

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****ARBITRATION PETITION NO. 1447 OF 2010**

Union of India,)
represented by Chief Commercial Manager,)
Western Railway, Churchgate,)
Mumbai – 400 020) **..... Petitioner**

Versus

K.P.Traders,)
8-B, Sai Suman Complex, Beside Saibaba Temple)
Water Tank Road, Harni Road,)
Vadodara – 390 006) **..... Respondent**

Mr.R.V.Desai, Senior Advocate, a/w. Mr.Suresh Kumar, Ms.Sangeeta Yadav, i/b. Sureshkumar for the Petitioner.

Mr.S.U.Kamdar, Senior Advocate, i/b. Mr.Rahul Oak for the Respondent.

CORAM : R.D. DHANUKA, J.

RESERVED ON : 19th MARCH, 2015

PRONOUNCED ON : 20th APRIL, 2015

JUDGMENT :

1. By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996, (for short the said Arbitration Act), the petitioner has impugned the arbitral award dated 8th October, 2010 rendered by the learned arbitrator allowing some of the claims made by the respondent. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner herein was the original respondent in the arbitral proceedings whereas the respondent was the original claimant.

3. On 19th August, 1998 the petitioner had invited the tenders for Handling and Transshipment of Goods and Luggage at Sabarmati TP vide Tender Notice No.357. The petitioner awarded the said work to the respondent for the period from 11th August, 1998 to 10th August, 2001 which was further extended upto 15th January, 2002. The petitioner issued a letter of award of contract on 19th August, 1998. The parties executed an agreement on 20th April, 1999.

4. The dispute arose between the parties. By letter dated 17th February, 2003 the respondent invoked the arbitration clause and requested the General Manager of the petitioner to appoint an arbitrator. The respondent submitted their detailed claim on 26th November, 2003. On 8th/9th June, 2006, the General Manager of the petitioner appointed Mr.G.P.Srivastav as a sole arbitrator to arbitrate the claims setout in the letter dated 8th/9th June, 2006. Pursuant to the liberty granted by the learned arbitrator, the respondent submitted their statement of claim before the learned arbitrator on 24th August, 2006. On 29th September, 2006 the petitioner filed their reply before the learned arbitrator opposing the claims made by the respondent. The petitioner denied the contentions raised by the respondent in the affidavit in reply by filing rejoinder.

5. It is the case of the petitioner that on 11th January, 2007 there was no hearing held by the learned arbitrator. The respondent had filed number of replies even thereafter before the learned arbitrator. On 17th April, 2010 and 18th May, 2010, the petitioner filed further reply before the learned arbitrator. The petitioner also filed reply on 18th May, 2010. On 8th October, 2010, the learned arbitrator made a final award allowing some of the claims made by the respondent. By the said arbitral award, the learned arbitrator allowed ten claims out of twenty claims made by the respondent. The respondent had originally claimed sum of Rs.6,26,12,622/-. The

said claim was quantified with interest upto 31st August, 2010 at Rs.49,38,63,736/-. The learned arbitrator has awarded the principle amount of Rs.65,27,989/- and awarded interest at the rate of 15% per annum on the said amount of Rs.65,27,989/- calculated at Rs.84,04,172/- thereby allowing the total amount of Rs.1,49,32,161/- with further interest thereon at the rate of 18% per annum if the said amount was not paid within 60 days from the date of declaration of award till the date of payment. The learned arbitrator directed both the parties to bear the arbitration cost except the fees of the learned arbitrator amounting to Rs.5,000/- which was directed to be borne by the parties in equal proportion.

6. Mr.Desai, learned senior counsel appearing for the petitioner submits that during the period of four years when the arbitration proceedings were pending before the learned arbitrator effectively only two meetings were held. In the first meeting held on 11th January, 2007, the petitioner was absent and in the last meeting, the petitioner informed the learned arbitrator in advance that the petitioner would not be able to attend the meeting. On 11th January, 2007 due to exigency, the petitioner could not attend the said meeting and prior intimation was issued to all the concerned. Insofar as meeting alleged to have been held on 19th / 20th August, 2010 is concerned, the said meeting was attended by the representative of the petitioner. However, the respondent herein was absent. He submits that the learned arbitrator ought to have fixed sufficient dates of hearing and ought to have complied with the principle of natural justice. The learned arbitrator did not direct the respondent to prove their claims. The entire procedure followed by the learned arbitrator was in gross violation of principle of natural justice and was vitiated.

7. Learned senior counsel dealt with claim nos.5, 8 and 11 together which were allowed by the learned arbitrator. Insofar as claim no.5 is concerned, which was

for payment of 25% extra above schedule rates for excess quantum alleged to have been handled by the respondent is concerned, the learned arbitrator has allowed the said claim at Rs.53,43,750/- as against the claim of Rs.3,69,15,148/-. The reliance is placed on clause 7 of the contract which is extracted as under :-

7. The Contractor will not be entitled to any increase in the accepted rates of remuneration or compensation due to fluctuations in traffic (increase or decrease) due to any reason. The Contractor will, however, be advised of any anticipated increase or decrease of traffic whenever possible but failure on the part of the Railway Administration to do so will not entitle the Contractor to claim any damage or compensation.

8. Learned senior counsel submits that in view of the prohibition under the said clause no.7 of the contract, the learned arbitrator could not have allowed any additional rate even if there was any increase in traffic due to any reason whatsoever. He submits that the learned arbitrator has placed reliance on some other contract and also the alleged policy of the railway in the impugned award while allowing the said claim which was not forming part of the said contract. He submits that the award is thus dehors the contract and thus is in conflict with public policy.

9. Insofar as claim no.8 is concerned, the learned senior counsel placed reliance on clause 4.2 and would submit that the rate of remuneration payable to the respondent was liable to be adjusted by the railway administration every six months from the date of award of contract, on the basis of percentage increase or decrease in the figures of consumer price index of the city or nearby city. The decision of the railway administration in that regard shall be final and binding on the party. He submits that the respondent had claimed monthly escalation contrary to the said clause 4(ii). The respondent had placed reliance on the letter of railway

(Baroda) Division which was not forming part of the contract. The petitioner had already made payment for the work carried out and also escalation there in accordance with clause 4(ii) by adjusting the rate of remuneration every six months from the date of the contract. The learned arbitrator has awarded escalation month-wise which is contrary to clause 4(ii) of the contract and thus award is dehors the terms of the contract and is in conflict with public policy.

10. Insofar as claim no.11 is concerned, the learned senior counsel placed reliance on clause 4(iv) of the contract and submits that the learned arbitrator has allowed the said claim contrary to the said clause by relying upon the board directives which were not forming part of the contract. The said part of the award is dehors the terms of the contract and is in conflict with public policy. The learned arbitrator could not have relied upon any material which was outside the purview of the contract and the same is not permissible.

11. Insofar as claim no.3 is concerned, the said claim was made in six parts. Three claims out of those six claims were accepted by the petitioner. The learned senior counsel submits that the learned arbitrator has made the remaining claims contrary to clause 6 of the contract since the claims were not made within three months of the date on which the payment was made in respect of which such under payment was said to have been made. Reliance is placed on Schedule A Note II and it is submitted that the respondent was not liable to claim any additional night rate. The said part of the claim awarded by the learned arbitrator is contrary to the provisions of the contract and is thus in conflict with public policy. Reliance is also placed on clause 25 of the contract and it is submitted that the respondent was under an obligation to provide all assistance in his power and employ all available labour when called upon to do so in the case of any emergency such as an accident

or a breach of the line or for any other work not provided for in the contract. The petitioner was only liable to pay the due charges to the respondent at the rates mentioned against Item (O) of Schedule A and not anything over and above the said rates.

12. Insofar as claim no.1 is concerned, the learned senior counsel submits that the learned arbitrator could not have relied upon the directives of railway board guideline in the impugned award which was not forming part of the contract. The petitioner was entitled to make deduction from the handling bill under clause 4(iii) and 4(iv). He submits that the learned arbitrator has allowed the said claim contrary to the contract and the same is in conflict with the public policy.

13. Insofar as claim no.2 is concerned, the learned senior counsel submits that the findings rendered by the learned arbitrator while allowing the said claim of Rs.5,252/- is perverse and shall be set aside by this court.

14. Insofar as claim no.4 is concerned, learned senior counsel submits that though the learned arbitrator has directed the petitioner to refund the deducted reserved deposit, the learned arbitrator has awarded huge amount of interest thereon for the period between 16th March, 2003 to 30th September, 2010 at the rate of 15% per annum. The learned arbitrator has also awarded interest on interest.

15. Insofar as claim no.12 is concerned, the learned arbitrator has allowed the said claim of Rs.20,412/- towards difference of unworkable revised cess charges. Learned senior counsel did not pursue the objection in respect of the said claim seriously.

16. Insofar as claim no.10 is concerned, the learned arbitrator has allowed the said claim of Rs.23,56,518/-. The learned senior counsel submits that since the respondent did not produce the bills within three months in terms of clause 6 of the contract, the petitioner was not liable to make the said payment to the respondent. The learned arbitrator has allowed the said claim contrary to clause 6 of the contract.

17. Insofar as claim no.9 is concerned, the learned arbitrator has allowed the said claim at Rs.15,17,950/- which was claimed by way of incentive of 25% on the rate accepted for wagon above the free time which expired after 21 hours. Learned senior counsel placed reliance on Annexure 'A' Note II and V and would submit that the petitioner was not liable to make any payment to the respondent for night allowance under the said provisions. The award is thus contrary to the contract and is in conflict to the public policy.

18. Learned senior counsel placed reliance on the judgment of the Supreme Court in case of *Food Corporation of India vs. M/s.Chandu Construction and Anr. 2007(3) Bom.C.R.597* and in particular paragraph (19). It is submitted that it was not open to the arbitrator to travel beyond the terms of the contract even if he was convinced that the rate quoted by the claimants was low and another contractor had been separately paid for the material. He submits that the claim of the contractor had to be adjudicated under the specific terms of the agreement with the petitioner and not dehors the contract. Paragraph (19) of the said judgment which is relied upon by the learned senior counsel read thus :-

19. From the above extracted terms of the agreement between the FCI and the claimants, it is manifest that the contract was to be executed in accordance with the C.P.W.D. specifications. As per para 2.9.4 of the said specifications, the rate quoted by

the bidder had to be for both the items required for construction of the godowns, namely, the labour as well as the materials, particularly when it was a turn key project. It is to be borne in mind that filling up of the plinth with sand under the floors for completion of the project was contemplated under the agreement but there was neither any stipulation in the tender document for splitting of the quotation for labour and material nor was it done by the claimants in their bid. The claimants had submitted their tender with eyes wide open and if according to them the cost of sand was not included in the quoted rates, they would have protested at some stage of execution of the contract, which is not the case here. Having accepted the terms of the agreement dated 19th September, 1989, they were bound by its terms and so was the arbitrator. It is, thus, clear that the claim awarded by the arbitrator is contrary to the unambiguous terms of the contract. We are of the view that the arbitrator was not justified in ignoring the express terms of the contract merely on the ground that in another contract for a similar work, extra payment for material was provided for. It was not open to the arbitrator to travel beyond the terms of the contract even if he was convinced that the rate quoted by the claimants was low and another contractor, namely, M/s Gupta and Company had been separately paid for the material. Claimants' claim had to be adjudicated by the specific terms of their agreement with the FCI and no other.

19. Learned senior counsel also placed reliance on the judgment of Supreme Court in case of ***Oil and Natural Gas Corporation Ltd. vs. SAW Pipes Ltd.*** AIR 2003 SC 2629 and in particular paragraph (34) in support of the submission that the learned arbitrator cannot decide de hors the terms of the contract otherwise it would be in conflict with the public policy.

20. Mr.Kamdar, learned senior counsel appearing for the respondent on the other hand invited my attention to the letter dated 19th August, 2010 addressed by the

petitioner to the learned arbitrator. He submits that by the said letter the petitioner admitted that the opportunities were given to the parties and had requested the learned arbitrator to proceed further. He submits that in the said letter, the petitioner has also referred to the meeting held on 19th August, 2010. Learned senior counsel also invited my attention to the letter dated 19th August, 2010 addressed by the respondent to the learned arbitrator confirming that he had been given full opportunity to represent his all claims in all respect and he had nothing further to clarify regarding his claims.

21. By the said letter, respondent gave no objection for declaration of the award by the learned arbitrator accepting that full opportunity was given by the learned arbitrator in all respect. Relying upon these two letters, learned senior counsel submits that both the parties had categorically admitted before the learned arbitrator that they were given opportunity and had requested the learned arbitrator to proceed further in the matter. Reliance is placed on section 24 of the Arbitration and Conciliation Act, 1996 and it is submitted that since both parties had agreed that no further hearing was required, the learned arbitrator was not bound to fix further dates of hearing. The award was thus in compliance with section 24 of the Arbitration and Conciliation Act, 1996 and was not in violation of principles of natural justice. Both parties had already filed their pleadings and later clarifications on various issues before the learned arbitrator which has been referred by the learned arbitrator in the impugned award. Since both the parties agreed not to have further oral hearing, the learned arbitrator was justified in proceeding with the declaration of impugned award.

22. Insofar as claim no.1 awarded by the learned arbitrator is concerned, learned senior counsel for the respondent invited my attention to clause 5 of the contract.

It is submitted that the respondent had submitted their bill in the month of December 1998 which were duly certified by the Divisional Railway Manager and the payment in respect thereof was made to the respondent. Insofar as bill in the month of February 1998 is concerned, he submits that in the month of February 1998 the traffic inspector however advised deduction of Rs.15,765/- from the account of the respondent. He submits that once the bill submitted by the respondent was duly served by the Divisional Railway Manager and the payment was made based on such certification, there was no other provision in the contract for deduction of any amount from the bill after such certification of payment. The learned arbitrator has considered this aspect at length and has rendered a finding of fact and has declared the deduction illegal which cannot be interfered with by this court.

23. Insofar as claim no.2 is concerned, learned senior counsel submits that the learned arbitrator has allowed the said claim at Rs.5,252/- inclusive of interest. The learned arbitrator has rendered a finding of fact that after verifying the documentary evidence had come to the conclusion that the said deduction of Rs.2,200/- as derailment charges was not permissible as per agreement clause no.11. The respondent was liable only for damages caused to rolling stock and other railway property due to his negligence. The petitioner did not produce or prove as to how the respondent was responsible for any derailment.

24. Insofar as claim no.3 is concerned, learned senior counsel invited my attention to the relevant paragraph of the written statement at page 93 of the compilation and submits that the petitioner did not dispute the item nos. 1 to 3 of the six sub-claims made by the respondent. The petitioner had only disputed a sum of Rs.1,50,870/- and Rs.7,736/- on the ground that there was no provision for the

additional payment towards transit period. The petitioner did not dispute the calculations submitted by the respondent. He submits that under clause 25 of the contract, respondent was under obligation to provide all assistance in his power and employ all available labour when called upon to do so in the case of any emergency. In this case there was transit of labour from Sabarmati to Viramgam. Item (O) does not include or exclude the transit period. Reliance is placed on the clarification issued by the Joint Secretary and Legal Adviser on this issue. He submits that the learned arbitrator has not allowed the night rates as canvassed by the petitioner. Learned senior counsel submits that the learned arbitrator has interpreted clause 25 with item (O) and has rendered a finding of fact. The learned arbitrator also placed reliance on guideline and directives of the petitioner issued vide letter dated 11th July, 1975 only for the purpose of interpretation of the agreement. Learned arbitrator has not allowed the said claim contrary to the terms of the contract. Claim allowed by the learned arbitrator is as per provisions of the contract.

25. Insofar as claim no.4 is concerned, learned senior counsel submits that under clause 8.1 of the contract, respondent was under an obligation to deposit Rs.23,73,000/- as and by way of security with the petitioner for the due fulfillment of the terms and conditions of the contract. Reliance is also placed on clause 26 of the contract and it is submitted that the security deposit mentioned in clause 8(i), (ii) and (iii) is liable to be returned to the contractor three calendar months after the termination of the agreement. In this case the petitioner had deducted a sum of Rs.50,000/- over and above the security deposit amount of Rs.23,73,000/- which was illegal. The said security was subsequently released belatedly. The learned arbitrator was thus justified in allowing the claim for interest on the said belated refund of Rs.50,000/- which was illegally withheld during the period between 1st

November, 2001 to 15th March, 2003. He submits that thus this court cannot interfere with this part of the award.

26. Insofar as claim no.5 is concerned, learned senior counsel invited my attention to the Schedule A appended to the contract and would submit that the schedule of quantity required to be supplied to the petitioner was mentioned therein. He also invited my attention to the letter dated 19th August, 1998 from the petitioner to the respondent prescribing special conditions of contract. Reliance is placed on clause 3.3 of the said letter. He submits that in the said special conditions of contract which would prevail in case of any inconsistency with the general conditions of contract, it was provided that the petitioner would be paid 25% extra over the percentage accepted above the fixed schedule of rates. My attention is invited to a letter dated 22nd November, 1998 from the respondent to the petitioner placing on record that due to paucity of rolling stock with the Indian railway, the financial calculation of the contractor based on the quantum went haywire, and the contractor had to pay extra money by way of cash incentive to labour, to handle extra work etc.

27. In the said letter, the respondent requested the petitioner that in the event of increase or decrease in traffic, than just normal, the respondent should be paid 50% more than the accepted rates, for the extra or less wagons releases in relation to the quantum on day to day basis. The respondent requested the petitioner to call the respondent for negotiations. The respondent made it clear that if such negotiations were not held within 30 days, it shall be assumed that their request for 50% more rates as spelled out in the said letter was accepted and the respondent shall be paid differential amounts in the bills. Learned senior counsel submits that there was no response to the said letter addressed by the respondent.

28. Learned senior counsel submits that even according to the letter of the railway board dated 6th May, 1963, 15% and 25% variation in such a situation was reasonable. He submits that in this case the quantum of the work exceeded upto 120% in some cases and little lower than that in other cases. My attention is also invited to the written statement filed by the petitioner in respect of claim no.5 and it is submitted that the petitioner did not dispute the calculation submitted by the respondent but had only relied upon clause no.7. It is submitted that clause no.7 of the general conditions of contract has to be read with special conditions of contract setout in the letter dated 19th August, 1998 addressed by the petitioner. The learned arbitrator has interpreted the terms of the contract and has in view of abnormal and excess quantum of work involved has awarded reasonable compensation. He submits that the view of the learned arbitrator is a possible view. The learned arbitrator has rendered a finding of fact that the quantity had abnormally exceeded over the quantity mentioned in the contract and thus compensation of Rs.25 lacs awarded by the learned arbitrator was just and fair.

29. Insofar as claim no.8 is concerned, learned senior counsel submits that considering the facts and circumstances of this case, the learned arbitrator was justified in granting claim for escalation also in the first six months from the date of award of contract. No interference is thus warranted in the said part of the award.

30. Insofar as claim no.9 is concerned, learned senior counsel invited my attention to the relevant part of the written statement and would submit that the period of hours of work carried out by the respondent has not been disputed by the petitioner. He submits that the respondent has been paid by the petitioner for extra hours at the scheduled rate and not at the additional rate. Learned senior counsel

submits that condition that (ii) and (iv) of Schedule (F) would not apply since the respondent was required to supply labour etc. in fix number of hours i.e. between 8 am to 9 pm whereas in this case the supply was over and above the said period. It is submitted that there was no infirmity with that part of the award rendered by the learned arbitrator.

31. Insofar as claim no.10 is concerned, the respondent had demanded 25% extra remuneration over the scheduled rates. It is submitted that due to oversight, the respondent had submitted nil payment bill and thus the payment was not made by the petitioner. The respondent had applied for permission to submit bill however no action was taken by the petitioner. He submits that the learned arbitrator has thus rightly placed reliance on condition no.3.3 and clause no.4(ii) of the contract and has rightly allowed the said claim of the respondent. The learned arbitrator rejected the claim of the respondent for 25% extra remuneration for RP bags transshipped in to BG BOX BCN, BCX, CBX etc. on the ground that there was no provision in the agreement. He submits that the learned arbitrator has reduced the said claim which was made for Rs.2,15,25,131/- to Rs.23,56,518/- inclusive of interest upto 30th September, 2010. He submits that the finding of fact rendered by the learned arbitrator are not perverse and no interference is thus permissible under section 34.

32. Insofar as claim no.11 is concerned, learned senior counsel invited my attention to the relevant part of the written statement and would submit that there was no dispute raised by the petitioner that there was excess capacity of wagons. The claim was for difference in payment due to transshipment under item D-1 to D-4 between quantum paid in the bill and as quantum due as per enhanced capacity as per clause 4(iv) of the agreement. He submits that the learned arbitrator has

rendered a finding of fact and allowed the said claim which cannot be interfered with by this court. The only defence of the petitioner was that the respondent had not raised bill which has been rightly negated by the learned arbitrator.

33. Insofar as claim no.12 is concerned, it is submitted by the learned senior counsel that since the railway administration had revised cess and water charges with retrospective effect, the recovery effected by the petitioner at higher rate was illegal. The learned arbitrator has rendered a finding of fact on interpretation of terms of contract and allowed the said claim at Rs.12,636/- inclusive of interest upto 30th September, 2010 and no interference is thus permissible with this part of the award under section 34.

34. Insofar as rate of interest and the period for which the rate of interest is awarded by the learned arbitrator is concerned, learned senior counsel for the respondent submits that there was a gross delay on the part of the petitioner since inception i.e. from the stage of appointment of arbitrator and all throughout during the pendency of the matter before the learned arbitrator. He submits that in any event under section 31(7)(a) of the Arbitration and Conciliation Act, 1996 it is at the discretion of the learned arbitrator to allow the claim for interest at such rate as the learned arbitrator deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the payment was made.

35. Reliance is placed on the judgment of Supreme Court in support of this case in case of ***Hyder Consulting (UK) Limited vs. Governor, State of Orissa, Through Chief Engineer, (2015) 2 SCC 189*** and in particular paragraphs 3 and 4 Per Justice S.A.Bobde, and paragraphs 26 to 33 concurring judgment of Justice

A.M.Sapre. Learned Senior counsel also placed reliance on the judgment of Supreme Court in case of *Associate Builders vs. Delhi Development Authority (2014) SCC Online 937* in support of his submission that unless finding of fact rendered by the learned arbitrator is perverse, no interference is permissible under section 34 of the Arbitration Act. If the learned arbitrator has interpreted the terms of the contract and if such interpretation is a possible interpretation, this court cannot substitute such interpretation by another interpretation. Paragraphs 3 and 4 per S.A.Bobde, J. and paragraphs 26 to 33, concurring judgment of A.M.Sapre, J. in case of *Hyder Consulting (UK) Limited (supra)* read thus :-

Per S.A.Bobde, J.

3. Sub-section (7) of Section 31 of the Act, which deals with the power of the Arbitral Tribunal to award interest, reads as follows:

“**31. (7)(a)** Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of *money*, the Arbitral Tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

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

(emphasis supplied)

4. Clause (a) of sub-section (7) provides that where an award is made for the payment of money, the Arbitral Tribunal may include interest in the sum for which the award is made. In plain terms, this provision confers a power upon the Arbitral Tribunal while making an award for payment of money, to include interest in the sum for which the award is made on either the whole or any part of the money and for the whole or any part of the period for the entire pre-award period between the date on which the cause of action arose and the date on which the award is made. To put it differently, sub-section (7)(a) con-

templates that an award, inclusive of interest for the pre-award period on the entire amount directed to be paid or part thereof, may be passed. The “*sum*” awarded may be the principal amount and such interest as the Arbitral Tribunal deems fit. If no interest is awarded, the “*sum*” comprises only the principal. The significant words occurring in clause (a) of sub-section (7) of Section 31 of the Act are “*the sum for which the award is made*”. On a plain reading, this expression refers to the *total amount* or *sum* for the payment for which the award is made. Parliament has not added a qualification like “principal” to the word “sum”, and therefore, the word “sum” here simply means “a particular amount of money”. In Section 31(7), this particular amount of money may include interest from the date of cause of action to the date of the award.

Per Sapre, J.

26. Section 31(7)(a) of the Act deals with grant of pre-award interest while clause (b) of Section 31(7) of the Act deals with grant of post-award interest. Pre-award interest is to ensure that arbitral proceedings are concluded without unnecessary delay. Longer the proceedings, the longer would be the period attracting interest. Similarly, post-award interest is to ensure speedy payment in compliance with the award. Pre-award interest is at the discretion of the Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of the statute—the only difference being that of rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act i.e. 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.

27. Section 31(7)(a) employs the words “... *the Arbitral Tribunal may include in the sum for which the award is made interest...*”. The words “*include in the sum*” are of utmost importance. This would mean that pre-award interest is not indepen-

dent of the “*sum*” awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a “*sum*” which includes within the “*sum*” component of interest, if awarded.

28. Therefore, for the purposes of an award, there is no distinction between a “*sum*” with interest, and a “*sum*” without interest. Once the interest is “*included in the sum*” for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then loses its character of an “*interest*” and takes the colour of “*sum*” for which the award is made.

29. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only “*interest*”. This award of interest would itself then become the “*sum*” for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum awarded and the interest component in it.

30. Therefore, I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a “*sum*” for which the award is made.

31. Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, “*A sum directed to be paid by an arbitral award...*”. Clause (b) uses the words “arbitral award” and not the “Arbitral Tribunal”. The arbitral award, as held above, is made in respect of a “*sum*” which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the “*sum directed to be paid by an arbitral award*” and not any other amount much less by or under the name “*interest*”. In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is “*interest on interest*”. Interest under clause (b) is granted on the “*sum*” directed to be paid by an arbitral award wherein the “*sum*” is nothing more than what is arrived at under clause (a).

32. Therefore, in my view, the expression “*grant of interest on interest*” while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest.

33. My aforesaid interpretation of Section 31(7) of the Act is based on three golden rules of interpretation as explained by Justice G.P. Singh in *Principles of Statutory Interpretation* (13th Edn., 2012) where the learned author has said that while interpreting any statute, language of the provision should be read as it is and the intention of the legislature should be gathered primarily from the language used in the provision meaning thereby that attention should be paid to what has been said as also to what has not been said; second, in selecting out of different interpretations “the court will adopt that which is just, reasonable, and sensible rather than that which is none of those things”; and third, when the words of the statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequence (*see pp. 50, 64 and 132*). I have kept these principles in mind while interpreting Section 31(7) of the Act.

Relevant paragraphs of the said judgment in case of *Associate Builders* (*supra*) read thus :-

In the 1996 Act, this principle is substituted by the 'patent illegality' principle which, in turn, contains three sub heads-

(a) a contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is a really a contravention of Section [28\(1\)\(a\)](#) of the Act, which reads as under:

“ **28. Rules applicable to substance of dispute.**--(1) *Where the place of arbitration is situated in India,-*

(a) *in an arbitration other than an international*

commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”

(b) a contravention of the Arbitration Act itself would be regarded as a patent illegality—for example if an arbitrator gives no reasons for an award in contravention of Section [31\(3\)](#) of the Act, such award will be liable to be set aside.

(c) Equally, the third sub-head of patent illegality is really a contravention of Section [28\(3\)](#) of the Arbitration Act, which reads as under:

“ 28. Rules applicable to substance of dispute.--(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”

This last contravention must be understood with a caveat. An arbitral tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.

In **McDermott International Inc. v. Burn Standard Co. Ltd.** : (2006) 11 SCC 181, this Court held as under:

112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract.

Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See Pure Helium India (P) Ltd. v. ONGC : (2003) 8 SCC 593] and D.D. Sharma v. Union of India : (2004) 5 SCC 325]).

113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.

36. In rejoinder, Mr.Desai, learned senior counsel for the petitioner submits that no reliance on the letter addressed by the railway board or guidelines of the railway or the recommendation of the Law Ministry by the learned arbitrator in the impugned award could be placed. Reliance placed on the documents not forming part of the contract by the learned arbitrator would amount to exceeding his power and deciding de hors the terms of the contract.

37. It is submitted by the learned senior counsel that the learned arbitrator has not rendered any finding that he had followed the particular procedure and had not given any personal hearing to the parties because of the respective letters addressed by the parties. Learned arbitrator did not prepare any minutes of the meeting. The petitioner had not given go-bye to the mandatory procedure because of the alleged agreement. The learned arbitrator did not follow any procedure for submitting statement of admission and denial of the documents. The learned arbitrator considered several disputed documents in the impugned award.

38. Insofar as claim nos. 10 and 11 is concerned, the learned senior counsel submits that since the respondent did not submit those bills to the petitioner within the time prescribed under the contract, the learned arbitrator could not have

awarded interest for the past period in respect of those two claims for which the petitioner was not responsible.

REASONS AND CONCLUSIONS :-

39. The first submission of learned senior counsel for the petitioner is that the impugned award rendered by the learned arbitrator was without rendering any hearing and is rendered in violation of the principles of natural justice. It is the case of the petitioner that the learned arbitrator effectively held two meetings. In one of the meeting the petitioner was absent and in the last meeting the petitioner had informed the learned arbitrator in advance that he would not be able to attend the said meeting. He submits that though the matter was pending before the learned arbitrator for a period of four years, the learned arbitrator did not fix any date for giving personal hearing to the parties or for leading any oral evidence. It is the case of the petitioner that the learned arbitrator did not follow the requisite procedure for admission and denial or marking of documents and recording evidence of the parties for proving the disputed documents. It is also the case of the petitioner that the learned arbitrator has considered several disputed documents in the arbitral award.

40. The case of the respondent on the other hand on this issue is that both the parties had submitted various clarifications from time to time to the learned arbitrator. The petitioner had addressed a letter to the learned arbitrator on 19th August, 2010 requesting the learned arbitrator to proceed further in the matter and informing that the clarification, if any, required would be provided accordingly. The learned senior counsel for the respondent also invited my attention to a letter 19th August, 2010 which was addressed by the respondent to the learned arbitrator informing that he had been given full opportunity to represent of his all claims

before the learned arbitrator and he had nothing to clarify further regarding his claims before the learned arbitrator. The respondent had also given his no objection for declaration of the award by the learned arbitrator.

41. A perusal of the award indicates that both the parties had filed their pleadings and documents before the learned arbitrator. A perusal of the letter addressed by the petitioner to the learned arbitrator on 19th August, 2010 clearly indicates that by the said letter the petitioner had admitted that vide letter dated 17th April, 2010, the petitioner had already explained all the claims i.e. claim Nos.1 to 21 in detail. The petitioner also referred to the fax letter dated 14th May, 2010 from the learned arbitrator and has stated that further clarification also had been submitted by the petitioner vide letter dated 18th May, 2010. In the said letter, the petitioner has mentioned that a copy of the said letter dated 18th May, 2010 was provided by the petitioner to the learned arbitrator during the hearing on 19th August, 2010 and further informed that the clarification, if any, required would be submitted accordingly. The petitioner accordingly recorded that considering the opportunity having been given by the learned arbitrator, he may proceed further. A perusal of the letter dated 19th August, 2010 addressed by the respondent to the learned arbitrator also clearly indicates that even he was given full opportunity by the learned arbitrator and had recorded the same in the said letter and had requested the learned arbitrator to proceed further and to make an award.

42. The question that arises for consideration of this Court is that if both the parties have agreed not to hold to any further hearing by the learned arbitrator, whether the learned arbitrator was bound to fix any further date of hearing. A perusal of section 24 of the Arbitration & Conciliation Act, 1996 makes it clear that the arbitral tribunal has to decide whether to hold oral hearing for presentation of

the evidence or for oral argument or whether the proceedings shall be conducted on the basis of the documents and other materials, unless otherwise agreed by the parties. It further provides that the arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings at the request by the parties, unless the parties have agreed that no oral hearing shall be held. In my view if the parties have agreed that no oral hearing shall be held, the learned arbitrator is not bound to hold any oral hearings under section 24 of the Arbitration & Conciliation Act, 1996. A perusal of the said provision clearly indicates that if there was no agreement between the parties not to hold any oral hearing by the learned arbitrator, only in that event the learned arbitrator was required to hold hearing at an appropriate stage of the proceedings.

43. In my view, since both the parties were satisfied that they were given full opportunities by the learned arbitrator and had submitted clarification as required by the learned arbitrator on various occasions, the learned arbitrator was justified in not holding any oral hearings for the presentation of evidence or oral arguments. In my view, there is thus no violation of principles of natural justice as canvassed by learned senior counsel for the petitioner.

44. Insofar as the submission of learned senior counsel for the petitioner that the learned arbitrator has not referred to any alleged agreement in the arbitral award, that the oral hearing was dispensed with in view of the said alleged agreement between the parties, the Court shall draw a conclusion that no such agreement was arrived at and shall hold that that the arbitral award was in violation of principles of natural justice and contrary to section 24 of the Arbitration Act is concerned, in my view since the parties have not disputed that they had informed the learned arbitrator that sufficient opportunities were given to them and had requested the

learned arbitrator to proceed further, the learned arbitrator was justified in proceeding with the matter further and in rendering the arbitral award without holding any further oral hearing for the purpose of oral arguments or for oral evidence. There is thus no merits in this submission of learned senior counsel for the petitioner.

45. Insofar as the submission of the petitioner that the learned arbitrator ought to have followed procedure of marking documents and ought to have given an opportunity to both the parties to lead oral evidence is concerned, a perusal of the record indicates that none of the parties had objected to any of the documents filed by either party before the learned arbitrator and also did not request the learned arbitrator to follow such procedure. Under section 19 of the Arbitration & Conciliation Act, 1996 the arbitral tribunal is not bound by the Code of Civil Procedure or Indian Evidence Act, 1872. The parties are free to agree of the procedure to be followed by the arbitral tribunal in conducting any proceedings subject to part (I) of the Act. If there was no agreement arrived at between the parties, the arbitral tribunal is empowered to conduct the proceedings in the manner it considers appropriate however subject to part (I).

46. The arbitral tribunal is empowered to determine the admissibility, relevance, materiality and weight of any evidence placed by the parties before him. The learned arbitrator however, while deciding the admissibility, relevance, materiality and weight of any evidence has to comply with the principles of natural justice. If the parties have not disputed any documents or contents thereof, the learned arbitrator is entitled to determine the admissibility, relevance, materiality and weight of such documents filed by the parties before him. In my view the petitioner thus cannot be allowed to urge this submission at this stage across the

bar that the award is vitiated on the ground that the learned arbitrator did not follow the procedure of marking the documents or in not giving the opportunity to the parties to lead oral evidence. Both the parties having chosen not to lead evidence or to follow procedure of marking documents, no grievance in that regard can be made by either parties in this proceeding.

47. I shall now deal with the claims awarded by the learned arbitrator in the impugned award.

Insofar as claim no.1 awarded by the learned arbitrator is concerned, the said claim was made by the respondent for refund of Rs.15,765/- which was deducted by the petitioner from the bills of the respondent as some quantity was disallowed based on advice of the traffic inspector. The learned arbitrator has allowed the said claim of Rs.15,765/- with interest thereon at the rate of 15% p.a. on the said claim amount for the period 1st May, 1999 to 30th September, 2010. A perusal of the record indicates that the learned arbitrator while allowing this claim has considered clause 4(iii) and 4(iv) of the general condition of contract and also the directives of the Railway Board and has rendered a finding of fact that there was no provision under the said provisions to disallow the quantity in variation with WTR and telly book. The learned arbitrator has considered the bill passed by Deputy CAO (TA) and has held that there was no reasons given by the Deputy CAO(TA) while passing the bill as to why the said quantity of 8764 was disallowed. The learned arbitrator has held that after verifying the documentary evidence and facts submitted by the parties, denial of claim by the petitioner was not permissible on the basis of clause 4(iv) of the agreement. The petitioner also did not produce any refusal letter or proved as to how disallowance of such quantity was permissible under any of the provisions of the contract.

48. A perusal of the record indicates that the respondent had submitted their bill in the month of December, 1998, which was duly certified by the Divisional Railway Manager and the payment in respect thereof was also made to the respondent. The said payment was made after scrutinizing the said bill and no deduction could have been thus made subsequently without any basis from the the bill contrary to the certificate issued by the Divisional Central Manager without any provision under the contract. There is thus no merits in the submission of learned senior counsel for the petitioner.

49. Insofar as claim no.2 is concerned, the learned arbitrator has allowed the said claim which was for refund of amount towards derailment charges, which was recovered from the respondent by the petitioner by placing reliance on clause 2(ii) and 11 of the general condition of contract. In my view under clause 2(ii) read with clause 11 of the general condition of contract, the petitioner could recover from the respondent only for the damages caused to the rolling stock and other railway property due to negligence of the contractor. The petitioner could not prove before the learned arbitrator as to how the respondent was responsible for derailment. The said recovery effected by the petitioner in my view was thus totally contrary to the provisions of the contract and thus the learned arbitrator has rightly allowed the said claim with interest. There is thus no substance in the submission made by learned senior counsel for the petitioner.

50. Insofar as claim no.3 is concerned, the said claim was made by the respondent for payment of the bills for labour supplied under item (O) with its escalation bills, bills payment of transit period with escalation bills and other bills. The learned arbitrator has allowed the said claim of Rs.12,42,579/- inclusive of

interest. A perusal of the record indicates that the said claim was comprising of six sub-claims made by the respondent. In the written statement filed by the petitioner before the learned arbitrator, out of six sub-claims made by the respondent, the petitioner did not dispute sub-claim nos. 1 to 3. The petitioner had only disputed a sum of Rs.1,50,870/- and Rs.7736/- on the ground that there was no provision for the additional payment towards transit period. A perusal of the written statement indicates that the petitioner however, did not dispute the calculation submitted by the respondent. It is not in dispute that the petitioner had asked for supply of labour which was in transit from Sabarmati to Viramgam. A perusal of item (O) indicates that it did not include or exclude the transit period.

51. A perusal of the award indicates that the learned arbitrator has interpreted clause 25 and also item (O) and has rendered a finding of fact that the respondent was entitled to the said claim. The said finding of fact is also recorded after verifying the documentary evidence and facts submitted by both the parties and it is held that the said amount of Rs.1,50,870/- as claimed by the respondent in the bill for transit period was payable also as per the guidelines and directives of CCM CCG vide letter dated 11th July, 1975. On the perusal of the award, it is clear that the learned arbitrator has relied upon the said guidelines only for the purpose of interpretation of the agreement and the award is not solely based on the said guidelines. In my view the learned arbitrator has not allowed the said claim contrary to the contract as canvassed by learned senior counsel for the petitioner. There is thus no merits in the submission of learned senior counsel for the petitioner. The learned arbitrator has accordingly allowed the claim for escalation in the sum of Rs.21,996/- in accordance with the agreement clause 4(ii) of the general condition of contract, which is payable as per the said provision. In my view, there is no infirmity in the said part of the claim of escalation allowed by the

learned arbitrator.

52. Insofar as claim no.4 is concerned, the learned arbitrator has allowed the said claim which was for interest for deduction of deposit of Rs.50,000/- which was made on 5th November, 2001 and refunded on 17th March, 2003. A perusal of clause 8.1 of the general condition of contract clearly indicates that the respondent was liable to deposit only a sum of Rs.23,73,000/- as and by way of security with the petitioner for due fulfillment of the terms and conditions of the contract. Under clause 26 of the contract, the petitioner was liable to return the said security deposit to the respondent within three calendar months after termination of the agreement. A perusal of the record indicates that the petitioner had deducted a sum of Rs.50,000/- over and above the security deposit of Rs.23,73,000/-. The learned arbitrator thus rightly allowed the said claim for interest on the additional deduction of Rs.50,000/- by the petitioner over and above security deposit in the sum of Rs.23,73,000/-. The learned arbitrator has interpreted the terms of the contract and has allowed the said reasonable amount. In my view, no infirmity can be found with that part of the award. There is thus no merits in the submission of learned senior counsel for the petitioner.

53. Insofar as claim no.5 is concerned, the respondent had made the said claim for 25% extra over and above the rate on accepted SOR on monthly 10% excess variation in quantum handled than monthly notified quantum. The learned arbitrator has relied upon clause 7 of the agreement which clearly provides that the contractor will not be entitled to increase any accepted rates of remuneration of compensation due to fluctuations in traffic due to any reason. However, Schedule "A" appended to the contract provided for schedule of quantities required to be supplied by the respondent to the petitioner. Clause 3.3 of the special conditions of

contract which was notified to the respondent by the petitioner vide letter dated 19th August, 1998, provides that the petitioner would be paid 25% extra over percentage accepted above the fix schedule of rates. The respondent vide their letter dated 22nd November, 1998 had placed on record that due to paucity of rolling stock with the Indian Railways, the financial calculations of the respondent based on the quantum went haywire and thus the contractor was entitled to be paid extra amount by way of cash incentive to labour, handle extra work etc., The respondent in the said letter demanded 50% more than the accepted rates. The respondent had requested the petitioner for negotiations of the rates. The petitioner however, did not enter into any negotiation with the respondent for deriving at the rate. The learned arbitrator after interpreting the terms of the contract has considered the effect thereof and has held that the respondent was entitled to 20% as a reasonable access and has awarded a sum of Rs.25 lakhs and interest thereon.

54. In my view there is thus no merit in the submission of learned senior counsel for the petitioner that there was any prohibition in the general condition of contract from making payment of the additional amount in view of the fact that in the special condition of contract, the additional payment was contemplated in respect of abnormal quantity. The learned arbitrator has interpreted both the provisions and has come to the conclusion that the respondent was entitled to the extra payment for the abnormal quantity. In my view even there is any inconsistency in general condition of contract and special conditions, what is provided in special condition of contract would prevail and not what is provided in general condition of contract. In my view, the interpretation of the learned arbitrator of the provisions of contract and with the assistance of law of Railway Board suggesting for variation to the extent of 15% to 25% is a possible interpretation which cannot be substituted by another interpretation by this Court under section 34 of the

Arbitration & Conciliation Act, 1996. The submission of learned senior counsel on this claim is thus devoid of merit and is rejected.

55. Insofar as claim no.8 is concerned, the said claim was for escalation claimed by the respondent for first six months which is awarded by the arbitral tribunal of Rs.21,07,934/- inclusive of interest. A perusal of clause 4(2) of the general condition of contract clearly indicates that the rate of remuneration payable by the petitioner to the respondent under the said provision was liable to be adjusted. The petitioner was entitled to adjustment of rates after six months from the date of the award of contract on the basis of percentage increase or decrease in the figures of consumer price index of the city or nearby city. The respondent however, had claimed monthly escalation contrary to the said clause (ii). The learned arbitrator has allowed the claim for escalation even for first six months which in my view is *ex-facie* contrary to and in the teeth of clause 4(2) to the general condition of contract. The learned arbitrator could not have allowed any escalation for the first six months. This claim allowed by the learned arbitrator is contrary to the clause 4.2 and thus deserves to be set aside.

56. Insofar as claim no.9 is concerned, the said claim was for 25% incentive for wagons for the period after 21 hours plus escalation and interest. The learned arbitrator has allowed the said claim of Rs.15,17,950/-. A perusal of the written statement filed by the petitioner before the learned arbitrator indicates that the petitioner has not disputed the period of hours of work carried out by the respondent. The respondent had been paid by the petitioner for extra hours at the scheduled rate and not at the additional rate. A perusal of condition No.(ii) and (iv) of Schedule "F" would not apply to the facts of this case since the respondent was

required to supply the labour during the fixed number of hours i.e. 8.00 a.m. to 9.00 p.m.. Admittedly the respondent had supplied the labour for the period over and above the said fixed number of hours i.e. between 8.00 a.m. to 9.00 p.m. The learned arbitrator has interpreted the said clause and has held that the respondent was entitled to a sum of Rs.15,17,950/- upon interpretation of the terms of the contract. The said interpretation in my view, is possible interpretation and thus the same cannot be substituted by another interpretation by this court.

57. The learned arbitrator has also verified the documentary evidence and the facts submitted by both the parties and has rightly come to the conclusion that the detention of labour of the respondent from 21 hours to 8 hours was on account of the railway administration and accordingly allowed the said claim by interpreting the terms of the contract. The learned arbitrator also considered the fact that the railway administration had been paying incentive of 25% of the rates under item (D-1) to (D-6) i.e. wagons handled after working hours i.e. after 21 hours but was handled before 21 hours in the other contract. In my view, there is thus no infirmity in the said part of the award rendered by the learned arbitrator. There is no merits in the submission of learned senior counsel for the petitioner.

58. Insofar as claim no.10 is concerned, the respondent had demanded 25% extra remuneration over the scheduled rates on RP loose transshipped into BG BOX BCN, BCX, CBX etc. as per tender condition no.3.3. It was the case of the respondent that due to over sight the respondent had submitted NIL payment bill. The respondent thereafter realized that the respondent was entitled to recover the said payment and had requested for permission of the petitioner to submit the bill. The petitioner however, did not take any action on the said request made by the respondent. A perusal of the award indicates that the learned arbitrator has rightly

placed on condition no.3.3 and the agreement clause 4(2) of the contract and has allowed the said claim by reducing the said claim from Rs.2,15,25,131/- to Rs.23,56,518/- inclusive of interest. Learned senior counsel for the petitioner has raised an issue that since the respondent did not submit the said bill demanding any amount at the relevant time, the learned arbitrator could not have directed the petitioner to pay interest from 1st April, 2002 to 30th September, 2010 having no fault of the petitioner.

59. A perusal of the record indicates that the petitioner had not denied the said claim on merits but had denied the claim on the ground that the respondent had not submitted the bill for the said payment on time. In my view, the learned arbitrator thus has rightly allowed the claim. Insofar as claim for interest on this claim for the period 1st April, 2002 to 30th September, 2010 is concerned, in my view learned senior counsel for the petitioner is right in his submission that since respondent had submitted bill for nil amount and did not claim the said amount for several years, the learned arbitrator could not have awarded interest on the said amount for the period between 1st April, 2002 and 30th September, 2010 for no fault of the petitioner. The principal amount allowed by the learned arbitrator for this claim is upheld. Award of interest on this claim for the period 1st April, 2002 and 30th September, 2010 is set aside.

60. Insofar as claim no.11 is concerned, the said claim was made by the respondent for difference in payment due for transshipment of wagon under item D-1 to D-4 between quantum claimed in bill and the quantum due as per enhanced carrying capacity of wagon as per clause 4(iv) of the agreement. The learned arbitrator has allowed these claims at Rs.22,73,027/- with interest. A perusal of the written statement filed by the petitioner clearly indicates that there was no dispute

raised by the petitioner about the existing capacity of wagons. The only defence raised by the petitioner was that the respondent had not raised the bill.

61. A perusal of the award indicates that the learned arbitrator has considered the written statement filed by the petitioner in which it was admitted that the quantum for item D-1, C, D-2 and D-4 for the difference between traffic weight and CC plus permissible enhanced carrying capacity in absence of label weight had been verified and had been found correct. Similarly the bill amount with escalation bill amount was also correct in calculation. The learned arbitrator has interpreted clause 4(iv) of the general condition of contract. The learned arbitrator held that the said amount was payable. The petitioner had failed to furnish the actual bills of the quantities in time to enable the respondent to submit the bills and thus the respondent could not prepare any bills for payment. The learned arbitrator accordingly, in my view, rightly allowed the said claim by holding that the respondent was eligible to get the bill amount of the said claim with escalation as per agreement clause 4(ii) and also in accordance with the directives issued by the Board. In my view, there is thus no merits in the submission of learned senior counsel for the petitioner that the said claim was awarded contrary to the terms of the contract. There was no such plea raised in the written statement filed by the petitioner.

62. Insofar as claim No.12 is concerned, the said claim was for refund of the revised cess charges with retrospective effect. The learned arbitrator has allowed the claim for Rs.20,412/-. It was the case of the respondent herein that the railway administration had revised the cess and water charges with retrospective effect i.e. from 1st April, 1999 vide their letter dated 21st October, 1999, which was abnormally high and was more than 300%. The learned arbitrator has rightly held

that the said revision of cess could not have been effected with retrospective effect. The respondent had paid Rs.7,776/- as a difference on a revised cess charges from 1st April, 1999 to 30th September, 1999. The learned arbitrator has interpreted clauses 18 and 19(2) of the general condition of contract and has held that there was no provision in the agreement authorizing the petitioner to revise the cess and water charges with retrospective effect and thus the said revision was not justified. In my view, the interpretation of the learned arbitrator of the said clause of contract is possible interpretation and cannot be substituted by another interpretation. No interference with that part of the award is thus permissible under section 34 of the Arbitration & Conciliation Act, 1996. The submission of learned senior counsel for the petitioner is thus devoid of merits and is accordingly rejected.

63. Insofar as the submission of learned senior counsel for the petitioner that the learned arbitrator could not have awarded interest from 1999 and that also at the rate of 15% is concerned, a perusal of the record indicates that there was gross delay on the part of the petitioner in appointing the learned arbitrator. There was no progress in the arbitration proceedings for quite some time. The gross delay on the part of the petitioner is clear from the correspondence forming part of the record. The learned arbitrator has thus rightly allowed the claim for interest from the due date by exercising powers under section 31(7)(a) of the Arbitration & Conciliation Act, 1996. The Supreme Court in the case of **Hyder Consulting (UK) Ltd.** (supra) has held that the learned arbitrator has power under section 31(7)(a) to award interest at the rate as the learned arbitrator may feel reasonable and from the date of cause of action till payment. The judgment of the Supreme Court in the case of **Hyder Consulting (UK) Ltd.** (supra) clearly applies to the facts of this case. I am respectfully bound by the said judgment of the Supreme Court. It is also held by the Supreme Court that arbitrator can award interest on interest.

64. Insofar as the judgment of the Supreme Court in the case of **Food**

Corporation of India (supra) relied upon by learned senior counsel of the petitioner in support of the submission that the learned arbitrator could not have considered any documents not forming part of the contract is concerned, it is not dispute that several policies and guidelines of the petitioner were forming part of the record before the learned arbitrator submitted by the respondent herein. The petitioner never disputed such documents being taken on record by the learned arbitrator. A perusal of the award indicates that the learned arbitrator has not allowed the claims solely on the basis of those guidelines / policies of the petitioner or other departments of the petitioner. The learned arbitrator has referred to some of such guidelines and policies for the purpose of interpretation of the terms of the contract. I am thus not inclined to accept the submission of learned senior counsel that the learned arbitrator has relied upon solely on the guidelines and policies and granted the claims of the petitioner. There is thus no merit in the submission of learned senior counsel for the petitioner. The judgment of the Supreme Court in the case of **Food Corporation of India** (supra) does not assist the petitioner.

65. The petition is devoid of any merit except insofar as claim no.8 and interest on claim no.10 for the period 1st April, 2002 to 30th September,2010 is concerned, I therefore, pass the following order :-

- a). Claim No.8 in the sum of Rs.21,07,934/- awarded by the learned arbitrator is set aside. Interest on claim no.10 for the period 1st April, 2002 to 30th September, 2010 is set aside. Rest of the award is upheld.
- b). The arbitration petition is partly allowed.
- c). There shall be no order as to costs.

(R.D. DHANUKA, J.)