

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2020

CORAM

THE HONOURABLE Mr. JUSTICE M.SUNDAR

O.P.No.329 of 2015

AND

O.P.No.350 of 2015

O.P.No.329 of 2015

The Board of Trustees of
Chennai Port Trust,
Rep. by its Chairman,
Rajaji Salai,
Chennai 600 001.

... Petitioner

Vs.

1.M/s.Afcons Infra Structure Limited,
Afccon House, 16 Shah Industrial Estate,
Veera Desai Road, Andheri (W),
Mumbai 400 053.

2.K.Dharmalingam
Presiding Arbitrator
Plot No.15, 1st Cross Street,
Padmavathi Nagar, Off Kamarajar Salai,
Virugambakkam, Chennai 600 092.

3.M.M.Kamath,
(Arbitrator)
Shree Matha,
Mizar Ramakrishna Pai Compound,
Mangalore 575 003.
Mannagudda

4.P.N.Bhaktavatchalan
Arbitrator,
Door No.23, Plot No.742,
Fourth Avenue,
Anna Nagar Western Extension,
Chennai 600 101.

.. Respondents

Original Petition filed under Section 34 of The Arbitration and Conciliation Act, 1996, to set aside the award dated 02.09.2012 passed by the learned Arbitrators/respondents 2 to 4 herein in Agreement No.61 dated 22.11.1999.

For Petitioner : Mr.R.Karthikeyan
For 1st Respondent : Mr.D.Balaraman

O.P.No.350 of 2015

The Board of Trustees of
Chennai Port Trust,
Rep. by its Chairman,
Rajaji Salai,
Chennai 600 001.

.. Petitioner

Vs.

1.M/s.Afcons Infra Structure Limited,
Plot No.1633, Door No.54,
“H” Block (1st Floor),
13th Main Road, Anna Nagar (West),
Chennai 600 040.

2.K.Dharmalingam
Presiding Arbitrator
Plot No.15, 1st Cross Street,
Padmavathi Nagar, Off Kamarajar Salai,
Virugambakkam, Chennai 600 092.

3.M.M.Kamath,
(Arbitrator)
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4.P.N.Bhaktavatchalan
Arbitrator,
Door No.23, Plot No.742,
Fourth Avenue,
Anna Nagar Western Extension,
Chennai 600 101.

... Respondents

Original Petition filed under Section 34 of The Arbitration and Conciliation Act, 1996, to set aside the award dated 02.09.2012 passed by the learned Arbitrators/respondents 2 to 4 herein in Agreement No.62 dated 22.11.1999.

For Petitioner : Mr.R.Karthikeyan
For 1st Respondent : Mr.D.Balaraman

COMMON ORDER

Mr.R.Karthikeyan, learned Standing Counsel for Chennai Port Trust (hereinafter 'said port' for brevity), petitioner in both these Original Petitions and Mr.D.Balaraman, learned counsel for the contesting first respondent in both these Original Petitions namely, 'Afcons Infrastructure Limited' (hereinafter 'said company' for brevity) are before this Court.

2.This common order will dispose of both these OPs ('OPs' in plural

and 'OP' in singular for brevity). Both these OPs have been filed by said port assailing two separate arbitral awards, both dated 02.09.2012 (hereinafter 'impugned awards' in plural and 'impugned award' in singular for brevity) made with regard to arbitral disputes arising between the parties *vide* agreement Nos.61/1999 and 62/1999 (hereinafter 'said contracts' in plural and 'said contract' in singular for the sake of convenience and clarity).

3. With the consent of learned counsel on both sides, both OPs are taken up together and are being disposed by this common order.

4. Before proceeding further, it is necessary to make a small prefatory note regarding three facets of a petition assailing an arbitral award under Section 34 of 'The Arbitration and Conciliation Act, 1996' (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for brevity. The three facets are :

- (a) Scope;
- (b) Nature of disposal; and
- (c) Time line.

5.To be noted, instant OPs were presented in this Court more than seven years ago i.e., way back in 2013 itself, much before the advent of Sub-sections (5) and (6) in Section 34 of A and C Act. To be noted, Sub-sections (5) and (6) were brought into statute books on and from 23.10.2015. Notwithstanding this position, this Court reminds itself that expeditious disposal of arbitral proceedings and court proceedings arising out of arbitration proceedings is an important pillar of 'Alternate Dispute Resolution' ('ADR') mechanism and therefore, it is necessary to mention that instant OPs have been pending in this Court for more than seven years and disposal brooks no delay. To be noted, impugned awards are dated 02.09.2012 and therefore, the awards are more than seven and half years old.

6.Both the impugned awards have been made by three member Arbitral Tribunal constituted by experts. To be noted, the awards are not unanimous, as one Arbitrator has dissented. This hardly makes a difference with regard to Section 34 of A and C Act as, what is before this Court is challenge to an award made by a three member Arbitral Tribunal in a 2:1 majority.

7.A careful perusal of the impugned awards, leaves this Court with

a considered view that challenge to the impugned awards may not fit into muchless fit neatly and snugly into any one of the eight slots adumbrated under Section 34 of A and C Act.

8.Be that as it may, with regard to the impugned award in 'OP.329 of 2015' (hereinafter 'senior OP' for clarity) claims have been captured in paragraph 11.8.1.4. of the impugned award and the same reads as follows:

'11.8.1.4.The main grounds for the substantiation of the claim are as under.

- The claimant had submitted that in terms of Clause 10.2, the performance security shall be returned to the Contractor within 14 days of the issue of the said Defects Liability Certificate. In the present case, only one Defects Liability Certificate has been issued for the whole of the work w.e.f.09.12.2003. In terms of Clause 10.2, the Performance Bank Guarantee should have to be returned to the Contractor within 14 days commencing from 09.12.2003 i.e. before 24.12.2003. However the performance BGs were returned only on 31.10.2005 and till then the Respondent continued instructing the Claimant to revalidate the Performance Bank Guarantee in violation to Clause 10.2 of GCC, by incurring infructuous costs.
- Hence, the Claimant established its entitlement for Bank Charges incurred for revalidating the Performance Bank Guarantee, from 24.12.2003 to 31.10.2005, at the instance of the Respondent, along with interest. However, since in the Final Statement, the Claimant had claimed only the Bank Charges from 26.01.2004 to 31.10.2005, the Claimant has restricted his claim for the same period.
- The Claimant had further submitted that in addition to the

Performance Bank Guarantee, the Claimant was also forced to keep revalidating the Bank Guarantees for an amount of Rs.1,13,40,791/- and Rs.12,50,000/- towards second half of the Retention Money, over and above the contractual requirements, resulting in additional bank charges to the Claimant.

- The Claimant elaborated that, though the Defects Liability Certificate was issued w.e.f. 09.12.2003, the Defects Liability Period expired only on 15.12.2003. In terms of Clause 60.6, the date of expiration of Defects Liability Period is the date to determine the release date of the Bank Guarantee, kept towards second half of the Retention Money. Hence in terms of Clauses 60.6 read with 62.1, the date upon which, the Bank Guarantee kept towards second half of the Retention Money, has to be released within 28 days after the expiration of the Defects Liability Period i.e. within 28 days from 15.12.2003 i.e. 12.01.2004 (15.12.2003 + 28 days).

However, the Respondent kept on instructing the Claimant to revalidate the said Bank Guarantee of Rs.1,13,40,791/- upto 31.07.2005 and the Bank Guarantee of Rs.12,50,000/- upto 31.12.2005, towards second half of the Retention money, in violation of the Clauses 49.1 and 62.1 of GCC, resulting in additional bank charges to the Claimant.

Hence, the Claimant established its entitlement for Bank Charges incurred for revalidating the aforesaid Bank Guarantees towards second half of the Retention Money over and above the contractual requirements, in the following manner :

- For the BG of Rs.1,13,40,791/- from 12.01.2004 to 31.07.2005;
 - For the BG of Rs.12,50,000/- from 12.01.2004 to 31.12.2005 along with interest.
- The Claimant had further contended that in terms of Clause 62.2 of GCC, both Contractor and Employer should remain liable for the fulfillment of any obligation incurred under the provisions of the contract prior to the issue of the Defects Liability Certificate, which remained unperformed at the time of issuance of Defects Liability Certificate and till that time the contract shall be deemed to remain in force between the parties. The obligation upon Respondent of paying the additional bank charges incurred by the Claimant existed prior to the issuance of the Defects Liability Certificate. The same obligation is still continuing resulting into the present claim.

- The Claimant further urged before the tribunal that, the Engineer/Respondent vide its letter dt:23.05.2005, specifically referred to Clause 62.2 of GCC which states as under *“Notwithstanding the issue of this certificate the Contractor and the Employer remain liable for the fulfillment of any obligation per the contract, pursuant to Clause 62.2 of GCC.”*

In view of above letter of the Respondent, read along with Clause 62.2, the Claimant submitted that the Respondent is liable to fulfill its unperformed obligations including the payment of the present claim and till such time the contract is not concluded.

- The Claimant had renewed the Bank Guarantees at the instructions of the Respondent. The Respondent required the renewal of Bank Guarantee, which was not a contractual requirement. Hence, the Claimant is entitled for a fair compensation in terms of the Indian Contracts Act.
- The Claim of the Claimant is for a sum of Rs.9,19,550/- along with interest on account of additional amount incurred in the form of Bank Commission, consequent on renewal of Bank Guarantees over and above the contractual requirements, as per Appendix A attached to the Written Submission of the oral arguments.'

9.The Arbitral Tribunal in its wisdom, held that it is not necessary to frame issues, owing to the nature of the defence. This is articulated in paragraph 13.0 of the impugned award, which reads as follows :

'13.0.ISSUES TO BE ADDRESSED BY THE ARBITRAL TRIBUNAL

The Claimant in the Statement of Claims, have claimed the amounts due to them under the various claims. Hence, the Arbitral Tribunal did not consider it necessary to frame the issues separately.'

10.The findings returned by the Arbitral Tribunal *qua* aforementioned claims read as follows :

Appendix - A

ADDITIONAL COST ON ACCOUNT OF BANK GUARANTEE COMMISSION

SRL NO.	B.G.NO.	B.G. AMOUNT (In. Rs)	PERIOD	B.G. CHARGES (In.Rs)	VOUCHER NO.	JOB NO.	RATE OF INTEREST	REMARKS
1	0607002 BG No.005656	1134079	12.01.2004 to 31.07.2005	175782		4368		((11340791*1%) / 12 months
2	0607003 BG No.000089	1250000	12.01.2004 to 30.06.2004	5833		4368		((1250000*1%) / 12 months
			30.06.2004 to 31.07.2004	1182	1317	4368	1.00%	
			31.07.2004 to 31.10.2004	3245	1305	4368	1.00%	
			31.10.2004 to 31.12.2004	2530	2310	4368	1.00%	
			31.12.2004 to 31.03.2005	3639	2664	4368	1.00%	
			01.04.2005 to 31.12.2005	9875				((1250000*1%) / 12 months
Retention Money B.G.								
Total B.G. Commission Charges				192231				
3	IFB 407/99	37887850	26.01.2004 to 30.09.2004	388380				((37887850*1.3%) / 12 months
			01.10.2004 to 31.12.2004	94820	11	4368	1.50%	
			01.01.2005 to 31.03.2005	78396	22	4368	0.75%	
			01.04.2005 to 31.10.2005	163759				((37887850*0.75%) / 12 months
Performance B.G.								
Total B.G. Commission Charges				727319				
Total Amount				919550				

Note:

Entitlement of Interest calculation relating to Bank Guarantee Commission

To be read in conjunction with Item No: 1 of Award-Para 17.0

Description	Due Date	Reference to Contract
Date of receipt of Final statement by the Engineer (Sub-Clause 60.11)	09.08.2007	(at Page 70 of SOC)
Due date of Certification of payment as per contract (58 days - Sub-Clause 60.8 - Time of Payment)	01.11.2007	(09.08.2007 + 58 days)
Interest for 56 days from the expiry of the due date (56 days - Sub-Clause 60.8 - Interest compounded monthly at 6% per annum.)	26.12.2007	(01.11.2007 + 56 days)
Interest at 12% per annum from 26.12.2007 to the date of award		
Interest at 12% per annum from the date of award till the actual realisation of amount		

Appendix - B

ADDITIONAL COST ON ACCOUNT OF UNPAID SUM/ DELAYED PAYMENT

<i>Interest for the delayed payment (Statement at Completion)</i>		
B.O.Q		
Day of submission of statement at completion to Engineer (Sub-Clause 60.10)		14.05.03
Due date of payment as per contract (Sub-Clause 60.8) - 58 days from the submission (14.05.2003 + 58 days)		10.07.03
56 days from the expiry of the due date (Clause 69.1 (a)) (11.07.2003 + 56 days)		4.09.03
Actual day of payment		15.02.06
Amount due to the contractor (on B.O.Q) as per Statement at completion certified by the Engineer		658036
Amount certified in the Statement at Completion	1041785.14 (A)	

Recoveries:			
(i) Income Tax	702		
(ii) Premium saved in 'car' policy	206946		
(iii) Premium saved in Insurance Policy	151601		
(iv) Replacement cost of damaged Wearing Coat	17000		
(v) Deficiency in Deck Slab	5000		
(vi) Loss of Token	2500		
	383749	(B)	
Total Payable (A) - (B)	658036.14		
I.e. (1041765- 383749)			
Delay in days (upto 56 days from the expiry of due date) (11.07.2003 to 04.09.2003)		56	
Rate of interest (Compounded monthly interest rate on 46 days deposit)		6%	
Amount to be paid on account of interest (for initial 56 days) $(6,58,036 \times (1+0.06/(365 \times 30))^{56/30}) - 6,58,036$		6070	
Further delay (beyond 04.09.2003 to till the date of payment) in days i.e. 05.09.2003 to 15.02.2006		895	
Rate of interest (Simple interest @ 12%)		12%	
Amount to be paid on account of interest $(6,58,036 \times .12 \times (895/365))$		193625	
Total amount $(6070 + 193625)$		199695	

Appendix - C

ADDITIONAL COST ON ACCOUNT OF UNPAID SUM/ DELAYED PAYMENT

Interest for the delayed payment
(Statement at Completion)

PRICE VARIATION

Day of submission of statement at completion to Engineer 14.05.03

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(Sub-Clause 60.10)	
Due date of payment as per contract (Sub-Clause 60.8) - 58 days from the submission (14.05.2003 + 58 days)	10.07.03
56 days from the expiry of the due date (Clause 69.1 (a)) (11.07.2003 + 56 days)	4.09.03
Actual day of certification and payment	15.02.06
Amount due to the contractor (on Escalation) as per Statement at completion certified by the Engineer	205439
Delay in days (upto 56 days from the expiry of due date) in terms of Clause 69.1 (11.07.2003 to 04.09.2003)	56
Rate of interest (Compounded monthly interest rate on 46 days deposit)	6%
Amount to be paid on account of interest (for initial 56 days) $(2,05,439 \times (1 + 0.06/(365 \times 30))^{(56/30)} - 2,05,439)$	1895
Further delay (beyond 04.09.2003 to till the date of payment) in days i.e. 05.09.2003 to 15.02.2006	895
Rate of interest (Simple interest @ 12%)	12%
Amount to be paid on account of interest $(2,05,439 \times .12 \times (895/365))$	60450
Total amount (1895 + 60450)	62345
Appendix - D	
	
ADDITIONAL COST ON ACCOUNT OF UNPAID SUM/ DELAYED PAYMENT	
Interest for the delayed payment	
(Repayment of Retention Money)	
FIRST HALF OF RETENTION MONEY :-	
Request by the contractor to issue a taking-over certificate (Clause 48.1)	11.12.02
Actual day of issue of taking over certificate	24.12.02

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Due date of repayment as per contract (24.12.2002 + 56 days - (Sub-Clause 60.8))	19.02.03
56 days from the expiry of the due date (Clause 69.1 (a)) (i.e from 19.02.2003 + 56 days)	15.04.03
Actual day of repayment	25.09.03
Amount of repayment	3378551
Delay in days (upto 56 days from the expiry of due date) (i.e from 19.02.2003 to 15.04.2003)	56
Rate of interest (Compounded monthly interest rate on 46 days deposit)	6%
Amount to be paid on account of interest (for initial 56 days) $(33,78,551 \times (1+0.06/(365 \times 30))^{(56/30)} - 33,78,551)$	31168
Further delay (beyond 15.04.2003 till the date of payment) in days i.e. from 16.04.2003 to 25.09.2003	163
Rate of interest (Simple interest @ 12%)	12%
Amount to be paid on account of interest $(33,78,551 \times .12 \times (163/365))$	181053
Total amount $(31168 + 181053)$	212221

Appendix - E

ADDITIONAL COST ON ACCOUNT OF UNPAID SUM/ DELAYED PAYMENT

Interest for the delayed payment (Repayment of Retention Money)	
SECOND HALF OF RETENTION MONEY :-	
Expiration of Defects Liability period (Clause 49.2)	15.12.03
Completion of outstanding works	12.01.04
Actual day of issue of Defects Liability certificate	23.05.05
Date eligible for release as per contract (Sub-Clause 60.8) (i.e from 15.12.2003 + 28 days)	11.01.04

56 days from the expiry of the due date (Clause 60.8) (i.e from 12.01.2004 + 56 days)	08.03.04
56 days from the expiry of the due date (Clause 69.1 (a)) (i.e from 09.03.2004 + 56 days)	03.05.04
Actual day of repayment	15.02.06
Amount of repayment	2956141
Delay in days (upto 56 days from the expiry of due date) (i.e. From 09.03.2004 to 03.05.2004)	56
Rate of interest (Compounded monthly interest rate on 46 days deposit)	6%
Amount to be paid on account of interest (for initial 56 days) $(29,56,141 \times (1+0.06/(365 \times 30))^{(56/30)} - 29,56,141)$	27271
Further delay in days (beyond 03.05.2004 till the date of payment) i.e. from 04.05.2004 to 15.02.2006	653
Rate of interest (Simple interest @ 12%)	12%
Amount to be paid on account of interest $(29,56,141 \times .12 \times (653/365))$	634639
Total amount $(27271 + 634639)$	661910

It may not be necessary to refer to the dissenting award as the 2:1 award is being tested on the merits of the majority view.

11.Likewise, the claims made before the Arbitral Tribunal in 'O.P.350 of 2015' (hereinafter 'junior OP' for clarity) were as follows :

'13.30 The claim of the Claimant under the final statement are arising under the following heads;

- | | | | |
|-------|--|-----|---------------|
| i) | Compensation for overhead costs in the extended period of contract | Rs. | 63,90,611/- |
| ii) | Compensation on account of extended stay of plant and equipment at site | Rs. | 1,44,98,278/- |
| iii) | Loss of opportunity & profit due to the extended period of the contract | Rs. | 1,06,18,089/- |
| iv) | Payment of Additional cost incurred towards revalidating the Bank Guarantee | Rs. | 17,55,948/- |
| v) | Payment of balance amount towards Price Adjustment provision | Rs. | 6,68,662/- |
| vi) | Payment towards portion of work executed under BOQ item No.1 of Bill No.2 | Rs. | 4,43,616/- |
| vii) | Payment of interest upon unpaid sums | Rs. | 12,53,682/- |
| viii) | Release of Rs.50,00,000/- BGs with further BG charges from 11.11.2010 till the date of release | | |
| ix) | Claim for pre-award and post-award interest upon all claims till the date of actual payment | | |

The above amounts have been reworked based on the discussion during the Arbitration meetings and incorporated in the Written Submission of oral Arguments.'

12.After taking into account the defence made by said company, impugned award in paragraph 20.0 under the caption 'ANALYSIS OF THE CLAIMS' has dealt with each of the claim in detail and has finally passed an award, summation of which is as follows :

'A.Awarded Items

1. Compensation for Overhead Costs in the Extended Period of Contract
Para 20.4 - Rs.31,26,982/-
 2. Compensation on Account of Extended Stay of Plant and Equipment at Site
Para 20.5 - Rs.1,23,88,602/-
 3. Loss of Opportunity & Profit Due to the Extended Period of the Contract
Para 20.6 - Claim rejected Nil
 4. Additional Cost incurred towards revalidating the Bank Guarantee - upto 31.05.2012
Para 20.7 - Rs.9,48,264/-
- The claimant is entitled for further bank charges from 01.06.2012, till the date of actual release of the Bank Guarantee.
5. Balance amount towards Price Adjustment provision;
Para 20.8 - Rs.4,71,498.51/-
 6. Portion of work executed under BOQ item No.1 of Bill No.2
Para 20.9 - Claim rejected
 7. Interest on unpaid sums (delayed payments) - Appendix C - Para 20.11.3 - Rs.5,95,916/-

B. Interest on Awarded Amount

Item No:1 (Overhead Costs in the Extended Period) and

Item No.2 (Extended Stay of Plant and Equipment) as above :
Date of receipt of Final Statement by the Engineer :

9.8.2007 - (P230 of SOC)

Due date of certification :1.11.2007
(9.8.2007 + 58 days) - Sub clause 60.8

Interest rate for 56 days from 1.11.2007 till 26.12.2007 6% p.a.
From 27.12.2007 till date of payment 12% p.a.

Item No.3 (Loss of opportunity), as above
Does not arise (Rejected item) Nil

Item No.4 (Bank Guarantee Charges) as above Nil

Item No.5 (Price Adjustment) as above

Date of receipt of Statement at Completion by the Engineer 8.7.2003
(P149 of SOC - Sub clause 60.10)

Date of certification of payment (58 days - Sub clause 60.8) 4.9.2003
(58 days from 8.7.2003)

Interest rate for 56 days from 4.9.2003 till 29.1.2003 6% p.a.
From 30.10.2003 till date of payment 12% p.a.

Item No.6 (BOQ items) as above
Does not arise (Rejected item) Nil

Item No.7 (Interest on unpaid sum) as above Nil
(Interest on interest is not applicable)

Tribunal directs the Respondent to make the payments to the Claimant as shown in Items A and B above.

C.Release of the remaining Performance Bank Guarantee of Rs.50,00,000/- Para 20.9

The Tribunal directs the Respondent, to release the above Bank Guarantee and return it to the Claimant immediately.

22.0 Cost of Arbitration

Sub-Clause 67.3 (vii) of Contract provides that the expenses of the arbitrators as determined by the arbitrators shall be shared equally by the Employer and Contractor. However, the expenses incurred by each

party in connection with the preparation, presentation etc. of their case prior to, during and after arbitration proceedings shall be borne by each party. Accordingly, this Tribunal does not award any cost to either party. The cost of arbitration proceedings and fees of arbitrators as per the directions of the Tribunal shall be borne by the individual parties on 50:50 basis.

This Arbitral Award has been made pursuant to the following provision of the Arbitration & Conciliation Act 1996 :

- This Arbitral Award is made in writing and signed by all the arbitrators in accordance with Section 31(1) of the Act.
- The reasons for the award have been given upon which is based in accordance with Section 31(3) of the Act.
- One copy of the award is delivered to each party as per Section 31(5) of Act.

This Award is made and signed by the Arbitrators on 2nd September 2012 at Chennai.'

In this impugned award, in the junior OP also, it is not necessary to refer to the dissenting award.

13.Though the challenge to the arbitral awards did not qualify as fitting into any one of the eight slots, this Court took it upon itself to examine if it is in conflict with public policy.

14.With regard to public policy, lead case laws are *ONGC Ltd. Vs.*

Western Geco International Ltd. reported in (2014) 9 SCC 263;

Associate Builders Vs. Delhi Development Authority reported in (2015)

3 SCC 49 and *Centrotrade Minerals and Metal Inc. Vs. Hindustan*

Copper Ltd., reported in (2017) 2 SCC 228. A careful reading of the aforesaid judgments rendered by Hon'ble Supreme Court brings to light that with regard to challenge to an arbitral award on the ground that it is in conflict to public policy of India, it is to be tested on three distinct juristic doctrines culled out by Hon'ble Supreme Court and the three distinct juristic doctrines are :

- (a) Judicial approach ;
- (b) Natural justice principle (NJP for brevity) ; and
- (c) Irrationality/perversity.

15.Hon'ble Supreme Court while laying down aforementioned three distinct juristic doctrines *qua* public policy, has also laid down tests for the same. The tests are :

- (a) fidelity of judicial approach ;
- (b) *audi alteram partem* ; and
- (c) *Wednesbury* principle of reasonableness.

16.In instant case, NJP does not arise for consideration. Therefore, it will suffice that the impugned award is tested on the touchstone of fidelity of judicial approach and *Wednesbury* principle of reasonableness.

17.A careful reading of the impugned awards leave this Court with the considered view that the impugned awards pass the tests without any difficulty. The grounds raised in instant OPs i.e., senior and junior OPs also do not highlight anything to demonstrate that the impugned awards do not pass these two litmus tests. This Court is left with the considered view that there is no ground to interfere with the impugned awards.

18.At this juncture, learned counsel for said port made a request that the interest awarded at the rate of 12 % per annum *vide* the impugned awards may please be reduced to 9% per annum. Responding to this, Mr.D.Balaraman, very fairly submitted that said company is agreeable to the same. In other words, this part of this order i.e., reduction of interest awarded *qua* impugned awards from 12% per annum to 9% per annum becomes a consent order.

In both the impugned awards, the interest component alone stands reduced from 12 % per annum to 9% per annum by consent of both parties.

In all other respects, the impugned awards remain untouched and

both the OPs are disposed of on above terms. There shall be no order as to costs.

16.03.3020

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Speaking Order

Index : Yes

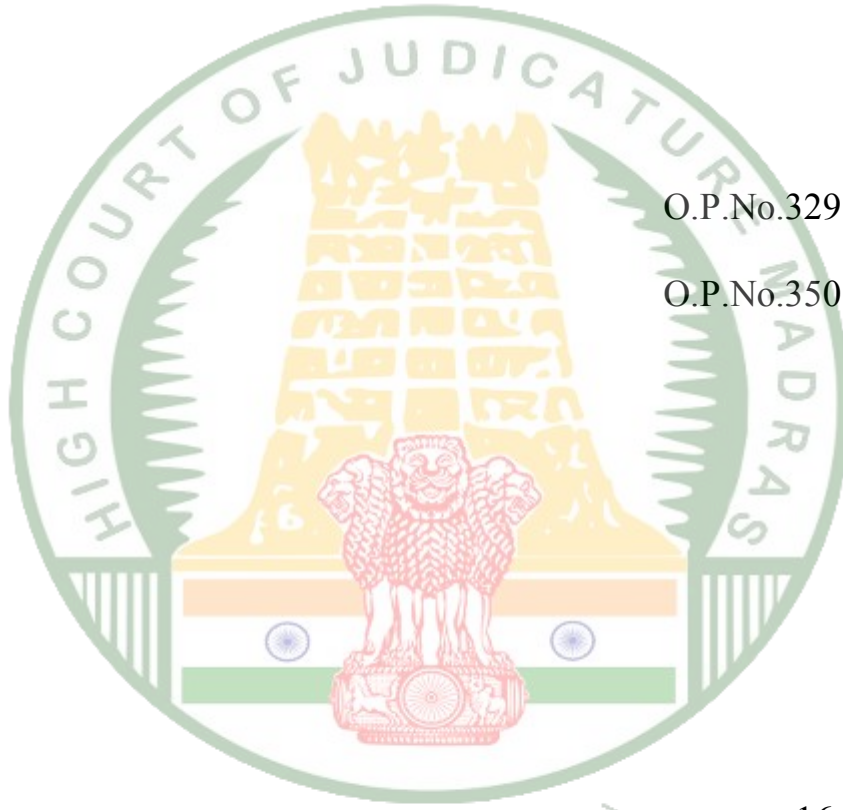


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M.SUNDAR, J.

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16.03.2020

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