



2024:DHC:3261



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

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Reserved on: 14th December, 2023
Pronounced on: 23rd April, 2024

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OMP (COMM) 451/2019

M/S SYNERGY CONSULTANTS

Flat No.149, Himvarsha Apartments,
103, I.P. Extension, New Delhi-110092.

..... Petitioner

Through: Mr. Vivek Srivastava, Mr. Milind
Srivastava and Ms. Shreya Gupta,
Advocates.

versus

M/S T.D. WILLIAMSON INDIA PVT. LTD.

Having Registered Office at:
Plot No.16, Phase III, Alindra Savli, GIDC,
Savli, Vadodra, Gujrat-391775.

.....Respondent

Through: Ms. Fereshte D. Sethna, Mr. Ameya
Pant, Mr. Ashish Mishra and Mr.
Mohit Tiwari, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "Act, 1996"*) has been filed by the petitioner against the Award dated 11.05.2019, whereby the learned Sole Arbitrator has declined the Claim of the petitioner/claimant in respect of the commission for ONGC Hazira 42 HTPCS (Hot Tapping) Project and pre-institution



interest on the commission amount granted for the ONGC- URAN Project.

2. **The facts in brief** are that Shri Anand Mallick, proprietor of the petitioner Firm is engaged in the business of providing consultancy services to its clients in the field of Petroleum, Gas & Oil Sector, for which he holds goodwill and reputation in the field of liaisoning, business relations, brand building, facilitating meetings, assisting drafting, specifications for pre-tender meetings, follow up of tenders and rendering held in developing business relations public sector units of India. The respondent M/S T.D. Williamson India Pvt. Ltd.,(TDW) a subsidiary Company of M/s T.D. Williamson Inc., Talsa, USA, was not able to garner any business in the field from the Public Sector Undertakings such as ONGC, GAIL etc. and it, therefore entered into a '*Representative Agreement*' dated 01.07.2012 with the petitioner.

3. According to the petitioner, this Agreement was non-exclusive to the Representative for the market area and TDW/respondent retained the right to quote, sell and invoice products and services to any customer within the market area either directly or through other representatives, without participation or payment of commission to the representative. The petitioner, as the Authorized Representative of the respondent Company, was to use its resources to promote the sale of products and services of respondent Company and to tap potential markets and facilitate meetings of the representatives of the respondent with the Companies to promote it in market specified in Schedule I of the Agreement. The commission was payable to the petitioner in terms of Schedule I and Schedule III of the Representative Commission Agreement.

4. It is asserted that the respondent Company was particularly interested



in the ONGC URAN (Hot Tapping) Project and ONGC-HAZIRA 42 HTPCS Project (Hot Tapping). Accordingly, the respondent Company through various emails gave directions to the petitioner for vetting their letters addressed to CMD, ONGC, and for performing various functions as provided in Clause 7.1, 7.8 and 7.13 of the Representative Performance Agreement. The various correspondences exchanged between the parties clearly reflect the participation of the petitioner in the said two Projects and also in arranging the meetings. Because of the hard work of the petitioner who played a major role, the respondent Company got the ONGC-URAN as well as ONGC HAZIRA 42 HTPCS Projects.

5. *Vide* Letter/Notification of Award (LOA) dated 16.04.2014, ONGC had placed the contract price of ONGC URAN plant at Rs.12,62,28,360.25 and the respondent was successful in getting the Tender awarded to it. ONGC through L&T Hydrocarbon Engineering Limited placed purchase Order No. OGSTP/74000-12308/S dated 03.12.2014 on the respondent regarding the “Hot tapping and stoppling at three location for isolation, needed for re-routing of section 42-SBHT pipeline of ONGC, near Umbrath, each for permanent protection of exposed 42-SBHT pipeline” for a sum of Rs.2,24,720,000,000/-.

6. The petitioner requested the officials of respondent to issue letter of assignment for these jobs, but the officials assured the petitioner that since they have already entered into an Agreement dated 01.07.2012, which entitled the petitioner to receive commission at the agreed rates for all the Projects relating to ONGC other than those which had been specifically assigned by the respondent to some other persons, there was no need for issue of any further letter or agreement in favour of the petitioner regarding



the projects of ONGC URAN Project and ONGC HAZIRA 42 HTPCS Project. Despite completion of these two Projects and release of money by ONGC, the respondent failed to pay the agreed commission as per Schedule III of the Agreement.

7. Because of their good terms, the petitioner verbally requested the respondent Company for issue of payment of commission to it. Various emails were written by the petitioner to Mr. Bruce A. Thames, Senior VP and COO seeking payment of his commission, but neither was any reply given, nor his dues paid. Eventually, Mr. Bruce A. Thames replied via email dated 30.03.2015 assuring the petitioner that all the issues shall be resolved. After brief correspondence and after taking more than one year Mr. Juan Chachinwill, Director of Far East Pacific Region, via email dated 10.06.2016 for the first time claimed that respondent Company did not issue any written authorization to applicant to work on either ONGC URAN or ONGC HAZIRA 42 and therefore, no commission was payable.

8. The respondent via letter dated 03.01.2017 terminated the Representative Agreement dated 01.07.2012 with an arbitrary proposal to pay the applicant a sum of Rs.18,39,278/- towards full and final settlement of all the dues alleged or otherwise due, under the said Agreement but insisted that the petitioner should execute a settlement Agreement on receiving the offered amount.

9. The petitioner also entered into another Agreement titled '*Commission Representative Agreement*' on 05.04.2014, whereby the petitioner was appointed as a commission representative for Gas Authority of India Ltd. (GAIL) on commission basis on terms and conditions, more or less similar to Agreement dated 01.07.2012. As per the terms of this Agreement, the



respondent paid commission to the petitioner on quarterly basis for the amount received in the said quarter from the sale of services and products to GAIL. The commission was paid till the quarter ending June, 2016, after which the respondent arbitrarily stopped paying the commission. The petitioner demanded his commission under the second Agreement, but *vide* letter dated 03.01.2017, the Agreement was terminated w.e.f 02.02.2017. The respondent offered to pay Rs.2,06,755/- as the outstanding commission under the second Agreement in full and final settlement of its claims. The petitioner did not accept this amount as he was entitled to receive more than approximately Rs.55,00,000/- towards his unpaid commission under this second Agreement.

10. Since the dispute arose inter se the parties, *Arbitration Petition No.837/2017* titled '*M/s Synergy Consultants vs. T.D. Williamson India Ltd.*' was filed *under Section 11 of the Act, 1996* before this Court and the matter was referred to Delhi International Arbitration Centre (DIAC), *vide* Order dated 10.04.2018. The learned Sole Arbitrator was appointed before whom the claim and the Reply was submitted by the petitioner as well as the respondent, respectively.

11. These two disputes, one pertaining to ONGC and other pertaining to GAIL got registered separately *vide* Reference No.DIAC/2003/04-18 and DIAC/2005/04-2018. A joint Award was passed by learned Sole Arbitrator wherein for the second claim in respect of reference No.DIAC/2005/04-2018, a sum of Rs.29,06,755/- was awarded to the applicant for the GAIL Project which has been accepted and not subjected to any challenge by the petitioner.

12. In respect of first *Reference NO.DIAC/2003/04-18*, the petitioner filed



its Statement of Claim in respect of ONGC URAN and ONGC-HAZIRA 42 projects. The Claim was contested by the respondents who in their detailed Reply, contended that these two Projects of ONGC had been awarded to respondent on account of its own efforts without there being any contribution from the petitioner. It further claimed that it had suffered damages on account of the acts of the petitioner, for which it filed a separate *Counter-Claim*.

13. The *counter-claim* filed by the respondent was rejected by the learned Sole Arbitrator *vide* Order dated 17.02.2019.

14. The learned Sole Arbitrator *vide* its Award dated 11.05.2019 in respect of first reference case bearing No.DIAC/2003/04-18 granted commission of 6% of the sale price of Rs.11,03,74,769/- which came to Rs.66,22,486 (rounded off to Rs.66,22,500/-) for *ONGC URAN project*. However, the learned Sole Arbitrator granted interest on the awarded amount from the date of filing of Statement of Claim but remained silent about the pre-institution Interest. *Further, the Claim in respect of ONGC-HAZIRA 42 HTPCS was declined.*

15. The ***petitioner has challenged the Award*** claiming it to be in contravention of *basic notions of morality and justice*. It is asserted that the learned Arbitrator has over looked the terms of the Agreement dated 01.07.2012 and has *wrongly interpreted the terms of the Contract*. It is claimed that the ambit of the Agreement was not confined to any Project, but the scope of work was defined by the customer i.e. ONGC with geographical limits described as India. The services required from the petitioner were purely in the nature of brand building of respondent in ONGC so as to facilitate the selling of products and services of respondent in various



projects of ONGC as has been specifically mentioned in Schedule-II of the Agreement. The scope of work was, therefore, not confined to any one Project but to all the projects of ONGC. The plain reading of the terms of the Agreement coupled with the admissions of the respondent that no written advice was required to be given to the petitioner by the respondent in respect of ONGC-HAZIRA 42 Project, is sufficient to hold the petitioner entitled to commission for the said Project. *It is claimed that the terms of the Agreement do not suggest that participation is mandatory for the petitioner to claim the commission.*

16. Moreover, it is admitted by Shri Srivatsan K. Iyengar, the witness appearing on behalf of the respondent during arbitration proceedings, that emails were duly exchanged between the parties, relating to both the projects of ONGC at URAN and HAZIRA. The learned Arbitrator while accepting the participation of the petitioner in ONGC - URAN Project on the basis of the emails, but has denied the claim of the petitioner in respect of ONGC-HAZIRA Project, by wrongly coming to the conclusion that these emails do not pertain to HAZIRA Project, contrary to the deposition of Shri Srivatsan K. Iyengar, the witness of the respondent.

17. It is submitted on behalf of the petitioner that learned Sole Arbitrator has *added the terms to the Contract by imputing the concept of mandatory participation* by the representative/petitioner in the Project to claim commission, which was neither the terms of the Agreement nor did the parties agree to such a term.

18. It is further asserted that on the Awarded amount of Rs.66,22,500/- for the ONGC- URAN Project, the learned Sole Arbitrator has wrongly *not awarded any interest for the period prior to the filing of Claim.*



19. **The respondent in its Reply** has asserted that the present objections are not maintainable as the petitioner has sought reappreciation of the evidence, which is beyond the scope of Section 34 of the Act, 1996. The Court cannot sit in appeal on the decision of the learned Arbitrator.

20. Likewise, as per Section 31(7)(a) of the Act, 1996, the grant of interest is a discretionary relief, when there is no provision in the Contract. It is asserted that learned Arbitrator has rightly appreciated the evidence of the parties and interpreted the terms of the Contract and non-exclusionary clause inter-se the parties and the claim of the petitioner has been rightly rejected. It is submitted that there is no merit in the present petition, which is liable to be rejected.

21. **The petitioner in its Rejoinder** has reiterated its submissions and assertions as made in the petition.

22. **The petitioner in its Written Submissions** has relied on the case of Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited (2019) 11 SCC 465, to point out the scope of interference by a Court in the Interest awarded by an Arbitral Tribunal.

23. **The respondent in its Written Submissions** has asserted that the Court cannot re-appreciate facts under Section 34 of the Arbitration and Conciliation Act, 1996. Reliance has been placed on the case of Elecon Engineering Co. Ltd. v. Indure (P) Ltd., 2023 SCC OnLine Del 1064 in this regard.

24. It is further asserted that a plausible interpretation of contract by the Arbitral Tribunal cannot be disturbed in section 34 of the Act, 1996 as per the case of Raghunath Builders Pvt. Ltd. v. Anant Raj Ltd. FAO (OS) (COMM) 220/2017 & CM APPL. 45963/2017 (DHC) dated 8 November



2023 and National Highways Authority of India v. Orissa Steel Expressway (P) Ltd., 2023 SCC OnLine Del 3296.

25. The respondent has referred to the case of United India Assurance Co. Ltd. v. Bansal Wood Product Pvt. Ltd., 2023 SCC Online Del 529 to argue that patent illegality or perversity does not extend to alleged erroneous application of law or alleged misappreciation of evidence.

26. It is contended that Award of pre-award interest lies within the discretion of the Arbitral Tribunal as held in the case of Morgan Securities & Credits (P) Ltd. v. Videocon Industries Ltd., 2022 SCC OnLine SC 1127.

Submissions heard and record perused.

27. The petitioner has challenged the impugned Award essentially on the grounds that the learned Arbitrator has *wrongly interpreted the terms of the Contract and that the terms of the Agreement do not suggest that participation is mandatory for the petitioner to claim the commission. Further, the learned Arbitrator has failed to award pre-reference interest to on the amount awarded for the ONGC- URAN Project, despite the same being claimed.*

28. It is asserted that the Award is in contravention of *basic notions of morality and justice* which falls under the term *Public Policy* mentioned in Section 34 and 48 of the Act, 1996.

29. In the case of Renusagar Power Company Limited v. General Electric Company 1994 Supp (1) SCC 644 the Supreme Court interpreted the term Public Policy. It was observed that the term public policy shall include : (i) fundamental policy of Indian law; (ii) interests of India or; (iii) justice or morality. In particular, it was held that an **award in violation of a statute** enacted to safeguard the national economic interest and **disregarding orders**



passed by superior courts shall be contrary to the fundamental policy of Indian law.

30. In the case of *Associate Builders vs. DDA* (2015) 3 SCC 49, the terms *morality and justice* were interpreted by the Apex Court and it observed that an award is against *justice* when **it shocks the conscience of the court**, whereas, *morality* would necessarily cover **agreements that are illegal and also those which cannot be enforced** given the prevailing mores of the day.

31. Against this background, the question which arises for the consideration of this court is: whether the Award of the learned Arbitrator warrants judicial interference on the grounds as narrated above.

32. Admittedly, the parties entered into a '*Representative Agreement*' dated 01.07.2012 with the petitioner. The Schedule I to the Agreement reads as under :

"1. Market Area; The market area covered by this agreement is that indicated by the box filled with specifics or limitation on filled in lines:

X Geographic-India

*X Industry(ies)-Oil & Gas Transmission and Distribution
(Limited to Customers Listed Below)*

*X Customer(s)-ONGC, Oil & Natural Gas Corporation
LTD.) and Public Sector Refining Units*

2. This Agreement is Exclusive or Nonexclusive as indicated by the box filled in (thus X)

X This Agreement is Nonexclusive to Representative for the market area:

TDW retains the right to quote, sell and invoice Products and Services to any customers within the Market Area, either directly or through their other representative



without participation by or payment of a Commission to Representative. TDW shall advise Representative in writing before exercising this right.

For orders involving TDW or other organizations having TDW's authorization to sell Products and services. Representative is not subject to commission component credits or debits in accordance with Schedule III except on an individual order as agreed in writing between the parties prior to receipt of the order by TDW.

This agreement is Exclusive to Representative for the market area for products and services listed in Schedule III.

TDW retains the right to quote, sell and invoice Products and Services to any customers within the Market Area, without participation by representative. TDW shall advise representative in writing before exercising this right and only when the sale order value is over \$500 USD shall pay representative a commission for these sales in accordance with Schedule III.

For a sale of products and services valued for \$500 USD, when more than one organization having TDW's authorization to sell products and services is involved in such a transaction, it shall be within TDW's discretion to make a division of commission in accordance with Schedule III.

Exclusively applies to all Products and Services listed in Schedule II, except which are NONEXCLUSIVE”

33. The petitioner had asserted that due to his efforts and interventions the



respondent was successful in getting two Projects of ONGC namely the *ONGC- Uran* and *ONGC – Hazira 42*. The petitioner has challenged the dismissal of its Claim for commission under the *ONGC – Hazira 42* and non-grant of pre institution interest on the Commission amount granted to the Petitioner under *ONGC-Uran Project*, which may be considered separately.

I. Denial of Commission in respect of *ONGC-HAZIRA 42 Project*:

34. The terms of the Contract are not disputed by the parties. Clause 2 of the Contract read with Schedule-I of the Agreement dated 01.07.2012 provided that it was non-exclusive Contract. Clause-II of the Agreement reads as under :

“SECTION II – TYPE OF AGREEMENT

2.1 This Agreement is either exclusive or nonexclusive as set forth in Schedule I.”

35. The petitioner also has not denied that the Agreement was nonexclusive for the market area and the respondent retained the right to quote, sell and invoice Products and services to any customers within the Market Area either directly or through other representative without participation by or payment of a commission to Petitioner. It specifically stated that TDW shall advise the Representative in writing before exercising this right. The learned Arbitrator thus, observed as under :

“16. At the first instance, a bare perusal of clause 2 of Schedule I, postulates that the agreement is non- exclusive to representative for the market area and TDW retains the right to quote and invoice products and service to any customers within the market area, either directly or through other representative without participation by or payment of a commission to the representative. TDW



shall advised representative in writing before exercising this right. It means there is no any such mandatory terms or condition which debars the representative to perform its obligation under the agreement. “The word TDW shall advise representative in writing before exercising this right” is only limited to the extent of exercising of its option quoting price directly to any customer and not otherwise (emphasis supplied) indeed it cannot and shall not be construed to mean that the representative is totally debarred from performing his obligation at the same time. TDW has given the power to advise the representative only to pointed extent nothing or less could legally be culled out of it. Moreover the advice clause shall not override the other provisions of bilateral agreement between the parties as mentioned hereinabove.”

36. Learned Arbitrator further referred to Clause 4.3 and other Clauses of the Agreement and declined the claim in respect of commission of ONGC HAZIRA 42 Project by observing as under :

“21. A co-joint and meaningful reading of the pointed relevant clauses of the agreements, inter alia, posite that representative shall have no power to make any agreement of any kind binding TDW. Representative has to use its reasonable best efforts to promote the sale of products and services in the market area. It was required to keep TDW informed from time to time about the commercial and market conditions within the market area and inform about the activities of customers and market competition. As per the terms and condition of the agreement, TDW has the power to contract with the invoice customers directly within the market area for sales or purchase and services and will pay representative commission as per schedule of the agreement. That means if the representative perform the abovementioned duties, then it is entitled to the commission as per Schedule III. Meaning thereby the representative is supposed to perform the indicated



obligations and not otherwise.

29. *In so far as the commission of ONGC HAZIRA 42 HTPCS (hot tapping) (UMBRATH) project is concerned, it is not a matter of dispute that the agreement Annexure Ex.C1 was executed between the parties and claimant firm was appointed as representative of TDW to provide consultancy service to use its reasonable best efforts to promote the sale of products and service in the market area to assist TDW personal, to inform about the activities of customers in the market competition and other obligations as contemplated under Section 7 of the Agreement Ex.C1. The claimant firm has claimed its commission for a total project price of Rs.22,47,20,000/- of ONGC HAZIRA 42 HTPCS (hot tapping) (UMBRATH) project Ex.C5(colly). Although, being claimant, heavy burden of proof was on the claimant firm to prove that it actually participated and performed its required obligations with regard to the ONGC HAZIRA 42 HTPCS (Hot tapping) project, but it has miserably failed to produce on record any evidence much less cogent, except email communication/letter dated 29.03.2012 Annexure C2 (colly). There mere fact that TDW has sent some email communication dated 29.03.2012 addressed to the Chairman-cum-MD of ONGC (not at all relatable to the representative) in which the name of the projects were mention, 'ipso-facto' is not at all relevant or sufficient ground to come to the definite conclusion that claimant firm has in any manner performed his duties or otherwise helped, participated or instrumental in the sale price or allotment of ONGC HAZIRA 42 HTPCS (hot tapping) project to TDW, as contrary urged on behalf of claimant firm.*

30. *Likewise the other feeble argument of Ld. Counsel of the claimant firm assuming for a movement that the representative has not directly participated or performed his obligations for the sale price or grant of ONGC*



HAZIRA 42 HTPCS (hot tapping) project, even then it is entitled for commission, cannot possibly and prudently be accepted. Because as discussed hereinabove that no cogent evidence is forth coming on record, even to suggest remotely that the representative has in any manner provided the consultancy service to TDW with regard to the ONGC HAZIRA 42 HTPCS (hot tapping) project. The contention of Ld. Counsel of TDW that during the relevant period of enforcement of the agreement the TDW has undertaken many such other projects such as ONGC HAZIRA 42 HTPCS (hot tapping) project etc, directly being the lowest bidder or by third party negotiation and the representative cannot at all be held entitled to, for commission of all such projects including ONGC HAZIRA 42 HTPCS (hot tapping), in which it has neither provided any consultancy services nor participated in any manner, has considerable force. Therefore it is held that since the representative has neither provided consultancy services nor participated not performed its obligation in any manner relatable to the sale price or grant of ONGC HAZIRA 42 HTPCS (hot tapping) project so it is not entitled for any kind of commission from TDW in this connection. Thus this claim of the claimant firm is negated in the obtaining circumstances of this case.”

37. Learned Sole Arbitrator referred to the agreement whereby the petitioner was appointed as a Representative on commission basis for the market area specified in Schedule I for fulfilling certain activities with regard to sale of products and services as set up in Schedule III. ***It was observed that as per the relevant clauses in the Agreement the representative/ petitioner herein had to use its reasonable best efforts to promote the sale of products and services in the market area.*** The petitioner was to perform certain obligations with respect to specific projects



to be entitled to a commission.

38. The petitioner has asserted that its service was in the nature of brand building of respondent in ONGC so as to facilitate the selling of products and services of respondent in various projects of ONGC. However, a perusal of the Agreement and its Schedule II makes it evident that the ***petitioner was in fact required to participate and help in allotment of projects***. Thus, the finding of the Arbitrator in this regard, does not warrant any interference.

39. Holding that the petitioner was required to perform certain obligations, the learned Arbitrator duly considered the documents and the emails to conclude that the Petitioner had not helped, participated or was instrumental in the sale price or allotment of ONGC HAZIRA 42. The emails on which reliance has been placed by the claimant, have been duly considered to observe that they did not support the case of the petitioner of ***having participated or performed its obligations in manner relatable to the grant of ONGC HAZIRA 42 Project***.

40. The main grievance of the petitioner is that while same emails have been considered to grant commission under the ONGC-Uran projects, the same emails equally applied to the ONGC-Hazira Project and could not have been arbitrarily discarded to deny the Claim of the Petitioner. This argument, however does not have any merit since, as detailed above, the Ld. Arbitrator has explained that these emails did not have any reference to Hazira Project and had rightly denied the commission for this Project.

41. The terms of the Agreement and the documents produced in support thereof, have been reasonably interpreted by the Sole Arbitrator who has given cogent reasons for declining the claim of the petitioner in respect of HAZIRA 42 project.



42. The Supreme court in State of Chhattisgarh & Anr. vs. SAL Udyog Pvt. Ltd. (2022) 2 SCC 275 held that an Award in blatant disregard of the express terms of the Agreement suffers from patent illegality. Similarly, the Apex Court in the case of Associate Builders (Supra) observed that the term "patent illegality" does not apply to every legal mistake made by the Arbitral Tribunal.

43. In the case of Ssangyong Engineering and Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131, it was observed that re-appreciation of evidence which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award. **The terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short that the arbitrator's view is not even a possible view to take.**

44. Similar observations were made in the case of McDermott International Inc. vs. Burn Standard Co. Ltd. (2006) 11 SCC 181.

45. Thus, the interpretation of a Contract is in the realm of the jurisdiction of the Arbitrator which cannot be interfered in by the Court unless it is found that there exists any bar on the face of the Award.

46. The scope of the objections under Section 34 of the Act, 1996 are limited and the petitioner has not been able to satisfy that the Award suffers from any patent illegality or is against the Public Policy which encompasses morality and justice. No grounds have been established which call for interference in the impugned Award in respect of non-grant of commission for the ONGC- HAZIRA Project.

II. Denial of pre-institution interest on the Commission granted for



ONGC Uran Project:

47. **The other objection taken on behalf of the petitioner** is that though the claim of Rs. 66,22,500/- has been allowed in regard to the ONGC Uran Project, but the Pre-Institution interest which was claimed @ 18% per annum from the date it accrued till the date of the institution of the claim, has not been granted to the petitioner. It is asserted that this non-consideration of the claim of the petitioner, even though it had been specifically asked, needs to be re-considered.

48. The Arbitrator has granted *pendente lite* and future interest @ 9% on the awarded amount but has not considered or stated anything in regard to the pre-institution interest, about which the Award is silent.

49. In the case of Arunachala Mudali vs. Maragathammal 67 L.W. 1088, it was held that where in a case where the relief is claimed but the decree is silent, the relief is deemed to have been refused.

50. Similar observations were made by the Apex Court in the case of Plasto Pack, Mumbai and Another vs. Ratnakar Bank Ltd. (2001) 6 SCC 683, wherein it was observed that such prayers which are specifically made but not granted by the decree, would be deemed to have been refused and to that extent, the Suit shall be deemed to have been dismissed.

51. The Co-ordinate Bench of this Court in the case of Gupta and Co. vs. DDA MANU/DE/0899/2021, while considering the same issue of non-grant of pre-institution award, observed that in the normal circumstances, non-grant of pre-reference interest would be deemed to have been rejected by the learned Arbitral Tribunal. Though in the said case, the pre-reference interest was granted as the interest on the admitted pre-reference amount had been granted on the principle of admission of the non-claimant of its liability to



pay the interest.

52. In the present case, there is no admission on the part of the respondent that the petitioner is entitled to any pre-institution interest on the amount awarded by the learned Arbitrator.

53. It is, therefore, held that the learned Arbitrator has granted the *pendente lite* and future interest which implies that the pre-institution interest as was claimed, has been denied to the petitioner. Accordingly, no interference is called for in regard to non-grant of pre-institution interest to the petitioner.

Conclusion:

54. In the light of aforesaid discussion, it is concluded that petitioner has not been able to successfully establish any ground for interference in the impugned Award. The Award is not against the basic notions of Morality and Justice and there is nothing which shocks the conscience of the Court.

55. It is hereby concluded that there is no merit in the present petition under Section 34 of the Act, 1996, which is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 23, 2024

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