



WEB COPY

O.P. No.56 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 08.01.2025

Pronounced on:31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

O.P. No.56 of 2020 &
Arb.O.P. (Com.Div) No.199 of 2021
and A. No.385 of 2020

O.P. No.56 of 2020

GMMCO Limited,
53A, HootaGali, Industrial Area,
Belvadi, Mysore – 570 001

... Petitioner

VS.

The Supreme Industries Limited,
Represented by Mr.Rajendra Jugalkishore Saboo,
The AVP (Corporate Affairs) & Company Secretary
and its Authroized Signatory,
612, Raheja Chambers, Nariman Point,
Mumbai – 400 021.

... Respondent

PRAYER: Original Petition filed under Sections 34 of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to set aside the Award dated 30.09.2019 passed by the learned Arbitrator, insofar as it directs the Petitioner to pay a sum of Rs.1,08,54,024/- (Rupees One Crore Eight Lakhs Fifty Four Thousand and Twenty Four only) to the Respondent alongwith interest @ 12% per annum from the date of claim statement (i.e., 29.12.2017) to the date of payment and award costs of the Arbitration and



the present petition to the Petitioner.

For Petitioner : Mr.Rahul Balaji
For Respondent : Mr.P.R.Raman,
for Mr.Goutham S. Raman

Arb.O.P. (Com.Div) No.199 of 2021

The Supreme Industries Limited,
Represented by Mr.Rajendra Jugalkishore Saboo,
The AVP (Corporate Affairs) & Company Secretary
and its Authroized Signatory,
612, Raheja Chambers, Nariman Point,
Mumbai – 400 021.

... Petitioner

vs.

GMMCO Limited,
(A Company incorporated within the Meaning
of the Companies Act, 2013)
having its Office at
53A, HootaGali, Industrial Area,
Belvadi, Mysore – 570 001.

... Respondent

PRAYER: Original Petition filed under Sections 34(2A) of the Arbitration and Conciliation Act, 1996 to quash and set aside the impugned Award dated 30.09.2019, thereby rejecting the Claim Nos.3 to 9 and to refer the Claim Nos.3 to 9 made by the Petitioner in the Statement of Claim for fresh consideration.

For Petitioner : Mr.P.R.Raman,
for Mr.Goutham S. Raman

For Respondent : Mr.Rahul Balaji



WEB COPY

O.P. No.56 of 2



COMMON ORDER

This Original Petition in O.P. No.56 of 2020 has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'Act'), challenging the award dated 30.09.2019 directing the petitioner to pay Rs.1,08,54,024/-, together with interest at 12% per annum, from the date of claim statement till the date of payment and costs (i.e., 29.12.2017).

2. The Arbitration Original Petition (Com.Div.) No.199 of 2021 has been filed limited to the rejection of the Claims 3 to 9, in and by the very same impugned award dated 30.09.2019 and for referring back the said claims for fresh consideration.

3. I have heard Mr.Rahul Balaji, learned counsel for the petitioner in O.P. No.56 of 2020 and respondent in Arb.O.P.(Com.Div.) No.199 of 2021 and Mr.P.R.Raman, learned Senior Counsel for Mr.Gautham S. Raman, learned counsel for the respondent in O.P. No.56 of 2020 and petitioner in Arb.O.P.(Com.Div.) No.199 of 2021.



4. The brief facts of the case for easy understanding are as hereunder:

4 (i). For the sake of convenience, the parties are referred to as per the ranking in O.P. No.56 of 2020.

4(ii). In and by a contract entered into between the petitioner and the respondent, the petitioner was required to supply and commission a Caterpillar Brand Gas Genset Engine of 500 KW capacity (Genset). However, the running and maintenance of the Genset was outside the scope of the contract and post commissioning of the Genset, the petitioner was required to replace parts which were under warranty. Admittedly, the manufacturer of the Genset was *M/s.Caterpillar India Private Limited* and the petitioner only supplied the said Genset to the respondent.

4 (iii). The petitioner supplied and commissioned the said Genset and thereafter, the respondent claimed that the Genset suffered from inherent manufacturing defects which were not noticed at the time of commissioning, but only during the operation of the Genset. In view of the said disputes raised by the respondent, the respondent initiated arbitration proceedings and made nine claims against the petitioner.

4(iv). The petitioner resisted the said claims, claiming that the Genset was not inherently defective as claimed by the respondent and that the problems arose only because of the manner of operation and maintenance



and quality of fuel used by the respondent and opposing all the nine claims, sought for dismissal of the claim petition.

WEB COPY

5. The learned Arbitrator after elaborate trial, awarded a sum of Rs.1,08,54,024/-, together with interest at 12% per annum in respect of certain claims alone and rejected claims 3 to 9 as against which, the respondent has come up with challenge to the said award by way of a separate Arb.O.P.(Com.Div.) No.199 of 2021.

6. The learned counsel for the petitioner, Mr.Rahul Balaji, would first and foremost contend that the learned Arbitrator failed to notice and appreciate that there was no arbitration agreement between the parties in the first place. In this regard, he would take me through the dates and events in a chronological manner, beginning the first offer/proposal dated 05.07.2010, sent by the petitioner to the respondent and various other events that occurred thereafter.

7. According to Mr.Rahul Balaji, in the first offer dated 05.07.2010, there was no arbitration agreement between the parties except for a jurisdiction Clause, in and by which the parties had agreed to refer all their disputes to Chennai Court's Jurisdiction. However, under the second offer



dated 26.07.2010, the parties had contemplated reference of disputes to Arbitration. The said second offer was not acceptable to the respondent and thereafter, the parties negotiated the commercial terms and ultimately, a third offer dated 29.07.2010 was given by the petitioner. According to the learned counsel for the petitioner, the respondent has not even produced the said third offer dated 29.07.2010 and it is only this offer which has been included and referred to in the Letter of Indent dated 05.08.2010 as well as the purchase order dated 06.08.2010. The learned counsel would therefore contend that in and by the Letter of Indent and Purchase Order dated 05.08.2010 and 06.08.2010 alone, the parties went ahead with the execution of the contract and it was only certain specific offers that were modified, accepted and incorporated from the earlier commercial bid, that is items like price, terms of delivery and taxes, warranty etc. The Arbitration Clause was never incorporated in the third offer and consequently, there was no arbitration agreement accepted between the parties.

8. The learned counsel would further take me through the findings of the learned Arbitrator and would contend that the Tribunal has erroneously relied on the Arbitration Clause contained in the Commercial bid in the Second proposal dated 26.07.2010 and held that the parties were bound to



arbitrate their disputes. According to the learned counsel for the petitioner, the commercial bid was not even signed by the parties and cannot constitute an agreement at all as it was merely a prelude to the transactions that the parties were proposing to enter into.

9. In this connection, the learned counsel would place reliance on the decision of the Hon'ble Supreme Court in *PSA Mumbai Investments PTE. Limited vs Board of Trustees of the Jawaharlal Nehru Port Trust and another*, reported in (2018) 10 SCC 525 where the Hon'ble Supreme Court in a case where the bid document contained an arbitration clause but however, the subsequent concluded contract did not form part of it, and ultimately the Apex Court held that there was no arbitration agreement between the parties. The learned counsel for the petitioner would also invite my attention to the Application filed by the petitioner under Section 16 of the Act before the Arbitrator. However, the learned Arbitrator dismissed the said Application by speaking order dated 02.05.2018 and the said order is also under challenge in the above proceedings.

10. Without prejudice to the preliminary contention with regard to absence of an Arbitration agreement between the parties, Mr.Rahul Balaji



would also attack the award on the ground that it opposed to the public policy of India. In this regard, he would refer to the issue of limitation.

According to the petitioner, the Genset was commissioned on 11.01.2011 and the period of limitation therefore expired on 10.01.2014. He would invite my attention to the findings of the learned Arbitrator in this regard, holding that the limitation period expired only 10.07.2015, since a six months extended warranty period and a standard one year warranty period have to be factored while arriving at the limitation period.

11. The argument of the learned counsel for the petitioner is that the claims made by the respondent were not claims for replacement and repair, the Genset being under warranty but only for refund of the entire amount price paid in advance. He would therefore submit that the cause of action would start running from the date of commissioning of the Gas Genset itself and not from the date of expiry of the warranty periods.

12. In this regard, the learned counsel would place reliance on the following decisions:

1. *M/s .ha Thilokchand Poosaji v. Crystal & Company*, reported in *AIR 1995 MAD 481*;



2. *Union of India v. Rallia Ram*, reported in (1963) SCC OnLine SC 132;

WEB COPY

3. *Svenska Handelsbanken v. M/s.Indian Charge Chrome & ors*, reported in [(1994) 1 SCC 504]

4. *Rajratan Babulal Agarwal v. Solartex India Private Limited and Ors*, reported in (2023) 1 SCC 115

5. *City and Industrial Development Corporation of Maharashtra Ltd vs Nagpur Steel and Alloys Private Ltd*, reported in (1993) MhLJ 193

6. *Associate Builders vs DDA*, reported in (2015) 3 SCC 49

7. *Ssangyong Engineering and Construction Company Ltd vs National Highways Authority of India*, reported in (2019) 15 SCC 131

13. The next contention raised by the learned counsel for the petitioner is that the award is patently illegal and liable to be set aside under Section 34(2A) of the Act. Challenge to the award on this ground is that the learned Arbitrator erroneously concluded that the Genset was defective which was based on no evidence and in this regard, he would take me through the award itself, where the learned Arbitrator had categorically found that the respondent had not produced the log book which was the best evidence to show that the Genset was working properly or not. In fact, the

9/27



bone of contention of Mr.Rahul Balaji is that the learned Arbitrator has apparently blown hot and cold. For failure to produce the log book, the learned Arbitrator has rejected Claim 5, whereas the learned Arbitrator allowed Claim 1 without holding that the non-production of log books would affect Claim 1 as well.

14. The learned counsel for the petitioner would also take me through the evidence, more specifically Ex.R6 and question and answers pertaining to the said Exhibit. The petitioner had instructed the respondent to use the Genset in a proper manner and it is the specific case of the petitioner that the respondent mishandled the Genset by operating it on solo mode instead of parallel mode. He would invite my attention to the Project Information Checklist at Section 11 which requires parallel operation with the grid, referring to the same, the learned counsel for the petitioner would submit that this mode of operation was fundamental for the use of the Genset and the checklist also formed basis of the offer proposed by the petitioner.

15. Apart from R6, the learned counsel for the petitioner would invite my attention to Ex.R5, an email dated 09.11.2009, in and whereby, the petitioner has provided the checklist even prior to the first offer being made.



Even in Ex.C7 an email which emanated from the respondent to the petitioner, the respondent had categorically requested the petitioner to give a port for 0.5MW CNG Generator suitable to raise parallel to 725 k VA DG Set. The learned counsel would also invite my attention to the admission of CW2 that the checklist is an important document as it is a standard practice to capture information from users. Therefore, according to the learned counsel for the petitioner, these vital documents/evidence have been ignored, thereby rendering the award patently illegal.

16. The learned counsel would also invite my attention to Ex.C41 minutes of meeting dated 13.12.2010, where the gas Genset pre-commissioning was on solo mode, the complaint raised was that the Engine had started running with 500kw and was working satisfactorily. However, after two hours hunting was noted, and the engine had stopped, the said complaint was attended and the PRV was sent for repair and according to the petitioner, vide Ex.R11, the petitioner supplied the PRV subsequently as a good will gesture. Mr.Rahul Balaji would contend in this connection that the learned Arbitrator has failed to consider that at the time of load trials, the Engine has tripped due to PRV failure and after the petitioner supplied another PRV, the Engine was successfully re-commissioned and the



respondent themselves issued a letter of appreciation on 11.01.2011 which has gone unnoticed by the learned Arbitrator. He would refer to several other dates between 02.01.2011 and 27.03.2012 which are all covered by Ex.C42, 45, 46, 50, 56, 57, 58, 59, 60, 61, 63, 64, 67, 76, 78, 80, 84 and 89. The further grievance of the learned counsel for the petitioner is that the learned Arbitrator has merely reproduced the table contained in the proof affidavit of C.W.1 and proceeded to render a finding that the Genset has a serious manufacturing defect. Referring to the various Exhibits C42, etc. (referred herein above), the learned counsel for the petitioner would contend that the various dates on which defects have been pointed out and scheduled maintenance was carried out, clearly point to the fact that there was no manufacturing defect as alleged by the respondent.

17. Further, Mr.Rahul Balaji would also bring to my notice the petitioner's offer to the respondent to enter into an operation and maintenance contract, since the scope of the contract between the petitioner and the respondent was only for supply and commissioning of the Genset and not maintenance. However, the respondent did not accept the said offer which was also brought out in the evidence of C.W.1 and therefore, only because of improper and unqualified use of the Genset and lack of proper



maintenance, the problems surfaced and it was not a manufacturing defect at all. In short, the learned counsel would submit that the learned Arbitrator having not only failed to appreciate vital evidence but also by ignoring material evidence has rendered a patently illegal award which is liable to be set aside.

18. Per contra, Mr.P.R.Raman, learned Senior Counsel for the claimant would take me through the nine claims made by the respondent/claimant before the learned Arbitrator. With regard to limitation, the learned Senior Counsel would submit that the objection with regard to limitation and warranty period is wholly misconceived. He would take me through the warranty Clause under the second proposal dated 26.07.2010, in and by which the manufacturer guarantees the Genset for period of 12 months from the date of commissioning. In and by meeting dated 05.03.2011, the said 12 months warranty was extended by a further period of 6 months. According to the learned Senior Counsel, it is not only the case of the claimant that the Genset was defective but also that there was a breach of the warranty and therefore the learned Arbitrator cannot be found fault for holding that the limitation would start only after the expiry of the warranty period.



19. In this regard, the learned Senior Counsel would invite my attention to few of the relevant dates. The Genset was commissioned vide (Ex.C45) on 11.01.2011 and the 12 months warranty period expires on 10.01.2012, in and by meeting dated 05.03.2011, the warranty was extended by 6 months (Ex.C52) and therefore the warranty was extended upto 10.07.2012. As early as on 30.04.2013, the respondent issued a legal notice (Ex.C93) and followed it up with Section 21 notice (Ex.C95) under the Arbitration and Conciliation Act, 1996 on 03.02.2014. Therefore, according to the learned Senior Counsel, the warranty period expired only on 10.07.2012 and well before the three year period on 10.07.2015, the claims were made and therefore, the claims were not bound by limitation. Further, he would contend that limitation being a mixed question of law and facts and when the learned Arbitrator had given a finding based on the above Exhibits C45, C52, C93 and C95, the same is nothing but a factual finding and cannot be challenged under Section 34 of the Arbitration and Conciliation Act, 1996.

20. As regards the award being opposed to fundamental public policy of India, the learned Senior Counsel would reiterate his submission that the



claimant's case was also breach of warranty and the learned Arbitrator has rightly relied on the documentary evidence and rendered a factual finding that the product sold, suffered from manufacturing defects and rightly awarded compensation to the respondent. As regards the contention of Mr.Rahul Balaji, that the learned Arbitrator has given a finding that the Genset had a manufacturing defect, based on no evidence, the learned Senior Counsel would take me through the award held from paragraph 9 onwards to show as to how the learned Arbitrator has in great detail examined the oral and documentary evidence of the parties and based on a proper assessment of the same had rendered a finding that the Genset was defective and also that it was an old machine lying in the petitioner's Mysore plant. Consequently, the learned Arbitrator has also found that non-compliance of the instructions the petitioner did not result to the failure of the Genset.

21. The learned Senior Counsel would also bring to my notice the admissions of R.W.1 which have been rightly considered by the learned Arbitrator where R.W.1 admits that several parts of the Genset has been replaced immediately after installation and commissioning of the Genset. The learned Senior Counsel would therefore contend that when a new



Genset had been supplied and installed and immediately thereafter, there was malfunction resulting in several parts being replaced, it would only lead to the irrefutable conclusion that the Genset was defective. He would also invite my attention to various findings of the Arbitrator in this regard and the learned Arbitrator being the best judge of facts and evidence on record, cannot be challenged under Section 34 of the Act.

22. With regard to Arb.O.P.(Com.Div.) No.199 of 2021, the learned Senior Counsel would contend that the learned Arbitrator erroneously rejected Claims 3 & 4, when the Tribunal had come to the conclusion that the Genset was having manufacturing defects. Insofar as rejection of the claim for installation of the commissioning charges, the learned Senior Counsel would contend that the petitioner had not even denied the fact that the respondent had incurred these expenses and in Annexure C2 in the statement of claim the details were also elaborately set out, the correctness of which was never questioned by the petitioner.

23. Similarly, with rejection of Claim 6, the learned Senior Counsel would state that the third party instruction reports marked as exhibits had been totally ignored by the learned Arbitrator. Similar arguments is also



placed in respect of Claim 7, which is regarding Gas penalty paid to GAIL in 2014 for non- running of the Gas Genset and despite production of C2, C99, C100 and C101 regarding the said Claim, the finding of the learned Arbitrator that the said Claim was barred by limitation is contended to be illegal as the payment itself was made by the respondent only on 08.10.2015 and the statement of claim was filed on 29.12.2017 within 3 years. Finally, the learned senior counsel would also contend that the rejection of cost for purchasing new Diesel Genset was also erroneous in view of the categorical finding that the petitioner had delivered a defective Genset.

24. The learned Senior Counsel would also place reliance on the decision of the Honorable Supreme Court in *UNISSI (India) Private limited vs Post Graduate Institute of Medical Education and Research*, reported in (2009) 1 SCC 107, where the Honorable Supreme Court held that when one party had sent an agreement containing an Arbitration Clause duly signed and the other party having received the same, did not send back the agreement after signing it, but however, used the machine for about a year and thereafter, returned it. It was held that in view of Section 7 of the Arbitration and Conciliation Act, 1996, the Arbitration agreement did exist and the matter should be referred to an Arbitrator for decision holding that



Supply of materials and acceptance thereof in pursuance of tender enquiry, such tender containing an Arbitration Clause would bind the parties and one of the parties cannot wriggle out from the Arbitration agreement.

25. I have carefully considered the rival submissions advanced by the learned counsel on either side.

26. Firstly, I shall deal with the issue of non arbitrability of the dispute. As contended by the learned counsel for the petitioner, the petitioner sent its first offer on 05.07.2010. Admittedly, the said offer did not contain an Arbitration clause. In response to the said offer, the respondent had sent a mail on 15.07.2010 requesting the petitioner to give a quote. On 26.07.2010, the petitioner gave its second quote which contained a commercial bid and an Arbitration Clause. On 28.07.2010, the respondent, by Email, objected to the price quote being very high and on the very next day 29.07.2010, the petitioner replied by email agreeing to reduce the price and attached a revised offer which also admittedly did not contain an Arbitration clause. Thereafter on 05.08.2010, the respondent issued a letter of indent referring to the petitioner's proposal dated 29.07.2010. The said Letter of Indent also does not contain an arbitration Clause, on the very next



day purchase order was issued by the respondent to the petitioner, such purchase order also admittedly does not contain an Arbitration Clause.

Equally the Proforma Invoice issued by the respondent to the petitioner on 25.08.2010 and Delivery Challan cum Tax Invoice dated 22.09.2010 also do not contain an Arbitration clause.

27. In view of the above, it is to be seen whether the third offer dated 29.07.2010 reducing the price to Rs.81,00,000/- and subsequent Letter of Indent dated 05.08.2010, are only in continuation of the second offer given by the petitioner containing an Arbitration Clause or whether the third offer dated 29.07.2010 in furtherance of which the LOI and purchase order followed would constitute a novated contract between the parties or not. In this regard, I have already noticed that, this issue was raised even before the learned Arbitrator by way of a Section 16, Application and the learned Arbitrator after detailed discussion of the rival contentions and the documents exchanged between the parties, rejected the argument of the petitioner herein that there is no Arbitration agreement between the parties. I have gone through the said order dated 02.05.2018, dismissing the Section 16 Application. The learned Arbitrator had rightly discussed the documents exchanged between the parties and held that there was no new offer which



emanated on 29.07.2010 and it was only reduction of price that was agreed upon under Exhibit C12 and that the parties would be bound by the Arbitration clause in the second offer dated 26.07.2010. I do not find any illegality or infirmity in the findings arrived at by the learned Arbitrator in this regard.

28. The learned Arbitrator has also discussed the case law which has also been placed before me and the learned arbitrator has rightly applied the ratio laid down by the Hon'ble Supreme Court in *Trimex International FZE limited vs Vedanta Aluminium Limited, India* reported in (2010) 3 SCC 1. The learned Arbitrator has rightly relied on the correspondence between the parties specifically exhibit C10 to C14, which clearly bring out an intention of the parties to resolve the disputes by Arbitration. I do not find that the mere reduction in price subsequent to a request made by the petitioner will amount to a novation of the contract itself and the absence of the Arbitration Clause in the said revised offer dated 29.07.2010, would result in a position where the parties cannot be referred to Arbitration and therefore , I am unable to countenance the submissions of the learned counsel for the petitioner. Accordingly, I reject the objection with regard to non arbitrability of the disputes.



29. Next, with regard to limitation, I have already discussed in detail the rival submissions advanced by the learned counsel on either side with regard to the aspect of the limitation. It is not in dispute that there was a 12 months manufacture warranty which was subsequently, extended by a further period of 6 months and if the claim is to be considered from the said extended period of warranty then, there is no quarrel that the claim is well within the period of limitation. However, the only contention that is raised by the learned counsel for the petitioner in this regard is that when the respondent claimed refund of the purchase price, he cannot take advantage of the warranty period and limitation would start running from the date of supply and commissioning. If considered from this angle, the claim is beyond three years and consequently time barred.

30. I have carefully gone through the pleadings of the parties and also the findings of the learned Arbitrator in this regard. From the claim statement, it is clear that the respondent had specifically alleged breach of condition and warranty by the petitioner. Specific averments in this regard are set out in paragraph Nos.20, 21 and 24 of the claim statement as well. Therefore, it is not a case simpliciter for refund of the price paid for a



defective Genset. The learned Arbitrator has dealt with the issue elaborately from paragraph 48.1 to 48.11. The learned Arbitrator in my opinion has rightly referred to the lawyer's notice dated 30.04.2013 in Exhibit C93, where the respondent had claimed not only refund of the price paid for the Genset but also various other claims, including losses suffered and the learned Arbitrator rightly placed reliance on the decision of the Hon'ble Supreme Court in *State of Goa vs Praveen Enterprises*, reported in (2012) 12 SCC 581 and held that Claims 1 to 7 were alone in time and further claims 8 and 9 were barred by limitation.

31. Limitation being a mixed question of law and fact and the learned Arbitrator having rightly applied his mind to the factual matrix, the relevant dates and arrived at a factual finding that the claims 1 to 7 were in time and claims 8 and 9 were barred by limitation. Therefore, exercising power under Section 34 of the Arbitration and Conciliation Act, 1996, I do not find any material or patent illegality warranting interference with such factual findings.

32. Lastly, with regard to the contentions that the award of the learned Arbitrator is patently illegal for reason of non appreciation of vital



evidence and also ignoring material evidence, I have independently gone through the entire award of the learned Arbitrator. The learned arbitrator has discussed threadbare the oral and documentary evidence adduced by the parties. The learned Arbitrator has rendered a categorical and positive finding that the Genset supplied had several manufacturing defects and proceeded to allow part of the claims in favour of the respondent.

33. The learned Arbitrator has also rendered a finding that the defects were not a consequence of improper usage of the Genset as alleged by the petitioner. The said findings are all backed by oral and documentary evidence which have been rightly discussed and decided by the learned Arbitrator and the very fact that the learned Arbitrator has disallowed the claims 8 and 9 as being barred by limitation and Claims 3 to 7 on the ground that the respondent has not substantiated such claims by production of satisfactory evidence would clearly show that there has been a proper Application of mind to the issues at hand by the learned Arbitrator.

34. The scope and power of this Court to interfere under Section 34 of the Act, is very narrow and limited and in fact the Hon'ble Supreme Court has pointed out that it is merely a “pigeon hole” that is available for



the High Court sitting and exercising a jurisdiction under Section 34 of the Act. Testing the award and the findings rendered by the learned Arbitrator, I do not find that the petitioner has made out any justifiable grounds warranting interference under Section 34 of the Arbitration and Conciliation Act, 1996. All the findings arrived at by the learned arbitrator backed by oral and documentary evidence adduced by the parties and available before the learned Arbitrator for consideration, there is no perversity on the part of the Arbitrator in applying the facts of the case to the said legal provisions of law as well. This Court is not sitting in Appeal over the Arbitral award and when it is seen that a possible view on facts, has been taken by the learned Arbitrator, then, the same is necessarily to be respected, since the learned Arbitrator is the final Master of the quantity as well as quality of evidence relied upon. It is always not necessary that the award has to be an elaborate judgment and it is the substance and not the form of the findings that is relevant.

35. Further, even an erroneous application of law or wrong appreciation of evidence are not sufficient grounds to exercise power under Section 34 of the Act. Arbitral awards are not to be interfered with casually, unless the Court finds perversity writ large on the face of the



award and going to the root of the matter. This Court cannot re-appreciate the evidence adduced by the parties before the learned Arbitrator and pick holes when the award is reasoned one and also a plausible view on available materials. The Hon'ble Supreme Court in *Dyna Technologies Private Limited Vs. Crompton Greaves Limited*, reported in (2019) 20 SCC 1, has held that the award has to be reasoned and the reasons are proper, intelligible and adequate. If the Court finds these to exist, then there should be no interference.

36. Therefore, viewing from this angle, I am unable to see the existence of any of the grounds warranting interference of the award under Section 34 of the Act. I am unable to countenance the submissions of the learned counsel for the petitioner that the award is patently illegal and also opposed to the fundamental public policy of India. As repeatedly held by the Hon'ble Supreme Court, the learned Arbitrator is the best judge of the oral and documentary evidence adduced by the parties before him and unless, there is any violation of principles of natural justice or non consideration of material evidence or when the award is based on no evidence and there is a violation of public policy of India, the award of the arbitrator can be set aside. When the arbitrator has recorded a reasoned



findings regarding the defects and also eligibility of the respondent to sum up the claims originally made, I do not find any grounds justifying interference even insofar as disallowed claims which have been challenged in Arb.O.P.(Com.Div.) No.199 of 2021.

37. For all the above reasons, the O.P. No.56 of 2020 and Arb.O.P.(Com.Div.) No.199 of 2021 is dismissed. Consequently, connected Application is also dismissed.

31.01.2025

rkp
Speaking/Non-speaking order
Index : Yes / No
Neutral Citation: Yes/No



WEB COPY

O.P. No.56 of 2



P.B.BALAJI, J.,

rkp

Pre-delivery Order in
O.P. No.56 of 2020 &
Arb.O.P. (Com.Div) No.199 of 2021
and A. No.385 of 2020

31.01.2025