

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.SUNDAR

O.P.No.951 of 2016
and A.No.6731 of 2016

1.The Chairman/Managing Director,
HLL Lifecare Limited,
Mahilamandiram Road, Poojappura,
Thiruvananthapuram 695 012.

2.The Associate Vice President,
HLL Lifecare Limited,
Infrastructure Development Division,
Mahilamandiram Road, Poojappura,
Thiruvananthapuram 695 012.

3.The Deputy General Manager (Technical),
HLL Lifecare Limited,
Infrastructure Development Division,
Mahilamandiram Road, Poojappura,
Thiruvananthapuram 695 012.

4.The Senior Manager (Civil),
HLL Lifecare Limited,
(JIPMER-Project),
Dhanvanthri Nagar,
Puducherry 605 006.

Petitioners are represented by the Company Secretary
and Senior Vice President (HR)

... Petitioners

Vs.

M/s.Tarmaker,
Civil Engineers & Contractors,
Rep. by its Partner, K.Nakiran, B.E.,
No.12, Ground Floor, Sithankudi Road,
(Via) Jayaram Thirumana Nilayam,
Puducherry.

... Respondent

Original Petition filed under Section 34 of the
Arbitration and Conciliation Act, 1996, to set aside the
award dated 03.09.2016 passed by the learned Arbitrator in

the arbitral proceedings between the petitioners and the respondent and consequently dismiss the claim petition preferred by the respondent.

For Petitioners : Ms.V.Kamala Kumar
For Respondent : Mr.N.Thiagarajan

ORDER

Instant 'Original Petition' ('OP' for brevity) has been filed under Section 34 of 'The Arbitration and Conciliation Act, 1996' ('A & C Act' for brevity) assailing an arbitral award dated 03.09.2016 ('impugned award' for brevity) made by an 'Arbitral Tribunal' ('AT' for brevity) constituted by a sole Arbitrator, a former Judge of this Hon'ble Court appointed vide order dated 12.08.2015 in OP.No.186 of 2016 (under Section 11 of A & C Act) by the then Hon'ble Chief Justice.

2.In the scheme of A & C Act, Section 34 is slotted under Chapter VII captioned 'RECURSE AGAINST ARBITRAL AWARD'. A perusal of Section 34 also reveals that recourse to a Court against an arbitral award under Section 34 of A & C Act may be made by an 'application'. Also to be noted, caption to Section 34 itself reads 'APPLICATION FOR SETTING ASIDE ARBITRAL AWARD' (underlining made by this Court to supply emphasis and highlight). Be that as it may, with regard to a legal proceeding which is in the nature of recourse against an arbitral award, the same is being

assigned the nomenclature 'Original Petition' in the Registry of this Court and therefore, instant proceeding is being referred to as 'OP', for the sake of convenience and clarity.

3. Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER), Puducherry wanted to build an Urban Health Centre at Kuruchikuppam, Puducherry. For this purpose, a company viz., HLL Life Care Limited (hereinafter 'HLL' for brevity) was engaged as Project Management Consultant. This Court is informed that HLL is a Government of India enterprise and is acting as Project Management Consultant for JIPMER. HLL on 07.03.2013, invited tenders for construction of an Urban Health Centre at Kuruchikuppam for JIPMER, Puducherry. M/s. Tarmaker, a partnership firm whom this court is informed is in the line of business activity of civil engineering made their offer on 19.04.2013. HLL issued a letter of award dated 10.06.2013 and thereafter, a full fledged agreement dated 19.06.2013 came to be executed. This agreement dated 19.06.2013 is the fulcrum of this lis and therefore, the same shall be referred to as 'said contract' for the sake of convenience and clarity.

4. The central theme of this lis is encapsulated and

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put in a nutshell can be described as 'whether

M/s.Tarmaker could commence the work in the site ('said site' for clarity) in which the Urban Health Centre had to be constructed when it was made available to it.

5.It is not in dispute that M/s.Tarmaker was handed over the site on 20.06.2013. It is also not in dispute that in the first week of March of 2014, Bhoomi pooja for commencement of work was conducted. Under such circumstances, on 03.03.2014, the Executive Engineer of the Irrigation Division of the 'Public Works Department' ('PWD' for brevity), Government of Puducherry issued a letter to M/s.Tarmaker calling upon them to stop work and not to do any construction activities on the said site.

6.In this communication, the PWD of the Government of Puducherry, stated that permission that had already been granted on 17.12.2013 for diverting the existing pipes drainage pipe course running within the said site is deferred. To be noted, no reasons whatsoever have been given by PWD, Government of Puducherry for deferring the permission already granted. This letter from PWD, Government of Puducherry forwarded by M/s.Tarmaker to HLL under cover of letter dated 06.03.2014 which has been marked as Ex.C24 before AT.

7.This can be described as the genesis of this lis.

8.M/s.Tarmaker could not proceed with the construction owing to this stop work order issued by the PWD, Government of Puducherry.

9.Thereafter, there was a series of correspondence and they have all been marked as exhibits before AT. However, considering the limited scope and narrow compass on which instant OP turns, owing to being a petition under Section 34 of A & C Act, it would not be necessary to advert to all those correspondence in great detail.

10.Suffice to say that M/s.Tarmaker could not commence work for the next two years, as the aforesaid work order issued by PWD, Government of Puducherry dated 03.03.2014 (forwarded by M/s.Tarmaker to HLL under cover of letter dated 06.03.2014 i.e., Ex.C24 adverted to *supra*) was revoked only on 03.07.2015. This order of the PWD, Government of Puducherry, which is in the nature of a letter to JIPMER has been marked as Ex.R12 before AT. Considering the importance of these two orders made by PWD, Government of Puducherry, viz., stop work order dated 03.03.2014 and letter revoking the stop work order being letter dated 03.07.2015 to JIPMER i.e., Ex.C24 and Ex.R12, the same are extracted and reproduced infra.

'GOVERNMENT OF PUDUCHERRY
OFFICE OF THE EXECUTIVE ENGINEER
IRRIGATION DIVISION
PUBLIC WORKS DEPARTMENT

No.3226/PW/ID/EEI/DB/D2/3-381/2013-14 Puducherry

To
Thiru.K.C.Premarajan,
Project Co-ordinator,
Jipmer,
Puducherry 605 006.

Sir,

Sub :	PW-ID-Construction of closed RCC drain at Urban Health Centre at Kuruchikuppam by JIPMER - Reg.
Ref :	i. Letter No.1168/PW/EEI/DB/ID/2013-2014, dt.23.8.2013 of EE, ID,PWD., Puducherry. ii.Letter No.ECM4(3)/2012, dt.13.9.2013 of The Director, Jipmer, Puducherry. iii.Letter No.1513/PW/EEI/DB/C-19/2013-14, dt.25.09.2013 of EE, ID, PWD, Puducherry. iv.No.JIP/PC/JIUH/2013, dt.18.10.2013 of the Project Co-ordinator, Jipmer, Puducherry. v. Letter No.2489/PW/EEI/D2/3-321/2013-14, dt.17.12.2013 of the Executive Engineer, Irrigation Division, PWD, Puducherry. vi.Letter dated 30.01.2014 of the Project Co-ordinator, Jipmer, Puducherry. -----

Referring the subject and references cited above, the permission accorded vide reference 5 to divert the existing RCC hume pipe drainage course, which is presently running within the Urban Health Centre at the junction of S.V.Patel

Salai, Ambour Salai and Gingee Salai is hereby deferred.

It is also further informed that you are instructed to stop any construction activities over the above said Urban Health Centre area of Kuruchikuppam.

Yours faithfully,

Sd/-

3/3/14

EXECUTIVE ENGINEER
IRRIGATION DIVISION

Copy submitted to :

- 1.The Chief Engineer, PWD, Puducherry.
- 2.The Superintending Engineer, Circle-II, PWD, Puducherry.
- 3.The Private Secretary to Chief Secretary, Puducherry.
- 4.The Private Secretary to Secretary (Works), Puducherry.

Copy to :

- 1.The Assistant Engineer, ISD-II, PWD, Puducherry-for follow up action'

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE EXECUTIVE ENGINEER
IRRIGATION DIVISION
PUBLIC WORKS DEPARTMENT

No.1212/PW/EEI/DB/D2/3-JIPMER/2015-2016/2908

Puducherry

03.07.2015

To
The Medical Superintendent,
JIPMER Hospital,
Gorimedu, Puducherry 605 009.
Sir,

WEB COPY

Sub :	PW-ID-Reconstruction of Urban Health Centre at Kuruchikuppam by Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER), Puducherry - Reg.
Ref :	i. Lr.No.JIP/PC/UHC/2014, dt.23.06.2014 of the Project Co-ordinator, JIPMER, Puducherry. ii. Lr.No.3226/PW/ID/EEI/DB/D2/3-381/2013-14, dt.03.03.2014. iii. C.E.'s Note No.981/PW/CE/EE(P)/AE(P) 2/G-II-IRRN/2015-16, dated 01.07.2015. -----

In pursuance to the subject and references cited above, I hereby withdraw the letter issued vide 2nd reference cited above, based on the Chief Engineer's notice issued vide 3rd reference cited above. A copy of the same is enclosed for your reference.

Encl : Chief Engineer's Note.

Yours faithfully,
Sd/-
3/7/15
EXECUTIVE ENGINEER'

सत्यमेव जयते

11.It is not in dispute that there is an arbitration agreement between the parties viz., HLL and M/s.Tarmaker and this arbitration agreement being an arbitration agreement within the meaning of Section 7 of A & C Act is in the form of a clause in the said contract and the said clause is clause 25. Clause 25 is captioned 'settlement of disputes and arbitration'. As there is no disagreement

(between parties before this Court) on these aspects, this

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Court refrains from burdening this order by extracting

Clause 25. However, the parties could not agree on an Arbitrator, resulting in M/s.Tarmaker filing a petition in this Court under Section 11 of A & C Act being OP.No.186 of 2015 which has been adverted to *supra* wherein *vide* order dated 12.08.2015, the then Hon'ble Chief Justice appointed a former Hon'ble Judge of this Court as sole Arbitrator and thus the AT came to be constituted.

12.AT entered upon reference and a claim statement dated 27.10.2015 came to be filed by M/s.Tarmaker. In this claim statement, M/s.Tarmaker made a claim of total sum of Rs.79,40,556/- or in other words, little over Rs.79.406 lakhs under seven heads of claim and the claims as can be culled out from the case file placed before this Court are as follows :

'DETAILS OF CLAIM

Claim No.I : Running Bill - Settlement of accounts - Rs.4,65,960/-

Claim No.II : Loss on expected profit - Rs.47,63,650/-

Claim No.III Unnecessary one Head establishment charges for the entire period from 10.06.2013 till 30.12.2014 (subject to revision) = 18 months (rounded)

Compensation for 18 months 1,02,500 x18 =
Rs.18,44,500/-

Claim No.IV : Capital investment - Unnecessary diversion of EMD/P.G. without any productive work. Compensation by way of interest claimed. Date of tender 06.04.2013 to 31.10.2015 rounded :

31 months - Rs.1,35,544/- (Rs.40,851/- + Rs.94,693/-)

Claim No.V : For pre construction Activities -
Expenditure spent to be compensated -
Rs.5,99,814/-

Claim VI : For belated payment of running bill
18% interest claimed

Claim VII : Cost of Arbitration - Rs.30,500/-

13.HLL filed a Statement of Defence dated 28.12.2015, but curiously HLL had not made any counter claim. Only the aforementioned seven heads of claim made by M/s.Tarmaker have been denied and disputed. To be noted, M/s.Tarmaker as claimant before AT filed a rejoinder dated 11.01.2016. Pleadings before AT thus stood completed. On completion of rival pleadings in this manner, AT framed 12 issues which are as follows :

1. Whether the HLL Life Care Limited (Respondents) have taken possession of site in question before tenders are floated ? If so, what is the date of possession ?
2. Whether there was an old building of Health Centre at the site of contract ? Who has dismantled it and when ?
3. Whether there were live trees at site ? If so, who has removed them & when ?
4. Whether the pre construction activities, viz, preparation and submission of plan and approval, preparation of structure drawings, dismantling the existing building, soil exploration test are part of Agreement ? If

so, who has carried out the item ?

5. Who has initiated the action to obtain Puducherry Planning Authority approval for construction of new building ?
6. Whether there were objections from Puducherry Govt. Official's viz. Puducherry Municipality/PWD, in regard to execution of work ? If so, details there on ?
7. Whether the delay in commencing the work is attributable to the Claimant or Respondents ? If so to what extent ? And what are the reasons thereof ?
8. Whether Claimant is entitled to all the heads of claims made in the claim statement ?
9. Whether both parties have discharged their obligations arising out of the contract ?
10. Whether there is any breach of contract as pleaded by the parties ? If there is breach, which party is responsible for that ?
11. Order as to costs ?
12. To what other reliefs the parties are entitled ? सत्यमेव जयते

14. Before the AT, M/s.Tarmaker as claimant alone let in oral evidence and one Mr.K.Nakiran, whom this Court is informed is a partner in M/s.Tarmaker deposed as CW1. No oral evidence was let in on behalf of HLL. Be that as it may, before AT, on behalf of M/s.Tarmaker as claimant, as many as 70 exhibits were marked as Exs.C1 to C70. On the side of HLL, as sole respondent before AT, 13 exhibits being Exs.R1 to R13 were marked. On the basis of aforesaid

oral and documentary evidence as well as oral hearings, wherein, arguments have advanced and written submissions were filed, AT made the impugned award.

15. In the impugned award, with regard to aforementioned seven heads of claim made by M/s.Tarmaker, claim Nos.1, 3, 5 and 6 were acceded to in full. To be noted, in terms of the numbers, there may be slight variations between the numbers as found in the claim and the actual amount awarded but both parties agreed that these variations can be ignored. Therefore it would suffice to say that claim Nos.1, 3, 5 and 6 were acceded to in its entirety. Claim Nos.4 and 7 were disallowed or in other words, rejected. With regard to claim No.2 which pertains to 'loss on expected profit', while M/s.Tarmaker as claimant claimed Rs.47,63,650/- computed at 15% of the value of the said contract, AT awarded the same in part i.e., AT awarded 10% of the value of the contract. This translates to Rs.31,75,662/-. In other words, with regard to claim No.2 while the claim of M/s.Tarmaker's claim was little over Rs.47.63 lakhs, vide impugned award, AT awarded little over Rs.31.75 lakhs.

16. It is in the aforesaid backdrop, the instant OP has been filed by HLL. There are four petitioners in the instant OP, but this Court is informed that all the four

can be collectively referred to as HLL, which was the respondent before AT.

17. On behalf of HLL, Ms. Kamala Kumar, learned counsel on record for petitioners in instant OP and on behalf of M/s. Tarmaker, Mr. N. Thiagarajan, learned counsel on record for the sole respondent in instant OP were before this Court.

18. On behalf of M/s. Tarmaker, learned counsel submits that no OP has been filed assailing the impugned award, though two heads of claim were disallowed viz., claim Nos. 4 and 7 and one head of claim 'loss on expected profit' was allowed only in part. In other words, learned counsel for respondent/Tarmaker submitted that M/s. Tarmaker accepts the award and has given legal quietus to the same.

19. In the aforesaid backdrop/setting, instant OP was heard out.

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20. Before this Court embarks upon the exercise of examining the arguments, a perusal of instant OP presented by HLL reveals that though it runs to 13 pages and consists of V heads, heads I and II are long cause titles, head III consist facts of the case and head V is the prayer. Head

grounds and a perusal of head IV reveals that there are 17 grounds. On a perusal of the grounds, this Court pointed out that the language in which ground Nos.4, 6, 9 and 13 are couched ought to have been avoided. For the purpose of convenience, this Court deems it appropriate to extract the said grounds which read as follows :

'4.The Arbitrator has 'consciously closed his eyes to the facts' presented by the Claimant himself with reference to Exhibit C-15 according permission to reroute the underground drain.

6.The act of the Arbitrator awarding the claim under Nos.1, 5 and 6, namely, the running cost, pre-construction cost and interest on the running cost after holding that site was not handed over to the Respondent is contradictory. The Award reading Exhibits C-2 and C-41, which were issued under different circumstances, together reveals the 'frantic effort of the Arbitrator to support the case of the respondent' herein.

9.The act of the Arbitrator in basing his decisions on baseless and unreasonable grounds holding the petitioners liable without proper reasoning is tinted with 'bias'.

13.The awarding of Claim No.3 under the heading unnecessary over head establishment charges for the period from 10.06.2013 to 31.12.2014 (18 months) 'is absurd' considering the fact that the contract itself is only for a period of twelve months, even prior to which the respondent has withdrawn from activities.'

(underlining and single inverted commas put in by this Court for supplying emphasis and highlighting)

21.Faced with the above situation, learned counsel for HLL very fairly submitted that ground No.9 is being withdrawn and is not being pressed. With regard to ground Nos.4, 6 and 13, learned counsel very fairly submitted that the expressions 'consciously closed his eyes to the facts', 'frantic effort of the Arbitrator to support the case of the respondent' and 'is absurd' occurring therein stand withdrawn. This is recorded.

22.With the above said prefatory note, this Court now proceeds to examine the arguments that were advanced.

23.With regard to claim No.1, learned counsel for petitioner submitted that the claim based on running bills ought not to have been acceded to when CW1 has deposed that he has not signed the bills. With regard to claim No.2 i.e., loss on expected profit, learned counsel pressed into service a judgment of the Hon'ble Supreme Court made in *Bharat Coking Coal Ltd. Vs. L.K.Ahuja* reported in (2004) 5 SCC 109 and submitted that in claims of this nature, particularly, loss of profit due to prolongation of work, the contractor has to establish that he could have utilised the resources elsewhere and earned profits thereon.

Learned counsel submitted that there is no evidence in this regard and the AT, vide the impugned award has adopted a thumb rule approximation approach in awarding 10% value of the said contract, while M/s.Tarmaker had claimed 15%. With regard to claim No.3, learned counsel submitted that when there has been no resort to Clause 3A of said contract, this claim ought not to have been awarded. With regard to claim Nos.5 and 6, it was submitted that the same ought not to have been acceded to as it is not supported by evidence.

24.In response to the aforesaid arguments, learned counsel for M/s.Tarmaker submitted that there has been absolutely no fault on behalf of the contractor in the instant case and a bare perusal of aforesaid Ex.C24 and Ex.R12 would reveal that the contractor M/s.Tarmaker who had in all fairness made Bhoomi pooja, could not proceed with the work as it was slapped with aforesaid letter dated 03.03.2014 from the PWD, Government of Puducherry within two days from the date of Bhoomi pooja. Learned counsel submitted that the stop work order was ultimately withdrawn only on 03.07.2015 by the PWD, Government of Puducherry. It was also pointed out that the contractor embarked upon the project *inter-alia* on the basis of the permission given by PWD with regard to the drainage course and diversion of the same. PWD, Government of Puducherry suddenly deferring

the permission already granted on 17.12.2013 without assigning any reason whatsoever and slapping the stop work order was something for which the contractor cannot be blamed or directed to bear the consequences.

25.Learned counsel for petitioner pressed into service a judgment of the Hon'ble Supreme Court in *Hindustan Zinc Ltd. Vs. Friends Coal Carbonisation* reported in (2006) 4 SCC 445 to say that when the award is patently illegal and it is opposed to the public policy it calls for judicial intervention. Learned counsel also pressed into service *Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.* reported in AIR 2003 SC 2629 for the principle that an award being patently illegal could be set aside.

26.Learned counsel for respondent, pressed into service a judgment of Hon'ble Supreme Court made in *Navodaya Mass Entertainment Limited Vs. J.M.Combines* reported in (2015) 5 SCC 698, for the proposition that an award cannot be interfered with and there cannot be judicial intervention in the absence of perversity and there cannot be judicial intervention, merely because another view (a view other than the one taken by the AT) is possible. Learned counsel also pressed into service another judgment of Hon'ble Supreme Court being *Sutlej Construction Limited Vs. Union Territory of Chandigarh* reported in (2018) 1 SCC 718 and submitted that an arbitral

award can be interfered with under Section 34 of A & C Act only when it shocks the conscience of the Court.

27.A perusal of the impugned award reveals that with regard to claim No.1, the argument that M/s.Tarmaker is not entitled to claim the said amount, as it has refused to sign the joint measurement that has been taken was negatived. This was negatived primarily by holding that the work that was done until then was not in dispute and there was an inspection of the site. With regard to claim No.2 as mentioned *supra*, AT had held that though the contractor has claimed 15% of the contract value as loss on expected profit, 10% would be appropriate.

28.In this regard, as already alluded to *supra*, *Bharat Coking Coal* case was pressed into service. It was submitted by learned counsel for respondent M/s.Tarmaker that *Bharat Coking Coal* case is clearly distinguishable on facts, as that was a case where loss of profit was claimed on the basis of diminution in turnover on account of delay in completion of work. It is in this context, the Hon'ble Supreme Court held that in a situation like this, the contractor should establish that if the contractor had received the amount due under the contract, he would have utilised the same for some other business and he would have earned profit. In the instant case, the claim with regard

to loss of expected profit was on slightly different circumstances. In this case, it is the case of M/s.Tarmaker that the original period fixed for the contract is 12 months and Clause 3A provides for termination of contract, if there is no progress in the work within 1/8th of this period. Clause 3A reads as follows :

'In case, the work cannot be started due to reasons not within the control of the contractor within 1/8th of the stipulated time for completion of work, either party may close the contract in such eventually, the Earnest Money Deposit and the Performance Guarantee of the Contractor shall be refunded, but no payment on account of Interest, loss of profit or damages etc. shall be payable at all."

That not having been done and the stop work order ultimately being rescinded on 03.07.2015 vide Ex.R12 by PWD, Government of Puducherry puts the instant case on different factual footing is learned counsel's further say. In this regard, one ground that has been raised in the instant OP is that the AT has given a go by to Clauses 1A (a) and 1A(e) of Special Conditions of Contract which read as follows :

'1.0 Scope of Work

1.1 The construction works shall, inter-alia, include the following, as specified or as

A) Building Works :

(a) Site clearance, removal of trees and stumps and dismantling and removal of obstructions etc. before commencement of the Works;

....

(e) Any other item of works as may be required to be carried out for proper execution and completion of works in all respect in accordance with provisions of the Contract.'

According to learned counsel for petitioner this is a violation of Section 28(3) of A & C Act and therefore, this also qualifies the ground for having set aside.

29. In the light of the peculiar facts and circumstances of instant case, where PWD, Government of Puducherry after giving permission has simply slapped stop work order without assigning any reason on 03.03.2014 and ultimately, rescinded the same only on 03.07.2015 and where it is nobody's case that the work could have proceeded in the site notwithstanding the stop work notice does put this case on a different factual footing. Owing to this, this Court is unable to disagree with respondent counsel's submission that *Bharat Coking Coal* case is distinguishable on facts. Likewise, the ground of Clauses 1A(a) and 1A(e) being given a go by advanced as the case of petitioner HLL does not hold water.

30. With regard to claim No.3, the same principle or

<https://hcservices.ecourt.gov.in/hcservices> the actual position that the contractor M/s. Tarmaker was impeded solely because of stop work order made by the

PWD, Government of Puducherry justifies the said claim being acceded to. With regard to claim Nos.5 and 6, which pertain to pre-construction activities and interest on running bill, the pre-construction activities as can be noticed from the appreciation of evidence, is only of such a nature that it has been done by M/s.Tarmaker in the best interest of carrying the project forward expeditiously and obviously to its logical end. Therefore, M/s.Tarmaker cannot be found fault with regard to this aspect also.

31. With regard to interest under claim No.6, it is *pendente lite* interest. In the light of Section 37(1)(b) of A & C Act and in the light of a long line of authorities which are to the effect that *pendente lite* interest cannot be awarded unless there is a specific clause in the contract, the interest portion of the award i.e., interest at 18% per annum alone calls for judicial intervention and needs to be interfered with. This is owing to the undisputed position before this Court that there is no clause in the contract providing for interest for belated payment of running bill much less interest at the rate of 18% per annum. In other words, there is no disagreement before this Court that there is covenant in said contract providing for *pendente lite* interest.

32. Though the AT is at liberty to award interest post

award, *pendente lite* interest will be governed only by the terms of the contract. In the light of the undisputed position before this Court that there is no provision for *pendente lite* interest in this contract much less at the rate of 18% per annum, claim No.6 pertaining to interest at the rate of 18% per annum on payment of running bills alone is being interfered with.

33. With regard to other aspects of the matter, a perusal of the impugned award reveals that it pertains to appreciation of evidence which this Court in exercise of powers under Section 34 of A & C Act will not interfere with perversity being the lone exception. In the OP itself, i.e., the grounds, it has been canvassed that the view taken by the Arbitrator is not a plausible view and this is articulated in ground No.8. As long as it is a possible view, this Court will not interfere and cause judicial intervention qua impugned award, unless the award shocks the conscience of this Court.

34. In this regard, *Sutlej Construction* case authored by Hon'ble Justice Sanjay Kishan Kaul was pressed into service by learned counsel for M/s. Tarmaker and the relevant paragraph being paragraph 11 reads as follows :

'11. It has been opined by this Court that when it comes to setting aside of an award under the public policy ground, it would mean that the

award should shock the conscience of the Court and would not include what the Court thinks is unjust on the facts of the case seeking to substitute its view for that of the arbitrator to do what it considers to be "justice". [*Associate Builders Vs. Delhi Development Authority* reported in (2015) 3 SCC 49]

Paragraph 13 of this judgment is also of relevance and the same reads as follows :

'13.The learned Single Judge ought to have restrained himself from getting into the meanderings of evidence appreciation and acting like a second appellate court. In fact, even in the second appeals, only questions of law are to be determined while the first appellate court is the final court on facts. In the present case, the learned Single Judge has, thus, acted in the first appeal against objections dismissed as if it was the first appellate court against a decree passed by the trial Court.'

35.This Court has also reminded itself of the *Fiza Developers* principle, being a principle laid down in *Fiza Developers & Inter-Trade (P) Ltd. Vs. AMCI (India) (P) Ltd.* reported in (2009) 17 SCC 796, wherein Hon'ble Supreme Court has held that proceedings under Section 34 of A & C Act are summary procedures. To be noted, *Fiza Developers* principle was subsequently explained by Hon'ble Supreme

Sondhi reported in (2018) 9 SCC 49. While explaining *Fiza Developers* principle in *Emkay Global* case Hon'ble Supreme Court held that *Fiza Developers* principle is a step in the right direction qua disposing petitions and proceedings under Section 34 of A & C Act.

36.A further perusal of the impugned award made by the AT brings to light that there is nothing so glaring that it could be classified as one that shocks the conscience of the Court or one that is so unreasonable that no reasonable person could have arrived at such a conclusion.

37.The oft quoted *Associate Builders* case is of relevance. In *Associate Builders* case, with regard to public policy and with regard to fundamental policy of Indian law culled out three distinct juristic doctrines were quoted.

38.The first juristic doctrine is with regard to judicial approach and the second juristic doctrine is principles of natural justice. These two do not come in to play in the instant case. The third juristic doctrine comes into play i.e., irrationality/perversity and test for this is *Wednesbury* principle of reasonableness. In very simple terms, *Wednesbury* principle of reasonableness is to the effect that no reasonable person would have arrived at

conclusions on the basis of material available before it. This Court is unable to persuade itself to believe that the impugned award made by AT in the instant case falls in this third category.

39. In the light of the aforesaid narrative, the award in a sum of Rs.1,53,763/- towards interest at the rate of 18% per annum for belated payment of running bills being claim No.6 alone is being set aside and the impugned award is being upheld in all other aspects. This Court does not find any ground for judicial intervention qua impugned award.

40. Instant OP is partly allowed and disposed of on above terms. Considering the nature of the matter and the trajectory of the hearing, this Court deems it appropriate to leave the parties to bear their respective costs. Consequently, connected application is closed.

Sd/-M.S.J

22/04/2019

//Certified to be true copy//

Dated at Madras this the day of 2019.
JJ 25/06/2019

COURT OFFICER(O.S.)

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