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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 30.09.2019

Pronounced on: 29 .01.2020

+ O.M.P. (COMM) 413/2019

HIEDELBERG CEMENT INDIA LTD.

..... Petitioner

Through: Mr. Dhruv Mehta, Senior
Advocate with Mr. Ajay Goyal,
Mr. Bikash Mohanty, Mr. Umesh
Agarwal, Mr. A. Animesh Thakur,
Mr. Krishnendu Datta, Advocates

versus

THE INDURE PVT.LTD

..... Respondent

Through: Mr. Sandeep Sethi, Senior
Advocate with Mr. Prashant
Mehta, Advocate

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present petition under Section 34 of the Arbitration & Conciliation Act, 1996, ('Act') lays a challenge to an Award dated 02.07.2019 passed by the Arbitral Tribunal, whereby the Tribunal has dismissed all the claims of the petitioner and partly allowed the counter claims of the respondent.

2. The facts as culled out in the petition are that to increase the cement production capacity of its Narsingarh Cement Plant at Damoh, Madhya Pradesh, petitioner obtained "Consent to Establish" (CTE) vide letter dated 31.12.2009 and "Consent to Operate" (CTO) on 04.12.2012, subject to establishing Waste Heat Recovery Power Plant (WHRPP), as

per Pollution Control Laws of the State of Madhya Pradesh. The petitioner had to construct a WHRPP with a guaranteed power generation plant so that the waste heat generated during cement production is not directly released into the atmosphere and is used for electricity generation. Petitioner invited competitive proposals for establishing the WHRPP across the globe from six prospective suppliers which included Dalian East, a Chinese entity. It was suggested by the tenderers that the tender should be submitted in collaboration with an Indian Entity to take a lead role and provide local assistance as well as expertise in installation, erection and commissioning of WHRPP.

3. Dalian, vide its email dated 14.08.2012 communicated to the petitioner that they were collaborating with an Indian Company i.e. Indure Private Limited (respondent herein). The respondent vide its email dated 21.08.2012 communicated to the petitioner that it would submit its technical offer by 27.08.2012 and commercial offer by 03.09.2012, with its alliance partner Dalian. Respondent assured total responsibility of supply, execution and performance of the Project. Its single point responsibility for successful implementation of the Project was reassured by a letter dated 24.08.2012.

4. Vide its email dated 19.12.2012, the petitioner requested the respondent for a copy of the MOU executed between respondent and Dalian along with Site Organization Chart. The requisite documents were sent by the respondent vide email dated 20.12.2012.

5. Believing the representation of the respondent on its technological competence and on account of its lowest bid, the petitioner issued a Letter of Intent dated 25.01.2013 in favour of the respondent. The petitioner

released an advance amount of 20% of the value of the agreement amounting to Rs. 15,06,00,000/- against an unconditional, irrevocable, on demand, Advance Bank Guarantee of an equivalent amount as per Article 10 of the Agreement dated 20.02.2013.

6. Pursuant to the LOI, petitioner entered into three agreements with the respondent viz Supply Contract dated 20.02.2013; Master Contract dated 18.03.2013 and Service Contract dated 19.03.2013, on a Turnkey basis, for installation of WHRPP.

7. Salient features of the Contracts entered into between the parties are as follows:

Salient features of the Contracts entered between the Parties	
Contracts entered between Applicant and Respondent	1. Master Contract: 18.03.2013 2. Supply Contract: 20.02.2013 3. Service Contract: 19.03.2013
Effective date of Contract (Article 1 of Master Contract)	Date of Letter of Intent (LOI) i.e. 25.01.2013
Commencement of work	From the date of LOI i.e. 25.01.2013
Price Basis (Article 9 of Supply Contract)	Fixed price contracts
Provisional Acceptance Certificate (PAC) (Article 1 of Master Contract)	Stage when the plant is established and reliability and performance tests of the plant have been completed.

Time of delivery of PAC	Delivery of PAC is 18 months
Engineering & equipment (Article 5 of Supply Contract)	Delivery of engineering & equipment as per time schedule i.e. Annexure -7.
Consequences for delay in delivery in Delivery of PAC, engineering & equipment (Article 6 of the Supply Contract)	Allows the Applicant to terminate the contract in part or full for delay in delivery of engineering & equipment after delay of 12 weeks of delay in terms of Annexure-7 (time schedule)
Project period i.e. Contract period (Article 4 of Master Contract)	18 months
RISK PURCHASE & SELLER'S INDEMNITY AGAINST BREACH (Article 27 of Supply Contract, Article 5 of the Master Contract, and Article 62, Service Contract)	This clause supersedes all terms of the contracts and allows the Applicant to claim loss or damage suffered by the applicant due to breach of contract by the respondent. It also allows the applicant make alternative arrangement to complete the remaining works under the contracts after termination of the contract.
Terminations Clauses of the three contracts (Article 17 of Supply Contract; Article 6, Master Contract and Article 65, Service Contract)	Allows the applicant to terminate the contract for material breach of contract and/or delay of 12 weeks in terms of time schedule i.e. Annexure-7 of the supply contract.

8. As per the petitioner, from the beginning of the Project itself, respondent was procrastinating and delaying the commencement of work. Petitioner raised concerns regarding delay in submitting the data sheet for the Turbine Generator through its email dated 08.04.2013 and on account of ordering the equipments vide email dated 23.04.2013. It is the case of the petitioner that several correspondences exchanged between the respondent and Dalian reflect that their respective terms and conditions were unsettled and this resulted in the delay. Requests were received from Dalian by the petitioner to postpone the meetings for finalization of the specifications of the equipments. It is averred in the petition that as a matter of record, there were several issues and disputes interse between the respondent and Dalian which were hampering the commencement of the Project.

9. The petitioner further avers that on account of this delay, it was clear that respondent had committed a material breach of the agreement by not following the time schedule mentioned in Annexure '7' of the Supply Contract.

10. Finally, Dalian East exited as a technology partner of the respondent and the respondent approached the petitioner pursuant to which a meeting was scheduled on 07.06.2013 for incorporating some changes in the terms of the contract including the contract price, due to inclusion of a new technology partner, Sinoma. Petitioner avers that the selection of Sinoma was an independent action of the respondent having no connection with the petitioner. Petitioner agreed to the entry of Sinoma in the interest of expediting the already delayed Project so that

the installation work could commence at the earliest. It was agreed between the parties that the points discussed and agreed in the meeting were subject to approval of the Steering Committee of the petitioner and other terms of the earlier three agreements would remain unaltered. Subsequently, an Amended Agreement dated 26.06.2013 was forwarded to the respondent to bring changes in the Master and the Supply Contract, after approval of the Steering Committee, subject to its signing and returning of a duplicate copy as a token of acceptance. Respondent did not, however, accept and sign the Amendment Agreement and refused to incorporate the proposed changes. Thus, the Contract between the parties was never amended. Accordingly, the petitioner avers that the original timelines as mentioned in Annexure 7 of the Supply Contract and other terms remained unchanged and the respondent was in material breach of the same. Respondent's own letter dated 05.09.2013 shows that issue of further changes continued till 05.09.2013, with no actual ground work.

11. Petitioner was shocked to receive a communication dated 28.06.2013 from the respondent pointing out that it was facing financial difficulties because of fall in the Dollar rate and calling upon the petitioner to introduce a change in the Contract, by substituting the mode of payment from Indian Rupees to US Dollars. It was clearly stated that delivery of imported equipments would start only by the end of year 2013, which was a clear breach of the timelines. The petitioner rejected this request of the respondent, but as a goodwill gesture, it was amenable to increase the contract price by Rs. 3 Crores, on the request of the respondent. This was followed by several letters by the respondent

requesting for currency change, but the petitioner was firm in its stand and rejected the requests.

12. When the respondent failed to carry out its obligations under the Contract, petitioner was constrained to issue a show cause notice dated 23.09.2013 to cure the defects in 21 days and it also listed several breaches therein. In response, respondent denied the delay and rather raised an allegation of corruption against the petitioner on the basis of an alleged email from an employee of Dalian East to the respondent in its reply dated 14.10.2013. The allegation related to illegal gratification sought by an employee of the petitioner and was raised as an afterthought after six months, as a ploy against invocation of the Bank Guarantee and to wriggle out of the Contract. Respondent also intimated closure of the contract.

13. Petitioner finally vide its letter dated 18.10.2013 confirmed the termination of the contract and approached the concerned Bank for encashment of the Bank Guarantee. Respondent thereupon approached this Court in a suit for Declaration and Permanent Injunction. An ex-parte ad interim injunction was granted to the respondent restraining the petitioner from invoking the Bank Guarantee. Detailed reply was filed by the petitioner and finally, vide order dated 23.05.2017, the stay order was vacated and the petitioner was allowed to encash the Bank Guarantee, which it did.

14. It is further averred that the Contract contained a term permitting the petitioner risk-purchase upon failure of the respondent to confirm the timelines. Since the respondent had done no work, the petitioner got the work of WHRPP completed through various contractors, but the result

was that the Project which was to be originally completed by June 2014 was completed only in February 2016. It is averred by the petitioner that a substantial loss was caused to the petitioner, more particularly, it incurred additional costs in getting the work completed, amounting to Rs. 37,50,00,000/-.

15. The Contract provided for dispute resolutions through Arbitration. Notice dated 19.05.2016 was sent by the petitioner invoking arbitration pertaining to all disputes. Both parties appointed their respective Arbitrators who in turn appointed the Presiding Arbitrator.

16. The petitioner being the claimant raised a claim for an amount of Rs.37.50 Crores towards Claim no.1, for loss suffered by it on account of getting the contract completed through third party. Claim no.2 was for Rs.34.85 Crores towards damages and loss incurred by it due to delay of nearly two years in completion of the project. It was claimed that due to the delay, the petitioner had to consume electricity from the State Grid leading to huge financial burden. The petitioner also claimed advance amount of Rs.15,06,00,000/- plus interest at the rate of 12% from January 13, 2013 till actual date of realization on the ground that the said amount was an advance forwarded by it in good faith and had been usurped by the respondent.

17. After the Statement of Claim was filed by the petitioner before the Tribunal, the respondent filed its Statement of Defence and Counter Claims. Finally, after recording evidence and hearing the parties, the Tribunal passed the Award on 02.07.2019. The Tribunal rejected all the claims of the petitioner. Some of the counter claims of the respondent were disallowed, while some were totally allowed or partly allowed. The

Tribunal also granted interest at the rate of 9% p.a. from the date of termination of contract i.e. 18.10.2013 till the date of payment.

18. The first and foremost contention of learned Senior Advocate for the petitioner is that the award is erroneous on facts and law and patently illegal, vitiated by untenable interpretation of the terms of contract. It is argued that the Tribunal has erroneously interpreted Article 6 of the Supply Contract and arrived at a conclusion that the termination of the Contract by the petitioner was pre-mature. It is argued that it was a grave error on the part of the Tribunal in holding that the petitioner was not entitled to terminate the contract, not only during the contract period but also upto 12 weeks beyond the Provisional Acceptance Certificate (hereinafter referred to as 'PAC'). The Tribunal has re-written the contract between the parties merely because the wording of the Article 6 indicates that the buyer may terminate the contract "after a delay of 12 weeks after the PAC" i.e. the 18 months' contract period. The Tribunal by holding that the contract could not be terminated till expiry of 21 months (18 months + 12 weeks) has virtually held that no contract can be terminated during its currency. This according to the Senior Counsel is against the fundamental principles of law of contracts that a contract can be terminated during its currency, as once the contract period expires, the contract in any case comes to an end by efflux of time.

19. It is further argued that Article 6 only restricts the petitioner from imposing Liquidated Damages upto a period of 21 weeks in case the supply of the engineering drawings and equipment, etc. is delayed.

20. It is also argued that the Tribunal failed to appreciate the fact that the petitioner had only issued a show cause notice dated 23.09.2013 for

rectification of breaches of the contract committed by the respondent and did not terminate the contract. In fact it was the respondent who through its reply dated 14.10.13 chose to end the contract. The petitioner only confirmed the closure of the contract by the respondent vide its letter dated 18.10.2013, as it had no other option.

21. It is next contended that the Tribunal failed to appreciate that the breaches set out in the Cure Notice dated 23.09.2013 were all material breaches of the respondent's obligations under the Supply Contract and thus, in any case the petitioner was entitled to terminate the contract under Article 17 of the Contract by giving a 21 days' notice to the respondent. It is submitted that the power under Article 17 cannot be taken away from the petitioner for terminating the contract by an erroneous interpretation of Article 6. It is also argued that the Tribunal has merely confused the power under Article 6 and Articles 14 and 17 of the Contract. Under Article 14, the petitioner has the power to levy Liquidated Damages due to delay in Provisional Acceptance Certification (PAC). The right of the petitioner under Article 6 and Article 14 are completely independent and separate from the right to terminate under Article 17 on account of 'material breach', which is one of the grounds under Article 17. It is thus argued that the interpretation given by the Tribunal that the Contract could not be terminated till expiry of 12 weeks from the PAC date would make Article 6 of the Master Contract and Article 17 (1)(b) of the Supply Contract totally redundant and this could never have been the intention of the parties.

22. The next contention of the petitioner is that the Tribunal while examining the legal validity of the Termination Letter erroneously

concluded that the contract was illegally and prematurely terminated, in as much as the Tribunal has itself observed in para 132 of the Award that there is material on record to show that the respondent was slow in the execution of the work as per milestones agreed between the parties.

23. It is contended that the Tribunal failed to appreciate that the respondent in its own letter dated 14.10.2013 had stated that the Contract was void ab initio having been induced by immoral and corrupt practices on account of the allegation of demand of 1% commission as illegal gratification by the officer of the petitioner. The Tribunal having rejected the said allegations, ought to have concluded that the respondent abandoned the project and the petitioner was entitled to terminate the contract and claim damages and losses on account of breach by the respondent.

24. It is argued that the Tribunal fell into a grave error by holding that time was not of essence of the contract. The contract was a Turnkey / EPC Contract for Commissioning of a WHRPP and was required to be completed in a time bound manner. Further in Article 4 in Part B of the Service Agreement dated 19.03.2013, it was agreed between the parties that the time was of essence of the contract. The Tribunal erroneously placed reliance on the judgment in the case of *Hind Construction Contractors vs. State of Maharashtra (1979) 2 SCC 70* without appreciating that it does not lay down that if time ceases to be of essence of the contract, termination cannot be resorted to by an innocent party. All that the judgment holds is that in case time is not of essence, then the innocent party may give a notice to the other party and terminate the contract. In the present case, despite Cure notice, the respondent failed to

rectify the defects and was guilty of breaches. Reliance is placed on the judgment in the case of *Arosan Enterprises Ltd. vs. Union of India (1999) 9 SCC 449*, wherein three types of cases have been carved out where time is termed to be the essence viz where the parties expressly stipulate that the time must be complied with and two, where the circumstances of the contract or the nature of subject matter indicates a fixed date for completion of the contract. It is argued that the petitioner's case falls in the two classifications and even assuming the time was not of essence, then also the case would fall under the third category, where though time is not originally of essence of the contract, but if one party is guilty of undue delay then the other party can give a notice to perform the contract within a reasonable time, depending on the nature of transactions.

25. Learned Senior Counsel further argues that no Amendment to the contract ever took place. The parties in the meeting held in Singapore on 07.06.2013 decided to consider the proposed suggestions, subject to approval of the Steering Committee of the petitioner. Article 29 of the Supply Agreement stipulated that no Amendment could be made without it being in writing and duly executed by Authorised Representatives of the parties. Though correspondences were exchanged between the parties by giving proposals and counter proposals, but the parties could not agree on the terms and hence no final decision on the Amendment was ever taken. The Tribunal has completely ignored letter dated 05.09.2013 issued by the respondent where it had stated that it was still awaiting petitioner's confirmation on the counter proposal by the respondent for the proposed amendment in the Agreement. It is also contended by

learned Senior Counsel that the Tribunal has failed to make a distinction between the induction of a new technology partner, Sinoma-EC and the proposed Amendments discussed in the meeting dated 07.06.2013. Substitution of a technology partner is not a matter covered under the contract, as this was an arrangement between the respondent and its technology partner. The petitioner had no privity with either the new or the old technology partner and thus this could not form the basis of any Amendment proposed in the meeting dated 07.06.2013. Learned Senior Counsel vehemently disputes any role of the petitioner in selection of the technology partner and submits that this is a patently illegal finding by the Tribunal.

26. It is argued that under Article 3.1 read with Article 3.2 of the Master Agreement, the respondent had acknowledged its sole responsibility for execution of the entire project, including the performance of its sub-contractors. In terms of the agreement, the petitioner had made a payment of Rs.15.06 Crores to the respondent at the time of signing of the LOI, against Advance Bank Guarantee. No payment had been made to any of the technology partner of the respondent and the payment of Rs.8.9 Crores was made by the respondent to Sinoma.

27. Per contra, learned Senior Counsel for the respondent contends that the Arbitral Tribunal has adjudicated upon the disputes between the parties after considering at length, the pleadings, documents and evidence and after having heard the parties who made extensive arguments and also filed written submissions. The Tribunal is the sole Judge of quality and quantity of the evidence, including interpretation of the Agreements

of the contract and appreciation of the documents. It is not open to this Court under Section 34 of the Act to interfere with the findings of fact or interpretation of the terms of the contract. Re-appreciation of evidence led before the Tribunal is also not the domain of this Court in the present proceedings. Reliance is placed on the judgements in the case of ***Sudarshan Trading Company vs. Government of Kerela & Anr. (1989) 1 SCR 665, Hindustan Construction Company Limited vs. State of Jammu and Kashmir AIR 1992 SC 2192, Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49, Eastern Coalfields Limited & Ors. vs. Rungta Projects Limited & Ors. 2018 (6) ARBLR 370 (Cal).***

28. The Tribunal after a detailed analysis of the documents and evidence has come to a finding that the petitioner had substantial role in selection of the technology partner. Dalian was selected by the petitioner and was introduced to the respondent as its business partner for executing the project in India. Upon Dalian exiting, the parties mutually agreed upon inducting Sinoma as a technology partner, in a meeting held on 07.06.2013. The contract with Sinoma was executed pursuant to the said meeting and the Amendment of the contract was approved by the Steering Committee of the petitioner. The Tribunal has also come to a finding that the respondent had never taken a stand that it would not abide by the terms and conditions agreed in the meeting dated 07.06.2013 and issue of foreign exchange variation did not effect the performance of the respondent. The Tribunal has categorically concluded that respondent was not in breach of the terms of the contract and time was not of essence. There is a finding that termination was premature and contrary to Articles 6 and 17 of the Supply Agreement and was thus, illegal. None

of the findings can be said to be perverse so as to call for interference under Section 34 of the Act.

29. It is argued by the Senior Counsel that the Tribunal has considered the impact of Article 17 of the Supply Agreement and has found as a matter of fact that there was no material breach on the part of the respondent and therefore, the termination was illegal. The argument is that interpretation given to Article 6 of Supply Agreement is not erroneous, without prejudice of course to the fundamental argument that interpretation of an Article of a contract is in the domain of the Tribunal. It is contended that the Tribunal in para 103 of the Award has clearly considered Article 6 of Supply Agreement and held that the plain language makes it clear that the contract could not be terminated till the expiry of 12 weeks beyond the PAC. This interpretation cannot be said to be such that no reasonable person would give such an interpretation, apart from the fact that the language itself is plain and clear and needed no interpretation. In any case, the petitioner cannot even agitate these issues, as their adjudication was in the domain of the Tribunal.

30. It is contended that the petitioner is wrong in arguing that the Tribunal has given contrary findings in para 132 and 105-107. In para 105-107, the Tribunal considered the evidence and held that there was no material breach by the respondent. Going slow in a project on account of several hurdles faced by the respondent, did not cause a material breach as per the terms of the contract and law and moreover, when time was not of essence, there could not have been a breach in the respondent being slow in its work. Observations in all the paragraphs are in harmony with each other.

31. It is argued by learned senior counsel for the respondent that the Tribunal has rightly rejected the claims of the petitioner. Once the Tribunal concluded that the termination was illegal as there was no material breach by the respondent, the rejection of the submission in respect of the 1% commission as illegal gratification would have no impact.

32. In so far as the grant of interest is concerned, it is a settled law that grant of interest is in the discretion of the Arbitrator. The Tribunal has in its discretion on analyzing the conduct of the parties and quality and quantity of the evidence awarded the interest and this Court cannot interfere in the award of interest. Reliance is placed on ***Hindustan Construction Company Limited (supra)***.

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

34. A bare perusal of the Arbitral Award shows that the Tribunal examined the issue whether parties intended time to be of essence of the contract, by analyzing the terms of the contract and the conduct of the parties. It specifically analyzed Articles 3.8 and 3.12 of the Master Agreement for the said purpose. The said Articles are as under :-

"3.8 The various activities under each Contract must be concluded in an integrated fashion and be coordinated and managed by the EPC Contractor with the objective of completing the project no later than the Long Stop Date.

3.12 As the leader of the Co-Ordinators with overall responsibility for the project, the EPC Contractor shall be fully authorized to take all actions and receive all instructions, notices and communications under the Contract and in general deal in all matters related thereto

for and on behalf of all the Co-Ordinators, including but not limited to the following:

(f) taking all necessary action to ensure timely achievement of the Functional Guarantee values for all the equipments and start-up of the plant."

35. Reliance was also placed on Article 4 of the Master Agreement as per which the parties agreed that the project would be completed and provisional acceptance of the plant would be not later than 18 months from the effective date of the contract. Having examined the same, the Tribunal came to a finding that the stipulation of time being of essence of the contract stood diluted. Reliance was also placed on the judgment in ***Hind Construction Contractors (supra)*** to hold that even where time is provided to be of essence of the contract, the other provisions of the contract like Liquidated Damages, etc. would override this stipulation. The Tribunal also examined the subsequent conduct of the parties, specially the terms and conditions of the meeting held on 07.06.2013. In the meeting, it was recorded that the parties had agreed to revise the PAC date and petitioner had also agreed for changes in the technical specification requested by Sinoma. The fact that the respondent had to execute a fresh MOU with Sinoma was known to the petitioner and the deviations suggested by Sinoma were agreed to by the petitioner. The Tribunal observed that once the petitioner knew that there was a third-party involvement which was crucial to the completion of the project, it would cause some delay and thus time being of essence, lost its relevancy. Relevant paras of the Award are as under :-

"95. The Tribunal has referred to the above mentioned provisions contained in the various Contracts entered into

between the parties so to examine whether the parties through these provisions intended "time as the essence of the Contract. In the services agreement as already indicated the contract stipulates "time is the essence of the contract" but when we go through the other provisions quoted above, what emerges is that the stipulation that time is the essence of the contract stood considerably diluted. Law is settled that even where the parties have expressly provided that time is the essence of the contract, such a stipulation will have to be read along with other provisions of the Contract and such other provisions may, on construction of the Contract, exclude that the completion of work by a particular date might not be so fundamental as to terminate the Contract. Provisions like imposition of liquidated damages, extension of time, etc. would override the stipulation that the time is the essence of the contract. In this connection reference may be made to few judgments of the Supreme Court of which the often quoted judgments are Hind Construction Contractors v. State of Maharashtra (1979 (2) SCC 70) and Arosan Enterprises Ltd. v/s UOI and another (1999) 9 SCC 44.

96. Tribunal relying on the principles laid down by the Supreme Court in the above judgments are clearly of the opinion, after examining the various contractual provisions, that time was never intended to be the essence of the contract in this case.

97. Tribunal also would like to examine the subsequent conduct of the parties as well, especially in the light of the various terms and conditions agreed between the parties in the meeting held on 7.6.2013. Learned counsel appearing for the Respondent referred to few communications to establish the conduct of parties that the time was not the essence of the contract. Tribunal is of the view, in the facts and circumstances of the case it is unnecessary to go through all these communications exchanged between the parties prior to 7.6.2013 because

the main controversy centres round the facts which emerge subsequent to the crucial meeting held on 7.6.2013. Meeting held on 7.6.2013 recorded that the parties had agreed to revise the PAC date as September 25.1.2014 (20 months from the LOI. Further, the Claimant had also agreed for certain changes in the technical specifications requested by the new technology partner of the Respondent. Letter dated 1. 7.2013 of the Claimant clearly recognizes the fact that there was inordinate delay in the Project due to the reason that the Respondent could not keep its earlier technology partner on Board. Exit of the earlier technology partner Dalion, who was selected by the Claimant itself, was also brought to the notice of the Claimant Following the exit of Dalion the Respondent, for completing the Project, had to get the assistance of a new technology partner Sinoma - EC, whose induction was also approved by the Claimant. The fact that Respondent had to execute a fresh MOU with Sinoma EC with changed technical specifications was known to the Claimant and a copy of the MOU executed as well as the Supply Contract dated 16.6.2013 entered into between the Respondent and Sinoma EC were also called for by the Claimant. Even the Claimant as evident from the minutes of the meeting held on 7.6.2013 agreed to incorporate clarifications/deviations suggested by Sinoma.

98. The Tribunal has indicated these facts also to demonstrate the involvement of a third party in the completion of the Project. When a third party's involvement is crucial and inevitable in the completion of the Project and if there was any delay on the part of the third party, then also the stipulation that the time is the essence of the contract between the Claimant and the Respondent, loses its relevancy. The fact that there was delay on the part of the new technology partner also cannot be ignored. Looking into all those aspects

Tribunal is of the considered view that time was never intended to be the essence of the contract.”

36. The Tribunal also examined the issue of the alleged novation of the contract. The minutes of the meeting held on 07.06.2013 had incorporated certain new terms and conditions. The Tribunal then examined the question as to whether the petitioner had acted on the new terms. The Tribunal observed that the respondent had sent a letter dated 06.07.2013 acknowledging the Amendments sent by the petitioner. The respondent reiterated its commitment to execute the project and visited the project site with Sinoma. Following the agreement reached between the parties, respondent on 08.08.2013 released Rs.8.9 Crores to Sinoma. The petitioner by its email dated 14.08.2013 accepted receipt of several engineering documents from the respondent. Thus, a finding was arrived at by the Tribunal that the petitioner had acted upon the terms and conditions agreed to in the meeting held on 07.06.2013. Relevant paras of the Award read as under :

“99. The Tribunal in the light of the above recorded finding has to examine the further issues. The Tribunal will now consider whether the terms and conditions recorded in the minutes of meeting held on 7.6.2013 came into effect, and whether parties have acted upon those terms and conditions. The terms and conditions discussed and agreed between the parties in the meeting held on 7.6.2013 at Singapore were already noted in the earlier part of this award. Let us first examine as to whether the Claimant had acted upon the terms and conditions of this Agreement dated 7/6/2013 followed by the Amendment -1. As already noticed by the Tribunal, the Respondent sent a letter dated 6.7.2013 acknowledging the Amendment- I sent by the Claimant and the Claimant in its letter dated

6.7.2013 appreciated the pro-active approach of the Respondent to meet all the committed timelines and to complete the Project as per the terms agreed in the Contract. The Respondent in its letter dated 20.7.2013 reiterated its commitment to execute the Project. Respondent along with Engineers of Sinoma- EC the new Technology Partner had visited the Project site and held several meetings with the Project team of the Claimant on various occasions. Following the agreement reached between the parties the Respondent on 8.8.2013 released an amount of Rs.8.9 Crores to Sinoma - EC. The Claimant in fact in its email dated 14.8.2013 recognised the fact that it had received the big lot of engineering documents from the Respondent and those documents had been taken for review one by one by the Claimant and its consultant. Even though the Respondent had failed to forward the duplicate copy of the Amendment- I, as the token of its acceptance, the fact remains that it had acted upon the terms and conditions agreed upon by the parties and recorded in the minutes of the meeting held on 7.6.2013.”

37. The Tribunal has also dealt with the issue of the stand of the respondent on the change of the foreign currency. It has come to a conclusion that though the respondent was requesting for change of currency due to currency fluctuations but this was only highlighting its grievances and it never took a stand that it would not comply with the obligations under the contract. Relevant para is as under :

“100. Tribunal finds after going through the various letters, e-m ails, etc. written by the Respondent after the meeting held on 7.6.2013 that it was facing a very crucial problem when it deals with a Technical Partner because the equipments were to be imported to the country. However, the Respondent reiterated that it was committed to complete the Project as per the terms and conditions agreed upon between the parties on 7.6.2013. In fact it is

seen recognized by the Claimant on various occasions. The crucial problem that the Respondent was facing pertains to "currency fluctuation". Respondent stated that it was incurring heavy losses since it had to enter into a fresh Contract with the new technology partner situated abroad in the place of Dalian - East. The stand of the Claimant was that this Respondent should have anticipated when it had entered into various agreements in February and March 2013. The Respondent's stand is that the situation one gets at that time cannot be compared with the situation which one faces after the acceptance of a new technology partner after the meeting held on 7.6.2013. Facts would indicate Respondent was only highlighting its grievances and on that ground, it cannot be concluded, that the Respondent was not committed to complete the Project or not complying with its obligations under the Contracts."

38. The Tribunal has elaborately dealt with the termination of the contract as well as the Articles 6, 14, and 17 of the Supply Agreement in this regard. Interpreting Article 6 of the Supply Agreement, the Tribunal held that the petitioner had the power to terminate the contract only after 12 weeks of delay after PAC. The original contractual date of completion was 25.07.2014 but with Liquidated Damages it was upto 25.09.2014. For genuine reasons, the contract could be terminated after 17.10.2014, but after the meeting of 07.06.2013 the date of completion stood extended upto 25.09.2014 without Liquidated Damages and upto 25.11.2014, with Liquidated Damages. The date would advance upto 18.12.2014, if 12 weeks from the PAC date are added. Since this was the time schedule agreed upon, premature termination of the contract on 18.10.2013 could not be sustained.

39. The Tribunal has also extensively considered Article 17 of the Supply Agreement and held that the respondent had neither abandoned the contract nor was guilty of any material breach. A finding has been arrived at that the respondent had not selected Dalian and it was the petitioner who had selected the technology partner. Delay due to change over from Dalian to Sinoma was never considered as a delay by either of the parties. In fact, the petitioner approved the induction of Sinoma on 13.06.2013 and only thereafter the respondent could have entered into a contract with Sinoma. Technical assistance of Sinoma was very crucial for the balance work and hence respondent had not committed any material breach so as to call for termination of the contract. The Tribunal thus came to a conclusion that the contract was illegally and prematurely terminated, though the respondent had repeatedly informed the petitioner of its readiness and willingness to complete the work under the contract. Relevant paras of the impugned Award are as under:-

“101. The Claimant without paying heed to what has been indicated to it by the Respondent, issued cure notice dated 23.9.2013, alleging that there was complete failure on the part of the Respondent to fulfil its obligations under the Contract dated 20.2.2013 and hence there had been an automatic breach on its part of the obligations under the Contract dated 19.3.2013. The main breaches highlighted in the cure notice were with regard to the failure to provide the mechanical designs drawing, civil construction drawings, electrical and automation design drawings and the delay in ordering major equipments, delivery of steel, delivery of equipments, installation and erection works. It was stated therein that the notice of termination was issued in terms of Article 6 of the Master Agreement dated 18.3.2013, Article 17 of Supply agreement and Clause 65 of the Contract Agreement

dated 19.3.2013 for civil and structural construction. The Respondent was called upon to cure the defects within 21 days. The Respondent in its reply dated 14.10.2013 highlighted the fact that the nature of work is such that the involvement of Technology Partner Sinoma was of crucial in the matter of mechanical design drawing , civil construction drawing, etc. Major equipments were to be supplied by Sinoma -East and that it had already paid an amount of Rs.8.9 Crores to Sinoma on 8.8.2013 for executing the Project well in time as agreed upon between the parties. The Respondent had also highlighted the fact that there was no factual foundation on the allegation of delay and the delay was not that crucial or significant so as to terminate the Contract, especially when time was not the essence of the contract.

102. The Claimant however vide its communication dated 18.10.2013 terminated the Contract alleging material breaches on the part of the Respondent and not curing those breaches within the time granted in the cure notice. Before examining the sustainability or otherwise of the grounds stated for terminating the Contract, the Tribunal has to examine whether by terminating the Contract the Claimant had violated the time schedule agreed upon by the parties in the meeting held on 7.6.2013.

103. Clause 6 empowers the Claimant to terminate the Contract only after 12 weeks of delay after PAC. The original contractual date of completion was 25.7.2014 without the amendment/extension of time and with liquidated damages upto 25.9.2014. Certainly, for genuine reasons, the Contract could be terminated after 17.10.2014 but with the extension of time agreed upon by the parties in the meeting held on 7.6.2013 read with email dated 13.6.2013 by which the date of completion stood extended upto 25.9.2014 without liquidated damages and upto 25.11.2014 with liquidated damages. The date could even advance upto 18.12.2014 if we

reckon 12 weeks from the PAC date of 25.9.2014. That being the time schedule agreed upon between the parties, and time was not the essence of the contract, the Tribunal is of the view that the premature termination of the Contract on 18.10.2013 cannot be sustained on facts as well as on law.

104. The cure notice refer to three letters dated 3.7.2012, 12.7.2012 and 18.7.2013, wherein according to the Claimant it had indicated the breaches committed by the Respondent. It was stated therein that it was the Respondent who had selected Dalion which is factually incorrect. In fact it was the Claimant, who had selected Dalion East. Delay due to change over from Dalion to Sinoma was never considered as a delay by both the parties. In fact, the Claimant approved Sinoma only on 13.6.2013 and only after approval, the Respondent can enter into Contract with Sinoma. In fact, in the letter dated 12.7.2013, the Claimant had appreciated the proactive approach of the Respondent. The letter dated 18.7.2013 only reminds the Respondent not to delay the Project.

105. The cure notice also refers to Article 6 of the Master Agreement, Article 17 of the Supply Agreement and clause 65 of the Contract Agreement. The Claimant has no case that the Respondent has abandoned or failed to comply with any valid instructions. The Claimant placed reliance on Articles 2.2 and 2.3 of the Master Agreement and submitted, if there is any ambiguity or inconsistency between the terms of the agreements, the terms of the Master Agreement would prevail and the Claimant can at any time terminate the Contract, once there is a material breach of the terms of any agreement. The expression material breach as such is not defined in the Contract. In commercial parlance, material breach is a breach, a failure of which strikes at the root of the Contract, that it renders the Contract "irrevocably broken" and defeats the

very purpose of making the Contract. Material breach is committed only where a party breached a condition or an innominate term, the consequence of which are so serious that the breach justifies the termination. In the instant case both the Claimant and Respondent recognize the role of Sinoma-EC situated in China. The real work of Respondent would start, once Sinoma fulfills its part being a Technical Partner. Technical assistance of Sinoma was very crucial for the rest of the work to be performed by the Respondent. BTG Boiler and other equipments were yet to be supplied by Sinoma even though Contract was already entered into by the Respondent and Sinoma and advance was already paid. In such a factual Scenario the Tribunal is of the view that the Respondent has not committed any material breach of the Contract, so as to terminate the Contract especially when time was not the essence of the contract.

106. The Tribunal once finds that the termination order passed by the Claimant cannot be sustained, and the Claimant is in breach for not following the time schedule and there is no material breach of the Contract committed by the Respondent, needless to say, none of the claims raised by the Claimant calls for adjudication. The Tribunal therefore need only examine the Counter Claims raised by the Respondent.

107. The Tribunal is of the view that the Contract was illegally terminated prematurely though the Respondent had repeatedly informed the Claimant of its readiness and willingness to complete the Contract within the stipulated time. Due to the induction of the new technology partner Sinoma- EC a fresh Contract had to be entered into with the approval of the Claimant which included new terms and conditions. Due to the exit of Dalion and entry of Sinoma - EC, the terms and conditions changed so also the situations like fluctuation in the rate of US dollars. The Respondent was making a fervent request to the

Claimant to effect payment in dollars directly to Sinoma - EC subject to the condition that in case value of rupee increases, benefit would be given to the Claimant The Claimant without paying any attention to those requests whether it is genuine or not, terminated the Contract prematurely causing heavy losses to the Respondent which are reflected in the Counter Claims raised.”

40. Learned senior counsel for the respondent in the opinion of this Court is right in its contention that the petitioner is seeking to assail pure findings of fact arrived at by the Tribunal, based on documents and evidence on record and cannot be interfered with by this Court under Section 34 of the Act. Interpretation of the Articles of contract is again the domain of the Arbitrator. It has been held by the Supreme Court in *Associate Builders (supra)* 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.”

41. Since the interpretation of the Articles of the agreement is in the domain of the Tribunal, the Tribunal having interpreted the same in a particular manner cannot be interfered with. The interpretation given is neither unreasonable nor perverse. Article 6 of the Supply Agreement reads as under :

“Article 6 :Consequence of Delay in Delivery

In the event of any delay in supply of the Engineering and Equipment (inclusive of tools & tackles required, two years Operation & Maintenance spares, commissioning spares, consumable, First fill, lube oil, other lubricants, flushing oil, chemicals etc.) beyond the stipulated shipment delivery schedule and corresponding delay in "PAC" due to reasons solely attributable to the Seller. Liquidated damages may be imposed as mentioned under Article 14. The aforesaid liquidated damages shall be recovered from the payments due to the Seller against delivery of machinery I equipment or otherwise at the options available to Buyer. Recovery of Liquidated Damages shall not absolve the Seller from his obligations under the Contract.

The Buyer may by written notice to the Seller terminate this whole or any part of the Contract after (12) weeks of delay, due to factors I reasons attributable to the Seller. Deduction from Contract Price: All costs, damages I losses or expenses which the Buyer may have paid, suffered or incurred for reasons solely attributable to the Seller, may be deducted by the Buyer from any money due or become due by the Buyer to the Seller under the contract or may be recovered by suit or otherwise from the Seller as an arrear in terms of the provisions under this contract."

A bare perusal of the aforesaid provision indicates that the parties had clearly agreed that in the event of any delay in supply of Engineering and Equipment beyond the stipulated delivery schedule and corresponding delay in PAC due to reasons solely attributable to the seller, Liquidated Damages may be imposed under Article 14. The Article further stipulates that the Buyer may by written notice to the Seller terminate the contract by 12 weeks of delay, due to factors attributable to the Seller. It is thus clear that the right of the Buyer to terminate under Article 6 could arise only after the passage of 12 weeks from the PAC and this is exactly the interpretation given by the Tribunal. It can hardly be argued that no reasonable person would give the said interpretation. In my view, the interpretation of the Articles and the findings of fact rendered by the Tribunal is not only a possible, but a plausible view.

42. Law of Judicial Review and Interference in proceedings under Section 34 of the Act is no more res integra. In *Associate Builders (supra)*, the Supreme Court has held as under:-

“19. When it came to construing the expression “the public policy of India” contained in Section 34(2)(b)(ii) of the Arbitration Act, 1996, this Court in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705 : AIR 2003 SC 2629] held: (SCC pp. 727-28 & 744-45, paras 31 & 74)

“31. Therefore, in our view, the phrase ‘public policy of India’ used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied

from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be—award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or*
- (b) the interest of India; or*
- (c) justice or morality, or*
- (d) in addition, if it is patently illegal.*

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.

74. In the result, it is held that:

(A)(1) The court can set aside the arbitral award under Section 34(2) of the Act if the party making the application furnishes proof that:

- (i) a party was under some incapacity, or*
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the*

submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration.

(2) The court may set aside the award:

(i)(a) if the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties,

(b) failing such agreement, the composition of the Arbitral Tribunal was not in accordance with Part I of the Act,

(ii) if the arbitral procedure was not in accordance with:

(a) the agreement of the parties, or

(b) failing such agreement, the arbitral procedure was not in accordance with Part I of the Act.

However, exception for setting aside the award on the ground of composition of Arbitral Tribunal or illegality of arbitral procedure is that the agreement should not be in conflict with the provisions of Part I of the Act from which parties cannot derogate.

(c) If the award passed by the Arbitral Tribunal is in contravention of the provisions of the Act or any other substantive law governing the parties or is against the terms of the contract.

(3) The award could be set aside if it is against the public policy of India, that is to say, if it is contrary to:

(a) fundamental policy of Indian law; or

(b) the interest of India; or

(c) justice or morality; or

(d) if it is patently illegal.

(4) It could be challenged:

(a) as provided under Section 13(5); and

(b) Section 16(6) of the Act.

(B)(1) The impugned award requires to be set aside mainly on the grounds:

(i) there is specific stipulation in the agreement that the time and date of delivery of the goods was of the essence of the contract;

(ii) in case of failure to deliver the goods within the period fixed for such delivery in the schedule, ONGC was entitled to recover from the contractor liquidated damages as agreed;

(iii) it was also explicitly understood that the agreed liquidated damages were genuine pre-estimate of damages;

(iv) on the request of the respondent to extend the time-limit for supply of goods, ONGC informed specifically that time was extended but stipulated liquidated damages as agreed would be recovered;

(v) liquidated damages for delay in supply of goods were to be recovered by paying authorities from the bills for payment of cost of material supplied by the contractor;

(vi) there is nothing on record to suggest that stipulation for recovering liquidated damages was by way of penalty or that the said sum was in any way unreasonable;

(vii) in certain contracts, it is impossible to assess the damages or prove the same. Such situation is taken care of by Sections 73 and 74 of the Contract Act and in the present case by specific terms of the contract.”

43. In **McDermott International Inc. vs. Burn Standard Co. Ltd. & Ors. (2006) 11 SCC 181**, the Supreme Court has held as under:-

“52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by

opting for arbitration as they prefer the expediency and finality offered by it.”

44. In the very recent judgments, the Supreme Court has once again reiterated the law related to the examination by a Court of an Award under Section 34 of the Act. In ***Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India Ltd.*** 2019 SCC OnLine SC 677, the Supreme Court has held 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 “Renusagar” 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.

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.

41. The change made in Section 28(3) by the Amendment Act really follows what is stated in paragraphs 42.3 to 45 in Associate Builders (supra), namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2A).

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.”

45. Recently, in ***Hindustan Construction Company Limited & Anr. Vs. Union of India & Ors., 2019 SCC OnLine SC 1520***, the Apex Court has held as under:-

“55. Further, this Court has repeatedly held that an application under Section 34 of the Arbitration Act, 1996 is a summary proceeding not in the nature of a regular suit - see Canara Nidhi Ltd. v. M. Shashikala 2019 SCC

OnLine SC 1244 at paragraph 20. As a result, a court reviewing an arbitral award under Section 34 does not sit in appeal over the award, and if the view taken by the arbitrator is possible, no interference is called for - see Associated Construction v. Pawanhans Helicopters Ltd. (2008) 16 SCC 128 at paragraph 17.

56. Also, as has been held in the recent decision Ssangyong Engineering & Construction Co. Ltd. v. NHA 2019 SCC OnLine SC 677, after the 2015 Amendment Act, this Court cannot interfere with an arbitral award on merits.”

46. The Tribunal after extensively examining the evidence, documents and the submissions of the parties has held that the respondent was not in breach of the Agreement and the petitioner had illegally and prematurely terminated the Agreements. Having examined the various contentions of the petitioner on the touchstone of the parameters of interference as explicitly laid down by the Supreme Court in several judgments referred to above, I am of the view that the impugned Award does not call for any interference. This Court cannot re-appreciate evidence or interpret the Articles of the Agreement which the petitioner is calling upon the Court to do. The contentions of the petitioner are thus rejected having no merit.

47. In view of the aforesaid, there is no merit in the petition and the same is hereby dismissed.

IA No.13744/2019 (stay)

48. In view of the order passed above, the present application is dismissed.

IA No.13746/2019 (call for records)

49. The application is dismissed as not pressed.

JYOTI SINGH, J

JANUARY 29th, 2020

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