



2024:DHC:5957



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

+ **O.M.P. (COMM) 134/2023 and I.A. 6824/2023**

**POWER GRID CORPORATION OF INDIA
LIMITED**

.....Petitioner

Through: Mr. Apoorv P. Tripathi, Ms.
Anjali Kaushik and Mr. Apurv Tyagi,
Advocate

versus

RANJIT SINGH AND COMPANY LLP

.....Respondent

Through: Mr. Aayush Agarwala, Ms.
Mallika Luthra, Mr. Kunj Mehra, Ms. Nilesh
Kumar and Mr. Prakash Jha, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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07.08.2024

Facts

1. The petitioner Power Grid Corporation of India Ltd. and the respondent Ranjit Singh and Company LLP entered into a contract on 27 July 2009 for construction of a transmission line from Dehradun to Baghpat. The contract envisaged resolution of disputes between the parties by arbitration.

2. The scheduled date of completion of the contract was July 2011, but the contract came to be completed in 2017. The project was commissioned by the respondent on 28 January 2017. On 17 March



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2017, the petitioner issued a taking over certificate to the respondent.

3. On 16 January 2021, the respondent invoked the arbitration clause in the contract and raised claims against the petitioner for overhead costs incurred by the respondent having to take extension of time, as well as price variations and compensation for alleged delay, by the petitioner, in making payments against the respondent's running bills. The dispute was ultimately referred to a three-member Arbitral Tribunal, which came to render the impugned award on 8 November 2022.

4. The respondent raised five claims against the petitioner, of which Claims 2 to 5 were rejected.

5. Claim 1, which was for an amount of ₹ 6,91,67,247/-, was raised under Clause 6 read with Clause 1.4 of the contract, on the ground that the petitioner had not provided full right of way (ROW) to the respondent within the stipulated period of 24 months, spanning 10 July 2009 to 9 July 2011. The delay in completion of the project was, therefore, as per the respondent, attributable to the petitioner.

6. The learned Arbitral Tribunal has awarded, against the amount claimed in Claim 1 by the respondent, an amount of ₹ 2,42,17,988/-. The claim was, therefore, partly allowed.

7. The respondent, subsequently, moved an application under Section 33 of the 1996 Act for correction of the impugned award,



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which came to be disposed of on 8 December 2022.

8. The petitioner has, by the present petition, sought to challenge the impugned award, in so far as it partly allows Claim 1 of the respondent.

Rival Contentions

9. I have heard Mr. Apoorv P. Tripathi, learned Counsel for the petitioner, and Mr. Ayush Agarwala, learned Counsel for the respondent at length.

10. Mr. Tripathi submits that the learned Arbitral Tribunal has awarded Claim 1 purely on the principles of justice, equity and good conscience, even after acknowledging that the respondent had not produced any material to support the claim. He has taken me through the findings of the learned Arbitral Tribunal with respect to Claim 1, which may, to the relevant extent, be reproduced thus:

“30. On merit, in the instant case, two instances of breach of contract have been cited by the Claimant, namely on account of delay in obtaining forest/tree-cutting Permission; and breach on account of obtaining RoW.

As per clause 6.3 of the GCC (@ page 7, Vol. B, SoC Docs.), the forest clearance and tree-cutting permission were to be obtained by the Respondent. No time is specified in the contract for the date by which the said permissions had to be acquired, however, it was the understanding of the parties that the said permissions had to be reacquired within a reasonable time so that the contract can be completed as per the L2 schedule.

When the said permissions were not obtained in a reasonable time Frame, the Claimant ought to have realised that the



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Respondent is in breach of its contractual obligations of obtaining the forest clearance and tree cutting permissions and therefore as per article 55 of the Limitation Act, 1963, that is the date from which limitation will begin to run. Given the fact that location nos. 4-53 is in the forest area and the fact that the stringing work on location nos. 3-55 was to begin after the grant of forest clearance, the forest clearance should have been obtained around 2-3 months before the dates specified in the L2 Schedule, which is the time period from which the period of limitation will start to run.

In any case, the aforementioned permissions were granted on 24.09.2013 for Uttar Pradesh; and on 04.04.2014 for Uttarakhand. Thus there was delay on the part of Respondent in obtaining the permission from forest Department of both the States for tree cutting.

Further, there was farmer agitation for compensation. It was the duty of the Respondent to solve this problem at the earliest. But it took time. In the instant case, it was the duty of the Respondent to ask the farmers to allow the claimant to work. But there was delay on the part of Respondent which resulted hindrance towards completion the work with in targeted time. For stopping the work by farmers, the claimant has no role. So, for his no fault in this regard, the Tribunal is of the view that the claimant is entitled for these two reasons, for compensation. In the absence of any voucher or details, question remains that how much compensation can be provided. During arguments, discussion was held for the **Hudson formula**.

But fact remains that an important criticism of this formula is that this formula was evolved in the 1960s era when there was high economic activity in construction and therefore one could assume the existence of a favourable market where an adequate profit and fixed overhead percentage will be available to be earned during the delayed period. One could also assume equally importantly an element of constraint, that is to say that that the contractor's resources will be so occupied that they are unable to take on work elsewhere if such work offers itself.

In the present case, the Claimant has also not given details of any other contracts which it could have worked on for earning profit during the extended period nor has the Claimant stated anywhere that due to the extension of the present contract, it did not have any other manpower or machinery for performing any other contract. In the absence of the same, no amounts are payable to the Claimant under the **Hudson formula**. It may be mentioned that the **Hudson formula** does not have any applicability in a



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claim for monies allegedly incurred towards site overheads, i.e. bank guarantees, insurance policies, etc. which constitutes the majority of claim no. 1 raised by the Claimant. Moreover, in the cases cited by the Ld. Counsel for the Claimant, **Hudson formula** was never applied by Hon'ble Supreme court or High Court. It was applied by the Tribunal and Hon'ble courts merely upheld. Further, **Hudson formula** only applies to a claim for loss of profits and head office overheads expenses. In the present case, there is no claim for loss of profits. Hence we reject the demand to apply the **Hudson Formula**.

33. In the present case, *admittedly, the Claimant had not furnished any evidence or material to establishment that it had incurred additional expenditure on account of claim during the extended period.* It may be mentioned that *in order to make any claim under Section 55 read with Section 73 of the Contract Act, 1872, towards the overhead expenses during the extended period, the Claimant should have led some evidence by oral or documentary to prove that certain expenses were actually required and made in order to keep the site establishments running throughout the extended period.* It is another matter for the Tribunal to either adopt **Hudson formula** or make estimation. **Hudson formula** has been rejected for the reasons mentioned above. Hence, by keeping in mind the doctrine of Equity, Justice and good conscious, the Tribunal allows the claim on estimate basis. The claim for payment towards Institutions like bank guarantees, insurance policies, etc. are allowed 100% as per the demand raised by the Institutions and for remaining overhead @50% which constitutes the majority of claim no. 1 raised by the Claimant. The claimant has mentioned the details of this claim of Rs 6,91,67,247. But the Tribunal has restricted the claim as under :

S. No	Particulars	Claim No. – 1 Total Amount for Delay Period (66 Months and 18 days) (66.6 Months)	Amount Awarded	Remarks
1	Insurance			
a)	EAR Insurance	6,606,653.40	6,606,653.40	
b)	Workmen Compassion Policy	1,942,855.20	NIL	Claimant have produced letters only



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				written to respondent but not submitted proof of payment.
2.	Bank Guarantee Charge	-		
a)	10% CPG Commission	9,426,100.46	94,261.00	
b)	B.G. Commission for Advance	2,589,810.26	25,898.10	
3	Interest on Advance Beyond Original Completion Date	6,636,490.20	NIL	
4	Office Cum Store (Chutmalpur U.P.)	-		
a)	Rent	2,586,011.40	1,293,005.70	
b)	Electricity & Water	285,314.40	142,657.20	
5	Office cum store (Rishikesh U.K)	-	-	
a)	Rent	2,831,032.80	NIL	
b)	Electricity & Water	299,700.00	NIL	
6	Office (Chutmalpur U.P.)	-	-	
a)	Project in Charge	3,179,817.00	1,589,908.50	
b)	Accountant	1,420,245.00	710,122.50	
c)	Sr. Store Keeper	2,074,123.80	1,037,061.90	
d)	Peon	785,613.60	392,806.80	
e)	Watchman (2 Nos, day & Night)	2,304,626.40	1,152,313.20	
7	Office	-	-	



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	(Rishikesh U.K)			
a)	Store Keeper	1,156,975.20	578,487.60	
b)	Peon	785,613.60	392,806.80	
c)	Watchman (2 Nos, day & Night)	1,566,432.00	783,216.00	
8.	Site Staff	-	-	
a)	Assistant Project in charge	2,323,341.00	1,161,670.50	
b)	Supervisor	2,075,455.80	1,037,727.90	
c)	Quality Control Officer	1,636,029.00	818,014.50	
d)	Sr. Safety Officer	2,396,134.80	1,198,067.40	
9.	Head Office Expenses L.S.	3,459,004.20	1,729,502.10	
10.	Tool & Plants	-		
a)	Tension Stringing Equipment and Tools & Plant Blockage	14,652,000.00	7,326,000.00	
	Total	73,019,379.53	28,070,181.11	
	Released by PGCIL on 19.09.2014	3,852,193.00	3,852,193.00	
	Balance to Be Paid by PGCIL	(69,167,186.53)	24,217,988.11	

Thus Claim no. 1 is allowed for Rs. 2,42,17,988 (two crores forty-two lakhs seventeen thousand nine hundred eighty-eight only. The claim is partly allowed but without any interest.

11. Mr. Tripathi's contention is that the learned Arbitral Tribunal has, in its afore-extracted findings, allowed Claim 1 of the respondent, albeit in part, solely on the principles of justice, equity and good conscience, even after acknowledging that the respondent had failed to produce any material in respect of the claim. He submits that the



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learned Arbitral Tribunal has, for reasons known only to itself, decided to allow the respondent's claim, to the extent claimed against the demand raised by the institutions @ 100% and @ 50% for remaining overheads. The basis for this decision to allow 100% of the claimed amount in certain cases and 50% in others, he submits, is not forthcoming in the award. Effectively, submits Mr. Tripathi, the learned Arbitral Tribunal has blindly, and with no discernible justification, granted the relief to the respondent under Claim 1, which is a claim admittedly unsupported by evidence. This, he submits, renders the impugned award patently illegal as well as perverse.

12. Countering the submissions of Mr. Tripathi, Mr. Agarwala submits that Claim 1 has not been allowed without any material in its support. He submits that the respondent had placed, on record before the learned Arbitral Tribunal, almost 270 pages of documents supporting Claim 1. Apparently, submits Mr. Agarwala, the learned Arbitral Tribunal has seen the said documents and has arrived at what he terms a "guestimate". He submits that the arbitrator is the master of the quantity and quality of evidence and, so long as the evidence in support of the claim is before him, is also entitled to indulge in some guesswork.

13. In support of his submission that the learned Arbitral Tribunal was not unconscious of the material before it, Mr. Agarwala has invited my attention to the order dated 8 December 2022 passed by the learned Arbitral Tribunal on the respondent's Section 33 application. He has particularly drawn my attention to para 3 of the said order,



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which reads thus:

“3. In the instant case, the claimant has provided the proof of payment of EAR insurance (Rs. 6606653.40) and the Tribunal has allowed the same @ 100%. But no proof was provided for the payment of 10% CPG commission and B.G. commission for advance, in spite of several requests. *In the absence of the proof of payment, the Tribunal has allowed the same on estimate basis @ 1% of claim by keeping in mind the Doctrine of Equity, justice and good conscience as well fair bank practice.*”

(Emphasis supplied)

The observations in para 3, submits Mr. Agarwala, indicate that the learned Arbitral Tribunal had perused the material before it, and had, only thereafter, awarded Claim 1 in part.

14. Given the practice of circumspection which courts are required to adopt while dealing with Section 34 challenges to arbitral awards, Mr. Agarwala submits that no case for interference with the impugned award can be said to exist. At any rate, the award cannot be treated as one of no evidence and, once evidence to support the award existed, the Court could not assess the quantity or quality of the evidence or sit in appeal over the manner in which the learned Arbitral Tribunal appreciates the evidence.

15. Mr. Tripathi, in rejoinder, places reliance on para 111 of the judgment of the High Court of Bombay in *Essar Procurement Services Ltd v. Paramount Construction*¹.

16. Mr. Tripathi also submits that the learned Arbitral Tribunal

¹ 2016 SCC OnLine Bom 9697



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could not, while adjudicating a Section 33 application of the respondent, alter the original award. Section 33, he submits, is only intended to correct clerical errors, and cannot be a basis to re-write the award, in whole or in part.

Analysis

17. Having heard learned counsel for both sides and considered the material on record, this Court finds it impossible to uphold the impugned award, in so far as it awards ₹ 2,42,17,988/- to the respondent against Claim 1.

18. It is clear, from the observations and findings of the learned Arbitral Tribunal with respect to Claim 1 of the respondent, that *the learned Arbitral Tribunal has proceeded on the premise that no vouchers or details, or any other material, supporting the respondent's claim are available before him.* The impugned Award specifically raises the following poser:

“In the absence of any voucher or details, question remains that how much compensation can be provided.”

19. This aspect is further underscored by the following observations in para 33 of the impugned award:

“33. In the present case, admittedly, *the Claimant had not furnished any evidence or material to establishment that it had incurred additional expenditure on account of claim during the extended period.* It may be mentioned that in order to make any claim under Section 55 read with Section 73 of the Contract Act, 1872, towards the overhead expenses during the extended period,



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the Claimant should have led some evidence by oral or documentary to prove that certain expenses were actually required and made in order to keep the site establishments running throughout the extended period.”

(Emphasis supplied)

20. As such, even if there was any material placed on record before the learned Arbitral Tribunal to support the respondent’s claim as Mr. Agarwala has sought to contend, that material quite clearly has not been taken into account by the learned Arbitral Tribunal while awarding ₹ 2,42,17,988/- to the respondent against Claim 1 raised by it. The respondent cannot seek to support the impugned Award on the basis of material which has not been considered by the learned Arbitral Tribunal while rendering the Award. The reliance, by Mr. Agarwala, on the material which had been placed by the respondent before the learned Arbitral Tribunal to substantiate its claim cannot therefore, in my opinion, advance the respondent’s case to any substantial extent.

21. Further, and perhaps more damagingly, para 33 of the impugned award clearly states that the award was being passed applying the doctrine of “justice, equity and good conscience”. This is completely impermissible, and, in the 1996 Act, an express proscription in this regard is to be found in the little-referred Section 28(2)². Analyzing this provision, the High Court of Bombay has, in ***Board of Control for Cricket in India v Deccan Chronicle Holdings Ltd***³, held thus:

² (2) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

³ 2021 SCC Online Bom 834



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“230. Sections 28(2) and 28(3) of the Arbitration Act say:

(2) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.

(Emphasis added)

231. We also find both these provisions reflected in Article 28 of the UNCITRAL model law and the UNCITRAL 2010 Rules.

232. Mr. Mehta points out that the terms *ex aequo et bono* and *amiable compositeur* have a specific legal connotation. The first means ‘according to what is equitable (or just) and good’. A decision-maker (especially in international law) who is authorized to decide *ex aequo et bono* is not bound by legal rules and may instead follow equitable principles. An *amiable compositeur* in arbitration law is an arbitrator empowered by consensus of parties to settle a dispute on the basis of what is ‘equitable and good’.

233. Given the wording of the Arbitration Act, a longer examination of the antecedents of these concepts is unnecessary. The statute itself is clear and unambiguous; and in **Associate Builders**⁴, the Supreme Court in paragraph 42.3 extracted Section 28 and said that a contravention of it is a sub-head of patent illegality. **Ssangyong Engineering**⁵ does not change this position. Given this now-settled position in law, it is unnecessary to examine the additional authorities on which Mr. Mehta relies, all to the same effect. They also say this : commercial arbitrators are not entitled to settle a dispute by applying what they conceive is ‘fair and reasonable,’ absent specific authorization in an arbitration agreement. Section 28(3) also mandates the arbitral tribunal to take into account the terms of the contract while making and deciding the award. Section 28 is applicable to all stages of proceedings before the arbitral tribunal and not merely to the making of the award. Under Section 28(2), the Arbitral Tribunal is required to decide *ex aequo et bono* or as *amiable compositeur* only if the parties expressly authorize it to do so. The Arbitrator is bound to implement the contractual clauses and cannot go contrary to them. He cannot decide based on his notions of equity and fairness, unless the contract permits it.”

⁴ **Associate Builders v D.D.A., (2015) 3 SCC 49**

⁵ **Ssangyong Engineering & Construction Co. Ltd v N.H.A.I., (2019) 15 SCC 131**



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(Italics in original; underscoring supplied)

I respectfully express my complete and unhesitating concurrence with the above enunciation of the law.

22. The Supreme Court has said the same thing on more than one occasion. In *Managing Director, Army Welfare Housing Organisation v Sumangal Services (P) Ltd*⁶, albeit rendered in the context of the erstwhile 1940 Arbitration Act, it was held:

“43. An Arbitral Tribunal is not a court of law. Its orders are not judicial orders. Its functions are not judicial functions. *It cannot exercise its power ex debito justitiae*. The jurisdiction of the arbitrator being confined to the four corners of the agreement, he can only pass such an order which may be the subject-matter of reference.”

(Emphasis supplied)

In para 69 of the report, the Supreme Court further observes thus:

“... An arbitrator cannot be equated with a court of law. Whereas the court has an inherent power, an arbitrator does not have. It is a tribunal of limited jurisdiction. Its jurisdiction is circumscribed by the terms of reference. An arbitrator can act only within the four corners of the agreement and not beyond thereto.”

23. In *Prakash Atlanta v N.H.A.I.*⁷, this Court set aside an award which awarded 50% of the claimant’s claim, holding that the claimant and respondent were both equally responsible for the breach and, therefore, responsibility could be allocated 50:50. This Court was severely critical of the approach, terming it a “*panchayati* solution”, with no discernible justification for applying the 50:50 formula. This

⁶ (2004) 9 SCC 619

⁷ 2016 SCC OnLine Del 1648



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case eerily parallels the present; except that, in the present case, the 100% and 50% figures have been adopted without even providing a rudimentary justification, as was available in *Prakash Atlanta*.

24. *M.S.T.C. Ltd v. Jain Traders*⁸ is yet another case in which this Court set aside an award rendered on “equitable considerations”.

25. The Supreme Court has, in a recent decision in *Batliboi Environmental Engineers Ltd v. Hindustan Petroleum Corporation Ltd*⁹, qualified the above principle thus:

“An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator’s approach was arbitrary or capricious.”

After *Batliboi*, it may be possible to argue that an award cannot be set aside *merely* on the ground that the Arbitral Tribunal has acted in equity. The harmonization of this enunciation of the law, with Section 28 of the 1996 Act, may form subject matter of an interesting debate.

26. That debate need not, however, detain us, and may await a future, and more suitable, occasion. In the present case, it is not necessary to enter into this arena, for the simple reason that the learned Arbitral Tribunal has specifically held that the respondent had

⁸ 2011 SCC OnLine Del 3304

⁹ (2024) 2 SCC 375



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produced no evidence or material in support of its claim. A claim which is held to be devoid of supportive material must fail. There is no halfway house. No law can justify awarding of such a claim, wholly or in part, howsoever infinitesimal the part may be. While, in view of **Batliboi**, the adoption of an equitable approach by the arbitrator may not fatally imperil his award, it was certainly not open to the learned Arbitrator to, after observing that there was no material or evidence to support the respondent's claim, nonetheless proceed to award it on the ground of equity, justice and good conscience. That is precisely what Section 28 proscribes.

27. Moreover, while applying the principle of “equity, justice and good conscience, the learned Arbitral Tribunal has, in an omnibus manner and without any discernible justification therefor allowed claims for payment towards Institutions like Bank Guarantee, Insurance Policies, etc. @ 100% as per the demand raised by the Institutions and for remaining overheads @ 50%. The basis for this is not forthcoming in the impugned award. The arbitral award cannot be passed in a rule of thumb manner, merely awarding as the *ipse dixit* of the Arbitrator a particular percentage of claimed amounts, following a specific finding that no evidence in support thereof was available on record. To that extent, the case is even worse than **Prakash Atlanta**.

28. Mr. Agarwala submits that the Arbitral Tribunal is not proscribed from acting on estimates. The submission, as advanced, is unexceptionable. There is, however, a clearly discernible qualitative distinction between an “estimate” and a pure rule-of-thumb award,



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blindly awarding claims, unsupported by evidence, 100% in some cases and 50% in others, with no justification for adopting 100%, 50%, or, for that matter, any other percentage, being forthcoming in the award. An arbitrator can award a claim on estimate basis, *provided he finds, on evidence, that a party is entitled to relief but, owing to one reason or another, it is not possible to precisely quantify the extent of relief which can be granted.*

29. To support his submission that an Arbitral Tribunal can decide a claim on estimates, Mr Agarwala cites *Dwarka Das v State of Madhya Pradesh*¹⁰, *Construction & Design Services v DDA*¹¹, *Airports Authority of India v ICM Airport Technics*¹², *New India Assurance Co Ltd v Renu Gupta*¹³, *Crest Education (P) Ltd v Career Launcher (I) Ltd*¹⁴ and *UOI v Garg Associates*¹⁵.

30. *Dwarka Das* and *New India Assurance* do not involve arbitration at all and cannot, therefore, be of use in ascertaining the extent of authority of the arbitrator while dealing with the claims before him. *Construction & Design Services*, too, was not a case involving arbitration; moreover, the Supreme Court, in that case, held that, where the contract between the parties stipulated the quantum of damages payable in the event of the breach, it was for the party who had committed the breach to show that the amount was not a genuine pre-estimate. In the present case, the impugned Award does not allow

¹⁰ (1993) 3 SCC 500

¹¹ (2015) 14 SCC 263

¹² (2006) 3 Arb LR 380 (Del-DB)

¹³ 2015 SCC OnLine Del 6579

¹⁴ 2023 SCC OnLine Del 3801

¹⁵ 2018 SCC OnLine Del 8747



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Claim 2 of the respondent on the basis of any quantum of damages stipulated in the contract. ***Airport Authority of India***, too, dealt with computation of escalation, by the arbitrator, on the basis of a formula stipulated in the contract. ***Crest Education*** was a case where the plea of guesswork was advanced by the unsuccessful litigant in arbitration with respect to an amount awarded towards future profits, and this Court held that future profits being fundamentally presumptive, the Arbitral Tribunal was justified in assessing the future profits on the basis of the amount earned during the currency of the contract. ***Garg Associates*** holds that the Court would not interfere with computation of damages based on guess work, *provided it is reasonable*.

31. At the cost of repetition, two important distinguishing features of the impugned Award, insofar as it partly allows Claim 5(A), merit reiteration. The first is that the learned Arbitral Tribunal has found, in so many words, that “*the Claimant had not furnished any evidence or material to establishment that it had incurred additional expenditure on account of claim during the extended period*”. The second is that the learned Arbitral Tribunal provides *no basis, reason or justification whatsoever* for allowing the claim, in respect of some items, @ 100% and, in respect of others, @ 50%. The adoption of these percentages is, not to mince words, *completely arbitrary*.

32. The question of passing an award on the basis of estimates cannot arise where the Tribunal finds, on facts, that there is no evidence in support of the claim. If a claim is unsupported by evidence, it has to be rejected. The learned Arbitral Tribunal cannot,



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after finding that no supportive evidence had been led by the claimant, nonetheless proceed to award the claim, or any part thereof. Such an order is manifestly perverse and is also opposed to the fundamental policy of Indian law, which does not permit claims in commercial matters to be allowed in the absence of any supportive evidence. The order is also resultantly patently illegal even on that score.

33. Mr. Agarwala has also pressed into service the principle of reticence, to be adopted by Courts while dealing with challenges to arbitral awards under Section 34 of the 1996 Act. The principle is unexceptionable. There can be no doubt that interference with arbitral awards is to be the exception rather than the rule and that, where an Arbitrator has examined the material on record and has arrived at a decision, the Court is proscribed either from examining the correctness of the decision or the sufficiency of the evidence on the basis of which the decision is arrived at.

34. In the present case, however, the learned Arbitral Tribunal has, after finding that there is no evidence produced in favour of the respondent's claim, nonetheless proceeded to award the claim, albeit in part. In such a case, the Court would be acting in breach of its judicial obligation if it allows such an award to remain, untouched.

35. Mr. Agarwala has drawn attention to the remark contained against Claim 1(b) of the respondent for "workmen compassion policy" of ₹ 1,942,855/- which reads: "Claimant have produced letters only written to respondent but not submitted proof of payment". This,



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he submits, indicates that the learned Arbitral Tribunal was alive to the material produced by the respondent before him in support of its claims.

36. In fact, if one reads the table in para 33 of the impugned award holistically, it appears that the learned Arbitral Tribunal has proceeded on the premise that the only evidence available with him is in the form of letters written to the petitioner in connection with Claim 1(b). While advertent to the said letters, there is not even a whisper of an allusion to any other evidence placed by the respondent on record before the learned Arbitral Tribunal. This remark, therefore, underscores the fact that the learned Arbitral Tribunal has, for all the claims, either awarded 100% or 50% in a pure rule of thumb manner. The impugned Award is, thereby, rendered completely arbitrary, in law.

37. The reliance, by Mr. Agarwala, on the Section 33 application of the respondent, is also of no real use to him. In fact, para 3 of the said order specifically states that, in the absence of proof of payment, the claim for 100% CPG commission and BG commission was allowed on estimate basis *keeping in mind the doctrine of justice, equity, good conscience and fair practice*. Here again, the learned Arbitral Tribunal has awarded the claim purely on estimate, based on the principles of justice, equity and good conscience which, to repeat, is impermissible.

38. For all the aforesaid reasons, the impugned award, in so far as it awards ₹ 2,42,17,988/- to the respondent against Claim 1, cannot



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sustain. It is, therefore, set aside.

39. The petition is, accordingly, allowed with no orders as to costs.

C.HARI SHANKAR, J

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