2024:CGHC:43451

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBAP No. 10 of 2023

1 Bulk Trading S.A. Having Its Office at Piazza Molino Nuovo 17 Lugano CH-6900, Switzerland, Through Its Authorized Representative, Mr. Alberto Ravano S/o. Pietro, Aged About 73 Years, Having Office At Piazza Nolino Nuovo 17, 6900 Lugano, Switzerland

---- **Petitioners**

versus

Mahendra Sponge And Power Ltd. Having Its Registered Office At A Block, 2nd Floor, Maruti Business Park, Near Dhuppar Pump, G.E. Road, Raipur, Chhattisgarh. -492001

---- **Respondents**

ARBAP No. 9 of 2023

1 - Bulk Trading S.A. Having Its Office At Piazza Molino Nuovo 17 Lugano C H - 6900, Switzerland, Through Its Authorized Representative, Mr. Alberto Ravano S/o Pietro, Aged About 73 Years, Having Office At Piazza Nolino Nuovo 17, 6900 Lugano, Switzerland.

----**Petitioner**

Versus

1 - Mahendra Sponge And Power Ltd. Having Its Registered Office At A Block, 2nd Floor, Maruti Business Park, Near Dhuppar Pump, G. E. Road, Raipur, Chhattisgarh- 492001.

---- **Respondent**

For Applicant	**:**	Ms. Feresthe D. Sethna, Advocate with Harshmander Rastogi, Mr. Amieya Pant and Mr. Mohit Tiwari, Advocates
For Respondent	**:**	Mr. Aashish Anand Barnad, Advocate with Mr. Ashish Mittal and Mr. Mehal Jethani, Advocates

SB.: Hon'ble Mr. Justice Deepak Kumar Tiwari
Order On Board

07/11/2024

1. These two Arbitral Applications have been filed under Sections 47, 48 and 49, Chapter 1, Part-II of the Arbitration and Conciliation Act, 1996 read with Order XXI and Section 151 of the CPC for enforcement of the English Arbitral Award dated 11.8.2021 and Cost Award dated 27.3.2023.
2. Indisputably, on 6.3.2020, a contract for sale of 50,000 MT +/- 10% of Coal (Contract) was entered into by and between the parties via exchange of e-mails, which incorporated the Standard Coal Trading Agreement Version 8, General Terms and Conditions (ScoTA). Further, the respondent/judgment debtor was obliged to open a letter of credit (LC) 10 days before the commencement of the delivery period i.e. by no later than 31.3.2020. The respondent/judgment-debtor failed to open the LC by the said

date. Such a failure amounted to an event of default entitling the award-holder/applicant to terminate the contract. Subsequently, a dispute was referred and an arbitral award and cost award were passed in favour of the applicant. The respondent/decree-holder challenged the aforesaid awards by way of an appeal under the English Arbitration Award, 1996 and both the awards have attained finality. The merits award and cost award are published in the United Kingdom and as such, governed by the Notification dated 25.10.1976 issued by the Ministry of Commerce in exercise of powers conferred under clause (b) of Section 2 of the Foreign Awards (Recognition and Enforcement Act, 1961), and the same has been published in the Gazette of India on 13.11.1976. Since the property of the respondent/judgment-debtor is located in the territory of the State of Chhattisgarh, both these applications have been filed to recognize the said foreign award(s).

3. Mr. Aashish Anand Barnad, learned counsel for the respondent would submit that enforcement of the said foreign award may be refused in view of Section 48 of the Arbitration and Conciliation Act, 1996 (in short “the Act, 1996”) as the said award would be contrary to the public policy of India. Learned counsel would also submit that due to outbreak of Covid-19 Pandemic, various Notifications/Circulars have been issued under Section 10(2)(l) of the the Disaster Management Act, 2005 (in short “the Act, 2005”), regarding measures to be taken by the Ministries/Departments of Government of India to mitigate the extraordinary situation of the Covid-19 Pandemic. Learned counsel for the respondent would

refer to the letter issued by the Home Secretary and the order issued by the National Disaster Management Authority, both dated 24.3.2020, in which, guidelines in this regard have been issued. In Sl. No.4 of the said guidelines, it is directed that commercial and private establishments should be closed down, however there was an exception (at Sl.no.4 b.) to Banks, Insurance offices and ATMs. He would further submit that apart from the said exception, there was a further stipulation at Sl. No.13, whereby, a direction has been given that the organisations/employers must ensure necessary precautions against Covid-19 virus as well as social distance measures as advised by the Health Department from time to time. He further referred to Sl. No.17 of the said guidelines, wherein, it has been mentioned that any person violating these containment measures will be liable to be proceeded against as per the provisions of Sections 51 to 60 of the Act, 2005, besides legal action under Section 188 of the IPC. He would further submit that in such extraordinary situation, movement of the respondent/judgment-debtor got restricted during that period and moreover, obtaining a LC from the Bank was not so necessary like obtaining essential goods. He would further draw attention to Sl. No.15 of the said guidelines, whereby, all enforcing authorities had been given relaxation only to the extent of essential goods. Therefore, the respondent/judgment-debtor did not obtain the letter of credit in such extraordinary situation, however, the learned Arbitrators have not considered the said submission put forth, in its proper perspective and rejected the said objection and

passed the awards in favour of the applicant. Learned counsel for the respondent highlighted the objections raised in para 50 of the said award(s), wherein, the learned Arbitrators have observed that 'the only event that was to take place in India was the opening of the LC required by the Sale Contract before 1 April. We are not satisfied, on the evidence we have seen - or, more particularly, not seen – that the pandemic rendered such an event impossible. Further, were there to have been such a FM event, we would have considered it excepted by the definition of FM set out in the Sale Contract, as set out in paragraph 47 above – being an "obligation to make any payment under the agreement" under paragraph a.'

4. Learned counsel for the respondent would place reliance on the judgment rendered in the matter of **National Agricultural Cooperative Marketing Federation of India Vs. Alimenta S.A., (2020) 19 SCC 260** (para 69)., wherein, it was observed that NAFED was unable to supply as it did not have any permission in the season 1980-81 to effect the supply, it required the permission of the Government. The matter is such which pertains to the fundamental policy of India and parties were aware of it, and contracted that in such an exigency as provided in Clause 14, the Agreement shall be cancelled for the supply which could not be made. There was no permission to export commodity of the previous year in the next season and then the Government declined permission to NAFED to supply. It was held therein that it would be against the fundamental public policy of India to enforce such an award.

5. Learned counsel for the respondent also relied upon the judgment

rendered in the matter of **Associate Builders Vs. Delhi Development Authority, (2015) 3 SCC 49** and referred to para 27 of it, which reads as under :

> *Fundamental Policy of Indian Law*
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> **27.** Coming to each of the heads contained in Saw Pipes (2003) 5 SCC 705, AIR 2003 SC 2629 judgment, we will first deal with the head "fundamental policy of Indian law". It has already been seen from Renusagar 1994 Supp (1) SCC 644 judgment that violation of the Foreign Exchange Act and disregarding orders of superior courts in India would be regarded as being contrary to the fundamental policy of Indian law. To this it could be added that the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law.

6. Lastly, learned counsel for the respondent would submit that due to outbreak of Covid-19 Pandemic in March 2020, even the Supreme Court had taken cognizance and extended the limitation in SLW (C) No.3/2020. He submits that due to such epidemic; the respondent could not obtain the LC during the subject period as it was complying with the directions/guidelines issued by the Government under the Act 2005 in the territory of India. However, this aspect has not been taken into consideration by the learned Arbitrators. Hence, both the impugned awards are not sustainable, therefore, he prays to refuse enforcement of the said

awards.

7. Replying the aforesaid submissions, Ms. Feresthe D. Sethna, learned counsel for the applicant/award-holder would submit that in the subject Notification itself there is an exception to the Banks and the said ground has been taken by the respondent/judgment debtor before the learned Arbitrators. From para 46 onwards of the award(s), the learned Arbitrators have dealt with the said aspect and they have categorically observed in para 49 that Banks and Shipping are excepted industries and they were not subjected to the lock-down rules. If there was some kind of force majeure or frustration event due to Covid-19 pandemic, evidence to the contrary would have to be adduced by the buyer and they have not done so. Learned counsel for the applicant would further submit that even during Covid-19 pandemic period, passes and permits were issued by the competent authorities for certain exigencies. However, no effort has been made by the respondent/judgment debtor in this regard. Therefore, the learned Arbitrators have rightly disregarded such objection at para 50 by observing that in such situation, it was not impossible for the respondent to obtain LC and accepted the submission of the applicant that it was also not necessary for the respondent or its employee to visit the Bank in person to open a letter of credit as appearance of a person was not compulsory for opening a LC. Lastly, learned counsel for the applicant would submit that both the awards have attained finality.

8. Learned counsel for the applicant further submits that in a catena

of judgments, it has been held by the Supreme Court that there is a narrow scope of enquiry before the Court in which the award is sought to be enforced and the same is limited to the grounds mentioned in Section 48 of the Act, 1996. She would place reliance on the matter of **Shri Lal Mahal Limited Vs. Progetto Grano Spa** reported in **(2014) 2 SCC 433** and refer to para 45, wherein , it has been categorically observed that Section 48 of the Act, 1996 does not give an opportunity to have a "second look" at the foreign award in the award enforcement stage. Para 45 of the said judgment is reproduced below :

> 45. Moreover, Section 48 of the 1996 Act does not give an opportunity to have a "second look" at the foreign award in the award enforcement stage. The scope of inquiry under Section 48 does not permit review of the foreign award on merits. Procedural defects (like taking into consideration inadmissible evidence or ignoring/rejecting the evidence which may be of binding nature) in the course of foreign arbitration do not lead necessarily to excuse an award from enforcement on the ground of public policy.

9. Learned counsel for the applicant would further place reliance on the matter of **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI), (2019) 15 SCC 131**, wherein, the aspect with regard to challenge of foreign award was categorically dealt with in para 44 to 48 and para

69, which read thus :

> **44.** In Renusagar (supra), this Court dealt with a challenge to a foreign award under Section 7 of the Foreign Awards (Recognition and Enforcement) Act, 1961 ["Foreign Awards Act"]. The Foreign Awards Act has since been repealed by the 1996 Act. However, considering that Section 7 of the Foreign Awards Act contained grounds which were borrowed from Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 ["New York Convention"], which is almost in the same terms as Sections 34 and 48 of the 1996 Act, the said judgment is of great importance in understanding the parameters of judicial review when it comes to either foreign awards or international commercial arbitrations being held in India, the grounds for challenge/refusal of enforcement under Sections 34 and 48, respectively, being the same.
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> **45.** After referring to the New York Convention, this Court delineated the scope of enquiry of grounds under Sections 34/48 (equivalent to the grounds under Section 7 of the Foreign Awards Act, which was considered by the Court), and held:
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> > "34. Under the Geneva Convention of 1927, in order to obtain recognition or enforcement of a foreign arbitral award, the requirements of clauses (a) to (e) of Article I had to be fulfilled and in Article II, it was prescribed that even if the conditions laid down in Article I were fulfilled recognition and enforcement of the award would be refused if the Court was satisfied in respect of matters mentioned in clauses (a), (b) and (c). The principles which apply to recognition and enforcement of foreign awards are in substance, similar to those adopted by the English courts at common law. (See: Dicey & Morris, The Conflict of Laws, 11 Edn., Vol. I, p. 578). It was, however, felt that the Geneva Convention suffered from certain defects which hampered the speedy settlement of disputes through arbitration. The New York Convention seeks to remedy the said defects by providing for a much more simple and

effective method of obtaining recognition and enforcement of foreign awards. Under the New York Convention the party against whom the award is sought to be enforced can object to recognition and enforcement of the foreign award on grounds set out in sub-clauses (a) to (e) of clause (1) of Article V and the court can, on its own motion, refuse recognition and enforcement of a foreign award for two additional reasons set out in sub-clauses (a) and (b) of clause (2) of Article V. None of the grounds set out in sub-clauses (a) to (e) of clause (1) and sub-clauses (a) and (b) of clause (2) of Article V postulates a challenge to the award on merits.

35. Albert Jan van den Berg in his treatise The New York Arbitration Convention of 1958 : Towards a Uniform Judicial Interpretation, has expressed the view:

"*It is a generally accepted interpretation of the Convention that the court before which the enforcement of the foreign award is sought may not review the merits of the award. The main reason is that the exhaustive list of grounds for refusal of enforcement enumerated in Article V does not include a mistake in fact or law by the arbitrator*. Furthermore, under the Convention the task of the enforcement judge is a limited one. The control exercised by him is limited to verifying whether an objection of a respondent on the basis of the grounds for refusal of Article V(1) is justified and whether the enforcement of the award would violate the public policy of the law of his country. This limitation must be seen in the light of the principle of international commercial arbitration that a national court should not interfere with the substance of the arbitration." (p. 269)

36. Similarly Alan Redfern and Martin Hunter have said:

> "The New York Convention does not permit any review on the merits of an award to which the Convention applies and, in this respect, therefore, differs from the provisions of some systems of national law governing the challenge of an award, where an appeal to the

courts on points of law may be permitted." (Redfern & Hunter, Law and Practice of International Commercial Arbitration, 2 Edn., p. 461.)

37. In our opinion, therefore, in proceedings for enforcement of a foreign award under the Foreign Awards Act, 1961, the scope of enquiry before the court in which award is sought to be enforced is limited to grounds mentioned in Section 7 of the Act and does not enable a party to the said proceedings to impeach the award on merits.

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65. This would imply that the defence of public policy which is permissible under Section 7(1)(b)(ii) should be construed narrowly. In this context, it would also be of relevance to mention that under Article I(e) of the Geneva Convention Act of 1927, it is permissible to raise objection to the enforcement of arbitral award on the ground that the recognition or enforcement of the award is contrary to the public policy or to the principles of the law of the country in which it is sought to be relied upon. To the same effect is the provision in Section 7(1) of the Protocol & Convention Act of 1837 which requires that the enforcement of the foreign award must not be contrary to the public policy or the law of India. Since the expression "public policy" covers the field not covered by the words "and the law of India" which follow the said expression, contravention of law alone will not attract the bar of public policy and something more than contravention of law is required.

66. Article V(2)(b) of the New York Convention of 1958 and Section 7(1)(b)(ii) of the Foreign Awards Act do not postulate refusal of recognition and enforcement of a foreign award on the ground that it is contrary to the law of the country of enforcement and the ground of challenge is confined to the recognition and enforcement being contrary to the public policy of the country in which the award is set to be enforced. There is nothing to indicate

> that the expression “public policy” in Article V(2) (b) of the New York Convention and Section 7(1)(b)(ii) of the Foreign Awards Act is not used in the same sense in which it was used in Article I(c) of the Geneva Convention of 1927 and Section 7(1) of the Protocol and Convention Act of 1937. This would mean that “public policy” in Section 7(1)(b)(ii) has been used in a narrower sense and in order to attract the bar of public policy the enforcement of the award must invoke something more than the violation of the law of India. Since the Foreign Awards Act is concerned with recognition and enforcement of foreign awards which are governed by the principles of private international law, the expression “public policy” in Section 7(1)(b)(ii) of the Foreign Awards Act must necessarily be construed in the sense the doctrine of public policy is applied in the field of private international law. Applying the said criteria, it must be held that the enforcement of a foreign award would be refused on the ground that it is contrary to public policy if such enforcement would be contrary to (i) fundamental policy of Indian law; or (ii) the interests of India; or (iii) justice or morality.”
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> (emphasis supplied)

46. This judgment was cited with approval in Redfern and Hunter on International Arbitration by Nigel Blackaby, Constantine Partasides, Alan Redfern, and Martin Hunter (Oxford University Press, Fifth Ed., 2009) [“Redfern and Hunter”] as follows:

> “11.56. First, the New York Convention does not permit any review on the merits of an award to which the Convention applies. [This statement, which was made in an earlier edition of this book, has since been cited with approval by the Supreme Court of India in Renusagar Power Co. Ltd. v. General Electric Co. .. . The court added that in its opinion ‘the scope of enquiry before the court in which the award is sought to be enforced is limited [to the grounds mentioned in the Act] and does not enable a party to the said proceedings to impeach the Award on merits']. Nor does the Model Law.”

47. The same theme is echoed in standard textbooks on international arbitration. Thus, in International Commercial Arbitration by Gary B. Born (Wolters Kluwer, Second Ed., 2014) [“Gary Born”], the learned author deals with this aspect of the matter as follows:

“[12] No Judicial Review of Merits of Foreign or Non-Domestic Awards in Recognition Actions

It is an almost sacrosanct principle of international arbitration that courts will not review the substance of arbitrators' decisions contained in foreign or nondomestic arbitral awards in recognition proceedings. Virtually every authority acknowledges this rule and virtually nobody suggests that this principle should be abandoned. When national courts do review the merits of awards, they labour to categorize their action as an application of public policy, excess of authority, or some other Article V exception, rather than purporting to justify a review of the merits.

[a] No Judicial Review of Awards Under New York and Inter-American Conventions

Neither the New York Convention nor the Inter-American Convention contains any exception permitting non-enforcement of an award simply because the arbitrators got their decision on the substance of the parties' dispute wrong, or even badly wrong. This is reasonably clear from the language of the Convention, which makes no reference to the possibility of a review of the merits in Article V's exhaustive list of the exclusive grounds for denying recognition of foreign and nondomestic awards. There is also no hint in the New York Convention's drafting history of any authority to reconsider the merits of an arbitral award in recognition proceedings.

Likewise, the prohibition against review of the merits of the arbitrator's decision is one of the most fundamental pillars of national court authority interpreting the Convention. This prohibition has repeatedly and uniformly been affirmed by national courts, in both common law and civil law jurisdictions. Simply put: “the court may not refuse to enforce an arbitral award solely on the ground that the arbitrator may have made a mistake

of law or fact" [Karaha Bodas Co. LLC v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara, 364 F.3d 274, 287-88 (5 Cir. 2004)]. Thus, in the words of the Luxembourg Supreme Court [Judgment of 24 November 1993, XXI Y.B. Comm. Arb. 617, 623 (Luxembourg Cour Supérieure de Justice) (1996)]:

> "The New York Convention does not provide for any control on the manner in which the arbitrators decide on the merits, with as the only reservation, the respect of international public policy. Even if blatant, a mistake of fact or law, if made by the arbitral tribunal, is not a ground for refusal of enforcement of the tribunal's award."

Or, as a Brazilian recognition decision under the Convention held [Judgment of 19 August 2009, Atecs Mannesmann GmbH v. Rodrimar S/A Transportes Equipamentos Industriais e Armazes Gerais, XXXV Y.B. Comm. Arb. 330, 331 (Brazilian Tribunal de Justiça) (2010)]:

"These questions pertain to the merits of the arbitral award that, according to precedents from the Federal Supreme Court and of this Superior Court of Justice, cannot be reviewed by this Court since recognition and enforcement of a foreign award is limited to an analysis of the formal requirements of the award."

Commentators have uniformly adopted the same view of the Convention [See, for e.g., K.-H. Böckstiegel, S. Kröll & P. Nacimiento, Arbitration in Germany 452 (2007)]." (at pp. 3707-3710)

(emphasis supplied)

48. Likewise, the UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (2016 Ed.) ["UNCITRAL Guide on the New York Convention"] also states:

> "9. The grounds for refusal under article V do not include an erroneous decision in law or in fact by the arbitral tribunal. A court seized with an application for recognition and enforcement under the Convention may not review the merits of the arbitral tribunal's decision. This principle is

unanimously confirmed in the case law and commentary on the New York Convention."

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

10. Learned counsel for the applicant would further submit that if the Court is satisfied that the foreign award is enforceable, the award(s) shall be deemed to be a decree of that Court and the Court has to proceed further to execute the foreign award as the decree of that Court. Lastly, she would submit that the objections raised by the respondent/judgment debtor are not sustainable. Hence, learned counsel for the applicant prays to allow both the applications and recognize the awards for enforcement.

11. Heard learned counsel for the parties and also perused the

documents annexed with the petitions.

12. Section 48 of the Act, 1996 set out the grounds on which the foreign award is refused. The said Section is reproduced below :

> **48. Conditions for enforcement of foreign awards.** (1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that-
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> (a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
>
> (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
>
> (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
>
> Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or
>
> (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the

parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that-

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

[Explanation 1. For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2 - For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(3) If an application for the setting aside or suspension of

> the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

13. Learned counsel for the respondent/judgment-debtor has taken only a specific plea that the said awards are not enforceable on the ground that the same are contrary to the public policy of India. The situation of the Covid-19 Pandemic has been referred in the subject Notification which has been issued under the Act, 2005. The expression "Public Policy of India" as contained in the Foreign Awards (Recognition and Enforcement) Act, 1961 (the Foreign Awards Act) was interpretated in **Renusagar Power Co. Ltd. Vs. General Electric Co, 1994 Supp. (1) SCC 644 (Renusagar)**. The said expression received a narrow construction in the said judgment in the context of a foreign award. After the enactment of the Arbitration Act and consequent repeal of the Foreign Awards Act, the appropriate construction of the expression "public policy of India" as contained in the Arbitration Act was decided **in Shri Lal Mahal Limited (supra**). In the said judgment, the Honb'le Supreme Court concluded that it is the narrow construction of public policy which should apply to the interpretation of Section 48 of the Arbitration Act. While the Hon'ble Supreme Court refused to declare a foreign award to be enforceable in **Alimenta S.A**

(supra), the said judgment was rendered in the context of the Government of India refusing permission to NAFED to export the relevant commodity. On such basis, it was concluded that the enforcement of the foreign award would contravene the fundamental policy of India and the basic notions of justice. In other words, unless a foreign award is contrary to the fundamental policy of Indian law or the most basic notions of morality or justice it should be recognized and enforced.

14. The question whether the recognition and enforcement of a part of the Foreign Award is contrary to public policy, in the peculiar facts and circumstances of the case, is a separate and distinct matter. The expression “public policy” cannot be put into a straight jacket. As interpretated in **Renusagar** and subsequently in **Shri Lal Mahal (supra)**, the said expression is required to receive a narrow construction in the context of a foreign award.

15. Reverting back to the facts and circumstances of the case, it is quite vivid that in the situation of Covid-19 pandemic in March 2020, though the Supreme Court has extended the limitation for cognizance in the litigation matters but in the said Notification itself, there is an exception to the Banks and other organisations and the said objection has been raised before the learned Arbitrators. The learned Arbitrators have carefully dealt with the said issue extensively and observed that the banks and shipping are the excepted industries and they are not subject to the lock-down rules.

16. Even if the submission of learned counsel for the

respondent/judgment debtor is accepted, for the sake of convenience, there is no complete bar even in such contingencies. During the relevant period, the person concerned could have approached the Bank after obtaining permission/permit of the competent authorities. The Banking Sector continued to provide essential services to meet out the requirements of every citizen in such extra ordinary situations so as to avoid any financial hardship. The learned Arbitrators have assigned cogent reasons for discarding the said objection. Hence, the awards on such score would not be contrary to or in the teeth of public policy of India and the said objection raised by learned counsel for the respondent/judgment debtor is not sustainable.

17. In view of the aforesaid discussion, the Applicant is entitled to an order declaring that the Foreign Award(s) is recognized and is, consequently, enforceable as a decree of this Court. If the payment has not been made, it is open for the Applicant to enforce the Foreign Award(s) by taking recourse to measures in accordance with the applicable provisions of the Code of Civil Procedure, 1908.

18. Consequently, both the Arbitration Applications are allowed on the above terms without any order as to costs.

Sd/-

(Deepak Kumar Tiwari)

Judge

Shyna

ARBAP No. 10 of 2023 & ARBAP No. 9 of 2023

HEAD NOTE

Foreign Award Enforcement – Even during Covid-19 pandemic, the Banking Sector continued to provide essential services and in the Notification, said Sector is under exception, so the award(s) could not be said to be contrary to public policy of India. Foreign Award(s) is recognised and enforceable as a decree of the Court.

विदेशी अवार्ड का प्रवर्तन – कोविड 19 महामारी के दौरान भी बैंकिंग क्षेत्र ने निरन्तर आवश्यक सेवाएँ प्रदान की है तथा अधिसूचना में उक्त क्षेत्र छूट के अंतर्गत है, ताकि अवार्ड को भारत के लोक नीति के प्रतिकूल न समझा जावे। विदेशी अवार्ड न्यायालय के डिक्री के समान मान्यता प्राप्त और प्रवतर्नीय है।