistake, and will not be remitted or set aside.
>> The general rule is that, as the parties choose their own arbitrator to be the judge in the disputes between them, they cannot, when the award is

> good on its face, object to his decision, either upon the law or the facts, (see Russell on Arbitration, 17th ed., p.322).
>
> 13. An error of law on the face of the award means that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous (see Lord Dunedin in Champsey Ehara & Co, v. Jivraj Baloo Co.). In Union of India v. Bungo Steel Furniture Pvt. Ltd., this Court adopted the proposition laid down by the Privy Council and applied it. The Court has no jurisdiction to investigate into the merits of the case and to examine the documentary and oral evidence on the record for the purpose of finding out, whether or not the arbitrator has committed an error of law."

> 39. In any event, the issues raised in the matter on merits relate to default, time being the essence, quantum of damages--These are all issues of fact, and the Arbitrators are within their jurisdiction to decide the issue as they deem it fit--The Courts have no right or authority to interdict an award on a factual issue and it is on this score the Appellate Court has gone totally wrong and thus exercised jurisdiction which it did not have. The exercise of jurisdiction is thus wholly unwarranted and the High Court has thus exceeded its jurisdiction warranting interference by this Court. As regards issues of fact as noticed above and the observations made herein above obtains support from a judgment of this Court in the case of Olympus Superstructures Pvt. Ltd. v. Meena Vijay Khetan and Ors."
>
> (Emphasis supplied)

21. Similar findings have been rendered by this Court in the case of Radhe Cotton Traders (supra), on similar facts, in respect of extension of date of delivery period.

22. Further, a perusal of the impugned arbitral award would go to show that the same has taken into consideration all the facts and the evidence as led by the parties before the Board. In fact, the impugned arbitral award is by way of an appeal, which has been provided for under Byelaw No. 38(E) of the Association, against the award of the learned Sole Arbitrator dated 2nd August 2012.

23. Therefore, in my view, the impugned arbitral award has been passed on an appreciation of facts, which have been perused by two authorities, i.e., firstly by the learned Sole Arbitrator by his award dated 2nd August 2012, and the Board in

the impugned arbitral award. This in my view by itself would not require further interference under the provisions of Section 34 of the Act, inasmuch as Arbitral Tribunals are the masters of facts and the evidence led before them. The impugned arbitral award has therefore been passed after a thorough investigation of the facts and the evidence produced before it. The Board on the basis of appreciation of evidence and facts has come to a possible view, and this view to my mind cannot be interfered with by this Court under Section 34 of the Act.

24. I am also not in an agreement with the contention as raised by the Petitioner that the Respondent (Original Claimant) could invoke Byelaw No. 74 as opposed to Byelaw No. 34A for fixation of invoice back rate, inasmuch as the explanatory note of Byelaw No. 74 specifically mentions that in respect of invoicing back rate in the case of delivery contracts, which are permitted to be traded in by the Board under Byelaw No. 66(A)(a)(iv) and Byelaw No. 66(A)(b), it shall be the spot rate fixed by the Daily Rates Committee on the due date, and in case of other delivery contracts, it shall be spot rate fixed by the Committee under Byelaw No. 34A on application of either of the parties. Byelaw No. 34A also postulates that in fixing the prices for cotton, the rates at Mumbai's spot market and the spot prices of cotton in the interior market have to be considered, and in the facts of the present case, the rate fixed under Byelaw No. 34A and the spot rate applicable as on 13th May 2011 were identical, i.e., Rs. 44,800/- per candy. Thus, whichever provision were to be availed by the Respondent (Original Claimant), it would give rise to the same rate. Considering that the spot rate applicable has to be taken into consideration for both the Byelaws of the Association, i.e., Byelaw No.

34A and Byelaw No. 74, therefore, the contention of the Petitioner that the Respondent (Original Claimant) ought to have invoked Byelaw No. 74 as opposed to Byelaw No. 34A(1)(a) requires to be rejected.

25. I am further of the view that the plea as taken by the Petitioner that it was unable to file an appeal under the provisions of Byelaw No. 34A(1)(e) of the Association against the price fixation of the invoice back rate as the document/report on the basis of which the same was fixed was never given to the Petitioner deserves to be rejected, inasmuch as, firstly, there was no obligation upon the Committee fixing the prices to submit such a document to the Petitioner, and secondly, the Petitioner's right to appeal was at no point taken away. In fact, the Petitioner chose to file an appeal under Byelaw No. 38(E) before the Board. Therefore, the submission made by learned counsel on behalf of the Petitioner that the opportunity of appeal was denied to it on account of the document/report fixing the invoice back rate not being given to it deserves to be rejected.

26. In the case of **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.**[5] the Supreme Court has categorically held that the mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get the dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with an arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternative dispute resolution would stand frustrated. In the present facts, the impugned arbitral award, on an appreciation of evidence and facts, and on the basis of the fixation of price which has been done by

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an independent body under the Byelaws provided, has come to a reasoned finding that the invoicing back and price fixation was correct, and the Petitioner was liable to pay the said amount to the Respondent (Original Claimant). I am of the view therefore that there is no perversity in the approach of the Board in passing the impugned arbitral award. The relevant paragraphs of the decision in the case of **Dyna Technologies** (supra) are reproduced below:-

> 24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.
>
> **25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.**
>
> 34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.
>
> **35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of**

the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

36. At this juncture it must be noted that the legislative intention of providing Section 34(4) in the Arbitration Act was to make the award enforceable, after giving an opportunity to the Tribunal to undo the curable defects. This provision cannot be brushed aside and the High Court could not have proceeded further to determine the issue on merits.

37. In case of absence of reasoning the utility has been provided under Section 34(4) of the Arbitration Act to cure such defects. When there is complete perversity in the reasoning then only it can be challenged under the provisions of Section 34 of the Arbitration Act. The power vested under Section 34(4) of the Arbitration Act to cure defects can be utilised in cases where the arbitral award does not provide any reasoning or if the award has some gap in the reasoning or otherwise and that can be cured so as to avoid a challenge based on the aforesaid curable defects under Section 34 of the Arbitration Act. However, in this case such remand to the Tribunal would not be beneficial as this case has taken more than 25 years for its adjudication. It is in this state of affairs that we lament that the purpose of arbitration as an effective and expeditious forum itself stands effaced.

(Emphasis supplied)

27. Further in the case of **MMTC Ltd. v. Vedanta Ltd.**[6] it has been held that in exercise of jurisdiction under Section 34 of the Act, the court does not sit in appeal over the arbitral award and may interfere on merits on the limited grounds provided under Section 34. It was further held that while interpreting the terms of the contract, the conduct of the parties and correspondences exchanged would be relevant factors, and it is within the arbitrator's jurisdiction to review the same if the view taken by the arbitrator is a possible view. In the facts of the present case, the learned Sole Arbitrator and the Board have come to the conclusion that the invoicing back and the price fixation was a correct approach on the basis of appreciation of facts and the relevant Byelaws of the Association, and hence this

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Court does not intend to re-examine the facts or sit in appeal over the aforesaid findings. Therefore, I am of the view that interference under Section 34 of the Act is not warranted. The relevant paragraphs of the decision in **MMTC Ltd Vs Vedanta** (supra) are reproduced below:-

> 11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.
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> **12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA. Also see ONGC Ltd. v. Saw Pipes Ltd.; Hindustan Zinc Ltd. v. Friends Coal Carbonisation; and McDermott International Inc. v. Burn Standard Co. Ltd.**
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> **13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.**
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> (Emphasis supplied)

28. It is a settled principle of law in a series of decisions that an impugned arbitral award to be termed as being in contravention of public policy has to be such an award that shocks the conscience of this Court, and the making of the

which is induced or affected by fraud or corruption, or is in violation of Section 75 or Section 81 of the Act, or which is in contravention to the fundamental policy of Indian law, or is in conflict with the most basic notions of morality or justice.[7] In the facts of the present case, none of these ingredients have been satisfied, and hence the challenge mounted by the Petitioner on the ground that the impugned arbitral award is against the public policy of India needs to fail. I have also, in earlier paragraph Nos. 14, 15, and 16 taken a view that the present impugned arbitral award has not been passed in breach of principles of natural justice warranting interference under Section 34 of the Act.

29. Considering the aforesaid clear position of facts and the detailed findings in the impugned arbitral award on the basis of appreciation of facts and documentary evidence, on which a possible view has been arrived at by the Board, I am not satisfied that a case has been made out for interference with the impugned arbitral award. Therefore, the petition is dismissed without any interference. Interim Application(s), if any, shall also be disposed of accordingly. Any amount deposited in Court shall be released within the expiry of **one month** from the date on which this judgement is uploaded on this Court's website. The petition is disposed of in the aforesaid terms. No costs.

(AARTI SATHE, J.)

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7 Read Ssanyong (supra) and Associate Builders (supra)