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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 06.02.2020

Pronounced on: 18.02.2020

+ O.M.P. (COMM) 5/2019

AMES IMPEX ELECTRICALS PVT LTD THROUGH ITS
DIRECTOR Petitioner

Through Mr.Vikas Mehta with Mr.Apoorv
Khator, Advocates

versus

NEW DELHI MUNICIPAL COUNCIL Respondent

Through Mr.Yoginder Handoo with
Mr.Nishant Kumar, Advocates for
NDMC.

+ O.M.P. (COMM) 22/2019 and I.A. 530/2019 (stay)

NEW DELHI MUNICIPAL COUNCIL Petitioner

Through Mr.Vikas Mehta with Mr.Apoorv
Khator, Advocates

versus

AMES IMPEX ELECTRICALS PVT LTD Respondent

Through Mr.Yoginder Handoo with
Mr.Nishant Kumar, Advocates for
NDMC.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G M E N T

1. O.M.P. (COMM) 5/2019 has been filed by Ames Impex Electricals Pvt. Ltd. under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') for setting aside the Arbitral Award dated 06.09.2018. Ames

Impex Electricals Pvt. Ltd. is referred to as petitioner hereinafter. O.M.P. (COMM) 22/2019 is a petition filed under Section 34 of the Act by New Delhi Municipal Council ('NDMC') against the same Award. NDMC is being referred to as the respondent hereinafter. Since both the petitions have been filed challenging the same Award, they are being disposed of by a common judgment.

2. Shorn of unnecessary details, the brief facts to decide the present cross petitions are that the respondent floated two tenders bearing nos.9/2009-10/EE(S-I) for supply of 1000 KVA Dry Type Cars Rasin Transformers for indoor duty application and the other being tender no. 4/2009-10/EE(S-I) for supply of 1600 KVA Dry Type Cars Rasin Transformers for indoor duty application.

3. The petitioner was declared as a successful bidder in both the tenders. A pre-bid earnest money deposit was made by the petitioner with respect to both the tenders, which was to be returned after completion of supply. Respondent issued a purchase order dated 09.10.2009 with respect to the first tender for supply of 57 transformers with a total value being Rs.4,97,61,000/-. The Supply Order was accepted by the petitioner vide acceptance report dated 13.10.2009. Another purchase order was issued on 03.03.2010 for supply of 37 transformers against the second tender for a total value of Rs.4,66,20,000/-. The petitioner accepted the order by an acceptance report dated 08.03.2010.

4. It is the case of the petitioner that in both the Supply Orders, the scope of work was restricted only to supply of the transformers after they were duly tested by the respondent / agencies appointed by the respondent. The scope of work did not include maintenance, erection, commissioning, etc. The petitioner was to be discharged from its obligations the moment the supplies were complete.

5. It is the further case of the petitioner that the Supply Orders were for “in door duty transformers” i.e. the transformers were meant to be kept in-doors with proper channel for ventilation and were manufactured strictly as per the said specification. As per clause 10 of the terms and conditions of the Supply Orders, the respondent was required to make 100% payment within 30 days of receipt of the supply. Petitioner was to submit duly stamped and pre-receipted bills. Under clause 11, petitioner was required to furnish a Performance Bank Guarantee of 5% of the total value of the work, and the same was accordingly furnished by the petitioner with respect to both the Supply Orders. As per the petitioner, the PBGs amounting to Rs.55,06,856/- have not been returned till date. Even the earnest money deposit had not been returned by the respondent though supply was complete long ago.

6. Petitioner further avers that the transformers were tested and inspected by a third party agency M/s. RITES in presence of Engineers of the respondent. Transformers under both the Supply Orders were successfully tested at ERDA Baroda and in fact one from each lot of supply was picked up randomly by the inspection team of the respondent and was tested as HEAT RUN Type. It is only when the respondent had

put the transformers to such vigorous testing that it had accepted the lots and issued delivery statements.

7. Petitioner further avers that on a number of occasions, petitioner had communicated to the respondent that the transformers were designed for indoor environment and were to be stored indoors even when they were not installed or operational. In 2011, respondent communicated to the petitioner that some of the transformers had trouble in functioning. Although admittedly by this time, the transformers had functioned for about 4 months yet in good faith, petitioner conducted a joint inspection of the site with the respondent's engineers and a detailed report was submitted. The inspection report categorically reflected that the faults were attributable to the negligent conduct of the respondent in storing and maintaining the transformers. The transformers were kept in the open without any shelter for over seven months and were exposed to extreme weather conditions. On the weekends there was excess voltage and this contributed to the malfunctioning of the transformers. There was negligence in shifting the transformers from the stores to the erection sites, besides lack of ventilation. The transformers were subjected to a much higher voltage than the prescribed capacity. According to the petitioner, these and certain other factors led to the faults in the transformers and none of these could be categorized as manufacturing defect.

8. Vide letter dated 08.04.2011, petitioner apprised the respondent about the shortcomings and this stand was reiterated in subsequent letters. It is the case of the petitioner that though the petitioner under the NIT was

not responsible to undertake any repair for the faults which occurred due to the negligence of the respondent, however, in good faith it took back the transformers and carried out repairs at its own costs. Since the petitioner is a Small Scale industry and was facing a financial crunch, it requested the respondent to release some payment against the outstanding amount of Rs.3 Crores due to it. On 01.03.2012, petitioner again requested for the outstanding payment but this only provoked the respondent into issuing letters alleging that the transformers were faulty on account of manufacturing defects. In the meantime, the petitioner kept on extending the Bank Guarantee which should have been actually refunded. To the shock of the petitioner, the respondent issued a show-cause notice on 01.06.2017 alleging non-compliance in rectification of defects and threatening to take action on account of the breach of Contract. On 10.06.2017, the respondent wrote to the petitioner to get the transformer tested from NABL accredited Lab. Petitioner agreed to undertake the test but at the expense of the respondent.

9. Thereafter, on account of some disputes having arisen, petitioner invoked Arbitration vide e-mail dated 11.10.2017 and finally the respondent appointed a Sole Arbitrator to adjudicate the disputes.

10. The petitioner filed the following statement of claim :

“(a) This Hon’ble Arbitral Tribunal, be pleased to hold, declare and direct the Respondent NDMC, to Release/make the Payment of Rs.9,71,96,498/- (Rupees Nine Crores, Seventy One Lakhs, Ninety Six Thousand, Four Hundred Ninety Eight Only) as per our Statement of Claim attached

h/w as Annexure – S, within 1 month of the passing of the Award to the Claimant.....”

11. Respondent filed its statement of defence as well as the Counter Claim. The Counter Claims of the respondent are as under :

“COUNTER-CLAIM NO. 1: On account of expenditure incurred for replacement of burnt Transformers of 1000KVA vide S. O. No. 07/DP/EE(S-1)/2009-10 dt.09.10.2009. (Qty. - 57 nos.) & 1600 KVA vide S. O. No. 27 /DP/EE(S-1)/2009-10 dt.03.03.2010. (Qty. - 37 nos.) supplied by the Claimant.

COUNTER-CLAIM NO. 2: Towards cost of purchase of new transformers against the existing Burnt/Defective Transformers of Claimant.

COUNTER-CLAIM NO. 3: Towards costs for repairing defective transformers.

COUNTER-CLAIM No. 4: Towards expenditure incurred by Respondent for inspection of transformers by RITES together with TA/DA expenses by NDMC Engineers.

COUNTER-CLAIM NO. 5: Interest@ 18% Annually.

COUNTER-CLAIM NO. 6: Cost towards arbitration.”

12. The Arbitral Tribunal by its Award dated 06.09.2018 awarded a sum of Rs.1,58,28,204/- to the petitioner towards the part payment of 11 transformers alongwith the EMD deposit, as well as the refund of only one Bank Guarantee. In so far as the respondent is concerned, the Tribunal awarded a sum of Rs.64,14,299/- towards Counter Claim no.1, an amount of Rs.64,49,444/- towards Counter Claim no.2. As mentioned

above, both parties have challenged the said Award of the Arbitral Tribunal.

13. The principal contention of the learned counsel for the petitioner is that the Tribunal has given a clear finding that the protection devices given by the respondent were old and dilapidated and most of the failures were on account of uncontrolled surge in power over the weekends. The transformers were tested before their supply in presence of the engineers of the NDMC including by an independent inspection agency RITES. The Tribunal has given a categorical finding that the transformers were well designed and manufactured and only on approval and acceptance, they were supplied to the NDMC. The transformers were never defective and nor had any manufacturing defects. Having rendered these findings in favour of the petitioner, the Tribunal should have released the entire pending payments to the petitioner instead of allowing the claim partly.

14. It is further contended that four Bank Guarantees were furnished by the petitioner amounting to Rs.55,06,856/- but the Tribunal has erroneously directed return of only one Bank Guarantee amounting to Rs.26,61,816/- and that too as though it included 5% interest. The Award is silent regarding the remaining BGs.

15. It is further contended that the Arbitrator has failed to award any interest on the pending payment despite the fact that the petitioner is registered under the MSMED Act, 2006 and is entitled to compound interest at three times the rate of the Banks under Section 16 of the said Act.

16. Learned counsel challenges the award of the Counter Claims in favour of the respondent. He argues that the award is a non-speaking award bereft of any reasons as to why the Counter Claims have been allowed and that too despite a finding that the transformers when supplied were not faulty and under the NIT the responsibility of the petitioner ended on mere supply of the transformers. Petitioner was not obliged to carry out any repairs for the faults that occurred on account of the negligent handling of the transformers by the respondent. Learned counsel submits that the Award suffers from a patent illegality appearing on the face of the Award. He thus prays that the Award should be set aside to the extent it has allowed the two Counter Claims of the respondent and has disallowed part claims of the petitioner.

17. Learned counsel for the respondent submits that the Award has been challenged by the respondent to the extent it has disallowed the Counter Claim towards costs of repairing some of the transformers as well as to the extent it has allowed the claims of the petitioner. Learned counsel submits that after successful inspection of the transformers, the transformers were delivered at the NDMC stores in lots. Soon after the supplies were made, respondent started receiving wide-spread complaints of the failures of the transformers such as malfunctioning, abnormal sounds and burning. Despite several requests to the petitioner, it failed to rectify the defects and repair the transformers. Petitioner through several letters acknowledged its failure and assured that the defaults would be rectified, but no action was taken. Though subsequently, the petitioner

undertook the task of repairing but the repairs carried out were extremely slow and of inferior quality.

18. It is further contended that the petitioner even refused to carry out joint inspection alongwith M/s. RITES and finally the inspection report dated 03.12.2012 clearly revealed that the transformers had manufacturing defects and design flaws. The same was reiterated in the second joint inspection report dated 07.01.2016. A third joint inspection report dated 08.04.2016 reaffirmed the manufacturing defects in the transformers. Learned counsel submits that being a public body, respondent faced an alarming situation as the defective transformers led to compromising the power supply to the public in the NDMC areas. On account of this, the PBGs and the outstanding payments of 11 units of the transformers alongwith EMD were withheld by the respondent totaling to about Rs.2.60 Crores.

19. Learned counsel contends that the Arbitrator has erroneously awarded the balance cost of the transformers in favour of the petitioner alongwith the refund of BGs and EMD. He contends that as per clauses 17 and 19 of the Supply Order, petitioner was bound to guarantee the respondent against any defects, till the transformers became fully operational and defect free. Having supplied defective material, petitioner is in complete breach of the Supply Order. Respondent in fact even filed a complaint with the police on account of the cheating by the petitioner in supplying defective material.

20. Learned counsel argues that the Award is contradictory as, on one hand, it holds that there were no manufacturing defects while, on the other hand, it has awarded expenditure incurred for replacement of burnt transformers alongwith cost of purchase of new one. Learned counsel further points out that the Arbitrator has erred in holding that there was improper ventilation of the sites by the respondent and ignored that the petitioner had itself vide letter dated 28.04.2011 informed the respondent that the site and the installation procedure in Jivan Bharti Building was impressive.

21. I have heard the learned counsels for the parties and examined their contentions.

22. Law on interference and judicial review under Section 34 of the Act is no longer res integra. The parameters on which interference can be done in an Arbitral Award are laid down in Section 34 itself and have been elaborated in several judgments of the Supreme Court and this Court. In the case of *Associate Builders vs. Delhi Development Authority* (2015) 3 SCC 49, it has been held as under :-

“42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

*“28. Rules applicable to substance of dispute.—(1)-(2)****

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the

terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. 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.”

23. In the recent judgment by the Supreme Court in ***Ssangyong Engineering & Construction Co. Ltd. vs. NHAI (2017) 5 SCC 743***, the parameters have been clearly subscribed and the relevant paras are as under :-

“35. What is clear, therefore, is that the expression “public policy of India”, whether contained in Section 34 or in Section 48, would now mean the “fundamental policy of Indian law” as explained in paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to the “Renuagar” understanding of this expression. This would necessarily mean that the Western Geco (supra) expansion has been done away with. In short, Western Geco (supra), as explained in paragraphs 28 and 29 of Associate Builders (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of Associate Builders (supra).

36. It is important to notice that the ground for interference insofar as it concerns “interest of India” has

since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. This again would be in line with paragraphs 36 to 39 of Associate Builders (supra), as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

37. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with.

38. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

39. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.”

24. Thus, examined on the touchstone of the law as laid down by the Supreme Court, this Court is of the opinion that the impugned Award does suffer from a patent illegality in rejecting the claims of the petitioner. In so far as it has allowed the Counter Claims, it is a non-reasoned and non-speaking award.

25. The Arbitral Tribunal after a detailed narration of the chronology of list of dates and events, has come to a clear finding that the transformers supplied by the petitioner were never defective and did not have any manufacturing defects, as alleged repeatedly by the respondent. The Tribunal has also observed that there were deficiencies in the sites where they were installed in terms of lack of ventilation, proper spacing from the nearest obstruction, lack of protected devices, absence of winding temperature indicator. It is also observed that the NCT was not connected to the system in the absence of which there were sudden surge in power which damaged the transformers. Significantly the Tribunal also observed that the transformers had been supplied after various tests conducted prior to the supply in the presence of the engineers of the NDMC and RITES. The tests not only validated the design but also certified that the transformers met all the parameters and only after the NDMC approved and accepted the lots that the transformers were supplied. Having so observed, the Tribunal makes an observation that both parties were responsible for the failure of the transformers and declined to grant complete balance payment to the petitioner as well as return of some Bank Guarantees. It is significant to mention here that the Supply Orders itself stipulated that the responsibility of the supplier was

only to the extent of supply and delivery. Relevant clauses of the Supply Agreement read as under:

“1. SCOPE

1.1 The tender covers the supply and delivery of the equipment detailed in the technical specifications (attached in the last) hereof if the tenderers are in a position to quote for supply in accordance with the requirements stated in the tender form, they shall submit the quotations in DUPLICATE to the Executive Engineer E.(Store-I) N.D.M.C. New Delhi on the prescribed tender form here to annexed.

13. PRICES

x x x

13.2 F.O.R. prices shall be deemed to include packing and forwarding charges if any,. The supplier will be responsible until the materials arrive in good condition at the Electric Stores, NDMC.”

26. The Arbitrator has itself in para 4.3 of the Award observed that the supply order was restricted to supply only and in fact has emphasized in a bracket that it did not envisage any installation or anything further on the part of the petitioner herein. Relevant para 4.3 is extracted hereinunder.

“4.3 ...The supply order was restricted to supply only (No installation or anything further), after inspection, as per the relevant standards as approved by the Respondent’s inspection agency (M/s. Rites) and in presence of the Respondent’s Engineer.”

In view of the said provision of the Supply Order as well as the finding of the Arbitral Tribunal itself, there is a patent illegality and

perversity in the Award as is evident from a bare perusal of the same. The Supreme Court in *Ssangyong (supra)* has as under:

42. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

27. Learned counsel for the petitioner is right in its contention that there is inherent contradiction in the Award. In one para, the Tribunal refers to the inspection reports and gives a one line finding that there were defects in the transformers while in the next para it arrives at a contradictory conclusion that the transformers were neither defective nor had any manufacturing defects. The latter finding is supported by elaborate reasoning given by the Tribunal. As per the supply agreement, petitioner was to supply transformers for indoor use. The transformers were tested and inspected by RITES along with the representatives of the respondent. In addition to the routine test, transformers from each lot of supply were also ‘impulse tested’ at ERDA and ‘Heat Run tested’ and only therefore were accepted by the respondent. The record also shows that the petitioner had written several letters to the respondent to store the

transformers properly and operate them in conditions conducive to their working. The petitioner, in my view, is thus right that having rendered a finding in its favour with detailed reasoning that there were no defects in the transformers at the time of supply, the Tribunal could not have rejected a part of the claim for balance payments towards supply of transformers. Relevant para of the Award is as under :

“In my view, both parties are responsible for the failure of the proper functioning of the transformers in as much as there were deficiencies in the sites where they were installed. Most of the sites were not ventilated. Ventilation helps escaping the hot air thereby keeping the atmosphere of the area and Transformer cooled. The medium of cooling of these Transformers is air-forced or natural. In most the cases there were no spacing from the nearest obstructions. Spacing helps in free flow of air vital for cooling down the transformer. The protection devices like HT Breakers were old and dilapidated with their battery chargers not working. Winding temperature indicators were not connected to them to activate the breaker when in fault. NCT was not connected to the system in absence of these protection sudden surge of power did damage the transformer. It is also observed that during weekends there was uncontrolled sustained surge in power, which was damaging the transformer. Most of the failures occurred due to uncontrolled power surge in weekends. As the claimants have claimed that the transformer from each lot of supply was again “heat run type tested” at their works and the type test reports were attached. It has also been claimed that the inspection and testing work conducted in presence of NDMC’s Executive Engineers and their inspection Agency M/s RITES, a govt. of India organization. The type test not only validates the design but by meeting all parameters in routine tests it also proves that the transformer is well designed and

manufacture. Only on approval and acceptance of the above testing reports by NDMC, the transformers were supplied by the claimant to the Respondent-NDMC, which proves that the transformers were never defective or with any manufacturing defects as is alleged repeatedly by the NDMC now.”

28. During the course of arguments, the Respondent has placed reliance on a letter dated 08.04.2011 to contend that the petitioner had itself acknowledged that 5 transformers in Jeevan Bharti Building were installed as per Code of Practice but they also failed to function. This contention in my view has no merit. The Arbitrator has in its Award clearly noted that the contributory factor to the malfunctioning of the transformer was uncontrolled and unsustained surge in power and this resulted in damaging the transformers and was responsible for most of the failures. This factor again cannot be attributed to the petitioner. This part of the Award therefore, rejecting part claim of the petitioner for balance payment of the transformers and refund of the remaining three BGs is hereby set aside.

29. As already mentioned above, the supply order only envisaged the supply of the transformers by the petitioner. There was no obligation under the Agreement to repair or maintain the transformers. Once the Tribunal has noticed this fact and also rendered a finding that there were no defects in the transformers when supplied, there was no reason for the Tribunal to have allowed counter claim no.1 and counter claim no.2 in favour of the respondent. Moreover, this part of the award is completely unreasoned. Relevant part of the Award is as under:-

“I hereby, award a sum of Rs.64,14,299/- towards Counter claim No.1 and also an amount of Rs.64,49,444/- towards Counter Claim No.2 of the Respondent-NDMC in favour of the Respondent-NDMC.”

30. Section 31(3) of the Act mandates that the Award shall state the reasons upon which it is based. It has been held by the Supreme Court in the case of **Ssangyong (supra)** that the Arbitrator must give a reasoned award. Relevant para reads as under :-

“40. To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

31. In fact, in a very recent judgment in the case of **Anuradha Bhasin vs Union of India 2020 SCC OnLine SC 25**, Supreme Court has reiterated this position of law and has even explained what an unreasoned Award is. Relevant para reads as under:

“36. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regards to the speedy resolution of dispute.

37. When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.”

32. The respondent has not assailed the rejection of counter claim nos. 3 and 4 and this part of the Award thus deserves to be upheld.

33. Accordingly, the Award dated 06.09.2018 in the opinion of this Court suffers from perversity and patent illegality on the face of it and

deserves to be partly set aside. The Award is upheld to the extent it has rejected counter claim nos.3 and 4 of the respondent.

34. The Award of counter claim nos.1 and 2 in favour of the respondent is against the terms of the Supply Order as mentioned in the earlier part of the judgment and should not have been awarded in favour of the respondent. This part of the Award is accordingly set aside.

35. The Award dated 06.09.2018, is upheld to the extent it has allowed part payment in favour of the petitioner towards his claims.

36. Accordingly, OMP(COMM) 5/2019 is allowed and OMP (COMM) 22/2019 is dismissed alongwith the pending application.

37. It is, however, open to the petitioner to agitate its further claims in accordance with law.

JYOTI SINGH, J

FEBRUARY 18th, 2020

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