

IN THE HIGH COURT OF DELHI AT NEW DELHI

Order Reserved on: 17.04.2014
Order Pronounced on: 08.08.2014

OMP 632/2009

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....PETITIONER

Through: Mr. Saurabh S. Sinha and
Mr. Arijit Mazumdar,
Advocates.

versus

M/S. SRICON INFRASTRUCTURE PVT. LTD..... RESPONDENT

Through: Mr. Ravi Gupta, Sr.
Advocate with Mr. Rajul
Srivastav, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J

1. The Petitioner has filed the present petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) for setting aside Award dated 03.06.2009 alongwith notice dated 11.06.2004 amending the Award dated 03.06.2009.

2. The Arbitral Tribunal by the Award dated 03.06.2009 had awarded to the Respondent/Claimant a sum of Rs.1366.23 lakhs alongwith future interest @ 12% from three months from the date of the Award. By notice of making correction dated 11.06.2009, the Arbitral Tribunal has corrected the Award and enhanced the awarded amount to Rs.1369.57 lakhs.
3. As per the Petitioner, in the year 2005, bids were invited by the Petitioner for rehabilitation and improvement of pavement for Gurgaon-Kotputli-Amer Section of National Highway-8 from Km 42.00 to Km 248.00.
4. It is contended that there were certain errors in the notice inviting tender and, accordingly, on 18.03.2005, the Petitioner informed the responsive bidders that the unit of item 10 of Bill of Quantities was inadvertently mentioned as Sqm. instead of Cum. The bidders were requested to submit bids as per the amended bill of quantity.
5. The Respondent amongst other submitted its bid. The bid of the Petitioner was accepted and Contract Agreement dated 17.05.2005 was executed between the

Petitioner and the Respondent.

6. Certain disputes arose between the parties during the course of execution of the contract which in terms of the agreement were referred to the Engineer. The claims raised by the Respondent were rejected by the Engineer by his letter dated 02.02.2007 and thus notice of its intention to commence the arbitration against Engineer's decision was issued by the Respondent.
7. The Arbitral Tribunal consisting of sole Arbitrator was constituted with the consent of the parties. The Respondent filed its statement of claim. The Petitioner submitted its statement of defence. After detailed examination of the claim and its supporting documents, the response of the Petitioner and its supporting documents and after considering the submission of the parties, the Arbitral Tribunal by the Award dated 03.06.2009 awarded a sum of Rs.1366.23 lakhs.
8. By notice of making correction to the Arbitration Award dated 11.06.2009, the Arbitral Tribunal made 23 corrections to the Award and enhanced the awarded amount to Rs.1369.57 lakhs from 1366.23 Lakhs.

9. The Petitioner has contended that the arbitral Award is against public policy and arbitrary and without any basis in law and fact. It is contended that there are illegalities committed by the Arbitral Tribunal in all and the Award is contrary to facts and law. It is contended that the Award is against public policy as it violates the provisions of the Act that make it mandatory for the Arbitrator to deal with and record findings with regard to the documents and evidence produced by the parties.
10. It is further contended that the fact that 23 corrections were made to the Award shows that there is complete non-application of mind. It is submitted that the Arbitral Tribunal could not have corrected or amended the Award after publishing the same on 03.06.2009 as the Tribunal had become *functus officio*.
11. It is contended that the findings of the Arbitral Tribunal is de hors the express contractual provisions that mandate that the employer is the final authority to grant the extension of time and the Engineer has power only for recommendation to the employer (Respondent). The extension of time granted by the Engineer was

contrary to facts.

12. The Respondent has opposed the petition and has contended that the Award is based on the material placed before the Arbitral Tribunal and is a well reasoned Award. It is contended that the contract document defined the scope of the work to be executed under the contract and the type of treatments to be adopted for various stretches were clearly defined.
13. It is contended that the time for completion of work was nine months from the date of commencement of work. However, actual time taken for completion was about 16 months. It is contended that the Engineer granted extension of time for completion of work up to 30.09.2006 and also declared that the entire delay was caused due to the compensation events mentioned under the contract. The Engineer, however, left the issue of payment of compensation for the delays caused undecided.
14. It is further contended that the actual situation at the site was much different than that foreseen at the time of preparation of bids. It is contended that the scope of the work to be executed to suit the actual site conditions

took a long time for deciding.

15. It is contended that the actual situation at the site led to various delays in completion of the project. It is contended that the Respondent had immediately mobilized the resources and commenced the work, however the changed scope of works, sequence, nature and timing of work had rendered the quoted rates as inapplicable. The Respondent had informed the Engineer about the condition of the road in certain stretches which were extremely distressed and different from that envisaged and provided for in the scope/specification of work as per Contract Agreement (CA) and requested the Engineer to look into this and confirm the location where the strengthening was to be done.
16. It is contended that the Engineer took about two months to approve the programme for extra work and to hand over possession. It is contended that the maintenance contract was abandoned by another agency. The resources of the Respondent were engaged in performing certain emergency work.
17. It is contended that there were various factors leading

to the delay in the execution of the work and attributable to the Petitioner. It is contended that delay in execution of the work was due to reasons not attributable to the Respondent but solely attributable to the Petitioner and the Engineer.

18. It is contended that the matter regarding Extension of Time was referred to the Engineer by the Respondent claiming 226 days extension. It is submitted that the Engineer recommended extension of time of 226 days without levy of any penalty or damages and clearly returned a finding that the delay was for reasons beyond the purview and control of the Respondent.
19. Learned Senior Counsel for the Respondent submitted that the Arbitral Tribunal has in great detail considered the claims and the response of the Petitioner and has referred to the various documentation filed by the parties and the submissions made and a detailed speaking order has been passed.
20. He further submitted that in an Award of about Rs.1366 Lakhs, the amendment is of only about Rs.3.3 lakhs. It is submitted that the Award contained computational and typographical errors which were noticed by the

Arbitral Tribunal after the Award had been published and the corrections were issued within a span of eight days from publishing of the initial Award.

21. It is further submitted that the Arbitrator was an individual having specialized knowledge in the field of construction and had expert technical knowledge about the said field. It is submitted that the Arbitrator has not used any personal knowledge of facts but has used his expertise and technical knowledge.
22. It is further submitted that the time was extended by the Engineer keeping in view the facts and circumstances of the case and once time had been extended by the Engineer, the Petitioner had no right or authority to decline the extended time.
23. Before adverting to the factual matrix of the Award, it would be appropriate to examine the scope of section 34 of the Act and the scope of judicial interference permissible by a court while exercising the power under section 34.
24. The law laid down by the Supreme Court restricts the supervisory role of the courts while testing the validity

of an Arbitration Award. In the case of ***MCDERMOTT INTERNATIONAL INC. VS. BURN STANDARD CO. LTD. AND OTHERS (2006) 11 SCC 181***, the Supreme Court has held as under:-

“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. The court cannot correct errors of the Arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court’s jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.”

25. Where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under Section 34 is not appellate in nature and an Award passed by an

Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the Award merely because in the opinion of the court, another view is possible.

26. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under Section 34 of the Act is of the view that there are two views possible and the Arbitral Tribunal has taken one of the two possible views which could have been taken on the material before it, the court would be reluctant to interfere.
27. The court is not to substitute its view with the view of the Arbitrator, if the view taken by the Arbitrator is reasonable and plausible. If the Arbitrator has taken a view which the court finds reasonable and plausible, the court would certainly not interfere.
28. As laid down by the Apex Court, the supervisory role of the court in arbitration proceedings has been kept at a minimum level and this is because the parties to the

agreement make a conscious decision to exclude the Courts' jurisdiction by opting for arbitration as the parties prefer the expediency and finality offered by it.

29. In the present case the Arbitral Tribunal has extensively considered the pleadings of the parties and the evidence filed in support thereof. The plea raised by the Petitioner/objector has been considered in great detail in the Award.
30. The Arbitral Tribunal on considering the documents produced by the parties has noticed in paragraph 1.3 that the case for time compensation on account of compensation events was initiated by the Claimant on 25.09.2006. He has further noticed that the time compensation was recommended by the Engineer on 13.09.2006.
31. The Arbitral Tribunal has relied on the General Conditions of Contract clause 28.3 wherein it is stipulated that the employer is to communicate to the Engineer his acceptance or otherwise of the Engineer's decision on extension of time within 21 days. If the employer fails to give his acceptance, the Engineer shall not grant the extension and the contractor may

refer the matter to the Dispute Review Expert under General Conditions of Contract Clause 24.1. He has further noticed that under General Conditions of Contract clause 24.1 there is no provision of Dispute Review Expert and it is stipulated that the dispute shall in the first place be referred to the Engineer. Accordingly the disputes regarding time and cost compensation were referred to the Engineer vide Claimant's letter dated the 28.01.2007.

32. The Engineer in its letter dated 02.02.2007 confirmed the time compensation by way of extension of time upto 30.09.2006 as recommended earlier but did not agree for any cost compensation.
33. The Arbitral Tribunal has thus held that the dispute regarding time compensation got resolved but the dispute regarding cost compensation still remained unresolved to be settled through arbitration.
34. The Arbitral Tribunal has exhaustively considered the contention of the parties, their documents submitted and submissions made and has given detailed reasoning. The Arbitral Tribunal framed following issues to decide the admissibility or otherwise of the

claims:

- (a) Whether the compensation events that have occurred during execution of the work were attributable to the Respondent or the Claimant?
- (b) Whether the Claimant had the requisite level of resources and efficiency to achieve the rate of progress to complete the entire work within the stipulated period/date of completion?
- (c) Whether the Claimant had executed additional/varied works ordered by Engineer and is entitled to adequate financial compensation for the same?
- (d) Whether the Claimant is entitled to financial compensation of additional costs for the compensation events apart from time compensation decided by Engineer?

35. The Arbitral Tribunal on the basis of the documents filed and the oral submissions made by the Claimant has held that the works program based on the scope of work in terms of locations, quantities and specifications as stipulated in the Contract Agreement was submitted for approval of the Engineer on 23.05.2005.

36. The tribunal has further noticed that the Claimant reported to the Engineer on 29.05.2005 that the condition of the road in certain stretches was extremely distressed and different from that envisaged and provided for in the scope/specifications of work as per Contract Agreement and requested the Engineer to look into this and confirm the locations where strengthening is to be done. Similar requests was made to the Engineer in Claimant's letter dated 03.06.2005. Thereafter number of letters were exchanged on delay/disruptions due to non-availability of instructions on locations / specifications of strengthening / rehabilitation of pavement work and changes in design of kerb stones work to be done and undesirability of undertaking milling work in monsoons.
37. In response to Claimant's request to take up the DBM/BC work where there was no milling provided in the Contract Agreement, the Engineer, in its letter dated 28.07.2005 confirmed the deteriorated condition of existing road which required change of specification to include additional milling/DBM, undesirability of attending to this work in monsoons and stated "However we are looking for some stretches of the

road, where surface water drainage was no problem and where milling, crack sealing can be carried out during dry period during monsoons time."

38. The Arbitral Tribunal has thus held that it was obvious that the Engineer could not decide on the locations/specifications of the work till as late as 28.07.2005. The Arbitral Tribunal has further held that in the meantime due to failure of another O & M contractor, the Claimant had undertaken emergency DBM work ordered by the Engineer and executed during July/August of 2005.
39. The Engineer released a part of the site for milling work against this Contract Agreement vide letter dated 08.08.2005, but while the work was picking up momentum, the Engineer reversed/modified the instructions dated 08.08.2005 vide letter dated 30.09.2005. The Arbitral Tribunal has held that the locations/specifications to be followed for the work continued to be intimated to Claimant in bits and patches in piecemeal basis, in non-sequential manner from time to time during original as well as extended time, thereby causing delays/disruptions in

planning/execution of the work and affecting the efficiency and productivity of the resources. The Arbitral Tribunal has held that this amounts to compensation even in terms of General Conditions of Contract that 44.1 (c) of the Contract Agreement.

40. The Arbitral Tribunal has further held that the Engineer in his letters had very clearly brought out the existing extremely deteriorated condition of the road and necessity to include additional stretches for milling and proper treatment of such stretches.
41. Based on the chart prepared by the Respondent the Arbitral Tribunal has held that as against 6.4 km of milling in 4 stretches on LHS of the road provided in the Contract Agreement, the actual milling was ordered by Engineer in 29.855 km in 13 different stretches. Similarly as against 9.2 km of milling in 7 stretches on RHS of the road provided in Contract Agreement, the actual mailing was ordered by Engineer for 25.537 km in 13 different stretches. Moreover the milling was to be 8.54 m wide and 65 mm deep which was revised to different widths (4, 6, 8.54 m) and different depths (65, 100, 140 mm) at different locations leading to 216%

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increase in milling work. This work was also released in non-sequential manner involving leapfrog movements of resources and frequent changes in methodology and adjustments of milling machine to meet the varying requirements of width and depth, leading to delays/disruptions. The plans for milling approved by Engineer was also modified from time to time causing additional disruption/delays. Further activities of the road work depended on completion of milling work. Therefore the delay in instructions by Engineer leading to delay in execution of milling resulted in delay in other subsequent activities leading to delay in completion of the work and increase in the cost.

42. The Arbitral Tribunal has rejected the contention of the Petitioner that the highway being already in operation and in possession of the Petitioner, the site and working fronts as per Contract Agreement were available to the Claimant immediately after acceptance of contract.
43. The contention of the Petitioner that the contract drawings were already made available to the Claimant and the work could have been carried out accordingly

was also rejected. The reason given by the tribunal for rejection is based on the fact that the work could not be commenced for quite some time due to the requirement to revise the locations/specifications of the work that was stipulated in the Contract Agreement, by the Engineer based on the changed/deteriorated condition of the road. This revisor and formal release of a part of the site for work was done by Engineer on the 08.08.2005 but these instructions were also reversed/modified vide letter dated 30.09.2005 and this practice of release of work with revised locations/specifications became an ongoing process during the original as well as extended period. This as per the Arbitral Tribunal amounted to delay in handing over site for actual execution of work and a compensation event in terms of General Conditions of Contract clause 44.1(a) of the Contract Agreement.

44. The Arbitral Tribunal further the rejected the contention of the Petitioner that the Claimant had not given early warning of likely delay in completion of work. The tribunal has held that the Claimant had reported the deteriorated condition of the road (which may lead to revision of scope/specifications of the

work which was likely to adversely affect the quality of work, increase in cost or delay the execution of work) and had requested the Engineer to look into this. Based on these reports the Engineer was required to make and consider proposals to avoid/reduce the impact of such event/circumstance and to issue instructions in this regard as per General Conditions of Contract clause 32.2 of Contract Agreement. Not having received responses/instructions from the Engineer, a detailed site study report to indicate and bring out events causing delay in work with specific reference to was also made by Claimant. The Arbitral Tribunal has held that no speedy action was taken by the Engineer in this regard and these were treated as routine reports and instructions on revision of scope/specifications were issued and often modified over a long period of time even beyond original date of completion. The Arbitral Tribunal has held that this is the main reason for delay/disruption in the works and a major compensation event.

45. The Arbitral Tribunal has further held that the delays stated to be on the part of the Respondent/Claimant did not have any effect leading to delays in the work which

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were due to the delays in clear instructions by the Engineer which were prerequisite for commencement/smooth progress of the work.

46. The Arbitral Tribunal has referred to the provisions of the Contract Agreement to hold that in terms of the General Conditions of Contract, on occurrence of compensation events the Claimant was entitled to compensation by way of additional time as well as additional costs. On the basis of the analysis of the evidence of the parties, the Arbitral Tribunal has held that the delay/disruption in completion of the work was not attributable to the Respondent/Claimant and the same were compensation events in terms of the terms of the General Conditions of Contract 44.1 and thus the Claimant was entitled for time and cost compensation.
47. The Arbitral Tribunal has also examined the various documentation on the issue whether the Claimant had the requisite level of resources and efficiency to achieve the rate of progress to complete the work within the original date of completion stipulated in the Contract Agreement. The Arbitral Tribunal has analyzed the details in respect of the 3 major items of

Milling, DBM and BC during the entire period of completion. The Arbitral Tribunal has also examined the details of the equipment deployed by the Respondent/Claimant. On the basis of analysis of the evidence, the Arbitral Tribunal has held that the Claimant had the requisite level of resources and efficiency to achieve the rate of progress to complete the work within the stipulated period/date of completion. The delay in completion of work despite having adequate resources, due to reasons beyond the purview of Claimant, has been held as amounting to reduction in productivity of resources and resultant additional costs to the Claimant and thus he was held eligible for cost compensation.

48. The Arbitral Tribunal has held that the stand taken by the Engineer in rejecting the financial compensation while granting the time compensation was not justified. The tribunal has held that during the execution of work a number of compensation events occurred leading to delays/disruption and additional quantities of work were also ordered by Engineer, for reasons not attribute to the Claimant which resulted in loss of efficiency/output of resources at site leading to increase

in cost of inputs which warranted financial compensation apart from extension of time. The contract having no price adjustment clause to cover escalations, the contractor would have considered/assessed escalation in prices only for original period of contract, therefore the work done during the period after original completion date warranted financial compensation by way of price adjustment for escalation. Similarly the payment for additional/varied work has to be made at appropriate varied rates as financial compensation. The tribunal has held that the additional cost compensation's could not be washed away by merely stating that time compensation by way of extension of time was recommended with no financial implications whatsoever and various issues raised did not merit consideration for any financial compensation.

49. Based on the analysis of the evidence placed before the Arbitral Tribunal by way of documents and submissions made the Arbitral Tribunal arrived at the conclusion that the compensation events that occurred during the execution of the contract were not attributable to the Claimant. It further concluded that

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the Claimant had the requisite level of resources and efficiency to achieve the rate of progress to complete the entire work within the stipulated period/date of completion. It further held that the Claimant had executed certain additional/varied works ordered by the Engineer. The Arbitral Tribunal thus held that the Claimant was entitled to financial compensation by way of additional costs due to various compensation events apart from time compensation as decided by the Engineer.

50. The Arbitral Tribunal after concluding about the admissibility of the claims evaluated the claims on the basis of the documents submitted by the parties. The Arbitral Tribunal has observed that in the absence of verification of details for the evaluation of the claims, the tribunal being an Engineer with professional experience of five decades in various capacities in highways construction field including about two decades in intensive mechanized highway construction works, considered that a fair and reasonable evaluation of the claim could be done based on general practice of average norms for estimation and costing of mechanized highway construction works for the

purpose of price adjustments normally adopted in the industry.

51. The Arbitral Tribunal has further explained the average norms for estimation and costing of mechanized highway construction work that is normally adopted in the industry. Based on the average norms for estimation that is adopted in the industry and the analysis of the evidence the Arbitral Tribunal has worked out the various computation of the claims. The Arbitral Tribunal has found some of the claims of the Claimant as justified and had neglected some claims as unjustified.
52. A detailed analysis of the claims, examination of the documents submitted and the working of the industry has been considered by the tribunal while computing the claims of the Claimant. I find no reason to take a different view from the view taken by the Arbitral Tribunal and the computation of the various claims. In my considered opinion the view taken by the Arbitral Tribunal is reasonable and plausible.
53. The Arbitrator has elaborately considered the various documents, submissions and evidence led by the parties

in respect of each claim. The Arbitrator has extensively gone into the evidence and evaluated the entire material before him and has published a detailed speaking Award.

54. I do not find that any of the grounds as stipulated by section 34 of the Act exist in the present case for setting aside the Award.
55. This court is not sitting as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under Section 34 not being appellate in nature, an Award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. The view taken by the Arbitral Tribunal is a plausible view on the facts, pleadings and evidence before the Arbitral Tribunal, thus there is no ground to interfere with the Award.
56. Further persons with technical knowledge are appointed as Arbitrators as they are well versed with the practices and customs in respective fields. While deciding a dispute, though the Arbitral Tribunal cannot make use of personal knowledge of facts which are not part of the record but an Arbitral Tribunal can certainly

make use of an expertise or technical knowledge or general knowledge about particular trade in deciding a matter.¹ In the present case, the Arbitral Tribunal has not used any personal knowledge of the facts in the case while deciding and publishing the Award but has made use of expert technical knowledge about the particular trade and the practices and customs in the construction field. That cannot be considered as using personal knowledge of facts of a transaction to decide a dispute.

57. Extension of time and the reasons for the delay are pure questions of fact and pure questions of fact cannot be disturbed or set aside under Section 34 of the Arbitration Act.²
58. The reliance by the counsel for the Petitioner on the judgment of **ONGC LTD. VS. SAW PIPES LTD. 2003 5 SCC 705** to contend that for construction of contract the intention of the parties is to be gathered from the words used in the agreement and further that the Arbitral Tribunal is required to decide the dispute in accordance with the terms of the contract does not

¹ **PR SHAH SHARES & STOCK BROKERS (P.) LTD. VS. M/S. BHH SECURITIES (P.) LTD., 2012 (1) SCC 594**

² **NATIONAL HIGHWAYS AUTHORITY OF INDIA VS. M/S. GAMMON ATLANTA (JV) 2013 (4) Arb. LR 61 (Del)**

further the case of the Petitioner as the Arbitral Tribunal has decided the dispute based on the general conditions of the contract and the Contract Agreement between the parties. The use of an expertise or technical knowledge or general knowledge about particular trade would not imply that the decision is not in accordance with the terms of the contract. In the facts of the present case, the dispute has been decided by the Arbitral Tribunal based on the General Conditions of Contract and the Contract Agreement.

59. The reliance by the counsel for the Petitioner on the decision in the case of ***DEWAN SINGH VS. CHAMPAT SINGH & ORS., 1969 (3) SCC 447*** to contend that the proceedings before the Arbitrator are quasi-judicial proceedings and must be conducted in accordance with the principles of natural justice is not applicable in the facts of the present case.
60. The judgment relied upon by the counsel for the Petitioner in the case of ***UNION OF INDIA VS. U.P. UPBHOKTA SEHKARI SANGH LTD., 2003 (67) DRJ 596*** to contend that if in a case the court finds that the Arbitrator has arrived at a finding which is contrary to

the material before him or has arrived at a conclusion which is capricious on the face of it, the Court can interfere, is not applicable in the facts of the present case since the view taken by the Arbitrator is reasonable and plausible.

61. Further reliance placed by the counsel for the Petitioner on the judgment in the case of ***FORBES GOKAK LIMITED VS. CENTRAL WAREHOUSING CORPORATION LTD. (2003) (102) DLT 31*** to contend that an Arbitrator has no authority in law to rewrite the contract also does not help the case of the Petitioner since the Arbitral Tribunal has decided the dispute based on the General Conditions of Contract and the Contract Agreement between the parties.
62. The further contention of the Petitioner that the Award is liable to be set aside since there are various corrections carried out by the tribunal in the competition also has no merit. The type of corrections carried out by the Arbitral Tribunal after the passing of the Award clearly show that the same are typographical errors. One of the major corrections pointed out by the counsel for Petitioner is with regard to serial No 2 of

the notice of correction of Award where the Arbitral Tribunal has corrected the figure of 122.48 to 1519.29. If this entry at serial number 4 is compared with entry at serial number 2 the error would be apparent. The entry at serial number 4 is 1522.48 which has been corrected to 1519.29. Comparing the 2 entries clearly show that the entry at serial number 2 recorded as 122.48 was to be recorded as 1522.48 and 1522.48 has now been corrected to 1519.29. The total claim originally awarded to the Respondent/Claimant is 1366.23 lakhs and by the correction the amount has now become 1369.57 lakhs. The increase is only marginal that is of approximately 3 lakhs which translates to an increase of only 0.2%. The mere fact that there are 23 typographical corrections made in the figures would not render the Award liable to be set aside. The Arbitral Tribunal has passed a very comprehensive and detailed Award giving very extensive reasoning after an in-depth analysis of the evidence, documents, General Conditions of Contract, Contract Agreement and the submission of the parties.

63. The submission of the Petitioner that the Arbitral Tribunal had become functus officio and thus could not

have corrected the Award is also not sustainable in view of Section 33 (3) of the Act that lays down that the Tribunal may correct the errors within thirty days. The Award contained computational and typographical errors which were noticed by the Arbitral Tribunal after the Award had been published and the corrections were issued within a span of eight days from publishing of the initial Award

64. I find no infirmity in the Award of the Arbitral Tribunal and also do not find that any of the grounds laid down Section 34 of the Act exist in the facts of the present case to set aside the Award. In view of the above, I find no merit in the petition and the objections raised by the Petitioner to the Award passed by the Arbitral Tribunal. The petition is accordingly dismissed.

SANJEEV SACHDEVA, J

August 08, 2014
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