

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO-CARB No.8 of 2018 (O & M)
Date of Decision: - 16th August, 2021

Haryana Power Generation Corporation Ltd.

..... APPELLANT

VERSUS

M/s MSTC Ltd. & others

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. Naresh Markanda, Senior Advocate with Ms. Sonia Madan, Advocate, for the appellant.

Mr. Kunal Verma, Advocate, for respondent No.1.

Mr. Rajiv Atma Ram, Senior Advocate, with Mr. Rajat Khanna, Advocate, for respondent No.2.

. . .

Sant Parkash, J

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.

1. The appellant has preferred the instant appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (for short, 'Arbitration Act'), against order dated 05.01.2018, passed by the Special Commercial Court presided over by the Additional District Judge, Gurugram, vide which, Award dated 19.12.2014 (Annexure A-1) passed by the Arbitral Tribunal has been partly upheld.

2. The appellant – Haryana Power Generation Corporation Limited issued a notice inviting Tender dated 01.03.2012 for supply of 14.5 lac metric tones imported steam coal in bulk on High Seas Sale basis of Type-1 GCV Air Dried Basis (ADB) 6300 Kcal/Kg over a period of six months i.e. from October 2012 to March 2013, to be supplied to three power plants i.e. PTPS, Panipat (6 lac MT), DCRTTP, Yamuna Nagar (2 lac MT) and RGTPP, Khedar (6.5 lac MT). The last date for submission of bids was 19.04.2012.

3. Letter of acceptance dated 13.09.2012 was issued in favour of respondent No.1 – M/s MSTC Ltd., it being the lowest bidder. Earlier to that, respondent No.2 – M/s Adani Enterprises Limited had entered into an Associate Supplier Agreement dated 04.11.2011 with respondent No.1 to supply imported coal in the Indian Market in order to cater to the needs of imported coal by public sector undertakings like respondent No.1 – MSTC. As respondent No.1 was the successful bidder in the aforesaid tender, respondent No.2 – M/s Adani Enterprises Limited sent a confirmation letter dated 29.09.2012, agreeing to carry out supply and inland handling of imported coal to the appellant, on behalf of respondent No.1. Accordingly, respondent No.1 sent a communication dated 03.10.2012 informing the appellant about respondent No.2 being inland logistics agency for supply of imported coal. Thereafter, the appellant issued Purchase Order dated 17.10.2012 in favour of respondent No.1, which subsequently issued a Work Order dated 17.10.2012 in favour of respondent No.2 for handling and supply of imported coal to the appellant. Copies of Purchase Order and Work Order are appended with the appeal as Annexure A-3 (colly.).

4. Though, supply of coal rakes was commenced by respondent No.2 to thermal plants in Haryana but in terms of clause 5 of Work Order, various parameters of the supplies made, were to remain strictly within the range of variation set out therein.

During the execution of contract, out of 30 imported coal rakes supplied to appellant's power generating stations, 27 were rejected due to Total Moisture (ARB – As Received Basis) Parameter crossing the tolerance limit as per the provisions of Clause 5 of Work Order and 3 coal rakes were rejected as their Hardgrove Grindability Index (HGI) was lower than the limit prescribed in the clause *ibid*.

5. Aggrieved by the aforesaid action of the appellant, respondents vide letters dated 11.10.2013 and 16.10.2013 requested for invocation of arbitration proceedings under the Arbitration Act read with clause 22 of Work Order and clause 23 of Purchase Order, showing their disparity to clauses of the aforesaid purchase & Work Orders dated 17.10.2012, whereafter the appellant requested Mr. Harbans Lal Bajaj to give his acceptance to be a Sole Arbitrator to adjudicate the issue raised by the respondents. The acceptance was conveyed vide letters dated 06.11.2013 and 02.01.2014, whereafter the appellant, vide letter dated 05.02.2014 requested the Sole Arbitrator to initiate the process for arbitration between the parties. Accordingly, Arbitration Tribunal stood constituted.

6. After considering the submissions of parties, the Arbitrator vide Award dated 19.12.2014 held as under :-

“39. The Respondent is right in rejecting the three (3) coal rakes having HGI lower than the rejection value as no adjustment in this parameter is permissible. The Respondent

is entitled to consume these three rejected coal rakes for which no payment is to be made by the Respondent.

40. The Respondent is not right in rejecting the coal rakes having Total Moisture ALONE in excess of the rejection value. However, pro rata adjustment in weight is directed to be made as per rates stipulated in the PW/WO upto the actual moisture content percentage.

41. The amount claimed for the 27 coal rakes, after due adjustment for the excess moisture as above, has been found to be due to the claimant/respondent. Duly adjusted payment for these 27 coal rakes wrongly rejected by the respondent would have been released within 5 working clear days of the receipt of invoice completed in all respect with supporting documents. Claimants have intimated the Respondent vide letter dated March 26, 2013 that they will be constrained to charge interest on overdue payments. Arbitrator considers it just, proper and reasonable to hold that as per The Interest Act, 1978 and The Arbitration and Conciliation Act, 1996, interest at the rate of 10% (against 18% prayed by the Claimants) of the amount which has been found to be due from April 5, 2013 (Allowing 5 clear working days as grace period as per PO/WO from March 26, 2013) to the date of award is also payable. Ordered accordingly.”

7. Against the aforesaid Award dated 19.12.2014, the appellant preferred Objections under Section 34 of the Arbitration Act before the

Special Commercial Court (Haryana). The sole issue to be adjudicated by the Special Commercial Court was as to whether the appellant was entitled to reject 27 coal rakes on account of Total Moisture exceeding the maximum limit specified in the Work Order and that the interest w.e.f. 05.04.2013 on the awarded amount could be sustained or not. The Objection petition was contested by the respondents by filing separate replies.

8. After perusing the record and on the principle of *audi alteram partem*, the Commercial Court vide impugned order dated 05.01.2018 disposed of the Objection petition and modified the award of Arbitrator as under:-

“38. Now the award passed by learned Arbitrator dated 09.12.2014 stand modified to the effect that the interest for the rejected coal rakes would start from 05.04.2013 but the rakes of the coal which have been rejected after 05.04.2013 would not be taken into consideration for the purpose of calculation of interest as awarded by him.

39. The amount already deposited with the Court as per order of the Arbitrator will be taken into consideration and the decree holder/claimant would be entitled to interest as awarded by the Arbitrator w.e.f. 05.04.2013 till the deposit of amount in the Court and the interest of the FDR from the date of FDR would be subject to adjustment till realization and the claimant would be entitled to the difference of interest awarded by Arbitrator and the interest of FDR till realization from the date of deposit of amount in the court.”

9. Now, the appellant has approached this Court through the present appeal challenging the order dated 05.01.2018 passed by the Special Commercial Court (Haryana).

Learned senior counsel for the appellant has vehemently contended that impugned order dated 05.01.2018 passed by the Special Commercial Court is manifestly contrary to the facts on record and has been passed without appreciating the legal & factual positions. The Arbitrator made the award in complete disregard of clauses 5, 9(a), 9(e), 9(f) and 9(g) of the Work Order. The Commercial Court awarded excess interest, inasmuch as the appellant was directed to pay the difference in interest between the rate of interest awarded by the Arbitrator and the rate of FDR in which the decretal amount was kept. It is contended that rejected rakes had Total Moisture content in excess of 20% i.e. the maximum range stipulated in clause 5 of the Work Order. No rake having Total Moisture content in the range of 16% to 20% was rejected. The last column in the table in clause 5 of Work Order pertains to 'Rejection' which means that if the coal supplied does not conform to the parameters in the Work Order, the same is liable to be rejected.

Learned counsel has further submitted that Arbitrator has tried to re-write the contract and erroneously held that while rejection of coal on some parameters is permissible even if a single parameter is beyond the limit specified in the Work Order, in the case of other parameters, rejection is possible only when more than one parameter is beyond the rejection limit. Clause 9(g) relates to rejection of coal solely on the basis of single parameter of 'Total Moisture'. There is nothing in the Work Order which can even remotely be construed to mean that rejection on a single parameter of Total

Moisture is not permissible. Quality of coal is an essential component for proper efficiency of generation. If the coal supplied is not as per specifications/parameters, the efficiency of Power Plant would get reduced, resulting in lesser power generation, inasmuch as more coal would be consumed for generation of the same quantum of power.

Learned counsel further contended that an award which is against the terms of contract cannot be sustained. In support of this proposition, learned counsel has relied on Shyam Charan Agarwala vs. Union of India, (2002)6 SCC 201; Food Corporation of India vs. Chandu Construction and another, (2007)4 SCC 697; Delhi Development Authority vs. R.S. Sharma & Co., (2008)13 SCC 80; and South East Asia Marine Engineering and Constructions Ltd. Vs. Oil India Ltd., (2020)5 SCC 164.

Learned counsel has lastly contended that the Special Commercial Court has wrongly held that respondents would be entitled to difference in the rate of interest awarded by the Arbitrator and the rate of FDR. Thus, the impugned order of Commercial Court is patently violative of Order 21 Rule 1(4) CPC which provides that interest, if any, shall cease to run from the date of service of notice referred to in sub-rule (2). In support of this submission, learned counsel has relied on the judgment of Hon'ble Supreme Court in Gurpreet Singh vs. Union of India, (2006)8 SCC 457.

10. *Per contra*, learned senior counsel for respondent No.2 has submitted that respondent No.2 handled the coal sold by respondent No.1 to the appellant, from discharge port till delivery of the same to the power plants of appellant. Appellant had rejected 30 rakes of coal supplied by the respondents, on the ground of 'single parameter' being beyond the specified

range. Since respondent No.2 vide notice dated 11.10.2013 invoked arbitration under Clause 22 of the Work Order, respondent No.1 also, vide letter dated 16.10.2013 approached the appellant to invoke the arbitration under Clause 23 of the Purchase Order. Since respondent No.1 sought a declaration of liability of appellant and had no objection to the quantum of money as claimed by respondent No.2, the two arbitrations were consolidated by referring both the disputes to be adjudicated by the arbitrator, jointly.

Learned counsel contended that Arbitrator upon examining the entire purchase and Work Orders, came to a conclusion that coal rakes can be rejected on the ground of single parameter being beyond specified limit, is in the case of HGI but it cannot be so rejected in the case of Total Moisture.

Further elaborating his arguments, he submitted that Clause 5 of the Work Order provides that imported coal rakes having parameters beyond specified limits shall be outrightly rejected. Similarly Clause 9(e) of the Work Order provides that quality adjustment shall not be carried out for parameters other than those provided in clause. Clause 9(d) and clause 9(e) make it clear that rejection shall be effected even if one parameter is in excess of the rejection value i.e. in case of Sulphur only. Clause 9(g) is confined to testing analysis of samples only, which shall be based on the results of appellant Laboratory. Therefore, Clause 9(g) does not state or can be interpreted to mean that coal can solely be rejected on a single parameter of Total Moisture.

Learned counsel submitted that various coal rakes were rejected on different dates, majority of them having been rejected much prior

to 05.04.2013, the Arbitrator, had levied interest from 05.04.2013 which is the date on which the respondents herein had intimated the appellant that they would be constrained to charge interest on the overdue payments. Thus, the cut-off date for payment of interest is legal and proper. The Special Commercial Court also directed that respondent No.2 would be entitled to difference of interest awarded by the Arbitrator and the interest of FDR till realization from the date of deposit of amount in the court.

Learned counsel contended that reliance of appellant on Order 21 Rule 1 (4) of CPC is completely misplaced and incorrect as provisions of CPC are not strictly applicable to the arbitration proceedings.

It is further contended that the appellant has filed a single objection under Section 34 of the Arbitration Act against the common award passed by the Arbitrator in two separate claim petitions filed by the respondents. The construction of a contract is primarily for the Arbitrator to decide and unless the Arbitrator construes the contract in such a way that no fair minded and reasonable person could do, the award should not be interfered with. It is further submitted by the learned counsel that clause 9 (d) and (e) state that rejection shall be effected even if one parameter is in excess of rejection value, is only applicable in the case of Sulphur.

11. Learned counsel for respondent No.1 has contended that the Arbitral Tribunal and the Special Commercial Court have carefully considered the entire contract and examined all the relevant provisions of the Work Order. Upon careful and minute scrutiny of the clauses of the Work Order, the Arbitrator has returned a finding that insofar as those specifications where an agreement provides for adjustment i.e. in cases of

Total Moisture, Gross Calorific Value and Ash Content is concerned, coal rake cannot be rejected on account of single parameter alone.

Learned counsel further contended that the Objections under Section 34 and appeal under Section 37 of the Arbitration Act are not in the form of regular appeal(s). The court can not sit in appeal over the arbitral award and Section 34 does not entail review of merits of dispute and the only limited scope is to ascertain if the findings of the Arbitrator are arbitrary, capricious or perverse. In support of this submission, he has relied upon judgment of the Supreme Court in the case of **MMTC vs. Vedanta Ltd.**, (2019) 4 SCC 163.

Learned counsel contended that if the view taken by the arbitral tribunal is a possible view, then the same should not be interfered with even if two views are possible. Further, relying on **NHAI v ITD Cementation India** (2015) 14 SCC 21 and **Swan Gold Mining v Hindustan Copper Ltd.** (2015) 5 SCC 739, respondent No.1 has contended that the interpretation of the terms of the contract is primarily for the arbitrator to decide and the court would not ordinarily substitute its interpretation for that of the arbitrator. The view taken by the Arbitral Tribunal is directly flowing from the construction of contract and as such is not only a possible view but is also a plausible view. When a party appoints an arbitrator who is an expert in his field, the approach of the court must be to sustain the Award unless a specific ground as contemplated by the act has been established for the interference of the court.

Learned counsel has contended that the Arbitrator granted interest @ 10% per annum. The only challenge before the Special Commercial Court made by the appellant qua interest was with regard to the

date from which the interest shall accrue. The said rate of interest has not been challenged by the appellant as being excessive. Thus, having not challenged the rate of interest, the respondent cannot be denied of its entitlement to interest at 10% per annum.

12. We have heard the rival submissions made by learned counsel for the parties and perused the record but do not find any force in the submissions of learned counsel for the appellant for the following more than one reasons.

13. For proper adjudication of the matter, it would be relevant to take note of Clauses 5 and 9 of the Work Order, which read as under:-

“5. Technical Specifications of Coal:

The quality of the contracted imported coal will be as per specifications given below. The quality of Coal beyond the Rejection values of the technical parameters as per the specifications shall be liable for rejection by

PTPS/DCRTPP/RGTPP, HPGCL:-

Parameters	Tolerance	Range	Guaranteed	Rejection
Totoal moisture (ARB)	%	10-20	16	>20
Ash (ADB)	%	08-20	10	>20
Fixed carbon(ADB)	%	30-50	-	<30
Volatile matter (ADB)	%	25-45	-	>45 <25
Sulphur (ADB)	%	0.7-0.9	0.8	0.9
Gross Caloric Value (ADB)	Kcal/kg	5800-6500	6300	<5800
HGI	-	45-60	-	<45 >60
Ash Fusion Temp. IDT/HT/FT	°	1100+ 1200+ 1250+	- - -	<1100 <1200 <1250

Size (in mm)	% by weight	0.50m	-	>0.50 mm size quality is more than 20%
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However, important coal rakes having parameters beyond specified limits as mentioned in the table shall be outrightly rejected notwithstanding the fact that same is unloaded and its coal consumed. The rejected coal so received, shall not be returned for which no payment shall be made after having ascertained the limits required for rejection from the test results submitted by nominated laboratory.”

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“**Clause 9 (Adjustment on quality variations)**

Total Moisture (As received basis (ARB)

a) If actual total moisture at unloading end exceeds the guaranteed total moisture of coal (i.e. 18%), the justment in weight shall be done on pro-rata basis. For example for x% increase over the guaranteed total moisture, the total weight will be reduced by x%. The decrease in total moisture below the guaranteed value shall be ignored.

b) **Gross calorofic value (Air Dried basis ADB)**

if the gross calorific value on ADB basis of unloading end is less than the guaranteed GCV (i.e. 6300 Kcl/KG on ADB basis, the price will be adjusted as per the formula given below:

Contracted CIF Price per tonne x CCV (ADB) at power station end
Contracted guaranteed GCV (ADB).

If the GCV at unloading end is above the guaranteed value, the portion above the guaranteed value shall be ignored for the above calculations.

c) **Ash content (ADB)**

If the Ash content at unloading end exceeds the guaranteed ash content (i.e.10%), the adjustment in weight will be made on prorate basis i.e. for every increase of x% of the Ash content, the weight of the coal will be reduced by x%. The Ash content below the guaranteed value shall be ignored.

d) **Sulphur (ADB)**

If the sulphur content at unloading end exceeds from the guaranteed sulphur content 0.8%, a penalty at the rate of Rs. 10/- PMT for every increase of 0.1% sulphur or part thereof shall be levied.

The Sulphur content below the guaranteed value shall be ignored. Coal having sulphur content in excess of the maximum range specified shall be rejected.

e) **Adjustment on quality variation other than the parameters indicated at 9a, 9b, 9c, & 9d shall not be carried out.**

f) **However, imported coal rake having parameters beyond specified limits as mentioned in the table shall be outrightly rejected notwithstanding the fact that same is unloaded and its coal consumed. The coal shall neither be returned nor shall payment be made for rejected rake**

after having ascertained the rejection from the test results submitted by nominated laboratory.

- g) The price adjustment of Total moisture shall be based as 'As received Basis' of analysis results at HPGCL Laboratory or some other laboratory to be used for analysis of samples of (Part-1) taken randomly. Similarly the rejection on account of total moisture content shall also be based on analysis results of HPGCL Laboratory or some other Laboratory to be used for analysis of samples (of Part-1) taken randomly.

The payment on this account (after total Moisture adjustment) shall be released along with other quality adjustments on receipt of analysis results from the nominated laboratory (i.e. part-II of samples)'."

Admittedly, the appellant rejected 30 rakes of coal supplied. Three rakes were rejected due to high hardgrove index (HGI) and 27 rakes were rejected due to excess Total Moisture content. The respondents challenged the rejection of coal rakes before Arbitrator claiming that coal quality determination had not been done as per the procedure agreed between the parties which provided for quality determination on the basis of average quality results for all the coal rakes received in a fortnight and that, the rejection of coal rakes on the basis of a single parameter being beyond specific value is contrary to clause 4 of the Purchase Order which is similar to clause 5 of the Work Order.

The clause(s) of the Purchase Order dated 17.10.2012 between the appellant and respondent No.1 are *pari materia* with those of the Work Order dated 17.10.2012 between the appellant and respondent No.2.

14. We have gone through the entire contract/Work Order. A careful reading of Clause 5, reproduced above, would go on to show that there is deliberate use of plural term 'parameters' which denotes that coal rake cannot be rejected on the ground of a single parameter in the case of first set (including Total Moisture) of specifications except in the case of Sulphur. The above finding is further fortified with the reading of Clause 5 alongwith Clause 9 that shows that only in case of Sulphur, rejection on the basis of single parameter is permissible whereas in case of other parameters, the contract itself provides for adjustment on quality variation. Thus, rejection is permissible only when more than one parameter exceeds the prescribed limit. Further, Clause 9(g) provides for mode, manner and procedure of testing while determining Total Moisture, which is clear from the words "shall be based on analysis results of HPGCL Laboratory". In this view of the matter, in case coal is sought to be rejected on the ground of two or more parameters including Total Moisture, analysis result of HPGCL Laboratory would be significant as per Clause 9(g). If the interpretation of the appellant that coal rake can be rejected on the basis of any single parameter is accepted, clause 9 (a to e) would be rendered redundant since clause 5 of the Work Order already provides for rejection value of the parameters and if the coal was to be rejected on the basis of a single parameter, there was no need for insertion of Clause 9(e) in the Work Order. Further-more, had the parties any intention that coal rakes can be rejected on a single parameter, nothing prevented the parties to include a clause similar

to clause 9(d) in the agreement. Thus, it can be safely held that rejection of coal rakes on account of Total Moisture alone was erroneous which has been rightly concluded by the Arbitrator in its award dated 19.12.2014 (Annexure A-1). We find ourselves in full agreement with the finding of Arbitrator, who upon examining the entire contract, came to a right conclusion that while coal rakes can be rejected on the ground of single parameter being beyond specified limit in case of HGI, it cannot be so rejected in case of Total Moisture.

The Arbitrator has taken a holistic view while interpreting Clause 9(g) which would show that it does not empower the appellant to reject the coal rakes on the basis of single parameter of excess Total Moisture (as is the case for Sulphur) but only provides a procedure and the manner in which the Total Moisture would be ascertained. Learned Arbitrator has correctly interpreted the expression 'parameters' to mean multiple parameters i.e. more than one.

15. Now coming to scope of Sections 34 and 37 of the Arbitration Act. It is well settled that Objections under Section 34 and appeal under Section 37 are not in the form of a regular appeals. The Court can not sit in appeal over the arbitral award and Section 34 does not entail review of the merits of dispute and the only limited scope is to ascertain if the findings of the arbitrator are arbitrary, capricious or perverse. The award can be set aside primarily on the grounds enumerated under Section 34, and Section 37 deals with the cases under which the appeal can be filed against the commercial court. The aforesaid view further finds support from the landmark judgment of Hon'ble Supreme Court in the case of **MMTC Limited (supra)** wherein at Para 12, it has been observed:-

“12. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

It is pertinent to mention here that Arbitrator is an eminently competent; technically qualified and experienced person to understand the intricacies and import of the terms of Work Order as he is an Electrical Engineering graduate with masters in Power systems. He was appointed as Chairman of Central Electricity Authority in 2002 and subsequently became Technical Member of Appellate Tribunal for Electricity in May, 2005 (APTEL) adjudicating appeals against the orders of the Central and State Electricity Regulatory Commissions. He started his career with Appellant and moved on BHEL and thereafter NTPC Limited in 1987. At NTPC he was associated in operation, maintenance and construction of power plants and held positions of ED (Consultancy Wing) and ED (WR) and eventually rose to the director (Commercial).

It is well settled that interpretation of the terms of Purchase Order/Work Order is primarily for the arbitrator to decide. The court would not ordinarily substitute its interpretation for that of the Arbitrator. To validate our finding, we can rely on the case of **NHAI (supra)**, wherein the Hon'ble Supreme Court observed as under:-

“20. It is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the contract. The court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair minded or reasonable person could do.”

The view taken in the judgment reproduced above has been further reiterated by the Supreme Court in the case of **Swan Gold Mining (supra)** wherein it has been observed:-

“12. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the fact of it

erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Arbitrator or by the Court would be erroneous or illegal.

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22. The words “public policy” or “opposed to public policy”, find reference in Section 23 of the Contract Act and also Section 34 (2)(b)(ii) of the Arbitration and Conciliation Act, 1996. As stated above, the interpretation of the contract is matter of the Arbitrator, who is a Judge, chosen by the parties to determine and decide the dispute. The Court is precluded from re-appreciating the evidence and to arrive at different conclusion by holding that the arbitral award is against the public policy.”

16. As regards levy of interest, the amount claimed for 27 coal rakes, after due adjustment for the excess moisture, had been found to be due to the respondents but it was rejected by the appellant, whereas it should have been released within 5 working clear days of the receipt of invoice from the respondents i.e. from 26.03.2013. In this regard, Arbitrator held that as per the Interest Act, 1978 and the Arbitration Act, interest @ 10% of the amount, was found to be payable from 05.04.2013 (allowing 5 clear working days as grace period as per purchase/Work Orders from

26.03.2013). Though this part was modified vide impugned order dated 05.01.2018 passed by the Special Commercial Court to the effect that the interest for the rejected coal rakes would start from 05.04.2013 but the rakes of the coal which were rejected after 05.04.2013 would not be taken into consideration for the purpose of calculation of interest.

It is well settled that award of interest in matters arising from Arbitration Act is a matter of discretion of the court. Unless it is shown that the discretion has been exercised perversely, the same should not be interfered with. In the present case, the grant of interest to the respondents @ 10% per annum cannot be said to be excessive by any stretch of imagination. Further, the appellant has failed to convince this Court that the aforesaid modification of the arbitral award by the Special Commercial Court was vicious in any manner.

17. Further, reliance by the appellant on Order 21 Rule 1(4) CPC is completely misplaced and incorrect as the provisions of CPC are not strictly applicable to the Arbitration proceedings. In any event, Order 21 relates to the 'execution of decree', therefore, has no applicability in the present case as the present matter is an appeal and thus, the judgment cited by the appellant in the case of **Gurpreet Singh (supra)** is of no help. To further fortify our view as regards non-applicability of aforesaid provisions of CPC in the arbitration proceedings, Sections 5 and 19 of the Arbitration Act read as under:-

“5. Extent of judicial intervention.-- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

19. Determination of rules of procedure.—(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872)

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in subsection (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.”

So far as the judgments relied upon by learned counsel for the appellant are concerned, there is no dispute about the observations made and law laid down therein. In the cases of judgments cited on behalf of the appellant viz. **M/s Shyama Charan Aggarwala (supra), Food Corporation of India (supra), Delhi Development Authority (supra) and South East Asia Marine Engineering & Constructions Ltd. (supra)**, arbitration was invoked under the Arbitration Act 1940 whereas in the present case, arbitration had been invoked under the Arbitration & Conciliation Act, 1996. In the above mentioned judgments, the primary ground of appeal was that the Arbitrator had misconducted himself, whereas in the present case, no such scenario exists. Thus, on close perusal of the cited judgments, none of them has been found to be of any help to the appellant being distinguishable on facts. It is settled principle of law that

facts of each case are to be examined, considered and appreciated first before applying any codified or judge-made law thereto.

In view of the aforesaid discussion, we do not find any merit in the instant appeal and the same is accordingly dismissed.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

16th August, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No