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

+ **O.M.P. (COMM) 9/2024, I.As. 197-99/2024**

NTPC LIMITED

..... Petitioner

Through: Mr. Rituraj Biswas, Mr. Mayan Prasad, Mr. Sanjoit Ray, Advs.

versus

LARSEN AND TOUBRO LIMITED

..... Respondent

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Dharendra Negi, Ms. Tanya Tiwari, Mr. Rishabh Yadav, Mr. Sukrit Sethi, Advs.

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Date of Decision: 05.01.2024.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, *inter-alia* seeking setting aside of the Arbitral Award dated 23.08.2023 (hereinafter referred to as "the impugned Award") passed by the Ld. Arbitral Tribunal Comprising of Justice Dipak Misra, Justice K.K. Lahoti and Justice Parthasakha Datta in the Arbitration case titled as "M/s Larsen and Toubro Ltd Vs. NTPC Limited". The summary of the award as encapsulated by the learned

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Arbitral Tribunal is *inter-alia* as under:

“311. Accordingly, for the reasons set out hereinabove, the Tribunal, under the provisions of the Arbitration Act, allows the claim in favour of the Claimant and against the Respondent as per the following terms and quantification:

Claim Description	Claim Amount Allowed
Claim – for Increase in rate of Minimum Wages	Rs.9,02,84,509/-
Claim - Interest	As directed
Claim - towards cost of Arbitration and other expenses	Rs.70,00,000/-

312. Resultantly, in view of the foregoing analysis and findings, the Tribunal hereby passes an award, under the provisions of the Arbitration Act, for a total of Rs.9,02,84,509/- along with interest, as directed hereinbefore, with costs of Rs.70,00,000/- in favour of the Claimant and against the Respondent. The said amount is hereby recoverable in law by the Claimant from the Respondent by virtue of this Award.

313. The Claim of the Claimant is allowed to the extent indicated above.”

2. Briefly, stated the facts are that, the Petitioner had initiated the project for setting up of 2 x 800 MW Darlipali Supe Thermal Power Project, Stage I in the Sundargarh District of Odisha and for the said purpose, the Petitioner floated a tender by Invitation for Bid dated 24.02.2014 for Main Plant and Offsite Civil Works Package for the Project. The Respondent submitted its complete bid and was the lowest bidder. The Petitioner issued a letter of Award dated 12.08.2014 in favour of the Respondent. The parties subsequently entered a contract on 14 November 2014 numbered as CS-9549-315A(R)- 9-CS-COA-6196



for the work of Main Plant & Offsite Civil Works Package for Darlipalli Super Thermal Power Plant, Stage -1 (2 X 800MW). Cause of action between the parties arose when The Ministry of Labour and Employment, Government of India issued notification under the Minimum Wages Act, 1948, increasing the daily rates of minimum wages payable to workmen with effect from 19 January 2017 which resulted in the claim for additional cost on account of the above Notification. In view of the arbitration clause, the matter was referred to learned Arbitral Tribunal and the tribunal after hearing passed the impugned award.

3. The award has been challenged by the petitioner under Section 34 of the Arbitration and Conciliation Act primarily on the following grounds:
 - i. Ld. Tribunal ignored the absence of term “Notification” in GCC clause 10.4.3 which indicated the intention of parties for exclusion of notification from the ambit of change in law. Tribunal also didn’t consider “South East Asia Marine Engineering and Construction Ltd. vs. Oil India Ltd.” judgement where Hon’ble Supreme Court held that document forming a written contract has to be read as a whole and so far as possible as mutually explanatory.
 - ii. Tribunal also did not take into consideration Section 3(1)(b) of the Act which provided for the review of the rate of minimum wages fixed by the govt. at intervals as deemed fit. The award has further been challenged on the ground that the tribunal mistook the Price



- Adjustment clause in Clause 6 of SCC which compensated the Respondent for the variation in the rate of labour costs and considered the rate increase in the rate of minimum wages. The petitioner submitted that Clause 6 misses out any reference to the minimum wages or the components of minimum wages. It has been submitted that Clause 6 only compensates for labour and material.
- iii. The petitioner submitted that the expenditures incurred by the Respondent and the expenditure compensated under the Price Adjustment Clause were excluded from the ambit of Clause 10.4.3. and only the costs covered under the Price Adjustment clause can be compensated. It has been submitted that Clause 6.15.0 provided for no compensation to the Respondent for other expenditure incurred due to the increase in benefits of workers/labourers, and no other expenditure could be reimbursed.
- iv. The petitioner submits that the expenditure incurred due to reasons of delay and expenditure already compensated under the Price Adjustment Clause are excluded from the ambit of GCC Clause 10.4.3. By allowing the claim under given clause, the Respondent will be compensated twice for the same increase. In case of conflict between the clause 10.4.3 of GCC and clause 6.15.0 of SCC, the latter will be preferred over the former.
- v. The petitioner submits that the price adjustment in any of the components is not limited to the increase in CPI, it affects the entire cost of labour which include all factors relating to labour



- and it forms an integral part of the bid. The tribunal wrongly concluded the Price Adjustment Formula as contained in SCC Clause 6 as it intended to compensate anything which could be foreseen or predicted.
- vi. The petitioner submits that the Tribunal's decision that Respondent cannot be solely responsible for the delays in performance and he cannot be denied benefit under GCC clause 10.4.3, was perverse because extensions were granted by the Petitioner while reserving the right to levy liquidated damages on the Respondent.
- vii. The petitioner submits that the Tribunal has erroneously concluded that when GCC Clause 10.4.3 expressly stipulates and clearly manifests the intention of the parties to the effect that increase in the basic rates of wages owing to change in law would be compensated, the same ought to be given effect to and the question of any requirement for the bidders such as the Respondent to raise any pre-bid query in this regard relating to future increase in the cost of minimum wages does not arise at all.
- viii. The petitioner submits that the sum allowed by the Tribunal in favour of Respondent was based on wrong interpretation of the laws and terms of the contract and without appreciating the evidence placed on record. The respondent was already compensated worth INR 12.59 Crores as per Price Variation formula. It has been submitted that awarding the petitioner to pay a sum of INR 90284509/-, doubly compensates the respondent.



4. Mr. Rituraj Biswas, learned counsel for the petitioner has submitted that the award suffers from perversity, and infirmity and therefore, the impugned award is liable to be set aside.
5. Learned counsel submits that initially the contract was granted in 2014 which was extended from time to time and it is still subsisting and will remain in operation till March 2024.
6. Learned counsel submits that in between there was a revision of minimum wages on account of which the dispute arose and the arbitration clause was invoked by the respondent/claimant.
7. Learned counsel for the petitioner has invited the attention of this court to clauses 10.4.1, 10.4.2, and 10.4.3 of GCC which read as under:

“10.4.1. During the entire period of Contract, the Contractor and his Sub-Contractors shall, at all times abide by all existing labour enactments, rules made therein, regulations, notifications and bye-laws by the appropriate government, local authority or any other labour laws or notification that may be issued under any labour law prevailing as on the date seven(7) days prior to the date set for opening of the bids, published by the State or Central Government or Local Authorities. An illustrative list of applicable acts, notifications, rules etc. in connection with the labour as applicable is provided in SCC. This list is not in any way exhaustive and shall not absolve the Contractor from any of his liabilities or responsibilities in compliance with any other laws, regulations, notifications that may be in force during the tenure of Contract.

10.4.2 The Contractor and his Sub-Contractors shall indemnify the Employer, from any action taken against the Employer by any competent authority in connection with the enforcement of the applicable laws, regulations, notifications, on account of contravention of any of the



provisions therein, including amendments thereto. If the Employer is caused to pay or otherwise made liable, such amounts as may be necessary for non-observance of the provisions stipulated in the laws, rules, notifications including amendments, if any on the part of the Contractor and/or his Sub-Contractors, the Engineer- in-Charge / Employer shall have the right to deduct any such money from any amount due to the Contractor including his performance security, under the Contract. The Employer shall also have the right to recover from the Contractor any sum required or estimated as required for making good any loss or damage suffered / likely to be suffered by the Employer, on this account.

10.4.3 If due to an enactment of any new Act or Statute and rules made thereunder or any modification to the Acts/Statute or rules made thereunder, all after seven (7) days prior to the date set for opening of bids and as a consequence thereof, the Contractor has to incur additional cost or expenditure, the same will be reimbursed by the Employer to the Contractor, excepting those due to reasons attributable to the Contractor and those being already compensated by other provisions of the Contract, like Price Adjustment, Taxes and Duties etc.”

8. Learned counsel submits that clause 10.4.3 has wrongly been interpreted by the learned Arbitral Tribunal and despite the fact that ‘notification’ was specifically excluded from clause 10.4.3, the learned Arbitral Tribunal has *inter-alia* held that the issuance of the notification resulting in the enhancement of minimum wages has amounted to a change in the law. Learned counsel submitted that in fact, clause 10.4.3 is not applicable and therefore, the award is liable to be set aside.
9. Learned counsel has further submitted that the award is also in violation of the method given for the calculation of Contract Price



Adjustment and has further submitted that clause 6.15.0 of SCC specifically provides that except as provided in the price variation clause, no other expenditure incurred by the Contractor, due to levy of additional/increase in royalty, insurance premium(s) benefits to workers/Labourers or any other Clause(s)/items(s) due to any reason whatsoever, shall be payable to the Contractor.

10. Learned counsel has also invited the attention of the court to the findings of the learned Arbitral Tribunal which has *inter-alia* wrongly held that any amendment made to the schedule in the Minimum Wages Act resulting in the enhancement of minimum wages amount to change in law.
11. Learned counsel has also invited the attention of the court that the learned Arbitral Tribunal has not taken into consideration the submissions made by Sh. Chetan Sharma, learned senior counsel and learned Additional Solicitor General of India that the Notification dated 19.01.2017 does not amount to a change in law under GCC Clause 10.4.3 in as much as the 2017 Notification was issued under the provisions of the Minimum Wages Act, 1948 which enactment/statute existed 7 (seven) days prior to the opening of the bids and when the parties entered into the contract and, thus, there has been no enactment or modification due to change of law as contemplated by GCC Clause 10.4.3. Learned counsel submitted that the learned Arbitral Tribunal did not take into account that when it was in the contemplation of the parties, in view of the provisions of Section 3 of the Act, that the minimum rates of wages have to be revised at regular intervals not



exceeding 5 years, it cannot be the intention of the parties to consider the Notification as a new Act or Statute or modification to such Act or Statute or to cover such a Notification under Clause 10.4.3.

12. The attention has also been invited to the findings contained in the arbitral award passed by the learned Arbitral Tribunal wherein the Arbitral Tribunal has wrongly distinguished the judgment of the Hon'ble Supreme Court in ***South East Asia Marine Engineering and Construction Ltd. v. Oil India Ltd., reported in (2020) 5 SCC 164.***
13. Learned counsel submits that even if, for the sake of argument, it is assumed that the 2017 Notification amounts to change in law, GCC Clause 10.4.3 will not be applicable since the said GCC Clause 10.4.3 excludes the cost already compensated by the other provisions of the Contract including the Price Adjustment Clause. It has further been submitted that the Price Adjustment Clause in SCC Clause 6 considers the increase in the rate of minimum wages and suitably compensates the Claimant for the variation or increase in the rate of labour costs.
14. Learned counsel submits that therefore, the present award suffers from patent illegality and is liable to be set aside.
15. Mr. Dharendra Negi, learned counsel for the respondent has appeared on the advance notice.
16. Mr. Dayan Krishnan learned senior counsel appearing for the respondent has submitted that the present issue has repeatedly been agitated and decided by this court initially by the learned single judge in ***NTPC Ltd. vs. Larsen and Tourbro Limited*** bearing O.M.P. (COMM) 560/2020 and ***Larsen and Tourbro Limited vs. NTPC Ltd.*** in



O.M.P. (COMM) 524/2020, [2021 SCC OnLine Del 5299] wherein the co-ordinate bench or this court has *inter-alia* held as under:

“17. The principal dispute between the parties relates to L&T's claim for additional payment on account of increase in the cost of labour resulting from the increase in the minimum rates of wages payable to various categories of labour in terms of Notification No. S.O. 188 (E), dated 19.01.2017 (hereinafter 'the Notification') issued under the Minimum Wages Act, 1948. According to L&T, the said notification constituted a change in the law resulting in L&T incurring additional costs, which was required to be reimbursed in terms of Clause 31.4.3 of the SCC included in the Contract Agreement. Clause 31.4.3 of the SCC is set out below: —

“31.4.3 If due to an enactment of any new Act or Statute and rules made thereunder or any modification to the Acts/Statute or rules made thereunder, all after seven (7) days prior to the date set for opening of Price Bids and as a consequence thereof, the Contractor has to incur additional cost or expenditure, the same will be reimbursed by the Employer to the Contract, excepting those due to reasons attributable to the Contractor and those being already compensated by other provisions of the Contract, like Price Adjustment, Taxes and Duties etc.”

18. NTPC disputes that L&T is liable to be paid any amount in terms of Clause 31.4.3 of the SCC on account of increase in labour wages pursuant to the Notification. It is NTPC's case that the price variation on account of increase in labour costs is specifically provided for in Appendix-2 of the Contract Agreement and Clause 31.4.3 of the SCC is inapplicable as it applies only in cases where the increase in expenditure is not factored in the price adjustment provisions. According to NTPC, Appendix-2 to the Contract Agreement contains an exhaustive mechanism to



compensate L&T for any changes in the cost of labour and material component during the execution of the contract”

17. Learned senior counsel has also drawn the attention of this court to the findings of the learned Single Judge which *inter-alia* reads as under:

“23. The Arbitral Tribunal observed that the Notification of the minimum wages for labour are in two parts. The first being the basic minimum wage rate and the second being a Variable Dearness Allowance (VDA). The second component of VDA is revised from time to time to commensurate with the increase in the cost of living. The Arbitral Tribunal found that insofar as the VDA is concerned, the same was factored in the formula for the variation in the Contract Price, as stipulated in Appendix-2 of the Contract Agreement but not the increase in the basic minimum wage rate. This was apparent as in the terms of the formula, the price for labour component was linked to the All India Consumer Price Index for Industrial Workers” as published by Labour Bureau. Thus, the Arbitral Tribunal was persuaded to accept that Appendix 2 only factored in the variable cost of living allowance as published by the Labour Commissioner periodically and did not factor any rise in the basic minimum rate of wages.

28. This Court is unable to accept that the impugned award is ex-facie contrary to the term of the Contract Agreement and therefore, is vitiated by patent illegality. The Arbitral Tribunal has interpreted the provisions of Clause 31.4.3 of the SCC along with Appendix - 2 to the Contract Agreement. The decision of an Arbitral Tribunal in respect of construction of a Contract is final and the Court cannot supplant its view in place of that of the Arbitral Tribunal. Concededly, the scope of interference with an impugned award under Section 34 of the A&C Act is limited. Unless the court finds that the impugned award is patently illegal on the face of the award or falls foul of the fundamental policy of Indian Law, the impugned award cannot be set aside. In the present case, the Arbitral Tribunal's



interpretation as to the construction of Clause 31.4.3 of the SCC is a plausible one. This Court is unable to accept that such an interpretation is ex-facie erroneous and contrary to the plain language of the Contract Agreement.”

18. Learned senior counsel submits that it is pertinent to mention here that the notification before the learned single judge in O.M.P. (COMM) 560/2020 and O.M.P. (COMM) 524/2020 was the same dated 19.01.2017 which is also the subject matter in the present case. Learned senior counsel has also submitted that clause 31.4.3 as reproduced herein above is identical to clause 10.4.3 in the present GCC. Learned senior counsel submitted that the learned single judge rejected the contention that the impugned award is contrary to the terms of the contract agreement and is vitiated by the patent illegally.
19. Learned senior counsel submits that the order/judgment of the learned single judge was duly upheld by the division bench of this court in FAO(OS) (COMM) 45/2022 titled ***NTPC Ltd. vs. L and T – MHPS Boilers Pvt. Ltd.*** and FAO(OS) (COMM) 46/2022 titled ***NTPC Ltd. vs. Larsen and Toubro Limited*** [2023 SCC OnLine Del 4225].
20. Learned senior counsel has also submitted that the similar notification and the interpretation of the clause was a matter of adjudication before this court in O.M.P. (COMM) 139/2021 titled ***Tata Projects Ltd. vs. NTPC Limited*** and O.M.P. (COMM) 171/2021 titled ***NTPC Limited vs. Tata Projects Ltd.*** [2021 SCC OnLine Del 5229]
21. Learned senior counsel submits that in this case also the finding of the learned Arbitral Tribunal was upheld by the learned single judge and the order of the learned single judge was upheld by the division bench

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of this court in FAO(OS) (COMM) 55/2022 titled **NTPC Ltd. vs. M/s Tata Projects Ltd.** [2022 SCC OnLine Del 702]

22. Learned counsel submits that the SLP filed in **NTPC Ltd. vs. M/s Tata Projects Ltd.** bearing SLP No. 14903/2022 was dismissed by the Hon'ble Supreme Court vide order dated 05.09.2022.
23. Learned senior counsel submits that all the contentions being raised by the petitioner herein were duly considered and adjudicated by the learned Arbitral Tribunal and there is no illegality or perversity in the order of the learned Arbitral Tribunal.
24. Learned senior counsel has taken the court to clause 10.4.1, clause 10.4.2 and clause 10.4.3. Learned senior counsel submitted that the learned Arbitral Tribunal has rightly returned the findings that the notification enhancing the minimum wage amounts to a change of law.
25. The jurisdiction of the court while hearing the objection against the award is very limited. The court by entertaining the challenge is not required to re-appreciate or re-evaluate the evidence and substitute its opinion over that of the arbitral tribunal. The arbitral award can be interfered with on merits only on the grounds as specified under Section 34 (2) (b) (ii) and Section 34 (2) (a) of the Act.
26. In **Associate Builders v. DDA**, (2015) 3 SCC 49 it was *inter-alia* held as under:

"It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be



relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts”

27. In **MMTC Ltd. vs. Vedanta Ltd.** (2019) 4 SCC 163 it was inter alia held as under:

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., [1948] 1 K.B. 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to



the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, Which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.”

28. In ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.***, 2021 SCC OnLine SC 695, it was inter alia held as under:

“24. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by courts while examining the validity of the arbitral awards. The limited grounds available to courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would



lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

25. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which not fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'.

26. Section 34 (2) (b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter



of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression 'public policy of India' and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice. In Ssangyong (supra), this Court held that the meaning of the expression 'fundamental policy of Indian law' would be in accordance with the understanding of this Court in Renusagar Power Co. Ltd. v. General Electric Co. In Renusagar (supra), this Court observed that violation of the Foreign Exchange Regulation Act, 1973, a statute enacted for the 'national economic interest' and disregarding the superior courts in India would be antithetical to the fundamental policy of Indian law. Contravention of a statute not linked to public policy or public interest cannot be a ground to set at naught an arbitral award as being discordant with the fundamental policy of Indian law and neither can it be brought within the confines of 'patent illegality' as discussed above. In other words, contravention of a statute only if it is linked to public policy or public interest is cause for setting aside the award as being at odds with the fundamental policy of Indian law. If an arbitral award shocks the conscience of the court, it can be set aside as being in conflict with the most basic notions of justice. The ground of morality in this context has been interpreted by this Court to encompass awards involving elements of sexual morality, such as prostitution, or awards seeking to validate agreements which are not illegal but would not be enforced given the prevailing mores of the day.

27. In light of the principles elucidated herein for interference with an arbitral award by a court in exercise of



its jurisdiction under Section 34 of the 1996 Act, we proceed to consider the questions that arise in these Appeals as to whether the Division Bench of the High Court was right in setting aside the award of the Arbitral Tribunal dated 11.05.2017.”

29. The perusal of the above judgments makes it clear that the substantial changes were made in the Arbitration and Conciliation Act pursuant to 246th of the Law Commission and judicial interference with the arbitrable award is limited to the grounds in Section 34. The mandate for the courts while entertaining such objection is to strictly act in accordance with and within the conscience of Section 34. The court is required to refrain from appreciation or re-appreciation of the matter of fact as well as law.
30. The perusal of the award makes it clear that the learned arbitral tribunal has taken into account the judgment of this court wherein it has clearly been opined that the said 2017 Notification does constitute a change law resulting in an increase in the cost of labour due to increase in the basic minimum wages which was required to be compensated. Learned Arbitral Tribunal has referred to ***Tata Projects Ltd. vs. NTPC Limited*** (supra). Thus, the award is in conformity with the judgments passed by this court. Learned Arbitral Tribunal has also relied upon the judgment of this court in ***NTPC Ltd. vs. Larsen and Tourbro Limited*** (supra).
31. The perusal of the award also indicates that the learned Arbitral Tribunal has relied upon ***GMR Warora Energy Limited v. Central Electricity Regulatory Commission (CERC) and Others*** [2023 SCC OnLine SC 464] wherein the apex court has relied on the decision in



Energy Watchdog and Others v. Central Electricity Regulatory Commission and Others and Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission and Others. Learned arbitral tribunal has inter alia held as under:

163. In GMR Warora Energy Limited v. Central Electricity Regulatory Commission (CERC) and Others, the Hon'ble. Supreme Court, relying on the decisions in Energy Watchdog and Others v. Central Electricity Regulatory Commission and Others and Maharashtra State Electricity Distribution Company Limited v. Maharashtra Electricity Regulatory Commission and Others, has held as under:

"96. Perusal of the definition of the term "Law" itself would clearly show that the term "Law" would mean all laws including Electricity Laws in force in India. and any statute, ordinance, regulation, Notification or code, rule, or any interpretation of any of them by an Indian Governmental Instrumentality and having force of law. It would further reveal that the term "Law" shall also include all applicable rules, regulations, orders, Notifications by an Indian Governmental Instrumentality and shall also include all rules, regulations, decisions and orders of the CERC and the MERC."

And again:

"101. As discussed herein above, the term 'Law' would also include all applicable rules, regulations, orders, Notifications issued by an Indian Governmental Instrumentality.

102. It would thus be clear that all such additional charges which are payable on account of orders, directions, Notifications, Regulations, etc., issued by the instrumentalities of the State, after the cut-off date, will have



to be considered to be "Change in Law" events.

164. From the aforesaid authorities, it is clear as day that the Notification issued under the authority of the statutory provision that determines or revises the monthly wages is legislative in nature, being in the realm of delegated legislation, having the force of law and such issuance of Notification will definitely fall within the ambit of "change of law" or "modification to the Acts/Statute or rules made thereunder as envisaged in GCC Clause 10.4.3.

226. Emphasis has also been placed by the learned Senior Counsel for the Respondent on the aspect that while GCC Clauses 10.4.1 and 10.4.2 use the word "Notification", GCC Clause 10.4.3, which has been cited by the Claimant as the bedrock or foundation of its claim, does not use the word "Notification".

227. In this regard, as has already been analysed in detail in the preceding paragraphs while dealing with lasie (ii), GCC Clause 10.4.3 contains the words "enactment of any new Act or Statute and rules made thereunder" or "modification to the Acts/Statute or rules made thereunder". The rates of minimum wages stipulated under the 2009 Notification formed part of the MW Act and when these rates were modified by the 2017 Notification, it resulted in modification of the MW Act itself in relation to the rates of minimum wages payable. Thus, when the 2017 Notification has been issued by the appropriate Government, that is, the Central Government, by virtue of the authority conferred upon it under the provisions of the MW Act, it is very much a part of the MW Act itself and modification to the minimum wages brought about by the 2017 Notification would amount to modification of the MW Act itself."

32. The perusal of the above finding makes it clear that the learned Arbitral Tribunal has minutely gone into the question being raised by the petitioner. It has to be kept in mind that the court while exercising

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jurisdiction under Section 34 of the Arbitration and Conciliation Act is not to be set as a court of appeal. The Arbitral Tribunal is the final arbitrator of the facts.

33. The court can interfere with the award passed by the learned Arbitrator on the limited ground as provided in Section 34 that is the award is in conflict with the public policy of India or the award was induced/affected by fraud or corruption or was in violation of Section 75 or Section 81. The award can also be set aside if the award was in contravention with the fundamental policy of Indian law or is in conflict with the most basic notion of morality or justice.
34. This court finds that the award does not suffer from any of the above grounds. Hence, the petition along with pending applications stands dismissed.

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