IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

O.P.No.57 of 2015

Hindustan Petroleum Corporation Limited,
Rep. By its Sr.Manager – Retail Upgradation
South Zone, 4th Floor, Thalamuthu Natarajan Building,
Gandhi Irwin Road,
Egmore, Chennai – 600 008. ... Petitioner

Vs.

1.M/s.Banu Constructions
Civil & Electrical Engineering Contractors,
No.4, (Old No.44) 3rd Street
Thiruvalluvar Nagar,
Alandur, Chennai – 600 016.

2.Shri A.M.Atri
Sole Arbitrator,
C/o.Hindustan Petroleum Corporation Limited,
6th Floor, North Tower, Scope Minar, Dist Centre,
Laxmi Nagar, Delhi – 110 092.

...Respondents

[Second Respondent stands deleted by this Court vide order dated 19.08.2020]

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the Award dated 10.09.2014 passed by the 2nd Respondent herein and received at the office of the petitioner on 22.09.2014.

For Petitioner : Mr.O.R.Santhanakrishnan

For 1st Respondent : Mr.R.Thiagarajan

ORDER

Instant 'Original Petition' ('OP' for the sake of brevity) is an application 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 the sake of brevity, convenience and clarity.

2. Instant O.P. i.e., OP on hand has been filed, assailing an 'arbitral award dated 10.09.2014 ('impugned award' for clarity) made by an 'Arbitral Tribunal' ('AT' for brevity) constituted by a sole Arbitrator. Sole Arbitrator, who constituted the AT, has been arrayed as second respondent in the OP on hand. After hearing the submissions of both sides, I am of the considered

view that the sole Arbitrator, who constituted the AT is not necessary to be here in the array of parties. Therefore, I direct deletion of Respondent No.2 in and by this order. Consequently, Respondent No.1 in the OP on hand now becomes the sole respondent. This deletion is ordered based on ***Vinay Heavy Equipments*** order of Hon'ble Supreme Court dated 30.04.2007 shown as footnote in ***Zonal General Manager, Ircon Internatinal Limited Vs. Vinay Heavy Equipments*** reported in ***2015 (13) SCC 680*** as this Court finds from the facts/circumstances of this case and case file that sole arbitrator who constituted AT need not be here as part of array of parties in captioned OP.

3. Petitioner before me, which is an Oil Company, was the respondent before AT and sole respondent before me now was the claimant before AT. For the sake of convenience and clarity, petitioner shall be referred to as 'HPCL' denoting 'Hindustan Petroleum Corporation Limited' and the sole respondent shall be referred as 'contractor'.

4. Mr.O.R.Santhanakrishnan, learned counsel on record for HPCL (petitioner), Mr.R.Thiagarajan, counsel on record for sole respondent

(contractor) are before me. Both learned counsel submitted that the main OP can be taken up for final disposal and heard out. On the basis of this common submission made in unison by both the learned counsel, main OP was taken up for final disposal and heard out.

5. As mentioned supra, OP on hand is one under Section 34 of A and C Act wherein the contours are very limited and the confines of an application under Section 34 are very clear. Therefore, short facts shorn of unnecessary particulars will suffice. Factual matrix in a nutshell is as follows:

> a) HPCL, floated a tender in the name and style 'Techno Commercial Bid' and this is for standing works contract for mobilization/construction of retail outlets. This is Tender No.6000091-HD-11750 due date being 27.10.2006. It is submitted without any disputation that the contractor was the successful bidder. As the contractor was the successful bidder, who was awarded the contract, it is submitted before me without any disputation or disagreement that 'General Terms

and Conditions of Works Contract' ('GTC' for brevity) would apply in full force between the parties before me. It is also agreed and pointed out that Clause 14 of GTC captioned 'Arbitration' is the arbitration agreement between HPCL and the contractor being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. What is of utmost significance is, besides this GTC, in this case, there is no disputation or disagreement that Special Terms and Conditions for standing works contract for mobilization/construction of new retail outlets (hereinafter 'STC' for brevity) was entered into between the parties and this STC is to be read in conjunction with GTC. Post the aforementioned GTC and STC, five purchase orders were issued to the contractor and these five purchase orders issued to the contractor over a period of time constitute the fulcrum of the lis between the parties herein. These five purchase orders are as follows:

'PO No.6000122-OS-11750 dated 01.08.2006

PO No.7000037-OS-11750 dated 25.05.2007

PO No.70000156-OS-11750 dated 12.11.2007

PO No.7000176-OS-11750 dated 05.12.2007

PO No.10000046-OS-11750 dated 24.09.2020'

b)Aforementioned five purchase orders shall be referred to as 'POs' collectively for the sake of convenience/ clarity but wherever required, the same shall be referred to as first PO, second PO, third PO, fourth PO and fifth PO respectively in the order in which they have been set out supra.

c)There is also no disputation or disagreement that the contractor has completed the work in accordance with the requirement and the entire dispute now pertains to claim of the contractor based on price escalation. The claims of the contractor were five in number. Out of five heads of claim, claim Nos.1, 2 and 3 were acceded to, claim No.4 was accepted and paid to the contractor separately and claim No.5 was negatived. This Court is informed that the contractor has not preferred any petition under Section 34 of A and C Act against claim No.5 being negatived. However, HPCL has presented in this Court instant OP assailing claim Nos.1, 2 and 3 i.e., three heads of claim out of a total of five being allowed in favour of the contractor. As already delineated, all heads of claim pertains to price escalation.

d) Instant OP has been presented in this Court on 19.12.2014.The significance is, it is prior to 23.10.2015. Though obvious, for the purpose of clarity, it is made clear that 23.10.2015 is the date on which Act 3 of 2016 came into force with retrospective effect and vide this Act 3 of 2016 large scale amendments were brought into A and C Act (including Section 34 of A and C Act).

6. Assailing the impugned award, learned counsel for HPCL made submissions, summation of which is as follows:

a) Price Escalation is not arbitrable vide clause 3.5 of the aforementioned tender qua GTC.

b) Claim of the contractor is barred by limitation, as according to learned counsel for HPCL, it is beyond three years and it is the specific case of learned counsel for HPCL that three years is the limitation in cases of this nature.

c) There was a meeting on 07.12.2009, between HPCL and contractor and there are minutes of this meeting. In this minutes, price escalation claimed by Contractor has been discussed and therefore, the Contractor is estopped from claiming escalation post this minutes.

d) Impugned award is a non-speaking award.

7. In response to the aforementioned submissions made by learned counsel for HPCL, learned counsel for Contractor made submissions which are as follows:

a) The claim is not barred by limitation as the contractor had to wait for the final bill on 24.09.2010 to make the claim.

b) Price escalation is not exempt from arbitration as contended, as post tender, the contractor being the successful bidder, GTC and STC were executed both of which provide for price escalation and no exception from arbitration qua escalation.

c) Minutes of the meeting cannot be put against the contractor as the minutes itself had become a bone of contention leading to contractor triggering the arbitration making it part of arbitral disputes. Therefore this would tantamount to begging the question, is the learned counsel's say.

d)With regard to the impugned award being a non-speaking award, it was submitted that when an award proceeds on admissions, it cannot be gainsaid that the impugned award does not give reasons.

8. I now proceed to examine the rival submissions, set out my discussion and give my dispositive reasoning.

9. Limitation goes to the route of the matter and claim of limitation is

founded on public policy. Therefore any plea of limitation in a petition under section 34 will fall within the scope of Section 34(2)(b)(ii) read with clause (ii) of Explanation I. Therefore I deem it appropriate to deal with limitation as the first point.

10. With regard to limitation, besides saying that the contractor had to wait for the final bill to make the claim qua price escalation, it was also attempted to argue that limitation was never raised before the AT. With regard to limitation, it is necessary that an adjudicating authority has to necessarily look into even if it has not been set up as a defence. This is vide Section 3 of the Limitation Act. Therefore I took it upon myself to examine limitation. With regard to limitation, the fifth PO is dated 24.09.2010. There is also no disputation or disagreement before me that the final bill is dated 24.09.2010. Therefore 24.09.2010 becomes the reckoning date or the starting point of limitation, to examine the plea of limitation. This is more so in the light of Clause (6) of the escalation condition, which makes it clear that adjustment for escalation would be made in the final bill as revised index No. will not be available at the time of handing over of site. It is also

made clear that the payment of running bills will be made at the applicable base rates only. Now that 24.09.2010 is the reckoning date, the question is whether the claim was launched within three years from that date. For this purpose one has to turn to section 21 of A and C Act. Section 21 of A and C Act provides for date of commencement of arbitral proceedings. Section 21 of A and C Act reads as follows:

> *'21. **Commencement of arbitral proceedings**.- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.'*

11. In this case, the trigger notice or in other words, the notice invoking the arbitration is dated 10.04.2013 and this notice was issued by the contractor. Going by the language in which Section 21 is couched, the date of receipt of this trigger notice by HPCL would be date of commencement of arbitral proceedings. In this case though the exact date of receipt of trigger notice by noticee HPCL is not available, HPCL has replied to this 10.04.2013 trigger notice in and by a reply notice dated 21.05.2013.

Therefore, it is very clear that 10.04.2013 notice has been received by HPCL on some date between 10.04.2013 and 21.05.2013. At the highest, it could have been received on 24.05.2013 and HPCL could have replied on the same date. Therefore, even on a worst case scenario for the contractor, the limitation gets arrested on 21.05.2013. Computing limitation from 24.09.2010, obviously 21.05.2013 is within three years. Therefore, the plea of limitation, though not raised before the AT, has been examined by me in the spirit of Section 3 of the Limitation Act and I find for the contractor with regard to limitation. In other words, I find that the claims are not barred by limitation owing to the reasons delineated herein.

12. This takes us to the next point pertaining to claim on account of escalation being non-arbitrable. This plea is predicated on clause 3.5 of GTC, which has been annexed to the aforementioned Tender, which was due on 27.10.2006 and this clause 3.5 reads as follows:

'3.5.No escalation in the Tender rates will be permitted throughout the period of contract or the period of completion of the job whichever is later on account of any variation in prices of materials or cost of labour or due to any other reasons. Claims on account of escalation shall not be arbitrable.'

13. A perusal of the aforementioned clause 3.5. reveals that it says that no escalaton rates in tender will to be permitted, but thereafter when the contractor became the successful bidder the parties agreed on GTC and more importantly STC. What is of relevance is, the GTC and STC, which ultimately govern the parties post tender, provide for price escalation claims. Clause 3.5 has been revised in the GTC and revised 3.5 in GTC reads as follows:

'3.5.Unless specifically provided for in the tender documents or any Special Conditions, no escalation in the Tender rates or prices quoted will be permitted throughout the period of contract or the period of actual completion of the job whichever is later on account of any variation in prices of materials or cost of labour or due to any other reasons. Claims on account of escalation shall not be arbitrable.'

14.Therefore, STC comes into play. Relevant clause in STC reads as follows:

<u>'ESCALATION / DE-ESCALATION CLAUSE</u>

1. Escalation / de-escalation shall be allowed only on the following items of Schedule of Rates.

PART 'A'

Item No.7: Reinforcement Steel

Item No 15.1 : Structural Steel: Angle Iron Post.

Item No 15.2 : Pipe railing.

Item No.15.3 : Chain link fencing.

Item No.15.4 : Barbed wire fencing.

PART 'B'

Item No.9 Steel Reinforcement

Item No.26.0 MS Grill

Item No.27.0 MS Ladder

Item No.29.0 Steel Windows.

Item No.30.0 rolling shuttur.

Item No.31.0 grill in rolling shutter.

Item No.33.4 structure steel work for service bay.

PART 'C'

Item No.17 MS chequered plate

Item No.18 MS angle/channel supporting

PART 'D'

Item No.6.0 *Steel reinforcement*

PART 'E'

Item No.5 *Reinforcement Steel Works.*

Item No.10 *Manhole cover*

PART 'J'

Item No.65 *Structural Steel for pergola*

PART 'K'

Item No.1.1 *Foundation Bolt*

Item No.1.2 *Beams, columns, trusses, plates.*

Escalation / De-escalation on no other item shall be allowed.

2. Escalation/ De-escalation will be worked out on basis of Monthly Index Number as declared by Reserve Bank of India (RBI) bulletins "Index Number of Whole sale prices in India-By Groups and Subgroups (Month end / year end) as applicable to Sub-category-Iron and Steel under Category Basic Metal & Alloys and Metal Products.

3. The value of the Index Number for the month in which the due date of this tender falls will be considered as Base Index Number with reference to which Escalation / De-escalation will be calculated.

4. To ascertain rates applicable for any job Escalation / De-escalation will be carried out by comparing value of index for the month in which the site is initially handed over to the vendor with the value of the base index number mentioned above.

The formula for calculation of Escalation / De-escalation is given below:

For Item numbers 14.1 of section 'A' 33.4 of Section 'B', 65 of Section 'J', 1.2 of section 'K' as mentioned above

*RR = BR * {Revised Index Number – Base Index Number) / Base Index Number} * 0.7*

For balance items as mentioned above,

*RR = BR + BR * {Revised Index Number – Base Index Number) / Base Index Number} * 0.8*

(It is considered that 70% and 80% for Item numbers 14.1 of Section 'A', 33.4 of section 'B', 1.2 of Section 'K', 65 of section 'J' and for balance items as mentioned above respectively of the rate is towards material cost and as such Escalation / De-escalation shall be applicable only to this portion.)

RR = Revised Rate

BR = Base Rate (Rate as per Master Purchase Order placed by HPCL – GMO South Zone)

Base Index Number = Value of Index for the month in which due date of the tender falls.

Revised Index Number = Value of Index for the month in which the site is initially handed over.

5. Revised Rates so computed will be frozen and no further escalation / de-escalation will be computed till completion of job.

6. Since the Revised Index Number will not be available at the time of handing over of site, payment of Running Bills will be made at the applicable base rates only. Adjustment for Escalation / de-escalation will be made in Final Bill.

Signature and Seal of Bidder

15. Now the question is whether a claim predicated on escalation is arbitrable. In this regard, it was argued by learned counsel for contractor that HPCL has not only participated in the proceedings before AT, but it has also made a counter claim. Having participated in the proceedings before the AT and having made a counter claim or in other words having itself submitted to the jurisdiction of AT, it cannot now be contended that claims based on escalation are not arbitrable. With regard to this argument, a perusal of the impugned award reveals that there is no mention about this arbitrability having been raised before the AT. There is also no disputation or disagreement before me that this question of escalation not being arbitrable was not raised before the AT in the pleadings. However, this relates to jurisdiction of AT under Section 16. Jurisdiction of AT under Section 16, though not raised before the AT, can be raised at the Section 34 stage in the light of ***Lion Engineering*** [***Lion Engineering Consultants Vs. State of Madhya Pradesh*** reported in ***(2018) 16 SCC 758***] which set at knot the principle laid down in ***MSP Infrastructure Ltd. Vs. M.P. Road Development Corpn. Ltd.*** reported in (***2015) 13 SCC 713***. Therefore, I have

to necessarily consider the question pertaining to whether this escalation is exempt. In this case, what is of relevance is, a plain reading of revised GTC shows that claims on account of escalation shall not be arbitrable. HPCL, not having raised this point before the AT,may not really militate against HPCL, with regard to raising it in a Section 34 petition in the light of ***Lion Engineering*** principle, but I have to necessarily examine, this plea on the basis of the case that has been projected before me. Therefore without accepting the argument that this plea was not raised before the AT, I set upon the exercise of examining this plea independently in this Section 34 application. Here again, what is of relevance is the trigger notice dated 10.04.2013 and 21.05.2013 reply to same from HPCL. Owing to the importance of trigger notice and reply I deem it appropriate to extract the entire trigger notice/reply the same are reproduced hereunder:

'Arbitration Notice

REF: HPCL/ Arbitration ***Date: 10.04.2013***

To

General Manager – South Zone,

M/s. Hindustan Petroleum Corporation Ltd.,

GMO SZ-Retail, Thalamuthu Natarajan Building, *4th Floor, Post Box No.3045,*

Gandhi Irwin Road, Chennai Tamil Nadu Pin: 600 008

Dear Sir

SUB: Arbitration Notice – Reg

Ref: 1.Standing Works Contract – PT (PO Number – 6000122-OS-11750 dt 01-08-06)

2.Standing Works Contract – PT (PO Number – 7000037-OS-11750 dt 25-05-07)

3.Standing Works Contract – PT (PO Number – 7000156-OS-11750 dt 12-11-07)

4.Standing Works Contract – PT (PO Number -7000176-OS-11750 dt 05.12.07)

5.Standing Works Contract – PT (PO Number – 10000046-OS-11750 dt 24-09-10)

Despite of our several request & reminders you have failed to release the Escalation amount due to us for the work executed by us for the above cited standing orders.

Hence as per the provision of the Arbitration and Conciliation Act 1996, we are proposed to go for Arbitration to get our payments due and justice.

So kindly arrange for Arbitration at Chennai.

Kindly please inform us about the Arbitration Proceeding at the earliest.

Thanking you,

Yours Truly,

For M/s.BANU CONSTRUCTIONS

BABU.P, M.E., M.B.A.,

Partner

16. As already referred to supra, while dealing with the limitation point, HPCL reply notice is dated 21.05.2013 and again considering the importance entire 21.05.2013 correspondence is extracted and reproduced hereunder:

'Ref: DM/ARB *21st May, 2013.*

To:

M/s.Banu Constructions

Civil & Electrical Engineering Contractors,

No.4, (Old No.44) 3rd Street

Thiruvalluvar Nagar,

Alandur, Chennai – 600 016. *} Claimant*

and

Hindustan Petroleum Corporation Limited,

Through its Senior Manager – Retail Upgradation

South Zone, 4th Floor, Thalamuthu Natarajan Building,

Gandhi Irwin Road,

Egmore, Chennai – 600 008. *} Respondent*

Sub: Appointment of Sole Arbitrator in respect of disputes and differences pertaining to Purchase Order No.6000122-OS-11750 dated

01.08.2006, PO No.7000037-OS-11750 dated 25.05.2007, PO No.7000156-OS-11750 dated 12.11.2007, PO NO.7000176-OS-11750 dated 05.12.2007, PO No.10000046-OS-11750 dated 24.9.2010 and other contracts entered into between the Parties.

Dear Sirs,

I refer to (i) the Purchase Order No.6000122-OS-11750 daetd 01.08.2006, No.7000037-OS-11750 dated 25.05.2007, No.7000156-OS-11750 dated 12.11.2007, No.7000176-OS-11750 dated 05.12.2007 and No.10000046-OS-11750 dated 24.09.2010 and other contracts for similar works issued by Hindustan Petroleum Corporation Limited (Respondent) in favour of M/s Banu Constructions (Claimant) (ii) Letters from Claimant to Respondent dated 11.12.2008, 10.02.2010 and 30.11.2011 (iii) Letters from the Respondent to the Claimant (iv) all related correspondence and documents.

Certain disputes and differences have arisen between the parties, since the Claimant alleges that certain sums are due and payable by the Respondent to the Claimant towards escalation of steel prices as per the escalation/de-escalation clause under the Special terms and conditions of the Purchase orders/contracts. On the other hand Respondent denies the same as any escalation were to be claimed in the final bill and the Claimant are claiming the escalation after the payment of the final bill. Moreover the Respondent states that the Claimant has not considered the de-escalation clause.

Claimant vide its letter dated 10.04.2013 has sought for appointment of an Arbitrator in terms of Clause 14 of the General Terms and Conditions *of the Purchase Orders/contracts. I hereby nominate Shri H.S. Juneja, a serving officer of the Respondent Corporation, to be the Sole Arbitrator to adjudicate upon the disputes and differences between the Parties. Both parties are free to raise all their claims and counter claims before the said Arbitration, under the above stated Purchase orders and other similar contracts between the Claimant & Respondent.*

I am endorsing a copy of this letter to Shri H.S.Juneja and request him to enter upon the office of Sole Arbitrator and adjudicate upon all the disputes and differences between the Parties and pass his award in terms of the clauses of the Purchase orders/ contracts and the provisions of the Arbitration and Conciliation Act, 1996 and the law applicable on the subject.

Thanking you.

Very truly yours,

Nishi Vasudeva

Director-Marketing

cc:	*Shri H.S.Juneja, DGM – O&D, Hindustan Petroleum Corp. Ltd., 4th Flr, Thalamuthu Natarajan Bldg, Gandhi Irwin Road, Egmore, Chennai 600 008.'*	*You are nominated as Sole Arbitrator and are requested to enter upon reference and adjudicate upon the disputes and differences between the parties as stated*

17. A careful perusal of 21.05.2013 reply of HPCL to the trigger notice, makes it clear that HPCL, had made a departure and agreed for arbitration with regard to escalation claims also. An attempt was made to argue before this Court that this was without prejudice to the rights of HPCL. I am unable to agree as there is nothing to this effect in 21.05.2013 reply from HPCL. What is of greater significance is, HPCL has nominated sole Arbitrator namely, who was subsequently replaced by the Arbitrator, who made the impugned award, as the Arbitrator appointed originally by HPCL had since resigned. Therefore, this takes us to the very fundamental sublime philosophy underlining A and C Act. This sublime philosophy underlining A and C Act and the salutary principle behind it is party autonomy. Based on party autonomy, the parties create an Arbitral Tribunal. In other words, AT is a creature of the contract and it is not a creature of statute. As arbitral Tribunals are creatures of contract based on party autonomy, it cannot be gainsaid that the claims based on escalation are exempted after agreeing for an Arbitral Tribunal and after nominating a sole Arbitrator and more so after participating in the entire arbitral proceedings

without demur. In this limited aspect of the matter, the fact that the HPCL did not raise it even before the AT gains significance. If reply of HPCL dated 21.05.2013 was without prejudice to its rights and contentions in this regard, nothing prevented HPCL from raising the point before the AT. Therefore, it is crystal clear that the principles of novation and substitution come into play. The original contract, has been substituted by exchange of 10.04.2013 trigger notice and 21.05.2013 reply from HPCL. There is one other reason which is peculiar to the facts and circumstances of this case which impels this Court to hold that this point does not gravitate in favour of HPCL i.e., entire claim of contractor vide the trigger notice dated 10.04.2013 is based only on escalation and no other ground. On a demurer assuming that the claim was under several heads and escalation was one of the heads and the issue of some disputes being arbitrable and some not being arbitrable could have arisen. That is not the case here. All the claims are based only one issue and that one issue is escalation. Therefore, a situation that some of the disputes raised by contractor in the trigger notice being arbitrable and others not being so also does not arise in this case.

More importantly this sustain the STC prevailing qua GTC theory. Therefore, owing to the peculiar facts and circumstances of this case, I find for the contractor on this aspect of the matter.

18.This takes us to the third point pertaining to minutes of the meeting. As far as the minutes are concerned, a careful perusal of minutes of the meeting dated 17.12.2009 reveals that it is not conclusive. The reason is, point No.8 of the minutes, which makes it clear that the contractor has to submit their claims supporting calculations for cost incurred for certain works even if this is not part of escalation reveals that there has been difficulty in release of escalation amount, which has led to the dispute being raised and the arbitration clause being invoked. To be noted 10.04.2013 trigger notice has already been extracted and reproduced supra. Therefore, the minutes of the meeting being put against the contractor, tantamounts to begging the question qua invocation of arbitration and therefore I am unable to sustain this plea of HPCL.

19. This takes us to the last plea pertaining to non-speaking award. A

perusal of award reveals that it does give reasons. It does refer to clause 6 of the STC, which deals with escalation/de-escalation and then finds for the contractor. That the impugned award is epigrammatic by itself does not become a ground to dislodge it as long as it is not laconic as case on hand is one where impugned award proceeds on admission.

20. It was argued that impugned award suffers from the vice of perversity. In this regard, my attention was drawn to scope of testing an award for perversity. In the considered view of this Court, a good working test of perversity has been laid down by High Court in the celebrated Associate Builders case in paragraph 32 which reads as follows:

> *'32.A good working test of perversity is contained in two judgments. In H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312 at p. 317, it was held:*
>
> > *"7. ....It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from*

the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

In Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 at para 10, it was held:

"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.'

21. A perusal of paragraph 32 of Associate Builders, leaves this Court with the considered view that the working test laid down by the Hon'ble Supreme Court in turn is based on Gopi Nath principle and Kuldeep Singh principle. To be noted, both case laws have been set out and the relevant paragraphs have been extracted in paragraph 32 of Associate Builders itself. Therefore, for an award to be dislodged on the ground of perversity, the

finding should be so outrageous that it defies logic or in other words the findings should be such that no reasonable person, would take such a view. In this regard, learned counsel for contractor, drew my attention to ***Project Director, Tamil Nadu Road Sector Project II V. RNS Infrastructure Ltd-GPL (JC)*** *reported in* ***2018 (2) CTC 593*** and ***Chaudrhary Avadhesh Kumar V. Volleyball Federation of India*** reported in ***(2019) 5 CTC 155*** regarding the scope of Section 34. For intervention under Section 34, merely because another possible or plausible view is preferred by the Court, an award cannot be set aside. In other words, the test is not which of the views is better, but the test is whether the view taken by the AT is implausible and so implausible that no reasonable person would have taken such a view. In the instant case, though this Court would have articulated differently if called upon to adjudicate on this lis impugned award being a possible view proceeding on admission, perversity plea fails.

22. Owing to all that have been set out supra, this Court before concluding makes it appropriate to refer to the obtaining legal philosophy underlining Section 34 petitions. Section 34 is not an appeal. I am not

sitting qua appeal on the impugned award. It is neither an appeal nor a revision. It is not even a full-fledged judicial review. It is a limited challenge to an award limited to the eight grounds adumbrated in sub-section (2) of Section 34 and elucidation of Courts qua facts of same. If that is the case, the question is whether the challenge to the impugned award fits into any one of the pigeonholes adumbrated in sub-section (2). In this case, the narrative thus far will reveal that it does not fit much less fit snuggly into any one of the eight pigeon holes or facets of same as elucidated by Court. Furthermore, this Court has also reminded itself of the legal philosophy that Section 34 by itself is a delicate balance between the sanctity attached to finality of an arbitral award ingrained in Section 35 of the A and C Act read with minimum judicial intervention ingrained in Section 5 of A and C Act on one side and the sanctus philosophy attached to judicial review in substantive due process of law. Arbitration as part of Alternate Dispute Resolution (ADR) mechanism is the foundation for this delicate balance.

23. As already mentioned supra, instant OP was presented in this

Court on 19.12.2014, it is more than half a decade old, in the light of sub-section (6) of Section 34 and the observations made by Hon'ble Supreme Court in ***Bhumi Vikas Bank*** case [***State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti*** reported in ***(2018) 9 SCC 472]*** in paragraph 26 with regard to sub-section (6) of Section 34, I have no hesitation in describing the instant OP as a vintage OP as it is more than half a decade old in this Court.

In the light of the narrative thus far, in the light of the discussion and dispositive reasoning, the challenge to the impugned award fails and the OP stands dismissed. There shall be no order as to costs.

03.08.2020

Sgl/gpa

M.SUNDAR,J.

Sgl/gpa

O.P.No.57 of 2015

03.08.2020