Chief General Manager Bharat Sanchar ... vs M/S S.D. Constructions on 15 November, 2022

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AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBA No. 18 of 2018

1. Chief General Manager Bharat Sanchar Nigam Ltd. Raipur, Tahsil and District Raipur, Chhattisgarh,

2. Telecom District Manager Bharat Sanchar Nigam Ltd., Raipur Tehsil and District Raipur, Chhattisgarh --- Appellants

Versus

M/s S.D. Constructions Opp. Marawi Dharamshala, School Road, Ambikapur 297001, (Claimant), District : Surguja (Ambikapur), Chhattisgarh --- Respondent

For the Appellants : Mr. Sandeep Dubey, Advocate with Ms. Pragya Chowdhary and Ms. Pragati Kaushik, Advocates

For the Respondent : Ms. Hamida Siddiqui & Mr. Arham Siddiqui with Mr. Rahul Agrawal, Advocates.

Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Shri Justice Naresh Kumar Chandravanshi

JUDGMENT ON BOARD

Per Goutam Bhaduri, J

15.11.2022

1. The instant appeal is against the judgment dated 19.02.2018 passed by the Commercial Court (District Level) Raipur whereby the arbitral award dated 12.02.2017 passed by the Sole Arbitrator u/s 34 of The Arbitration and Conciliation Act, 1996 was affirmed.

2. The brief facts of the case are that on 30-10-2006, a Notice Inviting Tender (NIT) for construction of rehabilitation pole- less activities and associated works in external plant of Raipur City was invited and thereafter in the month of November, 2006 the bids were opened and the tender work was awarded to M/s. S.D. Construction Ambikapur for Rs.1,09,13,400/-. Subsequently, the contract agreement was executed between the appellants and respondent S.D. Construction on 11.06.2007. The contract period was extended from time to time. Firstly it was extended from 11.06.2008 to 10.092008, thereafter from 11.09.2008 to 10.12.2008 and lastly from 11.12.2008 to 31.01.2009.

3. The respondent S.D. Construction claimed the amount for enhanced estimated cost, but since it was in dispute, the money was not released with respect to balance payment, as such, the arbitration clause was invoked by the respondent. Since the arbitrator was not appointed, consequently on application being filed u/s 11(6) of the Arbitration and Conciliation Act, 1996 (for short the "Act of 1996"), the sole arbitrator was appointed by this High Court vide order dated 13.03.2013 for resolution of dispute between the parties. Pursuant to the arbitration proceedings, the statement of claim was filed by the respondent and thereafter, reply thereto was filed by BSNL/ appellants herein on 07.02.2014. In the meanwhile, the arbitrator laid down the process of business and the affidavit was initially filed by the claimant/respondent on 10.10.2014. Thereafter, the final affidavit was filed on 05.08.2015 in lieu of examination-in- chief and reliance is placed on it. The appellants sought for production of documents from the claimant contractor on 02.01.2016 and also filed an application on 08.05.2016 seeking opportunity to cross-examine the claimant witnesses. The learned sole arbitrator rejected the application of the BSNL/ appellant and subsequent thereto, the affidavit of respondent was filed on 15.07.2016. Thereafter, the arbitral award was passed on 12.02.2017. Being aggrieved by the arbitral award, it was challenged by the BSNL before the Commercial Court wherein the impugned order dated 19.02.2018 was passed by the Commercial Court. Hence this appeal.

4. (a) Mr. Sandeep Dubey, learned counsel appearing for the appellant would submit that the Letter dated 02.04.2009 on which the entire award is based which was filed as Annexure C-6 along with the memo of application does not conform the fact that the additional work was carried out. Referring to the order sheet dated 08.05.2016 of the Sole Arbitrator, the learned counsel for the appellant would submit that production of document sought for was wrongly disallowed merely on the ground that the respondent contractor is not in hold. He would submit that in order to process the work done and to prepare the bills for the works to be done, certain norms are required to be followed, but the reliance which has been placed by the arbitrator on bills is the outcome of reply against RTI application of one Balchand, therefore, the same cannot be admitted to that of work done by the respondent contractor. Referring to the letter Annexure A-6, learned counsel submits that in such letter, the contractor admitted the fact that only Earnest Money Deposit (EMD) and Security Deposit (SD) are required to be returned, therefore, having given the letter, it would

operate as an estoppel against the contractor to raise any further claim. The other letters dated 03.09.2010, 09.08.2011, 20.09.2011 and 10.07.2012 were referred to by the counsel to show that all these letters would only speak about the refund of Security Deposit and Earnest Money Deposit. 4(b) It is further submitted that as per the agreement dated 11.06.2007, the initial value of work was Rs.1,09,13,400/- which could have been enhanced only to the extent of 25%. However, the claim which has been made by the contractor exceeds such limit which is beyond the terms of contract. Therefore, the very inception and foundation of claim was on wrong facts. He further submits that reliance placed by the learned arbitrator is on the document received under RTI that too by a third party and in order to succeed the claim, the claimant should have proved the authenticity of such documents and consequently when the application was filed for production of those documents on which the claimant founded his claim, in absence thereof, the claim could not have been entertained. He further submits that on the basis of such documents, when the claimant contractor has filed affidavit, an application was filed to cross examine him which could have been allowed to afford a fair opportunity of hearing. Reliance was placed on a case law reported in (2003) 7 SCC 492 - Sohanlal Versus Asha Devi and would submit that the principles of natural justice were not followed though the arbitrator was obliged to follow the same. Further reliance was placed on a decision reported in 2013 SCC Online Bombay 209 (Nazim H. Kazi v. Kokan Mercantile Co-Operative Bank Ltd) to submit that learned Arbitrator has relied upon the disputed documents which were not admitted by either party and thus came to a wrong finding. Further reliance was placed in Civil Appeal No.4228/2006 (M/s. Anandam Timber Industries Vs. Commissioner of Central Excise, Kolkata) decided on 02.09.2015 to submit that the right to cross-examine should have been given by the learned arbitrator when specific application was filed in this behalf. Further, referring to a decision in Associate Builders Versus Delhi Development Authority (2015) 3 SCC 49 he would submit that the test of 'public policy' is required to be applied to an arbitral award and judicial approach demands that a decision be fair, in absence thereof, the arbitral award would be a nullity. Further he would submit that the arbitrator should have decided the dispute keeping in view the right of the parties and the reliance was placed in P. Radhakrishna Murthy Vs. National Buildings Construction Corpn. Ltd. (2013) 3 SCC 747 . He, therefore, submits that the order passed by the Tribunal requires interference by this Court.

5. Per contra, Ms. Hamida Siddiqui, Advocate, assisted by Mr. Arham Siddiqui appearing for the respondent would submit that the claim statement in this case was filed by the contractor on 23.08.2013 and the return was filed on 07.02.2014 by the appellant/BSNL with an affidavit of one A.K. Pandey, A.G.M., and subsequent rejoinder was filed on 29.06.2014. It is further submitted that the first affidavit of the claimant was placed on 10.10.2014, however, the final affidavit on which the reliance was placed in lieu of examination-in-chief was filed on 09.08.2015 by the claimant. It is submitted that on such filing of affidavit, opportunity to cross-examine was not availed by the appellant BSNL and subsequently a highly belated application was filed on 08.05.2016 to cross-examine, which was rightly rejected by the arbitrator. She would submit that as per Section 19 of the Act 1996, the Rules of Procedure was laid down by the Arbitrator on 28.04.2013 and the reply of the statement of claim would show that no specific denial was made to the claim. She would further submit that the application for production of documents was filed on 02.01.2016 and after filing the statement of claim, no amendment or supplement in defence was ever placed before the Arbitrator, which could have been otherwise done u/s 23(3) of the Act, 1996. She would further

submit that no application was ever filed or prayer was made after filing of the affidavit to hold oral hearing, but it was filed at a highly belated stage on 08.05.2016 only to protract the trial, therefore, the said application was rightly rejected.

6. Further the counsel for the respondent would submit that the bills which were placed before the arbitrator after obtaining under RTI would show that the liability register has specifically endorsed the fact that the bills are in custody of the department which was also not denied and consequently, the demand was raised. Referring to the process of payment of bill, she would submit that after the work is done, it has to be verified and processed by the SDE, therefore, all the documents hold the endorsement of SDE. Further reference was made to a decision of Supreme Court in Fiza Developers and Inter-Trade Pvt. Ltd Vs. AMCI (India) Pvt. Ltd. (2009) 17 SCC 796 to canvass that the arbitral proceedings is summary in nature and the Act is a special enactment and Section 34 provides for a special remedy and the proceedings u/s 34 requires to be dealt with expeditiously, as such, the hearing as has been sought for at the belated stage could not have been allowed. 6 (b) She further refers to a decision in Ssangyong Engineering & Construction Co. Ltd. Versus National Highway Authority of India (2019) 15 SCC 131 to submit that the scope of interference has been abridged by the Supreme Court and only in case of breach of public policy for patent illegality, interference ought to have been done. She further submits that when the affidavit was filed, any opportunity of cross-examination was not availed, soit cannot be said to be a right at a belated stage. She further refers to Ispat Engineering and Foundry Works v. Steel Authority of India (2001) 6 SCC 347 to submit that re- appraisal of evidence by the Court would not permissible and exercise of power to re-appraise the evidence is unknown to a proceeding under Section 30 of the Arbitration Act. Therefore, the judgment is well merited which do not call for any interference.

7. We have heard learned counsel for the parties at length and have also perused the records and documents.

8. Since the appellate power u/s 37 of the Act, 1996 would be controlled and would be within the purview of limitation provided u/s 34 of the Act, 1996 to challenge the arbitral award, it would be relevant to refer the provisions of Section 34 of the Act, 1996 which is reproduced herein below:

> 34. Application for setting aside arbitral award .-
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> (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
> (2) An arbitral award may be set aside by the Court only if -
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> (a) the party making the application furnishes proof that --
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> (i) a party was under some incapacity, or
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> (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in

force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that -

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

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

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

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

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

Explanation 2.-- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian Law shall not entail a review on the merits of the dispute.] (2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbiral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under his section shall be disposed of expeditiously and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."

9. The Supreme Court in Fiza Developers and Inter-Trade Pvt Ltd Vs. AMCI (India) Pvt Ltd. (2009) 17 SCC 796 held that the scheme of arbitral proceedings is summary in nature,the said proposition still holds the field. The Court further held that the scheme and provisions of the 1996 Act disclose two significant aspects relating to courts vis-a-vis arbitration. The first is that there should be minimal interference by courts in matters relating to arbitration. The second is sense of urgency shown with reference to arbitration matters brought to court, requiring promptness in disposal. The court has further observed that the Act is a special enactment and section 34 provides for a special remedy. So the proceedings u/s 34 requires to be dealt with expeditiously. Paras 14, 17, 21 & 24 are relevant and quoted hereinbelow:

"14. In a summary proceeding, the respondent is given an opportunity to file his objections or written statement. Thereafter, the court will permit the parties to file affidavits in proof of their respective stands, and if necessary permit cross examination by the other side, before hearing arguments. Framing of issues in such proceedings is not necessary. We hasten to add that when it is said issues are not necessary, it does not mean that evidence is not necessary.

17. The scheme and provisions of the Act disclose two significant aspects relating to courts vis-a-vis arbitration. The first is that there should be minimal interference by courts in matters relating to arbitration. Second is the sense of urgency shown with reference to arbitration matters brought to court, requiring promptness in disposal.

> 21. We may therefore examine the question for consideration, by bearing three factors in mind. The first is that the Act is a special enactment and section 34 provides for a special remedy. The second is that an arbitration award can be set aside only upon one of the grounds mentioned in sub-section (2) of Section 34 exists. The third is that proceedings under Section 34 requires to be dealt with expeditiously.
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> 24. In other words, an application under section 34 of the Act is a single issue proceeding, where the very fact that the application has been instituted under that particular provision declares the issue involved. Any further exercise to frame issues will only delay the proceedings. It is thus clear that issues need not be framed in applications under section 34 of the Act.

10. A perusal of the record would show that on 28.04.2013 the Arbitrator laid down the rules of procedure. The said rules of procedure was determined u/s 19 of the Act, 1996. Section 19 contemplates that the parties are free to agree on the procedure to be followed by Arbitral Tribunal in conducting its proceeding and accordingly, the arbitrator determined the following rules of procedure, which reads as under:

> "The claim statement shall be filed by the Claimant by the next date. Thereafter, the respondent shall be given liberty of filing their reply with Counter Claim, if any. If Counter Claim is filed by the respondent, the Claimant shall be afforded an opportunity to file Rejoinder. Thereafter the parties shall be at liberty to file such documents as they may wish to submit.
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> Points for consideration may be framed and draft points for consideration may also be called for from the parties for the purpose. The parties shall be entitled to adduce evidence by way of affidavit or in case they so wish, they may make a prayer for adducing oral evidence also, which shall be considered and decided. Respective parties shall have the opportunity to cross examine on affidavit and the witnesses, if permitted on prayer being made in this regard by the parties. After closure of the evidence, submissions of the parties shall be heard. Appropriate variation / modification in procedure as above, may be made with the consent of parties".

11. As per the order sheet, the claim statement was filed on 24.08.2013. Thereafter, on 28.09.2013, the case was adjourned to 14.12.2013 for filing reply. On 14.12.2013, the reply was not filed and the case was adjourned to 08.02.2014 and on 08.02.2014, for want of reply, matter was taken up on 08.03.2014. On 08.03.2014, reply to the claim statement with affidavit of Shri A.K. Pandey, AGM (Network Planning), BSNL was filed.

12. The dates of hearing would show that considerable time was provided by the Arbitrator as on 23.08.2013, the claim statement was filed and return was filed in the month of February, 2014. Rejoinder to the return was filed in the month of June 2014 and the affidavit of claimant in lieu of examination-in-chief was filed on 09.08.2015 and the affidavit of respondent was filed on

15.07.2016. So, it cannot be said that sufficient time was not provided to the appellants and if further time as claimed for is granted, it would only defeat the procedure to deal with the trial expeditiously. The return filed on behalf of respondent (Annexure A-5) would show that it only touches upon the refund of Security Deposit and Earnest Money Deposit, but in respect of other claim, no reply was filed though unilateral statement was made that a detailed para-wise reply, if required, would be filed in future. So virtually the averments made in claim statement were not replied at all. During the course of submission, it is stated that the claim for Security Deposit and Earnest Money Deposit since has already been settled by the BSNL, that is not a part of dispute as of now.

13. Since the return was silent about the claim of respondent, we refer to the affidavit filed by the claimant. A perusal of the affidavit shows that a detailed claim was enumerated which finds a reference to a letter written by the General Manager, which was marked as C-4 and the document on which the reliance placed is C-4 dated 01.11.2011, it is a document obtained under RTI wherein certain liability has been shown. This document however was not admitted by the respondent. But when the claim statements are compared to the reply and the letter Annexure C-6 dated 02.04.2009 addressed to the C.G.Telecom Raipur which was sent by the BSNL, the fact would emerge that the said letter bears a reference of contract No. W-1-18/Tender/ 419/Reh/RYP City/06-07, which purports about extension of work till 30.01.2009 and the total expected expenditure including the pending bills was shown to be Rs. 1.90 crores. In such letter, the expenditure of tender work is admitted to have been exceeded by Rs.81 lakhs over and above the estimated cost. So when the claim averments are read together with the reply and the document C-6 issued by the BSNL which finds a reference to original contract number and internal letter, which is not in dispute, it clearly shows that the contract time was extended and it also includes the expansion of expenditure due to wide-spread developmental activities under-taken in the city of Raipur. It appears that after appreciation of facts and evidence, the arbitrator in its award has held that the liability was accepted by the respondent authorities as per the Letter Annexure C-6 and therefore they would be liable to pay an amount of Rs.51,49,683/- as the claim of Security Deposit and Earnest Money Deposit has already been settled.

14. The Supreme Court in In Civil Appeal No.4353 of 2010 (State of Chhattisgarh Vs. M/s Sal Udyog Private Limited decided on 8th November, 2021) at para 14 has reiterated the observations made in Ssangyong Engineering and Construction Company Ltd (Supra), which spelt out the contours of the limited scope of judicial interference in reviewing the Arbiral Awards under the Act. Para 14 is relevant and quoted 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 his expression. This would necessarily mean that Western Geco [ONGC v. Western Geco 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 hat 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. Equality, 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 of 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.

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-

A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the back-door when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], namely a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an Arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], 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 arriving at is 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 characterized as perverse."

(emphasis added)

15. Further referring to the facets of the 'patent illegality, the Supreme Court in Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd, 2021 SCC Online SC 695 held that the Scope has been narrowed down but in case of "patent illegality" interference in the arbitral award would be permissible. At para 26, the Court has observed as under :

> "26. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbiral Tribunal would not fall within the expression 'patent illegality' Likewise, erroneous application of law cannot be categorized 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 re-appreciate 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'.

16. Applying the aforesaid principles to the present facts of the case and following the position of law reiterated in Ispat Engineering and Foundry Works (2001) 6 SCC 347 (Supra) we are of the opinion that re-appraisal of evidence by the Court is not permissible and as a matter of fact, exercise of power to re-appraise the evidence is unknown to a proceeding under section 37 of the Arbitration Act.

17. Now coming to the question of grant of opportunity, keeping in view the arbitral proceedings is summary in nature as explained in Fiza Developers (2009) 17 SCC 796 (supra), the entire order sheets of Arbitrator are gone through. The facts of present case would reflect that the procedure of arbitration was drawn on 28.04.2013 and thereafter the claim statement was filed on 23.08.2013. After filing of claim statements, return was filed on 08.02.2014 and the affidavit in lieu of examination-in-chief was filed on 09.08.2015. On that date, order sheet would show that no prayer for cross examination was made by the appellant/respondent. The rules of procedure which initially laid down in 28.4.2013 gives ample opportunity of liberty to cross examine but the order sheets do not show that any prayer was made to avail such opportunity. Therefore, if the opportunity has not been availed by the party concerned to cross examine the witness, it cannot be stated that there would be violation of principles of natural justice at a subsequent stage. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case, it shows that at a highly belated stage on 08.05.2016, an application was filed along with application for production of documents and for cross examination.

18. Considering the nature of proceedings which started from 2013, the contention of the appellants that fair opportunity was not granted though a fresh affidavit of another AGM was filed, cannot be appreciated and acceptance of such prayer made by the Appellants would only lead to protract the trial which defeats the very spirit of arbitral proceeding. In view of the aforesaid discussion, after examination of all aspects, we hold that no interference is required by this Court in the award passed by the learned Tribunal or the Arbitrator. The appeal, therefore, is liable to be and is hereby dismissed.

Sd/-	Sd/-
(Goutam BhadurI)	(N. K. Chandravanshi)
Judge	Judge

Rao