In a Section 34 challenge to an award arising from an international commercial arbitration seated in India, ground of patent illegality under Section 34(2A) is unavailable. Consequently, reappreciation of evidence, or alleged ignoring of vital evidence cannot by themselves justify setting aside the award, because those matters do not fall within the restricted scope of "public policy of India"

The **Bombay High Court** in the case of ONGC vs Sapura Fabrication SDN BHD [Commercial Arbitration Petition No. 720 of 2024] dated June 09, 2026, has dismissed ONGC's Section 34 Arbitration Act petition challenging an arbitral award arising out of a contract for redevelopment of the Mumbai High South Field, under which the contractor had completed the works within time and later raised six claims for extra work or change orders. It clarified that in a Section 34 challenge to an award arising from an international commercial arbitration seated in India, the ground of patent illegality under Section 34(2A) is unavailable.

Consequently, perversity, reappreciation of evidence, or alleged ignoring of vital evidence cannot by themselves justify setting aside the award, because those matters fall within patent illegality and not within the restricted scope of "public policy of India." Where the Arbitral Tribunal's interpretation of the contract is a plausible one and no case is made out under Section 34(2), the Court will not interfere even if another view is possible, and even where the award on a particular claim may appear vulnerable on patent illegality grounds.

The Court observed that the arbitration was an international commercial arbitration because Sapura was a Malaysian company and the arbitration was seated in India. Accordingly, while Section 34 applied, the separate ground of "patent illegality" under Section 34(2A) was not available. The Court emphasised that perversity in findings is relatable to patent illegality and not to the narrower post-amendment meaning of "public policy of India." Therefore, ONGC could not seek to set aside the award by rearguing perversity or reappreciation of evidence as though it were pursuing an appeal.

On first claim relating to SCA Jacket V Bracing, the Court upheld the Tribunal's view that the phrase "as per actuals" in ONGC's letter of 10 October 2016 meant payment for work actually carried out, and did not permit ONGC to apply discretionary or external rates from the B-127 contract. The Court also agreed that Note 5 to Item III of Annexure-C would apply only when Clause 8.1.1.4(iii) was triggered, whereas here the contract already contained applicable rates for saturation diving spread under Clause 8.1.1.4(ii). The Tribunal's interpretation was thus held to be plausible and correct.

On second claim relating to additional work for the N23 platform, the Court held that the contract itself contemplated pipeline laying work and contained relevant marine spread rates in Annexure-C. ONGC was therefore not justified in applying B-127 rates by invoking Note 5. The Tribunal's award, including use of the ceiling limit under Clause 8.1.1.7(f), was therefore upheld.

On third claim concerning topside modification on the SCA platform, the Court upheld the award in respect of the third pre-engineering survey and the additional material and time caused by ONGC’s last-minute change in installation philosophy. The Court noted that the Tribunal had reasonably found the third survey unnecessary because earlier surveys had already established the relevant position, and ONGC could not direct multiple surveys without necessity. The Court also found that ONGC had changed its stand before the Court regarding the reason for the third survey. As to installation philosophy, the Court accepted that ONGC had authority to change it, but held that there was no justification for doing so only when Sapura had reached the site, especially where additional material and additional marine spread time were certified by ONGC’s own agency, ABS.

On fourth claim concerning the Intruder Detection cum Deterrence System, the Court held that the Tribunal was justified in finding that connecting the HVLR to both firewater headers was never a contractual requirement and therefore constituted additional work or a change order. The Court relied on the note to Section 2.2.7.2 of the bidding documents, which stated that firefighting was to be preferred over HVLR operation and both systems were not to operate simultaneously, as well as ONGC’s approval of the piping and instrumentation diagrams with a single connection. The Court further held that deck extensions for foam tanks were outside contract scope, noting ONGC’s own admission in the minutes of meeting dated 11 May 2016 that such deck extensions were not envisaged in the contract scope. The Tribunal’s award for additional material, steel, offshore installation time, and unnecessary surveys, all supported by ABS certification, was therefore not interfered with.

On fifth claim for standby charges for SK900 on account of Rig GD Chaaya, the Court noted that there was force in ONGC’s complaint that the Tribunal appeared to have ignored material evidence, especially the letters and record notes of 13 January 2017, which indicated that Sapura had been made aware of the rig’s presence and had prepared to perform SIMOPs. However, the Court expressly held that even if the Tribunal had ignored vital evidence, that would amount at best to perversity or patent illegality, a ground unavailable in an international commercial arbitration. Since ONGC could not bring the case within “public policy of India,” the award on Claim No. 5 also could not be set aside.

The Court also declined to interfere with the Tribunal’s grant of post-award interest at LIBOR plus 2% simple interest and with the award of arbitral costs, since no substantial ground was made out against those parts of the award.