IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.07.2017

Pronounced on: 06.11.2017

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. Nos.428 and 484 of 2015

Indian Maritime University,
rep. by its Registrar,
East Coast Road, Uthandi,
Chennai-600 119.

National Maritime Academy,
rep. by its Director,
East Coast Road, Uthandi,
Chennai-600 119. .. Petitioner in O.P. No.428 of 2015

(since the National Maritime Academy
subsumed with Indian Maritime University
by virtue of Indian Maritime University Act,
2008 (Central Act 22 of 2008) on and from
14.11.2008, the said NMA has not been
shown as one of the petitioner herein)

M/s.S.R.C.Projects (P) Ltd.,
4-B, Lakshmipuram,
Gandhi Road, Salem-636 007. .. Petitioner in O.P. No.484 of 2015



-vs-

1.M/s.S.R.C.Projects (P) Ltd.,
4-B, Lakshmipuram,
Gandhi Road, Salem-636 007.

2.Hon'ble Mr.T.Somasundaram,
Presiding Arbitrator (Retired Judge),
No.1/688, 15th street, H-Block,
Anna Nagar, Chennai 600 040.
3.Hon'ble Mr.P.Shanmugam,
Arbitrator (Retired Judge),
No.288-B, TTK Road, Teynampet,
Chennai-600 018.

4.Thiru K.A.Mathew,
Arbitrator (Retired IAS Officer),
No.1077, Abhyam, Officers Colony,
Anna Nagar (West Extn.), Chennai-101. .. Respondents in O.P. No.428 of 2015

1.National Maritime Academy,
rep. by its Director,
East Coast Road, Uthandi,
Chennai-600 119.

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Arbitrator (Retired IAS Officer),
No.1077, Abhyam, Officers Colony,
Anna Nagar (West Extn.), Chennai-101... Respondents in O.P. No.484 of 2015

**Prayer in O.P. No.428 of 2015:** Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 to set aside the award dated 07.03.2013 passed by the Hon'ble Arbitral Tribunal in the matter of the Arbitration Proceedings arising out of Land Filling of 106 Acres of Indian Maritime University Site, Chennai under Contract No.HMA/IMU/T.001/2008/EC dated 13.02.2009.

**Prayer in O.P. No.484 of 2015:** Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 to modify the award dated 07.03.2013 made by the Arbitral Tribunal consisting of respondents 3 to 5 herein, by awarding interest @ 18% p.a. on Claim No.1 for pre-reference period and pendente lite and interest @ 18% p.a. for pre-reference period and pendente lite on all the pending bills claimed by the petitioner in Claim No.2 as prayed for in the claim petition.

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|---|---|
| For Petitioner in O.P. No.428 of 2015 and Respondent in O.P. O.P.484 of 2015 | : Mr.R.Krishnamurthy, Senior Counsel for Mr.K.R.Thamizh Mani |
| For Petitioner in O.P. No.484 of 2015 and Respondent in O.P.428 of 2015 | : Mr.A.L.Somayaji, Senior Counsel for Mr.V.P.Sengottuvel |



**COMMON ORDER**

These original petitions challenge an award passed by the Learned Arbitral Tribunal dated 07.03.2013. Since the facts relating to both O.Ps are common, they are disposed of by means of a single order.

2.The National Maritime Academy invited tenders on 03.03.08 for land filling of 106 acres at the Indian Maritime University (in short 'IMU') at East Coast Road, Chennai. S.R.C. Projects Private Limited (in short 'contractor') submitted a tender that was accepted and the work awarded on 09.01.2009. Mr.C.R.Narayana Rao, Architect (in short 'CRN') was appointed as Engineer for the works. The contract was in relation to the work of removal of earth from two rivers namely Pomar lake and Melakotaiyur lake situated at the Western side of Old Mahabalipuram Road and transporting of the earth to the site of the IMU through trucks that would ply on Old Mahabalipuram Road (in short 'OMR').

3.An agreement was entered into between IMU and the contractor on 13.02.2009 that provided for the terms that would govern the scope of work being *'land filling of Indian Maritime University Site by quarrying Earth at Source, Transporting, Levelling and Consolidating of the same at Indian Maritime University Site'*.

4. The contract provides that all technical aspects of the work were to be carried out pursuant to discussions between the representatives of the parties and the engineer, and payments to be recommended by the engineer after due verification of all aspects of the matter.

5. There is no dispute with respect to the position that the contract has been completed and the site handed over to IMU. The work commenced on

13.03.2009 and was completed on 18.09.09 within time with the contractor deploying 642 trucks that had been leased out by it to carry out the work.

6. Disputes arose between the parties that were sought to be referred to Arbitration by an Arbitral Tribunal comprising three (3) members in terms of clause 75.3 of the General Conditions of Contract of the Tender, at the instance of the contractor.

7. Two reliefs were sought for in the claim petition filed by the contractor being (i) reimbursement of toll fee paid of an amount of Rs.1,40,72,586/- along with interest at 18% per annum from 13.09.2010 to 15.08.2011 and further interest from date of the claim petition till realization and (ii) interest at 18% per annum on a sum of Rs.1,29,25,652/- being payments effected by IMU that were admittedly delayed.

8. The Tribunal, after hearing the parties, passed an award dated 07.03.13. The claim relating to the reimbursement of toll fee was accepted sans interest and the claim for interest on delayed payments also accepted. Against the aforesaid award, both parties are before this Court, IMU being the petitioner in O.P. No.428 of 2015 and the Contractor, the petitioner in O.P. No.484 of 2015.

9. Heard Mr.R.Krishnamoorthy, learned senior counsel appearing on behalf of Mr.K.R.Thamizh Mani, learned counsel appearing for Indian Maritime University (IMU) and Mr.A.L.Somayaji, learned senior counsel appearing on behalf of Mr.V.P.Sengottuvel, learned counsel appearing for Contractor.

10. The brief facts relating to the issue of reimbursement of toll fee are as under:

The tender for land filling was floated by IMU on 03.03.08 and the tender submitted by the contractor on 11.04.08 prior to notification of collection of toll on 15.12.08. Thus, at the time when the parties entered into the contract, there was no levy of toll on the route proposed to be used by the contractor. The levy of toll for the use of the OMR was notified and commenced only from 15.12.2008. The cost of toll was thus not factored in the quotation of the contractor and the work order had itself been accepted by the contractor without prejudice to its claim of reimbursement of toll fee, if and when levied.

11. The toll was thus a post tender, statutory levy paid by the contractor after the commencement of the project that had not been taken into account in the original pricing agreed upon between the parties.

12. On 22.06.09, the contractor raised a claim for toll fee paid, producing available materials before CRN, the certifying authority, to establish the payment of toll. The claim was subject to proper verification and recommendation for payment by the Engineer.

13. Full particulars relating to the numbers of trucks used and their movement along with quantum of the sand transported were furnished by the contractor. CRN had accepted the decoded documents such as material receipts and lorry trip sheets that had been filed by the contractor as

contemporaneous records, on the basis of which the recommendations for payment had been made on 01.08.2009 and 24.08.2010.

14. IMU referred the matter to the Technical Committee, which on 09.11.2010 concluded that the claim may be considered, but only upon the contractor producing documentary evidence such as toll fee receipts issued by the toll booth.

15. IMU rejected the claim vide its proceedings dated 12.11.2010 on the ground that no documentary proof had been filed by the contractor to establish actual payment. IMU would maintain that the documents filed only confirmed the position that the trips had been undertaken and the sand delivered by the lorries but did not amount to conclusive proof that the toll fee had, in fact, been paid.

16. An allegation was also made pointing out the possibility that the contractor could well have undertaken the trips while clandestinely avoiding payment of the fee. In such a case, awarding the reimbursement of the fee in the absence of conclusive proof such as the bar coded toll fee receipt issued by the booth would amount to unjustly enriching the contractor at the expense of IMU.

17. The Tribunal examined the issue in detail. IMU argued that the price fixed for the work entrusted to the contractor was inclusive of all payments such as taxes and levies and as such contested the very maintainability and basis of the claim for reimbursement of toll fee.

18. Mr.Krishnamoorthy would also assail the award on the ground that the claim has been accepted by the Tribunal for the mere asking by the contractor and that the burden that lay upon the contractor to establish the factum of actual payment had not been discharged.

19. Mr.Somayaji would, in response, draw the attention of the Court to Minutes of Meeting dated 17.11.2008 to which the contractor was not a party, particularly Clause 4 thereof, that reads as follows:

> *"4.Request for permission for allowing usage of TNRDC Roads by M/s.S.R.C.Projects Pvt. Ltd. For plying trucks for IMU land filling activity.*
> *The Vice President, TNRDC, informed that necessary permission will be granted to NMA/IMU/Ms.SRC Projects Pvt. Ltd., for use of OMR for plying of vehicles carrying earth for the IMU land filling work. However, necessary toll charges have to be paid and borne by the contractor. The Chief Secretary and others suggested that TNRDC should take necessary steps to maintain the OMR free from spillage of earth from the vehicles and the contractor should be instructed to prevent any spillage. Director, NMA, assured that all preventive measures will be taken in this regard."*

20. He would also draw the attention to Minutes of meeting held on 08.01.2009 between IMU, the Engineer and the Contractor specifically dealing with the issue of payment of toll. The relevant paragraph is extracted hereunder:

> *'6.M/s.SRC had pointed out that for access to this road, vehicles have to pass through a tollgate established recently, for which payment has to be made for every trip at Rs.17/- a trip and this will run to some crores of rupees and requested IMU to reimburse the same. IMU replied that they will take up with the relevant authorities for waiver of this toll levy for vehicles bound to IMU.'*

21. After a detailed consideration of the matter, the Tribunal passes an Award accepting the claim for reimbursement, rejecting however, its claim for interest thereupon.

22. As regards the claim relating to clause 4 of the Agreement providing for an all-inclusive rate agreed upon by the parties, the Tribunal rightly notes the presence of clause 53 of the General conditions of contract which provides for additional payments. The clause reads as under:

> *'53: Notwithstanding any other provision of the contract if the contractor intends to claim any additional payment pursuant to any clause of those conditions or otherwise, he shall give notice of his intention to the Engineer within 30 days after the event giving rise to the claim has first arisen.'*

23. Clause 4 of the contract that provides for the rate agreed upon to be all-inclusive is thus not absolute and has to be read along with clause 53 extracted above that opens with a non-obstante clause and permits the raising of additional claims as well. The additional claim in the present case is the reimbursement of toll fee, which, as the documents reveal, has been brought to the notice of IMU as a claim as early as on 12.01.09 by the contractor in its acceptance of the work order.

24. In any event, the impugned Award notes that the statement of defense filed by IMU proceeds on the basis that the claim of reimbursement of toll fee has been taken to be an additional claim by the contractor. IMU cites the approval granted by the Technical committee to reimburse the toll fee

paid, subject to production of supporting evidence of payment. Thus, what remained was only the establishment of payment of the same by way of supporting evidence.

25. As regards the veracity or contemporaneous nature of the supporting documents, the material produced by the contractor has been held to be contemporaneous and acceptable by both the Engineer, the certifying authority, as well as the Tribunal.

26. No doubt, the bar coded receipts specifically sought for by the IMU to establish the payment of toll could not be produced. However, one cannot lose sight of the fact that the request for reimbursement of toll was made by the contractor on 02.06.2009 and all contemporaneous records were produced such as details of trucks, the time spent on movement of the trucks, the quantum of sand transported duly verified at the loading as well as unloading point, lorry trip sheets, records maintained by the contractor and statement of consolidated claim of toll charges with toll notices and list of trucks. None of the records produced have been disputed and it is based on the aforesaid documents that CRN has actually recommended and certified the bills.

27. The recommendation for payment was made on 01.08.2009. However, the rejection of the request by IMU was only on 12.11.2010 after the elapse of more than 15 months from the recommendation by the Engineer. It was only at the time of rejection of the claim that IMU calls upon the contractor to produce the toll booth tickets, in response to which the

contractor, vide reply dated 14.10.2010 states that the toll receipts were issued on thermal wax paper on which the print survives only for a few days and fades thereafter.

28. Before me, nothing perverse has been pointed out in the acceptance of the records by the Engineer or, for that matter, by the Tribunal. I am called upon to re-appreciate the same evidence as has been produced before the Tribunal and the conclusion arrived at in the Award.

29. Mr.R.Krishnamoorthy, learned senior counsel would lay stress on the position that not only were the toll receipts not produced, no oral evidence was let in by examining the drivers or employees to evidence the payment of toll. This argument does not appeal in the face of the finding of fact rendered by the Tribunal on the appropriateness of the recommendation of the Engineer based on verification of records. It is not for this court, in a challenge under section 34 of the Act, to substitute an alternate justification or conclusion for that arrived at by the Arbitrators, but merely examine whether the conclusion arrived at is a possible/plausible one. No error, much less perversity, has been established in the conclusion in the Award or, even in the recommendation made by the Engineer.

30. I also find force in the conclusion of the Tribunal to the effect that the parties have, by way of documentation as well as conduct, varied the terms of the contract inter se. The rate quoted as per Clause 4 of the contract between the parties stood varied and modified thereafter by inclusion of the

additional claim on account of toll fee. This can be seen from the fact that no demur was expressed by IMU to the caveat set out by the contractor in the acceptance of tender on 12.01.09 whereunder the right to claim toll fee was reserved by the contractor. The claims raised on this account have also been entertained and in fact, IMU, vide its letter dated 09.08.10, has communicated its in-principle acceptance for the reimbursement of toll based on the decision of the Technical Committee to this effect. This ground is rejected.

31. The second ground of challenge relates to the levy of interest. The submissions before the Arbitral Tribunal were to the effect that the claims on account of running bills, retention money and service tax that had been raised by the contractor had been settled only after significant delay. A claim was thus put forth for the award of interest at the rate of 18% on the belated payments amounting to Rs.1,29,25,652/- that was rejected by the respondents in terms of their letter dated 18.03.2011.

32. The defence put forth by IMU before the Arbitrators was reliance upon clauses 57.1 and 57.2 of the contract which, according to IMU, was explicit to the effect that no interest would be payable under any circumstances whatsoever. The relevant clauses have been extracted and interpreted in detail by the learned Arbitrators and read as follows:

*'14. 57 Payment Terms:*
*57.1 The contractor shall submit to the Engineer once in 15 days a statement on the standard printed form to be had on application to the work executed upto the end of the fortnight (if such) value shall justify the issue of an interim certificate together with statements of earth received at site in trucks with their volumes and total quantities reduced by 20% of voids to*

*enable to verify and cross check the quantities filled and compacted at site. The contractor will submit bills for a minimum value of Rs.2 crores and will be paid on the certificate of the Engineer, and after scrutiny of Engineer NMA or NMA's authorized representative, the amount due to him on account of the estimated contract value of the permanent work executed upto the end of the previous bill amount together with such amount (if any) as the Engineer may consider proper on account of materials on the site subject to a retention of the percentage named in the tender until the amount retained shall reach the limit of retention money/security deposit named in the tender. All amount due to the NMA by the contractor if outstanding on account of supply of any materials, electricity, water, services rendered in connection with the contract, repairs or rectifications to work etc., shall be adjusted from the bills or any amount due to the contractor by the NMA by way of outstanding deposits etc.*

*57.2 On receipts of bills an ad hoc payment of 75% of the bill amount will be released within a period of one week. The date on which a Cheque of payment is handed over the contractor by the Employer will be considered as the date of payment for all purposes. The balance amount of Bill will be paid within 18 days of submission of bill. Client will pay within a week of certificate from the Engineer. Delay in making such payments by the Employer due to exceptional circumstances shall not nullity or vitiate in any way or other, the conditions of the contract and the contractor shall have no claim on this account. The employer will not pay any interest on account of any delay in the payment to the Contractor under any point of time and Contractor cannot prefer any claim on this account."*

33. According to IMU, the parties had not envisaged the levy of interest under the contract at all. Mr.Krishnamurthy, learned senior counsel would quote from the latter portion of Article 57.2, to state that no interest had been provided for, even in exceptional circumstances and in any event no such circumstances had been made out by the contractor to justify the claim for interest.



34. The learned Arbitrators after a detailed consideration of the issue accepted the claim for interest. The Tribunal noted that clauses 57.1 and 57.2 provided for a frame work for the settlement of the claims of the contractor, stipulating both the procedure as well as time frame therefor.

35. Towards the conclusion of clause 57.2, the clause provided that IMU would pay the contractor within a week of certification of payment by the Engineer. Any delay in effecting payments would not nullify or vitiate in any way the conditions of the contract and the contractor would have no claim on this account. The last sentence is to the effect that IMU was not liable to pay interest on account of any delay in payment to the Contractor under any point of time and no claim could be preferred by the contractor on this account.

36. The parties adopted extreme positions before the Arbitrators on the bar on levy of interest under contract. Each party sought the benefit of isolated portions of the clauses above, and this called for proper and harmonious reconciliation by the Tribunal.

37. The interpretation accorded to clauses 57.1 and 57.2 was to the effect that interest would be payable, except in cases where the reason causing the delay was exceptional. The Tribunal, at paragraph 15.11 states:

> *'15.11.Therefore the expression in the later portion of Cl.57.2 which reads that no interest is payable on any account precedes the expression dealing with the delay in making payments in exceptional circumstances and the time limit of one week and eighteen days for payments on receipt of bills. The clauses read together it shall mean that IMU will have no obligation to pay interest* ***only*** *if there is an* ***exceptional circumstance****. In this case the contract is dated 1302.2009. The work had to be completed within eight months. The earth removing work commenced on 13.03.2009 and completed on 01.08.2009 within time and site was taken over by IMU on 18.9.2009(Ex.C30)'.*

38. I find the reconciliation acceptable since the contract does not, evidently and on a plain reading, bar the levy of interest absolutely but only in those cases where the delay is caused by exceptional circumstances. The argument to the contrary is rejected.

39. As far as the justification for the delay is itself concerned, the Tribunal has examined the justification in the case of each bill where the payment was delayed. The date of submission of the bill by the contractor, recommendation by various authorities such as the executive engineer and FAO and date of payment have been examined. The notes accompanying the invoices have also been noted prior to arriving at a reasoned conclusion that no exceptional circumstances had arisen that would justify the delay in payment. Thus the claim for award of interest has been accepted by the Tribunal after proper and detailed analysis. No instances of perversity in interpretation or appreciation of the facts have been brought to my notice.

40. The following cases have been relied upon by IMU in this regard:

> *'1.Union of India v. Ambica construction (2016) 6 Supreme Court Cases 36.*
> *2.Union of India v. Bright Power Projects (India) (P) Ltd. (2015) 9 Supreme Court Cases 695.'*



41. In *Ambica Construction* (supra) the Bench identified the question raised for consideration as follows:

> *'6.The only question for consideration is whether an arbitrator has the power*

*to award pendente lite interest in case contract bars the same in a case covered by the Act and decisions of this Court in Engineers De-Space-Age2 and Madnani Construction Corpn. (P) Ltd.3 have been correctly decided?'*

42. In *Union of India vs. Bright Power Projects (India) Private Limited* (supra) wherein the Supreme Court holds that the Arbitrator has no power to go beyond the bar imposed by contract on the imposition of interest stating at para 14, as follows:

*'14.We may also refer to the decision of this Court in Union of India v. Saraswat Trading Agency. This Court has observed in the said case that if there is a bar against payment of interest in the contract, the arbitrator cannot award any interest for such period. In view of the specific bar under Clause 13(3) of the contract entered into between the parties, we are of the view that the Arbitral Tribunal was not justified in awarding interest from the date of entering upon the reference to the Arbitral Tribunal till the date of the award.'*

43. Both judgements cited are distinguishable on facts since the contract, in the present case, does not bar the claim of interest absolutely but only in cases where the delay was occasioned by exceptional circumstances.

44. In the light of the discussion above, the ground of challenge relating to the levy of interest is rejected.

45. The scope of interference under section 34 is narrow, to say the least, and does not extend to re-visiting the award except in the circumstances set out under sub-section (2) of section 34. The permissible grounds are restricted to i) incapacity of the party, ii) invalidity of arbitration agreement, iii) violation of principles of natural justice, iv) excess of

jurisdiction assumed by the Arbitrator and v) conflict with public policy of India. None of the aforesaid conditions would be attracted in the facts and circumstances of the present case. Thus, and at the outset, I am of the categoric view that no ground has been made out for interference in the award on both aspects argued before me. That apart, the Tribunal has considered the issue in detail on merits as well. The conclusions arrived at both on the claim of reimbursement of toll fee as well as interest on delayed payment are based on evidences and a proper interpretation of the Agreement and constitute a possible and acceptable view which does not call for interference.

46. The following cases relied upon by Mr.Somayaji support the above conclusion:

In the context of 1940 Act:

*'1.U.P.State Electricity Board V.Searsole Chemicals Ltd., (2001) 3 SCC 397*

*2.State of U.P.Vs.Allied Constructions (2003) 7 SCC 396*

*3.Satna Stone & Lime Co. Ltd., Vs. U.O.I (2008) 14 SCC 785*

*'10.In Hindustan Construction Co. Ltd. v. Governor of Orissa the court observed as follows: (SCC p. 17, para 10)*

*"10.......It is well known that the Court while considering the question whether the award should be set aside, does not examine that question as an appellate court. While exercising the said power, the court cannot reappreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. Such award can be set aside on any of the grounds specified in Section 30 of the Act."*

*11. There is no quarrel with the proposition canvassed by the learned counsel for the appellants. This scope of interference by the court is limited and the court would not be justified in reappreciating the material on record and substituting its own view in place of arbitrator's view. This exercise is not permissible by the court in view of the settled legal position.*

*12. In the instant case, where there is an error apparent on the face of record or where the arbitrator has not followed the statutory legal position, the court would be justified in interfering with the award of the arbitrator.'*

*4.Steel Authority of India Ltd., Vs. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63*

*'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.*

*(1989) 2 SCC 38 (1991)4 SCC 93 (1990) 4 SCC 740*

*(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.'*

*5. Ravindra & Associates Vs.U.O.I (2010) 1 SCC 80*

*6. Madnani Construction Corporation Pvt Ltd. Vs. U.O.I. (2010) 1 SCC 549*

*'20.It is well settled that the arbitrator is the master of facts. When the arbitrator on the basis of record and materials which are placed before him by the railways came to such specific findings and which have not been stigmatized as perverse by the High Court, the High Court in reaching its conclusions cannot ignore those findings. But it appears that in the instant case, the High Court has come to the aforesaid finding that the items mentioned above are excepted matters and non-arbitrable by completely ignoring the factual finding by the arbitrator and without holding that those findings are perverse.'*

In the context of 1996 Act:

*7. Rashtriya Ispat Nigam Ltd., Vs. Dewan Chand Ram Saran (2012) 5 SCC 306*

*'44.The legal position in this behalf has been summarized in paragaph 18 of the judgment of this court in SAIL vs. Gupta Brother Steel Tubes Ltd. (supra) and which has been referred to above. Similar view has been taken later in Sumitomo Heavy Industries Ltd. vs. ONGC Ltd. reported in [2010 (11) SCC 296] to which one of us (Gokhale J.) was a party. The observations in paragraph 43 thereof are instructive in this behalf.'*



*8. Navodaya Mass Entertainment Ltd. V. V.J.M. Combines (2015) 5 SCC 698*

*'8.In our opinion, the scope of interference of the Court is very limited. Court would not be justified in reappraising the material on record and substituting its own view in place of the Arbitrator's view. Where there is an error apparent on the face of the record or the Arbitrator has not followed the statutory legal position, then and then only it*

*would be justified in interfering with the award published by the Arbitrator.'*

9. Bharat Heavy Electricals Ltd., Vs. Globe Hi-Fabs Ltd., (2015) 5 SCC718
10.Swan Gold Mining Ltd., Vs. Hindustan Copper Ltd., (2015) 5 SCC 739

*'11. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Arbitrator or by the Court would be erroneous or illegal.*

*12. It is equally well settled that the Arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him.'*



*11.The Project Director, TamilNadu Road Sector Project Vs. RNS Infrastructure Ltd., (2017) 3 CTC 113'.*



47. The contractor in his challenge to the award (OP No.484 of 2015) seeks an enhancement of the rate of interest from 12% per annum to 18% per annum. No case has been made out for the enhancement sought and the rate of interest awarded is perfectly in order and confirmed.

48. In fine, both O.P. No.484 of 2015 and O.P.428 of 2015 are dismissed leaving the parties to bear their own costs.

06.11.2017

Index :Yes/No

Speaking Order/Non-Speaking Order

vga/msv/sl

**Dr.ANITA SUMANTH,J.**

Vga/msv/sl

Pre-delivery judgment in

O.P. Nos.428 and 484 of 2015



06.11.2017