IN THE HIGH COURT OF JHARKHAND AT RANCHI

Arbitration Appeal No. 12 of 2012

Central Coalfields Limited, a subsidiary of Coal India Limited and a Government of India Undertaking having its Head Office at Darbhanga House, Ranchi P.S. – Kotwali, P.O.- G.P.O., Ranchi, District – Ranchi through its General Manager (CMC) Sri Alakesh Roy, son of Late Jagdish Roy, residing at Hill View Apartment, Kanke Road, P.O. & P.S. – Gonda, District – Ranchi

… … Petitioner/Appellant

Versus

M/s. Rajdhani Carriers Private Limited, Anandgram, Lane – 3, Morabadi Maidan (North), P.O. – Ranchi University, P.S. Gonda, District – Ranchi**… … Opposite Party/Respondent**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Appellant : Mr. Amit Kumar Das, Advocate
: Mr. Preetam Mandal, Advocate
For the Respondent : Mr. Pandey Neeraj Rai, Advocate
Mr. Akchansh Kishore, Advocate

12/**05.04.2023**

1. This arbitration appeal has been filed against the order dated 19.07.2012 passed by learned Subordinate Judge – I, Ranchi in Misc. Case No.59 of 2010 whereby and whereunder he has dismissed the application filed by the appellant under Section 34 (2) of the Arbitration and Conciliation Act, 1996 and upheld the award passed in A.A. No.02 of 2003 passed on 12.10.2010 by learned Arbitrator Sri R.D. Roy, Chairman-cum- Managing Director (Retired), Western Coalfields Limited, Anandgra, Lane – 3, Morabadai Maidan (North), P.O – Ranchi University, District – Ranchi.

By the award dated 12.10.2010 the appellant has been directed to pay the withheld amount of Rs.2,93,910/- to the claimant/Opposite Party. There is also a direction to pay interest @ 12% p.a. from 06.11.1999 till the date of publication of the award and also interest as provided under Section 31(7) (b) of the Arbitration and Conciliation Act, 1996, if the awarded amount is not paid within the period of 2 months. A direction has also been made for payment of Rs. 30,000/- to the claimant as compensation towards expenditure in the court and during arbitration.

Arguments on behalf of the Appellant

2. **1st Point – point of limitation** The respondent gave notice for arbitration to the Chairman-cum-Managing Director, CCL, Ranchi on 28.11.2002 i.e. after expiry of the limitation period of 03 years. During the course of argument, the learned counsel for the appellant has referred to the award. The stand of the CCL before the learned Arbitrator has been recorded in para-III (rejoinder of the respondent) of the award.

3. The learned counsel submits that the learned Arbitrator has not returned any finding on the point of limitation. During the course of arguments it was pointed out to the learned counsel for the appellant that upon perusal of the said paragraph-III of the award, it appears that no plea of limitation has been mentioned. In response, learned counsel for the appellant has submitted that a point of law arises in the present case inasmuch as the learned Arbitrator was duty-bound to examine the point of limitation irrespective of any plea having been raised by the appellant before the learned Arbitrator. The learned counsel has also submitted that this plea of limitation can be verified from the defence statement filed by the appellant before the learned Arbitrator .

However, from the perusal of the grounds taken by the appellant in the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, no such ground has been taken that the plea of limitation having been raised in the defence statement, has not been considered by the learned Arbitrator.

4. The learned counsel further submits that the finding of the learned Court below on the point of limitation is contrary to law, inasmuch as, the learned Court below has recorded a finding that the point of limitation will arise only from the date of denial of the claim. The learned counsel has relied upon a judgment passed by this Court in ***Second Appeal No.96 of 2014 decided on 27.03.2019 (para 21, 25)*** and submits that the finding of the learned court below is contrary to law.

5. **2nd Point -regarding clause 32 of the agreement** The claim with regard to refund of security deposit was barred in view of Clause 32 of the Contract which strictly provided that security deposit will be refunded upon production of completion certificate to be issued by the General Manager of the concerned Area. Learned counsel submits that

Clause 32 has been quoted in the impugned order passed by the learned Court below. The learned counsel submitted that no completion certificate was produced by the Claimant before the learned Arbitrator and the reason for not issuance of completion certificate was that the Claimant was to deposit the provident fund dues amounting to Rs.23,76,664/-. The learned counsel submits that on account of such dues relating to provident fund amount , a counter claim was also filed by the appellant before the learned Arbitrator.

6. The learned counsel has referred to the Award and submits that with regard to Clause 32 and issuance of completion certificate, specific plea has been raised in para III (4) and para III (9) of the award and the finding of the learned Arbitrator is at para IV (6) and para IV (7) of the Award. The learned counsel submits that the Counter Claim No.2, for recovery of Rs.23,76,664/- was also rejected by the learned Arbitrator.

7. However, during the course of hearing, it is observed that no ground has been raised to challenge the rejection of counter claim in the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

8. **Third Point -regarding clause 33 of the agreement -** Learned counsel further submits that Clause 33 of the Contract deals with the interest and the clause has been quoted in the impugned order. The learned counsel submits that no interest was at all payable on the security deposited or deducted for the work and/or on the amount due and payable if the payment is delayed on any reasonable ground. The learned counsel further submits that the plea with regard to Clause 33 of the Contract was raised in para III (9) of the award. He has also submitted that last portion of paragraph para IV (7) records that there was no reasonable ground to withhold the payment of security deposit and if there was any reason other than the absence of certificate regarding the performance, that matter should have been sorted out immediately after completion of the work and the security money released.

9. The learned counsel submits that the amount of CMPF was due and, therefore, there was reasonable ground to withhold the security deposit, which is over and above the fact that upon true interpretation of Clause 33 of the Agreement, no interest at all was payable on the

security deposit and the amount of interest on the other payment could have been withheld if there was reasonable ground.

10. The learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court reported in ***(2015) 9 SCC 695 [Union of India Vs. Bright Power Projects (India) Private Limited]*** and has referred to paragraphs 9, 10 and 11 of the said judgement. He submits that similar narration made in connection with the payment of interest is involved in the present case and, therefore, award of interest on security deposit by the learned Arbitrator is *ex facie* illegal. The learned counsel for the appellant has referred to ground no. (e) raised in the petition under Section 34 of the Act of 1996.

11. Learned counsel has also relied upon the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No. 5286 of 2006 (M/s. Rashtriya Chemicals & Fertilizers Ltd Vs. M/s. Chowgule Brothers & Ors)*** decided on 07.07.2010 and has referred to paragraphs 16 onwards of the said judgment.

12. Learned counsel further submits that the point with regard to Clause 33 of the Contract was not properly considered by the learned Court below and the learned Court below has passed a cryptic order in connection therewith.

Fourth Point -regarding exorbitant interest

13. Learned counsel has also submitted that the learned Arbitrator has given *pendente lite* interest @ 12% p.a. which is exorbitant and is required to be modified.

Fifth Point -claim of refund of security amount barred under Order II Rule 2 CPC.

14. Learned counsel has also submitted that the claim of refund of security amount was barred by the principles of Order II Rule 2 CPC. This plea was raised before learned Arbitrator but he has not appreciated it properly and even the learned Court below has not appreciated this aspect of the matter.

15. Learned counsel has relied upon paragraph ***16*** of the judgement passed in ***Civil Appeal No. 5286 of 2006*** and submits that the law is well settled that the Arbitrator cannot travel beyond the terms of the contract and any amount awarded beyond the terms of the contract cannot be sustained in the eyes of law.

Submissions of Respondent

16. Learned counsel for the respondent, on the point of limitation, has submitted that this issue relates to question of fact and the finding can be returned by the learned Arbitrator only with regard to the issues which were raised before the learned Arbitrator. Learned counsel has further submitted that he has gone through the records of the learned Arbitrator but no such plea was raised that the claim was barred by limitation.

17. So far as Clause No. 32 of the Contract is concerned, he has referred to para IV (6) of the Award and has submitted that refund of security deposit was never linked with alleged non-deposit of CMPF contribution. He has, in particular, referred to paragraphs 3 and 4 of the rejoinder of the respondent. The learned counsel has also submitted that non-payment of CMPF amount was never linked to certification of completion of work. He has also submitted that completion of work has nothing to do with the alleged non-payment of CMPF amount. He submits that the counter-claim based on non-deposit of CMPF contribution has been rejected by the learned Arbitrator which has not been challenged by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996. The learned counsel has also submitted that the learned Arbitrator after considering the materials on record has recorded a specific finding that there was satisfactory completion of work and such finding of the learned Arbitrator has neither been challenged in the petition under Section 34 of the Act, nor could have been challenged after seeing the subsequent dates of appreciating the facts of the case. He has also submitted that once the finding of satisfactory completion of work has been recorded by the learned Arbitrator, the appellant cannot take advantage of their own wrong by not issuing the completion certificate. The learned counsel has also submitted that so far as Clause Nos.32 and 33 of the Contract are concerned, the same have been considered and there is a specific finding by the learned Arbitrator as per the plea raised by the respective parties and there was no scope of interference by the learned court below . The learned counsel has also submitted that there is no scope of interference so far as *pendente lite* interest of 12% per annum is concerned. Learned

counsel, on the point of interest on payment of security amount, has submitted that the judgment which has been cited by the learned counsel for the appellant, the corresponding clause of the said judgment is totally different as there was a clear bar and absolute bar on payment of interest. He submits that in the present case, the bar on payment of interest is followed by some conditions i.e. presence of any reasonable ground to deny payment. It has also been submitted that the appellant had taken a specific ground with regard to the said clause before the learned Arbitrator and new interpretation to the same clause which is being given by the appellant before this Court by referring the aforesaid judgment is not permissible in the eyes of law. The learned counsel has also submitted that the learned Arbitrator, on the basis of a specific stand taken by the appellant before the learned Arbitrator, has given a finding that there was no reasonable ground for non -refund of security amount.

18. The learned counsel has further submitted that with regard to point raised by the appellant regarding Order II Rule 2 CPC, a specific finding has been recorded by the learned Arbitrator and the same has also been considered by the learned Court below in its order.

Rejoinder arguments of the appellant.

19. In response, learned counsel for the appellant has referred to para III (4) of the rejoinder of the respondent (present appellant) as recorded in page 6 of the award and submits that it was specifically argued by the appellant that unless the claimant furnishes the details with regard to deduction of provident fund of the employees, return showing deposit of the deducted provident fund along with their contribution, the appellant was not liable to refund security deposit.

Findings of this Court.

20. The claimant was awarded a contract for transportation and loading of coal under the sponsorship of Director General of Rehabilitation in view of Memorandum of Understanding made between Ministry of Defence and Ministry of Coal, Government of India. The claimant carried out the work in various collieries of the appellant for which separate agreement for different area was to be executed every year. The period of sponsorship was 10 years which

ended on 05.11.1999. After completion of work, the respondent approached the appellant for refund of security deposit of Rs.4,06,222/-. The claim and the awarded amount are as follows: -

Sl. No.	Particulars	Amount (Rs.)	Awarded amount
1	Amount of security recovered from the various bills of the claimant to be refunded	Rs. 4,06,222.00	The respondent (appellant herein) shall pay the withheld amount of Rs.2,93,910.00 to the claimant
2	Interest on (1) above @ 18% calculated from 06.11.1999 to the actual date of payment	Amount to be ascertained depending on the date of actual payment	The respondent (appellant herein) shall pay interest on the withheld amount of Rs.2,93,910.00 to the claimant @ 12% per annum from 06.11.1999 till the date of publication of the award
3	Compensation for the expenditure incurred by the claimant in the court and for arbitration	Rs. 1,00,000.00	The respondent (appellant herein) shall pay Rs.30,000/- to the claimant as compensation towards expenditure in the court and during arbitration.

21. Following were the counter claims made by the respondent (appellant herein) over the claimant:

Sl. No.1	Particulars	Findings
1.	Recovery of overpayment of Rs.1,40,34,013.69	Counter claims were devoid of merit therefore they were rejected in totality.
2.	Amount of Rs.23,76,664.00 recoverable towards CMPF dues	

22. The learned arbitrator has also recorded that the appellant was directed to verify the recovery of the security amount and on verification, the recovery of the security money was reconciled to the extent of only Rs. 3,91,515.00. The discrepancy of Rs. 14,707.00 could not be reconciled. It has also been recorded that in sitting no. 45 on 26.09.2007, both the parties stated that the discrepancy of Rs. 14,707.00 should be treated as dropped. Therefore, only the amount of Rs. 3,91,515.00 was held to be the withheld amount of the security money. Further, the amount of Rs. 97,605.00 was stated to have been adjusted from the security deposit of the claimant vide letter no. CGM

(CMC)/ESM/Rent-Recv/07/957 dated 03.11.2007 addressed to the claimant by Chief General Manager (CMC) of the appellant. The learned arbitrator recorded that he was convinced that the VTC (Vocational Training Centre) was occupied by the claimant but no rent was paid and therefore, the appellant adjusted the due rent of Rs. 97,605.00 from the security deposit of the claimant and upon adjustment of Rs. 97,605.00 from the security deposit of Rs. 3,91,515.00, the balance security deposit came to Rs. 2,93,910.00 which was directed to be paid.

Fifth Point -claim of refund of security money barred under Order II Rule 2 CPC.

23. The plea that the claim was barred by Order II Rule -2 of CPC is required to be decided first.

24. It was the case of the appellant that the claimant had filed another application for appointment of arbitrator in the High Court being AA No.36/02 with regards to claim arising out of the agreement and the High Court was pleased to refer the dispute to the Arbitral Tribunal of Sri S.N. Singh Ex Chairman-cum-Managing Director, Eastern Coal Field Limited-Sole Arbitrator and accordingly, the dispute with respect to refund of security deposit was barred by the principle of order II Rule -2 of CPC.

On the other hand, it was the case of the claimant before the learned arbitrator, after giving the entire background of the claim, that a joint petition was filed by the parties on 19.01.2009 (sitting no.50) in which the respondent (appellant herein) stated that they did not have any objection, if that tribunal heard the dispute with regard to the refund of the security deposit provided the claimant withdrew the supplementary claim with regard to the security deposit filed before the arbitration tribunal of Sri S.N. Singh.

It has been recorded by the learned arbitrator that on the basis of the said joint petition with express consent of both the parties, this tribunal by the order dated 19.01.2009 (sitting no. 50) held that the hearing of the case would proceed and this tribunal fixed the next date of hearing. In terms of pre-condition (i.e. withdrawal of claim relating to security deposit from arbitral tribunal of Sri S.N. Singh) by the joint petition

dated 19.01.2009 and the order of the tribunal dated 19.01.2009, the claimant filed petition before Sri S.N. Singh on 21.01.2009 for withdrawal of the supplementary claim for release of security deposit and Sri S.N. Singh allowed the claimant to withdraw the petition for refund of security deposit vide his order dated 04.02.2009.

The principle of law with regard to Order II Rule 2 of CPC was considered by observing that if the plaintiff does not include all claim he cannot file another suit for the claim which has not been included in earlier suit, but there is a rider by virtue of which the plaintiff may obtain leave of the court to file a subsequent suit with regard to the claim not included in the first suit and in the present proceedings, Sri S.N. Singh had given leave to include the claim for refund of security deposit before the learned Arbitral tribunal. The learned arbitrator also recorded that the claimant had filed their Statement of Facts and Claim (SOFC) before the learned Arbitrator on 10.06.2003 in which claim of security deposit was included whereas, SOFC was filed before Sri S.N. Singh 4 months later i.e. on 27.10.2003 in which such claim was not included. The learned Arbitrator after considering the various materials rejected the case of the appellant that the claimant had relinquished claim for refund of security deposit. The learned Arbitrator ultimately recorded his finding after considering the entire plea in paragraph 42 of the Award as follows:

> *"42. Considering the facts placed before me by the claimant as well as the respondent and on going through the records, I am fully satisfied and hold that the dispute before me is maintainable/arbitrable and this arbitral tribunal has got full jurisdiction to adjudicate upon the dispute."*

25. In view of the aforesaid findings recorded by the learned arbitrator based on materials on record, this court is of the considered view that the challenge made by the learned counsel for the appellant by referring to order II Rule -2 of CPC cannot be entertained under the limited scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 . There is no scope for reappreciation of the evidences before the learned arbitrator and coming to a different finding. Neither the quantity nor the quality of the evidence can be reappreciated while considering a petition under section 34 of the aforesaid Act of 1996. This court is of the considered view that the learned court below has rightly rejected the aforesaid plea raised by the

appellant with regards to the point of the appellant that the claim of the claimant for refund of security amount was barred under order II Rule -2 of CPC. Further, the scope of interference is much narrower when it comes to an appeal under Section 37 of the aforesaid act of 1996.

26. In view of the aforesaid findings, the point no.5, as raised by the appellant, is hereby decided against the appellant and in favour of the claimant.

1st Point – point of limitation

27. The grievance of the appellant is that the learned Arbitrator has not returned any finding on the point of limitation. During the course of arguments, it was pointed out to the learned counsel for the appellant that upon perusal of the arguments of the appellant recorded in paragraph-III of the award, no plea of limitation has been mentioned. In response, learned counsel for the appellant has submitted that the learned Arbitrator was duty-bound to examine the point of limitation irrespective of any plea having been raised by the appellant before the learned Arbitrator. The learned counsel has also submitted that this plea of limitation can be verified from the defence statement filed by the appellant before the learned Arbitrator.

28. The following ground with regards to limitation was taken by the petitioner (appellant herein) before the learned court below: -

> *"The Arbitral Tribunal should have held that claim made by the claimant/opposite party was barred by limitation for the period 1996-97, 1997-98, 1997-98 and 1998-99. Since the opposite party gave notice for arbitration to the Chairman-cum-Managing Director, C.C.L., Ranchi on 28.11.2002 i.e. after expiry of the limitation period of 3 years."*

29. This court finds that on the one hand, from the perusal of the award, it appears that the learned arbitrator has recorded the submission of both the parties but no ground of limitation was taken by the appellant before the learned arbitrator and on the other hand, at the stage of petition under section 34 of the Act of 1996, no such ground has been raised regarding non consideration of any point raised in the defence statement filed by the appellant.

30. The learned counsel for the appellant has also submitted that ground of limitation ought to have been considered by the learned arbitrator as the learned Arbitrator was duty-bound to examine the point of limitation irrespective of any plea having been raised and it has also

been submitted that the plea of limitation can be verified from the defence statement filed by the appellant before the learned Arbitrator.

31. The aforesaid argument of the learned counsel for the appellant is devoid of any merits. The point of limitation, if any, was required to be specifically raised by the appellant before the learned arbitrator who could have considered such plea after giving an opportunity to the claimant. It is important to note that the claimant had raised objection on the point of limitation in connection with adjustment of rent against security deposit, but the plea was rejected by the learned tribunal and the balance amount after adjustment of rent was directed to be paid . It is important to note that the dispute before the learned arbitrator was with regards to refund of security amount and the adjustment of rent of Rs.97,605/- against the security amount was made by the appellant vide their letter dated 03.11.2007. So far as the plea of verification from the defence statement filed by the appellant before the learned Arbitrator is concerned, the same also cannot be entertained by this court for the first time under section 37 of the aforesaid act of 1996. From the perusal of the grounds taken under Section 34 of the Arbitration and Conciliation Act, 1996, this court finds that no such ground has been taken by the appellant that, plea of limitation was raised in the defence statement but has not been considered by the learned Arbitrator. In such circumstances, reliance of the appellant on the judgement passed in *Second Appeal No.96 of 2014 decided on 27.03.2019 (para 21, 25)* deciding the point of limitation formulated under the facts of the said case, does not help the appellant in any manner.

32. This court is of the considered view that non consideration of point of limitation, which was never raised before the learned arbitrator, does not call for any interference in view of the limited jurisdiction under section 34 of the aforesaid Act of 1996. The learned court below has rightly refused to interfere with the award.

33. The point no.1 is accordingly decided against the appellant and in favour of the claimant.

2nd Point -regarding clause 32 of the agreement

34. Clause 32 of the Agreement is quoted as under:

> *"On satisfactory completion of the entire work and after it is duly certify by the companies GM of the concerned area the security deposit will be refunded to the contractor."*

35. The ground raised by the appellant before the learned court below with regards to clause 32 of the agreement is as under: -

> *"The learned Arbitral Tribunal has failed to take into consideration that Clause 32 of the GTC prohibits payment of security deposit unless satisfactory completion of entire work and a certificate to this effect duly certified is given by the representative of the company and General manager of the concern area. Only on the satisfactory completion of work and after it is duly certified by the representative of the company and the General manager of the concern area the security deposit will be refunded to the contractor."*

36. In the judgment passed by Hon'ble Supreme Court in the case of ***M/s Rashtriya Chemicals & Fertilizers Ltd. Vs. M/s Chowgule Brothers & Ors. in Civil Appeal No.5286 of 2006,*** it has been, *inter alia*, held that while it is true that the Courts show deference to the findings of fact recorded by the Arbitrators and even opinions, if any, expressed on questions of law referred to them for determination, yet it is equally true that the Arbitrators have no jurisdiction to make an award against the specific terms of the contract executed between the parties.

37. It is well settled that the arbitrator derives authority from the contract and if he acts in manifest disregard of the contract, the award given by him would be an arbitrary one; that this deliberate departure from the contract amounts not only to manifest disregard of the authority or misconduct on his part, but it may tantamount to mala fide action.

38. It is also well settled that interpretation of a particular condition in the agreement would be within the jurisdiction of the arbitrator. However, in cases where there is no question of interpretation of any term of the contract, but of solely reading the same as it is and still the arbitrator ignores it and awards the amount despite the prohibition in the agreement, the award would be arbitrary, capricious and without jurisdiction. Whether the arbitrator has acted beyond the terms of the contract or has travelled beyond his jurisdiction would depend upon facts, which however would be jurisdictional facts, and are required to be gone into by the court. The arbitrator may have jurisdiction to

entertain claim and yet he may not have jurisdiction to pass award for particular items in view of the prohibition contained in the contract and, in such cases, it would be a jurisdictional error.

39. In the case of ***Bharat Coking Coal Ltd. v. Annapurna Construction reported in (2003) 8 SCC 154***, the Hon'ble Supreme Court reiterated the legal position in the following words:

> *"There lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record."*

40. The plea of the appellant has to be looked into keeping in mind the aforesaid principles of law.

41. The learned Arbitrator referred to various correspondences and also conduct of the parties and interpreted clause 32 of the agreement regarding release of security deposit and recorded his finding at para 7 of the award:

> "*7. I agree that under clause 32 of the agreement for release of the security deposit a certificate from the GM of the area concerned or his representative is required, but it has not been specifically mentioned that the contractor is required to enclose such certificate. Such certificate could have been given even on the claimant's application/request for release of security deposit. If it was essential for the claimant to produce the certificate, they could have been asked to do so, rather than denying them the payment. In fact the respondent should have issued a notice under clause 20 (b) of MOU dated 16.04.1999 before forfeiting the security deposit. On going through the submissions of both the parties carefully I am satisfied that the performance of the claimant had been satisfactory and the security money should have been released after completion of the work. There was no reasonable ground to withhold the payment of security deposit. If there was any reason other than the absence of certificate regarding the performance that matter should have been sorted out immediately after the completion of the work and the security money released."*

42. This court finds that the interpretation has been made by the learned arbitrator with regards to refund of security deposit with particular reference to clause 32 of the agreement. The view taken by the learned arbitrator is certainly a view based on appreciation of evidences and interpretation of agreement (clause 32) which to the mind of this court is certainly a possible/plausible view which does not call

for any interference in the limited jurisdiction under section 34 of the aforesaid Act of 1996.

43. So far as the plea that the required certificate was to be given after deposit of the amount of provident fund dues is concerned, the same has no basis at all as the award itself reflects that the claim in connection with dues against provident fund amount could not be substantiated by the appellant before the learned arbitrator and the counter claim under this head was also rejected by a well speaking award. In fact, all the counter claims were rejected by the learned arbitrator.

44. The learned court below has rightly rejected the objection to the award which does not call for any interference under section 37 of the aforesaid Act of 1996. Neither the learned arbitrator acted in manifest disregard of the contract nor the award given by him can be said to be an arbitrary one nor there is any deliberate departure from the contract while directing refund of security amount after interpreting clause 32 of the agreement.

45. The point no.2 is accordingly decided against the appellant and in favour of the claimant.

46. <u>Third Point -regarding clause 33 of the agreement –</u>

47. Clause 33 of the Agreement is quoted as under:

> *"No interest shall be paid on the security money deposited or deducted for the work and/or on the amount due and payable if payment is delayed on any reasonable grounds."*

48. The ground raised by the appellant before the learned court below with regards to clause 32 of the agreement is as under: -

> *"The learned Arbitrator has erred in awarding the interest and the same is against the terms of the Clause – 33 of the agreement which speaks that no interest shall be payable on the security money deposited or deducted for work is/are on amount due and payable if payment is delayed on any reasonable grounds and whatever the interest is awarded by Arbitral Tribunal is too high, unjust and not to be logically accepted."*

49. Paragraphs 9,10 and 11 of the judgement passed in ***Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695*** are quoted as under:

> ***9.*** *Clause 13(3) of the contract entered into between the parties reads as under:*

> *"13. (3) No interest will be payable upon the earnest money and the security deposit or amounts payable to the contractor under the contract, but government securities deposited in terms of sub-clause (1) of this clause will be repayable with interest accrued thereon."*
>
> ***10.*** *Thus, it had been specifically understood between the parties that no interest was to be paid on the earnest money, security deposit and the amount payable to the contractor under the contract. So far as payment of interest on government securities, which had been deposited by the respondent contractor with the appellant is concerned, it was specifically stated that the said amount was to be returned to the contractor along with interest accrued thereon, but so far as payment of interest on the amount payable to the contractor under the contract was concerned, there was a specific term that no interest was to be paid thereon.*
>
> ***11.*** *When parties to the contract had agreed to the fact that interest would not be awarded on the amount payable to the contractor under the contract, in our opinion, they were bound by their understanding. Having once agreed that the contractor would not claim any interest on the amount to be paid under the contract, he could not have claimed interest either before a civil court or before an Arbitral Tribunal."*

50. The clause regarding payment of interest in the judgement passed by Hon'ble Supreme Court ***Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695*** clearly mentioned that no interest was at all payable against the earnest money and the security deposit or amounts payable to the contractor under the contract, but interest was payable only on government securities.

51. In the present case, the clause 33 of the agreement is different. The claim of interest under claim no.2 in the light of clause 33 has been considered by the learned arbitrator by interpreting the same and applying it to the facts of the case. So far as the claim no.2 relating to interest on the security amount is concerned, the learned Arbitrator considered and interpreted the clause 33 of the contract by stating that as per terms and conditions of the contract, no interest was payable on security deposit provided the security deposit withheld on reasonable ground and rejected the plea of the appellant by holding that it was already recorded by the learned Arbitrator that there was no justification or any reasonable ground to withhold the refund of security deposit and therefore the interest was found to be payable on the withheld amount of Rs.2,93,910.00.

52. The view taken by the learned Arbitrator is certainly a view based on appreciation of evidences and interpretation of agreement clause 33 which to the mind of this court is certainly a possible/plausible view which does not call for any interference in the limited jurisdiction under section 34 of the aforesaid Act of 1996. The learned court below has rightly rejected the objection to the award which does not call for any interference under section 37 of the aforesaid Act of 1996. Neither the learned arbitrator acted in manifest disregard of the contract nor the award given by him can be said to be an arbitrary one nor there is any deliberate departure from the contract while directing payment of interest on refundable security amount after interpreting clause 33 of the agreement and applying it to the facts of the case.

53. The point no.3 is accordingly decided against the appellant and in favour of the claimant.

<u>Fourth Point -regarding exorbitant interest</u>

54. The learned arbitrator has recorded following findings: -

> *" The claimant has claimed interest on the withheld amount of security money @ 18% per annum from 06.11.1999 to the actual date of payment. As per the terms and conditions of the contract no interest is payable on the security deposit provided the security deposit is withheld on reasonable grounds. In the light of the facts already mentioned in the preceding paragraphs I do not find any justification or any reasonable ground to withhold the refund of the security deposit and therefore interest is payable on the withheld amount of Rs. 2,93,910.00.*
>
> *The interest becomes payable, when any amount due to be paid is not paid, when due. Since the security deposit was due to be paid after completion of the work, but it was not paid, the respondent is liable to pay the interest on the withheld amount. The claimant has demanded interest @ 18% per annum which is considered high. In my opinion interest @12% per annum would be quite reasonable. The work was completed on 05.11.1999. The security money should have been released immediately after 05.11.1999, but it was not done. The interest is therefore payable on Rs. 2,93,910.00 from 06.11.1999 till the publication of this award."*

55. This Court finds that the learned Arbitrator has cited reasons for award of interest on refund of security deposit and has passed a reasoned order even on the point of rate of interest. No interference was called for under section 34 of the aforesaid Act of 1996 and the learned court below has rightly refused to interfere even on the point of interest.

This court also does not find any ground enabling interference under Section 37 of the act of 1996.

56. The point no.4 is accordingly decided against the appellant and in favour of the claimant.

57. As a cumulative effect of the aforesaid findings, there is no merits in this appeal, which is accordingly dismissed.

58. Interim order, if any is vacated.

59. Let this judgement be communicated to the concerned court through e-mail/FAX.

60. Let the records received from the learned court below be immediately sent back.

61. The amount deposited before this court pursuant to the order dated 19.08.2016 be remitted to the executing court with up to date accrued interest on the same.

(Anubha Rawat Choudhary, J.)

Pankaj/Mukul