

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Commercial Arbitration Petition No. 48 of 2024

Damodar Ropeways and Infra Limited

.....PETITIONER

: VERSUS :

Shree Jivdani Temple Trust and others

....RESPONDENTS

Mr. Prasad Dani, Senior Advocate with Mr. Chakrapani Misra, Mr. Sameer Bindra & Mr. P.V. Narendran i/b Khaitan & Co., for Petitioner.

Mr. M.P. Rao, Senior Advocate with Ms. Swati Sagwekar, for Respondents.

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved On: 4 February, 2026.

Judgment Pronounced On: 17 February, 2026.

Judgment :

1) By this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**), Petitioner challenges arbitral Award dated 15 January 2024 passed by the learned sole Arbitrator rejecting most of its claims and granting the relief of return of security deposit of Rs.10,00,000/-. Since Petitioner's claims for loss of revenue profits and expenses incurred in performance of contract are rejected, it has challenged the Award of the learned sole Arbitrator.

2) Respondent No.1 is a Public Trust registered under the Maharashtra Public Trusts Act, 1950 and manages affairs relating to Maa Jivdani Temple located at Jivdani Road, Katkari Pada, Chandasar, Virar (E), District-Thane. Respondent Nos. 2 to 13 are the trustees of the first Respondent-Trust. For the sake of convenience, all the Respondents are collectively referred to as 'the Respondent-Trust'.

3) The temple of the Trust is located on Jivdani Hill and the devotees were required to climb more than 1200 steps from the base of the hill to reach the temple. With a view to avoid any inconvenience to the devotees, the Respondent-Trust proposed setting up of a funicular railway for transporting the devotees from base of the Jivdani Hill to the Temple. Accordingly, in July 2003, the Respondent-Trust published tender notice inviting offers from reputed consultants/manufacturers for aerial ropeways, funicular railway etc. Since the land on which funicular railway was proposed to be constructed belonged to Forest Department, the Respondent-Trust had apparently obtained Stage-1 and Stage-2 clearance from the Ministry of Environment and Forests, Government of India, both for renovation of Jivdani temple, as well as, for installation of a railway system through the designated corridor in the forest area. Four offers were received in response to the tender including that of the Petitioner. Petitioner's bid was accepted and an agreement was executed on 28 January 2004 (**2004 Funicular Agreement**) for construction of funicular system on Built Operate Transfer (**BOT**) basis. According to the Petitioner, the Forest Department objected to setting up of funicular system on its land and accordingly, the Respondent-Trust proposed an amendment to the 2004 Funicular Agreement and proposed construction of a ropeway system in place of funicular system and the proposal was

agreeable to the Petitioner. Accordingly, an agreement was executed on 23 December 2007 (**2007 Ropeway Agreement**) for construction of ropeway system. It appears that under the 2007 Ropeway Agreement, it was the responsibility of the Petitioner to obtain all the necessary permissions. According to the Petitioner, separate agreement dated 4 August 2009 (**Aerial Trolley Agreement**) was executed between the Petitioner and Respondent-Trust for the purpose of bringing the 2007 Ropeway Agreement in compliance with the provisions of the Bombay Aerial Ropeways Act, 1955. According to the Petitioner, all required NOCs were secured from the respective authorities for commencing of ropeway system in 2010 except that of Maharashtra Tourism Development Corporation, which was received in the year 2012. Respondent-Trust directed the Petitioner to secure permissions/NOC of Vasai Virar City Municipal Corporation (**VVCMC**). Petitioner expected assistance from Respondent-Trust in obtaining NOC from VVCMC and the Petitioner alleges that no assistance was provided by the Respondent-Trust. On 24 October 2013, VVCMC addressed letter to the Respondent-Trust, with a copy to the Petitioner, stating that application for permission must be made only by the Respondent-Trust. Petitioner claims that it continued working at the site while awaiting permission of VVCMC. It claims to have rigorously followed up with the Respondent-Trust with regard to the status of permission from VVCMC. According to the Petitioner, in January 2016, Respondent-Trust once again expressed desire for installation of funicular system at the temple and a meeting to that effect took place between the parties. On 19 May 2016, Respondent-Trust proposed mediation for resolution of disputes between the parties. It appears that

meetings were conducted before the Mediator. In the meantime, efforts were made for securing NOC/permissions from VVCMC.

4) In the above background, Respondent-Trust terminated the Contract vide letter dated 26 October 2017. Petitioner issued reply dated 11 January 2018 and thereafter filed Petition under Section 9 of the Arbitration Act in this Court seeking interim measures. By order dated 11 September 2018, this Court appointed sole Arbitrator to decide the disputes between the parties. The learned sole arbitrator apparently expressed inability to continue the arbitral proceedings which led to passing of order dated 22 July 2019 by this Court substituting the Arbitrator. This Court appointed Mr. Justice Naresh Patil (Former Chief Justice of Bombay High Court) to adjudicate the dispute and differences between the parties. Petitioner amended Section 9 Petition and was permitted to be convert the same as application under Section 17 of the Arbitration Act. Petitioner pressed for interim measures for restraining the Respondent-Trust from acting in furtherance of termination letter or taking further steps in constructing the ropeway/funicular or aerial system or from operating its own ropeway system. Section 17 application was however rejected by the Arbitral Tribunal by order dated 20 November 2019 directing the Trust to maintain an account of revenue earned towards carrying the passengers from base to the temple site and restrained the Trust from creating any third party interest in respect of the ropeway and aerial system.

5) Petitioner filed Statement Of Claim on 22 October 2019. In addition to opposing the claim of the Petitioner, Respondent-Trust filed Statement Of Defence, as well as counterclaim, which was opposed by the

Petitioner. On the basis of pleadings filed by the parties, the Arbitral Tribunal framed issues. Parties led evidence in support of their respective cases. The Arbitral Tribunal has made Award dated 15 January 2024 holding *inter-alia* that the Petitioner failed to prove that the termination letter dated 26 October 2017 is illegal or that the Respondent-Trust committed breach of the 2007 Ropeway Agreement or Aerial Trolley Agreement. It appears that the claim for specific performance was not pressed by the Petitioner before the Arbitral Tribunal. Its alternate plea for damages of Rs.15,51,67,499.40/- is rejected. Similarly, Petitioner's claim for having incurred expenditure of Rs.2,25,45,129.82/- is also rejected by the Arbitral Tribunal. The only relief granted in favour of the Petitioner is to direct refund of security deposit of Rs.10,00,000/-. The counterclaim filed by the Respondent-Trust is also rejected.

6) Petitioner is aggrieved by the Award dated 15 January 2024 and has accordingly filed the present Petition under Section 34 of the Arbitration Act. Respondent-Trust has filed Affidavit-in-Reply to which a rejoinder has been filed by the Petitioner. Accordingly, the Petition is taken up for hearing and final disposal.

7) Mr. Dani, the learned Senior Advocate appearing for the Petitioner submits that the impugned arbitral Award suffers from patent illegality as it ignores vital documentary evidence and that it violates public policy doctrine. He submits that the Arbitral Tribunal has taken into consideration the reasons beyond the ones indicated in the termination order while justifying the termination, which is impermissible. That it is well settled that termination order must be

judged on the basis of the reasons indicated therein and reasons extraneous to those reflected in the termination order cannot be taken into consideration by the Arbitral Tribunal.

8) In support of his contention that vital documentary evidence on record is ignored by the Arbitral Tribunal, Mr.Dani submits that the Tribunal has totally ignored letter dated 24 October 2013 of VVCMC directing that only Trust could apply for permission and the application made by any other agency would not be considered. That thus the responsibility of securing permission of VVCMC was mainly of the Respondent-Trust and Petitioner is erroneously held liable in respect of the delay in securing the said permission. That the Tribunal has ignored the position that all other permissions are secured by the Petitioner. That while holding the Petitioner responsible for non-commencement of construction even after lapse of 10 years, the Arbitral Tribunal ignored the position that the Respondent-Trust applied for permission of VVCMC on 15 November 2016. That the said permission was rejected on 10 January 2017 and thereafter the Contract was terminated immediately on 26 October 2017. That the Tribunal has ignored this vital evidence on record while holding Petitioner responsible of delay in execution of the Project. That ignorance of vital evidence on record constitutes a ground for invalidating the Award. In support, he relies on judgments of the Apex Court in **Associates Builders Versus. Delhi Development Authority**¹, **K.P. Poulose Versus. State of Kerala and another**², and of Madras High Court in **Image Infotainment Ltd. Versus. Labour India Public School and Junior College**³. He submits that by ignoring the relevant material on

1 2014 SCC Online 937

2 1975 SCC Online SC 158

3 2023 SCC Online Mad 5466

record, the learned Arbitrator has misconducted the arbitral proceedings and in support he relies upon judgment of the Delhi High Court in **Kochar Constructions Works Versus. Delhi Development Authority and another**⁴. In support of his contention that the Arbitral Tribunal has failed to apply its mind to the relevant material on record and has failed to draw inference which ought to have been drawn, Mr. Dani relies on judgment of the Apex Court in **Oil and Natural Gas Corporation Ltd. Versus. Western Geco International Ltd**⁵.

9) Mr. Dani further submits that the Arbitral Tribunal has grossly erred in answering Issue No.1 relating to legality of termination and Issue No.2 relating to breach of terms of contract by the Respondent-Trust in total ignorance of the position that the Respondent-Trust was to secure permission from VVCMC in the light of specific stand taken by the VVCMC and that no correspondence from the Petitioner would be entertained. That despite this position, Petitioner is erroneously held guilty of non-securing the permission of VVCMC. That the Tribunal has erred in drawing an inference that the Petitioner did not pay development charges of Rs.42 lakhs to VVCMC. That the evidence on record clearly indicates that the development charges were payable only after the receipt of the NOC for ropeway. That therefore occasion to pay the development charges of Rs.42,00,000/- never arrived.

10) Mr.Dani would further submit that the Arbitral Tribunal has perversely interpreted the contractual clauses. He would further submit that the termination of the contract of the Petitioner was

4 1998 SCC Online Del 378

5 2014 9 SCC 263

ex-facie illegal and has been erroneously upheld by the Arbitral Tribunal in ignorance of the position that the delay in non-commencement of construction was clearly attributable to the Respondent-Trust, who failed to secure the permission from VVCMC. He submits that initially Petitioner's proposal for construction of funicular system was modified to that of ropeway system by the Respondent-Trust and ultimately another contractor was permitted to install funicular system. He further submits that the Petitioner has in fact incurred huge expenditure in securing various permissions and executed certain works at the site. That the Arbitral Tribunal has grossly erred in not awarding the claim for expenses raised by the Petitioner. He further submits that since the contract is illegally terminated, the Petitioner is entitled to claim for award of loss of profits. He would accordingly pray for setting aside of the impugned Award.

11) Mr. Rao, the learned Senior Advocate appearing for the Respondent-Trust would oppose the Petition submitting that the Petition is filed and argued as if it is an appeal over the arbitral Award. That this Court is being urged to reappreciate and reevaluate the evidence on record. That the Arbitral Tribunal has taken a plausible view after considering the entire material on record. That it is impermissible to interfere in the reasonable and plausible view taken by the Arbitral Tribunal merely because some other view may also be possible. He submits that the Petition clearly travels beyond the scope of power of this Court under Section 34 of the Arbitration Act. Mr. Rao further submits that under the Contract, the entire responsibility of securing permissions was solely on the Petitioner and therefore Respondent-Trust cannot be

held responsible. He would submit that in the year 2014 itself, Petitioner was asked to pay development charges of Rs.42,00,000/- which remained unpaid on the part of the Petitioner. That the Petitioner could not get along with the officials of VVCMC and is now attempting to blame the Respondent-Trust for inability to secure the requisite NOC. He submits that the construction could not be carried out in absence of permission of the Planning Authority under Section 44 of the Maharashtra Regional and Town Planning Act, 1966. He takes me through relevant correspondence in support of his contention that the Petitioner was responsible for delay in securing the requisite permission from VVCMC. He would therefore submit that the findings recorded by the Tribunal about validity of termination and non-commission of any breach by the Respondent-Trust do not warrant any interference in exercise of powers under Section 34 of the Arbitration Act.

12) Mr. Rao further submits that no civil work was carried out at the site by the Petitioner. That no evidence of carrying out any actual civil work at the site was produced. That Petitioner examined a Chartered Accountant who was appointed in the year 2019 and had no personal knowledge in respect of the Project. That the claim of carrying out any actual civil work at the site was not supported by any evidence. That Petitioner examined the Chartered Accountant, who was appointed in the year 2019 and had no personal knowledge in respect of the Project. That the claim for expenses was filed based on mere statements without any supporting documents. That the claim towards expenses has rightly been rejected in absence of any direct credible evidence. Mr. Rao would accordingly pray for dismissal of the Petition.

13) Rival contentions of the parties now fall for my consideration.

14) The disputes and differences arose between the parties essentially out of Ropeway Agreement dated 23 December 2007 and Aerial Trolley Agreement dated 4 August 2009. As observed earlier, the proposal for construction of funicular railway was dropped and accordingly the Funicular Agreement of 28 January 2004 is irrelevant for the purpose of deciding the disputes and differences between the parties.

15) There is no dispute to the position that the actual construction work of the ropeway system did not commence in terms of the Ropeway Agreement dated 23 December 2007. The said Ropeway Agreement and the Aerial Trolley Agreement have been terminated by the Respondent-Trust by letter dated 26 October 2017. Thus, for about 10 long years, the construction work in respect of the ropeway system had actually not commenced and this was the main reason why the Respondent-Trust was required to terminate the Agreement.

16) Issue No.1 before the Arbitral Tribunal was about validity of termination letter dated 26 October 2017. The letter dated 26 October 2017 reads thus :-

Outward No. 74/ 2017-18
Date: 26.10.2017

To,
M/s.Damodar Ropeways and Infra Ltd.
1/A, Vanittart Row, Kolkata-700 001
(India)

Kind attention: Mr. Shravan Kumar Agarwal

Reference: 1. Agreement date 28 January 2004.
2. Revised agreement dated 23 December 2007.
3. Agreement dated 04. August 2009.
4. Your letter ref: DRIL/2016-2017/924 dated 7/10/2016.
5. Your letter DRIL/SJDT/2017-18/765 dated 13 October 2017

Dear Sirs,

With reference to the aforesaid documents and the correspondence that has been exchanged from either side, it is noted that for want of sanctioning of the project by the Municipal Corporation of city of Vasai-Virar, you have not been in a position to commence and complete the ropeway project. We have considered your last communication. From the said communication it appears that you have been trying to make out that trustees have not been in position to follow with the Municipal Corporation of city of Vasai- Virar. However it is a matter of record that you're not furnished us any particulars of filing a proper proposal with the Municipal Corporation of City of Vasai-Virar. This clearly indicates that you have been deliberately delaying taking proper steps in the matter.

17) Thus, the termination letter cites the principal reason of non-grant of permission by VVCMC resulting in non-commencement and non-completion of Ropeway Project. The termination letter also refers to the plea raised by the Petitioner about Trustees not being in a position to follow up with VVCMC and rejects the said allegation stating that the Petitioner had failed to furnish the requisite particulars for filing a proper proposal with VVCMC. The termination letter accordingly accused the Petitioner for deliberately delaying in taking proper steps in the matter. The termination letter refers to wastage of nearly a decade without any fruitful results. Accordingly, the agreements have been terminated by the Respondent-Trust.

18) Mr. Dani has contended that the Arbitral Tribunal has traveled beyond the reasons recorded in the termination letter for justifying the same. It appears that the Petitioner had contended before the Tribunal that delay was not the ground or reason for terminating the Agreement and that the ground of delay was sought to be supplanted in the form of evidence. Similar contention is raised before me by contending that the Arbitral Tribunal has held termination to be justified on the ground of delay, which was not the reason stated in the termination letter. I am unable to accept the contention raised on behalf of the Petitioner. There is specific allegation in the termination letter of deliberate delay on the part of the Petitioner in not taking proper steps by submitting the requisite particulars to the Respondent-Trust for filing proposal with VVCMC. The termination letter thereafter refers to passage of a decade in which no fruitful result could be achieved. It therefore cannot be contended that the delay in execution of the Project is not a ground specified in the termination letter dated 26 October 2017.

19) Another reason indicated in the termination letter is failure on the part of Petitioner to secure permission from VVCMC. The Arbitral Tribunal has noted contractual obligation on the part of the Petitioner to secure all the requisite permissions. Even before me, there is no dispute to the position that Petitioner was responsible for securing of requisite permissions under the contractual obligations. It is however sought to be contended that the Petitioner secured all other requisite permissions but could not secure the permission of VVCMC on account of specific direction of VVCMC by letter dated 24 October 2013 for entertaining

proposal only from Respondent-Trust. The letter dated 24 October 2013 reads thus :-

To,
M/s. Shree Jivdani Devi Mandir Trust,
Jivdani Road, Virar (E)
Tal: Vasal,
DIST: THANE

Sub: N.O.C for Installation of a passenger Ropeway at Jivdani Temple Virar (E), Tal: Vasal, Dist: Thane.

Ref: 1. Your letter dtd. 27/06/2013.
2. Damodar Ropeway & Construction Co. letter dtd, 28/08/2013.

Sir,

With-reference to your letter dtd. 27/06/2013 it is to Inform you that vide letter dtd 27/06/2013 M/s. Jivdani Temple Trust requested this office to guide as regards the permission to be obtained u/s 44 of MRTP-Act 1966, Since NOC has been. Issued to M/s. Jivdani Temple Trust by CIDCO all correspondences in this regard shall be done by M/s. Jivdani Temple Trust only for various purposes. Hence M/s. Jivdani Temple Trust shall make an application to: VVCMC clearly specifying the requirements. Any application made by any agency will not be considered which may please be noted.

Thanking you.

Yours faithfully,
Dy. Director of Town Planning
Vasai-Virar city Municipal
Corporation

c.c to M/s: Damodar Roeways & Const. Co. (pt).
Ltd., C-11, Jal Devi Darshan Society,
Jivdani Road, Virar (W),
Tal: Vasai,
DIST: THANE

20) In letter dated 24 October 2013 issued by VVCMC, the VVCMC stated that the initial NOC was issued by CIDCO and all

correspondence were always made by the Respondent-Trust and that therefore Respondent-Trust should make application to VVCMC specifying the requirements and that application made by other agencies would not be considered. The letter refers to Petitioner's letter dated 27 June 2013. The Arbitral Tribunal has discussed evidence of R.W.1 (Secretary of the Trust) who has deposed that officers of the Petitioner, who used to interact with VVCMC, had disputes with the officials of VVCMC and therefore the Municipal Corporation refused to entertain applications of the Petitioner. Thus, the findings recorded by the Arbitral Tribunal do suggest that some fault for VVCMC not entertaining Petitioner's application must be shared by the Petitioner. Whatever may be the reason, the contractual obligation was ultimately on Petitioner to secure all permissions for the project, including VVCMC's permission. Even though VVCMC refused to entertain direct proposal of Petitioner for permission (possibly on account of conduct of Petitioner's own officials), the same did not absolve Petitioner of contractual obligation to secure VVCMC's permission. The letter dated 24 October 2013 would only mean that the proposal ought to be in the name of Trust. But the obligation to secure permission ultimately was on Petitioner. However, it is not necessary to delve further into this aspect as the proposal was ultimately submitted by the Respondent-Trust to VVCMC on 15 November 2016. During the cross-examination of R.W.1, a suggestion was sought to be given that VVCMC was responsible for the delay of 3 years in not submitting the proposal despite VVCMC communicating to the Respondent-Trust on 24 October 2013 that only Respondent's proposal would be entertained. The witness has however clarified the position that requisite documents for submission of the proposal and the requisite

formalities were not completed by the Petitioner. This position is buttressed by Municipal Corporation's letter dated 10 January 2017, which enumerates 15 deficiencies in the proposal including non-payment of development charges which was computed at Rs.42,00,000/-.

21) Even if the documents on record are taken into consideration, it is clear that Petitioner wrote to the Architect of the Respondent-Trust on 29 October 2014 indicating that all requisite documents were forwarded on 17 October 2014 and requested the Architect to submit proposal to VVCMC. It appears that thereafter there were some discussions with regard to the drawings in respect of the Ropeway system and Petitioner had written letter dated 2 December 2014 to the Architect, to which the Architect replied on 9 December 2014 calling upon the Petitioner to confirm the changes made in the drawings. The cross-examination of R.W.1 also refers to the inputs relating to drawings and designs being submitted to the Architect. The letter of VVCMC dated 10 January 2017 indicates that the Architect of the Respondent-Trust ultimately submitted the proposal on 17 November 2016 on which various queries were raised by the Municipal Corporation. It appears that by that time the termination was resorted on 26 October 2017, the said queries of the VVCMC remained unresolved. One of the shortcomings in the proposal was about non-payment of development charges of Rs.42,00,000/-. There is no dispute to the position that the development charges were to be paid by the Petitioner. There is nothing on record to indicate that even after receipt of letter dated 10 January 2017, Petitioner actually paid the development charges. This conduct of Petitioner is sought to be justified by Mr. Dani by referring to the cross-

examination of Respondent's witness that development charges were payable after receipt of NOC. However the letter of VVCMC dated 10 January 2017 does not suggest so. It clearly called upon the Petitioner to pay the development charges as per the Maharashtra Regional and Town Planning Act, 1966.

22) The Tribunal has held Petitioner responsible for failure to take steps in aiding the Respondent-Trust to secure permission from VVCMC. This finding of fact rendered by Arbitral Tribunal cannot be termed as so grossly perverse that Section 34 Court must invalidate the award. The Tribunal has also considered overall delay of 10 years in non-commencement of any construction in respect of the Project.

23) No doubt the arbitral Award must reflect cogent reasons in support of the findings recorded on various issues. Ordinarily, inadequacy or insufficiency of reasons cannot be a ground for interfering in the arbitral award, so long as the reasons are intelligible and on fair reading of the entire award, the broad reasoning of the Award can be discerned. The approach of the Court should be to preserve the award rather than setting aside the same on the ground of inadequacy or insufficiency of reasons. In **OPG Power Generation Power LTD. Versus. Enxio Power Cooling Solutions India Pvt. Ltd. and Another**⁶ the Apex Court has held that the Court can even explain the underlying reasons in the award by undertaking the exercise of meaningful reading of the entire award and documents on record of the arbitral proceedings. By extracting the reasons behind making of the award, the Court does not supplant the reasons of the Arbitral Tribunal but only explains it for the better and

6 2025 2 SCC 417

clear understanding thereof. The Apex Court has held in para-168 as under :-

168. We have given due consideration to the above submission. In our view, a distinction would have to be drawn between an arbitral award where reasons are either lacking/unintelligible or perverse and an arbitral award where reasons are there but appear inadequate or insufficient 124. In a case where reasons appear insufficient or inadequate, if, on a careful reading of the entire award, coupled with documents recited/relied therein, the underlying reason, factual or legal, that forms the basis of the award, is discernible/intelligible, and the same exhibits no perversity, the Court need not set aside the award while exercising powers under Section 34 or Section 37 of the 1996 Act, rather it may explain the existence of that underlying reason while dealing with a challenge laid to the award. In doing so, the Court does not supplant the reasons of the Arbitral Tribunal but only explains it for a better and clearer understanding of the award.

24) Accordingly, after undertaking the exercise of fair reading of the entire Award together with the documents on record, in my view, the underlying reason for upholding the termination and for absolving the Respondent-Trust of allegation of breach of contractual obligation is clearly discernible. Even after considering various correspondence between the parties, to which no specific reference is made by the Arbitral Tribunal, this Court is unable to arrive at the conclusion that the termination is invalid or that Respondent-Trust has committed breach of contractual obligations. Therefore, the ground of ignorance of vital evidence on record sought to be raised on behalf of the Petitioner deserves to be rejected. Reliance by the Petitioner on judgments in **Associates Builders, Oil and Natural Gas Corporation Ltd., Kochar Constructions Works and K.P. Poulouse** (supra) is therefore inapposite.

25) The Petitioner gave up the claim for specific performance of the contract apparently because its application under

Section 17 was rejected and VVCMC engaged another contractor for execution of work of funicular systems. Therefore, the Petitioner pressed for alternate relief of damages and expenses. Since termination is found to be valid, there is no question of awarding any damages to the Petitioner. The claim for damages of Rs.15.51 crore was premised essentially on declaration of invalidity of termination. It was a claim towards loss of profit, which Petitioner could have earned if the contract was not terminated. The same was based on specified percentage of value of the contract if Petitioner was to operate ropeway systems for 30 years. However, since the termination is found to be valid, there is no question of awarding damages in the form of loss of profit to the Petitioner. The Tribunal has rightly rejected the said claim and there is no valid reason to interfere in the same.

26) So far as rejection of claim for expenses of Rs.2,25,45,129.82/- is concerned, the Tribunal has recorded a finding that the Petitioner could not establish actual incurring of expenses during currency of the contract. It was claimed by the Petitioner that it had started manufacturing the requisite parts and had incurred the expenses. To prove the claim, Petitioner examined C.W.2 who is the Chartered Accountant who was called upon in the cross-examination to produce the basis for claim for incurring of expenditure for leveling work, excavation and bringing construction material at the site. However, the invoices produced on record were not proved by examining any witness and they were apparently not marked in evidence. The Tribunal has appreciated the quantity and quality of evidence and has rejected the claim for incurring of expenses. This Court is not expected to re-appreciate evidence and arrive at a different conclusion than the one recorded by

the Tribunal. Petitioner has also relied on judgments in *Sudir Engineering Company Versus. Nitco Roadways Limited.*⁷ *Walter D'souza Versus. Miss Anita D'souza*⁸ and *Om Prakash Berlia and another Versus. Unit Trust Of India and others*⁹ in support of the contention that marking of a document as Exhibit is merely a customary practice without legal basis. However, the concerned documents were apparently marked for identification, and the Petitioner was expected to lead evidence of a witness for proving those documents. The Chartered Accountant could not prove the invoices. More importantly, the Chartered Accountant had apparently started looking after affairs of the Petitioner from 2019 onwards and had no personal knowledge about incurring of any expenditure before termination of the contract. In my view therefore, there is no room for interference even in the findings *qua* rejection of claim for expenses.

27) Considering the overall conspectus of the case, I am of the view that no valid ground is made out by the Petitioner for challenging the impugned arbitral Award. The Award appears, to my mind, to be unexceptionable.

28) The Arbitration Petition is accordingly dismissed. There shall be no order as to costs.

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signed by
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[SANDEEP V. MARNE, J.]

7 1995 (34) DRJ 86

8 Testamentary Suit No. 33 of 1998 decided on 12 November 2014

9 1982 SCC Online Bom 148