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IN THE HIGH COURT OF DELHI AT NEW DELHI*Judgment pronounced on:02.04.2025***+ FAO(OS) (COMM) 109/2019****M/S SEASPRAY SHIPPING CO LTD.****....Appellant**

Through: Mr. Gaurav Mitra, Mr. Dhruv Kapur,
Mr. Maharishi Kaler, Mr. Adit Singh,
Ms. Aishwarya Modi, Mr. A.
Fazelbhoy and Ms. Chahat Arya,
Advocates.

versus**STEEL AUTHORITY OF INDIA LTD.****..... Respondent**

Through: Mr. Raj Shekhar Rao, Sr. Advocate
along with Mr. Sunil K. Jain, Mr.
Deepanshu Jain, Mr. S. Jain and Mr.
Prateek Kumar, Advocates.

+ FAO(OS) (COMM) 144/2019**STEEL AUTHORITY OF INDIA LTD.****.... Appellant**

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CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**



SACHIN DATTA, J.

1. These cross-appeals have been filed under Section 37(1)(c) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the “A&C Act”), challenging the judgment dated 28.02.2019 (hereinafter referred to as the “*Impugned Judgment*”) passed by the learned Single Judge in OMP No. 76 of 2015. The said petition was filed by the Steel Authority of India Limited (hereinafter referred to as “*SAIL*”) under Section 34 of the A&C Act, assailing an arbitral award dated 20.08.2014 (hereinafter referred to as the “*Original Award*”) rendered by an Arbitral Tribunal comprising of three arbitrators: Capt. Satish P. Anand (Presiding Arbitrator), Capt. S.M. Berry, and Mr. Niranjana Chakraborty (hereinafter referred to as the “*Arbitral Tribunal*”).

2. By the Original Award, the Arbitral Tribunal awarded a net sum of USD 14,049,506.74, which was determined after deducting a 2.5% commission payable to the Charterers and a 1.25% brokerage fee. Additionally, the Arbitral Tribunal awarded an amount of USD 100,000.00 towards legal fees and expenses. The costs of the arbitration, including fees and expenses of the arbitrators and administrative fees of the Indian Council of Arbitration, were fixed at INR 19,60,000. Furthermore, an amount of INR 4,90,000 was awarded to be paid to each arbitrator in accordance with Indian Council of Arbitration rules, and an additional INR 4,90,000 was awarded towards Indian Council of Arbitration administrative fees. Additionally, the Tribunal awarded interest at the rate of 6% per annum from 01.12.2012, until the publication of the award on the net sum of USD



14,049,506.74, and thereafter at 6% per annum until the total awarded amount is fully paid.

3. In the proceedings under Section 34 of the A&C Act, SAIL highlighted that the Arbitral Tribunal had not provided reasoning for its conclusions on certain issues. In light of this, the learned Single Judge, on 22.02.2017, directed the Arbitral Tribunal to reconvene and provide reasons in respect of the specified issues. Complying with this directive, the Arbitral Tribunal passed an Additional Award on 10.06.2017 (hereinafter “*Additional Award*”) detailing its reasoning for the specified issues of the Original Award. Hereafter, the Original Award and the Additional Award will collectively be referred to as the “*Impugned Award*.”

4. The learned Single Judge partly allowed SAIL’s petition and set aside the impugned award to the extent of damages computed for the quantity of coal that would have been shipped after the termination of the Agreement till December 2012. It was held that the agreement stood validly terminated by SAIL vide communication dated 11.09.2012 under Clause 62 of the Agreement. The learned Single Judge made the following observations in the impugned Judgement –

“63. Having said so, the Arbitral Award, insofar as it awards damages for the quantity of coal that would have been shipped after the termination of the Agreement till December 2012, cannot be sustained as the exercise of power by the petitioner under Clause 62 of the Agreement has been held to be valid in this order.

64. As the shipment was to be made on “evenly spread per month basis”, the amount due to the respondent would be reworked by taking the Shipment quantity that was due till the date of termination of the Contract.”

5. Additionally, the learned Single Judge modified the award of interest in line with the Hon’ble Supreme Court’s decision in ***Vedanta Ltd. v.***



Shenzen Shandong Nuclear Power Construction Co. Ltd, 2018 SCC OnLine SC 1922, setting it at the London Inter Bank Offered Rate (LIBOR).

6. M/s. Seaspray Shipping Co. Ltd. (hereafter Seaspray) has assailed the impugned judgment to the extent that the Impugned Judgment has reversed the Arbitral Tribunal's decision that SAIL was not entitled to terminate the COA under Clause 62 and set aside the damages awarded for the period following the termination. Additionally, Seaspray contests the interest rate modification from 6% per annum, to the rate granted by the Supreme Court in *Vedanta* (supra).

7. SAIL has also appealed the impugned judgement to the extent that the learned Single Judge has upheld the impugned award to the extent it awards damages for the period before termination of the Contract. According to SAIL, the same contravenes Section 73 of the Indian Contract Act, 1872 (hereinafter "ICA").

8. The present case involves dispute arising from the Contract of Affreightment (hereafter referred to as the "COA") dated 04.12.2007. The contract was executed between Seaspray, referred to as the 'Owners', and SAIL, referred to as the 'Charterers'. The COA pertains to the shipment of coking coal from Queensland, Australia, to the East Coast of India, covering a shipment period from April 2008 to December 2012. This period was extendable up to three months, at the discretion of SAIL, until March 2013.

FACTUAL BACKGROUND

9. Seaspray is a company duly incorporated under the laws of the United Kingdom and maintains its principal place of business at 5 Charterhouse Square, London EC1M 6EE, U.K. It operates a fleet of vessels and, in the



course of its business activities, engages in the chartering of ships or provides vessels under contracts of affreightment. SAIL is a public sector company owned and controlled by the government of India. It has its office at Central Marketing Organisation, Ispat Bhavan (6th Floor), 40 Jawahar Lal Nehru Road, Kolkata - 700071. The company specializes in the manufacturing and marketing iron and steel products and relies on coking coal as a primary raw material for its steel plants. The shipping requirements of SAIL are arranged by Transchart, a division of Ministry of Shipping, Government of India.

10. On 04.12.2007, Seaspray and SAIL entered into the COA, which was later amended by Addendum No. 1 on 29.06.2010. Under the COA, SAIL was obligated to transport 2,000,000 metric tons ($\pm 5\%$ at SAIL's option) of bulk coking coal from Queensland, Australia, to India's East Coast using Handymax vessels provided by Seaspray. The shipments were to be evenly distributed throughout the contract period, with parcel sizes between 45,000 to 52,000 metric tons ($\pm 5\%$ at Seaspray's discretion).

11. The COA required the transportation of 2,000,000 metric tons ($\pm 5\%$) of coking coal from April 2008 to December 2012, with an option for SAIL to extend the period to March 2013.

12. The COA was amended at SAIL's request via Addendum No. 1, dated 29.06.2010. Addendum No. 1 allowed SAIL to load Panamax shipments (75,000 metric tons $\pm 5\%$) instead of Handymax shipments, reduced the freight rate for Panamax shipments from USD 40.00 to USD 34.00 per metric ton, lowered the additional freight for a second discharge port, and expanded the loading area to include ports in New South Wales. Seaspray agreed to these changes.



13. Disputes arose between the parties due to non-supply of cargo under the COA by the SAIL. Seaspray asserts that SAIL has only transported 881,204.80 metric tons out of the required 2,000,000 metric tons ($\pm 5\%$) under the COA.

14. The last cargo shipped by SAIL was the 15th shipment in early May 2011. After this, SAIL ceased further deliveries, resulting in an outstanding balance of 1,118,795.20 metric tons scheduled for transport between June 2011 and December 2012. This left an average monthly shipment volume of approximately 58,883.96 metric tons that remained undelivered.

15. Communications between Seaspray and SAIL were facilitated by Sujora Shipping Pvt. Ltd, New Delhi (SAIL's chartering brokers), while Seaspray's emails were managed by Chios Navigation (Hellas) Ltd, Seaspray's ship management agent.

16. On 06.05.2011, Seaspray, through Brokers, emailed SAIL that the 16th cargo under COA was due in June 2011 and requested a suitable stem. SAIL did not respond. Subsequent emails were sent by Seaspray through Brokers on 25.05.2011, 01.06.2011, and 28.06.2011, reiterating the request for the 16th cargo and noting SAIL's frequent entries into the spot market for June/July stems. Again, SAIL did not reply.

17. Seaspray addressed the issue again via email on 04.07.2011 and, more specifically, emphasised SAIL's entry into the spot market with two 75,000-ton stems for late July from Queensland and SAIL's non-compliance with the COA terms. On 21.07.2011, Seaspray learned that SAIL had fixed a cargo from Australia to India for a third party, contrary to the COA.

18. SAIL remained unresponsive despite further reminders for the 16th and 17th cargo/stem. Seaspray continued to protest SAIL's non-compliance,



particularly as SAIL was engaged in spot market deals for other cargoes, which violated the COA terms.

19. On 19.10.2011, Seaspray, through its London solicitors, sent a legal notice to SAIL by e-mail and courier, setting out the breaches committed by SAIL under the COA and claiming approximately USD 2.25 million for the 16th and 17th cargoes.

20. SAIL replied to the legal notice denying all Seaspray's claims and alleging that Seaspray itself has been in breach of the COA. By e-mail dated 03.11.2011, Seaspray submitted their claim of USD 929,958.75 for the 18th shipment based on the prevailing market rate.

21. On 18.11.2011, Seaspray sent a notice of Arbitration Under Clause 60 of the COA through its lawyers by e-mail and hand delivery to the Indian Council of Arbitration and SAIL, respectively, resulting in the initiation of the arbitral proceedings between Seaspray and SAIL.

ARBITRATION PROCEEDINGS

22. On 22.05.2012, Seaspray filed a Statement of Claim, alleging that SAIL had failed to supply cargo as per the COA. Subsequently, on 11.09.2012, SAIL reduced the shipment quantity by 5%. On the same day, SAIL sent another fax message terminating the Agreement, citing the "Default Clause," which led to a dispute. Seaspray contended that SAIL had no unilateral right to terminate the Agreement, while SAIL argued that such a right was provided under Clause 62 of the COA. SAIL filed a Statement of Defence on 21.09.2012, and Seaspray submitted a rejoinder on 03.01.2013. SAIL further filed an application under Section 16 of the A&C Act on



22.09.2012. Seaspray filed their reply to the Section 16 application on 07.01.2013.

23. Seaspray's claim in its statement of claim sought damages for the non-supply of 1,118,795.20 metric tons (MT) of cargo from June 2011 to December 2012. For the period from June 2011 to March 2012, they sought damages for 10 shipments totalling 588,839.60 MT, with a total claim of USD 7,830,742.02 after a 2% reduction. For the period from April 2012 to December 2012, they claimed damages for 9 shipments totalling 529,955.64 MT, with a total claim of USD 8,439,543.57 after a 2% reduction. The combined claim for both periods amounted to USD 16,270,285.59. Seaspray also sought 10% annual interest on the claimed amount and arbitration-related costs.

24. Seaspray alleged that SAIL failed to supply the cargo despite multiple requests and instead entered the spot market for shipments that should have been delivered under the COA. They provided instances where SAIL fulfilled third-party contracts instead.

25. SAIL contended that COA was a service contract and not a valid agreement, and that the dispute did not fall under maritime arbitration. They terminated the COA on 11.09.2012, backdating it to April/May 2011 due to non-supply, citing economic slowdown and *force majeure*. They argued that Seaspray could not claim unearned profits without actual loss and that the COA was obsolete and impractical. SAIL argued that the Seaspray was merely an arranger of vessels and not entitled to any portion of the freight payable to the vessel owner. They emphasized that Seaspray was not the vessel owner under the agreement and had not notified or kept any vessels idle for the contract. SAIL also cited *force majeure* as ground for cancelling



the agreement and argued that the claim was a civil matter and, hence, outside the scope of maritime arbitration.

26. In their rejoinder, Seaspray refuted SAIL's defences, stating that the contract terms were unambiguous. Seaspray countered the SAIL's argument that the vessels provided were not owned by Seaspray, arguing that the contract explicitly allowed for the vessels to be owned, managed, chartered, operated, or otherwise controlled by Seaspray. Consequently, ownership of the vessels was not necessary, and Seaspray had arranged the vessels as per the contract terms. It was further argued that COA is clear and falls within the definition of a 'maritime dispute,' governed by the Maritime Arbitration Rules of the Indian Council of Arbitration. Seaspray countered the *force majeure* defence, noting it was lifted before the SAIL's first default and did not affect the contract's performance. Additionally, Seaspray asserted that Clause 62 of the COA, cited by the SAIL, was irrelevant and could not be used to justify the breach of contract. Seaspray claimed their loss was the profit they would have earned if the contract had been performed.

27. Regarding the application of SAIL under Section 16, SAIL contended that the claim was not a maritime dispute and should be handled in a different forum. SAIL further contended that SAIL was not a signatory to the COA, which was signed by Transchart and not by SAIL. Seaspray countered by asserting that the SAIL's application should be dismissed because it was filed after the SAIL had already submitted its statement of defence. Seaspray further emphasized that the arbitration clause in COA clearly stated that disputes should be settled under the Maritime Arbitration Rules, and the current dispute arose from SAIL's failure to provide cargo and compensate Seaspray. It was also argued that a contract signed by an



agent on behalf of the SAIL made the SAIL a party to the contract. They referred to Section 7(4) of A&C Act, which considers an arbitration agreement in writing if it is contained in a document signed by the parties, including agents acting on their behalf.

28. After the pleadings were completed, the first hearing was scheduled for 04.07.2013 and 05.07.2013 at the Indian Council of Arbitration in New Delhi.

29. The issues for determination, as set out in the impugned award, are reproduced below:-

71.1 Whether, in view of the Respondent allegation (denied by the Claimant) that the agreement dated 04.12.2007 was not entered into and signed by the respondent, the arbitration would be maintainable between the Claimant and the Respondent?

71.2 Whether the dispute raised by the Claimant can be classified as a maritime dispute?

71.3 Whether the agreement dated 04.12.2007 can be treated as a “Contract of Affreightment?”

71.4 Whether the “Contract of Affreightment” was to come into being after nomination of vessel was asked for and the nominated vessel was accepted by the charterer on fulfilment of the conditions as per clause 5 of the agreement dated 04.12.2007?

71.5 Whether for the reasons alleged in paragraph 1(k), para 9 of page 21 of the reply and para 10 of the additional reply, the hiring of vessels through the claimant for the years



2008-2009 was rendered almost impossible thus excluding the respondent from all performance?

71.6 Whether the termination of agreement dated 04.12.2007 was valid in view of Clause 62 of the agreement?

71.7 Whether the claim of the Claimant is maintainable, in view of clause 62 of the agreement dated 04.12.2007?

71.8 Whether, in view of the section 73 Indian contract Act, the claimant can seek damages without proving the actual loss suffered as alleged in Para 19 of the respondent's reply?

71.9 Whether the extreme weather conditions occurred in Australian ports around December, 2010 gave rise to *force majeure* within the meaning of clause 61 of the agreement?

71.10 Whether the claimant is entitled to an Award in the sum claimed or any other amount?

71.11 Whether the claimant is entitled to the interest and costs as claimed?"

IMPUGNED AWARD

30. One of the principal controversies before the Arbitral Tribunal was whether the arbitration between Seaspray and SAIL would be maintainable, based on SAIL's allegation that the COA had not been entered into and signed by SAIL.

31. The primary conclusion reached by the Tribunal was that the SAIL, having provided 15 cargoes/stems under the COA and made full payment up to the 15 cargoes to the Seaspray, could not legally disown the COA and



evade the consequences of breaching its terms. Consequently, the Tribunal observed that SAIL was bound by the terms of the COA, including Clause 60 thereof.

32. The Tribunal observed that SAIL had cited the case of *Indowind Energy Ltd vs. Wescare (India) Ltd and Others*, (2010) 5 SCC 306. The Tribunal held that this case was distinguishable from the case at hand, as the SAIL was clearly named as a party in the COA and had acknowledged and performed the COA by accepting 15 shipments.

33. As per the impugned award, the COA explicitly referred to the agreement between Seaspray Shipping Ltd. and SAIL, and signed by Mr. S. Chandrasekaran, Chartering Officer, Ministry of Shipping, Govt. of India, for and on behalf of SAIL. The Addendum No. 1 dated 29.06.2010 had also been similarly signed. SAIL had not challenged the authority of the Chartering Officer or the validity of the COA's execution. It was further observed that an email from SAIL dated 08.09.2011 acknowledged the intention to perform its obligations under COA despite options to discontinue, and the SAIL had made payments for 15 shipments. The Tribunal found no merit in the SAIL's contention that it was not a party to the COA or the arbitration agreement and rejected this argument.

34. SAIL had also argued that the disputes under the COA were not maritime disputes and that the COA was not a maritime contract. However, Rule 7 of the Maritime Rules clearly included disputes related to contracts of affreightment. Therefore, the Tribunal disagreed with the SAIL's argument. The term "contract of affreightment" (COA) referred to long-term arrangements for the supply of shipping space over multiple voyages. The Tribunal held that the COA was a "Contract of Affreightment" and a



maritime contract. The disputes arising under this COA were maritime disputes, and the arbitrators had the jurisdiction to entertain and decide on these disputes as per Clause 60 of the COA.

35. SAIL's argument that the COA was not a contract but merely an agreement was also rejected. The Arbitral Tribunal noted that according to Section 2(h) of the ICA, a contract is an enforceable agreement. COA specified the obligations of both parties and did not leave any essential terms undecided.

36. SAIL cited several judgments, including *Union of India vs. Maddala Thathiah and others*, to contend that the COA lacked binding force. However, these cases were held to be distinguished by the Arbitral Tribunal. The Arbitral Tribunal observed that COA represented a mutual commitment by both parties to specific terms, making it a binding contract.

37. Another issue that the Arbitral Tribunal considered in detail was whether the hiring of vessels through Seaspray for 2008-2009 was rendered impossible, excusing the SAIL from all performance. SAIL argued that due to cheaper ships available in the spot market, the COA had become 'impossible' to perform, citing an economic example. However, this argument was rejected as it contradicted the principle of a binding contract.

38. SAIL claimed that a global economic slowdown, a reduction in Handymax parcels, and a fall in spot freight rates made the COA financially unviable. They claimed that the contract had become impossible under Section 56 of the Indian Contract Act.

39. Seaspray countered that COA was still a binding contract despite market changes. The Arbitral Tribunal found that the SAIL's arguments did not satisfy the criteria for impossibility of performance, as the changes were



not beyond what the parties could have anticipated. The Arbitral Tribunal also noted that SAIL had continued to perform similar contracts during the alleged *force majeure* period and had not formally declared *force majeure* under the COA.

40. The Arbitral Tribunal concluded that SAIL was in clear breach of the COA and awarded damages to Seaspray, including interest and costs, for the unshipped quantity. Additionally, Seaspray was awarded interest at 6% per annum from 01.12.2012, and costs of USD 100,000, along with arbitration costs fixed by the ICA.

41. However, the Arbitral Tribunal did not provide any reasoning for the conclusions drawn in respect to the issues set out in paragraphs 71.5 to 71.7 of the award, which was later pointed out in the petition filed by SAIL against the Original Award under Section 34 of the A&C Act. During the said Proceedings, the learned Single Judge observed, in an order dated 22.02.2017, that the Arbitral Tribunal had not provided reasons for its conclusions in paragraphs 71.5 to 71.7 of the Award. Consequently, the Court directed the Arbitral Tribunal to reconvene and furnish reasons for its conclusions on these specific issues.

42. In compliance with these directions, the Arbitral Tribunal issued an Additional Award on 10.06.2017, providing the required reasons for the conclusions in paragraphs 71.5 to 71.7 of the Award dated 20.08.2014.

43. The Arbitral Tribunal held that Clause 62 of the COA should be interpreted in the context of the Agreement's other provisions and applied only to circumstances constituting frustration of the Agreement, specifically targeting the coal supplier in Australia rather than SAIL. The Tribunal also concluded that even if Clause 62 did empower SAIL to unilaterally



terminate the Agreement, the notice dated 11.09.2012 could not be considered a valid notice under Clause 62, rendering the termination invalid. Regarding consequential damages, the Tribunal found that Seaspray did not need to hire a vessel to prove its damages and, based on market rates at the Baltic Exchange Fixture for the remaining quantity, awarded damages in favor of the Seaspray.

THE IMPUGNED JUDGMENT

44. The first issue addressed by the court was whether the Arbitral Tribunal correctly concluded that the COA dated 04.12.2007 was a binding contract between the parties, rather than a Memorandum of Understanding or a preliminary Agreement to enter into a future contract. The learned Single Judge observed that Clause 1 of the Agreement specified the quantity and parcel size of Coking Coal to be shipped from Queensland, Australia, to the Eastern Coast of India. Clause 2 outlined the shipment period, which extended from April 2008 to December 2012, with a possible extension to March 2013. Clauses 3 and 4 detailed the vessels to be used, Clause 5 provided the procedure for vessel nomination, and Clause 6 specified the loading and unloading parameters. The Court held that these terms clearly indicated that the Agreement was intended to be a binding contract, not a mere Memorandum of Understanding or an agreement to agree in the future. The Court observed that the Original Award dated 20.08.2014 supported this conclusion, and there was no reason to interfere with this finding.

45. Regarding the interpretation and effect of Clause 62 of the Agreement, the Court observed that Clause 61 was the Force Majeure



Clause, which deferred obligations under the Agreement due to various extraordinary events. Clause 62, the Default Clause, allowed for the termination of the Agreement if the Suppliers/Charterers failed to perform their obligations. The Court observed that Clause 62 of the Agreement explicitly allows SAIL to terminate the contract for convenience if the contract fails “in any manner or otherwise.” The Court also dismissed Seaspray’s argument that the use of “Suppliers/Charterers” in Clause 62 creates ambiguity, affirming that the term solely refers to the SAIL and does not affect the clause’s validity. Thus, the Tribunal’s interpretation of Clause 62 as only applying to frustration events was held to be unsustainable.

46. The Court also noted that the SAIL’s letter dated 11.09.2012 clearly conveyed its intent to terminate the Agreement under Clause 62. Contrary to the impugned award’s observation that the termination lacked a positive declaration, the Court found that the letter unequivocally indicated the Agreement’s termination. The Court held that the termination was valid and became effective upon its communication to Seaspray on 13.09.2012.

47. However, the Court observed that letter could not terminate the Agreement retroactively, as Clause 62 does not grant SAIL the authority to do so. Therefore, the termination was effective only from 13.09.2012. While upholding the Tribunal’s observation pursuant to Section 73, read with Illustrations (a), (d), and (g) of the Indian Contract Act, 1872, for loss of expected profit prior to the contract termination, the Court held that SAIL was liable to pay damages for the period before the termination, i.e., prior to 13.09.2012. The Court stated that since shipments were to be made on an “evenly spread per month basis,” the amount due to Seaspray should be



recalculated based on the shipment quantity owed up until the date of the Contract's termination.

48. The objection raised by SAIL regarding the rate of interest awarded on the amount was allowed by the learned Single Judge in view of the decision of the Supreme Court in *Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.* (Supra). The learned Single Judge set aside the interest awarded by the Arbitral Tribunal and awarded interest at the London Interbank Offered Rate (LIBOR).

SUBMISSIONS

49. In challenging the Impugned Order, Seaspray argues that the Hon'ble Court substituted the Arbitral Tribunal's interpretation with its own by asserting that Clause 62 of the COA unambiguously grants SAIL an unfettered right to terminate the agreement. Seaspray contends that the Tribunal's interpretation of Clause 62 was justified because a literal reading of the clause would lead to absurd results, such as allowing a "Supplier," who is not a party to the COA, to terminate the agreement. Seaspray emphasizes that the Hon'ble Court erred in assuming that "Suppliers/Charterers" referred solely to SAIL when the COA clearly distinguishes between the physical suppliers of coal in Australia and SAIL as Charterers. Seaspray asserts that when a literal interpretation leads to an absurdity, a purposive construction should be adopted to ensure the agreement's provisions make sense within the entire context.

50. Seaspray further argues that the Hon'ble Court failed to appreciate that the Tribunal's construction of Clause 62 was reasonable and provided coherent meaning to all the words in the clause, including "Supplier."



Seaspray clarifies that the Tribunal did not deny the existence of a termination for convenience clause but questioned the applicability of Clause 62 under the specific circumstances of the COA due to its ambiguity. Seaspray maintains that Clause 62 cannot be considered a clear and unambiguous clause. In support of the said contention Seaspray has relied upon the judgements in *Central Bank of India Ltd, Amritsar v. Hartford Fire Insurance Co. Ltd.* AIR 1965 SC 1288, *Her Highness Maharani Shantidevi P. Gaikwad v. Savjibai Haribhai Patel and Ors.* (2001) 5 SCC 101, *M/s Darrameks Hotels & Developers Pvt. Ltd. v. M/s Altus Group India Pvt. Ltd.* 2018 SCC OnLine Del 9335 and *Pipavav Energy Pvt. Ltd. v. Madhavi Procon Pvt. Ltd.* 2018 SCC OnLine Del 13100.

51. Seaspray also contends that the Tribunal's interpretation of Clause 62 was both reasonable and plausible. Therefore, the Hon'ble Court's interference was unwarranted given the limited scope of review under Section 34 of the A&C Act. Seaspray emphasizes that Courts should not interfere with an arbitral tribunal's interpretation of a contractual provision if it is plausible, even if it is not the preferred interpretation. In this regard, reliance is placed on *Sudarsan Trading Co. v. Government of Kerala and Ors.* (1989) 2 SCC 38 and *Associate Builders vs. DDA*, (2015) 3 SCC 49.

52. Seaspray asserts that the Hon'ble Court erred in reversing the Arbitral Tribunal's finding that the SAIL did not issue a valid declaration of termination under Clause 62 of the COA. Seaspray points out that the Tribunal determined that the fax message dated 11.09.2012 was not a valid declaration but merely an internal communication suggesting that the COA ended in May 2011. Seaspray submits that the Hon'ble Court incorrectly overturned this finding without sufficient grounds, failing to recognize that



Clause 62 required a positive declaration of termination, which was absent in the said communication.

53. Furthermore, Seaspray challenges the Hon'ble Court's modification of the Arbitral Tribunal's interest award, which was set at 6% per annum from 01.12.2012 to the date of the award's publication and until actual payment. Seaspray asserts that the Hon'ble Court misapplied the precedent set in *Vedanta Ltd. (Supra)*, as it does not establish a general rule for all cases involving awards in foreign currency.

54. Lastly, Seaspray argues that the Impugned Order is beyond the confines of Section 34 of the A & C Act, inasmuch as it undertakes a merit based review of the impugned award. Additionally, Seaspray contends that the Court incorrectly applied the concept of "patent illegality" to an international commercial arbitration, which is not permissible under Section 34(2A) of the A&C Act. The Court's re-appreciation of the factual aspects, is also challenged as an overreach.

55. SAIL on the other hand counters the aforesaid submissions. It supports the decision of the learned Single Judge that the Arbitral Tribunal's interpretation of Clause 62 of the COA to the effect that it did not entitle SAIL to terminate the COA at its discretion and without reason, was erroneous. However it challenges the learned Single Judge's order to the extent it upholds the award of damages to Seaspray, albeit for the reduced period. SAIL contends that the learned Single Judge failed to fully consider Clause 62 of the COA, which provides an option for non-performance and the declaration of the contract "at end" without any liabilities on either side. SAIL submits that according to this clause, if either the Suppliers or Charterers fail to perform their obligations, the contract can be terminated



without liability. SAIL argues that if the charterer or supplier of the material fails to provide the material for shipment, the agreement ends without any liabilities.

56. SAIL claims that the learned Single Judge misinterpreted the clauses of the agreement, particularly Clause 62, which allows the SAIL to terminate the agreement without liability if the Suppliers/Charterers fail to perform its obligation. It is further contended that the learned Single Judge failed to take into consideration the plain and literal meaning of Clause 62, which entitles the Suppliers/Charterers to terminate the contract without liabilities for the unsupplied quantity. It is further submitted that the learned Single Judge, erred in holding that the SAIL could not terminate the agreement retrospectively.

57. SAIL further argues that the Hon'ble High Court erred in its application and interpretation of Section 73 of the ICA, concerning the assessment of damages. SAIL contends that merely stating a claim for compensation without evidence does not suffice. They cite the Supreme Court's ruling in *State of Rajasthan v. Ferro Concrete Construction (P) Ltd. and Maula Bux v. Union of India*, (2009) 12 SCC 1 and *Maula Bux v. Union of India*, (1969) 2 SCC 554 to underscore that compensation must be tied to proven losses.

58. SAIL further submits that the arbitral tribunal lacked jurisdiction as the dispute was not maritime in nature. Maritime disputes typically involve issues like vessel acceptance at load ports, demurrage, or damage during transit, which were not applicable here.

59. Seaspray, in response to the said submissions of the SAIL, submits that even if the termination on 11.09.2012 is deemed valid, it cannot have



retrospective effect. The contract required shipments from April 2008 to December 2012, with shipments supposed to be evenly spread monthly. The violation period, during which no shipments occurred, is from May 2011 to December 2012, and damages were awarded for this period. According to the Appellant, a retrospective termination would only result in reducing the damages awarded for the last three months by the Tribunal. It is averred that both the Arbitral Tribunal and the learned Single Judge correctly concluded that the termination could not be applied retrospectively, as supported by the Tribunal's detailed reasoning and the learned Single Judge's order.

60. Regarding damages, it is submitted that Section 73 of the ICA mandates that the non-defaulting party should be placed in the position it would have been, had the contract been performed. This does not require the non-defaulting party to procure goods or ships but rather to assess damages based on market conditions. It is averred that the Tribunal correctly relied on Section 73's principles and relevant case law to determine damages.

REASONING AND ANALYSIS

61. In the above factual conspectus, the controversy that falls for consideration of this Court revolves around the following issues :-

- i. Whether the Arbitral Tribunal's interpretation of Clause 62 of the Agreement between the parties (the termination clause) is liable to be interfered with in exercise of jurisdiction under Section 34/37 of the A&C Act?
- ii. Whether the award of damages was consistent with Section 73 of the ICA?



iii. Whether the award in respect of interest runs afoul of the judgment of the Supreme Court in ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd*** (supra) and is, therefore, liable to be set aside on that ground?

62. There can be no cavil as to the scope of interference with an arbitral award rendered in the context of an international commercial arbitration. An international award can be set aside only on ground of contravention of public policy. The concept of patent illegality applies exclusively to domestic awards, and as such, is not relevant in this case. The confines of the jurisdiction of this Court in respect of an award rendered in the context of ‘international commercial arbitration’ has been reiterated and restated time and again, and most recently by the Supreme Court in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited & Anr.***, 2024 INSC 711, wherein the Supreme Court has observed as under –

“45. The Amendment, 2015 by inserting sub-section (2-A) in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Subsection (2-A) provides that the Court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the Court is, however, circumscribed by the Proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

46. Explanation 1 to Section 34(2)(b)(ii), specifies that an arbitral award is in conflict with the public policy of India, only if,- (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or (ii) it is in contravention with the fundamental policy of Indian law; or (iii) it is in conflict with the most basic notions of morality or justice.



51. In *Ssangyong Engineering (supra)*, this Court dealt with the effect of the Amendment, 2015. While doing so, it took note of a supplementary report of February 2015 of the Law Commission of India made in the context of the proposed 2015 amendments. The said supplementary report has been extracted in paragraph 30 of that judgment. The key features of it are summarized below:

(a) Mere violation of law of India would not be a violation of public policy in cases of international commercial arbitrations held in India.

(b) The proposed 2015 amendments in 1996 Act (i.e., in Sections 34(2)(b)(ii) and 48(2)(b) including insertion of sub-section (2-A) in Section 34) were on the assumption that the terms, such as, “fundamental policy of Indian law” or conflict with “most basic notions of morality or justice” would not be widely construed.

(c) The power to review an award on merits is contrary to the object of the Act and international practice.

(d) The judgment in *Western Geco (supra)* would expand the court’s power, contrary to international practice. Hence, a clarification needs to be incorporated to ensure that the term ‘fundamental policy of Indian law’ is narrowly construed. The applicability of *Wednesbury* principles to public policy will open the floodgates. Hence, Explanation 2 to Section 34(2)(b)(ii) has been proposed.

After taking note of the supplementary report, the statement of objects and reasons of the Amendment Act, 2015, and the amended provisions of Sections 28, 34 and 48, this Court held:

“34. What is clear, therefore, is that the expression public policy of India, whether contained in section 34 or in section 48, would now mean the fundamental policy of Indian law as explained in paras 18 and 27 of *Associate Builders* i.e. the fundamental policy of Indian law would be relegated to *Renusagar's* understanding of this expression. This would necessarily mean that *Western Geco* expansion has been done away with. In short, *Western Geco*, as explained in Paras 28 and 29 of *Associate Builders*, would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach the court’s intervention would be on the merits of the award, which cannot be permitted post



amendment. However, in so far as principles of natural justice are concerned, as contained in sections 18 and 34(2)(a) (iii) of the 1996 Act, these continue to be the grounds of challenge of an award, as is contained in para 30 of Associate Builders.

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37. *In so far as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015 to section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter, but which does not amount to mere erroneous application of the law. In short, what is not subsumed within the fundamental policy of Indian law, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the back door when it comes to setting aside an award on the ground of patent illegality.*

38. *Secondly, it is also made clear that reappreciation 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.*

39. *To elucidate, para 42.1 of Associate Builders, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders, however, would remain, for if an arbitrator gives no reasons for an award and contravenes section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.*

40. *The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of 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. Also, if the arbitrator wanders outside the contract and deals with the matters not allotted to him, he commits an error of*



jurisdiction. This ground of challenge will now fall within the new ground added under Section 34 (2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse.

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

52. The legal position which emerges from the aforesaid discussion is that after the ‘2015 amendments’ in Section 34 (2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase “in conflict with the public policy of India” must be accorded a restricted meaning in terms of



Explanation 1. The expression “in contravention with the fundamental policy of Indian law” by use of the word ‘fundamental’ before the phrase ‘policy of Indian law’ makes the expression narrower in its application than the phrase “in contravention with the policy of Indian law”, which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that (a) violation of the principles of natural justice; (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law. However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).”

(emphasis supplied)

63. A perusal of the impugned award, reveals that in respect of the issue of termination, the conclusion drawn by the Arbitral Tribunal largely turns on the interpretation accorded by the Arbitral Tribunal to Clause 62 of the Agreement between the parties.

64. It has been held in the award that (i) Clause 62 must be read in context with the other provisions of the Contract of Affreightment; (ii) if there are two possible constructions of Clause 62 then the one which would give effect to all the Clauses of the Agreement must be adopted and not another which would nullify them; (iii) it was found that the claimant’s interpretation gave effect to the rest of the provisions of the Agreement, in contradiction to the interpretation canvassed by the SAIL; (iv) it was noticed that the construction sought to be canvassed by SAIL made it impossible to reconcile with its binding obligation to ship at least 1,900,000 MT of coal;



(v) any interpretation which rendered the obligation of SAIL to ship the requisite amount of cargo in the relevant period “optional” would lead to an absurdity; (vi) reading of the Contract as a whole made it evident that the SAIL was obliged to ship a minimum of 1,900,000 MT and maximum of 2,100,000 MT of coal; (vii) it was noticed that there was nothing optional and/or non-binding as regards (a) cargo/quantity, (b) shipment period, (c) type of vessels, (d) details of vessels likely to perform COA and (e) Nomination of Vessels. Even where flexibility was permitted, the limits of that flexibility were strictly mentioned in the Contract; (viii) on the basis of the above, it was concluded that SAIL’s interpretation would practically annihilate the binding nature of many clauses in the Agreement including Clauses 1, 2, 3, 4 and 5, even though they expressly convey that the parties intended for them to be binding; (ix) Clause 62 could only have been invoked if a supplier in Australia failed or was unable to supply material for shipment. It cannot be said to operate if the supplier provides coal to SAIL but SAIL does not provide the same to Seaspray for shipment; the failure must be a failure by the supplier which in turn leads to a failure by SAIL.

65. It can be seen that the conclusion drawn and the findings rendered by the Arbitral Tribunal is based on an interpretative exercise.

66. The interpretation accorded to Clause 62 and the limitation read into it by the Arbitral Tribunal are based on an evaluation and interpretation of the Contract as a whole, and in the light of the purport thereof.

67. The impugned judgement, on the other hand, while analysing the impugned award, finds fault with the award on the premise that “*a Clause in the Agreement empowering one of the parties to terminate the Agreement at its convenience and without there being a justifiable cause for the same*”



would make other clauses redundant, cannot be accepted”. However, a perusal of the award indicates that the award does not render any sweeping finding as regards invalidity of termination clause. On the contrary, as noticed, the conclusion and findings rendered by the Arbitral Tribunal turn on the peculiar language and context of Clause 62.

68. Importantly, the very same clause and an identical interpretation thereof rendered in the context of arbitration proceedings between SAIL and another entity, has been subject matter of consideration by a Division Bench of this Court in *Noble Chatering Inc v. Steel Authority of India Ltd.*, 2024:DHC:5183-DB¹.

69. In the said case also, the interpretation accorded to Clause 62 was identical to the view taken by the Arbitral Tribunal in the present case. The award was set aside in proceedings under Section 34 of the A&C Act on the basis that “*the interpretation of the Arbitral Tribunal with respect to Clause 62 of the COA being applicable only if the reason for such termination was outside the control of the Charterer (SAIL), was fallacious and unsustainable in law*”.

70. In proceedings under Section 37 of the A&C Act, a Division Bench of this Court noticed that the main reason behind the interpretation accorded to Clause 62 of the Contract Agreement in that case (as also in the present case) was to ensure that the same is in conformity and not inconsistent with the other clauses of the Contract.

¹62. Default

Should Suppliers/Charterers fail to provide materials for shipment or to ship the materials by the time or times agreed upon or should Suppliers/Charterers in any manner or otherwise, fail to perform the contract or should a Receiver be appointed on its assets or make or enter into any arrangements or composition with creditors or suspend payments (or being a company should enter into liquidation either compulsory or voluntary) the Suppliers/Charterers shall be entitled to declare the contract as at an end without any liabilities on either side.



71. Further, it was noticed by the Division Bench that “*the Arbitral Tribunal’s construction of Clause 62 of the COA was largely founded on the contextual interpretation of the said Clause*”. It was further held as under:-

“82. This is apparent from the further detailed reasoning provided by the Arbitral Tribunal. The Arbitral Tribunal accepted that in construing a clause of a contract, the words and expressed terms are required to be given their plain meaning unless the same lead to any absurdity or results in making the said clause otiose. The Arbitral Tribunal proceeded to consider SAIL’s contention that Clause 62 of the COA was required to be read literally as well as the decision in the case of *Rajasthan State Industrial Development and Investment Corporation & Anr. v. Diamond & Gem Development Corporation Ltd. & Anr.*¹² which was relied upon by SAIL in support of its contention. The Arbitral Tribunal rejected the contention that the said decision supported SAIL’s contention. The Arbitral Tribunal held that the expression “Suppliers/Charterers in any manner or otherwise fail to perform the contract” in Clause 62 of the COA would have to be read in the context of the other words contained in Clause 62 of the COA. The Arbitral Tribunal found that the said expression enabled SAIL to terminate the COA only when it was helpless in performing the same and not at its will or for commercial reasons. The Arbitral Tribunal did not accept that SAIL would be entitled to terminate the contract as it had become commercially unprofitable to perform the same.

83. The Arbitral Tribunal accepted Noble’s contention that the said clause must be given a purposive interpretation to give effect to the joint intent of the parties. The Arbitral Tribunal supported the said view by interpreting Clauses 61 and 62 of the COA as exceptions, which release the parties from their obligations to be performed under the COA. Plainly, such exceptions could not entail an absolute unfettered discretion to terminate the COA at will.

84. The Arbitral Tribunal also reasoned that if the intent of the parties was to give SAIL an unguided power to terminate the COA, the clause would have simply read so. The Arbitral Tribunal also found that the literal reading of the expression “suppliers/charterers in any manner or otherwise fail to perform the contract” would render it inconsistent with the first part and the last part of the same Clause.

85. The Arbitral Tribunal held that in such circumstances, the construction of the expression, which is different from its literal meaning, must be accepted. The Arbitral Tribunal also referred to the decisions of the Privy Council in *Raneegunge Coal Association Ltd. v. Tata Iron and*



Steel Co. Ltd.¹³ and of the Supreme Court in Radha Sundar Dutta v. Mohd. Jahadur Rahim & Ors.¹⁴ as supporting such a view. In addition, the Arbitral Tribunal held that accepting SAIL's interpretation would render Clause 61 of the COA redundant. It observed that if one interpretation would render Clause 61 of the COA as redundant and two constructions are possible, the one which would give effect to the other provisions of the contract, must be accepted. The aforesaid reasoning of the Arbitral Tribunal informed its decision that SAIL's termination of the COA was invalid.

87. Whilst the Arbitral Tribunal made observations to the said effect by construing Clause 62 of the COA in the manner as canvassed by SAIL would render it vulnerable on the ground of public policy, the Arbitral Tribunal's interpretation of Clause 62 of the COA is not founded on that reason alone. The Arbitral Tribunal's decision is founded on its finding that Clause 62 of the COA was required to be construed in accordance with the nature of the contract (COA) and SAIL's interpretation of the said clause would render it inherently conflicting.

88. SAIL's contention that Arbitral Tribunal's interpretation of Clause 62 of the COA was plainly contrary to the language of the COA and no other view is possible, is not persuasive. It is settled law that the deed has to be construed as a whole. The intent of the parties is to be ascertained by the language of the written contract read as a whole and not by reading parts of the clauses of the contract literally dehors their context. The Arbitral Tribunal undertook precisely the same exercise.

89. It is well settled that interpretation of a contract falls within the jurisdiction of the Arbitral Tribunal, thus, it is the final adjudicator of the said construction and its decision cannot be interfered unless it is found that the Arbitral Tribunal's view is not a possible one."

72. The above conclusions drawn by a Co-ordinate Bench of this Court in the context of a *pari materia* clause are squarely applicable to the facts of the present case as well. As held in *Noble* (supra), the Arbitral Tribunal's decision, being founded on the premise that Clause 62 of the COA was required to be construed in accordance with the nature of the Contract, cannot be faulted.



73. Further, in **Noble** (supra), this Court took note of the fundamental principle that the view taken by the Arbitral tribunal cannot be interfered with unless it is found that the said view is not even a possible one. It has also been noticed in **Noble** (supra) that an award rendered in an international commercial arbitration, as defined in Section 2(1)(f) of the A&C Act, cannot be assailed on the ground of patent illegality under Section 34(2A) of the A&C Act. In the context of an international commercial arbitration, the challenge is to be tested solely on the anvil whether the impugned award is in conflict with the public policy of India.

74. The Division Bench in **Noble** (supra), after taking note of the judgment of the Supreme Court in **Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India**, (2019) 15 SCC 131, which itself relies on **Associate Builders v. Delhi Development Authority**, (2015) 3 SCC 49 and **Renusagar Power Co. Ltd. v. General Electric Company**, 1994 Supp (1) SCC 644, reached the conclusion that in the context of the interpretation accorded by the Arbitral Tribunal to Clause 62 (which is identical to the interpretation accorded in the present case), it could not be held that the same fell within the scope of the public policy exception. It was categorically held in **Noble** (supra) as under:-

“104. A plain reading of the above clearly indicates that the scope of setting aside an arbitral award on the ground that it falls foul of public policy of India is extremely narrow. The grounds that an arbitral award is perverse or irrational does not necessarily qualify as a ground to set aside an arbitral award on the ground that it is in conflict with the public policy of India. Thus, even if we accept (which we do not) that the Arbitral Tribunal’s interpretation of the COA is erroneous, the impugned award could not be set aside on the ground of being in conflict with the public policy of India.”



75. The judgment of the Division Bench in *Noble* (supra) squarely applies to the facts of the present case on the issue of interpretation of Clause 62 of the Contract between the parties. In terms thereof, the interpretation accorded to the said Clause is perfectly within the domain of the Arbitral Tribunal and cannot be interfered with in exercise of the jurisdiction under Section 34/37 of the A&C Act.

76. The judgment of the learned Single Judge, to the extent it holds to the contrary, is, therefore, liable to be set aside.

77. It is also noticed that the impugned award in the present case has also rendered a factual finding to the effect that SAIL did not, in unequivocal terms, made the requisite declaration as required under Clause 62 and cited several instances which were in the nature of “*positive affirmations of the fact that the respondent had all along treated the Agreement as valid and subsisting and was aware that it was bound by the obligation to provide the required cargo. We therefore do not accept the respondent’s argument that it validly terminated the Agreement much less that it was done retrospectively with effect from May 2011*”.

78. Again, the said finding, being purely factual in nature, brooks no interference in exercise of the jurisdiction under Section 34/ 37 of the A&C Act.

79. As regards the issue whether the award of damages is in accordance with Section 73 of the ICA, the learned Single Judge, after perusing the relevant provisions of the award, has reached the conclusion that both the factual finding and application of Section 73 of the ICA does not suffer from any illegality. It was further observed as under:-



“61. As far as the quantification is concerned, the Arbitral Tribunal has relied upon the market rates available at the Baltic Exchange and has further allowed deduction of 2.5% for Address Commission and 1.25% for brokerage as per Clause 48 of the Agreement. The Agreement, in Clause 1 thereof provides for the parcel size and further Clause 2 states the shipment to be on "evenly spread per month basis". The petitioner was in default since June, 2011 and therefore, the Arbitral Tribunal has adopted the average of the Baltic Exchange fixture for arriving at the damages. No fault can be found in this approach. In any case, this Court cannot interfere with an Award merely because it would find some other measure of such damages to be more just or reasonable.

62. I cannot also agree with the submissions of the learned senior counsel for the petitioner that damages could only have been awarded on basis of a long term agreement. The petitioner was in breach of COA for each of prior failure to declare laycan in terms of the COA on basis of "evenly spread per month basis." The respondent could not have entered into a long term agreement for each of such failure/breach. In any case, Clause 1(d) provides for calculation of damages based on spot rates in case of default by the respondent. Adoption of same basis for calculating damages in favour of the respondent cannot be faulted.”

80. The said conclusion drawn by the learned Single Judge is unexceptional and warrants no interference.

81. As regards the award of interest, the impugned judgment modifies the rate of interest awarded in the impugned award by relying upon the judgment of the Supreme Court in **Vedanta** (supra). With regard to the said aspect, in **Noble** (supra), it has been held as under :-

“105. The decision of the learned Single Judge to modify the award of interest is also without jurisdiction. The Arbitral Tribunal had awarded 3% interest for the date of termination of the COA till the date of the award. The said interest cannot be stated to be either perverse or unreasonable. We are also unable to accept that the award of future interest at the rate of 9% on the awarded amount conflicts with the public policy of India. The learned Single Judge had referred to the decision in *Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited* and held that dual rates of interest are impermissible.

106. The decision in *Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited* is inapplicable in the facts of this



case. In the said case, the Arbitral Tribunal had awarded interest at dual rates. The Arbitral Tribunal had held that “interest @ 9% per annum would be paid from the date of institution of the present arbitration proceedings provided the amount is paid / deposited within 120 days of the award”. The Arbitral Tribunal had further held that if the respondent fails to pay the amounts within 120 days from the date of the award, the claimant would be entitled to further interest at the rate of 15% per annum till realization of the amount. Thus, it does appear that a higher rate of interest would be applicable depending on whether the awarded amount was paid within the specified period of 120 days or not. In the present case, the Arbitral Tribunal has awarded interest at the rate of 3% per annum from the date of the Letter of Termination (termination e-mail dated 02.01.2023) till the date of the impugned award. The Arbitral Tribunal has also awarded interest for the post award period at the rate of 9% per annum, which would commence after three months from the date of the award. The pre-award interest is a part of the awarded amount and covered under Clause (a) of Sub-section (7) of Section 31 of the A&C Act while future interest at the rate of 9% is covered under Clause (b) of Sub-section (7) of Section 31 of the A&C Act.

107. This is not a case where the Arbitral Tribunal has awarded interest at dual rates for the same period. The decision to modify the interest awarded cannot be sustained for yet another reason: it is impermissible to modify an arbitral award in proceedings under Section 34 of the A&C Act.

108. It is also relevant to note that in *Pradeep Vinod Construction Co. v. Union of India*, this Court had held that the decision of the Supreme Court in *Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited* to modify the arbitral award was in exercise of powers under Article 142 of the Constitution of India.”

82. Again, the aforesaid findings rendered in **Noble** (supra) are squarely applicable to the facts and circumstances of the present case as well. As such, there is no basis or rationale to modify the interest awarded in the impugned award. The impugned judgment, to the extent it seeks to do so, is also liable to be set aside.



83. One other issue raised by SAIL in its written submissions, is that the arbitral tribunal lacked jurisdiction on the basis that the dispute did not qualify as maritime in nature.

84. The said contention was also raised by SAIL before the Arbitral Tribunal. However, after due consideration, the Arbitral Tribunal rejected the argument and made the following observations:

“123.The other ingenious argument raised by the Respondent is that the disputes under the COA is not a maritime dispute and the COA is not a maritime contract and that the ‘Contract of Affreightment’ is a form of contract that includes only the Charter Parties or Bills of Lading and cited definitions from HARDY Ivamy, Blacks Dictionary, Halsbury's Laws of England (Quoted in part) and the Supreme court's judgment in Shanmughavilas cashew Industries (1990) 3 SCC 481 (at pg 550) in their support. Thus the dispute does not fall under item (1) of Rule 7 of the Maritime Rules.

124. Firstly it is necessary to reproduce Rule 7 of the Maritime Rules which deals with the scope of maritime disputes, as follows:

Rule 7

“These rules shall apply, inter-alia, to maritime disputes in respect of the following:

- 1. Interpretation of charter party, any Contract of affreightment (emphasis supplied) and bills of lading;*
- 2. Carriage of goods by sea;*
- 3. Marine salvage, towage of vessels or other floating objects;*
- 4. Damages arising out of collisions, groundings, fire or any such accidents whether in port or at sea, including damage to fix or floating objects at ports;*
- 5. Interpretation of any shipping documents;*
- 6. Ownership of vessels and aspects relation to liens and mortgages;*
- 7. General Average, particular average and matters arising out of contracts of marine insurance;*
- 8. Wreck removal and marine pollution;*
- 9. Disputes relating to other matters connected with shipping and not mentioned above.”*



The parties have agreed to refer this dispute under the Rules of the Maritime Rules of ICA. The Rule 7 clearly and without any ambiguity provides for the Maritime disputes related to Contract of Affreightment. Therefore, we do not agree with the arguments of the Respondent.

125. Secondly the term also has a more specific meaning that is clearly brought out in Cooke's Voyage Charters (Third Edition) at page 3. "Voyage charters for more than one voyage may fall into a number of different categories. They may be "consecutive voyage charters' where each voyage follows on directly from the previous one, they may be "intermittent voyage charters", or they may be so-called "contract of affreightment" or "tonnage contracts" for a series of periodic voyages in a vessel or vessels to be nominated thereafter. Since all contracts of carriage by sea may accurately be called "contracts of affreightment, contracts of this last kind are often referred to merely as "C.O.A.s" in order to highlight their particular characteristics."

126. Thirdly The British India Steam Navigation Co Ltd v Shanmughavilllas Cashew Industries (1990) 3 SCC 481 page 500 - 'In Halsbury's Law of England (4th edn Vol 43 para 401) A contract for the carriage of goods in a ship is called in law a contract of affreightment. "This can be expressed in a C/P or a Bill of lading. The Carriage of goods i.e. coal was by sea and the Clause 1 of the COA clarifies the shipment details which specifically mentions that 'a cargo of 20,00,000 mt 5% more or less in Charterers option (5% Charterers option declarable latest by 30.09.2012) Coking Coal in Bulk shall be loaded from Queensland (Australia) for discharge at E. C. India and this is the cargo to be carried by the Ship of the Claimant. We may further add that Halsbury's Law of England, 5th edn, Vol-7, para 205 inter alia states "The term 'contract of affreightment' is also used in the market to refer to long term arrangements between the shipping lines and cargo-interests providing for the supply by the former to the latter of shipping space on several vessels over a long period of time, the use of each vessels being covered by the terms of the overall contractual arrangement and possibly by separate charter parties covering a particular vessel."

127. Many consecutive voyage charters under similar terms are termed as COA and this is the normal shipping practice worldwide.

128 We therefore, find and hold that the COA dated 4.12.2007 is a 'Contract of Affreightment' and is a maritime contract. The dispute



has arisen under the above Contract as such is a maritime dispute and the Arbitrators have the jurisdiction to entertain this reference and decide on the disputes as per the Clause No. 60 of the COA”

85. The Tribunal confirmed that the Contract of Affreightment (COA) was a maritime contract, rejecting SAIL’s argument to the contrary. It cited Rule 7 of the Maritime Rules, *Cooke’s Voyage Charters*, *Halsbury’s Laws of England*, and the Supreme Court precedents to establish that COAs cover the carriage of goods by sea and fall under maritime jurisdiction.

86. Relying upon Clause 1 of the COA which specifically outlined the shipment details, stating that 20 million metric tons of coking coal would be transported from Queensland, Australia, to India, the Arbitral Tribunal observed that the contract was maritime in nature.

87. This Court fails to find any reason to interfere with the said finding of the Tribunal.

88. In the above circumstances, FAO(OS) (COMM) 109/2019 filed by Seaspray succeeds, FAO(OS) (COMM) 144/2019 filed by SAIL is found to be devoid of merit; consequently, it is held that the impugned award is not liable to be interfered with in exercise of jurisdiction under Section 34/37 of the A&C Act ; the impugned award is accordingly upheld.

89. These appeals are disposed of in the above terms.

SACHIN DATTA, J

VIBHU BAKHRU, J

APRIL 2, 2025

r, sv