M/S.Beml Limited vs M/S Veer Engineering Works on 3 January, 2022

IN THE COURT OF LXXXIX ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU. (CCH-90)

Present: Sri.S.J.Krishna, B.Sc., LL.B.,
LXXXIX Addl.City Civil &
Sessions Judge, Bengaluru.

Dated: 3rd January 2022
Com.A.P.No.05/2021

PLAINTIFF : M/s.BEML Limited,
No.22/C, BSP Expansion,
Office Building,
Near Ispat Bhavan,
Bhilai-460 001.
Represented by its Authorised Signatory,
Mr.G.Ravikumar

(By M/s.AK Law Chambers, Advocates)
Vs.

DEFENDANTS: 1. M/s Veer Engineering Works,
Railway Station Road,
Roberts Ganj, Sonebhandra,
Uttar Pradesh-231 216.

(By Sri.Shyam Sundar.H.V, Advocate)

2. Hon'ble Mr.Justice (Retd.) Veeeranna G.Tigadi,
District Judge (Retd.)
No.207, D Block, Second Floor,
Inland Everglade Apartment,
Dasarahalli Main Road,
HA Rarm Post, Hebbal,
Bengaluru-560 024.

/2/
Com.A.P.No.5/2021

Date of Institution of suit	: 16-01-2021		
Nature of suit (suit on pronote, suit for declaration and possession suit for injunction, etc.,)	: U/sec.34 of the Arbitration Conciliation Act.		
Date of commencement of recording of evidence	: -		
Date of judgment	: 03.01.2022		
Total duration	: Year/s	Month/s	Day/s
	00	11	17

(S.J.KRISHNA)
LXXXIX ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU.
(CCH-90)

JUDGMENT

The Plaintiff has filed this Arbitration suit U/Sec.34 of the Arbitration & Conciliation Act, 1996 praying the Court to call for the records of the Tribunal from the 2 nd defendant; set aside the impugned award dated: 11.08.2020 and 17.10.2020 passed by the learned Sole Arbitrator in AC.No.01/2019 and grant such other reliefs as are deemed necessary in the circumstances of the case.

02. The arbitration proceedings in A.C.No:01/2019 was conducted by the Sole Arbitrator/Defendant No:2 herein in respect of Work Order dated: 25.11.2013 and contract dated:24.12.2013 by informing the parties about the /3/ Com.A.P.No.5/2021 constitution of the Arbitral Tribunal vide letter dated:29 th August 2019.

03. For the sake of convenience, the parties to the present suit are referred to as 'claimant' and 'respondent' as before the learned Sole Arbitrator in A.C.No:01/2019.

The summary of the case of the Claimant M/S.VEER ENGINEERING WORKS before the Arbitral Tribunal in A.C.No:01/2019 is as under:

04. The claimant states that the claimant is in the business of maintenance and repairs of heavy equipment since 1986 and provides its services to the clients across the country. The claimant has had to working relation with the respondent for over 30 years. The respondent is a Central Government Public Sector Undertaking under the Ministry of Defence, Government of India. It manufactures a variety of heavy equipment, such as that are used for earth moving, transport and mining.

05. That on 25.11.2013, a Work Order was issued to the claimant by the respondent to execute intended works in connection with the maintenance and repair contract.

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06. Subsequently on 24.12.2013, Maintenance and Repair Contract was executed in furtherance of the aforesaid work order between the claimant and the respondent inter alia for BH50M/BH60M Dumpers-11 Nos.BE1000 Hydraulic Excavators - 7 Nos, BD355-Bull Dozers - 6 Nos (Equipment) at M/s. Sail Rajhara (Dalli and Rajhara Mines) for a period of 1 (one) year and renewable for 4 (four) years. The terms and conditions with respect to the work are detailed in MARC, which are applicable to the parties.

07. The claimant had quoted its rates to the respondent in March, 2013 hoping that the work

description under MARC would commence from April, 2013, however the contract was finally awarded to the claimant in December 2013 after delay of nine months. In view thereof, the rates as were quoted by the claimant to the respondent were downsized by 30% during the negotiation stage of MARC. Since beginning the claimant performed its duties with diligence and responsibility as dishonouring the contract, was never the intention of the claimant.

08. As per the terms and conditions of MARC, yearly renewals of MARC were done on 29.11.2014 vide Letter No.1743, 21.11.2016 vide Letter No.1025 for the period commencing from 01.12.2016 till 30.11.2017 and lastly /5/ Com.A.P.No.5/2021 renewed on 29.11.2017 vide letter No.923 for the period commencing from 01.12.2017 till 31.12.2017.

09. In consonance with the terms and conditions of MARC, the claimant issued two Bank Guarantees, each for an amount of .14,39,760/- in respondent's favor for the purpose of performance bank guarantee and security deposit. The Bank guarantees were duly renewed by the claimant from time to time.

10. On 19.06.2015, the Steel Authority of India Limited (SAIL) issued Form of Certificate by Principal Employer in Form- V inter alia acknowledging that the claimant as the Sub- Contractor. Vide the said certificate; SAIL undertook to be bound by all the labor laws and regulations qua the claimant.

11. As per the terms and conditions of MARC, the claimant was required to produce and deploy labor at the work site of the respondent/respondent's client. In pursuance to the same, the claimants applied for obtained the requisite labor license dated 23.09.2015 issued by the office of the Deputy Chief Labor Commissioner (Central), Ministry of Labor and Employment, Government of India. The aforesaid license was subsequently renewed by the claimant till 22.09.2017.

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12. On 16.01.2016, the claimant vide a letter inter alia requested the respondent to consider increase in the basic rates of the equipment by 20% w.e.f., from April, 2016 due to unprecedented increase in labor rates by about 30% with a further increase of about 38-40% expected to be implemented in the following two years. By way of the same letter, the respondent's attention was brought to the state of losses amounting to 25-30% being incurred by the claimant.

13. On 19.01.2017 vide a notification bg.S.O.No.187(E), the Government of India further increased the minimum wage rate of workers by 40% which was reaffirmed by the office of the Chief Labor Commissioner vide a notice dated 17.03.2017. It is submitted that owing to the terms and condition of MARC, the respondent is responsible to pay "on site logistics and labor charges, including supervision' per month for each equipment. Needles to say that any increase or revision in the rates of Minimum Wages is the liability and responsibility of the respondent, thereby meaning that any increase in the wages had to be compensated by the respondent.

14. Subsequently, a representation dated 08.05.2017 was made by the claimant to the respondent inter alia informing about the frequency of breakdowns in the equipment and the difficulty being suffered by the claimant /7/ Com.A.P.No.5/2021 due to the increase in the cost of labor owing to the increase in Minimum Wages by the government.

15. Thereafter, another representation dated 06.06.2017 was made by the claimant reiterating its concern about the sudden spurt in capital costs and the financial hardships affecting the claimant.

16. That on 29.09.2017 a meeting was held between the claimant and the respondent wherein the issues were discussed and it was assured during the said meeting that all the issues will be resolved in due course of time. In view of this assurance, the claimant agreed to make all payments to the workers as were due.

17. Thereafter, representations dated 23.12.2017 and 04.01.2018 were made by the claimant to the respondent inter alia reiterating contents of the previous two representations.

18. However, despite receiving the aforesaid representations, no respite extended to the claimant despite facing significant monetary losses. To add to the woes of the claimant, ancillary costs like EPF and other taxes also shot up due to a sudden rise in wages. All along the claimant was /8/ Com.A.P.No.5/2021 performing its duties in a diligent manner in as much as the successive extensions to the MARC are evidence to the same.

19. Another representation dated 19.07.2018 was made by the claimant to the respondent, inter alia raising its concerns and seeking payment of an amount of .49,23,000/- against the pending statutory payments to be paid to the workers.

20. Accordingly, on 19.07.2018, a meeting was held between the claimant and the respondent, to have deliberations and discussions on the pending issues for the closure of the Work Order and to arrive at the final settlement. After certain deliberations, on the basis of the assurance of the respondent to receive the wage difference amounts from SAIL, the claimant agreed to make payments amounting to .22,10,262/- by October 2018.

21. Further, on 06.08.2018 the bank guarantees as issued by the claimant in favor of the respondent were renewed till 12.02.2019.

22. Furthermore, on 13.09.2018, the claimant vide a Letter inter alia yet again raised its concerns including the 40% enhancement in the Minimum Wages which was required /9/ Com.A.P.No.5/2021 to be paid to the workers. The claimant also indicated at the fact that the respondent has been paying the rates quoted in the MARC dated 25.11.2013 and therefore has not considered the revised wage rates which is in contradiction to the statutory provisions under law.

23. Thereafter, on 22.09.2018 the claimant invoked the arbitration clause under the work order in order to adjudicate upon the disputes between the parties.

24. However, on 28.09.2018 the respondent issued a letter inter alia shifting the entire liability of payment of wages to the workers on enhanced rates unto the claimant in a mala fide and malicious manner.

25. To the utter shock of the claimant, on 08.11.2018, the respondent vide a letter addressed to the Punjab National Bank, requested the invocation of the two bank guarantees amounting to .14,39,760/- as were issued by the claimant in favor of the respondent which clearly indicates mala fide towards the claimant.

26. On 20.11.2018 vide an email, the claimant requested the respondent to not invoke the aforesaid bank guarantee as it would cause irreparable damage and harm to the claimant.

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27. The claimant was misguided and manipulated by the respondent and was falsely promised relief subsequent to the payment of the aforesaid amount. Accordingly, the claimant due to its bona fide intentions and work ethics made payments amounting to a total of .22,75,003/- under protest. The same were directly credited to the workers' accounts and/or to the concerned departments, for example in case of EPF.

28. Further, in view of the request made by the claimant on 22.11.2018 the respondent issued a Letter to the Punjab National Bank inter alia requesting to put on hold the process of the invocation of the bank guarantees as issued by the claimant in favor of the respondent.

29. Thereafter, on 27.11.2018 the respondent vide a Letter responded to the notice dated 22.09.2018 issued by the claimant seeking invocation of the arbitration clause for adjudication of disputes between the parties. The respondent vide its reply dated 27.11.2018 intended to refer the dispute to the Karnataka Arbitration Centre.

30. On 30.01.2019, the claimant vide a Letter inter alia called upon the respondents to pay .50,77,062/- owing to the increased rates due to unprecedented increase in variables during the execution of the MARC and towards damages and /11/ Com.A.P.No.5/2021 penalty of EPF on arrears salary. Needles to say that significant financial losses were faced by the claimant due to an unprecedented increase in the Minimum Wages, without any increase in the rates of the claimant.

31. On 15.02.2019, the respondent replied to the aforesaid Letter dated 30.01.2019 vide letter. The respondent willfully turned a deaf ear to the pleas raised by the claimant without giving any cogent reasons for the same.

32. Further, to the utter shock of the Claimant, even after making the pending payments to the workers, on 11.03.2019, the claimant received a copy of the summons/notice dated 15.11.2018, from the respondent as issued by the Court of Authority under Minimum Wages Act, 1948 and Regional Labor Commissioner (C), Raipur for paying less wages than the Minimum Wages to 89 workers thereby quantifying the deficit payment at .21,85,636/-. It is reiterated that the claimant had made

all due payments towards wages of the workers, under protest. Further, the said notice also quantified compensation to an astounding amount of .2,18,56,360/-.

33. In view of the payment made by the claimant the summons/notice dated 15.11.2018 as received by the claimant regarding alleged default in payment of wages had been /12/ Com.A.P.No.5/2021 rendered in fructuous. If, at a later stage compensation, if any is awarded as against the aforementioned notice, in that circumstance compensation so arrived at would be payable by the respondent. Additionally, any liability accruing against the said notice/summons would be levied on the respondent in view of the deficit payment as already made by the claimant.

34. Thereafter, on 02.04.2019, vide a notice the Arbitration Clause was invoked by the claimant. On 29.05.2019, the respondent replied to the aforesaid notice invoking arbitration vide a letter Bg.No:LC/VEER EBG.2019/59, wherein inter alia all the legitimate and rightful claims of the claimant were negated by the respondent, absolving itself from all the liabilities, the respondent shifted the entire onus on the claimant and yet again intended to refer the disputes between the parties to the Karnataka Arbitration Centre.

35. On 28.06.2019, a rejoinder to the aforesaid reply was sent by the claimant wherein it was reiterated that the liability to pay for the surge in the Minimum Wages was to be borne by the respondent as per the Clause 13 of the work order and the responsibility of the claimant was only with respect to deployment of workforce and the same was only to the extent and as per the provisions of the work order. It was further /13/ Com.A.P.No.5/2021 reiterated in the aforesaid rejoinder-response that the claimant has already made payments amounting to INR 22,75,003/- directly to the workers accounts and where the need was, to concerned departments. It is pertinent to state that in the said rejoinder response, the claimant also clarified the fact that as per the arbitration clause the disputes are to be adjudicated under the provisions of the Arbitration and Conciliation Act, 1996 and in view thereof the same may not be referred to the Karnataka Arbitration Centre.

36. Accordingly, on 16.08.2019, vide a Letter, the respondent informed the claimant that they have appointed the Sole Arbitrator vide a Letter dated 14.08.2019 to adjudicate the disputes between the parties.

37. In view thereof, on 29.08.2019, a letter was issued by the sole arbitrator by way of which the arbitral tribunal was constituted to adjudicate the disputes between the parties.

38. The claimant made the following claims against the respondent before the Arbitral Tribunal.

1) (A) Claim towards a sum in the amount of .2,40,41,996/- against the respondent to pay for the deficit as well as the compensation as has been quantified by the Regional Labor Commissioner vide /14/ Com.A.P.No.5/2021 noticed dated 15.11.2018, along with interest, if any. (B) The respondent's act of absolving itself from all liabilities and putting its lawful and legitimate obligations on the claimant has caused immense financial hardship to the claimant. The claimant, since the inception of the MARC has been operating in 25- 30% loss and the respondent's illegitimate and wrongful act

has further financial as well as emotional distress to the claimant.

(C) Despite making the payments of a sum amounting to .22,75,003/- directly to the workers and after continuous and repeated promises by the respondent that the issue will be taken up by it with SAIL, the claimant was shocked to have received the notice/summons dated 15.11.2018 issued by the Court of Authority under Minimum Wages Act, 1948 and Regional Labor Commissioner (C), Raipur for allegedly paying less wages than the Minimum wages to 89 workers, quantifying the deficit payment at .21,85,636/- along with compensation of an astounding amount of .2,18,56,360/-. (D) As per the contractual obligations and clause 13 of the MARC, it was the respondent's duty to pay for any difference or deficits in the worker' wages. The claimant discharged all the contractual obligations /15/ Com.A.P.No.5/2021 despite suffering continuous losses and hardships to have a long and successful business relationship with the respondent. The aforesaid is a clear indication of the bona fide and goodwill of the claimant.

2) Claim towards a sum in the amount of .50,77,062/- against the respondent is in favor the claimant towards increased rates due to unprecedented increase in variables during the execution of the MARC and towards damages and penalty of EPF on arrears salary.

(A) In order to comply with the Governmental Notifications and to avoid any labor unrest, the claimant has been attempting to pay the workers as per the revised wage rate, even though the respondent continued to pay the claimant as per the rates awarded under MARC in 2013, which happens to be predominantly labor-intensive contract. (B) Vide representation dated 30.01.2019 the claimant had inter alia pointed out the fact that as a result of the revised wage rate, the claimant incurred huge losses to the tune of .69,42,219/-. In view thereof, on 19.07.2018, a meeting was held between the claimant and the respondent to resolve pending issues with regard to payments as per increased rates, wherein /16/ Com.A.P.No.5/2021 the claimant agreed to make payment amounting to .22,10,262/- by October 2018. In the same meeting, the respondent was requested to approach SAIL regarding the recompense of wage difference caused by a drastic hike of around 40%, to which the respondent had assured to do so. However, it appears that the respondent has deliberately not resolved this matter with SAIL, which if resolved, would have, in turn discharged the liabilities of claimant towards payment of wages as per the higher wage rate which is legally tenable under law. Needless to say that such an act on the part of the respondent to not have resolved the issues with SAIL and indicates at its mala fide.

(C) In view of the above, the claimant seeks from the respondent .49,28,858/- towards increased rates due to unprecendented increase in variables during the execution of the MARC and .1,48,204/- towards damages and penalty of EPF on arrears salary, totaling to .50,77,062/- as was wrongfully incurred by the claimant.

3) (A) Claim towards expenses incurred in the present Arbitration proceedings to an amount of approximately .10,00,000/- in favor of the claimant. The claimant /17/ Com.A.P.No.5/2021 had cleared all its dues and made all the payments in a bona fide manner. It is further stated that even though the claimant incurred losses and expenses for reasons solely attributable to the respondent, the claimant had not intended to claim the same and wanted to settle the matter as expeditiously as

possible, between both the parties itself. (B) Despite making numerous representations to the Respondent, the issue at hand was still not resolved and helplessly, the Claimant invoked Arbitration Clause in order to adjudicate the disputes. Needless to say that the cost being incurred by the Claimant is solely attributable to the Respondent and the same be incurred by the Respondent.

(C) Because of the arbitrary acts of the respondent that the claimant had to invoke the arbitration and initiate the instant proceedings and in view thereof, the claimant is liable to receive the costs incurred herein from the respondent.

4) (A) Claim towards interest at 18% p.a. on each and every claim as enlisted above from the date of accrual till its realisation.

(B) The claimant be awarded interest from the date of accrual of claims, pendent lite and interest at 18% p.a. on all the claims awarded till the date of actual /18/ Com.A.P.No.5/2021 payment.

(C) Claim towards the fee payable to the Ld.Arbitral Tribunal that the same shall be solely paid by the respondent.

5) The claimant prays for an award for the following reliefs to the claimant.

(A) Pass an award directing the respondent to pay an amount of .2,40,41,996/- to the appropriate authority as sought vide notice/summons dated 15.11.2018 issued by the Court of Authority under Minimum Wages Act, 1948 and Regional Labor Commissioner (C), Raipur;

(B) Pass an award directing the respondent to pay an amount of .50,77,062/-to the claimant towards increased rates due to unprecedented increase in variables during the execution of the MARC and towards damages and penalty of EPF on arrear salary as incurred by the claimant;

(C) Pass an award directing the respondent to pay an amount of .10,00,000/- to the claimant on account of the expenses incurred/to be incurred by the claimant in the present arbitration proceedings; (D) Pass an award towards interest at 18% p.a. on each and every claim as enlisted above from the date /19/ Com.A.P.No.5/2021 of accrual till its realisation;

(E) Pass an award inter alia holding that the fee payable to the Hon'ble Arbitral Tribunal be solely paid by the respondent; and (F) Any further orders/directions as this Hon'ble Tribunal may deem fit in the interest of justice.

40. The respondent filed statement of objections contending that the claim under reply has no basis in law or on facts and is therefore liable to be dismissed. Without prejudice to other contentions, the respondent has stated that the claim towards payment of Compensation of .2,18,56,360/- quantified by the Regional Labor Commissioner (Claim No.1) is hypothetical and is also beyond the scope of authority of the Tribunal. It is the claim made in anticipation of the Award/order in the proceedings initiated by the Labor enforcement Officer before the Authority appointed under

Minimum Wages Act, 1948 and Regional Labor Commissioner (Central) Raipur in Claim Application No: MWA-35/2018. At the outset it is submitted that the respondent is not a party to the said proceedings. The same is under adjudication and the Regional Labor Commissioner has not passed any order for compensation as claimed by the claimant. It is admitted that though the contractual obligation to pay the Minimum Wages as notified from time to time, to the claimant's laborers was /20/ Com.A.P.No.5/2021 with the claimant, the claimant postponed the payments. This lead to the initiation of the proceedings by the Labor Enforcement Officer against the claimant and M/s.Steel Authority of India (SAIL) being the Principal employer for which the respondent cannot be made liable. There is no contractual obligation on the respondent to reimburse the penalty if any, imposed by the authority for the claimant's failure to meet a statutory requirement. Admittedly, this Arbitration Proceeding is initiated by the claimant based on the work order dated 25.11.2013. The claim for compensation is one for reimbursement of a penalty which may be imposed on the claimant for violation of a statute and does not arise out of the said work order. This claim is therefore beyond the scope of authority of this Hon'ble Tribunal.

41. It is not the case of the claimant that this compensation amount has been levied and paid by the claimant. Therefore, as regards the claim towards compensation allegedly quantified by the Regional Labor Commissioner, the respondent herein submits that there is no cause of action and there is no live dispute between the parties regarding this claim. The existence of a legal dispute is a prerequisite to confer jurisdiction on this Hon'ble Tribunal. Therefore, with respect to the claim for compensation the Arbitral Tribunal has no jurisdiction.

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42. The respondent is a Government of India Undertaking under the Department of Defence Production Ministry of Defence. The respondent is a Heavy Engineering Industry inter-alia engaged in the manufacture and marketing of equipment and components used for Mining and Constructions, Defence and Aerospace, Rail and Metro, Dredging, etc.,

43. The respondent entered into Memorandum of Understanding dated 12.05.2008 and 26.08.2011 with SAIL for the supply and maintenance of heavy earth moving equipment at SAIL's Dalli and Rajhara Mines for 7 years or 28000 hours of operation for Hydraulic Excavator BE1000-1, 07 years or 10000 hours of operation for Buldozer BD3555 and 07 years or 280009 hours of operation for Rear Dumper BH60M.

44. The respondent intended to off-load the maintenance and repair of the equipment and therefore on 10.05.2013, invited tenders through Tender for the Full Maintenance Repair Contractor 11 Nos. BH50M DUMPERS, 07 Nos.BE1000 HYDRAULIC EXCAVATORS, 06 Nos BD355 BULLDOZERS at SAIL Rajhara, for period of 4 years, with the number of equipment increasing or decreasing on a yearly basis.

45. The claimant was the successful bidder and the respondent sub-contracted the work to the claimant. In this /22/ Com.A.P.No.5/2021 regard the work order dated 25.11.2013 was issued to the claimant for a period of 1 year renewable for 4 years.

46. It is apposite to highlight the relevant clauses in the work order for convenience.

Manpower Deployment: The contractor shall deploy shift-wise Supervisor/ Mechanics, Auto Electricians, Welders and Helpers during contract period in all the three shifts. The Minimum manpower deployment at both the projects is furnished at Annexure-C.

47. All the Manpower deployed by the contractor shall be covered under ESI, EPF, Insurance, Local Laws and other statutory Labor Laws applicable under Mines Safety Act etc. that come to force from time to time.

Performance bank guarantee..

Labor Clause (a)..

(b)..

(c) Wages-The contractor shall pay the wages to his workmen not less than the minimum wages fixed under the Minimum Wages Act.

48. In respect of all labor directly or indirectly employed by the Contractor on the contract work, it shall be the bounden /23/ Com.A.P.No.5/2021 duty of the contractor to abide by and to strictly comply with all labor legislation enacted by the parliament or by the state legislation and rules/byelaws framed there under in general and the following legislation in particular;

49. Important provisions of Labor Act; and Contractor shall ensure payment of Minimum Wages as notified from time to by the State Government under Minimum Wages Act.

50. The claimant had duly accepted the terms and conditions of the work order. Therefore, the claimant and respondent entered into a Maintenance and Repair Contract on 24.12.2013. This contract is in tandem with the work order and is for the period of one year renewable for four years. The contract has clearly stipulated the obligations of the contractor including the obligations to pay Minimum Wages to its laborers in accordance with the Statute. The claimant in this contract has undertaken to indemnify the respondent against any loss caused to the respondent due to non compliance or violation of any law by the contractor. The terms of the contract were finalized mutually by the parties and the respondent has always ensured that it could facilitate performance and ease the claimant's concerns wherever possible. For instance, the claimant was required to deposit 10% of the annual value of the contract as security deposit. On the Claimant's request, /24/ Com.A.P.No.5/2021 the respondent agreed to accept a bank guarantee in lieu of the deposit. As per the terms of the work order and MARC, it has been renewed from time to time, the last being from 01.12.2016 to 30.11.2017 vide letter dated 21.11.2016. However, the MARC was again extended for one month 01.12.2017 to 31.12.2017. Further, as required under the provisions of Contract Labor (Regulation & Abolition) Act. SAIL had issued Form-V duly acknowledging the claimant as subcontractor and also undertaking to be bound by all labor laws and regulation. It is submitted that the contractual period of three years was passed without any issues. When things stood thus vide

Gazette Notification S.O.No.187(E) dated 19 January 2017 the Government of India revised the minimum wages payable under Minimum Wages Act with effect from 19.01.2017. Thereafter SAIL issued an Office Order Bg.No.O&M/Procedure/1259 dated 27.06.2017 regarding the course of action to be taken in view of the revision of Minimum Wages. As per the said Office Order, SAIL had undertaken to make the additional payment on account of increase in wages to the contractor for the actual number of man days deployed with effect from 01.04.2017.

51. In view of the amendment and SAIL's Office Order and based on the claimant's request, although it was the responsibility of the claimant, the respondent wrote to SAIL /25/ Com.A.P.No.5/2021 on 05.07.2017 requesting amendment to the Work Order. Vide Letter dated 09.08.2017, the respondent again requested amendment of the Work Order to enable payment of wages as per revised rates. The respondent herein addressed several Letters to SAIL, requesting for a revision in the charges to enable payment of Minimum Wages at the revised rates.

52. Despite the Office Order dated 27.06.2017 providing payment of revised wages, SAIL issued a reply dated 18.05.2019 stating that there is no contract between BEML and SAIL for wage escalation and rejected the request of the respondent for amendment to the work order with respect of revision of Minimum Wages. The respondent issued response dated 25.07.2019 to this letter.

53. The respondent submits that under the work order, MARC and in law, the respondent has no liability towards the payment of wages to the labor employed by the claimant herein. It is needless to submit that as per relevant provisions of law, if the contractor fails to pay the wages within the prescribed period, then the principal employer is liable to pay the wages. Therefore, it was the responsibility of the claimant to pay the Minimum Wages and on the claimant's failure to do so it was for the principal employer i.e., SAIL to pay the amount of the wages. The respondent herein is not /26/ Com.A.P.No.5/2021 responsible in any manner for the payment or reimbursement of increased Minimum Wages.

54. Furthermore, the Work Order and MARC clearly stipulates that the claimant is required to conform to various labor legislation including the Contract Labor (Regulation and Abolition) Act, 1970 and the Minimum Wages Act, 1948 and that the respondent shall not be responsible for any act or omission in this regard. It has been specifically agreed that the claimant shall ensure payment of Minimum Wages as notified from time to time in view of this, the respondent has no obligation to reimburse the revised Minimum Wages to the claimant. Furthermore, the Principal employer viz SAIL has refused to pay the revised Minimum Wages and the claimant has not taken any action against SAIL. The claimant can have no claim or cause of action against the respondent.

55. Despite situation, the respondent endeavored to the best of its abilities to persuade the claimant to pay the labor. In this regard, a meeting was held between the claimant and the respondent on 19.09.2017 and the claimant agreed without any protest to pay the difference in wages for the month of June 2017 in September, July 2017 in October and undertook to continue to pay the revised wages as stated in the minutes of the meeting dated 19.09.2017. Despite this, /27/ Com.A.P.No.5/2021 the claimant failed to pay the wages as required even as of July 2018. Therefore, another meeting was conducted on 19.07.2018 in which the claimant was once again

requested to clear the pending payments of about .22,10,262/- towards wages and the claimant agreed to pay the amount in the manner stated in the minutes of the meeting, without demur or protest. It is evident from the minutes of the meeting dated 19.07.2018 that the claimant had requested the respondent to take up the matter with SAIL and it has been agreed that in case of BEML receives the wage difference from SAIL, the same would be paid to the claimant with concurrence of the management of the respondent. The respondent made several representations to SAIL to amend the work order in view of the revision of Minimum Wages. On the other hand, the claimant did not fulfill its statutory obligations and also the commitments made in the meetings between the claimant and the respondent that it would pay the wages according to the revised rates as per the schedule agreed in the meeting.

56. On 30.10.2017, the Labor Enforcement Officer, inspected the establishment at the Mines Dalli Mines, BSP SAIL and made a report against the claimant and the Mines Manager, Dalli Mines of SAIL, alleging that they had less than the Minimum Wages to 89 workers less than the Minimum Wages and failed to ensure payment of Minimum rates of /28/ Com.A.P.No.5/2021 wages. Despite the issue of show cause notice to the claimant and initiation of proceedings before the Regional Labor Commissioner (Central) Raipur as submitted supra, this is pending adjudication. It is clear from this proceeding that the liability to pay the revised Minimum Wages is on the claimant or on SAIL and by no stretch of imagination the same can be attributed to the respondent.

57. Without prejudice to what is stated above, the respondent has made para-wise remarks. The respondent submits that except what has been specifically admitted hereunder, all the averments made in the Statement of Claim under reply are denied.

58. The averments in paragraphs No.3.4 to 3.47, are not fully admitted. The claimant has not produced the registered partnership deed to maintain its claim. The claimant is put to strict proof of the averments herein.

59. The averments made in Para No:3.1 & 3.2 are matters of record and no specific traversal is warranted.

60. Regarding Paragraph No.3.3 the respondent has submitted that the claimant having accepted the terms and /29/ Com.A.P.No.5/2021 conditions of the work order and also entered into the MARC with the respondent has no locus standi to contend that the rates were downsized by 30%, the contract was performed with monetary loss etc., Further, such contentions have no relevance to the instant dispute. Thus, all the contentions herein are denied as false.

61. The Respondent has stated that the claimant reaffirms the respondent's position that SAIL is the principal employer. As such, the claimant as the sub-contractor and SAL being the principal employer are responsible for the payment of wages in accordance with law.

62. The claimant is put to strict proof of the averments made in paragraph No.3.8. It is also submitted that these averments are irrelevant to the claim in this proceeding.

63. The averments with regard to the notification bg.S.O.No.187(E) dated 18 January 2017 increasing the Minimum Wages which was reaffirmed by the Chief Labor Commissioner are true, however it is completely false and misleading to state that the respondent is liable and responsible for any increase or revision in the rates of wages and that the respondent is to compensate for any increase or revision in the rate of Minimum Wages. As a matter of fact, as /30/ Com.A.P.No.5/2021 per the Work Order and also the terms of the MARC, it is the responsibility of the claimant to pay the Minimum Wages to his workers and there is no contractual obligation on the respondent in this regard. The respondent was only liable to pay the claimant the charges fixed as per the Work Order. It is pertinent to submit that the rates/value quoted in the work Order/Contract has been duly paid by the respondent to the claimant and there is no dispute whatsoever with respect to such payments.

64. Furthermore, the claimant's assertions regarding the failure of equipment spurt in capital costs etc., are wholly unsubstantiated, irrelevant and not admitted.

65. The respondent submits that is clear from the minutes of the meeting that the claimant agreed to pay the revised Minimum Wages. It is denied that the respondent gave any assurance to the claimant with respect to revision of Minimum Wages as is evident from the Minutes of the Meeting duly signed by the claimant.

66. The respondent had performed its entire contractual obligations. The other averments made in para No.3.14 are not admitted and the claimant is put to strict proof of the same.

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67. The respondent had performed its entire contractual obligations and the payment of Minimum Wages, as revised, was not the obligation of the respondent, the request of the claimant was not admissible.

68. As is evident from the minutes of the meeting dated 19.07.2018, the respondent only agreed that in case it receives the wage difference from SAIL, the matter will be taken up with the management for consideration in favor of the claimant. As already submitted above, though the respondent repeatedly approached SAIL to consider payment of the revised wages, SAIL refused the claim for the reasons stated in its Letter. No assurance as stated by the claimant was given by the respondent at any point in time.

69. It is denied that the non-consideration of the request for payment of difference in wages is contrary to the statutory provisions. As per the terms of the contract the obligation to pay Minimum Wages to the employees of Claimant is with the claimant. It is further evident from the Labor License and certifications produced by the claimant that the principal employer was SAIL and not the respondent. Thus, in case the claimant fails to pay the Minimum Wages, it is the responsibility of SAIL to pay and recover from the claimant and /32/ Com.A.P.No.5/2021 no stretch of imagination such obligation can be imposed on the respondent. In this regard, it is relevant to submit that the claimant vide email dated 26.06.2017 agreed to pay the arrears effective from 19.01.2017 as per G.O. The respondent vide its Letter dated 11.09.2017 advised the claimant to pay the Minimum Wages to

the Contract Laborers at the earliest.

70. The Letter dated 28.09.2018, referring to the commitment made by the claimant in the Minutes of Meeting dated 19.07.2018, the respondent requested the claimant to make the payment of Minimum Wages. Furthermore, in view of the nonpayment of wages by the claimant which is a statutory obligation, the respondent suffered damages because SAIL refused to give No Dues Certificate on this ground and bills towards MARC were not paid. The respondent reiterates that it is the responsibility of the claimant to pay the Minimum Wages as notified from time to time, to the labor engaged by them.

71. The respondent vide its letter dated 12.09.2018 called upon the claimant to make the statutory payments and forewarned that failure to do so would constrain the respondent to invoke the bank guarantees. Thereafter, the respondent had issued several reminders, however, the claimant did not heed to the same. Since, despite repeated /33/ Com.A.P.No.5/2021 requests. The claimant did not clear the dues to the contract laborers and the respondents bills towards MARC were withheld by SAIL on account of nonpayment of Minimum Wages to laborers, the respondent was constrained to invoke the Bank Guarantees submitted by the claimant vide its Letter dated 08.11.2018.

72. Vide email, the claimant, while admitting its liability towards the Minimum Wages, had requested the respondent to stop the invocation of the bank guarantees and assured that they are ready for discussion of resolve the issues. This email evidences that the claimant is aware and admits its liability to pay the Minimum wages and is now attempting to foist this claim on the respondent to unjustly enrich it. However, it is submitted that the respondent issued a Letter dated 22.11.2018 to the banker advising to withhold the process of invocation of the bank guarantee till further instruction. It is denied that the respondent misguided and manipulated the claimant. The respondent denies that any promises beyond the terms of the contract and work order were made to the claimant. These contentions of the claimant are vague and unsubstantiated. It is also denied that the claimant made the payments under protest and the claimant is put to strict proof of the same. However, it is true that the claimant had made the outstanding payments to the laborers during November /34/ Com.A.P.No.5/2021 2018. The claimant is well aware that the respondent had returned the original bank guarantees to the claimant.

73. The respondent had duly replied to the Legal Notice invoking Arbitration vide C-21 denying the claim but agreeing to resolve the dispute through Arbitration.

74. The reply dated 15.02.2019, the respondent had elaborately explained all the issues point wise and informed that there is no provision in the contract for the payment of differential wages on account of revision in Minimum Wages.

75. It could be seen from C-24 that the respondent is not a party to the proceedings and no way connected with said proceedings and the same are not relevant to adjudicate the dispute in the instant matter. In this regard, it is submitted that, as stated above, the respondent repeatedly informed the claimant regarding the representation of various unions of labors regarding the non-payment of Minimum Wages. The claimant was also advised that nonpayment would invite

proceedings under the Minimum Wages Act. Despite this, the claimant chose to delay the payment. The said proceeding was initiated by the Labor Enforcement Officer against the claimant and SAIL after a visit to the site on 30.1.2017. It is evident that the proceedings were necessitated only on account of the /35/ Com.A.P.No.5/2021 claimant's attitude and not heeding to the request of the respondent to make the payment of the Minimum Wages.

76. As is evident from the record, the claimant made payments towards Minimum Wages after the proceedings were initiated. It is also clear from the averments in this paragraph that no compensation has been levied or paid by the claimant as on the date of filing of the claim statement. Therefore, the claim against the respondent i.e., claim No.1 merely expectation / anticipated loss. Without prejudice to its preliminary objections, the respondent further states, that if any compensation is levied and to be paid by the claimant, it is solely the claimant who is liable for such payment particularly because it was the claimant's choice to enormously delay the payment of the statutory dues i.e., revised Minimum Wages, Further, the Labor Enforcement Officer has initiated the proceedings against the claimant and SAIL, as such even if the penalty is imposed, the respondent is not liable or responsible. Hence, the contention of the claimant in that regard is without any basis and unsustainable before the law. The respondent is not bound in any manner to pay any sums to the claimant.

77. The claimant had again issued notice invoking arbitration vide Annexure C25 requesting the respondent to /36/ Com.A.P.No.5/2021 suggest, impartial, fair and unbiased arbitrators to enable the claimant to choose the sole Arbitrator. The respondent had replied to the said notice vide Annexure C26.

78. The respondent denies the claimant's contention in the said rejoinder and reiterates that it is the claimant's responsibility in law and as per the contract and work order to pay the Minimum Wages as notified from time to time. As stated by the claimant, it was the claimant who was responsible for the deployment of the workforce and therefore, it is the claimant who is responsible for the payments to be made to the workforce. Clause 13 does not state that the surge in Minimum Wages was to be borne by the respondent. Clause 13 only envisages the monthly charges payable by the respondent to the claimant. On the other hand, Clause 18 clarifies that the claimant shall ensure payment of Minimum Wages from time to time.

79. The averments made in paragraph 3.33 and 3.34 are the matters of record.

80. The respondent has reiterated it contentions taken in para wise rebuttal while answering the claims No.1 and Claim No.2.

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81. The instant claim is baseless and absurd. As is the case with all the claims made in the Claim Statement under reply the Claimant has not substantiated or provided any details of this claim. The claimant fails to explain on what account if has incurred expenses under Claim No.3 in any event, the respondent submits that the claims under reply are frivolous and without any basis in the

contract between the parties and in law. The claimant has no cause of action against the respondent and therefore, the instant claim is liable to be dismissed with costs awarded to the respondent.

82. In view of the above the claimant is not entitled to receive any amount as interest. The claim for 18% interest is contrary to the stipulation in Section 31(7) of the Arbitration and Conciliation Act 1996 and settled principles of law.

83. The claimant and respondent entered into a contract with specific clause as per which the payment of wages as notified by the govt. is the responsibility of the claimant. Admittedly, SAIL is the principal employer. The claimant had in its various correspondences and also in the minutes of the meetings agreed to make payment of Minimum Wages as revised by the Govt. Further, the Labor Enforcement Officer /38/ Com.A.P.No.5/2021 has initiated proceedings against the claimant and SAIL which is pending.

84. As such the present proceedings and the Claim made by the claimant is an abuse of process of law and also frivolous. Therefore, the claimant is to be directed to bear the entire cost of the arbitration. The respondent is also entitled for the expenses including the legal fee being incurred by the respondent in view of this proceeding initiated by the claimant.

85. The respondent prays that in the interest of justice and equity, for an award dismissing the claims of the claimant and directing the claimant to pay the respondent's costs of the instant proceeding.

86. Initially, the claimant claimed .2,40,42,966/- under Claim No:1. Subsequently, it is stated that the Court of Authority, after hearing the parties in MWA-35/2018, the LEO(c)-II M/S.Veer Engineering Works and another passed an order dated:26.12.2019 holding that no claim for Minimum Wages exists against M/S.Veer Engineering Works, therefore, the case is dismissed and stands disposed. On the basis of said order the Claimant filed an application for amendment of claim statement. The said application was allowed and the /39/ Com.A.P.No.5/2021 Claimant amended its claim under Claim no:1 claiming an amount of .15,24,186/-. The Claimant has filed amended claim statement.

87. The Respondent has filed amended Statement of defence in response to amended claim statement filed by the claimant.

88. On the basis of the pleadings of the parties and after hearing the learned Counsel for claimant and respondent following issues are framed:

ISSUES:

1. Whether the claimant proves that the respondent is liable to pay to it an amount of .15,24,186/- towards deficit wages quantified, Notification dated 15.11.2018, by the Regional Commissioner, along with interest at 18% p.a. from the date of accrual of claim till the date of actual payment?

2. Whether the claimant proves that the respondent is liable to pay to it an amount of .50,77,062/- towards increased rate of wages during execution of MARC, damages and penalty on EPF on arrears of salary with interest at 18% p.a. from the /40/ Com.A.P.No.5/2021 date of accrual of claim till the date of actual payment?

3. Whether the claimant proves that the respondent is liable to pay to it an amount of approximately .10,00,000/- towards expenses incurred by the claimant in the present Arbitration proceedings with interest at 18% p.a. from the date of accrual of claim till the date of actual payment?

4. Whether the respondent proves that this Tribunal has no jurisdiction to adjudicate on the claim towards payment of compensation of .2,18,66,360/-

quantified by the Regional Labour Commissioner as it is hypothetical and is also beyond the scope of this Tribunal?

5. Whether the respondent proves that there is no cause of action for the claimant to initiate this Arbitration proceedings?

6. What Award or Order?

89. The Claimant and the respondents have not adduced any oral evidence. By consent of parties Ex.C1 to Ex.C28 and Ex.R1 to Ex.5, Ex.R 5(A), Ex.R 5(B), Ex.R 5(C), Ex.R 5(D), Ex.R 5(E), Ex.R 5(F), Ex.R6, R7, Ex.R8, Ex.R8(A), Ex.R9, Ex.R9(A), Ex.R9(B), Ex.R9(C) were marked on behalf of claimant and respondents respectively.

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90. After hearing the arguments, the learned Arbitral Tribunal has passed its award on 11th August 2020 as under:

1. The Claimant is entitled and the Respondent is liable to pay an amount of .15,05,010/-

(Rupees Fifteen Lakhs Five Thousand and Ten) only towards the wage difference from January 2017 to May 2017 (including EPF) with interest at the rate of 9% Per Annum from 01.06.2017 till payment of the dues in full.

2. The Claimant is entitled and the Respondent is liable to pay an amount of .21,47,165/- (Rupees Twenty One Lakhs Forty Seven Thousand One Hundred and Sixty Five only) towards the wage difference from June 2017 to December 2017 (including EPF) with interest at the rate of 9% Per Annum from 01.01.2018 till payment of the dues in full.

3. The Claimant is entitled and the Respondent is liable to pay an amount of .4,45,600/- (Four Lakhs Forty Five Thousand and Six Hundred only) towards expenses incurred by the Claimant in the present Arbitration Proceedings.

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4. Award is signed and issued in three originals one for the record and remaining two for the parties.

91. The Learned Arbitral Tribunal has modified the Award as per order dated:17th October 2020 passed on the application filed the by the Respondent under Section 33 of A & C Act, 1996 as under:

> 1. The Claimant is entitled and the Respondent is liable to pay an amount of .15,05,010/-

(Rupees Fifteen Lakhs Five Thousand and Ten) only towards the wage difference from January 2017 to May 2017 (including EPF) with interest at the rate of 9% Per Annum from 17.12.2018 till payment of the dues in full.

2. The Claimant is entitled and the Respondent is liable to pay an amount of .21,47,165/- (Rupees Twenty One Lakhs Forty Seven Thousand One Hundred and Sixty Five only) towards the wage difference from June 2017 to December 2017 (including EPF) with interest at the rate of 9% Per Annum from 05.03.2018 till payment of the dues in full.

3. The Claimant is entitled and the Respondent is liable to pay an amount of .2,85,300/-

/43/ Com.A.P.No.5/2021 (Two Lakhs Eighty Five Thousand and Three Hundred only) towards expenses incurred by the Claimant in the present Arbitration Proceedings.

4. Award is signed and issued in three originals one for the record and remaining two for the parties.

92. The Respondent being aggrieved by the impugned award dated:11.08.2020 and modified Award dated:17.10.2020 passed in A.C.No:01/2019 has filed this suit under section 34 of Arbitration & Conciliation Act, 1996 for the following among other grounds:

> a. The Respondent has reiterated in detail the averments made in the statement of objections and amended statement of objections in the plaint apart from urging grounds to set aside the impugned award. The Respondent has culled out various Clauses of MARC and challenged the findings of the Arbitral Tribunal on Issues separately apart from urging general grounds.

93. Regarding findings on Issue No:5. The Respondent has stated that the matter in dispute in the present case, relates to the payment of enhanced wages paid /44/ Com.A.P.No.5/2021 by the Claimant as a consequence of enhancement in the payment of minimum wages under the Minimum Wages Act, 1948 by Notification, and does not relate to any breach o the provisions of the Contract

i.e. Work Order/MARC by the Respondent. Therefore, the claims of the Claimant in the present arbitration proceedings are beyond the scope of the 2nd defendant. The Impugned Award is liable to be set aside on this ground. Further, the Impugned Award, shocks the conscience of the Court and is therefore contrary to the most basic notions of justice or morality.

94. Regarding Issue No:1 and 2: The Arbitral Tribunal has failed to consider that the price agreed as per Clause 13 of the Work Order is fixed and there is no contract for payment of any amount beyond what has been agreed to in the Work Order/MARC. Further, there is no case of breach of contract by the Respondent and as such there is no question of Award of Compensation.

95. The Arbitral Tribunal failed to recognize that wherever the parties envisaged for an additional claim of any statutory payments like taxes, levies etc., they have specifically provided so in the MARC or the Work Order. However, no such additional claim clause exists in relation to payment of the enhanced wages.

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96. The Arbitral Tribunal ought to have held that there is no provision in the Work Order or MARC to enable the Claimant to claim enhanced rates even if it is based on the fact that the Government has enhanced rate of minimum wages as that was the Commercial understanding between the parties.

97. The Arbitral Tribunal failed consider that the claimant having agreed to execute the work at a particular rate under Clause 13 of the Work Order, has no right to claim enhanced rates from the Respondent.

98. Thus, the Arbitral Tribunal has passed an Award contravening the terms of the MARC which would not have been arrived at by any reasonable or fair-minded person. The Impugned Award is therefore patently illegal and is liable to be set aside on these grounds.

99. The Arbitral Tribunal failed to consider that as per Clause j of the 'Obligations of the Contractor' contained in the MARC, the Claimant has agreed to indemnify the Respondent against any loss caused to the Respondent owing to the non- compliance or violation of any law by the Claimant including the Minimum Wages Act, 1948. The said indemnification clause would be obsolete if the Tribunal arrives at a finding that the Respondent was liable to pay minimum wages.

/46/ Com.A.P.No.5/2021 Hence, this is an additional proof that the Claimant contractually agreed to be liable for payment of minimum wages as per the Minimum Wages Act, 1948. For this reason also, the Respondent is not liable to make any payments to the Claimant.

100. The Arbitral Tribunal has ignored vital evidence such as the provisions of the MARC, when arriving at its finding. Therefore, the impugned Award ignores vital evidence in arriving at its decision and is therefore perverse. In any event, the Tribunal by ignoring the relevant provisions of the MARC when arriving at its finding, has sought to accord a construction to the terms of the

MARC which would not have been arrived at by any reasonable or fair-minded person. The Impugned Award is therefore patently illegal and is liable to be set aside on these grounds. Further, the Impugned Award, shocks the conscience of the Court and is therefore contrary to the most basic notions of justice or morality.

101. The Arbitral Tribunal in arriving at its finding that merely because there is no provision in the contract for revision of rates does not mean that the same cannot take place. Similarly, the Arbitral Tribunal erred in arriving at its finding to hold that the Claimant has agreed to absorb any increase in the minimum wages, there must be a specific and /47/ Com.A.P.No.5/2021 express recital in the contract. The said findings are without any basis in evidence. As such, the said findings are perverse and patently illegal. Similarly, such a finding clearly contravenes the terms and objects of the Contract by according a construction to the Contract, which would not have been accorded by any reasonable or fair minded person.

102. The Arbitral Tribunal erred in arriving at its finding that it is an admitted position in the present arbitration proceedings, that the Claimant has made payment of enhanced wages as there were no records showing that the Claimant has paid enhanced wages to its workers. Such a finding runs contrary of the numerous contentions raised by the Respondent, putting the Claimant to strict proof of the fact that it has in fact made such payment of the enhanced wages. The said findings are without any basis in evidence. As such, the said findings are perverse and patently illegal.

103. The Arbitral Tribunal erred in interpreting the Minutes of Meeting dated:19.07.2018, to find that the Claimant is entitled to the amount of .15,05,010/- in the present arbitration proceedings. The Arbitral Tribunal failed to consider that in the said Minutes of Meeting dated:19.07.2018, the Claimant merely submitted its claim for payment of enhanced wages purportedly paid and requested the /48/ Com.A.P.No.5/2021 Respondent to take the said issue up with SAIL for its consideration. The interpretation on the Minutes of Meeting dated:19.07.2018 by the Tribunal is therefore completely erroneous. It clearly establishes that the Claimant was very well aware that the Respondent is not liable to pay or reimburse the wage difference on account of the Notification. The findings of the Tribunal that the Claimant is entitled to the amount of .15,05,010/- in the present arbitration proceedings, is therefore without any basis in evidence. The said findings are perverse and patently illegal.

104. The Arbitral Tribunal also erred in placing reliance upon the break-up provided by the Claimant in respect of Issue No:2 in the written submissions and awarding an amount of .21,47,165/- to the Claimant under this head, despite finding that the break-up for the said claim was never pleaded in its SOC by the claimant and without any documentary evidence. By placing reliance upon written submissions of the Claimant which have not been pleaded, the Arbitral Tribunal prevented the Respondent from being able to lead sufficient evidence to rebut the contentions of the Claimant. Therefore, the impugned Award is contrary to the principles of natural justice and is therefore contrary to the Fundamental Policy of Indian Law apart from perverse and patently illegal.

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105. The Arbitral Tribunal while having observed that there is no clause in the Work Order providing for payment of enhanced minimum wages, has erroneously placed reliance on the judgment in the case of Tarapore & Co., State of M.P. reported in (1994) 3 SCC 521 and held that in such cases it is to be assumed there was an implied understanding between the Respondent and the Claimant that in case there was a rise in the minimum wages, the same was to be reimbursed to the Claimant by the Respondent. The said proposition is applicable when the contract clause is silent on the obligations of the parties regarding payment of Wages. To the contrary, in the present case, Clause 15 and 18 of the Work Order place the responsibility on the Claimant to ensure the payment of Minimum Wages as notified from time to time by the State Government and Clause 13 is unambiguous on the consideration payable by the Respondent to the Claimant. The reliance of the Arbitral Tribunal on the judgment in Tarapore is wholly misplaced since the facts of the said judgment are distinguishable from the facts of the present case.

106. The Arbitral Tribunal has not properly appreciated the letter correspondences between the Claimant and the Respondent, Clause 13, 15 of Work Order, and the concept of payment of compensation for breach of a contract in proper perspective. When the principal amount of .21,47,165/- itself /50/ Com.A.P.No.5/2021 is not payable, the awarding of interest on the same is therefore patently illegal and without any basis and is liable to set aside.

107. Regarding Issue No:3: The Arbitral Tribunal has awarded a sum of .1,60,300/- towards the Arbitrator's fees and Administrative Expenses and .1,25,000/- towards the advocate's fees and Travelling expenses. However, the Claimant has not furnished any evidence to prove the cost incurred by it towards Advocate's fees and travelling expenses. When the principal amount itself is not payable, awarding of costs for Advocate's fees and Travelling expenses is without any basis. Therefore, the Impugned Award is passed without considering the law and any evidence and is therefore patently illegal and is liable to be set aside.

108. Regarding Issue No:4 : In view of the amendment of claim statement by the Claimant withdrawing its claim for .2,18,66,360/- following the order of the Regional Labor Commissioner dated:26.12.2019, the Issue No:4 rendered otiose.

109. The Arbitral Tribunal has not followed the law laid down by the Hon'ble Supreme Court of India in its various judgments; the impugned award shocks the conscience of the /51/ Com.A.P.No.5/2021 Court; the impugned award contravenes the terms of the Work Order/MARC, such that interpretation sought to be given by the Arbitral Tribunal is neither possible nor plausible and one which could not have been arrived at by any reasonable or fair-minded person; the impugned award ignores vital evidence when arriving at its findings; impugned Award is rendered by the Arbitral Tribunal without any basis in evidence and for all these reasons the impugned award is patently illegal, perverse and opposed to fundamental policy of Indian Law and shocks the conscience of the Court. Hence, the impugned award is liable to be set aside.

110. The defendant No:1/Claimant has filed statement of objections to the petition/application filed under Section 34 of Arbitration & Conciliation Act, 1996, filed by the Respondent.

111. The Claimant has reiterated the averments made in its claim statement and written submissions filed before the learned Arbitral Tribunal.

112. The Claimant has stated that the averments made in paragraphs 1 to 6, 21, 22, 23 are matters of fact. The averments made in paragraphs No:25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36 are all false, frivolous and the Respondent is put to strict proof of the same.

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113. The Claimant has reiterated the facts and law pleaded by it in the Statement of Claim and written submissions filed before the Arbitral Tribunal. The Claimant has fully supported the findings of the Arbitral Tribunal on the Issues. The Claimant has stated that the present petition under section 34 of the Arbitration & Conciliation Act, 1996 does not permit re-appreciation of evidence in any manner, since this is not an appeal on facts. The Claimant has prayed the Court to dismiss the petition with exemplary costs.

114. I have heard the arguments addressed by the learned advocates on record. I have gone through the materials available on record including the written arguments submitted by the parties before the learned Arbitral Tribunal. The Respondent has submitted written arguments also in support of its case. I have gone through the precedents relied on by the parties.

115. The following Points arise for my determination.

(1) Whether the Plaintiff has made out any grounds set out under Section 34 of Arbitration & Conciliation Act, 1996 so as to Set aside the Award dated: 11th August 2020 and modified order dated:17th October 2020 passed by the learned Sole Arbitrator in the arbitration proceedings A.C.No.01/2019? (2) What Order?

/53/ Com.A.P.No.5/2021

116. My findings on the above Points are as under:

> Point No:1 : IN THE NEGATIVE Point No:2 : As per final Order for the following REASONS

117. POINT No.1 : The claimant had filed the Claim Petition seeking the following reliefs before the learned Arbitral Tribunal:

a. To pass an award directing the respondent to pay an amount of .15,24,186/- to the Claimant for the deficit as has been quantified by the Court of Authority under Minimum Wages Act, 1948 and Regional Labor Commissioner (C), Raipur vide its order dated:26.12.2019;

b. To pass an award directing the respondent to pay an amount of .50,77,062/- to the claimant towards increased rates due to unprecedented increase in variables during the execution of the

MARC and towards damages and penalty of EPF on arrear salary as incurred by the claimant;

c. To pass an award directing the respondent to pay an amount of .10,00,000/- to the claimant on account of the expenses /54/ Com.A.P.No.5/2021 incurred/to be incurred by the claimant in the present arbitration proceedings;

d. To pass an award towards interest at 18% p.a. on each and every claim as enlisted above from the date of accrual till its realization;

e. To pass an award inter alia holding that the fee payable to the Hon'ble Arbitral Tribunal be solely paid by the respondent; and f. Any further orders/directions as this Hon'ble Tribunal may deem fit in the interest of justice.

118. It is settled law that the Court while dealing an application under Section 34 of Arbitration & Conciliation Act, 1996 is required to exercise its jurisdiction within the frame work of Section 34 and Section 34 (2A) of the Act. Where two views are possible in respect of a dispute, the view taken by the Arbitrator cannot be found fault with by the Court. The plaintiffs have to establish that the impugned order is against to the fundamental law of India and must be patently illegal.

119. In order to determine the suit it is useful to refer to Section 34 of Arbitration and Conciliation Act, 1996 which reads as under:

> /55/ Com.A.P.No.5/2021 ARBITRATION AND CONCILIATION ACT, 1996 [Section : 34] Application for setting aside arbitral award (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- (a) the party making the application establishes on the basis of the record of the arbitral tribunal that-
>
> (i) a party was under some incapacity; or
>
> (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 /56/ Com.A.P.No.5/2021 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 Indian law; or

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

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

(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 the 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.

/57/ Com.A.P.No.5/2021 (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 arbitral 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 this 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.

120. Before discussing the matter in controversy it is useful to refer to the principles laid down by the Hon'ble /58/ Com.A.P.No.5/2021 Supreme Court of India in the following decision regarding the scope of Section 34 of Arbitration & Conciliation Act, 1996.

MMTC LTD Vs. M/S Vedanta Ltd LAWS(SC) 2019 2 102 SUPREME COURT OF INDIA:

> SCC 2019 4 163
>
> 11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii), i.e. if the award is against the public policy of India.

As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2) (b) (ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator /59/ Com.A.P.No.5/2021 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. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA, (2015) 3 SCC

49). Also see ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705; Hindustan Zinc Ltd. v.

Friends Coal Carbonisation, (2006) 4 SCC 445; and McDermott International v. Burn Standard Co. Ltd., (2006) 11 SCC 181).

53. It is relevant to note that after the 2015 amendments to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

121. The Claimant and the respondent have not adduced any oral evidence. By consent of parties Ex.C1 to Ex.C28 and Ex.R1 to Ex.5, Ex.R 5(A), Ex.R 5(B), Ex.R 5(C), Ex.R 5(D), Ex.R /60/ Com.A.P.No.5/2021 5(E), Ex.R 5(F), Ex.R6, R7, Ex.R8, Ex.R8(A), Ex.R9, Ex.R9(A), Ex.R9(B), Ex.R9(C) were marked on behalf of claimant and respondents respectively.

122. The Respondent has relied on the following citations in support of its case:

Sl.No. Particulars

1. NTPC Ltd., V.Deconar Services Pvt. Ltd., AIR 2021 SC 2588

2. Oswal Woollen Mills Ltd., V Oswal Agro Mills Ltd., (2018) 16 SCC 219

3. Assam SEB v.Buildworth (P) Ltd., (2017) 8 SCC 146

4. Ravindra Kumar Gupta & Co.V. Union of India, (2010) 1 SCC

5. Kwality Mfg.Corpn.v.Central Warehousing Corpn., (2009) 5 SCC 142

6. Food Corporation of India v.A.M.Ahmed & Co., (2006) 13 SCC

7. State of U.P. v. Allied Constructions, (2003) 7 SCC 396

8. Ramachnadra Reddy & Co.v.State of A.P., (2001) 4 SCC 241.

9. Arosan Enterprises Ltd., v.Union of India, (1999) 9 SCC 449

10. Tarapore & Co.v.State of M.P., (1994) 3 SCC 521

11. Food Corpn. Of India v.Municipal Committee, Jalalabad, (1999) 6 SCC 74

12. ONGC Ltd., v.Saw Pipes Ltd., (2003) 5 SCC 705

13. Ircon International Ltd., v.Vinay Heavy Equipments, (2015) 13 SCC 680 /61/ Com.A.P.No.5/2021

123. The Claimant has relied on the following citations in support of its case:

Sl.No. Particulars

1. Tarapore & Co.V. State of MP, (1994) 3 SCC 521

2. Oil and Natural Gas Corporation Limited v.Oil Country Tubular Limited, 2011 (113) BOMLR 1417

3. Ambika Construction Co.v.Union of India & Anr., 2012 (1) MhLJ 455

4. Kailas Nath Associates v.Delhi Development Authority and Anr., (2015) 4 SCC 136

5. Telecommunication Consultants India Ltd., v.Next generation Business Power Systems Ltd., 2019 SCC Online Del 6791

6. Saangyong Engineering & Construction Co., Ltd., v.

National Highways Authority of India, 2019 SCC Online SC 677

124. I have carefully gone through the above citations and discussed the facts of the case in the back drop of the ratio of the said citations.

125. The undisputed facts of the case are that the Respondent invited tenders for Maintenance and Repairs Work of the equipment viz., Dumper, BH50M011 Nos, Hydraulic Excavator BE1000-7 Nos & BD355-6 Nos Bull Dozer for a period of 4 years at Sail, Rajhara as per Ex.R1. The Claimant was the successful bidder. The Respondent issued Work as per Ex.C2 to execute intended Maintenance and Repair Contract.

/62/ Com.A.P.No.5/2021 The Contract was awarded to the Claimant to execute full maintenance & Repairs of the equipment shown in Ex.R1. The Chief Labor Commissioner issued a notification dated:17.03.2017 as per Ex.C7(A) revising the rates of Minimum Wages. The Regional Labor Commissioner, Raipur issued a summons to the Claimant and the Mines manager, Dalli Mines, Balod District along with an application filed by Inspector, Minimum Wages. Wherein it was alleged that the Claimant and SAIL have paid wages to 89 workers at the rate less than the minimum rates of wages fixed for their category of employment amounting to .21,85,636/- and also sought for compensation of .2,18,56,360/- thus made a claim for .2,40,42,996/-.

126. Originally Claimant has prayed the Arbitral Tribunal to award .2,40,42,996/- against the respondent. Subsequently the Claimant got amended the Claim No:1 in view of the orders

dated:26/12/2019 passed by the Court of Authority in MWA/35/2018 LEO(C)-II and claimed .15,24,186/- against the Respondent.

127. The claimant prayed .50,77,062/- under Claim No:2 and furnished the break-up in the written submissions. The Claimant has claimed .10,00,000/- towards costs and expenses incurred by it in the Arbitral Proceedings. The /63/ Com.A.P.No.5/2021 Claimant has also sought for awarding of interest at 18% p.a. on all the amounts claimed from the Respondent.

128. In view of withdrawal of claim for .2,18,66,360/- by way of amendment by the Claimant, the Learned Arbitral Tribunal has rightly held that the Issue No:4 does not survive for consideration.

129. The Respondent is contending that the Tribunal has no jurisdiction to decide the dispute regarding the claim made by the claimant. The Tribunal framed Issue No:5 fastening the burden on the Respondent to prove that there is no cause of action for the Claimant to initiate the Arbitration Proceeding.

130. The Claimant had issued legal notice as per Ex.C-25 invoking arbitration Clause calling upon the Respondent to provide a list of minimum five impartial, fair and unbiased arbitrators to enable the claimant to suggest appointment of a sole arbitrator out of them failing which the Claimant will be constrained to initiate appropriate legal proceedings as per law. The Respondent issued reply notice as per Ex.C-26 informing the claimant that the Respondent has already agreed to refer the dispute to Karnataka Arbitration Centre established under the aegis of High Court of Karnataka. The Respondent has informed the claimant that it has appointed /64/ Com.A.P.No.5/2021 Shri Veeranna G Tigadi, the defendant No:2 herein as the Sole Arbitrator vide letter dated:16.08.2019/Ex.C-28. The defendant No:2 has informed the Claimant vide letter dated:14/08/2019 about his appointment as Sole Arbitrator by the Respondent. The exchange of legal notices/reply notice/rejoinder notice between the Claimant and the Respondent shows that the Respondent has disputed the claim of the Claimant that it is entitled for reimbursement of amount paid by the Claimant in view of revision of Minimum Wages (including EPF). The Respondent has never raised any question regarding the 'arbitrability' of the dispute in its reply notice. The Respondent has raised the objection regarding the jurisdiction of the Arbitral Tribunal regarding the adjudication of the dispute on the count that there is no clause/provision in the contract enabling the Claimant to claim enhanced rates of minimum wages. Hence, the said question is beyond the scope of the Contract and the Tribunal has no jurisdiction to adjudicate upon the issue.

131. The Learned Arbitral Tribunal by referring to Clause 21 of Ex.C2/Work Order and Arbitration Clause contained in Ex.C3/MARC and the ratio of decision of Hon'ble Supreme Court in Tarapore & Co., V State of M.P. (1994)3SCC 521 has come to the conclusion that the Arbitral Tribunal has jurisdiction to adjudicate upon the dispute between the /65/ Com.A.P.No.5/2021 Claimant and the Respondent. The Arbitral Tribunal while arriving at the said conclusion has extensively considered the materials available before it in an elaborated manner. The reasoning adopted and conclusion arrived at by the Arbitral Tribunal stands the test of reasoning and calls for no interference by the Court.

132. The Claimant has sought for reimbursement of .15,24,186/- under claim No.1; and .50,77,062/-under Claim No:2. The Claimant is contending that as per the terms of MARC payment of Minimum Wages to the workers is mandatory. The Claimant has paid Minimum Wages to the workers as revised by the Government of India. Increase in the rate of Minimum Wages is beyond the control of the Claimant. While deciding whether the Claimant is entitled for reimbursement from the respondent regarding the enhanced amount in view of enhancement of Minimum Wages the terms of the contract, conduct of the parties, facts and circumstances of the case has to be considered. The Respondent had promised from time to time the matter would be taken up with SAIL and will be resolved. The Respondent is liable to reimburse the enhanced minimum wages paid by the Claimant to the Workers.

/66/ Com.A.P.No.5/2021

133. The Respondent is contending that it is not liable to pay enhanced minimum wage claimed by the Claimant. The Contract does not provide for payment of enhanced or revised Minimum Wages paid by the Claimant. The Respondent has stated that the Government of India issued Notification S.O.No:187(E) dated: 19.01.2017 with effect from 19.01.2017 enhancing the Minimum Wages payable to the Workers. The SAIL has issued an Office Order Bg.No: O & M/Procedure/1259 dated: 27.06.2017 regarding the Course of action to be taken in view of the revision of Minimum Wages. The SAIL had undertaken to pay additional payment in view of increase in Wages to the Contractor for the actual number of man days deployed with effect from 01.04.2017. In view of the amendment and SAILS office order and based on the Claimant's request, although it was the responsibility of the Claimant, the Respondent wrote to SAIL on 05.07.2017 requesting amendment to the Work Order vide letter dated:09.08.2017, the Respondent again requested amendment of the Work Order to enable payment of wages as per revised rates The Respondent addressed several letters to SAIL, requesting for a revision in the charges to enable payment of the Minimum Wages at the revised rates. Despite the Office order dated:27.06.2017 providing payment of revised wages, SAIL issued a reply dated:18.05.2019 stating that there is no contract between BEML and SAIL for wage /67/ Com.A.P.No.5/2021 escalation and rejected the request of the Respondent for amendment to the Work Order with respect to revision of Minimum Wages. The respondent issued a response dated:25.07.2019 to this Letter. Therefore, it was the responsibility of the Claimant to pay the Minimum Wages and on the Claimant's failure to do it was for the principal employer i.e. SAIL to pay the amount of the Wages. Furthermore, the Principal Employer i.e. SAIL has refused to pay the revised Minimum Wages and the Claimant has not taken action against the Respondent. Therefore, another meeting was conducted on 19.07.2018 in which the Claimant was once again requested to clear the pending payments of about .22,10,262/- towards wages and the Claimant agreed to pay the amount in the manner stated in the Minutes of Meeting, without demur or protest. It is clear from this proceeding that the liability to pay the revised Minimum Wages is on the Claimant or on SAIL and by no stretch of imagination the same can be attributed to the Respondent. As such, the Claimant as the sub contractor and SAIL being the principal employer are responsible for the payment of wages in accordance with law. This position is clear from the fact that in the proceedings before the Regional Labour Commissioner, Raipur, only the Claimant and SAIL have been arrayed as opponents. The Respondent is contending that neither the Work Order nor MARC provide for enhancement of wages or any other amount.

/68/ Com.A.P.No.5/2021 The Respondent entered in to contract with Claimant to execute the work entrusted it at fixed rates specifically mentioned in the Schedule. The Claimant, having agreed to execute the work at a particular rate has no right to claim enhanced rates from the Respondent more so when SAIL has turned down the request of the Respondent for enhanced rates. The Tribunal has no jurisdiction to award the amount claimed by the Claimant in claim No:1 and 2. The broad contention of the Claimant that whatever is not excluded specifically by the Contract can be subject matter of claim by the Claimant cannot be accepted. The Parties are not allowed to depart from what they had agreed. It is not open to the Arbitrator to rewrite the terms of the contract and award the contractor a higher rate for the work for which rate was already fixed in the contract. The parties have to strictly comply with the terms of the contract and equity has no role to play in the matter.

134. From the rival contentions it is evident that M/S.SAIL is the principal employer. The Respondent is the contractor of M/S.SAIL. The Respondent has accepted the bid submitted by the Claimant and allotted the maintenance work as per Work Order and MARC. Thus, the Claimant is the sub-contractor of the principal employer M/S. SAIL. The Respondent has not made any arrangement for payment of revised minimum /69/ Com.A.P.No.5/2021 wages with M/S.SAIL. The Claimant has no direct contract or arrangement with M/S.SAIL. As per the terms of the Contract the Claimant is primarily liable to pay revised Minimum Wages and in default the principal Employer M/S.SAIL is liable to pay Minimum Wages. Hence, the proceedings before the Regional Labour Commissioner was conducted only against Claimant and M/S.SAIL and the Respondent was not a party in the said proceedings.

135. The dispute before the Tribunal was with respect to the entitlement of the Claimant to seek and have the amount paid by it in view of revision of Minimum Wages from the Respondent. The Respondent is contending that in the absence of a specific condition/clause in Work Order or MARC, the Claimant is not entitled for reimbursement of enhanced Minimum Wages by it. It is true that there is no specific clause/condition either in Work Order or in MARC to reimburse the enhanced Minimum Wages paid by the Claimant. Hence, the Learned Tribunal has considered the entire correspondence and all the attending circumstances to interpret the clauses of MARC and Work Order in the back drop of ratio of the precedents relied on by the parties. The Learned Tribunal has closely scrutinized each of the circumstances which led to the dispute between the parties and the minute details of the correspondence in a proper perspective.

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136. This Court being a Court exercising powers under Section 34 of Arbitration and Conciliation Act, 1996 is not empowered to sit in appeal over the impugned award; this Court cannot re-appreciate the evidence and substitute its view to the view of the learned Arbitral Tribunal. In the following case, the Hon'ble Supreme Court of India has laid down the law to be followed while dealing a question regarding error in jurisdiction committed by the Arbitral Tribunal.

MSK PROJECTS (I) (JV) LTD. Vs. STATE OF RAJASTHAN LAWS(SC) 2011 7 117SUPREME COURT OF INDIA

8. If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders out - side the contract and deals with matters not allotted to him, he commits a jurisdictional error. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such a jurisdictional error /71/ Com.A.P.No.5/2021 needs to be proved by evidence ex- trinsic to the award. (See: Gobardhan Das v. Lachhmi Ram & Ors., 1954 AIR(SC) 689; Seth Thawardas Pherumal v. The Union of India, 1955 AIR(SC) 468; Union of India v. Kishorilal Gupta & Bros., 1959 AIR(SC) 1362; Alopi Parshad & Sons. Ltd. v. Union of India, 1960 AIR(SC) 588; Jivarajbhai Ujamshi Sheth & Ors. v. Chintamanrao Balaji & Ors., 1965 AIR(SC) 214; and Renusagar Power Co. Ltd. v. General Electric Company & Anr., 1985 AIR(SC) 1156).

9. In Kishore Kumar Khaitan & Anr. v. Praveen Kumar Singh, 2006 3 SCC 312, this Court held that when a court asks itself a wrong question or approaches the question in an improper manner, even if it comes to a finding of fact, the said finding of fact cannot be said to be one rendered with jurisdiction. The failure to render the necessary findings to support its order would also be a jurisdictional error liable to correction. (See also: Williams v. Lourdusamy & Anr., 2008 5 SCC 647.

10. In Cellular Operators Association of India & Ors. v. Union of India & Ors., 2003 3 SCC 186, this Court held as under: "As regards /72/ Com.A.P.No.5/2021 the issue of jurisdiction, it posed a wrong question and gave a wrong answer The learned TDSAT, therefore, has posed absolutely a wrong question and thus its impugned decision suffers from a misdirection in law."

11. This Court, in Oil & Natural Gas Corporation Ltd. v. SAW Pipes Ltd., 2003 AIR(SC) 2629; and Hindustan Zinc Ltd. v. Friends Coal Carbonisation, 2006 4 SCC 445, held that an arbitration award contrary to substantive provisions of law, or provisions of the Act, 1996 or against terms of the contract, or public policy, would be patently illegal, and if it affects the rights of the parties, it would be open for the court to interfere under Section 34(2) of the Act 1996.

12. Thus, in view of the above, the settled legal proposition emerges to the effect that the arbitral tribunal cannot travel beyond terms of reference; however, in exceptional circumstances where a party pleads that the demand of another party is beyond the terms of contract and statutory provisions, the tribunal may examine by the terms of contract as well as the statutory provisions. In the absence of proper pleadings and objections, such a course may not be permissible.

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137. In the present case the learned Tribunal has framed a proper question and has answered the same in a right perspective based on the materials available before it.

138. The Learned Arbitral has observed that 'the following documents relied upon by the Respondent show that the Respondent and SAIL were of the view that increase in the rate of Minimum Wages can be a reason for revising the rates. Ex.R3 is Course of action to be taken in view of Revision of Minimum Wages dated:27.06.2017 issued by SAIL. By this Communication SAIL has issued guidelines regarding action to be taken in view of revision of Minimum Wages. These guidelines are in respect of a) Contracts under execution, b) under consideration for award and under process. In this document the cases which are specifically excluded from the application of the guidelines are mentioned:

> Exclusion: (i) Contracts under extension due to reasons attributable to the contractors.
>
> (ii) Contracts finalized based on bids filed prior to 07/04/17, 23/02/17(in case of Mines) where Contractor has agreed to absorb increase in wages.

139. It is not the case of the Respondent that Contract with claimant was under extension due to the reason /74/ Com.A.P.No.5/2021 attributable to the Claimant. No doubt the Contract as epr Ex.C2 Work Order and Ex.C3 MARC based on bids filed prior to 07.04.2017 and 23.02.2017, but it is not of the Respondent the Contract between the Claimant and the Respondent was Mines Contract nor the Claimant has agreed to absorb increase in wages. Merely because there is no clause in the contract for payment of enhanced Minimum Wages does not mean that the Claimant has agreed to absorb increase in Minimum Wages.'

140. The Learned Arbitral Tribunal has opined that to hold that Claimant has agreed to absorb increase in wages there must be a specific ad express recital in the contract. Therefore, the Contract under Ex.C2 Work Order and Ex.C3 MARC do not fall under exclusions mentioned in Ex.R3. The Contract of the Claimant is one under execution. The guidelines in respect of the Contracts under Execution are applicable. The Learned Arbitral Tribunal has arrived at a conclusion that the claimant is entitled for an amount of .15,05,010/- towards the wage difference from January 2017 to May 2017 (including EPF).

141. The parties have gone to the trial with full understanding of the Issues they have to prove. They have chosen not to lead oral evidence and to satisfy with the documentary evidence alone. In such circumstances, the not furnishing break-up in the statement of claim by the claimant /75/ Com.A.P.No.5/2021 under Claim No:2 for .50,77,062/- is not fatal to the case of the claimant. The learned Arbitral Tribunal has considered the inevitability of the circumstances which forced the claimant to pay revised or increased Minimum Wages and also the stand of the Respondent that it is not liable to reimburse the Claimant under the impression that the liability to pay increased Minimum Wages lies with the Claimant or SAIL. The Learned Arbitral Tribunal has balanced the claim of the Claimant to reimburse the payment made by it towards the revised Minimum Wages and the resistance offered by the Respondent, by employing sound reasoning. The learned Arbitral Tribunal after giving due consideration to the claim made by the claimant allowed only .21,47,165/- towards the wage difference from July 2017 to December 2017 (Including EPF). The said finding of the Arbitral Tribunal based on materials available on record cannot be found fault

with.

142. The Claimant has sought for rate of interest at 18% p.a. on each of the claim. However, the Learned Arbitral Tribunal after a thorough discussion and application of ratio of the precedents relied on by the parties has awarded interest at 9% p.a. In these circumstances, the finding of the Learned Arbitral Tribunal calls for no interference by this Court.

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143. The Learned Arbitral Tribunal had awarded costs and expenses at .4,45,600/- However, by allowing application filed under Section 33 of Arbitration & Conciliation Act, 1996, has revised the quantum of cost to .2,85,300/- by assigning proper reasons.

144. The materials available on record justify the reasoning adopted and findings given on issues by the learned Arbitrator while coming to the conclusion to allow the claim of the claimant in part. The Respondent has failed to make out a case that the impugned Award is against to the fundamental law of India and patently illegal, perverse and against the facts of the case. The Respondent i.e. plaintiff herein has not made out any grounds to interfere with the impugned award. In such circumstances I answer Point No:1 in the NEGATIVE.

145. POINT No.2 : In view of the discussion made above and findings on Point No:1 I pass the following ORDER The Arbitral suit filed by the Plaintiff under section 34 of Arbitration & Conciliation Act, 1996 to set aside the impugned award dated: 11.08.2020 and 17.10.2020 passed by the learned Sole Arbitrator in AC.No.01/2019 is hereby dismissed with costs.

/77/ Com.A.P.No.5/2021 The Award dated:11.08.2020 and modified order dated:17.10.2020 passed by the Learned Sole Arbitrator in the arbitration proceeding in A.C.No:01/2019 is hereby confirmed.

(Dictated to the Stenographer, transcribed and typed by her, then corrected and pronounced by me in the Open Court on this 3 rd day of January, 2022) (S.J.KRISHNA) LXXXIX ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU.

(CCH-90)

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SJ

KRISHNA

Digitally signed by S J KRISHNA

Date: 2022.01.05 13:53:02 +0530