

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

+ O.M.P. 286/2000

M/S. NATIONAL AGRICULTURE
CO-OPERATIVE MARKETING
FEDERATION OF INDIA LIMITED Petitioner/Objector
Through Mr. Shiv Khorana with
Mr. Ashish Khorana, Advocates

versus

UNION OF INDIA Respondent/Claimant
Through: Mr. A.S. Chandiok, ASG with
Mr. Anuj Aggarwal, Ms. Vibha
Dhawan, Mr. Sandeep Bajaj,
Mr. Gurpreet Prawanda and
Mr. Gaurav Khanna, Advocates

% Date of Decision : March 4, 2010

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

- | | |
|--|------|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. To be referred to the Reporter or not? | Yes. |
| 3. Whether the judgment should be reported in the Digest? | Yes. |

J U D G M E N T

MANMOHAN, J (ORAL)

1. Present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “Act, 1996”) challenging the arbitral Award dated 8th August, 2000 passed by the Sole Arbitrator, Mr. B.L. Nishad, Additional Legal Adviser, Ministry of Law and Justice.

2. Briefly stated the facts of the present case are that on 2nd February, 1996 a tender enquiry bearing No. J-12015/1/96-Pur.III was floated for procurement of 7300 MTs Gram Whole by the Army Purchase Organisation with the following schedule :-

<i>Delivery Period</i>	<i>Quantity</i>
<i>16-31 March, 1996</i>	<i>1825 MT</i>
<i>01-15 April, 1996</i>	<i>1825 MT</i>
<i>16-30 April, 1996</i>	<i>1825 MT</i>
<i>01-15 May, 1996</i>	<i>1825 MT</i>

3. On 19th March, 1996, the contract for supply of 6000 MTs Gram Whole was placed upon the petitioner-objector with the following details :-

<i>Delivery Period</i>	<i>Quantity (MT)</i>	<i>Rate/Qtl (Rs.)</i>
<i>16-31.3.96</i>	<i>525</i>	<i>Rs. 1017/-</i>
<i>01-15.4.96</i>	<i>1825</i>	
<i>16-30.4.96</i>	<i>1825</i>	
<i>01-15.5.96</i>	<i>1825</i>	

4. On 26th March, 1996, petitioner-objector acknowledged the acceptance of tender but requested the respondent-claimant for rescheduling the delivery period from 15th March, 1996 to 15th April, 1996.

5. Thereafter on 12th April, 1996, 28th May, 1996, 17th July, 1996 and 10th September, 1996 respondent-claimant granted repeated extension of time to petitioner-objector to supply the contracted quantity of Gram Whole. Each of the abovementioned extensions was granted at the petitioner-objector's request and was subject to respondent-claimant's right to levy liquidated damages upto 2% per month.

6. On 18th October, 1996, respondent-claimant at petitioner-objector's request granted fifth extension of time upto 30th April, 1997 for delivery of balance quantity of Gram Whole. However, according to respondent-claimant, a clerical error occurred while granting fifth extension which was rectified by way of a corrigendum dated 23rd October, 1996 as well as by letter dated 28th October, 1996 whereby letter dated 18th October, 1996 was superceded and the delivery period for balance 3929 MTs of Gram Whole was extended only upto 30th November, 1996. Even this extension was subject to respondent-claimant's right to levy liquidated damages upto 2% per month.

7. On 4th November, 1996, petitioner-objector acknowledged and accepted fifth extension upto 30th November, 1996. But by this letter, petitioner-objector once again requested for extension of time for supply of balance quantity of Gram Whole upto March and April, 1997. The said letter dated 4th November, 1996 reads as under :-

“No. DLI/MK/67/96-97/1393

DATED 4.11.1996

*The Jt. Secretary (AFO),
Ministry of Defence,
South Block,
New Delhi.*

*Sub: Supply of Gram Whole against A.T. No. J-
13015/1/67/96.Pur-III dt. 19.3.96.*

Dear Sir,

We are thankful to you for granting us extension upto 30.11.96 for the balance quantity of 3929 MTs of Gram Whole against the above mentioned A.T. You will kindly appreciate that we have already supplied to you a qty of 2071 MTs in spite of the rates of Gram Whole having gone up substantially and several other constraints.

We had requested you vide our letter of even number dated 04.10.1996 for granting us extension upto 30.4.1997 because of non-availability of the stocks as per your specifications. In case extension for the balance qty is not possible upto 30.4.97 we shall request you to please divide the above balance qty in two months i.e. March '97 and April '97.

Further, we undertake the guarantee to supply you the above goods in case emergency arises within a month's time on receiving your instructions. As we are already suffering heavy losses in the above supplies, we shall be highly thankful to you if you kindly consider condoning LD charges charged against the above supplies.

Thanking you,

Yours faithfully,

*Sd/-
(D.N. GUPTA)
BRANCH MANAGER*

CC: The Chief Director of Purchase, Govt. of India, Ministry of Defence, Army Purchase organization, Krishi Bhawan, New Delhi – for kind favour.

*Sd/-
BRANCH MANAGER”*

(emphasis supplied)

8. On the basis of assurance given by petitioner-objector during the meeting held on 5th November, 1996, respondent-claimant asked the petitioner-objector to complete the supply of balance quantity of 3929 MTs of Gram Whole by 31st January, 1997 by way of Final Extension-cum-Performance Notice dated 11th November, 1996. It was once again clarified that liquidated damages would be imposed on delayed supply at the rate of 2% per month.

9. However, petitioner-objector supplied only 1800.165 MTs as against the contracted quantity of 6000 MTs thereby leaving an unsupplied balance of 4199.835 MTs. This shortfall in supply was there, despite repeated opportunities given by respondent-claimant to complete the contract.

10. As there was an inordinate delay in completion of supplies and as petitioner-objector had not completed the contract even after sixth extension, the respondent-claimant cancelled the contract for the balance quantity at the risk and cost of petitioner-objector. Even the bank guarantee furnished by petitioner-objector for a sum of Rs. 61,02,000/- was encashed by the respondent-claimant, pursuant to an order passed by the Supreme Court.

11. On 2nd April, 1997, respondent-claimant floated a Risk Purchase (in short “RP”) Tender Enquiry for balance quantity of 4199.835 MTs

of Gram Whole. On 22nd April, 1997, respondent-claimant supplied a set of documents pertaining to the said tender to the petitioner-objector. It was specifically stated in the said letter that in case the petitioner-objector's offer was accepted, it would have to furnish security deposit equivalent to the difference between its quotation and the next best quotation or 10% of the proposed contract value whichever was higher by a specified date before placement of contract on it failing which its offer would be ignored.

12. On 15th May, 1997, respondent-claimant sent a telegram calling petitioner-objector to deposit advance security by 26th May, 1997. It was specifically mentioned in the said telegram that petitioner-objector's failure to deposit the security would lead to its tender offer being ignored and the orders would be placed on the best acceptable offers at its risk and cost.

13. However, instead of depositing the security amount asked for, petitioner-objector sought further time of three to four days to deposit the said security. Respondent-objector rejected said request and RP contracts were awarded to M/s. Gujrat Cooperative Grain Growers Fed. Ltd. for supply of 1000 MT @ Rs. 1567/- P.Q. and to M/s STC for supply of 2199.835 MTs @ Rs.1567/- P.Q. and 1000 MTs @ Rs. 1591/- vide A/T No. J-13015/1/67/96-RP/6/121/97.Pur.III dated 26.05.97 and J-13015/1/67/96-RP/5/120/97.Pur.III dated 26.05.97

respectively.

14. On 19th June, 1998, petitioner-objector was asked by respondent-claimant to deposit a sum of Rs. 2,31,65,784.75 being the amount of loss suffered by the respondent-claimant in RP of Gram Whole.

15. Since disputes had arisen between the parties, respondent-claimant on 17th March, 1999 appointed Mr. B.L. Nishad as Sole Arbitrator to adjudicate upon the same.

16. By way of the impugned Award dated 8th August, 2000, the Sole Arbitrator allowed the respondent-claimant's Claims No. 1 & 2 and awarded a sum of Rs. 1,69,63,784.75 being the total loss incurred by respondent-claimant on RP contracts after adjusting the bank guarantee as well as earnest money. The Arbitrator dismissed the counter-claims of petitioner-objector.

17. Mr. Shiv Khorana, learned counsel for petitioner-objector submitted that the impugned Award was liable to be set aside as the Arbitrator had perused the purchase file of the respondent-claimant behind the back of petitioner-objector's counsel. He stated that this amounted to violation of principles of natural justice and Section 24 of Act, 1996. In this connection, he placed reliance upon a judgment of this Court passed in **OMP No. 150/2000** titled as **MP State Co-**

Operative Oil Seed Growers' Fed. Ltd. Vs. Union of India & Anr.
decided on *13th November, 2009*.

18. Mr. Khorana also contended that the Award was antedated as the impugned Award had been despatched by the Arbitrator on 22nd August, 2000 even though the Award was dated 8th August, 2000. In this connection, Mr. Khorana relied upon the despatch envelope as well as the petitioner-objector's application dated 21st August, 2000 filed before the Arbitrator.

19. Mr. Khorana further submitted that the Arbitrator had failed to discharge his legal obligation as he had not called for record with regard to manner of procurement of Gram Whole even though the petitioner-objector had made an allegation in its written submissions with regard to violation of undertaking by successful RP tenderers. Mr. Khorana pointed out that the Arbitrator had failed to appreciate that petitioner-objector's lowest offer under the RP tender was ignored even though petitioner-objector had only asked for three to four days time to furnish security. In this connection, Mr. Khorana relied upon the petitioner-objector's letter dated 27th May, 1997 which reads as under :-

"Ref. No. HO/PUL/APO/SUPPLY/97-98/ DATED 27.5.1997

*The Chief Director of Purchase
Army Purchase Organisation,
Ministry of Defence,
New Delhi – 110001*

Sub: Supply of Gram Whole to APO-Tender

*enquiry No. J-12015/2/97-PUR-III dtd.
2.4.97*

Dear Sir,

This is in continuation of our letter of even no. dated 23.5.97. We have to inform you that we are ready and willing to furnish the security amount in any other form provided in the purchase tender enquiry. We should be given the time of 3-4 days to furnish the said security.

Awaiting for an early reply.

Thanking you,

Yours faithfully,

*Sd/-
(S.C. SONDHI)
GENERAL MANAGER (PULSES)*

20. According to Mr. Khorana, the impugned Award was a non-reasoned one and further that the Arbitrator had given no reasons for rejecting petitioner-objector's counter claim for refund of liquidated damages. In this connection, he relied upon a judgment passed by a learned Single Judge of this Court in **CS(OS) 449A/1997** titled as **U.O.I. Vs. M/s. P.L.B. Industries** decided on **26th October, 2009**.

21. Mr. Khorana lastly urged that the rate of interest awarded by the Arbitrator was usurious and not in consonance with the prevalent interest rate charged by the bank and financial institutions.

22. On the other hand, Mr. A.S. Chandiok, learned Additional Solicitor General for the respondent-UOI submitted that the petitioner-objector's allegation that the Arbitrator had perused the purchase file

behind the back of petitioner-objector's counsel was frivolous and baseless. In this connection, he referred to the reply filed by the respondent-claimant to the present objection petition, which reads as under :-

'REPLY TO THE GROUNDS

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xxxx

xxxx

xxxx

It is submitted that all these averments of the Petitioner are absolutely preposterous, totally misleading and intentional misrepresentation of the facts and a clear cut suppression of the material on record. Further these are all very vague allegations without production of a single document in defence of their contentions. Hence these averments are vehemently denied by the Respondent. It is submitted that the petitioner in their written pleadings before the Sole Arbitrator alleged that vide their letter dated 02.07.96, they requested the Respondent for a Delivery Period extension without levying liquidated damages and produced before the Arbitrator in their written pleadings the copy of the letter as per their records. In the reply filed before the Arbitrator, the Respondent contended that in the letter received from the Petitioner, the last five words – “without levy of Liquidated Damages” – were struck off before the letter was signed and sent to the Respondent and a copy of the said letter as available on the contract file,(as original files were seized by CBI after the Respondent retained the Photocopy of the contract files) was produced by the respondent before the learned arbitrator. Both these documents which were attached to the written pleadings to the Arbitrator in the very presence of the advocates on behalf of the Petitioner and pleaded with the Arbitrator to see for himself which party has tampered with the document. At this, the Petitioner's advocate wanted the original file from the Respondent to be submitted to the Arbitrator. The Respondent informed the Learned Arbitrator that the original files were seized by CBI in the criminal case registered by them against the Petitioner/Claimant, NAFED and hence only the photocopy of the contract file was available. In response to this pleading of the Respondent, the learned Arbitrator orally directed the Respondent to show him the photocopy of the contract file in the next hearing and adjourn the hearing.

During the hearing, the learned Arbitrator never could suspect the integrity of the Officers of the Respondent and he made it clear in the hearing that the photocopy of the file would be enough for his perusal as he refused to suspect the Respondent and he also made it clear that in case if any doubt arises in his perusal of the file, he would be at liberty to call for the original file. Accordingly, during the next hearing, the Respondent produced the photocopy file to the learned Arbitrator in the very presence of the Petitioner and their advocates. Learned Arbitrator perused the document which was alleged by the Petitioner to have been tampered with and he also perused the document produced by the Petitioner along with their written pleadings. As a single glance at these two documents clearly reveals as to which party tampered with the document, the learned Arbitrator accepted the pleading of the Respondent that the document produced by the petitioner was the one which was tampered with and accordingly he summarily dismissed the allegation of the Petitioner that the document was tampered by the Respondent.”

(emphasis supplied)

23. He further pointed out that even if petitioner-objector's allegation was correct, it did not cause any prejudice to petitioner-objector as the Arbitrator had not rendered any finding on the basis of the said file.

24. Mr. Chandiok emphatically denied that the Award was antedated. He drew my attention to Sub-sections (1) and (5) of Section 31 of Act, 1996 to show that there was a distinction between despatch and writing and signing of an arbitral award. According to Mr. Chandiok, the date of despatch and the date of publishing of an award need not be the same. He laid emphasis on the fact that the impugned Award had been passed on stamp paper which had been purchased in the month of June,

2000. Mr. Chandiok also denied that respondent-claimant had ignored the petitioner-objector's lowest offer. In this connection, he referred to the respondent-claimant's letter dated 22nd April, 1997, which reads as under :

Dated 22.4.97

To

*M/s NAFED,
2423/29, Surekha Building,
Shradhanand Marg, Delhi-6.*

*Subject:- Tender Enquiry for Risk Purchase of 4199.835
MT Gram Whole against A/T No. J-
13015/1/67/96-Pur III Dated 19.3.96 for
Defence Services.*

Dear Sir,

I am directed to invite your attention to this organisation's letter No.J-13015/1/67/96-Pur III dated 26.3.97 and to state that 4199.835 MT Gram Whole against A/T No. J-13015/1/67/96-Pur III dated 19.3.96 was cancelled at your risk and cost. A copy of Tender Enquiry No. J-12015/2/97-Pur III dated 2.4.97 for repurchase of 4199.835 MT Gram Whole is enclosed.

2. Your attention is also invited to clause 5 of the Invitation to Tender and Instructions to Tenderers and Clause 20 of the Terms and Conditions sent alongwith Tender Enquiry No. 12015/2/97-Pur III dated 2.4.97 which is reproduced below:-

"In case of risk purchase, if the quotation of the defaulting firm happens to be the lowest acceptable, they will be required to furnish security deposit equivalent to the difference between his quotation and the next best quotation or 10 % (Ten Percent) of the proposed contract value whichever is more by which their offer will be ignored and placement of the contract on the next best offer will be considered. Bank Guarantee will not be an acceptable form of Security Deposit."

3. This is without prejudice to the rights and remedies available to the Government under the terms and conditions

of contract and any other rights which are hereby fully reserved.

*Yours faithfully,
Sd/-
(SUSHMA RATH)
SECTION OFFICER (PURCHASE)
FOR AND ON BEHALF OF THE
PRESIDENT OF INDIA
TELS: 3383511/4252*

(emphasis supplied)

25. Mr. Chandiok pointed out that subsequent to the said letter, as petitioner-objector's offer was the lowest, respondent-claimant issued a telegram dated 15th May, 1997 giving the petitioner-objector time till 26th May, 1997 to furnish security in accordance with the tender terms. He stated that it was not possible for the respondent-claimant to grant any further extension of time for furnishing the security as offers received under the RP tender were only valid upto 28th May, 1997.

26. Mr. Chandiok also contended that the Arbitrator was not obliged to call for the record with regard to procurement of Gram Whole under the RP tenders as there was no challenge filed by petitioner-objector before the Arbitrator to the placement of RP tenders. In any event, he submitted that even if there was any violation of any undertaking given by a third party to the respondent-claimant, petitioner-objector could not derive any benefit from the same.

27. Mr. Chandiok also submitted that from a reading of the Award, the thought process of the Arbitrator was clear. Mr. Chandiok stated

that the petitioner-objector's counter claim for refund of liquidated damages was baseless. He pointed out that the liquidated damages had been deducted by respondent-claimant from the petitioner-objector's running bills without any protest. He laid emphasis on the fact that in none of the contemporaneous correspondence exchanged between the parties, petitioner-objector had ever raised any objection with regard to periodic deduction of liquidated damages. Consequently, he submitted that the petitioner-objector had waived its rights to raise any objection with regard to levy of liquidated damages.

28. As far as the rate of interest is concerned, Mr. Chandiok drew my attention to Section 31(7)(b) of Act, 1996 which reads as under :

31. Form and contents of arbitral award. –

xxxx xxxx xxxx xxxx

(7) (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

29. However, he left the rate of interest to be decided by this Court.

30. Having heard the parties at length and having perused the impugned Award, I am of the view that it would be appropriate to first outline the circumstances in which a Court can interfere with an arbitral award passed under the Act, 1996. The Supreme Court in ***Delhi Development Authority Vs. R.S. Sharma and Company, New Delhi*** reported in ***(2008) 13 SCC 80*** after referring to a catena of judgments

including *Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* reported in (2003) 5 SCC 705 has held that an arbitral award is open to interference by a court under Section 34(2) of the Act, 1996 if it is:-

- (i) contrary to substantive provisions of law; or
- (ii) contrary to the provisions of the Arbitration and Conciliation Act, 1996; or
- (iii) against the terms of the respective contract; or
- (iv) patently illegal; or
- (v) prejudicial to the rights of the parties.

31. The Supreme Court has further held in the aforesaid judgment that an award can be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality.

32. In fact, the Supreme Court in *McDermott International Inc. Vs. Burn Standard Co. Ltd. & Ors.* reported in (2006) 11 SCC 181 has succinctly summed up the scope of interference by this Court by stating “ *the 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc.....*”

33. In fact, upon perusal of the arbitral record, it is apparent that the petitioner-objector failed to supply the contracted quantity of Gram Whole despite the delivery period being extended vide respondent-claimant's letters dated 12th April, 1996, 28th May, 1996, 17th July, 1996, 10th September, 1996, 18th October, 1996, 28th October, 1996 and

11th November, 1996. Consequently, respondent-claimant in accordance with the contract rightly cancelled the contract and floated a risk purchase tender after deduction of liquidated damages.

34. Moreover, upon perusal of the Award, it cannot be assumed that the Arbitrator had perused the files behind the back of petitioner-objector's counsel. Also, the said fact is vehemently denied by the respondent-claimant in its reply to the present objection petition. Moreover, even if the petitioner-objector's allegation is taken to be correct, I am of the view that files must have been perused by the Arbitrator by way of abundant precaution. In any event, perusal of an official record which has been contemporaneously maintained, cannot be termed as either misconduct or violation of principles of natural justice especially when the said record does not form the basis of any finding in the impugned Award. Accordingly, the judgment relied upon by Mr. Khorana has no application to the facts of the present case.

35. Further, petitioner-objector's allegation that the Award had been passed on 22nd August, 2000 to render infructuous petitioner-objector's application dated 21st August, 2000 is based on surmises and conjunctures. I am also of the view that an award of this nature could not have been passed in one day's time as alleged by learned counsel for petitioner-objector. I am of the opinion that the date of despatch of Award would not prove that Award had been passed on the said date.

Writing, signing and publishing of an award is distinct from its despatch as rightly pointed out by Mr. Chandiok. Sub-sections (1) and (5) of Section 31 of Act, 1996 read as under :-

“31. Form and contents of arbitral award. –(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

xxxx xxxx xxxx xxxx

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

36. I am also of the opinion that the Arbitrator rightly did not call for the record with regard to manner of procurement of Gram Whole by the successful RP tenderers as, firstly, no such allegation had been made by petitioner-objector in its claim statement. Secondly, the said allegation had not been substantiated by any evidence by petitioner-objector. Thirdly, there was no challenge by petitioner-objector to the Award of RP tenders. In any event, even if the RP tenderer had violated any term of contract executed between them and respondent-claimant, petitioner-objector would not be absolved of its obligation to pay liquidated damages. In fact, from the documents on record, it is apparent that the petitioner-objector's offer under the RP tender was not ignored by respondent-claimant. On the contrary, in accordance with Clause 5 of the Invitation to Tender and Instructions to Tenderers and Clause 20 of Terms and Conditions of Tender Enquiry dated 2nd April, 1997, petitioner-objector was asked to furnish security by 26th May, 1997 – which the petitioner-objector admittedly failed to furnish.

37. I am further of the opinion that the respondent-claimant acted reasonably and fairly in rejecting petitioner-objector's request for further extension of three to four days time as the offers received under the RP tender were open only till 28th May, 1997 and in case orders had not been placed on 27th May, 1997 against the RP tender, the whole RP exercise would have had to be carried out once again.

38. I am also of the view that the petitioner-objector's submission that the impugned Award was a non-reasoned one and/or the Award did not indicate the Arbitrator's thought process is contrary to facts and untenable in law. An arbitrator is not expected to write a judgment like a Court of law. Even though it is obligatory for an arbitrator to state reasons, it is not obligatory for him to give a detailed judgment (refer to *Ircon International Ltd. Vs. Arvind Construction Company Ltd. & Anr.* reported in 1999 (81) DLT 268, *Indian Oil Corporation Vs. Indian Carbon Ltd.* reported in AIR 1988 Supreme Court 1340 and *College of Vocational Studies Vs. S.S. Jaitely* reported in AIR 1987 Delhi 134). In the present case, I find that the Arbitrator has given cogent and concise reasons for awarding Claims No.1 and 2 and for rejecting petitioner-objector's counter claims. In any event, as held by the Supreme Court in *M/s. Sudarshan Trading Co. Vs. Government of Kerala and Anr.* reported in (1989) 2 SCC 38, reasonableness of reasons cannot be challenged in an objection petition filed against an

arbitral award.

39. As far as rejection of petitioner-objector's counter claim for refund of liquidated damages is concerned, I am of the opinion that the petitioner-objector was estopped from raising this counter claim as during the contemporaneous period when liquidated damages were deducted, petitioner-objector had never raised any objection. Consequently, in my view, petitioner-objector has waived its right to claim refund of liquidated damages. In any event, I find that petitioner-objector did not lead any evidence to show that petitioner-objector had not breached its original contract dated 19th March, 1996. In fact, as pointed out hereinabove, petitioner-objector had never challenged the award of RP tender before the Arbitrator.

40. As far as rate of interest is concerned, I deem it appropriate to reduce the rate of interest to 9% per annum simple interest. In this connection, I may refer to observations of the Supreme Court in cases of *State of Rajasthan & Anr. Vs. M/s. Ferro Concrete Construction Pvt. Ltd.* reported in 2009 (8) SCALE 753 and *Krishna Bhagya Jala Nigam Ltd. vs. G. Harischandra Reddy & Anr.* reported in (2007) 2 SCC 720 wherein the Court held as under :-

A) *State of Rajasthan & Anr. Vs. M/s. Ferro Concrete Construction Pvt. Ltd.*

“36. In regard to the rate of interest, we are of the view that

the award of interest at 18% per annum, in an award governed by the old Act (Arbitration Act, 1940), was an error apparent on the face of the award. In regard to award of interest governed by the Interest Act, 1978, the rate of interest could not exceed the current rate of interest which means the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act. Therefore, we are of the view that pre-reference interest should be only at the rate of 9% per annum. It is appropriate to award the same rate of interest even by way of pendent lite interest and future interest upto date of payment.”

B. *Krishna Bhagya Jala Nigam Ltd. vs. G. Harischandra Reddy & Anr.*

“11. here also we may add that we do not wish to interfere with the award except to say that after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the arbitrator at 18% for the pre-arbitration period, for the pendente lite period and future interest be reduced to 9%.”

41. Consequently, keeping in view the aforesaid judgments and the current rate of interest, the impugned Award dated 8th August, 2000 is modified only with regard to the rate of interest. Accordingly, present petition is dismissed but with no order as to costs.

MANMOHAN,J

MARCH 4, 2010.

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