2023 STPL(Web) 15 HP
HIGH COURT OF HIMACHAL PRADESH

(HON'BLE MR. JUSTICE SANDEEP SHARMA, J.)

STATE OF HIMACHAL PRADESH AND ANOTHER

Petitioners

VERSUS

M/S SAB INDUSTRIES LTD.

Respondent

M/S SAB INDUSTRIES LIMITED

Petitioner

VERSUS

STATE OF HIMACHAL PRADESH AND ANOTHER

Respondents

Arb. Cases Nos. 92 of 2011 with 6 of 2012-Decided on 5-7-2023

Arbitration

Arbitration and Conciliation Act, 1996 – Section 31, 34 – Arbitration award – Challenge to – Award relating to work contract – Plea of against public policy not accepted – Held**:** Admittedly, in the case at hand, record clearly reveals that claims, qua which claims (a) to (j) have been set out deals with various extra and substituted items which have been admittedly executed by the claimant, but neither rates were finalized by the employer nor rates offered/submitted by the claimant were rejected rather, the employer kept on making part payments. Award held to be valid – Rate of interest increased from 12% to 18% in line with provisions of S.31(7)(b), which clearly provides that sum directed to be paid by arbitral tribunal shall, unless where otherwise directed, carry interest at the rate of 18% from the date of award to the date of payment.

(Para 38, 56)

Advocate(s): Arb. Case No. 92 of 2011 For the Petitioners:
Mr. Ashwani K. Sharma, Senior Advocate with Mr. Ishan Sharma, Advocate. For the Respondent: Mr. K.D. Sood, Senior Advocate with Mr. Het Ram Thakur, Advocate.
Arb. Case No. 6 of 2012
For the Petitioner: Mr. K.D. Sood, Senior Advocate with Mr. Het Ram Thakur, Advocate. For the Respondents: Mr. Ashwani K. Sharma, Senior Advocate with Mr. Ishan Sharma, Advocate.

JUDGMENT

Sandeep Sharma, Judge: By way of above captioned arbitration cases filed under S.34 of Arbitration and Conciliation Act (hereinafter, 'Act'), challenge has been laid to Award dated 19.8.2011 passed by arbitral tribunal consisting of sole arbitrator Justice Vijender Jain (retired), whereby learned Arbitrator, while allowing the claim set up by M/s SAB Industries, petitioner in Arb. Case No. 6 of 2012 (hereinafter referred to as, 'claimant') awarded Rs.1,40,36,158/- in its favour and against the State of Himachal Pradesh, petitioner in Arb. Case No. 92 of 2011 (hereinafter referred to as, 'employer').

2. For having bird's eye view of the matter, facts shorn of unnecessary details, necessary for the adjudication of the case at hand are that an item rate tender for deposit work for construction of Himachal Pradesh Dental College, Shimla (Building portion Block-A & B including water supply and SI, external water supply, sewerage and development of site) was approved and awarded in favour of M/s SAB Industries Ltd. for total amount of Rs.4,94,85,169/- (which was 166.13% above total amount put to tender) with deviation limit of 30% as per Clause 2(e)(ii) of contract agreement i.e. amount of Rs.1,48,45,550/- and stipulated period of completion of work as per award letter dated 23.8.1996 was two years i.e. from 8.9.1996 to 7.9.1998. The contract period was admittedly extended by the petitioners on the requests made by claimant from time to time by granting six authorized time extensions. The work was completed on 30.6.2000. There was no dispute between the parties that upto 46th running bill, total amount to the tune of Rs.5,39,07,701/- stood paid to claimant by the department. Thereafter, in the 47th bill (final bill) an amount of Rs.32,54,503/- was claimed by the claimant for substituted and extra items from the employer. Since no payment was made by the employer, the claimant raised dispute in terms of Clause 25 of the agreement for Rs.2,72,90,155/- under following heads:

(a) Whether the claimant company is entitled to the claims set out in items A to J, paragraphs 7-44 of the claim petition (Vol.) as due and payable by the respondent?

(b) In case these claims are not proved in their entirety, what claim amount the claimant can be held entitled which may be just and equitable?

(c) Whether the extension of contract period was due to default of the respondent on account of the acts of omission and commission on the part of the concerned employees and to what effect?

(d) Whether the claimant company is entitled to any amount of claim on account of deviations, escalations, substituted items and extra items and how much

(e) Whether the claimant is entitled to an interest and if so from which date and at what rate?

(f) Whether the claim of the petitioner company is time barred?

(g) Whether the claimant is stopped from making the claim in question.

3. Earlier Superintending Engineer (Arbitration Cell) was appointed as arbitrator on 13.3.2002 and he entered into reference on 16.2.2002, however, later said post was abolished and as such, this Court vide order dated 6.3.2003 appointed late Justice Roop Singh Thakur, as an Arbitrator but due to untimely death of said arbitrator, this court vide order dated 31.10.2008, appointed Justice Virender Jain, former Chief Justice, Punjab and Haryana High Court as an arbitrator. Since pleadings were completed during the tenure of late Justice Roop Singh Thakur, parties agreed to continue with arbitration proceedings, from the stage, left by earlier arbitrator, who entered into reference after being appointed as an arbitrator.

4. The claimant claimed following amounts in its claim filed before the Arbitrator:

A. Payment against work done including escalation Rs.84,76,158/-

B. Release of security Rs.50,000/-

C. Payment due against loss caused to the claimant by the Department by obstructing claimant from executing and completing the work of total estimated cost of Rs.4,94,85,169/- till original time limit i.e. upto 7.9.1998. Work of only Rs.2,30,36,514/- was allowed to be executed and completed within original contract period i.e. upto 7.9.1998. Claimant stressed that it was obstructed to execute the balance work of Rs.2,64,48,655/- within the original contract period depriving claimant estimated profit percentage of 15% net, which is recoverable from the Department, 15% of Rs.2,64,655/- i.e. Rs.39,67,298/-.

D. Payment due against loss caused to the claimant by the Department by allowing claimant to execute and complete the work of Rs.2,64,48,655/- in the period commencing from 8.9.1998 till 30.6.2000 i.e. for a period of about 22 months in sharp contrast to claimant capacity to execute and complete the work of Rs.4,53,61,61,405/- (calculated on the basis of presumed agreed capacity of the above work of Rs.4,94,85,169/- within a time of twenty four months depriving claimant of estimated profit on the work @ 15% on the balance amount i.e. 15% of Rs.1,89,12,750/- i.e. Rs.28,36,912/-

E. Payment due against loss caused to the claimant for rendering its T&P machinery, equipment etc. for a long overrun period Rs.10,53,775/-

F. Depreciation of tools, plants, shuttering and centering machinery and equipment etc. for a long over-run period Rs.8,75,253/-

G. Payment due against loss caused to the claimant during the over-run period of the contract on overheads, financial cost on watch and ward staff and financial cost borne by the claimant Rs.52,05,746/-

H. Payment due on account of over run cost incurred on POCLAIN CK-90-Rs,19,21,075/0-

I. Payment due on account of loss of interest on delayed payments Rs.4,23,015/-

J. Claim on account of arbitration expenses @ 10% of the amount of claimants from claim A to L i.e. 10%5 of Rs.2,48,09,232- Rs.24,80,923/

K. Interest on account of depreciation of the use of the blocked amount of Rs.2,72,90,155/- i.e. amounts under claim A to J @ 24% per annum compounded quarterly.

L. Interest from the date of award to the date of actual payment @ 24% per annum compounded quarterly on amount of claims from A to K.

5. Learned Arbitrator, on the basis of claim and counter-claim filed by respective parties, framed following issues on 29.11.2003

1. Whether the claimant company is entitled to the claims set out in items A to J, paragraphs 7-44 of the claim petition (Vol.) as due and payable by the respondent?

2. In case these claims are not proved in their entirety, what claim amount the claimant can be held entitled which may be just and equitable?

3. Whether the extension of contract period was due to default of the respondent on account of the acts of omission and commission on the part of the concerned employees and to what effect?

4. Whether the claimant company is entitled to any amount of claim on account of deviations, escalations, substituted items and extra items and how much?

5. Whether the claimant is entitled to an interest and if so from which date and at what rate?

6. Whether the claim of the petitioner company is time barred?

7. Whether the claimant is stopped from making the claim in question.

6. After framing issues and allowing parties to lead evidence, learned Arbitrator, vide award dated 19.8.2011, passed following award in favour of the claimant:

1. Amount of Rs.57,27,307/- under claim A

2. Rs.50,000/- under claim B

3. Amount of Rs.26,44,865/- under claim C

4. Amount of Rs.7,02,478/- under claim E

5. Amount of Rs.10,00,000/- under claim G.

6. Amount of Rs.12,00,000/- under claim H

7. Amount of Rs.2,11,508/- under claim I

8. Amount of Rs.25,00,000/- under Claim J Thus a total award of Rs.1,40,36,158/- with simple interest at the rate of 12% from 31.8.2001 till date of award was passed and further after three months from the date of award amount of Rs.1,67,03,028/- as interest was allowed and total claim was settled at Rs.3,07,39,186/-.

7. Feeling aggrieved by the award passed by learned Arbitrator, the employer has filed Arbitration Case No. 92 of 2011, praying therein to quash the arbitral award being against the public policy of India. On the other hand, claimant has preferred Arbitration Case No. 6 of 2012, seeking enhancement of the award. Since both the cases arise out of same award, as such, they were tagged and were heard together.

8. Having heard learned counsel for the parties and perused the record, vis-à-vis reasoning assigned in the impugned award, this Court finds that the employer has mainly laid challenge to the impugned Award on the following grounds:

(a) That the award is against the Arbitration and Conciliation Ac.

(b) Documents relied upon by the Department were not considered and learned Arbitrator mis-conducted the proceedings as admitted facts have been noticed incorrectly.

(c) The award is preposterous, against record and harsh & oppressive.

(d) That learned Arbitrator has not taken into consideration rates of items on the basis of rates fixed/decided and amount has been awarded on lump sum basis.

(e) The learned Arbitrator has not correctly appreciated the reasons for delay in completion of work and Department instructed and advised the claimant to complete the work in time by issuing various letters.

(f) Learned Arbitrator has not taken into consideration the amounts already paid to the claimant.

9. To the contrary, claimant has sought enhancement of award on following grounds: (a) Rate of interest should have been allowed on the total award amount of Rs.3,07,39,186/- (b) Compounding interest at the rate of 24% compounded quarterly ought to have been awarded instead of simple interest of 12% per annum as per Section 31(7) of the Arbitration and Conciliation Act.

10. Precisely, the case of the employer, as has been highlighted in the petition and further canvassed by Mr. Ashwani Sharma, learned senior counsel appearing for the employer is that award in question is not in conformity with the public policy of India for the reason that arbitrator has gone beyond the scope of Clause 25, while adjudicating the reference made to him. He submitted that in terms of Clause 25, of the contract agreement, except where otherwise provided in the agreement,, all questions and disputes arising therefrom were referable to arbitration whereas, dispute, which has been raised by the claimant, is totally different as such, award is liable to be set aside on this count only. Learned senior counsel, further argued that learned Arbitrator has committed a grave illegality in law, by ignoring provisions of Clause 25 of the agreement, which was a lump sum contract, therefore, arbitrator was not competent to adjudicate the dispute. It was specifically given in the agreement that substituted works required for the purpose of contract were to be executed by contractor within lump sum amount of contract. While making this court peruse the contents of tender document vis-à-vis document led on record by the employer, Mr. Sharma, argued that the amounts assessed under various heads as well as claims set up by the claimant were beyond the scope of the consciously agreed clauses of the contract agreement, executed and signed inter se parties. He submitted that agreed deviation limit of project was 30% whereas, actual deviation on the site was less than that and as such, there was no scope of awarding amounts on lump sum basis without agreeing or fixing the rate of such extra and substituted items. He submitted that record clearly reveals that all such claims which were due and payable to the claimant stood already judiciously assessed and promptly paid and hence, nothing remained to be paid to the claimant. He submitted that rates of extra and substituted items were got approved by the employer in light of applicable clauses of contract agreement from competent authority i.e. Chief Engineer, but vide impugned Award, learned Arbitrator ignored such approved rates on wholly untenable ground that concrete justification behind methodology adopted by the authority in determining the rates was not mentioned. Hon'ble Apex Court in G.J. Fernandez v. State of Karnataka & Ors 1990 (2) SCC 488 held that if tender conditions are interpreted consistently by the State in a particular manner acting bona fide, the court should not interfere or substitute an interpretation, which it considers correct. It was held that it is for the State to decide what is the true interpretation of the documents. While making this Court peruse the findings returned by learned Arbitrator, while allowing the claims submitted by the claimant vis-à-vis documentary evidence led on record by the employer, Mr. Sharma argued that there was no reason or justification for learned Arbitrator, while awarding certain amounts under particular heads. He submitted that letters written by contractor, whimsically fixing rates of extra and substituted items were not payable by the employer and learned Arbitrator did not care to look into the grounds as to how the claimant had given justification/analysis of the rates claimed and there is no reasoning, observation or finding by learned Arbitrator on this aspect. In this regard, he placed reliance upon judgment rendered by Hon'ble Apex Court in Food Corporation of India & Ors. v. Vikas Majdoor Kamdar Sahkari Mangli Ltd. (2007) 13 SCC 544.

11. He argued that the amount awarded contrary to permissible agreement is in breach of public policy of India and as such, impugned Award is not sustainable. Lastly, Mr. Sharma submitted that delay in completion of work was not attributable to the employer rather entire project was delayed on account of lethargic attitude of the claimant. Mr. Sharma, argued that learned Arbitrator wrongly placed reliance upon Minutes of Meeting held on 1.3.1999 when Additional Chief Secretary in the presence of Departmental officers had reviewed the progress of the project, because perusal of the same clearly reveals that the delay of work was not attributable to the employer rather same happened on account of rain and snow. He submitted that the mere fact that claimant was granted repeated extensions, cannot be said to be sufficient reason to draw any adverse conclusion against the employer that such delay had occurred owing to faults and defaults on the part of the employer. He further argued that objection petition filed by the claimant for grant of interest at the rate of 18% per annum compounding from 31.8.2001 to 19.8.2011 on amount of Rs.1,40,36,158/- and future interest of 18% per annum on total amount under award i.e. Rs.3,92,18,178/- alongwith costs of objections is not tenable and deserves outright rejection. He submitted that learned Arbitrator, after due consideration of entire facts and circumstances of the case exercised discretion with regard to grant of rate of interest on the amount as assessed. He further submitted that otherwise also, claim set up on behalf of the claimant with regard to grant of interest (its rate or simple/compound) is not an issue which is covered within the scope of S.34(2)((b)(ii) of the Act because, such matter cannot be said to be ‘against the public policy of India’. He submitted that claimant cannot be allowed to indulge in unjust enrichment and objection on behalf of the claimant for award of compounding interest and costs of objections, as claimed, is liable to be dismissed.

12. Per contra, Mr. K.D. Sood, learned senior counsel duly assisted by Mr. Het Ram Thakur, Advocate supported the impugned Award, inasmuch claims Nos. (a) to (j) came to be allowed. While placing

reliance upon judgment passed by this Court in State of H.P. v. M/s Himachal Techno Engineers and another, Arb. Case No. 7 of 2008 and Himachal Pradesh Roads and Other Infrastructure Development Corporation Ltd. v. M/s C&C Construction Ltd., (CRBC No. 1 of 2022), Mr. Sood, learned senior counsel argued that court has a very limited jurisdiction to interfere with the findings returned in the impugned Award. He argued that court can not interfere with the award in usual course, on factual aspects, rather court can interfere only if it appears to it that findings returned are such that no fair-minded or reasonable person could return. He further submitted that so far issue of awarding interest is concerned, Hon'ble Apex Court in Uhl Power Company Limited v. State of Himachal Pradesh has held that even post-award interest can be granted by the arbitrator on the interest amount awarded. While making this court peruse the reasoning assigned in the impugned Award passed by learned Arbitrator, Mr. K.D. Sood, learned senior counsel appearing for the claimant argued that bare perusal of the same clearly reveals that the same is based upon proper appreciation of law as well as documentary evidence, as such, petition filed under S.34 by the employer, deserves outright rejection.

13. I have heard learned counsel for the parties and gone through the record as also the reasoning assigned in the impugned Award.

14. Before ascertaining the correctness of the rival submissions as noted herein above, this court deems it necessary to elaborate upon the scope of interference by this Court, while exercising power under S.34 of the Act.

15. Hon'ble Apex Court in Uhl Power Company Limited v. State of Himachal Pradesh (2022) 4 SCC 116, has categorically held that jurisdiction conferred upon the courts under S.34 of the Act is fairly narrow and when it comes to the scope of an appeal under S.37 of the Arbitration and Conciliation Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award is all the more circumscribed.

16. In the afore judgment, Hon'ble Apex Court further held that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found if the learned Arbitrator proceeds to accept the one interpretation as against the other.

17. Similarly, in case titled Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. (2019) 20 SCC 1, which has been otherwise taken note in Uhl Power Company (supra), Hon'ble Apex Court proceeded to hold that S.34 of the Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts and arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter, without there being a possibility of alternative interpretation which may sustain the arbitral award.

18. If the aforesaid judgments are read in their entirety, it clearly emerges that S.34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate contained under S.34 is to respect the finality of the arbitral award and the parties autonomy to get the dispute adjudicated by an alternative forum as provided under the law. Hon'ble Apex Court further held that if the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternative dispute resolution world stand frustrated.

19. Hon'ble Apex Court in Oil & Natural Gas Corporation Limited v. Western Geco International Limited (2014) 9 SCC 263, categorically held that award made by an arbitrator can be interfered, if it is found to be in conflict with the public policy of India. The expression, 'public policy' as came to be interpreted by Hon'ble Apex Court in ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705 also came to be reiterated by Hon'ble Apex Court in Oil & Natural Gas Corporation Ltd. (supra). Relevant paras of the aforesaid judgment read as under:-

> "34. It is true that none of the grounds enumerated under Section 34(2)(a) were set up before the High Court to assail the arbitral award. What was all the same urged before the High Court and so also before us was that the award made by the arbitrators was in conflict with the "public policy of India" a ground recognized under Section 34(2)(b)(ii) (supra). The expression "Public Policy of India" fell for interpretation before this Court in ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705 and was, after a comprehensive review of the case law on the subject, explained in para 31 of the decision in the following words: (SCC pp.727-28)
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> > "31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public

policy" in Renusagar case 1994 Supp(1) SCC 644, it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to: (a) fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal. Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."

35. What then would constitute the 'Fundamental policy of Indian Law' is the question. The decision in Saw Pipes Ltd. (supra) does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "Fundamental Policy of Indian Law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the Fundamental Policy of Indian law. The first and foremost is the principle that in every determination whether by a Court or other authority that affects the rights of a citizen or leads to any civil consequences, the Court or authority concerned is bound to adopt what is in legal parlance called a 'judicial approach' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the Court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of Judicial approach in judicial and quasi judicial determination lies in the fact that so long as the Court, Tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bonafide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a Court, Tribunal or Authority vulnerable to challenge."

20. It clearly emerges from the aforesaid judgment that the concept of "public policy" connotes some matter which concerns public good and the public interest. Similarly, award/judgment/decision likely to adversely affect the administration of justice has been also termed to be against "public policy."

21. Reliance is also placed upon a judgment passed by Hon'ble Apex Court in Hindustan Tea Company v. M/s K. Sashikant & Company and another, AIR 1987 Supreme Court 81; wherein it has been held as under:- "Under the law, the arbitrator is made the final arbiter of the dispute between the parties. The award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion or has failed to appreciate facts. Where the award which was a reasoned one was challenged on the ground that the arbitrator acted contrary to the provisions of Section 70 of the Contract Act, it was held that the same could not be set aside."

22. Similarly, Hon'ble Apex Court in M/s Sudarsan Trading Company v. The Government of Kerala and another, AIR 1989 Supreme Court 890, has held as under:- "It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator as to what impelled him to arrive at his conclusion. In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In the absence of any reasons for making the award, it is not open to the Court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisement of evidence by the arbitrator is never a matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator."

23. Reference is also made to the judgment passed by the Hon'ble Apex Court in McDermott International Inc. v. Burn Standard Company Limited and others (2006) 11 Supreme Court Cases 181. The relevant paras of the judgment are reproduced as under:-

"In terms of the 1996 Act, a departure was made so far as the jurisdiction of the court to set aside an arbitral award is concerned vis-a-vis the earlier Act. Whereas under Sections 30 and 33 of the 1940 Act, the power of the court was wide, Section 34 of the 1996 Act brings about certain changes envisaged thereunder. Section 30 of the Arbitration Act, 1940 did not contain the expression "error of law…". The same was added by judicial interpretation. While interpreting Section 30 of the 1940 Act, a question has been raised before the courts as to whether the principle of law applied by the arbitrator was (a) erroneous or otherwise or (b) wrong principle was applied. If, however, no dispute existed as on the date of invocation, the question could not have been gone into by the Arbitrator. The 1996 Act makes provision for the supervisory role of

courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it. The arbitral award can be set aside if it is contrary to (a) fundamental policy of Indian law;(b) the interests of India; (c) justice or morality; or (d) if it is patently illegal or arbitrary. Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Lastly where the Arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute, would come within the purview of Section 34 of the Act. What would constitute public policy is a matter dependant upon the nature of transaction and nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the court to judge what is in public good or public interest, and what would otherwise be injurious to the public good at the relevant point, as contradistinguished from the policy of a particular government."

24. It is quite apparent from the aforesaid exposition of law that scope of interference by Court is very limited while considering objections having been filed by the aggrieved party under S.34 of the Act. Award passed by the learned Arbitrator can be interfered with in case of a fraud or bias or violation of principles of natural justice. Interference, if any, on the ground of 'patent illegality' is only permissible, if the same goes to the root of the case. Violation should be so unfair and unreasonable as to shock the conscience of the Court. In the judgment referred herein above, it has been held by the Hon'ble Apex Court that what is to be constituted as 'public policy' is a matter dependent upon the transaction and nature of the statute, but the same should be so unfair and unreasonable as to shock the conscience of the Court, as has been observed herein above.

25. Similarly, there cannot be any dispute qua the fact that the court, while deciding objections, if any, filed by an aggrieved party under S.34 of the Act, against the Award passed by an Arbitrator, does not sit in appeal over the findings returned by the learned Arbitrator and there cannot be any reappraisal of evidence on the basis of which, learned Arbitrator has passed the Award. Otherwise also, in terms of S. 34 of the Act, objections, if any, filed by the aggrieved party can be considered by the Court, if the Award is, in any manner, against the public policy, which certainly has to be liberally interpreted in view of the facts of the case.

26. Now being guided by aforesaid exposition of law laid down by Hon'ble Apex Court, this court would proceed to consider the facts of the instant case to determine whether the impugned Award is against public policy of India as claimed by the objectors or not?

27. Precisely, the argument, as has been raised by the employer is that the learned Arbitrator, while passing impugned Award failed to take into consideration material placed before him. However, having gone through the award passed by learned Arbitrator vis-à-vis material placed on record by the parties, this court has no hesitation to conclude that the learned Arbitrator has dealt with each and every contention raised by both the parties, while considering each claim put forth by the claimant. Learned Tribunal below, after having recorded the facts and submissions made by learned counsel for the parties, has given detailed reasoning and as such, it cannot be said that the award passed by learned Tribunal below is without any reasoning. Though, this Court is fully convinced that the award passed by learned Tribunal below, while awarding compensation qua different claims set up by the claimant is reasoned but even otherwise, this Court is not persuaded to agree with Mr. Ashwani K. Sharma, learned senior counsel that impugned Award passed by learned Arbitrator is against public policy of India. To substantiate aforesaid plea of award being against public policy of India, Mr. Sharma made a serious attempt to persuade this court to agree with the contention that learned Tribunal below, while deciding various facts, travelled beyond the scope of reference and erroneously allowed the claimants to file amended claims contrary to the claim filed by it at the first instance before Superintending Engineer.

28. In the case at hand, there is no dispute with regard to quantity and measurement of work but the only dispute is with regard to rates of various extra and substituted items and loss /damages caused to the claimant on account of delay of two years in completion of work. Perusal of the issues framed by the learned Arbitrator clearly reveals that the question involved in the arbitration is as to who is responsible for causing delay. It is not in dispute that stipulated period of completion of work was two years i.e. from 8.9.1996 to 7.9.1998, but such period was extended by respondents from time to time and construction work was only completed on 30.6.2000. As many as six extensions were granted to the claimant by the employer and there is no dispute inter se parties till payment of 46th running bill. Dispute arose after submission of 47th running bill i.e. final bill sent vide letter dated 17.7.2001. Since no payment was made by the employer against the bill, claimant invoked clause 25 of the agreement. Perusal of claim in its entirety clearly reveals that same was raised on the basis of loss suffered by the claimant for a number of

reasons i.e. not handing over site by the employer, non-removal of trees, delay in demolition of old building, delay in getting clearances from Department/authorities and late approval of structural designs, unfavourable weather conditions like rain and snow, delay in payments, untimely supply of stores like cement and steel, additions and alternations in designs and specifications by respondent and non-availability of permits for movement of the vehicles. It is not in dispute that execution of work in question was delayed and the employer taking into consideration reasons stated herein above, repeatedly granted extension of time to the claimant for completion of work.

29. Mr. Sharma, learned senior counsel appearing for the employer, further argued that no amount could be awarded as claimed by the claimants against various claims, till the time it was shown to the learned Arbitrator that work got delayed on account of reasons solely attributable to the employer. Though, Mr. Sharma learned counsel for the claimant vehemently argued that execution of work was not hampered for the reasons solely attributable to the employer and invited attention to various communications sent by site engineer to the claimant, calling upon it to expedite the work, but bare perusal of the proceedings of the meetings of Monitoring and Coordination Group regarding construction of Dental College Building in Shimla held in the Chamber of Smt. C.P. Sujaya, Additional Chief Secretary on 13.5.1998, suggests something else. Perusal of conclusion drawn in the proceedings of the meeting, which have been already taken into consideration by learned Arbitrator and made part of award, clearly suggests that the delay in execution of the work in question was on account of failure of the employer to get the sanction for cutting trees on the site. It has been categorically held in the Minutes of Meeting that delay was on account of changes made by the Public Works authorities from time to time.

30. Having noticed various aspects of the matter committee categorically recorded its finding that delay is attributable to the employer. Since the employer itself failed to get the necessary clearances for cutting trees in time and drawings were repeatedly changed at the behest of Public Works authorities, amount as claimed by the claimant under various claims rightly came to be allowed by the learned Arbitrator.

31. Interestingly, rates offered/demanded by the claimant were neither rejected nor approved inspite of the fact that claimant submitted bill indicating rates during execution of work itself.

32. Leaving everything aside, this court finds that since there was no dispute qua the fact that there were some modifications in the work, claimant made reference to the employer, through written communications. Department could have either accepted the rates or rejected the same, but interestingly, in the case at hand, employer kept on making part payments but failed to take a decision with regard to rates submitted /offered by the claimants.

33. Clause 12(4) of the agreement heavily pressed into service by Mr. Ashwani K. Sharma, learned senior counsel itself suggests that rates were to be decided by engineer-in-charge on the basis of prevailing market rates when the work was done. Record of learned Arbitrator reveals that nothing was brought on record by the employer to show what was market rate for the items qua which specific reference came to be put forth by the claimant.

34. Claims set out in items Nos. (a) to (j) in paragraphs 17-44 of the claim petition, claimed to be payable by the employer for a sum of Rs.84,74,158/- for extra and substituted items came to be decided by learned Arbitrator by returning findings qua issue Nos. 2 and 4. Record reveals that the employer made part payments to the aforesaid claims towards extra and substituted items against rates demanded by the claimant but failed to take a decision, if any, with regard to rates offered/submitted by the Department. Since claimant had to complete the work within extended time, it kept on using the material i.e. extra and substituted material without there being a final decision of department qua the rates offered by the claimant. However, subsequently, employer, while considering 47th running bill, which was of Rs.1,95,87,657/-, rejected the same on 31.8.2011. Rates were to be worked out as per Clause 12 agreed between the parties, however, employer claimed before learned Arbitrator that rate provisionally given by the claimant was agreed in terms of agreement. Record reveals that the employer failed to place on record rates decided inter se parties qua extra and substituted items, after extension of time granted by the employer.

35. Clause 12 of the agreement clearly provides that:

> "The Engineer-in-Charge shall have the power to make any alterations in, omissions from additions or substitutions for, the original specifications, drawings, designs and instructions, that may appear to him to be necessary during the progress of work and the contractor shall carry out the work in accordance with any instructions which may be given to him in writing signed by the Engineer-in-Charge, and such alterations, omissions, additions or substitutions shall not invalidate the Contract and any altered, additional or substituted work which the Contractor may be directed to do in the manner above specified as part of the work shall be carried out by the Contractor on the same conditions in all respect on which he agreed to do the main work. The time for the completion of work shall be extended in the proportion that the altered, additional or

substituted work, bears to the original Contract work, and the certificate of the Engineer-in-charge, shall be conclusive as to such proportion. ”

36. Most importantly, aforesaid clause 12 provides that rates for such additional, altered or substituted work under this clause shall be worked out in accordance with the following provisions of respective order:

(i) If the rates for the additional altered or substituted work are specified in the contract for the work the contractor is bound to carry out the additional, altered or substituted work at the same rates as are specified in the contract for the work.

(ii) If the rates for the additional, altered or substituted work are not specifically provided in the contract for the work the rates will be derived from the rates for a similar class of work as are specified in the contract for the work.

(iii) If the altered, additional or substituted work includes any work for which no rate is specified in the contract for the work and cannot be derived from the similar class s of work in the contract then such work shall be carried out at the rates entered in HP Schedule of Rate, 1987 with up-to the correction of tender minus/plus percentage which the total tendered amount bears to the estimated cost of the entire work put to tender.

(iv) If the rates for the altered, additional or substituted work cannot be determined in the manner specified in clause (i) to (iii) above, then the rates for such work shall be worked out on the basis of the schedule of rates of the district specified above minus/plus percentage which the total tendered amount bears to the estimated cost of the entire work put to tender. Provided always that if the rate for a particular part or parts of the item is not in the schedule of rates, the rate for such part or parts will be determined by the Engineer-in-charge on the basis of prevailing market rates when the work was done.

(v) If the rates for the altered, additional or substituted work cannot be determined in the manner specified in sub-clause (i) to (iv) above, then the contractor shall, within 7 days of the date of receipt of order carry out the work, inform the Engineer-incharge of the rate when it is his intention to charge for such class of work supported by analysis of the rate or rates claimed and the Engineer-in-Charge shall determine the rate or rates on the basis of prevailing market rates and pay the contractor accordingly. However, the Engineer-in-Charge by notice in writing, will be at liberty to cancel his order to carry out such class of work and arrange to carry it out in such manner as he may consider advisable. But under no circumstances, the contractor shall suspend the work on the plea of non-settlement of rates of items falling under this clause.”

37. Condition No.(iv) as taken note herein above provides that If the rates for the altered, additional or substituted work cannot be determined in the manner specified in clause (i) to (iii) above, then the rates for such work shall be worked out on the basis of the schedule of rates of the district specified above minus/plus percentage which the total tendered amount bears to the estimated cost of the entire work put to tender. Provided always that if the rate for a particular part or parts of the item is not in the schedule of rates, the rate for such part or parts will be determined by the Engineer-in-charge on the basis of prevailing market rates when the work was done.

38. Admittedly, in the case at hand, record clearly reveals that claims, qua which claims (a) to (j) have been set out deals with various extra and substituted items which have been admittedly executed by the claimant, but neither rates were finalized by the employer nor rates offered/submitted by the claimant were rejected rather, the employer kept on making part payments.

39. All the claims set out in the clauses (a) to (j) were duly considered by learned Arbitrator under various provisions of Clause 12 of agreement, because admittedly rates qua aforesaid items were not given in original schedule of work nor were subsequently approved by the employer. Though, Mr. Sharma, learned senior counsel for the employer, vehemently argued that the claims set out by the claimant under Clause (a) to (j) were not covered under various provisions of clause 12 but such plea of him deserves outright rejection because learned Arbitrator, while awarding amount qua aforesaid claims has very carefully and meticulously examined claims vis-à-vis provisions contained under Clause 12 of the agreement.

40. Otherwise also, careful perusal of award reveals that the employer has admitted certain claims to be covered under Clause 12 but yet termed the claims of the claimants to be on higher side, as such, prayer of the employer rightly came to be rejected because, as per provisions contained under Clause 12 (4), rates were to be decided for extra items or the works not included in original schedule were to be decided by the Department. In the case at hand, employer neither rejected the rates offered/submitted by the claimant nor determined the rate on its own basis.

41. Findings returned by learned Arbitrator qua aforesaid aspect of the matter, nowhere persuades this court to agree with Mr. Ashwani Sharma, learned senior counsel representing the employer that the learned Arbitrator while deciding claims failed to appreciate the material placed on record by it, rather, this court finds that learned Arbitrator has decided all the claims strictly on the basis of material placed on record before it by the respective parties.

42. Perusal of the award clearly reveals that on the basis of pleadings of the parties, learned Arbitrator considered all the claims set out in the claim separately. Learned Arbitrator below before passing impugned Award in extensio took note of contention of the parties. Each and every claim has been dealt /decided by the learned Tribunal below after taking into consideration contentions made by the learned counsel for the parties, as such, it cannot be said that same has been passed without taking into consideration documents, which were produced before learned Arbitrator by the parties.

43. Another question, which arises for consideration is, 'whether this court can go into findings recorded by learned Arbitrator by reappreciating the pleadings and evidence led on record. Answer to this question is in the negative. Since findings returned by learned Arbitrator are based on the contentions of the parties and evidence led on record, in terms of contract entered into between the parties, same cannot be interfered with.

44. While exercising power under S.34 of the Act, court cannot interfere with arbitral award, when there is nothing to suggest that the findings recorded by learned Arbitrator are so perverse so as to shock the judicious conscious of this court. Decision of the arbitrator can only be interfered, in case of commission of misconduct by the arbitrator, which does not exist as far as present case is concerned.

45. Having scanned entire material available on record vis-à-vis reasoning assigned in the impugned Award, this court has not been able to find any illegality or perversity in the findings. Findings returned by the learned Arbitrator are simple findings of fact, which cannot be interfered unless same are shown to be totally perverse or contrary to record. Re-appreciation of evidence is not within authority of this Court under S.34 therefore, this court purposely restrains itself from reappreciating the evidence so as to return finding on merit, qua issues raised before learned Arbitrator, while passing the impugned Award.

46. Moreover, this Court cannot sit as an appellate court and reappreciate evidence on record. Though, it came to be vehemently argued on behalf of the employer that award is in conflict with justice and morality and there is patent illegality, but neither there is any material to substantiate the aforesaid argument nor learned senior counsel for the employer was able to point out any patent illegality or conflict with justice or morality.

47. By way of arbitration case No. 6 of 2012, claimant has set up a claim for grant of compounding interest at the rate of 18% per annum from 31.8.2001 to 19.8.2011 on Rs.1,40,36,158/- and future interest at the rate of 18%% per annum on total amount of the award i.e. Rs.3,92,18,178/- alongwith cost of objections.

48. Mr. Sood, learned senior counsel, representing the employer vehemently argued that 12% rate of interest awarded by learned Arbitrator is on lower side as simple interest at the rate of 12% per annum comes to 7% per annum, when calculated on monthly rest basis over the period in question. As per norms of the banks and statutory provisions under S.37(b), which provides that a sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment. While placing reliance upon judgment passed by Hon'ble Apex Court in Hyder Consulting (UK) Limited v. Governor, State of Orissa AIR 2015 SC 856::2014 (3) Scale 169, Mr. Sood argued that the word, "sum" used in S.31(7)(b) refers to the principal amount adjudged and the interest and thus post award interest can be levied on aggregate sum by the arbitral tribunal. He submitted that the findings returned by Hon'ble Apex Court in State of Haryana v. S.L. Arora & Co., which had ruled that the post award interest can only be on the principal sum and not on pre-award interest, was held to be incorrect by the majority decision in Hyder Consulting. He contended that when award was pronounced in 2011, judgment in S.L. Arora supra, was prevailing and as such, learned Arbitrator granted future interest only on the principal amount and not on the sum awarded but now since the mandate given in S.L. Arora supra has been held to be bad in law by a majority judgment rendered in Hyder Consulting supra, claimants will be entitled to future interest on the principal amount and not on the sum awarded.

49. Mr. Ashwani K. Sharma, learned senior counsel representing the employer argued that learned Arbitrator, after due consideration of the entire facts and circumstances, had exercised his discretion for grant of rate of interest on the amount so assessed. He submitted that since the claimant set up a claim with regard to grant of interest (interest rate simple or compounding), is not an issue, which is covered within the scope of S.34(b)(2) of the Act, as such, matter cannot be said to be 'against public policy of India' He further submitted that the claimant cannot be allowed to indulge in unjust enrichment and objections filed by the claimant for grant of compounding interest alongwith costs, are liable to be dismissed.

50. No doubt, at the time of passing of the award, judgment passed by Hon'ble Apex Court in S.L. Arora, was occupying the field. In S.L. Arora, it was held that the post award interest can only be awarded on principal sum and not on pre-award interest. However, Hon'ble Apex Court in Hyder Consulting, supra, has held that in S.L Arora, it has been wrongly held that the sum directed to be paid by arbitral tribunal does not refer to interest upon award and that in absence of any provision of interest upon interest in the contract, arbitral tribunal does not have power to award interest on interest or compounding interest, either for pre-award or post-award period. In the aforesaid judgment, though one of the Hon'ble Judges in three-judge bench, differed and upheld the view taken by Hon'ble Apex Court in S.L. Arora supra, but admittedly, two Hon'ble Judges, by way of majority judgment, overruled the law laid down in S.L. Arora. In Hyder Consulting supra, Hon'ble Apex Court by majority decision, ruled that undoubtedly the Parliament has the power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the Award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language. It would be apt to take note of following paras of Hyder Consulting supra:

> "70. Thus, sub-section (7) of Section 31 of the Act provides, firstly, vide clause (a) that the Arbitral Tribunal may include interest while making an award for payment of money in the sum for which the Award is made and further, vide clause (b) that the sum so directed to be made by the Award shall carry interest at a certain rate for the post award period.
>
> 71. The purpose of enacting this provision is clear, namely, viz. to encourage early payment of the awarded sum and to discourage the usual delay, which accompanies the execution of the Award in the same manner as if it were a decree of the court vide Section 36 of the Act.
>
> 72. In this view of the matter, it is clear that the interest, the sum directed to be paid by the Arbitral Award under clause (b) of sub-section (7) of Section 31 of the Act is inclusive of interest pendent lite.
>
> 73. At this juncture, it may be useful to refer to Section 34 of the CPC, also enacted by Parliament and conferring the same power upon a court to award interest on an award i.e. post-award interest. While enacting Section 34, CPC, Parliament conferred power on a court to order interest "on the principal sum adjudged" and not on merely the "sum" as provided in the Arbitration Act. The departure from the language of Section 34 CPC in Section 31 (7) of the Act, 1996 is significant and shows the intention of Parliament.
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> 74. It is settled law that where different language is used by Parliament, it is intended to have a different effect. In the Arbitration Act, the word "sum" has deliberately not been qualified by using the word "principal" before it. If it had been so used, there would have been no scope for the contention that the word "sum" may include "interest." In Section 31(7) of the Act, Parliament has deliberately used the word "sum" to refer to the aggregate of the amounts that may be directed to be paid by the Arbitral Tribunal and not merely the "principal" sum without interest.
>
> 75. Thus, it is apparent that vide clause (a) of sub-section (7) of Section 31 of the Act, Parliament intended that an award for payment of money may be inclusive of interest, and the "sum" of the principal amount plus interest may be directed to be paid by the Arbitral Tribunal for the preaward period. Thereupon, the Arbitral Tribunal may direct interest to be paid on such "sum" for the post-award period vide clause (b) of subsection (7) of Section 31 of the Act, at which stage the amount would be the sum arrived at after the merging of interest with the principal; the two components having lost their separate identities.
>
> 76. In fact this is a case where the language of sub-section 7 clause (a) and (b) is so plain and unambiguous that no question of construction of a statutory provision arises. The language itself provides that in the sum for which an award is made, interest may be included for the pre-award period and that for the post-award period interest up to the rate of eighteen per cent per annum may be awarded on such sum directed to be paid by the Arbitral Award. In such a situation one is reminded of the decision in Ganga Prasad Verma (Dr.) v. State of Bihar, 1995 Supp (1) SCC 192 Para 5, where this Court held that, "Where the language of the Act is clear and explicit, the court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature." Similarly, in Keshavji Ravji & Co. v. CIT, (1990) 2 SCC 231, a three- Judge Bench of this Court explained the rule of literal interpretation as under (SCC p.242, Para 11): "If the intendment is not in the words used it is nowhere else. The need for interpretation arises when the words used in the statute are, on their terms, ambivalent and do not manifest the intention of the legislature." We may also refer to the decision of the Privy Council in Pakala Narayana Swami v. Emperor, AIR 1939 PC 47, wherein Lord Atkin observed that, "when the meaning of words is plain, it is not the duty of courts to busy themselves with supposed intentions." This view was upheld recently by this Court in T.N. State Electricity Board v. Central Electricity Regulatory Commission, (2007) 7 SCC 636. In fact the settled view on this

subject has been to admit results of construction even if they be strange or surprising[1], unreasonable or unjust or oppressive[2]. The Privy Council in Emperor v. Benoarilal Sarma, AIR 1945 PC 48 (p. 53), emphasised, "Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise which may follow from giving effect to the language used." In the case of Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577 (Para 37), a three-Judge Bench of this Court, made it clear that the Court's jurisdiction cannot be invoked to interpret a statute so as to add or subtract words or read something into a provision which is not there. Infact, Maxwell on the Interpretation of Statutes, states, "where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. "The decision in this case," said Lord Morris of Borth-y-Gest in a revenue case, "calls for a full and fair application of particular statutory language to particular facts as found. The desirability or the undesirability of one conclusion as compared with another cannot furnish a guide in reaching a decision." [3] Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be. [4] The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient:[5] words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded.[6] Tindal, C.J. in the Sussex Peerage[7] case, summarised this principle as follows: "If the words of the Statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the law giver." This cardinal principle of construction was first stated by the United States Supreme Court in its landmark decision of Caminetti v. United States, 242 U.S. 470, 485 (1917), whereby Justice Day observed, "where the language is plain and admits of no more than one meaning the duty of interpretation does not arise."

77. In the result, I am of the view that S.L. Arora's case is wrongly decided in that it holds that a sum directed to be paid by an Arbitral Tribunal and the reference to the Award on the substantive claim does not refer to interest pendente lite awarded on the "sum directed to be paid upon Award" and that in the absence of any provision of interest upon interest in the contract, the Arbitral Tribunal does not have the power to award interest upon interest, or compound interest either for the preaward period or for the post-award period. Parliament has the undoubted power to legislate on the subject and provide that the Arbitral Tribunal may award interest on the sum directed to be paid by the Award, meaning a sum inclusive of principal sum adjudged and the interest, and this has been done by Parliament in plain language.

78. I have had the benefit of reading the scholarly Judgments of My Lord the Chief Justice as also my learned brother Bobde J.

79. With great respect, I find myself in complete agreement with the reasoning and the eventual conclusion arrived at by brother Bobde J. Even though, the judgment delivered by brother Bobde J. encapsulates everything of what is required to be said, I, however, looking to the point involved and very ably argued by all learned senior counsel, wish to record my own reasons, in addition to what has already been laid down.

80. Reiteration of facts is unnecessary. The only question that arises for determination in the instant lis is, "Whether grant of interest by the Arbitral Tribunal under Section 31(7) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act") amounts to granting "interest on interest"?

81. The aforesaid question can be answered by a plain and simple reading of Section 31(7) of the Act which reads as under:

> "31(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment."

82. Section 31(7)(a) of the Act deals with grant of pre-award interest while sub-clause (b) of Section 31(7) of the Act deals with grant of post- award interest. Pre-award interest is to ensure that arbitral proceedings are concluded without unnecessary delay. Longer the proceedings, would be the period attracting interest. Similarly, post-award interest is to ensure speedy payment in compliance of the award. Pre-award interest is at the discretion of Arbitral Tribunal, while the post-award interest on the awarded sum is mandate of statute - the only difference being that of

rate of interest to be awarded by the Arbitral Tribunal. In other words, if the Arbitral Tribunal has awarded post-award interest payable from the date of award to the date of payment at a particular rate in its discretion then it will prevail else the party will be entitled to claim post-award interest on the awarded sum at the statutory rate specified in clause (b) of Section 31(7) of the Act, i.e., 18%. Thus, there is a clear distinction in time period and the intended purpose of grant of interest.

83. Section 31(7)(a) employs the words "...the arbitral tribunal may include in the sum for which the award is made interest...". The words "include in the sum" are of utmost importance. This would mean that preaward interest is not independent of the "sum" awarded. If in case, the Arbitral Tribunal decides to award interest at the time of making the award, the interest component will not be awarded separately but it shall become part and parcel of the award. An award is thus made in respect of a "sum" which includes within the "sum" component of interest, if awarded.

84. Therefore, for the purposes of an award, there is no distinction between a "sum" with interest, and a "sum" without interest. Once the interest is "included in the sum" for which the award is made, the original sum and the interest component cannot be segregated and be seen independent of each other. The interest component then looses its character of an "interest" and takes the colour of "sum" for which the award is made.

85. There may arise a situation where, the Arbitral Tribunal may not award any amount towards principal claim but award only "interest". This award of interest would itself then become the "sum" for which an award is made under Section 31(7)(a) of the Act. Thus, in a pre-award stage, the legislation seeks to make no distinction between the sum award and the interest component in it.

86. Therefore, I am inclined to hold that the amount award under Section 31(7)(a) of the Act, whether with interest or without interest, constitutes a "sum" for which the award is made.

87. Coming now to the post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under sub-clause (a).

88. Therefore, in my view, the expression "grant of interest on interest" while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest.

89. My aforesaid interpretation of Section 31 (7) of the Act is based on three golden rules of interpretation as explained by Justice G.P. Singh - Interpretation of Statute (13th Edition- 2012) where the learned author has said that while interpreting any Statue, language of the provision should be read as it is and the intention of the legislature should be gathered primarily from the language used in the provision meaning thereby that attention should be paid to what has been said as also to what has not been said; second, in selecting out of different interpretations "the Court will adopt that which is just, reasonable, and sensible rather than that which is none of those things" ; and third, when the words of the Statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning , the Courts are bound to give effect to that meaning irrespective of the consequence (see pages 50, 64, and 132). I have kept these principles in mind while interpreting Section 31(7) of the Act.

51. in Hyder Consulting, moot question before Hon'ble Apex Court was that, “whether in light of McDermott International INC v. Burn Standard Co. Ltd. and Others, (2006) 11 SCC 181; Uttar Pradesh Cooperative Federation Limited v. Three Circles, (2009) 10 SCC 374; Oil and Natural Gas Commission v. M.C. Clelland Engineers S.A., (1999) 4 SCC 327; and Central Bank of India v. Ravindra and Others, (2002) 1 SCC 367, there exists any infirmity in decision rendered by Hon'ble Supreme Court in S.L. Arora and whether sub-section(7) of S.31 of the Act could be interpreted to include interest pendent lite within the sum payable as per the arbitral award, for the purpose of awarding post-award interest.

52. Though, one of the Hon’ble Judges of the Apex Court, held that no infirmity could be found with the judgment in S.L. Arora, supra whereby it was held that if the arbitral award is silent about interest from the date of award till the date of payment, the person in whose favour the award is made will be entitled to interest at 18% per annum on the principal amount awarded, from the date of award till the date of payment. However, by way of majority decision rendered by two Hon’ble Judges of Hon'ble Apex Court,

aforesaid law laid down in S.L. Arora, supra came to be overruled. By way of majority decision, Hon'ble Apex Court held that the expression "grant of interest on interest" while exercising the power under Section 31(7) of the Act does not arise and, therefore, the Arbitral Tribunal is well empowered to grant interest even in the absence of clause in the contract for grant of interest.

53. Similarly, Hon'ble Apex Court in Hyder Consulting supra, held that post-award interest, Section 31(7)(b) of the Act employs the words, "A sum directed to be paid by an arbitral award...". Sub-clause (b) uses the words "arbitral award" and not the "arbitral tribunal". The arbitral award, as held above, is made in respect of a "sum" which includes the interest. It is, therefore, obvious that what carries under Section 31(7)(b) of the Act is the "sum directed to be paid by an arbitral award" and not any other amount much less by or under the name "interest". In such situation, it cannot be said that what is being granted under Section 31(7)(b) of the Act is "interest on interest". Interest under sub-clause (b) is granted on the "sum" directed to be paid by an arbitral award wherein the "sum" is nothing more than what is arrived at under sub-clause (a).

54. Impugned award clearly reveals that learned Arbitrator having taken note of judgment rendered by Hon'ble Apex Court in S.L. Arora supra, held that compounding interest can be awarded only if there is specific contract and authority under the statute for compounding interest, however, in view of Hyder Consulting, supra, award to this extent is not sustainable.

55. There is no dispute that Hon'ble Apex Court, while passing judgment in Hyder Consulting supra, held its finding in S.L. Arora, supra to the effect that post award interest could be awarded only on principal amount and not on post award interest, to be incorrect, as such, claimant is entitled to compounding interest as claimed by it in the objections.

56. In view of aforesaid finding by Hon'ble Apex Court in Hyder Consulting supra, objection filed by the claimants deserves to be allowed to the extent that rate of interest deserves to be enhanced from 12% to 18% per annum and future interest at the rate of 18% per annum on total sum of post award interest and on future interest from the date of award in line with provisions of S.31(7)(b), which clearly provides that sum directed to be paid by arbitral tribunal shall, unless where otherwise directed, carry interest at the rate of 18% from the date of award to the date of payment.

57. In view of the aforesaid, Arb. Case No. 92 of 2011 is dismissed.

58. Arb. Case No. 6 of 2012 is allowed and impugned Award is modified to the extent that the claimant shall be entitled to interest at the rate of 18% per annum, compounding from 31.8.2001 to 19.8.2011 on Rs.1,40,36,158/- and future interest at the rate of 18% per annum on total amount directed to be paid under the award i.e. Rs.3,92,18,178/- .

59. All pending applications in both the cases stand disposed of. Interim directions, if any, stand vacated.
