2024:DHC:5183-DB

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:15.07.2024

\+ **FAO(OS) (COMM) 94/2019 and CM APPL. 19449/2019**

NOBLE CHARTERING INC ..... Appellant

versus

STEEL AUTHORITY OF INDIA LTD. ..... Respondent

AND

\+ **FAO(OS) (COMM) 121/2019 and CM APPL. 26007/2019**

STEEL AUTHORITY OF INDIA LTD. ..... Appellant

versus

NOBLE CHARTERING INC ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr V.K. Ramabhadran, Senior Advocate with Mr J.K. Ashar, Mr Abhishek Singh, Mr Sudhanshu Sikka and Ms Nancy Thapar, Advocates and for respondent in FAO(OS) (COMM) 121/2019.

For the Respondent : Mr Raj Shekhar Rao, Senior Advocate with Mr Ashish Tiwari, Mr Anurag Tiwari and Mr Sahib Patel, Advocates and for appellant in FAO(OS) (COMM) 121/2019.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MSJUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J.

1. These cross appeals have been filed under Section 37(1)(c) of the Arbitration & Conciliation Act, 1996 (hereafter the *A&C Act*)

impugning a judgment dated 28.02.2019 (hereafter the *impugned judgment*) passed by the learned Single Judge in OMP(COMM) No.225/2018. The said petition was preferred by the Steel Authority of India Limited (hereafter *the SAIL*) under Section 34 of the A&C Act impugning an arbitral award dated 27.12.2017 (hereafter the *impugned award*) rendered by an Arbitral Tribunal comprising of the sole arbitrator (hereafter *the Arbitral Tribunal*). By the impugned award, the Arbitral Tribunal has awarded a sum of USD 8,564,908.60 along with interest at the rate of 3% per annum from the date of letter of termination dated 02.01.2013 (hereafter *the termination e-mail*) till the date of the impugned award, with a further direction that the same be paid within a period of three months. In addition, the Arbitral Tribunal also awarded future interest at the rate of 9% per annum on the awarded amount in the event the same was not paid within a period of three months from the date of the impugned award.

2. The learned Single Judge partly allowed SAIL's application and set aside the impugned award to the extent of damages computed on account of failure to issue stems for the period after the termination e-mail. The learned Single Judge confined the award of damages to USD 2,013,585.60 on account of stem due in December, 2012. Additionally, the learned Single Judge modified the award of interest to LIBOR rate plus 3%.

3. Noble Chartering Inc. (hereafter *Noble*) has assailed the impugned judgment to the extent that the claims awarded by the Arbitral Tribunal have been set aside. Additionally, it is also contended on its

behalf that the decision to modify the award of interest is erroneous. SAIL has also appealed the impugned judgement to the extent that the learned Single Judge has not interfered with the award of damages of USD 2,013,585.60.

4. The disputes in the present case arise out of the Contract of Affreightment dated 20.08.2008 (hereafter *the COA*) entered into between Noble as '*Owners*' and SAIL as '*Charterers'* for shipment of coking coal from the ports in the United States of America to the ports in India for a shipment period of three years from September, 2008 to August, 2011.

FACTUAL CONTEXT

5. Noble is a company incorporated under the laws of Hong Kong and is engaged in the business of owning, chartering and operating vessels. Its principal place of business is at 18th Floor, Mass Mutual Tower, 38 Gloucester Road, Hong Kong.

6. SAIL is a public sector company that is owned and controlled by the Government of India. It is, *inter alia*, engaged in manufacturing steel and has its office at Central Marketing Organisation, Ispat Bhavan (6th Floor), 40 Jawahar Lal Nehru Road, Kolkata- 700 071. The shipping requirements of SAIL are arranged by Transchart, a division of Ministry of Shipping, Government of India.

7. The parties entered into the COA on 20.08.2008. In terms of the COA, SAIL agreed to load 18,00,000 MT, plus/minus 5% at its option, cargo of coking coal during a period of three years commencing from

September, 2008 to August, 2011. The shipments were to be made in parcels of 70,000 MT (5% more or less at Noble's option) on a 'Fairly Evenly Spread' (hereafter also referred to as '*FES'* in short) prorate basis during the shipment period. Thus, it is stated by Noble that SAIL was required to make twenty-five shipments of coking coal after intervals of approximately forty-four days. In terms of Clause 2 of the COA, the shipment period was extendable by three months at SAIL's option and such extension was to be declared five months before the completion of the period of the COA.

8. SAIL declared two stems in the month of September, 2008 and November, 2008. However, it did not declare any further stems till May, 2009 thereafter.

9. By an e-mail dated 17.11.2008, the representative of SAIL informed the counsel for Noble that on account of the economic, financial, and market conditions, the nomination for stem for the month of December, 2008 was uncertain. SAIL claimed that due to the Sub-Prime Crisis in the United States of America, manufacturing of steel was adversely affected and its requirement of coking coal, for such manufacturing, was reduced.

10. By an e-mail dated 04.12.2008, Noble urged SAIL to declare a stem for the month of December, 2008 in terms of the COA and conveyed that in the event SAIL did not declare the stem within 24 hours, Noble would be constrained to take appropriate legal action and claim damages amounting to USD 3,533,846/-. SAIL responded by its

e-mail dated 05.12.2008, stating that it intends to honour its obligations under the COA as the global economic situation improves. Noble by another e-mail dated 09.12.2008 informed SAIL that it would be constrained to take legal action if stems are not declared and would also charge interest on all overdue payments.

11. After certain discussions between the parties, the parties agreed that coal could be loaded from Australia in addition to the United States of America. Subsequently, two stems (one in May 2009 and another in August 2009) were declared by SAIL for loading from Australia.

12. This agreement was formalised by the parties by entering into an Addendum to the COA dated 29.09.2009 (hereafter *the Addendum*). In terms of the Addendum, SAIL was given the option of loading from Australian Ports. The duration of the COA was also extended to February, 2012.

13. A tabular statement setting out the shipments made under the COA as set out in the impugned award, is reproduced below:

NO.	LOAD/DISCH PORT	VSL	LAYCAN	CARGO QTY	BL date
1	USEC/ECI	CALYPSO	20-30 SEP 08	71130	01 October 2008
2	USEC/ECI	FORTUNE RAINBOW	10-20 NOV 08	73560	19 November 2008
3	DBCT/EC INDIA	PHILLIPPINE EXPRESS	20-30 MAY 09	73500	28 May 2009
4	DBCT/EC INDIA	GIANT SKY	20-30 AUG 09	76402	18 September 2009
5	HAY POINT / ECI	MEDI KOBE	5-14 NOV 09	73473	22 November 2009
6	QUEENSLAND/ECI	WEN ZHU HAI	5-15 FEB 10	74476	24 February 2010

7	QUEENSLAND/ECI	PINA CAFIERO	5-15 MAR 10	71269	19 April 2010
8	DBCT/EC INDIA	INTER PRIDE	10-25 APR 10	71875	27 April 2010
9	HAY POINT / ECI	AOM MILENA	1-10 JUN 10	73508	02 June 2010
10	HAY POINT / ECI	PRABHU SATRAM	9-18 JUL 10	73459	13 July 2010
11	HAY POINT / ECI	GH POWER	16-25 SEP 10	72994	17 September 2010
12	HAY POINT / ECI	CLIPPER MONARCH	10-19 NOV 10	72476	11 November 2010
13	HAY POINT / ECI	MINERAL STAR	10-20 APR 11	73508	14 April 2010
14	GLADSTONE/ECI	YONG TAI	1-10 MAY 11	71432	04 May 2011
15	EC AUSSIE	CAPT DIAMANTIS	25 JUN-05 JUL 11	72715	07 July 2011
16	EC AUSSIE	BARGARA	14-23 FEB 12	72650	17 February 2012
17	EC AUSSIE	CAPTAIN DIAMANTIS	29 FEB- 9 MAR 12	72602	28 March 2012
18	EC AUSSIE	EVANGELIA PETRAKIS	20-30 MAY 12	72126	31 May 2012
19	EC AUSSIE	ARCHON	5-14 JUL 12	73012	09 July 2012

14. In terms of Clause 1 of the Addendum, SAIL agreed that it would declare five laycan on FES basis between May, 2009 and March, 2010. Noble also agreed to defer the balance five shipments and SAIL agreed that the said five shipments would be performed within the duration of COA but after 31.03.2010.

15. In terms of Clause 3 of the Addendum, it was agreed that the deferred five shipments would be performed in addition to the balance twelve shipments under the COA and thus, a total of seventeen shipments would be performed during the period April, 2010 to February, 2012.

16. During the period of April, 2010 to January, 2012, SAIL provided eight shipments. SAIL claims that due to heavy rain and flooding in Australia during the period 24.12.2010 to 20.06.2011, the mines could not dispatch coal to the ports. And, this constituted *force majeure*. Notwithstanding the same, SAIL made two shipments during the said period, one in April, 2011 and the second in May, 2011.

17. According to Noble, SAIL failed to perform its obligations under the COA as extended. It claimed that SAIL was obliged to make seventeen shipments between the period April, 2010 and February, 2012 on FES basis. Noble states that in this background further discussions took place between the parties till early January, 2012, which were recorded in an e-mail dated 05.01.2012. SAIL provided further four shipments between the period February, 2012 to July, 2012.

18. Noble claims that as on 01.08.2012, the shipments made fell short of 413,833 MT out of the agreed 18,00,000 MT as was contracted in terms of the COA. There were certain communications exchanged between the parties in this regard.

19. On 26.10.2012, Noble sent an e-mail informing SAIL that it was prepared to extend time till 30.09.2013 to allow SAIL to lift the outstanding 413,833 MT of cargo by way of five shipments performed at FES intervals and in accordance with the COA. Noble also specified that the same would be against "full reservation of rights". SAIL responded by an e-mail dated 30.10.2012 agreeing to the extension of

COA till September, 2013 but reserving the rights for reduction in quantity by 5%.

20. Noble's solicitors confirmed the said extension of the COA till 30.09.2013 by an e-mail dated 09.11.2012. However, it was also clarified that the remaining shipments were to be performed on FES basis. Noble also sought declaration of stems for the month of December, 2012 on an urgent basis by its e-mails dated 09.11.2012 and 20.11.2012.

21. SAIL terminated the COA by the termination e-mail referring to Clause 62 of the COA.

22. Noble did not accept the termination of the COA and sent an e-mail dated 04.01.2013 alleging that SAIL's termination was wrongful and unless the same is withdrawn, it would be treated that SAIL had repudiated the COA. Thereafter, by an e-mail dated 10.01.2013, Noble informed SAIL that they were accepting SAIL's repudiation of the COA while reserving the right to claim losses under the Maritime Arbitration Rules before the Indian Council of Arbitration (hereafter *ICA*).

23. Noble invoked Clause 60 of the COA and sought reference of the disputes to arbitration under the aegis of the ICA. Pursuant thereto an Arbitral Tribunal comprising of three members (hereafter *ICA Tribunal*) was appointed on 07.03.2014.

24. SAIL challenged the reference of disputes before the ICA Tribunal and filed a suit being CS No. 193/2013, *inter alia*, seeking a declaration that the arbitration clause (Clause 60) in the COA does not cover disputes arising out of breach of terms of the COA and is limited to maritime disputes. SAIL sought a perpetual injunction restraining Noble from pursuing the arbitration before the ICA Tribunal. SAIL also filed an application seeking interim stay of the proceedings before the ICA Tribunal. SAIL challenged the mandate of the members of the ICA Tribunal to continue the arbitral proceedings. Noble instituted a suit for damages before the High Court of Delhi.

25. Thereafter on 29.06.2016, the parties entered into an Arbitration Agreement (hereafter *the Arbitration Agreement*) and agreed to refer the disputes to a sole arbitrator for determination. The parties agreed to appoint the Arbitral Tribunal and in terms of Clause 3 of the Arbitration Agreement collectively revoked the jurisdiction of the ICA Tribunal to decide the disputes. Clause 3 of the Arbitration Agreement is quoted hereinbelow:

> "3. The Parties agree to appoint Retired Justice S.S. Nijjar as the Sole Arbitrator. The appointment of Retired Justice S.S. Nijjar is made on a joint basis by both Parties. Upon acceptance of appointment, Retired Justice S.S. Nijjar shall take up his appointment and become the Sole Arbitrator on the terms set out in this Agreement. Once Retired Justice S.S. Nijjar has accepted his appointment and become the Sole Arbitrator, the Tribunal collectively and each individual arbitrator of the Tribunal as well as the ICA shall no longer have jurisdiction to determine the

Disputes and their appointments as arbitrators shall cease."

26. In terms of the Arbitration Agreement, it was agreed that the sole arbitrator constituting the Arbitral Tribunal, would take up its appointment from the stage the arbitral proceedings had reached. The parties agreed to withdraw the litigation pending before the courts.

THE ARBITRAL PROCEEDINGS

27. The Arbitral Tribunal continued the proceedings on 09.07.2016. The pleadings were completed by the parties before the ICA. An amended Statement of Claim was filed by Noble before the ICA on 01.04.2015 whereby it sought a declaration that SAIL was in repudiatory breach or had unlawfully renounced the COA and the Addendum.

28. Noble claimed that SAIL had failed to declare the stems on FES basis, which it was obliged to do in terms of the COA and the Addendum. According to Noble, if the stems were declared on FES basis, the outstanding laycans would have been declared on or around 20.12.2012, 10.03.2013, 30.05.2013 and 20.08.2013. It was contended that SAIL unjustly enriched itself by arranging shipments through the spot market, to the extent of the difference between the agreed freight set out in the COA and the spot market rates. Noble claimed that it was entitled to the difference between the COA and market rates for freight for the shipments that were not declared by SAIL. Noble referred to the Baltic Exchange rates for determining the market freight rates. It calculated the loss and damage caused to it in respect of four shipments,

which, according to Noble should have been performed prior to the termination of the COA, that is, during 09.11.2012 to 30.09.2013 by considering the market rate of freight at the material time (USD 19.15 per MT). And, claimed that it had suffered a loss of USD 2,013,585.60 during the said period. The losses suffered by Noble for three other shipments were calculated by it on the basis of the difference between the rate of freight as per the COA and the market rate of freight with reference to Forward Prices as on the date of the termination of the COA. The same was quantified, as a Time Charter Equivalent of USD 59,347.82 per day over a period of 41.28 days per shipment, at a sum of USD 6,550,628.25. Alternatively, Noble calculated the loss by considering the market rates of freight as per the spot market rates prevalent at the material time the shipments should have been performed, at a sum of USD 6,511,323.00.

29. An Expert Report prepared by Ms Jean Richards (CW-2) was submitted before the Arbitral Tribunal along with a note on calculation of damages whereby damage/ loss occasioned was calculated based on the Baltic Index method at USD 8,463,585.09. Alternatively, the damage was calculated as USD 8,844,185.00 based on stems declared by SAIL in the spot market and it was evaluated to be USD 8,587,838.31 based on Forward Pricing.

30. Accordingly, Noble set up its claim for a sum of USD 8,564,213.85 or alternatively, a sum of USD 8,524,908.60 as compensation for breach of the COA and the Addendum along with compensation for incidental losses suffered by Noble for a sum of USD

32,500. It also sought interest at the rate of 18% per annum from the respective shipment dates and cost of arbitration.

31. An amended Statement of Defence was filed by SAIL on 30.06.2015 and a reply to the amended Statement of Defence was filed by Noble on 24.07.2015.

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

> "No.1A Is the Respondent precluded from challenging Capt. V. K. Gupta's nomination as an arbitrator – particularly in view of the decision of the Maritime Arbitration Committee dated 23 October 2013 and 14 November 2013?
>
> No.1B If the Respondent is not precluded as stated above, then whether this Tribunal has jurisdiction to decide the challenge to Capt. V. K. Gupta's nomination on the grounds that he does not possess the qualifications agreed to by the parties and more particularly that he is not a commercial man?
>
> No.1C If the Respondent is not so precluded, and if this Tribunal has the jurisdiction to decide the challenge to Capt. Gupta's nomination, then does the Respondent prove that Capt V. K. Gupta does not satisfy the requirement of being a "commercial man" as agreed in the Arbitration Agreement between the parties i.e. Clause 60 of the agreement dated 20th August 2008?
>
> No.2 Whether the Tribunal has jurisdiction to determine the present Claim?

No.2(a) Whether the agreement dated 20.08.2008 is a 'Contract of Affreightment' or otherwise if so to what effect?

No.3 Whether the Contract of Affreightment Agreement dated 20.08.2008 ("the Agreement") was in the nature of a standing order/contingent contract/MoU/agreement to agree in future with no binding obligation on the Respondent to make available any specific quantity of shipment and the Claimant had to nominate a vessel only when the Respondent declared a stem or whether it was a binding obligation requiring the Respondent to ship 1,800,000 MT of cargo (+/-5% in its option) over the period of 3 years (such period subsequently being amended by agreement) at fairly evenly spread intervals?

No.4 If so, what meaning is the term "fairly evenly spread" to be given in the facts and circumstances of the case and whether the stems declared by the Respondent were "fairly evenly spread"?

No.5 Whether the Respondent was obliged to provide 7 (seven) shipments to the Claimant, 4 (four) between 9 November 2012 and 30 September 2013 at approximately 65 days intervals, and 3 (three) thereafter, as alleged by the Claimant?

No.6 Whether the proposed Addendum contained in Claimant's email of 05 January 2012 was concluded as an amendment to Agreement between the parties? If so, to what effect?

No.7 Whether the Respondent was entitled to terminate the Agreement in terms of Clause 62 by its letter dated 2 January 2013? If so, was such termination without liability?

No.7(a) What was the effect of claimant's letter dated 10th January, 2013?

No.8 Whether the Claimant was in breach of the Agreement, as alleged by the Respondent, and, if so, to what effect?

No.9 Whether the Respondent's conduct amounted to a renunciation and/or repudiation and/or breach of the Agreement by the Respondent, thereby entitling the Claimant to terminate the Agreement, as alleged?

No.10 Whether, by reason of unprecedented economic meltdown throughout the world, the Agreement stood frustrated?

No.11 Whether the Respondent proved that events which occurred in Queensland, Australia in December 2010 constitute *force majeure* events under the Agreement and if so, whether the Respondent gave the Claimant proper notice of the occurrence of the *force majeure* events? If the answer to both the foregoing questions is in the affirmative, what effect does the occurrence of the *force majeure* events have?

No.12 Whether the Claimant proves to have suffered any legally recoverable loss on account of the Respondent's repudiation/breach of the Agreement and if so, the quantum of loss suffered by the Claimant?

No.13 Whether the Claimant is entitled to recover from the Respondent losses suffered by the Claimant on account of incidental expenses as claimed?

No.14 Whether the Claimant is entitled to recover interest from the Respondent and if so, on what sums and from what date and at what rate?

No.15 Whether the Claimant is entitled to recover from the Respondent its legal costs of this arbitration (including fees of the Tribunal as may be paid or payable by Claimant and other expenses incurred by Noble incurred in connection with this arbitral proceeding)?

No.16 What order?"

33. Noble examined Mr. Jagmeet Singh (CW-1) to prove the material facts and Ms Jean Richards (CW-2) as an expert witness. SAIL examined Ms. Jasmine Maiti (RW-1) as a fact witness and Mr Colm Nolan (RW-2) as an expert witness. Witnesses were cross examined before the Arbitral Tribunal.

34. The issues for determination as framed by the ICA tribunal were decided by the Arbitral Tribunal, except Issue Nos. 1 and 2, which the parties agreed were not relevant.

THE IMPUGNED AWARD

35. Noble's claims were founded on alleged wrongful repudiation of the COA. The principal controversy before the Arbitral Tribunal related to the interpretation of the COA and the termination of the COA by SAIL under Clause 62 of the COA. The Arbitral Tribunal considered the rival contentions advanced by the parties. It determined the nature of the COA and interpreted the terms of the COA based on evidence led by the parties.

36. The Arbitral Tribunal took note of the record of shipments as stated in the Statement of Claim and observed that a total of 1,385,627 MTs of cargo was shipped during the period of September, 2008 to July, 2012.

37. SAIL contended that the COA was not in the nature of a 'Contract for Affreightment' but in the nature of a standing order or a contingent contract, or a Memorandum of Understanding, or an agreement to agree to declare stems, which would give rise to obligations when such declaration was made. This contention was rejected by the Arbitral Tribunal. The Arbitral Tribunal also considered the evidence of witnesses (Mr. Makkar, CW 1 and Ms. Jasmine Maiti, RW 1) in drawing its conclusion. It observed that, broadly, the COA was in the nature of a Contract for Affreightment which, was a binding contract between the parties for shipment of a fixed quantity of coking coal (18,00,000 MTs) over a specified duration (3 years). The term of the COA could be extended by way of addendums and the parties had the right to terminate the contract under the provisions of the COA.

38. The Arbitral Tribunal referred to the evidence led by Ms Jean Richards, CW 2 and the decision in ***Aquavita International SA Glendive Enterprise Ltd v. AsaPura Minechem Limited***[1], and accepted that the terms of the COA specified that the shipments were to be made on a 'fairly evenly spread' basis. The Arbitral Tribunal observed that as per the customs and usage of the shipping industry the term 'fairly evenly spread' would apply to the COA and accordingly, the shipments were to be made with a gap of 44 to 45 days during the term of the COA. The Arbitral Tribunal accepted Noble's contention that the stems were not declared by SAIL on a 'fairly evenly spread' basis.

[1] (2015) EWHC 2807 (QB)

39. The Arbitral Tribunal determined the issue whether a second addendum was entered into between the parties (Addendum dated 05.01.2012) or whether the same was merely a proposed addendum for extension of the terms of the COA till 30.09.2013 on the basis of the material placed by the parties. The Arbitral Tribunal considered the communications between the parties including the email dated 05.01.2012, (which discussed the terms of the said addendum) and email dated 12.01.2012 addressed by representative on behalf SAIL seeking time for approval of the terms of the Addendum dated 05.01.2012. And, held that there was no consensus arrived at between the parties with regard to the second addendum dated 05.01.2012, which sought to extend the period of the COA to 30.09.2013 and that the parties continued operations under the impression that the said addendum had not come into effect.

40. As noted above, the principal controversy centered around the termination of the COA by SAIL under Clause 62 of COA by email dated 02.01.2013. The Arbitral Tribunal interpreted the said clause and observed that a strict reading of Clause 62 of the COA shows that the COA can be terminated under the said Clause in the following two circumstances:

> "(a) In case suppliers fail to provide the material to the charterer. Obviously, therefore charterer would be justified in not making any shipments.
>
> (b) In case there is a late supply by the supplier, the charterer would not be able to ship the materials by the time or times agreed upon. Again, the charterer

would be justified in not making the shipments in time."

41. The Arbitral Tribunal did not accept that the part of Clause 62 of the COA that read as "Suppliers/Charterers in any manner or otherwise fail to perform the contract", permitted SAIL to terminate the COA without cause. The Arbitral Tribunal held that the COA could be terminated under Clause 62 of the COA on account of circumstances beyond the control of the respondent (SAIL) and the termination e-mail did not terminate the COA under such circumstances.

42. The Arbitral Tribunal interpreted Clause 61 of the COA as one enabling both parties to terminate the COA on account of *force majeure* events. The Arbitral Tribunal accepted that Clause 62 of the COA, permitted only SAIL to terminate the contract without any liability for either party. But did not accept that the intention of Clause 62 was not to grant SAIL unbridled, unilateral and absolute powers to terminate the contract at its will or for commercial expediency.

43. The Arbitral Tribunal held that SAIL was not justified in terminating the COA by virtue of the termination e-mail under the default clause (Clause 62 of the COA).

44. The Arbitral Tribunal denied SAIL's claim that Noble was in breach of the COA including by reason of substitution of the vessels to perform the shipments. SAIL's contentions that Noble's conduct led to renunciation/ repudiation/ breach of the COA and that the contract stood frustrated by virtue of the unprecedented economic meltdown, were rejected.

45. Noble's contention that proper notice of *force majeure* was not given for non-declaration of the stems by SAIL during the period from December, 2010 to 20.06.2011 during which *force majeure* events occurred in Australia, was rejected on the ground that the COA was not terminated by the termination e-mail on account of *force majeure* events (under Clause 61 of the COA).

46. The Arbitral Tribunal granted damages to Noble for breach of the COA by SAIL. The Arbitral Tribunal accepted that laycans were due during December 2012, March 2013, May 2013 and August 2013 as the stems were to be declared on 'fairly evenly spread' basis. The measure of damages was taken as the difference between the contract price (COA rates) and the spot market rate at the time of the breach of the COA. The Arbitral Tribunal dismissed the Baltic Index method and the Forward Pricing method for evaluating the quantum of damages. The quantum of damages calculated by Ms Jean Richards based on the spot market rate was also not accepted.

47. Noble's claim of damages, quantified at USD 8,524,908.60, was allowed. Furthermore, interest at the rate of 3% per annum was granted from 02.01.2013 (date of termination of the COA) till the date of the award. The Arbitral Tribunal also awarded future interest at the rate of 9% per annum in case of default in payment of the amount awarded within a period of three months. The operative part of the impugned award is set out hereinbelow:

"<u>AWARD</u>

NOW, FOR THE REASONS GIVEN ABOVE, I, JUSTICE S. S. NIJJAR (RETD.) HEREBY AWARD, ORDER, AND DIRECT THAT:

(1) The Respondent shall pay to the Claimant a sum of USD 8,524,908.60, with interest @ 3% p.a. from the date of the issuance of the letter of termination by the Respondent i.e. 02.01.2013, within a period of three months from the date of the Award. In the event of default the amount awarded together with interest shall be paid @ of 9% p.a. from the date of the award, till payment.

(ii) The Parties shall bear their own costs for the entire proceedings."

THE IMPUGNED JUDGEMENT

48. The learned Single Judge partially allowed the challenge raised by SAIL to the impugned award.

49. The learned Single Judge noted SAIL's submissions that there was a typographical error in the amount as awarded in favour of Noble. And, sum of USD 8,524,908.60 was awarded in favour of Noble in place of USD 8,506,669.6. This was accepted by counsel appearing for Noble.

50. The learned Single judge accepted SAIL's contention that the Arbitral Tribunal had misinterpreted Clause 62 of the COA. The learned Single Judge found that the Arbitral Tribunal had proceeded on an erroneous assumption that the power to unilaterally terminate the COA under Clause 62 of the COA would render the said Clause void under Sections 23 and 28 of the Indian Contract Act, 1872 (hereafter *the*

Contract Act). The learned Single Judge referred to certain authorities[2], and held that a contractual clause conferring the power to unilaterally terminate a contract, on a party would not render the same void.

51. The Arbitral Tribunal's decision that Clause 62 of the COA would have to be read *ejusdem generis* with other provisions of the contract was also rejected. The learned Single Judge held that there was no ambiguity in the language of Clause 62 of the COA and thus, the same was to be read literally.

52. The learned Single Judge took notice of the limited jurisdiction of a court under Section 34 of the A&C Act, however, observed that in case of an *ex facie* incorrect interpretation of a contract by an Arbitral Tribunal, the arbitral award would be liable to be set aside. It was observed that the interpretation of the Arbitral Tribunal with respect to Clause 62 of the COA being applicable only if the reason for such termination was outside the control of the Charterer (SAIL), was fallacious and unsustainable in law.

53. The learned Single Judge also faulted the Arbitral Tribunal's decision to hold that that the termination of the COA by SAIL was wrongful as the same was based on an erroneous interpretation of the provisions of the COA.

[2] Her Highness Maharani Shantidevi P.Gaikwad vs. Savjibhai Haribhai Patel & Ors.: (2001) 5 SCC 101, Central Bank of India Ltd, Amritsar vs. Hartford Fire Insurance Co., Ltd.: AIR 1965 SC 1288, M/s Classic Motors Ltd. v. Maruti Udyog Ltd.: 1996 SCC OnLine Del 872, Oil and Natural Gas Corporation Ltd., Mumbai v. M/s Streamline Shipping Co. Pvt. Ltd.: 2002 SCC OnLine Bom 303, Altus Group India Pvt. Ltd. vs. Darrameks Hotels & DevelopersPvt Ltd.: MANU/DE/1362/2018

54. The learned Single Judge referred to the decision of the Supreme Court in ***Juggilal Kamlapat v. Pratapmal Rameshwar***[3] and held that a contract could be repudiated on any ground existing at the time of such repudiation, regardless of whether the ground was stated in the correspondence communicating such repudiation.

55. The damages awarded by the Arbitral Tribunal on account of failure to declare stems after the termination of the COA, were set aside with the observation that SAIL could not be held responsible to loss occasioned after the COA was terminated. The claim for damages for the stem that was required to be declared prior to the issuance of the termination e-mail – that is prior to the termination of the COA – being a sum of USD 2,013,585.60, was upheld. The learned Single Judge reasoned that the termination of the COA could not be construed to be effective retrospectively to absolve SAIL of its liability for the breach during the period prior to the termination of the COA. However, SAIL's contention that the amount awarded would have to be reduced by 1.25% payable as brokerage, was accepted.

56. The learned Single Judge found the method adopted by the Arbitral Tribunal for determining the quantum of damages, being the difference between the contract price (COA rates) and the spot market rate at the time of the breach of the COA, was reasonable and accepted the same.

[3] (1978) 1 SCC 69

57. The objection raised by SAIL regarding the rate of interest awarded on the awarded amount – that is, 3% from the date of issuance of the termination e-mail till the date of the impugned award and 9% from the date of the impugned award till the date of payment – was allowed by the learned Single Judge in view of the decision of the Supreme Court in ***Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Co. Ltd***.[4].

58. The learned Single Judge set aside the interest awarded by the Arbitral Tribunal and awarded interest at the London Interbank Offered Rate (LIBOR) plus 3% per annum.

SUBMISSIONS

59. Mr Ramabhadran, learning senior counsel appearing for Noble submitted that the learned Single Judge had, in effect, attempted to re-adjudicate the disputes between the parties, which is impermissible. He contended that the learned Single Judge had exceeded the remit of Section 34 of the A&C Act by expansively construing the same and supplanting its opinion in place of that of the Arbitral Tribunal. He contended that the impugned award could be assailed only on the ground of conflict with public policy as explained by the Supreme Court in ***Renusagar Power Company Limited v. General Electric Company***[5]. He submitted that even if it was found that there was contravention of any statute, the same would not render an arbitral award in conflict with the public policy of India if it did not affect national interest as held by

[4] 2019 (11) SCC 465
[5] 1994 SCC SUPL. (1) 644

this Court in ***National Highways Authority of India v. GVK Jaipur Expressway Private Limited***[6].

60. He submitted that the learned Single Judge had erred in proceeding on the basis that the Arbitral Tribunal's decision to interpret Clause 62 of the COA rested only on the ground that if the clause is interpreted in the manner as canvassed by SAIL, it would be void. He submitted that a plain reading of the impugned award indicated that the learned Arbitral Tribunal had examined Clause 62 of the COA and had interpreted the same in reference to the context, which was neither perverse nor implausible. He submitted that an interpretation of an agreement by an arbitrator is not amenable to challenge under Section 34 of the A&C Act unless it is an impossible interpretation. Further, such a challenge would fall within the scope of patent illegality and within the scope of conflict with the public policy of India.

61. He also submitted that by virtue of amendment to Section 28(3) of the A&C Act, the Arbitral Tribunal was required to render an award having regard to the terms of the COA. The said amendment was introduced to remove the basis of the decision of the Supreme Court in ***Oil and Natural Gas Corporation Limited v. Saw Pipes Limited***[7]. He contended that in the present case, the Arbitral Tribunal had rendered the decision having due regard to the provisions of the COA and thus, the Arbitral Tribunal's decision could not be faulted.

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[6] 2023 SCC OnLine Del 3790
[7] (2003) 5 SCC 705

62. Lastly, he submitted that the learned Single Judge had also erred in amending the impugned award by modifying the award of interest. He contended that pre-award interest at the rate of 3% and future interest at the rate of 9%, could not be considered as unreasonable or patently illegal.

63. Mr Rajshekhar Rao, learned senior counsel appearing for SAIL countered the aforesaid submissions. He supported the decision of the learned Single Judge that the Arbitral Tribunal's interpretation of Clause 62 of the COA to the effect that it did not entitle SAIL to terminate the COA at its discretion and without reason, was erroneous. He contended that the learned Single Judge had, thus, rightly set aside the impugned award on the ground of an erroneous interpretation of the said Clause. He submitted that the Arbitral Tribunal had, by interpreting Clause 62 of the COA in the manner that it had, re-written the bargain between the parties and the same would be contrary to the public policy of India. He relied on the decisions of the Supreme Court in ***Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India***[8] and ***PSA SICAL Terminals Pvt. Limited v. Board of Trustees of V.O. Chidambaran Port Trust Tuticorin and Ors.***[9] in support of his contention.

64. Whilst, Mr Rao supported the findings of the learned Single Judge faulting the impugned award regarding the interpretation of Clause 62 of the COA, he also assailed the impugned judgment to the

8 (2019) 15 SCC 131
9 2021 SCC OnLine SC 508

extent the learned Single Judge had upheld the award of damages arising out of the stem due in December, 2012 as the same was prior to SAIL terminating the COA. He submitted that sustaining the impugned award to the said extent, notwithstanding that the foundation of the impugned award had been set aside, amounted to modification of the impugned award, which is impermissible. He referred to the decision of the Supreme Court in ***Project Director, National Highways No.45E and 220 National Highways Authority of India v. M. Hakeem and Another***[10] and submitted that the Court has no jurisdiction to modify an arbitral award in proceedings under Section 34 of the A&C Act. He contended that since the learned Single Judge had set aside the impugned award on the basis of an erroneous interpretation of Clause 62 of the COA, there was no scope for further sustaining any part of the impugned award.

65. He submitted in the alternative that, the assumption that there was any stem due in December, 2012 was also not based on any adjudication of the said question. He submitted that the parties had by their conduct waived the condition for FES and therefore, the assumption that any stem was due in December, 2012, was, *ex facie*, erroneous.

66. Next, he submitted that in any event, there were no stems that could have been declared on account of *force majeure* conditions. Thus, the question of award of damages for failure to declare stems did not arise.

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[10] (2021) 9 SCC 1

67. Lastly, he submitted that the quantification of damages was also unsustainable on two grounds. First, that it was erroneous to compute damages on the basis of contractual rate of freight and spot market rate and, the same would be violative of Section 73 of the Contract Act. He contended that the COA was a long-term contract and damages could not be ascertained on the basis of spot market rates, which were not comparable to the freight rates as agreed. Thus, the damages were required to be worked out on the basis of rates as applicable for a long-term agreement such as the COA. Second, he submitted that Noble had led no evidence to establish the loss suffered by it. He contended that Noble had a back-to-back service agreement with Noble Chartering Ltd. and therefore, the only possible loss suffered by Noble would be the difference between the freight rates under the COA and the rates negotiated by Noble on a back-to-back basis. However, the said Agreement between Noble and Noble Chartering Ltd. was not brought on record. He also contended that the obligation of Noble to arrange a vessel would arise, when a stem is declared. Since no stem was declared, Noble had not suffered any loss.

68. It is important to note that the counsel had submitted their written submissions. But, apart from the submissions as briefly noted above, no other submissions were advanced or pressed before this Court.

69. As noted above, before the learned Single Judge, it was contended on behalf of SAIL that there was a typographical error in calculation of the amount awarded but no such contention was advanced

in these proceedings. This was also brought to the notice of the learned senior counsel by this Court.

REASONS AND CONCLUSION

70. At the outset, it is relevant to note that SAIL had assailed the impugned award before the learned Single Judge on several grounds including that the COA was not a binding agreement but was merely a document expressing the intention of the parties to enter into a separate contract of affreightment. The said contention was neither accepted by the learned Arbitral Tribunal nor by the learned Single Judge. The learned counsel for SAIL did not press this contention before this Court and did not dispute that the COA was a binding agreement. It is, thus, not necessary to address SAIL's challenge to the impugned award on this ground.

71. SAIL's challenge to the impugned award centers around the Arbitral Tribunal's decision to hold that Clause 62 of the COA did not entitle SAIL to terminate the COA at will and on account of its failure to declare stems. According to SAIL, Clause 62 of the COA is a 'no-fault' termination clause and it entitled SAIL to terminate the COA at will. The Arbitral Tribunal has held otherwise.

72. The Arbitral Tribunal also observed that construing Clause 62 of the COA in the manner as contended by SAIL would render it vulnerable to being declared void under Sections 23 and 28 of the Contract Act. The learned Single Judge held that the said *"interpretation was predicated on the finding of the Arbitrator that the*

plain reading of the clause would make the clause vulnerable as being declared void". The learned Single Judge faulted the said conclusion on the ground that a clause enabling unilateral termination of a contract by one party could not be construed to be void as being contrary to public policy. The learned Single Judge held that once the foundation of interpretation of the contractual Clause is found to be incorrect, the Arbitral Tribunal's interpretation of Clause 62 of the COA could not be sustained.

73. It is important to note that it was not Noble's case before the Arbitral Tribunal that Clause 62 of the COA was void. It was also not its contention that construing Clause 62 of the COA as a no-fault 'default clause' entitling SAIL to terminate the COA at will would render it void as falling foul of Sections 23 or 28 of the Contract Act.

74. The controversy in the present appeal is, essentially, two-fold. First, whether the Arbitral Tribunal's interpretation of Clause 62 of the COA rests substantially on the aforesaid premise. And second whether the Arbitral Tribunal's interpretation rendered the impugned award vulnerable under the public policy exception under Section 34(2)(b)(ii) of the A&C Act.

75. At this stage, it is relevant to refer to Clauses 61 and 62 of the COA as the controversy regarding interpretation of those Clauses is central to SAIL's challenge to the impugned award. The said Clauses are set out below:

> "61. Force Majeure Clause

If either shippers/Charterers be prevented from discharging their or its obligations under this agreement by reason of arrests or restraints by Government or people, war, blockade, revolution, insurrection, mobilization, strikes, civil commotions, acts of God, plague or other epidemics, breakdowns of mining, rail, road or port equipment, destruction of materials by fire or flood or other natural calamity interfering with production, loading or discharging, the obligations under this agreement shall be deferred to a date to be agreed considering the length of time required to resume natural operations. However, if any one occurrence of force majeure continues uninterrupted for 30 days or more or if the total of such occurrence within the agreed shipment period adds to 90 days or more, Owners/Charterers may opt to cancel this agreement without in any way being liable to the other party for such cancellation.

Party invoking protections under such clause will put the other party on notice within a reasonable period of time supported by certificate from chamber of commerce or concerned government authority or concerned authority or company secretary and shall likewise intimate cessation of such causes.

The delivery shall be resumed by the party/parties after cessation of Force Majeure causes.

62. Default

Should Suppliers/Charterers fail to provide materials for shipment or to ship the materials by the time or times agreed upon or should Suppliers/Charterers in any manner or otherwise,

> fail to perform the contract or should a Receiver be appointed on its assets or make or enter into any arrangements or composition with creditors or suspend payments (or being a company should enter into liquidation either compulsory or voluntary) the Suppliers/Charterers shall be entitled to declare the contract as at an end without any liabilities on either side."

76. Concededly, it was not Noble's case that construing Clause 62 of the COA to mean that SAIL had a unilateral right to terminate the COA at will, would render it void on the ground of public policy. It was Noble's case that on a proper construction of Clause 62 of the COA, it could not be construed to empower SAIL to terminate the COA without any reason and on account of its own default.

77. It is, thus, necessary to carefully examine the Arbitral Tribunal's interpretation of Clause 62 of the COA and the reasons for the same.

78. The Arbitral Tribunal noted that the real bone of contention between the parties is a part of the said Clause, which entitled SAIL to declare the COA at an end without any liability on either side if the "*suppliers/charterers in any manner or otherwise fail to perform the contract*". SAIL claimed that the aforesaid part of Clause 62 of the COA entitled it to terminate the COA as it thought fit.

79. The Arbitral Tribunal rejected the aforesaid submission for a number of reasons as set out briefly in Paragraphs 150 and 151 of the impugned award. The same are set out below:

> "150. I am unable to accept the aforesaid submission of the Respondent for a number of reasons.

(i) Such an interpretation of Clause 62 would render the same to be vulnerable to being declared void under Section 23 of the Indian Contract Act, 1872. Such an interpretation would be forbidden being contrary to Section 73 of the Indian Contract Act, 1872 (hereinafter referred as "the Contract Act, 1872").

(ii) It would be in violation of Section 23 read with Section 28 of the Contract Act, 1872. It is a well-settled proposition of law that parties cannot contract against the statute.

(iii) The words "*Suppliers/Charterers in any manner or otherwise fail to perform the contract*" cannot be read in isolation. These words have to be construed in such a way as not to destroy the sanctity of the contract. Therefore, the aforesaid words have to be read *eusdem generis* to the other terms within this clause. It is notable that under Clause 62 the Respondent is entitled to declare the contract as at an end, in case the Respondent is unable to declare a stem which for circumstances are akin to the circumstances described under Clause 61 of the Case 1 Agreement. The only difference between Clause 61 and Clause 62 of the Case 1 Agreement is that under Clause 61 the inability to declare the stems by the Respondent is caused by circumstances beyond the control of the Claimant or the Respondent. Under Clause 62 is the inability of the Respondent in circumstances not under the control of the Respondent.

(iv) Therefore, in my opinion, the term "*Suppliers/Charterers in any manner or otherwise fail to perform the contract*" would be applicable when it is not possible for the Respondent to perform its obligations under the

COA, in circumstances similar to those in the opening and the closing of Clause 62. The term *in any manner or otherwise* if not so defined would be inconsistent with the opening and the closing parts of Clause 62. It is well settled that when a clause in a contract is open to two constructions, one which will give effect to the contract, while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "*ut res magis valeat quam pereat.*"

(v) In ***Halsbury's laws of England***, *Vol.32 (2012), para 435*, the above principle of interpretation is stated thus:

> "Where particular things named (in a document) have some common characteristics which constitute them as a genus and the general words (following an enumeration of specific things or classes of things) ca be properly regarded as in the nature of a sweeping clause designed to guard against accidental omission, then the rule of *ejusdem generis* will apply, and the general words will be restricted to things of the same nature as those which have been already mentioned; but the absence of a common genus between the enumerated words will not necessarily prevent a restricted construction of the general words if justified by the context. The *ejusdem generis* construction will be assisted if the general scope or the language of the deed, or the particular clause, indicates that the general words should receive a limited construction will produce some unforeseen loss to the grantor."

(vi) The aforesaid words do not permit the Respondent to invoke Clause 62 of the Case 1 Agreement for any of the reasons mentioned in the letter of termination dated 02.01.2013.

(vii) The second paragraph of the letter of termination dated 02.01.2013 only makes a reference to different events and circumstances adversely effecting the subject agreement. It is well settled that a party cannot be absolved of its liability perform Its obligations under the contract, merely because due to some extraneous circumstances, the performance of the contract has become onerous. See (1) ***Alopi Prasad and Sons v Union of India;*** *(1960) 2 SCR 793 (Paras 22 and 24);* (ii) ***Travancore Devaswom Board Vs. Thanath International;*** *(2004) 13 SCC 44* (*Paras 12 and 13*).

(viii) The third paragraph of the letter of termination dated 02.01.2013 makes general allegations that the Claimant has imposed extraneous demands which were beyond the scope of the COA. This cannot be accepted as the Respondent has failed to give any particulars of the alleged extraneous demands which were beyond the scope of the COA.

(ix) The fourth paragraph of the letter of termination dated 02.01.2013, firstly affirms that SAIL has continued to honour the agreement. It is then alleged that harassment was caused to the Respondent, as and when vessels were substituted by the Claimant as well as by the delayed arrival of vessels etc. This reason is also without any basis as substitution of the vessels is permitted under Clause 5 of the COA. In any event, all the substitutions and delayed arrivals were accepted by the Respondent.

> 151. In my opinion that the facts and circumstances narrated in the letter dated 02.01.2013 would not justify the termination of the COA under Clause 62."
>
> [emphasis added]

80. It is apparent from the above that apart from mentioning that SAIL's interpretation of Clause 62 of the COA is violative of Sections 23, 73 and 28 of the Contract Act – which was not Noble's case – the Arbitral Tribunal also furnished several other reasons for arriving at the conclusion. The main reason being the construction of Clause 62 of the COA in conformity with other clauses of the COA. It is clear that according to the Arbitral Tribunal, part of the Clause 62 of the COA, which was relied upon by SAIL could not be read in isolation and the manner as contended by SAIL. According to Arbitral Tribunal the same was required to be read in the context of the other terms as well as the nature of the COA.

81. At least one decision of this Court – ***Simplex Concrete Piles (India) Limited v. Union of India***[11]. – has held that a clause of a contract, which prohibits a claim of damages for breach of contract by the other party, would be opposed to public policy. Although this view has not found much acceptance, the proposition is not alien to legal jurisprudence. The learned Single Judge may be right in its conclusion that the Arbitral Tribunal's observations to the effect that enabling a party to unilaterally terminate the contract without any consequences would render the Clause void, is erroneous. But the key question is

[11] 2010 SCC OnLine Del 821

whether such interpretation renders the impugned award in conflict with public policy of India. In this context the fact that a similar view had found acceptance by a court may be of some significance. However, it is not necessary to delve any deeper into the question whether literal interpretation of an expression in Clause 62 of the COA would render it void. This is because it is clear that the Arbitral Tribunal's construction of Clause 62 of the COA was largely founded on the contextual interpretation of the said Clause.

82. This is apparent from the further detailed reasoning provided by the Arbitral Tribunal. The Arbitral Tribunal accepted that in construing a clause of a contract, the words and expressed terms are required to be given their plain meaning unless the same lead to any absurdity or results in making the said clause otiose. The Arbitral Tribunal proceeded to consider SAIL's contention that Clause 62 of the COA was required to be read literally as well as the decision in the case of ***Rajasthan State Industrial Development and Investment Corporation & Anr. v. Diamond & Gem Development Corporation Ltd. & Anr.***[12] which was relied upon by SAIL in support of its contention. The Arbitral Tribunal rejected the contention that the said decision supported SAIL's contention. The Arbitral Tribunal held that the expression "*Suppliers/Charterers in any manner or otherwise fail to perform the contract*" in Clause 62 of the COA would have to be read in the context of the other words contained in Clause 62 of the COA. The Arbitral Tribunal found that the said expression enabled SAIL to

[12] (2013) 5 SCC 470

terminate the COA only when it was helpless in performing the same and not at its will or for commercial reasons. The Arbitral Tribunal did not accept that SAIL would be entitled to terminate the contract as it had become commercially unprofitable to perform the same.

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

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

85. The Arbitral Tribunal held that in such circumstances, the construction of the expression, which is different from its literal meaning, must be accepted. The Arbitral Tribunal also referred to the decisions of the Privy Council in ***Raneegunge Coal Association Ltd. v. Tata Iron and Steel Co. Ltd.***[13] and of the Supreme Court in ***Radha Sundar Dutta v. Mohd. Jahadur Rahim & Ors.***[14] as supporting such a

[13] 1940 SCC OnLine PC 36
[14] 1959 SCR 1309

view. In addition, the Arbitral Tribunal held that accepting SAIL's interpretation would render Clause 61 of the COA redundant. It observed that if one interpretation would render Clause 61 of the COA as redundant and two constructions are possible, the one which would give effect to the other provisions of the contract, must be accepted. The aforesaid reasoning of the Arbitral Tribunal informed its decision that SAIL's termination of the COA was invalid.

86. The relevant extract of the impugned award, which clearly reflects the aforesaid reasoning of the Arbitral Tribunal, is reproduced below:

> "153. The Claimant has relied on the Judgment of the Hon'ble Supreme Court of India in ***Rajasthan State Industrial Development and Investment Corporation & Anr. Vs. Diamond & Gem Development Corporation Ltd & Anr***. [*(2013) 5 SCC 470) (Para 23)*, wherein it is held as under:
>
> "23. A party cannot claim more than what is covered by the terms of contract, for the reason that contract is transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has

to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely."

154. I am of the opinion that the aforesaid observations do not support the submissions of the Respondent. The expression "Suppliers/Charterers in any manner or otherwise fail to perform the contract" would have to be read in the context of the provision contained in Clause 62. The Clause is clearly intended to enable the Respondent to declare the contract to be at an end when it is helpless in performing the contract.

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156. The Claimant in support of its submission that the Contract must be given a purposive interpretation relied on ***DLF Limited*** (***Supra***) wherein it is held as follows:

"13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the Joint intent of the parties at the time the contract so framed. It is not the intent of a single party, it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

14. As is stated in Anson's Law of Contract:

> 'a basic principle of the common law of contract is that the parties are free to determine for themselves what primary obligations they will accept.... Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large'

15. The Court assumes:

> 'that the parties to the contract are reasonable persons who seek to achive reasonable results, fairness and efficiency....In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the judge should interpret the contract accordingly'"

157. <u>The aforesaid observations leave no manner of doubt that the Clauses of the Contract should be interpreted to give effect to the Joint intent of the parties. The Court is required to determine the ultimate purpose of a contract. This has to be determined primarily on the basis of the joint intention of the parties at the time the contract was formed.</u>

158. Applying the aforesaid test it becomes apparent, from a bare perusal of the opening paragraphs of the COA, that the parties had mutually agreed that a Cargo of 18,00,000 MT of Coking Coal shall be shipped from specified ports in America to the specified ports in India. It has been held earlier in the

Award that the parties had entered into a COA with binding rights and obligations on both the parties. The Contract is to be performed in a specified period of time. The shipments are to be made at Fairly, Evenly, Speared (FES) periods, over three (3) years. Both the parties may opt to cancel the Agreement under the Force Majeure Clause 61 of the Case 1 Agreement. Clause 62 of the Case 1 Agreement gives an option to the Respondent to declare the Contract as at an end without any liabilities on either side. Clauses 61 and 62 are exceptions which release either one or both parties from obligations to be performed under the COA.

159. The Respondent has placed strong reliance on the observations made by the Hon'ble Supreme Court in the cases of (i) ***Her Highness Maharani Shantidevi P. Gaikwad vs. Savjibhai Haribhati Patel***; *(2001) 5 SCC 101*. In paragraph 56 it has been observed as follows:

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(ii) ***Hajee S.V.M. Mohamed Jamaludeen Bros & Co. vs. Govt. of T.N.***; *(1997) 3 SCC 466*. In paragraph 18 it has been observed as follows:

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(iii) ***Crompton Greaves v. Dyna Technologies***; *2007 4 Arb. LR 228 (Mad)*. In paragraph 16 it has been observed as follows:

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(iv) ***ONGC v. WIG Bros. Builders & Engineers (P) Ltd.***; *(2010) 13 SCC 377*. In paragraph 7 it has been observed as follows:

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160. I am of the opinion that the aforesaid judgments do not affect in any manner the plea put forward by the Claimant. It is not the case of the Claimant that Clause 62 per se would interfere with the integrity of the contract. It is also not the submission of the Claimant that the Clause should be declared void only on the ground that it gives the Respondent absolute right to cancel the contract. Therefore the submissions made by the Ld. Senior Counsel of the Claimant cannot be said to be contrary to the law laid down by the Supreme Court and the Madras High Court in the judgments noted above.

161. I find merit in the submissions of the Claimant that Clause 62 would not entitle the Respondent to terminate the Agreement whimsically or at will. It could also not be terminated for the reasons stated in the letter of termination dated 02.01.2013.

162. The reasons mentioned by the Respondent in the letter of termination dated 02.01.2013, would tend to indicate that the Respondent was finding it un-economical to perform its obligations. It seems to me that letter of termination dated 02.01.2013 was issued as a number of adverse circumstances had made it onerous for the Respondent to perform its obligations under the COA. I am of the opinion that in such circumstances the Respondent could not have invoked the Default Clause in Clause 62 of the Case 1 Agreement.

163. It is a settled proposition of law that a contract must be read as a whole in order to ascertain the true meaning of its several clauses. The words of each clause should be interpreted so as to bring them into harmony with the other provisions ***(North Eastern Railway Co. v. Lord Hastings***; *1900 AC 260).* Acceptance of the interpretation of clause 62 given by the Respondent would result in making the same

redundant. If the Intention was to give a unilateral, absolute and unbridled power of termination to the Respondent the Clause would have simply provided that "Suppliers/Charterers in any manner or otherwise fail to perform the contract". There was no necessity to limit the first limb of Clause 62 to the failure of the Mine Owners in USA or Australia to supply coking coal to the Respondent. Similarly, the second limb of the Clause would not have tied the Inability of the Respondent to perform its obligations on the receiver being appointed. Therefore I find no merit in the submissions made on behalf of the Respondent.

164. A bare perusal of Clause 62 of the case 1 Agreement would show that the expression "Suppliers/ Charterers in any manner or otherwise fail to perform the contract" is wholly inconsistent with the first part and the last part of Clause 62. In similar circumstances the Privy Council in the case of ***Raneegunge Coal Association Ltd. Vs. Tata Iron and Steel Co. Ltd.*** has observed as follows:

".......The position accordingly is that that of the two portions of the clause which disclose the inconsistency, one is susceptible of a possible construction different from its literal meaning, while the other is not: and if the possible construction is applied all inconsistency disappears. That construction must therefore be adopted. This alternative construction of the clause is not, their Lordships think, open to the objection which seems to have pressed upon the Chief Justice. It does not convert a condition precedent into anything other than a condition precedent; nor does it involve having recourse to the Calcutta market otherwise than on the condition specified, except of course according to the literal meaning of the words used. What the Courts in Bombay have done is, in order to reconcile two apparent inconsistencies, to attribute to the words used a meaning which the words used are capable of bearing, though different from their literal meaning. The condition precedent so construed remains as a condition precedent, and the condition specified by the agreement is the condition as so construed."

165. In ***Radha Sundar Dutta versus Mohd. Jahadur Rahim & Ors***; *1959 SCR 1309: AIR 1959 SC 24*; the Supreme Court sums up the rule on inconsistency as follows:

"11. Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, It is the former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam pereat........"

166. Furthermore, accepting the interpretation of the Respondent would render Clause 61 of the COA as redundant. <u>It is a settled proposition of law that when two constructions are possible to be given to a Clause in the Contract, the one which would give effect to the other provisions of the Contract must be accepted. The interpretation which would render any other clause(s) of the Contract redundant or nugatory must be discarded.</u>

167. Section 28(2) of the Arbitration and Conciliation Act, 1996 specifically provides that the Arbitral Tribunal shall decide the matter in accordance with the terms of the contract. An Arbitrator cannot do what he thinks is just and right. This legal position is

> well settled. In the case of Associated Engineering Co. vs. Government of Andhra Pradesh and another; (1991) 4 SCC 93, it has been observed as follows…"
>
> [emphasis added]

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

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

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

90. In ***Assam State Electricity Board & Ors. v. Buildworth (P.) Ltd.***[15], the Supreme Court had observed that "matters relating to the construction of a contract lie within the province of the Arbitral Tribunal" and are not amenable to review on merits unless, the interpretation is not a possible one.

91. In ***Associate Builders v. Delhi Development Authority***[16] the Supreme Court reiterated the said proposition in the following words:

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

92. We are unable to accept that the Arbitral Tribunal's interpretation of Clause 62 of the COA is not a plausible one. The Arbitral Tribunal has interpretated the said clause in the context of the COA and a merits review of the said decision is not permissible.

93. In ***MSK Projects India (JV) Limited v State of Rajasthan & Anr***[17] the Supreme Court had explained that even an error of interpretation of a contract is an error within the jurisdiction of the Arbitral Tribunal.

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[15] (2017) 8 SCC 146
[16] (2015) 3 SCC 49
[17] (2011) 10 SCC 573

94. We are unable to accept that this is a case where the Arbitral Tribunal has re-written the bargain between the parties. The Arbitral Tribunal has adjudicated the intent of the parties having due regard to the terms of the COA.

95. The learned Single Judge had erred in proceeding on the basis that the Arbitral Tribunal's decision to interpret Clause 62 of the COA rested on its reasoning that the literal reading of the clause would render it void. That may have been one of the observations made by the Arbitral Tribunal, but it is apparent that the Arbitral Tribunal's construction of Clause 62 of the COA rested on the interpretation of the said clause in the context of the COA and having regard to the language of the said Clause. The interpretation is founded on sound principles of interpretation of deeds.

96. The learned Single Judge had also erred in not considering the scope of examination in the present case. The learned Single Judge failed to note that the impugned award was rendered in an international commercial arbitration as defined under Section 2(1)(f) of the A&C Act. Concededly, the impugned award cannot be assailed on the ground of patent illegality as in terms of Section 34(2A) of the A&C Act, the challenge to an arbitral award on the ground of patent illegality is not available in respect of arbitral awards in an international commercial arbitration. Thus, SAIL's challenge to the impugned award was required to be tested solely on the anvil whether the impugned award is in conflict with the public policy of India.

97. The Explanations to Section 34(2) of the A&C Act clarify the scope of an arbitral award being in conflict with the public policy of India and states that an arbitral award would be considered in conflict with the public policy of India if there was fraud or corruption in the making of the award; if it falls foul of the fundamental policy of India; or offends the most basic notions of morality and justice.

98. Misinterpretation of terms of a contract would not render an arbitral award vulnerable on the ground of the public policy exception.

99. In ***Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India***[18], the Supreme Court held that the expression "fundamental policy of Indian law" would necessarily have to be understood as explained in paragraphs 18 and 27 of its decision in ***Associate Builders v. Delhi Development Authority***[19] and, its earlier decision in ***Renusagar Power Co. Ltd. v. General Electric Company***[20]. The relevant extract of the said decision[21] is set out below:

> "34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco

[18] *supra*
[19] supra
[20] supra
[21] Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India

International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204].

35. It is important to notice that the ground for interference insofar as it concerns “interest of India” has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. This again would be in line with paras 36 to 39 sof Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], or secondly, that such award is against basic notions of justice or morality

as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], and paras 28 and 29 in particular, is now done away with."

100. Paragraphs 18 and 27 of the decision in ***Associate Builders v. Delhi Development Authority***[22] are set out below:

> "18. In Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644], the Supreme Court construed Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961:
>
> > "7. Conditions for enforcement of foreign awards.—
> >
> > (1) A foreign award may not be enforced under this Act—
> >
> > ***
> >
> > (b) if the Court dealing with the case is satisfied that—
> >
> > ***
> >
> > (ii) the enforcement of the award will be contrary to the public policy."

[22] *supra*

In construing the expression "public policy" in the context of a foreign award, the Court held that an award contrary to

(i) The fundamental policy of Indian law,

(ii) The interest of India,

(iii) Justice or morality,

would be set aside on the ground that it would be contrary to the public policy of India. It went on further to hold that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India in that the statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation (see SCC p. 685, para 75). Equally, disregarding orders passed by the superior courts in India could also be a contravention of the fundamental policy of Indian law, but the recovery of compound interest on interest, being contrary to statute only, would not contravene any fundamental policy of Indian law (see SCC pp. 689 & 693, paras 85 & 95).

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27. Coming to each of the heads contained in Saw Pipes [(2003) 5 SCC 705 : (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 [Renusagar Power Co. Ltd. v. General Electric Co., 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."

101. In ***HRD Corporation (Marcus Oil and Chemical Division0 v. GAIL (India) Limited (Formerly Gas Authority of India Limited)***[23], ***Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India***[24] and ***Vijay Karia & Ors v. Prysmian Cavi E Sistemi SRL & Ors***[25], the Supreme Court explained that after the amendment in the A&C Act introduced by the Arbitration & Conciliation (Amendment) Act, 2015, Section 48 of the A&C Act, which concerned the enforcement of a foreign award is amended to delete the provision for declining enforcement of the foreign award on the ground of "contrary to interest of India". Further, Explanation 2 to Section 48 of the A&C Act was added clarifying that the question whether there is contravention of the fundamental policy of Indian law, shall not entail a review on the merits of the dispute. Similarly, Explanation 2 was added to Section 34(2)(b) of the A&C Act, which clarify that the tests "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"

102. Sub-section (2A) was also introduced in Section 34 of the A&C Act, which would be applicable to arbitral awards other than those delivered in an international commercial arbitration. In terms of said

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[23] (2018) 12 SCC 471
[24] *supra*
[25] (2020) 11 SCC 1

Sub-section, an arbitral award could be set aside if the same is vitiated by patent illegality appearing on the face of the award.

103. It is relevant to note the following passages from the decision of the Supreme Court in ***Vijay Karia & Ors. v. Prysmian Cavi E Sistemi SRL & Ors.***[26], as the same explain the scope of the public policy exception:

> **"43.** It will be noticed that in the context of challenge to domestic awards, Section 34 of the Arbitration Act differentiates between international commercial arbitrations held in India and other arbitrations held in India. So far as "the public policy of India" ground is concerned, both Sections 34 and 48 are now identical, so that in an international commercial arbitration conducted in India, the ground of challenge relating to "public policy of India" would be the same as the ground of resisting enforcement of a foreign award in India. Why it is important to advert to this feature of the 2015 Amendment Act is that all grounds relating to patent illegality appearing on the face of the award are outside the scope of interference with international commercial arbitration awards made in India and foreign awards whose enforcement is resisted in India. In this respect, it is important to advert to paras 41 and 69 of *Ssangyong* as follows:
>
> > "*41.* What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders*, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in

[26] *supra*

arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.

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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."
>
> This statement of the law applies equally to Section 48 of the Arbitration Act.

> **44.** Indeed, this approach has commended itself in other jurisdictions as well. Thus, in *Sui Southern Gas Co. Ltd.* v. *Habibullah Coastal Power Co. (Pte) Ltd.*, the Singapore High Court, after setting out the legislative policy of the Model Law that the "public policy" exception is to be narrowly viewed and that an arbitral award that shocks the conscience alone would be set aside, went on to hold:
>
> > "*48.* It is clear, therefore, that in order for SSGC to have succeeded on the public policy argument, it had to cross a very high threshold and demonstrate egregious circumstances such as corruption, bribery or fraud, which would violate the most basic notions of morality and justice. Nothing of the sort had been pleaded or proved by SSGC, and its ambiguous contention that the award was "perverse" or "irrational" could not, of itself, amount to a breach of public policy."

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

impugned award could not be set aside on the ground of being in conflict with the public policy of India.

105. The decision of the learned Single Judge to modify the award of interest is also without jurisdiction. The Arbitral Tribunal had awarded 3% interest for the date of termination of the COA till the date of the award. The said interest cannot be stated to be either perverse or unreasonable. We are also unable to accept that the award of future interest at the rate of 9% on the awarded amount conflicts with the public policy of India. The learned Single Judge had referred to the decision in ***Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited***[27] and held that dual rates of interest are impermissible.

106. The decision in ***Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited***[28] is inapplicable in the facts of this case. In the said case, the Arbitral Tribunal had awarded interest at dual rates. The Arbitral Tribunal had held that "*interest @ 9% per annum would be paid from the date of institution of the present arbitration proceedings provided the amount is paid / deposited within 120 days of the award*". The Arbitral Tribunal had further held that if the respondent fails to pay the amounts within 120 days from the date of the award, the claimant would be entitled to further interest at the rate of 15% per annum till realization of the amount. Thus, it does appear that a higher rate of interest would be applicable depending on whether

[27] *supra*
[28] *supra*

the awarded amount was paid within the specified period of 120 days or not. In the present case, the Arbitral Tribunal has awarded interest at the rate of 3% per annum from the date of the Letter of Termination (termination e-mail dated 02.01.2023) till the date of the impugned award. The Arbitral Tribunal has also awarded interest for the post award period at the rate of 9% per annum, which would commence after three months from the date of the award. The pre-award interest is a part of the awarded amount and covered under Clause (a) of Sub-section (7) of Section 31 of the A&C Act while future interest at the rate of 9% is covered under Clause (b) of Sub-section (7) of Section 31 of the A&C Act.

107. This is not a case where the Arbitral Tribunal has awarded interest at dual rates for the same period. The decision to modify the interest awarded cannot be sustained for yet another reason: it is impermissible to modify an arbitral award in proceedings under Section 34 of the A&C Act[29].

108. It is also relevant to note that in ***Pradeep Vinod Construction Co. v. Union of India***[30], this Court had held that the decision of the Supreme Court in ***Vedanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited***[31] to modify the arbitral award was in exercise of powers under Article 142 of the Constitution of India.

[29] Project Director, National Highways No.45E and 220 National Highways Authority of India v. M. Hakeem and Another (*supra*)
[30] 2022 SCC OnLine Del 4937
[31] *supra*

109. In view of the above, Noble's appeal is allowed and the impugned judgment is set aside. In view of the aforesaid decision, SAIL's appeal fails and is accordingly, dismissed.

110. The parties are left to bear their own costs.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JULY 15, 2024
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