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

+ **OMP No. 301/2011 & IA No. 6340/2011**

Reserved on: January 31, 2017
Date of Decision: March 29, 2017

THE STATE OF GUJARAT

..... Petitioner

Through: Mr. Preetesh Kapur, Ms. Hemantika Wahi,
Ms. Puja Singh & Mr. Satya Panda,
Advocates.

versus

ASHVIKA CONSTRUCTION PVT. LTD. & ANR. Respondents

Through: Mr. Dayan Krishnan, Senior Advocate with
Ms. Bina Gupta & Mr. Ranjit Raut,
Advocates for R-1.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

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29.03.2017

1. The State of Gujarat has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') against Ashvika Construction Private Limited (Respondent No. 1) and the Government of India, Ministry of Road Transport and Highways (impleaded as proforma Respondent No.2) challenging an Award dated 10th December, 2010 passed by the sole Arbitrator in the disputes between the Petitioner and Respondent No. 1 arising out of a tripartite Build, Operate and Transfer ('BOT') Agreement dated 19th September, 1996 between the Government of India on the one part, the Petitioner on the second part and Respondent No. 1 on the third part

for the construction of a four-lane Road Over Bridge ('ROB') and its approaches from KM 259/4 to KM 263/4 in the Ahmedabad-Mumbai section of NH-8 on BOT basis in place of the then existing two-lane Railway level crossing No. 13-A, between KM 261/2 to 261/4 of the said section of the National Highway.

The BOT Agreement

2. In terms of the BOT scheme, the selected Entrepreneur was required to design and construct the four-lane ROB and its approaches and also maintain it for an agreed period known as the 'Concession Period' at its own cost. In lieu thereof, the Entrepreneur was allowed the rights to collect and retain the fees from the users of the facility at agreed rates during the Concession Period, so as to recover its investment with returns.

3. The tender of Respondent No. 1 was accepted and the aforementioned BOT agreement was signed. The construction period was 18 months and the Concession Period was 23 months and 5 days. Under Clause 3.10 of the BOT Agreement, Respondent No. 1 was allowed to levy fee on vehicles using the facility in accordance with the National Highways Act, 1956 ('NH Act') only after the Government of India issued a notification to that effect. In effect, therefore, Respondent No. 1 had no say on the fee that was to be collected. That was purely within the ambit of the Government of India.

4. On 10th July, 1998, a Notification was issued by the Ministry of Surface Transport, Government of India in exercise of the powers conferred under Sections 7 and 8A of the NH Act authorising Respondent No. 1 or its authorised legal representative to collect and retain fees as per the rates

specified in the Schedule appended to the Notification from 13th July, 1998 to 17th April, 2000 for use of the part of NH-8 i.e., four-lane ROB from km 261/2 to km 261/4 including its approaches from km 259/4 to 263/4 in Ahmedabad-Mumbai Section NH-8. Separate rates were specified for motor cycles, scooters or any other two-wheelers (Nil per trip); motor cars, taxis, jeeps, pick-up vans, station wagons, tempos, auto rickshaws, three-wheeler scooters or other auto driven light vehicles with or without trailer (Rs. 5 per trip per vehicle); buses, trucks and other heavy vehicles including trucks, trailer combinations laden with goods / passengers both loaded and unloaded (Rs. 15 per trip per vehicle); and other mechanically propelled vehicles whether loaded or unloaded (Rs. 20 per trip per vehicle).

5. At this stage it is important to refer to Section 8A of the NH Act, which reads as under:

“8A. Power of Central Government to enter into agreements for development and maintenance of national highways. –

(1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to

regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject matter of such agreement, for proper management thereof.”

6. Under Clause 1.2 and 8 of the BOT Agreement, a Steering Group (‘SG’) had to be constituted. Its duties and responsibilities were outlined thereunder. The said SG was to be the technical authority under whose direction and control the work was to be carried out.

7. Clause 8 of the BOT Agreement provided that the SG would be the final authority in all technical matters. The drainage arrangements, layout of junction improvements, other details of the road works, cross-drainage works etc. were to be approved by the SG.

8. The stipulated date of completion of construction was 18th May, 1998. However, on account of reasons beyond the control of Respondent No. 1, the construction could be completed only on 15th July, 1998. The collection of fees from the users started from 16th July, 1998.

Civil suit in the Bardoli Court

9. Meanwhile, on 30th June, 1998, a Cooperative Society named Chalthan Vibhag Khand Udyog Sahakari Mandli Limited representing certain local interests filed Civil Suit No. 12/1998 in the Court of Civil Judge, Senior Division, Surat, Camp Bardoli against the Government of India, the State of Gujarat and Respondent No. 1 challenging the proposed collection of fees from vehicles which would not use the ROB.

10. In the said suit, an interim order was passed by the Civil Judge on 29th

July, 1999 restraining Respondent No. 1 from collecting fees from vehicles, which were not crossing over the ROB. The onus was put on Respondent No. 1 to collect tax from mechanical vehicles crossing over and using the ROB.

11. The said order 29th July, 1999 was not challenged by Respondent No. 1. Subsequently, Civil Suit No. 12/1998 was decreed on 30th April, 2005 in favour of the State of Gujarat thereby declaring that only the vehicles crossing over the bridge from North to South as well as South to North would have to pay the toll fee. It was further declared that the collection of fees from East to West or West to East without crossing over the bridge was illegal.

12. In the meanwhile, on 15th February, 2000 at a meeting of the SG, the aforementioned interim order dated 29th July, 1999 of the SG was discussed. The SG then agreed that the said order amounted to 'Force Majeure' in terms of Clause 11.3 of the BOT Agreement.

13. At this stage, it is required to be noticed under Clause 11.3 that if, at any time during the Concession Period, the Entrepreneur (Respondent No. 1) was unable to collect any fee or the fee collection was drastically reduced due to reasons beyond the control of Entrepreneur such as fire, earthquake, floods, storm or any other such calamity strike not solely confined to the staff of the Entrepreneur, political bandh, transporters agitations, merchant agitations, riots, civil commotions, **injunction from any court** or the closure of bridges for more than 24 hours at a time on account of structural repairs etc., the Government of India was to compensate the Entrepreneur

for such deficit / shortfall in the fee collection along with interest as may be decided by the SG. (emphasis supplied)

14. The SG then directed that the Entrepreneur together with the PWD Personnel would collect the traffic census data for 7 days (24 hours a day), conduct an O-D Survey at both the ends of the project location to assess the possible loss of collection after accounting seasonal variations. The SG met again on 13th & 14 July, 2000. It calculated the compensation payable to Respondent No. 1 as Rs. 15,48,120.

Arbitration Proceedings: The First Part

15. Respondent No. 1 did not accept the recommendation of the SG and sought reference of the disputes to Arbitration in terms of Clause 10 of the BOT Agreement. The Government of India appointed a sole Arbitrator by a letter dated 28th September, 2000. Before the said Arbitrator, Respondent No. 1 filed its Statement of Claim ('SOC') and the State of Gujarat and the Government of India filed their Statement of Defence.

16. By an Award dated 4th July, 2007, the learned sole Arbitrator held that on account of the judgment dated 30th April, 2005 of the Civil Judge in Special Civil Case No. B/12/A.D 1998, he could not act as an Arbitrator to adjudicate the claim. He granted leave to Respondent No. 1 to seek appropriate relief from a higher court of law against the judgment of the Civil Judge.

17. The above Award was challenged by Respondent No. 1 by filing an application under Section 34 of the Act being OMP No. 560/2007 before

this Court. By an order dated 19th November, 2008, this Court set aside the said Award dated 4th July, 2007 on the ground that the learned Arbitrator had committed a jurisdictional error. Thereafter, the same learned sole Arbitrator presided over the fresh arbitration proceedings.

Arbitration Proceedings: The Second Part

18. In its SOC before the Arbitrator, Respondent No. 1 quantified the compensation payable to it against the losses suffered on account of refusal of local users to pay toll during the Concession Period as Rs. 4,22,50,100. Further, interest was claimed at 18% per annum both *pendente lite* and future apart from cost of arbitration.

19. The learned Arbitrator noted that after certain mistakes in computation were pointed out during the hearings, Respondent No. 1 corrected the claim amount as Rs. 2,40,33,825 vide CD-6 (R), which was filed during the hearing on 13th August, 2010. With the help of a road map, Respondent No. 1 explained that a substantial traffic used part approaches of the ROB for travelling to and from the State Highway leading to Udhna Industrial Estate. It was urged that the compensation should be based on the traffic count taken from 21st February, 2000 to 27th February, 2000, which captured the entire traffic that used the facility toll free.

20. The case of the State of Gujarat, on the other hand, was that the proposal made by Respondent No. 1 while bidding for the Contract was based on the traffic study conditions in terms of Clause 3.1 of the BOT Agreement. The burden was on Respondent No. 1 to have carried out its own traffic study and make an independent assessment to arrive at a likely volume of the

traffic data. It was submitted that Respondent No. 1 was aware of the legal conditions and was to bid accordingly for the work which was on a commercial format of BOT. Further, it was pointed out that the Arbitrator could not go against the finding of the Civil Judge, Senior Division, Bardoli, who had already interpreted the notification and passed an order disallowing levy of fee on such users who did not cross over the ROB:

“9.2. ... that contract clause 11.3 is not attracted because during the Concession Period the claimant was not restrained from collecting the fees from the users of the facility of the ROB and that the injunction order only restrained him from collecting fees from vehicles not crossing the bridge. In connection with the judgment of the Civil Court Bardoli, the Respondents submitted case law (2003) 7 SCC 197 to emphasize that the decision of the Civil Court is binding on the Arbitrator.”

21. In addition, it was contended by the Government of India that the passersby, who could not be tolled, used flat road of 1270 metres on Kadodra side and 1070 metres on Karan side, which accounted for only 15% and 19% respectively of the project cost but in both, the original and alternative quantification, Respondent No. 1 had assumed as if full toll was payable by such vehicles. It was further submitted that the traffic count held in February, 2000 had to be subject to seasonal and other variations and would not remain the same during the entire Concession Period. Further, the number of vehicles that would have opted for daily and monthly passes was perhaps assumed on the lower side. Certain arithmetical mistakes in the calculation of loss made by Respondent No. 1 were also pointed out.

The impugned Award

22. After considering the pleadings and the above submissions in the light of

the documents placed on record, the learned sole Arbitrator passed the impugned Award dated 10th December, 2010. The learned sole Arbitrator considered only one issue viz.:

“Whether in terms of the conditions and spirit of the BOT Agreement the Claimant was entitled to collect toll from those users of the facility who were not actually crossing the ROB but were using only part o/the approaches on either side ?”

23. The learned Arbitrator then analysed Clauses 3.10, 1.12 and 1.8 of the BOT Agreement and held as follows:

(i) Respondent No. 1 was entitled to collect fee even from users of part facility i.e., from those who used only part of approach roads without crossing the ROB;

(ii) of the total project cost of Rs. 996.74 lakhs, the cost of ROB was Rs. 202.88 lakhs and the cost of approaches was Rs. 630 lakhs. The remaining was for other ancillary items like cost of collection booths / office, lighting and interest on borrowed capital etc. Thus, the approaches constituted a major component of the project.

(iii) The non-levy of the fee for their use violated the spirit of the BOT Agreement, as per which the Entrepreneur (Respondent No. 1) had been given the fee collection rights in terms of Clause 2.4 to recover the entire project cost of Rs. 996.74 lakhs.

(iv) From the correspondence exchanged between the parties, the learned Arbitrator concluded that Respondent No. 1 had given details of the expected fee collections on the assumption that fees could be recovered from

all the users of the facility except exempted category of Defence vehicles, vehicles with VIP symbols etc. The correspondence showed that the State of Gujarat accepted the above proposal. Thus, at this time, they were also of the view that all users including part users who might not cross the bridge were liable to pay the toll. Therefore, the denial to Respondent No. 1 of collection of toll from users of part facility gave rise to a genuine claim.

(v) Till the time the disputes were referred to arbitration, the State of Gujarat and the Union of India appeared to believe that Respondent No. 1 had a right to collect toll even from users of part facility. As per the letter and spirit of the terms and conditions of the BOT Agreement, Respondent No. 1 was allowed to collect fees from all the vehicles either in full or in part.

(vi) The legal restraint imposed by the Civil Judge, Surat barring Respondent No. 1 from collecting fees from users who were not crossing the ROB attracted the 'Force Majeure' clause i.e., Clause 11.3 of the BOT Agreement for which Respondent No. 1 ought to have been compensated.

24. The learned Arbitrator noticed that till the time of the disagreement of Respondent No. 1 with the quantum of compensation recommended by the SG, the State of Gujarat also believed that Respondent No. 1 had a right to collect user fee from all vehicles using the facility either in part or in full. It was pointed out that both the State of Gujarat as well as Respondent No. 1 were aggrieved by the recommendations of the SG to compensate Respondent No. 1 in the sum of Rs. 15,48,120. While Respondent No. 1 did not accept it on account of the quantum being less than what it considered due, the State of Gujarat opposed the recommendations of the SG on the

ground that it was beyond the scope of the Agreement. This, the learned Arbitrator characterised as an afterthought. The evidence further showed that the State of Gujarat considered the traffic data assumed by Respondent No. 1 as realistic. This also meant that the State of Gujarat also believed at the time of acceptance of the Entrepreneur's proposal that the entire traffic including that which would use the facility only partly would be liable to pay the user fee after construction of the facility. It was within the jurisdiction of the learned Arbitrator to decide on the merit and quantum of compensation payable by the State of Gujarat on account of the injunction imposed by the order of the Bardoli Civil Judge.

25. The Arbitrator agreed in principle with the approach of Respondent No. 1 in quantifying the claim on the basis of the joint traffic survey of February, 2000. The learned Arbitrator also set out as part of the impugned Award what he *suo motu* considered to be mistakes in such calculation. Thereafter, the learned Arbitrator set out in great detail the calculations and computed the total loss suffered by Respondent No. 1 as Rs. 1,05,68,915.

26. Respondent No. 1 was asked to provide audited figures of month-wise collection of toll. However, Respondent No. 1 could provide only year-wise figures of 1998-99, 1999-2000 and 2000-2001. This information (at CD-4) showed that Respondent No. 1 had made a total collection of Rs. 1,283.50 lakhs which was against the projected collection of Rs. 1,297.38 lakhs up to the end of 21st month of collection. The learned Arbitrator concluded that:

“10.7.2. ... Under the circumstances, the compensation that the Claimant will now receive would mainly contribute to his profit. Hence I am of the view that a simple rate of interest of 14 % would

meet the ends of justice in this case. As regards the date from which the interest should be payable, I am of the view that if the Steering Group had correctly quantified the claim in July 2000, the Claimant would probably have accepted the same and then the same would have been received by the Claimant by the end of September 2000. Therefore the Claimant should get interest on the awarded amount with effect from 1st October, 2000.”

27. The learned Arbitrator in the impugned Award held that Respondent No. 1 would be entitled to Rs. 1,05,68,915 by way of compensation for the loss suffered on account of not being able to realise the user fee from local users during the Concession Period together with simple interest at 14% per annum from 1st October, 2000 onwards. The parties were to bear their own costs.

Submissions on behalf of the Petitioner

28. Mr. Preetesh Kapur, learned counsel appearing for the State of Gujarat, made the following submissions:

(i) The Notification under which Respondent No. 1 was entitled to collect fees from mechanical vehicles was not leviable for the approach roads. The Notification defined the ROB as “four lane road over bridge in lieu of level crossing between km 261/2 to km 261/4 including its approaches from km 259/4 to km 263/4 in the Ahmedabad-Mumbai section of NH-8.” By holding that the fees could be collected from users of the approach roads who had not crossed the ROB, the learned Arbitrator acted beyond his jurisdiction and against his mandate.

(ii) The BOT Agreement gave full authority to the Government of India to

determine the rate of fee to be calculated and provided the manner and category of vehicles liable to pay fees. The Schedule set out the rates applicable to users of the ROB. Thus, right from the beginning, the intention was to collect fee only from the users of the ROB and not part users of the facility; had that been the intention, the Schedule would have included the rates payable by part users. Further, the explanation in the Schedule made it clear that for Respondent No. 1 to collect fee, “the vehicle has to cross over the bridge.” Respondent No. 1, therefore, had no right to collect fee from vehicles which were using the approach roads and not the ROB.

(iii) The SG had to function within the parameters laid down in Clauses 1.2 and 1.8 of the BOT Agreement. The SG did not have the authority to decide on compensation. In doing so, it acted beyond its jurisdiction. Therefore, it was futile for the Arbitrator to have relied upon the decision of the SG to come on an erroneous finding that the understanding of the parties from the beginning was that the fees could be collected from even part users of the facility.

(iv) The learned Arbitrator’s understanding of the Force Majeure clause i.e., Clause 11.3 of the BOT Agreement was also erroneous. The mere passing of an injunction by a Civil Court would not attract Clause 11.3. The conclusion of the Arbitrator that full fee should be assumed for part use of the facility was not reflected anywhere in the Agreement or the correspondence and, therefore, contrary to Section 28 (3) of the Act.

(v) The learned Arbitrator also failed to appreciate the correct position regarding the cost of the approach road. The passersby could not be tolled as

they used a flat road of about 1270 metres on Kadodra side and 1070 metres on Karan side. These accounted for only 15% and 19% respectively of the project cost. The calculation given by Respondent No. 1 at Rs. 630 lakhs included, apart from the flat road, the elevation leading to the ROB. This was an integral part of the project. It could not have been assumed that it was the cost of the flat road / approach road alone which was being paid for by vehicles not crossing the ROB.

(vi) The judgment of the Civil Court was not challenged by Respondent No. 1 and had therefore attained finality. The Civil Court held that Respondent No. 1 had no right to collect fees from the part user of the facility. However, this was completely disregarded by the learned Arbitrator. The Award, therefore, was contrary to the fundamental policy of Indian law.

Submissions on behalf of Respondent No. 1

29. Replying to the above contentions, Mr. Dayan Krishnan, learned Senior Counsel appearing for Respondent No. 1 submitted as under:

(i) The nature of the work as described included the approaches from Km. 259/4 to Km. 263/4. The fourth recital to the BOT Agreement reiterated that the work was not only for the construction of the ROB but also its approaches. Likewise, Clause 1.8 which defines 'Project' states that it shall mean construction of the ROB "along with approaches, the subways, CD Works, landscaping ..." etc.

(ii) Even at the time of offering the bid, the costs that were to be recovered envisaged collections from all users and not just users of the ROB. It was

mentioned therein that the cost of the approach roads was much more than the cost of the ROB. The joint affidavit filed by the State of Gujarat and the Union of India in the civil suit contradicted their present stand. They, in fact, supported the stand of Respondent No. 1.

(iii) The learned Arbitrator went only by the joint survey map and the joint survey report. This was a purely factual determination. The entire Award was based on a proper analysis of the clauses of the BOT Agreement and it was a plausible view to take.

Scope of Section 34

30. Before commencing the discussion on the above submissions, the Court would like to recapitulate the law in relation to the scope of the powers of the Court under Section 34 of the Act to interfere with an arbitral Award. As explained by the Supreme Court in ***NHAI v. ITD Cementation India Limited (2015) 14 SCC 21***:

“25. It is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is 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 contract. The court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair minded or reasonable person could do.”

Toll not confined to users of ROB

31. The first issue to be considered is whether the real intention of the parties was to confine the collection of the toll to the users of the ROB or to include part users of the approach roads.

32. The learned Arbitrator has in para 10.2 of the impugned Award set out the various factors that led him to reach the conclusion that all the parties, including the State of Gujarat, genuinely believed that in terms of the BOT Agreement, Respondent No. 1 “had a right to collect toll even from users of part facility and that if the claimant was unable to do so due to any reason beyond [its] control, [it] deserved to be compensated for the loss suffered.”

33. There is merit in the contention of Mr. Krishnan that what was envisaged to be constructed was a ‘facility’ at a total estimated cost of Rs. 873.08 lakhs. The cost of the ROB was only 25% of the total cost i.e., Rs. 202 lakhs. It was for this reason that both, the State of Gujarat and the Government of India believed that a vehicle presenting itself at a toll collection booth must pay the toll fee irrespective whether it intended to cross the ROB or not. Otherwise, neither the State of Gujarat nor the Government of India would have allowed the toll booths to be constructed on either side of the ROB at locations that would trap even the traffic not crossing ROB but only using part of the facility i.e., the approach road on either side. This factor was noticed by the learned Arbitrator in para 10.2 (v) of the impugned Award. It was noticed that “the toll booths on the central verge of the highway on either side would have captured the outward traffic from Chaltan also.” The learned Arbitrator also correctly noted that in the affidavit filed by the State of Gujarat and the Government of India in the Court of the Civil Judge, the right of Respondent No. 1 to collect fee even from part users of the facility who did not cross the ROB was acknowledged.

34. The Respondent is also right in its contention that the learned Arbitrator did not base his finding only on the minutes of the meetings of the SG. The other factors that weighed with the learned Arbitrator are set out in para 10.2 of the impugned Award. The very format of the BOT Agreement recognised the right of the Concessionaire to recover its investments, other expenses and profit by realising fee from the users of the highway facility constructed and maintained by it. The entire model was based on estimated traffic that was expected to use the facility. No doubt, the Concessionaire bears a risk of reduced traffic.

Force Majeure

35. Where, however, the reduction in traffic was due to an action which was not within its control, the Concessionaire was required to be compensated. This forms the subject matter of Clause 11.3 of the BOT Agreement which specifically talks of reduction in the fee due to “injunction from any court” among other things which constitutes a *force majeure* event. Consequently, the Court is unable to agree with the submission of the Petitioner that the learned Arbitrator proceeded on an erroneous interpretation of Clause 11.3 of the BOT Agreement.

Scope of powers of the SG

36. Even as regards the scope of the power and the mandate of the SG, it is plain that some of the decisions of the SG were indeed acted upon and, in fact, payments were made by the Petitioner to Respondent No. 1 on the basis of such decisions. As noted by the learned Arbitrator, the meetings of the SG were presided over by the officials of the MoST and, thus, the genuineness

of the claims of compensation of Respondent No. 1 was accepted in principle. It was only the quantum of compensation that was the matter of dispute. Consequently, the Court is unable to accept the criticism of the Petitioner that the SG exceeded its mandate in making recommendations as regards compensation payable to Respondent No. 1 for the loss suffered by it on account of the court injunction.

Calculation of compensation

37. As regards calculation of compensation, the learned Arbitrator has discussed in great detail the traffic figures as corrected by him at paras 10.6.4 to 10.6.6. The main reason for the difference in the figures arrived at by the SG and the learned Arbitrator was that the SG had only considered the traffic of trucks which were engaged exclusively for Chaltan. All other traffic was completely ignored by the SG without giving any reasons. The learned Arbitrator correctly held that there was no rationale for this omission by the SG.

38. The Petitioner has been unable to show on what basis this detailed calculation by the learned Arbitrator of the traffic figures of the estimated loss on account of the injunction granted by the Court can be simply discarded by the Court as perverse or erroneous.

Decree of the civil Court

39. The submission that the finality of the decree of the Civil Court precludes any claim for compensation ignores the fact that it is the very decree by the Court that gives rise to the claim under Clause 11.3 of the BOT Agreement. In other words, it is only when the Court decree granting a

total injunction against collection of toll from part users becomes final that the requirement for Respondent No. 1 to be compensated under Clause 11.3 arises. Therefore, the submission that Respondent No. 1 would not be entitled to any compensation because the Court decree has become final would actually be an erroneous reading of Clause 11.3. Far from the learned Arbitrator committing any error in this regard, the impugned Award is, in fact, consistent with the various clauses of the BOT Agreement.

40. The impugned Award is also based on a thorough analysis of the evidence placed on record. The Court rejects the plea of the Petitioner that the impugned Award is contrary to Section 28 (3) of the Act.

Conclusion

41. The Court holds that no grounds have been made out by the Petitioner for interference with the impugned Award under Section 34 of the Act.

42. The petition and the application are dismissed with costs of Rs. 50,000 which shall be paid by the Petitioner to Respondent No. 1 within four weeks.

S. MURALIDHAR, J

MARCH 29, 2017

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