

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **OMP NO. 372/2015**

Reserved on: 23rd November, 2017
Date of decision: 07th December, 2017

ALSTOM T & D INDIA LTD (FORMERLY AREVA T&D INDIA LTD.)

..... Petitioner

Through: Mr.Kaustubh Sinha, Adv.

versus

M/S ARADHYA INFRA-TECH PVT. LTD.

..... Respondent

Through: Ms.Ekta Mehta, Mr.Shreyans
 Singhvi, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the Act') has been filed by the petitioner Alstom T & D India Ltd. (Formerly Areva T&D India Ltd.) challenging the Arbitral Award dated 27.02.2015 passed by the Sole Arbitrator.

2. The petitioner had been awarded a contract pertaining to erection and commissioning of power equipments in construction of 132 x 33 KV sub-station at Ghatanji, District Yavatmal by M/s Maharashtra State Electricity Transmission Company (hereinafter referred to as MSETCL). Amongst the various activities forming part of the scope of the petitioner's responsibilities was to carry out

civil and building work on Ghatanji. The petitioner allotted this part of the land to the respondent. Purchase Order dated 04.03.2010 was placed upon the respondent on the agreed terms as contained in the General and Special Conditions of the Contract. As disputes arose between the parties, the following claims were made before the Sole Arbitrator by the respondent:-

- “1. Claim of transportation of 8300 cum of Murrum from longer distance :Rs. 6171050/-*
- 2. Claim for additional expenditure for use of additional cement: Rs.509216/-*
- 3. Claim for over head expenditure on staff for extended duration of contract: Rs.4,92,7509/-*
- 4. Claim for loss on account of underutilisation of machineries: Rs.16355248/-*
- 5. Claim for loss of business profit for the work withdrawn: Rs.1801108/-*
- 6. Balance of RA bills: Rs.3507965/-*
- 7. Retention amount: Rs.1460795/-*
- 8. Claim on account of refund of income tax: Rs.764848/-*
- 9. Legal expenditure: Rs.1000000/- “*

3. The present petition has been filed by the petitioner challenging the Arbitral Award insofar as it grants the claim made by the respondent under claim Nos. 1, 6 and 7 referred above.

4. As far as grant of claim No. 1 i.e. the claim of transportation of 8300 cum of Murrum from longer distance totaling Rs. 61,71,050/- is concerned, it is submitted that the Arbitrator has

granted this claim in favour of the respondent in ignorance of the terms of the contract and without any evidence. Further, relying upon the averments made in the pleadings filed before the Arbitral Tribunal, it is submitted that this claim could not have been separately granted in favour of the respondent as it was a part of Rs. 35,07,965/- claimed by the petitioner under claim No. 6.

5. The learned counsel for the petitioner has submitted that the claim No. 1 has been granted in favour of the respondent solely relying upon Annexure-4 filed by the claimant with its Statement of Claim. It is submitted that this document was merely a chart and had been denied by the petitioner in the admission / denial of documents conducted before the Sole Arbitrator. It is further submitted that in the affidavit by way of evidence filed before the Sole Arbitrator this chart remained un-proved and, therefore, no reliance could have been placed on the same.

6. On the other hand, learned counsel for the respondent submits that there was no denial that this chart, which was filed as Annexure-4, was based on the additional distance from which the Murrum was carried and rates presided by the State of Maharashtra for such additional transportation cost. She further submits that in the reply filed before the Sole Arbitrator, there was no denial by the respondent to the distance or the rates that were mentioned in Annexure-4. She further drew my attention to the Affidavit by way of Evidence filed by the respondent before the Sole Arbitrator to contend that even in the affidavit, the distance as also rate as per

Central Schedule Rates of the Public Works Department, Maharashtra Government, had been mentioned and there was no cross-examination of the said witness by the petitioner.

7. The learned Arbitrator has given the following finding as far as the rate and the distance of transportation;

“The claimant has calculated the claim for transportation of 8300 cum of Murrum from longer distance as per CSL rates which the Tribunal was informed are the rates fixed by the Government. The details of calculations are given at page 64 of the statement of claim. The respondent has made no comments on the calculations. The Tribunal, therefore, has no reason to disbelieve the same.”

8. I have given my consideration to the submissions made by the parties. I find that the rate and distance covered indeed had not been disputed by the petitioner before Sole Arbitrator. In fact, as would be discussed by me later in this judgment, the fact that Murrum was obtained from alternative site at Kelapur was proved by the respondent. Therefore, the quantity, distance and the rate of transportation, as held by the Sole Arbitrator, was proved. The rate claimed by the respondent was based on the PWD, State of Maharashtra and had not been disputed by the petitioner. In view of the matter, the finding of the learned Arbitrator cannot be challenged.

9. As far as the submission of the petitioner that such claim has been granted in ignorance of the terms of the contract, the petitioner has placed reliance on the following clauses:-

“1.0 Scope of Work

The Detail Scope of work shall be as specified in that Technical Specifications & Bill of Quantity. However, major Scope of work is as mentioned below.

i) Switch Yard: Construction of civil work of switchyard, control room building etc. as per BOQ Annexure- I as signed by you.

Work shall be carried out as per approved drawings & MSETCL specifications, Field quality plan and the directions of the site-in-charge. Contractor shall execute the work up to the entire satisfaction of MSETCL/AREVA Site-in-Charge. Also adhere to the entire statutory Requirement. All necessary civil works such as chipping, grouting, making holes, breaking walls, remaking, if required, shall be in the scope of the contractor.

5.0 Payment Terms

xxxxxxx

B. 85% Payment against Progressive Bills;

85 % Payment shall be payable within Thirty (30) days against progressive bill on submission of invoices duly verified and certified by the Site-In-Charge.

The RA Bill should comprise followings:

I. xxxxxx

II. Measurement Sheet duly certified by Site-In-charge/Engineer.

Xxxxxxxx

5. Other Items as per unit rate.

Measurement certification of AREVA from MSETCL is contractor responsibility”.

10. Relying upon the above clauses, it is submitted that it was the duty of the respondent to not only submit the documents in support of its Running Account Bills but also the measurement certification of AREVA / Petitioner from MSETCL.

11. The learned counsel for the petitioner, placing reliance on certain letters written by the petitioner to the respondent, has submitted that the respondent has failed to submit the relevant documents in favour of Royalty Passes etc., that would have shown that Murrum was, in fact, excavated from Kellapur Quarry and, in absence of these documents, claim could not have been granted in favour of the respondent.

12. The learned Arbitrator has rejected the said plea relying upon the letter dated 30.01.2012 of the petitioner itself to MSETCL which clearly records the stand of the petitioner that the Murrum was supplied from Kelapur Quarry and the Royalty Passes with respect thereof had also been supplied by the petitioner to MSETCL. I may here quote the finding of the Arbitrator;

“The claimant in support of its case has placed on record a letter dated November, 30, 2012 addressed by the respondent to MSETCL. This is a letter which in view of the Tribunal holds the key to the decision on the issue. Hence, it is being reproduced in its entirety.

Our Reference: MSTECL/AREVA/Civil/11-12/786

To,

The Chief Engineer,

EHV Const cum O&M, MSETCL,

Amarvati

Subject: Acceptability of Royalty passes for the Land Development at Ghatanji 132/33k V s/s

OUR REFERENCE:

a) Work order no. MSETCL/CO/11666 dated 27.08.09

b) R.A. bill of ACC No.5 submitted vide our Letter No.527 dated 13.07.11

c) Original Royalty passes submitted vide our letter above.

d) Your Letter No.DYEE/CCCM Sub-Dn/EHV/MSETCLTD/YTL-205 dated 18.07.2011.

Dear Sir,

With reference to subject matter, we wish to bring to your kind attention that we finished Land Development works at Ghatanji s/s by supplying approximately 28,000 CUM of Murrum bought from outside in Mar-11. 95% of works are completed at site.

MSETCL certified for the 20,000 CUM of Land Development as per Contract based on Royalty passes submitted by us. We subsequently submitted ACC-5 for balance 8,000 CUM Qty of Land Development alongwith requisite Royalty Passes. MSETCL returned the ACC-5 indicating that the Murrum is supplied form the same quarry however Royalty Passes are belonging to another (Kelapur) Quarry which is contrary to the fact.

Our corresponding payment is therefore on hold since long and we are unable to pay to our Civil

Agency for the similar reasons. Our relations with the civil Agency are strained due to non-payment.

“We once again re-assure that the Murrum is supplied from Kelapur quarry and respective Royalty passes are also belonging to same quarry. The receipts for payment of Murrum and original Royalty challans are verified by MSETCL Field Officers at the Collector Office.”

Since it is a genuine case, we had been requesting for the certification of the said ACC.

We therefore, request you for kind intervention to resolve the matter.

*Thanking You,
With Regards
Rajeev Dhande
AREVA T & D India Ltd.*

CC to:

- 1. CMD-MSETCL (Prakashganga, Mumbai)*
- 2. Director-Projects (Prakashganga, Mumbai)*
- 3. ED-Projects (Prakashganga, Mumbai)*
- 4. CE-Trans Projects (Prakashganga, Mumbai)*

The aforesaid letter which is signed by one Shri Rajiv Dhande on behalf of the respondent is sufficient to nail the defence set up by the respondent that Murrum was not excavated from an alternate site or that the claimant had submitted forged and fabricated documents. The reason is that the respondent in the letter of 30.11.2012 has not only accepted but has also emphasized to MSETCL that Murrum was excavated from Kelapur quarry. And let us also bear in mind that the respondent has not denied the existence of such a letter or the fact that it was written by it. The letter has been admitted by the respondent in its affidavit of admission and denial of documents dated August 5, 2013. Of course, it has tried to retract from the same

by taking refuge behind non issuance of certificate by MSETCL as also on the ground that the examination of the murrurn established that it was from the same quarry and not from the Kellapur site.

It needs to be borne in mind that the claimant had entered into a contract with the respondent. There was no privity of contract between the claimant and the MSETCL except that the work was to be carried out on the joint instructions of the respondent and MSETCL. Therefore, the respondent cannot pass on the buck to the MSETCL and wash his hands off when it comes to making payment to the claimant by hiding behind the plea of non-certification by MSETCL and on some test carried out certifying that the additional Murrum was from the same quarry and not from the Kellapur.

It will be fair to presume that the respondent before writing the letter dated 30.11.2012 to MSETCL had fully verified and satisfied itself that 8300 cum of Murrum was excavated from Kellapur quarry and not from the original site. The respondent therefore is estopped from taking a stand different from that taken by it in its letter of 30.11.2012. The contents of the letter of 30.11.2012 also reveal that receipts for payment of Murrum and original royalty challans are verified by MSETCL Field Officers at Collector's office. If the MSETCL is not prepared to rely upon its own Field Officers then one is left wondering who else will it reply upon? The respondent has not placed on record any letter from the MSETCL denying the presence of its Field Officers at Kelapur quarry.

As regards the plea that the examination of Murrum established that it was from the same quarry and not from Kellapur, in the first place it is not clear which examination is the respondent referring to and wherefrom report, if any, was obtained, for no such report has been placed on record. Assuming, any such report is in existence, it is obvious that it was obtained

behind the back of the claimant. How can such a report be relied upon and form the basis for rejecting the claim? It was a one sided exercise the result of which cannot be thrust upon the respondent.

Succinctly put the following facts have emerged in favour of the claimant.

The respondent has not denied the issuance and existence of letter dated 30.11.2012; the respondent itself has corroborated that the Murrum was excavated from alternate site (Kellapur) in its letter of 30.11.2012 to MSETCL; the same was verified and certified by MSETCL's Field Staff (as stated in the said letter) and lastly the presumption goes that the respondent's Field Staff, Project Manager at site would have fully satisfied themselves before sending such an affirmation in the letter of 30.11.2012”.

13. The learned Arbitrator has therefore, analyzed the evidence led before her and the finding of the Sole Arbitrator cannot be said to perverse. It may be true that the clauses of the agreement referred by the counsel for the petitioner and quoted by me above have not been separately quoted in the award, however, the effect of the same has been elaborately discussed in the above finding of the Arbitrator. The Arbitrator has clearly found that the stand of the petitioner, in its letter dated 30th November, 2012 to MSTECL, was that the quantity of Murrum and its supply from alternative site (Kelapur) has been verified and certified by MSETCL Field Staff; the respondent, therefore, had clearly complied with the requirements of the contract as quoted above. If for any reasons MSETCL had not released the said payment in favour of the

petitioner, this was a dispute between MSETCL and the petitioner, for which the respondent could not have been denied its legitimate claim.

14. It is further contended by the counsel for the petitioner that the respondent, in its Statement of Claim, Rejoinder to the Statement of Claim and the Affidavit by way of Evidence had admitted that the claim of Rs. 35,07,965/- raised in claim No. 6 included claim for “extra item of transportation, escalation and payment for the work done”. It is further submitted that the amount under claim No. 1 and claim No. 7 could not have been separately granted to the respondent once claim No. 6 had been granted to the full extent of Rs. 35,07,965/-.

15. This submission of the petitioner is totally unfounded and has been rightly rejected by the learned Sole Arbitrator holding as under:-

“The respondent contends that the claims raised are liable to be rejected at the very threshold without going into the merits of the same, even though it has filed written statement of defence denying the claims on merits. The contention for outright rejection of the claims is based on certain pleadings of the claimant which the respondent says tantamounts to admissions on its part with which it is bound by and which by themselves negate the claims. The so called admissions are as under:-

- 1. The value of the work executed is Rs. 3,27,23,874/-.
The amount paid by the respondent is Rs.*

2,92,15,909/- leaving a balance of Rs. 3,50,7965/- only.

In the rejoinder affidavit, the claimant has submitted that "Out of which the value of work executed by the claimant is Rs. 3,27,23,874/- which includes extra items of transportation, escalation and payment of work done."

(para 3 page 2)

In its written arguments (page 17) filed before the Tribunal it is stated that "Value of the work executed by contracting agency- Rs. 3,27,23,874/- as per the bills submitted..... the payment released by the respondent for running bill upto RA bill No.7 is Rs. 2,92,15,909/- leaving balance of Rs. 35,07,965/- as value of bills executed but not paid for."

Do the pleadings noticed above, and as contended by the respondent constitute 'admissions' on the part of the claimant leaving no scope with it in raising the claims amounting to Rs. 3,64,97,739 besides cost and interest @18% per annum.

The pleadings which the respondent is showcasing as 'admissions' cannot be seen in isolation. They have to be read in conjunction with the other averments made in the statement of claim, and when so read, one cannot come to the conclusion that the claimant has made admissions detrimental to its case. The pleadings relied upon merely refer to the running bills submitted by the claimant which were to the tune of Rs.3,27,23874/- out of which it was paid a sum of Rs. 2,92,15,909/- only leaving a balance of Rs.3,50,7965/-. This is also borne out from the 'summary and details' of the, claimed amount of Rs.3,64,97739/- as set out on page 00023 of the statement of claim. This document gives the description of the claims and the amount claimed against each claim. One of the claims at item

no.13 pertains to 'balance of RA bills. The amount outstanding against it is shown as Rs. 350,7965/-, which is the difference between the amount claimed i.e. Rs.32723874/- and the amount paid i.e. Rs.29215909/-. All other amounts have been claimed under separate heads from serial No. 6 to 12 and 14 to 16, such as, claim for transportation 8300 cum of Murrum from longer distance, claim for additional expenditure for use of additional cement, claim for over head expenditure for extended duration of contract etc. It is clear from the 'summary and details of the claimed amount' that the works which the claimant allegedly performed outside the scope of its work or in variation of the original scope of work or what is 'being claimed by way of loss or damages did not form part of the running bills'".

16. It is not the case of the petitioner that the Running Bills claimed in claim No. 6 included the extra cost of transportation of Murrum that had been claimed under claim No. 1 and the retention amount that had been claimed under claim No. 7. The pleadings of the parties are not to be construed as Statue. Both parties were aware of the claim on each head being claimed and the petitioner cannot rely upon the purported ambiguity in the pleadings of claim to deny the legitimate claim of the respondent.

17. The petitioner has also challenged the award insofar as it grants the claim No. 6 in favour of the respondent. The petitioner submits that in terms of the contract between the parties, the petitioner was entitled to retain 5% of the amount from the Running Bills and adjust the same towards liquidated damages which were

leviable in terms of the contract in case of delay in execution of the work by the respondent. It is further submitted that in the present case there was an admitted delay in execution of the work by the respondent and therefore, in terms of Clause 8 of the contract, the petitioner was entitled to levy liquidated damages. The counsel for the petitioner submits that though various letters had been produced before the Sole Arbitrator showing the default on the part of the respondent in timely execution of the work, the Arbitrator has not given any reason for its finding that the delay was attributable to both the parties. Relying upon the judgment of the Supreme Court in *ONGC Vs. Western Geco International Limited (2014) 9 SCC 263*; *Anand Brothers Private Limited Vs. Union of India And Others (2014) 9 SCC 212* and of this Court in *Jai Singh Vs. DDA 2008(3) Arb. LR 667 (DEL)*, it is contended that it was obligatory on the Arbitrator to give reasons for the award and in absence of the same, the award is liable to be set aside.

18. I am unable to accept the above arguments of the petitioner. The Arbitrator has discussed the evidence led before her to come to the conclusion that the delay in execution of the work is attributable to the default of both the parties. The Arbitrator has further held as under:-

“It is not disputed that Aradhya was a sub-contractor to Alston T & D for the project awarded to Alston by MSETCL. It is not pleaded before the Tribunal that any amount towards liquidated damages was imposed on respondent by MSETCL owing to time over-run. The respondent has claimed higher cost incurred on

account of re-allocation to third parties but the onus of delays and higher cost also fall on the respondent and not conclusively on the claimant. Thus the alleged breach as stated by respondent does not hold true on account of 1) delays not held to be entirely on claimants side; 2) alleged short supply on the part of the claimant but no instances cited by the respondent; 3) on poor quality a single instance of rusted steel cited by the respondent which is disputed by the claimant; 4) nothing to show that liquidated damages were levelled on the respondent by the principal employer MSETCL. The respondent it may be stated at the cost of repetition has not indicated what damages it has suffered from late completion of project or any realistic estimate of damages. A mere clause in the contract ipso facto will not entitle it for liquidated damages. In the case of Indian Oil Corporation Vs. Lloyd Steel Industries, 2007(4)Arb. LR 84 2008 quoting Section 74 of the India Contract Act, Delhi High Court has held that what is to be awarded is reasonable compensation, and in a case when a party complaining of breach of the contract has not suffered legal injury in the sense of suffering loss or damage, there is nothing to compensate him for, there is nothing to re-compense, satisfy or make amends. The judgment further goes on to say that if liquidated damages are awarded to a party even when it has not suffered any loss it would amount to unjust enrichment which cannot be countenanced and has to eschewed. The relevant paragraph of the judgment is being reproduced as under:-

.....
.....

In a particular case where there is a clause of liquidated damages the Court will award to the party aggrieved only reasonable compensation which would not exceed an amount of liquidated damages stipulated

in the contract. It would not, however, follow there from that even when no loss is suffered, the amount stipulated as liquidated damages is to be awarded. Such a clause would operate when loss is suffered but it may normally be difficult to estimate the damages and, therefore, the genesis of providing such a clause is that the damages are pre-estimated. Thus, discretion of the Court in the matter of reducing the amount of damages agreed upon is left unqualified by any specific limitation. The guiding principle is 'reasonable compensation'. In order to see what would be the reasonable compensation in a given case, the Court can adjudge the said compensation in that case. For this purpose, as held in Fateh Chand (supra) it is the duty of the Court to award compensation according to settled principles. Settled principles warrant not to award a compensation where no loss is suffered, as one cannot compensate a person who has not suffered any loss or damage. There may be cases where the actual loss or damage is incapable of proof; facts may be so complicated that it may be difficult for the party to prove actual extent of the loss or damage. Section 74 exempts him from such responsibility and enables him to claim compensation in spite of his failure to prove the actual extent of the loss or damage, provided the basic requirement for award of 'compensation', viz. the fact that he has suffered some loss or damage is established. The proof of this basic requirement is not dispensed with by Section 74. That the party complaining of breach of contract and claiming compensation is entitled to succeed only on proof of 'legal injury' having been suffered by him in the sense of some loss or damage having been sustained on account of such breach, is clear from Sections 73 and 74.

.....
.....

If liquidated damages are awarded to the petitioner even when the petitioner has not suffered any loss, it would amount to 'unjust enrichment', which cannot be countenanced and has to be eschewed.

42. It is too preposterous on the part of the petitioner to submit that it should get the liquidated damages stipulated in the contract even when no loss is suffered.

In view of the above, the rub of the matter is whether the respondent suffered any loss which can entitle it to pre-estimated liquidated damages and retention of certain amounts. The respondent perhaps could make out a case in its favour had it shown or brought on record some evidence that it was burdened with liquidated damages by MSETCL on account of time over-run. No such evidence has been furnished by it and it has therefore in terms of the judgment of the High Court suffered no legal injury. The Tribunal thus finds no merit in the respondent holding the retention money and imposition of liquidated damages on the claimant. As such, the amount of RA bills of Rs.3507965/- and retention money amounting to Rs.1460795/- is ordered to be refunded to the claimant."

19. The learned Arbitrator has held that in absence of any loss having been suffered by the petitioner due to such delay, it was not entitled to levy liquidated damages on the respondent. It was not shown before the Arbitrator and even before me that MSETCL had levied any damages on ground of alleged delay in execution of the work on the petitioner.

20. The counsel for the petitioner has submitted that certain work had been withdrawn from the respondent and had been given to

third party, details of which were produced before the Arbitrator. The petitioner, therefore, submits that loss suffered by the petitioner could have been inferred from the same.

21. I am afraid that even this submission of the petitioner is not acceptable. The petitioner had merely placed before the Arbitrator the value of the work which had been granted to the third party after withdrawal of the same from the respondent. It had not been shown that for award of such work, it had incurred any additional cost. The counsel for the respondent, on the other hand, has pointed out that the original contract awarded in its favour was for Rs. 4.96 Crores approximately; the work executed and paid for by the respondent was Rs. 3.27 Crores and the work awarded to third party was around Rs. 1.22 Crores. Therefore, the work done by the respondent and that got done by the third party would still be short of the original value of the work allotted to the respondent. This could not be refuted by the counsel for the petitioner. It is, therefore, evident that for withdrawal of the work from the respondent and taking the same from the third party, the petitioner had not suffered any loss. In ***Kailash Nath Associates Vs. DDA (2015) 4 SCC 136***, Supreme Court has reiterated the law on compensation for breach of Contract under Section 74 of the Contract Act, 1872 as under:-

“43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the

party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression “whether or not actual damage or loss is proved to have been caused thereby” means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application”.

22. Therefore, even for claiming Liquidated Damages it was incumbent on the petitioner not only to show that the respondent had breached the Agreement that also due to such default the petitioner had suffered damage or loss. As held by the Arbitrator, petitioner has failed to prove any loss being suffered by it due to delay in execution of the work by the respondent, if any, therefore, respondent's claim under Claim No. 7 was rightly allowed by the Arbitrator.

23. It, therefore, cannot be said that the Arbitrator has not given any reasons in Award for its finding. In ***Associate Builder Vs. DDA (2015) 3 SCC, 49***, Supreme Court has held when any of the heads / sub-heads of test of 'Public Policy' is applied to an Arbitral Award, Court does not act as Court of appeal. Interference is not permissible only because another view is possible. Arbitrator is the ultimate master of quantity and quality of evidence. Construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. In the present case none of the limited grounds of challenge to the Arbitral Award under Section 34 have been made out by the petitioner.

24. In view of the above, I find no merit in the present petition and same is accordingly dismissed with no order as to costs.

NAVIN CHAWLA, J

DECEMBER 07, 2017/rv

