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

Date of decision: 26th April, 2023

(17)+ **O.M.P. (COMM) 451/2017**

GREAT EASTERN ENERGY CORPORATION LIMITED

..... Petitioner

Through: Mr.Darpan Wadhwa, Sr. Adv.
with Mr.Ajay Bhargava,
Mr.Aseem Chaturvedi &
Mr.Shivank Diddi, Advs.

versus

SOPAN PROJECTS

..... Respondent

Through: Mr.V. Seshagiri, Mr.Adhish
Rajvanshi, Mr.Bikram
Bhattacharya, Advs. with
Mr.Gaurav Sachar, AR.

(18)+ **O.M.P. (COMM) 100/2018**

SOPAN PROJECTS

..... Petitioner

Through: Mr.V. Seshagiri, Mr.Adhish
Rajvanshi, Mr.Bikram
Bhattacharya, Advs. with
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versus

GREAT EASTERN ENERGY CORPORATION LTD.

..... Respondent

Through: Mr.Darpan Wadhwa, Sr. Adv.
with Mr.Ajay Bhargava,
Mr.Aseem Chaturvedi &
Mr.Shivank Diddi, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These cross petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') have been filed by both the parties to the arbitration proceedings, challenging the Arbitral Award dated 10.11.2017 (hereinafter referred to as the 'Impugned Amended Arbitral Award') passed by the learned Sole Arbitrator.
2. The disputes between the parties arose out of the Work Order for construction/expansion of existing Gas Gathering Station-North placed by Great Eastern Energy Corporation Limited (hereinafter referred to as the 'petitioner') on Sopan Projects (hereinafter referred to as the 'respondent'). The said disputes were settled by an Arbitral Award dated 25.08.2017 (hereinafter referred to as the 'Original Award') passed by the learned Sole Arbitrator. The respondent thereafter filed an application under Section 33 of the Act. On the said application, the learned Sole Arbitrator passed an order dated 25.10.2017, allowing the application of the respondent and making certain corrections in the Award. The petitioner, aggrieved of the said order, filed an application seeking recall of the said order, on which, with the consent of the parties, the learned Sole Arbitrator recalled the order dated 25.10.2017 and the amended Award dated the same. The learned Sole Arbitrator, on hearing the parties on the application filed by the respondent, by an order dated 10.11.2017, allowed the said application and passed the Impugned Amended Arbitral Award. As

noted herein above, both the parties to the arbitration proceedings challenge the Impugned Amended Arbitral Award.

3. The learned senior counsel for the petitioner submits that in terms of the Original Award dated 25.08.2017, the learned Sole Arbitrator had awarded a sum of Rs.32,02,553/- in favour of the petitioner herein, while further directing that the respondent would be entitled to a sum of Rs.24,73,375/- towards Central Sales Tax and Entry Tax. He submits that the petitioner duly implemented the Award as far as the Central Sales Tax and Entry Tax is concerned, and issued Form C to the respondent. It was, therefore, only the petitioner who was to receive a sum of Rs.32,02,553/- from the respondent. He submits that even this amount was adjusted against the amounts awarded in favour of the respondent under the other Arbitral Awards dated 25.08.2017 between the same parties.

4. He submits that by the Impugned Amended Arbitral Award passed by the learned Sole Arbitrator, purportedly under Section 33 of the Act, the learned Sole Arbitrator has in fact reviewed his Original Award. He submits that by the Impugned Amended Arbitral Award, the learned Sole Arbitrator has held the respondent to be entitled to Service Tax, a claim that was expressly rejected by the learned Sole Arbitrator in the Original Award.

5. He submits that the learned Arbitrator in the Impugned Amended Arbitral Award has reduced the *ad hoc* amount admittedly received by the respondent from the petitioner, from Rs.3,31,56,341/- to Rs.2,25,91,275/-, and on basis thereof, instead of the respondent owing an amount to the petitioner, the petitioner has been found liable

to pay a sum of Rs.79,08,206/- to the respondent. He submits that this also amounts to review of the Original Award.

6. He further submits that in the Original Award, there was no direction for payment of interest, whereas in the Impugned Amended Arbitral Award, the petitioner has been held liable to pay interest at the rate of 8% per annum from the date of filing of the Statement of Claim and future interest at the rate of 2% higher than the current rate of interest prevalent on the date of the Award. He submits that for award of interest, leave alone the same being in the form of a review of the Award, no reasons have been given by the learned Sole Arbitrator for either the rate or period of interest. He submits that even otherwise, the learned Arbitrator could not have awarded a higher rate of interest on default of the petitioner to pay the awarded amount. The learned Arbitrator has no power to grant penalty.

7. The learned senior counsel for the petitioner places reliance on the judgments of the Supreme Court in *State of Arunachal Pradesh v. Damani Construction Co.*, (2007) 10 SCC 742 and *Gyan Prakash Arya v. Titan Industries Limited*, (2023) 1 SCC 153, and submits that in the garb of an application under Section 33 of the Act, the learned Sole Arbitrator could not have reviewed his Award and passed a fresh Award.

8. The learned senior counsel for the petitioner submits that for the above reasons, the Impugned Amended Arbitral Award should be set aside by this Court, while keeping the original Arbitral Award dated 25.08.2017 intact. He submits that in *Gyan Prakash Arya* (supra), the Supreme Court had also restored the original Award while setting aside the modified Award.

9. On the other hand, the learned counsel for the respondent submits that the Original Award suffered from clerical and computational errors apparent on the face of the Award. He submits that the application under Section 33 of the Act was, therefore, rightly filed and has been allowed by the learned Arbitrator. In support, he submits that it cannot be disputed that the respondent had filed 17 invoices on record before the learned Sole Arbitrator. The learned Sole Arbitrator while passing the Original Award, had considered only 16 invoices, as is reflected in the Original Award itself. He submits that this, therefore, was a clerical error, which has been rightly corrected by the learned Arbitrator. He submits that, in fact, the respondent is aggrieved of even the Impugned Amended Arbitral Award, as the claim of the respondent could not have been curtailed to only the invoices that were placed on record once the petitioner had not disputed that in all 22 invoices had been raised by the respondent on the petitioner.

10. On the grant of Service Tax, he submits that merely because the relevant Clause was not reproduced in the written submissions of the respondent, the learned Sole Arbitrator in the original Arbitral Award held that the Service Tax was not payable to the respondent. In the Impugned Amended Arbitral Award, the learned Arbitrator has, therefore, rightly included the quantum of Service Tax while granting the claim of the respondent on the invoices.

11. He submits that there was an apparent arithmetical error also in considering the amount of bank guarantee, both as an admitted amount paid to the respondent as also for the adjustment made in

favour of the petitioner. For this reason, the reduction in the *ad hoc* amount liable for adjustment cannot be faulted.

12. He further submits that the learned Arbitrator in the original Award had also made an arithmetical error in taking the admitted amount received by the respondent as Rs. 3,31,56,341/-. In this regard he has drawn my attention to the paragraphs 5.3 and 5.4 of the Statement of Claim, wherein it is mentioned that the total amount of Rs.3,31,56,341/- received by the respondent from the petitioner includes an amount of Rs. 1,05,65,066/- paid directly by the petitioner to the suppliers. He submits that once the Arbitrator has held that the respondent cannot lay any claim on the supply invoices post the amendment of the Contract, wherein payment was to be made directly to the suppliers by the petitioner, this amount also was not liable to be adjusted as received by the respondent. In such a situation, both the invoices for supply as also the payment made against them, are to be excluded from consideration. He submits that, therefore, there was clearly an arithmetical error in taking the amount of adjustment as Rs.3,31,56,341/-, and the same has rightly been rectified in the Impugned Amended Arbitral Award.

13. On the respondent's own challenge, the learned counsel for the respondent submits that the respondent has made a total claim of Rs.7,06,37,274/- as invoices unpaid between the period 20.03.2012 to 08.01.2013. The learned Arbitrator, however, has arbitrarily reduced the said claim to Rs.1,14,28,741/-. He submits that no reason has been given by the learned Arbitrator to confine the claim to only 17 invoices, especially where the witnesses of the petitioner had admitted that in all 22 invoices were raised by the respondent on the petitioner

for a sum of Rs.7,06,37,274/-. Once the learned Arbitrator found that, in principle, all these invoices were payable, he could not have confined the Award only to 17 invoices.

14. I have considered the submissions made by the learned counsels for the parties.

15. It cannot be disputed that the power of the Arbitrator under Section 33 of the Act is rather limited and can be invoked only to correct any computational errors, clerical or typographical errors, or other errors of a similar nature occurring in the Award, or where the parties were aggrieved, give an interpretation of a specific point or part of the Award. The Arbitral Tribunal may also make an additional Award on the claim presented in the arbitral proceedings but omitted from the Arbitral Award. The said power, however, does extend to review of the Award on merit.

16. In ***Damani Construction Co.*** (*supra*), the Supreme Court has held as under:-

“8. Firstly, the letter had been designed not strictly under Section 33 of the Act because under Section 33 of the Act a party can seek certain correction in computation of errors, or clerical or typographical errors or any other errors of a similar nature occurring in the award with notice to the other party or if agreed between the parties, a party may request the Arbitral Tribunal to give an interpretation of a specific point or part of the award. This application which was moved by the appellant does not come within any of the criteria falling under Section 33(1) of the Act. It was designed as if the appellant was seeking review of the award. Since the Tribunal had no power of review on merit, therefore, the application moved by the appellant was wholly misconceived. Secondly, it was prayed whether the payment was to be made directly to the

respondent or through the court or that the respondent might be asked to furnish bank guarantee from a nationalised bank as it was an interim award, till final verdict was awaited. Both these prayers in this case were not within the scope of Section 33. Neither review was maintainable nor the prayer which had been made in the application had anything to do with Section 33 of the Act. The prayer was with regard to the mode of payment. When this application does not come within the purview of Section 33 of the Act, the application was totally misconceived and accordingly the arbitrator by communication dated 10-4-2004 replied to the following effect:

“However, for your benefit I may mention here that as per the scheme of the Act of 1996, the issues/claims that have been adjudicated by the interim award dated 12-10-2003 are final and the same issues cannot be gone into once again at the time of passing the final award.”

9. Therefore, the reply given by the arbitrator does not give any fresh cause of action to the appellant so as to move an application under Section 34(3) of the Act. In fact, when the award dated 12-10-2003 was passed the only option with the appellant was either to have moved an application under Section 34 within three months as required under sub-section (3) of Section 34 or within the extended period of another 30 days. But instead of that a totally misconceived application was filed and there too the prayer was for review and with regard to mode of payment. The question of review was totally misconceived as there is no such provision in the Act for review of the award by the arbitrator and the clarification sought for as to the mode of payment is not contemplated under Section 33 of the Act. Therefore, in this

background, the application was totally misconceived and the reply sent by the arbitrator does not entitle the appellant a fresh cause of action so as to file an application under Section 34(3) of the Act, taking it as the starting point of limitation from the date of reply given by the arbitrator i.e. 10-4-2004.”

(Emphasis Supplied)

17. In the present case, it is evident that the learned Arbitrator has reviewed the original Award on various aspects, including on the aspect of Service Tax. In the original Award, the learned Arbitrator has held as under:-

“The service tax claimed by the Claimant is not being awarded as the contract was an all inclusive contract except for Central Sales Tax.”

18. However, in the Impugned Amended Arbitral Award, the learned Arbitrator has held as under:-

“The service tax claimed by the Claimant is being awarded as the contract was exclusive of service tax.”

19. The learned Arbitrator in his order dated 10.11.2017, passed on the application of the respondent filed under Section 33 of the Act, has explained the reason for this change as under:-

“In respect of the service tax, the Claimant argued that the contract was a lump sum contract exclusive of service tax and central sales tax and in support the clauses were shown during the argument. However in the written submissions the service tax clause was not extracted and due to voluminous pleadings in this matter, and the final hearings spread

over months, the said clause missed the attention of the Tribunal and hence the said amount was not awarded to the Claimant. I interpret such a mistake as omission falling under Section 33(4) on the Tribunal's part and hence deem it appropriate to award the same to the Claimant."

20. Clearly, the above reason given by the learned Arbitrator amounts to a review of the Award and cannot be sustained as being in exercise of power vested in the Arbitrator under Section 33 of the Act. If the clause in the agreement was overlooked due to it not being extracted in the written submissions, this may be a ground to review an Award, however, as there is no power vested with an Arbitrator to review his Arbitral Award, the order passed by the learned Arbitrator shall be without jurisdiction.

21. Equally, the Original Award, on basis of calculations found that the respondent was to pay a sum of Rs.32,02,553/- to the petitioner. Interest was not awarded to the petitioner on the said amount. However, in the Impugned Amended Arbitral Award, while correcting the so-called arithmetical errors, the learned Arbitrator has proceeded to Award interest in favour of the respondent on the amounts that are now found payable by the petitioner to the respondent. No reasons for the rate of interest or the period of interest have been given by the learned Arbitrator in the modified Award.

22. The Supreme Court in ***Executive Engineer (R and B) and Others v. Gokul Chandra Kanungo (Dead) Thr. his Lrs***, 2022 SCC OnLine SC 1336, on the issue of awarding of interest by an Arbitrator, has held as under:-

"10. The provisions of Section 31(7)(a) of the 1996 Act fell for consideration before this Court in many cases including in the cases of

*Hyder Consulting (UK) Limited (supra) and Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation*⁵. A perusal of clause (a) of subsection (7) of Section 31 of the 1996 Act would reveal that, no doubt, a discretion is vested in the arbitral tribunal to include in the sum for which the award is made interest, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. However, it would reveal that the section itself requires interest to be at such rate as the arbitral tribunal deems reasonable. When a discretion is vested to an arbitral tribunal to award interest at a rate which it deems reasonable, then a duty would be cast upon the arbitral tribunal to give reasons as to how it deems the rate of interest to be reasonable.”

(Emphasis Supplied)

23. Therefore, it is evident that while awarding interest, the learned Arbitrator has not only exceeded his jurisdiction in reviewing the original Award, but has also failed to give any reasons for awarding interest to the respondent, when the same was denied to the petitioner in the Original Award, and for the rate and period of such interest.

24. The learned Arbitrator has further reduced the amount paid to the respondent from Rs.3,31,56,341/- to Rs.2,25,91,275/-. While the reasons for such adjustment may be correct, as is also evident from the order dated 10.11.2017 passed by the learned Arbitrator on the application filed under Section 33 of the Act by the respondent, however, at the same time, such change would also amount to a review of the Original Award, which cannot be done in exercise of

power under Section 33 of the Act. The finding of the learned Arbitrator on this issue is as under:-

“In so far as computation error of the Tribunal is concerned pertaining to the adjustment of the amount of Rs. 1,05,65,066/- paid by Respondent to the Claimant is concerned, I am of the view that the Bank Guarantee adjustment and was a computation error falling under Section 33(1)(a) and is hence rectifiable under Section 33. Even the wrongful deduction of the payment made by the Respondent directly to the third party from Claimants awarded amount is an error of similar nature and hence shall fall within the purview of Section 33 of the Act. Significantly Claimant has demonstrated that the said sum of Rs. 1,05,65,066/- was not a part of its claim. Similarly the Respondent has been unable to show any admission on record of this Tribunal that the Claimant had admitted the receipt of the said amount of Rs.1,05,65,066/- .”

(Emphasis supplied)

25. In the Statement of Claim, the respondent had pleaded as under:-

“5. CLAIM A

TOWARDS UNPAID CERTIFIED INVOICES

5.1 *The Claimant upon executing the works entrusted to it by the Respondent under the Contract has raised 22 invoices that have been duly certified by the Respondent between March 20, 2012 and January 8, 2013 for a sum of Rs.7,06,37,274/- (Rupees Seven Crores Six Lakhs Thirty Seven Thousand Two Hundred Seventy Four Only). The Respondent however, failed to make the payment under the aforementioned invoices to the claimant even after repeated requests made by the Claimant. Therefore, considering the obligations of the Respondent under the*

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O.M.P. (COMM) 451/2017 & 100/2018

Contract, the Respondent has unlawfully withheld Rs.7,06,37,274/-, due and payable to the Claimant by the Respondent.

5.2. *The Claimant states that the non-payment by the Respondent is an act which is manifestly perverse and unlawful and against the terms of the Contract and constitutes a material breach on the part of the Respondent. Therefore, the Claimant is entitled to claim not only the amount due which has not been paid by the Respondent against the certified invoices as raised by the Claimant for the work done under the Contract but also for those invoices which have not been certified.*

5.3 *The Respondent had on 27th Dec 2011, advanced to the Claimant a sum of Rs.1,60,00,000/- (Rupees One Lakh Sixty Lakhs only) as mobilization advance which was to be adjusted proportionately against the Running Bills. The Respondent had adjusted a sum of Rs.34,08,725/- from the Running Bills of the Claimant. The Respondent is therefore, entitled to a further sum of Rs.1,25,91,275/- to be deducted from the invoices of the Claimant. Further the Respondent had made an ad hoc payment of Rs.1,00,00,000/- (One Crore Only) towards the works executed between August, 2012 and December, 2012 and a further sum of Rs.1,05,65,066/- (One Crore Five Lakhs Sixty Five Thousand Sixty Six Only) paid by the Respondent to the suppliers of the Claimant directly. The said amounts have been included in the certified invoices raised by the Claimant. A copy of the Demand Drafts issued by the Respondent directly to the suppliers are attached herewith and marked as **Annexure P-18**.*

5.4 *After giving a due credit of Rs.3,31,56,341/- (Rupees Three Crore Thirty One Lakhs Fifty Six Thousand*

Three Hundred Forty One Only) to the Respondent, the Respondent is liable to pay the Claimant an amount of Rs.3,74,80,933/- (Rupees Three Crore Seventy Four Lakhs Eighty Thousand Nine Hundred Thirty Three Only) against certified invoices.”

26. The Arbitrator, in the original Award, held as under:

“The Claimant in its own pleading has accepted that the Respondent has paid the Claimant an adhoc amount of Rs.3,31,56,341/- Thus the amount found due and payable to the Claimant amounts to Rs.2,14,53,788/- along with Rs. 5,00,000/- towards cost and expenses of the present proceeding.

Thus the above mentioned amount i.e. Rs. 2,19,53,788/- needs to be adjusted against the adhoc payment made by the Respondent.

After adjusting the amount awarded to the Claimant, Rs.1,12,02,553 remains as extra payment made by the Respondent.

Thus the Respondent is entitled to retain Rs. 80,00,000/- towards the encashment of Advance Bank Guarantee.

The Claimant is thus directed to give the Respondent Rs. 32,02,553/- out of the release of Bank Guarantee from the Registrar General Delhi High Court amounting to Rs. 80,00,000/- and retain the rest.”

27. The learned Sole Arbitrator has, therefore, considered the amount in the hands of the respondent as Rs. 3,31,56,341/-. The same included Rs. 1,05,65,066/-, which was paid by the petitioner to the suppliers. In the Impugned Amended Arbitral Award, the learned Arbitrator, as respondent hereinabove, excluded this amount, finding that the same was not included in the claim of the respondent nor was admitted to be received by it. This again amounts to a review of the Award.

28. In view of the above, the Impugned Amended Arbitral Award cannot be sustained and is liable to be set aside.

29. This now brings me to the submission of the learned senior counsel for the petitioner that once the Impugned Amended Arbitral Award is set aside by this Court, the Original Award shall be operable. In support, he places reliance on the judgment in **Gyan Prakash Arya** (supra).

30. I am unable to agree with the submissions of the learned senior counsel for the petitioner in the facts of the present case. In the present case, the learned Arbitrator himself has recognized that there were errors apparent on the face of the record in the Original Award. I also find the errors to be apparent on the face of the record in the Original Award. Merely because a relevant clause was not mentioned in the Written Submissions filed by a party but otherwise pointed out to the arbitrator, cannot be a sufficient reason for upholding an Award that is passed in ignorance of such a clause of the agreement. It is not a question of interpretation of the Award but a case of disregard of the terms of the Award.

31. I also find, as is evident from the Statement of Claim reproduced hereinabove, that the respondent had clearly stated that Rs. 1,05,65,066/- had been paid by the petitioner directly to the suppliers. The learned Arbitrator even in the Original Award held that post the amendment of the Agreement, the respondent is not entitled to any payment towards the supply invoices, but is entitled to a margin of 10% of the supply bills raised by the respondent prior to the amendment. The relevant finding in the Original Award is as under:-

*“In so far as the supply invoices out of those
16 bills are concerned, in light of the*

amendment dated 16.08.2012 signed by both the parties, the supply invoices raised by the Claimant cannot be paid to the Claimant as the parties mutually agreed that the payments for pending supply items will be made by the Respondent directly.

However, it is a known fact that while entering into the Contract the Claimant must have calculated a margin in making the supply payments itself. Thus the supply bills preceding the 16.08.2012 amendment containing the margin as contemplated by the Claimant should be granted to the Claimant. The Supply bills raised post amendment shall not be considered by the Tribunal as post amendment payments to third party were agreed to be made by the Respondent and once consent given by the Claimant, no margin or payment qua the supply invoices can be raised by the Claimant.

The Claimant has not pleaded in its case that what percentage of the supply invoices was its margin in the contract entered into between the parties, however after making reasonable estimate of the margin of the Claimant and in the interest of justice the Tribunal grants 10% of the supply bills raised by the Claimant before the amendment dated 16.08.2012 i.e. Rs. 23,26,987/-."

32. If that be so, the amount of Rs. 1,05,65,066/- could not have been adjusted as been received by the respondent. The respondent had stated in the Statement of Claim that this amount was paid by the petitioner directly to the suppliers. If the supply invoices are not to be paid to the respondent, any amount paid to the suppliers against such invoices also cannot be accounted for as an amount paid to the respondent. This error was sought to be corrected by the learned Arbitrator in the Impugned Amended Arbitral Award. The bank guarantee amount had also been counted twice over while making the adjustment of the amount in the Original Award. Though the

Impugned Amended Arbitral Award cannot be sustained as it is found to be beyond the jurisdiction of the learned Arbitrator, at the same time, the Original Award also cannot be sustained as it would cause grave injustice to the respondent.

33. In ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***, (2019) 15 SCC 131, the Supreme clarified that though the jurisdiction of the Court under Section 34 of the Act is highly limited, interference with an Award will be justified if the Award gives a finding which is perverse. A finding based on no evidence or in ignorance of vital evidence would be perverse. It has been held as under:-

“41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, 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.

34. The Original Award passed by the learned Sole Arbitrator suffers from such patent illegality. In the facts of this case, therefore, it cannot be held that on setting aside of the Impugned Amended Arbitral Award, the Original Award shall revive and bind the parties.

35. In ***Gyan Prakash Arya*** (supra), the original Award was based on the Statement of Claim filed by the respondent therein itself. After passing of the original Award, the respondent therein filed an application under Section 33 of the Act, which, in fact, sought to

amend its Statement of Claim. This was allowed by the learned Arbitrator. It was in those circumstances that the Supreme Court held as under:-

“13. The original award was passed considering the claim made by the claimant as per its original claim and as per the statement of the claim made and therefore subsequently allowing the application under Section 33 of the 1996 Act to modify the original award in exercise of powers under Section 33 of the 1996 Act is not sustainable. Only in a case of arithmetical and/or clerical error, the award can be modified and such errors only can be corrected. In the present case, it cannot be said that there was any arithmetical and/or clerical error in the original award passed by the learned arbitrator. What was claimed by the original claimant in the statement of claim was awarded. Therefore, the order passed by the learned arbitrator on an application filed under Section 33 of the 1996 Act and thereafter modifying the original award cannot be sustained. The order passed by the learned arbitrator in the application under Section 33 of the 1996 Act is beyond the scope and ambit of Section 33 of the 1996 Act. Therefore, both, the City Civil Court as well as the High Court have committed a grave error in dismissing the arbitration suit/appeal under Sections 34 and 37 of the 1996 Act respectively. The modified award passed by the learned arbitrator allowing the application under Section 33 of the 1996 Act cannot be sustained and the same deserves to be quashed and set aside.

14. In view of the above and for the reasons stated above, the present appeal is allowed. The impugned judgment and orders passed by the High Court in an appeal under Section 37 of the 1996 Act and the City Civil Court in arbitration suit under Section 34 of the 1996 Act and the order passed by the learned arbitrator dated 14-1-2011 modifying the original award dated 4-12-2010 are hereby quashed and set aside. Consequently, the

original award passed by the learned arbitrator dated 4-12-2010 stands restored. However, in the facts and circumstances of the case, there shall be no order as to costs.”

36. In the present case, the Original Award was clearly contrary to the record. The same, therefore, cannot be sustained and has to be equally set aside.

37. Accordingly, the Original Award dated 25.08.2017 as also the Impugned Amended Arbitral Award dated 10.11.2017 are set aside. The parties are left to take their own remedies in accordance with law.

38. The petitions are disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

APRIL 26, 2023/rv



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