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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.187 OF 2023
WITH
INTERIM APPLICATION (L) NO.34364 OF 2022

Hindustan Petroleum Corporation Ltd. ...Petitioner

Versus

Arcon Powerinfra India Pvt. Ltd. ...Respondent

Javeed Hussein with Mubashir Hussein, Munibah Iram and Munzir
Hussein i/b. Hussein and Co. for the Petitioner.

Kalpesh Joshi with Nisha Shah i/b Kalpesh Joshi Associates for the
Respondent.

CORAM : R.I. CHAGLA J.
DATE : 1ST MARCH, 2024.

ORDER :

1. By this Arbitration Petition, the Petitioner is seeking
setting aside of Award dated 26th July, 2022 by which the learned
Arbitrator had awarded a sum of Rs.25,73,262/- along with interest
@12% p.a. from 26th August, 2017 until payment and / or
realization to the Respondent / Original Claimant and to be paid by
the Petitioner / Original Respondent.

2. It would be necessary to advert to the material facts

which are relevant for the purposes of the present Arbitration Petition which is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (“the Arbitration Act”).

3. The Petitioner is a government company carrying on business of refining and marketing of oil products throughout the country. The Petitioner by its E-Tender Enquiry No.16000236-HD-10002 dated 17th March, 2017 invited Bids for Civil Work of Tankage and Site Grading to be carried out at Leh in the State of Jammu and Kashmir. The total Tender Value (inclusive of taxes) was Rs.6,30,93,200/-. The said tender contract was inter alia to be governed by the General Terms and Conditions of Works Contract.

4. The Respondent was the successful bidder and hence awarded contract dated 27th April 2017.

5. Under the General Terms of the Contract, the successful bidder had to accept the “Integrity Pact” along with solemnly affirmed declaration as to the contents of the bid placed by the Contractor under the said Integrity Pact. The contractor signing the pact would clearly state that in the event any information given by

the Contractor is found to be false, the agreement awarded is liable to be terminated even after the Tender is awarded for breach of subject conditions. Clause 4(i) and 4(ii) of the Contract are relevant in this context. Further, the agreed Terms, provided for a Declaration for not being delisted:- “Please confirm that you have not been banned or delisted by any Government or Quasi Government Agencies or PSUs. If you have been banned, then this fact must be clearly mentioned here.” The Respondent had submitted the Solemn Declaration dated 6th March, 2017 wherein it declared that:- “This is to declare that as on due date of the above subject i.e. Civil Works for Tankage and Side Grading at Leh, J and K, that we have not been banned / put on holiday or delisted by any government or quasi government agency or PSUs”.

6. Subsequent to the grant of contract, it is the Petitioners case that the bid and solemn declaration submitted with the Tender bid by the Respondent for the subject tender was based on false, fabricated and incorrect information. The Respondent has intentionally suppressed material fact and failed to disclose that the Respondent Company is in the holiday list / banned by National Hydro Power Company Ltd. (NHPC) which is a Government of India

Enterprise. This was learnt about by the Petitioner around 3rd week of May, 2017. The Claimant had been banned by the NHPC by a communication letter dated 6th June, 2016 for a period of three years. Further, the information was available on the website of NHPC Ltd.

7. The Petitioner had in view of having learnt the aforementioned issued a termination letter dated 20th July, 2017 contending that the Respondent / Original Claimant had materially breached the terms and conditions of the tender under which the Purchase Order was issued.

8. The Petitioner has contended that prior to issuance of termination notice due procedure was followed by issuance of show cause notice dated 31st May, 2017 bringing to the notice of the Respondent / Original Claimant the clauses of the tender specifically pertaining to declaration that Respondent / Original Claimant was not under ban or delisted by any Government of quasi-Government agency or PSUs which had been breached. The reference was made to Clause 4.2 of the Integrity Pact wherein Respondent / Original Claimant had undertaken that in the event incorrect statements are

found in the bidding process, the Petitioner would be entitled to terminate the agreement after the award of tender is executed.

9. The Respondent / Original claimant had by its Reply dated 21st June, 2017 responded to the termination letter. It is necessary to note that it is the Petitioner's contention that despite the Petitioner giving full opportunity to the Respondent / Original Claimant to defend itself by offering personal hearing on multiple occasions, the Respondent / Original claimants failed to remain present for the personal hearing and that is a reason why the Petitioner had terminated the said Purchase Order.

10. The Respondent had attempted to challenge the termination letter dated 20th July, 2017 before this Court by way of Writ Petition (L) No.2033 of 2017. However, the Writ Petition was dismissed on 7th August, 2017.

11. The Petitioner upon termination of the contract appointed one contractor being M/s. Hariom Builders on 27th July, 2017. It is contended by the Petitioner that the said M/s. Hariom Builders had commenced work on 31st July, 2017 and completed

95% of the work before passing of the Award.

12. The Respondent / Original Claimant claimed that it had partly carried out the work and for which RA-1 bill was issued to the Petitioner. The Petitioner has contended that there was a dispute in so far as the claim of RA-1 bill, as according to the Petitioner the same had been issued unilaterally without evidence of work done or quantum of work done.

13. According to the Petitioner, the RA-1 Contract – Bill had been received by the Petitioner through email dated 2nd November, 2017. Further, the Respondent / Original claimant was called to site for joint measurement and as Claimant failed to appear for the same the Petitioner has finally communicated vide email dated 2nd August, 2021⁸ that RA-1 bill submitted is incorrect and called for the joint measurement again.

14. The learned Arbitrator has in the impugned Award dated 26th July, 2022 found in favour of the Respondent / Original claimant in so far as payment of the RA-1 bill is concerned by arriving at the finding that the RA-1 bill was sent by the

Respondent / Original Claimant to the Petitioner along with measurements on 27th June, 2017 and the Petitioner had not contested the bill until at least 26th August, 2017 when the arbitration clause was invoked. That, there did not appear to be a dispute raised in respect of the RA-1 bill, when the Respondent / Original Claimant followed up for payment thereunder at least till November, 2017 (i.e. after the invocation of arbitration) with no substantive response from the Petitioner.

15. The learned Arbitrator by the impugned Award has held that the termination of the contract by the Petitioner was legal. However, the counter claim by the Petitioner / Original Respondent has been rejected on the ground that the learned Arbitrator was not satisfied with the evidence led by the Petitioner / Original Respondent in respect of the counter claim. This has been held in paragraph 67 of the impugned Award. Thus, the impugned Award has disposed of the claim and counter claim by directing the Petitioner / Original Respondent to pay to the Respondent / Original Claimant the sum of Rs.25,73,262/- along with interest @ 12% p.a. from 26th August, 2017 until payment or realization.

16. The learned Counsel for the Petitioner has submitted that RA-1 bill was raised by the Respondent / Original despite its having committed a breach of the contract. Further, RA-1 bill was not in conformity with Clause 7 of the General Terms and Conditions of the Works Contract / Contract which provided for approval for payment of Contractor bills. Further, under Clause 12.5 of the General Terms and Conditions, if the Respondent / Original Claimant who was the contractor failed to depute its representative for joint measurement, the Petitioner owner shall take measurement with its Engineer-in-charge/Site – in-Charge or any other outside representative. It is the contention of the Petitioner that such joint measurement was never done as the Respondent / Original Claimant was not available at site for carrying out the same.

17. The learned Counsel for the Petitioner states that the Respondent / Original Claimant failed to lead any evidence to show work done by it till termination of the contract or even during the arbitration.

18. The learned Counsel for the Petitioner has accordingly submitted that the impugned Award is opposed to public policy as

the reasons given in the impugned Award for granting relief of payment of first RA-1 bill is untenable being contrary to law, particularly after holding that the termination of contract as valid.

19. The learned Counsel for the Petitioner has submitted the learned Arbitrator has rejected the grant of relief in the counter claim of the Petitioner / Original Respondent on account of a lack of satisfactory evidence whereas granting the amount claimed by the Respondent / Original Claimant based on an invoice unilaterally signed and submitted by the Respondent / Original Claimant without any proof of execution of work.

20. The learned Counsel for the Petitioner has relied upon the ratio laid down under the maxim “Nullus Commodum CaperePotest De Injuria Sua Propria”. He has submitted that it is a Maxim which is based on equitable principles and fully recognized by the Court of law. He has submitted that in the impugned Award the learned Arbitrator has grossly erred and granted the Respondent / Original Claimant a sum of Rs.25,73,262/- along with interest 12% p.a. from 26th August, 2017 until payment or realization. This is inspite of the learned Arbitrator holding that there had been valid

termination of the contract for breach committed by the Respondent / Original Claimant. Thus, no relief could have been granted to the Respondent / Original Claimant. However, the learned Arbitrator has made an attempt to enrich the wrongdoer.

21. The learned Counsel for the Petitioner has then submitted that under Section 2(I) of the Contract Act voidable contract has been defined. The key feature is that, the party who believes it is not obligated by contract, the unbound party has the option to reject or accept it. If the contract is accepted by the unbound party, the contract becomes legally binding on both the parties. Whereas, if the contract is rejected by the unbound party the party will claim that the contract is unenforceable against the other party.

22. The learned Counsel for the Petitioner has referred to the decision of the Madhya Pradesh High Court at Jabalpur in *Linkwell Telesystems Pvt. Ltd. Co. Vs. The State of Madhya Pradesh and Ors.*¹. He has submitted that in that case, the Court has dealt with the similar situation of misrepresentation or suppression of facts at the

¹ Writ Petition No.10989 of 2022 decided on 15th September, 2022.

time of bid. There was a similar declaration made in that case that the bidder should not have been terminated by the Central Government / any State Government / any Government organization or Department in India for breaching the terms of the contract / non-compliance of terms of agreement at the time of bid submission. If this was found to be false, the application fees and any performance guarantees would be forfeited. There was a breach of this declaration and accordingly the Division Bench of the Madhya Pradesh High Court at Jabalpur held that a fraudulent practice means misrepresentation of facts in order to influence award of a contract etc. The Respondents were held to be justified in terminating the contract.

23. The learned Counsel for the Petitioner has also relied upon the decision of the Supreme Court of Appeal of South Africa in *Namasthethu Electrical (Pty) Ltd. Vs. City of Cape Town and James Robert Garner No²*. In that case, the Court held that the declaration pursuant to tender was vitiated by fraud and in view of the contract validly being terminated the Arbitration Clause in the contract does not survive. Further, the Supreme Court of Appeal of South Africa

² Case No.201 of 2019 dated 13th May, 2020.

had held that even referring of the dispute to the 2nd Respondent for adjudication was invalid and unlawful as the tenderer was guilty of fraud and corruption and hence, the Court set aside the reference.

24. The learned Counsel for the Petitioner has submitted that based on the cited decisions, the termination having been held to be valid, the claim of the Respondent / Original Claimant could not have been awarded.

25. The learned Counsel for the Petitioner has submitted that the interest awarded by the learned Arbitrator being 12% p.a. from 2017 is the exact amount claimed by the Respondent / Original Claimant. The learned Arbitrator has ignored the fact that no proceeding took place during the pandemic period and there was moratorium declared by the Government. However, the learned Arbitrator has failed to exempt the pandemic period.

26. The learned Counsel for the Petitioner has further submitted that the entire tender document is silent on the part of interest and in such eventuality, the learned Arbitrator is empowered to grant a reasonable interest. In normal course reasonableness is

measured through the Repo Rate fixed by the RBI. The learned Arbitral Tribunal ignored this fact and without application of mind awarded interest @ 12% p.a. on RA-1 bill.

27. The learned Counsel for the Petitioner has further submitted that under Section 65 of the Indian Contract Act, 1872, the obligation of a person who has received advantage under void agreement or contract that becomes void, is to restore or to make compensation for it to the person from whom he received it.

28. The learned Counsel for the Petitioner has submitted that the learned Arbitrator has erred in rejecting the counter claim of the Petitioner. The learned Arbitrator failed to appreciate that the Petitioner suffered a loss and same is evident from the fact that for the work proposed to be executed through the Purchase Order due to breach of the terms of tender by the Claimant, a fresh tender was floated and placed on M/s. Hariom Builders, for execution of required work for an amount of Rs.7,64,13,260/- as against the total order valued at Rs.6,30,93,200/- on the same scope of job. Therefore, it is evident that, the Petitioner had to incur an additional cost of Rs.1,33,20,060/- towards execution job as well as risk and

costs and hence total amount of the counter claim stood at Rs.1,46,52,066/-. The Petitioner had incurred additional cost of Rs.1,23,853/- towards shifting, levelling, watering, rolling and compacting of 2026.069 cum. of soil excavated by the Respondent / Original Claimant.

29. The learned Counsel for the Petitioner has made submissions on bias and gross misconduct of the learned Arbitrator. He has submitted that despite the learned Arbitrator sitting as Arbitrator chose to appear against the Petitioner as an Advocate in another matter.

30. The learned Counsel for the Petitioner has referred to Section 12(2) of the Arbitration Act and submitted that the learned Arbitrator appearing where one of the parties to the Arbitration Proceedings is concerned, without disclosing the said fact would be in violation of this provision. He has submitted that the learned Arbitrator had rendered himself ineligible by reason of his action, and non-disclosure thereof. This would be contrary to Section 12 and 7th schedule thereof. He has accordingly submitted that the impugned Award be quashed and set aside in the interest of justice

and equity.

31. The learned Counsel for the Respondent has submitted that there are no valid grounds made out by the Petitioner for setting aside of the impugned Award under Section 34 of the Arbitration Act. The Petitioner has sought reappreciation of evidence led by the parties before the learned Arbitrator. The Petitioner has failed to make any case of perversity or holding against settled principles of law or the public policy in the impugned Award.

32. The learned Counsel for the Respondent has submitted that the main ground of challenge in the Arbitration Petition is the alleged fraudulent misrepresentation by the Respondent / Original Claimant and submitting alleged false declaration that the Respondent / Original Claimant had no previous transgression in the previous three years with any public sector undertaking and thereby violating Clause 4 of the Agreement under Integrity Pact. He has submitted that the learned Arbitrator has held in paragraph 55 of the Award that the only reason why according to the learned Arbitrator, the Respondent / Original claimant had knowledge of the blacklisting and that consequently breached the terms of the Integrity Pact is that

the blacklisting order was available on the NHPC website and thus the Respondent / Original claimant could not claim that they had no knowledge of the blacklisting order when they had bid for the tender issued by the Petitioner.

33. The learned Counsel for the Respondent has submitted that the learned Arbitrator has based on the evidence nowhere held that the Respondent / Original claimant had played a fraud upon Petitioner.

34. The learned Counsel for the Respondent has then dealt with the contention of the Petitioner that the termination of contract having been held to be valid, the learned Arbitrator erred in granting an amount of Rs.25,73,262/- along with interest @ 12% to the Respondent / Original Claimant. He has submitted that under Clause 7.1 and 7.2 of the General Terms and Conditions of the said Works Contract, payment will be made against Running Account Bills certified by the owner's Engineer-in-Charge/ Site-in-Charge within 15 days from the date of receipt of the bill. Running Account Bills and the final bill shall be submitted by the Contractor together with the duly signed measurements sheet to the Engineer in charge / Site in

Charge of the owner in quadruplicate for certification. Further, under Clause 12.3 of the General Terms and Conditions of the Works Contract entitles the Respondent / Original claimant to receive the amount payable for the work done in the event of the termination of contract.

35. The learned Counsel for the Respondent has submitted that under Section 64 of the Indian Contract Act, 1872, when a party at whose option a contract is voidable rescinds it, the other party thereto needs to perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, shall restore such benefit, so far as may be, to the person from whom it was received. Further, under Section 65 of the Indian Contract Act, 1872, it provides that, when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound or restore it, or to make compensation for it, to the person from whom he received it.

36. The learned Counsel for the Respondent has submitted that the Petitioner has never raised any dispute with respect to the

work carried out by the Respondent / Original claimant as one of the grounds for defence before the learned Arbitrator. Also, the Petitioner has given contract to one M/s. Hariom only for the balance work remained to be completed by the Respondent. Hence, the Petitioner has got benefited with the work done by the Respondent.

37. The learned Counsel for the Respondent has submitted that the learned Arbitrator has rightly recorded in paragraph 64 of the Award that, the RA-1 Bill was sent to the Petitioner / Original Respondent along with measurements on 27th June, 2017 and was not contested until at least 26th August, 2017 when the arbitration clause was invoked. There was no dispute raised with respect to the RA -1 Bill with the Claimant following up for payment thereunder until at least November, 2017. Accordingly, the learned Arbitrator has held that the amount under the first RA Bill is payable.

38. The learned Counsel for the Respondent has submitted that termination of the contract was done by the Petitioner on several grounds including delay in execution of the contract. This is apparent from the termination notice issued by the Petitioner. Therefore, termination was done in accordance with the terms of the contract

and the learned Arbitrator has allowed the RA – 1 Bill in accordance with the terms of the contract and in particular Clause 12 which provides for the work which has already been carried out is required to be compensated by the Petitioner.

39. The learned Counsel for the Respondent has further submitted that there is no merit in the contention of the Petitioner that there was gross misconduct and bias shown by the learned Arbitrator. The learned Arbitrator had appeared against the Petitioner in unconnected proceedings to the present Arbitration which cannot be considered as a valid ground in support of the allegations made against the learned Arbitrator. He has placed reliance upon the decision of the Supreme Court in the case of *HRD Corporation (Marcus Oil and Chemical Division) Vs. Gail (India) Ltd.*³. The learned Counsel for the Respondent has submitted that the Petitioner has failed to make out any grounds for challenge as provided in Section 12 of the Arbitration Act read with 7th schedule.

40. The learned Counsel for the Respondent has dealt with the contention of the Petitioner that the learned Arbitrator has not

³ (2018) 12 Supreme Court Cases 471.

given any finding on the counter claim filed by the Petitioner in the operative part of the Award. He has submitted that this is contrary to paragraph Nos.66 to 69 of the Award which is in context of the counter claim filed by the Petitioner. Further, there are reasons given in paragraph 70 of the impugned Award that the evidence produced in respect of the counter claim is wholly unsatisfactory for the learned Arbitrator to grant the counter claim sought by the Respondent.

41. The learned Counsel for the Respondent has accordingly submitted that impugned Award requires no interference and the captioned Petition filed by the Petitioner be dismissed with costs.

42. Having considered the rival submissions, I find that the learned Arbitrator has awarded the Respondent / Original Claimant the sum of Rs.25,73,262/- along with interest @12% p.a. from 26th August, 2017 until payment and / or realization which the Petitioner has been directed to pay upon an appreciation of the evidence on record. The learned Arbitrator has found that the RA-1 Bill had not been contested by the Petitioner, when it was sent and was only contested and / or dispute raised when the Respondent / Original

Claimant had followed up for payment until at least November, 2017. Thus, the RA-1 Bill was not contested prior to invocation of the arbitration clause. The learned Arbitrator has further gone into the relevant clauses of the contract and in particular Clause 7.A.2, whereunder joint measurement is to be taken for Running Accounts Bills (the RA-1 Bill). From the evidence on record the Petitioner / Original Respondent was found to have failed to have checked and counter-signed the RA-1 Bill, which had been sent by the Respondent / Original Claimant. The Petitioner / Original Respondent also failed to call upon the Respondent / Original Claimant to do the joint measurement. Thus, there was no question of the Respondent / Original Claimant failing to remain present for joint measurement as alleged.

43. It is well settled that the Court under Section 34 of the Arbitration Act cannot re-appreciate evidence as sought by the Petitioner in the present Arbitration Petition. Thus, upon an analysis of the relevant clauses of the contract and the evidence on record, (Cross Examination of (CW1), the learned Arbitrator's findings with respect to the RA-1 Bill is not required to be interfered with in any manner. Further, it is relevant to note that under the termination

clause being Clause 12 of the General Terms and Conditions of the Works Contract, the work which had already been carried out is required to be jointly measured under Clause 12.5 thereof and such measurement is not to be questioned by the Contractor in the event of such joint measurement being carried out. Thus, such joint measurement of work was contemplated even upon termination of the contract. In the present case, the Contract having been held to be validly terminated, the Petitioner / Original Respondent did not call upon the Respondent / Original Claimant to carry out such joint measurement. Thus, there has been a non conformity with Clause 12.5 of the General Terms and Conditions of the Works Contract. The measurement of the work by the Claimant in respect of the RA-1 Bill not having been disputed by the Petitioner / Original Respondent, there can be no fault with the finding of the learned Arbitrator that the RA-1 Bill was payable.

44. With regard to the non consideration of the counter claim which is a ground of challenge raised by the Petitioner, it is clear from paragraph 67 of the impugned Award that the learned Arbitrator upon the appreciation of evidence has not been satisfied with the evidence led by the Petitioner / Original Respondent to

support its counter claim. The learned Arbitrator has held that there were no liquidated damages quantified in the contract which had been brought to the attention of the learned Arbitrator. The only clause on which reliance was placed is Clause 12.4 of the General Terms and Conditions of Works Contracts which contemplated that balance work being done by another contractor would be at the Respondent/ Original Claimant's risk and costs. The Petitioner / Original Respondent was obliged to show what extra costs it had incurred in order to foist liability on the Respondent / Original Claimant which the Petitioner / Original Respondent had failed to establish.

45. The Petitioner is again seeking a re-appreciation of the evidence by the Court under Section 34 of the Arbitration Act which has been held to be impermissible by the Supreme Court in *Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India*⁴ and *Associate Builders Vs. Delhi Development Authority*⁵.

46. I further find that the learned Arbitrator has not held

⁴ (2019) 15 SCC 131.

⁵ 2015 (3) SCC 49

there to be any fraudulent misrepresentation by the Respondent / Original Claimant in its submitting the declaration that the Respondent / Original Claimant had no previous transgression in the prior three years with any public sector undertaking. Although such declaration has been held by the learned Arbitrator to be in violation of Clause 4 of the agreement under the Integrity Pact, it can be seen from the paragraph 55 of the impugned Award that, the only reason for the learned Arbitrator to so hold is that the Claimant had knowledge of the blacklisting as the blacklisting order was available on the NHPC Website. There is no finding based upon appreciation of the evidence that the Respondent / Original Claimant had played any fraud upon the Petitioner which cannot be re-appreciated.

47. Further, I find no merit in the contention of the Petitioner that there has been any misconduct and / or bias of the learned Arbitrator. The allegation of the Petitioner with regard to bias is on the ground that the learned Arbitrator despite being seized of the present Arbitration had appeared against the Petitioner in an unconnected case. Reliance has been placed by the learned Counsel for the Petitioner on Section 12(2) of the Arbitration Act.

48. Upon a perusal of Section 12(2) of the Arbitration Act, in my view such contention is without any merit and upon a misreading of Section 12(2) which refers to the disclosure by the Arbitrator of the circumstances referred to in Section 12(1). Under Section 12(1), the disclosure to be made is with regard to direct or indirect, of any past or present relationship with or interest in any of the parties on in relation with subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independent or impartiality and which are likely to affect his ability to devote sufficient time to the Arbitration and in particular to his ability to complete the entire arbitration within a period of 12 months. Thus, from a reading of Section 12(1) of the Arbitration Act, this does not apply to an Arbitrator who has as a professional Counsel appeared in an unrelated matter against the Petitioner who was a party to the arbitration proceedings and in which matter the Respondent was not even a party. Thus there is no existence of any direct or indirect or of any past or present relationship with any of the parties in the arbitral proceedings and thus, no disclosure was required to be made by the learned Arbitrator in the facts of the present case. Further, there is also no violation of Section 12(5) of the Arbitration Act read with 7th Schedule of the

Arbitration Act.

49. The Supreme Court in *HRD Corporation (Marcus Oil and Chemical Division) (Supra)* has contrasted a business relationship from a professional relationship. The Supreme Court has held that under Schedule VII Item 1, the Arbitrator may be an ‘Advisor’ in so far as it concerns the business of a party and a business relationship, would not include legal advice given. The advise given under the VII Schedule could not be one of opinion given by a retired Judge or a professional basis at arm’s length. The Supreme Court has held that since the arbitrator has given the professional opinion to one of the parties to the arbitral proceedings and which had no concern with the present dispute at hand, he is clearly not disqualified.

50. Thus, it is clear from the law laid down by the Supreme Court that even professional advise given to a party to the arbitral proceeding does not render his disqualification. Far from such professional advise given to the party to an arbitral proceeding, in the present case the learned Arbitrator has had no relationship with either parties to the Arbitration Proceedings and in fact appeared against the Petition in unconnected proceedings where the

Respondent herein was not even a party. Hence, there is no ground made out for by the Petitioner with respect to this claim.

51. I, thus find no valid grounds made out by the Petitioner under Section 34 of the Arbitration Act for setting aside of the impugned Award passed by the learned Arbitrator.

52. In that view of the matter, the Arbitration Petition is dismissed and disposed of accordingly. There shall be no order as to costs.

53. The Interim Application does not survive and is accordingly disposed of.

[R.I. CHAGLA J.]