RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 76/2025
CNR: RJHC021100672024 | URN: CMA / 118U / 2025

Rajasthan High Court
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M/s Bhagwati Enterprises, Through Its Power Of Attorney Holder Shri M.s. Somani, S/o Shri M.l. Somani, 101, Classic Centre, First Floor, 575, M.g Road, Indore Madhya Pradesh

----Appellant

Versus

Rajasthan State Road Transport Corporation, Through Its Chairman And Managing Director, Address- Parivahan Marg, Jaipur

----Respondent

For Appellant(s)	:	Mr. R.K. Agarwal, Sr. Adv. Assisted by Mr. Adhiraj Modi Mr. Madhav Dadhich Mr. Rachit Sharma
For Respondent(s)	:	Mr. R.N. Mathur, Sr. Adv. Assisted by Mr. Prateek Mathur Mr. Utkarsh Dubey

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HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

Reportable

Pronounced on : 04/ 11/2026

Per: Arun Monga, J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act of 1996) is directed against the order dated 08.11.2024 passed by the learned Commercial Court No. 4, Jaipur Metropolitan II, vide which it allowed the objections of the respondent under Section 34 of the Act of 1996. It set aside the arbitral award dated 18.09.2011 rendered by the learned Sole Arbitrator. M/s Bhagwati Enterprises is the appellant. It was the claimant before the learned

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Arbitrator. The Rajasthan State Road Transport Corporation is the respondent, referred to as RSRTC or the respondent.

2. The award was for a sum of Rs. 653.20 crores along with interest at 12% per annum. The claim before the learned Arbitrator was for Rs. 2,970.56 crores (Rs.29.50 Billion). Against the said claim, the appellant never carried out any work under the proposed arrangement which never materialised. It did not carry a single parcel on a single bus. That one fact colours the whole case. More of it later, in greater details.

THE FACTS

3. Succinctly put, the controversy pertains to disputes arising out of the tender process initiated by the Rajasthan State Road Transport Corporation (RSRTC) for appointment of a sole licensee to carry domestic articles and small commercial goods on its fleet of approximately 4,000 buses, pursuant to which the appellant's bid was accepted *vide* letter dated 31.01.2005. Even the before the work could begin, the dispute arose between the parties in relation to the execution of the formal agreement which led to the subsequent cancellation of the work order dated 22.02.2005.

4. Salient features of the arrangement are tabulated as below:-

Date of Notice Inviting Tender	*27.01.2005*
Date of acceptance of appellant's bid	*31.01.2005*
Monthly licence fee quoted by the appellant	*Rs. 6,66,786/-*
Security deposit	*Rs. 6,66,786/-*
Bank guarantee furnished	*Rs. 40,00,716/-*
Date of issuance of Work Order	*22.02.2005*
Licence period as per Work Order	*21.03.2005 to 20.03.2008*
Date of signing of agreement by the appellant	*28.03.2005*
Date of signing of agreement by RSRTC	*29.03.2005*
Date of cancellation of Work Order	*16.04.2005*

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5. The claims preferred before the learned Arbitral Tribunal as per statement of claim dated 10.02.2010 are tabulated as under:-

S.No.	*Particulars*	*Amount*
1.	*Claim No. 1: For refund of earnest money and security deposit paid to respondent along with interest @24% p.a. up to 31.12.2009*	*Rs. 1,47,20,592/- (1.47 crore)*
2.	*Claim No. 2: For establishment, overhead expenses and administrative expenses upto June 2005 & traveling expenses upto September 2005 with interest @24% p.a. up to 31.12.2009*	*Rs. 57,38,076/- (57.38 lakhs)*
3.	*Claim No. 3: For legal expenses incurred towards this case along with interest @ 24% p.a. up to 31.12.2009*	*Rs. 32,09,506/- (32.09 lakhs)*
4.	*Claim No. 4: For loss of profit @ 15% of contract value along with interest @ 24% p.a. up to 31.12.2009*	*Rs.29,68,19,73,065/- (2,968.19 crores)*

The total claim preferred before the learned Arbitral Tribunal was for Rs.2,970.56 crores. The arbitral proceedings culminated in an award, whereby a sum of Rs. 653.20 crores along with interest at 12% per annum from 10.01.2010 was awarded in favour of the appellant. *Vide* the said award, Claim No. 4 was allowed and Claim Nos. 1 and 2 were partly allowed, while Claim No. 3 was rejected. The counterclaim preferred by RSRTC was rejected in toto.

6. The decision of the learned Tribunal on various claims is culled out and tabulated as under:-

S.No.	*Particulars*	*Decision*	*Amount (in Rupees)*
1.	*Claim No. 1: Refund of earnest money and security deposit*	*Partly allowed*	*Rs. 7,66,786/-*
2.	*Claim No. 2: Administrative, establishment and other expenses*	*Partly allowed*	*Rs. 19,01,369/-*
3.	*Claim No. 3: Legal, professional and*	*Disallowed*	*--*

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	other expenses		
4.	*Claim No. 4: Anticipated loss of profit*		*Rs.6,52,94,18,212/-*
	i) On the basis of license fee payable for three years	*Allowed*	*Rs. 2,64,84,744/-*
	ii) Incentive payable to RSRTC's drivers/conductors	*Allowed after reduction*	*Rs.42,70,05,00,000/-*
	iii) Rental for shops/offices at bus stands and sub-depots	*Allowed*	*Rs. 9,07,20,000/-*
	iv) Loading/unloading charges	*Allowed after reduction*	*Rs. 71,17,50,000/-*
5.	*Total award*		*Rs. 6,53,20,86,367/-* *(653.20 crores)*

Aside from the above, the learned Arbitral Tribunal awarded pendente lite and future interest at the rate of 12% per annum on the awarded amount from 10.01.2010 till realisation. It was further directed that the parties would bear their own costs.

7. Adumbrating little more into the specifics, stripped of the unnecessary details, it was in 2005 RSRTC invited tenders for a sole licensee. The licensee was to carry domestic articles and small commercial goods on its fleet of about 4,000 buses. Four bids came in. The appellant's bid was the highest. RSRTC accepted it by letter dated 31.01.2005. The appellant was asked to deposit Rs. 6,66,786/- and to furnish a bank guarantee of Rs. 40,00,716/-. The appellant itself calls the deposit an advance monthly premium. It made the deposit on 09.02.2005. It furnished the bank guarantee on 16.02.2005. The bank guarantee is exactly six times the monthly sum.

7.1 On 22.02.2005 RSRTC issued a letter, described as the work order. It named the appellant sole licensee for the period 21.03.2005 to 20.03.2008. A letter dated 07.03.2005 repeated that period.

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7.2 Clause 21 of the tender conditions dealt with the term. It provided that the agreement would be for one year. It could be extended for two more years after deliberation. Clause 31 of the tender conditions required the successful bidder to sign a formal agreement. The format was to be prepared by RSRTC in line with the tender conditions. Clause 32 of the agreement made the tender conditions binding.

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7.3 On 19.03.2005 the appellant asked for the draft agreement. On receiving it, the appellant wrote on 23.03.2005. It wanted Clauses 29 and 30 deleted. It also wanted a clause on goods permits. Clauses 29 and 30 kept some traffic outside the licence. That traffic included dak of the Posts and Telegraph Department, parcels of the State Government and stationery of RSRTC. The Suvidha Vahan buses were also kept outside the licence.

7.4 The agreement bears the signature of the appellant's representative dated 28.03.2005. It bears the signature of the then Chairman and Managing Director of RSRTC dated 29.03.2005. It also carries a handwritten note. The note says that Clauses 29 and 30 are not accepted and that a valid goods permit is needed. RSRTC says the note was not on the document when the file went up for signature. It says the note was put in later. The Financial Advisor and the Executive Director (Administration) were to sign as witnesses for RSRTC. They never signed. No officer of RSRTC initialled the note.

7.5 On 31.03.2005 the appellant's representative was called to the chamber of the Financial Advisor. He was told that the note was not acceptable. He was asked to sign a fresh agreement in the prescribed format. RSRTC then wrote to the appellant on 01.04.2005 and again on 06.04.2005. In substance this was RSRTC's counter offer. The appellant was not willing to sign on those terms.

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7.6 What the appellant did next matters a great deal. It did not press RSRTC to let it start work. It asked RSRTC to refund its security. RSRTC acted on that request and refunded the money. On 16.04.2005 RSRTC cancelled the work order. The appellant never began work.

7.7. On 03.05.2005 the appellant asked for appointment of an arbitrator. On 24.05.2005 RSRTC replied that its Chairman was the named arbitrator. The appellant then moved this Court under Section 11. By order dated 22.05.2006 in S.B. Arbitration Application No. 15/2005, this Court appointed an Hon'ble retired Judge of High Court as Sole Arbitrator. RSRTC carried the matter to the Supreme Court. Civil Appeal No. 5137/2007 was dismissed on 10.12.2009. The appointment stood. The question whether a concluded contract existed was left open for adjudication.

7.8 The statement of claim was filed on 10.02.2010. Issues were framed on 03.06.2010. The award dated 18.09.2011 granted Rs. 6,53,20,86,367/- with interest at 12% per annum from 10.01.2010.

7.9 RSRTC filed its objections under Section 34 on 24.12.2011. By the impugned order dated 08.11.2024 the learned Commercial Court set aside the award. Its reasons, in short, are three. First, the learned Arbitrator ignored Clause 21 of the tender conditions and Clause 32 of the agreement. He worked out loss for three years when the assured term was one year. Second, compensation can be given only for loss that is shown. The payments made, the period for which the agreement ran, the date of cancellation and the fact that nothing was paid for the second and third years were all relevant. They were ignored. Third, the award does not give reasons as Section 31(3) of the Act of 1996 requires.

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SUBMISSIONS ON BEHALF OF THE APPELLANT

8. Mr. R.K. Agarwal, learned Senior counsel for the appellant assisted by Mr. Adhiraj Modi made these submissions. The scope of Section 34 is narrow. The Court does not sit in appeal over an award. The arbitrator is the master of the quantity and quality of evidence. A possible view cannot be upset because another view is also possible. Reliance was placed on **Associate Builders v. Delhi Development Authority**[1], **MMTC Ltd. v. Vedanta Ltd.**[2], **Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India**[3] and **Reliance Infrastructure Ltd. v. State of Goa**[4]. Section 5 of the Act of 1996 was also pressed into service.

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8.1 It was urged that the issue of concluded contract stands closed by the order dated 03.08.2024, affirmed on 18.10.2024. RSRTC, it was said, cancelled a concluded contract on a false plea of interpolation. The agreement remained in RSRTC's own custody. No inquiry was held against any officer. A concluded contract cannot be defeated by unilateral cancellation. Reliance was placed on **National Fertilizers Ltd. v. Puran Chand Nangia**[5].

8.2 On the term, it was argued that the contract was for three years. Clause 4 of the agreement says so. The work order dated 22.02.2005 and the letter dated 07.03.2005 say so. The bank guarantee ran for three years. The order dated 03.08.2024 and the order of this Court dated 18.10.2024 record it. The one year theory, it was said, is outside the lis.

8.3 On damages, it was argued that a party who wrongly ends a contract must pay for the profit the other side expected to earn. Proof

[1](2015) 3 SCC 49
[2](2019) 4 SCC 163
[3](2019) 15 SCC 131
[4](2024) 1 SCC 479
[5](2000) 8 SCC 343

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of actual loss is not needed. A broad evaluation is enough. Reliance was placed on **A.T. Brij Paul Singh v. State of Gujarat**[6], **Dwaarka Das v. State of Madhya Pradesh**[7] and **Mohd. Salamatullah v. Government of Andhra Pradesh**[8]. The choice of formula is for the arbitrator, as held in **McDermott International Inc. v. Burn Standard Co. Ltd.**[9].

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8.4 It was said that the claim for loss of profit was supported by bids in later tenders of RSRTC. M/s Rachna Parcel Courier Agency, Kota offered a licence fee of Rs. 402 lakhs per month with 10% yearly escalation. M/s Yogesh Traders, Ujjain and M/s Annapurna Techno System Pvt. Ltd., Kota put forward yearly profits of Rs. 736.14 crores and Rs. 947.7 crores. The learned Arbitrator examined each head, allowed some and rejected others. The award, it was said, is reasoned.

8.5 Lastly, it was argued that lack of reasons is not by itself a ground under Section 34(2). If any part of the award is bad, it may be severed under **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**[10].

SUBMISSIONS ON BEHALF OF THE RESPONDENT

9. Mr. R.N. Mathur, learned Senior counsel assisted by Mr. Prateek Mathur representing RSRTC opposed the appeal. His first submission was on the appellant's own conduct. The appellant signed the agreement with a handwritten condition. That was not an unqualified acceptance. It was a fresh proposal on the terms of the formal agreement. RSRTC answered with its own terms. It asked for a fresh agreement in the prescribed format. That was the counter offer. The appellant did not accept it. Instead it asked for its security back. RSRTC acted on that request and refunded the money. The appellant thus

[6](1984) 4 SCC 59
[7](1999) 3 SCC 500
[8](1977) 3 SCC 590
[9](2006) 11 SCC 181
[10]2025 SCC OnLine SC 986

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chose to walk away. Having taken its money back, it cannot now claim three years of profit as if it had been kept out against its will.

9.1 His second submission was on the term. Clause 21 of the tender conditions gave an assured term of one year only. Extension for two more years depended on deliberation by RSRTC. Clause 32 of the agreement made the tender conditions binding. The work order itself made all tender conditions applicable. A renewal that depended on performance could not be assumed when no work was done at all. The award for three years thus rests on a right that never existed.

9.2 His third submission was on quantum. Section 73 of the Indian Contract Act, 1872 allows compensation only for loss that arises naturally from the breach. Remote and indirect loss is excluded. No loss was proved. The appellant did not lead its accounts. The bids of third parties in other tenders prove nothing about the appellant's profit. Many documents were picked from the internet and no witness proved them. An award of over Rs. 653 crores to a licensee who did no work shocks the conscience. It is against the public policy of India. Reliance was placed on **Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.**[11], **Unibros v. All India Radio**[12], **Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd.**[13] and **Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.**[14].

9.3 His fourth submission was on procedure and fairness. On 13.03.2011 RSRTC applied to place documents on record, including the appellant's balance sheets. The application was rejected. The very documents that could test the claim for profit were shut out. That offends Section 18 of the Act of 1996. He urged that the award also

[11](2003) 5 SCC 705
[12]2023 SCC OnLine SC 1366
[13](2024) 2 SCC 375
[14](2024) 6 SCC 357

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misstates basic dates of the proceedings. It awards interest on the deposit, though the tender conditions provided none.

9.4 His fifth submission was on Clauses 29 and 30. Under Section 66 of the Motor Vehicles Act, 1988 and the Rajasthan Motor Vehicles Rules, 1990, goods may be carried only in the manner permitted. The deluxe Suvidha Vahan buses had no provision to carry goods. The clauses reflected the law. The handwritten note made the acceptance conditional. RSRTC was not bound to accept it. The appeal be thus dismissed.

RELEVANT CONTRACTUAL PROVISIONS

10. Before adverting to the merits of the dispute, it would be apposite to identify, with specificity, the contractual stipulations of the tender conditions, work order dated 22.02.2005 and agreement dated 29.03.2005 which stand attracted in the light of the written submissions and the passages extracted from the award and the objections as already noticed in the record. The adjudication in hand require consideration, *inter alia*, of the following clauses of the tender conditions and agreement, along with their subject-heads:

S. No.	*Relevant Clauses/ Documents*	*Particulars*
1.	*Clause 21 of the Tender Conditions*	*Term of Agreement and Extension*
2.	*Clause 31 of the Tender Conditions*	*Execution of Formal Agreement in the Prescribed Format*
3.	*Clause 4 of the Agreement*	*Period of Agreement*
4.	*Clause 29 of the Agreement*	*Exclusion of Specified Categories of Traffic from the Licence*
5.	*Clause 30 of the Agreement*	*Exclusion of Specified Categories of Traffic, including Suvidha Vahan Buses, from the Licence*
6.	*Clause 32 of the Agreement*	*Applicability of Tender Conditions*
7.	*Work Order dated 22.02.2005*	*Appointment of the Appellant as Sole Licensee and Stipulated Licence Period*

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QUESTIONS FOR DETERMINATION

11. We have heard learned counsel for both sides and gone through the record. Basis thereof, the following questions arise for our consideration :-

(i) What is the scope of interference in this appeal, and which law governs the objections?

(ii) What is the effect of the appellant asking for, and receiving, refund of its security after it refused RSRTC's counter offer?

(iii) Did the appellant have a right to a three year term?

(iv) Can the award of loss of profit stand when no work was done, no loss was proved and the sum is out of all proportion to the bargain?

(v) Can any part of the award be saved by severance?

QUESTION (i) SCOPE OF INTERFERENCE AND THE GOVERNING LAW

12. We accept the general principles urged for the appellant. A Court under Section 34 does not sit in appeal. It does not reweigh evidence. A plausible view of the arbitrator must be respected. Under Section 37 the appellate Court is narrower still. It examines whether the Section 34 Court stayed within its limits. This is settled by **MMTC *(supra)*** and **Punjab State Civil Supplies Corporation Ltd. v. Sanman Rice Mills**[15].

13. But limited review is not no review. One feature of this case is easily missed. The objections were filed on 24.12.2011. That was well

[15]2024 SCC OnLine SC 2632

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before the amendment of 2015 came into force on 23.10.2015. In **Ssangyong Engineering *(supra)*** Hon'ble the Supreme Court held that the amended Section 34 applies only to applications filed on or after that date. So the unamended Section 34 governs these objections. The law on public policy is the law laid down in **Saw Pipes, ONGC Ltd. v. Western Geco International Ltd.**[16] and **Associate Builders.**

14. Under that law, an award is open to challenge on the ground of public policy if it is patently illegal. It is open to challenge if it contravenes the substantive law, the Act of 1996 or the terms of the contract. It is open to challenge if it is so unfair and unreasonable that it shocks the conscience of the Court. The fundamental policy of Indian law includes a judicial approach, the principles of natural justice and the test of reasonableness. A finding based on no evidence is perverse. So is a finding that ignores vital evidence. So is a finding that rests on irrelevant material. These are not appeals on merits, but rather the recognised heads of challenge.

15. The question before us, then, is not whether we would have read the evidence differently. It is whether the learned Commercial Court was right in finding that the award falls within the recognized heads of challenge. For the reasons that follow, we hold that it was.

QUESTION (ii) THE APPELLANT'S OWN CONDUCT IN SEEKING REFUND

16. We start with the conduct of the appellant, because it goes to the root. We are not reopening the finding that a concluded contract came into being. That finding is final and binds us. But a concluded contract

[16](2014) 9 SCC 263

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does not freeze the parties for all time. Parties who make a contract may also end it. Section 62 of the Indian Contract Act, 1872 says so in plain words. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. Such agreement need not be in writing. It may be gathered from conduct.

17. Now see what happened here. The appellant signed the formal agreement with a condition written on it. Under Section 7 of the Contract Act an acceptance must be absolute and unqualified. A condition added at the time of signing is not acceptance of the offered terms. It is a fresh proposal. RSRTC did not accept that proposal. It called the appellant's representative on 31.03.2005. It wrote on 01.04.2005 and on 06.04.2005. It asked for a fresh agreement in the prescribed format. That was RSRTC's counter offer.

18. The appellant had two courses open. It could accept the counter offer and start work. Or it could insist on the earlier bargain, keep its security in place and hold RSRTC to performance. It did neither. It asked RSRTC to return its security. That request has only one sensible meaning. The appellant was not willing to go ahead on the terms on offer. It wanted out, and it wanted its money. RSRTC took the appellant at its word. It refunded the money. Both sides thus acted on the footing that the arrangement was over.

19. A licensee who asks for its security back is not a licensee who stands ready and willing to perform. The security was the very foundation of the licence. Without it the appellant could not have run the licence for a day. By asking for it back, the appellant itself pulled out that foundation. RSRTC's later letter of 16.04.2005 only recorded what the parties had already done.

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20. The law does not allow a party to blow hot and cold. In **R.N. Gosain v. Yashpal Dhir**[17] the Supreme Court held that a person cannot approbate and reprobate. He cannot take a benefit under an arrangement and then deny the basis on which he took it. The appellant took the refund on the footing that the arrangement had ended. It cannot now say that the arrangement ran on for three years and claim the profit of all three.

21. This conduct was vital evidence. It bore directly on whether there was any breach by RSRTC at all. It bore on whether the appellant was ready to perform. It bore on whether any loss could be laid at RSRTC's door. Any award of expected profit had first to reckon with it. The award does not reckon with it in any real way. An award that leaves out vital evidence is perverse under **Associate Builders.** The same principle was applied in **Delhi Metro Rail Corporation**. This alone is enough to sustain the impugned order.

22. There is one more aspect. The first head of claim was refund of the security with interest. The security was refunded at the appellant's own request. To award it again, with interest at 12%, would be to pay the same money twice. To that extent the award is plainly unsustainable.

QUESTION (iii) THE THREE YEAR TERM WAS NOT A MATTER OF RIGHT

23. The appellant's entire claim for profit is worked out over three years. That premise does not survive a reading of the contract as a whole.

24. Clause 21 of the tender conditions is clear. The agreement was to be for one year. It could be extended for two more years after deliberation. Extension was thus a matter for RSRTC to decide after

[17](1992) 4 SCC 683

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seeing how the licensee performed. It was not a right that vested in the bidder on day one. Clause 32 of the agreement made the tender conditions binding. The appellant's own case is that, under Clause 31 of the tender conditions, the formal agreement had to conform to the tender conditions. The work order dated 22.02.2005, as RSRTC rightly points out, itself made all tender conditions applicable.

25. The appellant relies on the tender conditions when it suits it. It says Clauses 29 and 30 had to go because they were not in the tender. It cannot then set aside Clause 21 of the same tender when it comes to the term. A party cannot pick the terms it likes and discard the rest. Read together, the documents yield one meaning. The period 21.03.2005 to 20.03.2008 mentioned in the work order and in Clause 4 of the agreement was the outer limit of the licence. One year was assured. The next two years depended on renewal. Renewal depended on performance and on deliberation by RSRTC.

26. The other material relied on by the appellant does not alter this. A bank guarantee is security for the licensor. The fact that the guarantee was kept valid for three years protected RSRTC if the licence ran its full course. It did not enlarge the licensee's rights. The orders dated 03.08.2024 and 18.10.2024 dealt with whether a concluded contract existed. They narrate the period stated in the work order. They do not decide whether the second and third years were assured. That question was not before them.

27. Section 28(3) of the Act of 1996 obliged the learned Arbitrator to take the terms of the contract into account. He did not deal with Clause 21 and Clause 32 when he worked out profit for three years. Ignoring a binding term of the contract is patent illegality. This was held in

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Associate Builders and reiterated in **State of Chhattisgarh v. Sal Udyog Pvt. Ltd.**[18].

28. There is a deeper flaw as well. Loss for the second and third years could arise only if the licence would have been renewed. Renewal would depend on performance. The appellant did not perform for a single day. There was nothing on which RSRTC could judge it. So the claim for those years rests on a hope stacked on a hope. Section 73 of the Contract Act says compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Profit for two years that the appellant had no right to, and no record to earn, is exactly such loss.

QUESTION (iv) DAMAGES WITHOUT WORK, WITHOUT PROOF AND WITHOUT PROPORTION

29. We now come to the most troubling part of the award. It grants Rs. 6,53,20,86,367/- to a licensee who did no work, with interest at 12% on top.

30. Section 73 of the Contract Act is the governing law. It allows compensation for loss or damage caused by the breach. The loss must be one that naturally arose in the usual course of things, or one the parties knew would likely result. Remote and indirect loss is excluded. The Explanation adds that the means which existed of remedying the inconvenience must be taken into account. The section thus speaks of loss caused. It does not speak of windfalls. In this context, reference may be had to another judgment rendered by Division Bench of this Court, presided over by one of us (Arun Monga, J.) in **D.B. Civil Miscellaneous Appeal No. 1560/2025*, titled Jaipur Development***

[18](2022) 2 SCC 275

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Authority v. Rohan Rahdeeo Rajasthan Infra Project Ltd.[19]**.** The relevant portion of the said judgment is reproduced hereinbelow:

> *"**(J) Disproportionality -***
>
> *79. Dehors all that has been discussed in the preceding part, there is one further, overarching aspect of the matter which, in our considered opinion, independently vitiates the award, and which we consider it our duty to record. The arithmetic of the award, when laid bare, speaks for itself. Conceded case of the claimant/respondent is that the actual date of completion of the work is 31.01.2013, on which date as per its own calculations, as against the project cost of Rs. 150 crores, it incurred Rs. 207.87 crores. Thus, a cost overrun of Rs. 57.87 crores. After the actual completion date, i.e., 31.01.2013, there was no further cost and it was all revenue receipts against toll collection. Taken to its best, the claimant could, at the most, seek compensation of Rs. 57.87 crores along with interest, but that too not in monetary terms but by extension of time since as per the contract, time was revenue.*
>
> *79.1 However, we have already held that extension of time of 484 days was granted and no further was asked for. The Project Cost stood contractually frozen at Rs. 150 crores. On the respondent's own showing, resting on the certificates of its Chartered Accountants/Statutory Auditors, the actual capital cost of the project upon completion was Rs. 207.85 crores. That is to say, the entire cost escalation which the respondent itself asserted, and which the learned Tribunal accepted, was of the order of Rs. 57.87 crores. Upon this foundation of Rs. 57.87 crores, the learned Tribunal awarded, under Claim 1 alone, a sum of Rs. 175.67 crores, the principal escalation compounded at the so-called IRR of 20.33%, i.e., more than three times the escalation itself, and to this were added the further claims, taking the aggregate award, as on the date of the Statement of Claim, to Rs. 198.04 crores. The Corrigendum Award of 31.07.2023 then jumped even that ceiling, directing IRR at 20.33% until actual realisation.*
>
> *79.2 The consequence, as pointed out at the Bar and not disputed before us, is that in the execution proceedings arising out of the award as corrected, the respondent has laid a claim exceeding Rs. 500 crores.*
>
> *In other words, an admitted cost escalation of about Rs. 57 crores has, by the alchemy of a compounding "internal rate of return", been transmuted into a demand of over Rs. 500 crores against the public exchequer, roughly nine times escalation on which the entire claim was founded, and more than three times the agreed cost of constructing the tunnel project itself. Indeed, Claim No. 1 alone, at Rs. 175.67 crores, exceeds the contractually frozen cost of the entire project; the "compensation" for an incident of the project has outstripped the cost of the project.*
>
> *80. Such a result seems to us, with due respect, rather preposterous, and no process of reasoning consistent with law can sustain it. The law of damages is compensatory, not punitive. Section 73 of the Contract Act entitles a party only to compensation for loss or damage which naturally arose, or which the parties knew to be likely to arise, from the breach, and to nothing more.*
>
> *80.1 An award mechanism under which the remedy grows, year upon year and on a compounding basis, at a rate half as high again as the claimant's own admitted cost of borrowing (13.5%), and continues to grow after the award until realisation, does not just compensate a loss; In fact, it confers a windfall, converts the arbitral award into a high-yield investment*

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against the State, and creates the perverse consequence that every day of delay enriches the claimant beyond any loss it could conceivably have suffered.

80.2 When the paying party is a statutory development authority and the ultimate source of payment is public money collected from the citizens, the award operates as unjust enrichment at the cost of the public exchequer. Proportionality between the wrong (if any) and the remedy is an elementary requirement of justice. An award which bears no rational proportion to the loss found, indeed, in the present case, to a loss never found, there being no finding of breach at all, shocks the conscience of the Court. As held in ***Associate Builders (supra)*** *and reiterated in* ***Ssangyong (supra)****, an award which shocks the conscience of the Court conflicts with the most basic notions of morality and justice within the meaning of Explanation 1(iii) to Section 34(2)(b) (ii) of the Act of 1996, and this ground, though to be applied sparingly, exists precisely for a case such as the present.*

81. We are conscious that inadequacy or excessiveness of the amount awarded is not, by itself, a ground of challenge to the Award under Section 34, and that the Court does not sit in appeal over quantum. But that principle presupposes an award whose measure of compensation is anchored in the contract or in law.

81.1 In the case in hand, the very measure adopted is a notional, compounding project appraisal rate (IRR) applied to claims which have been allowed. That too, without a finding of breach. And as an icing on the cake, unmoored by the corrigendum from any ceiling, which is itself dehors to the contract. Moreover, it is contrary to Section 73 of the Contract Act. It is contrary to the public policy reflected in the Interest Act. It is contrary to Section 31(7) of the Act of 1996 and productive of a result which is wholly unconscionable.

81.2 The vice is therefore not one of mere quantum but of the legal foundation of the award itself, and squarely falls within Section 34(2)(b) (ii) read with Explanation 1, as also Section 34(2A). This aspect, too, wholly escaped the attention of the learned Commercial Court.

81.3 The award is liable to be set aside on this ground independently of, and in addition to, the grounds recorded hereinabove."

31. As held above, even in the case in hand we are of the same opinion that, Dehors, what has been discussed in the preceding part of instant judgment, disproportionality herein also is too overreaching, and that aspect of the matter independently vitiates the entire award. In **Kailash Nath Associates v. Delhi Development Authority**[20] Hon'ble the Supreme Court held that damage or loss caused by the breach is a sine qua non for compensation under the Contract Act. Where loss can be proved, it must be proved. In **Unibros *(supra)***, the Supreme Court dealt with a claim for loss of profit in arbitration. It held that such a claim needs credible evidence. Damages cannot as a matter of course

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result in an award without proof of the claimant having suffered injury. A formula cannot be applied in a vacuum. An award resting on no evidence on this head was held to be patently illegal and in conflict with the public policy of India. **Batliboi Environmental *(supra)*** is to the same effect. The appellant itself cites it for the rule that damages cannot be whimsical or disproportionate, and must rest on an intelligible factual basis.

32. The appellant says the learned Commercial Court wrongly insisted on actual loss. We do not read the impugned order that way. It does not say that expected profit can never be awarded. It says that loss must be shown on material, and that the payments made, the period for which the agreement ran, the date of cancellation and the absence of any payment for later years must be weighed. That is the very inquiry Section 73 demands. It is the very inquiry **Unibros** and **Batliboi Environmental** require.

33. The judgments relied on by the appellant do not help it. In **Brij Paul Singh** the contractor had executed part of the work. Damages were measured at 15% of the value of the balance work. In **Dwaarka Das** damages were 10% of the contract value. In **Mohd. Salamatullah** too a modest percentage was applied. All three were works contracts. The contractor was to be paid a price. The expected profit was a small, known slice of that price. Here the appellant was not to be paid anything by RSRTC. It was to pay RSRTC a licence fee. Its profit depended wholly on freight it might earn from a business it never started. These cases support a broad evaluation of a reasonable margin. They do not support an award of several hundred crores on bids made by strangers.

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34. **McDermott International** also does not assist. It holds that the choice of formula is for the arbitrator. But every formula needs proven inputs. In that case the work had been done and costs had been incurred. Here the inputs are bids of third parties in other tenders. That is a formula working in a vacuum, which **Unibros** forbids.

35. Let us also have a look at the evidence as well on which the profit was awarded, since learned senior for the appellant would argue that it is overwhelmingly in favour of appellant. Though of course we do not agree with that. And for valid reasons. Evidence consists of nothing but bids in later tenders. One bidder offered a licence fee of Rs. 402 lakhs per month. A bid is a hope. It is not a profit. It tells us what a bidder said it would pay or hoped to earn. It tells us nothing about what appellant before us would have earned. No accounts of the appellant were placed. No business plan was proved. No witness from those bidders was examined. RSRTC's stand is that many documents were taken from the internet and no one proved them. The appellant has not shown us otherwise. A figure of more than Rs. 900 crores a year, just by carrying parcels on the State buses called for the closest scrutiny. It received none.

36. The record does contain any firm figure on the value of this bargain. It is what the appellant itself agreed to pay. The monthly sum was Rs. 6,66,786/-. The bank guarantee of Rs. 40,00,716/- is exactly six months of it. At that rate the appellant would have paid RSRTC about Rs. 80,01,432/- a year, and about Rs. 2,40,04,296/- over three years. The award is about 272 times that three year total. It is about 816 times one year's fee. That is before interest. Even if one were to borrow the 10% to 15% yardstick of the cases cited by the appellant

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and apply it generously, the figure would run into lakhs, not hundreds of crores.

37. No reasonable person in the appellant's shoes would have bid Rs. 80 lakhs a year for a business expected to yield hundreds of crores a year. Nor would any reasonable licensor have let it go so cheap. The disproportion is not a matter of degree. It is of a different order altogether. It shows that the award was not an estimate of loss caused, but surely a windfall.

38. Impugned award thus fails because it awards an enormous sum on no proof of loss, for a term that was never assured, to a party that did no work and itself asked for its money back. Such an award is so unfair and unreasonable that it shocks the conscience of the Court. That is the very test laid down in **Saw Pipes *(supra)***. It is in conflict with the public policy of India. It is perverse in the sense explained in **Associate Builders**. It is patently illegal for disregard of Section 73 of the Contract Act and Section 28(3) of the Act of 1996.

QUESTION (v) SEVERANCE

39. Learned counsel for the appellant urged that, though in the alternative, to sever the bad part and save the rest. In **Gayatri Balasamy *(supra)*** it has been held that a Court may set aside part of an award where the valid and invalid parts are truly separable. However, it is also held that the power to modify an award is narrow. The Court cannot reassess the merits or work out a fresh figure of its own.

40. There is nothing here that can be cleanly separated and saved. The security was refunded at the appellant's own request. The claim for expenses rests on unproved bills after the appellant stepped away. The claim for legal expenses was rejected by the learned Arbitrator himself.

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The claim for profit rests on no proof of loss and on a term that was never assured. Even a profit figure for the first year would have to be worked out afresh. That is precisely what **Gayatri Balasamy** says a Court cannot do. The award must therefore fall as a whole.

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CONCLUSION

41. To sum up. The appellant, having refused RSRTC's counter offer, itself asked for refund of its security. RSRTC acted on that request and refunded the money. The appellant cannot now claim profit for a contract it chose to leave. The three year term was not a matter of right. Only one year was assured, and renewal depended on performance that never took place. The award of Rs. 6,53,20,86,367/- was made without any work being done, without any proof of actual loss and on bids of third parties. It is wholly out of proportion to the bargain. It ignores Section 73 of the Contract Act and the terms of the contract. It shuts out relevant evidence. It is in conflict with the public policy of India as the law stood when the objections were filed.

42. The learned Commercial Court did not reweigh evidence or substitute its own view. It applied the recognised heads of challenge. We find no error in the impugned order dated 08.11.2024. It does not call for interference under Section 37 of the Act of 1996.

43. The appeal is accordingly dismissed. The order dated 08.11.2024 passed by the learned Commercial Court No. 4, Jaipur Metropolitan II, Jaipur is upheld. The arbitral award dated 18.09.2011 stands set aside. Pending applications, if any, stand disposed of. There shall be no order as to costs.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

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