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**M/s. DLF Industries Ltd.**

Through: Mr. Anil Seth, Advocate

**Indian Oil Corporation Ltd.**

Through: None.

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

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|----|-----------------------------------------------------------------------|----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not?                                | No |
| 3. | Whether the judgment should be reported in the Digest?                | No |

1 This petition under Section 34 of the Arbitration Act, 1996 has  
been preferred with respect to the arbitral award dated 8<sup>th</sup> May,  
2009 partly in favour of the petitioner and rejecting the other claims  
of the petitioner. Even on the claims allowed in favour of the  
petitioner no pre-reference or pendente lite interest has been  
awarded by the arbitrator, though the arbitration proceedings  
remained pending for considerable time. The arbitrator has held  
that both the parties had delayed the arbitral proceedings and thus  
the petitioner is not entitled to any pendente lite interest. The  
arbitrator has awarded future interest to the petitioner at 9% per  
annum.

- 2 The challenge in this petition is two fold. Firstly, qua non-

grant of interest and secondly, qua the rejection of other claims of the petitioner.

3 As far as interest is concerned, the counsel for the petitioner has contended that from the perusal of the award and the arbitration record, though not before this court as yet, it is apparent that the delay in arbitration proceedings was not on the part of the petitioner but on the part of the respondent or on the part of the arbitrator. It is next contended that it was a term of the contract that the respondent would be charging interests at the rate of 19.75 % per annum on the mobilization advance given to the petitioner. It is argued that on the same parity, the petitioner was entitled to interest at the same rate on the amounts found due by the arbitrator to the petitioner. Reliance is placed on ***Bhagawati Oxygen Ltd. Vs. Hindustan Copper Ltd.*** 2005 (6) SCC 462 and ***State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd.*** 2009 (3) Arb. LR 140(SC). While in the first the High Court had interfered with the award of interest by the arbitrator and the Supreme Court reversed the same inter alia on the ground that the award of interest by the arbitrator at the same rate at which the other party was entitled under the contract was justified, in the other judgment the only principle is of the arbitrator being competent to award interest. In neither of the said cases the principle of the court interfering in the discretion exercised by the arbitrator in the matter of award of interest has been dealt with.

4 There is no principle that the arbitrator is bound to award interest on the claims allowed. The award of interest remains a discretionary matter. Even though the principle has been laid down by a five Judge bench in Executive Engineer Dhenkanal Minor

Irrigation Division Vs. N.C. Budharaj (2001) 2 SCC 721 that interest can also be in the form of compensation for delay in payment, the fact remains that it is not mandatory.

5 It is not as if in the present case the arbitrator has not given any reason. The arbitrator has given reasons for declining pendente lite interest to the petitioner. Interference with such factual findings of the arbitrator finding the petitioner not entitled to pendente lite interest or with the discretion, in my view is not permissible under Section 34 of the Act.

6 As far as the rejection of the other claims of the petitioner is concerned, the counsel for the petitioner has contended that all of them have been rejected for the same reasoning as at internal page 24 of the award. The arbitrator has held that the petitioner had while seeking extension of time for completing the works specifically stated that it will not raise any claims in respect of prolongation of contract; that the explanation rendered by the petitioner that it was forced to write such letters has been found by the arbitrator to have remained unsubstantiated.

7 The counsel for the petitioner has contended that there was an affidavit of the petitioner before the arbitrator in this respect and the petitioner had also placed before the arbitrator letters written by it in this regard.

8 However the same falls within the domain of appreciation of evidence which is not actionable under Section 34. The finding of the arbitrator, that the petitioner could not substantiate having been made to write the letter disclaiming rights/claims under coercion, is

a factual finding and this court in exercise of powers under Section 34 of the Act cannot interfere with the same.

9 No other point has been urged.

10 No case is made out for issuance of notice of the petition. The same is dismissed.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

August 21<sup>st</sup>, 2009  
J