* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 5th January, 2023**
Pronounced on: 26th April, 2023

\+ O.M.P. (COMM) 577/2020 & I.A. 11747/2020
TEHRI HYDRO DEVELOPMENT CORPORATION INDIA LIMITED ..... Petitioner

Through: Mr. Puneet Taneja, Ms. Prity Sharma, Ms. Laxmi Kumari and Mr. Manmohan Singh Narula, Advocates with Mr. Tarul Sharma from THDCIL

versus

M/S C. E. C. LIMITED ..... Respondent

Through: Mr. Ratan Kumar Singh, Sr. Advocate with Mr. Rajeev Gurung, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act, 199") has been filed on behalf of the petitioner seeking the following reliefs:

> *"In the view of aforementioned submissions, it is most respectfully prayed that this Hon'ble Court may be pleased to:*
> *(a) Set aside the impugned Arbitral Award dated 04.08.2020 passed by the Learned Arbitral Tribunal;*
> *Pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the Petitioner and against the Respondent herein."*

FACTUAL MATRIX

2. The facts necessary for the disposal of this instant petition are that the petitioner is Tehri Hydro Development Corporation India Limited, the employer/respondent in the Arbitration and the respondent is M/S C. E. C. Limited, the contractor/claimant in the Arbitration. The petitioner and the respondent entered into a Contract Agreement No. 1/TDC-1/1981-82 for the construction of four circular head race tunnels having a diameter of 8.5m and approximate lengths 1100, 1200, 1450, and 1500 meters leading to bottoms of four underground surge tanks for the underground powerhouse of Tehri Dam Project, on 23rd November 1981. The respondent was sent a notice of commencement of work on 28th November 1981 as per clause 1.4.05 of the Agreement.

3. The respondent *vide* letter dated 19th September 1987 submitted a Claim of INR 568.4 Lakhs which was rejected by the Engineer-in-charge *vide* his letter dated 2nd January 1988 after which the claimant invoked the Arbitration Clause. The dispute thus, existed between the parties only for Rs. 568.4 lakhs and which was made the subject matter of reference by the Claimant.

4. A Statement of Claim was filed by the respondent herein before the learned Arbitral Tribunal comprising of Mr. Justices B. Pandey (Retd.), R.N. Misra (Retd.), and Shri R.K. Agarwal on 11th November 1988 followed by Statement of Defence by the petitioner (respondent in the Arbitration) on 7th March 1989. The rejoinder was filed by the claimant/respondent on 15th April 1989.

5. On 7th July 1992 due to the demise of one of the learned Arbitrators, a new Arbitral Tribunal was constituted consisting of new Arbitrators, followed by the demise of another learned Arbitrator on 14th December 1992, and re-constitution of the Arbitral Tribunal.

6. The composition of the learned Arbitral Tribunal has changed on multiple occasions since the foreclosure of the contract on 15th December 1990. On 4th February 2019, Mr. Ram Dayal Gupta was appointed as the learned Sole Arbitrator in the Arbitration proceedings and the first hearing took place on 8th March 2019 before the current learned Sole Arbitrator.

7. The impugned Award was passed on 4th August 2020 and received by the petitioner on 7th August 2020, aggrieved by which the petitioner has approached this Court with the instant petition seeking the aforesaid reliefs.

SUBMISSIONS

(On behalf of the Petitioner)

8. Learned counsel for the petitioner submitted that the impugned Arbitral Award dated 4th August 2020 is in conflict with the fundamental policy of Indian Law and basic notions of justice, and is completely perverse, both factually and legally. It is further submitted that the Impugned Award suffers from sheer non-applicability of mind and is *ex-facie* fraudulent.

9. It is further submitted by Learned counsel for the petitioner that the impugned Award is arbitrary, and passed in utter disregard to facts, documents, evidence, and material on record.

10. It is submitted by learned counsel for the petitioner that evidence has been disregarded in each issue decided by the Arbitrator and that any extra expenditure on account of any idling and/or underutilization of resources, rise in wages, infructuous overheads, was incurred on account of any breach or otherwise by the claimant/respondent.

11. Learned Counsel for the Petitioner submitted that the Learned Sole Arbitrator violated the procedure and rendered "issue-wise" findings without any issues being addressed by the parties during the course of arbitration proceedings.

12. It is also submitted that the impugned Award completely ignores the contractual provisions pertaining to deductions/adjustment from the running bill towards the recovery of mobilization advances, and furnishing of the construction program within a period of 30 days from the day of signing the contract. Additionally, it is submitted that the Arbitrator ignored vital clauses of the Contract, such as Clause 1.4.08 (Construction programme), Clause 1.4.28 (completion of works), Clause 1.1.11 (deviations, alterations, and additions to the work), Clause 1.1.19 (access to the Contractor's books), Clause 1.2.14 (no claim for delayed payment due to dispute), and Clause 1.2.15 (interest on money due to the Contractor).

13. Learned counsel for the petitioner submitted that the impugned Award ignored the effect of "No Claim Certificates" issued by the claimant/respondent.

14. It is submitted by learned counsel for the petitioner that the petitioner had objected at a very early stage pointing out the absence of any relevant books of accounts or records from which actual expenditure

could be verified. It is submitted that the manner in which the Arbitrator had glossed over the complete absence of any account book or evidentiary material to establish the expenditure of INR 4,47,62,772.94/-, the amount awarded by the Arbitrator, is unconscionable. Learned counsel for the petitioner submitted that the books of accounts have never seen the light of the day and findings of the books are fraudulent.

15. Learned counsel for the petitioner submits that the impugned Award grants an amount of 1.3 crores on account of loss of profit to the respondent, whereas there was no such claim before the learned Sole Arbitrator.

16. Learned counsel for the petitioner submitted that the findings of the learned Arbitrator are illegal as they are based on no evidence, as held by the Hon'ble Supreme Court in ***State of Rajasthan vs. Ferro Concrete Construction Pvt Ltd*** **(2009) 12 SCC 11.** The relevant paragraph is reproduced below:

> *"55. While the quantum of evidence required to accept a claim may be a matter within the exclusive jurisdiction of the arbitrator to decide, if there was no evidence at all and if the arbitrator makes an award of the amount claimed in the claim statement, merely on the basis of the claim statement without anything more, it has to be held that the award on that account would be invalid. Suffice it to say that the entire award under this head is wholly illegal and beyond the jurisdiction of the arbitrator, and wholly unsustainable. "*

17. Learned counsel for the petitioner further submitted that the respondent did not have the requisite equipment to achieve the required excavation rate, which could be ascertained from the evidence led by the

petitioner's witnesses during cross-examination. Further, it is submitted that the learned Sole Arbitrator has erroneously decided this issue against the petitioner by relying on the letter dated 16th December 1987.

18. Learned counsel for the petitioner submitted that the respondent never submitted any construction programme approved by the Engineer-in-Charge of the work to be executed by them thereby violating Clause 1.4.08 of the Agreement, which reads as under:

> *"**Clause 1.4.08 CONSTRUCTION PROGRAMME**: Within thirty (30) calendar days after the date of receipt of notice to proceed with the work the contractor shall furnish to Engineer-in-Charge a complete construction programme showing in details his proposed programme of the operations which programme shall provide for orderly performance of the work. The construction programme shall be in such form and in such details as to properly show the sequence of the work under each time of the schedule of quantities and bids. Revised construction programme shall be submitted at intervals of not more than three months for the approval of the Engineer-in-Charge and, in addition thereto the contractor shall immediately advise the Engineer in-charge of any proposed change in his construction programme."*

19. It is further submitted that the learned Sole Arbitrator, without any logical reasoning, has come to an erroneous conclusion that the curtailment of the various items of work from the scope of Agreement by the petitioner herein was arbitrary, illegal, and without jurisdiction.

20. Learned counsel for the petitioner submitted that the learned Sole Arbitrator has failed to consider that shortage of funds was never an issue for hindrances in the execution of work.

21. It is further submitted that the learned Sole Arbitrator has completely disregarded the petitioner's averments made in the Statement of Defense.

22. Learned counsel for the petitioner submitted that the learned Sole Arbitrator has wrongly interpreted Section 31(7)(a) of the Act in awarding the interest of 14% to the respondent which is barred under Section 31(7)(a).

23. It is further submitted that reasoning given by learned Sole Arbitrator has no basis and the relevant Contractual Clauses 1.2.14 and 1.2.15 have been completed disregarded. He has referred the Clauses 1.2.14 and 1.2.15 which have been reproduced herein below:

> *"**Clause 1.2.14 NO CLAIM FOR DELAYED PAYMENT DUE TO DISPUTE ETC.***
> *The contractor agrees that no claim for interest or damage will be entertained or payable by the Government in respect of any money or balances which may be lying with the Government owing to any disputes, difference or misunderstanding between the parties in respect of any delay or omission on the part of the Engineer-in-Charge in making intermediate or final payments or in any other respect whatsoever."*
> *"**Clause 1.2.15 INTEREST ON MONEY DUE TO THE CONTRACTOR***
> *No omission on the part of the Engineer-in-Charge to pay the amount due upon measurement or other-wise shall vitiate or make void the contract, nor shall the contractor be entitled to interest upon any guarantee or payments in arrears nor upon any balance which may on the final settlement of his accounts be due to him."*

24. Learned counsel for the petitioner further submitted that the learned Sole Arbitrator has rejected the Counter Claim of the petitioner without giving any reason.

25. Learned counsel for the petitioner submitted that the terms of the Agreement with regard to the recovery of the principal amount of advance and the interest accrued thereon to be made from the Contractor has been disregarded and completely ignored by learned Arbitrator.

26. Learned counsel for the petitioner thus submitted that the impugned award dated 4th August 2020 is liable to be set aside under Section 34 of the Act, 1996.

(On behalf of the Respondents)

27. *Per Contra*, learned senior counsel for the respondent vehemently denies the objections raised by the petitioner. It is submitted by the learned counsel for the respondent that the work did not complete on time due to delays on the part of the petitioner and subsequent requests for the extension of time.

28. Learned senior counsel for the respondent submitted that the respondent raised claims of INR 4,47,62,772.94/-, INR 1,20,77668.88/-, and INR 3,49,20,000/- for delay caused by the petitioner.

29. Learned senior counsel of the respondent further submitted that learned Sole Arbitrator has considered relevant evidentiary material on record, contractual provisions and all applicable laws and has thereafter, correctly made the Award.

30. Learned senior counsel for the respondent submitted that the petitioner in disguise of Section 34 seeks nothing more than

reappreciation of evidence and re-litigation on merits which is clearly barred by law.

31. It is submitted that INR 4,47,62,772.94 was awarded to the respondent for the loss suffered by it due to expenditure on labour and overheads caused solely due to idling of labour and infructuous overheads which was duly verified by the CA of the petitioner who was also a witness in the Arbitral Proceedings.

32. It is further submitted that the petitioner's contention that the learned Sole Arbitrator has wrongly awarded interest in view of the contractual bar presented by the aforementioned clauses 1.2.14 and 1.2.15 is baseless, misconceived and contrary to the law.

33. It is submitted that as per Clause 1.2.08, of the Agreement recovery of advance was to be done against the running bills and thus, was directly connected with the turnover rate of works. In this regard, the learned Arbitrator has rightly held that it was not possible for advance to be recovered as per Clause 1.2.08 due to the low turnover rate caused solely by the petitioner's breaches. Thus, the respondent herein continued to incur excess interest due to and solely on account of the breaches of the petitioner.

34. Learned Senior counsel on behalf of the respondent submitted that the learned Arbitrator is correct in rejecting the petitioner's counterclaim for INR 213 lakhs as it was the obligation of the petitioner to keep the hypothecated plant and equipment in good condition.

35. It is further submitted that it is absolutely wrong and untenable for the petitioner to plead that the learned Sole Arbitrator has wrongly rejected their counterclaims 'without giving any reasons' and has

'disregarded and completely ignored' Clause 1.2.08 given the detailed and thoughtful reasoning apparent on the face of the award.

36. Learned senior counsel for the respondents thus submitted that this petition is liable to be dismissed.

FINDINGS AND ANALYSIS

37. Heard learned counsel for the parties and perused the record. This Court has also perused the impugned arbitral award as well as the entire arbitral record brought on record and has given thoughtful consideration to the submissions advanced on behalf of the parties.

38. The challenge to the impugned Arbitral Award *inter alia* has been made on the ground that the Award dated 4th August 2020 is in conflict with the fundamental policy of Indian Law and basic notions of justice and is completely perverse both factually and legally.

39. The Award has been challenged *inter alia* on the basis that the impugned Award is arbitrary, and passed in utter disregard of facts, documents, evidence and material on record, and that the learned Arbitrator did not give substantial reasoning for his decision.

40. The main ground taken by the learned counsel for the petitioner while assailing the Arbitral Award is that the impugned Arbitral Award is *ex-facie* erroneous and suffers from 'patent illegality', contrary to the 'fundamental policy of Indian Law'. The law regarding patent illegality and public policy of India is no more *res integra* and has been authoritatively clarified by the Hon'ble Supreme Court in a number of judicial pronouncements.

PATENT ILLEGALITY

41. Patent illegality is no longer a lacuna in the law of Arbitration in India. The scope of Section 34 of the Act, 1996, with regards to patent llegality has been discussed through numerous cases in India and abroad.

42. In ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI,* (2019) 15 SCC 131**, the Hon'ble Supreme Court while explaining the scope of the expression 'public policy of India' made the following pertinent observations:

> *"23. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to the "Renusagar" understanding of this expression. This would necessarily mean that the Western Geco (supra) expansion has been done away with. In short, Western Geco (supra), as explained in paragraphs 28 and 29 of Associate Builders (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of Associate Builders (supra).*
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> *xxxxxx*
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> *25. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs*

36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with. 26. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

27. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

28. To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

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30. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the

> *ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."*

43. It is pertinent to elaborate the meaning of the 'Fundamental Policy of Indian Law', as the petitioner has taken a plea that the impugned arbitral award is contrary to the fundamental policy of Indian Law and hence, being opposed to the public policy of India.

44. The Hon'ble Supreme Court in ***Associate Builders vs. Delhi Development Authority*, (2015) 3 SCC 49 ,** while explaining the meaning and scope of patent illegality, held as follows:

> *"42. In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three subheads*
> *42.1 (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is a really a contravention of Section 28(1)(a) of the Act, which reads as under:*
>
> > *"28. Rules applicable to substance of dispute.—(1) Where the place of arbitration is situated in India,— (a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;"*
>
> *42.2 (b) a contravention of the Arbitration Act itself would be regarded as a patent illegality- for example if an arbitrator gives no reasons for an award in contravention of section 31(3) of the Act, such award will be liable to be set aside.*

> *42.3 (c) Equally, the third sub-head of patent illegality is really a contravention of Section 28 (3) of the Arbitration Act, which reads as under:*
>
> > *"28. Rules applicable to substance of dispute.— (3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."*
>
> *This last contravention must be understood with a caveat. An arbitral tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.*

45. In the case of ***Associate Builders (supra),*** the Hon'ble Supreme Court clarified the meaning and scope of *"Fundamental Policy of Indian Law'* in the context of Section 34 of the Arbitration Act in the following manner:

> *"28. In a recent judgment,* ***ONGC Ltd. v. Western Geco International Ltd., 2014 (9) SCC 263,*** *this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held-*
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> > *35. What then would constitute the "fundamental policy of Indian law" is the question. The decision in ONGC [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "fundamental*

policy of Indian law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the for a concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

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38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and

circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available. 40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

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> *31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
>
> *1. a finding is based on no evidence, or*
>
> *2. an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or*
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> *3. ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*
>
> *xxxxxx*
>
> *33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts....."*

46. It is therefore clear that the decisive test is that *first*, the learned Arbitrator had to adopt a judicial approach; *second*, the principles of natural justice had to be upheld; *third*, the decision must not have been egregious, or rather, perverse.

47. Reiterating as previously observed, "patent illegality" is an illegality that goes to the root of the matter but excludes the erroneous application of the law by an arbitral tribunal or re-appreciation of evidence by an appellate court.

48. In order to apply the triple test to the impugned Award, it is important to analyze the Award with regard to each issue raised by the

petitioner in this instant petition. The true test of patent illegality is to be applied to the specific irregularities raised to adjudicate whether or not learned Arbitrator has erred in making the impugned Award.

49. The key grounds to examine whether the impugned Award is liable to be set aside on patently illegality as per Section 34 of the Act, 1996 are:

1. Whether the learned Arbitrator adjudicated the dispute disregarding the facts and evidences pertaining to the matter?

2. Whether the interest rate specified in issue no. 20 is patently illegal and contrary to the contract?

3. Whether the learned Arbitrator has the power to give out issue wise findings without any issues being addressed by the parties during the course of Arbitration proceedings?

1. DISREGARD OF FACTS & EVIDENCE

50. A key ground raised by the petitioner is that the findings of the learned Arbitrator are illegal as they are based on no evidence as held by the Hon'ble Supreme Court in ***State of Rajasthan vs. Ferro Concrete Construction Pvt Ltd*** **(Supra)**.

51. To examine the ground raised, a relevant portion of the impugned Award is reproduced below:

> *" **Issue No. 14 (b) Have the Claimants suffered losses on that account amounting to Rs.4,47,62,772.94 up to Aug. 1987 as alleged in para 15 of the Statement of claims?***
> *xxxxxx*
> *I have heard the Counsel of both of the parties and gone through the pleadings, written submissions and oral arguments advanced by the parties including the judgments relied upon on the issue of the no claim certificate submitted*

by the Claimant along with the time extension application. Perusal of Exhibit C-69 dated 20th October 1987 is a letter by the Claimant to the Respondent in which it has been written "this is with reference to your letter dated 28.09.1987, as desired by you vide your above cited letter we are enclosing herewith a no-claim certificate as per the proforma furnished by your office, although there is no provision in the Contract Agreement for furnishing such no claim certificate". The contents of the letter speak for itself that the Claimant did not furnish the no claim certificate on its own choice, but instead the Respondent insisted for its submission to the Claimant along with the time extension application. In fact it is clear from the letter that the Claimant clearly objected to the submission of the no claim certificate as their was no contractual provision for it. However, he did so because he had no other choice. In this regard the Ld. Counsel for the Claimant referred to a compilation of judgments already submitted by the Claimant in the records of the Ld. Arbitrators and to the cases ***Chairman and Managing Director NTPC Ltd. v. Reshmi Constructions Builders and Contractors [2004 2 SCC 663]*** *and* ***Ambika Construction v. Union of India [2006 13 SCC 475]*** *and thereafter during the Oral hearing before this Tribunal the case of* ***M/S Associated Construction vs. Pawan Hans Helicopters*** *decided on 07.05.2008 in* ***[Appeal (Civil) 3376- 3377 of 2008]*** *by the Hon'ble Supreme Court.*

The above case law clearly show that the Hon'ble Supreme Court has clearly considered the issue of situations in which furnishing of a no-claim certificate becomes ordinarily compulsory, even if there is no undue influence or coercion, while relying on the maxim "necessitas non habet legem meaning necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the bargain who is in a stronger position". The Hon'ble Supreme Court has also upheld in the abovementioned judgments that even if there is a clause of furnishing of no claim certificate in the agreement it would not be a bar for

the contractor in raising claims which are genuine. In the present case, I find that as the contractor gave the no claim certificate on the demand of the Respondents and with a specific protest in their letter dated 20.10.1987 [Exhibit C-69] the Claimants claim cannot be rejected in view of the said no claim certificate as furnished by the Claimant along with the time extension request. The submission of the Respondent is therefore rejected.

Now, coming to the merits of the claim under consideration, I have carefully gone through the arguments of both the parties, the evidences and the material on record in so far as the present claim is concerned.

The case of the claimant is that due to various defaults on the part of Respondents, the work under the contract could not progress at the speed so as to complete the same within the stipulated completion period of 72 months.

As stated above, the claimant has submitted a working of this claim in Annexure - II of statement of claims in which it has been explained that the tender working for this work by the claimants was based on following components.
xxxxxx
In view of the above earlier orders of the tribunal, the pending application dated 17.11.2009 of the respondent has to be disposed off. Application dated 17.11.2009 mainly prays for directions to the claimant to produce its original record relating to the accounts said to have been maintained by the claimant The claimant mainly objected in their objection dated 28.11.2009 that the application deserves to be dismissed as the final arguments were in progress and the present arbitration was pending for last 22 years, (even as in the year 2009) and the entire material on record on the basis of which the arguments are being advanced is available in the form of all relevant facts and documents in oral evidences of the parties. The respondent at the stage of evidence had full opportunity to peruse and question the

claimant on their account books and it was only a dilatory tactics being adopted by the respondent to have filed this application. The order dated 22.08.2010 has recorded detailed submissions made by both the parties and which is on record of the present arbitration and is not being quoted, therefore.

However, the submissions made by the learned counsel for both the parties as recorded in order dated 22.08.2010 have been carefully seen by me. I find the claimant's witness was cross-examined extensively by the counsel of the respondent. In reply to question no.130 it is clear that the agreed procedure between the parties was that account books shall be produced by the claimant before the arbitrators as and when required for the purposes of cross-examination. The then Sr. Counsel of the respondent Shri M.K. Banerjee also had stated that the account books would be required by him for the purposes of cross-examination but not on the said date however to be produced later as may be required by him. In question no. 634 the learned Sr. Counsel of the respondent specifically put the question before the claimant's witness, "Is it your evidence that you expect the learned Arbitrator to search through your books the figures which have been given in Exhibit - 84." In reply to the said question the claimant's witness confirms that the ledger and the account books were all produced before Shri Arun Saxena of the firm of the Chartered Accountant who also was present in the arbitration hearing of that date. Similarly, the oral statement of claimant witness Shri Manjeet Singh, from question no. 628 to 632 show that on the asking of the learned Sr. Counsel of the respondent, the account books /ledgers were produced physically in the arbitration hearings with reference to verification of the Exhibit-84 filed along with the statement of claims of the claimant pertaining to labour expenses/charges. Series of Question Nos. 1032 to 1039 of the cross examination of the claimant's witness Shri Manjeet Singh will show that the Chartered Accountant had also verified the vouchers submitted by the claimant and

only two vouchers no. 256 and 475 of the dates 25.12.1985 and 31.12.1985 could not be traced for verification. The cross examination of the claimant witness was concluded by the learned Sr. Counsel of the respondent on 26.09.1993. The present application was preferred by the respondent on 17.11.2009 and clearly as per the orders dated 22.08.2010; 23.08.2010 and 26.10.2010 passed by the earlier arbitral tribunal did not chose to issue any directions on the applications of the respondent and allowed the proceedings to continue which was in the final stage of hearing. As far as the present arbitral tribunal is concerned vide letter dated: 10.3.2019 it is clear that the arbitration proceedings which were left incomplete at the final argument stage had to be recommenced and concluded at the earliest.

As per the law settled in the judgments referred to by the learned counsel for the respondents themselves the entries in the books of accounts, regularly kept in the course of business were duly verified through the process of evidence before the arbitral tribunal by the evidence of persons who could clearly vouch safe for the truth of the facts in issue, in the present case the claimant's witness; its cross examination; the chartered accountants verifications at the instance of the respondent and which is an admitted fact on their part, are all complete evidence in itself. Mere absence of physical account books on the record of arbitration which was never directed by the arbitral tribunal to be placed on record can infer nothing in adverse against the claimants. It is clear from the records of the case that for convenience as and when required by the respondents, the account books, ledgers, vouchers etc. were made available for verifications and questioning to respondent and hence its existence cannot be doubted at all. All the relevant facts pertaining to the account books were duly brought on record by the parties during the course of evidence. However, in so far as the merits of the said evidence are concerned that has to be examined individually, claim wise by the arbitral tribunal in accordance with law in the facts and circumstances of the

case and which shall be seen.

In view of the above, the application dated 17.11.2009, filed by the respondent is hereby rejected."

52. From a bare reading of the above-quoted portion of the impugned Award, it can be inferred that the Arbitrator has given careful thought before framing the Award, and has considered all the relevant documents on record to reach his decision.

53. The learned Arbitrator has clearly considered all the relevant evidence of record, and the ground of "misappreciation of evidence" does not stand validated as per the submissions of the Petitioner and under the observation of the Court.

54. A clear reading of the judicial decisions cited proves that under the limited scope of Section 34, the instant ground does not warrant the interference of this Court. In the instant case, the Petitioner claimed that the Arbitrator mis-appreciated the evidence on record, but the learned Arbitrator has relied upon the letter dated 20th October 1987 to adjudicate upon the issue.

55. Apart from the aforementioned letter, the learned Arbitrator verified the contentions by perusing the books of accounts to make the Award. Accordingly, with reference to the aforesaid judgments and the impugned Arbitral Award, the Petitioner cannot have the benefit of the *'ground of patent illegality*' to assail the impugned Arbitral Award under Section 34 of the Act, 1996.

2. INTEREST RATE

56. A key ground raised by the petitioner is that Sole Arbitrator has wrongly interpreted Section 31(7)(a) of the Act, 1996 in awarding the interest of 14% to the respondent which is barred under Section 31(7)(a). Section 31(7)(a) of the Act, 1996 is reproduced hereinbelow for clarity:

> ***"31. Form and contents of arbitral award.—***
>
> *(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made."*

57. The relevant portion of the impugned Award is reproduced hereinbelow for clarity:

> ***"Issue No: 20 Whether the claimants are entitled to any interest ? if so, at what rate and for what period*** *?*
>
> *The claimant in their statement of claims in their prayer contained in para 18-(d) have claimed interest including pendente-lite interest and future interest to be awarded on the awarded amount from the date the same became due @ 18% per annum till the date of payment of the awarded amount.*
>
> *The learned counsel for the respondent strongly objected to the maintainability of the said claim and has submitted in their written submissions that the claimant is not entitled to any amount of interest as prayed for and the same is also barred by Section 31 (7) (a) of the Arbitration & Conciliation Act 1996 which contemplates if there is a agreement between the parties excluding interest the same shall not be payable. The respondents have relied upon clauses 1.2.14 and 1.2.15 of the contract agreement to advance their arguments. In support of their submissions the*

respondents have relied upon the following judgments : Irrigation Deptt. Govt. of Orissa v. G.C. Roy {(1992) 1 SCC 508}; Tehri Hydro Development Corporation Limited and another V. Jai Prakash Associates Limited {(2012) 12 SCC 10}; Union of India V. Bright Power Projects (India) Private Limited {(2015) 9 Supreme Court Cases 695} ; Union of India v. Ambica Construction {(2016) 6 SCC 36} ; Shri Chittaranan v. Union of India {(2017) 9 SCC 611} ; Union of India v. Pradeep Vinod Construction Co. {(2018 SCC Online Del 10723}; Jaiprakash Page Associates Ltd. v. Tehri Hydro Development Corporation Ltd. (THDC) {2019 sec Online sc 143} ;

The claimant on the other hand maintains his claim of interest and states that the clauses and judgments referred to by the respondent do not apply in the facts of the present arbitration because as for as the present arbitration is concerned it is a reference arising out of breach of contract and all the claims as raised by the claimant arise out of the provisions of law as compensation payable under Sections 52, 53, 54, and 73 of the Indian Contract Act and no payment is being claimed by them under the contract to warrant any application of clauses 1.2.14 and 1.2.15 which are the clauses relied upon by the respondent and also considered in the decision of the Hon'ble Supreme Court of India in the case of Tehri Hydro Development Corporation Ltd. (2012) as referred by the respondent and which is therefore distinguishable from the facts as are prevalent in the present arbitration.

Heard the Parties, and I have carefully gone through the provisions of the Contract, the provisions of Law and the judgments referred to by the parties on this issue. The findings are hereinunder.

The judgments relied upon by the learned Sr. Counsel of the respondent ***(I) Irrigation Deptt. Govt. of Orissa v. G.C. Roy {{1992) 1 SCC 508};*** *In this case the para referred to by the respondent provides that where an amount found "due from one party to the other" and where the agreement provides that no interest pendente-lite shall be payable on the*

"amount due" shall not be paid. In the present arbitration no amount due has been claimed under the contract by the contractor against the respondent. ***(II) Tehri Hydro Development Corporation limited and another V. Jai Prakash Associates limited {(2012) 12 SCC 10};*** *This is a case wherein the controversy involved was in reference to claims of the contractor for the unpaid amounts under the final bill as well as for return/refund of security deposit. It was in this background that the identical clauses as are present in the present arbitration case were considered; however it is clear that no such claim has been raised by the claimant in the present dispute which pertains only to claims arising out of breach of contract and the claims for consequential damages being raised for before the arbitral tribunal.* ***(III) Union of India V. Bright Power Projects (India) Private limited {(2015) 9 Supreme Court Cases 695};*** *This case also shows that the clause prohibiting payment of interest was upon the earnest money and the security deposit or amounts payable to the contractor under the contract, as already reasoned hereinabove in the present arbitration no such claim has been raised by the claimant.* ***(IV) Union of India v. Ambica Construction {(2016) 6 SCC 36}*** *; This judgment as relied upon by the respondent, the Hon'ble Supreme Court is clearly of the opinion that while considering such exclusion clauses regard has to be taken upon "the nature of the ouster clause" in each case and the award of interest must depend upon the overall intention of the agreement and what is expressly excluded. I find that in the fact and circumstances of the present case the overall intention of the agreement is not wide enough to read agreement of the parties for exclusion of interest admissible and payable as per law in any and every circumstances, which the respondents are erroneously interpreting.* ***(V) Shri Chittaranan v. Union of India {(2017) 9 SCC 611};*** *In this case the relevant point is to be seen is that again the matter before the Hon'ble Court was regarding interest on delayed payments in favour of the appellant therein. In the present arbitration there is no claim of the claimant regarding*

delayed payment and the point of delayed payment has only been raised by the claimant as a ground to justify the hindrance caused in the progress of work and a fact which has been admitted by the respondent. Hence, I find that this judgment would not support the respondent. ***(VI) Union of India v. Pradeep Vinod Construction Co. {(2018 SCC Online Del 10723};*** *This judgment also deals with exclusion of interest upon the earnest money of the security deposit and amounts payable under the contract, which is not the subject matter in the present arbitration case.* ***(VII) Jaiprakash Associates Ltd. v. Tehri Hydro Development Corporation Ltd. (THDC) {2019 SCC Online SC 143}*** *; This judgment also deals with exclusion of interest upon the money due to the contractor upon measurement or amount payable in respect of any balance which may be lying with the corporation which is not the subject matter in the present arbitration case as no money has been claimed by the claimant from the respondent which may be lying with the corporation owing to any dispute, difference or misunderstanding between the parties.*

In view of the above I hold that the clauses 1.2.14 and 1.2.15 of the present contract agreement cannot be given such a wide interpretation to exclude payment of interest in any and every circumstances and the clauses are to be read only in context of the payments arising out of contract works and which is not a subject matter of dispute between the present parties at all. All the claims of the claimants directly arise out of the consequence of damages for breach of contract and obligations which resulted in losses to the claimant. Accordingly, the claimants are fully entitled for payment of interest on their claims as prayed for in prayer 18(d) of their statement of claims.

Now once the admissibility has been considered, the next point to be seen is that at what rate the interest and for period the interest is to be awarded to the claimants.

The claimant has claimed interest including pendente lite interest and future interest on the amount awarded from the date of the same became due till the date of payment at the

rate of 18%. The arbitration was invoked by the claimant vide a letter dated 18th January 1988 and the statement of claim was filed by the Claimant on 12th November 1988. Accordingly, in the given facts and circumstances of the case, I find that the relevant start date for the purposes of claim for interest by the claimant should be 18th January 1988. It can be seen that this is a unique case in which the arbitration proceedings have gone on for a period 32 years. Considering the length of the time elapsed, the value of money has shrunk to negligible. Another factor to be taken into consideration is clause 1. 2.07(a) on page 33 of the contract agreement wherein it can be seen that both parties have agreed to a simple interest @14% per annum. Further the provisions of section 31(7) (a) of the Arbitration and Conciliation act 1996 provides that where the award is for payment of money then interest can be awarded at such rate as may be deemed reasonable by the Arbitral Tribunal from the date of cause of action till date of payment or for such part period as the case may be.

Therefore, in the facts circumstances of the present case, I hold, that the rate of interest at the rate of 14% simple interest with effect from 12th November 1988 upto the date of award shall be a reasonable rate to be awarded as interest to the claimant on the awarded amount. The said interest @ 14% is therefore accordingly awarded and allowed in favour of the claimant. I, further award interest to the claimant @ 18% simple interest, from the date· of the award till the date of payment of the awarded amount.

The issue is accordingly decided in favour of the claimant."

58. A bare reading of Section 31 (7) (a) makes it evident that the Section applies only where there is no previous Agreement as to the rate of interest to be awarded. It is as plain as a pikestaff that the learned Arbitral Tribunal has gone beyond the contract and awarded an interest rate at 14% when it was previously decided *vide* Clause 1.2.15 of the Contract that the contractor shall not be entitled to interest on any arrears.

59. The powers of an Arbitral Tribunal are those conferred upon it by the parties within the limits allowed by the applicable law, together with any additional powers that may be conferred automatically by the operation of law. The Hon'ble Supreme Court has held that there is the primacy of Agreement over the powers of the Arbitral Tribunal regarding the rate of interest of an Arbitral Award.

60. In ***Rajasthan State Mines and Minerals Limited v. Eastern Engineering Enterprises and Another*, (1999) 9 SCC 283**, the Hon'ble Supreme Court held that:

> *"44. From the resume of the aforesaid decisions, it can be stated that:*
> *(a) It is not open to the Court to speculate, where no reasons are given by the Arbitrator, as to what impelled Arbitrator to arrive at his conclusion.*
> *(b) It is not open to the Court to admit to probe the mental process by which the Arbitrator has reached his conclusion where it is not disclosed by the terms of the Award.*
> *(c) If the Arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the Court cannot interfere.*
> *(d) If no specific question of law is referred, the decision of the Arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where specific question of law touching upon the jurisdiction of the Arbitrator was referred for the decision of the Arbitrator by the parties, then the finding of the Arbitrator on the said question between the parties may be binding.*
> *(e) In a case of non-speaking Award, the jurisdiction of the Court is limited. The Award can be set aside if the Arbitrator acts beyond his jurisdiction.*

(f) To find out whether the Arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the Agreement between the parties containing the Arbitration clause. Arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the Award.

(g) In order to determine whether Arbitrator has acted in excess of his jurisdiction what has to be seen is whether the Claimant could raise a particular Claim before the Arbitrator. If there is a specific term in the Contract or the law which does not permit or give the Arbitrator the power to decide the dispute raised by the Claimant or there is a specific bar in the Contract to the raising of the particular Claim then the Award passed by the Arbitrator in respect thereof would be in excess of jurisdiction.

(h) The Award made by the Arbitrator disregarding the terms of the reference or the Arbitration Agreement or the terms of the Contract would be a jurisdictional error which requires ultimately to be decided by the Court. He cannot Award an amount which is ruled out or prohibited by the terms of the Agreement. Because of specific bar stipulated by the parties in the Agreement, that Claim could not be raised. Even if it is raised and referred to Arbitration because of wider Arbitration clause such Claim amount cannot be Awarded as Agreement is binding between the parties and the Arbitrator has to adjudicate as per the Agreement. This aspect is absolutely made clear in Continental Construction Co. Ltd.(supra) by relying upon the following passage from M/s. Alopi Parshad Vs. Union of India [1960] 2 SCR 703 which is to the following effect: - There it was observed that a Contract is not frustrated merely because the circumstances in which the Contract was made, altered. The Contract Act does not enable a party to a Contract to ignore the express covenants thereof, and to Claim payment of consideration for performance of the Contract at rates different from the

> *stipulated rates, on some vague plea of equity. The parties to an executory Contract are often faced, in the course of carrying it out, with a turn of event which they did not at all anticipate, a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the Contract merely because on account of an uncontemplated turn of events, the performance of the Contract may become onerous.*
> *(i) The Arbitrator could not act arbitrarily, irrationally, capriciously or independently of the Contract. A deliberate departure or conscious disregard of the Contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action.*
> (j) *The Arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the Arbitrator is a tribunal selected by the parties to decide the disputes according to law."*

61. This Hon'ble Supreme Court had earlier held in ***Associate Engineering Company v. Govt. of Andhra Pradesh and others,*** **(1991) 4 SCC 93**, that the Arbitrator cannot simply overlook the provisions in the Contract. The relevant paragraphs are reiterated below:

> *"24. The Arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the Contract. His sole function is to arbitrate in terms of the Contract. He has no power apart from what the parties have given him under the Contract. If he has travelled outside the bounds of the Contract, he has acted without jurisdiction. But if he has remained inside the parameters of the Contract and has construed the provisions of the Contract; his Award cannot be interfered with unless he has given reasons for the Award disclosing an error apparent on the face of it.*

> *25. An Arbitrator who acts in manifest disregard of the Contract acts without jurisdiction. His authority is derived from the Contract and is governed by the Arbitration Act which embodies principles derived from a specialised branch of the law of agency (see Mustill & Boyd's Commercial Arbitration, Second Edition, p. 641). He commits misconduct if by his Award he decides matters excluded by the Agreement (see Halsbury's Laws of England, Volume II, Fourth Edition, Para 622). A deliberate departure from Contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action. A conscious disregard of the law or the provisions of the Contract from which he has derived his authority vitiates the Award."*

62. In ***Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum,*** **(2022) 4 SCC 463,** the Hon'ble Supreme Court has reiterated that the Arbitrator is a creature of the contract. The relevant paragraphs are reproduced below:

> *"43. An Arbitral Tribunal being a creature of Contract, is bound to act in terms of the Contract under which it is constituted. An Award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the Contract or has ignored the specific terms of a Contract.*
> *44. However, a distinction has to be drawn between failure to act in terms of a Contract and an erroneous interpretation of the terms of a Contract. An Arbitral Tribunal is entitled to interpret the terms and conditions of a Contract, while adjudicating a dispute. An error in interpretation of a Contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.*
> *45. The Court does not sit in appeal over the Award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a Contractual provision, unless such interpretation is patently unreasonable or perverse. Where a Contractual provision is ambiguous or is capable of being interpreted in more ways*

than one, the Court cannot interfere with the arbitral Award, only because the Court is of the opinion that another possible interpretation would have been a better one.

46. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court held that an Award ignoring the terms of a Contract would not be in public interest. In the instant case, the Award in respect of the lease rent and the lease term is in patent disregard of the terms and conditions of the lease Agreement and thus against public policy. Furthermore, in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] the jurisdiction of the Arbitral Tribunal to adjudicate a dispute itself was not in issue. The Court was dealing with the circumstances in which a court could look into the merits of an Award.

47. In this case, as observed above, the Impugned Award insofar as it pertains to lease rent and lease period is patently beyond the scope of the competence of the Arbitrator appointed in terms of the dealership Agreement by the Director (Marketing) of the appellant.

48. The lease Agreement which was in force for a period of 29 years with effect from 15-4-2005 specifically provided for monthly lease rent of Rs 1750 per month for the said plot of land on which the retail outlet had been set up. It is well settled that an Arbitral Tribunal, or for that matter, the Court cannot alter the terms and conditions of a valid Contract executed between the parties with their eyes open.

49. In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , this Court held : (SCC pp. 199-200, para 76)

"76. However, when it comes to the public policy of India, argument based upon "most basic notions of justice", it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the Agreement continued to be applied till February 2013 —

in short, it is not correct to say that the formula under the Agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a circular, unilaterally issued by one party, cannot possibly bind the other party to the Agreement without that other party's consent. Indeed, the circular itself expressly stipulates that it cannot apply unless the Contractors furnish an undertaking/affidavit that the price adjustment under the circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority Award has created a new Contract for the parties by applying the said unilateral circular and by substituting a workable formula under the Agreement by another formula dehors the Agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a Contract can never be foisted upon an unwilling party, nor can a party to the Agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral Award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment."

50. In PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2021) 18 SCC 716 : 2021 SCC OnLine SC 508] this Court referred to and relied upon Ssangyong Engg. & Construction [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020)

2 SCC (Civ) 213] and held : (PSA Sical Terminals case [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2021) 18 SCC 716 : 2021 SCC OnLine SC 508] , SCC para 85)

"85. As such, as held by this Court in Ssangyong Engg. & Construction [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , the fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a Contract has been foisted upon an unwilling party. This Court has further held that a party to the Agreement cannot be made liable to perform something for which it has not entered into a Contract. In our view, re-writing a Contract for the parties would be breach of fundamental principles of justice entitling a court to interfere since such case would be one which shocks the conscience of the Court and as such, would fall in the exceptional category."

51. In PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2021) 18 SCC 716 : 2021 SCC OnLine SC 508] this Court clearly held that the role of the Arbitrator was to arbitrate within the terms of the Contract. He had no power apart from what the parties had given him under the Contract. If he has travelled beyond the Contract, he would be acting without jurisdiction.

52. In PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2021) 18 SCC 716 : 2021 SCC OnLine SC 508] this Court referred to and relied upon the earlier judgment of this Court in Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. [Army Welfare Housing Organisation v. Sumangal Services (P) Ltd., (2004) 9 SCC 619] and held that an Arbitral Tribunal is not a court of law. It cannot exercise its power ex debito justitiae.

53. In Satyanarayana Construction Co. v. Union of India [Satyanarayana Construction Co. v. Union of India, (2011) 15 SCC 101 : (2014) 2 SCC (Civ) 252] , a Bench of this Court of coordinate strength held that once a rate had been fixed in a Contract, it was not open to the Arbitrator to rewrite the terms of the Contract and Award a higher rate.

Where an Arbitrator had in effect rewritten the Contract and Awarded a rate, higher than that agreed in the Contract, the High Court was held not to commit any error in setting aside the Award.

63. The Hon'ble Supreme Court in ***State of Haryana v. S.L. Arora & Co.,*** **(2010) 3 SCC 690** says as under:

"34. Thus it is clear that Section 31(7) merely authorises the Arbitral Tribunal to Award interest in accordance with the Contract and in the absence of any prohibition in the Contract and in the absence of specific provision relating to interest in the Contract, to Award simple interest at such rates as it deems fit from the date on which the cause of action arose till the date of payment. It also provides that if the Award is silent about interest from the date of Award till the date of payment, the person in whose favour the Award is made will be entitled to interest at 18% per annum on the principal amount Awarded, from the date of Award till the date of payment. The calculation that was made in the execution petition as originally filed was correct and the modification by the respondent increasing the amount due under the Award was contrary to the Award."

64. In ***Morgan Securities and Credits Pvt. Ltd. v Videocon Industries Ltd.,*****(2023) 1 SCC 602** the Court has interpreted Section 31(7)(b) with respect to two phrases - *first*, the expression "sum"; and *second*, "unless the award otherwise directs". It was held that the Arbitrator must exercise the discretion in good faith, must take into account relevant and not irrelevant considerations, and must act reasonably and rationally taking cognizance of the surrounding circumstances. The relevant portion is reproduced below:

"20. The interpretation of Section 31(7)(b) has to focus on the meaning of two phrases — first, the expression "sum";

*and second, "unless the Award otherwise directs". The phrase "sum" has been interpreted in the opinion of Bobde, J. and in the concurring opinion of Sapre, J. in Hyder Consulting [**Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38**] to mean the amount directed to be paid by an arbitral Award as arrived in Section 31(7)(a), which would include the aggregate of the principal and the pre-Award interest. While Sapre, J. was of the view that the Arbitrator only has the discretion to determine the rate of post-Award interest, Bobde, J. did not expressly discuss the ambit of discretion of the Arbitrator while granting post-Award interest. In Bobde, J.'s opinion, there was no discussion on whether the Arbitrator had the discretion to order post-Award interest on a part of the "sum" that was arrived at under Section 31(7)(a).*

21. On the interpretation of the words "unless the Award otherwise directs", Sapre, J. interpreted them to mean that post-Award interest is a statutory mandate and that the Arbitrator only has the discretion to determine the rate of interest to be Awarded. Bobde, J. did not specifically interpret the phrase "unless the Award otherwise directs". The Learned Judge made a passing reference to the phrase in para 7 of the judgment, where he observed that : (Hyder Consulting case [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , SCC p. 201)

"7. ... In other words, what clause (b) of sub-section (7) of Section 31 of the Act directs is that the "sum", which is directed to be paid by the Award, whether inclusive or exclusive of interest, shall carry interest at the rate of eighteen per cent per annum for the post-Award period, unless otherwise ordered."

However, in para 13 of the judgment, the Learned Judge observed : (Hyder Consulting case [Hyder Consulting (UK) Ltd. v. State of Orissa, (2015) 2 SCC 189 : (2015) 2 SCC (Civ) 38] , SCC p. 202)

"13. ... Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-Award period vide

> *clause (b) of sub-section (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities."*

65. The Court may only interfere where the learned Sole Arbitrator has failed in adopting a judicial approach during the arbitration proceedings, analysis of the contract, and thus while giving the award. Where it is evident that the learned Sole Arbitrator had worked well within his limits and there has not been any arbitrary exercise of power, there is no scope of interference of this Court with respect to the change in the rate of interest of an award.

66. Further, in ***Executive Engineer v. Gokul Chandra Kanungo*, 2022 SCC OnLine SC 1336,** the Hon'ble Supreme Court held that if the Arbitral Tribunal has the discretion to award a rate of interest, it must be reasonable. The relevant paragraph is reiterated hereinunder:

> *"10. The provisions of Section 31(7)(a) of the 1996 Act fell for consideration before this Court in many cases including in the cases of Hyder Consulting (UK) Limited (supra) and Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation5. A perusal of clause (a) of subsection (7) of Section 31 of the 1996 Act would reveal that, no doubt, a discretion is vested in the Arbitral Tribunal to include in the sum for which the Award is made interest, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the Award is made. However, it would reveal that the section itself requires interest to be at such rate as the Arbitral Tribunal deems reasonable. When a discretion is vested to an Arbitral Tribunal to Award interest at a rate which it deems reasonable, then a duty would be cast upon the Arbitral Tribunal to give reasons as to how it deems the rate of interest to be reasonable. It could further*

> *be seen that the Arbitral Tribunal has also a discretion to Award interest on the whole or any part of the money or for the whole or any part of the period between the date of cause of action and the date on which the Award is made. When the Arbitral Tribunal is empowered with such a discretion, the Arbitral Tribunal would be required to apply its mind to the facts of the case and decide as to whether the interest is payable on whole or any part of the money and also as to whether it is to be Awarded to the whole or any part of the period between the date on which the cause of action arose and the date on which the Award is made."*

67. In ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*, (2019) 11 SCC 465** the Hon'ble Supreme Court held as under:

> *"9. The discretion of the Arbitrator to Award interest must be exercised reasonably. An Arbitral Tribunal while making an Award for interest must take into consideration a host of factors, such as : (i) the "loss of use" of the principal sum; (ii) the types of sums to which the interest must apply; (iii) the time period over which interest should be Awarded; (iv) the internationally prevailing rates of interest; (v) whether simple or compound rate of interest is to be applied; (vi) whether the rate of interest Awarded is commercially prudent from an economic standpoint; (vii) the rates of inflation; (viii) proportionality of the count Awarded as interest to the principal sums Awarded."*

68. In ***MSK Projects Ltd v State of Rajasthan* (2011) 10 SCC 573**, a two-Judge bench of the Hon'ble Supreme Court held that:

> *"20. This Court, in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705 : AIR 2003 SC 2629] and Hindustan Zinc Ltd. v. Friends Coal Carbonisation [(2006) 4 SCC 445] , held that an Arbitration Award contrary to substantive provisions of law, or provisions of the 1996 Act or against the terms of the Contract, or public policy, would*

> *be patently illegal, and if it affects the rights of the parties, it would be open for the court to interfere under Section 34(2) of the 1996 Act.*
> *XXXXXX*
> *25. So far as the rate of interest is concerned, it may be necessary to refer to the provisions of* ***Section 3 of the Interest Act, 1978****, the relevant part of which reads as under:*
>
> > *"****3.Power of court to allow interest.—(****1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a Claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such Claim, as the case may be, at a rate not exceeding the current rate of interest…."*
> > *Thus, it is evident that the aforesaid provisions empower the court to Award interest at the rate prevailing in the banking transactions. Thus, impliedly, the court has a power to vary the rate of interest agreed by the parties."*

69. In light of the aforementioned judicial decisions, it can be said that the learned Arbitral Tribunal may not grant a different interest rate when a specific rate of interest has been decided by the parties, bound by an Agreement.

70. In the instant case, Clauses 1.2.14 and 1.2.15 of the Agreement specifically specified no interest shall be granted. This takes away the power of the Arbitrator to deviate and grant his own rate of interest.

71. Even if the learned Arbitrator is successful in justifying his reasons for deciding such a rate, the Agreement being the birth-giver, should be held at a higher stature when it concerns an issue that has been pre-decided and mutually agreed upon by the parties.

72. The issue that arises before this Court is whether the Arbitral Award can be modified by this Court within the ambit of the power enshrined under Section 34 of the Act, 1996.

73. In ***NHAI v. M. Hakeem*, (2021) 9 SCC 1** the Hon'ble Supreme Court held that the power of the court under Section 34 to "set aside" the Arbitral Award does not include the power to modify such an award. There are limited grounds not dealing with the merits of an award, "Limited remedy" under Section 34 is to either set aside an Award or remand a matter under circumstances mentioned under Section 34. Lastly held, Section 34 jurisdiction cannot be assimilated with revisional jurisdiction under Section 115 Civil Procedure Code, 1908. The relevant paragraph is reproduced hereinunder:

> *"35. In Krishna Bhagya Jala Nigam Ltd. v. Harischandra Reddy [Krishna Bhagya Jala Nigam Ltd. v. Harischandra Reddy, (2007) 2 SCC 720] , a judgment of this Court referred to in para 36, this Court reduced the rate of interest for the pre-Arbitration period, pendente lite and future interest. It also referred to a suggestion that a certain amount be reduced from the Awarded amount from Rs 1.47 crores to Rs 1 crore, which the Learned counsel for the respondent therein fairly accepted. Obviously, these orders were also made under Article 142 of the Constitution of India and do not carry the matter very much further. From these judgments, to deduce, in para 39, that the judicial trend appears to favour an interpretation which would read into Section 34 a power to modify, revise or vary an Award is wholly incorrect. The observation found in* ***McDermott [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181]*** *decision clearly bound the Learned Single Judge and any decision to the contrary would be incorrect."*

74. In view of the aforesaid pronouncements of the Hon'ble Supreme Court, this Court has no power to modify the rate of interest in the impugned award.

75. Thus, the impugned Award with regards to the rate of interest specified as per issue no. 20 is liable to be set aside, as the learned Arbitral Tribunal granted an interest at the rate of 14%, when it was expressly stipulated and agreed upon by the parties in the Agreement that the Contractor shall not be entitled to any interest on arrears of payments.

3. POWERS OF ARBITRATOR

76. A ground invoked by the petitioner is that the learned Sole Arbitrator gave out issue-wise findings without any issues being addressed by the parties during the course of arbitration proceedings.

77. Arbitral Award cannot be vitiated merely because the learned Arbitral Tribunal decided to give issue-wise findings in the Arbitral Award when no such issue was made out by the parties during the Arbitration. Learned Arbitral Tribunal has the power to analyze the issue and give his findings accordingly. The manner in which such findings are recorded is under the prerogative of the learned Tribunal.

78. In ***Union of India vs. J.P. Sharma and Sons*, 1967 SCC OnLine Raj 44**, the High Court of Rajasthan had expanded on the powers of the Arbitral Tribunal in terms of making the Award. The relevant paragraphs are reproduced herein:

> *"24. In AIR 1940 Lah 186, the learned Judges observed that "an arbitrator is not bound by the technical rules of procedure which the Court must follow, nor" need he record separate findings on the various points on which the parties are at issue, or write a reasoned judicial decision. All that he*

is required to do is to give an intelligible decision which determines the rights of parties in relation to the subject matter of the reference". These observations were affirmed by their Lordships of the Privy Council in AIR 1944 PC 83, which was a case dealt with by their Lordships in an appeal from the Lahore case. In this case the matter was referred to an arbitrator while an appeal was pending between the parties against a judgment of the original court and the point canvassed was as to what was the subject of the submission to arbitration; whether it was the whole dispute and not merely the matter of appeal. Their Lordships pointed out that the whole dispute will be deemed to have been referred to the arbitrator as the parties wanted a den sion on merits in order to avoid litigation. Thpir Lordships observed that the parties chose to refer the matter to one of their relatives and for better or worse they chose to submit the dispute to him and there was no ground for impugning the validity of the award.

25. In AIR 1925 Cal 599, the learned Judges pointed out that an award of the arbitrator is intended to be final both in fact and law, and the Courts will not inter- fere except on certain well-recognised principles and in certain well-defined circumstances. The learned Judges added that an award made in a form in which it is calculated to have an effect, which is the opposite of finality, should be deemed as falling below the standard. The arbitrator ought not to include evidence or refer to or discuss authorities making his award more like the judgment of judge which is subject to appeal than the award of an arbitrator.

26. In AIR 1956 Cal 470, the learned Judge pointed out that it cannot be said that the formal framing of issues or their formal determination separately was a procedure at all enjoined as compulsory in an arbitration proceeding. The learned Judge also added that for challenging an award on the ground of apparent error, the error should be found in the operative part of the award, because reference in the recital does not incorporate a document as to form part of the award

> *27. In (1912) 16 Ind Cas 478 (Mad), the learned Judges observed that an award need not be reasonable but it should be intelligible.*
> *28. In AIR 1964 Madh Pra 15, it was pointed out following, AIR 1923 PC 66 and other cases that an arbitrator need not give any reasons for his decision and need only set down his decision in a clear and unambiguous manner The learned Judges added that an arbitrator gets jurisdiction by consent of the parties and his decision on facts is in no event subject to scrutiny by courts except on the ground of corruption or fraud or where the question of law necessarily arises on the face of the award."*

79. In light of the aforementioned judgment, it is made substantially clear that the Arbitrator has the power to draft the Award in the manner that seems suitable to him. The Arbitral Tribunal giving out issue-wise findings when no issues were specifically made out, is not a procedural illegality, or irregularity.

80. Similarly, another key ground raised by the petitioner is that the impugned Award granted an amount of INR 1.3 Crore on account of loss of profit to the respondent, but such a claim was not made before the learned Sole Arbitrator.

81. In ***Union of India vs. J.P. Sharma and Sons (Supra)***, it was held that:

> *"29. In (1911) 14 Ind Cas 371 (Lah), it was observed that where the whole case has been submitted to the arbitration of a person, his duty is to decide the whole dispute substantially though he is not bound to write a judgment and give his finding on each issue.*
> *30. Assadullah Makhdoomi's case, AIR 1966 J & K 1 only follows the Supreme Court cases which we have already referred.*

31. In AIR 1958 Mad 296, the learned Judges pointed out that the fact that the Umpire did not give any reasons in the award cannot by itself vitiate the award. They also observed that the validity of the award cannot be challenged on the ground that each item of claim or counter-claim was not specifically dealt with and Umpire's decision thereon recorded.

32. Then we may refer to the passage from Halsbury's Laws of England referred to in 1951-2 All ER 904. It is about the evidence of the umpire or arbitrator Lord Cairns observed that "the award is a document which must speak for itself, and the evidence of the umpire is not admissible to explain or to aid, much less to attempt to contradict what is to be found upon the face of that written instrument." It was also pointed out that it was not open to the Court to investigate as to by what mental processes the arbitrator had arrived at his decision.

33. In AIR 1960 Cal 693, Bachawat J., as he then was, pointed out that it was no misconduct if the arbitrator did not make separate findings on each issue. The learned Judge pointed out that the arbitrator may award on the whole case. All that is necessary is that the arbitrator has given an award on the whole case whereby he has fully and finally determined the rights of the parties in respect of the subject-matter referred.

34. Lastly, we may refer to AIR 1963 SC 1677. Their Lordships reviewed a number of authorities in this case and pointed out how far and under what circumstances an award could be challenged on the ground of its incompleteness and what principles the Court has to bear in mind. Their Lordships observed as follows:-- "Where an award given by the arbitrator is filed in Court and it is challenged on the ground of its incompleteness, the Court has to bear in mind certain basic positions. These are: (1) a Court should approach an award with a desire to support it, if that is reasonably possible, rather than to destroy it by calling it illegal; (2) unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim

or matter separately, but can deliver a consolidated award. The legal position is clear that unless so specifically required an award need not formally express the decision of the arbitrator on each matter of difference; (3) unless the contrary appears the Court will presume that the award disposes finally of all the matters in difference: and (4) where an award is made de premises (that is, of and concerning all the matters in dispute referred to the arbitrator'), the presumption is, that the arbitrator intended to dispose finally of all the matters in difference: and his award will be held final, if by any intendment it can be made so."

"Where, therefore, after taking into consideration the arbitration agreement, the statements filed by the parties and the document produced, the arbitrator proceeds to give his "award in writing as to all disputes" referred to him, the Court will assume that the arbitrator has considered and disposed of every claim made or defence raised. Since the award states that it is made of and concerning all the matters in dispute referred to the arbitrator, there is a presumption that the award is complete. In such a circumstance, the silence of the award as regards a particular claim must be taken to be intended as a decision rejecting the claim to that relief."

35. In our view, the last mentioned case points out exhaustively as to what should be the basic approach of a Court in dealing with the question of invalidity of an award on the ground of incompleteness. As far as possible the Court should make a reasonable effort to sustain the award. Their Lordships pointed out that it is not necessary for the arbitrator to deal with each claim or matter separately and it is open to him to award an consolidated amount for a number of claims. This is, however, subject to one important condition and it is this that if the reference to arbitration specifically requires the arbitrator to deal with certain disputes specifically the position is otherwise and in that event the award may be taken to be incomplete and thus defective or invalid. However, in this regard the rule is that

the Court will presume that the award disposes finally all the matters in difference, unless the contrary appears to the Court and where an award is made concerning all the matters in dispute the presumption is that the arbitrator intended to dispose finally of all the matters in dispute referred to him. This conclusion can be reached if by necessary intendment the award can be held to dispose of all the matters."

82. In ***Kali Charan Sharma vs. Municipal Corporation of Delhi and Others*** **AIR 1981 Del 301,** this Court has expounded on the same principle. The relevant paragraph is reproduced hereinbelow:

"4. *In this context he has adverted to Union of India v. Firm J.P. Sharma and Sons AIR 1968 Raj, 99 which is a Bench decision and State of Madhya Pradesh v. Satyapal Wasson AIR 1979 Madhya Pradesh, 119, also a Bench decision of that Court. In the Rajasthan case the principal dispute between the parties was about the applicability of agreed rate for the job done by the contractor. Certain issues were framed and eventually, the arbitrator awarded a lump sum to the contractor without dealing with each and every issue separately. Learned Judges while adverting to various authorities including Champsey Bhara and Co. v. Jivraj Balloo Spinning and Weaving Co. Ltd.AIR 1923 PC 66, Jivarajbhai v. Chintamanrao BalajiAIR 1965 SC 214. Bungo Steel Furniture (P) Ltd. v. Union at India AIR 1967 SC 378, Firm Madan Lal Roshan Lal Mahajan v. Hukamchand Mills Ltd. Indore AIR 1967 SC 1030. and Smt. Santa Sila Devi v. Dhirendra Nath SenAIR 1963 SC 1677 etc. reproduced the following observations of their Lordships of the Supreme Court in AIR 1963 SC 1677, (See headnote).*

"Where an award given by the arbitrator is filed in Court and it is challenged on the ground of its incompleteness, the Court has to bear in mind certain basic positions. These are: (1) a Court should approach an award with a desire to support it, if that is reasonably possible rather than to

destroy it by calling it illegal; (2) unless the reference to arbitration specifically so requires the arbitrator is not bound to deal with each claim or matter separately, but can deliver a consolidated award. The legal position is clear that unless so specifically required an award need not formally express the decision of the arbitrator on each matter of difference; (3) unless the contrary appears the Court will presume that the award disposes finally of all the matters in difference; and (4) where an award is made de praemissis (that is, of and concerning all the matters in dispute referred to the arbitrator), the presumption is, that the arbitrator intended to dispose finally of all the matters in difference; and his award will be held final, if by any intendment it can be made so.""

83. It is understood from a bare reading of the above cited judgment, that it is a long-standing principle that the Arbitrator is the Sole Authority in the Arbitral Proceedings. Arbitrator is not bound by a rigid law of procedure in order to enable smooth adjudication of the disputes and ensure that the parties are granted relief.

84. Not all procedural irregularities are sufficient to set aside an award. The materiality to the outcome of the proceedings may be relevant. In **Chantiers de l'Atlantique SA v Gaztransport & Technigaz SAS** the Commercial Court in London held that even fraud in the arbitral proceedings would not necessarily justify setting the Award aside. The court held that a witness for Gaztransport had deliberately misled the Arbitral Tribunal. However, despite agreeing with the claimant on the existence of fraud in the proceedings, the court held that the fraudulent testimony did not justify setting the award aside, because 'even if the true position had been disclosed to the tribunal, that would, in all probability, not have affected the result of the arbitration. (See *10.60, page 544,*

Blackaby, Nigel. Redfern and Hunter on International Arbitration. Oxford ; New York :Oxford University Press, Seventh edition, 2022)

85. Therefore, the learned Arbitrator has acted well within his power in granting an amount of INR 1.3 Crore on account of loss of profit to the respondent when such a claim was not made before the learned Arbitral Tribunal, and giving out issue-wise findings in the Award when such issues were not addressed by the parties during the course of the Arbitral Proceedings.

86. Such procedural irregularities that are not perverse at the face of the Award, does not warrant the action of the Court to set aside such an Award.

87. It is evident from the aforementioned precedents that there is Patent Illegality with respect to the rate of interest awarded by the learned Arbitrator. Therefore, as discussed in the foregoing paragraphs, in the present petition, the learned Sole Arbitrator has erred in decreeing the award with respect to the rate of interest, and hence, the Award *qua* issue no. 20 with regards to the rate of interest is liable to be set aside.

88. The entire impugned Award need not be set aside due to the perversity in one specific aspect of the Award.

CONCLUSION

89. In light of the facts, submissions and contentions in the pleadings, and arguments advanced by the parties, and the applicable laws and judgments, this court is inclined to conclude that there appears to be a patent illegality in the impugned Award only in the learned Arbitral Tribunal's decision in issue no. 20, pertaining to the rate of Interest.

90. Further, the learned Arbitrator has passed the impugned Award without considering relevant clauses of the Agreement, and in complete contravention of Section 31(a) of the Act, 1996, while adjudicating on the rate of interest to be granted. Therefore, the impugned Award till the extent of the rate of interest granted, is contrary to provisions of the Agreement, suffers from infirmity and patent illegality.

91. It is settled law that the ground of patent illegality gives way to setting aside an Arbitral Award with a very minimal scope of intervention.

92. Also, much of the contentions made out by the petitioner did not hold ground, within the limited scope of Section 34.

93. In view of the above discussion of facts and law, this Court finds no reason to completely set aside the impugned arbitral award. Therefore, the impugned Award is set aside only with regard to the rate of interest, where perversity, and thus patent illegality has been observed. Therefore, issue no. 20 is set aside for being patently illegal.

94. Hence, the instant petition is disposed of in the aforementioned manner. The Award *qua* issue no. 20 is set aside.

95. Pending applications, if any, also stand disposed of.

96. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 26, 2023
gs/as