

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 27th November, 2017
Pronounced on: 06th December, 2017

+

O.M.P. 23/2010

DIRECTORATE GENERAL OF
HYDROCARBONS OF INDIA

..... Petitioner

Through : Mr.K.R.Sasiprabhu and
Mr.Somiran Sharma, Advocates.

versus

OVERSEAS DRILLING LIMITED

..... Respondent

Through : Mr.Neeraj Sharma, Mr.Alok
Tiwari, Mr.Raviner Prasad,
Ms.Dakshani Saxena and
Mr.Adhish Rajvanshi, Advocates.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. Petitioner by this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'the Act') impugns the arbitral award dated 29.08.2009.

2. The facts leading up to the filing of the present petition are set out hereunder:

(i) the Petitioner is a government body established by the Ministry of Petroleum and Natural Gas, Government of India and has its

office at C-139, Opposite Fortis Hospital, Sector 63, Noida-201301, Uttar Pradesh;

(ii) the Respondent is a company incorporated under the laws of the Cayman Islands with its offices at c/o Walkers SPV Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, KYI - 9002, Cayman Islands. The Respondent is engaged in the business of rendering services in the field of, inter alia, scientific research, drilling vessel and providing equipment and services for offshore scientific research;

(iii) the Petitioner had acquired oil and gas exploration rights from the Government of India for conducting Scientific Research and Development Programme under the National Gas Hydrate Programme for drilling / coring, logging and analytical activities to assess the characteristics of Gas Hydrates deposits in the Indian offshore ("Project");

(iv) the Respondent owned and operated a research vessel known as 'JOIDES Resolution' ("Vessel") which had the requisite capabilities for conducting research under the Project;

(v) the Petitioner, under the aegis of the Ministry of Petroleum and Natural Gas, Government of India, sought a consolidated proposal from the consortium consisting of the Respondent and Fugro McClelland Marine Geosciences Inc. ("Fugro") to undertake certain work under the Project;

(vi) the Respondent, on behalf of the consortium, submitted a proposal on 06.12.2005 to provide a full service gas hydrate investigative programme. In terms thereof, the Respondent and

Fugro were to work with Integrated Ocean Drilling Programme ("IODP"), U.S. Geological Survey ("USGS"), U.S. Department of Energy and Lament Doherty Earth Observatory ("LDEO") of Columbia University;

(vii) an agreement dated 09.03.2006 was entered into between the Petitioner, Respondent and Fugro in respect of the Project ("Agreement"). Under the Agreement, the Respondent and Fugro were to act along with primary sub-contractors GEOTEK and LDEO. The Agreement further provided the Respondent would act as the leader of the consortium. A copy of the Agreement dated 09.03.2006 is annexed herewith and marked as **Annexure P-2**;

(viii) in terms of the Agreement, the Respondent was obligated to mobilize the Vessel together with the required scientific equipment and the scientific support staff to India for the purpose of conducting the scientific initiatives according to an approved scientific program contemplated in the Agreement. The Vessel was to be mobilized from Galveston, USA to Mumbai, India. The project involved research drilling, coring, logging and scientific analysis activities at ten (10) pre-defined sites in India. The analysis of the geologic data and samples collected during the gas hydrate research drilling/coring project was to continue after the completion of the program in collaboration with USGS. The scientists and technicians were to be provided through the series of subcontracts managed by Fugro and GEOTEK and developed in consultation with USGS and the Petitioner;

(ix) under the Agreement, certain cores and samples which were to be stored in Mumbai were to be offloaded from the Vessel by the Petitioner at the end of the expedition and it was the responsibility of the Petitioner to transport the same to Mumbai. However, certain samples were to be studied by international scientific parties including USGS and it was the responsibility of the consortium to transport the said samples to USGS laboratories in the USA and Canada and to other international scientific parties.

(x) the Petitioner was required to pay mobilization fees, demobilization fees, science support services fees, logging while drilling fees and logging fees and appropriate day rate amounts to the members of the consortium. Further, if the Petitioner requested the members of the consortium to provide additional services above and beyond those provided in the Agreement, the fees for the same was to be agreed between the members of the consortium and the Petitioner.

3. As per the tri-partite agreement dated 09.03.2006, the term 'Consortium' was defined as under:-

“b) THE CONSORTIUM means ODL and FUGRO, acting therein with primary subcontractors GEOTEK, LDEO and others, which shall include, but not be limited to all subcontractors of ODL, FUGRO, GEOTEK, & LDEO (Lamont Doherty Earth Observatory), which shall include Schlumberger and affiliated companies, and other subcontractors providing science support services.”

4. The work was divided into three phases, per appendix A to the agreement containing of Statement of Work to be completed in three distinct phases as follows:-

“A, Phase-I

Mobilization of a Scientific Ocean Drilling Capability consisting of the mobilization of the scientific ocean research' vessel, the "JOIDES Resolution", and the required scientific equipment and the scientific support staff to India for the purpose of conducting the proposed scientific initiatives according to an approved Scientific Programme. The “JOIDES Resolution” would be mobilized from the port of Galveston, Texas, USA to the port of Mumbai, India.

B. Phase-II

Field Project Management Operations and Research consisting of a collaborative field program of research drilling coring (pressurized and non-pressurized) logging (logging While drilling and wireline logging) and scientific analysis activities during the hydrate project at ten (10) predefined sites consisting of 1 site off the West Coast of India, in which drilling coring and logging, but not logging while drilling (LWD) will occur, seven (1) sites off the East Coast of India In which LWD, drilling, coring and wireline logging will occur, and two (2) sites off the Andaman Islands in which drilling, coring and wireline logging, but not logging while drilling (LWD) will occur.

C. Phase-III.

Demobilization of the Scientific Ocean Drilling Capability and Collaborative Post Field Project Analysis of Geologic Data and Samples shall be as follows. After completing the drilling and coring

activities of Phase II, the 'JOIDES Resolution' would proceed to Port Blair where the cores would be removed from the vessel and delivered to DGH. The vessel would then be prepared for and be demobilized from Indian waters.

Collaborative post field analysis of the geologic data and samples collected during the gas hydrate research drilling / coring project will continue after the completion of the programme in collaboration with USGS and other identified agency."

5. The pricing is given in Appendix B of the agreement and as per the price schedule the mobilization fee was USD7,145,000; demobilization fee was USD7,297,300; the overseas drilling limit (ODL) for JOIDES Resolution and crew was USD5,980,000.
6. The vessel namely JOIDES Resolution was to come from the Port of Galveston, Texas, USA to the port of Mumbai, India and was to demobilize from the Indian waters.
7. The demobilization fee was to be paid to ODL and FURGO in line with the table provided in Appendix B and since the respondent was likely to get a gas hydrate agreement from Chinese authorities and so it was agreed between the parties in case the China Gas Hydrate Programme materializes and vessel JOIDES Resolution mobilize to China from Port Blair in that event the petitioner shall have to pay USD 3,042,000 only as demobilization fee to the consortium. It is alleged by the petitioner that such reduction in demobilization charges then offered was as the distance covered by the vessel from Texas, USA to Port Blair

was more than the distance between the Port Blair and China and it was only for this reason the respondent had agreed to receive less demobilization charges.

8. Admittedly the vessel was to reach initially at Port Blair, but due to custom clearance issues, both the parties agreed the port of landing to be at Chennai for which an additional mobilization charge for 2.6 days for the time taken in reaching Chennai was agreed to be given to the respondent.

9. It is argued, the respondent for the first time vide its letter dated 03.07.2016 had informed that after demobilization they shall take vessel to Singapore instead to USA, so, the petitioner wrote a letter dated 25.07.2006 to the respondent asking them to further reduce the demobilization charges since the distance between the two countries was far less than distance from Chennai to America but the respondent in its letter dated 25.07.2016 refused to decrease the demobilization charges on the plea nowhere was the distance a criteria to fix the demobilization charges and the concession, earlier in charges was being offered by the respondent only in the event of its getting China Gas Hydrate Programme – which unfortunately could not materialize and hence such offer of concession could not be relied upon.

10. Admittedly Phase – I in Appendix A show the mobilization charges as also such other charges payable and the vessel was to come from Texas, USA to Port Blair, India, but there was no corresponding provision in Phase – III as to where the vessel would proceed on demobilization and hence it cannot be said the pricing of the mobilization

and demobilization was based on actual nautical miles the vessel need to cover. The offer of reduction given by the respondent was thus only in an event of materialization of China Gas Hydrate Programme - which never happened and hence charges were never based on exact nautical miles.

11. The learned arbitral tribunal has also dealt with this issue and has given the same logic as under:-

“Demobilization fees:

Whatever might have been the basis on which the parties negotiated to contract, once the contract was finalized and signed on behalf of the parties, the terms of the contract can only be ascertained from the written contract. Barring the exceptional case of any ambiguity in a term, it would not be permissible to look into or consider extrinsic evidence for interpreting the contract. Apart from this legal position, Clause 1306 of the Agreement expressly provides that the agreement, including Appendices A to G appended to the Agreement "supersedes and replaces any oral or written communications heretofore made between the parties relating to subject matter hereof. In this view of the matter, all the claims have to be adjudged on the express terms of the contract, which is fairly extensive one and contains meticulous details of the terms.

Appendix 8 to the agreement deals with "Pricing". This appendix gives the breakup of the fees under the heads:

<i>Demobilization fees</i>	<i>\$7,297,300</i>
<i>Overseas Drilling Limited (ODL) for JOIDES Resolution and Crew</i>	<i>\$5,980,000</i>
<i>Fugro for Science support equipment and personnel</i>	<i>\$167,300</i>
<i>Logging Demobilization fees (via</i>	<i>\$1,150,000</i>

<i>ODL) broken down as follows:</i>	
<i>Logging While Drilling (LWD)</i>	<i>\$770,000</i>
<i>Wireless Logging</i>	<i>\$225,000</i>
<i>LDEO</i>	<i>\$155,000</i>

The contract [vide Appendix A.1 (A)] is specific about the fact that the vessel JOIDES RESOLUTION would be mobilized from the port of Galveston Texas, USA to the port of Mumbai, India. As to demobilization, the contract only says: "after completing the drilling and coring activities of Phase II, the JOIDES RESOLUTION would proceed to Port Blair where the cores would be removed from the vessel and delivered to DGH. The vessel then be prepared for demobilize from Indian Waters'. Significantly, the contract nowhere specifies that after demobilization the vessel would proceed to any particular port. In the teeth of this term, the Tribunal is unable to accept the Contention of the Respondent that the demobilization fee payable to the Respondent for the vessel and its crew at USD 5,980,000 was fixed on the footing that after demobilization the vessel would proceed to Galveston, USA.

The pricing contract in Appendix B clearly stipulates that the Respondent and Fugro were to be separately paid demobilization fees in line with the above table and the details in the Appendix B. The payment schedule provided in the contract is that the Claimant's demobilization fee of USD 5,980,000 shall be invoiced upon completion of the scientific programme once the vessel has departed the final port in India. It further provides that the Respondent shall pay the invoice within 20 days after receipt of the invoice. The only contingency under which the demobilization fee was to be reduced is indicated in the last paragraph in the Appendix B. It provides that in case the China gas

hydrate programme materialized, and the vessel mobilized to China from Port Blair, the Respondent would pay only USD 3,042,000 as the total demobilization fees to the consortium. Even prior to the commencement of the agreement and the contractual work, by the email dated February 15, 2006, the Claimant had informed the Respondent that China had not accepted its proposal for the Chinese hydrate programme, which was not likely to come through. Thus, the only contingency for reduction of the demobilization fees payable to Claimant never arose.

The Respondent contends that there is difference in the quantum of the mobilization fees and the demobilization fees stipulated as payable to the Claimant, which indicates that the mobilization and demobilization fees were proportionate to the distance to be travelled by the vessel. The Tribunal is unable to accept this contention. In the first place, this is not a haulage contract in which the fees payable would be partly fixed and partly proportionate to the distance of haulage. Secondly, if it was the intention of the parties that the mobilization fee or demobilization fee was to be linked to the distance travelled by the ship, then the parties would have definitely stipulated mobilization demobilization fees linked to the distance covered by the vessel. Lastly, the terms of the contract as to payment of demobilization fee are clear and unambiguous leaving no room for interpretation. Thus, Tribunal is, therefore, unable to accept the contention of the Respondent that since after demobilization the vessel travelled only up to Singapore, the demobilization fee payable to the Claimant could be pro-rata reduced, as the distance between Chennai-the port of demobilization and Singapore

was shorter than the distance between Chennai and Galveston.

The Tribunal is of the view that whatever might have been the factors present in the minds of the parties when they negotiated the contract, the contractual terms have to be interpreted in accordance with the language used in the contract. The Tribunal finds no ambiguity in the terms of the contract pertaining to demobilization fees. Hence, there is no room for interpreting the terms in the light of the extrinsic evidence of oral deposition of the Respondent's witness. Hence, the Tribunal is of the view that the Claimant is entitled to the amount of USD 5,98,0000 as demobilization fees less the amount of USD 834,270 which is admitted to have been paid to the Claimant by the Respondent.

Article VIII of the contract details the procedure for payment of charges. Article VIII section 802 provides that the Respondent shall pay all invoices within 20 days after the receipt thereof. If any item in the invoice is disputed, the Respondent is required, within 15 days after receipt of the invoice, to notify the members of the consortium of the disputed amount, specifying the reasons for the dispute. Thereafter, the payment of the disputed amount would carry no interest until payment after paying of the undisputed portion of the invoice. This clause also stipulates that any sums excluding, amounts not paid within 30 days after receipt of notice bear interest @ 1% over the prevailing Libor rates per annum, from the 30th day until paid.

The Claimant points out that, for the first time, by its letter dated July 25, 2006, the Respondent claimed that it was "perceived in the contract that the demobilization fee mentioned in the contract would have to be reduced proportionately as the ship was going to Singapore

after demobilization, and not to Galveston. The demobilization invoice No. 00684-00010197 was raised on 19th August, 2006. There was no dispute raised with regard to the payment of demobilization fees within the period of 15 days after receipt thereof, as stipulated in Article VIII (802) of the contract, nor was the invoice paid within the stipulated period of 20 days. On the other hand, the email dated 19th September, 2006 from the Respondent assured the Claimant that the Respondent was in the process of releasing payments of the pending invoices and that the payments would be made in a couple of days. The Claimant was informed that the payment details would be forwarded after releasing the payments. By the email of 20th September, 2006 Mr.Murali, on behalf of the Respondent, informed the Claimant that all the bills had been received and were under the process, and that in a couple of days, the payment would be released together with the details of the payments. By another email of 21st September, 2006, for the first time, Mr.Murali informed Mr. Brent Shoemaker of the Claimant that all other payments were released except the demobilization fees, which had been withheld as they were under process. Even by his email dated 23rd September, 2006, Mr. Murali explained: "In my email I had indicated that these two invoices is under process and did not indicate that the same had been withheld". Thus, it would appear that the Respondent did not follow the procedure and the time schedule for payments fixed in Article VIII (801 to 803). The Tribunal, therefore, is of the opinion that the amount found due towards demobilization fee should carry interest @ 1% over the prevailing Libor rate per annum from the 30th day i.e. from 19th September, 2006 until paid."

12. The reasoning given by the learned arbitral tribunal is similar to what has been observed by me above and is in consonance with the terms of the contract dated 09.03.2006 and need not be interfered. The learned arbitrator rather analyzed various clauses qua mobilization/demobilization, pricing and interest and rightly come to the conclusion the contract was not that of haulage and thus delayed payments would also attract interest.

13. The second limb of argument raised by the petitioner is the learned arbitrator has wrongly given compensation for the period from 19.08.2006 to 23.10.2006 which ought not to have been awarded and is against the terms of the contract.

14. Admittedly the Vessel carried the work from 28.04.2006 to 19.08.2006 in terms of the Agreement and collected extensive samples. Prior to demobilization, the standard cores and all Indian samples were to be offloaded at Port Blair and from there five (5) pressure cores were to be transported to Mumbai by the Petitioner itself. However such cores were retained on the Vessel at the suggestion of Dr. Collett (who was a key member of the consortium) as it was felt that they could be damaged during the long road transport journey due to unsatisfactory road conditions, hence it was suggested by Dr.Collett that it be taken to Singapore and from there it be air-lifted to Mumbai and that the cost of storage and transportation of it shall be borne through the science fund of the program.”

15. In order to substantiate his plea, the learned counsel for the petitioner referred to cross-examination of Mr.Brent Shoemaker,

conducted on 17.07.2008, wherein he deposed that Dr.Tim Collett was a key member of his team under the MOU between the USGS and DGH. The petitioner also referred to cross-examination of Mr.Arun Kumar Sethi who admitted it was the responsibility of DGH to carry all cores to Mumbai from Port Blair, however, in view of the change in port of demobilization on information of bad road conditions through the agent of ODL, it was agreed by Dr.Collett the Chief Science Coordinator that the precious pressure core samples will be taken by him to Singapore and dispatched to Mumbai by air or by sea through the science budget of the programme without any additional cost to DGH, hence it was argued that the petitioner cannot be made liable for additional work/storage charges.

16. All these submissions of the petitioner are based on oral assurances of Dr. Collett who was neither an authorized person to commit anything for the petitioner or for the respondent. Though the petitioner sought support from some portions of cross-examination of Mr. Brent Shoemaker and Arun Kumar Sethi but admittedly the parties never entered into any written agreement relating to transportation of the cores from Chennai port to Singapore. If the cores were transported to Singapore on an alleged assurance of Dr.Collett then the petitioner could have claimed additional charges on the science fund and ought not to have asked the JOIDES to grant free service. Hence the tribunal was right in awarding the claim for storage for five pressure cores. The extract of the relevant portion of the award in this regard is as follows:-

“Claim for storage of five pressure cores :

Appendix A to the contract styled "Statement of Work" stipulates the details of the work to be

done by the consortium of which the Respondent is a party. Clause A.2.2.2 stipulates the manner of handling and preservation and on board scientific studies of cores. It provides that the consortium shall provide all the necessary services, materials, laboratory facilities, other equipments and trained technicians and experienced scientific staff for core handling, preservation and on board scientific studies "during the operational period". Clause (v) indicates that five each aluminium pressure cores transfer vessels were to be provided by the Respondent but they were to be retained by the Respondent.

The statement of work in Appendix A.1, Clause C (Phase III) stipulates that after completing the drilling and core activities of Phase II, JOIDES RESOLUTION would proceed to Port Blair where the cores would be removed from the vessel and delivered to the Respondent. The vessel would then be prepared for and be demobilized from Indian waters. Clause A.6 also stipulates that, after completing the activities for the program, the vessel would return to Port Blair at which time all the cores recovered from, the operation would be handed over to the Respondent in refrigerated conditions after which the vessel would be prepared and de-demobilized from India. It further stipulates "all cores and gas hydrate samples would remain on research vessel to the end of the expedition port call in Andaman Island (Port Blair). DGH would be responsible for transfer of all cores and gas hydrate samples from the end of expedition port call in Port Blair to Mumbai. DGH would supply their own refrigerated Nan at Port Blair for the transport of cores and gas hydrate samples to NGHP laboratories in Panvel, Mumbai. However, the consortium would be responsible for sending

samples to international scientific party". The evidence of Mr. A.K. Sethi on this issue is quiet clear. In answer to question No.37, he clearly admitted that it was the responsibility of the Respondent to carry all cores to Mumbai from Port Blair. However, in view of the change in the port of demobilization to Chennai and information being received about the bad road conditions from the agent of the Respondent, Dr. Collett, Chief Science Coordinator of the project, was of the view that the precious core samples would deteriorate during the drive from Chennai to Mumbai under bad, road conditions. He suggested that it would be taken to Singapore and be dispatched from there by air to Mumbai through the science budget of the program without any additional cost to the Respondent. The Respondent claims that because of this suggestion, the five pressure cores were not removed from the vessel and they continued on board during the onward journey to Singapore. There is no dispute between the parties that the concerned five pressure cores were not off loaded in Chennai, although Chennai was the changed port of demobilization. They continued on board the vessel from August 19, 2006 till the vessel proceeded to Singapore, and even thereafter till 23rd October, 2006, when they were removed from the vessel and taken charge of by the Respondent.

On 5th October, 2006, the Claimant had addressed a letter to the Respondent pointing out that under the agreement between the parties, the cores were to be removed from JOIDES RESOLUTION before the demobilization of the vessel from Indian waters on 19th August, 2006. However, at the request of the Respondent, they were carried onwards to Singapore and retained on board under controlled parameters of temperature and pressure till removed. The

Respondent had claimed an additional daily fee of USD 10,500 for doing this additional work.

The Respondent has admittedly paid an amount of USD 834,270 to the Claimant on 10th October 2006.

By another letter dated October 11, 2006, the Respondent pointed out that the five pressure cores had remained on vessel from August 19, 2006 at 1900 hours till they were removed from the vessel 1200 hours on October 23, 2006. The Claimant had stated that it would charge a daily fee of USD 10,500 and an invoice would be raised for the total fee of USD 6,794,37.50 towards expenses incurred on storage and for wages to be paid to the personnel maintaining the equipments. Accordingly, an invoice dated 23rd October, 2006 was raised by the Claimant for the sum of USD 6, 794,37.50.

The material on record does show that the five concerned pressure cores were carried on board the vessel from 19th August, 2006 till 23rd October, 2006 when they were finally removed by the Respondent for being sent to the laboratory at Panvel.

The Claimant contends that this was an additional responsibility thrust upon it as its responsibility was only to handover the concerned pressure cores to the Respondent at the port of demobilization and because of the inability and/or failure of the Respondent to make appropriate arrangements for refrigerated containers at the port of demobilization, the five pressure cores containing gas hydrate samples were carried to Singapore and retained on board till 23rd October, 2006. The Respondent's contention is that they were so carried on the advice of Dr. Collett, the Chief Coordinator of the scientific project.

The scientific project was undertaken under the leadership of the Government of United States under the USGS. While the USGS might have been responsible for the scientific study part of the project, the contract was between the consortium and the Respondent. The expression "Consortium" is defined in Article 101 (b) as ODL and Fugro acting along with the sub-contractors. The USGS or Dr. Collett were not a part of the consortium; nor was Dr. Collett authorized to agree on behalf of the Claimant that the pressure cores would be carried over to Singapore and retained on board until taken charge of by the Respondent without extra remuneration. Maybe, from the point of view of scientific study that was the most appropriate thing to do, as otherwise there was a possibility of deterioration of the samples during transit from Chennai to Mumbai under bad road conditions. However, the Claimant had not agreed to do this extra work without further charges. Nor was the contract suitably amended to make it part of Claimant's responsibility. The evidence of Mr. Arun Kumar Sethi suggests that Dr. Collett had said that the additional costs would be met from USGS funds. Even if that be true, it is for the Respondent to collect the said funds from the USGS; but, as between the Claimant and the Respondent, there is no doubt that the Respondent would be liable to the Claimant for the said amount. Since the said amount was also not paid, nor disputed within the period prescribed, the said amount would also carry interest @ 1% per annum over the Libor rate from 23rd October, 2006.

Clause 702 of the Agreement provides that the Claimant shall pay to the members of the Consortium additional remuneration, which may be negotiated between the Claimant and them "if

the scope of the work increases beyond what is defined in this Agreement, provided DGH requests the members of the Consortium to provide additional services". The Tribunal is unable to accept the contention of the Respondent that the work of carrying the five pressure cores containing Gas Hydrate samples to Singapore and maintaining them from 19th August 2006 to 23rd October 2006 was within the scope of the original contract or that such work was not done at the request of the Claimant. The Tribunal also cannot accept the Respondent's contention that all invoices raised on 23rd October 2006 were the result of afterthoughts and without any basis."

17. Admittedly, the duration of the agreement was 111 days. Notes 1 and 2 of Appendix B pertain to estimated cost for each phases of the programme based on an operational programme of approximately 108 days, exclusive of all Indian Taxes etc.

18. The contract stipulate pricing policy based on half rates of stand by; operating day rate, demobilization rates etc. It was not a contract for haulage but a time charging contract and it was for only this reason the claimant/respondent charged for extra 2.6 days once the landing port was changed from Port Blair to Chennai. Moreover during the period of contract it was the responsibility of the respondent to handle and preserve the core and on demobilization the aluminum pressure cores were to be handed over to the petitioner. Admittedly such vessels were not removed at Port Blair and rather were retained in JOIDES RESOLUTION as the Consortium has directed to take it to Singapore on an advice of Dr. Collett who was not an authorized representative, as observed above.

Under the agreement JOIDES was only obliged to deliver such cores at Port Blair but was directed to further retain/store it and hence was rightly entitled to be compensated for additional work. Admittedly the cores remained on vessels from 19.08.2006 to 23.10.2006 till were finally removed. It was not at all the responsibility of vessel to retain it till the cores were finally removed to Panvel, Mumbai and till such time JOIDES was unnecessarily detained despite it was to be demolished on 19.08.2006. The consortium never agreed to do this extra work for free and rather had made claims during the storage period and hence can't be directed to bear the loss for keeping such cores and of retaining the vessel till 23.10.2006, thus were rightly directed to be paid by the Learned Arbitrator per clause 702 of the Agreement which give right to claimant to charge for extra/additional work. Hence the responsibility given to respondent to take such hydro pressure cores to Singapore and retain it till 23.10.2006 till were airlifted by the petitioner, was rightly directed to be compensated and there is no reason to interfere with the award.

19. The scope of intervention, under Section 34 of the Act is no longer res-intergra. In *Navodaya Mass Entertainment Limited vs. J.M. Combines* (2015) 5 SCC 698 it has been held as under:-

“8. In our opinion, the scope of interference of the court is very limited. The court would not be justified in reappraising the material on record and substituting its own view in place of the arbitrator's view. Where there is an error apparent on the face of the record or the arbitrator has not followed the statutory legal position, then and then only it would be justified in interfering with the award published by the arbitrator. Once the

arbitrator has applied his mind to the matter before him, the court cannot reappraise the matter as if it were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. [See Bharat Coking Coal Ltd. v. L.K. Ahuja (2004) 5 SCC 109; Ravindra & Associates vs. Union of India (2010) 1 SCC 80; Madnani Construction Corpn. (P) Ltd. v. Union of India (2010) 1 SCC 549; Associates Construction vs Pawanhans Helicopters Limited (2008) 16 SCC 128; and Satna Stone & Lime Co. Ltd. v. Union of India (2008) 14 SCC 785.]”

20. The Supreme Court in *M/s Sudarsan Trading Company vs. Government of Kerala & Another* AIR 1989 SC 890 held as under:-

“29. The next question on this aspect which requires consideration is that only in a speaking award the court can look into the reasoning of the award. It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion. See the observations of this Court in Hindustan Steel Works Construction Ltd. v. C. Rajasekhar Rao, [1987] 4 SCC 93. In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In absence of any reasons for making the award, it is not open to the court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisal of evidence by the arbitrator is never a matter which the court questions and considers. If the parties

have selected their own forum, the deciding forum must be conceded the power of appraisal of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a judge on the evidence before the arbitrator. See the observations of this Court in Municipal Corpn. of Delhi v. M/s Jagan Nath Ashok Kumar & Anr., [1987] 4 SCC 497.”

21. In *Steel Authority of India Limited vs Gupta Brothers Steel Tubes Limited* : (2009) 10 SCC 63 the Supreme Court held as under:-

“29. The legal position is no more res integra that the arbitrator having been made the final arbiter of resolution of disputes between the parties, the award is not open to challenge on the ground that arbitrator has reached at a wrong conclusion. The courts do not interfere with the conclusion of the arbitrator even with regard to construction of a contract, if it is a possible view of the matter. The words "no award shall be set aside" in Section 30 mandate the courts not to set aside the award on the ground other than those specified in Section 30. In a case such as this, where the arbitrator has given elaborate reasons that compensation Clause 7.2 is not attracted for the breaches for which the compensation has been claimed by the respondent and such view of the arbitrator is a possible view, we are afraid in the circumstances, award is not amenable to correction by the court.”

22. Thus, in view of the law discussed and in view of the reasoning given by the learned arbitrator and the award being based on the terms of the contract entered into between the parties, I see no reason to interfere with the same.

23. The petition under Section 34 of the Act is dismissed. No order as to cost.

YOGESH KHANNA, J

DECEMBER 06, 2017

M

