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

\+ **Date of Decision: 20.12.2021**

% FAO(OS) (COMM) 176/2021

OIL INDIA LIMITED ..... Appellant

Through: Mr.Ritin Rai, Senior Advocate, Ms. Ritika Sinha and Mr. Ashutosh Kumar, Advocates.

versus

TECHNO CANADA INC. ..... Respondent

Through: Mr. Vikram Nandrajog, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. *(ORAL)*

CM APPLs. 45946-45947/2021

Exemptions allowed, subject to all just exceptions.

The applications stand disposed of.

FAO(OS) (COMM) 176/2021 & CM APPLs. 45944-45945/2021

1. Present appeal has been filed under Section 13 (1A) of the Commercial Courts Act, 2015 read with Section 37 (1) (c) of the Arbitration & Conciliation Act, 1996 against the judgment and order dated 08.09.2021 passed in O.M.P. (COMM) No. 12/2021.
2. The appellant Oil India Limited (OIL) had filed O.M.P. (COMM) No. 12/2021 under Section 34 of the Arbitration & Conciliation Act, 1996 impugning the Arbitral Award dated 01.09.2020. OIL's challenge to

the impugned award was founded primarily on its contention that the claims raised by TECHNO CANADA INC. (hereinafter called 'TCI') were barred by limitation, and the conclusion of the Arbitral Tribunal to the contrary, is manifestly erroneous. In the impugned order, the said objections have been rejected, and Court found no infirmity with the award of the Arbitral Tribunal in rejecting OIL's contention that TCI's claims were barred by limitation. Briefly stating the facts giving rise to filing of the present appeal may as now be noted.

3. In May, 2014 OIL issued a notice inviting bids for hiring of production testing services for exploratory wells in NELP-VI Block (MZ-ONN-2004/1) in Mizoram. The respondent, TCI being an entity incorporated under the laws of Canada submitted its offer and was awarded the contract by LOA (Letter of Award) dated 13.10.2014. On 26.02.2015 the parties entered into a formal agreement captioned *"Contract No: 6205782 for Hiring of Production Testing Services for Exploratory Wells in NELP-VI Block (mz-onn-2004/1) in Mizoram,"* hereinafter called "the Agreement".

4. Pursuant to the LOA, OIL issued a notice dated 21.10.2014 calling upon TCI to mobilise its resources at specified site (Well Aibawk-1 at Location MZ-3) by 28.01.2015 (the Mobilisation Notice). OIL had entered into an Agreement as it was desirous of availing certain services described as "*Surface Production Testing services, Well Activation/Stimulation/Killing services (using coiled tubing unit & nitrogen pumping unit), Tubing conveyed Perforation service and Slickline service (for bottom-hole PVT sampling and bottom-hole pressure & temperature survey*". The initial term of the Agreement was

for a period of one year, extendable for an additional period of one year at the option of OIL.

5. On 06.01.2015, OIL sent an e-mail requesting TCI to defer mobilization of equipment till 15.03.2015. OIL indicated that the delay was on account of 'slow drilling progress'. Even though TCI accepted the delay in mobilization vide e-mail dated 08.01.2015, it informed that it was accepting the delay in mobilization by diverting the consignment, however, while doing so, the TCI was incurring demurrage.

6. On 30.01.2015, TCI sent a communication stating that it would need clear hundred days for mobilization from "Final OIL Approved Mobilization Notice." This was considering that only sixty eight days were available for mobilization after OIL's notice dated 06.01.2015 requiring TCI to defer the same. However, the e-mail of 30.01.2015 was not accepted by OIL, and OIL on 06.02.2015 called upon TCI to confirm the arrangement for mobilization in accordance with the contract between the parties.

7. TCI responded by its letter of 09.02.2015 stating that it had initiated mobilization of equipment in November, 2014 after receiving OIL's e-mail dated 21.10.2014. However, on account of notice dated 06.01.2015 requiring TCI to defer mobilization, it had no option but to divert the equipment in transit to its yard/ base at Barmer, Rajasthan. TCI sought clear approval from OIL that it would again initiate equipment mobilization, so that TCI could complete the mobilization of equipment within 100 days in terms of their contract.

8. On 10.02.2015, OIL sent an e-mail revising its earlier request to complete mobilization by 15.03.2015, and deferring completion of mobilization to 15.04.2015. The deferment was made based on OIL's estimate that drilling upto the target depth would only be completed by first week of April, 2015 and the same could be handed over for production testing by 15.04.2015.

9. According to TCI, OIL did not provide sufficient site/facilities for storage and installation of the equipment even after 15.04.2015.

10. The mobilisation was completed on 08.06.2015. On 22.10.2015, OIL issued a notice requiring TCI to demobilize on an interim basis (Interim Demobilisation Notice). And, on 31.03.2016, OIL issued a notice requiring TCI to remobilise the resources (Interim Remobilisation Notice) between 15.05.2016 to 29.05.2016. In the meanwhile, TCI requested payment of Monthly Rental Charges (hereinafter called MRC) in respect of certain items for the period after the Interim Demobilization Notice, which was denied. The same was not acceptable to TCI, and therefore, by a notice dated 06.04.2016, it informed OIL that disputes had arisen which were required to be settled as per the provisions of the contract.

11. Since OIL did not pay the MRC for certain equipment during the period from 23.10.2015 to 29.05.2016, TCI raised invoices for the same. On 06.04.2016, TCI issued a notice requesting OIL to clear the outstanding MRC from October, 2015 failing which it would refer the disputes for Conciliation by an 'Outside Expert Committee'. Since the amounts claimed were not settled, by a letter dated 20.06.2016, the said disputes were referred to the Outside Expert Committee.

12. On 20.08.2016, OIL issued a notice to TCI to carry out final demobilization from Well (Aibawk-1 at Location MZ-3), which would be effective from 12 noon on the said date. It called upon TCI to clear the site within a period of ten days thereafter.
13. The Outside Expert Committee submitted its recommendations on 14.12.2016. It recommended that a sum USD 233,570 plus service tax be paid by OIL to TCI, being 70% of the amount claimed by it in full and final settlement of its claims.
14. The said recommendations were rejected by OIL by its letter dated 12.10.2017.
15. According to OIL, there was a delay of one week in remobilization of the equipment and resources in terms of the Remobilisation Notice dated 31.03.2016. On account of this delay, OIL levied and recovered a sum of USD 24,764 as liquidated damages computed at the rate of 0.5% of the contract amount including mobilisation charges.
16. On 12.04.2018, TCI issued a notice requesting OIL to refer the disputes to arbitration. Justice (Retired) Deepak Verma, former Judge of the Supreme Court was appointed as Arbitrator to adjudicate the disputes between the parties.
17. TCI filed its Statement of Claims claiming USD 2,934,064/-(as Claim No.1) on account charges payable for the period commencing 28.01.2015. TCI claimed that it had taken the steps for mobilisation of equipment pursuant to the Mobilisation Notice dated 24.10.2014. And, but for OIL's request to defer the same, it would have completed the mobilisation by 28.01.2015. TCI claimed that OIL was liable to pay the Standby Date Rates (SDR)/Monthly Rental Charges (MRC) for certain

Schedule of Rates (SOR) items, in terms of the Agreement. TCI further claimed costs for loading and transportation of equipment up to 06.01.2015, transportation to the storage yard (at its Base) and unloading of the equipment at the said yard as well as GST at the rate of 12%.

18. TCI further prayed for USD $373,707/- towards payment of MRC for Interim Demobilisation Period from 23.10.2015 to 29.05.2016 at the rate of USD $45,500 per month (Claim No. 2). TCI also sought refund of USD $21,000/- (revised from USD $24,764), which was deducted towards liquidated damages for the alleged delay of one week in remobilization, at the rate of 0.5% of the total contract amount (Claim No. 3).

19. In addition, TCI also claimed establishment cost amounting to USD $1,00,000/- (Claim No. 4) and USD $1,00,000/- towards damages (Claim No. 5). It also sought interest on the awarded amount at the rate of 10% per annum from 01.04.2016 till the date of invocation of the arbitration as well as pendente lite and future interest at the rate of 10% per annum on the amounts claimed (Claim No. 6). In addition, TCI claimed costs of the arbitral proceedings (Claim No. 7).

20. An additional claim No. 3A for refund of liquidated damages amounting to USD $173,348/- levied by OIL, was made on 12.09.2019.

21. The learned Arbitrator vide Award dated 01.09.2020 awarded the following:-

A) Claimant is entitled to receive USD 26,19,700/- as part of Claim No. l.

B) Claimant is entitled to payment of USD 3,73,707/- from Respondent as part of Claim No.2.

C) Claimant is entitled to a payment of USD 21,000/-from Respondent as part of Claim No.3.

D) Claimant is entitled to a payment of USD 173,348/- from Respondent as part of Claim No.3A, after adjusting the amount already paid to Claimant, if any.

E) Claimant is entitled to payment of USD 1,00,000/-from Respondent as part of Claim No.4.

F) Claimant's Claim Nos.5 is rejected and dismissed.

G) Claimant is entitled to interest @12% as past, pendete lite and future interest on all the amounts awarded to it under the present arbitration proceedings as under Claim No.6.

H) Claimant is entitled to receive Rs.54,90,000/- from Respondent as costs incurred during the arbitration proceedings as under Claim No.7.

I) All payments in USD to be made under the prevailing rate of exchange on the date of payment and to be made by Respondent within 30 days from the date of receipt of this Award.

22. The appellant OIL filed the petition under Section 34 of the Arbitration & Conciliation Act, being O.M.P.(COMM.) 12/2021, challenging the findings of the arbitral award dated 01.09.2020.

23. As aforesaid, the learned Single Judge found no infirmity with the decision of the Arbitral Tribunal in rejecting OIL's contention that TCI's claim for damages were barred by limitation. It only set aside the impugned award to the extent that it awards establishment cost of USD

$1,00,000/- (Claim No.4) and to the extent that it awarded interest (past, pendente lite and future), in excess of 10% per annum.

24. The primary argument of the learned senior counsel for the appellant before us is that claims made by TCI with regard to compensation/contract charges for the period prior to mobilization on 06.01.2015, were barred by limitation. His submission is that the breach, if any, on the part of OIL occurred on 06.01.2015, when TCI was asked to defer mobilization till 15.03.2015. He referred to Article 55 of the Schedule to the Limitation Act, 1963 and contended that the limitation period for compensation for breach of contract was prescribed as three years from the date from *"when the contract is broken…."*. He submitted that since the Contract was allegedly broken on 06.01.2015, the period of limitation to claim compensation would start running from the said date. TCI had issued the notice of arbitration on 12.04.2018, which was received by OIL on 27.04.2018. He submitted that by that time, the period of limitation in respect of the claim founded upon the cause of action which arose on 06.01.2015 had already expired and therefore, Claim No.1 was, ex facie, barred by limitation. He has also pointed that TCI had not raised any such claim before the Outside Expert Committee.

25. As far as claim 3A is concerned, Mr. Rai submitted that no such claim had been made either in the notice invoking arbitration dated 12.04.2018, or prior to that date. The said claim had been introduced by way of an application seeking amendment in the Statement of Claims, which was filed on 12.09.2019. He submitted that OIL had levied liquidated damages for delay in mobilization, which was computed up

to 22.06.2015. Subsequently, OIL accepted that the mobilization of equipment and resources was completed on 08.06.2015 and, therefore, reduced the liquidated damages by USD $74,292 to USD $173,348. He submitted that the excess amount of USD $74,292 was added to TCI's invoice of USD $486,342, and the total amount of USD $539,579.26 was remitted to TCI and received by it on 30.10.2015. He submitted that TCI was, thus, fully aware of the levy of liquidated damages and the period of limitation for making a claim in that regard, expired by 30.10.2018. He submitted that Claim No.3A was completely different from Claim No.3, which pertained to recovery of liquidated damages for delay in completion of remobilization beyond the deadline of 29.05.2016. The levy of such damages was not related to the liquidated damages levied for delay in mobilization from 15.04.2015 till 08.06.2015. He submitted that therefore, the award of Claim No.3A is also barred by limitation.

26. Learned senior counsel appearing for the appellant further contended that the award of compensation to TCI for delay in mobilization was unsustainable, since the TCI failed to prove that: (i) it could have completed the mobilization by the original deadline; (ii) the equipment could not have been productively utilized elsewhere; (iii) it suffered actual damages; and (iv) the delay in mobilization from 15.04.2015 to 08.06.2015 was wholly on account of the respondent.

27. Learned senior counsel for OIL also submitted that the Respondent was not entitled to claim No.1 by applying Standby Day Rate (hereinafter called "SDR") Charges and Monthly Rental Charges before completion of mobilisation and commencement of testing

operations, considering the explicit language of Clauses 2.0(E)(i) and 2.0(F) in Section IV of the Contract. The Ld. Sole Arbitrator had erroneously awarded Claim No. 1 by applying SDR and MRC specified in the Contract as a measure of liquidated damages, despite the absence of a contractual term providing so. Rather, the Contract explicitly provided for payment of the Standby Date Rate and the Monthly Rental Charges only after completion of mobilization. This finding was perverse, and the same could not have been arrived at by the learned Arbitrator. Thus, the decision of the arbitrator is contrary to section 73 & section 74 of the Contract act. The learned Single Judge, while quantifying Claim No.1, in fact, failed to consider the same, despite it being addressed at length by OIL.

28. Mr. Rai further argued that the Arbitral Tribunal had awarded interest at the rate of 12%, which was reduced by the learned Single Judge to 10%. According to OIL, even this is extremely high, considering the fact that interest is to paid in terms of US dollars. Interest is awarded to offset the effect of inflation and the falling value of money. However, in respect of US dollars, the rate of fall of its buying power is minimal, if at all.

29. Per contra Mr. Vikram Nandrajog, learned Counsel for the Respondent has argued that OIL had not raised any defence of limitation in its pleadings, and the said defence was raised for the first time in oral submissions made at the stage of final hearing. He submitted that the contention that the breach had occurred for the first time on 06.01.2015 was never advanced before the Arbitral Tribunal. He submitted that OIL had also not referred to the decisions, as are cited before this

Court, as it was not their case that the period of limitation was required to be reckoned from 06.01.2015. Our attention has been drawn to the order dated 10.05.2021 passed by the learned Single Judge wherein the learned ASG, appearing for OIL, challenged the award on three grounds, reproduced herein under:-

> *"2. Mr Sharma, learned ASG appearing for the petitioner has challenged the award, essentially, on three grounds. First, he states that the award against Claim No.4 for a sum of $1,00,000/- is patently illegal. He has drawn the attention of this Court to the Arbitrator's finding that the respondent had not produced any evidence or material in support of his claim. He submits that once the Arbitral Tribunal had rejected the said claim, there is no question of awarding the same in the conclusive paragraphs of the award. Second, he has challenged the finding of the Arbitral Tribunal that the claims arising out of deferment of mobilization were within the period of limitation. He submits that the finding of the Arbitral Tribunal that the limitation would commence from issuance of notice under Section 21 of the Arbitration and Conciliation Act, 1996 invoking the arbitration is patently illegal. He submits that the instructions for deferment of mobilisation were issued on 06.01.2015 and the mobilisation was deferred till 15.03.2015 at the first instance and 15.04.2015 on the second occasion. He submitted that notice for arbitration was issued on 12.04.2018 and received on 27.04.2018 which was beyond the period of three years from the said date. Third, he submits that the claim for refund of liquidated damages was also beyond the period of limitation as the same had been deducted on 27.08.2015 but no claim in this regard had been made in the notice of arbitration dated 12.04.2018. The same was raised for the first time by amending the statement of claims."*

30. We have heard Mr. Ritin Rai, Senior Advocate for the appellant, and Mr. Vikram Nandrajog, for the respondent and considered their respective submissions. As regards the issue of limitation is concerned, the same was not pleaded, but being a legal issue, it was examined by the learned Single Judge. The Ld. Single judge has correctly appreciated that the notice issued under Section 21 of the A&C Act, rather than the date when the Statement of Claims was filed, was relevant in determining whether a claim was barred by limitation. At this point, it is appropriate to refer to Section 21 of the A&C Act which reads as under:

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

31. It is clear that the notice of arbitration was issued on 12.04.2018, and received by the appellant on 27.04.2018, meaning thereby, the limitation would stop to run on receipt of notice under section 21 of A&C Act i.e., on 27.04.2018, and the date of filing of the Statement of Claims before the Arbitral Tribunal is not relevant to determination of the issue: whether Arbitration was commenced within the period of limitation. The Ld. Single Judge, on this aspect has observed as under:

> ***"44. Concededly, OIL's contention that the period of limitation in respect of the dispute would end on the filing of the Statement of Claims is erroneous. The period of limitation would end on receipt of notice under Section 21 of the A&C Act.***

45. In terms of Section 21 of the A&C Act, the arbitral proceedings in respect of disputes between the parties commenced on receipt of the notice dated 12.04.2018, which OIL claimed it received on 27.04.2018.

46. Mr Gulati drew the attention of this Court to the following passage from the impugned award:

"Since, in the instant case, Respondent has with respect to each Claim, raised by Claimant repeatedly raised, issue of limitation, Tribunal deems it fit to clarify for once and all that the limitation period of all Claims raised in the present arbitration proceedings barring Claim No.3A will commence from the date of notice invoking arbitration and not from the date of notice of completion of mobilisation/or when the inspection was completed."

47. He contended that the proposition of law that limitation would commence from the date of notice invoking the arbitration is, ex facie, erroneous and, the impugned award is liable to be set aside on this ground.

48. There can be no quarrel with the proposition that the period of limitation for commencing the arbitral proceedings, in respect of a dispute, would stop running with the issuance of a notice under Section 21 of the A&C Act. This is because, in terms of Section 21 of the A&C Act, the arbitral proceedings would commence on receipt of the notice invoking arbitration.

*49. **The observation in the impugned award that "the limitation period of all Claims raised in the present arbitration proceedings barring Claim No.3A will commence from the date of notice invoking arbitration" is, ex facie, erroneous**. However, if one examines the context in which the said conclusion was drawn, it is obvious that the same is error in semantics rather than one of any substance.*

50. As noticed above, it was contended on behalf of OIL before the Arbitral Tribunal that TCI's Statement of Claims was barred by limitation. It is relevant to note that there is a clear distinction between limitation for commencement of arbitral proceedings in respect of claims and the limitation period for taking any precipitate steps thereafter. It is relevant to refer to Sub-sections (1) and (2) of Section 43 of the A&C Act. The same are set out below:

> *"**43. Limitations.**— (1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.*
>
> *(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21."*

51. Section 43(1) of the A&C Act makes it amply clear that the Limitation Act 1963, would apply to proceedings under the A&C Act. Unlike a suit where the limitation period would stop running on filing of the plaint in a court, the limitation period in respect of any claims is required to be reckoned till the arbitral proceedings are commenced in terms of Section 21 of the A&C Act. This is made explicitly clear by virtue of Sub-section (2) of Section 43 of the A&C Act. The period of limitation in respect of further steps thereafter, is to be reckoned from the date of Section 21 of the A&C Act. Thus, the period for filing an application under Section 11 of the A&C Act or for taking other steps would commence on the date of receipt of the notice invoking arbitration (See: Bharat Sanchar Nigam Ltd. and Anr. v. Nortel Networks India Pvt. Ltd.: 2021 5 SCC 738 and Golden Chariot Recreations Pvt. Ltd. v. Mukesh Panika & Anr.: 253 (2018) DLT 219.)

52. It appears that the Arbitral Tribunal's observations as set out in Paragraph 17 above, were made in the context of filing of the Statement of Claims and the contentions advanced on behalf of OIL. It does appear that the Arbitral Tribunal clearly intended to hold that the period of limitation would run till the notice invoking arbitration. As noticed above, it was OIL's contention before the Arbitral Tribunal that the period of limitation would run from 08.06.2015 till filing of the Statement of Claims before the Arbitral Tribunal. The Arbitral Tribunal has rejected this contention. In this context, it had referred that the limitation period would end on the date of notice invoking arbitration (which has been incorrectly mentioned as "will commence from the date of notice invoking arbitration"). ***It was nobody's case before the Arbitral Tribunal that the period of limitation would commence from the date of issuance of notice invoking arbitration. The only controversy before the Arbitral Tribunal was whether the period of limitation would end with the receipt of notice invoking arbitration or on filing of the Statement of Claims. OIL cannot draw any sustenance with respect to the apparent error as noted above.***

53. The question whether any dispute is barred by limitation is also a mixed question of law and fact. The question whether the cause of action had arisen on 08.06.2015 on TCI completing the mobilization or on 06.01.2015, is required to be determined in the factual context as well as the terms of the Agreement. ***Concededly, OIL had never set up the defence that the cause of action for the claims raised by TCI had commenced on 06.01.2015 or on 28.01.2015 (the date on which the mobilization was required to be completed). OIL cannot be permitted to now set up a new defence that requires some examination as to the facts of the case. The said contention is an afterthought and is liable to be rejected on that ground alone.***

54. OIL's contention that it had committed a breach on 06.01.2015 by requesting for a deferment of mobilization and the period of limitation for raising claim for compensation for deferent of mobilization would commence from the said date is a contentious one. The reliance on the decision in case of State of Gujrat vs Kothari and Associates (supra) is premised on the basis that Agreement was broken on that date. However, the TCI had kept the Agreement alive and performed it obligations. In the case of State of Gujrat vs Kothari and Associates (supra), the court found the case to be one of successive breaches and the site was required to be made available each year for 15th November to 14th June each year and there were successive delays in handing over the site each year. ***This is not a case of successive breaches. OIL had requested that the mobilization be deferred till 15.03.2015 and thereafter, to 15.04.2015.*** *It was TCI's* ***case that it had agreed to delay the mobilization at OIL's request, however, that did not preclude TCI from claiming compensation on the ground that it had taken all steps to mobilize the resources by the due date (28.01.2015) and was on the verge of doing so.***

55. It is also TCI's case that it had taken steps for mobilization, however, OIL was not ready to receive the equipment and had not provided the necessary space/area for storage and initialization of the equipment at site, thus, resulting in further delay in mobilization from 15.04.2015 to 08.06.2015. Thus, according to TCI, the cause of action *for Claim no.1 would commence on 08.06.2015.* ***OIL had never disputed that the period of limitation for Claim No.1 would commence on 08.06.2015. On the contrary, it had contended before the Arbitral Tribunal that the period of limitation did commence on 08.06.2015.***

56. The Agreement did not provide for any payment prior to the

completion of mobilization. Thus, the claim for compensation for the period 28.01.2015 to 08.06.2015 could be made at the end of the period for completion of mobilization. OIL's contention in respect of limitation, before the Arbitral Tribunal, was also founded on this premise. Plainly, it is not open for OIL to now contend quite to the contrary, before this Court."

(emphasis added)

32. As regards claim 3A– which was for the refund of liquidated damages levied by OIL –being barred by limitation, being raised for the first time on 120.09.2019, the learned single judge has held as under:-

"63. Concededly, OIL had sought to introduce the fact regarding levy of liquidated damages in respect of the delay prior to 08.06.2015 before the Arbitral Tribunal by filing additional documents. It is in this
background that the Arbitral Tribunal permitted TCI to amend its Statement of Claims. TCI averred that it was never informed that OIL had levied any liquidated damages prior to the hearing held on 05.08.2019.
64. The Arbitral Tribunal accepted TCI's contention that it was never informed regarding the levy of liquidated damages in the past and such
information was disclosed for the first time during the arbitral proceedings. It is admitted that OIL had placed no communication on record, whereby, it had informed TCI regarding the levy of liquidated damages. OIL had contended that the same could be inferred from the fact that it had not paid TCI's initial invoice in full. The said contention
was not accepted by the Arbitral Tribunal.
65. This Court finds no infirmity with the decision of the Arbitral Tribunal in rejecting OIL's contention that TCI's claim for refund of liquidated damages was barred by limitation. In any

view, the said controversy does not fall within the grounds as contemplated under Section 34(2)(b)(ii) of the A&C Act."

33. The above discussion from the impugned judgment reproduced by us clearly and correctly rejects the contention of appellant that the claims of the respondent are barred by limitation. This discussion is exhaustive and sound. Mr. Rai has not been able to dent the reasoning contained in the impugned judgment. We, thus, agree with the learned Single Judge that no case has been made out by the appellant as regards the issue of limitation. The grievance of appellant, as regards rejection of the plea premised on limitation is, therefore, not justified.

34. The next contention of the Ld. Senior counsel for appellant is that the issue of applicability of Standby Date Rate and the Monthly Rental Charges, while quantifying claim no.1, had not been adverted to by Ld single judge in the order under challenge, even though the Appellant had taken a categorical objection to the same at Para 32 (from Ground C-F) in the Petition filed under Section 34, before the Ld Single Judge. It has been stated at the Bar by the learned Senior Counsel appearing for the appellant, that the said objections were duly argued before the learned Single Judge. However, he has also been fair in conceding that he was not the counsel before the learned Single Judge and hence, on instructions, states that the said point was argued. But since, he was not the counsel appearing for the appellant before the learned Single Judge, he cannot state with certainty. He seeks liberty to file a review petition before the learned Single Judge as far as the quantification of SDR from 28.01.2015 to 08.06.2015 is concerned. In view of this matter,

liberty as prayed for, is granted. The Appellant should prefer the review within four weeks of this order being uploaded. If so preferred, the learned Single Judge may deal with the same on merits, and the same would not be rejected on the grounds of limitation.

35. As far as the interest is concerned, the learned Single Judge has reduced the rate of interest on the awarded amount from 12% to 10%. During the course of argument, Mr. Vikram Nandrajog has submitted a document dated 26.08.2019 from HSBC, showing rate of interest on credit facilities granted by HSBC to the respondent.

36. As per this document dated 26.08.2019, "Bank US base rates" and "Interest, fees" reads as under:

> *"**<u>Bank's U.S. Base Rates"</u>** means the variable annual rate of interest established and adjusted by the Bank from time to time as a reference rate for purposes of determining rates of interest it will charge on commercial loans denominated in **United States dollars in Canada based on a year of 360 days, and which was 5.75% per annum on August 26,2019 but in no event shall such interest rate be less than 0% per annum. Such rate is available in a Bank Branch. A certificate of a manager or account manager of the Bank shall, absent manifest error, be conclusive evidence of the Bank's U.S. Base Rate from time to time***
>
> ...
>
> *III. Interest, Fees*
>
> *(a) Interest on the daily balance of the principal amount advanced under the Credit Facilities and remaining unpaid from time to time shall accrue and shall be payable by the Borrower as set out in this Facility Letter both before and after demand, default, maturity, or judgment and until*

indefeasible payment in full, except as otherwise expressly provided for.

(b) *If the Borrower repays any portion of the Credit Facilities accruing interest at the Bank's CAD Fixed Rate or the Bank's USD Fixed Rate or based on LIBOR on a date other than the expiration of the selected Interest Period or LIBOR Period, as the case may be, whether as a result of a demand for repayment by the Bank or otherwise, it shall also concurrently pay to the Bank the greater of;*

(i) *three months' interest on the portion prepaid at the CAD Fixed Rate or the Bank's USD Fixed Rate or based on LIBOR plus the applicable margin (pursuant to the Facility Letter), as the case made be; and*

(ii) *the applicable Compensating Amount.*

(c) *Interest based on the Bank's U.S. Base Rate and on LIBOR shall be computed on the basis of a year of 360 days and for actual days that the amounts are outstanding under the relevant Credit Facilities on this basis. For the purpose of the Interest Act (Canada), (i) the annual rate of interest to which interest computed on the basis of a year of 360 days is equivalent is the rate of interest as provided in this Facility Letter multiplied by the actual number of days in such year (whether 365 or 366) and divided by 360 and (ii) the annual rate of interest to which interest computed on the basis of a year of 365 days is equivalent is the rate of interest as provided in this Facility Letter multiplied by the actual number of days in such year (whether 365 or 366) and divided by 365. The Borrower confirms that it fully understands and is able to calculate the rate of interest applicable to the Credit Facilities based on the methodology for calculating per annum rates provided for in this Facility Letter. …….*

(d) *Upon expiration of the term of any outstanding Loan during* *which interest is accruing at the Bank's CAD Fixed Rate or the Bank's USD Fixed Rate, or on the maturity of a BA, unless another interest rate option is selected by the Borrower for an advance to refinance such Loan or BA Advance on maturity, interest shall accrue at the applicable rate as provided in this Facility Letter for outstanding indebtedness and liability in CAD at the Bank's Prime Rate plus the applicable margin and for USD at the Bank's U.S. Base Rate plus the applicable margin, as the case may be. LIBOR Loans may be rolled over on request by the Customer subject to the Bank's direction.*

(e) ......

(f) In the event that interest is not received by the Bank on any date for payment provided for in this Facility Letter or in any other relevant document, interest on such overdue interest shall be compounded on the basis of interest calculated and payable on overdue interest in the same manner and at the same rate per annum as is applicable to such overdue interest until indefeasible payment in full. Any other amounts which become payable to the Bank under this Facility Letter or the Loan Documents and which are not paid when due shall accrue interest and be payable from the due date at the Bank's Prime Rate plus 3% per annum, calculated and payable monthly on the last day of each month, both before and after demand, default, maturity or judgment and until indefeasible payment in full (other than for overdrafts exceeding the permitted limit which shall accrue interest at the rate of 21% per annum both before and after demand, default and judgment until indefeasible payment in full).

(g) .....

(h) ……

(i) ………

(j) ..
(k) ..
(l) ..
(m) ..
(n) ..
(o) ..
(p) ..
(q) ..”

(emphasis supplied)

37. A reading of the aforesaid terms shows that the respondent itself, while obtaining credit incurs interest at the rate of 7 % towards its bankers in Canada. That being so, we put it to learned counsel for the respondent that interest is meant to compensate for the depreciation of value, money and cannot be punitive in nature. The Supreme Court in its recent judgment in ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.***, (2019) 11 SCC 465, applied the principles of reasonableness and proportionality while determining the quantum of interest. It observed as follows:

> ***“9.*** *The discretion of the arbitrator to award interest must be exercised reasonably. An Arbitral Tribunal while making an award for interest must take into consideration a host of factors, such as : (i) the “loss of use” of the principal sum; (ii) the types of sums to which the interest must apply; (iii) the time period over which interest should be awarded; (iv)* ***the internationally prevailing rates of interest;*** *(v) whether simple or compound rate of interest is to be applied; (vi)* ***whether the rate of interest awarded is commercially prudent from an economic standpoint; (vii) the rates of inflation;*** *(viii) proportionality of the count awarded as interest to the principal sums awarded.*

__10.__ On the one hand, the rate of interest must be compensatory as it is a form of reparation granted to the award-holder; ***while on the other it must not be punitive, unconscionable or usurious in nature.***
11. Courts may reduce the interest rate awarded by an Arbitral Tribunal where such interest rate does not reflect the prevailing economic conditions *[Indian Oil Corpn. Ltd. v. Lloyds Steel Industries Ltd., 2007 SCC OnLine Del 1169: (2007) 4 Arb LR 84 at p. 103]* ***or where it is not found reasonable*** *[Manalal Prabhudayal v. Oriental Insurance Co. Ltd., (2009) 17 SCC 296: (2011) 2 SCC (Civ) 376] ,* ***or promotes the interests of justice*** *[Food Corporation of India v. A.M. Ahmed & Co., (2006) 13 SCC 779 : AIR 2007 SC 829] ."* **(emphasis supplied)**

38. Learned counsel for the respondent has fairly agreed that the interest rate may be reduced from 10% to 7.5 %. We accordingly reduce the interest from 10% to 7.5%. Interest on claim 1 would be payable from the date the dispute between the parties arose i.e., from the date on which the notice of Arbitration was given, namely, 12.04.2018. As regards Claim No. 3A is concerned, the interest as awarded from the date when the amendment to the claim was made i.e., 12.09.2019.

39. The present appeal is disposed of in the aforesaid terms.

JASMEET SINGH, J

VIPIN SANGHI, J

DECEMBER 20, 2021/ ***Sr***

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