# Mr.N.Srinivasa Rao vs M/S.Sundaram Finance Ltd on 26 March, 2019

## Author: M.Sundar

## Bench: M.Sundar

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.Nos.509 to 511 of 2014

1.Mr.N.Srinivasa Rao
2.Mr.N.Manjunatha Rao .. Petit
all O

vs.

1.M/s.Sundaram Finance Ltd.
21, Pattullos Road,
Chennai – 600 002.

2.Mr.M.Ganesan
Sole Arbitrator
S-4, Pragadheeswara Apartments
New No.50 (Old No.51/52)
First Main Road, C.I.T.Nagar
Chennai – 600 035. ... Resp
all

Original Petitions filed under Section 34(V)(2) of the Arbitr

Conciliation Act, 1996, to set aside the impugned award dated 20

passed by the second respondent and consequently declare all proce

initiated by the second respondent as against the petitioners are

such further or other orders as this Hon'ble Court may deem fit an

the facts and circumstances of the case and thus render justice.

For Petitioners (in all O.Ps') : Mr.S.Thanka Sivan

For Respondents (in all O.Ps') : Mr.T.Srinivasa Raghavan for M/s.T.Srinivasa Raghavan & A Assisted by Mr.E.Tamizharasa R2-Arbitrator.

COMMON ORDER

This common order will dispose of instant three 'Original Petitions' ('OPs' for brevity).

2. To be noted, instant OPs have been filed under Section 34 of A & C Act. Section 34 in the scheme of A & C Act finds its slot under Chapter VII of A & C Act, which is captioned 'RECOURSE AGAINST ARBITRAL AWARD'. A perusal of Section 34 of A & C Act also reveals that recourse to Court against an arbitral award may be made by an 'application'. Also to be noted, the very caption to Section 34 of A & C Act reads 'APPLICATION FOR SETTING ASIDE AN ARBITRAL AWARD'. Be that as it may, such recourse against an arbitral award is being assigned the nomenclature 'Original Petition' in this Registry. Therefore, I shall refer to the instant proceedings as 'OP' for the sake of convenience and clarity.

3. 'O.P.No.509 of 2014' shall be referred to as 'senior OP', 'O.P.No.510 of 2014' shall be referred to as 'first junior OP' and 'O.P.No.511 of 2014' shall be http://www.judis.nic.in referred to as 'second junior OP' for the sake of convenience and clarity.

4. All the three OPs are directed against three different arbitral awards, but all the three arbitral awards are of the same date i.e., 20.11.2013. Therefore, arbitral award called in question in senior OP shall be referred to as 'impugned award-I', arbitral award called in question in first junior OP shall be referred to as 'impugned award-II' and arbitral award called in question in second junior OP shall be referred to as 'impugned award-III'.

5. Impugned award-I arises out of a loan agreement dated 08.08.2007 bearing Loan Contract No.CB8371 (hereinafter 'said loan agreement-I'), impugned award-II arises out of a loan agreement dated 08.08.2007 bearing Loan Contract No.CB8372 (hereinafter 'said loan agreement-II') and impugned award-III arises out of a loan agreement dated 08.08.2007 bearing Loan Contract No.CB8373 (hereinafter 'said loan agreement-III')

6. Said loan agreement-I pertains to finance for purchase of a truck viz., Leyland Tipper HCV vehicle 2007 Model, bearing Chassis No.YFE582851 fitted with Engine No.ZFH 377858 (hereinafter 'said

truck-I' for brevity), said loan agreement-II pertains to finance for purchase of a truck viz., Leyland Tipper HCV vehicle 2007 Model, bearing Chassis No.XFA062097 fitted with Engine No.ZFH 388916 (hereinafter 'said truck-II' for brevity) and said loan agreement- http://www.judis.nic.in III pertains to finance for purchase of a truck viz., Leyland Tipper HCV vehicle 2007 Model, bearing Chassis No.XFA061763 fitted with Engine No.ZFH 379827 (hereinafter 'said truck-III' for brevity)

7. To be noted, impugned award-I, impugned award-II and impugned award-III have all been passed by the same Arbitral Tribunal i.e., Arbitral Tribunal constituted by a sole Arbitrator, which shall hereinafter be referred to as 'AT' for the sake of brevity, clarity and convenience.

8. Considering the narrow scope on which the entire matter turns, suffice to say that first petitioner is the borrower, second petitioner is a guarantor and the first respondent is the finance company, which this Court is informed is a 'Non-Banking Finance Company' (NBFC' for brevity), which financed the purchase of said truck-I, said truck-II and said truck-III.

9. Suffice to say that there was default in repayment by the petitioners resulting in the first respondent invoking the arbitration clauses in said loan agreement-I, said loan agreement-II and said loan agreement-III and going before the Arbitral Tribunal . Arbitral Tribunal entered reference, conducted arbitral proceedings and after full contest, passed impugned award-I, impugned award-II and impugned award-III, which have been called in http://www.judis.nic.in question, in senior OP, first junior OP and second junior OP respectively.

10. It may not be necessary to go into the quantum of loan, the extent of default and the numbers in terms of claim considering the nature of submissions made in the hearing today.

11. Mr.S.Thankasivan, learned counsel on record for petitioners and Mr.T.Srinivasaraghavan of M/s.T.Srinivasa Raghavan & Associates [Law Firm] assisted by Mr.E.Tamizharasan, learned counsel on record for first respondent are before this Court.

12. Notwithstanding the contents of OPs i.e., three OPs being senior OP, first junior OP and second junior OP, it is submitted by learned counsel for petitioners that the entire challenge to the three impugned awards is solely on the ground that it is in conflict with public policy of India.

13. Elaborating on this submission, learned counsel submitted that two points constitute the attack of the impugned awards on the ground that they are in conflict with public policy of India. First point is that Clause 14.1 of the three loan agreements is contrary to Section 74 of the Contract Act. Second point is that clause 14.4 is contrary to Section 176 of the Contract Act and therefore it is valid. Owing to this submission, this Court deems it appropriate http://www.judis.nic.in to extract clauses 14.1 and 14.4, which read as follows:

> 'Clause 14.1 The occurrence of any/all of the aforesaid events of Default shall entitle the lender to intimate the Borrower that the entire sum of money and all other sums and charges of whatsoever nature, including but not limited to, interests on account of default in payment of insurance premia and on account of other taxes which would

have been payable by the Borrower if the Agreement had run to its full term, have become due and payable forthwith. The Lender shall be entitled to charge an extra percentage at a rate specified in the first Schedule on the principal outstanding and on the other amounts due, and demand that all the aforesaid amounts be repaid to the Lender immediately. The Lender may, by a notice in writing at its discretion, call upon the Borrower to rectify the event of Default within the period specified in such notice.

Clause 14.4 The Borrower shall not be entitled to raise any objections regarding the regularity of the sale and/or actions taken by the Lender nor shall the Lender be liable/responsible for any loss that may be occasioned from the exercise of such power and/or may arise from any act or default on the part of any broker or auctioneer or other person or body engaged by the Lender for the said purpose.'

14. Section 74 of the Contract Act reads as follows:

'74. Compensation for breach of contract where penalty stipulated for._ http://www.judis.nic.in When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.'

15. Section 176 of the Contract Act reads as follows:

'176. Pawnees's right where pawnor makes default._If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debit or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.'

16. To be noted, the clauses are referred to as Articles and therefore, it is Article 14.1 and Article 14.4. Also to be noted, the Articles are adverbatim the same in all the three loan agreements viz., said loan agreement-I, said loan agreement-II and said loan agreement-III.

http://www.judis.nic.in

17. Therefore, the submissions are common.

18. Learned counsel for petitioners also drew the attention of this Court to Article 21 of the loan agreement, which reads as follows:

> 'ARTICLE 21 PARTIAL INVALIDITY If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent for any reason including by reason of any law or regulation or government policy, the reminder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Any invalid or unenforceable provisions of this Agreement shall be replaced with a provision, which is valid and enforceable and most nearly reflects the original intent of the unenforceable provision, in a mutually agreeable manner.'

19. To be noted, Article 21 is also adverbatim the same in all the three loan agreements viz., said loan agreement-I, said loan agreement-II and said loan agreement-III.

20. This takes us to the impugned awards.



21. In the light of the pointed but limited submissions that have been made before this Court, it may be appropriate to extract the issues framed in the three impugned awards. Eight issues have been framed in the three impugned awards and they read as follows:

> 1. Whether the arbitration proceedings is maintainable against the second respondent since he is not a signatory to the loan agreement?
>
> 2. Whether the loan agreement and the guarantee letter have been properly stamped?
>
> 3. Whether the arbitral proceedings are maintainable at Chennai?
>
> 4. Whether Clause 14.1 and 14.4 of the loan agreement is against public policy and statute?
>
> 5. Whether the vehicle was under valued and sold as stated by the respondents?
>
> 6. Whether the claimant is entitled for recovery of the claim amount as prayed for?
>
> 7. Whether the claimant is entitled for any interest as claimed?
>
> 8. To what other relief the claimant is entitled to? '

22. To be noted, the issues are also the same in the three impugned awards viz., impugned award-I, impugned award-II and impugned award-III.

23. In the light of the submissions made (which have been captured supra) it emerges clearly that the entire arguments turn on issue Nos.4 and 7. http://www.judis.nic.in

24. Before AT, evidence was let-in, one witness was examined on the side of the petitioners before this Court and one witness was examined on the side of the first respondent before this Court. In impugned award-I and impugned award-III, 13 exhibits were marked on the side of first respondent before this Court (claimant before AT) and they are exhibits A1 to A13. Likewise in impugned award-I and impugned award-III, two exhibits were marked on the side of the petitioners before this Court (respondents 1 and 2 before AT) and they are exhibits B1 and B2. With regard to impugned award-II, 12 exhibits viz., Exs.A1 to A12 were marked on the side of first respondent before this Court (claimant before AT) and two exhibits viz., Exs.B1 and B2 were marked on behalf of the petitioners before this Court (respondents 1 and 2 before AT).

25. As mentioned supra, the entire matter turns on issue Nos.4 and 7. Issue No.4 deals with aforesaid articles 14.1 and 14.4 in said loan agreements. Issue No.7 deals with interest. Discussions and findings returned on issue No.4 as in the impugned awards read as follows:

> '12. Issue 4:
>
> 4. Whether clause 14.1 and 14.4 of the loan agreement is against public policy and statute?

The first respondent had questioned the validity of Article 14.1 and 14.4 of the loan agreement and has raised the said issue by http://www.judis.nic.in way of counter claim. It is his contention that the said articles provide for additional finance charges at exorbitant rate of 30% p.a. On delayed payment of installment amounts and also debarring the respondents from questioning the regularity of the sale of repossessed vehicle and the sale price which according to him are opposed to the public policy. It was submitted by the respondents that the agreement itself provides for payment of the loan amount in 47 monthly installments and such installment consists of both the principal as well as interest. Therefore to charge further interest on delayed payment of installment amount would amount to charging interest on interest which is not permissible in law and in any case, claiming of 30% interest per annum is usurious. It was further contended that since the asset had been hypothecated in favour of the claimant, they are not liable to pay interest beyond 9% p.a and as such Clause 14.1 providing for payment of additional finance charges has to be declared as null and void. On the other hand, claimant contends that the additional finance charges are collected for the delayed period in payment of the installment dues as per schedule and such charges are nothing but pre-estimated damages agreed between the parties.

13. In the light of the rival claims made by both the parties, it is imperative to look at Article 14.1 which state as follows:

'the occurrence of any/all of the aforesaid events of default shall entitle the lender to intimate the borrower that the entire sum of money and all other sums and charges of whatsoever nature, including but not limited to, interests on account of default in payment of insurance payments and on account of other taxes which would have been payable by the Borrower if the agreement had run to its full term, have become due and payable forthwith. The Lender http://www.judis.nic.in shall be entitled to charge an extra percentage at a rate specified in the first Schedule on the principal outstanding and on the other amounts due, and demand that all the aforesaid amounts be repaid to the Lender immediately. The Lender may, by a notice in writing at its discretion, call upon the Borrower to rectify the event of default within the period specified in such notice'

14. The above Clause clearly indicates that the borrower shall pay all the outstanding dues payable on the respective dates as per the schedule to the agreement and if the borrower fails to pay such amount on the due dates or commits any event of default as specified under Article 13 of the agreement, then the Lender notwithstanding his right to recall the loan amount can also charge extra percentage at the rate specified in the first schedule to the loan agreement.

15. Further, the above clause seems to have been inserted primarily with an object to act as a deterrent for the borrower not to commit any events of default. Under Article 14 of the provision for collection of extra percentage has been contingent on happening of any event of defaults specified under Article 13. The Borrower is expected to pay the loan amount as per the schedule on their due date. The loan amount includes the loan advances and also the interest and in this case, it is 13.30% p.a. The said total loan amount inclusive of interest at the above percentage has been divided into 47 monthly installments of varied amounts. The main grievance of the first respondent appears to be that the said installment dues consists of components of both principal and interest and therefore to charge any extra interest over the same is impermissible in law as it would amount to charging interest on interest. I am afraid that I cannot agree with the above submission for the reason that once http://www.judis.nic.in the loan amount has been determined and the same is divided into monthly installments, then such monthly installment itself would become principal amount. Supreme Court had in Central Bank of India vs Ravindra as reported in AIR 2001 SC 3095 had held that capitalization of interest is absolutely permissible and such amalgam of interest with principal would itself become adjudged principal sum. The second question to be addressed herein is whether 30% interest charged for the delayed period is usurious or not? According to the Claimant charging additional interest is nothing but akin to fixing pre-estimated damages which was agreed between the parties in the event of default as provided under Article 13 of the loan agreement. In this regard it is pertinent to refer Art.2.9(e) of the Agreement which clearly provides that the Borrower is liable to pay additional financial charges as stipulated in the schedule for the period of delay in payment of the outstanding dues. Entry 12 of the First Schedule stipulates additional interest at 30% p.a. The first respondent after having signed the agreement with the above terms and being fully aware of the consequences of non-payment of installment amount on their due dates cannot cry foul at this late stage. He has agreed upon the specified sum calculated with specified rate of interest for the period of delayed payment which is binding on him. Under Article 27 of the Loan Agreement it has been stated that the Borrower had read the entire agreement containing page 1 to 8 and the details given

in the schedule and he is bound by all the conditions of the said agreement. He has also declared that the said agreement and other documents have been explained to him in the language understood by him and he had understood the entire meaning of all the clauses before executing the said document. Thus, after http://www.judis.nic.in having agreed to the provision of collection of additional finance charges at the specified rate given in the first schedule, I hold that he is not entitled to challenge the same at this stage.

16. The next challenge of the respondents is with regard to Article 14.4 of the Loan Agreement. Article 14.4 provides as follows:

> 'that the Borrower is not entitled to raise objection regarding the regularity of the sale or action taken by the Lender or the lender be responsible for any loss that may be occasioned from the exercise of such power and/or may arise from any act or default on the part of any broker or auctioneer or other persons or body engaged by the Lender for the said purpose' Firstly the respondents have not challenged the above clause on the basis that it is against any statutory provision of law. The plea taken by the respondents was merely that the said clause is opposed to public policy. We have to only now examine whether the above clause is against public policy within the meaning enumerated above. It is to be noted that both the parties at the time of entering into agreement had full knowledge of the implications of the above clause. Main object of the agreement is that of its compliance. Article 14 deals with the consequences of breach of the agreement by the borrower which he is not supposed to act. Apart from the other rights conferred on the lender, a specific right to repossess the financed vehicle or asset is given under the said clause. Further more the lender has also been given the right to sell such repossessed asset or vehicle to recover either whole or part of the dues payable by the Borrower. It is only in the context of the exercise of such power, the above clause 14.4 has been inserted which indemnifies the Lender from any claim that may arise with regard to the sale of the said http://www.judis.nic.in vehicle or asset. This is the plain meaning that we can gather from a bare reading of the above clause. The first respondent in order to challenge the above clause should point out any mischief on the part of the Lender while exercising the power conferred under the said Article in order to attract violation of public policy. Section 23 of Indian Contract Act has a direct bearing to the above challenge. Section 23 adumbrates that the consideration or object of an agreement is lawful unless it is forbidden by law or is of such nature that if permitted it would defeat the provision of any law or is fraudulently involved or implied injury to the persons or property of another, or the court regards it as immoral or opposed to public policy. In the instant case, the respondents seek to challenge Article 14.4 as being opposed to public policy. Any contract can be said to be opposed to public policy if it tends to defeat any provision of law or purpose of law and it becomes unlawful and void under Section 23 of the contract Act. Section 23 is concerned only with the object or consideration of the transaction and not the reasons or motives. The loan agreement is entered in respect of commercial transaction between an affluent businessman and a financial institution who stand on equal bargaining

power. If the respondent had found any unreasonableness in respect of a term in the agreement he could have protested the same either before or after signing the agreement. He also had the option to avoid the contract. Admittedly, the first respondent did not make any protest before entering into the agreement. But on the other hand went ahead with its performance. The validity of the above clause has been challenged after termination of the agreement and initiation of arbitral proceedings. It is settled law that if the party complaining of any unfairness in a contract and does not do http://www.judis.nic.in anything to avoid it and accepts it, then complaining party cannot make a grievance of the contract. The first respondent being an affluent businessman had full knowledge as to all the implications of the terms of the agreement but did not react in any manner to the terms of the agreement. On the other hand, he continued to reap the benefits under the agreement. Further a clause being against pubic policy, arbitrary or unconscionable could be raised only when the contract relates to the realm of public law. However, the same is not applicable to a contract between two private business persons dealing a commercial transaction. Where two businessman are negotiating at arm's length, it is difficult to uphold the law of public policy. Accordingly, clauses 14.1 and 14.4 of the Loan Agreement cannot be held to be invalid on that count.'

26. To be noted, with regard to issue No.7, the same has been dealt with along with issue No.8, which is a residuary limb of prayer. With regard to issue Nos.7 and 8, the discussions and findings returned as culled out from the impugned awards reads as follows:

'21.Issues 7 & 8:

7. Whether the claimant is entitled for any interest as claimed?

8. To what other relief the claimant is entitled to? ' Regarding interest, I am of the view that since the transaction is commercial in nature, the claimant will be entitled to charge the same at 18% p.a., on the outstanding dues of Rs.4,64,627.60ps from 02.03.2009 till the recovery of the entire dues. The cost of http://www.judis.nic.in the arbitration proceedings is made up of a sum of Rs.5,000/-

fixed as Arbitrator's fee, Rs.2,500/- towards postage, Xerox, stationary, clerical and other miscellaneous expenses, aggregating to Rs.7,500/-. The first respondent had already paid a sum of Rs.2,500/- as arbitrator's fee. Therefore, the claimant shall pay the balance amount of Rs.5,000/- and recover the same from the respondents. I answer Issues 7 & 8 as above.'

27. Learned counsel for petitioners relied on a judgment of Hon'ble Supreme Court in ONGC Ltd. Vs. Saw Pipes Ltd. reported in (2003) 5 Supreme Court Cases 705. The relevant portion of said judgment is paragraph 31, which reads as follows:

'31. Therefore, in our view, the phrase 'public policy of India' used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term 'public policy' in Renusagar case it is required to be held that the award could be set aside if it is patently illegal. The result would be – award could be set aside if it is contrary to:

(a) fundamental policy of Indian law; or http://www.judis.nic.in

(b) the interest of India; or

(c) justice or morality, or

(d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court. Such award is opposed to public policy and is required to be adjudged void.'

28. Learned counsel for petitioners also relied on the oft-quoted judgment being Associate Builders Vs. Delhi Development Authority reported in (2015) 3 SCC 49. The relevant portion of said judgment is paragraph 42, which reads as follows:

'42. In the 1996 Act, this principle is substituted by the 'patent illegality' principle which, in turn, contains three subheads:

42.1.(a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

'28.Rules applicable to substance of dispute._ (1) Where the place of arbitration is situated in India_

(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the http://www.judis.nic.in dispute submitted to arbitration in accordance with the substantive law for the time being in force in India.' 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality _

> for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

> "28. Rules applicable to substance of dispute._ (1)-(2) (3) In all cases, the Arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."

This last contravention must be understood with a caveat. An arbitral tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term 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.'

29. Learned counsel for first respondent, in response, submitted that if the petitioners are aggrieved by Articles 14.1 and 14.4 of said loan agreements, it is for the petitioners to challenge the same and seek a declaration but that cannot be raised before AT.



30. This Court has carefully considered the rival submissions. The submissions that Articles 14.1 and 14.4 may have to be challenged independently, may not hold water in the light of Article 21 as it provides for severing clauses from said loan agreements on the ground of invalidity. However, the extract of discussion and finding on issue No.4 in the impugned award, which has been extracted supra, will reveal that AT has discussed and returned findings with regard to the challenge to Artciles 14.1 and 14.4. AT has returned a finding that they are not implausible and they are not illegal and therefore, they need not be severed from said contract i.e., loan agreement-I, loan agreement-II and loan agreement-III.

31. Faced with the above situation, learned counsel for first respondent pressed into service a judgment of Hon'ble Supreme Court in Central Bank of India Vs. Ravindra reported in AIR 2001 Supreme Court 3095 for the proposition that it is incorrect to say that there cannot be interest on interest.

32. Even in the celebrated Associate Builders Case, Hodgkinson principle has been referred to and the same is articulated in paragraph 41, which reads as follows:

> '41. This, in turn, led to the famous principle laid down in Champsey Bhara Company v. The Jivraj Balloo Spinning and http://www.judis.nic.in Weaving Company Ltd., AIR 1923 PC 66, where the Privy Council referred to Hodgkinson and then laid down: (IA pp.330-32) 'The law on the subject has never been more clearly stated than by

Williams, J. in Hodgkinson v. Fernie :

[CB(NS)p.202 : ER p.717] 'The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact ..... The only exceptions to that rule are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think firmly established viz., where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established.' "Now the regret expressed by Williams, J. in Hodgkinson v. Fernie has been repeated by more than one learned Judge, and it is certainly not to be desired that the exception should be in any way extended. An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is, and then going to the contract on http://www.judis.nic.in which the parties' rights depend to see if that contention is sound. Here it is impossible to say, from what is shown on the face of the award, what mistake the arbitrators made. The only way that the learned judges have arrived at finding what the mistake was is by saying: "Inasmuch as the Arbitrators awarded so and so, and inasmuch as the letter shows that then buyer rejected the cotton, the arbitrators can only have arrived at that result by totally misinterpreting Cl.52." But they were entitled to give their own interpretation to Cl. 52 or any other article, and the award will stand unless, on the face of it they have tied themselves down to some special legal proposition which then, when examined, appears to be unsound. Upon this point, therefore, their Lordships think that the judgment of Pratt, J. was right and the conclusion of the learned Judges of the Court of Appeal erroneous." This judgment has been consistently followed in India to test awards under Section 30 of the Arbitration Act, 1940.

33. In other words, Hodgkinson principle is to the effect that AT is the sole and final judge of the quantity and quality of evidence before it

34. As AT has returned a finding with regard to clauses 14.1 and 14.4, which is the crux and gravamen of the attack qua the three impugned arbitral awards i.e., impugned award-I, impugned award-II and impugned award-III before this Court and both have been discussed and answered by the AT and held to be valid, all that has to be seen is whether it is a possible view. http://www.judis.nic.in

35. Learned counsel for petitioner also drew my attention to Associate Builders case and submitted that one of the three distinct juristic principles with regard to fundamental policy of Indian law i.e.,

irrationality/perversity would operate.

36. A perusal of Associate Builders case would reveal that Western Geco has been followed and with regard to irrationality/perversity, it has been held that the test is Wednesbury principle of reasonableness.

37. Wednesbury principle, in short and simple terms is whether AT has arrived at a conclusion, which is so unreasonable that no reasonable person would have arrived at such a conclusion on the basis of materials placed before it.

38. This Court has carefully considered the impugned awards particularly the answer to issue No.4 and there is no hesitation in coming to the conclusion that it is clearly not only possible, but also plausible view and therefore, the impugned awards certainly pass the muster of Wednesbury test of reasonableness. In other words, this Court is unable to persuade itself that the conclusion that has been arrived at by AT is so unreasonable that no reasonable person/entity could have arrived at such a conclusion on the basis http://www.judis.nic.in of materials before it.

39. Therefore, impugned awards pass the muster of Wednesbury test of reasonableness on the drill of applying the Wednesbury test of reasonableness by this Court qua impugned awards. In other words, this Court is of the considered view that no case has been made out for judicial intervention under Section 34 of A & C Act qua three impugned arbitral awards viz., impugned award-I, impugned award-II and impugned award-III. In applying the test and hearing this OPs, this Court reminded itself of Fiza Developers and Inter- Trade Private Limited Vs. AMCI (India) Private Limited reported in (2009) 17 SCC 796, wherein the Hon'ble Supreme Court held that proceedings under Section 34 of A & C Act are summary procedures. This Fiza Developers principle was subsequently reiterated by Hon'ble Supreme Court in Emkay Global Financial Services Ltd. v. Girdhar Sondhi reported in (2018) 9 SCC 49 and while so reiterating, Hon'ble Supreme Court held that Fiza Developers principle is a step in the right direction.

40. Owing to all that have been set out supra, all the three OPs fail and the same are dismissed. Considering the nature of matter and the kind of submissions that were made before this Court i.e., the trajectory of the hearing, this Court deems it appropriate to leave the parties to bear their http://www.judis.nic.in respective costs.

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