

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

Reserved on: 12.05.2016

% **Decided on: 01.08.2016**

+ **FAO (OS) 93/2010**
RAJESH KHANNA Appellant

Through: Mr. Divyanshu Goyal with Ms.
Swati Jain, Advocate.

versus

NATIONAL AGRICULTURAL CO-OPERATIVE
MARKETING FEDERATION OF INDIA LTD Respondent

Through: Mr. A K Thakur, Mr. R K
Mishra and Ms. Rajeshwari Jha,
Advocate.

and

+ **FAO (OS) 317/2010**
SANDEEP KHANNA Appellant

Through: Mr. Mukesh Anand, Advocate.

versus

NATIONAL AGRICULTURAL CO-OPERATIVE
MARKETING FEDERATION OF INDIA LTD Respondent

Through: Mr. A K Thakur, Mr. R K
Mishra and Ms. Rajeshwari Jha,
Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

HON'BLE MS. JUSTICE DEEPA SHARMA (JUDGMENT)

1. The appellants challenge the order of a learned Single Judge dated 04.12.2009 (impugned order) which rejected their objections

under Section 34 of Arbitration and Conciliation Act (OMP No. 693/2009 and OMP No. 694/2009) to the award dated 24.04.2009.

2. The brief facts of the case are that the appellants and National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED), (a Cooperative Society duly registered under the Multiple State Cooperative Societies Act) entered into agreements (hereafter “MOUs”), pursuant to which ₹ 75 crores were advanced by the NAFED to M/s Rital Impex and ₹ 10 crores, to M/s Kripa Overseas. Certain Disputes arose between the parties under both the MOU’s.

3. NAFED filed an application under Section 9 (OMP No. 291/2006) and by order dated 06.07.2006 immovable properties were attached. When NAFED appointed the arbitrator under the MOU, M/s Rital Impex filed an application, (AA No. 271/2006, under Section 11) in the court for appointment of an Arbitrator. In those proceedings, Justice Devender Gupta, a retired Judge of this Court, was appointed as an Arbitrator to adjudicate upon the dispute between the parties. NAFED claimed ₹ 50 crores; M/s Rital Impex counter claimed ₹ 65 crores towards loss and damages suffered by it.

4. Another application, AA No. 68/2007 was filed by NAFED against Kripa overseas and by order dated 20.03.2007, Mr. Justice D.P. Wadhwa (Retd.) was appointed as a sole Arbitrator. NAFED complained to the police, which led to registration of FIR Nos. 474/2006 dated 26.08.2006 at Police Station Srinivaspuri for offences punishable under Sections 406, 420 read with Section 121-B of IPC against M/S Kripa Overseas, Sandeep Khanna and others and registration of FIR No. 223/2007 dated 18.05.2007 with Police Station

Srinivaspuri against Sh. Rajesh Khanna, proprietor of Rital Impex Limited for offences punishable under Sections 406, 420, 467, 468, 471 read with Section 120-B of the Indian Penal Code.

5. Negotiations ensued between the parties and all three, NAFED, M/s Rital Impex and M/s Kripa Overseas entered into a settlement dated 03.05.2007. Under the terms of settlement, besides Sh. Rajesh Khanna and Sh. Sandeep Khanna, proprietors of M/s Rital Impex and M/s Kripa Overseas, other family members and promoters/Directors of Rital Impex Limited, who owned/possessed the properties, also acknowledged and admitted and ratified the terms of settlement and agreed to be bound by the same. The settlement was produced before the Court of Sh. Vinod Kumar, Additional Sessions Judge, wherein the bail application in FIR No. 474/2006 was pending. The parties made a statement before the Court on 14.05.2007 acknowledging the settlement. Since the other family members of these two proprietorship concerns were not the parties of the MOU, they moved CM 5746/ 2007 for impleadment in OMP 291/ 2006. The learned single judge, by order dated 16.05.2007 allowed the impleadment of those individuals as parties and in the same order on another application CM 5743/ 2007 (for taking on record the settlement) observed that in view of the settlement between the parties, the proceedings before the Arbitrator had become redundant. The said application under Section 11 was disposed of with liberty to move appropriate applications seeking implementation of the settlement. The Arbitrator was also informed of the said settlement and in view of the settlement and order of the Single

judge dated 16.05.2007, the arbitral proceedings were adjourned *sine die* with liberty to the parties to apply for its revival.

6. Meanwhile, the Writ Petition (Crl) No. 461/2007 and Writ Petition (Crl) No. 785/2007 for quashing of FIRs were taken up for hearing on 02.04.2007. These proceedings were opposed by NAFED alleging failure on the part of the two concerns and their proprietors to honor the commitment in the settlement. During those proceedings, the appellants agreed that the liability could be discharged by way of sale of the properties under attachment by public auction. Pursuant to order dated 24.03.2008, of the court the petitioners and other owners of the attached properties filed their affidavits on 04.04.2008 and also made statements recorded in the Court whereby all of them had categorically conveyed their no objections to the sale of the properties in public auction. Ms. Justice Sharda Aggarwal, (Retd) was appointed as a Court Observer to oversee the auction and the NAFED was also directed to appoint a Government approved auctioneer for valuation of the property.

7. Subsequently, an application IA No. 7484/2007 was filed in disposed of OMP No. 595/2006 requesting the clubbing of the two references and to refer the same to one Arbitrator and to terminate the mandate of Mr. Justice D.P. Wadhwa. The Court terminated the mandate of the said Arbitrator and assigned his reference to Mr. Justice Devender Gupta (Retd.) who had to draw an award in terms of settlement. The said Arbitrator then entered upon the merits of the two references i.e. of M/s Rital Impex and M/s Kripa Overseas. An application was filed in the arbitral proceedings urging it to adjudicate

upon the counter claim of M/s Rital Impex and M/s Kripa Overseas and NAFED's claim for interest. In its reply, NAFED took the plea that all the disputes between the parties were ended by settlement dated 03.05.2007 and no dispute, claim or counter claims had survived and that M/s Kripa Overseas and M/s Rital Impex had acknowledged the amount payable by them as a principal sum and as an interest and as service charges with future interest in case of default by signing the said settlement and urged the arbitrator to pass the award in terms of settlement with modifications as agreed to in the manner of recovery which was by way of the sale of the properties in public auction.

8. After hearing the parties at length, and considering the materials on record, the learned Arbitrator concluded that in view of the settlement dated 03.05.2007, whereby M/s Rital Impex through its sole proprietor Sh. Rajesh Khanna had confirmed and acknowledged his dues worth ₹ 34.74 crores under the MOU payable to NAFED and ₹ 15.85 crores towards interest and service charges (Interest Charges ₹ 14.49 crores and service charges as 1.36 crores) till 30.4 2007; M/s Kripa Overseas through its sole proprietor, Sh. Sandeep Khanna, confirmed and acknowledged its dues till 30.04.2007 under the MOU payable ₹ 8.47 crores towards principal balance and Rs. 2.61 crores towards interest and service charges (Interest Charges ₹ 2.46 crores and service charges ₹ .015crores) and thus totaling ₹ 43.21 crores towards principal and ₹ 18.46 crores towards interest and service charges, there remained no dispute between them and all their claims and counter claims stood settled.

9. The Arbitrator also noticed that subsequent developments showed that the manner of liquidating the liabilities was changed. Earlier the appellants were to sell their properties themselves, subsequently they agreed for the sale of the properties through public auction. Considering all these and the other relevant facts, the learned Arbitrator concluded that the scope of arbitral proceedings was limited one - only to record the settlement between the parties and to proceed to make an award in terms thereof. Accordingly, in terms of the settlement between the parties, the learned Arbitrator passed the award in favour of the NAFED and against Sh. Rajesh Khanna, sole proprietor of M/s Rital Impex and Sh. Sandeep Khanna, sole proprietor of M/s Kripa Overseas, jointly and severally to pay the outstanding amount of ₹ 43.21 crores as principal and ₹ 18.46 crores as interest as on 30.04.2007 with further interest at the rate of 15% per annum on and from 01.05.2007 on the diminishing balance basis till the date of award and future interest at the same rate from the award till payment and also allowed the adjustment of the payments received by NAFED from respondents after 30.04.2007. The learned Arbitrator also held that Respondents 3 to 10 (in the arbitral proceedings) were bound by their commitments and the NAFED was also entitled to recover the outstanding amounts by the sale of the properties mentioned in the deed of settlement by public auction as agreed and ordered by Mr. Justice S.L. Bhayana in his order dated 04.04.2008 along with the cost of the arbitration. M/s Kripa Overseas through Mr. Sandeep Khanna and M/s Rital Impex through Sh. Rajesh Khanna challenged the award in OMP No. 693/2009 and OMP No. 694/2009.

10. The award was challenged on three main grounds under Section 34 of Arbitration and Conciliation Act. The first ground of challenge was that the interest at the rate of 15% per annum has been wrongly awarded in violation of the terms of settlement-dated 03.05.2007. It was contended that the interest was payable only on default in payment by the petitioners and that there was no default on the part of the petitioners and so the grant of interest by the Arbitrator was beyond its jurisdiction. It was also submitted that the parties were also entitled to the waiver of 50% of the interest amount in terms of the settlement.

11. The second ground of challenge was that the order dated 04.04.2008 passed in the criminal writ petition could not be termed an amendment of the settlement dated 03.05.2007 and that the Arbitrator had erred in recording in its award that the order dated 04.04.2008 in the criminal writ proceeding had become an integral part of the settlement dated 03.05.2007. The third ground was that the findings of the Arbitrator that the counter claim did not survive in view of the settlement dated 03.05.2007 and modification in view of the order, dated 04.04.2008, was unsustainable. The respondent NAFED besides controverting the contentions of petitioners had also contended that the petitions were barred by time since it was filed beyond 90 days plus 30 days, (the period of limitation for filing the objections under Section 34(3) of Indian Arbitration Act) and thus liable to be dismissed solely on that ground.

12. The single judge- by the impugned judgment, held that the petitions/objections, as they were filed on 24.11.2009 i.e. beyond the period of four months as laid down under Section 34(3), from date of

award dated 24.04.2009 and parties receiving copies on same day, were clearly time barred liable to be dismissed. However he did not rest the impugned judgment solely on this ground but decided the matters on the merit. The impugned judgment is questioned on the ground that that the single judge upheld a wrong construction of terms of settlement and erroneous appreciation of facts.

13. Mr. Mukesh Anand, learned counsel for appellants, urges that the Single judge fell into error in overlooking that the Arbitral Tribunal did not apply its mind and adjudicate upon the counter claim. The appellants argue that when the dispute was referred to the Arbitrator for adjudication, besides NAFED' claim, the appellants too had filed counter claims and when the matter was referred back, the Arbitrator ought to have adjudicated the counter claims of the appellants and should not have confined itself to passing the award on the basis of settlement dated 03.05.2007. It is urged that despite the settlement between the parties, the counter claims survived and thus the award passed without adjudicating the counter claims, stands vitiated and the order of the single judge upholding the findings of arbitrator on this count is liable to be set aside being illegal and contrary to law.

14. It was next urged that in terms of the settlement, the payment toward liquidation of the appellants' liabilities was subject to sale/mortgage of properties, i.e. No E-19, East of Kailash, New Delhi-110065 and Mohan Cooperative Industrial Area respectively. As these properties could not be sold for the reasons beyond their control, no liability could be fastened on the appellants and it was because of this reason that the criminal Court directed the sale of these properties by

public auction. These facts clearly showed that the payment was subject to sale of the properties and thus the findings of learned Single Judge confirming the finding in the award -that the petitioners had defaulted in payments-is contrary to the terms of settlement and thus liable to be set aside.

15. The next contention urged is that the settlement deed could not have been modified by the order of the Court dated 04.04.2008 in W.P.(Criminal) No. 461/2007 and the observations of the Arbitral Tribunal and the Single Judge that the petitioner had agreed and had never challenged to this modification is unsustainable. It is submitted that by no stretch of the imagination can a validly and consciously negotiated agreement, be modified by an order of Court. Such order – to the extent it has no consent of the parties and is without volition, but on account of compulsion and threat of criminal proceedings, is not binding. Therefore, the award- and the impugned judgment are unsustainable on this score. It was lastly argued that the court fell into error of law in upholding award of interest; the parties never agreed upon such interest.

16. Mr. A.K. Thakur learned counsel for NAFED opposes the appeals, urging that they are without merit. It is submitted that interpretation of contract is within the exclusive jurisdiction of the Arbitral tribunal. Learned counsel submitted that the single judge dealt with the question as to whether the appellants' counter claim was maintainable and could be adjudicated and correctly concluded that once the settlement recorded that the parties had resolved all their differences, the terms of such agreement subsumed pending claims of

each against the other. Only those amounts shown as outstanding and admitted by the parties were payable. Since NAFED's liability was not shown there was no question of the appellant claiming it, once the settlement gave up such claims. It was submitted that there was no attempt by the appellants to urge that the settlement recorded before the single judge was under duress; the orders recording such settlement had become final. That order could not be re-opened, considering that the appellants' statements were recorded in court. Therefore, those terms had to be honoured and could not have been resiled from. As to interest, it was submitted that the calculation of interest and the award based on it, were in turn based on the settlement. The plain terms of the settlement showed that the appellants were liable to pay interest at specified rates in the event of default in payment of the principal liability. Since these related to interpretation of contract terms, court interference under Section 34 was unwarranted. Learned counsel urged lastly that unless an award disclosed- on the face of the record, patent illegality or unreasonableness in regard to the findings, or was contrary to contract, it was not liable to interference.

17. Under Section 34 of the Arbitration and Conciliation Act (hereinafter referred to as "the Act"), the Courts' power to interfere is narrowed down to challenges where the award is against the public policy or has been passed in violation of the prescribed procedure. An award can be said to be against Public Policy if it is patently illegal. What is "public policy" has been discussed by the Supreme Court in *Oil and Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.*, AIR 2003 SC 2629. The court has held that the expression "Public Policy of

India” has a wider meaning and that an award which is, on the face of an award is in violation of statutory provisions, contrary to public interest in the sense that it opposes public good, it can be said to be contrary to “public policy”. It was further held by the Court that if the illegality goes to the root of the matter then the award can be held against the public policy. The award should be unfair and unreasonable to the extent that it shocks the conscience of the Court to be termed as the award against the public policy which can be interfered with. The legal position determining the extent to which the Courts can interfere with the award has been crystallized by Supreme Court in ***Steel Authority of India Ltd. Vs. Gupta Brother Steel Tubes Ltd*** (2009) 10 SCC 63 which reads as follows:-

“18. It is not necessary to multiply the references. Suffice it to say that the legal position that emerges from the decisions of this Court can be summarised thus:

(i) In a case where an arbitrator travels beyond the contract, the award would be without jurisdiction and would amount to legal misconduct and because of which the award would become amenable for being set aside by a Court.

(ii) An error relatable to interpretation of the contract by an arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award.

(iii) If a specific question of law is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law does not make the award bad on its face.

(iv) An award contrary to substantive provision of law or against the terms of contract would be patently illegal.

(v) Where the parties have deliberately specified the amount of compensation in express terms, the party who

has suffered by such breach can only claim the sum specified in the contract and not in excess thereof. In other words, no award of compensation in case of breach of contract, if named or specified in the contract, could be awarded in excess thereof.

(vi) If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award.

(vii) It is not permissible to a court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings.”

18. In ***J.G. Engineers Private Limited vs. Union of India and another***, (2011) 5 SCC 758, the Supreme Court held that the award cannot be set aside unless the unfairness and unreasonableness shocks the conscience of the Court. Thus the scope of the Court to interfere with an award of the Arbitrator is circumscribed to where the award can be said shocks the conscience of the Court and where it is patently illegal. It is also a settled proposition of law that in a challenge under Section 34 of the Act, the Courts do not exercise appellate jurisdiction and re-assess and re-appreciate the evidences. Even if a different opinion is possible, the Courts are not to substitute their opinion to that of the Arbitrator (reliance is placed in the case of ***P.R. Shah, Shares & Stock Brokers Pvt. Ltd. vs. B.H.H Securities Pvt. Ltd & Other*** (2012) 1 SCC 594).

19. In the light of these settled propositions of law, this court is to examine if the ld. Single judge overlooked any error apparent on the face of the award or any patent illegality in it. The first contention of the appellants is that when the dispute was referred to the Arbitrator for adjudication, besides NAFED filing its claim, they too preferred

counter claims and when the matter was sent back to the Arbitrator, he ought to have adjudicated the counter claims of the appellants and should not have confined itself to passing the award on the basis of settlement dated 03.05.2007. It is urged that despite the settlement between the parties, the counter claims survived and thus the award passed without adjudicating the counter claims, stands vitiated and the order of the single judge upholding the findings of arbitrator on this count is liable to be set aside being illegal and contrary to law.

20. The Arbitral Tribunal, before which this issue was highlighted, *inter alia*, that with the settlement between the parties, only those amounts which were to be paid by the appellants to NAFED had been settled and acknowledged and the other claims and counter claims were not given up had rejected the contentions. The Ld. Arbitrator reproduced the terms of settlement in its award which reads as under:-

In order to better understand the respective submission, I am quoting in extensor the relevant parts of the settlement arrived at between the parties, as under:-

“The outstanding dues are proposed to be settled in the following manners.

- 1) Since there is a liquidity crunch, and therefore, the proposed settlement amount has to be paid from disposal of properties, which are subject matter of attachment. Till the time the payment is made to NAFED, sufficient security either in the form of property security or Bank Guarantee or any other tangible security shall be provided to NAFED. Upon payment of the amount, the security to that extent shall be refunded back. The owners of the properties, which are subject matter of attachment, have given personal guarantee for repayment of dues to NAFED.*

- 2) *Rs. 5 crores shall be paid within 30 days from the date permission is granted by the Hon'ble Court for sale of property bearing No. E-19, East of Kailash, New Delhi- 110065. For that owner of this property shall give an undertaking before the court that upon disposal within 30 days Rs. 5 Cr. shall be paid to NAFED.*
- 3) *Rs. 20 Cr. shall be paid within next 60 days upon raising loan by mortgaging the property bearing No. A-13/B-1 and E-15/B-1, Mohan Co-operative Industrial Estate, Mathura Road New Delhi-11004. For this purpose M/s Rital Impex will provide copy of the sanctioned and release orders issued by the concerned bank along with an undertaking that aforesaid money will be paid to NAFED as per above admitted dates.*
- 4) *Payment of balance principal amount of Rs. 18 Cr. shall be paid after 90 days in three equated monthly instalments of Rs. 6 Cr each. The titled deed of property namely E-18 East of Kailash New Delhi is already deposited with NAFED with an intention to create equitable mortgage in favour of NAFED. The title deed of another property bearing number F A/B-1 Ext. Mohan Co-Operative Industrial Estate, Mathura Road, New Delhi has been lost we have applied for certified copy of the title deed. Photocopy of the title deed of the said property is hereby enclosed with an intention to create mortgage to secure payment of outstanding amount payable to NAFED in terms of this offer. Original receipt of application for certified copy is enclosed herewith and we authorize NAFED to receive the certified copy directly from the concerned office and retain the said title deed by way of equitable mortgage. It is also confirmed that these properties have not been mortgaged anywhere to any institution/persons by any of the owners of*

the properties and are free from all encumbrances. Undertaking from the all property owners duly notarized are attached ANNEXURE-II.

- 5) It is requested that conceding to the present financial condition of M/s Rital Impex and M/s Kripa Overseas only 50% of the interest charges to be charged from us. It is further requested to waive off total service charges of NAFED. For 50% of interest i.e. Rs. 8.48 Cr., sufficient security to the satisfaction of NAFED shall be given till the mutually settled amount is paid.*
- 6) To begin with, both parties shall move a joint application before the Hon'ble High Court of Delhi for removal of injunction w.r.t. property bearing No. E-19, East of Kailash, New Delhi – 65. After getting order from Hon'ble Delhi High Court payment of Rs. 5 Cr. shall be made to NAFED immediately not exceeding 30 days.*
- 7) Original title deeds of properties bearing No. E-18, East of Kailash, New Delhi-110065 and E-16/B-1 Mohan Co-operative Industrial Estate, Mathura road, New Delhi- 110044 have already been handed over to NAFED in order to create equitable mortgage. The title deed of E-18, East of Kailash and New Delhi- 110065 was deposited with NAFED by Shri. Rajesh Khanna and other co-owners have acknowledged consented and ratified action of Rajesh Khanna for creating the said mortgage. The said consent letters of the co-owners are enclosed herewith as ANNEXURE III.*
- 8) Property namely, E-1,6/B-1, Mohan Co-Operative Industrial Estate, Mathura Road, New Delhi- 110044 is partially owned by Kamal Khanna and who is a promoter, shareholder and Director of M/s Rital Impex Ltd, a closely held company of the family and Kamal Khanna is also*

father of Sandeep Khanna, Sole Proprietor of Kripa Overseas. The consent letter of Kamal Khanna acknowledging, admitting and ratifying the creating of the mortgage of the property is enclosed herewith and marked as ANNEXURE IV.

- 9) Besides that the original documents of E-18, East of Kailash, New Delhi and FA/B-1, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044 (certified copy of the documents as applied to DDA New Delhi will be provided to NAFED) shall be retained with NAFED in order to secure them till full and final payment is being made or in the alternative security in the form of Bank Guarantee or other tangible security can be furnished till the discharge of the total liability.*
- 10) Once our proposal is considered for repayment of the principal amount in the manner indicated above. NAFED may charge interest @ 15% per annum on the diminishing balance basis in case of default and in that event entire amount shall become due and payable.*
- 11) We also understand that we shall not be entitled for any relief in case we default in repayment of outstanding dues as committed by us. However, 50% interest payable will be reviewed on completion of payment of principal amount.*
- 12) We further undertake to create second charge on the properties of E-19, East of Kailash, New Delhi-65, A-13/B-1, Mohan Co-operative Industrial Estate and first charge on the property of FA/B-1, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi from ROC and to provide evidences accordingly to NAFED.*
- 13) NAFED shall withdraw all legal cases in the courts all over India/Police/EOW/CBI or any other agency that may be involved by NAFED or*

otherwise, after entire payment is made in terms of the offer for settlement.

- 14) *That we may be allowed to replace any co-lateral during the course of repayment to the satisfaction of NAFED.*

“It may be pertinent to mention here that we have already deposited an amount of Rs. 5 lacs in account of M/s Kripa Overseas vide two different pay orders of Rs.4 Lacs and 1 Lacs each. Also Rs.25.15 Lacs in the account of M/s Rital Impex has been deposited for purchase of our own Hing Stocks which will be accounted for towards first instalment of Rs.5 Cr to be paid by us against sale of Property bearing No.E-19, East of Kailash, New Delhi-65.

These properties are owned by Sole Proprietors and their family members or other entities closely held by family members and a resolution and/ or authorizing and/or rectification of the owner to create equitable mortgage with respect to their properties with NAFED to secure the debt of NAFED is annexed hereto and marked as Annexure.

We the owner/Co-owners of the respective properties are willingly and with our full knowledge and out of our own will are mortgaging/transferring properties are referred to before to NAFED without any pressure, duress, coercion or influence from any quarter/side. We are doing this in the interest of our family members who are the sole proprietors of the above mentioned firms towards settlement of their outstanding dues towards NAFED”.

21. After noting the terms of settlement between parties, the learned Arbitrator held as follows:-

In the settlement arrived at between the parties in terms as recorded in the settlement deed dated 3rd May, 2007, both M/s. Rital Impex and Kripa Overseas confirmed the total balance principal outstanding payable to NAFED as on 30th April, 2007. M/s. Rital Impex through its sole

proprietor Shri .Rajesh Khanna confirmed and acknowledged that as on 30th April. 2007, the total principal balance outstanding as per the terms of MOU to NAFED was Rs.34.74 Crores and Rs.15.85 Crores towards interest and service charges. ((Interest Rs.14.49 Cr. and service charges Rs.1.36 Cr.), Similarly, M/s, Knpa Overseas through its sole Proprietor Shri Sandeep Khanna also confirmed and acknowledged that as on to 30th April' 2007 the principal balance outstanding payable as per the terms of MOU to NAFED was Rs.8.47 Crores and Rs.2.61 Crores towards interest and service charges, (Interest Rs.2.46 Crores and service charges Rs.015 Crores). Both of them confirmed and acknowledged that as on 30th April, 2007 Rs.43.21 crores towards principal and Rs.18.46 as interest and service charges were outstanding and payable by them jointly to Nafed.

The amount of principal and interest was agreed to be discharged by both M/s.Rital Impex and Kripa Overseas in the manner, as mentioned in the terms of settlement. The terms of settlement nowhere suggest that M/s Rital Impex or Kripa Overseas intended to or keep their counter claim alive against NAFED. An application was jointly moved by the parties (I.A.5743 of 2007 in O.M.P.No. 291 of 2006.) praying for taking the settlement and other incidental documents on record and to pass appropriate order/direction for implementation of the terms of settlement and further direction that the Respondents should be bound by the undertaking given before the Court. Even in the application moved before the court nowhere the parties mentioned that any part of the dispute or difference, including the counter claim of the respondents had been kept alive. The relevant portions of the application read:

"2. During the pendency of the aforesaid Petition, Respondent and Guarantors have come out with a proposal for settlement. The offer for settlement has been given jointly by Rital Impex of which Respondent is the

Sole Proprietor and also by another entity by the name of Kripa Overseas of which Sandeep Khanna is the Sole Proprietor. It is also pertinent to mention that the joint offer given on behalf of Rital Impex and Kripa Overseas have the consent, approval, ratification of the other guarantors and the company, or other entity where the Respondent is having substantial stake,

3. So far as dispute pertaining to Kripa Overseas is concerned the same has been referred to the arbitration where Justice D. P. Wadhwa, Retired Judge of Hon'ble Supreme Court was appointed as Arbitrator. With regard to dispute with the Respondent, the same has already been referred to Justice Devinder Gupta, (Retired) Former Chief Justice of /Andhra Pradesh High Court. Since the proposal is joint and, comprehensive and therefore, parties to this dispute have decided to move a joint application for termination of mandate of Justice D.P. Wadhwa and for reference of that dispute to Justice. Devinder Gupta so that in terms of settlement arrived between the parties appropriate orders and / or award would be passed by the same Arbitrator. Otherwise that will lead to multiplicity of proceeding and further complication in the matter.

4. The joint proposal for settlement was given by both the parties i.e. Rital impex and Kripa Overseas admitting and confirming their respective liability of principal amount Rs.34.74 crores and Rs.8.47 crores respectively as on 30.4.2007. Besides that they have also admitted the liability on account of interest and service charges to the extent of Rs.15.85, crores and Rs.2.61 crores respectively. After having confirmed and admitted the aforesaid liability the Respondent have agreed to settle "the aforesaid liability in terms of their proposal, the said proposal in original is annexed hereto and marked as ANNEXURE P-1. The said proposal is also admitted and ratified by the owners of the respective properties. The relevant resolutions of the company for the purpose of execution of settlement are collectively filed and annexed hereto and marked as annexure P-2.

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7. *The terms of settlement may be read as part and parcel of this application and the same may be taken on record. Parties further undertake to comply with the terms of settlement.*

8. *The parties also undertake to file joint application before the Arbitrator for appropriate directions, orders and/or award at appropriate stage, for enforcement of the settlement.”*

21. The above findings of the Arbitrator were challenged before the learned Single Judge who had dealt with these contentions and held as under:-

“10. Taking the last point first, the Arbitrator held that counter claims which were filed in the arbitration proceedings being prior in point of time than the settlement dated 3.5.07 merged in the settlement as arrived at on 3.5.07 and as per which settlement the sole proprietors admitted their liability to the respondent to the tune of approximately Rs.63 crores. I do not find any fault whatsoever in this finding of the learned Arbitrator inasmuch as even before me it is not disputed that the settlement dated 3.5.07 was entered into between all the concerned parties. Once a settlement has been arrived at and in which it is categorically stated that the amounts are payable by the petitioners, its relatives etc., it does not lie in the mouth of the petitioner to contend that the counter claims survive. If that was so, a clear statement should have been made to that effect in the settlement dated 3.5.2007 and in fact even-subsequently thereafter till 4.4.08 when the settlement was slightly modified when the sale of the properties were directed to take place through public auction and not by the parties themselves. This contention that the counter claims therefore survive is clearly misconceived and mala fide and deserves outright rejection. I may also note that the order dated 16.5.2007 passed in the joint application of the parties for recording

the settlement also records that all the disputes which were referred to arbitration have been settled, All the disputes before the Arbitrators naturally would include the counter-claims. It is quite clear that the sole proprietors and the other related persons having taken the benefit of the settlement by not only postponing the repayment of the dues but getting the benefit of not being arrested are now seeking to blow hot and cold and avoid their liability, in terms of the settlement dated 3.5.07 and as modified by the order dated 4.4.08. This objection is therefore misconceived and hence rejected. ”

22. There is also no dispute about the fact that at the time when the petitioners moved the joint application along with NAFED for bringing the settlement on record, they used the expression “all disputes are settled”. It was on this application that the order dated 16.05.2007 was passed by the Court:-

“IA No. 5743/2007 & OMP No. 291/2006

*By this application parties have placed on record the settlement arrived at between the parties including added parties. The application is accompanied by affidavits of the parties and the settlement arrived at. The settlement is signed by the respondent as well as Mr. Sandeep Khanna as regards other respondents they have given individual guarantees and undertakings for implementation of the settlement. The settlement is sought to be implemented through Court. Since, the parties have arrived at a compromise in respect of the entire dispute, which was referred to the Arbitrator, the settlement is considered as the final settlement of dispute between the parties and **the proceedings before the Arbitrator therefore have become redundant.** The settlement is to be implemented by parties in phases. The first phase is sale of property no. E-19, East of Kailash, New Delhi which was attached by this Court. The respondent has to pay Rs. 5 crores within 30 days from today after sale of the property.*

Respondent is given permission to sell this property, the attachment is lifted for this purpose and the payment of Rs. 5 crores be made in terms of the undertaking within the period specified. This OMP is disposed of with liberty to the parties to move appropriate application seeking implementation of the compromise.

Dasti.”

23. The Single judge also observed that the proceedings before the Arbitrator had become “redundant” in view of the settlement and at that time the Appellants had not contented that their counter claims had survived despite the settlement. The Arbitrator, in view of the settlement, had adjourned the matter *sine die*. The appellants did not object to the said order and did not seek adjudication of their counter claim but allowed the proceedings to be adjourned *sine die*. It was observed that for the first time when the matter was sent back by the Court for passing an award in terms of settlement, the appellants urged this objection. Significantly, the settlement relates to all the disputes arising out of the MOU’s and addendum dated 20.09.2004, 27.02.2004 and 01.03.2004. Since the parties by virtue of the settlement had sorted out all their disputes arising of MOU’s, it could not be said that any dispute had survived between the parties under the said MOU. It is further apparent that the M/s Rital Impex was advanced a sum of ₹ 75 crores and M/s Kripa Overseas- a sum of ₹ 10 crores, thus totaling about ₹ 85 crores by the NAFED and the settlement amount is ₹ 43 crores plus interest of about ₹ 17 crores and service charges of about ₹ 1.5 crores.

24. In the light of these facts, it is apparent that the appellant's plea is meritless and frivolous. This court, therefore, rejects the submission that the failure to consider the appellants' counter claim vitiates the award. The reasoning in the award and the impugned judgment, on this aspect are sound; the award cannot be termed patently illegal or unreasonable.

25. The Appellants urged that they never defaulted in the payment and had made the payments as per the terms of settlement. It was argued that in terms of settlement, payment was subject to sale/mortgage of properties i.e. E-19, East of Kailash, New Delhi-110065 and Mohan Cooperative Industrial Area respectively. Since the properties could not be sold for the reasons beyond their control, liability could not be fastened on them. As the sale was to be through public auction, the appellants could not be found fault with. The appellants argue that the award and the impugned judgment are in error in overlooking this vital aspect.

26. NAFED had urged that in terms of the settlement, the Appellants were required to make the payment in time bound manner i.e. ₹ 5 crores was to be paid within 30 days and ₹ 20 crores within 60 days and balance of ₹ 18 crores after 90 days in three equal installments of ₹ 6 crore each. It is submitted that payment was not subjected to sale of any property and since the appellants were facing crunch of money, they were under the settlement given several benefits including 50% concession of the interest charges and payment of interest on unpaid amount with diminishing balance at the rate of 15% in case of "default" only. The two properties were attached by the Court and in order to

make it convenient for appellants, who were facing financial crunch, and it was agreed that the property be released to them but the payment was independent of the release of the property.

27. There can be no denial that under terms of the settlement interest was payable only in case of default in payment by the appellants. On this issue after hearing the parties the learned Arbitrator had recorded the submissions of appellants as under:-

“He also submitted that one of the benefits under the compromise is the settlement of principal amount and interest payable in different phases. The liability is to be liquidated as per the terms and conditions of settlement. Only in the event of defaults/non-performance of Therefore, interest can be levied otherwise benefit has to accrue to the respondent. It will be incumbent for the Arbitrator to adjudicate upon whether there has been default on the part of which of the parties and then to adjudicate upon the principal and interest due and payable by the respondent.”

28. After considering all the relevant facts on record, the learned Arbitrator proceeded to deal with those contentions in the following manner.

“It is an admitted fact that for one reason or the other, the respondents could not and were not able to strictly adhere to the terms of settlement by making payments, within the time, as stipulated in the terms of settlement. There were defaults. Whether defaults were deliberate, bonafide or intentional, is not subject matter of the arbitral proceedings. The scope of the arbitral proceedings now is limited as directed in the order passed on 24th April, 2008.”

29. The said findings were challenged before the learned Single Judge who dealt with is extracted below-

“13. I am of the firm opinion that this contention that no defaults have been committed is clearly misconceived because a reading of the various clauses clearly show that one is the factum of payment within a time and the second is the manner by which repayment has to be made. The manner of repayment viz by the sale of the properties cannot be confused with the factum of the time of repayment. The time of repayment runs independently and disposal of the properties was only a manner and method of repayment of the dues as per the schedule of payment fixed. I do feel that the terms of the settlement have to be read in a practical way and which has been so done by the Arbitrator by holding that defaults have been committed in view of the non-payment of the installments of Rs.5 crores, 20 crores and 18 crores within a period of 30 days, 60 days and 90 days as stated in the clauses 2 to 4 of the settlement dated 3.5.07. Any other interpretation would lead to an absurdity because the same would mean that payment of the dues is indefinitely postponed depending upon the uncertain factors governing the sale of the immovable properties. In this regard I feel that there is one aspect which totally clinches the issue against the petitioners and which is that the petitioners themselves treated non-payment within the time as default inasmuch as they themselves regularly and repeatedly applied for extension of time and with respect to which requests for extension of time various orders were passed from time to time viz on 25.10.07 in Bail Application No.2339/2007 of Justice V.B. Gupta of this Court, an order dated 14.12.07 passed in LA. No.5743/07 in O.M.P. No.291/06 by Justice Aruna Suresh of this Court and the order dated 3.1.08 passed by Justice Muralidhar in Bail Application No.2339/07, and which are some of the orders among others. If the contention of the petitioner was correct that it was only after sale of the properties would the issue of

default arise, then, there was no reason why the petitioners applied and sought for repeated extensions of time. The petitioners, therefore, themselves have understood and acted upon the settlement in that the amounts became payable in terms of the time schedule fixed and which was not relatable to the sale of the immovable properties. How the parties act pursuant to a settlement is very much a factor for interpreting the settlement and so was held by the Supreme Court in the judgment reported as Godhara Electricity Company Co. Ltd Vs. State of Gujarat (1975) 1 SCC 199. This objection that defendants have not been committed default is therefore rejected.”

30. On a plain construction of the contract –upon a conjoint reading of Clause 2 and Clause 6 of the settlement dated 03.05.2007- it can be seen that ₹ 5 crores were to be paid within 30 days from the date of release order of property No E-19, East of Kailash by Court. It doesn't contemplate in any manner that ₹ 5 crores were to be paid within 30 days from the sale of the property. Clause 2 contemplates- ₹ 5 crores shall be paid within 30 days from the date permission is granted by the court for sale of property. Clause 6 speaks of the parties moving a joint application for lifting of injunction order and then it provides that after obtaining orders from the court payment of ₹ 5 crore shall be made to NAFED *immediately* not exceeding 30 days. The terms of the settlement are unambiguous and forthright about payment and the time schedule. Parties also understood these conditions in this manner which is why after release of the property no. E-19, East of Kailash, New Delhi-110065, the appellants had been moving applications for extension of time for payment of ₹ 5 crores. No other interpretation can be given to the payment schedule. Also Clause 4 required the

balance principal amount of ₹ 18 crores to be paid after 90 days in three equal monthly installments of ₹ 6 crore each. This payment is not connected to sale/mortgage of any property and the amount became payable within 90 days of order of release of East of Kailash property which apparently was not done. It is apparent that the appellants had not observed their payment schedule and had not made any payment within the timeframe agreed upon by them.

31. The appellants' next contention was that the settlement deed could not have been modified by the order of the Court dated 04.04.2008 passed in W.P.(Criminal) No. 461/2007 and the observation of learned Arbitrator and the Single Judge that the petitioner had agreed and had never challenged to this modification is wrong. This court notices that the arbitral tribunal, in the award, answered the issue in these terms:

“After the parties settled the disputes and differences, as incorporated in Settlement deed dated 3rd May, 2007, there have been further developments as well. Due to those developments the parties have mutually agreed for change/modification in some of the terms of settlement in the matter of liquidating their liability. Instead of the respondents themselves selling their properties or raising further loan against their properties, they agreed to the sale of the properties by NAFED through public auction, This will be evident from some of the orders of the courts and the undertakings filed by the respondents in court proceedings by filing affidavits. This further development, modifying/altering some of the terms of settlement deserve to be noticed:

When the respondents could not generate funds by sale of the property, as agreed by them and failed to adhere to the terms of settlement by not making payment of

the due amount, within the stipulated period, as agreed, various orders came to be passed from time to time granting further time to the Respondents on their undertaking. Orders passed on 25th October, 2007 in Bail Application No.2339 of 2007 by Justice V.B. Gupta; on 14th December, 2007 in IA N.0.5743 of 2007 in OMP No.291 of 2006 by Justice Aruna Suresh; on 3rd January, 2008 by Justice S. Murlidhar- in Bail Application No,2339 of,2007 are some of the orders, When despite these orders and undertakings the Respondents were unable to discharge their obligation under the Settlement by raising sufficient amount to fulfill their obligation they agreed for sale of the properties by NAFED by public auction which, were mortgaged/pledged and / or attached. Order passed on 24th March, 2008 in Writ Petition (Criminal) No.785 of 2007 by Justice S.L. Bhayana is relevant on this aspect, which reads: “24.03.2008.

Learned, counsel for-the petitioners states that he is ready for the auction of the properties which are attached/ mortgaged with the NAFED/respondent No.2 and also states-that the NAFED will be at liberty to go ahead for auction of the properties. Learned counsel for the respondent NAFED states that there are various owners of the properties attached and mortgaged with the NAFED. Learned counsel for the petitioners is directed to file affidavits of all the property owners giving consent to the sale of the properties so- that there is no obstruction in the auction of the properties. Learned counsel for the petitioners undertakes that the petitioners shall file the requisite affidavits with advance copy to the other side within two days. The respondents/ State shall verify the same before the next date of hearing so that NAFED can go -ahead with the sale of the properties. Interim order to continue till the next date of hearing. In case affidavits are not filed before the next date, the; interim order shall be vacated and the protection shall be withdrawn.

List on 2nd April 2008.

As undertaken by the above order dated 24.3.2008 affidavits of respondents were, filed. But the, affidavits were found to be not in order. The same were permitted to be withdrawn and fresh affidavits were directed to be filed by order dated: 2nd April, 2008, which reads "02.04.2008 (WP(Crl.)785/2007)

Counsel for the petitioner states that due to some communication gap, the affidavits filed by the petitioners on 26th March, 2008 are not in consonance with the order dated 24th March, 2008 of this Court. He prays that the said affidavits may be ordered to be withdrawn. He seeks some time to file the requisite affidavits as per the order dated 24th March, 2008.

The affidavits filed by the petitioners on 26th March, 2008 are ordered to be withdrawn, and the requisite affidavits of various owners whose properties are attached/mortgaged/pledged with respondent no, 2/NAFED India Ltd., stating that, they have no objection if these properties are sold in public auction by respondent no.2 be filed before the next date of hearing."

In compliance to the order dated 2nd April, 2008 fresh affidavits were filed, in those affidavits also certain conditions were incorporated by the respondents subject to which the Respondent said that the properties be sold by NAFED by -public auction. The conditions were as regards the minimum amount at which the properties may be sold. Such conditions incorporated in the affidavits were permitted to be withdrawn. The Court on 4th April, 2008 recorded the statements of each and every deponent who had filed affidavit. Similar statements were made by each deponent. One of the statements is as follows:

Statement of Mr. Rajat .Khanna, s/o Shri Pradeep Khanna, R/O E-18, East of Kailash, New Delhi on S.A;

I have no, objection if the properties mentioned in the affidavits filed by me and other petitioners are sold by way of public auction at the market value. I withdraw all the conditions put in the affidavit regarding the market value and valuation given by me and I further undertake

not to interfere/ create obstructions in the sale of the properties and will hand over the original title deeds of the properties to the Court Observer appointed by the Court. I undertake to allow inspection of the properties to the interested bidders/applicants who want to buy the properties. I also undertake to hand over the vacant and peaceful possession of the properties to the successful bidders/buyers. I further undertake that there is no third part in possession of the property and I will not create any third party interest in the properties. I undertake that I shall be bound by the settlement.

After recording the statements the following order was passed by Justice S.L.Bhayana on 4.4.2008, which reads as under:

"04.04.2008

Learned counsel for the petitioner has filed the affidavits of the petitioners before Court. Let the same be placed on record. Separate statements of the petitioners have been recorded wherein they have withdrawn the conditions mentioned in the affidavits. The, petitioners have no objection if the properties are sold in the public auction. They also pray that a Court Observer be appointed to oversee the entire sale of properties by public auction. The public auction of the properties be done in a very transparent manner.

I hereby appoint Ms. Justice Sharda Aggarwal, a retired Judge of this Court, as a Court Observer to oversee the public auction of the properties and submit the report to this Court in the first week of July 2008. Her fee is fixed at Rs.50,000/- to be paid equally by both the parties.

Respondent No.2 NAFED is directed to appoint government approved auctioneer who shall value the property and shall give the advertisement of the auction of the properties at least in two national daily newspapers in consultation with the Court Observer. The Public Auctioneer may be appointed in consultation with the Court Observer.

Interim orders to continue till the next date of hearing.

From the above narration it stand established that on the undertakings given by each and every effective party, namely, Mr. Sandeep Khanna, Mr. Rajesh Khanna, Mr. Kamal Khanna, Mr. Ramesh Khanna, Mr. Pradeep Khanna, Mr. Rajat Khanna, Kripa Overseas and Rital Impex the owners of the properties an order was passed for sale of the properties by way of public auction at market value.

The statements coupled with the affidavits make it clear that the respondents as well as Kripa Overseas and Rital Impex slightly agreed for medication in the terms of settlement only as regards the method and manner in which they had to discharge their liabilities of payment of principal and interest. Instead of selling the property themselves; they agreed to have the properties sold by way of public auction at market value for which purpose Ms. Justice Sharda Aggarwal was appointed as the Court Commissioner. None of the parties has before me questioned the legality and validity of the settlement arrived at, as incorporated in settlement deed dated 3.5,2007. None of the parties has questioned the legality and validity of the modifications/alterations to the said settlement as regards the manner of realisation of the outstanding amount by sale of properties by way of public auction at market value. Rather the respondents have given undertaking to that effect and they are bound by their undertakings. It is settled position in law that the parties to an agreement may vary some of the terms by a subsequent agreement, Mere alteration or modification of the terms of the contract are not enough, the modification must be read into and become a part of the original contract. The original terms continue to be part of the contract and are not rescinded or superseded except in so far as they are inconsistent with the modifications. The consideration for the variation, if it has to be found, lies in the mutual abandonment of existing rights, or conferring new benefits by each party on the other; or in the assumption of additional obligations or incurring

additional liabilities or increased detriment. The courts have also recognized a 'practical benefit' arising- to a party undertaking an additional detriment, as sufficient consideration.

Thus, the modifications, as incorporated in the order dated 4th April, 2008 became integral part of the settlement deed dated 3.5.2007 with consent of the parties and none of them has challenged the same before me. This modification was also acted upon when the Court observer had one of the properties, i.e., E-16/B1, Mohan Cooperative Industrial Area, New Delhi/put to public auction but the sale could not be confirmed and it became the subject matter of writ petition. Only 25% of the bid amount was deposited which is lying deposited with the Registrar of the High Court. I have been informed in an application filed before me by M/s. Sikka Promoters Pvt. Ltd. that they have withdrawn the writ petition and the Court has directed for fresh auction of the property with liberty to M/s. Sikka Promoters Pvt. Ltd. to participate in the said auction."

32. The Single judge affirmed those findings and held as under--

"11. The second contention which was raised was that the Learned Arbitrator wrongly held that the order of 04.04.2008 passed in the criminal proceedings cannot be said to have modified the terms of the settlement dated 03.05.07. Related with this plea it was further contended that the Arbitrator has wrongly recorded that none of the parties have challenged the fact that the order dated 04.04.2008 is binding on the parties. So far as the latter aspect of the statement of fact recorded in the Award that the parties have not challenged the validity of the order dated 04.04.2008, I feel that the said statement is clearly binding on the petitioner and the other related parties for the reason that the Award has been passed way back on 24.04.09 and copy of which Award was delivered to the parties on the same date, and, if the Award had wrongly recorded a fact that the parties did not challenge the order

dated 04.04.08, then, it was incumbent upon the affected parties to immediately approach the Arbitrator seeking correction of the Award to that extent as soon as possible after the copy of the Award was received by them in view of the decision of the Supreme Court reported as State of Maharashtra Vs. Ramdas Shrinivas Nayak (1982) 2 SCC 483. Admittedly this has not been done even till date and consequently this contention is clearly mala fide and misconceived. In any case on merits too, this argument does not lie in the mouth of the petitioner because not only affidavits were filed by all the parties in the Criminal Writ Petitions, undertakings were also filed and the parties have in fact acted in furtherance of the order dated 04.04.08 passed in the Criminal Writ Petitions, and therefore, I am unable to understand as to how such a contention can even be raised by the petitioner. The order dated 4.4.2008 passed in the Criminal Writ Petition is therefore final as none of the parties had ever challenged the same. This objection therefore also fails and is rejected.”

33. At no stage did the appellants challenge the order dated 04.04.2008 in the criminal proceedings. Even otherwise, the order does not in any way alter the terms of the Contract/Settlement but only acknowledges the mode of liquidation of settlement amount as agreed upon by parties before it. The matter was sent to the arbitrator for passing of an award in terms of the settlement vide order, dated 24.04.2008 of this court. The order records as under:

“It is a joint move by the parties to have a common Arbitrator. Having consideration, the material on record and the facts taken into consideration, the parties now have a mutually agreeable settlement, which would bind the parties in OMP No.291/2006 as well as in OMP No.595/2006, the court is of the opinion that, in the interest of justice, a common award

as understood in law, to enable the parties the benefits of their compromise, should be made.”

34. The Arbitrator was required to pass an award in terms of settlement – and as understood in law, to ensure that the award should enable the parties, the benefit of their compromise. It was in view of these specific directions to the Arbitrator that the award incorporated the subsequent events and directions of the various courts passed on the basis of submissions of the parties and the affidavits furnished and also considered the un-challenged order of this court dated 04.04.2008 to incorporate the agreed method of liquidation of the properties secured by the appellants under the settlement and which had been ratified by all the persons, who had interest in those properties and who also became parties by moving application in OMP No.291/06. The award thus does not suffer from any infirmity on this count and thus no fault can be found with impugned order upholding the order of arbitrator on this count.

35. In the settlement dated 03.05.2007, the appellants had acknowledged their liability to the tune of ₹ 43.21/- crores and agreed to discharge the said liability in a time bound manner. To ensure the implementation of their undertaking, in time bound manner, they had furnished securities and made the guarantors parties to the proceedings. Since the petitioners had failed to honor the settlement, recovery began by sale of the properties by public auction under the supervision of the court observer. It is clear that in fact there was no modification of settlement rather in W.P.(Crl) No. 461/2007, the appellants had agreed for the disposal of the securities and of the properties attached by the

Court under Section 9 proceedings, by way of public auction. The settlement remained intact which was for payment of ₹ 43.21 crores within 180 days and in case of default of discharge of liability within said period, liability to pay the default interest at the rate of Rs. 15%. Also Under Section 31 of Arbitration and Conciliation Act, Court is empowered to award interest on the awarded amount. The Tribunal passed its award in terms of the settlement between the parties and had also taken note of the subsequent developments pursuant to settlement, till the date of the award. From this it is apparent that the award correctly appreciated the facts and circumstances of the case. It cannot therefore, be termed as against public policy. Nor is there anything in the award, which shocks the conscience of the Court. There is no patent illegality in the award and therefore the finding of the learned Single Judge in no way suffers with any illegality or infirmity.

36. NAFED had urged that the petition under sec.34 of the Act was barred by limitation as it was filed on expiry of 120 days from award and was liable to be dismissed on this count itself. The limitation for filing a petition under is 120 days and it has to be strictly adhered to and no condonation of delay is permissible since provisions of Limitation Act are not applicable to such proceedings. It has been so held by Supreme Court in ***Union of India Vs. M/s Popular Construction Co., AIR 2001 SC 4010***:

“15. Furthermore, section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub Section 2 and sub Section 3. Sub Section 2 relates to grounds for setting aside an award and

is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasized by the provisions of Section 36 which provide that "where the time for making an application to set aside the arbitral award under Section 34 has expired...the award shall be enforced and the Code of Civil Procedure 1908 in the same manner as if it were a decree of a court." This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow". Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the Court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the Court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

37. In this case, the award was passed on 24.04.2009 and parties received the copies on same day (which is apparent from their signatures on the award) and the Petition under Section 34 was filed on 24.11.2009. The Petition was thus filed beyond the period of limitation prescribed under Section 34(3) of Arbitration and Conciliation Act. Therefore it was liable to be dismissed for this reason.

38. For the foregoing reasons, there is no merit in the present appeals. FAO (OS) 93/2010 and FAO (OS) 317/2010 stands dismissed with no order as to costs.

**DEEPA SHARMA
(JUDGE)**

**S. RAVINDRA BHAT
(JUDGE)**

AUGUST 01, 2016
sapna

