

IN THE HIGH COURT AT CALCUTTA
ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
COMMERCIAL DIVISION

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

AP-COM/171/2024

[OLD NO. AP/618/2019]

WEST BENGAL MINERAL DEVELOPMENT AND TRADING CORPORATION LTD.

VS

TRANS DAMODAR COAL MINING PVT. LTD.

AND

AP-COM/172/2024

[OLD NO. AP/673/2019]

TRANS DAMODAR COAL MINING PVT. LTD.

VS

WEST BENGAL MINERAL DEVELOPMENT AND TRADING CORPORATION LTD.

For the West Bengal Mineral
Development and
Trading Corporation Ltd.

:Mr. Kishore Datta, Ld. AG
Mr. Sanjay Saha, Adv.
Mr. Chayan Gupta, Adv.
Mr. Aviroop Mitra, Adv.

For the Respondent in
AP-COM 171 of 2024
for the petitioner in
AP-COM 172 of 2024 .

:Mr. Jaydip Kar, Sr.Adv
Ms. Manju Bhutaria, Sr. Adv
Mr. Kumar Gupta, Adv.
Ms. Meenakshi Manot, Adv.
Ms. Arundhuti Barman Roy, Adv.
Mr. Piyush Jain, Adv.

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Shampa Sarkar, J.

1. AP-COM 171 of 2024 and AP-COM No. 172 of 2024 arise out of an award dated June 13, 2019 made by a learned retired judge of this Court, who acted as the Arbitrator, for settlement of the dispute between the parties. AP-COM 171 of 2024 was filed by West Bengal Mineral Development and Trading Corporation Limited, the respondent in the arbitral proceeding. AP-COM 172 of 2024 was filed by the Trans Damodar Coal Mining Private Limited, the claimant before the learned arbitrator.

2. Mr. Kishore Dutta, the then learned Advocate General appeared on behalf of the West Bengal Mineral Development and Trading Corporation (hereinafter referred to as the Corporation). He submitted that the award should be set aside for being patently illegal and contrary to public policy. The learned arbitrator, after having come to the conclusion that the contract between the parties was illegal and *void ab initio*, could not have taken recourse to the Coal Mines (Special Provisions) Act 2015, (hereinafter referred to as the 2015 Act) and allowed claims a,b,c,d,e,g,h,m,n.

3. It was urged that the 2015 Act was promulgated to give full effect to the judgment of the Supreme Court in ***Manohar Lal Sharma vs. Principal Secretary and Ors.***, reported in **(2014) 9 SCC 516**. Referring to the Statements of Objects And Reasons of the 2015 Act, learned Advocate General submitted that, the 2015 Act was necessary in public interest as immediate action had to be taken to allocate coal mines to successful bidders and allottees, keeping in view the energy security of the country. The Act did not provide any security or protection to the contractors of the prior

allottee. By judgment dated August 25, 2014, the Hon'ble Supreme Court had held that allocation of coal blocks through the screening committee and the Government Dispensation route, was arbitrary and illegal. The Supreme Court cancelled the allocation of 204 coal blocks out of 218 since 1993. The Supreme Court further directed that additional levy of Rs. 295 per metric ton should be paid by the 42 coal blocks for the coal extracted since the commencement of production till 31st March, 2015. In light of the judgment of the Supreme Court, it was considered necessary in public interest that the Central Government should take immediate action so as to ensure energy security of the country.

4. Learned Advocate General submitted that, the need for promulgation of the ordinance was to overcome the acute shortage of coal in core sectors such as steel, cement and power utilities, which were vital for the development of the country. Further, to mitigate the hardship of the household consumers, medium and small scale enterprises, cottage industries, a law was required to be put in place. As the Parliament was not in session and immediate action was required to be taken by the Central Government to implement the judgment and order of the Supreme Court and to address the objectives, an ordinance, namely Coal Mine (Special Provisions) Ordinance 2014 was promulgated by the President on 21st October, 2014 under Article 123 of the Constitution. After considering all such issues, it had been decided to include certain additional provisions in the Coal Mines (Special Provisions) Bill, 2015. The Bill provided for allocation of coal mines and vesting of right, title and interest in and over

the land and mine infrastructure together with mining leases to successful bidders and allottees, through a transparent bidding process with a view to ensure continuity in coal mining operations and production of coal and for promoting optimum utilization of the coal resources consistent with the country's national interest. Further, having regard to the coordinated and scientific development and utilization of coal resources, consistent with the growing requirement of the country, the Bill prescribed certain conditions to rationalize the coal sector for mining operations, consumption and sale. Thereafter, the 2015 Act was promulgated. Special emphasis was laid on the Statement of Objects and Reasons by the learned Advocate General in order to support his contention that the said Act would be applicable only with regard to the dispute between the successful bidder and the prior allottee. The said Act protected the successful bidder. The Act would not be applicable to the claims of the contractor, arising out of the contract which had been entered into between the prior allottee and the contractor for the purpose of raising large quantity of coal from the Trans Damodar Coal Block. The allocation of the Trans Damodar sector of Raniganj Coal Field in favour of the West Bengal Mineral Development & Trading Corporation Limited by the Ministry of Coal, Government of India, had been cancelled by the Supreme Court.

5. Learned Advocate General further submitted that the Preamble to the Act would indicate that the same was promulgated for allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure together with continuity in coal mining operation and

production of coal and for promoting optimum utilization of coal resources consistent with the requirement of the country in national interest, and matters connected therewith or incidental thereto. It was expedient in public interest for the Central Government to take immediate action to allocate coal mines to successful bidders and allottees, keeping in view the energy security of the country and to minimise the impact in the core sectors namely, steel, cement and power utility.

6. The Parliament was competent to legislate under Entry 54 of List I of the Seventh Schedule of the Constitution for regulation of mines and for mineral development. The 2015 Act was not promulgated for settlement of disputes between the prior allottee and the contractor. The difficulties faced by the contractors after the decision of the Hon'ble Supreme Court in ***Manohar Lal Sharma*** (supra) cancelling the allocation of the coal block in respect of the Corporation, were not covered by the said Act. The Act only protected the subsequent successful bidders. Their rights and obligations vis-à-vis the prior allottee was the main purpose behind the promulgation of the said statute.

7. It was next submitted that, in paragraphs 25 and 28 of the award, the learned arbitrator had clearly held that one party to the contract could not compel the other party to perform obligations arising out of a contract which was void under Section 23 of the Indian Contract Act. It was urged that the contentions of the learned Senior Advocate for the claimant made before the learned arbitrator, were not accepted by the learned Arbitrator, yet the claims were allowed.

8. The learned arbitrator held that a validly executed contract between the claimant and the respondent (Corporation) was inconsequential. The moment the Supreme Court declared the allotment in favour of the Corporation by the Central Government as illegal, the claimant could not pray for enforcement of any of the terms of the contract as the said contract for illegal mining was void.

9. The learned arbitrator also held that the claimant was a third party who had entered into the contract with a prior allottee in respect of coal mining operations. The Corporation was a prior allottee within the meaning of the 2015 Act. Trans Damodar Coal Mine was a mine which figured in both Schedule 1 and Schedule 2 of the 2015 Act. The arbitrator had already relied upon various Supreme Court decisions, and held that the parties to a void contract, entered into in violation of Section 23 of the Contract Act, were remediless for the purpose of realization of money spent on such contracts or for enforcing the terms of such void contracts. The prior allottee and the third party with whom the contract had been made by the prior allottee were equally remediless. Having recognized the above position of law and upon holding that the prior allottee as also the third party were remediless and the enforcement of a void contract could not be permissible, the learned arbitrator arrogated to himself the power to award compensation and allow some of the claims. Such wrongful exercise of jurisdiction by invoking the provisions of the 2015 Act was legally untenable, and as such, the award suffered from patent illegality. The award was not only contrary to law, but also suffered from perversity as the

learned Arbitrator exceeded his jurisdiction and wrongly applied the provisions of the 2015 Act, with the intention to grant some relief to the claimant, although there was a legal bar. Thus, the award was also contrary to the public policy of India.

10. The award should be set aside on the ground that the learned Arbitrator made out a third case on behalf the claimant. Learned Advocate General emphasized that the claimant had not made out a case for application of the provisions of the 2015 Act qua the dispute between the parties. The statement of claim and the averments therein, would indicate that the disputes between the parties were purely contractual. Both parties proceeded on the basis that the contract was valid. Specific pleadings in paragraph 25, 27, 35 and 38 of the statement of claim would indicate that the claimant had admitted that the dispute arose solely out of the contract. The claimant did not seek redressal under the 2015 Act. Reference was made to question numbers 72 to 89 of the cross-examination in support of the contention that the witness of the Corporation was not put any suggestion in the cross-examination with regard to the applicability of the 2015 Act. The specific case of the Corporation was that, the additional levy paid by the Corporation to the Government of India was appropriated from the claimants payment', on the basis of clarification and modification to the contract agreement dated March 31, 2010. RW1, in his cross-examination had specifically emphasized such fact and he also stated that the recovery of dues from the contractor was guided by the terms of the agreement executed between the parties. No contrary

suggestion was put to RW1 by the claimant on the applicability of the provisions of the 2015 Act qua the dispute between the parties. Thus, the learned arbitrator erred in holding that the 2015 Act also applied in cases of contractors of prior allottees and that their rights vis-a-vis such contracts which were otherwise void, were protected to some extent under the 2015 Act. In the absence of any foundation in the pleadings with regard to the applicability of the 2015 Act in respect of disputes between the parties, and in the absence of any evidence being led and no suggestions having been put to the witnesses of the Corporation with regard to the applicability of the 2015 Act, the learned arbitrator committed jurisdictional error in holding that the 2015 Act would come to the aid of the claimant, and some of the claims against the Corporation, for the breaches committed by the Corporation in respect of the contract, could be permitted under the 2015 Act.

11. Once the contract was found to be void, the arbitrator did not have any jurisdiction to pass the award. The arbitrator assumed jurisdiction from the contract. He exceeded his jurisdiction by deciding the dispute on the anvil of the 2015 Act. The dispute between the prior allottee and the contractors was never the subject matter of either of the judgments in ***Manohar Lal Judgments*** reported in ***(2014) 11 SCC 516*** and ***(2014) 11 SCC 614*** (hereinafter referred to as ***Manohar Lal Sharma 1*** and ***2*** respectively). The other feature of the 2015 Act was to protect the successful bidder from claims which other entities may have against the prior allottee. The interpretation of the learned Arbitrator with regard to the

various sections of the 2015 Act, were all misconceived and *de hors* the object of the 2015 Act. Even if it was assumed that, the 2015 Act could be made applicable, in that event Section 27 of the said Act provided for a tribunal for redressal of all grievances. Section 29 of the 2015 Act had the effect of overriding all instruments, including the subject contract. The finding in the award that Section 11 of the 2015 Act treated contracts which were otherwise void as valid, was contrary to the provisions of the 2015 Act. Likewise, the finding that by applying Section 11(2) of the 2015 Act, the third party contractor had remedies against the prior allottee, was also contrary to law.

12. The law was misinterpreted and the learned Arbitrator misdirected himself by holding that the cancellation would take effect on 31st March 2015. The Supreme Court did not keep the contract between prior allottee and the contractor valid till 31st March 2015. The contract between the parties became impossible to perform in view of the judgment of the Supreme Court. The said contract could not be revived by any statute, more so by a statutory interpretation, especially in the absence of any specific provision thereunder. The operation of coalmines was allowed till 31st March 2015, to facilitate holding of a fresh allocation process of coal blocks, and in order to protect the industries by ensuring adequate supply of energy to the core sectors.

13. The judgments of the Supreme Court could not be interpreted to mean that the Supreme Court had accorded any sanctity to the contract between the third party and the corporation. The judgments were restricted to the

validity in the allotment of the coal blocks. Even the public sector undertakings were not protected. The consequence of such reallocation and/or cancellation of allocation was the subject matter of the decision in ***Manohar Lal Sharma (2)***. The right of the contractor vis-a-vis the prior allottee were not a relevant issue before the Hon'ble Supreme Court and the 2015 Act. Both the judgments dealt with the issues with regard to recovery and imposition of additional levy from the prior allottee.

14. Learned Advocate General relied on various paragraphs of both judgments to emphasize that neither the judgments of the Supreme Court nor the enactment of 2015 Act, were concerned with the right of the contractor of the prior allottee and the obligation arising out of those contracts vis-à-vis the parties. The claimant proceeded on the basis that the contracts between the parties were valid and the Corporation had committed breach of those contractual terms. The allegations of the claimant against the Corporation, were restricted to non-performance of the contractual obligation and nothing beyond. Thus, it was prayed that the award should be set aside.

15. Mr. Jaydip Kar learned Senior Advocate for the claimant submitted that the learned Arbitrator allowed claims a, b, c, d, e g, h, m and n with elaborate reasons and by following the principle of restitution.

16. According to Mr. Kar, the primary grounds for challenge by the Corporation were patent illegality, perversity, jurisdictional error and violation of the public policy of India. The grounds on which an award could be set aside were specified under Section 34(2)(a) and 34(2)(b) as also

Section 34(2A) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the A & C Act). None of the grounds for setting aside the award could be established. Section 34(2)(b) provided that, when the award was in contravention to the fundamental policy of Indian law or was in conflict with the most basic notions of morality and justice, the award could be set aside. The award, read as a whole, would clearly indicate that the aforementioned grounds would not be attracted. Section 34(2)(a) provided that an arbitral award arising out of a domestic arbitration, could be set aside by the court, if the court found that the award was vitiated by patent illegality, apparent on the face of the award. The case of patent illegality could not be established in the course of arguments by the learned Advocate General.

17. Mr. Kar relied on the decisions of the Hon'ble Apex Court in ***MMTC Limited vs Vedanta Ltd.*** reported in ***(2019) 4 SCC 163***, and ***Ssangyong Engineering & Construction Company Limited vs National Highways Authority of India (NHAI)*** reported in ***(2019) 15 SCC 131***. In the above decisions, the Hon'ble Apex Court had laid down the scope of an application under Section 34 of the A & C Act. The Hon'ble Apex Court observed that, patent illegality on the face of the award would mean such illegality which would go to the root of the matter. Erroneous application of law would not qualify as patent illegality. Moreover, what was not subsumed within the fundamental policy of Indian law, i.e, contravention of a statute not linked to public policy or public interest, could not be brought in by the back door when it came to setting aside an award on the ground of patent illegality.

18. Reliance was also placed on ***Patel Engg. Ltd. vs North Eastern Electric Power Corporation Ltd.*** reported in ***(2020) 7 SCC 167*** and ***Reliance Infrastructure Ltd. vs State of Goa*** reported in ***(2024) 1 SCC 479***. According to Mr. Kar, the ratio which could be carved out from the above cited decisions was that, mere illegality would not call for interference with the award but “patent illegality” must be apparent on the face of the award. Patent illegality could not be culled out by way of a long-drawn analysis of the pleadings and evidence.

19. Further Reliance was placed on ***Hindustan Construction Co. Ltd vs NHAI*** reported in ***(2024) 2 SCC 613***. According to Mr. Kar, the view of the learned Arbitrator was a possible view and this Court should accept such view. Courts were debarred from reviewing the conclusion arrived at by the learned Arbitrator, only on the ground that an alternative or a better view could be possible. The jurisdiction of the Court under Section 34 of the said Act was not to correct the opinion and/or the findings of the learned Arbitrator.

20. Mr. Kar submitted that the scope for interference by this Court was limited, and strictly guided by the ratio laid down by the Hon’ble Apex Court. The award did not demonstrate that it suffered from either perversity or patent illegality. The learned Arbitrator had considered all aspects of the matter, the provisions of the law, the provisions of the contract, the effect of the judgment of the Supreme Court in ***Manohar Lal Sharma 1*** and ***2*** (supra) and had given his view, upon interpretation of the statutory provisions of the 2015 Act, the Contract Act and the covenants in the

contract. This Court cannot re-appreciate the evidence led by the parties. The arguments put forward by the Corporation did not indicate that the Corporation had alleged that substantive provisions of law had either been violated or ignored or transgressed or disregarded by the learned Arbitrator.

21. In the light of the restricted jurisdiction of this court, Mr. Kar submitted that the arbitrator's autonomy to decide the dispute should be respected and this court should adopt a hands-off approach. The award was a speaking one. It elaborately dealt with the contentions of the parties. The evidence was weighed and some of the claims were allowed by the learned Arbitrator, being supported by reasons. The learned Arbitrator opined that the Parliament had consciously conferred some remedies to third parties by treating the contract to be valid and keeping the contract alive for adoption and/or for enforcement. Otherwise, the third party who had entered into the contract for extraction of coal with the prior allottees would be rendered remediless for no fault of their own. Referring to the various paragraphs of the award, Mr. Kar submitted that the claimant was undoubtedly a third party who had entered into the contract with the prior allottees in respect of coal mining operations.

22. Trans Damodar Coal Mines was one of such coal mines which figured both in Schedule 1 and Schedule 2 of the Act. The Parliament had enacted the 2015 Act for the purpose of implementing a void contract by use of non-obstante clauses in some of the sections of the 2015 Act. Special emphasis was laid on the non-obstante clause at the beginning of Section 11 of the 2015 Act. The learned Arbitrator rightly held that although the contract may

be void, but the claimant was protected under Section 11(2) and other provisions of the 2015 Act would be attracted in respect of the rights of the third party/contractor. The claims allowed by the learned Arbitrator were based on the principle of restitution. Reference was made to Section 65 and 70 of the Indian Contract Act. The contract had come to an end, and as such, the claimant had been deprived of the benefits arising out of the contract as also of the money receivable under the contract. The learned Arbitrator correctly held that the dispute would not be covered by Section 27 of the 2015 Act.

23. Under such situation, the Arbitrator allowed refund of only the amounts which were unjustly deducted by the Corporation, upon holding that the Corporation was not entitled to deduct the same contractually. Reference was made to the decision of **Allahabad Bank and Ors. vs Bengal Paper Mills Co.** reported in **(2004) 8 SCC 236**. It was further urged that the learned Arbitrator disallowed the claim for damages suffered by the claimant by holding that, the facts and circumstances leading to the cancellation of the contract would not amount to breach on the part of the Corporation.

24. Mr. Kar explained the reasons behind allowing each of the claims. With regard to claim (a), the learned Arbitrator held that that additional levy has been wrongly appropriated by the Corporation, as such levy would not fall under the category of statutory levy. The deduction of the additional levy from the dues of the claimant was contrary to the contractual terms. The legislation had fixed the liability to pay compensation for illegal coal mining

described as additional levy, only upon the prior allottee under the 2015 Act. The legislature was aware that there were existing contracts of the prior allottee with third parties and others, in respect of such mining activities, yet the legislature consciously did not make any provision under the 2015 Act by which, the liability of additional levy would be proportionately borne by the prior allottee and the third party contractor. Moreover, the concept of additional levy which was brought in by the statute was never contemplated under the contract.

25. Thus, the direction for refund was rightly given by the learned Arbitrator. The deduction of the additional levy which was deposited with the Union of India, from the dues of the claimant was found to be contrary to the terms of the contract. The additional levy provided for in the statute under Section 22 of the 2015 Act, was not equivalent to royalty, cess, excise duty and any other statutory levy that was contemplated under Annexure C-1 of the contract.

26. Claim (b) was allowed on the ground that the penalty was wrongfully imposed for the shortfall in the production for the financial year 2013-14. The refund was directed on the principle of restitution. The learned Arbitrator rightly held that the claimant could not be faulted on account of the shortfall, as the Corporation had itself asked the claimant to stop coal production.

27. Claim (c) was based on the refund of the amount wrongfully deducted as penalty for alleged loss of coal, during transportation of coal from the mines to Durgapur Freight Terminal and then to the Railway Siding. The

learned Arbitrator held that, from the evidence on record and the admission of the witness of the Corporation in his cross-examination, it would appear that the procedure of measurement of the loss in transit as stated in the tripartite agreement, had not been followed and consequently the claimant should have got the benefit of 0.5 % loss, as per the agreement. The imposition of penalty was found to be illegal.

28. Claims (d) and (e) were allowed towards dues on account of mining charges. The claims were allowed on the ground that the Corporation did not adduce any evidence disputing the calculation of the claimant. The case of the claimant was that, in violation of the marketing agreement the Corporation sold several consignments of coal to DPL and WBPDCCL on credit, without receiving the full advance from them. The Corporation had also acted beyond the terms of the contract by opening a separate bank account and by not depositing the proceeds in the escrow agreement.

29. Claim (g) was for refund on account of land advance. The claimant had advanced a sum of Rs.43,68,22,071/- for acquiring land for mining purpose, which was to be adjusted or be repaid over 30 years of commercial production. The commercial production commenced from the financial year 2012-13, but due to the order of the Hon'ble Supreme Court, mining activities were required to be stopped from the midnight of 31st March, 2015. The Corporation stopped mining activities by a letter dated February 26, 2015. Till March 31, 2015 a sum of Rs.1,10,55,072 was refunded by way of adjustment. A sum of Rs.42,57,66,999 remained outstanding. A further sum of Rs.2,15,85,016 was paid to the claimant upon receiving the sum as

compensation from the Ministry of Coal. By a letter dated March 22, 2017, the Corporation informed the claimant that after all adjustments and payments, a sum of Rs.35,25,48,835 remained refundable. A further payment of Rs.1,69,33,157 was also made. Hence the claim.

30. The claim was allowed on the admission of parties as to the payment and adjustment. The Corporation failed to produce any document to show that they had paid any amount over and above the amount of Rs.3,85,18,173. Thus the admitted case between the parties was that the land advance of Rs.43,68,22,071 was refundable to the claimant.

31. Claim (m) was in respect of the claimant's share of the escrow account. The claim was allowed on admission. Claim (n) was in respect of the claimant's share in the fixed deposit lying with the State Bank of India. The learned Arbitrator allowed the claim on the ground that the claimant could not have any liability for the expenditure of any legal proceedings incurred by the respondent as the claimant was not a party to the proceeding. The Corporation had initially admitted the claim in the escrow account and there was no reason why the claimant would be deprived of the interest accrued thereon. There was no specific clause in the agreement which debarred payment of interest. Absence of such clause indicated the right to the interest as a matter of course. Thus, Mr. Kar submitted that the learned Arbitrator rightly directed the bank to liquidate the fixed deposits in respect of the escrow account in the ratio of 76.43% and 23.57%. The claim was allowed on the basis of the admitted case between the parties and

interpretation of the contract. The Arbitrator also allowed the pre-award and post-award interest, apart from cost.

32. Thus, Mr. Kar submitted that, upon considering the award and its reasoning and rationality as well as the law laid down by the Hon'ble Supreme Court in various decisions, the award was not liable to be set aside in exercise of power conferred under Section 34 of the A & C Act.

33. Before deciding the issues involved, in the application, a brief narration of the background is necessary. The claimant is a company incorporated under the Companies Act 1956, inter alia, engaged in the business of mining and agglomeration of coal. The Corporation is also a company fully controlled by the Government of West Bengal and was, inter alia, established to explore and extract various minerals from the mines in West Bengal.

34. Allocation of the Trans Damodar Sector coal block of the Raniganj Coalfields, was made in favour of the Corporation by the Ministry of Coal, Government of India by a letter dated January 14, 2005, subject to conditions stated therein. One of such condition was that the Corporation would carry out coal mining in accordance with the provisions of the Coal Mines (Nationalization) Act, 1973.

35. The Corporation published an expression of interest in respect of the coal mining activities and eventually a consortium was formed consisting of Godavari Commodities Limited, Banwarilal Agarwalla Private Limited and Calcutta Industrial Supply Corporation. The consortium was recommended by the committee constituted by the Government of West Bengal. The

Corporation entered into a contract on May 31, 2006 with the members of the consortium, by appointing them as contractors for coal mining and for the discharge of all other obligations to give effect to the coal mining in the Trans Damodar Zone. The Corporation also entered into a Marketing, Selling and Delivery of Coal Agreements with the consortium and the Corporation agreed to appoint a contractor. The contractor agreed to accept such appointments to perform and fulfil the agreements as indicated therein. The Corporation executed an agenda/clarification/modification to the contract agreement dated March 31, 2010 to make certain additions, alterations and modification and inserted certain clarifications in the contract agreement for smooth operation of excavation of coal and to fulfill the terms and conditions and covenants contained therein. The Corporation and the claimant entered and executed addendum/ clarification/ modification to the Marketing, Selling and Delivery of Coal Agreement dated May 31, 2006. On August 3, 2011, the Corporation and the Claimant entered into an Escrow Agreement recording the terms and conditions under which the State Bank of India agreed to be an Escrow agent. The Corporation, the claimants and Palogix Infrastructure Pvt. Limited, (Freight Terminal Operator (FTD)), entered into a tripartite agreement wherein the FTO agreed to give in hire/rent the Durgapur Freight Terminal, inter alia, to provide security, supervision, stocking operation and Coordination services in terms of the agreement. On August 25, 2014 (**Manohar Lal Sharma 1**) and September 24, 2014 (**Manohar Lal Sharma 2**) were delivered by the Hon'ble Supreme Court, cancelling the allotments of coal blocks including Trans Damodar Section.

However, the Hon'ble Supreme Court held that the allotments should be kept alive till March 31, 2016 to avoid public inconvenience. The relevant portions of **Manoharlal Sharma (1)** are quoted below :-

“163. To sum up, the entire allocation of coal block as per recommendations made by the Screening Committee from 14-7-1993 in 36 meetings and the allocation through the Government Dispensation Route suffers from the vice of arbitrariness and legal flaws. The Screening Committee has never been consistent; it has not been transparent; there is no proper application of mind; it has acted on no material in many cases; relevant factors have seldom been its guiding factors; there was no transparency and guidelines have seldom guided it. On many occasions, guidelines have been honoured more in their breach. There was no objective criteria, nay, no criteria for evaluation of comparative merits. The approach had been ad hoc and casual. There was no fair and transparent procedure, all resulting in unfair distribution of the national wealth. Common good and public interest have, thus, suffered heavily. Hence, the allocation of coal blocks based on the recommendations made in all the 36 meetings of the Screening Committee is illegal.

164. The allocation of coal blocks through Government Dispensation Route, however laudable the object may be, also is illegal since it is impermissible as per the scheme of the CMN Act. No State Government or public sector undertakings of the State Governments are eligible for mining coal for commercial use. Since allocation of coal is permissible only to those categories under Sections 3(3) and (4), the joint venture arrangement with ineligible firms is also impermissible. Equally, there is also no question of any consortium/leader/association in allocation. Only an undertaking satisfying the eligibility criteria referred to in Section 3(3) of the CMN Act viz. which has a unit engaged in the production of iron and steel and generation of power, washing of coal obtained from mine or production of cement, is entitled to the allocation in addition to the Central Government, a Central Government company or a Central Government corporation.

165. In this context, it is worthwhile to note that the 1957 Act has been amended introducing Section 11-A w.e.f. 13-2-2012. As per the said amendment, the grant of reconnaissance permit or prospecting licence or mining lease in respect of an area containing coal or lignite can be made only through selection through auction by competitive bidding even among the eligible entities under Section 3(3)(a)(iii), referred to above. However, the government companies, government corporations or companies or corporations, which have been awarded power projects on the basis of competitive bids for tariff (including Ultra Mega Power

Projects) have been exempted of allocation in favour of them is not meant to be through the competitive bidding process.

166. As we have already found that the allocations made, both under the Screening Committee Route and the Government Dispensation Route, are arbitrary and illegal, what should be the consequences, is the issue which remains to be tackled. We are of the view that, to this limited extent, the matter requires further hearing.

167. By way of footnote, it may be clarified and we do, that no challenge was laid before us in respect of blocks where competitive bidding was held for the lowest tariff for power for Ultra Mega Power Projects (UMPPs). As a matter of fact, Mr Prashant Bhushan, learned counsel for Common Cause submitted that since allocation for UMPPs is in accord with the opinion given in *Natural Resources Allocation, In re [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1]* and the benefit of the coal block is passed on to the public, the said allocations may not be cancelled. However, he submitted that in some cases the Government has allowed diversion of coal from UMPP to other end uses i.e. for commercial exploitation. Having regard to this, it is directed that the coal blocks allocated for UMPP would only be used for UMPP and no diversion of coal for commercial exploitation would be permitted.”

36. The Hon’ble Supreme Court, upon realizing that the consequence of cancellation of the coal block allocations was of superior importance, kept the matter pending for further hearing, on this limited issue. Upon further hearing, the Supreme Court by its decision ***Manohar Lal Sharma (2)*** dated September 24, 2014, held that the consequence was intended to correct the wrong done by the Union of India. The proceedings were held with the intention to compensate the exchequer for the wrongs done by the Union of India, in the manner suggested by the Learned Attorney General. The Supreme Court proposed to publish the said suggestions. The Supreme Court noted that there were two categories of coal block allotments. The first category being allotments other than those mentioned in Annexure 1 and 2. The second category being allotments mentioned in Annexure 1 and 2 that

could possibly be based on cancellation on the terms and conditions as submitted by the Learned Attorney General. The Supreme Court held that follows: -

“33. The learned Attorney General identified 46 coal blocks that could be “saved” from the guillotine, since all of them have commenced production or are on the verge of commencing production. As these allocations are also illegal and arbitrary they are also liable to be cancelled. However, the allotment of three coal blocks in Annexure 1 is not disturbed and they are Moher and Moher Amroli Extension allocated to Sasan Power Ltd. (UMPP) and Tasra [allotted to Steel Authority of India Ltd. (SAIL), a Central Government public sector undertaking not having any joint venture].

34. As far as the 6 coal blocks mentioned in Annexure 2 are concerned, the allottees have not yet commenced production. They do not stand on a different or better footing as far the consequences are concerned. These allotments are also liable to be cancelled. The allocation of Pakri Barwadih coal block [allotted to National Thermal Power Corporation (NTPC), being a Central Government public sector undertaking not having any joint venture] is not liable to be cancelled.

35. Except the above two allocations made to the UMPP and the two allocations made to the Central Government public sector undertaking not having any joint venture mentioned above, all other allocations mentioned in Annexure 1 and Annexure 2 are cancelled.

36. It was submitted by the learned Attorney General that on the cancellation of the coal block allotments, CIL would require some breathing time to manage its affairs. The Central Government is keen to move ahead but some time would be required to manage the emerging situation. Similarly, breathing time is also required to be given to the allottees to manage their affairs on the cancellation of the coal blocks.

37. In view of the submissions made, although we have quashed the allotment of 42 out of these 46 coal blocks, we make it clear that the cancellation will take effect only after six months from today, which is with effect from 31-3-2015. This period of six months is being given since the learned Attorney General submitted that the Central Government and CIL would need some time to adjust to the changed situation and move forward. This period will also give adequate time to the coal block allottees to adjust and manage their affairs. That CIL is inefficient and incapable of accepting the challenge, as submitted by the learned

counsel, is not an issue at all. The Central Government is confident, as submitted by the learned Attorney General, that CIL can fill the void and take things forward.

38. In addition to the request for deferment of cancellation, we also accept the submission of the learned Attorney General that the allottees of the coal blocks other than those covered by the judgment and the four coal blocks covered by this order must pay an amount of Rs 295 per metric tonne of coal extracted as an additional levy. This compensatory amount is based on the assessment made by CAG. It may well be that the cost of extraction of coal from an underground mine has not been taken into consideration by CAG, but in matters of this nature it is difficult to arrive at any mathematically acceptable figure quantifying the loss sustained. The estimated loss of Rs 295 per metric tonne of coal is, therefore, accepted for the purposes of these cases. The compensatory payment on this basis should be made within a period of three months and in any case on or before 31-12-2014. The coal extracted hereafter till 31-3-2015 will also attract the additional levy of Rs 295 per metric tonne.

39. In view submissions made, *although we have quashed the allotment of 42 out of these 46 coal blocks, we make it clear that the cancellation will take effect only after six months from today, which is with effect from 31st March, 2015. This period of six months is being given since the learned Attorney General submitted that the Central Government and CIL would need some time to adjust to the changed situation and move forward. This period will also give adequate time to the coal block allottees to adjust and manage their affairs. That the CIL is inefficient and incapable of accepting the challenge, as submitted by learned counsel, is not an issue at all. The Central government is confident, as submitted by the learned Attorney General, that the CIL can fill the void and take things forward.*

40. In addition to the request for deferment of cancellation, we also accept the submission of the learned Attorney General *that the allottees of the coal blocks other than those covered by the judgement and the four coal blocks covered by this order must pay an amount of Rs. 295/- per metric ton of coal extracted as an additional levy. This compensatory amount is based on the assessment made by the CAG. It may well be that the cost of extraction of coal from an underground mine has not been taken into consideration by the CAG, but in matters of this nature it is difficult to arrive at any mathematically acceptable figure quantifying the loss sustained. The estimated loss of Rs. 295/- per metric ton of coal is, therefore, accepted for the purposes of these cases. The compensatory payment on this basis should be made within a period of three months and in any case on or before 31st*

December, 2014. The coal extracted hereafter till 31st March, 2015 will also attract the additional levy of Rs. 295/- per metric ton.

41. It is made clear that the scrutiny by the CBI in respect of the allotment of 12 coal blocks out of 46 identified by the learned Attorney General (and for that matter against any other allottee) will continue and be taken to its logical conclusion. Needless to say, the observations and findings in this order shall no bearing on the pending investigations.”

37. After the decision of the Supreme Court, the Parliament enacted the 2015 Act on March 30, 2015. The Preamble of the Act is quoted below: -

“An Act to provide for allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure together with mining leases to successful bidders and allottees with a view to ensure continuity in coal mining operations and production of coal, and for promoting optimum utilisation of coal resources consistent with the requirement of the country in national interest and for matters connected therewith or incidental thereto.

Whereas the Supreme Court vide judgment dated 25th August, 2014 read with its order dated 24th September, 2014 has cancelled the allocation of coal blocks and issued directions with regard to such coal blocks and the Central Government in pursuance of the said directions has to take immediate action to implement the said order;

And whereas it is expedient in public interest for the Central Government to take immediate action to allocate coal mines to successful bidders and allottees keeping in view the energy security of the country and to minimise any impact on core sectors such as steel, cement and power utilities, which are vital for the development of the nation;

And whereas Parliament is competent to legislate under Entry 54 of List I of the Seventh Schedule to the Constitution for regulation of mines and mineral development to the extent to which such regulation and development under the control of Union is declared by Parliament by law to be expedient in the public interest.

Be it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows.”

38. On cessation of the mining activities pursuant to the above decision of the Supreme Court and consequent to passing of 2015 Act, various disputes arose between the parties resulting in the present arbitral proceeding. The

claimant filed its statement of claim (SOC). The Corporation denied the claims by filing a statement of defence (SOD).

39. Particulars of the claim are quoted below :-

Sl. No.	Particulars of Claim	Amounts in Rs.
a.	Refund of the amounts wrongly appropriated on account of Additional Levy as pleaded in paragraph 40 of the SOC.	54,91,79,927.00
b.	Refund of the amounts wrongly imposed as penalty for the alleged shortfall in production in FY 2013-14, as pleaded in paragraph 66 of the SOC.	9,39,06,983.00
c.	Refund of penalty wrongly deducted on account of alleged loss of transportation of coal from mines to the railway siding, as pleaded in paragraph 74 of the SOC.	1,67,92,183.00
d.	Dues on account of Mining Charges and commission on the direct sales by respondent to West Bengal Power Development Corporation Ltd., as pleaded in paragraph 89 of the SOC.	7,51,48,652.00
e.	Dues on account of Mining Charges and commission on the direct sales by respondent to Durgapur Projects Ltd., as pleaded in paragraph 89 of the SOC.	4,73,45,333.00
f.	Interest @ 13.50% p.a. on the total outstanding dues of Rs. 78,23,73,080.00 (a + b +c +d +e above) from 01.04.2015 to 31.01.2018)	29,97,88,215.00
g.	Refund on account of land advance, as pleaded in paragraph 83 of the SOC.	38,72,48,826.00
h.	Interest @ 13.50% p.a. on the refund of land advance amount for the period 01.04.2015 to 31.01.2018	14,83,85,262.00
i.	Claim on account of loss in mine development as pleaded in paragraph 103 of the SOC.	15,11,59,609.00
j.	Claim on account of loss in investments in Fixed assets, as pleaded in paragraph 109 of the SOC.	19,02,63,274.00

k.	Interest @ 13.50% on mine development and investment in Fixed assets for the period 01.04.2015 to 31.01.2018	13,08,25,765.00
l.	Claim on account of claimant's share of credit balance in Escrow account with State Bank of India as on 12.03.2017, as pleaded in paragraph 91 of the SOC.	8,16,784
m.	Claim on account of claimant's share in Fixed Deposit with State Bank of India, as pleaded in paragraph 95 of the SOC.	6,00,00,000.00
o.	Total	3,47,59,52,376.00

40. The specific contention of the learned Advocate General, apart from the factual denial of the case was that, in view of the decisions of the Supreme Court on August 25, 2014 and September 24, 2014, thereby cancelling the allocation of coal mines including the Trans Damodar Coal Mine, the claims were not tenable in law. Claims for damages, compensation and interest against the Corporation, pursuant to the contract which had been cancelled and declared void ab initio, were not enforceable.

41. The Director of the claimant as the principal officer, filed two sets of Affidavit of Evidence before the learned Arbitrator. The former Managing Director and the then Advisor and Director of the Corporation filed Affidavit of Evidence, on behalf of the Corporation. The witnesses were examined by the learned Advocates for the respective parties. Upon appreciating the background of the case, the learned Arbitrator framed the followings points for decision:-

“1. Whether in view of the decision of the Supreme Court in the case of **Manohar Lal Sharma vs Principal Secretary and Ors.** (supra), followed by the subsequent enactment of 2015 Act by the

Parliament, the various claims made by the claimant in the SOC as quoted above were maintainable in law.

1) If the answer to the above point was answered in the affirmative, whether the claimant is entitled to reliefs under different heads claimed in the SOC.”

42. The allotment of the coal mine was cancelled by the Supreme Court as the allotment had been held to be contrary to the provisions of the Coal Mines (Nationalization) Act, 1973 (CMN Act). Consequently, the learned Arbitrator held that on account of cancellation of the coal mine allocation, the contract for mining had become void. The subject matter of the contract was illegal, for violating the CMN Act.

43. There is no dispute that, in terms of the contract between the parties, the Corporation, in whose favour mining allotment was made by the Central Government, in its turn, entrusted the claimant with the duties of mining on the terms and conditions mentioned in the subject contract between the parties. There is also no dispute that the Supreme Court, in the abovementioned decision, had categorically held that the allotment of mining right by the Central Government in favour of the Corporation was against the provisions of the CNM Act and consequently, quashed the allotment. Hence, if the allotment in favour of the Corporation was against the provisions of the CMN Act, it necessarily followed that the contract between the Corporation and the claimant for coal mining, was also void because such right of mining, which was the subject-matter of the contract, was violative of CMN Act. The learned Arbitrator rightly held that contract between the parties was void.

44. This Court now proceeds to consider how the learned Arbitrator dealt with the disputes. Before the learned Arbitrator, the contention of the learned senior advocate for the claimant was that, the parties did not contemplate what would happen in future and had entered with an agreement considering the mining to be a valid one and not in conflict with the CMN Act. None of the parties could foresee that the enforcement of the mining rights in favour of the Corporation with regard to the Trans-Damodar sector would become illegal, pursuant to a decision of the Supreme Court. The decision of the Supreme Court would not stand in the way of the claimant to enforce the contract. The position would be different if the parties had knowingly entered into an illegal contract. Such argument was not accepted by the learned Arbitrator. The Arbitrator held that the law was well settled that, once the Supreme Court declared something as illegal, upon an interpretation of any provision of law, it should be presumed that such thing was illegal from the very beginning, unless the Supreme Court specifically held that its decision would be prospective. Reference was made to the decision of ***M.A. Murthi vs State of Karnataka and Ors.*** reported in ***AIR 2003 SC 3821***, The decision of the Supreme Court, enunciating a principle of law would be applicable to all cases, irrespective of its stage of pendency, because it would be assumed that what was enunciated by the Supreme Court was in fact the law from its inception. The doctrine of prospective overruling was an exception to the normal principle of law. It was a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation.

In other words, actions taken contrary to the law prior to the date of declaration were validated in larger public interest. In this case, the doctrine of prospective overruling could not be applied. By following the decision of the Hon'ble Supreme Court, the learned Arbitrator held that the agreement between the parties was void from the very beginning. Allotment of coal mine for the purpose of mining, which was granted in favour of the Corporation, was contrary to the provisions of CMN Act.

45. The learned Arbitrator held that the claimant was a third party who had entered into a contract with the Corporation, that is, the prior allottee, in respect of coal mining operation within the meaning of 2015 Act. He held that, as per the decision of the Supreme Court, the contract was void and such contract was in violation of Section 23 of the Contract Act. The parties were remediless for the purpose of enforcing the terms of such void contract, and could not be compensated for any breach. The prior allottee and the third party with whom the contract had been made by the prior allottee, were equally remediless as the contract was prohibited by law. Thus, the prayers of the claimant towards compensation for future loss of profit, interest on delayed payment of dues etc. were not allowed. It was observed as follows :-

“24. The above decision of the Supreme Court was in connection with a contract which became void being hit by Section 23 of the Contract Act, like the present one, and the State was restrained from realizing its dues after the 26th January, 1950 when the contract became void although the Respondent therein enjoyed the monopoly right by plying its buses till 30th November, 1951 and earned income.

25. Thus, even by taking aid of Section 65 of the Contract Act, a party to a contract cannot compel the other party to a contract which is void for being violative of Section 23 of the Act to return the benefit received under the void contract as a beneficiary thereof. This

Tribunal, thus, finds that the contention of Mr. Mitra that the contract is not void as both the parties *bona fide* entered into the contract by treating the same as a valid one is not tenable in the eye of law. In the above decision of *The State of Rajasthan*, the contract was entered into at a point of time when the Constitution was not in force and consequently, it was a valid one; even in such a fact, the Supreme Court restrained the Appellant from realizing its dues the moment the contract became invalid.

The other contention of Mr. Mitra that the Supreme Court, in the facts of the present case, did not go into the question as to the validity of the contract between the Claimant and the Respondent is equally inconsequential. The moment the Supreme Court declared the allotment in favour of the Respondent by the Central Government as illegal and violative of CMN Act, any contract between the Respondent and the Claimant for implementing the illegal allotment of right of mining is bound to be in violation of CMN Act. Thus, a party to void contract in violation of Section 23 of the Act is remediless if he wants to get back money that he has spent in aid of such contract.”

46. The above finding was in consonance with the contentions of the learned Advocate General. However, it was held that, in spite of the above position of law, the Parliament, which was presumed to be aware of all the existing laws of the land as well as all the judgments of the Supreme Court interpreting such laws, enacted the 2015 Act for the purpose of implementing the void contract at least to a limited extent, by deviating from the Contract Act by use of non-obstante clauses in some of the Sections of the 2015 Act. This interpretation of the 2015 Act, by the learned Arbitrator, was a consequence of the second contention to the learned senior Advocate of the claimant.

47. The Arbitrator rightly held that, if the contract was void, any party who may have taken advantage under such a void contract, should refund the advantage or compensate to the person from whom such advantage was

received, under the provision of Contract Act. The principle emanates from Section 65 of the Contract Act which is quoted below:-

“65. Obligation of person who has received advantage under void agreement, or contract that becomes void.—

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.”

48. Section 65 embodies the principles of restitution and prevention of unjust enrichment. This is a case where the contract was held to be void by the learned Arbitrator. Undoubtedly, there was an agreement between the parties. The agreement became void on account of the decision of the Supreme Court. The Arbitrator found that certain advantages were received by the Corporation and those advantages must be either restored or compensated. The decision of the learned Arbitrator was made on the principle of equity, that no one should unjustly enrich himself at another's expense. The principle of restitution would not be applicable if the agreement was *void ab initio*, and the parties knowingly entered into the illegal or void contract.

49. Thus, the Arbitrator proposed to consider some of the Sections of the 2015 Act, namely :-

“11. Discharge or adoption of third party contracts with prior allottees.—(1) Notwithstanding anything contained in any other law for the time being in force, a successful bidder or allottee, as the case may be, in respect of Schedule I coal mines, may elect, to adopt and continue such contracts which may be existing with any of the prior allottees in relation to coal mining operations and the same shall constitute a novation for the residual term or residual performance of such contract: Provided that in such an event, the successful bidder or allottee or the prior allottee shall

notify the nominated authority to include the vesting of any contracts adopted by the successful bidder. (2) In the event that a successful bidder or allottee elects not to adopt or continue with existing contracts which had been entered into by the prior allottees with third parties, in that case all such contracts which have not been adopted or continued shall cease to be enforceable against the successful bidder or allottee in relation to the Schedule I coal mine and the remedy of such contracting parties shall be against the prior allottees.

12. Provisions in relation to secured creditors.—(1) The secured creditors of the prior allottees which had any security interest in any part of the land or mine infrastructure of a Schedule I coal mine shall be entitled to— (a) continue with such facility agreements and security interest with the prior allottee if such prior allottee is a successful bidder or allottee; and (b) in the event that the prior allottee is not a successful bidder or allottee, then the security interest of such secured creditor shall only be satisfied out of the compensation payable to such prior allottee, to the extent determined in accordance with such rules as may be prescribed and the outstanding debt shall be recoverable from the prior allottee. (2) The Central Government shall, taking into consideration the provisions contained in section 9, prescribe the manner in which the secured creditor shall be paid out of the compensation in respect of any prior allottee.

13. Void alienations and permitted security interests.—Any and all alienations of land and mine infrastructure and creation of any encumbrances of whatsoever nature thereon which relate to Schedule I coal mines, made by any prior allottee after the 25th day of August, 2014 shall be void, save and except any registered security interest and charge over the land and mine infrastructure as registered by a bank or a financial institution or any other secured lender.

14. Liabilities of prior allottees.—(1) Notwithstanding anything contained in any other law for the time being in force, no proceedings, orders of attachment, distress, receivership, execution or the like, suits for the recovery of money, enforcement of a security or guarantee (except as otherwise provided for under this Act), prior to the date of commencement of this Act shall lie, or be proceeded further with and no remedies shall be available against the successful bidder, or allottee, as the case may be, or against the land and mine infrastructure in respect of Schedule I coal mines. (2) The proceedings as referred to in sub-section (1), shall continue as a personal remedy against the prior allottee but shall not be maintainable or continued against the land or mine infrastructure of Schedule I coal mine or the successful bidder or allottee, pursuant to this Act. (3) Every liability of any prior allottee in relation to a Schedule I coal mine in respect of any period prior to the vesting order or allotment

order, shall be the liability of such prior allottee and shall be enforceable against it and not against the successful bidder or allottee or the Central Government. (4) All unsecured loans shall continue to remain the liability of the prior allottee. (5) The additional levy imposed against the prior allottees of Schedule II coal mines shall continue to remain the liability of such prior allottees and such additional levy shall be collected by the Central Government in such manner as may be prescribed. (6) For the removal of doubts, it is hereby declared that— (a) no claim for wages, bonus, royalty, rate, rent, taxes, provident fund, pension, gratuity or any other dues in relation to a Schedule I coal mine in respect of any period prior to the date of vesting order or allotment order, as the case may be, shall be enforceable against the Central Government or the successful bidder or the allottee, as the case may be; (b) no award, decree, attachment or order of any court, tribunal or other authority in relation to any Schedule I coal mine passed prior to the date of commencement of this Act, in relation to the land and mine infrastructure of Schedule I coal mines, shall be enforceable against the Central Government or the successful bidder or the allottee, as the case may be; (c) no liability for the contravention of any provision of law for the time being in force, relating to any act or omission prior to the date of vesting order or allotment order, as the case may be, shall be enforceable against the successful bidder or allottee or the Central Government.

15. Commissioner of payments to be appointed and his powers.—(1) For the purposes of disbursing the amounts payable to the prior allottees of Schedule I coal mines, the Central Government shall appoint an officer not below the rank of Joint Secretary to the Government of India, to be the Commissioner of payments. (2) The Central Government may appoint such other officers and staff as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such officers also to exercise all or any of the powers exercisable by him under this Act. (3) Any officer authorised by the Commissioner to exercise any powers may exercise those powers in the same manner and with the same effect as if they have been conferred on him directly by this Act and not by way of authorisation. (4) The salaries and allowances and other terms and conditions of service of the Commissioner and other officers and staff appointed under this section shall be such as may be prescribed. (5) The Central Government shall, within a period of thirty days from such date as may be notified, pay to the Commissioner for payment to the prior allottee, an amount equal to the compensation determined by the nominated authority. (6) Separate records shall be maintained by the Commissioner in respect of each Schedule I coal mine in relation to which payments have been made to him under this Act.

27. Dispute settlement and Bar of Jurisdiction of civil courts.—

(1) Any dispute arising out of any action of the Central Government, nominated authority or Commissioner of payment or designated custodian, or any dispute between the successful bidder or allottee and prior allottee arising out of any issue connected with the Act shall be adjudicated by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957).

(2) Where the Central Government is of the opinion that any dispute arising out of any issue connected with the Act exists or is apprehended and the dispute should be adjudicated by the Tribunal referred to in sub-section (1), then, the Central Government may by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, to the Tribunal for adjudication. (3) The Tribunal referred to in sub-section (1) shall, after hearing the parties to the dispute, make an award in writing within a period of ninety days from the institution or reference of the dispute. (4) On and from the commencement of the Act, no court or other authority, except the Supreme Court and a High Court, shall have, or be entitled to exercise, any jurisdiction, powers or authority, in relation to matters connected with the Act.”

50. The Arbitrator held that, Section 11(1) had given liberty to the successful bidder or allottee in relation to the coal blocks/sectors in Schedule I (Trans Damodar), to adopt or continue any contract between the prior allottee and the third party in relation to the coal mining operation, which was a void agreement. If such agreement was adopted by the successful bidder or the allottee, the same should constitute novation of such contract for the residual term or performance of such residual part of the contract although the original contract was void. The above novation would, however, be on condition that the successful bidder or allottee or the prior allottee should notify the nominated authority to include the vesting of any contract adopted by the successful bidder or allottee. Section 11(2), on the other hand, spoke of a situation where a successful bidder or the allottee elected not to adopt or continue with existing contracts which had been

entered into by the prior allottees with third parties, which was the position of the claimant in this case. According to sub-section (2), in that event, all such contracts which had not been adopted or continued would cease to be enforceable against the successful bidder or allottee in relation to the Schedule I coal mines and the remedy of such contracting parties, that is the claimant in this case, would be against the prior allottee, i.e., the Corporation. The learned Arbitrator held as follows :-

“29.....

According to sub-section (2), in that event, all such contracts which have not been adopted or continued shall cease to be enforceable against the successful bidder or allottee in relation to the Schedule I coal mine and the remedy of such contracting parties, the Claimant in this case, shall be against the prior allottees. Thus, in the present case, the Parliament knowing full well that the third party by virtue of such void contract is remediless against the prior allottee under the existing law of the land, has consciously conferred such remedy under its contract with the prior allottee, which is otherwise void, by treating the same as if it is a valid contract because of the non-obstante clause at the beginning of Section 11 to the extent indicated in the 2015 Act.”

51. The learned Advocate General urged that, the above finding of the learned Arbitrator was not supported by the provisions of Section 11. The 2015 Act did not protect the third party/claimant. The learned Arbitrator took note of the provisions of Section 11(2) and the fact that Section 11 began with a non obstante clause i.e., “notwithstanding anything contained in any other law for the time being in force” and held that, even if a contract was found to be void under Section 23 of the Contract Act, in the event the successful bidder or the allottee elected not to adopt the existing contract entered between the prior allottee (Corporation) and the third party

(claimant), in such cases all the contracts in relation to Schedule 1, had been kept alive and the remedy of such contracting party/claimant would be against the prior allottee (corporation).

52. Thereafter, the learned Arbitrator proceeded to consider Section 12 of the 2015 Act. Section 12 had been incorporated for the benefit of the secured creditors of the prior allottees who, but for this provision, would have suffered because of the fact that their contract with the prior allottee would also be void, as one of the purpose behind such contract would be in aid of implementing a void contract. Under sub-(1) of Section 12, in the event the prior allottee was not a successful bidder or allottee, even then, the security interest of such secured creditor would be satisfied out of the compensation payable to such prior allottee, to the extent determined in accordance with such rules as may be prescribed and the outstanding debt would be recoverable from the prior allottee. Sub-section (2) of Section 12 on the other hand, vested the Central Government with the power to prescribe the manner in which the secured creditors would be paid out of the compensation money payable to prior allottees after taking into consideration the provisions of Section 9 of the 2015 Act. Thus, it was observed by the learned Arbitrator that, the Parliament incorporated Section 12 in the 2015 Act, notwithstanding the fact that under a void contract, even the secured creditors were remediless.

53. It was further observed by the learned Arbitrator that, Section 13 had been inserted for the protection of the Banks or financial institutions or any other secured lender in respect of alienation of land and mine infrastructure

or creation of encumbrances which are related to Schedule I coal mines, made by the prior allottee in respect of any registered security interest and charge over the land and mine infrastructure, as registered by a bank or a financial institution or any other secured lender which was not otherwise possible in connection with a void contract, but for the protection given under the said Section. By enacting Section 14 of the 2015 Act, the Parliament had protected the Central Government, the successful bidder and the subsequent allottees in respect of proceedings, orders of attachment, distress, receivership, execution or like, suits for recovery of money, enforcement of security or guarantee prior to the date of commencement of the 2015 Act in respect of Schedule I coalmines, by providing that those would continue only against prior allottee as their personal liability. At the same time, the additional levy in respect of Schedule II coalmines, imposed under the 2015 Act would continue to remain the liability of the prior allottee and would be collected by the Central Government in such manner as may be prescribed by Rules. By the enactment of Section 27, the Parliament had created a new forum for adjudication of disputes by excluding the jurisdiction of the Civil Court, in respect of any dispute arising out of any action of the Central Government, Nominated Authority or Commissioner of payment or designated custodian, or any dispute between the successful bidder or allottee and prior allottee arising out of any issue connected with the 2015 Act, for adjudication by the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957.

54. Thus, the above sections of 2015 Act were elaborately discussed by the learned Arbitrator. It was held that the 2015 Act, was enacted with the object to give protections to the Central Government, allottees, successful bidders, Banks and financial institutions and other secured creditors referred to therein and also the third parties who had contracted with the prior allottee in respect mining of the coal mines referred to in Schedule I and Schedule II of the 2015 Act, from the rigours of a void contract by shifting the liability to the prior allottees under the various contracts as their personal liability. It was held that the 2015 Act, was enacted primarily to give remedy to those remediless parties, except the prior allottees before different fora, by treating the liabilities under the contract as personal liability of the prior allottee subject to the restriction, if any, imposed by the 2015 Act.

55. The learned Arbitrator held that, so far as a third party, like the present claimant who had contracted with the prior allottee for implementation of the mining contract was concerned, its remedy was not covered under Section 27 of 2015 Act. The language used in sub-section (1) of Section 27 justifies such finding. Such claim should be made either before the Civil Court or before the Arbitral Tribunal, if there was any such agreement between the parties to the extent indicated in the 2015 Act. The contention of the learned Advocate General with regard to the alternative remedy under Section 27 of the 2015 Act was rightly negated by considering the provisions of Section 27 of 2015 Act. Paragraph 30 of the Award is quoted below:-

“30. Thus, the above Sections of the 2015 Act are enacted with the object to give protections to the Central Government, allottees, successful bidders, Banks and financial institutions and other secured creditors referred to therein and also the third parties who have contracted with the prior allottee in respect mining contract of coal mines referred to in Schedule I and Schedule II of the Act from the rigour of a void contract entered into by the Central Government and the prior allottees by shifting the liability to the prior allottees under the various contracts as their personal liability. The above facts clearly indicate that the Parliament was quite conscious of the position of law that if a contract is void by reason of violation of Section 23 of the Contract Act, the parties to it and also the parties to any other contracts in aid of or for implementation of such void contract are remediless and consequently, has enacted the 2015 Act primarily to give remedy to those remediless parties except the prior allottees before different forums by treating the liabilities under the contract as personal liability of the prior allottee subject to the restriction, if any, imposed by the 2015 Act. So far as the third parties like the present claimant who had contracted with the prior allottees for implementation of the mining contract are concerned, their remedy is not covered under Section 27 of 2015 Act as it appears from the language used in sub-section (1) of Section 27, and thus, to be enforced either before the civil court or before Arbitral Tribunal, if there is any such agreement between the parties to the extent indicated in the 2015 Act. Thus, this Tribunal does not find substance in the contention of the learned Advocate for the Respondent that the present disputes are also covered under Section 27 of the Act.

The Respondent in this proceeding has given a short note of submission on the present aspect of the matter regarding the scope of remedy of the contracting parties with the prior allottees and the same is quoted below:

“Various provisions of the Coal Mine (Special Provisions) Act, 2015 has only protected the right, title and interest of the successful bidder / allottee. However only Section 11 (2) of the said Act has specified that in the event a successful bidder or allottee elects not to adopt or continue with existing contract which had been entered into by the prior allottee with third parties, in that case all such contracts which have not been adopted or continued shall cease to be enforceable against the successful bidder or allottee in relation to Schedule-I Coal Mine and the remedy of such contracting parties shall be against the prior allottee.

In the present case, the respondent is the prior allottee and claimant is the contracting party. The term "remedy" and its

procedure for recovery has been defined in Section 14 of the said Act. Sub-Section 1, Section 14 specify that- notwithstanding anything contents in any other Law for the time being in force, no proceeding, order of attachment, distress, receivership, execution or the like suits for recovery for money, enforcement of a security or guarantee (except as otherwise provided for under this act) prior to the date of commencement of this act shall lie or be proceeded further with and no remedies shall be available against the successful bidder, or allottee, as the case may be, or against the land and mines infrastructure in respect of Schedule - I Coal Mine.

Sub-Section 2 of Section 14 specify that- the proceeding as referred to in Sub-Section 1 shall continue against the prior allottee but shall not be maintainable or continued against the land or mines infrastructure of Schedule - I Coal Mine or the successful bidder of allottee, pursuant to this Act.

According to Section 14(3) of the Coal Mine (Special Provision) Act, 2015 every liability of any prior allottee in relation to a Schedule I Coal Mine in respect of any period prior to the vesting order or allotment order shall be the liability of such prior allottee and shall be enforceable against it and not against successful bidder or allottee or the Central Government. In the present case the liability of the prior allottee being respondent herein prior to the vesting order is only restricted to the land advance given by the claimant in favour of the respondent around Rs. 33.50 crores. Therefore the claim of the claimant against the respondent can be sustained / enforceable with regard to the land advance only, which the respondent has admitted in its SOD. So far as the other claims are concern all are related to sharing of amount out of an illegal allotment of coal block and interpretation of various clauses of the illegal agreement and enforcement thereof which can not be done according to the Indian Contract Act.

Therefore, in order to maintain a proceeding by the contracting party in terms of Section 11(2) of the Coal Mine (Special Provision) Act, 2015 there must be a proceeding against the prior allottee by the contracting party on the day of commencement of the Act. Whereas in the present case, the instant dispute has been raised at the end of 2017. Therefore, the claimant has no right / remedy against the respondent according to the Coal Mine (Special Provision) Act, 2015.

The remedy of the claimant against the respondent, if any, the same is the contractual and is covered under the Indian Contract Act. Needless to mention here that various agreement/contracts executed between the parties were the subsequent events of an illegal allotment of Coal Block by the Ministry of Coal in favour of the respondent. Therefore, any agreement that was executed for implementing the illegal

allocation of Coal Block is also illegal and cannot be enforceable by any of the parties.

As a consequence of the illegal allocation of Coal Block, the claimant as well as the respondent both have been benefited. The claimant received much more benefits than the respondent which would be evident from the detail breakup of the sale proceeds of coal which has been distributed between the parties.”

(Emphasis supplied)

In the opinion of this Tribunal, the above interpretation of the provisions of the 2015 Act is wholly misconceived for the following reasons:

First, the submission that “Various provisions of the Coal Mine (Special Provisions) Act, 2015 has only protected the right, title and interest of the successful bidder / allottee” is totally without basis. On the other hand, this Tribunal has already pointed out that except the interest of prior allottees, the interests of the other stake holders involved in the mining business pursuant to illegal allotment have been protected as will appear from a mere reading of the provisions of 2015 Act. In the very second sentence of the written submission, the Respondent has admitted that if a case is covered by Section 11(2) of the 2015 Act, the remedy of the contracting party is only against the prior allottee. There is no dispute that the Respondent is a prior allottee and the Claimant is a contracting party with the prior allottee and that the present disputes are within the ambit of Section 11(2) of the 2015 Act as the successful bidder or the allottee has not agreed to adopt the contract between the Claimant and the Respondent.

Secondly the submission of the Respondent that “The term “remedy” and its procedure for recovery has been defined in Section 14 of the said Act.” is an absurd contention inasmuch as, there is no definition of “remedy” given in the entire 2015 Act although some other terms are defined in Section 3(1) of the above Act. Moreover, Section 14(1) of the 2015 Act does not protect the interest of the prior allottee in any way but it protects the interest of the successful bidders or allottees or against the land and mine infrastructure in respect of Schedule 1 coal mines. The present proceeding against the prior allottee is, therefore, outside the scope of Section 14(1). It is a wrong submission of the Respondent that the claim of land advance against the Respondent by the Claimant falls within Section 14(1) but is really covered under the scope of Section 11(2) of the Act. Lastly, it is equally preposterous to submit that “in order to maintain a proceeding by the contracting party in terms of Section 11(2) of the Coal Mine (Special Provision) Act, 2015 there must be a proceeding against the prior allottee by the contracting party on the day of commencement of the Act”

because in that event the object of giving remedy to the contracting third party against a prior allottee under Section 11(2) of the Act would be totally frustrated as would appear from the language used in Section 11(2) which is quoted below:

(2) In the event that a successful bidder or allottee elects not to adopt or continue with existing contracts which had been entered into by the prior allottees with third parties, in that case all such contracts which have not been adopted or continued shall cease to be enforceable against the successful bidder or allottee in relation to the Schedule I coal mine and the remedy of such contracting parties shall be against the prior allottees.

(Emphasis supplied).

If the intention of the Parliament was to give remedy only to pending proceeding on the date of commencement of the 2015 Act as contented by the Respondent, in that event, the Parliament would not have used future tense in the sub-section (2) of Section 11 by using the phrase “in the event a successful bidders or allottees elects” or the word shall”.

Thus, this Tribunal does not find substance in the contention of the learned Advocate for the Respondent raised in the written notes.”

56. The claimant was neither the successful bidder nor an allottee or prior allottee. The dispute between the parties arose out of a contract entered between the parties, prior to the promulgation of 2015 Act, which was a void contract.

57. Learned Advocate General submitted that, the provisions of 2015 Act, had only protected the right, title and interest of the successful bidder/allottee. Such contention is not correct. Section 11(2) of the 2015 Act provided that, in the event a successful bidder or allottee elected not to adopt or continue with the existing contract which had been entered into between the prior allottee, i.e., (Corporation) and a third party (claimant), all such contracts which had been adopted or continued would cease to be enforceable against the successful bidder or allottee in relation to Schedule-I

coal mines and the remedy of such contracting party (claimant) shall be against the prior allottee (Corporation).

58. Section 14(2) provided that, the proceeding as referred in sub-section (1) shall continue against the prior allottee, but shall not be maintainable or continued against the land or mines infrastructure of Schedule –I Coal Mine or the successful bidder or allottee, pursuant to the 2015 Act. Section 14(3) of the 2015 Act, provided that every liability of any prior allottee in relation to a Schedule I coal mine in respect of any period prior to the vesting order or allotment order shall be the liability of such prior allottee and shall be enforceable against it and not against a successful bidder. Thus, the learned Arbitrator opined that, in the present case Section 14(3) must apply and the claim of the claimant against the respondent could be sustained/enforced with regard to the land advance, which the respondent had admitted in its statement of defence.

59. The contention of the learned Advocate General that the provisions of 2015, Act had only protected the right, title and interest of the successful bidder/allottee, was dealt with by the learned Arbitrator. The Arbitrator held that, except for the interest of the prior allottee, the interest of all other stake holders involved in the mining business had been protected by the 2015 Act. The learned Arbitrator held that Section 14 of 2015 Act, did not protect the interest of the prior allottee in any way. It protected the interest of the successful bidder/allottee in respect of the land and mine infrastructure in under Schedule I coal mines. The proceeding against the prior allottee was therefore outside the scope of Section 14(1). The

submission of the Corporation that the claim of land advance by the claimant fell within the Section 14(1) was negated. The learned Arbitrator held that the claim was really covered under Section 11(2) of the 2015 Act. The further contention of the Corporation that, in order to maintain a proceeding by the contracting party in terms of Section 11(2) of the 2015 Act, pendency of a proceeding against the prior allottee by the contracting party on the date of commencement of the Act was not mandatory, was rightly rejected by the learned Arbitrator. It was held that the object of giving remedy to the contracting third party against a prior allottee under Section 11(2) of the Act would be totally frustrated if such contention was accepted. The learned Arbitrator held that, if the intention of the Parliament was to provide a remedy only to proceedings pending on the date of commencement of the 2015 Act, as contented by the Corporation, in that event the Parliament would not have used the phrase, “the remedy of such contracting parties shall be against the prior allottees” in Section 11(2) of the 2015 Act.

60. The legislature left it open to the third party (claimant) to proceed against the Corporation (prior allottee) for claims arising out of the contract, in the event the successful bidder or the allottee, did not adopt the contract. The Parliament had consciously used a future tense in sub-section 11(2) by using the phrase “in the event that the successful bidder or allottee elects not to adopt or continue with the existing contracts”. Thus, the intention of the legislature was rightly interpreted by the learned Arbitrator to hold that, if the successful bidder or the allottee did not adopt the existing contract entered into between the claimant and the Corporation in that event, the

contract would not be enforceable against the successful bidder or the allottee, but the remedy of such contracting party (claimant) shall be against the prior allottee i.e., the Corporation.

61. The views expressed by the learned Arbitrator were plausible views. The findings are not patently illegal. The interpretations of law are not found to be wholly misconceived. Moreover, the preamble to the 2015 Act provides that the Act was also promulgated to deal with matters incidental to and connected with allocation of coal mines and vesting of right title and interest of successful bidders and allottees pursuant to the decision of the Hon'ble Supreme Court. Reference is made to the following decisions in support of the contention that an award should not be set aside if the views of the Arbitrator are possible views.

62. In ***Hindusthan Construction Company Limited vs National Highways Authority of India*** reported in **(2024) 2 SCC 613**, the Hon'ble Supreme Court held that, even if a second view is possible, the court should accept the view of the arbitrator as a possible view. The relevant portions of the said judgment are quoted below :-

“26. The prevailing view about the standard of scrutiny — *not judicial review*, of an award, by persons of the disputants' choice being that of their decisions to stand — and not interfered with, (save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, *perverse*, as to qualify for interference, courts have to necessarily choose the path of *least interference, except when absolutely necessary*). By training, inclination and experience, Judges tend to adopt a corrective lens; usually, commended for appellate review. However, that lens is unavailable when exercising jurisdiction under Section 34 of the Act. Courts cannot, through process of primary contract interpretation, thus, create pathways to the kind of review which is forbidden under Section 34. So viewed, the Division Bench's approach, of appellate

review, twice removed, so to say (under Section 37), and conclusions drawn by it, resulted in displacing the majority view of the tribunal, and in many cases, the unanimous view, of other tribunals, and substitution of another view. As long as the view adopted by the majority was plausible — and this Court finds no reason to hold otherwise (because concededly the work was completed and the finished embankment was made of composite, *compacted* matter, comprising both soil and fly ash), such a substitution was impermissible.

27. For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly.

The proposition was placed in *State of U.P. v. Allied Constructions* [*State of U.P. v. Allied Constructions*, (2003) 7 SCC 396] : (SCC p. 398, para 4)

“4. ... It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the fact-situation obtaining therein. It is submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for the arbitrator to determine (see *Sudarsan Trading Co. v. State of Kerala* [*Sudarsan Trading Co. v. State of Kerala*, (1989) 2 SCC 38]). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law.”

28. This enunciation has been endorsed in several cases (Ref. *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181]). In *MSK Projects (I) (JV) Ltd. v. State of Rajasthan* [*MSK Projects (I) (JV) Ltd. v. State of Rajasthan*, (2011) 10 SCC 573 : (2012) 3 SCC (Civ) 818] it was held that an error in interpretation of a contract by an arbitrator is “*an error within his jurisdiction*”. The position was spelt out even more clearly in *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , where the Court said that : (*Associate Builders case* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42)

“42. ... 42.3. ... if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.”

63. The Court, under Section 34 of the A & C Act cannot correct the award, because it is not a court of appeal. In ***Consolidated Construction Consortium Limited vs Software Technology Parks of India*** reported in **2025 INSC 574**, the same legal principles were reiterated. The following portions are quoted below :-

“23. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

24. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act.

25. Keeping the above in view, let us now deal with the order of the learned Single Judge dated 02.01.2019 passed under Section 34 of the 1996 Act.

26. In the aforesaid order, learned Single Judge noted that the contract work was required to be executed within a period of 10 months. Appellant could not complete the work within the contract period due to land slides and rains. Ultimately, appellant could complete the work on 30.11.2007 by seeking extension of time which was granted by the respondent. There is no complaint about the construction. Learned Single Judge also noted that there were rains and land slides during the contract period which is not in dispute. Thereafter, learned Single Judge observed as under:

If the building had been erected and there were landslides, it would affect the building constructed and there would not only have been loss of money, but also loss of lives and that the 1st respondent should thank the stars that no untoward event took place.

27. Learned Single Judge also observed that clause 26 of the contract agreement could not be read in isolation without reference to clause 27. The fact that appellant was allowed to carry on the contract work and to subsequently complete the same cannot be denied. Once there is extension of time, there cannot be a narrow interpretation to clause 26. Purpose of extension of time was only for completion of work. Extension of time and levy of liquidated damages cannot go hand in hand. Contention of the respondent would have been acceptable had there been no extension in time or the work remained incomplete even after the extended period. In such an event, respondent would have been justified to levy and recover liquidated damages. Once the appellant had completed the work during the extended period of time, claim of liquidated damages by the respondent could not be accepted. Therefore, the arbitral award dated 10.05.2010 was set aside.

28. We are afraid learned Single Judge had clearly gone beyond the grounds provided in Section 34 of the 1996 Act to set aside the arbitral award. Learned Single Judge exceeded the jurisdiction under Section 34 of the 1996 Act. There was no justification for setting aside the arbitral award by taking a different view. View taken by the arbitral tribunal is certainly a possible and plausible view. A different interpretation of clause 26 other than the one taken by the arbitral tribunal is possible but that will not bring the challenge to the arbitral award within the four corners of Section 34. In any view of the matter, mere setting aside of the arbitral award did not confer any benefit to the appellant. In the circumstances, the Division Bench was

justified in reversing the order of the learned Single Judge under Section 37 of the 1996 Act.”

64. Before this court, the learned Advocate General placed reliance on the report of the select committee of The Coal Mines (Special provisions) Bill, 2015 in order to lay emphasis on the purpose behind the Bill, and the relevant portion is quoted below:-

“1.6 The Coal Mines (Special Provisions) Bill, 2015 provides for allocation of coal mines and vesting of the right, title and interest in and over the land and mining infrastructure together with mining leases to successful bidders and allottees through a transparent bidding process with a view to ensure continuity in coal mining operations and production of coal, and for promoting optimum utilization of coal resources consistent with the requirement of the country in national interest.

Further, the Bill, having regard to the coordinated and scientific development and utilization of coal resources consistent with the growing requirement of the country, prescribed the conditions to rationalise the coal sector for mining operations, consumption and sale.”

65. The learned Advocate General referred to the paragraph Nos. 2, 2.1, 2.3, 2.6, 2.8, 4.8, 4.6, 4.13.1, 4.19, of the report to substantiate that the learned Arbitrator had wrongly imported the provisions of the 2015 Act in order to allow some of the claims of the third party, although the protection under the 2015 Act was given only to the successful bidder or allottee, and the Act was promulgated in public interest and to enable the Central Government to take immediate action to allocate coal mines to successful bidders and allottees, keeping in view the energy security of the country and to minimize any impact on core sectors such as steel, cement and power

utilities which were vital for the development of the nation. The need was to protect public interest and ensure the supply of energy to the core sectors.

66. In ***Manohar Lal Sharma (2)***, the Hon'ble Apex Court held as follows:-

“1. On 25-8-2014 [*Manohar Lal Sharma v. Principal Secy.*, (2014) 9 SCC 516] the judgment was delivered in these cases and it was held, inter alia, that the allotment of coal blocks made by the Screening Committee of the Government of India, as also the allotments made through the Government Dispensation Route are arbitrary and illegal. Since the conclusion arrived at would have potentially had far-reaching consequences, on which submissions were not made when the case was heard, the question of what should be the consequences of the declaration was left open for hearing.

2. The relevant paragraphs of the judgment dated 25-8-2014 [*Manohar Lal Sharma v. Principal Secy.*, (2014) 9 SCC 516] read as follows: (*Manohar Lal Sharma case* [*Manohar Lal Sharma v. Principal Secy.*, (2014) 9 SCC 516] , SCC p. 613, paras 164-166)

“164. The allocation of coal blocks through Government Dispensation Route, however laudable the object may be, also is illegal since it is impermissible as per the scheme of the CMN Act. No State Government or public sector undertakings of the State Governments are eligible for mining coal for commercial use. Since allocation of coal is permissible only to those categories under Sections 3(3) and (4), the joint venture arrangement with ineligible firms is also impermissible. Equally, there is also no question of any consortium/leader/association in allocation. Only an undertaking satisfying the eligibility criteria referred to in Section 3(3) of the CMN Act viz. which has a unit engaged in the production of iron and steel and generation of power, washing of coal obtained from mine or production of cement, is entitled to the allocation in addition to Central Government, a Central Government company or a Central Government corporation.

165. In this context, it is worthwhile to note that the 1957 Act has been amended introducing Section 11-A w.e.f. 13-2-2012. As per the said amendment, the grant of reconnaissance permit or prospecting licence or mining lease in respect of an area containing coal or lignite can be made only through selection through auction by competitive bidding even among the eligible entities under Section 3(3)(a)(iii), referred to above. However, the government companies, government corporations or companies or corporations, which have been awarded power projects on the basis of competitive bids for tariff (including Ultra Mega Power

Projects) have been exempted of allocation in favour of them is not meant to be through the competitive bidding process.

166. As we have already found that the allocations made, both under the Screening Committee Route and the Government Dispensation Route, are arbitrary and illegal, what should be the consequences, is the issue which remains to be tackled. We are of the view that, to this limited extent, the matter requires further hearing.”

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5. Therefore, the affidavit is quite clear that 40 coal blocks are already producing coal and 6 coal blocks are in a position to produce coal virtually with immediate effect. The question is whether the allotment of these coal blocks should be cancelled or not.

6. It was submitted by the learned Attorney General that after the declaration of law and the conclusion that the allotment of coal blocks was arbitrary and illegal, only two consequences flow from the judgment [*Manohar Lal Sharma v. Principal Secy.*, (2014) 9 SCC 516] . The first is the natural consequence, that is, the allotment of the coal blocks (other than those mentioned in the judgment) should be cancelled and the Central Government is fully prepared to take things forward. The second option is that 46 coal blocks (as above) be left undisturbed (subject to conditions) and the allotment of the remaining coal blocks should be cancelled.

7. Expounding on the alternative consequence, it was submitted that Coal India Limited (CIL), a public sector undertaking, can take over and continue the extraction of coal from these 44 coal blocks without adversely affecting the rights of those employed therein. However, it was submitted that CIL would require some time to take over the coal blocks and manage its affairs for continuing the mining process. Effectively therefore, it was submitted that even if the allotment of these 44 coal blocks is cancelled, the Central Government can ensure that coal production will not stop.

8. The learned Attorney General submitted that all the allottees of coal blocks should be directed to pay an additional levy of Rs 295 per metric tonne of coal extracted from the date of extraction as per the Report of the Comptroller and Auditor General (CAG) dealing with the financial loss caused to the exchequer by the illegal and arbitrary allotments. It was further submitted that in the case of allottees supplying coal to the power sector, they should be mandated to enter into power purchase agreements (PPAs) with the State utility or distribution company (as the case may be) so that the benefit is passed on to the consumers.

* * *

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10. To put the suggestions of the learned Attorney General in perspective, they are summarised below:

10.1. All coal block allotments (except those mentioned in the judgment) may be cancelled.

10.2. Alternatively,

(a) extraction of coal from the 40 functional and 6 “ready” coal blocks may be permitted and the remaining coal blocks be cancelled;

(b) the allottees of all 46 coal blocks be directed to pay an additional levy of Rs 295 per metric tonne of coal extracted from the date of extraction; and

(c) the allottees of coal blocks for the power sector be also directed to enter into PPAs with the State utility or distribution company as the case may be.

* * *

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13. The consequences of cancellation of the coal blocks were categorised by Mr Venugopal under various heads and these are detailed below:

13.1. It was submitted that government companies are not in a position to supply the required quantity of coal; in fact, a large number of applications are pending with the Ministry of Coal for long-term coal linkages; power stations have a supply of less than one week of coal and therefore there are possibilities of power outages; as many as 10 power plants of National Thermal Power Corporation (NTPC) and Damodar Valley Corporation (DVC) have been shut down because of shortage of coal supply by Coal India Ltd. (CIL); there is an issue of poor quality of coal supplied by CIL; huge investments up to about Rs 2.87 lakh crores have been made in 157 coal blocks as on December 2012; investments in end-use plants have been made to the extent of about Rs 4 lakh crores; the employment of almost 10 lakh people is at stake; end-use plants have been designed keeping in mind the specification of coal in the allocated coal block and cancellation of the coal blocks would result in the end-use plant becoming redundant; loans to the extent of about Rs 2.5 lakh crores given by banks and financial institutions would become non-performing assets; State Bank of India may suffer a loss of up to Rs 78,263 crores which is almost 7.9% of its net worth for the financial year 2013; other public sector banks such as Punjab National Bank and Union Bank will receive a massive setback; public sector corporations like Rural Electricity Corporation and Power Finance Corporation have an even higher exposure than banks; there will be global ramifications of the de-allotments such as a negative impact on investor's confidence; acute distress in some

industries; the country's dependence on coal as a primary fuel source with up to 60% for power generation may result in inflationary trends; 28,000 MW of power capacity will be affected due to de-allocation; closure of coal mines would result in an estimated loss of Rs 4.4 lakh crores in terms of loss of royalty, cess, direct and indirect taxes; coal imports (already very high) will go up even more in FY 2016-2017 to the extent of Rs 1.44 lakh crores (without de-allocation); and on the other hand, the production of coal would substantially increase in case all coal blocks are made operational after the grant of necessary permission.

13.2. It was submitted that the auction of coal blocks would take at least 1-2 years and from past experience, it is unlikely that the auction would be successful due to lack of bids or proper participation; it would take at least 5-6 years for making the auctioned coal blocks operational; in any event (based on the timelines given by the Ministry of Coal in the allocation letters) it would take 36-42 months to develop an open cast mine and about 48-54 months to develop an underground mine; and the commissioning of end-use plants after obtaining various clearances would take a minimum of 3-4 years.

13.3. It was submitted on a positive note that the allottees have invested in basic infrastructure like road, rail links, etc. since the coal blocks allotted to them were in areas where CIL was not interested in making an investment; the allottees have made huge investments in setting up other infrastructure such as schools, hospitals, facilities for clean and potable water, residential colonies, community centres, playground, etc. and in creation of job opportunities; thousands of crores of rupees have already been paid by the coal block allottees by way of direct and indirect taxes and in the form of royalty, cess, etc.; and if the coal blocks are cancelled, the development activities initiated by the allottees would come to a standstill.

13.4. It was submitted that the delay in development of coal blocks is not attributable to the allottees who are actually victims of the faults of the Screening Committee; delays are attributable to various reasons such as administrative delays on the part of the Ministry of Environment and Forests and the Ministry of Coal, the consent by the Pollution Control Boards was not given on time, Court orders, Naxalite issues in some areas, the State Governments directing that mining lease should not be executed, introduction of go/no-go areas or without statutory permission, etc.; this Court has tacitly acknowledged administrative delays in grant of clearances in an order passed on 1-9-2014 in *Samaj Parivartana Samudaya v. State of Karnataka* [(2014) 9 SCC 630] ; the appropriate course of action to adopt would be for this Court

to appoint a committee to examine the peculiar facts of each individual allotment.

13.5. The figure of loss of revenue to the exchequer to the extent of Rs 295 per metric tonne of coal extracted is borrowed from the Report of CAG which Report is contested by the Government of India and is pending consideration before a Parliamentary Committee on Public Undertakings; the Report itself suggested that only a part of the financial gain could have accrued to the national exchequer; the Government of India has not applied its mind while suggesting the figure of Rs 295 per metric tonne and it has only considered the average price of coal as given by CIL for the year 2010-2011 (being Rs 1028 per metric tonne) and that cannot be adopted for earlier financial years; the coal extracted from the blocks allotted are of an inferior quality and the sale price thereof is much lower than the average sale price of CIL; CAG has not taken into consideration underground mines while calculating the alleged financial loss; the cost of production of coal for CIL is less since CIL has economically viable mines as compared to the mines allocated to the private sector which lack infrastructure and have several other problems; and penalty cannot be imposed with retrospective effect since the coal extracted by the allottees has already been utilised for production of power, steel, cement, etc.

67. The Hon'ble Supreme Court held that the conclusion arrived at ***Manohar Lal Sharma (1)*** had far reaching consequences and the question as to what should be the consequence of the declaration made in ***Manohar Lal Sharma (1)*** would be decided later. Thus, it is obvious that the second judgment in ***Manohar Lal Sharma (2)*** was confined to the consequences of the cancellation of the coal block and most of the suggestions of the Attorney General were accepted, including the suggestion that the allottees of the coal block must pay a sum of amount of Rs. 295 per metric ton of coal extracted as an additional levy which was a compensatory amount to be paid by the prior allottee on the assessment by the CAG.

68. The learned Arbitrator also interpreted that, the 2015 Act provided the consequences of the decision of the Hon'ble Supreme Court. He rightly held

that the Act was promulgated to deal with the far-reaching consequences of the cancellation of the allocation of coal blocks and was correct in holding that the non-obstante clauses in Sections 11, and 14 were intentionally used by the Parliament to somewhat protect other stakeholders and third party contractors.

69. The Arbitrator thereafter considered each of the claims on the principles discussed hereinabove. With regard to the claim no. (a), i.e. the amount wrongly appropriated on account of additional levy as pleaded in paragraph 40 of the SOC, the learned Arbitrator held that the additional levy was imposed by the Supreme Court on the prior allottee, which was subsequently incorporated in the 2015 Act as an additional levy. The 2015 Act clearly stipulated that the responsibility for payment of additional levy would be on the prior allottee. After September 24, 2014, for sale of coal till March 31, 2015, the Corporation had recovered proportionate additional levy on the quantity of coal sold from the end use customer. The very conduct of the Corporation made it clear that the additional levy had to be borne either by the Corporation or by the end use customer, from whom the Corporation was entitled to recover the additional levy. Even in terms of the contract, the Corporation was not entitled to raise a claim on account of the additional levy. The learned Arbitrator elaborately discussed the SOC and the SOD on this issue and also the documents submitted by the parties with regard to the demand for additional levy. The Corporation relied on the Annexure C of the agreement dated May 31, 2006 and Annexure C 1 of the amended agreement dated March 31, 2010 thereby emphasising that

additional levy would fall within the ambit of any other charge arising out of the tenure of contract and as such, any other charge under the contract would be the liability of the claimant. Accordingly, it was urged that, the full amount of the additional levy was payable by the claimant to the Corporation, which the Corporation would in turn remit to the Central Government. The claimant had denied such liability, inter alia, contending that the judgment of the Supreme Court cast the responsibility for payment of the additional levy on the prior allottee (the Corporation) and by no stretch of imagination could the claimant be saddled with such liability. The learned Arbitrator dealt with the submissions of the parties, the exhibits, letters exchanged between the parties and the evidence, to arrive at the finding that while enacting the 2015 Act, the Parliament was quite alive to the factual position that the prior allottees had agreements with the third parties for implementation of the mining arrangements and for the above reasons, had specifically reserved the remedy of the third party, which had an existing contract with the prior allottee. Additional levy was imposed by the Supreme Court for illegal mining. The liability to pay the levy was by way of a compensatory measure for revenue lost on account of illegal coal block allocation. The 2015 Act categorically defined the extent of liability of the aggrieved person who might have been involved in such illegal mining, including prior allottees. The Parliament had specifically fixed the liability to pay compensation for illegal extraction of coal, in the name of additional levy only upon the prior allottee and none else. The legislature was gainfully conscious that there were existing contract of prior allottees with third

parties and others, in respect of mining, which were ultimately found to be illegal. If the intention of the Parliament was also to compel the contracting parties to bear such liabilities, it would have specifically indicated so in the Act. Such liability of prior allottees to compensate the Union Government in the form of additional levy would then be subject to the contract with the third party. Even if it is assumed for arguments sake that the additional levy within the meaning of the 2015 Act would come within the purview of other statutory levy which was not in existence at the time of creation of agreement, but was incorporated in the 2015 Act, even then, the payment of additional levy was the liability of the prior allottees alone. The provision of the 2015 Act would prevail over the terms of the contract between the parties. Reference was made by the learned Arbitrator to the decision of the ***Mannalal Khetan vs. Kedar Nath Khetan*** reported in **(1977) 2 SCC 424** in this regard. The relevant paragraph from the award is quoted below :-

“41. It appears that the Parliament while enacting 2015 Act was quite alive to the factual position that the prior allottees had agreements with the third parties for implementation of the mining arrangements and for the above reason, in the 2015 Act, it has specifically safeguarded the remedy of the third parties which had existing contracts with the prior allottees. As pointed out earlier, regarding additional levies for illegal mining, Supreme Court specifically cast the liability to pay such levies upon the prior allottees as a compensatory measure to the Central Government. The Parliament while enacting 2015 Act, categorically defined the extent of liability of every person who might have been involved in such illegal mining including, prior allottees, secured creditors, banks, third-parties who had contracts with the prior allottees etc. In Section 14(5), the Parliament has specifically fixed the liability to pay the compensation for illegal trading of coal in the name of additional levies only upon the prior allottees and none else, being fully-conscious that there were existing contracts of prior allottees with the third parties and others in aid of illegal, mining. If the intention of the Parliament was to compel also the contracting parties to bear such liability in terms of their contract with the prior allottees, it would specifically indicate that such liability

of the prior allottees to compensate the Union of India in the form of additional levies would be subject to the contract with the third parties. Even if I assume for the sake of argument that the additional levies within the meaning of 2015 Act comes within the purview of other statutory levies which was then not in existence at the time of creation of agreement C-1, in view of the special provision in the subsequently enacted 2015 Act which makes additional levies a liability of the prior allottee alone, the provisions contained in the subsequent legislation will prevail over the terms of the contract between the parties. As pointed out earlier, the following observations of the Supreme Court in the case of Mannalal Khetan v Kedar nath Khetan reported in (1977) 2 SCC 424 = AIR 1977 SC 536 will fortify the above view of this Tribunal that the Clause in C-1 referred to above cannot have overridden effect on Section 14(5) of the 2015 Act by which the proposed additional levy has specifically been made the liability of the prior allottee alone:

"20. It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim *a pactis privatorum publico juri non derogatur* means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no Court can lend its assistance to give it effect. (See *Melliss v. Shirley Local Board*, (1885) 16 QBD 446). What is done in contravention of the provisions of an Act of the Legislature cannot be made the subject of an action." Thus, although by the 2015 Act, a subsequent legislation, the additional levy referred to therein is the liability of the Respondent alone, it cannot by taking aid of C-1 force the Claimant to bear a part of its own burden."

70. Thereafter, the learned Arbitrator dealt with the question whether the additional levy as enacted in the 2015 Act really came within the purview of clause C-1. To appreciate the said issues relevant clause as quoted below is perused :-

"Where Net Selling Price would mean: Gross Selling Price less Royalty, Cess, Surface Rent, Dead Rent and any other duties levied on Coal Mining, Excise Duties, Sales Tax, VAT, GST and other Central and State Government Taxes, as applicable under the law from time to time and any other similar charges duties or Cess or any statutory levies which may become applicable during the tenure of the contract."

71. The Arbitrator held that expressions “royalty”, “cess”, “excise duties” etc. including other statutory levy were incorporated in C-1, with the understanding that during the running of a lawful business of coal mining and when the tenure of the contract continued, if those were levied by the appropriate government, the amount would be deducted from the gross sale price, to arrive at the figure of net price. What was pointed out by the Supreme Court was that the prior allottees were running illegal business of coal mining as in the present case, and running of such illegal business had caused losses to the nation. Thus, the prior allottees were directed to compensate the Union of India, upon imposition of compensatory amount in the name of additional levy. Consequently, any levy imposed by the Parliament for running of the illegal business by violating the law of the land as a compensatory measure, could not come within the purview of C-1. The learned Arbitrator held that, the contract made the claimant bound by any new enactment, rules, regulations or orders which may be applicable to the mining activity. In such case, the claimant would be obliged to implement the same without any delay. The clause provided that if specific rules, orders or regulations were published or notified with regard to mining activities, the claimant should be responsible for the same. Therefore, additional levy under the 2015 Act could not be equated with a liability arising out of a new enactment or as any other statutory levy within the meaning of C-1. Hence, the Arbitrator held that illegal deduction of the amount of Rs. 54,91,79,927/- from the dues of the claimant should be refunded. I find the reasoning and interpretation of the statutory provisions as also the contents

of C-1 to be rational and logical. Section 14(5), 16 and 22 of the 2015 Act are quoted below for appreciation of the above issue:-

14(5) The additional levy imposed against the prior allottees of Schedule II coal mines shall continue to remain the liability of such prior allottees and such additional levy shall be collected by the Central Government in such manner as may be prescribed.

* * *

* * *

16. Valuation of compensation for payment to prior allottee.—(1) The quantum of compensation for the land in relation to Schedule I coal mines shall be as per the registered sale deeds lodged with the nominated authority in accordance with such rules as may be prescribed, together with twelve per cent. simple interest from the date of such purchase or acquisition, till the date of the execution of the vesting order or the allotment order, as the case may be.

(2) The quantum of compensation for the mine infrastructure in relation to Schedule I coal mines shall be determined as per the written down value reflected in the statutorily audited balance sheet of the previous financial year in accordance with such rules and in such manner as may be prescribed.

(3) If the successful bidder or allottee is a prior allottee of any of the Schedule I coal mines, then, the compensation payable to such successful bidder or allottee shall be set off or adjusted against the auction sum or the allotment sum payable by such successful bidder or allottee, as the case may be, for any of the Schedule I coal mines.

(4) The prior allottee shall not be entitled to compensation till the additional levy has been paid.

* * *

* * *

22. Realisation of additional levy.—If a prior allottee of Schedule II coal mine fails to deposit the additional levy with the Central Government within the specified time, then, such additional levy shall be realised as the arrears of land revenue.

72. The findings of the learned Arbitrator are quoted below:-

“42. Now this Tribunal proposes to decide the question whether the additional levies indicated in the 2015 Act really comes within the purview of C-1. To appreciate the above question, it will appropriate to refer the provisions of C-1 which is quoted below:

"Where Net Selling Price would mean: Gross Selling Price less Royalty, Cess, Surface Rent, Dead Rent and any other duties levied on Coal Mining, Excise Duties, Sales Tax, VAT, GST and other Central and State Government Taxes, as applicable under

the law from time to time and any other similar charges duties or Cess or any statutory levies which may become applicable during the tenure of the contract".

All the above expressions like Royalty, Cess, excise duties etc including other statutory levies as underlined above were incorporated in C-1 with the understanding that for running of a lawful business of coal mining if those are levied by the appropriate Government during the tenure of the Contract, those amount would be deducted from the Gross Sale Price to arrive at a figure of net price. All those items mentioned in C-1 in the form of various levies are imposed for carrying on any lawful business. But as pointed out by the Supreme Court, the prior allottees were running illegal business of coal mining in the present case and for running such illegal business causing loss of the Nation, the Supreme Court directed the prior allottees to compensate the Union of India with a specified amount and the Parliament enacted 2015 Act by imposing that compensatory amount in the name of additional levy. The persons who are, on the other hand, carrying lawful business of coal mining are not required to pay such additional levies. Thus, the additional levies mentioned in the 2015 Act does not stand in the same platform with Royalty, Cess, Excise duties etc. mentioned in C-1 which are imposed by the appropriate legislature for running of a lawful business. Consequently, any levy imposed by the Parliament for running of illegal business by violating the law of the land as compensatory measure upon a limited number of delinquent persons doing such illegal act was never contemplated in C-1. The parties in this case while arriving at the agreement mentioned as C-1, clearly intended to deduct all amount levied by the competent legislature for running of a lawful business of coal mining from the gross sale price to arrive at the figure of net sale price but it was never agreed to deduct compensation payable by the Respondent for violating any law of the land. The above interpretation of this Tribunal will find support from the averments made in paragraph 36 of the SOD while opposing claim (j) of paragraph 115 by the claimant. The relevant part of paragraph 36 of SOD is quoted below:

"The cancellation of Trans Damodar coal mines, allotted in favour of the Respondent in terms of the order dated 24.09.2014 of the Hon'ble Supreme Court of India, followed by the promulgation of Coal Mining (Special Provisions) Act 2015, was an act beyond the control of the Respondent. The order of the Hon'ble Supreme Court and the promulgation of Coal Mines (Special Provisions) Act 2015 are Change in Law. Para XVIII on Change in Law in the Contract Agreement dated 31.05.2006, executed by and between the Respondent and the Claimant states the following:-

"During the period of Agreement, if any new Act, Rules, Regulations and Order come into force, which is applicable to the Mine, the Contractor (the Claimant herein) will be duty bound to implement the same without delay."

(Emphasis supplied).

The above clause of the contract between the parties specifically states that the Contractor will be bound by any new enactments which are applicable to the Mine, meaning thereby, mine in general. The 2015 Act is not applicable to other mines than those mentioned in the schedules of the Act. This 2015 Act is applicable only for errant mining activities carried on by limited mine owners as specified above. Therefore, additional levies provided in the 2015 Act which are applicable only to the mines specified in the Schedules of the said Act cannot be said to a new enactment applicable to all coal mines and as such, are not coming within the expression "other statutory levies" within the meaning of C-1. Moreover, even in the new statute, it is specifically provided that the additional levies would be the liability of prior allottee.

Consequently, this Tribunal holds that the Respondent illegally deducted the amount mentioned in Claim (a) amounting to Rs. 54,91,79,927.00/- as an existing levy as if those are applicable to the persons doing mining of coal in general and the Claimant is entitled to the above amount as there is no dispute as regards the above figure."

73. Claim (b) amounting to Rs. 9,39,00,938/-, was for refund of the amount imposed as penalty for the shortfall in production in the financial year 2013-2014. The learned Arbitrator relied on the submissions of the parties, both oral and documentary evidence and came to the finding that the failure on the part of the claimant for not achieving yearly targeted extraction was on account of the non-compliance of the reciprocal obligation by the Corporation in failing to hand over unencumbered site for extraction. Relevant portions of the award are quoted below :-

"49.

.....

The above resolution of the Board of the Respondent itself suggests that the Respondent was satisfied that there was substance in the defences of the Claimant and for that reason, instead of imposing the penalty, it enhanced the target of mining and decided not to take penalty for the year 2013-14 on condition that the Claimant would achieve 50% of the added target of 2.75 lakh tonne in the next year which amounts to 1.375 lakh tonne although for the purpose of extraction of more than 1 lakh tonne of coal per year, environment clearance was necessary. It appears that in the year 2014-15, the Claimant had completed the production target of 1 million ton of coal by end of February, 2015/beginning March 2015 and they were in the process of mining more coal to meet the target as decided by the Respondent in its 213th Board Meeting for waiver of the penalty on account of shortfall in production in 2013-14. It further appears that for extraction of more coal than 1 million ton a year, Environmental Clearance was mandatory for extraction of additional quantity and it was the duty of the Respondent to obtain such permission by making application to the Government of India. The RW-1 has admitted that the respondent applied for such clearance but approval from MOEF for extraction of additional quantity of coal was not obtained. Therefore, in absence of clearance from the MOEF and also in view of the judgment of the Hon'ble Supreme Court cancelling the allotment of coal mines, the Respondent vide its letter Ref: No.MDTC/TDOCP/ENV/254 dated 26.02.2015 and also vide letter dated 03.03.2015 called upon the Claimant to stop coal-production after the Claimant reached the peak rated capacity of 1 million ton of coal at Transdamodar Sector Coal Block in the financial year 2014-15.(vide letters dated 26.02.2015 and 03.03.2015 of the Respondent marked as Exhibit, 'AJ' of the SOC at page 795 of Volume IV.). Thus, there was no fault on the part of the Claimant for not complying with the Resolution of the Board of conditional waiver of the penalty.

Moreover, this Tribunal finds that it has been established from the materials on record that the reasons for non-achievement of yearly target was fully established from the materials on record. At the relevant time, only 282 acres of land was in possession of the Claimant out of more than 600 acres of mining area. The plea of replacement of water pipeline affecting extraction of coal from substantial portion has also been proved. In such circumstances, there was no justification of imposing even additional target as a condition of waiver by the Board's Resolution. Even, the Respondent could not produce any further resolution of its Board showing that it had subsequently passed any specific reasoned order holding non-compliance of the earlier order of the Board imposing conditional waiver.

50. On consideration of the entire materials on record this Tribunal holds that there was no violation on the part of the Claimant for not achieving the yearly targeted extraction and it was the Respondent who was responsible for non-compliance of its reciprocal obligation of handing over unencumbered site for extraction. The Claimant is, thus, entitled to Claim (b) of SOC amounting to Rs. 9,39,06,983.00 towards the refund of the amounts illegally imposed as penalty for the alleged shortfall in production in FY 2013-14.

74. The next consideration was claim 'c' of the SOC for an amount of Rs. 1,67,92,183/- towards refund of penalty wrongly deducted on account of alleged loss for transportation of coal from mine to railway siding, as averred in paragraph 74 of the SOC. The Arbitrator held that it appeared from the records and was also admitted by the RW1 in cross examination (question no. 223) that, for imposing penalty for the alleged loss in transit, the Corporation had not taken into consideration the weight of the coal sent from the mine head at the Durgapur Freight Terminal Discharge point. According to the procedure of measurement, the quantity of coal loaded in the truck at the mine head should be checked at the freight terminal, in order to ascertain whether the loss was at the instance of the claimant. For the purpose of finding out the liability of the freight centre owner for the loss in transit from the freight centre to the railway station, such measurement was an essential requirement, as the claimant did not have any liability beyond the freight centre. Therefore, by calculating the amount of loss in the total distance between the mine head and the railway station, the loss could not be attributed to the claimant, as it was not possible to ascertain the respective liability of the claimant and the freight centre owner. It could be a possibility that the entire loss in transit was for the fault of the freight centre

owner, who first stored the entire amount of coal in his godown and then re-loaded the coal for the purpose of conveying the same to the railway wagon and during that period, the entire responsibility was of the freight centre owner. The Corporation did not follow the procedure for measurement of loss in transit as mentioned in the tripartite agreement and consequently, the claimant did not get the benefit of 0.5% loss as per agreement between the parties.

75. The answers to the questions 305, 308, 311, 314, 316, given by RW1 were considered. It was held that the Corporation had illegally imposed the penalty for the alleged loss in transit upon the claimant and the claimant was entitled to the relief claimed under (c). Reference is made to the following paragraphs of the award :-

“57.On consideration of the above materials, it appears from the work-order issued by the Respondent to the Claimant dated 31 March 2015, (page 834 of paper book volume IV) that the respondent asked the claimant for transportation of coal from the coal mine up to the private freight terminal owned by Palogix Infrastructure private limited in favour of M/S West Bengal Power Development Corporation Limited and Durgapur Projects Limited with the stipulation that the said order was issued with retrospective effect from 20 September 2013 up to 30 March 2015 and the charges for transportation will be at par with notified CII charges. It was further stipulated that the maximum transit loss allowable for transportation from Mine stockyards to Railway Siding and subsequent loading onto wagons will be 0.5% of the stock transferred from mine. In the event of shortfall beyond 0.5%, the coal value of the excess shortfall will be recovered from the bill of the claimant along with applicable taxes. Clause 8 of the tripartite agreement, however, provides for weighment of coal which is quoted below:

“The basis of measurement of coal coming inside the said Durgapur Freight Terminal will be the measurement as recorded in the computerised weighbridge. The weighbridge shall conform

to standards and shall be examined periodically by an independent agency to test whether it is functioning properly. The weighbridge shall be installed by the FTO at the Unloading Points in adequate numbers and for rake weighment at its own cost. In the presence of both parties, the coal shall be weighed at the said Durgapur freight Terminal discharge point and Railway weighbridge for outward movement of coal. These two weights shall be reconciled. Both weighments shall be jointly signed by representatives of Mine Owners/Hirer and the FTO. For the purpose of billing, however, the recorded weight of the railway weighbridges shall be final.

The procedure for measurement shall be that the loaded truck shall pass through the weighbridge before unloading the coal and after unloading of the same, the truck shall pass through the weighbridge for recording actual weight of such coal. Measurement is to be made only in the presence of the representative of Mine Owner. The weighment shall be recorded in ERP system of the Mine Owner for such purpose. The weighing system required to be synchronized with ERP system of Mine Owner for online recording which shall be final and binding on both the parties. Such dailies statement will form the basis of raising invoices and payment. In the Excess/Short up to 1% of receipt of quantity will be allowable as weighment difference."

58. As it appears from the record and also admitted by the RW-1 in cross-examination(Q-223), for imposing the penalty for the alleged loss in transit, the Respondent has not taken into consideration the weight of the Coal sent from Mine head at the Durgapur freight Terminal discharge point although according to the procedure of measurement, the quantity of coal loaded in the truck at the mine head should be checked at the freight terminal in order to ascertain the loss in transit at the instance of the Claimant. For the purpose of finding out the liability of the freight-center-owner for the loss in transit from freight center to Railway station such measurement is essentially required as the Claimant has no liability beyond freight centre. Therefore, by calculating the amount of loss in the total distance between mine head and the Railway Station, that-loss-cannot be attributable to the Claimant as we are not in position to ascertain the respective liability of the Claimant and the freight-centre-owner. It may be that the entire loss in transit was for the fault of the freight-center-owner who first stored the entire amount of coal in its godown and then reloaded for the purpose of conveying the same to the Railway wagon and during that period, the entire responsibility is of the freight-centre-owner.

Thus, it is well established that the Respondent has not followed the procedure of measurement of loss in transit as indicated in the tripartite agreement and consequently, the Claimant has not got the benefit of 0.5% loss as per agreement between the parties. Moreover, as appearing from the answers given by the RW-1 to Questions nos.305, 308-311,314-316 put to him, that he was constrained to admit that the basis of the above claim was patently illegal and not tenable. This Tribunal, thus, holds that the Respondent has illegally imposed the penalty for the alleged loss in transit upon the Claimant which is baseless and the claimant is entitled to the relief (c) made in paragraph 115 of the SOC amounting to Rs. 1,67,92,192/-.”

76. Next came claims (d) and (e). The questions which the learned Arbitrator decided was, whether the claimant was entitled to Rs. 7,51,48, 652/- towards alleged dues on account of mining charges and commission on the direct sale by the Corporation to the West Bengal Power Development Corporation Limited (WBPDC) and a further sum of Rs. 4,73,45,333/- towards sale to Durgapur Power Limited (DPL). The Arbitrator held that the claimant was entitled to relief under claims (d) and (e) i.e. the claimant was entitled to receive the mining charges and the loss in time as legitimate dues. The defence of the Corporation that WBPDC and DPL were Government Companies and the Corporation was entitled to deviate from the terms of the contract was not tenable, as the contract did not contain any such term, giving exemption from due compliance of the covenants therein, in case of sale to Government Companies. The terms of the contract and the relevant factors were taken into consideration. The findings are quoted below:-

“65. From the above materials on record, it appears that the figure appearing at relief (d) in paragraph 115 showing Rs.7,51,48, 652.00 is not a correct figure having regard to the calculation given in Ext-BA at

pages 908-1059 of the paper book IV and the same should be Rs.73,50,27,745/- as correctly stated in paragraph 87 of the SOC and reiterated by the CW-1 in paragraph 64 of the affidavit of evidence and no cross-examination has been made by the learned counsel for the Respondent suggesting any different sum than the ones claimed by the CW-1 in his affidavit of evidence or any mistake in calculation. There is no dispute that there is specific agreement between the parties covering the present aspect which is quoted below:

"Clause III - Rights, Duties & Obligation Of WBMDTC

1.....

2. WBMDTC will approve all the Buyers recommended by Contractor at its sole discretion and also reserve the right to book orders directly provided that the buyers fulfill the eligibility criteria under the Allotment Letter No. 13016/5/2002-GA dated 14th January 2005 from the Ministry of Coal, Government of India and other guidelines as may be indicated by Government of India, State Government time to time and will pay the price of Coal in full advance by way of DD/PO/ Irrecoverable Letter of Credit in favour of WBMDTC."

The defence of the Respondent in selling coal without taking full advance is as follows:

"(i) Being a government organization, the payment for coal supply from WBPDCCL and DPL were assured;

(ii) The Work Order issued by WBPDCCL and DPL stipulated some payment conditions, which did not stipulate advance payments;

iii) Power generation by WBPDCCL and DPL are for public purposes and, therefore, mode of payment realization from these two companies were different from other private buyers of coal of Trans Damodar coal mine."

66. In the opinion of this Tribunal, the above defence for not complying with the terms of the contract is not tenable in the eye of law as such violation will affect the right of the Claimant of receiving its mining charges and commission in time and consequently, it will also cause financial loss for the delayed payment of its legitimate dues. In the above, circumstances, this Tribunal is left with no other alternative but to allow the reliefs claimed in serial no. (d) to the extent of Rs.73,50,27,745/-(not what is wrongly mentioned in paragraph 115 due to typographical mistake) and Rs.4,73,45,333/- in respect of prayer (e) of paragraph 115 due to typographical mistake) and Rs. 4,73,45,333 /- in respect of prayer (e) of paragraph 115 of the SOC as the Respondent has not adduced any evidence disputing the evidence adduced as regards the calculation of the Claimant given in his basic facts in paragraphs 84-89 of SOC and the statements made in paragraphs 62-65 of the affidavit of evidence by the CW-1 as

mentioned above and at the same time, the violation of the terms of the contract, as indicated above, is also admitted. The defence that as those two entities were Government Company, the Respondent was entitled to deviate from the terms of the contract, is also not tenable as the contract does not contain any such term giving exemption to the Respondent from complying with the same in case of Government Companies. The figure mentioned in relief (d) of paragraph 115 of the SOC is on the face of a typographical mistake as would appear from the materials on record.

67. Regarding the claim of interest as prayed in prayers (f), (h) and (k) of paragraph 115 of the SOD, this Tribunal proposes to deal with the question separately after deciding the other claims of the Claimant.”

77. The next question which was taken up was, claim (g). Whether the claimant was entitled to refund on account of land advance made by the claimant. Such advance was made pursuant to clause 12 of the contract agreement dated 31st May, 2006 and the claimant deposited Rs. 43,68,22,071/- as advance for acquiring land for mining purpose in Trans Damodar Coal Mining Block. The said deposit was to be adjusted /repaid to the claimant at a pre-determined rate as contained in Annexure C1 of the contract agreement on the basis of per tonne of coal removed over 30 years of commercial production. The commercial production of coal commenced in the financial year 2012 to 2013. However, pursuant to the order of the Hon’ble Supreme Court in 2014, mining activities were stopped from the midnight of March 31, 2015. The Corporation directed the claimant to stop all mining activities upon reaching the 1 million metric tonne of coal target. Thus, the payment received by the claimant for coal mining from commencement of production in 2012 till March 31, 2015, was a sum of Rs. 1,10,55,072/-. After adjustment of the said sum, a further sum of Rs. 42,57,66,999/- was still being held and retained by the Corporation on

account of land purchase advance. In the premise, the claimant called upon the Corporation to refund the unadjusted amount along with interest aggregating to Rs. 54,83,87,894/-.

78. Learned Arbitrator held that from the facts, the oral evidence and the trend of the cross examination it would be evident that the Corporation had admitted its liability to return the advance to the extent of Rs. 33,56,15,678.35/-, whereas, the claim was for Rs. 38,72,48,826/- with interest. The learned Arbitrator held that interest would be payable. The moment the Supreme Court declared the agreement to be a nullity, there was no scope of continuing with the agreement, resulting in the liability of the Corporation to return the money advanced with effect from April 1, 2015. Any delay in refunding the amount would incur the liability to pay interest on the net deposit. The learned Arbitrator held that, there was no evidence on record to prove that in the past, the Corporation had ever offered to return the amount and that the claimant had refused to accept. Consequently, it was held that the claimant was entitled to interest on the unpaid amount from April 1, 2015. It also appears that, as per the submissions of the learned advocates for the Corporation, the Corporation had returned a sum of Rs. 33,56,15,678.35/- as per the receipt dated April 9, 2019. Therefore, it was held that, interest at the rate to be fixed on the above amount should be calculated from April 1, 2015 to April 9, 2019.

79. The answers of the RW1 to questions put to him in cross examination clearly demonstrated that an incorrect defence had been taken by the

Corporation regarding the payment made over and above what the claimant had established. Paragraph 74 to 77 of the award are quoted below:-

“74. It appears from the above material on record that the Respondent on the above issue has admitted its liability to return to the extent of Rs.33,56,15,678.35p whereas the claimant claimed a sum of Rs.38,72,48,826/- with interest. In the last sitting of this Arbitration Proceeding, the learned counsel for the Respondent also made submission from the instruction of his client to pay the above amount as will appear from paragraph 2 of the minutes of that day which is quoted below:

2. Mr. Ghoshal, the Learned Senior Counsel on instructions from the respondent submits that his client would pay/transfer a sum of Rs.33,56,15,678.35p. (Rupees Thirty-Three Crore Fifty-six Lakh fifteen Thousand Six Hundred Seventy Eight and paise thirty five) on account of claim for refund of land advance, as disclosed in page 81 of the Statement of Defence, to the claimant within eight days from today. Mr. Mitra, the Learned Senior Counsel on instructions from his client, the claimant, informs this Tribunal that the said amount would be accepted by his client without prejudice to his client's rights and claims in this arbitration proceeding."

75. Therefore, this Tribunal is required to decide whether the Claimant is entitled to Rs. Rs.38,72,48,826/- with interest.

76. First, this Tribunal proposes to deal with the question of interest. It is true that in agreement between the parties it is provided that the said advance will be refunded in course of 30 years in a manner provided therein by way of adjustment with the claim of the Claimant towards mining charges. However, the moment Supreme Court declared the agreement as nullity, there was no scope of continuing with the said agreement resulting in the liability of the Respondent to return the said amount with effect from 1 April, 2015. Any delay in refunding the amount will incur liability to pay interest on the unpaid deposit. There is no evidence on record produced by the Respondent that in the past it ever offered to return the amount but the claimant refused to accept. Consequently, this Tribunal holds that the Claimant is entitled to interest on the unpaid amount from April 1, 2015. It appears that pursuant to the submission of the learned Counsel for the Respondent at the last sitting of the Tribunal which has been recorded in the minutes of the last sitting, the Respondent has returned a sum of Rs.33,56,15,678.55 paise as it appears from the receipt dated 9th April, 2019 which has been sent to this Tribunal by speed post by learned Advocate for the Claimant. Therefore, the liability of paying interest at the rate to be fixed on the above amount will be till 9th April, 2019 from 1st April, 2015 and on the balance amount as per order of this Tribunal.

77. The next question is whether the Claimant is entitled to refund of Rs.38,72,48,826/ with interest. The specific case of the Claimant is that it has advanced a sum of Rs.43,68,22,071/-and after the commencement of product in the year 2012, till 31 March, 2015, a sum of Rs.1,10,55,072/-was adjusted and after such adjustment, the amount is reduced to Rs.42,57,66,999/-. Subsequently, the respondent issued a cheque dated 14th February, 2017 for a sum of Rs. 2,15,85,016/ and thus, a sum of Rs. 1,10,55,072 + Rs. 2,15,85,016 = Rs.3,85,18,173/- has been received by the Claimant till the presentation of the SOC and the balance amount of Rs. 43,68,22,071 – Rs. 3,85,18,173 = Rs.38,72,48,826/- is payable. If according to the Respondent, any amount in excess of Rs.3,85,18,173/-, in that event the onus is upon it to produce document in support of such payment which the Respondent has miserably failed. The answers given by the RW-1 in cross-examination in respect of questions nos.273,275,277-279,281-283,286,287,289-295,300 and 301, quoted above, clearly demonstrate that untrue defence has been taken by the Respondent regarding excess payment. This Tribunal, thus, holds that the Claimant is entitled to the relief claimed in (g) of paragraph 115 of the SOC amounting to Rs. 38,72,48,826/ with interest rate of which I will deal separately."

80. The next question was whether the claimant was entitled to a claim towards loss in mine development, as claimed in paragraph 103 of the SOC. Initially, the claim was for Rs. 15,11,59,609. The claimant filed an application for amendment of the SOC and reduction of the amount to Rs. 14,59,21,822/-. The application for amendment was allowed. The learned Arbitrator held that, according to the terms of the contract, it was the duty of the claimant to excavate without intervention of the respondent and the expenditure for such process should be borne by the claimant. The learned Arbitrator denied such claim. The learned Arbitrator held that the Corporation was not responsible for the stoppage of excavation. The position would have been different if the contract was illegally terminated, without any just cause and the Corporation would have stopped the excavation at a premature stage. Thus, the Arbitrator held that the claim (i) could not be

granted to the claimant. This finding was in consonance with the agreement made on behalf of the corporation.

81. The next issue was whether claim (j) was admissible or not, on account of the loss of investment in fixed assets. The learned Arbitrator held that there was neither any agreement nor any clause in the agreement between the parties that, the Corporation would compensate the claimant in case of any loss suffered by the claimant with respect to the fixed assets. In the absence of such agreement, the Arbitrator rejected the claim (j).

82. The next question was whether the claimant was entitled to loss of profit. It was held by the learned Arbitrator that as the case was not of unlawful termination of the agreement at the instance of the Corporation, but was a case of frustration of an agreement which was declared to be void by the Supreme Court of India, the claimant could not get the benefit of Section 73 of the Contract Act so as to claim future loss of profit for the balance 27 years of the term. Moreover, the 2015 Act had merely revived the share of the claimant to the extent it was a valid contract, restricting the remedy of the third party only against the prior allottee. The contract Act did not provide for remedy of damages, otherwise than as permitted under Section 73 and 74 of the Contract Act. Thus, it was rightly held that, there was no scope to grant relief for future loss of profit, in favour of the claimant. The position would have been different if the 2015 Act specifically provided for the relief of future loss of profit in favour of the third party. Therefore, claim (l) was also dismissed.

83. Paragraphs 94 to 98 of the award are quoted below:-

“94. Now the prime question is whether in the facts of the present case, the claimant is at all entitled to claim loss of future profit for the balance term of the contract because of the order passed by the Supreme Court. In the opinion of this Tribunal, the term "loss of future profit" under the Contract Act can be availed of only when a valid contract has been illegally terminated by a party to the contract and the above term "loss of future profit" comes within the domain of the phrase "damage" caused to a victim.

95. In the Contract Act, the Sections 53, 54, 55, 56, 65, 70 are the provisions providing for compensation for loss suffered by a party for the wrongful act of the other including failure of the other to perform reciprocal prior obligation or for restoration of the benefit or advantage received by one from another, as the case may be, where the contract is a void one. Sections 73 and 74, on the other hand, are the provisions providing for compensation for the loss or damage suffered by a party for the breach of the contract by the other party.

96. The words "damage", and "loss", as a noun, have been defined in the Oxford Advanced Learner's Dictionary of Current English, 4th Edition, by A.S. Hornby as under:

"Damage"- noun. 1. (to something) loss of value, attractiveness or usefulness caused by an event, accident, etc. 2. Damages (pl) -money paid or claimed as compensation for damage (1), loss or injury.

"Loss"-1. act, instance or process of losing;2.(a) Person or thing lost. (b) money lost in a business deal, etc. 3(sing) suffering caused by losing somebody or something; disadvantage:

In the Contract Act, the word "damage" in plural has not been used but it is used in singular. Thus, the word used therein is not employed to mean "money paid or claimed as compensation for damage (1), loss or injury" but being used in singular, it's meaning is more extensive than that of the word "loss" which is restricted to the actual suffering caused, whereas the word "damage" may include something more than actual loss, as for example, expectation of future loss of profit, earning etc. for the wrong done by the other party.

.....

97. Applying the above principles in the context of the Contract Act, one can reasonably contend that while in cases covered by Sections 73 and 74 of the Act, the amount of compensation are available not only for "loss" actually suffered by a party but also for "damage" caused to the aggrieved party in addition to the "loss" actually suffered, but in the cases covered by other sections mentioned above, the compensation must be restricted to the actual loss suffered because in those sections the word "damage" is conspicuously absent as the Legislature does not waste its words.

98. Consequently, this Tribunal is of the opinion that the present case, not being the one for unlawful termination of the agreement

between the parties at the instance of one but being due to frustration of an agreement declared to be void by the Supreme Court of India, the Claimant can, in no case, get the benefit of Section 73 of the Contract Act so as to claim future loss of profit for the balance 27 years of the terms. This Tribunal has already pointed out that the claimant has not even pleaded that the Respondent from the very beginning knew that the contract is against the law; on the other hand, stance taken in this proceeding by the parties is that they *bona fide* entered in to the contract by treating it as a valid one. Moreover, the 2015 Act has merely revived the remedy of the Claimant to the extent, as if it is a valid contract, however, by restricting the remedy of the third party only against the prior allottee. Accordingly, if the Contract Act does provide for remedy of damage otherwise than in a case under Sections 73 and 74, there is no scope of giving the relief of future loss of profit in favour of the Claimant. Position would have been different, if the 2015 Act specifically provided the relief of future loss of profit in favour of the third party against the prior allottee. The prayer of the Claimant in terms of relief (1) as made in Paragraph 115 is, thus, dismissed on the above ground alone.”

84. With regard to the claim (m) i.e. the share of the claimant in the balance in escrow account with the State Bank of India, the Arbitrator held that in paragraph 32 of the said SOD, the Corporation had mentioned that it had no objection if the claimant withdrew the same from the escrow account, for proportionate distribution between the parties. The relevant pleadings of the parties were considered and the claim was allowed as was follows:-

“102. The learned Senior Counsel for the Respondent did not put any question denying the above Claim of the Claimant. The RW-1 has also not stated anything about the above claim of the Claimant. Thus, this Tribunal is of the view that the Claimant is entitled to the relief claimed as (m) of paragraph 115 of the SOC. The Respondent is directed to immediately give necessary instruction to the SBI, Commercial Branch, Jeevan Deep, 1, Middleton Street, Kolkata, to with whom the Escrow Account is maintained, to release Rs.8,16,784/- in favour of the Claimant out of the credit balance of Rs. 10,68,670.28 as per bank statement dated 12.3.2017. being Ext. BB at page 1060 of Paper Book vol. IV”

85. Next was claim (n) which was with regard to the claimants' share in the fixed deposits with the State bank of India. The Learned Arbitrator opined that the claimant was entitled to the claim and held as follows :-

“109. It appears that the RW-1 subsequently did not give any details of those cases, where according to him, the Claimant was party to the proceedings before High Court. As indicated above, specific suggestion was given that the Claimant was not a party in any of those alleged proceedings either before the High Courts or in the Supreme Court. Thus, the Respondent has failed to prove that the Claimant was a party to any of those proceedings as onus is upon the Respondent to prove the same when the claimant is denying the fact. A negative fact cannot be proved by giving any positive evidence. Thus, the Claimant cannot have any liability for the expenditure of any legal proceedings incurred by the Respondent. When the Respondent has virtually admitted the claim of the Claimant in the Escrow Accounts, there is no reason why it will be deprived of the interest accrued therein. The suggestion given to the CW-1 was that in the agreement there was no clause for right of interest which was admitted by the CW-1. But in order to deprive the Claimant of the right to interest, there must be specific-clause in the agreement to that effect. Absence of such clause means that right of interest is a matter of course. Thus, this Tribunal holds that the Claimant is entitled also to the interest as well as the principal of the Fixed Deposit automatically opened by SBI from the amount lying in deposit with the Escrow Account. The Claimant is therefore entitled to its prayer in terms of relief (n) of paragraph 115 of the SOC in full. The Respondent is directed to immediately give necessary instruction to the SBI, Commercial Branch, Jeevan Deep, 1, Middleton Street, Kolkata, to liquidate the fixed deposits in respect of Escrow Account maintained by the parties in the said Branch being Account no.32064045713 as mentioned at page 1063 of Paper Book no. IV so that the liquidated Value of the Fixed deposits along with the accrued interest to those accounts may be distributed to the Claimant and the Respondent in the Ratio as per agreement between the parties and the Bank Authority is directed to release the same both in favour of the Claimant and the Respondent as per their respective share of 76.43:23.57 immediately on getting such instruction from the Respondent.”

86. With regard to interest and cost, it was held as follows:-

“110.

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Bearing in mind the aforesaid provisions of the Act by which this Tribunal is governed, this Tribunal now proposes to consider the question of rate of interest payable by the Respondent to the Claimant.

It appears from Section 31(7) of the Act that it has two parts. The first part, viz. sub-section (a) gives power to the Arbitral Tribunal to award interest unless otherwise agreed by the parties, for the period between the date on which the cause of action arose and the date on which the award is made at such rate as it deems reasonable for the whole or any part of the period on the whole or any part of the money found to be due and payable by the award it seeks to pass.

The second part on the other hand, viz. sub-section (b) invests the Tribunal to grant post award interest which should unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment bearing in mind that the expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of Section 2 of the Interest Act, 1978 (14 of 1978).

According to Clause (b) of Section 2 of the Interest Act, 1978, "current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949. (10 of 1949) Explanation. In this clause, "scheduled bank" means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949; (10 of 1949).

In this case, regarding payment of interest, there is no restriction in the agreement entered into between the parties. Therefore, this Tribunal is to fix the rate as it should deem reasonable.

* * *

* * *

In this case, the Claimant is involved in the business of mining and the cause of action for raising different claims arose from 1 April, 2015, the date the Supreme Court implemented the order of prohibition of mining in this case. After taking into consideration that huge amount of money was due and payable from the year 2015 and in the meantime four years have expired, this Tribunal proposes to grant pre-award interest at the rate of 12% per annum from 1st April 2015 till the date of Award on the Awarded amount as mentioned in relief nos. (a), (b), (c), (d), (e), and (g) of paragraph 115 of the SOC. So

far the reliefs in terms of (m) and (n) are concerned, since this Tribunal has asked the SBI authority to release the amount with interest accrued thereon, this Tribunal does not propose to grant any further interest on that amount.

111. The last question is the question of assessment of costs. Section 31A of the Arbitration and Conciliation Act, 1996 deals with the Regime for costs which is quoted below:

31-A. Regime for costs. (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine-

- (a) whether costs are payable by one party to another;
- (b) the amount of such costs; and
- (c) when such costs are to be paid.

Explanation. For the purpose of this sub-section, "costs" means reasonable costs relating to-

- (i) the fees and expenses of the arbitrators, courts and witnesses;
- (ii) legal fees and expenses;
- (iii) any administration fees of the institution supervising the arbitration; and
- iv) any other expenses incurred in connection with the arbitral or court proceedings and the arbitral award.

(2) If the court or arbitral tribunal decides to make an order as to payment of costs,-

- (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; or
- (b) the court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the court or arbitral tribunal shall have regard to all the circumstances, including

- (a) the conduct of all the parties;

- (b) whether a party has succeeded partly in the case;
 - (c) whether the party had made a frivolous counter-claim leading to delay in the disposal of the arbitral proceedings; and
 - (d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.
- (4) The court or arbitral tribunal may make any order under this section including the order that a party shall pay-
- (a) a proportion of another party's costs;
 - (b) a stated amount in respect of another party's costs;
 - (c) costs from or until a certain date only;
 - (d) costs incurred before proceedings have begun;
 - (e) costs relating to particular steps taken in the proceedings;
 - (f) costs relating only to a distinct part of the proceedings; and
 - (g) interest on costs from or until a certain date.
- (5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen."

* * *

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Thus, the summary of the expenditure incurred by the parties as follows:

Claimant's expenditures.

1. Fees paid towards the Arbitrator- Rs. 18,75,000/-including TDS.
 2. Remuneration paid to the Clerk of the Tribunal- Rs. 42,500/-
 3. Remuneration paid to the Stenographer of the Tribunal- Rs.51,000/-.
 4. Fees paid to the learned Advocates, stenographer and clerkage-Rs. 1,28,22,037/-
 6. Venue charge+ Food-Rs.70,843/-.
- Total- Rs.1,48,61,380/-

Respondent's expenditures.

1. Fees paid towards the Arbitrator- Rs. 18,75,000/-including TDS.
 2. Remuneration paid to the Clerk of the Tribunal- Rs. 42,500/-.
 3. Remuneration paid to the Stenographer of the Tribunal- Rs.51,000/-.
 4. Fees paid to the learned Advocates
 - a) Mr. Animesh Kanti Ghosal- Rs.13,98,000/-
 - b) Fees paid to the Clerks of Mr. Animesh Ghosal-Rs.42,500/-
 - c)Mr. Sanjay Saha, Advocate-Rs. 1,18,976/- including clerkage and legal expenses.
 5. Srinivas Rao (Expenses towards photo copy- Rs.8,800/-
 6. Venue charge- Rs.69,880/-+ Refreshment-Rs. 19,885/-5. 7. Ashoke Kumar Maity-Stenographer- Rs.5000/-
- Total- Rs. 36,27,011/-

112. As the Claimant has substantially succeeded except three out of its eleven claims, in the opinion of this Tribunal, the claimant is entitled to the 8/11th of the above amount of costs incurred by it less Rs. 70,843/- spent as cost of Food- Rs. 1,47,90,537/- as those are quite reasonable having regards to the amount of claim and the gravity of the subject-matter. This Tribunal accordingly pass an Award of costs of Rs.1,47,90,537/-x 8/11 = Rs. 1,07,56,754/- as costs in favour of the Claimant.”

87. Thus, the Learned Arbitrator refused the claims which arose out of untimely and premature termination of the contract, inter alia, holding that the Corporation could not be made liable in any way for such termination, as the termination was not at the instance of the Corporation, but the contract was declared to be void by the Hon'ble Supreme Court upon cancellation of the allocation of the coal block in favour of the Corporation. Thus, the contention of the learned Advocate that the Learned Arbitrator did not retain jurisdiction to allow some of the claims upon holding that the

contract was a void one and the contractor was remediless was answered by the learned Arbitrator, in details. The Learned Arbitrator denied those claims which would not be available on account of the contract being declared void and rightly held that the claimant was remediless in respect of those claims which would be covered by Sections 73 and 74 of the Contract Act. However, by applying the principle of restitution and upon interpreting the non-obstante clauses under Section 11 and Section 14, the Arbitrator came to the conclusion that some of the claims should be allowed.

88. ***Aviram Singh vs C.D. Commachen (Dead) by Legal Representatives and Ors.*** reported in ***(2017) 2 SCC 629*** dealt with permission to utilise parliamentary material in construing the words of a statute. This court has considered the parliamentary material produced by the learned Advocate General, namely, report of the Select Committee on the Coal Mines “Special Provisions” Bill, 2015 and also the history of the legislation, and is of the opinion that the interpretation of the learned Arbitrator with regard to the rights of third parties against the prior allottee was protected under the 2015 Act. The view of the learned Arbitrator is fortified by the principle of restitution and is not opposed to the fundamental policy of India. This court is of the view that the interpretation of the learned Arbitrator is not patently illegal. There is no scope for interference by this court. The materials on record and the evidence were considered in details. The learned Arbitrator did not take resort to extraneous considerations, in allowing the claims. The laws have not been ignored and the learned Arbitrator adopted a judicial approach.

89. The relevant portions of ***MNCC Limited vs. Vedanta Limited*** (supra) are quoted below :-

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

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See *Associate Builders v. DDA* [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Also see *ONGC Ltd. v. Saw Pipes Ltd.* [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation* [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and *McDermott International Inc. v. Burn Standard Co. Ltd.* [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the

Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.”

90. The award does not shock the conscience of the Court. It conforms to the most basic notion of justice. The relevant portions of ***Ssangyong Engineering and Construction Company Limited vs National Highways Authority of India (NHAI)*** (supra), are quoted below :-

“**76.** However, when it comes to the public policy of India, argument based upon “most basic notions of justice”, it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February 2013 — in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a Circular, unilaterally issued by one party, cannot possibly bind the other party to the agreement without that other party's consent. Indeed, the Circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the Circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral Circular and by substituting a workable formula under the agreement by another formula de hors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be

contrary to fundamental principles of justice as followed in this country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment.”

91. The relevant portions of ***Patel Engineering Limited vs. North Eastern Electric Power Corporation Ltd.*** reported in **(2020) 7 SCC 167**

are quoted below :-

“**26.** In *MMTC [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293]* , this Court took note of various decisions including that in *Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]* and expounded on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the 1996 Act, particularly when dealing with the concurrent findings (of the arbitrator and then of the Court). This Court, inter alia, held as under : (*MMTC case [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293]* , SCC pp. 166-67, paras 11-14)

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

contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(i), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See *Associate Builders v. DDA* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] Also see *ONGC Ltd. v. Saw Pipes Ltd.* [*ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705] ; *Hindustan Zinc Ltd. v. Friends Coal Carbonisation* [*Hindustan Zinc Ltd. v. Friends Coal Carbonisation*, (2006) 4 SCC 445] ; and *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181])

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

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

27. In *Ssangyong Engg. [Ssangyong Engg. & Construction Co. Ltd. v. NHAI]*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , this Court has set out the scope of challenge under Section 34 of the 1996 Act in further details in the following words : (SCC pp. 170-71, paras 37-41)

“37. Insofar 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 backdoor 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 [Associate Builders v. DDA]*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of *Associate Builders [Associate Builders v. DDA]*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

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 [Associate Builders v. DDA]*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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 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 [Associate Builders v. DDA]*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , 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 characterised as perverse.”

28. The limited scope of challenge under Section 34 of the Act was once again highlighted by this Court in *PSA Sical Terminals [PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust]*, (2023) 15 SCC 781 : 2021 SCC OnLine SC 508] and this Court particularly explained the relevant tests as under : (SCC paras 40 to 42)

“40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the Court is not expected to act as an appellate court and reappraise the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of “public policy of India”, which has been held to mean “the fundamental policy of Indian law”. A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. It is only such arbitral awards that shock the conscience of the Court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappraisal of evidence would not be permissible on the ground of patent illegality appearing on the face of the award.

41. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, 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.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of

this Court in *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus : (SCC pp. 75-76)

‘31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
- (iii) ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In *CCE & Sales v. Gopi Nath & Sons* [*CCE & Sales v. Gopi Nath & Sons*, 1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.” ’ ’ ”

92. The decision cited by the Learned Advocate General on ***Damodar Valley Corpn. v. K.K. Kar*** reported in **(1974) 1 SCC 141** was on the principle that, when a contract is put to an end, the arbitration clause perishes along with it. This decision is no longer good law. In this regard, reference is made to the decision in ***Interplay between Arbitration Agreements under Arbitration and Conciliation Act 1996 and Stamp Act, 1899*** reported in **(2024) 6 SCC 1**. The relevant portions of the same are quoted below :-

“**115.** The separability presumption has undergone a significant evolution in India. Initially, the Indian courts viewed an arbitration agreement as an integral part of the underlying contract without any existence beyond such contract. For instance, in *Union of India v. Kishorilal Gupta & Bros.* [*Union of India v. Kishorilal Gupta & Bros.*, 1959 SCC OnLine SC 6] , the issue before this Court was whether an arbitration clause in the

original contract survived after the enactment of a subsequent contract. K. Subba Rao (as the learned Chief Justice then was) considered *Heyman* [*Heyman v. Darwins Ltd.*, 1942 AC 356 (HL)] but distinguished it on the ground that it only dealt with repudiation, where rights and obligations of parties survive the termination of contract. It was held that in situations where the original contract is superseded by a subsequent contract, the arbitration clause in the original contract will also cease to exist. K. Subba Rao, J., speaking for the majority, held that *first*, an arbitration clause is a collateral term of a contract as distinguished from its substantive terms, but nonetheless it is an integral part of it; *second*, the existence of the underlying contract is a necessary condition for the operation of an arbitration clause; *third*, if the underlying contract was non est in the sense that it never came legally into existence or was void ab initio, the arbitration clause also cannot operate; *fourth*, if the parties put an end to a validly executed contract and substitute it with a new contract, the arbitration clause of the original contract also perishes with it; and *fifth*, in situations such as repudiation, frustration, or breach of contract, only the performance of the contract comes to an end, the arbitration clause persists because the contract continues to exist for the purposes of disputes arising under it.

116. In *Damodar Valley Corpn. v. K.K. Kar* [*Damodar Valley Corpn. v. K.K. Kar*, (1974) 1 SCC 141] , a two-Judge Bench of this Court held that the plea that a contract is void, illegal or fraudulent affects the entire contract along with the arbitration clause. However, the enactment of the Arbitration Act in 1996 enabled the Indian Courts to give effect to the separability presumption with greater impetus. Section 16(1)(b), which provides that a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause, renders the decisions in *Kishorilal Gupta* [*Union of India v. Kishorilal Gupta & Bros.*, 1959 SCC OnLine SC 6] and *Damodar Valley Corpn. v. K.K. Kar*, (1974) 1 SCC 141] redundant. Consequently, even if the underlying contract is declared null and void, it will not ipso jure result in the invalidity of the arbitration agreement.”

93. Moreover, Section 16(1)(a) and 16(1)(b) of the A & C Act recognises the doctrine of separability and even if a contract is void, the arbitration clause survives and the Arbitrator retains the jurisdiction to proceed with the disputes arising out of such void contract. Thus, the argument of the

learned Advocate General that, when the contract itself did not subsist on account of the same being declared void, the disputes could not be further decided by the learned Arbitrator as the learned Arbitrator lost his jurisdiction to decide such disputes arising out of a void contract, is not supported by law.

94. The steps laid down in ***Vidya Drolia and Ors. vs Durga Trading Corporation*** reported in ***(2021) 2 SCC 1***, to determine whether the subject matter of a dispute was arbitrable or not, cannot be applied to the facts of this case, for the reasons already discussed hereinabove.

95. Under such circumstances, AP-COM 171 of 2024 is dismissed without any interference with the award.

96. AP-COM 172 of 2024 is accordingly disposed of, as per the observation made hereinabove.

97. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(Shampa Sarkar, J.)