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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Pronounced on: 15.07.2024

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FAO(OS) (COMM) 202/2019**FLOVEL HYDRO TECHNOLOGIES PVT LTD & ANR Appellants**

versus

MECAMIDI S A

..... Respondent

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**FAO(OS) (COMM) 263/2019 & CM Appls.40595/2022,
3974/2024, 3975/2024 and 3874/2024****MECAMIDI S A**

..... Appellant

versus

FLOVEL HYDRO TECHNOLOGIES PVT LTD & ANR Respondents**Advocates who appeared in this case:**

For Flovel Hydro Technologies

Pvt. Ltd. & Anr.

: Mr. Anirudh Wadhwa, Mr. Kanishk
Garg & Mr. Anirudh Agarwal,
Advs.

For Mecamidi S.A.

: Ms. Ramni Taneja, Adv.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****JUDGMENT****TARA VITASTA GANJU, J.:****TABLE OF CONTENTS**

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Preface

1. This judgment decides two separate appeals filed by both the parties before this Court under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the ‘Arbitration Act’] against a judgement dated 30.07.2019 passed by the learned Single Judge of this Court in *O.M.P. (COMM) 228/2017* [hereinafter referred to as the ‘Impugned Judgment’].
2. By the Impugned Judgment, the learned Single Judge partly allowed the petition filed by Mecamidi S.A [hereinafter referred to as ‘Mecamidi’] under Section 34 of the Arbitration Act challenging an Arbitral Award dated 22.12.2016 passed by the Arbitral Tribunal [hereinafter referred to as the ‘Award’]. The Impugned Judgment has also been challenged by Flovel Hydro Technologies Pvt Ltd [hereinafter referred to as ‘Flovel’].
 - 2.1 During arguments before this Court, it was contended by learned Counsel for Flovel that Mecamidi had gone into liquidation and hence, the right to represent Mecamidi by learned Counsel who was appearing for the erstwhile management of the company was questioned. Learned Counsel for Mecamidi clarified that under French Law, an erstwhile Chairman and Director can continue legal proceedings even after a liquidator is appointed.
3. This Court, by its Order dated 22.01.2024, clarified that since the scope of challenge is a limited one, without going into the



abovementioned objection, it will hear the appeals on merits.

Brief Facts

4. On 22.03.2007, Mecamidi, a global supplier of electro-mechanical equipment for small and average hydro power plants, entered into a Joint Venture Shareholders Agreement [hereinafter referred to as 'JVSA'] with Flovel to market, design, manufacture, install, and service hydropower equipment in India. The JVSA envisaged an equal equity participation in Flovel Energy Private Limited [hereinafter referred to as 'the Venture Company'] by Mecamidi and Flovel. The JVSA also set out that the Venture Company shall be called 'Flovel Mecamidi Energy Private Limited'.
5. The JVSA required Mecamidi to invest Rs. 2.50 crores in two instalments: Rs.1.1 crores within 15 days of date of execution of the JVSA and Rs.1.4 crores (Rs. 60 lakhs to Venture Company and Rs. 80 lakhs to Flovel) within 180 days of date of the JVSA. Subsequently, the parties entered into a Supplementary JVSA executed on 12.06.2007 [hereinafter referred to as 'supplementary JVSA'], extending the deadlines for payment of these instalments. Thus, the first instalment was to be made by 27.06.2007, and second instalment by 11.12.2007.
- 5.1 Mecamidi paid the first instalment belatedly, which was accepted by Flovel. On 22.09.2007, four additional agreements were executed between the parties:
 - (i) Name Protection Agreement – Mecamidi;
 - (ii) Name Protection Agreement – Flovel;
 - (iii) Technical Know-How License Agreement; and



(iv) Trademarks License User Agreement.

6. Mecamidi failed to pay the second instalment of Rs.1.4 crores by 11.12.2007. Instead, Mecamidi sent Euros 94,968.60 on 18.08.2008, which was held by Flovel until 13.02.2009, when it was returned. In the meanwhile, negotiations for rescheduling payments did not culminate in a new contract between the parties.
7. Disputes arose when the Venture Company sought to increase its paid-up capital, leading to Mecamidi filing a petition alleging oppression and mismanagement of the Venture Company before the Company Law Board [hereinafter referred to as 'CLB']. On 27.03.2009, the CLB passed an order which stayed the increase in the paid-up capital of the Venture Company.
8. On 22.08.2009, Mecamidi terminated the JVSA and related agreements, citing reasons such as exorbitant share prices, attempts to dilute shareholding, and breaches of Articles of Association. Flovel disputed the termination and invoked the arbitration clause in the JVSA on 21.06.2010.
9. On 05.07.2010, the CLB recorded that Mecamidi was willing to exit from the Venture Company on a fair valuation. After some litigation between the parties, on 11.11.2010, the Venture Company was renamed Flovel Energy Pvt Ltd and Mecamidi exited from the Venture Company, selling its shareholding to Flovel on 20.04.2012.
10. An Arbitral Tribunal was constituted pursuant to which Flovel filed its Statement of Claim [hereinafter referred to as 'SOC']



inter-alia claiming compensation for breach of contract and financial obligations under the JVSA and damages as follows:

- (i) Damages on account of loss of profits;
- (ii) Future reputation and goodwill;
- (iii) Breach of clauses of the JVSA; and
- (iv) *Pendente lite* and future interest at the rate of 24% per annum.

11. Mecamidi also filed its counter-claims which included claims for damages on Flovel's continued use of the name "MECAMIDI" after termination of the JVSA; misrepresentation to customers about Mecamidi's association with Venture Company, and breach of the Technical Know-How License Agreement by using Mecamidi's proprietary information in bids and loss of reputation and goodwill along with *pendente lite* interest and costs.
12. By an Award dated 22.12.2016, the Arbitral Tribunal held that Mecamidi had committed a breach of its obligations under the JVSA, and that it failed to fulfil its financial obligations under the JVSA and awarded Rs. 1.5 crores as damages to Flovel along with interest at the rate of 12% per annum from the date of the Award to the date of actual payment. The Award however, dismissed all counter-claims of Mecamidi.

Impugned Judgement

13. The learned Single Judge by the Impugned Judgment upheld the Arbitral Tribunal's findings that Mecamidi breached the JVSA by failing to make payment of the second instalment within 180 days of supplementary JVSA. It further held that Flovel, by its conduct condoned the delay in making the payment of first instalment,



however, merely because the first instalment was accepted, the subsequent delay for the second instalment was not condoned. The learned Single Judge rejected Mecamidi's argument that the parties' negotiations after the deadline amounted to a new contract overriding the breach. The learned Single Judge observed that mere negotiations not culminating into a new concluded contract cannot undo a breach already committed.

14. Thus, the learned Single Judge set aside the Tribunal's Award of Rs. 1.5 crore as damages, citing a lack of reasoning and evidence behind this figure, rendering it in contravention of Section 73 of the Indian Contract Act, 1872 [hereinafter referred to as 'Contract Act'] and settled legal principles. It was held that damages cannot be awarded arbitrarily without a claimant providing some material evidence of the actual loss suffered due to the breach. The learned Single Judge set out the Tribunal's observation in paragraph 40 onwards of the Award that, Flovel failed to produce evidence of the financial gains they would have made if the contract was duly performed, or the extent of loss caused by the breach. Awarding a substantial sum of Rs. 1.5 crore by merely terming it as "*reasonable*" without any rationale or basis was found to be impermissible. The learned Single Judge also rejected Flovel's reliance on precedents allowing guesswork in awarding damages and held that the amount of Rs. 1.5 crores awarded, could not be said to be a 'token amount' when the contract itself was valued at Rs. 2.50 crores.



15. On Mecamidi's counter-claims related to use of "*MECAMIDI*" name and technical know-how by Flovel after termination, the learned Single Judge upheld the Tribunal's rejection, agreeing with its reasoning. It was held by the learned Single Judge that the Arbitral Tribunal had rightly observed that Mecamidi did not show any intention to actually exit the Venture Company till 05.07.2010 and therefore, no loss of goodwill or reputation could be attributed before that date. In addition, it held that Mecamidi failed to provide any documentary evidence to prove Flovel's use of know-how for specific projects after termination, and was relying on the damages claimed based on projected hypothetical calculations of share of profits rather than substantiated proof of actual loss. Hence, the learned Single Judge found no infirmity in the Tribunal's rejection of these counter-claims.

Deposit

16. A Coordinate Bench of this Court by its order dated 07.11.2019 passed in both Appeals, has recorded that a sum of USD 147,610/- converted to Rs. 1,07,90,855/- and Rs. 96 lacs was deposited by Flovel with the Registry of this Court. The deposit was converted into a fixed deposit receipt and was directed to be renewed by the Registry from time to time, till the disposal of the present appeals.

Contentions of Flovel

17. At the outset, learned Counsel for Flovel raised a preliminary objection with regard to the representation of Mecamidi before this Court. It was contended that Mecamidi, a French company, is now under liquidation and, therefore, it is now required to be



represented by the liquidator and not its erstwhile directors/management. It was contended that the Counsel representing Mecamidi has been authorised by the erstwhile Chairman and not by the Official Liquidator. It was further contended that this issue was agitated by Flovel before the National Company Law Tribunal [hereinafter referred to as “NCLT”] as well, in the *inter-se* litigation between the parties. Citing the principle of “*issue estoppel*”, learned Counsel for Flovel has contended that Mecamidi cannot be permitted to re-agitate this issue before this Court. Reliance was placed on the judgment of the Supreme Court in ***Hope Plantations Ltd. v. Taluk Land Board***¹.

17.1 Learned Counsel for Flovel has further contended that since by its order dated 22.01.2024, the Court has not gone into question as to whether the erstwhile management can continue to represent Mecamidi but has heard the appeal on merits, the question of return of monies which stands deposited in this Court by Flovel, could become an issue.

17.2 It was contended on behalf of Flovel that the Impugned Judgment wrongly set aside, the Award of Rs. 1.5 crores in favour of Flovel as being without any evidence. The basis for Claim no. 1 of Flovel in the SOC filed before the Arbitral Tribunal was breach of obligation for payment of “*share subscription money*” by Mecamidi under Clause 2 of the JVSA, while the basis for Claim no. 2 of Flovel in the SOC was a breach of the financial

¹ (1999) 5 SCC 590



obligations of Mecamidi under Clause 19 of the JVSA. Both these Claims were independent and distinct. The Arbitral Tribunal found Mecamidi to be in breach of its obligations in the Award thus, as a direct and natural consequence of this breach, Flovel suffered losses, and claims in this regard were made by Flovel as part of Claim no. 2 of the SOC.

17.3 Learned Counsel contended that Claim no. 2 of the SOC of Flovel for an amount of Rs.4,32,97,948.36/-, was based on the following table which formed part of its SOC as well:

S. No.	DESCRIPTION	AMOUNT CLAIMED
1	Interest @13% on the unsecured loan of Rupees 12.5 million (Rs.1.25 crore) to be brought in by the Mecamidi in the Venture Company with effect from 08.08.2008 to 31.03.2011 as such Loan Agreement was initialed [sic:initiated] by the Mecamidi on 08.08.2008 and was never given by to the Venture Company for the purpose of purchase of capital equipment. As a direct result whereof, the Venture Company had to make the payment to the foreign supplier by availing finances of the Lenders by paying interest.	Rs. 46,43,493/-
2	Deed of Indemnity was to be executed by the Mecamidi in favour of the Venture Company, Mr. Maharaj Kar and Mr. Gautam Kar for 50% value of the personal guarantees furnished by them to the Lenders. Such Deed of Indemnity was initialed between the Mecamidi and the Flovel on 08.08.2008. Amount claimed by the Flovel is the amount equivalent to 50% of 2.47% per annum of the net worth of Rs. 22.58 crores of the Flovel and its promoter Director for the period 08.08.2008 to 31.03.2011.	Rs. 1,80,67,654.69/-



3	Interest @ 13% on the Bank Guarantee amount equivalent to Rs. 22.5 Million (Rs.2.25 crore) to be furnished by the Mecamidi for 50% value of the collateral security furnished by Mr. Maharaj Kar amounting to Rs.45 million was to be furnished by the Mecamidi in favour of Mr. Maharaj Kar.	Rs. 83,58,287.67/-
4	Amount claimed by Venture Company towards the amount forfeited by Bank of India (the processing fees amounting to Rs. 5,97,850.00 & Rs. 31,49,323.00 paid by the Venture Company to Bank of India and the amount Rs. 30,00,000.00 paid by the Venture Company to Bank of India as prepayment charges and a further sum of Rs. 49,63,500.00 as processing charges and Rs.5,17,840.00 as counter bank guarantee charge paid to M/s. ICICI Bank.)	Rs. 1,22,28,513/-
	TOTAL	Rs. 4,32,97,948.36/-

Out of the amount of Rs.4,32,97,948.36/-, a total of Rs.1,68,72,006/- was based on documentary evidence on record. Thus, the Arbitral Tribunal, instead of allowing, Rs. 1,68,72,006/-, allowed Rs, 1,50,00,000, as a lump sum amount, as being reasonable and based on a wholistic view of the evidence.

17.4 It is submitted by Flovel, in light of the judgment in the case of *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*², the underlying arbitration between the parties was an “international commercial arbitration” in terms of Section 2(1)(f) of the Arbitration Act, the only ground available for interference with such an arbitral Award was if it were in

² (2019) 15 SCC 131



conflict with the “public policy of India”. The ground of ‘*patent illegality*’ under Section 34 (2A) of the Arbitration Act, to set aside the Award, was not available. Additionally, it was averred that it is settled law that an Arbitral Tribunal is the master of the quality and quantity of evidence and a finding of fact reached by an Arbitral Tribunal, as long as the view taken is a ‘*possible*’ view, it is not capable of being interfered with by the Courts, as has been held in the judgement of the Supreme Court in ***Associate Builders v. Delhi Development Authority***³. Thus, the learned Single Judge should not have interfered with the Award.

17.5 It was further contended by Flovel that an estimate of damages on the basis of guesswork or “*guess-timation*” in assessing the damages is within the jurisdiction of the Arbitral Tribunal and as such incapable of being interfered with. Reliance was placed ***DDA v. Anand & Associates***⁴ and ***Mohan Lal v. UOI***⁵.

17.6 Lastly, it was contended that the Impugned Judgment correctly did not interfere with the rejection of the counter-claims of Mecamidi and the Award of costs in the sum of Rs. 20 lakhs in favour of Flovel.

Contentions of Mecamidi

18. Learned Counsel appearing on behalf of Mecamidi has contended that the objection taken by Flovel, that the erstwhile Chairman has no authority to represent Mecamidi in these proceedings before

³ (2015) 3 SCC 49

⁴ (2008) 151 DLT 18 (DB)

⁵ 2010 SCC OnLine Del 699



this Court as company is in liquidation, is misconceived. Relying on two legal opinions given by Advocates practicing in France, Mr. Bruno Lefebvre and Mr. Benjamin Honig and an extract from the Register of Commerce and Companies issued by the Registrar in Paris, it is contended that under French Law, Mr. Jean Zekri continues to remain as the Chairman of Mecamidi during the liquidation process and that Mecamidi continues in existence. Since, Mecamidi is governed by French Law, its proceedings in respect of liquidation are also governed by French Law and not Indian Law.

- 18.1 Learned Counsel for Mecamidi has submitted that the Arbitral Tribunal found that Flovel had failed to produce any evidence to show the loss suffered by it and that it was also under a duty to mitigate its losses which was not done by Flovel. Challenging this finding, it is contended that despite there being no evidence on record, the Arbitral Tribunal's Award of Rs. 1.5 crores and interest to Flovel was incorrect and impermissible in law and that the learned Single Judge has rightly set aside such Award and the interest accrued thereon.
- 18.2 It has been contended by learned Counsel for Mecamidi that Mecamidi is aggrieved by the dismissal of all its counter-claims and the finding of the learned Single Judge that it had committed breach of the JVSA. In addition, Mecamidi is aggrieved by the learned Single Judge's order upholding the order of costs in the sum of Rs. 20 lakhs in favour of Flovel.



- 18.3 Learned Counsel for Mecamidi relied on the judgment of the *National Agricultural Cooperative Marketing Federation of India (NAFED) v. Alimenta SA*⁶, concerning the interpretation of the concept of public policy in the context of a foreign award. In the *NAFED* case, the Supreme Court while relying on the ratio of the decision in the *Ssangyong* case, held that the learned Single Judge has disregarded the legal position that the impugned Award is against public policy and is also against the fundamental policy of Indian law and against the basic concept of justice.
- 18.4 It is further contended that Flovel in the present Appeal is requesting this Court to re-appreciate the ‘purported’ evidence filed by it in the Arbitral Tribunal which is impermissible in law. If this Court is persuaded to re-appreciate the evidence as is sought to be done by Flovel, then, it should re-appreciate the copious evidence that has been filed by Mecamidi in support of its counter-claims, all of which have been rejected by the Arbitral Tribunal and also by the learned Single Judge.
- 18.5 Lastly, Mecamidi contends that the guesswork or concept of “guess-timation” has been misapplied by Flovel to justify its claim for damages. It is contended that the Supreme Court in the case of *Trishala Jain and another v. State of Uttaranchal and Anr.*⁷ has explained the meaning of “guess-timation” and held that discretion of the Court in applying guesswork to the facts of a given case, is not unfettered, but has to be reasonable and should have a

⁶ 2020 19 SCC 260

⁷ (2011) 6 SCC 47



connection to the data on record produced by the parties by way of evidence. This concept is inapplicable to the present case as the Arbitral Tribunal itself has ruled that Flovel did not produce any evidence. Thus, it is contended the principle of “*guess-timation*” has no applicability in the present case.

Analysis & Findings

19. As stated above, the Impugned Award was rendered in an international commercial arbitration as defined under Section 2(1)(f) of the Arbitration Act since Mecamidi is an entity incorporated overseas. The Award passed in an international commercial arbitration has a limited scope of challenge under Section 34 of the Arbitration Act, such an Award cannot be interfered with or set aside on the ground of patent illegality as is set forth under Section 34(2A) of the Arbitration Act. The grounds for challenge available for an Award passed in an international commercial arbitration are as set out in Section 34(2) of the Arbitration Act. Section 34(2)(b)(ii) of the Arbitration Act sets out that an award may be set aside where the Court finds that such award is in conflict with the “public policy of India”.

20. The explanation to Section 34(2)(b) of the Arbitration Act defines conflict with the “public policy of India” as follows:

“34. **Application for setting aside arbitral award** –

(1)

(2) *An arbitral award may be set aside by the Court only if –*

(a)



(b) the Court finds that –

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1 – For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if –

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2 – For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”

21. Thus, as stated above, this Court is required to examine as to whether the Award is induced or affected by fraud or corruption; or is in contravention with the fundamental policy of Indian law or in conflict of the basic notions of morality or justice. No averment with respect to the Award being induced or affected by a fraud or corruption was raised by either party. However, it is contended that the Award is in violation of the fundamental policy of Indian law.

22. During the pendency of the Appeals, Mecamidi filed an application to place on record the fact that Mecamidi has gone into liquidation. In addition, Mecamidi also produced the legal opinion by French Counsel to clarify that the erstwhile Chairman of Mecamidi continues to be the legal representative and



Chairman/Chief Executive of the Mecamidi under French Law, during the liquidation proceedings. It has also been stated that this issue has also been raised by the parties before the NCLT, New Delhi and in other ancillary proceedings which are pending between the parties. Since, this issue is being examined by NCLT and as stated above, what is pending before this Court is a Petition under Section 37 of the Arbitration Act. This Court has thus heard the matter on merits without advertng to an opinion in this regard.

23. The issue before this Court is in a narrow compass. The Arbitral Tribunal awarded Flovel damages in the sum of Rs. 1.5 crores for breach of contract by Mecamidi along with interest and the Arbitral Tribunal further held that Mecamidi has not been able to prove its losses and thus rejected the counter-claims of Mecamidi.
24. The learned Single Judge set aside the Award in favour of Flovel on the ground that the Arbitral Tribunal has awarded damages in the absence of any evidence. The learned Single Judge further held that Flovel was also required to show the losses suffered by it, while being under a duty to mitigate such loss – which has not been done by Flovel before the Arbitral Tribunal. The learned Single Judge however upheld the dismissal of the counter-claims of Mecamidi by the Arbitral Tribunal.

Findings on Claims of Flovel

25. An examination of the claims of Flovel shows that Claim No. 1 of Flovel was related to the breach of obligations of the JVSA and the supplementary JVSA including under Clause 2.4 of the JVSA.



The Arbitral Tribunal held that Mecamidi had breached its obligations to subscribe to the equity share capital of the Venture Company by delaying the payment of the 2nd instalment payment of Rs. 1.4 crores in terms of the Clause 2.4 of the JVSA.

26. Claim No. 2 of Flovel was a declaration that Mecamidi had breached its obligations under Clause 19 of the JVSA and Article 22 of the Article of Association of the Venture Company, for which a claim in the sum of Rs.4,32,97,948.36/- was made by Flovel as is set out in the Table reproduced in paragraph 17.3 hereinabove. Clause 19 of the JVSA which discusses financial obligations reads as follows:

“19. Financial Obligations

19.1 The JV Company may borrow from a bank/financial institutions/other lending entities additional amounts from time to time for materializing the business plan. The total raised funds shall be utilized for meeting the business plan. The Shareholders agree to provide security, if so required by the bank/financial institutions/other lending entities and to be agreed between the Shareholders, in equal proportion.”

- 26.1 Flovel contended that the Venture Company was burdened with additional financial obligations and that the Directors of Flovel were obligated to banks for availing loan facilities by furnishing personal securities and collateral security, no assistance was provided by Mecamidi. It was further contended that the processing fees and charges of the bank for the increase in the authorised and paid-up capital of the Venture Company was to be shared equally by Mecamidi which was not done. Lastly, the amounts towards processing fees and lead banking charges and pre-payment charges were also claimed.



27. Mecamidi, on the other hand, contended that while Clause 19 of the JVSA pre-supposes an equal proportionality in terms of shareholding of 50% of shares, it does not envisage that Mecamidi be burdened by financial obligations in the form of security for unsecured loans, bank securities or obligations arising out of deed of indemnities executed by the Venture Company.
28. The Arbitral Tribunal held that Mecamidi did not exercise the right to subscribe to the balance 25% of equity shares within time and thus, Clause 19.1 of the JVSA would have to be interpreted to hold that the shareholders were to secure the loans in equal proportion. In the view of the Arbitral Tribunal, it would be fair to interpret this Clause in a manner to mean that equal security was required to be furnished by Mecamidi. The relevant extract of the Award is reproduced below:

*“44. In our view the parties had agreed for joint venture company and to hold the share holding in equal proportion. As we have indicated above instead of equally subscribing to the shares at the first instance, the parties agreed that Indian Promoter will bring in 75% of the paid up capital and Mecamidi being foreign partner will bring in 25% of the paid up capital. A right is given to the Mecamidi being foreign partner to bring in balance 25% of the paid up capital within 180 days from date of execution of JVSA which time was subsequently agreed to be from 12.6.2007. The parties had also agreed that in the event Mecamidi did not exercise its right to bring in balance 25% of paid up capital then it will relinquish certain rights relating to quorum of Board meetings, General meetings, and specified decisions to be taken in said meeting. Thus, the rights which were to be available to Mecamidi on being 50% equal shareholder could not have been available to it if it would have been in minority i.e. to the extent of 25%. **We are of the view that Mecamidi did not exercise the right to subscribe to the balance 25% of the equity shares of Flovel energy within agreed extended time knowing fully well the consequences. In this view of the matter, clause 19.1 will have to be interpreted and enforced accordingly. The parties agreed in clause 19 that the shareholders are to secure the loans in equal proportion.** This equal proportion had some meaning and Importance. By not subscribing*



*balance 25% of equity shareholding certain rights as enumerated in clause 2.8 were forfeited for Mecamidi, while Flovel Energy continued to operate Its business. **In our view, it will be fair to read clause 19.1 to mean that security was to be furnished by Mecamidi equal to the extent of its proportion in equity shareholding.***

[Emphasis is ours]

29. It was on this basis that the Arbitral Tribunal decided to award damages in the sum of Rs.1.5 crores as well as interest thereon at the rate of 12% per annum.
30. The learned Single Judge, however, found that damages in the sum of Rs.1.5 crores could not be awarded as a finding was recorded by the Arbitral Tribunal that Flovel was unable to show that the damages were reasonably foreseeable. Relying on Section 73 of the Contract Act, it was held by the learned Single Judge that damages claimed cannot be granted as a matter of right but evidence is required which proves the same.
31. The learned Single Judge discussed the law as applicable to breach of contract and compensation for loss of damages. While relying on various judgments of the Supreme Court, the learned Single Judge held that the damages claimed cannot be granted as a matter of course and that some material evidence is always necessary.
32. The learned Single Judge also found that the damages of Rs.1.5 crores awarded in a contract where a party was to invest a total of Rs. 2.5 crores could not be said to be token damages or nominal damages, especially in view of the fact that Mecamidi had already made payment of Rs. 1.1 crores as the first instalment *albeit*, with some delay. The learned Single Judge further found that the



payment of Euros 94,968.60 which was made by Mecamidi on 18.08.2008, was kept by Flovel for a period of almost 6 months and subsequently returned and that this does not appear to have been considered by the Arbitral Tribunal in the Award.

33. The learned Single Judge held that the Arbitral Tribunal noted in the first instance, that it was for Flovel to show the loss suffered on account of breach but thereafter, in paragraph 47 of the Award itself holds that Flovel has failed to produce any evidence to show the gains it would have made if the Contract was performed. The Arbitral Tribunal further holds in paragraph 47 that Flovel was under duty to mitigate the losses it occurred, which has not been shown to be done. However, in the absence of evidences, awarded damages which appeared to the Arbitral Tribunal to be reasonable along with interest. It is apposite to reproduce paragraph 47 of the Award in this regard which reads as follows:

“47. Flovel has calculated and claimed damages in the sum of Rupees 4,11,85,334.36 as detailed in paragraph 40 above which includes amounts, that in terms of the contract between the parties, were payable by the Respondent Mecamidi by way of interest for the loans or charges for securing a bank guarantee etc. Flovel carried on business with Mecamidi as an equity shareholder of only 25% instead of 50% of the share capital. The profit of the business was allotted accordingly. Flovel was therefore required to show what was the loss suffered by it on accounts of the breach of contract by Mecamidi. Flovel was required to prove it by producing evidence to show what would have been the financial gains for Flovel if Mecamidi had performed its part of the contract. Unfortunately, Flovel has failed to do so as it has not produced any evidence to show the gains that Flovel would have made in the eventuality of the contract being performed. Further Flovel was also under a positive duty to mitigate and/or reduce its losses which is not shown to have been done. Though it cannot be denied that on account of the breaches committed by Mecamidi, the Claimant must have suffered losses, in the absence of the substantive evidence to assess the extent of such loss, the Tribunal can only award damages which in its opinion



appear to be reasonable. Having regard to the facts and circumstances of this case and the evidence produced by the parties, this Tribunal is of the view that it would be sufficient and reasonable to award a sum of Rs. 1,50,00,000.00 (Rs. 1 Crore and 50 Lakhs only) by way of damages. On the amount awarded by way of damages, the respondent shall pay interest at the rate of 12% per annum from the date of the award to the date of payment.”

[Emphasis is ours]

34. The learned Single Judge thus set aside the Award after he found that Flovel failed to produce any evidence of losses it suffered despite which, the Arbitral Tribunal awarded Rs. 1.5 crores as damages to Flovel.
35. This Court is thus required to see whether, in the context of international commercial arbitration, this Award is in conflict with the fundamental policy of Indian Law and the “public policy of India” in terms of the provisions of Section 34(2)(b)(ii) and its Explanation of the Arbitration Act.
36. An examination of the decisions of the Supreme Court since after the 2016 amendment to the Arbitration Act, show that the expression public policy is consistently being interpreted in line with the judgment in the *Associate Builders* case.
- 36.1 The Supreme Court in *HRD Corporation v. GAIL (India) Ltd.*⁸, explained that the 246th Law Commission report⁹ brought in amendments to the Act narrowing the grounds of challenge to an award. The judgments of *ONGC Ltd. v. Saw Pipes Ltd.*¹⁰ and

⁸ (2018) 12 SCC 471

⁹ Law Commission of India — Report No. 246 dated August 2014 — Amendments to the Arbitration and Conciliation Act, 1996

¹⁰ (2003) 5 SCC 705



*ONGC Ltd v. Western Geco International Ltd.*¹¹ were ‘done away with’ while the position of law as was obtained in *Renusagar Power Co. Ltd. v. General Electric Co.*¹² was brought back and accordingly, the definition of public policy was to be limited to the fundamental policy of Indian law and, justice and morality. Essentially, only those awards which shock the conscience of the Court as understood in law laid down in *Associate Builders* case, would be struck down. It further held that the Award rendered in the context of an international commercial arbitration will be subject to the same tests for setting aside under Section 34, as for enforcement under Section 48, and that the ground of patent illegality will not be available:

“18. Shri Divan is right in drawing our attention to the fact that the 246th Law Commission Report brought in amendments to the Act narrowing the grounds of challenge coterminous with seeing that independent, impartial and neutral arbitrators are appointed and that, therefore, we must be careful in preserving such independence, impartiality and neutrality of arbitrators. In fact, the same Law Commission Report has amended Sections 28 and 34 so as to narrow grounds of challenge available under the Act. The judgment in ONGC Ltd. V. Saw Pipes Ltd. has been expressly done away with. So has the judgment in ONGC Ltd. v. Western Geco International Ltd. Both Sections 34 and 48 have been brought back to the position of law contained in *Renusagar Power Co. Ltd. v. General Electric Co.* where “public policy” will now include only two of the three things set out therein viz. “fundamental policy of Indian law” and “justice or morality”. The ground relating to “the interest of India” no longer obtains. “Fundamental policy of Indian law” is now to be understood as laid down in *Renusagar*. “Justice or morality” has been tightened and is now to be understood as meaning only basic notions of justice and morality i.e. such notions as would shock the conscience of the Court as understood in *Associate Builders v. DDA*. Section 28(3) has also been amended to bring it in line with the judgment of this Court in *Associate Builders*, making it clear that the

¹¹ (2014) 9 SCC 263

¹² 1994 Supp (1) SCC 644



construction of the terms of the contract is primarily for the arbitrator to decide unless it is found that such a construction is not a possible one.

19. Thus, an award rendered in an international commercial arbitration - whether in India or abroad – is subject to the same tests qua setting aside under Section 34 or enforcement under Section 48, as the case may be. *The only difference is that in an arbitral award governed by Part I, arising out of an arbitration other than an international commercial arbitration, one more ground of challenge is available viz. patent illegality appearing on the face of the award. The ground of patent illegality would not be established, if there is merely an erroneous application of the law or a reappraisal of evidence.”*

[Emphasis is ours]

36.2 In the ***Ssangyong*** case, the Supreme Court reinforced the principle of minimal judicial interference including in awards arising out of international commercial arbitration. It was held that a violation of a substantive law of India, will not amount to patent illegality, much less to a violation of public policy. An award can be held to be in contravention of public policy, if the Court finds adjudication on matters beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal. While a decision based on ignorance of vital evidence may constitute patent illegality and render the award as perverse, it would not violate public policy. It was held:

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

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41. What is important to note is that a decision which is perverse, as



understood in paras 31 and 32 of Associate Builders, 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 characterized as perverse.

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69. We therefore hold, following the aforesaid authorities, that in the guise of misinterpretation of the contract, and consequent “errors of jurisdiction”, it is not possible to state that the arbitral award would be beyond the scope of submission to arbitration if otherwise the aforesaid misinterpretation (which would include going beyond the terms of the contract), could be said to have been fairly comprehended as “disputes” within the arbitration agreement, or which were referred to the decision of the arbitrators as understood by the authorities above. **If an arbitrator is alleged to have wandered outside the contract and dealt with matters not allotted to him, this would be a jurisdictional error which could be corrected on the ground of “patent illegality”, which, as we have seen would not apply to international commercial arbitrations that are decided under Part II of the 1996 Act. To bring in by the backdoor grounds relatable to Section 28(3) of the 1996 Act to be matters beyond the scope of submission to arbitration under Section 34(2)(a)(iv) would not be permissible as this ground must be construed narrowly and so construed, must refer only to matters which are beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal.**

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76. However, when it comes to the public policy of India argument based upon “most basic notions of justice”, it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. ... However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. **Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court.** That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment.”

[Emphasis is ours]



36.3 Subsequently, the Supreme Court in *Vijay Karia v. Prysmian Cavi E Sistemi Sri*¹³, while discussing the law on enforcement of a foreign award, further clarified that the ground of ‘patent illegality’ appearing on the face of the Award, is outside the scope of interference with an Award made in an international commercial arbitration as follow:

“42. At this stage it is important to advert to amendments that were made by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as “the 2015 Amendment Act”). Section 48 was amended to delete the ground of “contrary to the interest of India”. Also, what was important was to reiterate the Renusagar position, that the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute [vide Explanation 2 to Section 48(2)].

43. It will be noticed that in the context of challenge to domestic awards, Section 34 of the Arbitration Act differentiates between international commercial arbitrations held in India and other arbitrations held in India. So far as “the public policy of India” ground is concerned, both Sections 34 and 48 are now identical, so that in an international commercial arbitration conducted in India, the ground of challenge relating to “public policy of India” would be the same as the ground of resisting enforcement of a foreign award in India. Why it is important to advert to this feature of the 2015 Amendment Act is that all grounds relating to patent illegality appearing on the face of the award are outside the scope of interference with international commercial arbitration awards made in India and foreign awards whose enforcement is resisted in India.

[Emphasis is ours]

36.4 The Supreme Court in the *Vijay Karia* case has emphatically held that poor reasoning in rejecting a material issue or claim does not, by itself, meet the high threshold required to interfere with an arbitral award under the guise of public policy. The Court clarified that a judicial authority's disagreement with the tribunal's reasoning as not being adequate or its belief that justice has not

¹³ (2020) 11 SCC 1



been served, does not justify interference with the award and such an approach would run counter to the fundamental ethos of arbitration and the principle of minimal judicial intervention enshrined in Section 34 of the Arbitration Act. It is apposite to refer to the following extract:

“83. Having said this, however, if a foreign award fails to determine a material issue which goes to the root of the matter or fails to decide a claim or counterclaim in its entirety, the award may shock the conscience of the Court and may not be enforced, as was done by the Delhi High Court in Campos [Campos Bros. Farms v. Matru Bhumi Supply Chain (P) Ltd., 2019 SCC OnLine Del 8350 : (2019) 261 DLT 201] on the ground of violation of the public policy of India, in that it would then offend a most basic notion of justice in this country. It must always be remembered that poor reasoning, by which a material issue or claim is rejected, can never fall in this class of cases. Also, issues that the Tribunal considered essential and has addressed must be given their due weight — it often happens that the Tribunal considers a particular issue as essential and answers it, which by implication would mean that the other issue or issues raised have been implicitly rejected. For example, two parties may both allege that the other is in breach. A finding that one party is in breach, without expressly stating that the other party is not in breach, would amount to a decision on both a claim and a counterclaim, as to which party is in breach. Similarly, after hearing the parties, a certain sum may be awarded as damages and an issue as to interest may not be answered at all. This again may, on the facts of a given case, amount to an implied rejection of the claim for interest. The important point to be considered is that the foreign award must be read as a whole, fairly, and without nit-picking. If read as a whole, the said award has addressed the basic issues raised by the parties and has, in substance, decided the claims and counterclaims of the parties, enforcement must follow.”

[Emphasis is ours]

36.5 In *Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd.*¹⁴, the Supreme Court while discussing the scope of challenge under Section 48(1)(c) of the Arbitration Act, which is *pari*



materia with Section 34(2)(a)(iv), after the 2015 Amendment, has held that the "public policy of India" is an even more circumspect ground which does not even encompass the "patent illegality appearing on the face of the award", as a reason to set aside an award in an international commercial arbitration under Section 34. As such, after the 2015 Amendment "perversity of an award" will not be available to set aside an award in an international commercial arbitration under Section 34, or to refuse enforcement of a foreign award under Section 48 of Arbitration Act. Relying on the ***Ssangyong*** case it was held as follows:

*"60. The judgment in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] noted in para 29 that Section 48 of the Act has also been amended in the same manner as Section 34 of the Act. The ground of "patent illegality appearing on the face of the award" is an independent ground of challenge which applies only to awards made under Part I which do not involve international commercial arbitrations. **Thus, the "public policy of India" ground after the 2015 Amendment does not take within its scope, "perversity of an award" as a ground to set aside an award in an international commercial arbitration under Section 34, and concomitantly as a ground to refuse enforcement** of a foreign award under Section 48, being a *pari materia* provision which appears in Part II of the Act. This argument must therefore stand rejected.*

[Emphasis is ours]

37. The learned Single Judge's decision holding that the Award is in violation of a statutory provision and thus in conflict of the public policy of India as envisaged under Section 34 of the Arbitration Act, cannot thus be upheld.
38. This Court agrees with the submission of the learned Counsel for Mecamidi that the principle of 'guess-timation' cannot be applied

¹⁴ (2022) 1 SCC 753



where no evidence is produced. The Supreme Court in the *Trishala Jain* case has held that the guesswork has to be used with caution for determination of compensation and is only intended to bridge the gap to meet the ends of justice. It was further held that the principle of ‘guess-timation’ is to be used where the evidence produced by the parties is not sufficient to determine the compensation with exactitude. The relevant extract reads as follows:

“64. These precedents clearly demonstrate that the court may apply some guesswork before it could arrive at a final determination, which is in consonance with the statutory law as well as the principles stated in the judicial pronouncements. As already noticed, the guesswork has to be used for determination of compensation with greater element of caution and the principle of guesstimation will have no application to the case of “no evidence”. This principle is only intended to bridge the gap between the calculated compensation and the actual compensation that the claimants may be entitled to receive as per the facts of a given case to meet the ends of justice.”

65. It will be appropriate for us to state certain principles controlling the application of “guesstimate”:

(a) Wherever the evidence produced by the parties is not sufficient to determine the compensation with exactitude, this principle can be resorted to.

(b) Discretion of the court in applying guesswork to the facts of a given case is not unfettered but has to be reasonable and should have a connection to the data on record produced by the parties by way of evidence. Further, this entire exercise has to be within the limitations specified under Sections 23 and 24 of the Act and cannot be made in detriment thereto.”

[Emphasis is ours]

39. However, as discussed above, the conclusion that there was no adequate evidence produced by Flovel, is once again not a ground available for challenge to the Award. Lack of evidence or wrongful appreciation of the evidence, while could in certain



circumstances, be a ground to set aside an Award as being patently illegal, the same would not, however, be in conflict with the public policy of India.

Findings on counter-claims of Mecamidi

40. The Arbitral Tribunal found that the 3 agreements entered between the parties namely the Name Protection License Agreement, Technical Know-How License Agreement and Trademarks License User Agreement were co-terminus with the JVSA and that if the parties would have resolved their disputes under the JVSA, the disputes under these Agreements would not have arisen. Flovel contended that the counter-claims proceeded on the basis that there is a legal and valid termination of JVSA and since the termination was unilaterally by Mecamidi, the counter-claims of Mecamidi are not maintainable. This contention was rejected by the Arbitral Tribunal. The Arbitral Tribunal clubbed the Counter-claim Nos. 1, 2 and 4 of Mecamidi and dealt with them together.
41. Counter-claim Nos.1, 2 and 4 of Mecamidi were the claims in relation to the failure of Flovel to cease use of the word 'Mecamidi' even after the termination of the JVSA, Name Protection Agreement and the Trademarks License User Agreement. The Arbitral Tribunal held that there was no breach on the part of Flovel in not taking immediate steps for changing the name of Venture Company. The Arbitral Tribunal held that Mecamidi was part of the Board and a shareholder of the Venture Company and that Flovel was within its right to continue the name of the Venture Company with the word 'Mecamidi' in it since



Mecamidi continued to be a shareholder of the Venture Company even post the termination of the JVSA.

42. The Arbitral Tribunal further held that Mecamidi failed to place on record any evidence to support its claim for loss suffered as a consequence of a continuous use of its name and that neither was there any basis for the losses nor any proof for such losses was produced. The learned Single Judge held that as per the facts, there was no basis for making of such counter-claims and, hence, upheld the Award rejecting the same.
43. Counter-claim No. 3 of Mecamidi was its claim in paragraph 10 of its counter-claims, in relation to breach of Technical Know How Agreement and for loss of goodwill and harm caused to Mecamidi's reputation as a consequence thereof. Mecamidi contended that Flovel misrepresented to its customers that Mecamidi was still part of the Venture Company, even after the termination of the agreement on 22.08.2009 [hereinafter referred to as 'Termination Date']. Mecamidi set out the names of certain projects which were bid for by the Venture Company pursuant to the Termination Date with the name of the Venture Company containing the word 'Mecamidi' in its name. Flovel on the other hand contended that Mecamidi was a 22.68% shareholder of the Venture Company up to 20.04.2012 and as such there could be no misrepresentation by the Venture Company.
44. The Arbitral Tribunal agreed with the contentions of the Flovel. It held that not all documents referred to including, a 'reference list' were provided to the Arbitral Tribunal by either party and thus, in



the absence of documentary evidence, it could not be held that such list of Mecamidi was misused. The Arbitral Tribunal further relied upon the evidence of the witness of Mecamidi, who deposed that that there is no loss of goodwill. In addition, based on the fact that no valuation report assessing the damages was filed by Mecamidi and that for damages have been claimed on the basis of projected figures alone.

45. Mecamidi also sought damages for the loss of goodwill and harm to their reputation caused by the Flovel's actions. As such Mecamidi claimed damages based on the economic value of Mecamidi's 50% share in the Venture Company. Using figures from Venture Company's website, Mecamidi estimated an average annual order intake of 954 million Indian Rupees, with an Earnings Before Interest, Taxes, Depreciation, and Amortization [hereinafter referred to as 'EBITDA'] of approximately 10% (95 million Indian Rupees). The damages were then calculated as follows: EBITDA (95 million) multiplied by 8 [current rate of industrial activity valuation] multiplied by 50% (Mecamidi's share), resulting in a claim of 380 million Indian Rupees. The relevant extract of Counter-Claims of Mecamidi is produced below:

“10) Calculation of Damages for Loss of Goodwill of Mecamidi and Harm Caused by the Respondents to Mecamidi's Reputation

10.1 It is most respectfully submitted that in its commitment to India and to the small hydro power sector in India, the Claimant had dedicated its sincere efforts to supporting the growth of Respondent No. 2 in India's small hydro power sector from 2007 till 2009. It is evident from a perusal of the 'Key Figures' appearing on the website of website of Respondent No. 2, www.flovel.in [Annexure C-39 hereto] that the latter has performed well during the first three years i.e. from



2007 till 2009. It is submitted that this has been entirely due to the reference lists, clients' lists, documentation, classified technical information, technical know how, equipment supply lists and all other documentation and technical information et al of Mecamidi...

xxx

xxx

xxx

EBIDTA of Indian Rupees 95 million multiplied 8 times by the current rate of the valuation of the industrial activity multiplied by 50% of the share that Mecamidi [the Claimant] would have been entitled to under the JVSA and the Supplementary Agreement: Indian Rupees 380 million"

46. The Arbitral Tribunal has examined the evidence produced before it, which included the cross examination of witnesses of Mecamidi and held that there was no loss of goodwill and that damages were claimed on the basis of projected figures only. The Arbitral Tribunal held that Mecamidi filed a claim for damages which was in essence its share of profit, rather than loss of goodwill and reputation. The Arbitral Tribunal relied on the calculation for such claim and held that it is on a presumptive basis. It further held that Mecamidi failed to show any loss of goodwill or reputation caused by use of its name and that calculation of losses is on the basis of projected profits and not actual losses. Thus, the counter-claim No. 3 of Mecamidi was also rejected by the Arbitral Tribunal.
47. It is apposite to refer to the extract of findings of the Arbitral Tribunal on the counter-claims of Mecamidi which are set forth below:

"78. So far as submitting the bid is concerned by Flovel Energy with Mecamidi as part of its Corporate name is concerned, we have already answered the same in favour of Flovel. So far as use of reference list is concerned, Mecamidi has failed to show that in all these projects (except chirchind) reference list of Mecamidi was used. In respect of Chirchind, it appears that the bid was called for on 14.2.2008 (Annexure C 13 and 18.4.2008 Annexure C 48) and negotiations continued thereafter. Neither Mecamidi nor Flovel has placed on record any document to give the date when the reference



*list of Mecamidi was submitted by Flovel Energy. **In the absence of positive evidence, it is difficult to hold that Flovel Energy continued to use the reference list of Mecamidi after termination of JVSA and 3 related agreements by Mecamidi. Mr. Marcy in answer to Questions no. 74 to 78 during his cross examination admitted that it was Mecamidi's belief that Flovel Mecamidi Energy might have used the reference list of Mecamidi but they did not possess documentary Evidence nor did they possess any document to show that Mecamidi supplied the design and engineering for said 5 projects. Mecamidi has failed to provide source of its knowledge that its reference list was used by Flovel Mecamidi Energy for the named 5 projects. Mr. Marcy has admitted in his cross examination at Ques No. 83, 84, 85, 126 and 127 that there is no loss of goodwill nor there is any evaluation report for assessment of damages and damages have been claimed on basis of projected figures only.***

*79. There is another reason for declining this claim, as Mecamidi in spite of contending that there was breach of Technical Know Agreement and Flovel could not have used the reference list of **Mecamidi after termination of JVSA yet, it has claimed damages on sharing basis by saying that it is entitled to 50% share of the Joint Venture Company, i.e. Flovel Mecamidi Energy Private Limited. It has contended that Earning of JV company before taxes was Indian Rupees 95 million.** Mecamidi has multiplied Rs. 95 million 8 times (contending it to be the current rate of the valuation of the industrial activity) and then divided by 50% being the share of Mecamidi. **By this method it has claimed Indian Rupees 380 million. In effect Mecamidi is claiming its share of profit rather than loss of good will and reputation. We do not find any merit in the claim for the reason that Mecamidi has failed to show that any bid was awarded to Flovel solely by the use of name of Mecamidi or its reference list. It has also failed to show any loss was caused to its good will and reputation by either use of name of Mecamidi or its reference list. The calculation of loss is as per projected profits and share of Mecamidi. The figures are imaginary as well as presumptive.***

[Emphasis is ours]

48. The learned Single Judge held that it cannot sit as a Court of Appeal to re-examine the evidence and upheld these findings of the Arbitral Tribunal. In view of the discussions above, the Court does not find any reason to interfere with these concurrent findings. The Arbitral Tribunal examined the evidence placed



before it and reached its decision. No ground for its interference has been made out.

Conclusion

49. The Arbitral Tribunal found Mecamidi to be in breach of the JVSA with Flovel and proceeded to award what it considered in these circumstances to be reasonable and fair and in terms of the evidence and material placed before it. It is not within the domain of this Court to re-examine the merits or go behind the reasoning of the Arbitral Tribunal's award to Flovel. The Arbitral Tribunal in its wisdom also thought fit not to grant compensation to Mecamidi.
50. The Award does not shock the conscience of the Court by an infraction of the fundamental principles of justice or morality. The Award when read has addressed and decided all the claims and counter-claims of the parties.
51. In view of the foregoing discussions, the impugned judgment is set aside to the extent that it disallowed the claims of Flovel and the Award of the Arbitral Tribunal is restored.
52. The Arbitral Tribunal awarded costs in the sum of Rs. 20 lakhs as cost of proceedings to Flovel which was challenged by Mecamidi. The costs were awarded to Flovel in light of the breach of JVSA. The learned Single Judge found such cost to be reasonable. Section 31-A of the Arbitration Act provides for reasonable costs to be awarded at the discretion of the Arbitral Tribunal. We find no basis to interfere with this finding of the learned Single Judge.



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Accordingly, the award of cost of Rs. 20 lacs is upheld.

53. Resultantly, FAO(OS) (COMM) 202/2019 stands allowed, and FAO(OS)(COMM) 263/2019 is dismissed. All pending Applications stand closed.

(TARA VITASTA GANJU)
JUDGE

(VIBHU BAKHRU)
JUDGE

JULY 15, 2024/r