

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.09.2016

+ **O.M.P. (COMM) 409/2016 & IA No. 11225/2016, 11227/2016**

**GUJARAT STATE CO-OPERATIVE MARKETING
FEDERATION LTD.**

..... Petitioner

versus

**NATIONAL AGRICULTURE CO-OPERATIVE
MARKETING FEDERATION**

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Dipan Desai, Mr Alok Bhachawat and
Ms Devyani Bhatt.

For the Respondent : Mr Aaditya Vijay Kumar and Ms Liza M.
Baruah.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner, Gujarat State Co-operative Marketing Federation Ltd. (hereinafter 'GSCMF') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') for setting aside the award dated 15.04.2016 (hereafter 'the impugned award') passed by the sole Arbitrator, Dr. G.G. Saxena. By the impugned award, the Arbitrator allowed the counterclaim of the Respondent, National Agriculture

Co-operative Marketing Federation (hereafter 'NAFED'), directing GSCMF to make payment of amount of ₹1,48,44,000/- after adjusting the claim amount of ₹27,44,057/- from the counterclaim of ₹1,75,83,000/-.

2. GSCMF has assailed the award in question primarily on three grounds. First, that NAFED's counter claim was not referred to the Arbitrator, therefore, the impugned award in so far as it awards the counter claim in favour of NAFED is without jurisdiction. Secondly, that the counter claim preferred by NAFED was barred by limitation in as much as the goods in question (cotton) were procured and supplied to NAFED in the year 2009. And thirdly, that the counter claim is based on an allegation of under recovery of seed and lint and since there were no norms fixed for such recovery, and thus, the counter claim of NAFED was without any basis.

Factual background

3. GSCMF is a state level co-operative society registered under the Gujarat Co- operative Societies Act, 1961, dealing in purchase and sale of agricultural produce. NAFED is a national level co-operative society registered under the Multi State Co-operative Societies Act, 2002 with the aim and object to organize, promote and develop marketing, processing and

storage of agricultural, non-agricultural, horticulture and forest produce and also to undertake and promote inter-state and international trade and commerce on its behalf and on behalf of government and government organizations.

4. Government of India, Ministry of Textile, issued a circular dated 24.09.2008, fixing the support price for various types of cotton for the Kharif season of 2008-09. For the purpose of implementing the price support scheme, Cotton Commission of India (CCI) and NAFED were appointed as nodal agencies of the Government of India.

5. The parties entered into an agreement dated 05.01.2009 (hereafter 'the Contract') whereby GSCMF was appointed as the 'state level agent' of NAFED for procurement and processing of cotton by ginning to convert the same into cotton bales during the marketing season of 2008-2009. A formal letter dated 06.01.2009 was sent by NAFED- relating to procurement of Cotton under Price Support Scheme (hereinafter referred to as 'PSS') during the season in Gujarat - vide which it was mentioned that procurement is to be carried out strictly in accordance with the terms and conditions of the Contract and the Action Plan issued for procurement of cotton.

6. GSCMF procured 58452.553 MTs of raw cotton and after processing, the same provided 1,17,954 bales of cotton to NAFED in terms of the Contract. In terms of the Contract, GSCMF was entitled to 2% of the value of the purchase and other charges as fixed by CCI in this regard. Admittedly, a sum of ₹82,94,507/- became due and payable to GSCMF on account of the cotton bales supplied to NAFED. NAFED further issued 222 shares to GSCMF at ₹25,000/- per share for an aggregate amount of ₹55,50,000/-. After adjusting the aforesaid amount, a sum of ₹27,44,057/- was admittedly payable by NAFED to GSCMF.

7. GSCMF sent several communications / letters to NAFED for release of its amount due but the said sum was not paid by NAFED. By a letter dated 29.08.2011, NAFED confirmed that a sum of ₹82,94,507/- was payable to GSCMF towards full and final settlement of the account in respect of the cotton procured in the Kharif season of 2008-09. It was further confirmed that the aforesaid amount would be released only on receipt of approval from the competent authority at NAFED's Head Office. This was followed by another letter dated 30.08.2011, whereby, NAFED indicated the breakup of the said amount payable on the said date to GSCMF. Subsequently, by a letter dated 22.12.2011, NAFED forwarded the

certificates for 222 shares allotted to GSCMF for a total consideration of ₹55,50,000/-.

8. Thereafter, NAFED sent a letter dated 05.09.2012, and for the first time made a claim of ₹1,01,08,816/- on account of under recovery of lint as per CCI norms. According to NAFED, the lint recoverable as per CCI norms was 33.84% while the actual recovery of lint in respect of the cotton procured by GSCMF was 33.27%; and, therefore, there was under recovery to the extent of 0.57%. The said letter also indicated that recovery of the said amount was sought on account of observations made by the Auditors of the Comptroller and Auditor General of India (CAG).

9. GSCMF disputed the aforesaid claim as according to it, it had complied with the parameters as agreed to as per clause B.15 of the Contract. GSCMF further submitted that it was not possible for GSCMF to now recover the amount for the under recovery of lint from the farmers.

10. NAFED sent another letter dated 20.01.2014 and this time claimed that a sum of ₹175.83 Lacs was recoverable from GSCMF in respect of the cotton procured under the PSS for the Kharif season of 2008-09. The said

letter also indicated that the claim was made as NAFED's claim was disallowed by the Ministry of Agriculture.

11. GSCMF, by its letter dated 30.01.2014, objected to the aforesaid claim by stating it has no liability to pay the aforesaid sum as the report of the Ministry of Agriculture states that the loss did not exceed 3% -the actual loss was 2.91 % - and was within the permissible limits as per the Contract. Further, there was no allegation of negligence on the part of GSCMF.

12. Thereafter, on 22.08.2014, on the basis of reconciliation of accounts between both the parties, a claim of ₹27,44,057/- was shown as balance due from NAFED. The exchange of correspondences between the parties continued and on 09.09.2014, NAFED sought a payment of ₹1,48,39,000/- from GSCMF after adjusting ₹27,44,057/- out of its claim of ₹1,75,83,000/-. The reason cited by NAFED was that the Chief Advisor Cost, Department of Expenditure, Ministry of Finance (hereafter 'CA(C)') had disallowed the claim of NAFED and it was directed by the Ministry of Agriculture that shortage of lint recovery may be recovered from the State Level Agency - GSCMF.

13. Aggrieved by the above, GSCMF approached the Gujarat High Court by way of a petition under Article 226 of the Constitution of India (Special Civil Application no. 17446/2014) challenging the action of NAFED in endeavouring to recover the amount of ₹1,75,83,000/- and not releasing the amount of ₹27,44,057/- in the favour of GSCMF. The Court vide order dated 23.07.2015, dismissed the same in view of the fact, that the Contract provided for an alternative remedy for resolution of disputes.

14. NAFED reiterated its demand for ₹1,75,83,000/- from GSCMF by its letter dated 07.08.2015. Thereafter, on 28.10.2015, GSCMF filed a claim petition before the Registrar of the Cooperative Societies (hereafter 'the Registrar'), under Section 84 of the Multi State Cooperative Societies Act, 2002 (hereafter 'the MSCS Act'). And, on 31.12.2015, the Registrar referred the dispute to the Sole Arbitrator.

15. NAFED filed its statement of defence and counter claim before the Arbitrator on 23.01.2016. The Arbitrator allowed the counter claim and passed the impugned award. The Arbitrator held that a sum of ₹175.83 Lacs was due from GSCMF to NAFED and after adjusting an amount of ₹27,44,057/-, awarded a sum of ₹1,48,44,000/- in favour of NAFED.

Submissions

16. Mr Dipan Desai, the learned counsel appearing on behalf of GSCMF contended that the impugned award is liable to be set aside under Section 34(2)(iv) of the Act in as much as the Arbitrator had decided the counter claims which were not referred by the Registrar. He submitted that the Registrar had only referred the claim made by GSCMF as NAFED had not requested for reference of its counter claim to the Arbitrator. He referred to the decisions of the Supreme Court in case of **State of Goa v. Praveen Enterprises: (2012) 12 SCC 581** and in **Voltas Limited v. Rolta India Limited: (2014) 4 SCC 516**, in support of his contention that the Arbitrator cannot expand the scope of his reference.

17. Next, Mr Desai argued that the impugned award is also liable to be set aside for being in conflict with public policy of India since it suffers from patent illegality. He submits that the counter claim preferred by NAFED was wholly barred by limitation in as much as the cotton was procured in the year 2008-09 and NAFED had filed the counter claim before the Arbitrator for the first time in January, 2016.

18. He further submitted that there was no under recovery of lint as there were no norms provided by the CCI for such recovery. He submitted that CCI's lint recovery for the State of Gujarat was erroneously taken as the CCI's norm. He urged that the Arbitrator had grossly erred in not considering that there were no norms fixed for recovery of lint.

19. Mr Aaditya Vijay Kumar, the learned counsel appearing on behalf of NAFED countered the submissions made by Mr Desai. He referred to the Writ Petition filed by GSCMF before the Gujarat High Court - being Special Civil Petition No.14776/2014 - and submitted that GSCMF had sought quashing and setting aside of NAFED's communication dated 09.09.2014 whereby NAFED had raised the claim of ₹175.83 Lacs. He submitted that the order dated 23.07.2015 passed by the Gujarat High Court relegating the petitioner to the alternative remedy for dispute resolution in respect of the aforesaid dispute would also encompass NAFED's claim for the aforesaid amount. He further referred to the Statement of Claims filed by GSCMF which also indicated that NAFED's claim of ₹175.83 Lacs towards lint recovery was included as a part of the dispute. He also drew the attention of this Court to an application filed by GSCMF under Section 17 of the Act whereby GSCMF had prayed that NAFED be restrained from

recovering the amount of ₹1,48,44,000/- in terms of its letter dated 09.09.2014.

20. Mr Kumar, also disputed the contention that NAFED's claim was barred by limitation. He stated that in terms of paragraph 14 of the Action Plan, claims under PPS were subject to vetting by the CA(C) and the counter claim made by NAFED was pursuant to the findings of the CAG and the Department of Expenditure, Ministry of Finance. He also submitted that as the said report was made available only in the year 2014, the counter claim was within time.

21. He further pointed out that in terms of Section 85 of the MSCS Act, the period of limitation was six years and the counter claim preferred by NAFED was within the said limitation period. He also referred to clause B.15 of the Contract and submitted that the Contract expressly provided for CCI norms to be applied for recovery of seed and lint. He submitted that CCI norms were always understood as the overall standard of recovery of lint by CCI, which was ascertained at 33.84% for the State of Gujarat for the crop year 2008-09.

Reasoning and Conclusion

22. Before proceeding to address the question whether the counter claim was beyond the terms of reference, it is necessary to refer to the dispute resolution clause under the Contract, which reads as under:-

"24. In case of any dispute and differences whatsoever arising between the parties to the agreement in any manner touching the subject matter of the agreement, the same shall be referred to the Central Registrar for decision in terms of section 84 of the Multi State Cooperative Societies Act 2002. Venue (Ahmedabad of the office of BM Nafed). All disputes subject to the jurisdiction of Delhi Courts."

23. It is apparent from the language of the aforesaid clause that all disputes arising between the parties in relation to the Contract were agreed to be adjudicated in terms of Section 84 of the MSCS Act. Section 84(1) of the said Act, *inter alia*, provides that all disputes touching upon the constitution, management or business of a Multi-State Co-operative Society that may arise between a member and the society or between the society and its agent shall be referred to arbitration. The relevant extract of Section 84(1) of the MSCS Act is set out below:-

“84. Reference of disputes

(1) Notwithstanding anything contained in any other law for the time being in force, if any dispute [other than a dispute regarding disciplinary action taken by a multi-State co-operative society against its paid employee or an

industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947)] touching the constitution, management or business of a multi-State co-operative society arises—

- (a) xxxx xxxxx xxxxx
- (b) between a member, past member and persons claiming through a member, past member or deceased member and the multi-State co-operative society, its board or any officer, agent or employee of the multi-State co-operative society or liquidator, past or present, or
- (c) Between the multi-State co-operative society or its board and any past board, any officer, agent or employee, or any past officer, past agent or past employee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the multi-State co-operative society, or
- (d) xxxxx xxxxx xxxxx
- such dispute shall be referred to arbitration.”

Thus, there can be no dispute that NAFED's counter claim was also required to be resolved by arbitration as it clearly fell within the disputes resolution clause agreed to by the parties.

24. The next aspect to be considered is whether NAFED's claim falls within the scope of the disputes referred before the Arbitrator. In this regard it is necessary to observe at the outset that there is no controversy between the parties with regard to the amount of ₹27,44,057/-, which was admittedly due by NAFED to GSCMF. There has never been any dispute between the

parties with regard to the said amount being payable by NAFED to GSCMF. NAFED had further confirmed that the said amount would be released to GSCMF on approval of NAFED's competent authority.

25. The dispute arose between the parties with regard to the claim for under recovery of lint made by NAFED. By a letter dated 05.09.2012, NAFED had communicated to GSCMF that there was under recovery of lint to the extent of 0.57% and the said discrepancy had been pointed out by the Auditors from the Office of CAG. At the material time, NAFED had quantified the amount due on that count at ₹1,01,08,816/-. GSCMF disputed that any amount was liable to be recovered on account of under recovery of lint.

26. By a letter dated 20.01.2014, NAFED had informed GSCMF that the accounts of cotton (Kharif 2008) procured under PSS had been submitted to the Department of Agriculture and Cooperation, Ministry of Agriculture, New Delhi and had been settled as per the recommendation of the Office of CA(C). In terms of that settlement, ₹175.83 lacs was to be recovered from GSCMF and the said amount had been booked under the head "Procuring Agency Commission"; NAFED called upon GSCMF to pay the aforesaid amount. GSCMF had disputed the aforesaid claim.

27. Thereafter, NAFED by its letter dated 09.09.2014, once again sent a letter to GSCMF stating that a sum of ₹175.83 lacs was recoverable from GSCMF and after adjusting the sum of ₹27.44 lacs - admittedly due to GSCMF - a sum of ₹148.39 lacs was recoverable from GSCMF. Thus, the only dispute between the parties related to the recovery of the amount of ₹175.83 lacs claimed by NAFED. NAFED had all along accepted that a sum of ₹27.44 lacs was outstanding towards GSCMF.

28. It is, in the aforesaid context, that GSCMF had filed the writ petition before the Gujarat High Court (Special Civil Application No. 17446/2014), *inter alia*, praying as under:-

"(B)The Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ order or direction, directing the respondent to release an amount of Rs.27.44 lacs in favour of the petitioner and to restrain the respondent from recovering an amount of Rs.175.83 lacs from the petitioner.

(C) The Hon'ble Court be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ order or direction, quashing and setting aside the impugned communication dated 09.09.2014 of the respondent Federation at Annexure-A to the petition."

29. Admittedly, NAFED contested the aforesaid writ petition, *inter alia*, by pointing out that the aforesaid dispute was liable to be resolved in terms of clause 24 of the Contract. The said contention was accepted and by an order dated 23.07.2015, the Gujarat High Court disposed of the aforesaid petition by relegating the petitioner to the alternative remedy as available under the Contract.

30. In the meantime, NAFED had also sent another communication dated 27.04.2015, once again requesting that the amount of ₹175.83 lacs be released to NAFED immediately as the position was to be apprised by NAFED to the Government of India. It is in the aforesaid circumstances that GSCMF filed a Statement of Claims before the Registrar. In its Statement of Claims, GSCMF, *inter alia*, specifically pleaded that the communication dated 09.09.2014 issued by NAFED calling upon GSCMF to pay a sum of ₹148.39 lacs (that is, ₹175.83 lacs - ₹27.44 lacs) had led GSCMF to file the claim. GSCMF further claimed that NAFED's claim of ₹175.83 lacs was barred by time. It is also material to note that GSCMF also filed an application under Section 17 of the Act along with its Statement of Claims wherein it, *inter alia*, prayed that the Arbitrator "(a) pass an ad interim ex-

parte order restraining the respondent Federation from recovering the amount of ₹148.44 lacs in terms of letter dated 09.09.14."

31. On 31.12.2015, the Registrar issued a letter for appointment of an Arbitrator. The relevant extract of the said letter reads as under:-

"In exercise of powers conferred under sub-section (4) of Section 84 of the Multi-State Cooperative Societies Act, 2002, I, Ashish Kumar Bhutani, Central Registrar, Multi-State Cooperative Societies hereby appoint Dr. G.G. Saxena, IAS (Rtd.) as an Arbitrator to settle the dispute between Gujarat State Cooperative Marketing Federation Ltd. vs. National Agricultural Cooperative Marketing Federation of India Ltd. as per the provisions of the Arbitration & Conciliation Act, 1996 read with section 84 of the Multi-State Cooperative Societies Act, 2002."

32. It is plainly evident from the language of the aforesaid letter that what was referred by the Registrar was "the dispute", the contours of which have been outlined hereinbefore. Clearly, the only question involved in the dispute was whether the sum of ₹175.83 lacs was recoverable by NAFED on account of under recovery of lint.

33. The Arbitrator had considered GSCMF's contention as to whether the counter claim filed by NAFED was beyond the scope of the dispute referred to him and had held as under:-

"In view of the contents of the order of Hon'ble High Court of Gujarat and consequent filing of arbitration case the Claimant cannot interpret that Counterclaim was not part of dispute between the parties. The case "**State of Goa Vs. Praveen Enterprises**" (*supra*) as also cited by Respondent, clarifies that any dispute and all disputes are to be interpreted as disputes in this case as it is not new Counterclaim filed before the Arbitrator for the first time. In other words, it is within the jurisdiction of the Arbitrator to decide the dispute which includes Claimant Counterclaim. As such, the Claimant has failed to prove its point and therefore this issue is settled in favour of the Respondent."

34. I find no infirmity with the aforesaid view and, therefore, the contention that the impugned award is beyond the scope of the disputes referred to the Arbitrator, is in my view, without merit.

35. The next contention advanced on behalf of GSCMF was that NAFED's claim was barred by limitation. It is necessary to state, at the outset, that it is not disputed that by virtue of Section 85(1)(b) of the MSCS Act, the period of limitation in a case referred to arbitration covered under sub clauses (b), (c) and (d) of Sub-section 1 of Section 84 of the MSCS Act is six years. Thus, the period of limitation to be considered under the present case would by virtue of the aforesaid provision is six years.

36. In order to consider the issue of limitation, it is necessary to understand the context in which the Contract was entered into between the

parties. As stated earlier, the Government of India had floated a Price Support Scheme (PSS) as its initiative to sustain and improve production of various crops by guaranteeing the farmers a minimum assured price - referred to as Minimum Support Price or MSP - for their crops. The said scheme (PSS) required the Government of India to approach different State Level Agencies nominated under the PSS to commence the procurement of the specified crop, if the price fell below MSP. CCI and NAFED were the designated nodal agencies of the Government of India to undertake procurement of cotton under the PSS. NAFED was to procure cotton directly from farmers through cooperative societies when the prices of the quality stocks fell below the MSP fixed by the Government of India. GSCMF was appointed under the Contract as an agent of NAFED to undertake procurement on behalf of NAFED.

37. Under the PSS, NAFED was required to furnish the accounts of such procurement to the Government of India, liquidate the stocks and claim the loss from the Government of India. All claims of NAFED were to be duly certified by a Chartered Accountant and were required to be forwarded by the Department of Agriculture for vetting by office of the CA(C). This is

expressly provided under paragraph 14 of the Action Plan, which reads as under:-

"14. Audit System:

Apart from verification and certification of claims under price support scheme by practicing Chartered Accountants, all Claims are required to be submitted through Deptt. of Agri. & Croop., Govt. of India for vetting by office of the Chief Adviser Cost, Deptt. of Expenditure, Ministry of Finance which should be certified by practicing cost accountants, within the meaning of Cost and Works Accountants Act of India 1961.

All the claims and expenses are also subject to spot verification of records by office of the Chief Adviser Cost, Deptt. of Expenditure, Ministry of Finance, New Delhi and in case of disallowance of any expenses by Ministry of Finance the same shall be debited to the concerned SLAs/societies/union."

38. NAFED paid the amount to GSCMF for procurement of cotton and in turn made a claim for the loss from the Government of India. The issue regarding under recovery of lint was apparently pointed out by the Auditors from the office of CAG and NAFED had immediately communicated the same to GSCMF by its letter dated 05.09.2012.

39. It is also not disputed that NAFED had made its claim with the Government of India without accounting for the under recovery of lint. The Government of India had settled the accounts as per the recommendations of

the CA(C) subsequently. Undisputedly, a sum of ₹175.83 lacs was recoverable from GSCMF in terms of the accounts as settled. NAFED communicated the same to GSCMF by a letter dated 20.01.2014 enclosing therewith the report on the basis of which NAFED's accounts have been settled.

40. The Government of India, Ministry of Agriculture had also addressed a letter dated 23.10.2013 to NAFED communicating that the total loss approved by the Government of India was ₹99,409.24 lacs instead of ₹1,06,408.02 lacs as claimed by NAFED and, therefore, ₹2,090.7 lacs was required to be refunded by NAFED to the Government of India.

41. It is not disputed that GSCMF had furnished a letter dated 10.10.2009 to NAFED, undertaking that it would reimburse any financial loss incurred to NAFED due to any observation made by the Government Auditors.

42. In the aforesaid circumstances, the period for limitation for making the claim would not commence on the date when the goods have been procured by GSCMF but on the date when NAFED's claim had been rejected by the Government of India; thus, entitling NAFED to claim the same from GSCMF.

43. It is not disputed that the Government of India had rejected NAFED's claim sometime in the year 2013. The question of calling upon GSCMF to reimburse the loss suffered on account of audit objections would only arise when such objections are taken.

44. The Arbitrator had also considered the aforesaid question and had concluded as under:-

"19. Accordingly, Respondent could have made Counterclaim including implementation and compliance of audit report as envisaged in the Agreement and the letter issued by the Claimant to indemnify the Respondent on audit vide its letter dated 10.10.2009 (Exhibit R-1/3, Page 29 A) of the Reply on behalf of the Respondent filed on 23.01.2006) within six years from 22.08.2014, i.e., the date of reconciled statement signed by representatives of the parties. Hence, it is held that the Counterclaim of Rs.1,75,83,000/- is within the period of limitation. This issue is settled in favour of the Respondent as the Claimant failed to prove its case."

45. Although, the date of commencement of limitation has been taken by the Arbitrator as 22.08.2014, that may not be correct; in my view, the period of limitation would commence when NAFED's claim was disapproved by the Government of India. Thus, in any case, the counter claim would be within the period of limitation.

46. The last issue to be addressed is whether the Arbitrator had grossly erred in allowing the counter claim which according to GSCMF, is outside the terms of the Contract. It is, earnestly, contended on behalf of the petitioner that there were no norms for recovery of lint and, therefore, no claim could be made by NAFED on that count.

47. In the aforesaid context, the Arbitrator had considered clause B.15 of the Contract which reads as under:-

“15. The ginning and pressing losses, if any, are allowed only up to less than 3% of the procured raw cotton or as per Cotton Corporation of India (CCI) norms whichever is lower. In this regard, CCI norms for recovery of Seed and Lint shall be followed.”

48. The Arbitrator had interpreted the aforesaid clause and had concluded that the parties had agreed that CCI norms for less recovery of lint from raw cotton would be applicable. The Arbitrator accepted NAFED's contention that CCI norms would be the standard of recovery by CCI and the said norms would be available only after completion of the said process. CCI norms were understood as the average of lint recovery in the State of Gujarat which was ascertained as 33.84%. It is also relevant to mention that the learned counsel for the petitioner did not dispute that the said norms

were also applied by the Government of India while determining the amount of disallowance on account of under recovery of lint.

49. It is well settled that the question as to interpretation of an Agreement between the parties is clearly within the jurisdiction of the Arbitrator. In *Mcdermott International Inc. v. Burn Standard Co. Ltd and Others.*:

(2006) 11 SCC 181, the Supreme Court held as under:-

"112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement, is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot, be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. [See *Pure Helium India (P) Ltd. v. Oil & Natural Gas Commission*: AIR 2003 SC 4519 and *D.D. Sharma v. Union of India* : (2004) 5 SCC 325].

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

50. In **Steel Authority of India Ltd. v. Gupta Brother Steel Tubes Ltd.**:

(2009) 10 SCC 63, the Supreme Court had expressly stated as under:-

“....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”.

51. The Court further held that “*If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award*”.

52. In **Sumitomo Heavy Industries Limited v. Oil and Natural Gas Commission of India**: (2010) 11 SCC 296, the Supreme Court held as under:-

“.....The umpire has considered the fact situation and placed a construction on the clauses of the agreement which according to him was the correct one. One may at the highest say that one would have preferred another construction of Clause 17.3 but that cannot make the award in any way perverse. Nor can one substitute one's own view in such a situation, in place of the one taken by the umpire, which would amount to sitting in appeal. As held by this Court in *Kwality Mfg. Corpn. v. Central Warehousing Corpn.* the Court while considering challenge to arbitral award does not sit in appeal over the findings and decision of the arbitrator, which is what the High Court has practically done in this matter. The umpire is legitimately entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the

agreement. If he does so, the decision of the umpire has to be accepted as final and binding.”

53. The aforesaid view was reiterated by the Supreme Court in **Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran**: (2012) 5 SCC 306. In that case, the Supreme Court held as under:-

“43. In any case, assuming that Clause 9.3 was capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator.”

54. Although the decisions in ***Steel Authority of India Ltd.***(*supra*) and ***Sumitomo Heavy Industries Limited*** (*supra*) were rendered in the context of the Arbitration Act, 1940, the view expressed therein is still good law as the scope of interference under the Act has not been widened but has only been narrowed down considerably.

55. In my view, the manner in which the Arbitrator has interpreted the Contract is clearly within his jurisdiction and cannot be interfered with unless his view is found to be perverse or unreasonable.

56. In *Oil and Natural Gas Corporation Ltd. v. Western Geco International Ltd.*: (2014) 9 SCC 263, the Supreme Court had held as under:

"39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a Court of law. Perversity or irrationality of decisions is tested on the touchstone of *Wednesbury* principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a Court of law often in writ jurisdiction of the Superior courts but no less in statutory processes wherever the same are available."

57. In the present case, the impugned award cannot be stated to be perverse or unreasonable on the anvil of the *Wednesbury principle* and, thus, the same cannot be set aside.

58. Accordingly, the present petition is dismissed. Pending applications stand disposed of.

VIBHU BAKHRU, J

SEPTEMBER 30, 2016
RK/m