

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****ARB.A. No. 11 of 2009**

M.K. Saha, aged about 75 years, son of late J.L. Saha, Contractor, resident of Adarsh Nagar, Durg, carrying on business in the name and style of Emkay Nirman, as Sole Proprietor.

----Appellant**Versus**

Rashtriya Pariyojana Nirman Nigam a company Incorporated under the Companies Act, having Office at Nehru Place, New Delhi

---- Respondent

For Appellant	:	Mr. Ashish Surana, Advocate
For Respondent.	:	Mr. Azad Siddique, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****16/07/2015****(1)** Heard.

(2) The instant appeal is directed against the judgment and decree dated 31-10-2008 passed in Civil Suit No.50-A/2004 by the District Judge, Korba, whereby the District Judge has set aside the award dated 29-07-1994 passed by the Sole Arbitrator and remitted the matter back for rehearing with a direction to decide the claims and the counter-claims by assigning reasons.

(3) Briefly stated facts are that a contract was awarded to the appellant by the respondent/Corporation for works of CW pressure ducts, civil work for Balco Captive Power Plant on 12-02-1986. In respect of job assigned, an agreement in writing was executed between the parties. The value of the contract was Rs.9,00,000.00. The works under the contract were to be completed within a period of six months. The General Conditions of

the Contract provide for settlement of a dispute in connection with the contract by reference of the dispute to Sole Arbitrator to be appointed by the Chairman-cum-Managing Director of the respondent/Corporation.

(4) During carrying out of the works under the contract, a dispute arose between the parties regarding work and payment. Therefore, as per the demand made by the appellant for making a reference of the dispute to arbitration, the Chairman-cum-Managing Director of the respondent/Corporation appointed Mr. S.N.Sethi, a Retired Member of the Central Water Commission as Sole Arbitrator for settlement of the dispute in terms of the contract. Mr. S.N.Sethi accepted the appointment and entered into the arbitration and made an award on 29-07-1994.

(5) Since the reference was being governed by the Arbitration Act, 1940 (henceforth 'the Act of 1940'), after passing of the award on 29-07-1994, the appellant herein, being aggrieved by some part of the award, filed an application under Section 33 read with Section 30 of the Act of 1940 before the District Judge, Durg for setting aside the same part of the award. The respondent/Corporation also challenged the award and both the parties opposed each other.

(6) An issue of jurisdiction was raised before the District Judge, Durg. The Court at Durg, decided deciding the preliminary issue of jurisdiction on 08-05-1996 and held that the Court at Durg do not have jurisdiction and returned the application under Section 33 read with Section 30 of the Act of 1940 and all the enclosed documents to the appellant on 14-05-1996 to file the same before a competent jurisdictional Court. On 24-06-1996, the application was preferred before the District Judge, Bilaspur. Notices were issued to the parties. On 20-11-1999, the appellant made a submission

before the District Judge, Bilaspur that he do not want to press his application for setting aside the part of the award which was challenged by him and made a further submission that a judgment and decree be passed by the District Judge in terms of the award passed by the Arbitrator. Therefore, the application preferred by the appellant was dismissed which was for setting aside some part of the award.

(7) The respondent/Corporation, however, continued with its challenge and stand. It was contended by the respondent/Corporation before the District Judge that the award passed by the Arbitrator is non-speaking as the finding arrived at by the Arbitrator is not supported by any reason. As against the claim of the appellant of Rs.2,44,751.43, the award of Rs.2,43,000/- along with an interest @ 18% per annum from the date of 20-08-1987 till payment of the amount of award was made by the Arbitrator. As a consequence of withdrawal of application to challenge the award, the appellant stood satisfied with the amount of Rs.2,43,000/- and the interest and for rest of the amount he relinquished his claim before the District Judge.

(8) After creation of the Court of District Judge at Korba, the matter was transferred from the Court of District Judge, Bilaspur to the Court of District Judge, Korba. The District Judge, Korba, by the impugned judgment and decree dated 31-10-2008, set aside the award and remitted the matter to the Sole Arbitrator for rehearing the parties and decide the claims and the counter-claims by clearly giving reasons. Against the judgment and decree, the instant appeal.

(9) Learned counsel appearing for the appellant would submit that as against the claim of Rs.2,44,751.43, the Sole Arbitrator made the award of

Rs.2,43,000/- in favour of the appellant along with the interest @ 18% per annum from the date of 20-08-1987 till payment of the amount of award. He would submit that though the appellant was entitled for the entire amount claimed by him yet only a part thereof was awarded. Therefore, initially, the entire award was challenged, but subsequently, to his wisdom, the appellant did not press the challenge to denial of some part of his claim before the District Judge which was disallowed in the award. He would further submit that the entire case was being governed by the provisions of the Act of 1940 as it was then prevailing. Referring to the finding arrived at by the District Judge, he would submit that as per the provisions contained in Section 30 of the Act of 1940, an award cannot be set aside except that an Arbitrator has misconducted himself or the proceedings and/or that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35 of the Act of 1940 and/or that an award has been improperly procured or is otherwise invalid.

(10) Referring to Section 31 of the Arbitration and Conciliation Act, 1996 (henceforth 'the Act of 1996'), learned counsel for the appellant would submit that as per sub-section (3) of Section 31 of the Act of 1996, the arbitral award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an arbitral award on agreed terms under Section 30 of the Act of 1996. He would, therefore, submit that the deviation of Section 31 of the Act in 1996 would make the intention of the legislature clear that while passing an award under Section 30 of the Act of 1940, no specific reason was required to be given. He would further submit that in the present case, Clause 30 of the General Conditions of the Contract, which is the

Arbitration Clause, do not include a condition that the Arbitrator shall state reasons in support of the award and, therefore, the finding arrived at by the Arbitrator could not have been set aside.

(11) Learned counsel for the appellant would further submit that the District Judge has set aside the award on the ground that counter-claim of the respondent/Corporation was not considered by the Arbitrator, but, reading of the award would go to show that the award contains the order specifically that the claims and the counter-claims have been considered. He would, therefore, submit that the counter-claims, which were made by the respondent/Corporation, were also duly considered by the Arbitrator while passing the award.

(12) Learned counsel for the appellant placed reliance on **Raipur Development Authority etc. etc. v. M/s Chokhamal Contractors etc. etc., AIR 1990 SC 1426** and contended that when the award is passed under the Act of 1940, it could not have been easily set aside on the ground that the reasons have not been shown. It is further submitted that when the reading of the award would reflect that when the Arbitrator has considered both the claims and the counter-claims, it cannot be inferred that the Arbitrator has exceeded his jurisdiction.

(13) Learned counsel for the appellant further placed reliance on **Bhagawati Oxygen Ltd. v. Hindustan Copper Ltd., AIR 2005 SC 2071** and submitted that since there had been several claims, the Arbitrator had passed an award in lump sum not specifying under what head the particular award was made. To pass such award in such form was also within the jurisdiction of the Arbitrator.

(14) Learned counsel for the appellant further relied on **Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore, AIR 1967 SC 1030** and submitted that under the similar condition the Supreme Court also ratified such act that the Arbitrator could give his award in lump sum. He is not bound to give separate award for each claim.

(15) Learned counsel for the appellant further relied on **The Union of India v. Jai Narain Misra, AIR 1970 SC 753** and submitted that the award of the Arbitrator, in the instant case, could not have been set aside by the District Judge only on the ground that the Arbitrator did not record his reasons for the award.

(16) *Per contra*, learned counsel appearing on behalf of the respondent/Corporation would submit that the counter-claim of the respondent/Corporation was not considered by the Arbitrator. He stated that specific finding should have been recorded while passing the award. He relied on **Anand Brothers Private Limited through Managing Director v. Union of India and others, (2014) 9 SCC 212** and submitted that the reasons are necessary components for passing an award.

(17) I have heard learned counsel appearing for the parties at length and have also perused the material available on record.

(18) The respondent/Corporation was directed to file its affidavit to clarify the fact as to apart from Clause 30 of the Contract-Agreement whether any other clause existed with respect to the arbitration. Such affidavit has not been placed on record despite opportunity granted.

(19) Admittedly, in this case, General Conditions of the Contract contained the arbitration clause, which reads as under:

“30. Arbitration:

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instruction before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim right matter or thing, whatsoever, in any way arising out of relating to the contract, designs, drawings, specifications, estimates, instruction, orders or these conditions or otherwise concerning the works, or the execution or failure to execute the same, Whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the persons appointed by the Chairman-and-Managing Director of the National Projects Construction Corporation Limited acting as such, at the time of dispute. It will be no objection to any such appointment that the arbitrator so appointed is a Corporation Officer that he had to deal with the matters to which the contract relates and that in the course of his duties as Corporation Officer he had expressed views on all/or any of the matters in dispute or difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reasons, the Chairman-and-Managing Director as aforesaid at the time of such transfer, vacation of office or inability to act, shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor; it is also a term of this contract that no person other than a person appointed by the Chairman-and-Managing Director as aforesaid should act as arbitrator and if, for any reasons, that is not possible, the matter is not to be referred to arbitration at all. The Arbitrator may from time to time with consent of the parties enlarge the time, for making and publishing the award.”

(20) Therefore, it would be evident that only clause 30 existed for arbitration. In absence of any affidavit, despite the direction given to file it to the respondent, it will be deemed that no separate clause was contained in the contract-agreement with respect to the arbitration and the instant matter is adjudicated in such perspective.

(21) The award dated 29-07-1994 passed by the Sole Arbitrator reads as under:

“4. AND WHEREAS full opportunity has been given to the Parties above-named to -

- i. file their respective pleadings,
- ii. file their respective documents and affidavits,
- iii. tender their respective evidence, and to
- iv. submit written arguments.

5. NOW I, Shri S.N.Sethi Sole Arbitrator, having carefully considered the matters in dispute and the pleadings, documents, affidavits, and submissions of the Parties above-named, hereby AWARD and Director as follows :-

AWARD

(1) THAT Rashtriya Pariyojna Nirman Nigam Limited shall pay to Emkay Nirman a sum of Rs.2,43,000.00 (Rupees Two Lakh and Forty Three Thousand only) plus interest @ 18% per annum from 20.8.1987 till the date of payment, in full and final settlement of the Claims and the Counter-claims.

(2) THAT the Parties shall bear their own costs and expenses.

It is an explicit term of the arbitration reference that the AWARD will be final and binding on both the Parties. The Parties are directed to abide by and perform the AWARD.

Delhi
29 July 1994

Sd/-
S.N.SETHI
Sole Arbitrator”

(22) Reading of the award would show that an award of Rs.2,43,000/- was passed in full and final settlement of the claims and the counter-claims. The words “claims” and “counter-claims”, which are plural in form, have been used in the award which shows that there were several claims however after considering the entire claims the final award was made in lump sum. How much has been set off as against claim and counter claim is not been set forth but final adjudication of claim is made.

(23) Section 30 of the Act of 1940 enumerates certain grounds for setting aside an award, which read thus:

“30. Grounds for setting aside award.—An award shall not be set aside except on one or more of the following grounds, namely:—

- (a) that an arbitrator or umpire has misconducted himself or the proceedings;
- (b) that an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;
- (c) that an award has been improperly procured or is otherwise invalid.”

(24) Section 17 of the Act of 1940 speaks that where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration or to set aside the award, the Court shall, after the time for making an application to set aside the award has expired, or such application having been made, after refusing it, proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow and no appeal shall lie from such decree except on the ground that it is in excess of, or not otherwise in accordance with, the award. Section 16 of the Act of 1940 speaks about power to remit an award. Clause (c) of sub-section (1) of Section 16 of the Act of 1940 purports that where an objection to the legality of the award is apparent upon the face of it, the Court may remit the award for reconsideration.

(25) Here, reading of the award would show that though no specific finding has been recorded yet the Arbitrator while considering the claims and the counter-claims has awarded an amount of Rs.2,43,000/- in lump sum.

(26) The Supreme Court, in **Raipur Development Authority case** (supra), while interpreting the provisions of the Act of 1940, has held thus:

“19. It is now well-settled that an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitration agreement or the deed of submission requires him to give reasons. The arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or in the deed of submission he is required to give such reasons and if the arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator umpire on the face of the record on going through such reasons. The arbitrator or umpire shall have to give reasons also where the Court has directed in any order such as the one made under Section 20 or Section 21 or Section 34 of the Act that reasons should be given or where the statute which governs an arbitration requires him to do so.

22. It is not disputed that in India it had been firmly established till the year 1976 that it was not obligatory on the part of the arbitrator or the umpire to give reasons in support of the award when neither in the arbitration agreement nor in the deed of submission it was required that reasons had to be given for the award (vide *Firm Madanlal Roshanlal Mahajan v. Hukumchand Mills Ltd., Indore* (1967) 1 SCR 105 : (AIR 1967 SC 1030), *Bungo Steel Furniture Pvt. Ltd. v. Union of India* (AIR 1967 SC 378) (supra) and *N. Chellappan v. Secretary, Kerala State Electricity Board*, (1975) 2 SCR 811 : (AIR 1975 SC 230). It is, however, urged by Shri Fali S. Nariman, who argued in support of the contention that in the absence of the reasons for the award, the award is either liable to be remitted or set aside, that subsequent to 1976 there has been a qualitative change in the law of arbitration and that it has now become necessary to insist upon the arbitrator or the umpire to give reasons in support of the award passed by them unless the parties to the dispute have agreed that no reasons need be given by the arbitrator or the umpire for his decision. Two main submissions are made in support of the above contention. The first submission is that an arbitrator or an umpire discharges a judicial function while functioning as an arbitrator or an umpire under the Act, and, therefore, is under an obligation to observe rules of natural justice while discharging his duties, as observed by this Court in *Payyavula Vengamma v. Payyavula Kesanna*. (1953 SCR 119 : (AIR 1953 SC 21). This Court relied in that decision upon the observations made by Lord Langdale M.R. in *Harvey v. Shelton*, (1844) 7 Beav 455 at page 462 which read thus:

“It is so ordinary a principle in the administration of justice, that no party to a cause can be allowed to use any means whatsoever to influence the mind of the Judge, which means are not known to and capable of being met and resisted by the other

party, that it is impossible, for a moment, not to see, that this was an extremely indiscreet mode of proceeding, to say the very least of it. It is contrary to every principle to allow of such a thing, and wholly deny the difference which is alleged to exist between mercantile arbitrations and legal arbitrations. The first principle of justice must be equally applied in every case. Except in the few cases where exceptions are unavoidable, both sides must be heard, and each in the presence of the other. In every case in which matters are litigated, you must attend to the representations made on both sides, and you must not, in the administration of justice, in whatever form, whether in the regularly constituted Courts or in arbitrations, whether before lawyers or merchants, permit one side to use means of influencing the conduct and the decisions of the Judge, which means are not known to the other side.”

33. The question which arises for consideration in these cases is whether it is appropriate for this Court to take the view that any award passed under the Act, that is, the Arbitration Act, 1940 is liable to be remitted or set aside solely on the ground that the arbitrator has not given reasons thus virtually introducing by a judicial verdict an amendment to the Act when it has not been the law for nearly 7/8 decades. The people in India as in other parts of the world such as England, U.S.A. And Australia have become accustomed to the system of settlement of disputes by private arbitration and have accepted awards made against them as binding even though no reasons have been given in support of the awards for a long time. They have attached more importance to the element of finality of the awards than their legality. Of course when reasons are given in support of the awards and those reasons disclose any error apparent on the face of the record people have not refrained from questioning such awards before the courts. It is not as if that people are without any remedy at all in cases where they find that it is in their interest to require the arbitrator to give reasons for the award. In cases where reasons are required, it is open to the parties to the dispute to introduce a term either in the arbitration agreement or in the deed of submission requiring the arbitrators to give reasons in support of the awards. When the parties to the dispute insist upon reasons being given, the arbitrator is, as already observed earlier, under an obligation to give reasons. But there may be many arbitrations in which parties to the dispute may not relish the disclosure of the reasons for the awards. In the circumstances and particularly having regard to the various reasons given by the Indian Law Commission for not recommending to the Government to introduce an amendment in the Act requiring the arbitrators to give reasons for their awards we feel that it may not be appropriate to take the view that all awards which do not

contain reasons should either be remitted or set aside. A decision on the question argued before us involves a question of legislative policy which should be left to the decision of Parliament. It is a well-known rule of construction that if a certain interpretation has been uniformly put upon the meaning of a statute and transactions such as dealings in property and making of contracts have taken place on the basis of that interpretation, the Court will not put a different interpretation upon it which will materially affect those transactions. We may refer here to the decision of the court of Appeal rendered by Lord Evershed M.R. in *Brownsea Haven Properties v. Poole Corpn.* (1958) Ch 574 in which it is observed thus:

“There is well established authority for the view that a decision of long standing, on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision.”

(27) At this juncture, it would be relevant to go to Clause 30 of the General Conditions of the Contract which is the arbitration clause. Reading of the arbitration clause reveals that on a reference being made to the Arbitrator appointed by the Chairman-cum-Managing Director of the respondent/Corporation, the Arbitrator shall be free to decide the same. The arbitration clause also purports that the Arbitrator may, from time to time, with the consent of the parties, enlarge the time for making and publishing the award. The arbitration clause also purports that the arbitration proceedings shall be subject to the Act of 1940 or to any modification engrafted thereunder or to the rules made thereunder. The Act of 1940 was replaced by the Act of 1996. Section 31 of the Act of 1996 lays down the form and contents of an arbitral award. Sub-section (3) of Section 31 of the Act of 1996 makes it necessary for the Arbitrator to state the reasons upon which the arbitral award is based, unless the parties have agreed that no reasons are to be given or the award is an arbitral award on agreed terms under Section 30 of the Act of 1996.

(28) In the case in hand, the award is of 1994. Therefore, the argument, which is advanced by learned counsel for the respondent/Corporation that the reasons should have been stated in support of the conclusion reached in the award, is difficult to accept. Arbitration Clause 30 of the General Conditions of the Contract also does not speak that the reasons should be stated. The intention of the legislature for an award which is passed under the Act of 1940 is that unless and until specific conditions are engrafted in the contract-agreement, the reasons are not required to be stated in support of the conclusion arrived at in the award. This is in conformity with the law settled in **Raipur Development Authority case** (supra).

(29) Learned counsel for the respondent/Corporation has relied upon paragraphs 4 and 5 of the decision in **Anand Brothers case** (supra), which read as under:

“4. Clause 70 of the general conditions of the contract to the extent the same is relevant for our purposes, is to the following effect:

“..... The arbitrator shall give his award within a period of six months from the date of his entering on his reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, along with sums awarded, separately on each individual item of dispute.”

5. A plain reading of the above Clause 70 would show that the arbitrator was required to (i) give his award within the stipulated period as extended from time to time; (ii) the award must be on “all matters referred to him”; (iii) the award must indicate the findings of the arbitrator along with sums, if any, awarded; (iv) the findings and award of sums if any must be separate on each item of dispute. There is no gainsaying that Clause 70 makes a clear distinction between findings on each individual item of dispute on the one hand and the sum, if any, awarded in regard to the same on the other. That the arbitrator had made his award in regard to each item of dispute raised by the appellant before it, is evident from a reading of the award. The question is whether the arbitrator

had recorded his findings on each such items. The High Court has, as noted above, answered that question in the negative and set aside the award holding that the expression “findings” must include the reasons for the ultimate conclusion arrived at by the arbitrator. That view was assailed by the learned counsel for the appellant who contended that the expression “findings” should not imply the process of reasoning adopted by the arbitrator for recording his conclusions. A finding howsoever cryptic would, according to the submission of the learned counsel for the appellant, satisfy the requirement of Clause 70 for otherwise the clause would have been differently worded so as to make it mandatory for the arbitrator to make what is called a speaking award giving reasons for the conclusions arrived at by him.”

(30) Reading of above-quoted paragraphs 4 and 5 would reflect that in the case before the Supreme Court Clause 70 of the General Conditions of the Contract was existing which required the Arbitrator to give his award within the stipulated period as extended from time to time and further reads that the award must be on “all matters referred to him”; the award must indicate the “findings” of the Arbitrator along with sums, if any, awarded; the findings and award of sums if any must be separate on each item of dispute. In this case, the respondent/Corporation, despite the opportunity afforded to it, has failed to substantiate the fact that apart from Clause 30 of the General Conditions of the Contract any other clause existed with respect to arbitration, which required the arbitrator to record it's finding while passing award. Therefore, the law laid down by the Supreme Court in **Anand Brothers case** (supra) cannot be applied in the instant case.

(31) Further, in view of the words which purports that arbitrator should have recorded “specific finding” while passing the award, it was interpreted by the Supreme Court that in such case since the Arbitrator did not record his finding, therefore, the award was remitted back. Therefore, the decision in **Raipur Development Authority case** (supra) shall apply to

the instant case in full force.

(32) Further, one more contention was raised that the award was made in lump sum. Admittedly, there were several claims and the Arbitrator while passing the award had considered the claims and the counter-claims and in all passed the award of Rs.2,43,000/-. In regard to passing of a lump sum award, the Supreme Court has held in **Firm Madanlal Roshanlal case** (supra) as under:

“2. The arbitrator could give a lump sum award. He was not bound to give a separate award for each claim. His award on both fact and law is final. There is no appeal from his verdict. The Court cannot review his award and correct any mistake in his adjudication, unless an objection to the legality of the award is apparent on that face of it. In *Champsey Bhara and Co. v. Jivraj Balloo Spinning and Weaving Co. Ltd.*, 50 Ind App 324 : (AIR 1923 PC 66), the Privy Council stated:

“An error in law on the face of the award means, in Their Lordships view, that you can find in the award or a document actually incorporated thereto, as for instance a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous.”

(33) In the instant case, reading of the award would further reflect that the Arbitrator in his award has recorded that while passing the award he has considered the matters in dispute with respect to pleadings, documents, affidavit and submissions of the parties and subsequently the award was passed. Therefore, the Court, while exercising the power under Section 30 of the Act of 1940, cannot re-appreciate the evidence or examine the correctness of the conclusion arrived at by the Arbitrator. The jurisdiction of the Court in the case in hand is not appellate in nature and the award passed by the Arbitrator could not 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 other view is equally possible. It is only when the Court is satisfied that the Arbitrator has misconducted himself or the proceedings and/or the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Section 35 of the Act of 1940 and/or the award has been improperly procured or is otherwise invalid, the Court may set aside such award.

(34) The trial Court has recorded in its judgment dated 31-10-2008 that the Arbitrator has exceeded his jurisdiction and has passed an ambiguous award. I am unable to understand that on what basis the Court has recorded its finding that the Arbitrator has exceeded his jurisdiction. The Supreme Court in **Bhagwati Oxygen case** (supra) has held in paragraph 26 as under:

“26. In *Union of India v. Rallia Ram*, AIR 1963 SC 1685, this Court said;

“An award being a decision of an arbitrator whether a lawyer or a layman chosen by the parties, and entrusted with power to decide a dispute submitted to him is ordinarily not liable to be challenged on the ground that it is erroneous. In order to make arbitration effective and the awards enforceable, machinery is devised for lending the assistance of the ordinary Courts. The Court is also entrusted with power to modify or correct the award on the ground of imperfect form or clerical errors, or decision on questions not referred, which are severable from those referred. The Court has also power to remit the award when it has left some matters, referred undetermined, or when the award is indefinite, or where the objection to the legality of the award is apparent on the face of the award. The Court may also set aside an award on the ground of corruption or misconduct of the arbitrator, or that a party has been guilty of fraudulent concealment or willful deception. But the Court cannot interfere with the award if otherwise proper on the ground that the decision appears to it to be erroneous. The award of the arbitrator

is ordinarily final and conclusive, unless a contrary intention is disclosed by the agreement. The award is the decision of a domestic tribunal chosen by the parties, and the Civil Courts which are entrusted with the power to facilitate arbitration and to effectuate the awards, cannot exercise appellate powers over the decision. Wrong or right the decision is binding if it be reached fairly after giving adequate opportunity to the parties to place their grievance in the manner provided by the arbitration agreement.”

(35) Therefore, applying such analogy, I find that the District Judge has exercised the power of appellate Court which is also not well reasoned. Consequently, for the reasons stated hereinabove, the impugned judgment and decree dated 31-10-2008 passed by the District Judge is not sustainable and deserves to be set aside.

(36) Now coming to the part of the interest, the Tribunal has awarded 18% per annum as *pendente lite* interest. On the merits of the claims made by the contractor, it is found that the Tribunal has meticulously examined the claims of the contractor under each separate head. I do not see any reason to interfere except on the rates of interest awarded. As has been held in case of ***Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy & Another*** reported in (2007) 2 SCC 720, after the economic reforms in our country the interest regime has changed and the rates have substantially reduced and accordingly I am also of the opinion to follow the guidelines as laid down by the Hon'ble Supreme Court and consequently reduced the quantum of interest to the extent of 9% per annum in view of the substantial reduction of interest rates in the country.

(37) Accordingly, the instant appeal is allowed. The impugned judgment and decree dated 31-10-2008 passed by the District Judge, Korba is set aside and the award dated 29-07-1994 passed by the Arbitrator is restored with above modification in interest.

(38) A decree be drawn-up in terms of the award of the Arbitrator.

(39) The respondent shall bear the cost of litigation.

**Sd/-
(Goutam Bhaduri)
Judge**

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