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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Pronounced on: 02.07.2024***

\+ **FAO(OS) (COMM) 357/2019**

THE DEPUTY COMMISSIONER OF POLICE ..... Appellant

Versus

SCORE INFORMATION TECHNOLOGIES LTD ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Tushar Sannu, Ms. Ankita Bhadoriya, Mr. Stayam, Advs. Along with Mr. Pankaj Rai, ACP, Mr. Vijender Singh, Mr. Chander Mohan & Mr. Mukeshh Kumar, ASIs.

For the Respondent : Mr. Tejas Karia, Mr. Prakhar Deep, Mr. Nishant Doshi & Mr. Nitin Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

1. This Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the "A&C Act"] impugns a judgment dated 08.07.2019 [hereinafter referred to as "Impugned Order"] passed by the learned Single Judge of this Court in *O.M.P 1161/2012*, which dismissed the Petition under Section 34 of A&C Act filed by the Appellant, and upheld the Arbitral Award dated 04.06.2012 [hereinafter referred to as "Arbitral Award"] passed by the Sole Arbitrator in favour of the Respondent.

2. The Impugned Order upheld all amounts awarded to the Respondent including the Award of interest and costs. Although, the Appeal challenges the entire Award, a Coordinate Bench of this Court, in its order dated 25.02.2020, recorded that the Appellant proposes to confine the Appeal to only the award of the release of 40% of the cost of the supply of the CCTV system to be installed. Thus, this Court is only adjudicating this Appeal to the extent of this issue. The order additionally stayed the enforcement of the Arbitral Award subject to a deposit of the amount awarded, which was subsequently deposited by the Appellant.

3. Briefly, the Appellant floated a tender and invited bids for the installation of a CCTV system in the Walled City, Delhi on 19.10.2006. The bid submitted by the Respondent was accepted by a letter dated 26.02.2007. On 15.03.2007, the Appellant placed an order for supply and installation of the CCTV system on the Respondent [hereinafter referred to as "the Contract"]. A bank guarantee in the sum of Rs. 11,25,000/- as a security for performance of the Contract was also submitted by the Respondent in favour of the Appellant. The Contract also provided that the equipment required for the Contract [hereinafter referred to as "the Equipment"] be delivered by the Respondent. The payment for the Equipment was to be done by the Appellant in two instalments; 60% cost was to be made initially and the balance 40% of the cost of the Equipment to be paid after the successful completion of the Contract.

4. Disputes arose among the parties and the Appellant sent a show cause notice on 09.08.2007 on account of delay in completion of the works under the Contract. The notice was replied by the Respondent on 06.09.2007 attributing the delay in completion due to non-availability of permission from civic agencies for digging, road cutting and laying of cables, all of which were essential for successful work under the Contract. Both parties contended that this was not their responsibility under the Contract.

5. The Appellant terminated the Contract on 07.12.2007 and forfeited the Respondent's bank guarantee. The Appellant also awarded the works under the Contract to a third party. The Respondent was blacklisted by the Appellant for a period of three years. This led to the Respondent invoking the arbitral clause in the Contract between the parties.

6. By an order dated 04.12.2008, the Court appointed a sole arbitrator to adjudicate the disputes under the Contract [hereinafter referred to as "Arbitral Tribunal"]. The Respondent (Claimant in the arbitral proceedings) sought damages which included 60% price of the value of the Equipment in the sum of Rs. 66,44,477/-, refund of its bank guarantee and also made a claim for loss of reputation and business opportunities in the sum of Rs. 1,72,63,732/-. The Respondent also sought relief for specific performance of the Contract.

6.1 Since, the Contract had already been awarded to a third party, relief for specific performance was not granted to the Respondent.

The Arbitral Tribunal found that the Appellant had illegally terminated the Contract and thus awarded compensation in monetary terms in favour of the Respondent. It also awarded damages under Section 21 of the Specific Relief Act, 1963 to the tune of 40% balance payment of the Equipment supplied. The Award records the following :

> *"1. The claimant is granted an award for 60% of the value of stores supplied amounting to Rs. 40,53,151.80/- with interest @ 15% from 7.12.2007 till the date of the award amounting to Rs. 67,89,030/-;*
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> *2. The claimant is granted an award for the remaining 40% of the value of goods supplied amounting to Rs. 27,02,102/- with interest at the rate of 15% from 7.12.2007 till the date of the award amounting to Rs. 45,26,021/-;*
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> *3. The claimant is granted an award a declaration that the order of termination of the contract dated 7.12.2007 is bad;*
>
> *4. The claimant is granted an award setting aside the direction blacklisting the Claimant vide order dated 7.12.2007;*
>
> *5. An award for a sum of Rs. 11,25,000/- towards the value of security deposit / bank guarantee forfeited by the respondent with interest @ of 15% from 7.12.2007 till the date of the award;*
>
> *6. An award granting interest of 15% on all the above amount from the date of the award till the date of realization;*
>
> *7. Cost amounting to Rs. 95,000/- plus the value of the stamp paper."*

7. The Appellant filed a Petition under Section 34 of the A&C Act challenging the Award. The said Petition was dismissed by the learned Single Judge by the Impugned Order, on 08.07.2019. Relying on the judgment in the case of ***Associate Builders v Delhi***

Development Authority[1], the learned Single Judge held that the Court in proceedings under Section 34 of the A&C Act cannot interfere with the findings of an Arbitral Tribunal in respect of contractual interpretation and appreciation of evidence. The learned Single Judge further held that in the absence of a specific prayer for damages, the Court/Arbitrator is competent to Award damages.

7.1 The learned Single Judge found no error in the Arbitral Tribunals' interpretation of Clauses 1.3 and 12.3 of the Tender Document which form part of the Contract [hereinafter referred to as "the Tender Document"], to hold that the Contract cast no obligation on the Respondent to obtain any approvals including permission from the Municipal Corporation of Delhi and other authorities involved prior to the commencement of the Contract. The learned Single Judge further upheld that 60% payment made to the Respondent for Equipment supplied under the Contract was appropriate, noting that the Arbitral Tribunal found that the delivery of the Equipment was not denied by the Appellant, except for a plea of its delay, and that a joint inspection conducted on 19.03.2010 by the Appellant's technical team also confirmed the supply.

7.2 On award of remaining 40% cost of the Equipment, the Court noted that the Arbitral Tribunal has found specific performance was no longer feasible as the Contract already stood awarded to a

[1](2015) 3 SCC 49

third party. The Arbitral Tribunal, thus, awarded the 40% cost of the Equipment as damages in lieu of specific performance. The learned Single Judge held this was permissible, based on precedents which allowed grant of damages even without a specific prayer, if the circumstances permitted it. Lastly, the learned Single Judge rejected the Appellant's challenge to the rate of interest of 15% as awarded by the Arbitral Tribunal, stating the Arbitral Tribunal has discretion in determining the rate of interest under Section 31(7)(b) of A&C Act.

8. As set out above, the Appellant had on instructions, limited the scope of the present appeal to a challenge to award of payment of 40% cost of the Equipment supplied by the Respondent.

9. The learned Counsel of the Appellant submits that the Arbitral Tribunal overlooked that under Clause 3.4 of the Tender Document, the initial 60% payment was contingent upon a transfer of title of the Equipment, which did not occur. Despite this, the Arbitral Tribunal awarded 60% payment for the Equipment. Relying on Clause 3.5 of the Tender Document it was contended that 40% is payable only upon the system's final acceptance, which did not happen. Thus, the Arbitral Tribunal’s decision to grant this payment was in total disregard of the terms of the Contract.

9.1 It is further submitted that Clause 7.7 of the Tender Document specifies that installation or commissioning is incomplete until all Equipment and systems are accepted by the Purchaser, which

admittedly did not take place in this case. Despite this, the Arbitral Tribunal awarded the 40% of the cost of Equipment to the Respondent. Additionally, the Arbitral Tribunal did not consider that the Appellant asserted it was the Respondent's responsibility, not the Appellant's, to obtain necessary permissions from civic authorities for digging and installation.

9.2 The Arbitrator erroneously separated supply and installation, which should have been treated as one. The learned Single Judge also erred by not noting the Respondent's failure to mitigate damages and the Arbitral Tribunal's deviation from the Contract terms to award 40% of the cost as damages, despite no specific performance being possible.

9.3 Lastly, it was averred that the Arbitral Tribunal erred in granting the 40% cost of Equipment, as it did not form part of the Respondent's prayer, or claims, and as such could not have been granted.

10. Learned Counsel for the Respondent contended that the findings in the Award are well reasoned and based on an appreciation of evidence. The Arbitral Tribunal found that the Respondent did not breach the Contract but was precluded from performing the same on account of the Appellant's failure. It also held that time was not the essence of the Contract. It was on the basis of these findings that the Arbitral Tribunal allowed the claim for 60% of the value of the Equipment.

10.1 It was held that since the relief for specific performance was no longer available to the Respondent (after the award of the Contract to a third party), the Arbitral Tribunal deemed it fit to award damages under Section 21 of the Specific Relief Act, 1963. The learned Single Judge held that the findings of the Arbitral Tribunal are not patently illegal nor against public policy and thus cannot be interfered with.

10.2 The Respondent avers that the Arbitral Tribunal's decision to award the remaining 40% cost of Equipment is valid, not illegal. The decision complies with Section 21 of the Specific Relief Act, 1963. The Courts have held that the procedural requirement under Section 21(5) of Specific Relief Act is not strictly applicable in arbitral proceedings, thus allowing the Arbitrator to grant such damages, without rendering the award illegal or in violation of public policy.

10.3 Lastly, it was contended that the award of damages under Section 21 of the Specific Relief Act, 1963 without a specific prayer, is not an act of equity or reasonableness under Section 28(2) of the A&C Act, it is a statutory discretion exercised by the Arbitral Tribunal, which cannot be deemed unfair or unreasonable.

11. The subject matter of challenge before this Court is limited to the Award of the 40% cost of the Equipment to the Respondent. The Appellant has relied on Chapter 2 of the Tender Document which form part of the Contract, more specifically, Clause 3.2 and 3.4 to contend that since there was no transfer of title of the Equipment

to the Appellant, the payment could not have been directed to be made by the Arbitral Tribunal. This contention was also raised before the Arbitral Tribunal and the learned Single Judge.

11.1 Clauses 3.2, 3.4 and 3.5 of the Tender Document are extracted below:

> *"3.2 Transfer of Title: Upon each partial delivery of the Stores at the Purchaser's delivery site, an inventory of the Stores shall be taken jointly by the Supplier and the Purchaser to be completed within five (5) working days of such delivery to ensure that the supply is complete and in order. After the inventory of each partial delivery of the Stores has been completed to the entire satisfaction of the Purchaser, the title of those Stores will transfer to the Purchaser. In the event of short shipment or damage to the Stores inventorised, the title of only those items of Stores that are in order will transfer to the Purchaser.*
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> *3.4 First Payment: The Purchaser shall pay, to the Supplier, sixty percent (60%) cost of the Stores, title of which has been transferred to the Purchaser, the applicable VAT amount as First Payment, within Thirty (30) working days from the date of transfer of title of the Stores and receipt of supplier's bill complete in all respects.*
>
> *3.5 Final payment: The Purchaser shall pay, to the Supplier, the balance amount and VAT/Service Tax amount as "Final Payment" within thirty (30) working days from the Final Acceptance of the system and receipt of Supplier's bill complete in all respect."*

11.2 Clause 7.7 of the Tender Document provides that the Equipment shall not be deemed to be installed unless it is accepted by the Appellant.

12. The Arbitral Tribunal found that neither the delivery of the Equipment nor the value of the Equipment supplied was denied by the Appellant. The only defense raised was that the delivery was

beyond the time of four weeks, as provided for in the Contract. The Arbitral Tribunal further held that the Appellant did not object in any manner to the Equipment and once, it is accepted, they cannot deny the payment of the same.

13. The learned Single Judge found no fault with the findings of the Arbitral Tribunal. It was held that with the supply of the Equipment, the title would have passed to the Appellant. Reference was made to Section 42 of the Sale of Goods Act, 1930 in this regard. Section 42 of the Sale of Goods Act, 1930 reads as under:

> *"42. **Acceptance**.—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them."*

13.1 Indisputably, 60% cost of the Equipment was accepted by the Appellant and this finding has not been challenged before this Court in the present Appeal.

14. So far as concerns the payment for the balance 40%, the following two contentions have been raised by the Appellant:

(i) Clauses 3.5 and 7.7 of the Tender Document provide that this payment will be made within 30 days from the final acceptance of the entire system, which was never accepted; and

(ii) That there was no claim made by the Respondent for such

payment in its Statement of Claim before the Arbitral Tribunal.

15. The Arbitral Tribunal found that the Respondent was entitled to 60% payment for supply of the Equipment and would have also been entitled to balance 40% had the Contract been specifically performed. Thus, the prayer for the remaining 40% was in essence, included in the Statement of Claim. It was held that the Appellant prevented the Respondent from installing the entire system on account of termination of the Contract. Since, the termination was illegal, the Respondent was entitled to specific performance of the Contract, whilst that was no longer possible due to the award of the Contract to a third party, the Respondent was entitled to 40% of the cost of the Equipment, thus balancing equities. The blacklisting of the Respondent was also set aside by the Arbitral Tribunal.

16. The record shows that at the time of the filing of the Statement of Claim by the Respondent before the Arbitral Tribunal, the Contract had not yet been awarded to a third party. Thus, prayer (e) of the Statement of Claim filed, for the relief of specific performance of the Contract, essentially was the prayer for directions for installation of the Equipment including payment the for 40% of the Equipment delivered to the Appellant. This prayer is reproduced below:

> *"e) Direct the Respondent to specifically perform the Contract by fulfilling its obligations including acquiring the permission from the*

concerned civic authorities at Respondent's own cost and further permitting the Claimant by providing sufficient time to complete the installation of System and to issue necessary completion certificate and formally take over a Systems/Site from the claimant;"

16.1 The Arbitral Tribunal awarded damages to the Respondent, while relying on the settled law under Section 21 of the Specific Relief Act, 1963 that even in the absence of a specific prayer, damages can be awarded.

17. Section 21 of the Specific Relief Act, 1963 reads as follows:

*"21. **Power to award compensation in certain cases**.—(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach [in addition to] such performance.*
(2) ....
(3) ....
(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).
(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section."

17.1 A plain reading of the Explanation to sub-Section (5) of Section 21 of the Specific Relief Act, 1963 shows that the Court may exercise its power to award compensation for breach, if a Contract has become incapable of specific performance. In ***Urmila Devi v.***

Mandir Shree Chamunda Devi[2] ,while relying on the judgment in the case of ***Jagdish Singh v. Natthu Singh***[3] , the Supreme Court held that where a contract has become impossible to perform for no fault of the Plaintiff, Section 21 of the Specific Relief Act, 1963 enables the Court to award compensation. The relevant extract is below:

> *"12. This Court had the occasion to consider Section 21 of the Specific Relief Act in context of a case which arose almost on similar facts in Jagdish Singh v. Natthu Singh [Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647]. In the above case also suit was filed for specific performance on the basis of a contract to sell dated 3-7-1973, the suit was dismissed by the trial court as well as the first appellate court. However, the High Court in second appeal reversed [Nathu Singh v. Jagdish Singh, 1991 SCC OnLine All 273: AIR 1992 All 174] the finding of the courts below and held that the plaintiff was ready and willing to perform the contract and was entitled for decree. In the above case also during the pendency of the second appeal before the High Court, proceedings for compulsory acquisition of the land were initiated and the land was acquired. Question arose as to whether the plaintiff was entitled for the amount of compensation received in the land acquisition proceedings or was entitled only to the refund of the earnest money.* ***The High Court in the above case has modified the decree of the specific performance of the contract with decree for a realisation of compensation payable in lieu of acquisition. In para 13 of the judgment the directions [Nathu Singh v. Jagdish Singh, 1991 SCC OnLine All 273: AIR 1992 All 174]*** *of the High Court were extracted which is to the following effect: (Jagdish Singh case [Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647] , SCC pp. 652-53, para 13)*
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> > *"13. The High Court issued these consequential directions:*
> > ***'If the decree for specific performance of contract in question is found incapable of being executed due to acquisition of subject land, the decree shall stand suitably substituted by a decree for realisation of compensation payable in lieu thereof as may be or have been determined under the relevant Act and the plaintiff shall have a right to recover such compensation together with solatium and interest due thereon****. The plaintiff*

[2](2018) 2 SCC 284
[3](1992) 1 SCC 647

shall have a right to recover it from the defendant if the defendant has already realised these amounts and in that event the defendant shall be further liable to pay interest @ 12 per cent from the date of realisation by him to the date of payment on the entire amount realised in respect of the disputed land."

13. In the above context, this Court proceeded to examine the ambit and scope of Section 21 of the Specific Relief Act. ***This Court came to the opinion that when the contract has become impossible with no fault of the plaintiff, Section 21 enables the Court to award compensation in lieu of the specific performance****. Paras 24, 29 and 30 are extracted below****: (Jagdish Singh case [Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647] , SCC pp. 656-57)***

"24. When the plaintiff by his option has made specific performance impossible, Section 21 does not entitle him to seek damages. That position is common to both Section 2 of Lord Cairn's Act, 1858 and Section 21 of the Specific Relief Act, 1963. But in Indian law where the contract, for no fault of the plaintiff, becomes impossible of performance Section 21 enables award of compensation in lieu and substitution of specific performance*.*

* * *

29. In the present case there is no difficulty in assessing the quantum of the compensation. That is ascertainable with reference to the determination of the market value in the land acquisition proceedings. The compensation awarded may safely be taken to be the measure of damages subject, of course, to the deduction therefrom of money value of the services, time and energy expended by the appellant in pursuing the claims of compensation and the expenditure incurred by him in the litigation culminating in the award.

30. ***We accordingly confirm the finding of the High Court that respondent was willing and ready to perform the contract and that it was the appellant who was in breach. However, in substitution of the decree for specific performance, we make a decree for compensation, equivalent to the amount of the land acquisition compensation awarded for the suit lands together with solatium and accrued interest****, less a sum of Rs 1,50,000 (one lakh fifty thousand only) which, by a rough and ready estimate, we quantify as the amount to be paid to the appellant in respect of his services, time and money expended in pursuing the legal claims for compensation."*

[Emphasis is ours]

17.2 The Arbitral Tribunal in the present case found that the Contract could not be specifically performed by the Respondent since post termination, it was awarded to a third party. It also held the termination to be illegal, giving rise to a claim for compensation. The Arbitral Tribunal by its order dated 09.03.2010 directed a Report to be submitted on the delivery of the Equipment. Reports dated 19.03.2010 and 20.03.2010 were submitted by the independent surveyor appointed Brigadier Satish Malik (Retd.). The independent surveyor carried out a detailed an inspection of the items supplied by the Respondent to the Appellant and found that the delivery of the entire Equipment was made to the Appellant. A technical committee of the Appellant also inspected the Equipment supplied on 19.03.2010 and found the delivery/supply to be in accordance with the challans submitted by the Respondent. This factum of the delivery/supply of the Equipment has not been disputed. No evidence was lead before the Arbitral Tribunal about the quality of the Equipment being inferior or faulty. The Appellant has not been able to show anything contrary from the record before this Court either. It was in these circumstances that since no payment was made by the Appellant, the Arbitral Tribunal awarded compensation in monetary value of the 40% of the Equipment, which remained unpaid. Thus, this award was based on an appreciation of the evidence placed before the Arbitral Tribunal.

18. It is no longer *res integra*, that the scope of interference in an Arbitral Award under Sections 34 and 37 of the A&C Act is

limited.

19. Amongst the grounds provided in the A&C Act for interference with Arbitral Award is patent illegality, which is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. [See: ***PSA SICAL Terminals Pvt. Ltd. v Board of Trustees of V.O. Chidambranar Port Trust Tuticorin***[4] ***and MMTC Limited v. Vedanta Limited***[5]].

20. The Arbitrator examines the quality and quantity of evidence placed before him when he delivers his Arbitral Award and a view, which is possible on the facts as set forth by the Arbitrator must be relied upon. In ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[6], the Supreme Court has held that the very object of the Act is that there should be minimal judicial interference with an Award. It is further held that the Arbitral Tribunal holds the final authority in both facts and law and contravention of law not linked to public policy is beyond the scope of judicial interference under *"patent illegality"*:

> *"28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case*

[4] 2021 SCC OnLine SC 508
[5](2019) 4 SCC 163
[6](2022) 1 SCC 131

that come up before the Courts. ***There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards****. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.*

29. ***Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them.*** *An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality"."*

[Emphasis is ours]

21. Interpretation of a contract is a matter for an Arbitrator to determine. Even if such interpretation gives rise to an erroneous application of law, the Courts will generally not interfere, unless the error is palpably perverse or illegal and goes to the root of the

matter. It is therefore to be seen whether the interpretation given by the Arbitral Tribunal is such that a fair minded or reasonable person could conclude as well, or if the interpretation by the Arbitral Tribunal is patently illegal.

22. The Arbitral Tribunal concluded that the Respondent did not breach the Contract and was unable to perform the contract due to the Appellant's failures. The Arbitral Tribunal determined that the Respondent supplied the Equipment which was not returned and that there was no communication about its being faulty, defective or otherwise. Thus, in terms of the provisions Section 42 of the Sale of Goods Act, 1930, the entire consignment of Equipment was accepted by the Appellant. The only contention raised by the Appellant before this Court was that the entire System was not installed by the Respondent hence no compensation could be paid. However, the factum of supply remains undisputed. Based on these findings, the Arbitral Tribunal awarded the Respondent 60% of the value of the Equipment. Since the remaining 40% value would have been payable upon final contract performance, which could not be performed, the Arbitral Tribunal decided that the Respondent was entitled to the payment of 40% of the Equipment value supplied to the Appellant and without needing to amend their claim. No amounts have been awarded other than for the value of the Equipment by the Arbitral Tribunal.

23. The Arbitral Tribunal examined and interpreted the provisions of the Contract and found the termination of the Contract to be illegal

and awarded damages to the Respondent. The learned Single Judge upheld all the findings of the Arbitral Tribunal after examining the same. The findings of the Arbitral Tribunal are not patently illegal or against public policy.

24. We find that the interpretation given by the Arbitral Tribunal is given after a detailed examination of the pleadings and evidence. The view taken by the Arbitral Tribunal in its interpretation does not ignore any vital evidence. Merely because another interpretation is possible is not a ground to set aside an Award or part thereof.

25. The Supreme Court in ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum***[7], had held that where the terms of a contract are capable of more than one interpretation, the Court cannot interfere with the Award only if the Court is of the opinion that another interpretation would have been a better one. Reliance is placed on the following extract of the Indian Oil case:

> *"45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse.* ***Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one.****"*
>
> [Emphasis is ours]

[7](2022) 4 SCC 463

26. In view of the aforegoing discussions, we find no merit in the present Appeal. The Appeal is accordingly dismissed.

27. The Registry is directed to release the amounts deposited by the Appellant in favour of the Respondent, along with interest accrued thereon.

(TARA VITASTA GANJU)
JUDGE

(VIBHU BAKHRU)
JUDGE

JULY 02, 2024/r