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

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Date of Decision: 06.03.2024

+ **FAO (COMM) 156/2023 & CM No.63988/2023**

POWER GRID CORPORATION OF INDIA LTD. Appellant
Through: Mr. Pranay Kishore Mishra & Mr. B.K.
Pandey, Advs.

Versus

M/S JUGENDRA SINGH AND COMPANY Respondent
Through: Mr. Sunil Dalal, Sr. Adv. with Mr.
Vivek Jain, Mr. Nikhil Beniwal, Ms.
Manisha Saroha, Mr. Navish Bhati,
Ms. Aastha Tiwari, Ms. Tulasi Mukhi
& Mr. Vikram Singh Dalal, Advs.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (ORAL)**

1. Power Grid Corporation of India Ltd. – a Public Sector Undertaking of the Government of India has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning the judgement dated 26.05.2023 (hereafter *the impugned judgement*) passed by the learned Commercial Court in OMP (COMM) 55 of 2021 captioned *M/s. Jugendra Singh & Company v. M/s. Power Grid Corporation of India Limited*. The respondent – M/s. Jugendra Singh & Company – had filed the said application [OMP (COMM) 55 of 2021] under Section 34 of the A&C Act for setting aside an arbitral award dated 01.05.2021 (hereafter *the impugned award*) rendered by an Arbitral Tribunal comprising of a Sole Arbitrator.



2. The impugned award was rendered in the context of disputes arising out of an agreement (hereafter *the Contract Agreement*) entered into by the parties pursuant to a Letter of Award dated 08.06.2004 (hereafter *the LOA*).

FACTUAL CONTEXT

3. By virtue of the LOA the respondent was awarded the work for “Construction of residential buildings (B, C and D type quarters) at 400/220 KV Sub-Station, Mainpuri (UP)”. The Contract Price was fixed at ₹2,14,23,044/- and the work under the Contract Agreement was to be completed within 10 months from the zero date, which is stated to be 03.05.2004. The Date of Completion for the works, as stipulated in the LOA, was 02.03.2005. It is averred by the appellant that four extensions were granted to the respondent for the completion of works, with the last extension being granted till 31.07.2007.

4. The appellant states that since the works was not completed, despite the extensions being granted to the respondent, it issued a Default Notice dated 21.01.2009 to the respondent. It is averred that no response was given to the Default Notice dated 21.01.2009 by the respondent and the appellant issued a Notification of Award Cancellation dated 09.04.2009 cancelling the Contract Agreement. The Contract Agreement was terminated at the risk and cost of the respondent in terms of Clause 54.0 of the General Conditions of Contract (hereafter *the GCC*) applicable to the Contract Agreement.

5. The appellant awarded the contract for completing the remaining works to another contractor (M/s. Vee Kay Constructions) by a Letter of Award dated 17.01.2011, which was finally amended by a letter dated 31.12.2012. The appellant made payment to M/s. Vee Kay Constructions against the Final



Bill raised by it on 17.05.2013. Thereafter, the appellant issued a notice dated 24.06.2015 to the respondent for deposit of Balance Risk and Cost amount, which after adjusting the security deposit and retention amount was calculated at ₹24,42,056/-. The appellant demanded such payment within 30 days of receiving the notice dated 24.06.2015. It is stated by the appellant that the respondent did not respond to the notice dated 24.06.2015.

6. The appellant sent a legal notice dated 30.11.2018 calling upon the respondent to pay a sum of ₹24,42,056/- along with interest at 18% per annum. The respondent did not respond to the said notice as well.

7. The appellant claims that it invoked arbitration in terms of Section 21 of the A&C Act by issuance of a Letter of Invocation dated 09.05.2019. By the said letter, the appellant nominated an Ex-Director (Tech), NTPC Ltd. as arbitrator and requested the respondent to also nominate an arbitrator so a Presiding Arbitrator could be appointed to adjudicate the disputes. It is alleged by the appellant that since the respondent did not appoint its nominee arbitrator, the appellant appointed its nominated arbitrator as the Sole Arbitrator (hereafter *the Sole Arbitrator*) to adjudicate the disputes, in terms of Clauses 69 and 70 of the GCC. The relevant extract of Clause 69 of the GCC is quoted below :-

“Clause 69.0: ARBITRATION AND LAWS:

Arbitration:- ... For above shall otherwise stipulated apply to contracts whose value does not exceeds Rs. Fifty lakhs. For contract value exceeding Rs. Fifty lakhs in the event of any differences, disputes which cannot be resolved amicably. The aggrieved party as Claimant shall serve a notice of his/their disagreement/dispute having arisen on the opposite party (Respondent) calling upon the later to nominate his/ their nominee arbitrator within 06 months of the date of such notice and that in the event of failure in nominating arbitrator by the



Respondent within 30 days of the notice by the Claimant, the arbitrator nominated by the Claimant shall become the Sole Arbitrator. Where, however, if both the party nominates one arbitrator each i.e. contractor nominates one person to act as arbitrator and NPTC nominates one arbitrator. As required under Indian Arbitration Act, 1940 both the arbitrators shall appoint umpire before entering into the reference of disagreement/disputes before the two arbitrators enter into the reference.”

8. The appellant states that by a letter dated 20.06.2019, addressed to the Chairman cum Managing Director of the appellant, the Sole Arbitrator confirmed its independence, impartiality and capability to adjudicate the dispute. The Sole Arbitrator by the said letter also confirmed that it had no direct or indirect interest in the matter of dispute and accepted its appointment as the Sole Arbitrator.

THE ARBITRAL PROCEEDINGS

9. The arbitral proceedings commenced with the first hearing conducted on 16.07.2019. The respondent remained unrepresented before the Sole Arbitrator. The appellant submitted the Statement of Claim on 06.09.2019.

10. One Mr. Murari Lal Sharma entered appearance on the fourth arbitral hearing conducted on 20.02.2020 claiming to represent the respondent. The letter authorising Mr. Murari Lal Sharma as a representative of the respondent was signed by Ms. Rekha (who was stated to be a partner of the respondent firm), however the said letter was not taken on record by the Sole Arbitrator. And, the respondent was directed to furnish a proper authorisation/ Power of Attorney in favour of Mr. Murari Lal Sharma to enable him to represent the respondent in the arbitral proceedings.

11. The Sole Arbitrator passed a procedural order dated 12.03.2020 that the proceedings would proceed *ex-parte* if the respondent failed to submit the



authorisation letter and other documents by 20.07.2020.

12. By its procedural order dated 03.08.2020 the Arbitral Tribunal decided to proceed with the arbitration *ex-parte* taking note of the failure of the respondent to submit the relevant documents including the Power of Attorney for Mr. Murari Lal Sharma.

13. The arbitral proceedings were conducted *ex-parte* and the Arbitral Tribunal proceeded to examine the claims of the appellant under various heads and partially allowed the same by the impugned award.

14. Paragraph 62 of the impugned award which indicates the claims made and awarded is reproduced below:

“62. The following is the summary of the awarded amounts in favour of the Claimant;

Figures in Rs.

Claim No.	Description of claim in brief	Amount claimed by Claimant	Amount awarded by AT
1	Amount of Balance works executed at risk and cost	46,33,825	36,86,351
2	Liquidated damages for delay in completion of works	16,06,728	16,06,728
3	Payment towards GST @ 18%		
i	on amounts of claim No.1	11,23,300	NIL
ii	on amounts of Claim No.2		2,89,211
iii	GST on interest of claim No.2		63,801
4	Interest on claimed amounts @ 18% till realization plus GST as applicable.		
i	On claim No.1 above from the date of termination of contract i.e. 09.04.2009	62,40,533	52,82,894 [18% from date of 18.05.2013, after the final bill paid on 17.05.2013 incurring expenditure till date of award (01.05.2021) for pre-award period]
ii	On claim No. 2 above from		3,54,499



	the date of termination of contract		[18% from the date of reference to AT (01.07.2019) till the date of award (01.05.2021)]
iii	Interest on awarded amounts of claims from the date of award till realization plus GST as applicable	18%	12% from date of award to realization of payments as per para 63. (ii) below for the post award period
5	Legal expenses incurred	7,86,143	7,75,643
	Total awarded amount	1,43,90,529	1,20,59,077”

THE IMPUGNED ORDER

15. The respondent filed an application [OMP (COMM) 55 of 2021] for setting aside the impugned award on essentially three grounds. First it was averred that, the impugned award was vitiated by patent illegality as the appellant's claims were barred by limitation. Second, that the appellant had unilaterally appointed the Sole Arbitrator, which was impermissible. And, third that no notice under Section 21 of the A&C Act, invoking the arbitration was received by the respondent.

16. The learned Commercial Court noted that the cause of action for raising claim for Balance Works executed at Risk and Cost arose on 30.09.2012 when the contract with M/s. Vee Kay Constructions was executed. However, the arbitration was allegedly invoked on 09.05.2019. The learned Commercial Court observed that in terms of Article 55 of the Limitation Act, 1963, the period of limitation for compensation for breach of contract is three years from the breach and accordingly, the claim of the appellant before the Arbitral Tribunal was barred by limitation.

17. The learned Commercial Court rejected the appellant's contention that



in terms of Clause 69 of the GCC its nominee would be appointed as the Sole Arbitrator on the failure of the respondent to nominate its arbitrator. The learned Commercial Court took note of various decisions of the Supreme Court to conclude that an arbitrator unilaterally appointed was *ineligible* to act as an arbitrator. The learned Commercial Court also noted that the Sole Arbitrator had not communicated the disclosure as required in terms of Section 12(1) of the A&C Act.

18. The learned Commercial Court also accepted the contention that the impugned award was liable to be set aside on the ground of non-service of due notice invoking arbitration under Section 21 of the A&C Act.

REASONS & CONCLUSION

19. Essentially, three questions arise for consideration in this appeal. First whether the impugned award was liable to be set aside on account of non-receipt of notice invoking arbitration. Second, whether the impugned award is vitiated by patent illegality as the claims made by the appellant were barred by limitation. And third, whether the appointment of the Sole Arbitrator can be faulted.

NOTICE UNDER SECTION 21 OF THE A&C ACT

20. The first and foremost question to be addressed is whether the impugned award is liable to be set aside for want of receipt of the notice under Section 21 of the A&C Act. Section 21 of the A&C Act expressly provides that unless the parties agree otherwise, the arbitral proceedings in respect of a particular dispute would commence on the date on which the request for that dispute to be referred to arbitration is received by the respondent.



21. In the present case, the Letter of Invocation dated 09.05.2019 is claimed to be the notice under Section 21 of the A&C Act. Thus, the arbitral proceedings commenced with effect from the date the said notice was received by the respondent. It is material to note that the said notice was addressed to the respondent at “Gali No.1, Prem Nagar, Etah (UP) -207001” (hereafter *Prem Nagar address*). It is not in dispute that the said address is not that of the respondent. In any view, there is no material to establish the same.

22. The LOA was addressed to the respondent at a different address being “Near Rajendra Petrol Pump, Suresh Puri, G.T. Road, Etah (UP) – 207001” (hereafter *Rajendra Petrol Pump address*). There is also no cavil that while the Contract Agreement was being executed, all communications to the respondent were addressed at the Rajendra Petrol Pump address. The appellant had terminated the contract by a letter dated 09.04.2009. This too was sent to the respondent at the Rajendra Petrol Pump address.

23. Thereafter, the appellant issued a notice dated 24.06.2015, *inter alia*, stating that the security deposit furnished by the respondent had been adjusted towards the appellant’s demand against Risk and Cost of the amount of ₹52,09,225/-. And, after adjustment of the said amount, an amount of ₹24,42,056/- was payable by the respondent. By the said notice dated 24.06.2015, the respondent was called upon to deposit the said amount within a period of thirty days in terms of the Contract Agreement. The appellant threatened the respondent that in the event the said deposit was not made, the appellant would initiate “appropriate legal action” for recovery of the Balance Risk and Cost amount. This notice dated 24.06.2015 too was addressed to the respondent at its correct address, that is, Rajendra Petrol Pump address.



24. All communications to the respondent prior to the legal notice dated 30.11.2018, were addressed to the respondent at the Rajendra Petrol Pump Address. However, the said legal notice dated 30.11.2018 to the respondent was sent at the incorrect address, that is, Prem Nagar address.

25. The respondent did not respond to the notice dated 24.06.2015 as well as the legal notice dated 30.11.2018.

26. There is nothing on record which would indicate that the respondent had issued a communication to the appellant requesting the appellant to forward all future communications to the respondent to the Prem Nagar address.

27. It is important to note that there is no material on record to indicate as to why the legal notice dated 30.11.2018 was addressed at an incorrect address of the respondent. However, the learned counsel appearing for the appellant submits that since the appellant had not received any response to the notice dated 24.06.2015, it made local enquiries, which revealed the respondent's address to be the Prem Nagar address. However, as stated above, there is no material on record to support the said contention.

28. Thereafter, the Letter of Invocation dated 09.05.2019 – which the appellant claims to be the notice under Section 21 of the A&C Act – was issued.

29. The impugned award indicates that all communications of the Arbitral Tribunal were also addressed to the respondent at the incorrect address, being the Prem Nagar address. The respondent remained unrepresented before the Arbitral Tribunal. However, at the fourth arbitral hearing held on 20.02.2020, one Mr. Murari Lal Sharma appeared before the Arbitral Tribunal and



claimed to be the authorized representative of the respondent. This was stoutly disputed by the respondent, as according to the respondent, it had not authorized any person to appear before the Arbitral Tribunal. Be that as it may, Mr. Murari Lal Sharma had reportedly informed the Arbitral Tribunal that the communications issued by the Arbitral Tribunal were addressed at an incorrect address and the respondent had not received any earlier communications sent by the appellant or the Arbitral Tribunal and therefore, could not attend any of the hearings.

30. The Arbitral Tribunal did not accept Mr. Murari Lal Sharma's authority to appear for the respondent, however, took note of the fact that the earlier communications were addressed at an incorrect address – Prem Nagar address – and accordingly, directed that all future communications be sent at the respondent's address as reflected in the LOA (that is, Rajender Petrol Pump address).

31. Since there is no material to even remotely indicate that the respondent's correct address was the Prem Nagar address, this Court must accept that the notice dated 09.05.2019 was sent at an incorrect address.

32. The respondent had denied receipt of the said notice allegedly invoking arbitration and, there is no material to indicate to the contrary. Thus, the only inescapable conclusion is that the Letter of Invocation dated 09.05.2019 was not received by the respondent.

33. It is also relevant to refer to Section 3 of the A&C Act which provides for service of written communication. In terms of Clause (a) of Sub-section (1) of Section 3 of the A&C Act, a written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address. In terms of Clause (b) of



Sub-section (1) of Section 3 of the A&C Act, if none of the places as referred to in Clause (a) of Sub-section (1) of Section 3 of the A&C Act can be found then, a written communication would be deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides for a record of the attempt to deliver it. In the present case, the Letter of Invocation dated 09.05.2019 was neither delivered to the respondent personally nor sent to its place of business, habitual residence or mailing address. The said Letter was also not sent to the respondent's last known place of business by registered post.

34. In view of the above, we find no infirmity with the decision of the learned Commercial Court in accepting that the Letter of Invocation dated 09.05.2019 remained unserved. In terms of Section 21 of the A&C Act, unless the parties have agreed otherwise, the arbitral proceedings commence on receipt of the notice to refer the disputes to arbitration. In *Shriram Transport Finance Co. Ltd. v. Narender Singh: (2022) SCC OnLine Del 3412*, a Coordinate Bench of this Court, of which one of us (Tara Vitasta Ganju, J.) was a member, had emphasised that a notice under Section 21 of the A&C Act must not only be sent but received for the arbitration to commence. Since the notice for referring the disputes to arbitration was not received by the respondent, the impugned award is liable to be set aside.

35. Sub-clause (iii) of Clause (a) of Sub-section (2) of Section 34 of the A&C Act expressly provides that an arbitral award may be set aside if the party making an application to set aside the arbitral award was not given a proper notice of appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case. Clause (iii) of Section 34(2)(a) of



the A&C Act is clearly applicable to the facts of the present case. Thus, the impugned award is liable to be set aside on this ground alone.

CLAIMS BARRED BY LIMITATION

36. In view of the above, it is not necessary for this Court to address the contention whether the claims made by the appellant were barred by limitation and the impugned award holding to the contrary is vitiated by patent illegality appearing on the face of the award. However, for the sake of completeness, we consider it apposite to address this contention as well.

37. To address the aforesaid controversy, it is relevant to mention certain dates. The Contract Agreement was terminated on 09.04.2009. According to the appellant, the works were incomplete and the Contract Agreement was terminated as the respondent had failed to perform its obligations. The claim made by the appellant relates to risk and cost – the additional expenditure incurred by the appellant to complete the works. It is claimed that one M/s Vee Kay Constructions was issued a Letter of Award for completing the balance works on 17.01.2011. This is reflected in the letter dated 31.12.2012 issued by the appellant to M/s Vee Kay Constructions for amending the Letter of Award dated 17.01.2011.

38. The impugned award also reflects that M/s Vee Kay Constructions completed the remaining work on 30.09.2012. Thereafter, the Letter of Award dated 17.01.2011 issued to M/s Vee Kay Construction was amended, *inter alia*, to increase the value of the contract. Thus, clearly, the cause of action for recovering the amount for risk and cost had arisen after completion of the balance works by M/s Vee Kay Constructions, that is on 30.09.2012, if not earlier. However, there is no explanation why appellant did not take



immediate steps for recovering its claim of ₹52,09,225/- on account of Risk and Cost. Undeniably, the cause to do so had arisen.

39. The appellant adjusted the security deposit furnished by the respondent against the aforesaid claim and by a notice dated 24.06.2015 demanded the balance amount of ₹24,42,056/-. The appellant called upon the respondent to pay the same within a period of thirty days. Admittedly, the respondent did not comply with the said demand. Thus, undisputedly, the cause of action for commencing any recovery proceedings instituted for recovery of balance amount had arisen on expiry of the thirty days of the notice dated 24.06.2015.

40. The learned counsel appearing for the appellant submitted that the cause of action had not arisen as respondent had not denied the said demand. This contention is insubstantial. The fact that the respondent had not complied with the said demand and did not respond to the said notice, does not mean that the cause of action for recovery of damages had not arisen. The appellant took no steps to initiate any action within the period of three years thereafter. Thus, clearly, any action for recovering the same would be barred by limitation.

41. The appellant issued a legal notice dated 30.11.2018 (at the incorrect address of the respondent). The said legal notice was issued beyond the period of limitation and does not extend the period of limitation within which an action was required to be commenced.

42. This Court had pointedly asked the learned counsel appearing for the appellant whether there was any material on record which would indicate that the period of limitation stood extended by acknowledgment. He fairly responded in the negative.



43. Given the admitted facts, it is apparent that the claims raised by the appellant were barred by limitation. The impugned award holding to the contrary is thus, vitiated by patent illegality on the face of the record.

UNILATERAL APPOINTMENT OF THE SOLE ARBITRATOR

44. The next aspect to be examined is with regard to the challenge to the appointment of the Arbitral Tribunal. The respondent's challenge to the appointment of the Sole Arbitrator is two-fold. First, that the appointment was unilateral and therefore, the Sole Arbitrator was ineligible to act in terms of Section 12(5) of the A&C Act. Second, that the Sole Arbitrator had failed to make the mandatory disclosure as required under Section 12(1) of the A&C Act.

45. Insofar as, the first contention is concerned, it is not the appellant's case that it is entitled to unilaterally appoint the Sole Arbitrator. The appellant contended that it had issued the Letter of Invocation dated 09.05.2019 appointing its nominee arbitrator and had called upon the respondent to appoint its nominee. However, since the respondent had failed to appoint its nominee in terms of the arbitration clause (Clause 69 of the GCC), the arbitrator nominated by the appellant was required to act as a Sole Arbitrator. There is merit in the contention that the arbitrator nominated by the appellant acted as the Sole Arbitrator as a consequence of the respondent not appointing its nominee arbitrator. The appellant did not intend to unilaterally appoint the arbitrator. However, as noted above, the notice invoking the arbitration was never served on the respondent thus, the respondent had no occasion to nominate an arbitrator. Although not intended, the action of the appellant to appoint the arbitrator as the Sole Arbitrator amounts to unilaterally appointing an arbitrator contrary to the Arbitration Agreement (arbitration clause). The



action of the appellant to proceed to unilaterally appoint its nominee arbitrator as the Sole Arbitrator is clearly not sustainable. Since the Sole Arbitrator was not appointed in terms of the Contract Agreement, the impugned award rendered by the Arbitral Tribunal is liable to be set aside.

46. Insofar as, the second contention is concerned, the same is merited as well. It is noted that the Sole Arbitrator has not made the requisite disclosure as required under Section 12(1) of the A&C Act. It is relevant to refer to Sub-section (1) of Section 12 of the A&C Act. The same is set out below:

“12. Grounds for challenge.— (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation1.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.]”

47. It is apparent from the above that the arbitrator is not only required to disclose whether he had any interest or connection with the subject matter in dispute, but is also required to disclose whether he has, either direct or



indirect or any past or present relationship with any of the parties. In terms of Explanation 2 of Section 12(1) of the A&C Act, the said disclosure is required to be made in the specified format – as provided under the Sixth Schedule. In the present case, no disclosure in the given format was made by the Sole Arbitrator. Although the provision of making a disclosure in the specified format is directory, the obligation to make a full disclosure of the circumstances, which may give rise to justifiable doubts as to the independence and impartiality is not. The words “*he shall disclose*”, as used in Section 12(1) of the A&C Act make it clear that the obligation to disclose circumstances as specified in Section 12(1) of the A&C Act is mandatory.

48. In ***Ram Kumar & Anr. v. Shriram Transport Finance Co. Ltd.: 2022 SCC OnLine Del 4268***, a Coordinate Bench of this Court, of which one of us was a member (Vibhu Bakhru, J.) had observed as under:

22. It is necessary to note that the language of Section 12(1) of the A&C Act does not leave it at the discretion of any person, approached in connection with being appointed as an arbitrator, to make the necessary disclosures. The use of the words “he shall disclose” in Section 12(1) of the A&C Act makes it mandatory for the person who is approached in connection with his possible appointment as an arbitrator, to make a disclosure of all circumstances that may give rise to justifiable doubts as to his independence and impartiality.

23. In terms of Explanation 2 to Section 12(1) of the A&C Act, such disclosure is to be made in the form specified in the Sixth Schedule of the A&C Act. It may be sufficient compliance of the Explanation if the necessary particulars, as required to be disclosed in the Sixth Schedule, are disclosed but the disclosure is not in the format as provided. However, it would be erroneous to assume that the requirement of making a disclosure is not mandatory.

24. This Court is of the view that the requirement of making a



disclosure is a necessary safeguard for ensuring the integrity and efficacy of an arbitration as an alternate dispute resolution mechanism and is not optional.”

49. In the present case, the Sole Arbitrator has stated that he is independent, impartial, and capable to adjudicate the disputes. However, he has not disclosed whether he has any past or present relationship with the appellant. He has also not disclosed whether he has acted as an arbitrator or was employed in any other capacity by the appellant or its affiliate. In this regard, we pointedly asked the learned counsel appearing for the appellant, whether he can state that the arbitrator had no relationship with the appellant company and had not been engaged by the appellant company in the past as an arbitrator or in any other capacity. He fairly stated that he cannot make any such statement as there is no material on record, which would indicate so. This underscores the respondent’s objection that the Sole Arbitrator had not made any such disclosure.

50. In the given circumstances, we find no infirmity with the conclusion of the learned Commercial Court that the impugned award is liable to be set aside under Section 34 of the A&C Act.

51. The appeal is, accordingly, dismissed. Pending application is also dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 06, 2024

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FAO (COMM) 156/2023