



O.S.A(CAD)No.42 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
30.11.2023	01.03.2024

CORAM

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**O.S.A.(CAD) No.42 of 2022
and CMP.No. 4349 of 2022**

Indira Gandhi Center for Atomic Research
Rep. by its Director,
Engineering Service Group,
Indira Gandhi Center for Atomic Research,
Kalpakkam 603 102.

... Appellant

Vs.

B.E. Billimoria & Co. Ltd.
Rep. By its Head – Operations (South),
401-402, 4th Floor, Sigma Wing,
Raheja Towers, 177, Anna Salai,
Chennai 600 002.

... Respondents

Prayer: Appeal filed under Sec.13(1) of The Commercial Courts Act, 2015 against the judgment, dated 3.8.2021 made in O.P.No.227 of 2019.

For Appellant	: Mr.A.R.L.Sundaresan, Additional Solicitor General for Mr.V.Chandrasekaran
For Respondents	: Mr.M.Vaidyanathan



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J U D G M E N T

D.KRISHNAKUMAR, J.

The challenge in the instant intra Court appeal is against the order passed by the learned Single Judge dismissing the O.P.No.227 of 2019 by holding that the award passed by the Arbitrator cannot be stated as violative of the provision of law and public policy of India and confirmed the award passed by the Arbitrator.

2. Facts in Brief:

The respondent was the successful bidder in the tender invited by the appellant for construction of Head End Cells (Balance works) for DFRP at IGCAR, Kalpakkam and allied works. The appellant issued a letter of intent on 02.11.2010 and the contract was signed on 03.3.2011 for a contract price of Rs.17,00,13,250/-. The contract is valid for 16 months. As per the contract, the project was to commence on 01.12.2010. The time frame fixed by the appellant to complete and hand over the said project was on or before 31.3.2012. The dispute arose between the parties is that inordinate delay in the execution of the



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project attributable solely to the acts and omissions of the respondent and consequently, terminated the agreement by the appellant, forfeiture of the security deposit and earnest money deposit and encashment of the Bank guarantee provided by the respondent. The project work was commenced on 01.12.2010. As per the contractual terms, the schedule date for completion of the project was 31.3.2012. However, the work was not executed within a period agreed in the contract and extension of time was also granted five times from 21.8.2012 till 31.3.2016. The ground for delay attributed on the respondent is that the work was started after the stipulated date of completion due to non availability of specified aggregate in the nearby area and also policy change on mining by the Government resulting in rates are revised by the Government which has become unworkable. The contract was however, continued after a revised design dispensing with the special aggregate and the revised drawings were also given on 28.9.2013. The dispute arose when the show cause notice issued by the appellant on 25.11.2014. As there was no certainty about the time of completion, the delay was attributed only to the respondent even after the appraisal of the nature of work and condition of labour force deployed. Therefore, the respondent



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have no option except to rescind the contract, as the work was not completed within a time agreed or extended. The respondent also raised individual claims as well as counter claims.

3. The learned Arbitrator upon considering the oral and documentary evidence, had passed an award for a sum of Rs.2,09,45,305/- and also allowed the counter claim of Rs.7,46,000/- and finally passed an award for a sum of Rs.2,01,99,305/- with simple interest at the rate of 6%.

4. Aggrieved by the award, O.P.No.227 of 2019 has been filed before this Court by the appellant to set aside the award.

5. The following grounds have been raised in this appeal;

- i. Time being the essence of the contract.
- ii. The findings in the award passed by the arbitrator without considering the contention of the appellant, was in violation of the provisions of law and Public Policy of the Government of India.
- iii. The learned Single Judge while confirming the award passed by the arbitrator



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WEB COURT held that the respondent/claimant is entitled for refund of the security deposit, which is contrary to the terms of the contract under Section of 74 of the Indian Contract Act, 1872.

6. During the course of arguments, the learned Additional Solicitor General appearing for the appellant fairly accepted that he is unable to sustain the challenge made in respect of claim awarded by the arbitrator in favour of the respondent/claimant under claim nos.1 &2 and therefore, the appellant is not contesting as against the award passed in respect of the said claims. Hence the learned Additional Solicitor General appearing for the appellant has put forth his contentions only in respect of award passed by the arbitrator in claim nos. 3,4,5 & 9.

7. The learned counsel for the respondent/claimant would submit that the arbitrator being a technical person, had analysed the entire nature of work and considered the reason for the delay in completing the project was due to change of policy and the delay in procuring the Mines, based on the oral and documentary evidence and considering all factual aspects, has rightly passed the



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award and the same cannot be found fault with. According to the respondent, when such an award is passed by the arbitrator, the scope of interference by this Court is very limited. Therefore, the said award passed by the arbitrator is perfectly valid and does not warrant any interference.

8. Upon considering the rival submissions made by the learned counsels appearing for the parties concerned and on perusal of the impugned order passed by the learned Single Judge, the points that require to be answered in this intra Court appeal are:

- i. whether both the parties have followed '*Clause 5 & 5.2 (which stipulates - Time and extension for delay)*' of the contract executed on 16.11.2010.
- ii. whether the impugned order passed by the learned Single Judge confirming the award passed by the Arbitrator by considering the nature of work is valid or not?
- iii. Whether the respondent/claimant is entitled for refund of encashment of performance guarantee, earnest money deposit and security deposit as awarded by the arbitrator.

9. As regards point no.1 is concerned, it is useful to extract the relevant



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clauses of the agreement.

Clause 5: Time and extension for delay:-

The time allowed for execution of the works as specified in the Scheduled 'F' or the extended time in accordance with these conditions shall be the essence of the contract. The execution of the works shall commence from such time period as mentioned in Schedule "F" or from the date of handing over of the site, whichever is later. If the contractor commits default in commencing the execution of the work as aforesaid, Government shall without prejudice to any other right or remedy available in law, be at liberty to forfeit the earnest money and performance guarantee absolutely."

Clause 5.2 of the contract reads as follows:-

"5.2 If the work be delayed by:-

I. force majeure or

II. Abnormality bad weather or

III. Serious loss or damage

IV. civil commotion, local commotion of workmen, strike or lockout, affecting any of the trades employed on the work, or

V. delay on the part of other contractors or tradesmen engaged by Engineer-in-charge in executing work not forming part of the contract, or

VI. non-availability or break down of tools and plant to be supplied or supplied by Government or



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VIII. Any other clause which in the absolute discretion of the Engineer-in-charge is beyond the Contractor's control.

Then upon the happening of any such event causing delay, the Contractor shall immediately give notice thereof in writing to the Engineer-in-Charge but shall nevertheless use constantly his best endeavors to prevent or make good the delay and shall do all that may be reasonably required to the satisfaction of Engineer-in-Charge to proceed with the works.

Request for rescheduling of mile stones and extension of time to be eligible for consideration, shall be made by the contractor in writing within fourteen days of the happening of the event causing delay on the prescribed period for which extension is desired."

10. By invoking clause 5 of the agreement entered into between parties, at the request of the respondent/claimant, time was extended. The appellant had granted extension 5 times on 31.08.2012, 28.02.2013, 31.05.2014, 31.01.2015 and finally extended up to 31.03.2016. The time was extended at the request of the respondent/claimant for honouring the terms and conditions of the contract and completing the entire work as per the agreement entered into between the parties. In such circumstances, the appellant has no other option except to rescind the contract and further there is no progress in the work as per the



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agreement and therefore the delay is attributed on the part of the respondent/claimant. Hence the award passed by the arbitrator was challenged and the same was confirmed by the learned Single Judge. Hence the learned Additional Solicitor General urged before this Court that there is violation of Public Policy and this Court can interfere with the award passed by the Arbitrator.

11. This Court carefully considered the said agreement entered into between the parties under clause 5 of the agreement. It is seen that though the agreement was executed on 16.11.2010, the work was commenced on 30.11.2010 and the said work has to be completed within 16 months as per the agreement entered into between the parties. The stipulated date of completion of work is 29.10.2012. It is also seen that more than five occasions extension of time was granted and finally extended upto 31.03.2016. The ground raised by the respondent is that due to delay of change in Policy in procuring mines, which was meant for construction of such building, as one of the mines, which was supplying Haematite (iron ore) aggregate for heavy concreting. Undisputedly there was a delay on the part of the respondent in completing the project, which



WEB COM resulted in termination of contract by the appellant.

12. According to the appellant, the terms and conditions of the agreement stipulates the period for completion of work and failure to comply with the time schedule would amounts to breach of terms and conditions of the contract. If there is breach in terms and conditions of the contract, the appellant is entitled to invoke Part-I Clause -I of Performance Guarantee -Point (iv) of the terms and conditions of the contract for forfeiture of the Security Deposit. Therefore, there is a violation of Public Policy and hence the Court can interfere with the award passed by the arbitrator, which reads as follows:

In the event of the contract being determined or rescinded under provisions of any of the clause/condition of the agreement, the performance guarantee shall stand forfeited in full and shall be absolutely at the disposal of the President of India.'

13. The termination order issued to the respondent/claimant dated 29.03.2016 was marked as Ex.R17. In and by which the Engineer- in-Chief under power delegated to him under powers 3(a) or 3(b) stated the reasons for termination of agreement. The same is extracted hereunder;



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- i. Determine the contract as aforesaid upon which determination, your earnest money deposit, security deposit already recovered and Performance Guarantee stand absolutely forfeited to the government and shall be absolutely at the disposal of Government, and
- ii. Take out such part of the work out of your hand, as remain unexecuted, for giving it to another contract to complete the work, and you shall have no claim to compensation for any loss sustained by you and by reasons of your having purchased or procured any materials or entered in to any engagements or made any advances on account of or with a view to the execution of the work or the performance of the contract. You are also hereby served with notice to the effect that the work executed by you will be measured up on within 15 days from the receipt of this letter for which you are requested to attend for joint measurement failing which the work will be measured by the department unilaterally in your absence and result of measurement will be final and will be binding on you.
- iii. You shall not be allowed to participate in the tendering process for the balance work.

14. Thus, according to the learned counsel for the appellant when there is an agreement in vogue, it cannot be interpreted by the Court by accepting the



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WEB COPY contentions of the respondent/claimant for the refund of the claims towards encashment of performance guarantee and earnest money deposit, is wholly unsustainable and the same violates the fundamental policy of Indian Law. If the public policy is violated, as per the decision of the Hon'ble Supreme Court in the case of *Associate Builders Vs. Delhi Development Authority (reported in (2015) 3 SCC 49)* , the Court can interfere with the award passed by the arbitrator.



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15. The respondent/claimant has relied upon exhibit-C29-Communication of respondent dated 04.04.2016, requesting the appellant to withdraw the termination notice dated 29.03.2016 and to call for a joint meeting immediately so as to ensure that the work is completed within the agreed time frame.

16. This Court is of the view that there is no bonafide reason given in the said communication dated 04.04.2016 and the respondent/claimant has only sought for withdrawal of termination notice and sought for settlement of bill for the works already completed, which amply shows that the respondent/claimant has not completed the work in time, which amounts to breach of terms and conditions of the contract. In the aforesaid communication, the respondent has not sought for extension of time for completion of work.

17. The aforesaid facts clearly shows that the respondent/claimant has not made efforts to complete the work as per the terms of the contract despite several opportunities were given, the work was not completed by the



respondent/claimant. Considering the fact that the respondent/claimant violates the terms and conditions of the contract, in the light of the decision of the Hon'ble Supreme Court in the case of ***Reliance Infrastructure Ltd vs. State of Goa (reported in 2023 SCC Online 604)***, the order of the tribunal is liable to be interfered with. It is useful to extract the relevant portion of the said judgment.

27. In Ssangyong Engg. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , this Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words : (SCC pp. 170-71, paras 37-41)

“37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “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.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] ,



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namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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.”

28. The limited scope of challenge under Section 34 of the Act was once again highlighted by this Court in PSA Sical Terminals [PSA Sical



WEB COPY *Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781*

: 2021 SCC OnLine SC 508] and this Court particularly explained the relevant tests as under : (SCC paras 40 to 42)

“40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the Court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the Court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, 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.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court



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in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus : (SCC pp. 75-76)

‘31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or*
 - (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
 - (iii) ignores vital evidence in arriving at its decision,*
- such decision would necessarily be perverse.*

32. A good working test of perversity is contained in two judgments. In CCE & Sales v. Gopi Nath & Sons [CCE & Sales v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.” ’ ’

18. The aforesaid decision of the Hon'ble Supreme Court relied by the learned Additional Solicitor General squarely applies to the facts of the present case on hand as there is clear violation of the Public Policy, warranting interference by this Court.

19. Since the learned Additional Solicitor General appearing for the appellant during the course of arguments fairly accepted that he is unable to



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sustain the challenge made in respect of claim awarded by the arbitrator in favour of the respondent/claimant under claim nos.1 &2, this Court has to gone into merits of the claim only in respect of claim awarded by the arbitrator under claim nos. 3, 4,5 & 9.

20. It is seen from the award passed by the arbitrator that out of 13 claims made by the respondent/claimant under different heads, 6 claims were granted in favour of the respondent/claimant. There were 5 counter claims made by the appellant, out of which 2 counter claims were considered in favour of the appellant by the arbitrator. The claims awarded in favour of the respondent/claimant is tabulated hereunder.

Sl.No.	Brief Description	Amount claimed in Rs.	Amount awarded in Rs.
1.	Amount due towards the works executed by the claimant (30 th and final bill)	54,00,001.28	20,84,323.00
2.	Amount withheld in already approved steel fabrication rates	16,60,595.01	12,05,065.00
3.	Refund of amount by way of invoking and encashing of performance guarantee.	85,00,670.00	85,00,670.00
4.	Refund of earnest money deposit	25,38,000.00	25,38,000.00



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5.	Refund of security deposit	54,63,716.93	54,86,233.00
9.	Interest charges on earnest money deposit	6 and 18% per annum	12,31,014.00

21. It is a trite law that the Court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34. Though this Court cannot modify a particular claim, considering the breach of contract committed by the respondent/claimant as discussed in the preceding paragraphs, this Court can interfere and set aside partially or wholly any of the claims awarded by the arbitraor.

22. In this context it is useful to refer to the decision of the Hon'ble Supreme Court in the case of *M/s.Larsen Air Conditioning and Refrigeration Company Vs. Union of India & others (Civil Appeal Nos. 3798 of 2023, date 11.08.203) reporte in 2023 LiveLaw (SC) 631*, wherein the Hon'ble Supreme Court after elaborate consideration of its earlier decision and held that the Court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 .



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“ 13. In the present case, given that the arbitration commenced in 1997, i.e., after the Act of 1996 came into force on 22.08.1996, the arbitrator, and the award passed by them, would be subject to this statute. Under the enactment, i.e. Section 31(7), the statutory rate of interest itself is contemplated at 18% per annum. Of course, this is in the event the award does not contain any direction towards the rate of interest. Therefore, there is little to no reason, for the High Court to have interfered with the arbitrator's finding on interest accrued and payable. Unlike in the case of the old Act, **the court is powerless to modify the award and can only set aside partially, or wholly, an award on a finding that the conditions spelt out under Section 34 of the 1996 Act have been established.** The scope of interference by the court, is well defined and delineated [refer to *Associate Builders v. Delhi Development Authority*¹¹ , *Ssangyong Engineering Construction Co. Ltd v. National Highways Authority of India (NHAI)* ¹² and *Delhi Airport Metro Express Pvt. Ltd. v Delhi Metro Rail Corporation Ltd*¹³].

14. The reliance on *Kalsi Construction Company (supra)* by the respondent state, is inapt, given that this court had exercised its Article 142 jurisdiction in light of three pertinent factors – the award had been passed 20 years prior, related to construction of a Paediatrics Centre in a medical institute, and that the parties in



WEB COPY that case had left the matter to the discretion of the court.

Similarly, in *Oriental Structural Engineers (supra)* this court held that since the contract stipulated interest entitlement on delayed payments, but contained no mention of the rate of interest applicable – the Tribunal ought to have applied the principles laid down in *G.C. Roy (supra)*, and therefore, in exercise of Article 142, this court reduced the rate of interest awarded by the tribunal on the sum left unpaid. The judgment in *Municipal Corporation of Greater Mumbai (supra)* no doubt discusses the inherent powers of the High Court as a superior court of record, but relates specifically to the jurisdiction to recall its own orders, and offers little assistance in the present dispute.

15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that “illegality must go to the root of the matter and cannot be of a trivial nature”; and that the tribunal “must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground” [ref: *Associate Builders (supra)*]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been



WEB COPY upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision¹⁴ which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in *Project Director, National Highways No. 45E and 220 National Highways Authority of India v M. Hakeem*:

“42. It can therefore be said that this question has now been settled finally by at least 3 decisions [*McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181] , [*Kinnari Mullick v. Ghanshyam Das Damani*, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106] , [*Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.*, (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the *Uncitral Model Law on International Commercial Arbitration, 1985* which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the “limited remedy” under Section 34 is coterminous with the “limited right”, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.”



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16. *In view of the foregoing discussion, the impugned judgment warrants interference and is hereby set aside to the extent of modification of rate of interest for past, pendente lite and future interest. The 18% per annum rate of interest, as awarded by the arbitrator on 21.01.1999 (in Claim No. 9) is reinstated. The respondent-state is hereby directed to accordingly pay the dues within 8 weeks from the date of this judgment. “*

23. In light of aforesaid decision of the Hon'ble Supreme Court, this Court can very well set aside partially the claims awarded by the arbitrator. Accordingly, in respect of amount awarded under claim no. 3 - Refund of amount by way of invoking and encashing of Performance Guarantee and claim no. 4- Refund of Earnest Money Deposit, it is elaborately discussed in the preceding paragraphs and held that respondent committed breach of the contract and therefore performance guarantee and earnest money deposit shall stand forfeited as per the contract entered into between the appellant and the respondent. Since the respondent is not entitled for refund of earnest money deposit, the interest charges on earnest money deposit awarded under claim no.9 cannot be granted.



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WEB COPY 24. In respect of amount awarded under claim no 5- refund of security deposit, there is no specific ground raised by the appellant in the grounds of appeal. Therefore, this Court finds no reason to interfere with the amount awarded under the said claim by the arbitrator.

25. In view of the elaborate discussions in the foregoing paragraphs, this Court finds much force on the contentions of the learned Additional Solicitor General appearing for the appellant. The award passed by the arbitrator without considering the breach of contract shocks the conscience of the Court and award passed by the arbitrator warrants interference.

26. In the result, the order of the learned Single Judge in O.P.No.227 of 2019 dated 3.8.2021 as well as the award passed by the arbitrator are confirmed in respect of claim nos 1,2 & 5. Consequently, the order of the learned Single Judge as well as the award passed by the arbitrator are set aside in respect of claim nos. 3,4 & 9. The appeal is partly allowed to the above extent. No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.J.]

[P.D.B.J.]



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01.03.2024

Speaking Order/Non Speaking Order

Index: Yes

ak/jvm



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**D.KRISHNAKUMAR, J.
AND
P.DHANABAL, J.**

ak/jvm

**Pre-Delivery Judgment in
OSA(CAD)No.42 of 2022
and CMP.No. 4349 of 2022**

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