

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

Judgment reserved on April 9, 2015

Judgment delivered on October 12, 2015

+ **CS (OS) No. 2343/2007**

M/s UPPAL ENGG. CO. PVT. LTD.

..... Plaintiff

Through: Mr. M.S. Vinaik, Adv. with
Mr. Akhil Verma, Adv.

versus

BHARAT IMMUNOLOGICALS AND BIOLOGICALS
CORP. LTD.

..... Defendant

Through: Mr. R.B. Singhal, Sr. Adv.
with Mr. Anshuj Dhingra and
Mr. Janender Mahajan, Advs.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. By this order, I shall dispose of CS (OS) No.2343/2007 for making Rule of the Court, the Award passed by Brigadier V.K. Sawhney (Retd). Sole Arbitrator dated October 31, 2007 in dispute between the parties and the objections filed by the defendant to the said Award. The dispute between the parties relate to a work for construction of Housing Complex at Village Gangerwa, Bulandshahar, U.P which was awarded by the defendant to the plaintiff. The Letter of Intent was dated December 4, 2001. The total cost of the work was for Rs.200 Lacs and the time of completion was 15 months. The date of commencement was

to be reckoned from January 10, 1992 and the date of completion as April 1993. As noted from the Award, the LOI stipulates escalation of prices would be paid as per clause 10 CC of CPWD; 75% secured advance would be paid against material brought at site of work. It is also noted that a bank guarantee at 5% of the total contract value was to be tendered by the plaintiff to the defendant. Para 5 of the LOI stipulates, that a copy of the agreement signed by the defendant with the Architect namely M/s S.D. Sharma & Associates, was binding on the contract as well. A formal agreement dated December 5, 1991 was executed between the parties. The plaintiff raised claims vide letter dated August 7, 1995, which was also in the nature of serving notice for arbitration.

2. From the pleadings of the parties, the following issues were framed by the learned Arbitrator:-

a. Whether the Claimant has breached the contract and failed to comply with the terms and conditions of the contract.

b. Whether the respondent has breached the contract and failed to comply with the terms and conditions of the contract.

c. Whether the claims of the Claimant are in consonance with reference order; and whether the claims can be raised at all.

d. Whether the respective claims/counter-claims are legally tenable.

e. Which party has breached the contract and whether the breach goes to the root of the contract. If so, the injured party is entitled to what compensation in respect of each of its claims.

3. The learned Arbitrator was of the view that all the issues framed above, hinge on the fact as to how the contract was executed and whether the parties have carried out their respective contractual and reciprocal obligations in letter and spirit of contract. He accordingly considered the following aspects in that regard:-

- a. Whether Bulandshahar Khurja development Authority (BKDA) clearance was required, who was to arrange it, and if it was obtained.*
- b. Whether the drawings good for construction were issued in time to the Claimant.*
- c. Whether the Payments were made in time by the Respondent.*
- d. Whether the Respondent was required to provide electricity to the Claimant.*
- e. Whether the Respondent was within its rights to delay the decision regarding the extension for time, requested by the Claimant.*
- f. Whether site Organisation was properly manned by the parties, and whether sound decisions were given at site.*
- g. Whether the Respondent had the right to terminate the contract and was this power actually exercised in terms of the contract.*
- h. Whether there is any legal bar to the parties raising the claims in the present proceedings.*
- i. My impressions after the site visit.*

4. On 'a' above, the learned Arbitrator was of the view that the responsibility to get the clearances from BKDA was of the employer/architect. He was also of the view, giving partial clearances or piecemeal availability of site as was the stand of the defendant herein, does not satisfy the contractual obligation of the employer. He held that

the defendant was in breach of Contract in getting delayed sanctions, which was a hindrance preventing the completion of the project within the time frame fixed in the agreement between the parties, which goes to the root of the Contract and the plaintiff was entitled to damages from the defendant.

5. On 'b' above, the learned Arbitrator, on examination of the drawings submitted before him and on interpretation of the clauses of the agreement between the parties and the architect's agreement, was of the view that most of the drawings, if not all of them, were dated after the date of completion of the project. The drawings issued belatedly were not finished drawings but structural drawings and without which no worthwhile construction could be organized on the ground. He was also of the view, most of the drawings were in a disjointed manner. He would conclude that the site instructions are no substitute to good for construction drawings, required to be issued by the Architect. In fact, I note that the defendant, in his letter dated May 24, 1993, treated the drawings issued earlier by the defendant as void. The learned Arbitrator was of the view, no such (finished) drawings have been brought on the record of the Arbitrator, though a complete set of drawings were asked for and because of which, he did not give any credence to the statement of the defendant in that regard and was of the view, there is a major

breach of Contract by the defendant, which goes to the root of the Contract for which the plaintiff was entitled to damages.

6. Insofar as 'c' above is concerned, the learned Arbitrator was of the view that the defendant failed to device or enforce measures by which bills could be prepared and certified in time. The payments have been delayed often inordinately, which cannot be justified. He was also of the view that the deductions made from the bills were arbitrary. The value of work accepted by the defendant during the arbitration proceedings of about Rs.34.5 lacs, does not tally with the accepted figure of Rs.41 lacs plus escalation under Clause 10 cc of the CPWD. According to the learned Arbitrator, the shortfall leads to inescapable conclusion, that the work executed was not properly recorded or if recorded, it was incorrectly omitted in compilation of the assessment of the value of work. It was also his conclusion that if to the figure of Rs.41 lacs, the value of escalation is also added then it is clear that the payments made to the plaintiff by the defendant were not made in consonance with the work executed from time to time and amounts becoming payable thereafter. The conclusion of the Arbitrator was that the defendant was in breach of Contract as there was a failure to make timely and full payments, which is an essential requirement of contractual work for which the plaintiff was entitled to damages from the defendant. The

learned Arbitrator did not accept the claim of the plaintiff that it had executed work to the tune of Rs.60 lacs as no supporting details have been provided and accepted the figure of Rs.41 lacs.

7. Insofar as 'd' above is concerned, the learned Arbitrator was of the view that on conjoint reading of Article 29, Article 18, Sub-para (ix) of the NIT and clause 6.45 give a clear meaning to the Contract. In that the responsibility for providing electricity to the plaintiff remained entirely with the defendant. However, the supply was not to be free as submitted by the plaintiff and the plaintiff was required to pay for it after arranging the distribution from the terminal to be provided by the defendant. Failure to provide electricity was a major breach of Contract on the part of the defendant, which goes to the root of the Contract as the absence of electricity inevitably hampered the progress of the work drastically for which the plaintiff was entitled to damages.

8. Insofar as 'e' above is concerned, the learned Arbitrator was of the view that there are two facets on this issue. Firstly, whether it is justified and secondly, the time frame and the manner in which decision has to be taken by the employer. As regards the merit in the present matter, the time had got delayed and set at large, by the delays caused by the defendant. There were adequate and justifiable reasons for grant of extension to the plaintiff. As regard the time frame for decision, it was

held by him that the same was to be before the expiry of the Contract. According to him, the same is primarily for the reason that if the same was granted within the period of Contract, the contractor had the option to either rescind the Contract or work under compensation or work without prejudice to his right to claim damages. According to the learned Arbitrator, the defendant has not met its contractual obligation to decide the extension in time and thus defaulted and breached the Contract. Furthermore, as the completion date, initially or revised is very essential feature of any Contract, its absence is a breach, which goes to the root of the Contract for which plaintiff was entitled to damages from the defendant.

9. Insofar as 'f' above is concerned, the learned Arbitrator was of the view that Special Condition 6.38 clearly lays down that the consultant will furnish in writing to contractor, the name and designation of the official who shall serve as its duly authorised representative for the works. Likewise, the contractor too was to do the same. According to the learned Arbitrator, the consultant never provided the name of its representative while the plaintiff did so. He was of the view that the plaintiff has been corresponding with the defendant's Architect to arrange proper supervisory staff but the same was not heeded to. At best, ad-hoc arrangements were made by the defendant, which denoted

lack of purpose on defendant's behalf. He held that the defendant failed to establish proper site supervisory establishment. He held that the plaintiff was not at fault.

10. On 'g' above, the learned Arbitrator held that the defendant had the un-conditional right to terminate whole or part of the Contract vide Article 28, in which case, the Contractor has to cease all activities, cancel all provisioning contracts and labour arrangements etc. The defendant was obliged to pay for the services rendered and material brought on site. This clause was not invoked by the defendant. The learned Arbitrator was also of the view that where the Contract is not terminated, the contractor can be asked to stop the work in terms of Article 12. According to him, as per this clause in the event of default on the part of the contractor, the defendant can get the work executed by any other agency at the risk and cost of the contractor by using its plant, material and other equipment lying on site. Thus the term 'Termination' cannot be applied to this clause. He was also of the view, that the Company Secretary was not the designated authority to take action terminating the contract. He was also of the view, that the action of the defendant is highly questionable and cannot be justified. On merits as well, he would state that the termination cannot be justified due to serious breaches of the contract by the defendant. That apart, he held

that the defendant took no action whatsoever at site to get the balance work completed through another agency. No documents were executed in that regard. He refers to his site visit and has stated that the activity at the site remained dormant even after 12 years after the plaintiff has left the site. The defendant had no intention to get the work completed. The reasoning given by the defendant that it could not finish the work as lintels had not been cast is a frivolous engineering statement. The tools and equipment were not permitted to be removed from the site. Mere statement that it has no objection to get the same removed does not aid the defendant or mitigate the seriousness of the matter. The defendant has breached the contract and breach goes to the root of the contract for which the plaintiff is entitled to damages.

11. On 'h' above, the learned Arbitrator was of the view that the plaintiff cannot increase the claim from the amount which it had initially claimed vide letter dated August 7, 1995 and held, there is no bar for the plaintiff to agitate its claim in the present proceedings.

12. Insofar as 'i' is concerned, he held that; (i) no construction has taken place after the contract with the plaintiff was terminated; (ii) There was no technical impediment existing at the site in respect of the plaintiff's work which can prevent completion of unfinished structure.

13. The quality of construction made by the plaintiff was quite good

with hardly any deterioration in the structures though they were lying unattended for almost 12 years. He also held that the restrictions put by the defendant on the movement of the staff and materials had caused unnecessary delays and extra expense to the plaintiff. The learned Arbitrator was of the view that as per the contract, the defendant was required to provide the land near the site for labour hutments and for offices, stores etc. free of charge, for the entire period of contract and since the defendant failed to provide the plaintiff the same, the plaintiff used a portion of the land for the purpose of labour hutments etc, in the vicinity of the location of the building. However, from October 25, 1992, security staff of the defendant ordered the labour and staff of the plaintiff, not to stay at the site and they were turned out of the site after working hours. No alternative land was provided by the defendant, which not only caused unnecessary harassment but also extra expense to the plaintiff. No satisfactory answer has been furnished in its pleadings or during the site visit to justify non provision of site or not allowing the labour camp to remain within the site, particularly as nothing else was coming up, or has come up till date at the site. In any case, the learned Arbitrator held that the issue was academic. Finally, he held that in the absence of any maintenance/upkeep the condition of the unfinished construction will inevitably deteriorate, and also the fate of the

aggregate/construction material as well as the plaintiff's plant and machinery will lie at the mercy of the villagers/miscreants. Since the defendant has not taken any steps till date to implement the provision of Article 12 of the Agreement, he found no justification whatsoever on the part of the defendant to determine the contract with the plaintiff and the plaintiff was entitled to damages from the defendant.

14. The plaintiff, in all, had raised 14 claims and the following amounts have been awarded by the learned Arbitrator.

Sl. No.	Particulars of Claim	Awarded Amount
1.	<i>Loss of profit</i>	<i>Rs.15,90,000/-</i>
2.	<i>In respect of preliminary works vis temporary offices, temporary store, water storage tank, temporary water distribution lines and labour hutments.</i>	<i>Rs.1,70,130/-</i>
3.	<i>In respect of 25% costs of the materials against which 75% secured advance has been paid and the materials are in the custody of the defendant.</i>	<i>Rs.1,93,945/-</i>
4	<i>In respect of payment for the work done, measured and approved for payment by the Architect to the defendant but short paid amounting to Rs.5 Lacs.</i>	<i>Rs.5,00,000/-</i>
5 & 6	<i>The claim regarding the work done but not measured and paid for and reimbursement of escalation in prices for the work done as per clause 10cc of the CPWD.</i>	<i>Rs.9,97,067/-</i>
7	<i>In respect of infructuous expenditure on central offices/site over heads.</i>	<i>Rs.1,90,000/-</i>
8	<i>In respect of infructuous expenditure on tools & plants and shuttering materials etc.</i>	<i>Rs.3,60,000/-</i>
9	<i>Compensation for shifting of labour/workmen hutments from old location.</i>	<i>Claim rejected.</i>
10	<i>Theft of shuttering materials from the site of work.</i>	<i>Claim rejected</i>
11	<i>In respect of tools, plants, machinery, equipment and shuttering materials, taken possession by the defendant on the wrongful termination of the contract.</i>	<i>Rs.9,00,000/-</i>

12	<i>Refund of retention money withheld from R.A. Bills of the plaintiff.</i>	<i>1,33,275/-.</i>
13	<i>Materials lying at site for which no secured advance was paid but was taken into custody by the defendant after the wrongful termination of the contract.</i>	<i>Rejected</i>
14	<i>Interest and costs @ 18% per annum compounded for the period of pre-reference, pendente lite and future and Rs.50,000/- respectively.</i>	<i>12% interest per annum with effect from 7.8.1995 till date of award, claim for cost rejected.</i>

15. The learned Arbitrator was of the view that the un-recovered mobilisation advance made by the defendant to the plaintiff and verifying the details, the amount arrived at was Rs.15,95,019/-. Allowing the set off for the same the net amount payable by the defendant to the plaintiff was Rs.34,39,398/- plus interest.

16. Insofar as counter-claims of the defendant were concerned, the defendant had made three counter-claims which are as under:-

(i) Counter-claim No.1 In respect of pending mobilisation advance recovery, the learned Arbitrator refer to para 37.2, that the amount of Rs.15,95,019/- has been granted in favour of the defendant by allowing set off. Nothing is due to the defendant under this claim.

(ii) Counter-claim No.2. Penalty for an amount of Rs.15 lacs under Article 24 of the Agreement, the learned Arbitrator was of the view no breach or levy against the plaintiff is established and rejected this counter-claim.

(iii) Counter-claim No.3. In respect of costs, the learned Arbitrator has directed the parties to bear their own costs, the said claim was rejected.

17. The learned Arbitrator further held, the defendant to pay the amount awarded with interest @ 12% per annum to the plaintiff within three months and in case of default, the defendant was to pay the amount alongwith interest at the rate of 18% from the date of the award till payment.

18. Mr. R.B. Singhal, learned Senior Counsel for the defendant would challenge the Award by making the following submissions.

Clearances from BKDA:-

19. Mr. R.B. Singhal, learned Senior Counsel for the defendant on the aspect of clearances from BKDA, would submit that the learned Arbitrator has given a finding contrary to the submissions made by the parties and even also contrary to the admissions made by the plaintiff in its pleadings inasmuch as it is the own admission of the plaintiff in para 3.5 (b) of the Statement of Claims wherein, the plaintiff inter-alia stated *“In or about April 92, it would appear that the defendant got the sanction from the competent authority i.e Bulandshahar Development Authority for the plans”*. It is also the objection of the defendant that the learned Arbitrator for the reasons best known to him while arriving at the

above conclusion, had overlooked the admitted documents of the plaintiff Ex.C-16 which is a letter dated February 13, 1993 issued by the plaintiff to defendant seeking extension of time wherein the plaintiff has recorded *“this position was confirmed by the CMD, BIBCOT in the kick off meeting held in his office on 04.01.1992 stating however, the approval of the construction plans are still awaited from BKDA for which Architect and the contractor will take necessary follow up action. Refer para-1 of the minutes of the meeting held on 04.01.1992. Approval of the plans by the BDA were not conveyed to us until 08.04.92”*.

20. It is also the case of the defendant that the learned Arbitrator while arriving at the finding, has ignored the defence and evidence placed on record that it was the plaintiff which did not proceed with the work despite repetitive reminders and upon consecutive failure on its part, it was only on September 1, 1995, the agreement was terminated by the defendant. Significantly, the approval of the BKDA was conveyed to the plaintiff on April 8, 1992 and the contract was terminated on September 1, 1995 and there was no occasion for the learned Arbitrator to hold the defendant responsible for the breach of the contract. The learned Arbitrator also fell in error in accepting the submission of the plaintiff that the work could not be started at the project site due to pending BKDA approval. However, the plaintiff in its own letter dated April 8,

1992 has admitted that despite the pending BKDA approval, the plaintiff had mentioned that the excavation of 80% blocks stood completed. Further, the plaintiff had never sought the approval from BKDA as a pre-requisite to start the work.

21. On the other hand, Mr.M.S.Vinaik would submit that the defendant had failed to obtain the requisite clearances of drawings from the statutory authority viz BKDA which was a pre-requisite for any construction activity to take place. Besides, no formal clearance/approval of the employer was obtained as has been stipulated in the Architect's contract at Schedule 3. He would also state, that as per the minutes of the meeting, the construction activity was to be restricted to the north side of the plot only beyond 220 ft from the Bulandshahar Khurja Road for some time till the approval of the BKDA is accorded. It was the case of the plaintiff that in the absence of any approval by the BKDA, the work would have been illegal. Even the work at the rear of the plot could not have been taken up in the absence of specifically marked modified layout plan which was never furnished by the defendant and it is his submission that obtaining these clearances was not the responsibility of the plaintiff even if the plaintiff had agreed to accord any assistance for that purpose.

Issue of Drawings:-

22. It is the submission of Mr. R.B. Singhal that there was no delay on the part of the defendant in issue of drawings. According to him, the drawings were issued in time or progressively keeping in view the pace of the work. He would reiterate that getting approvals of BKDA or employer was irrelevant as far as the plaintiff is concerned. The defendant entirely dependent on its engineer for reading of drawings at site and further transformation of work at site due to non-deployment of the technical personnel at the site by the plaintiff. According to the learned Senior Counsel, the defendant never allowed the work to be interrupted for want of supply of drawings and where required, instructions were given by the site staff if any detailed drawing was not readily available. He states, that the plaintiff could have completed the housing complex of block ABCD within the stipulated date of completion or the extension required for 3-6 months if any. No pressure was put by the defendant for the construction of ABCD block or for that matter the block of Dy. CGM and CMD. He would state, the learned Arbitrator failed to appreciate that the defendant in its statement of defence filed in the proceedings in para 3.5 (c) has clearly mentioned that the drawings required for the work were issued well in advance of the requirement of the plaintiff for the use at site. It was also mentioned that all the foundation drawings were issued to the plaintiff on February

21, 1992. The defendant had also placed on record along with the defence statement letter dated February 22, 1992 where under four constructional drawings and six architectural drawings were issued to the plaintiff. Significantly, the minutes of the meeting dated March 07, 1992 records that the plaintiff had mentioned that the set of excavation drawings also contained foundation plans and structural details and they wanted to go ahead with the work. It is the submission of learned Senior Counsel that the learned Arbitrator while arriving at the above finding has failed to consider the minutes of the meeting dated January 4, 1992 wherein it was pointed out that the following drawings were handed over to Sh. Deepak Uppal by S.D. Sharma Architect:-

- (i) *Layout plan of site;*
- (ii) *Ground Floor, first floor, second floor and terrace plan of Type 'B' Housing;*
- (iii) *Details of stair case;*
- (iv) *Details of doors and windows;*
- (v) *Structural design of foundation of Type 'B' Housing.*

23. He would state, that the defendant vide letter dated February 11, 1992 had sent drawings of Master Plan; Excavation Plan (Type A to D); vide letter dated February 22, 1992, defendant has also supplied Constructional Drawings (Excavation Plan) and Architectural Drawings. He would further state, that vide letter dated June 11, 1992 the defendant further provided to the plaintiff the drawings of CMD residence, CGM

residence and Dy. CGM residence; vide letter dated November 23, 1992 the defendant provided to the plaintiff further drawings. It is his submission, regrettably, the learned Arbitrator ignored the documents, papers and evidence available on record and without any reasoning or basis has held under para 14.3 of the Award that no drawings have been brought on the record of the Tribunal by the defendant. According to him, this conclusion of the learned Arbitrator is absolutely perverse since the defendant during the course of the proceedings has exhibited drawings Ex.201 to 239, and the witness B.C. Dass during cross examination on August 21, 2007 has categorically stated that the drawings exhibited in R-201 to R-239 were issued to the plaintiff from December 17, 1991 to August 31, 1993 as per the requirement of work at site. The witness also deposed that the plaintiff has started the work on the basis of the drawings issued to the plaintiff at the time of kick off meeting and subsequently. The learned Senior Counsel also states that while deciding the issue of availability of the working drawings, the learned Arbitrator has failed to appreciate that the witness of the defendant in para F of the affidavit of evidence filed during the course of the proceedings had stated that “....*the works to be executed under the scope of LOI was properly designed by the defendant through their architects well in advance with a set of drawings of proposed block to be*

constructed has been annexed in the tender document and detailed information regarding proposed project has been described in the tender document". The learned Senior Counsel would state that the conclusion of the learned Arbitrator was absolutely extraneous to the present dispute. He would also state, the learned Arbitrator while arriving at a finding could not have gone beyond the terms of the agreement and any reference to the terms of the Architect's agreement was absolutely unjustified. He would also state that the learned Arbitrator while arriving at the finding under the Award had not only described the vital correspondence between the parties but also failed to return to any finding on the actual work done by the plaintiff on the project site vis-a-vis the drawings already released to the plaintiff/contractor. He would state, that during the minutes of the meeting, there was not even a whisper from the plaintiff's side complaining non provision of the drawings. Rather, it was the defendant who was complaining of the delay in execution of the work, stoppage of work, insufficient manpower, sub-standard quality of goods etc. He also states, that the drawings are issued stage wise considering the progress achieved under the previous work schedule which condition has been satisfied in this case.

24. On the other hand, Mr. M.S.Vinaik, learned counsel for the

plaintiff would support the conclusion of the learned Arbitrator in this regard inasmuch as the acceptance letter dated December 4, 1991 embodies at para 5 of the letter, copy of the agreement signed between the defendant and the Architect M/s S.D. Sharma & Associates for guidance. According to him, the work could not be proceeded smoothly as defendant/objector failed to furnish approved drawings in time and there were other lapses on their part. The plan supplied by the defendant vide letter dated December 17, 1991 was neither signed by the Architect nor approved by the employer. The same was not duly marked. They were preliminary drawings and not good for construction. There were no directions in the letter dated December 17, 1991 to carry out the work in a phased manner or to initially concentrate on A,B,C & D blocks. Even the drawings given during the meeting on January 4, 1992 were only preliminary drawings. The same were neither signed by the Architect nor approved by the employer as per the requirement of the contract. No sections or elevation were furnished. Drawings were not fully dimensioned and the same were not good for construction. Mr. Vinaik would deny that the scope of work of the contract was covered by the drawings so issued on January 4, 1992.

Release of Payment to Plaintiff:-

25. On the issue of release of payment to the plaintiff, it is the

submission of learned Senior Counsel for the defendant that no default has taken place on behalf of the defendant. The delay, if any, resulted due to lacunae on the part of the plaintiff in its functioning. The Bank Guarantee of Rs.20 lacs was submitted by the plaintiff by way of 10 Bank Guarantees of Rs.2 lacs each expiring on different dates, which was a breach of Contract. The preparation of bills got delayed primarily due to the fact that the plaintiff had not deployed qualified technical personnel at the site to prepare its bills and submit to the defendant. Rather, the plaintiff was dependant upon the defendant for preparation of the bills. The plaintiff never submitted the measurement details and arbitrarily claimed more amount in abstract cost and secured advance which created a ground for the plaintiff to blame the defendant for paucity of funds at a later date. The first RA bill, submitted by the plaintiff on June 15, 1992, was for Rs.7,63,854/-. The plaintiff did not submit its own measurement. But still the defendant had forwarded the first RA bill by recording in the measurement book and getting consent from the plaintiff towards the acceptance of measurement for work done and getting it approved from the Architect. Since the amount claimed was excessive, the payment was released as per the measurements recorded by the defendant. The Architect passed a bill for Rs.3,77,725/- on June 29, 1992 and the defendant had released the payment of

Rs.1,82,561/- after deducting the mobilization advance, security deposit, rebate offered 2.5% of quote value, TDS and amount of Rs.2 lacs on account of the expiry of Bank Guarantee No.207/92 which expired on June 24, 1992. The defendant's Architect did not entertain secured advance bill as neither entries were made in measurement book nor the indemnity bond has been furnished by the plaintiff. Plaintiff submitted second RA bill on September 8, 1992 for net value of Rs.6,08,674/-. The plaintiff had claimed an amount of Rs.10,34,594/- up to work value completed up to second RA bill and secured advance against material for Rs. 1,43,437/-. The defendant's Architect certified the bill for Rs.5,43,306/-. On the basis of the certification, the defendant released an amount of Rs.3,93,500/- after effecting statutory deductions. The 3rd RA bill for Rs.11,15,476/- was submitted on December 11, 1992, where the work executed was valued at only Rs. 6 lacs and secured advance against material was as about Rs.5,07,608/-. The Architect certified the work for Rs.4,16,121.40 and secured advance against material for Rs.4,80,608/-. On the basis of this certification, the defendant released the payment for Rs.8,96,789/- on January 13, 1993. The 4th RA bill was for Rs.7,29,000/- lacs inclusive of secured advance against material amounting to Rs. 4,54,710/-. The Architect certified the bill, the defendant released an amount of Rs.4,31,661/-, after valuing the work

done as Rs.3,02,266.75 and Rs.1,29,376 towards secured advance against material and after effecting statutory deductions on April 15, 1993. The plaintiff submitted the first escalation bill for Rs.1,88,277/- on April 24, 1993 as the bill furnished by the plaintiff was without any index and required documents. After certification from the Architect, a payment of Rs.93,120/- was released. Similarly against the 5th RA bill for Rs.11,23,376/- in which the plaintiff had claimed an amount of Rs.6,88,012/- towards secured advance against material. Defendant's Architect certified the 5th RA bill for Rs.4,20,899/- for execution of work value only, and accordingly the defendant released Rs.4,20,899/- to the plaintiff. It is his submission that all the payments released were certified by the Architect. All the payments made against secured advances have to be adjusted in the subsequent bills and which was duly done by the defendant. The plaintiff was in the habit of inflating the bills, creating an impression that the defendant was unnecessarily effecting deductions. In the 5th RA bill, the defendant had denied the payment against material advance since advance paid in the 3rd RA bill remained adjusted at the time of payment due in the 5th RA bill. Due to lack of interest on the part of the plaintiff to complete the work, defendant preferred to deduct the secured advance against materials due from plaintiff while passing the bill of 6th RA bill.

26. On the other hand, Mr. Vinaik would submit there was paucity of funds with the defendant to continue with and complete the project and the same was noticeable till March 1994. It is his submission, that the payments were regularly delayed from mobilization advance stage. Mobilization advance payable was Rs.20 lacs, within 15 days of the furnishing of the Bank Guarantees but the same was released in two stages of Rs.10 lacs each of more than 30 days after the Bank Guarantees were submitted. The RA bills payable within 15 days of submission were inordinately delayed and invariably paid in instalments. Drastic unwarranted deductions were made in respect of the bills submitted to the defendant. Despite a decision that the measurement of the work already done be carried out on 1st and 15th of each month, the same was not implemented. On April 25, 1992, the plaintiff requested the Architect on telephone, to prepare the 1st RA bill. The Architect promised, his representative would reach the site by February 1, 1992. On the date fixed, the plaintiff's representative was present but no one came from the Architect's side. Finally, the Architect's representative carried out the measurement only on May 15, 1992. The defendant informed the plaintiff that the 1st RA bill would be prepared by the defendant and sent to its consultants. The defendant, however, did not inform the plaintiff as to whether the bill has been prepared, sent or

passed by the defendant. It was only on June 15, 1992, the plaintiff finally submitted its 1st RA bill for Rs.7,63,854.74/-. The defendant however paid only a sum of RS.1.67 lacs on July 22, 1992 and Rs.1.96 on August 4, 1992. With respect to 2nd RA bill, which was for Rs.6,08,874.50, the defendant paid an amount of Rs.3.93 lacs on September 30, 1992 and October 6, 1992. The defendant promised to pay the balance amount later. The 3rd RA bill was of December 11, 1992 for the net value of RS.11,15,474.60. The Architect approved the bill for Rs.9,10,723/- but the same was not fully paid and also amount paid was in instalments. Against the 4th RA bill, which was for Rs.7.29 lacs, the respondent paid only about 4.31 lacs on April 14, 1993 and promised to pay the balance later. Against the first escalation bill of Rs.1,88,277/-, a payment of Rs.93,000/- was made only on November 26, 1993 i.e seven months after the date of submission. On or about May 10, 1993, the plaintiff submitted its 5th RA bill for Rs.11,23,376/- against which an amount of Rs.4.21 lacs was paid on August 23, 1993. Similarly, against 6th RA bill for an amount of Rs.14.26 lacs was reduced to Rs.8,14,288/-. Even the said amount was not paid. Only a sum of Rs.55,511/- was paid. As per commitment made by the defendant in the meeting held on July 11, 1994, at least Rs.2.50 lacs should have been released by July 18, 1994 but was not released and the remaining Rs.5,08,777/- lacs should

have been but was not released soon thereafter nor at the time of invocation or even thereafter. According to him, the defendant had admitted that the quantum of the work done by the plaintiff was for Rs.41 lacs and if an amount of escalation of Rs.8,44,795/- is added then the amount would be Rs.49,44,795/-. Against this, the defendant had allowed a sum of Rs.34,47,728/- only to the plaintiff. In any case, against this claim, the learned Arbitrator has allowed an amount of Rs.9,97,067/-.

Provision of Electricity:-

27. The submission of Mr. Singhal on the aspect of electricity was, the defendant was liable to provide electricity for site security only. According to him, Article 29 of the Contract clearly says that the contractor shall arrange the power required for the construction only and the reason given by the plaintiff is false and with ulterior motive.

28. On the other hand, Mr. Vinaik, would state that the electricity was to be provided by the defendant in terms of the agreement, which it failed to do till the termination of the contract. The plaintiff has been reminding the defendant about this essential requirement as work could not progress smoothly without electric power and had put the defendant to notice to the effect that it would liable to pay compensation for delay in this behalf. He would refer to letters dated March 3, 1992, September

3, 1992 and February 13, 1993. On March 21, 1993, the default on the part of the defendant was taken up with the CMD which figures in the minutes of the meeting. Even till the date of termination, the defendant neglected and defaulted in making available the required electricity power at the site. According to Mr. Vinaik, the NIT clearly stipulate, electric power required for construction shall be arranged by owner to the contractor at his own cost which imply that the electricity was to be provided by the defendant to the plaintiff free of cost. The defendant did not arrange for electric power till September 12, 1995. For want of electricity, the work could not progress sufficiently as the equipment could not operate.

Issue of Extension:-

29. Insofar as the issue of extension is concerned, it is the submission of learned Senior Counsel for the defendant that the learned Arbitrator while passing the Award had ignored the documents filed by the defendant which clearly and unequivocally suggests that the plaintiff was afforded time to time extensions which were duly recorded in not only the correspondence between the plaintiff and the defendant but also forms part of the subject of the letters written by the plaintiff to the architect and importantly, has been an agenda of the meeting between the senior officials of the defendant and the plaintiff recorded in the minutes

of the meeting placed on record. The evidence placed on record clearly suggests that the plaintiff despite repetitive and umpteen extensions afforded by the defendant abandoned the work at the project site which constrained the defendant to finally terminate the agreement on September 1, 1995. He would state that;

(1) the learned Arbitrator had ignored the documents of the plaintiff seeking extension of time as per Ex.C-16, C-42 and C-43;

(2) the plaintiff suspended the execution of the work with effect from February 28, 1994, the defendant arranged meeting and taking note of the lapses on the part of the plaintiff (i) Non renewal of the Bank Guarantee; (ii) Poor performance of work (iii) suspension of work from February 1994; (iv) non posting of any technical staff and non-appointment of an authorized representative;

(3) The plaintiff replied to the aforementioned in affirmative and promised to commence the work in a week (s) time and making it fully mobilized in 15-20 days;

(4) Desptie the failure of the plaintiff to mobilize resources, the defendant released payment of the 6th running bill when outstanding mobilization advance was over 17 lakhs and there was no performance bank guarantees;

(5) On November 21, 1994 the authorized representative of the

plaintiff sought 10 days time for mobilization of the site and was informed of their failure to revalidate the Bank Guarantees and next meeting was fixed for December 7, 1994 which was not attended by the plaintiff and also the Bank Guarantees were also not revalidated;

(6) In the next meeting on January 13, 1995 when the Bank Guarantees were not revalidated, the plaintiff was given time to revalidate the Bank Guarantees by January 16, 1995 and for the complete year did not get Bank Guarantees revalidated and further time till December 31, 1995 was given and the plaintiff without any further mobilization or execution of work sought extension upto May 10, 1996;

(7) On August 7, 1995 the plaintiff called upon to pay imaginary claims, the defendant called upon the plaintiff to finally resume the work within 7 days vide letter dated August 21, 1995;

(8) On failure of the plaintiff to either resume work or revalidate the Bank Guarantees, the defendant determined the contract vide letter dated September 12, 1995.

30. On the issue of extension Mr. Vinaik had stated that the plaintiff was entitled to extension of time because the work was impeded on account of hindrance caused by the defendant, which aspect has been considered and found to be correct by the learned Arbitrator in the Award. He would also state, that another reason for the delay was, the

defendant was to get the treatment of anti-termite from a specialized agency and the defendant did not nominate any particular agency and the plaintiff itself negotiated with the pest control company for execution of the work. There was another undue delay in taking a decision to allow the use of river borne aggregates instead of crushed aggregates. Another hindrance was caused when defendant introduced Special Security Checking Systems installing barriers and controlling the entry and exit of all workers thereby causing undue wastage of time. The defendant was to provide an alternate site for labour hutments, offices, stores but due to the non-availability of spaces, there was undue delay in the execution of the work.

Termination of the Contract:-

31. It is the submission of learned Senior Counsel for the defendant that the learned Arbitrator has travelled beyond the submissions and the pleadings. It was not the case of the plaintiff that (a) termination was under a wrong clause; (b) signing of the termination letter by alleged non-authorized person. The Arbitrator had no power to initiate any roving inquiry over the award of contract for the balance works to any third party and any observations of the learned Arbitrator in that regard were totally extraneous. He would state, that the company secretary was within its competence to issue the termination letter since the company

secretary was inherently authorized by the CMD of the defendant company to sign and execute the documents on behalf of the defendant. According to him, clause 1(iii) mandates employer's representative to be the Chairman-cum-Managing Director or any person authorized by him as would be In-charge of the work. He would also state, that Article 12 of the agreement between the parties provides a specific power to terminate the contract with the contractor and get the work executed at the risk and cost of the contractor. The power under Article 12 is independent of the power under Article 28 of the agreement, which provides for the termination of the agreement.

32. Mr.M.S.Vinaik would submit that the termination was not only unjustified but also illegal. Under Article 12 of the agreement, the owner was to give a notice in writing to the contractor asking him to make good the reasonable orders of the owner with regard to failure or neglect or contravention of the contract. It is only on failure to comply with the reasonable orders of the owner, the owner may proceed against the contractor. In this case, no such notice under Article 12 was issued to the plaintiff but a letter dated August 21, 1995 was issued by the company secretary to the plaintiff, which was not a proper notice as the same was not signed by the owner or the representative in terms of item 1(iii). According to him, there was no contractual lapse on the part of

the plaintiff. He would state, that the direction of the defendant to the plaintiff to resume the work, though the plaintiff had not stopped the work at the site without extension of time limit was unreasonable. He would justify the conclusion of the learned Arbitrator in this regard.

33. Insofar as the claims made by the plaintiff before the learned Arbitrator are concerned, it is the submission of learned Senior Counsel for the defendant that no reasons have been given by the learned Arbitrator and while deciding the quantum of the claims. He would also state that Arbitration ought to have allowed the claim of the defendant of liquidated damages. He would state, that, the Arbitrator once allowed loss of profit, he could not have allowed other claims. Further, escalation could not have been allowed, because of non-submission of bills on that account. The defendant relied upon the following judgments; *State of Kerala vs. K. Kurien P. Paul AIR 1992 (Kerala) 180*; *Indian Oil Corporation vs. Indian Carbon Ltd. 1988 (3) SCC 36* and *K.P Poullose vs. State of Kerala and Anr. 1975 (2) SCC 236*; and *Kuldip Kumar Suri Vs. Delhi Development Authority, AIR 1995 Delhi 82*.

34. On the other hand, Mr. Vinaik would justify the claims as granted by the learned Arbitrator in the following manner:-

Claim No.1 (Loss of Profit):-

35. The total cost of the work was Rs.200 lacs. The defendant admitted the plaintiff having done work for Rs.41 lacs. Hence, he had allowed profit of 10% is Rs.159 lacs (balance) by awarding an amount of Rs.15,90,000/-.

Claim No.2 (In respect of preliminary works vis temporary offices, temporary store,water storage tank, temporary water distribution lines and labour hutments):-

36. It was the contention of Mr. Vinaik that the learned Arbitrator has held that the defendant was obliged to provide suitable site for labour camp of the plaintiff. As per Article 29(ii) (2), failure to do so amounts to breach of the contract and breach goes to the root of the matter. According to him, in the claim statement, the plaintiff had submitted that it had to carry out the following preparatory work:-

- (a) Construction of temporary offices and stores for storage of cements, other articles to be incorporated in the works and for locating tools and plants;*
- (b) Construction of hutments was required by the contract. It was accordingly done;*
- (c) Construction of the tank for storage of water.*

37. According to the plaintiff, the aforesaid items have costed a sum of Rs.2 lacs to the plaintiff. It was his submission in the defence statement, the defendant admitted (a) and (b) above. Regarding (c), the defendant had stated that for the amount of these items, the plaintiff be put to strict proof. He would state, the learned Arbitrator has assessed

the award amount of Rs.1,70,130/- which is justified.

Claim No.3 (In respect of 25% costs of the materials):-

38. The claim was for an amount of Rs.4,47,475/-. According to him, in the reply, the defendant did not deny the claim except stating that the defendant has no objection if the plaintiff take away the material from the site after proper inventories are prepared and plaintiff furnishes security against the outstanding mobilization advance. According to him, by inference, the claim was admitted. According to him, inadvertently in the reference letter dated August 7, 1995, the plaintiff had mentioned the claim for Rs.1,93,945/-. In other words, the plaintiff voluntarily reduced the claim to Rs.1,93,945,- and the Arbitrator upheld the same. According to him, there is an adequate reasoning for grant of the said amount.

Claim No.4 (In respect of work done, measured and approved but short paid):-

39. The claim relates to an amount of Rs.5 lacs payable to the plaintiff against 6th R/A bill. He would rely upon the proceedings of the meeting held on July 11, 1994, wherein, it was stated as under:-

“Managing Director BIBCOL informed Sh. Uppal of M.s Uppal Engineering Company Pvt. Ltd that 50% of Rs.5 lacs due against 6th R/A Bill would be released and the balance amount will be released after the check of the detailed estimate between M/s S.D. Sharma & Associates Pvt. Ltd and BIBCOL. It was agreed that Rs.2.5 lacs would be released on 18th July, 1994 after the return of G.M. (F and “A”) from tour”.

According to him, the aforesaid would justify the claim granted.

Claim Nos.5 & 6 (In respect of work done but not measured):-

40. Insofar as claim Nos.5 & 6 are concerned, it is his submission that the value of work done was Rs.41 lacs. The value of work paid to the plaintiff on the basis of architect certification as admitted by the defendant was Rs.31,02,933/-. (Total amount paid against R/A bill 1 to 5 with escalation was Rs.26,02,933/-. Amount to be paid against RA bill No.6 as per claim No.4 was Rs.5 lacs). The balance to be paid was Rs.41,00,000 – 31,02,933 = Rs.9,97,067/-, which has been granted by the learned Arbitrator.

Claim No.7 (In respect of expenditure on central offices/site overheads):-

41. Insofar as the claim No.7 is concerned, in terms of the reference letter dated August 7, 1995 was in the amount of Rs.3,80,000/-. So was the final claim as consented by the plaintiff during arguments. The plea that the said claim does not find mention in the reference letter dated August 7, 1995 was rejected by the learned Arbitrator at para 29.1 (page 36 of the Award). According to him, the learned Arbitrator allowed the compensation probably for the central staff and not for site staff at Rs.1,90,000/- only which according to Mr. Vinaik is a finding of fact and cannot not be interfered by this Court. He would also state, that the

defendant had not raised any objection to the amount of the Award.

Claim No.8 (In respect of expenditure on tools and plants and shuttering materials etc):-

42. Claim No.8 is for under utilization of plant and machinery during construction period, on account of delays attributable to the defendant. Initially the plaintiff had mentioned the damages in the amount of Rs.7,20,000/- as per the reference letter dated August 7, 1995 but had raised to Rs.15,78,000/- in the claim statement. In the defence statement, the defendant stated that it was willing for adjudication of the claim in the amount of Rs.7,20,000/- only. The plaintiff agreed to the said amount. He would justify the Arbitrator assessing the damages at Rs.3,60,000/- more particularly when there is a conclusion in favour of the plaintiff that the delay that has caused to the work was attributable to the defendant.

Claim No.11 (In respect of tools, plants, machinery, equipment and shuttering materials taken possession by the defendant):-

43. With regard to award of this claim, it is the submission of Mr. Vinaik, learned counsel for the plaintiff that the claim was to cover the cost of tools, plants, machinery, equipment and shuttering materials taken over by the defendant at the time of wrongful termination of the Contract. In the reference letter, a claim for Rs.28 lacs was made. The plaintiff had demanded return of machinery valuing Rs.28 lacs. In the

claim statement, the value of the machinery was reduced to Rs.18 lacs. In the defence statement, the defendant did not refute the inventory of the articles nor the valuation thereof but took a plea that this was not the part of the dispute referred to the Arbitrator. The said plea was rejected by the Arbitrator by holding that this claim corresponds to narration at page 6 of the reference letter. The learned Arbitrator after taking into consideration the material on record revealed during arguments, allowed an amount of Rs.9 lacs in favour of the plaintiff which according to him is a finding of fact and the Court would not interfere. He would state that the learned Arbitrator has allowed a set off claim of Rs.15,95,019/- in favour of the defendant.

Claim No.12 (In respect of refund of retention money withheld from RA bills):-

44. With regard to claim No.12, it is the submission of Mr. Vinaik, learned counsel for the plaintiff that the initial claim was for Rs.1,33,275/- but during arguments, it was revised to Rs.1,72,186/-. The defendant admitted the claim in the amount of Rs.1,07,021/- in reply on page 19 of the defence statement. According to him, the learned Arbitrator did not allow the upward revision of the claim amount by the plaintiff but granted an amount of Rs.1,33,275/- in favour of the plaintiff.

Claim No.14 (In respect of interest):-

45. With regard to this claim, learned counsel for the plaintiff would justify the interest granted by the learned Arbitrator and relied on the following judgments in support of its contention:-

- (i) *D.C. Kapoor, proprietor M/s Dipson and Co. vs. DDA-1996 (2) Arb-LR349;*
- (ii) *M/s Hindustan Tea Co. vs. M/s K. Shashi Kant & Co. and anr AIR 1987 SC 81;*
- (iii) *M/s Sundasan Trading Co. vs. The Govt. of Kerala and anr. AIR 1889 SC 890;*
- (iv) *Firm Madan Lal Roshan Lal Mahajan vs. Hukum Chand Mills Ltd. Indore AIR 1967 SC 1030;*
- (v) *Puri Constitution Private Limited vs. Union of India AIR 1989 777;*
- (vi) *Goa, Daman & Diu Housing Board vs. Ramakant V.P. Darvotkar AIR 1991 SC 2089;*
- (vii) *Hindu Builders vs. UOI AIR 1990 SC 1340;*
- (viii) *Indian Oil Corporation vs. Indian Carbon (1988) 3 SCC 36;*
- (ix) *DDA vs. Alkaram AIR 1982 Delhi 365;*
- (x) *Chaudhary Construction Co. vs. MCD 1995 (34) Arb LR 428;*
- (xi) *DDA vs. Uppal Engineering Const Co. AIR 1982 Delhi 425.*

Conclusion:-

46. Before I deal with the respective contentions of the learned counsel for the parties on the issues and the claims decided by the learned Arbitrator, I would deal with the judgments referred to by them.

47. Insofar as the judgments relied upon by the defendant in its submissions are concerned, in the case of *K.P.Poulose (supra)*, the Supreme Court held, under what circumstances, the award can be set aside inasmuch as if the Arbitrator, on the face of the award arrives at an inconsistent conclusion, even on his own finding or arrives at a decision

by ignoring the very material documents, which throw abundant light on the controversy to hold a just and fair decision. It is in a sense that the Arbitrator has misconducted the proceedings in the case. The Supreme Court has set aside the award of the Arbitrator, remaining back the matter for completing the proceedings after considering the relevant documents.

48. In *State of Kerala and Anr. Vs. K. Kurien P.Paul, AIR 1992 (Kerala) 180* wherein according to him, the Arbitrator misconducts the proceedings when; (a) there is a defect in the procedure followed by him; (b) Arbitrator commits breach and neglect of duty and responsibility; (c) acts contrary to the principles of equity and good conscience; (d) acts without jurisdiction or exceeds it; (e) acts beyond reference; (f) proceeds on extraneous circumstances; (g) ignores the material documents; (h) basis the award on no evidence .

49. The reliance placed by the defendant in the case of the Supreme Court in *Indian Oil Corporation Vs. Indian Carbon Ltd. (1988) 3 SCC 36* is concerned, the Supreme Court has held that if there is no evidence to support the conclusions or if the award is based on legal proposition, which is erroneous, the award can be set aside.

50. In the case of *Kuldip Kumar Suri (supra)*, this Court on a finding that the learned Arbitrator based his finding only on the documents R-2

to R-5, without considering the document C-22 and R-46, which according to this Court, was the material document and non consideration of the same makes the award of the Arbitrator suffer from an error apparent on the face of the record. To that extent, this Court had remanded the matter back to the Arbitrator for reconsideration.

51. Insofar as the judgments relied upon by the learned counsel for the plaintiff are concerned, in the case of *D.C.Kapoor (supra)*, this Court was of the view that the Arbitrator is the sole judge of the quality as well as the quantity of the evidence and it is not for the Court to take upon itself the task of being a judge of the evidence before the Arbitrator. The Court held, it may be possible on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the Arbitrator, but that by itself, is no ground for setting aside the award of the Arbitrator.

52. In the case of *Hindustan Tea Co. (supra)*, the Supreme Court, in the given facts, has held that the award was a reasoned one and was not open to challenge on ground that the Umpire had reached at a wrong conclusion or failed to appreciate facts or acted contrary to Section 70 of the Contract Act, 1872.

53. In the case of *M/s. Sudarsan Trading Co. (supra)*, the Supreme Court made a distinction between the excess of jurisdiction and the error

apparent on the face of the award. The Supreme Court held, award in excess of the jurisdiction is open to judicial review by appreciating the evidence not appearing on the face of the award. But, in a case the award is within jurisdiction mode of exercise of jurisdiction is not open to the judicial review. The Supreme Court further held that in case of non-speaking order, the Court cannot probe into the reasoning of the award. Even where reasons given by the award, the Court cannot appreciate the evidence to examine the reasonableness of the reasons. The Court was also of the view that the award can be set aside on the ground when there is any erroneous legal proposition in the award or in any documents incorporated in it, on which award is based, but not when a specific question is referred even though answered to the question involved an erroneous decision on point of law.

54. In the case of *Firm Madanlal Roshanlal Mahajan (supra)*, the Supreme Court held that the Arbitrator's award, on both fact and law, is final and there is no appeal from his verdict. The Court cannot review the award or correct any mistake in its adjudication unless the legality of the award is apparent on the face of it. When Arbitrator has given no reason for award, nor there is any legal proposition as basis of award, contention that there are errors of law on the face of award, must be rejected.

55. In the case of *Puri Construction Pvt. Ltd. (supra)*, the Supreme Court held that the Court deciding the objections against the award, cannot examine the correctness of award on merits by re-appreciating the evidence. The Court held, the Arbitrator, a highly respectable and competent person and his integrity not doubted by the parties, the Court in the facts, rejected the objections.

56. In the case of *Goa, Daman and Diu Housing Board (supra)*, the Supreme Court held, in the given facts, the Arbitrator recorded reasons and has committed no misconduct.

57. In the case of *Hind Builders (supra)*, the Supreme Court rejected the contention of error apparent on the face of the award and that the Arbitrator has exceeded the authority conferred by the terms of the contract. The Supreme Court on facts held, no error could be found in the award as the Arbitrator has not ignored or overlooked any term of the contract or, on the contrary acting upon a particular interpretation of certain clauses of the contract on which two views were possible.

58. In the case of *Indian Oil Corporation Ltd. (supra)*, the Supreme Court held that the award should at least indicate the mind of the Arbitrator as to how and why he acted in a specific manner. The Supreme Court held, mentioning of factors in the award on the basis of which Arbitrator reached his conclusion is sufficient compliance with the

requirement to state reasons; and in the absence of any error of law and fact, held, such award is unassailable.

59. In the case of *Delhi Development Authority (supra)*, this Court held, where the Arbitrator mistake a fact either on law or fact, but such a mistake does not appear on the face of the award, the award is good notwithstanding the mistake and will not be remitted or set aside.

60. Similarly, in the case of *Chaudhary Construction Co. (supra)*, this Court rejected the challenge to the award on the ground that there was no evidence before the Arbitrator to arrive at the findings as returned by him by holding that the Court cannot sit in appeal over the award and can set aside only if it is apparent from the award itself that there was no evidence to support the conclusion. The Courts are reluctant to interfere with the decision of the expert, who has chosen as an Arbitrator by the parties. In the absence of any error on the face of the award, no interference is called for. It also held that the Arbitrator is not required to give a detailed judgment but only to indicate his mind as to how, he arrived at a decision in the award.

61. Similarly, in the case of *Delhi Development Authority Vs. Uppal Engineering Construction (supra)*, this Court held that if the Arbitrator makes a speaking award and given reasons, the Court cannot set aside the award merely because the Court have to give to a different

conclusion. The Court cannot re-examine and re-appreciate the evidence and sit in an appeal over the conclusion of the Arbitrator in the proceedings to set aside the award.

Clearances from BKDA:-

62. Having heard the learned counsel for the parties and perused the written submissions made, insofar as the submission made on the clearances from BKDA is concerned, the requirement under the agreement to get the approval of the BKDA was not on the plaintiff. The statutory approval is mandatory for any construction activity. The stand of the defendant that the issue of statutory approval is not relevant for the execution of the work nor the plaintiff ever demanded the same is concerned, suffice to state that for the construction activity, the approval must be in place. It is noted that as per defendant's own stand that the approval of the BKDA was conveyed to the plaintiff on April 8, 1992, would demonstrate that the approval, which was to be in place within 7 weeks (1 month 3 weeks), was secured only after 3-4 months of the zero date which was in breach of the stipulation in the contract. It only shows, that the defendant did not approach the work in a systematic manner. No doubt, the defendant had called upon the plaintiff to carry out the construction activity to the North side (rear) of the plot only beyond 220 feet from the Bulandshahar Khurja Road till such time the

approval is granted by the BKDA. It appears that the said work also could not be carried out for want of specifically marked modified layout plan. The learned Arbitrator has rightly rejected the stand of the defendant by referring to Article 8(B) of Schedule II and Schedule III that obtaining the requisite clearances was the responsibility of employer/Architect. It is noted, that, the Arbitrator, was also of the view giving partial clearances or piecemeal availability of site does not satisfy the contractual obligation of the employer. He rejected the stand of the defendant, that the non-obtaining of the requisite clearances within time, was no hindrance or breach of contract. I agree with this conclusion. Surely this delay, coupled with delay caused by other factors cumulatively delayed the work beyond the last date. Suffice to state, there is no breach on the part of the plaintiff.

Issue of Drawings:-

63. Having heard the learned counsel for the parties and considered the submissions made by them, the stand of the defendant that there was no delay on its part in issuance of drawings to the plaintiff and the drawings were issued in time or progressively keeping in view the pace of work by placing reliance on the drawings issued from time to time on December 17, 1991, January 4, 1992, February 22, 1992, March 7, 1992, June 11, 1992, November 23, 1992 for that matter till May 24, 1993 and

the amendments thereon carried out were minor and as and when the drawings were updated, the previous drawings were termed as void and heavy reliance placed by the defendant on the statement filed by it showing the number of drawings issued by the defendant would fall flat in view of the letter dated May 24, 1993 which was noted by the learned Arbitrator, wherein the defendant has taken a stand that all previous drawings issued may be treated as void and the work be carried out as per the fresh drawings. The particulars of the drawings sent by the defendant are as under:

“The following up-to-date drawings received from M/s. S.D. Sharma & Associates, Chandigarh on 24.5.93 are sent herewith. As informed by the architects all previous drawings issued may be treated as void. The work may kindly be carried out as per fresh drawings (now issued). Kindly intimate if all the drawings are in order.

	<u>Drawing No.</u>
1. <u>Type ‘A’</u> <u>Structural drawing.</u>	
1. Ground Floor	S-002
2. First Floor	S-003
3. Second Floor	S-004
2. <u>Type ‘B’</u>	
1. Ground Floor	S-002
2. First Floor	S-003
3. Second Floor	S-004
3. <u>Typical stair case detail for Type ‘A’, ‘B’, ‘C’ & ‘D’:</u>	
Houses	SC/S/01
4. Plan, elevation, sector, Type ‘D’	WD-11
5. Elevation & Section	WD-03
6. Plan Ground Floor, First Floor, Second Floor & Terrace, Type ‘A’	WD-02
7. Plan elevation & section, Type ‘C’	WD-08

<i>8. Plan elevation & section, Type 'B'</i>	<i>WD-06</i>
<i>9. Public Health & electrical layout (services) Type 'B'</i>	<i>WD-07</i>
<i>10. Plan Ground Floor, First Floor, Second Floor & Terrace, Type 'B'</i>	<i>WD-05</i>
<i>11. Services drawing, Type 'A'</i>	<i>WD-04</i>
<i>12. Services drawing, Type 'C' & 'D'</i>	<i>WD-10"</i>

64. The date of the letter is relevant, which in this case is the date, after the expiry of the last of completion of work. The letter reveals up-to-date drawings received from the Architect with a clear stipulation, the work be carried out as per fresh drawings. The drawings included structural drawings. It can be concluded as rightly did by the learned Arbitrator that the drawings issued were structural drawings and not finished drawings without which no worthwhile construction can be organized on the ground.

65. The submission on behalf of the defendant based on Exh. 201 to Exh. 239 also need to be rejected inasmuch as the said Exhibits includes, if not at all, most of them, the drawings which were given to the plaintiff, but were later treated as void in terms of letter dated May 24, 1993. The submission based on the affidavit of the defence witness is also need to be rejected in view of the letter dated May 24, 1993, which speaks otherwise. Similarly, the submission that drawings were timely released, also needs to be rejected as they were later treated as void. It is also clear that the drawings, if at all, fit for construction, can be said to have

been issued only on May 24, 1993 and not before that date, which is after the last date of completion of work as per the contract. The learned Arbitrator's finding on the aforesaid aspect is pursuant to examination made by him on the drawings submitted during the arbitration proceedings. As per the Architect's agreement, he was required to prepare the working drawings, details of work including architectural and structural, water supply, sanitary and electrical installations drawings, external sewerage, furniture, furnishings and interior decoration designs and obtaining the approval from the employer. It is a finding of the learned Arbitrator that most, if not all of them, were dated after the date of completion of the project. It is also his conclusion that most of the drawings were in a disjointed manner. The Arbitrator comes to a conclusion that there is a major breach of contract by the defendant by supplying drawings belatedly, which aspect goes to the root of the contract. These are findings of fact. I do not find any infirmity in the conclusion of the learned Arbitrator. This Court is of the view that the letter dated May 24, 1993 is conclusive which proves that drawings given between December 1991 to at least till May 1993 were treated as void and fresh set of drawings were given so as to carry the construction activity as per the said drawings.

Release of Payments to the Plaintiff:-

66. Insofar as release of payments to the plaintiff is concerned, the parties have justified their respective positions. Be that as it may, the conclusion of the learned Arbitrator, primarily was that against the work of Rs. 41 lacs done by the plaintiff and admitted by the defendant only an amount of Rs.34.5 lacs was paid to the plaintiff and the learned Arbitrator has also concluded that the plaintiff was entitled to the escalation in terms of clause 10cc of the CPWD. He has given a finding that the shortfall leads to an inescapable conclusion that the work executed was not properly recorded or if recorded it was incorrectly omitted in compilation of assessment of the value of work. He proceeds to grant the difference of the amount, so also the escalation in terms of clause 10cc of CPWD. The finding of the Arbitrator in this regard would be relevant for the purpose of claim made by the plaintiff for payment for the balance of work done, and not paid including the escalation. To that extent, the finding of the learned Arbitrator needs to be upheld. The argument of the defendant that the finding of the learned Arbitrator does not have any reasonable basis, documentary evidence on record, is liable to be rejected, for two reasons; (1) the same is based on accepted position of the defendant; (2) the figures of Rs. 34.51 lakhs and Rs. 41 lakhs have not been contested by the defendant in the objections/submissions.

Provision of Electricity:-

67. On the aspect of electricity, the submission of the learned Senior Counsel based on Article 29 of the Contract to contend that the defendant was liable to provide electricity for site security only was rejected by the learned Arbitrator by stating that the same was misquoted. I reproduce the relevant Article i.e Article 29 as noted by the learned Arbitrator as under:-

“The owner shall make available to the contractor land, electricity, access to job site and site security for overall plant, site boundaries so far as they are applicable to the contract, power required for construction shall be arranged by the contractor”

68. Article 18 (ix) of NIT, as quoted by the learned Arbitrator reads as under:-

“The contractor shall be entitled to use such supplies of electricity and water as are arranged by the owner under the terms of this contract at the site for the purpose of the works and shall at his own expense receive such supply at the point or location provided by the owner/other contractors/vendors”

Clause 6.45 of the contract/NIT reads “Electric Power required for construction shall be arranged by owner to the contractor at his own cost”.

69. The learned Arbitrator was of the view that a conjoint reading of Article 29, Article 18, Sub-para (ix) of the NIT and clause 6.45 give a clear meaning to the Contract, in that the responsibility for providing

electricity to the plaintiff remained with the defendant. However, the supply was not to be free. The plaintiff was required to pay for it after arranging the distribution from the terminal to be provided by the defendant. I note that the plaintiff had written letters dated March 3, 1992, September 3, 1992 and February 13, 1993; C-14, C-15 and C-16 respectively to which no response denying the liability to provide electricity was given by the defendant. At least, nothing has been pointed out by the defendant. On this, the learned Arbitrator was justified in coming to the aforesaid conclusion.

Issue of Extension:-

70. Having heard the learned counsel for the parties, from the facts as noted above and also taken into consideration by the learned Arbitrator, it is clear that the delays occurred because of the defendant, which were justifiable grounds for the extension of time. The conclusion arrived at by the learned Arbitrator on the aspect of delay is not only confined to delay in issue of drawings but also delay in payment to the plaintiff, approval from BKDA, on the aspect of anti-termite treatment, inability to provide electricity, under such circumstances, the defendant was required to take a decision on the extension, which it failed to do.

71. Insofar as the submission of the defendant that the Arbitrator has ignored the admitted documents of the plaintiff's seeking extension of

time is concerned, suffice to state, the documents have to be read in perspective inasmuch as the plaintiff has not accepted that the delays are attributable to it. The plaintiff in the letter dated February 13, 1993 (Exh. C-16) would state that the extension of time limit due to hindrances beyond the control of the contractual agency, is justified. The plaintiff did not say that the delays were attributable to it. Similarly, the letter dated March 2, 1995 (Exh. C-42) would reveal that the plaintiff has stated that the work could not be completed within the stipulated period for various reasons including that the defendant did not have sufficient funds to support the project. There is nothing in the Exh.C-16, Exh.C-42 and Exh. C-43 which would have a bearing on the conclusion of the learned Arbitrator under this head. It is clear that the extension of time was necessitated for the delays attributable to the defendant.

72. On the aspect of non-renewability of bank guarantees and failure on the part of the plaintiff to execute/commence the work, which was stopped on February 28, 1995 is concerned, the same would not justify non extension of contract by the defendant. Surely the past conduct of the defendant has been such, there was apprehension. That apart, the said reasons are primarily grounds in relation to the termination of the contract by the defendant which have no bearing on the conclusion of the Arbitrator, that the defendant breached the contract by not granting

extension of time to the plaintiff before the expiry of the period in April 1993, otherwise, contractor had the option to rescind the contract, work under compensation or work without prejudice to claim damages.

73. According to the learned Arbitrator, the bargaining position could not have been adopted by the defendant. The Arbitrator was of the view that the defendant had not met its contractual obligation to decide the extension of time and has thus defaulted and breached the contract. The conclusion of the learned Arbitrator is justified in that regard.

Termination of Contract:-

74. Having heard the learned counsel for the parties, in view of the conclusion above, be that on the aspect of approval from BKDA, on the aspect of supply of drawings, on the aspect of provision of electricity, on the aspect of payment of bills, on the aspect of issue of extension, the conclusion necessarily be that the defendant cannot justify the termination as there was no fault on the part of the plaintiff. Even assuming that the plaintiff had stopped work much before the termination of the contract, the same is justifiable for the reasons aforementioned. The defendant was at liberty to get the balance work executed by a third party, which according to the Arbitrator, the defendant did not get executed, which is clear from the narration in the award of his visit to the site. The justification given by the defendant

that it was technically not feasible was not believed by the learned Arbitrator.

75. Insofar as the illegality pointed by the defendant on the finding of the learned Arbitrator is concerned, meaningfully read, the Arbitrator award must be read to mean the power of the defendant to terminate the contract, could not have been exercised in the given facts, more-so, when there is no extension of time.

76. It would not be relevant to go into the aspect of competency of the Company Secretary to terminate the contract, when on merit the termination was held to be unjustified.

77. The learned Arbitrator on each issue framed was of the following view:

- (i) The claimant has not breached the contract and did not fail to comply with the terms and conditions of the contract;
- (ii) The defendant has breached the contract and did not comply with the terms and conditions of the contract;
- (iii) The claims of the claimant are in consonance with the reference order and there is no bar to the claimant raising its claims;
- (iv) The respective claims/counter-claims are legally tenable;
- (v) The defendant has breached the contract and the breach

goes to the root of the contract, the claimant is entitled to compensation/damages.

Insofar as the stand of the defendant that the learned Arbitrator has not considered the following submissions of the defendant is concerned;

- (i) Failure to set up testing laboratory;
- (ii) Inadequate man power;
- (iii) Failure to submit chart;
- (iv) Submission of analysis of date for supply and consolidation of soil inside campus;
- (v) Supply of indemnity bond;
- (vi) Attempt to use material which were not in conformity with the specification;
- (vii) Failure to submit proper Bank Guarantee for mobilization advance and security deposit etc.

suffice to state, the plaintiff has some explanation to give inasmuch as insofar as the anti-termite treatment is concerned, its stand was, the defendant did not nominate any particular agency. The plaintiff negotiated with pest control company for executing the work and brought it to the notice of the defendant, who was at liberty to accept the said agency or nominate another agency of its own. The defendant took no action for almost three months in the matter, thereby causing disruption in the work. The plaintiff relied on its letters dated March 30, 1992 and April 8, 1992 in that regard. The defendant ultimately, allowed the plaintiff to carry out the anti-termite work itself, but the work got delayed. Even on the aspect of shingle is concerned, it was the stand of

the plaintiff which has been noted by the learned Arbitrator that there is undue delay by the defendant in taking decision to allowing the use of river borne aggregates instead of crushed aggregates. The specification in the agreement permitted use of coarse aggregate other than crushed stones conforming to provisions of specifications under specific conditions, if permitted by the Engineer-in-Charge. There were serious problems in the availability of crushed stone. Ultimately, it resulted in litigation before the Supreme Court. The Supreme Court prohibited quarrying/crushing activities. Therefore, the plaintiff requested the defendant to permit the use of river bed shingle instead of crushed stone aggregate. This substitute items was also provided in the specifications items 15(b)(i) of the N.I.T./contract. The defendant had to expeditiously decide in the matter, but failed and neglected to do so for over a period of 34 days. The defendant finally accorded permission vide letter dated July 4, 1992. Similarly, insofar as the aspect of the deployment of manpower by the plaintiff is concerned, there is a finding of the learned Arbitrator that the consultant never provided the name of its representative while the plaintiff did so. The plaintiff has been corresponding with the defendant/architect to arrange proper supervisory staff but the same was not heeded. At best, ad-hoc arrangements were made perfunctorily by the defendant, which denoted the lack of response

on defendant's behalf. It is also a finding of the learned Arbitrator that the defendant failed to establish proper supervisory establishment. In any case, I note that there is an answer of the learned Arbitrator on issue No. (a) i.e. whether the plaintiff had breached the contract and failed to comply with the terms and conditions of the contract. The answer was in the negative. That apart, on issue No. (b) i.e. whether the defendant has breached the contract and failed to comply with the terms and conditions, the learned Arbitrator answered the issue in affirmative. In view of the findings of the learned Arbitrator on different aspects, as noted above, which are in the nature of substantive compliances and not procedural which resulted in the delay in execution of work, this stand of the defendant needs to be rejected.

78. Insofar as the tenability of the claims are concerned, it is the submission of the learned Senior Counsel for the defendant that the claims have been decided by the learned Arbitrator on his whims and fancies and without any reasons or basis. He states, the learned Arbitrator while deciding the quantum of the claims has failed to give any specific reason for allowing or partially allowing the same and if the same have been partially allowed, the basis of the claims to be paid in that ratio.

79. I note in the written submissions filed by the defendant against

every claim, it is the submission of the defendant that no reasons afforded for allowing a particular claim.

Claim No.1 (Loss of Profit):-

80. The claim No.1 is in respect of loss of profit on account of wrongful termination of the contract by the defendant. The learned Arbitrator has granted the loss of profit at 10% of the balance remaining work taking into consideration the total work done was for Rs.41 lacs i.e Rs.200 lacs – Rs.41 lacs = Rs.159 lacs, 10% of 159 lacs= 15,90,000/-. There is no dispute on the quantum of profit to be earned and the amount of work done. I do not find any infirmity in the Award.

Claim No.2 (In respect of preliminary works vis temporary offices, temporary store,water storage tank, temporary water distribution lines and labour hutments):-

81. Insofar as claim No.2 is concerned, the claim of the plaintiff was premised on the ground that it had to carry out preparatory works for;

(a) Construction of temporary offices and stores for storage of cements, other articles to be incorporated in the works and for locating tools and plants;

(b) Construction of hutments was required by the contract. It was accordingly done;

(c) Construction of the tank for storage of water.

82. The case of the plaintiff was that it had incurred an expenditure of Rs.2 lacs. In fact, the plaintiff had also stated that it had incurred much

more cost for supply of materials, making of service roads etc. It is noted that in reply to the said claim, the defendant has, in its reply, admitted the fact, the construction of temporary offices and stores for storage of cement, other articles to be incorporated in the works and for locating tools and plants. It also admitted that the construction of hutments was required by the contract. No doubt, the defendant has denied the construction of tank for storage of water on the ground that the amount of Rs.2 lacs reflected in the claim, the claim be put to strict proof. The defendant's witness has, in his affidavit stated that the claim is admitted by the respondent to the tune of Rs.2,50,000/- and he qualifies the same by stating, it is the jurisdiction of the Arbitrator to adjudicate. The defendant witness has only objected to the construction of tank for storing water and laying of GI pipes. Be that as it may, even though the learned Arbitrator has not given any reasoning, as has been contended by the plaintiff that the reason for the learned Arbitrator to award Rs.1,70,130/- was, the learned Arbitrator after noting the claim is for Rs.2,14,000/- has reduced the claim of the plaintiff in the ratio of 159/200 considering the petitioner had taken the benefit of preparatory works while carrying out the works of Rs.41 lacs out of total Rs.200 lacs and for the balance amount, had granted an amount of Rs.1,70,130/- in terms of calculation – $2,14,000 \times \frac{159}{200}$. It does give a reasonable

basis for the learned Arbitrator to award the amount and being a plausible view, this Court would not like to interfere with the said award.

Claim No.3 (In respect of 25% costs of materials):-

83. Insofar as claim No.3 is concerned, which relates to 25% cost of the materials against which 75% secured advance was given, the case of the plaintiff was that it bought materials costing Rs.7,85,780/- and was given a secured advance of Rs.5,81,835/- as 75% of the cost. I note, the defendant witness Bishnu Chandra Das, as in his affidavit, has stated as under:-

“Submissions made against claim No.2 are reiterated subject to the claimant’s refund the balance mobilization advance outstanding against them. The respondents have no objection to the claimant taking away their material from the site after proper inventories are prepared as per details available with the respondents”

84. I note, the learned Arbitrator noted that the defendant had modified its claim. He calculated 75% of the balance cost of the material by dividing 5,81,835/- to arrive at an amount of Rs.1,93,945/- which is 25% of 7,85,780/-. I do not find any infirmity in the award. The objection is rejected.

Claim No.4 (In respect of payment for the work done, measured and approved for payment):-

85. Claim No.4 relates to Rs.5 lacs payable to the petitioner against the 6th RA bill. The bill was approved by the Architect. This amount of

Rs.5 lacs was short paid to the plaintiff, which has been granted by the learned Arbitrator. I do not find any infirmity in the award. The objection is rejected.

Claim Nos.5 & 6 (In respect of work done but not measured and paid for):-

86. These claims relate to work done but not measured and paid amounting to Rs.31,79,000/- and in respect of escalation of prices for the work done as per clause 10cc of the CPWD manual amounting to Rs.22,81,880/- respectively total of which comes to Rs.54,60,880/-. The learned Arbitrator referred to reference letter. The plaintiff had revised the claims during arguments to the extent of Rs.17,10,449/- and Rs.8,44,749/- totalling to Rs.25,55,198/-. The learned Arbitrator awarded an amount of Rs.9,97,067/-. Even though, no basis has been given but the plaintiff justified it by contending that the total work executed by the plaintiff as admitted by the defendant was for Rs.41,00,000/-, the total amount paid to the plaintiff for the work was Rs.31,02,933/-. The break-up being against RA bills 1 to 5 with escalation Rs.26,02,933/-, against Bill No.6 (awarded against claim No.4) Rs.5 lacs. So, $\text{Rs.41,00,000} - 31,02,933 = \text{Rs.9,97,067/-}$. The basis appears to be reasonable. I do not find any infirmity in the award. The objection is rejected.

Claim No.7 (In respect of expenditure on central offices/site overheads):-

87. The claim No.7 relates to the expenditure on central offices/site overheads. Even though the claim was for Rs.27,92,000/-. The plaintiff revised the claim to Rs.3,80,000/- during arguments. The Arbitrator awarded an amount of Rs.1,90,000/- i.e 50% of the claim made. There is no dispute that the contract went beyond the normal term of 18 months, more particularly, on a finding that the delay that has occurred is attributable to the defendant with which I have concurred, I do not find any infirmity in the award. The objection with regard to this claim is rejected.

Claim No.8 (In respect of expenditure on tools and plants and shuttering materials etc):-

88. The defendant in its reply to this claim had stated, that the plaintiff having originally included in the list of disputes, a claim of Rs.7,20,000/- the Arbitrator can adjudicate the claim to that extent only. The same is not an admission. The Arbitrator even though does not give any reasoning, has allowed/granted an amount of Rs.3,60,000/- (50% of the claim amount). The awarded amount has to be looked from the perspective that the contract got delayed for the reasons attributable to the defendant and that till the termination was effected, the material remained at the site, and remained unutilized. The defendant does not

dispute that such a claim is not maintainable. In the facts, the Arbitrator having awarded the said amount, which is a plausible view, no interference is called for.

Claim No.11 (In respect of tools, plants, machinery, equipment and shuttering materials taken possession by the defendant):-

89. This is a claim in respect of tools, plants, machinery, equipment and shuttering materials taken possession by the defendant pursuant to the termination of the contract. The defendant did not refute the inventory of the Articles nor the valuation thereof but took a plea, that this was not originally claimed, which plea was rejected by the learned Arbitrator. I note, in the reference letter dated August 7, 1995, the plaintiff/claimant had requested the defendant to remove the machinery, equipment, tools and plants, shuttering, scaffolding and other materials, the same appears to have not been allowed by the defendant, which resulted in the raising of claim No. 11. Further, the learned Arbitrator has held that the claim, corresponds to narration at page 6 of the reference letter. The plaintiff revised the claim to Rs.18 lacs. The learned Arbitrator has awarded an amount of Rs.9 lacs against this claim. The awarded amount is a plausible conclusion. This is a finding of fact and the Court would not like to interfere with the same.

Claim No.12 (In respect of refund of retention money withheld from RA bills):-

90. Even though, initial claim was for Rs.1,33,275/- which was revised to Rs.1,72,186/- which was disallowed. The defendant in the reply to the claim petition, has admitted that amount of Rs.1,07,021/- was deducted from the running bills paid upto April 15, 1993, the date of expiry of the contract, and it appears an amount of Rs.26,254/- deducted from the 5th RA Bill, and not accounted for by the defendant, as is seen from the submissions filed by the plaintiff in these proceedings, the amount of Rs.1,33,275/- was granted by the learned Arbitrator. The amount of Rs.26,254/- has not been disputed by the defendant. The award for Rs.1,33,275 is justified. The learned Arbitrator has allowed an amount of Rs.1,33,275/-. I do not find any infirmity with the award. The objection with regard to this claim is rejected.

Claim No.14 (In respect of interest):-

91. It is noted that the learned Arbitrator has granted an interest of 12% per annum with effect from August 7, 1995 till the date of the Award i.e October 31, 2007 on the amounts awarded in favour of the plaintiff. On failure to pay to the plaintiff within three months, the defendant has been directed to pay an interest @ 18% from the date of award till payment. In other words, w.e.f August 7, 1995 till October 31 2007, the learned Arbitrator has granted an interest @ 12% per annum

and future interest @ 18% in the eventuality the defendant fails to pay the amount within three months. The interest rate on deposits in terms of the notification issued by the RBI from time to time varied between 12% to 13% in the year 1995-96, thereafter it had shown a downward trend and in the year 2006-07 the interest rate on deposits varied between 7.50% to 9% and in 2007-08 it varied between 8.25% to 9%. The amount of interest granted by the learned Arbitrator of 12% per annum w.e.f August 7, 1995 till October 31, 2007 is on the higher side, so also the future interest granted by the learned Arbitrator. Both the interest rates are not justifiable. I reduced the interest w.e.f August 7, 1995 till payment at 9% per annum on the awarded amount. The award is modified to that extent.

Counter Claim No.1 (In respect of mobilisation of advance recovery):-

92. The same has been held to be pending and set off of Rs.15,95,019/- has been allowed by the learned Arbitrator. He has also held rightly that nothing is due to the defendant. The conclusion needs no interference.

Counter Claim No.2 (In respect of penalty for an amount of Rs.15 lacs):-

93. The same was rejected by the learned Arbitrator on the ground that no breach or levy against the plaintiff has been established. The conclusion is justified, calls for no interference.

Counter Claim No.3 (Payment of costs):-

94. The learned Arbitrator has not granted costs to the defendant. I note the cost was not granted to the plaintiff as well. Rejection of the counter claim for the costs is justified.

The objections of the defendant are disposed of in terms of the above.

CS (OS) No. 2343/2007

95. The award dated October 31, 2007 of Brigadier V.K. Sawhney (Retd.) as modified above, is made Rule of the Court. Decree sheet be drawn accordingly. The parties to bear their own costs.

(V.KAMESWAR RAO)
JUDGE

OCTOBER 12, 2015

ak/akb