



ARBITRATION AND CONCILIATION

Delhi High Court Upholds Finding of Wrongful Termination, Declines Interference Under Section 34

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PUBLISHED 19 June 2026

The Delhi High Court disposed of two cross-petitions filed under **Section 34 of the Arbitration and Conciliation Act, 1996**, arising from a common arbitral award dated September 24, 2025. The award was passed in disputes between Telecommunications Consultants India Limited (TCIL) and Frans Global Infotech Private Limited (Frans) concerning the supply, installation, commissioning and maintenance of the Horizontal Extension of State Wide Area Network for the Government of Tripura.

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Background of the Dispute

TCIL had been awarded the project by the Directorate of Information Technology, Government of Tripura, pursuant to a **Request for Proposal dated December 5, 2022**. TCIL thereafter issued a Notice Inviting Tender on March 7, 2023, and also issued a corrigendum on March 15, 2023, clarifying that the timeline for commencement of the work order would be reckoned from March 6, 2023.

Frans submitted its bid on March 20, 2023, which was accepted, and a Letter of Intent was issued on March 24, 2023. A **Purchase Order** was issued on April 28, 2023.

Termination and Invocation of Arbitration

Disputes arose over delivery timelines and performance. TCIL issued a **show cause notice on May 18, 2023**, and thereafter terminated the Purchase Order on June 9, 2023. Simultaneously, TCIL took the following actions:

- Imposed a **two-year ban** on Frans from participating in TCIL's future tenders.
- Encashed the Performance Bank Guarantee of **Rs. 25,75,512/-**.

Frans invoked arbitration and a sole arbitrator was appointed.

Arbitral Tribunal's Findings

Before the arbitral tribunal, Frans alleged **wrongful termination**, non-payment of invoices, wrongful encashment of the PBG, and unlawful blacklisting. TCIL contested the claims and raised counter-claims for penalty, risk purchase costs and other losses.

The arbitral tribunal's key holdings were as follows:

- The **termination was wrongful**.
- Directed refund of the PBG with interest at **12% per annum**.

- Found the blacklisting to be **arbitrary**.
- Rejected Frans's claims for damages on the ground of insufficient proof of loss.
- Rejected the invoice claims on the basis of **back-to-back payment terms**.
- Rejected TCIL's counter-claims.

TCIL's Challenge Under Section 34

TCIL challenged the finding of **wrongful termination**, contending that Frans had persistently defaulted on timelines, and that the arbitral tribunal had misconstrued the contractual framework. TCIL relied on communications from Original Equipment Manufacturers to demonstrate non-payment and delay.

It also urged that the doctrine of **anticipatory breach under Section 39 of the Indian Contract Act, 1872** applied, since Frans's conduct made it clear it would not be able to perform.

Contractual Notice Period and Clause Interpretation

The Court declined to interfere. It noted that the arbitral tribunal had correctly held that **Clause 3.9 of the Special Conditions of Contract**, read with Clause 3.12 of the Client's Tender, prevailed over Clause 2.18 of the General Conditions of Contract. The contractually mandated **45-day notice period** was a condition precedent to a valid termination.

Admittedly, no such notice was issued before termination on June 9, 2023. The show cause notice did not qualify, as the mandatory period for performance had not even expired on the date of its issuance.

Doctrine of Approbate and Reprobate

The Court further found that TCIL's challenge was inconsistent: it had accepted the arbitral tribunal's interpretation of the same contractual scheme when it operated in its favour on the question of the commencement date, but sought to resist it when the same framework applied to termination.

The Court applied the **doctrine of approbate and reprobate**, citing *Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd.* (2013) 5 SCC 47, holding that TCIL was estopped from adopting an inconsistent position.

Anticipatory Breach Under Section 39

On the Section 39 argument, the Court noted that the arbitral tribunal had returned a **reasoned finding** that Frans had, through its communications of May 20, 2023 and May 24, 2023, expressed a continued willingness to perform. Frans had even sought extension and reinstatement after termination.

There was no repudiation or disabling conduct on Frans's part.

OEM Communications

On the OEM communications, the Court held that the arbitral tribunal had considered them but found them insufficient. There was **no privity of contract** between TCIL and the OEMs. This was not a case of ignoring vital evidence, but of assigning a different probative weight.

Frans's Challenge Under Section 34

Frans challenged three rejected claims:

- Damages for **wrongful termination**.
- Payment under invoices dated April 14, 2023 and May 1, 2023.
- Damages for **loss of reputation** arising from the blacklisting.

Damages for Wrongful Termination

The arbitral tribunal had held that even assuming Frans had delivered the two items it claimed to have supplied, those items constituted only about **15% of the total contract value**. They were neither installed nor commissioned within the stipulated date, and Frans had led no evidence of actual loss.

The Court upheld this finding, holding that while loss of expected profits may be awarded in appropriate cases, this is not automatic. The ruling in *MSK Projects (India) (JV) Ltd. v. State of Rajasthan* (2011) 10 SCC 573 does not dispense with the requirement of establishing **foundational facts for quantification**.

Invoice Claims and Back-to-Back Payment Terms

The arbitral tribunal found that the payment terms in **Clause 3.1 of the SCC** and Clause 5 of the Purchase Order expressly provided for a back-to-back payment mechanism. Under this mechanism, TCIL's obligation to pay Frans was contingent upon receipt of payment from the end client.

The arbitral tribunal further recorded that Frans's own correspondence and invoices reflected an understanding of this arrangement. Since there was no material to show that TCIL had received payment from the end client for the relevant items, the claims were rejected.

The Court found this to be a **reasoned contractual interpretation** and declined to interfere.

Reputation Damages

The Court held that such claims in a commercial context require **cogent evidence of actual loss**, such as cancelled contracts, denial of future tenders or loss of business opportunities. In the absence of any such material, the arbitral tribunal was neither required nor empowered to award damages by inference.

Scope of Interference Under Section 34

The Court reiterated the principles governing Section 34, relying on the three-judge bench decision of the Supreme Court in *OPG Power Generation Pvt. Ltd. v. Enxio Power Cooling Solutions (India) Pvt. Ltd.* (2025) 2 SCC 417.

A **possible view taken by an arbitrator on facts must be respected**. Interference is warranted only where findings are perverse, based on no evidence, or in conflict with the fundamental policy of Indian law. Neither petition disclosed any such ground.

Ruling

Both petitions were dismissed. No order as to costs.

Coram: Justice Harish Vaidyanathan Shankar | Counsel for TCIL: Mr. Amitesh Chandra Mishra and others | Counsel for Frans: Mr. Rizwan and others

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