



O.P.No.94 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.02.2024

Pronounced on: 28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.P.No.94 of 2021

and

Application No.343 of 2021

M/s.Hundai Motor India Ltd.,
having its Registered Office cum Factory
at Plot No.H-1, SIPCOT Industrial Park,
Irungattukottai,
Sriperumbudur Taluk,
Kancheepuram District,
Tamil Nadu

.. Petitioner

Vs.

M/s.L.A.Motors Pvt.Ltd.,
Plot No.34, Manorama Chambers,
Opp.Indian Bank S.V.
Road, Bandra (West),
Mumbai 400 050.

.. Respondent

Prayer: Original Petition is filed under Section 34 2(a) & (b), 34(2A) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 12.02.2020 passed by the learned Arbitrator to the extent it has awarded against the petitioner in Issue No.1 and pass such further or other orders remitting the case back to the learned Arbitrator to consider all the facts, pleadings and documents before it to pass a new award and pass any further orders.



O.P.No.94 of 2021

For Petitioner : Mr.R.Murari
Senior Counsel
for M/s.Surana & Surana

For Respondent : Mr.Aravindh Pandian
Senior Counsel
M/s.S.Arjun Suresh

ORDER

The petitioner is aggrieved by the impugned award dated 12.02.2020 passed by the Arbitral Tribunal in so far as the Arbitral Tribunal has awarded a sum of Rs.91,57,500/- to the respondent-claimant towards the unpaid Exchange/Corporate/Loyalty Scheme claim and Rs.2,50,000/- towards refund of Sincerity Deposit paid to the petitioner at the time of entering in to Dealership Agreement, after the dealership arrangement between the petitioner and the respondent stood terminated on 26.04.2014.

2. Operative portion of the Impugned Award reads as under:-

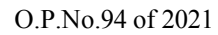
- 1) The Claimant is entitled to Rs, 91,57,500/- (Ninety one lakhs and fifty seven thousand and five hundred only) towards ECL claim with interest at 12% p.a. from 1st December 2013.
- 2) The Claimant is entitled to Rs.2,50,000/-(Two lakhs and fifty thousand only) being sincerity deposit paid to the respondent at the time of entering in to Dealership Agreement with interest at 9.% from the date of deposit, less any interest if already paid.



- 3) The Respondent is entitled to Rs.11,05,4 14/- with interest at 12% being the amount paid by the Respondent to the Sales Tax Authority for non-submission of 'C' Form due to the failure of the Claimant to surrender it to the Respondent in time. The Respondent is entitled to interest at 12 % p.a from 1st December 2013.
- 4) The Respondent is entitled to Rs.13,26,395/- with interest at 12.% p.a. being the amount payable by the claimant towards IDFSC claim with interest at 12% p.a from 1st December 2013.
- 5) No order as to costs.

3. The respondent was the claimant before the Arbitral Tribunal. The petitioner was the respondent before the Arbitral Tribunal. Before the Arbitral Tribunal, the respondent-claimant had made a claim for a sum of Rs. 94,07,500/- (Rupees Ninety Four Lakhs seven Thousand Five hundred only) towards unpaid ECL Scheme and Rs.50,00,000/- towards damages.

4. The petitioner herein had appointed the respondent as a dealer for selling the cars, manufactured by it. The appointment of the respondent as an Authorized dealer of the petitioner was on a non-exclusive basis for sale and service of Hyundai cars in the territory of Mumbai, Navi Mumbai, Thane and Raigad regions through their showroom at Bandra, Mumbai.etc.



- (a) that the Hon'ble Arbitrator may be pleased to order and decree to the Respondent to pay a sum of Rs.94,07,500/- (Rupees Ninety Four Lakhs Seven Thousand and Five Hundred Only) to the Claimant due as on 30th November, 2013 together with simple interest thereon at the rate of 18% p.a. from 1 December, 2013 till date of payment and/or realization as per Particulars of Claim annexed and marked as Exhibit "D-2" hereto.
- (b) that this Hon'ble Tribunal may be pleased to order and decree the Respondents to jointly and/or severally to pay a sum of Rs. 50,00,000/- (Rupees Fifty Lakhs only) to the Claimants by way of damages together with further interest thereon at the rate of 18% per annum from the date hereof till payment and/or realization as per the Particulars of Claim, annexed hereto and marked as Exhibit 'S';
- (c) Pending the hearing and final disposal of the



present Arbitration proceedings and enforcement of award which is likely to be passed against the Respondent, orders of injunction be passed against the Respondent Company, their directors, officers, agents, servants etc. restraining them from in any manner alienating, encumbering, parting with possession, moving, disposing off and/or creating third party rights in and over all or any of the Respondent Company's assets.

- (d) Costs of present proceedings be provided for and
- (e) For such further and other reliefs as this Hon'ble Court may deem fit and proper.

7. Thereafter, the petitioner filed a statement of defense which was followed by a rejoinder to the statement of defence of the petitioner. The above claim of the respondent were contested by the petitioner before the Arbitral Tribunal primarily on the ground that the claim of the respondent were time barred and in violation of the procedure applicable to all the dealers who had signed similar dealership agreement with the petitioner.

8. In the statement of defense, the petitioner had stated that the respondent had failed to furnish C-Form for the sale effected to them and therefore the petitioner was forced to bear the incidence of tax and therefore called upon the respondent to pay a sum of Rs.11,05,893/- together with interest at 12%. The petitioner thus made a counter claim for Rs.11,05,893/-



and set-off for a sum of Rs.22,98,341 towards Inter Dealer Free Service Coupon and towards Advertising expenses and towards GDMS account.

9. Specifically, it was submitted that the respondent as a dealer was bound to keep copies of all documents sent to the petitioner to claim reimbursement. It was stated that the petitioner may at any time ask dealers to re-submit the documents or the documents may be required at the time of a future audit at that dealership which was not complied by the respondent-claimant. Similarly, it was submitted that claims were not registered at the time of invoicing in GDMS and such claim would be void.

10. The Arbitral Tribunal framed the following issues:-

- (1) Whether the Claimant is entitled to Rs. 94,07,500/- (Rupees Ninety Four Lakhs seven Thousand Five hundred only) or any part thereof as Award and also damage of Rs.50,00,000/- (Rupees Fifty lakhs only) or any part thereof.?
- (2) Whether the claim /counter claim is barred by limitation?
- (3) Whether the Respondent is entitled to set off the amount towards IDFSC, GDMS and/or advertisement charges?
- (4) Whether the Claimant is justified in withholding 'C' Forms for the relevant financial year?
- (5) Whether the Respondent is entitled to counter claim of **Rs. 11,05,414/-** or any part thereof ?



O.P.No.94 of 2021

- (6) Whether the Parties are entitled to interest on the Claim or Counter Claim, if so at what rate and for which period?
- (7) Whether the Parties are entitled to any relief or other reliefs?

11. The Arbitral Tribunal also framed an additional issue on

13.12.2019:-

- (1) Whether the claimant has the right of lien over the 'C' Form and justified in retaining it?

12. The learned Senior Counsel for the petitioner dealer would submit that the dealership agreement and procedure for ECL Claim guidelines required the respondent to maintain the same and produce it whenever sought for by the petitioner. It is submitted that these documents were crucial for settling the claims of the respondent claimant.

13. The learned Senior Counsel for the Petitioner submits that the ECL claims can be categorized into three categories: 1) Lapsed Claims; 2) Rejected Claims ; 3) and Claims for which documents were not received by the petitioner.



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14. It is submitted that a break-up of the claims was provided in the written arguments before the Arbitral Tribunal. However, the Learned Arbitrator has allowed the Claim relating to ECL by without providing any reasons or findings by drawing an adverse inference against the Petitioner.

15. The learned Senior Counsel for the petitioner would further submit that the learned Arbitrator has not considered the contentions raised by the Petitioner, that the respondent was duty bound to produce the documents as and when the petitioner sought for it. In fact, the petitioner has contested that most of the claims had either lapsed or documents were not refurnished by the claimant-respondent.

16. The learned Senior Counsel for the petitioner further submitted that respondent was bound to produce the documents before the Arbitral Tribunal including ECLS scheme benefits which were passed on to the end customers. In absence of same, the respondent was not entitled to claim any amount under this head.

17. The learned Senior Counsel of the petitioner further submits that the Arbitral Tribunal has not given any reasons for awarding a sum of



Rs.94,07,800/- to the Respondent- Claimant in impugned Award as well. It is further submitted that the Learned Arbitrator referred to the respondent's submission that the total amount payable comes to Rs.40,84,000/-after excluding not received and rejected cases.

18. It is submitted that the Arbitral Tribunal has awarded the claim amount of Rs. 91,57,500/- to the respondent-Claimant under the head of ECL. According to the learned Senior Counsel of the petitioner this shows that the Arbitral Tribunal has mechanically passed the award without any application of mind. Hence, it is submitted that the impugned Arbitral Award has to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996.

19. It is further submitted by the learned Senior Counsel for the petitioner that the claim of the respondent towards ECL was fluctuating from **Rs.86,37,743/-** to Rs.91,57,500/- However, Arbitral Tribunal has awarded a sum of Rs.94,07,500/-. It is therefore submitted that the impugned Award does not satisfy the definition of an Award under the Act.

20. In short, it is the submission of the learned Senior Counsel for the petitioner that the impugned Award passed by the Arbitral Tribunal is not a



speaking and contrary to law. That apart, it is submitted that there is no reasoning in the Awarding a sum of Rs.91,57,500/- to the respondent.

21.The learned Senior Senior Counsel for the petitioner has drawn attention to the following decisions of the Courts:-

- i) **Eptisa Servicios De Ingenieria SL V.Ajmer Smart City Limited**, S.B.Civil Writ Petition No.13488/2019 dated 23.05.2022
- ii) **PSA Sical Terminals Pvt.Ltd. vs. The Board of Trustees of V.O. Chidambranar Port Trust, Tuticorin and Ors.** , AIR 2021 SC 4661
- iii)**Patel Engineering Ltd., vs. North Eastern Electric Power Corporation Ltd.**, AIR 2020 SC 2488
- iv) **South East Asia Marine Engineering and Construction Ltd., vs. Oils India Limited**, AIR 2020 SC 2323
- v)**Dyna Technologies Pvt.Ltd. vs. Crompton Greaves Ltd.**, 2020(4) LW 718
- vi)**Sangyong Engineering & Construction Co., Ltd., vs. National Highways Authority of India (NHAI)**, AIR 2019 SC 5041
- vii)**Patel Engineering Co., Ltd., vs. B.T.Patil & Sons Belgaum (Construction) Pvt.Ltd. and Ors.**, Arb.P.Nos.891 & 893 of 2010 dated 08.01.2016



22. Hence, learned Senior Senior Counsel for the petitioner prayed for setting aside the impugned Award.

23. Specifically, a reference was made to decision of the Hon'ble Supreme Court in **Dyna Technologies Pvt.Ltd., vs. Crompton Greaves Ltd.**, 2019 SCC OnLine SC 1656 which reads as under : -

4. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.
35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot



be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

24. It is submitted that the impugned award, does not give any proper reason as how the claim of the respondent was allowed. It is further submitted that the impugned Award is intelligible and therefore the award is liable to be set aside.

25. The learned Senior Counsel for the petitioner has also placed reliance on the decision of the Hon'ble Supreme Court in **McDermott International Inc. vs. Burn Standard Co.Ltd.and Ors.,** (2006) 11 SCC 181.

26. The learned Senior Counsel for the respondent on the other hand would submit that the scope of interference under Section 34 of the



Arbitration and Conciliation Act, 1996 is limited. It is submitted that the impugned Award is well reasoned and therefore does not call for any interference. It is submitted that the fact that the counter-claim of the petitioner was awarded in part indicates that there was an application of mind by the arbitral Tribunal.

27. It is thus submitted that the fact that the Tribunal has dismissed the claim of Rs.50,00,000/- for mental agony also shows that that there was an application of mind. It is submitted that merely because a part of the counter claim of the petitioner has been rejected would not mean the impugned award suffers from any of the vices which would attract Section 34 of the Arbitration and Conciliation Act, 1996.

28. The learned Senior Counsel for the respondent has placed reliance on the following decisions :-

- i. **Rajasthan State Mines & Minerals Ltd., vs. Eastern Engineering Enterprises and Another**, (1999) 9 SCC 283;
- ii. **Government of Kerala vs. Som Datt Builders Ltd.**, 2002 SCC Online Ker 134;
- iii. **Delhi Development Authority vs. Harbans Singh & Sons**, 2008(105) DRJ 60 (DB)



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29. The learned Senior Counsel for the respondent would submit that the Award is reasonable and submits that the learned Arbitrator has considered each of the issues and has passed a reasoned Award.

30. It is submitted that the Court is not required to probe into the mental process by which the Arbitrator has reached his conclusion where it is not disclosed by the terms of the award.

31. The Judgment in **Government of Kerala vs. Som Datt Builders Ltd.**, 2002 SCC Online Ker 134, was referred to wherein it was held that once the Arbitral Tribunal has examined the facts and given its reasons, recourse to the Court under Section 34 to examine the reasonableness of the reasons given by the Arbitrator in making his award is not permissible as the Arbitral Tribunal is the sole Judge of the quality and quantity of the evidence before it.

32. A reference was made to **Delhi Development Authority vs. Harbans Singh & Sons**, 2008(105) DRJ 60 (DB), wherein the Hon'ble Supreme Court has held that the Arbitral Tribunal is expected to indicate the thought process behind the Award and is not required to give details for



computation and mental meanderings. It is sufficient if his thought process is indicated and basis for awarding amount. In view of the above, it is submitted that it is a well settled law that the Court under Section 34 of the Arbitration and Conciliation Act is not expected to re-appreciate the evidence and is certainly not to interfere on finding of the facts arrived by the Arbitral Tribunal.

33. The learned Senior Counsel for the respondent further would submit that a) re-appreciation of evidence, which is what an Appellate Court is permitted to do, cannot be permitted under the ground of patent illegality apparent on the face of the award. b) that when a party invokes Section 34(2)(b)(ii) pertaining to fundamental policy of Indian law, Explanation 2 specifically prohibits review on the merits of the dispute while testing an award on the ground of contravention of fundamental policy of Indian law. Therefore, consideration of findings on merits is to be eschewed. It is only when findings are rendered in the award without evidence that it may shock the conscience of the Court to exercise power to interfere with the Award. c) For raising Section 34(2)(a), there must be “patent illegality” appearing on the face of the award, which illegality goes to the root of the matter, but which does not amount to mere erroneous application of the law. In short, it was not subsumed that “ the fundamental policy of Indian law,' namely the



contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality. Hence, he prays for dismissal of this petition.

34. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Counsel for the respondent.

35. It is noticed that the respondent made a claim for a sum of Rs.94,07,500/- (Rs.91,57,500 + Rs.2,50,000/-) as detailed below and Rs.50,00,000/- towards damages. The Arbitral Tribunal has awarded only a sum of Rs.94,07,500/- as detailed below and rejected the claim for Rs.50,00,000/- towards damages:-

SL.No	Particulars	Award Amount
1	Claim towards unpaid ECS Scheme	Rs.91,57,500
2	Claim towards Sincerity Deposit	Rs.2,50,000/-
	Total	Rs.94,07,500/-

36. The claim for the aforesaid sum of **Rs.91,57,500/-** is for the following period :-

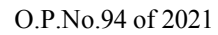


Claim Period	Particulars	Amount Claimed	Amount settled by petitioner	Balance
Jan 2010- Feb 2012	Claim in Ex.D1/P4 and D2/P5	Rs.1,30,47,000/-	Rs.58,64,000/-	Rs.71,83,000/-
Mar 2012-2013		Rs.1,04,28,000/-	Rs.84,53,000/-	Rs.19,74,500/-
Total amount				Rs.91,57,500/-

37. It was the case of the petitioner that instead of Rs.71,83,000/-, the actual amount of Refund should be Rs.67,19,000/- for claim period between Jan 2010- Feb 2012 as per Ex.B- Settlement Letter dated 29.05.2012 as received by the petitioner from the respondent, as admitted during the cross examination. It is submitted that the claim amount should have been only for a sum of Rs.86,94,000/- and not for Rs.91,57,500/ as detailed below :-

Claim Period	Particulars	Amount Claimed	Amount settled by petitioner	Balance
Jan 2010- Feb 2012	actual amount claimed and admitted in Ex.B and during cross examination	Rs.1,25,83,000/-	Rs.58,64,000/-	Rs.67,19,000/-
Mar 2012-2013	-	Rs.1,04,28,000/-	Rs.84,53,000/-	Rs.19,74,500/-
Total Amount				Rs.86,94,000/-

38. The submission of the learned Senior counsel for the petitioner that although the Arbitral Tribunal has discussed that the petitioner is entitled to receive only a sum of Rs.86,94,000/- as per Exhibit 'B' dated 29.05.2012



39. Ex.D.1 Summary Sheet, which has been filed by the petitioner with the typeset of document reads as under:-

40. It is noticed that the issue has been considered by the Tribunal in Nos.26 & 27 of the impugned Award dated 12.02.2020, which reads as under:-

“The Claimant in his claim Statement has stated that for the period from January, 2010 to February, 2012 a sum of Rs.1,25,83,000/- was due and a sum of Rs.58.64,000/- was paid by the respondent and so the total outstanding comes to Rs.67.98,000/- only and not Rs.71.83,000/-. When the claimant was confronted with the discrepancies he admitted that it was a typographical error and in fact the total outstanding was Rs.67,98,000/-only. Hence the total



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O.P.No.94 of 2021

claim under the head ECL comes to Rs.86.94,000/- besides Rs.2,50,000/- towards sincerity deposit. The respondent is engaged in manufacturing and marketing of Hyundai Cars and would come up with various discounts Schemes such as exchange/corporate/loyalty schemes (ECL Scheme) to boost the sale of his products. The Claimant was entitled to give discounts to end customers who fulfilled the conditions stipulated in the ECL Scheme. As per the agreement, the claimant had to get the reimbursement from the respondent for the discounts already given to the customers as per the terms and conditions of the ECL scheme.

The Claimant states that after a protracted negotiations in and around May, 2012 the Respondent and the Claimant mutually agreed to settle number of claim under ECL Scheme for an aggregated sum of Rs. 1,30,47,000/- for the period from January, 2010 to February, 2012 and in view of the settlement, the respondent agreed to clear all the claims in pursuance of the settlement and that the respondent paid Rs.58,64,000/- leaving a balance of Rs.71,83,000/-

For the period March, 2012 to August, 2013 towards an aggregated amount of Rs.1,04,28,000/- the Respondent paid Rs.84,53,000 leaving a balance of Rs.19,75,000/-. From April, 2013, the respondent introduced online system and the Claimant has submitted electronically through Centralized Data Management System known as GDMS. The documents as and when demanded by the respondent were submitted to the western region office of the respondent. Mrs. Ritika Sharma by Email dated 14th November, 2013 approved 50% of the claim for the period January, 2010 to February, 2012. By an Email dated 19th December, 2013, the respondent's representative through Email dated 19th December, 2013 acknowledged summary of all claims for the



O.P.No.94 of 2021

period April, 2013 till November, 2013”.

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41. Thus, it cannot be stated that the learned Arbitrator has ignored Exhibit-B Settlement Letter dated 29.05.2012 as received by respondent from the claimant.

42. As far as Issue No.1, claim for a sum of Rs.94,07,500/- besides Rs.50,00,000/- as compensation for the damages suffered by the respondent and a sum of Rs.2,50,000/- as sincerity (Security) deposit of Rs.2,50,000/- is concerned, the Award indicates that the petitioner accepted the request of the respondent for not continuing with the dealership with deep sense of regret after taking note of Ex.P.6 and Ex.P.7.

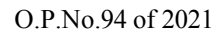
43. The Arbitral Tribunal has also taken note of the timeline between the decision of the respondent-claimant to exit from the dealership as early as 2013 and denial of claim by the respondent. The discussion from the impugned award indicates that as per the agreement, the claimant-respondent had to get the reimbursement from the petitioner for the discounts already given to the customers as per the terms and conditions of the ECL Scheme.



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44. After a protracted negotiations in and around May 2012, the petitioner and the respondent claimant mutually agreed to settle number of claim under ECL Scheme for an aggregated sum of Rs.1,30,47,000/- for the period from January 2010 to February, 2012. In view of the settlement, the petitioner agreed to clear all the claims in pursuance of the settlement. However the petitioner paid Rs.58,64,000/- leaving a balance of Rs.71,83,000/-.

45. A superficial regarding the Impugned Award may give impression that the Award is not a reasoned award . In fact, the manner in which, few passages from the Award were highlighted during the course of hearing before this Court by the learned Senior Counsel for the petitioner also gave an initial impression that the Impugned Award was both not intelligible and was without any proper reasons. However, a careful reading of the whole of the Impugned award, passages and sentences contained therein would indicate that the learned Arbitrator has applied his mind in coming to the conclusion that the respondent/claimant was indeed entitled to the Award amount.



46. The discussion in the impugned Award indicate that the learned

47. The answer to issue No.4 and additional issue No.1 clearly

48. Therefore, the Arbitral Tribunal has answered the issue in favour

49. Similarly, while answering to issue No.3, the learned Arbitrator



petitioner herein. Thus, it cannot be said that the Award suffers from non application of mind. The award is therefore reasonable and the issue No.3 was answered accordingly.

50. The fact that the counter claim for Rs.11,05,414/- has been answered in favour of the petitioner in issue No.5 also shows that the impugned award does not suffer from any of vices which would attract sting under Section 34 of the Arbitration and Conciliation Act, 1996.

51. That apart the scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 is limited. The Hon'ble Supreme Court in **Rajasthan State Mines & Minerals Ltd., vs. Eastern Engineering Enterprises and Another**, (1999) 9 SCC 283, has explained the scope of Section 34 of the Arbitration and Conciliation Act, 1996. Relevant portion of the said decision reads as under:-

44. From the resume of the aforesaid decisions, it can be stated that:

- (a) It is not open to the court to speculate, where no reasons are given by the arbitrator, as to what impelled the arbitrator to arrive at his conclusion.*
- (b) It is not open to the court to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the award.*



- (c) *If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the court cannot interfere.*
- (d) *If no specific question of law is referred, the decision of the arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where a specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties, then the finding of the arbitrator on the said question between the parties may be binding.*
- (e) *In a case of a non-speaking award, the jurisdiction of the court is limited. The award can be set aside if the arbitrator acts beyond his jurisdiction.*
- (f) *To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. The arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the award.*
- (g) *In order to determine whether the arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the award passed by the arbitrator in respect thereof would be in excess of jurisdiction.*
- (h) *The award made by the arbitrator disregarding the terms of the reference or the*



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O.P.No.94 of 2021

*arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the court. He cannot award an amount which is ruled out or prohibited by the terms of the agreement. Because of a specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of a wider arbitration clause such claim amount cannot be awarded as the agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement. This aspect is absolutely made clear in **Continental Construction Co. Ltd.**[(1988) 3 SCC 82 : (1988) 3 SCR 103] by relying upon the following passage from **Alopi Parshad v. Union of India** [AIR 1960 SC 588 : (1960) 2 SCR 793] which is to the following effect: (SCC p. 88, para 5)*

“There it was observed that a contract is not frustrated merely because the circumstances in which the contract was made, altered. The Contract Act does not enable a party to a contract to ignore the express covenants thereof, and to claim payment of consideration for performance of the contract at rates different from the stipulated rates, on some vague plea of equity. The parties to an executory contract are often faced, in the course of carrying it out, with a turn of events which they did not at all anticipate, a wholly abnormal rise or fall in prices, a sudden depreciation of currency, an unexpected obstacle to execution, or the like. There is no general liberty reserved to the courts to absolve a party from liability to perform his part of the contract merely because on account



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O.P.No.94 of 2021

of an un contemplated turn of events, the performance of the contract may become onerous.”

(i) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action.

(j) The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the arbitrator is a tribunal selected by the parties to decide the disputes according to law”.

52. The Hon'ble Supreme Court in **Indian Oil Corporation Ltd., vs. Indian Carbon Ltd.**, AIR 1988 SC 1340 has held that “ Arbitration process should be quick and that quickness of the decision can always be ensured by insisting that short intelligible indications of the grounds should be available to find out the mind of the arbitrator for his action.

53. The Delhi High Court in **Delhi Development Authority vs. Harbans Singh & Sons**, 2008(105) DRJ 60 (DB), has observed that the Arbitrator is not required to give detailed Judgment or detailed reasons. Courts are not required to go into the reasonableness of the reasons or sufficiency of the reasons.



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54. The Court is also not required to reappraise the evidence and sit as a Court of appeal. It is further submitted that the mandate of Section 31(3) of the Arbitration and Conciliation Act, 1996 also makes it clear that the Arbitrator Award shall state the reasons upon which it is based, unless— (a) the parties have agreed that no reasons are to be given, or (b) the award is an arbitral award on agreed terms under section 30.

55. The Hon'ble Supreme Court in **The State of Rajasthan vs. Puri Construction Co.**, (1994) 6 SCC 485, and in **Municipal Corporation, Delhi vs. Jagan nath Ashok Kumar**, AIR 1987 SC 2316, has held that reasonableness of the reasons given by the Arbitrator in making his award cannot be challenged and arbitrator is the Judge of quality as well as quantity of evidence and it would not be for the Court to take upon itself the task of being a Judge of evidence before the Arbitrator.

56. The Honourable Supreme Court in **Ssangyong Engineering and Construction Co Ltd versus National Highway Authority of India**, (2019) 15 SCC 131 has held that an award can be set aside on the ground of patent illegality under section 34 (2-A) of the Arbitration And Conciliation Act, 1996 only where the illegality in the award goes to the



root of the matter. It further held that **erroneous application of law by an Arbitral Tribunal** or the reappreciation of evidence by the court under section 34 (2-A) of the Arbitration and Conciliation Act, 1996 is not available.

57. The Court held that the above ground is available only where the view taken by the Arbitral Tribunal is an impossible view while construing the contract between the parties or where the award of the tribunal lacks any reasons. The Court further held that an award can be set aside only if an arbitrator/arbitral tribunal decide(s) the question beyond the contract or beyond the terms of reference or if the finding arrived by the Arbitral Tribunal is based on no evidence or ignoring vital evidence or is based on documents taken as evidence without notice to the parties.

58. Thus, the impugned Award does not call for any interference. Therefore, the challenge to the impugned Award has to fail. Accordingly, this Original Petition is liable to be dismissed and is accordingly dismissed. No costs.



O.P.No.94 of 2021

59. At the time of admission of this Original Petition, a sum of Rs.35,00,000/- was directed to be deposited by the petitioner pursuant to Order dated 09.02.2021. In view of the dismissal of this Original Petition, the respondent is permitted to withdraw the aforesaid amount of Rs.35,00,000/- deposited on 24.02.2021 pursuant to Order dated 09.02.2021. Registry is directed to process the same together with interest.

28.03.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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O.P.No.94 of 2021

C.SARAVANAN, J.

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O.P.No.94 of 2021

28.03.2024