In The Impugned Award. It Is To Be Noted ... vs No. 1 Has Not Challenged The Rejection Of ... on 3 January, 2022

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Com.A.S.No.108/2017

IN THE COURT OF LXXXII ADDL.CITY CIVIL & SESSIONS JUDGE, AT BENGALURU (CCH.83)

This the 03rd DAY OF JANUARY 2022

PRESENT:
SRI.DEVARAJA BHAT.M., B.COM, LL.B.,
LXXXII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.

Com.AS.No.108/2017

BETWEEN:

M/s KMB ESTATES LLP, represented by its chairman, Sri. Ramesh Bulchandani, No. 344, Nirmala, RMV II stage, II Block, 1st Cross, RMV Extension, Bengaluru - 560 094.

: PETITIONER

(Represented by M/s Anup S Shah Law Firm - Advocates).

AND

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1. United Foundations Private Limited, A Company incorporated under the provisions of Indian Companies Act, 1956, having its office at No. 27, Door No. 202, Gayatri Enclave, 4 th Main,

Ambedkar Layout, Kavalbyrasandra, R.T. Nagar, Bengaluru - 560 094.

2. Sri Justice A.V. Chandrashekar, NO. 92, 38 th Cross, 6th Main, 5th Block, Jayanagar, Bengaluru - 560 041

: RESPONDENTS

(Respondent No. 1 is represented by Sri. R. Vijaykumar -Advocate)

Date of Institution of the suit	04.09.2017
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Petition for setting aside Arbitral Award

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Date of commencement of recording of evidence	- Nil -
Date on which judgment was pronounced	03.01.2022
Date of First Case Management Hearing	- Not held -
Time taken for disposal from the date of conclusion of arguments	87 days

Total Duration	Year/s	Month/s	Day/s
	04	03	30

(DEVARAJA BHAT.M),
LXXXII Addl. City Civil & Sessions Judge,
Bengaluru.

JUDGMENT

This is a Petition filed by the Petitioner under Section 34 of the Arbitration & Conciliation Act, 1996 for setting aside the Arbitral Award dated 01.06.2017 passed by the learned Sole Arbitrator.

2. The Respondent No. 1 "M/s United Foundation Private Limited" had invoked the Arbitration Agreement and preferred certain Claims against "K.M.B. Estates LLP" the Petitioner.

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3. The Brief facts leading to the case are as follows:-

> The Petitioner is the developer of the property who undertook to construct both residential and commercial buildings at the project site, which belongs to Krishna E Campus, that the Respondent No. 1 approached to undertake the work and issued a quotation as per Ex.R.26, that subsequently after deliberations the Respondent No. 1 issued Ex.R.1/ letter and re-considered the dewatering system with deep well method, that the Petitioner had handed over Ex.R.2/ Soil Test Reports to the Respondent No. 1, that the Respondent No. 1 submitted revised quotation in the meeting held as per Ex.R.27, that the Respondent No. 1 also issued Ex.R.28/ Letter stating that the program for strutting and demolishing of soil nails and subsequent earth work has to be worked out with the main contractor, thereafter Ex.C.1/ Letter of Intent was issued, that the Respondent No. 1 failed to keep up with time schedule and failed to provide proper works in terms of schedule, that the Respondent No. 1 was required to start earth work excavation works on 02.04.2013, but the work have never started on time, that the Respondent No. 1 claimed payments as per Ex.R.19, that the PMC has issued Ex.R.29/ email to the Respondent No. 1 to put up safety boards and safety manuals, that the Respondent No. 1 sent Ex.R.31/ email seeking payments, that Com.A.S.No.108/2017 the PMC issued Ex.R.32/ email seeking reasons for not deploying proper machinery and man power, that the PMC granted permission to the Respondent No. 1 to engage the services of BBF Group as per Ex.P.75/ email, that RA Bill No.1 was forwarded to the PMC as per Ex.R.35, that the PMC as per Ex.R.36/ email elaborating the necessary documents and the formats for billing to be submitted, that as per Ex.R.37/ email the Respondent No. 1 represented that he was fully equipped to handle the situations, that as per Ex.R.38/ email, the Respondent No. 1 claimed that there is another leak on the eastern side of the project site, that despite the untenable claims, the Petitioner made payments of Rs. 31,22,718/- to the Respondent No. 1 as per Ex.R.41, that the PMC as per Ex.R.42, mentioned the actual date of completion of work, that according to the Respondent No. 1, he has carried out works in terms of conditions and submitted RA Bills to the Petitioner, that however they have not paid entire amount and hence he has filed the Claim Petition before the learned Arbitrator and after enquiry, the learned Arbitrator has passed the Impugned Award and allowed the Claim Petition in part and rejected the counter claim of the Petitioner.
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4. Being aggrieved by the said Arbitral Award, the Petitioner has challenged the same on several grounds, which will be discussed later in the body of the Judgment.

5. The Respondent No. 1 has submitted on 13.06.2019 that no written statement to be filed in this case since everything was placed before the Arbitral Tribunal.

6. The records of the Arbitral Tribunal are secured. I have heard the arguments of the Advocate for the Petitioner and the arguments of the Advocate for the Respondent No. 1. The Advocate for the Petitioner has filed Written Arguments on 18.03.2021. The Advocate for the Respondent has filed his written arguments on 08.04.2021.

7. Based on the above contentions of both parties, following Points arise for my consideration:-

1. Whether there are grounds to set aside the Impugned Award under Section 34 of the Arbitration & Conciliation Act?

2. What Order?

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8. My findings on the above points are as follows:-

Point No.1:- In the Negative.

Point No.2:- As per the final Order for the following reasons.

REASONS

9. Point No.1: - The Respondent No.1 has preferred a Claim Petition before the Learned Arbitrator for Rs. 3,31,03,442/- under 13 heads. The Petitioner has raised a counter-claim of Rs. 3,63,01,025/- with interest at 18% per annum from the date of Letter of Intent till the commencement of Arbitration and from that date till the amounts are paid.

10. The Learned Arbitrator has partly allowed the claims of the Respondent No.1 and dismissed the Counter Claim of the Petitioner in the Impugned Award. It is to be noted that the Respondent No. 1 has not challenged the rejection of the portion of his Claims.

11. The Petitioner has challenged the said Impugned Award in this proceeding. The Hon'ble High Court in the Judgment dated 17.04.2021 in Com.A.P.No.25/2021 (Union of India vs. M/s Warsaw Engineers), has laid down certain Com.A.S.No.108/2017 guidelines/principles about the writing of Judgments in a Petition filed under Section 34 of the Arbitration & Conciliation Act. Keeping in my mind the said guidelines, I now propose to examine each and every ground urged by the Petitioner specifically with reference to the submissions made by both Advocates.

12. By considering the facts of the case and the arguments of both Advocates, I now propose to answer the grounds urged by the Petitioner.

13. The First ground is that the Impugned Award is totally perverse, contrary to laws, public policy of India, is completely unconscionable, shocks the conscience and causes considerable and tremendous prejudice to the rights of the Petitioner.

13.a. This is a general ground and the same will be discussed along with other grounds urged by the Petitioner.

14. The Second ground is that the learned Arbitrator has ignored all material facts and has embarked on enquiry which is alien to the matter, that he has come to several unsupported inferences and the award is full of such inferences and conjectures which are not sustainable either in law or on facts.

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14.a. This is also a general ground and the same will be discussed along with other grounds urged by the Petitioner.

15. The Third ground is that the learned Arbitrator has not considered applicable laws, the provisions cited and such non- consideration would render the award contrary to the public policy.

15.a. This is also a general ground and the same will be discussed along with other grounds urged by the Petitioner.

16. The Fourth ground is that the Principle of natural justice is not followed, that contentions and documents produced by the Petitioner have been ignored and blindly accepted the contentions and documents of the Respondent No.1 and thereby the reasoning based on misinterpretation of facts and evidence.

16.a. The learned Advocate for the Petitioner has argued that the Impugned Award is contrary to Section 34 of the Arbitration and Conciliation Act since most of the contentions put forth by the Petitioner which have been rejected without any reasoning or basis, that the principles of natural justice being required to be followed by the Tribunal, that the same Com.A.S.No.108/2017 have not been followed, on one hand the contentions and documents produced by the Petitioner have been ignored and on the other hand, the contentions urged by the Respondent No.1, though false, baseless, untenable, contrary to record, contrary to evidence on record, have been plainly accepted without reasoning based on the misinterpretation, misrepresentation of facts, evidence and applicable law, that the Rules of the proceedings have been laid down prior to the commencement of trial, that the Tribunal has unilaterally changed the Rules at the time of the Award by holding that the burden of proof pales into insignificance at Para 27 of the Award, that there is no such concept in law, that the Rules and procedure as agreed between the parties cannot be changed post the Arbitration, that such a change if at all was sought to be made ought to have been informed to the

Petitioner which has not been done, that therefore, the vested right in the Petitioner has been taken away by the Tribunal thereby violating the principles of natural justice which are inherent in an Arbitration proceedings, that in terms of Rule 18 of the Arbitration Centre, Karnataka (Domestic and International) Rules 2012 it is required for the Tribunal to secure agreement of parties to dispense with formal proof of documents except in case of questioned documents, that there being no such agreement, the said Rule had to be followed since the same Com.A.S.No.108/2017 was not followed the Award liable to be quashed, that the Tribunal ought to have applied the principles of burden of proof and onus of proof form a substantial portion of Arbitration proceedings and the Tribunal ought to have acted in accordance with the issue as framed and not travel beyond it or dilute the issues in the matter as done, that this is violative of public policy, unknown to judicial procedure and amounts to Judicial malafide on part of the Arbitrator, on this ground alone the award is liable to be set aside.

16.b. In this aspect, it is to be noted that in the decision reported in A.I.R. - 1988 - S.C. - 1340 (Indian Oil Corporation vs. Indian Carbon Ltd), it is held as follows:-

> "It is one thing to say that reasons should be stated and another thing to state that a detailed judgment is to be given in support of an award. Even if it be held it is obligatory to state the reason, it is not obligatory to give a detailed judgment".

16.c. A similar view was also taken by the Hon'ble Supreme Court in the decision reported in A.I.R. - 1989 - S.C.

- 973 (Gujarat Water Supply vs. Unique Erectors).

16.d. Similar views were expressed by Full Bench (5 Hon'ble Judges Bench) of the Hon'ble Supreme Court in the decision reported in A.I.R. - 1991 - S.C. - 2089 (Goa, Daman & Diu Com.A.S.No.108/2017 Housing Board vs. Ramakant V.P. Darvotkar), wherein the Hon'ble Apex Court has held as follows:-

> " There is however nothing to show that the awards have been improperly procured. There is no allegation, far less, any finding, that the Arbitrator was biased or unfair or he has not heard both the parties or he has not fairly considered the submission of the parties in making the award in question. In our opinion, it is evident from the four awards made by the Arbitrator, that the Arbitrator has considered the submission of the parties in making the award in question. In our opinion, it is evident from the four awards made by the Arbitrator, that the Arbitrator has considered all the relevant issues raised by the parties in the Arbitrator proceedings and came to his finding after giving cogent reasons. The above award cannot under any circumstances be considered to be made by the Arbitrator without recording any reasons for the same. Therefore, in such circumstances, it is not proper to hold that the Arbitrator has misconducted himself or the proceedings in the matter of giving the awards".

16.e. In another decision reported in 2014 (9) - S.C.C. - 212 (Anand Brothers Private Limited vs. Union of India and Others), at Para No. 12 has considered and decided the phrase 'finding' and in Para No. 13 defined the phrase "conclusion" and further regarding the finding and speaking order the Hon'ble Apex Court at Para No. 14 has held as under:-

> Com.A.S.No.108/2017 "It is trite that a finding can be both; a finding of fact or a finding of law.....This is the rule also in the case of finding of fact where too the process of reasoning must be disclosed in order that it is accepted as a finding in the sense the expression is used in Clause 70".
>
> 16.f. In the present case also though there is a contention of the Petitioner that the Tribunal has changed the Rules of proceedings at the time of passing the award, there is no allegation about any other aspects. The Arbitrator has given cogent reasons and made detailed discussions in the Impugned Award. Therefore, in view of the ratio of aforesaid decisions, it has to be examined by perusing of the Impugned Award wherein the learned Arbitrator dealt with each and every claim separately and recorded the reasoning for allowing or disallowing the claim. Hence, as per the ratio of the above decisions, the said contentions of the Petitioner cannot be accepted. The award cannot be set aside on the said ground.

Hence, this ground is not available for the Petitioner under Sub- section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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17. The Fifth ground is that the Impugned Award has been passed in contravention of terms of the agreement and on a fundamental misconception of evidence and ignoring the material evidence.

17.a. The learned Advocate for the Petitioner has argued that the Impugned Award is in contravention to the Letter of Intent entered into between the parties, that the Award being contrary to terms of the contract the same is to be interfered with the ground that it is patently illegal and is opposed to Public Policy of India, that the Tribunal being a creature of the contract, ought to act only in terms of the contract and could not travel beyond it, that the Tribunal ought to strictly apply the terms of the contract in arriving at a decision in regard to the matter in dispute, that the Tribunal could not have traveled beyond the terms of the contract.

17.b. On perusal of the Impugned Award with the terms of the contract between the parties, it cannot be held that the learned Arbitrator has completely ignored the terms of the contract and traveled beyond all the terms of the contract while interpreting the same.

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17.c. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re-appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The findings of fact by the Arbitral Tribunal, if based on evidence, even where a different opinion can be held on the basis of that evidence, the findings given by the Arbitrator has to be accepted and the Courts cannot substitute its opinion. The power to interpret the contract also lies with the Arbitrator. If the Arbitrator interpreted the terms of contract in a particular way based on the material before him and the evidence adduced before him, even if another view is possible to be taken on the same materials and evidence, the Court cannot interfere the said findings of the learned Arbitrator, as held by the Hon'ble Supreme Court in the decision reported in 2009(6)

- S.C.C. - 414 (G.Ramachandra Reddy & Company vs. Union of India & another), wherein it is held that the interpretation of a contract will fall within the realm of arbitrator, that the Court while dealing with an award would not re-appreciate the evidence, that an award containing reasons may not be interfered unless they are found to be perverse or Com.A.S.No.108/2017 based on a wrong proposition of law. In another decision reported in 2009 (10) - S.C.C. - 63 (Steel Authority of India Limited vs. Gupta Brothers Steel Tubes Limited), it is held that once the arbitrator has constructed Clause 7.2 of the contract of the said case, in a particular manner and such construction is not absurd and appears to be plausible, it is not open to the Court to interfere with the award of the arbitrator.

17.d. For the same principle, I wish to refer another decision reported in 2019 (7) - S.C.C. - 236 (Parsa Kenta Collieries Limited vs. Rajasthan Rajya Vidyut Utpadan Nigam Limited). Once the courts reach to the conclusion that the Arbitrator has acted within its jurisdiction, even if the courts are of the view that the opinion of the arbitrator is wrong the same cannot be disturbed unless it is against the public policy.

17.e. Therefore, an award warrants interference by the Court under Section 34 of the Arbitration and Conciliation Act only when it contravenes a substantive provision of law or is patently illegal or shocks the conscious of the Court and that a plausible/reasonable view taken by an Arbitrator, even if the same is based on insufficient evidence, is not to be substituted by the Court. Hence, this ground is not available for the Petitioner under Sub-Section (2) and Sub-Section (2-A) of Com.A.S.No.108/2017 Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of Arbitral Award on this count is thwarted and rejected.

18. The Sixth ground is that the learned Arbitrator ignored the arguments and has gone beyond the pleadings and evidence.

18.a. This is also a general ground and the same will be discussed along with other grounds urged by the Petitioner.

19. The Seventh ground is that the claim of the 1 st Respondent about the alleged dues until RA Bill 4 allegedly certified has no support of any evidence and the same was awarded which is contrary to the evidence and pleadings.

19.a. The learned Advocate for the Petitioner has argued that though the 1st Respondent has prayed for Rs.91,83,693/- towards the alleged dues until RA Bill No.4 allegedly certified, without any evidence about the certification, the Tribunal has awarded Rs. 1,30,62,323/-, towards Bill No. 1 to 4. It is to be noted that as already discussed by me, the learned Arbitrator has discussed the contentions and evidence of both parties in the Impugned Award. If any, calculation mistakes crept in the award, this court cannot interfere about the same in this Com.A.S.No.108/2017 proceedings. Therefore, there are no grounds to accept the said contentions of the Petitioner. Hence, this ground is not available for the Petitioner under Sub-Section (2) and Sub-Section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of Arbitral Award on this count is thwarted and rejected.

20. The Eighth ground is that the learned Arbitrator could not have considered the so called RA Bill 1 to 4 in the absence of satisfying the requirements of Ex.P.1 and Ex.R.36.

20.a. The learned Advocate for the Petitioner has argued that RA Bills 1 to 4 to be running bills in the absence of them satisfying the requirements of Ex.P.1, LOI, Ex.P.2 and Ex.R.36, that there is absolutely no finding by the Tribunal that the above conditions precedent have been satisfied, that such being the case the so called RA Bill 1 to 4 could have not even been considered by the Tribunal.

20.b. This ground is more or less similar to that of seventh ground. Hence, for the same reasons, the contentions of the Petitioner cannot be accepted. Hence, this ground is not available for the Petitioner under Sub-Section (2) and Sub- Section (2-A) of Section 34 of the Arbitration & Conciliation Act.

Com.A.S.No.108/2017 Thus, the challenge flanked by the Petitioner calling for the setting aside of Arbitral Award on this count is thwarted and rejected.

21. The Ninth ground is that the learned Arbitrator could not have considered the so called RA Bill No.5 in the absence of satisfying the requirements of Ex.P.1 and Ex.R.36, and by relying on Ex.P.76 only.

21.a. The learned Advocate for the Petitioner has argued that as regards prayer at Sl. No.3 Page 18 of the Award towards the alleged 5th RA Bill, the claim made by the 1 st Respondent was for a sum of Rs. 32,34,127/- which has been awarded by the Tribunal, that while doing so, the Tribunal has considered Ex.P.76 being the e-mail of an Excel Sheet as a RA Bill and not considered the requirements under Ex.P.1, LOI, Ex.P.2, BOQ and Ex.R.36, that without first satisfying the requirements of a RA Bill, Ex.P.76 could not be considered to be a RA Bill, that apart there is no certification of Ex.P.76 by the PMC nor as the 1 st Respondent claimed for such certification, that Ex.P.76 adds back all the deductions made by PMC, that the award directing the payment towards the alleged RA Bill No.5 in the form of Excel Sheet is liable to be set aside.

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21.b. The learned Advocate for the 1st Respondent has argued that the Petitioner denied the submission of RA Bill No.5 by the 1st Respondent to PMC, that the RA Bill No.5 was sent by the 1st Respondent to PMC on 04.12.2013, that since there was no communication from the PMC, the 1 st Respondent sent one more copy of RA Bill No.5 on 06.12.2013 to PMC through e-mail as per Ex.P.76, that PMC has not certified the payment claimed by the 1st Respondent in RA Bill No.5.

21.c. The same aspect is once again agitated at twelfth ground. About the factual aspect, I shall discuss about the same while answering the twelfth ground. However, the aspect about sending the RA Bill through e-mail as per Ex.P.76 is concerned, though the same is not in terms of the contract between the parties, the same is to be considered in the light of provisions of Information Technology Act. With regard to the said aspect, I now discuss about the same.

21.d. Sections 4 and 6 of the Information Technology Act, 2000 provide for legal recognition of electronic records and their use in Government and its agencies. Section10-A of the said Act specifically provides for validity of contract through electronic means and accordingly provides that such contract shall not be deemed to be unenforceable solely on the ground Com.A.S.No.108/2017 that such electronic form or means was used for that purpose. Section 12 of the said Act provides for acknowledgment of receipt including in an automated manner. Section 13 of the said Act provides for time and place of dispatch and receipt of electronic records. Upon careful consideration of all these provisions, it is seen that electronic records have been provided with full legal recognition.

21.e. Under the provisions of the Information Technology Act, 2000 particularly Section 10-A, an electronic contract is valid and enforceable, which states as follows:-

> "Section 10-A: Validity of contracts formed through electronic means:- Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."

21.f. E-Contracts can be entered into through modes of communication such as e-mail, internet and fax. The only essential requirement to validate an E-Contract is compliance with the necessary pre-requisites provided under the Indian Contract Act, 1872.

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21.g. The evidentiary value of e-contracts can be well understood in the light of the Sections 85A, 85B, 88A, 90A and 85C deals with the presumptions as to electronic records whereas Section 65B relates to the admissibility of electronic record. In the present case, there is no dispute about the admissibility of various e-mails exchanged between the parties.

21.h. Formation of contracts online via emails has been recognized and given validity to by the Indian courts time and again. In the decision reported in 2010(1) - SCALE - 57 (Trimex International FZE Limited, Dubai vs. Vendata Aluminium Ltd.), the parties thoroughly agreed to the terms of the contract via emails. The Hon'ble Supreme Court upheld the validity of this contract and further held as follows:-

> "Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initiated by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initiated."

21.i. In the said case, the Hon'ble Supreme Court after going through the various E-mails exchanged between the parties including an E-mail attaching the draft contract, which remained unsigned, opined as follows:-

> Com.A.S.No.108/2017 "44. From the materials placed, it has to be ascertained whether there exists a valid contract with the arbitration clause. It is relevant to note that on 15-

10-2007 at 4.26 p.m. the petitioner submitted a commercial offer wherein Clause 6 contains the arbitration clause i.e. "this contract is governed by Indian law and arbitration in Mumbai courts". At 5.34 p.m. though the respondents offered their comments, as rightly pointed out by Mr. K.K. Venugopal, no comments were made in respect of the "arbitration clause". It is further seen that at 6.04 p.m., the petitioner sent a reply to the comments made by the respondent. Again, on 16-10-2007 at 11.28 a.m., though the respondents suggested certain additional information on the offer note, here again no suggestion was made with regard to the arbitration clause.....".

21.j. The Hon'ble Supreme Court in the decision reported in (2001) 7 - S.C.C. - 328 (Smita Conductors Limited vs. Euro Alloys Limited), has commented about two contracts and held that one of the party had in his mind those contracts while opening the letters of credit and while addressing the letters to the bank in that regard and had also invoked force majuere clause in those contracts which would obviously mean that the parties had in their mind those two contracts which stood formed by those letters of credit. It is held by the Hon'ble Supreme Court that if two contracts stood affirmed by reason of conduct of the parties as indicated in the letters exchanged, it must be held that there was an agreement in writing between the parties in that regard. The Com.A.S.No.108/2017 said judgment of the Hon'ble Supreme Court was specifically approved by the Hon'ble Supreme Court in its subsequent above- mentioned decision reported in 2010(1) - SCALE - 57 (Trimex International FZE Limited, Dubai vs. Vendata Aluminium Ltd.).

21.k. In another decision reported in (2009) 2 - S.C.C. - 134 (Shakti Bhog Foods Ltd. vs. Kola Shipping Ltd.), the Hon'ble Supreme Court has held as follows:-

> "The existence of an arbitration agreement can be inferred from a document signed by the parties, or an exchange of letters, telex, telegrams or other means of

telecommunication, which provide a record of the agreement".

21.l. Therefore, the correspondence through email can be considered as a valid binding agreement/contract between the parties and hence, the contention of the Petitioner that Ex.P.76 is only an e-mail sent through Excel Sheet cannot be accepted at all. Hence, this ground is not available for the Petitioner under Sub- section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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22. The Tenth ground is that the learned Arbitrator has not taken into account that towards the Bank Guarantee mobilization advance has been released and that the same has not been completely recovered, which is contrary to terms of contract.

22.a. The learned Advocate for the Petitioner has referred to Sl. No.9 at Page No. 18 of the Award. In the said page at Para No. 29 the learned Arbitrator has mentioned the prayer in Claim Petition as well as in the counter-claim of the Petitioner. There is no discussion about the claims referred to in the said paragraph. When such being the case the said ground is itself is misconception of facts. Even otherwise, as mentioned above, the Impugned Award is a Speaking Order. There are no grounds to interfere the same. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

23. The Eleventh ground is that the learned Arbitrator has not considered the purport and impact of the issues framed when the parties went to trial.

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23.a. The learned Advocate for the Petitioner has drawn my attention to Para No. 27 of the Impugned Award wherein the learned Arbitrator has held that the parties have adduced evidence consciously knowing the crux of the dispute, that after having led the evidence consciously the burden of proof fails into insignificance and has referred to a decision of the Hon'ble Supreme Court. The learned Advocate for the Petitioner has argued that no such decision as mentioned by the learned Arbitrator in the said paragraph. In fact, there is a mistake in mentioning the citation and also names of the parties. The principle of law as mentioned by the learned Arbitrator is well settled. Such a principle is enunciated by the Hon'ble Supreme Court in the decision reported in A.I.R. -1960 - S.C. - 100 (Narayan Bhagwantrao vs. Gopal Vinayak Gosavi And Others). When such being the case, the learned Advocate for the Petitioner cannot find fault with the learned Arbitrator for having mentioned an incorrect citation. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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24. The Twelfth ground is that the Rules of proceedings laid down to prior to commencement of trial has unilaterally changed at the time of the award by holding that the burden of proof fails into insignificance at Para No. 27 of the award.

24.a. The learned Advocate for the Petitioner has argued that It is a matter of fact and record that the Respondent No.1 has not produced or led any evidence in respect of the claims, that it is also a matter of fact and record that the Respondent No.1 did not even produce the RA Bills before the Tribunal and, in fact, they were got confronted by the Petitioner during cross- examination of PW.1, that the principles as enshrined under Section 101 of the Indian Evidence Act, 1872 have not even been applied by the Respondent No.1, that it is for the Respondent No.1 to have led positive evidence that it had discharged its obligations as required in terms of Ex.R.36 and Ex.P.1, that even a thorough reading of the Affidavit in-lieu of evidence filed by the Respondent No.1 would establish that no evidence is on record by the Respondent No.1 on this aspect, that the principles enunciated in the Civil Procedure Code and the Indian Evidence Act are applicable to an arbitral proceedings as laid down by the Hon'ble Supreme Court of India and various other Courts, that it is therefore required that the Tribunal applies the principles enunciated under Section 101 to Com.A.S.No.108/2017 104 ought to have been discharged by Respondent No.1, that therefore, the burden of proof that the bills were submitted in the required manner and complied with Ex.R.36 is entirely on the Respondent No.1 which has not been discharged, that the burden of proof also vested with the Respondent No.1 since failure to prove the above facts would result in a failure of the Respondent No.1's claim, that the aspect of whether the bills had been submitted in the required format with the required enclosures is in the sole custody and prerogative of Respondent No.1 , that the Respondent No.1 not having led any evidence in this regard has failed in discharging its burden of proof, that this crucial aspect has also been ignored by the Tribunal, that in spite of the same having been argued, brought to the notice of the Tribunal and the Tribunal having recorded the same from Para 12 Page 7 to Para 20 Page 12 of the Impugned Order, that Tribunal has misdirected itself as regards the role of CBRE, being a PMC and adverted to the document relating to appointment of CBRE and has given a finding that CBRE is the lawful custodian of the original RA Bills, that Tribunal has not given any finding as to whether the Respondent No.1 has discharged its obligations and the demands made by the PMC.

24.b. The learned Advocate for the Petitioner has relied on a decision reported in (2011) 12 - S.C.C. - 220 (Rangammal Com.A.S.No.108/2017 vs. Kuppusamy and another), wherein it is held that the Indian Evidence Act, 1872 has clearly laid down that the burden of proving the fact always lies upon a person who asserts it, that unless such burden is discharged, the other party is not required to be called upon to prove its case, that the court has to examine as to whether the person upon whom the burden lies has been able to discharge its burden, that unless he arrives at such a conclusion, he cannot proceed on the basis of weakness of the other party. Relying on the said decision, the learned Advocate for the Petitioner has argued that this principle has also been ignored by the Tribunal.

24.c. He has further argued that the Tribunal applied a wrong position of law to the present case thereby rendering the entire award, contrary to fundamental public policy of the country, that such a

wrong finding has resulted in the Tribunal committing a further illegality of passing an award in favour of the Respondent.

24.d. I have discussed about this aspect while answering ninth ground above. In fact, the learned Arbitrator after discussing the contentions and arguments of both parties, has discussed at Para No. 26 at Page No.16 of the Award, that the Petitioner has denied the receipt of Ex.P.76/RA Bill No.5, that Com.A.S.No.108/2017 Ex.P.76 was submitted with an e-mail letter dated 06.12.2013, in respect work executed during the period from 24.09.2013 to 30.11.2013, that as per Ex.R.91, CBRE alone was expected to be verified the RA Bills and to make certification recommending for payment, that if RA Bill No.5 is not processed through the PMC then the best person who could have spoken about the non-submission of Ex.P.76 is the engineer or official of CBRE and in view of the non-examination of the said engineer and official and in view of the receipt of Ex.P.76 is not seriously disputed in the evidence of RW.1, he has answered Issue No.5 in the Affirmative. When such being the case, the said finding cannot be considered as perverse or illegal. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

25. The Thirteenth ground is that the learned Arbitrator has not examined whether the 1st Respondent has submitted the running bills in the required form with all supporting documents.

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25.a. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re-appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. In fact, this ground is in the nature and tenor of appeal. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

26. The Fourteenth ground is that the learned Arbitrator has blindly awarded amounts more than claimed and rejected the deductions made by the PMC without any basis.

26.a. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re-appreciate and re-evaluate Com.A.S.No.108/2017 the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. In fact, this ground is

in the nature and tenor of appeal. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

27. The Fifteenth ground is that the learned Arbitrator has not referred to the cross-examination of PW.1 thereby rendering the entire cross-examination otiose.

27.a. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re-appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are Com.A.S.No.108/2017 correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. In fact, this ground is in the nature and tenor of appeal. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

28. The Sixteenth ground is that the learned Arbitrator has turned the law of evidence by holding that the Petitioner ought to have led the evidence of PMC to enable the Respondent No.1 to post questions in the cross-examination of said PMC, that the said finding being contrary to the legal aspects.

28.a. In fact, I have already discussed about this aspect while answering twelfth ground above. In addition to the same it is to be noted that Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re-appreciate and re-

Com.A.S.No.108/2017 evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. In fact, this ground is in the nature and tenor of appeal. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

29. The Seventeenth ground is that the learned Arbitrator has ignored the fact that if at all the 1 st Respondent wanted to lead evidence of PMC there was nothing preventing him for summoning the said PMC as a witness.

29.a. In fact, I have already discussed about this aspect while answering twelfth ground above. In addition to the same it is to be noted that Section 34 of the Arbitration & Conciliation Com.A.S.No.108/2017 Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. In fact, this ground is in the nature and tenor of appeal. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

30. The Eighteenth ground is that the learned Arbitrator has not considered that there were discrepancies in the submission of RA Bills and that in spite of RA Bills having been re-submitted several times, the discrepancies were not cleared.

30.a. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re-appreciate and re-evaluate Com.A.S.No.108/2017 the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. In fact, this ground is in the nature and tenor of appeal. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

31. The Nineteenth ground is that until the submission of RA Bill with all requirements satisfying the terms of the contract, Ex.R.36, the submissions could not be held to be complete and proper.

31.a. In fact, I have already discussed about this aspect while answering twelfth ground above. In addition to the same it is to be noted that Section 34 of the Arbitration & Conciliation Com.A.S.No.108/2017 Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over

his findings. In fact, this ground is in the nature and tenor of appeal. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

32. The Twentieth ground is that the learned Arbitrator has treated both the parties unequally by permitting the 1 st Respondent to produce documents after completion of evidence and rejected the similar prayer of the Petitioner.

32.a. By elaborating the arguments on this ground, the learned Advocate for the Petitioner has also relied on a decision Com.A.S.No.108/2017 reported in 2008 (13) - S.C.C. - 80 (DDA vs. R.S. Sharma & Co.), and has argued that the learned Arbitrator has not given equal treatment to both parties. On perusal of the Arbitral Records, the learned Arbitrator has recorded the evidence of PW.1 on behalf of the 1st Respondent and RW.1 and 2 on behalf of the Petitioner. The 1st Respondent has produced Ex.P.1 to Ex.P.117 and the Petitioner has produced Ex.R.1 to Ex.R.94. The learned Arbitrator has considered the said oral and documentary evidence in the Impugned Award. Just because he has not permitted the Petitioner to produce additional documents as prayed by him in the Application dated 16.04.2015, as per the Orders dated 05.06.2015, it cannot be considered that the learned Arbitrator has not given equal treatment to both parties. In order to find out the equal treatment the entire proceedings conducted by the learned Arbitrator has to be taken into consideration. When such being the case the said contention of the Petitioner cannot be accepted. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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33. The Twenty First ground is that the learned Arbitrator on the one hand has held that the adhoc payment advice of the PMC is certification thereby holding that the Petitioner had to make payments to the 1st Respondent in terms thereof and on the other hand indicates that the deduction made by the PMC without any reasoning, basis or evidence on record.

33.a. In fact, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re- appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner Com.A.S.No.108/2017 calling for the setting aside of arbitral award on this ground is thwarted and rejected.

34. The Twenty Second ground is that the mere reading of Issue No.5 that it is for the 1 st Respondent to prove that RA Bills were submitted as per the required format agreed upon that all the supporting documents required to be submitted as agreed upon between the parties, and that if the same had not been submitted as per Item No. 4 and 5 of Ex.P.1 and the extracted portion of Ex.R.6 had not been complied, there was a violation and Issue No.5 ought to have been answered in favour of the Petitioner.

34.a. In fact, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re- appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act Com.A.S.No.108/2017 is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

35. The Twenty Third ground is that a mere perusal of the appreciation of Issue No.5 at Para No.11 Page No. 6 to Para No.27 at Page No.17 would establish that the learned Arbitrator has not applied the terms of the contract while dealing with the said issue.

35.a. The learned Advocate for the Petitioner has argued that a mere perusal of the appreciation of Issue No.5 would categorically and unimpeachably establish that the Tribunal has not applied the terms of the contract while dealing with appreciating the said issue, that the Tribunal though at Para No.11 Page No. 7 extracted the requirements no finding has been given in respect of the said requirements.

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35.b. So far as the interpretation of terms of contracts by the learned Arbitrator, I have already discussed while answering twelfth ground above. For the same reasons, the contentions of the Petitioner on this ground also cannot be accepted. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral

award on this ground is thwarted and rejected.

36. The Twenty Fourth ground is that instead of examining the requirements under Ex.R.36, the learned Arbitrator has misdirected as regards the role of PMC and adverted to the document relating to appointment of CBRE and has given a finding that CBRE is the lawful custodian of the RA Bills.

36.a. About this ground, the learned Advocate for the Petitioner has argued about the burden of proof lies on the 1 st Respondent since failure to prove the said aspect would result in a failure of the claim of the 1 st Respondent, that the aspect of whether the bills had been submitted in the require enclosures is in the sole custody and prerogative of the 1 st Respondent, that the 1st Respondent not having led any evidence in this Com.A.S.No.108/2017 regard has failed in discharging its burden of proof and this aspect has been ignored by the learned Arbitrator. With this background if this ground is read, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

37. The Twenty Fifth ground is that at Para No.11 of the award, the learned Arbitrator though refers to the letter dated Com.A.S.No.108/2017 25.06.2013, calling upon the 1st Respondent to furnish documents with the RA Bills he has not given any finding has to whether the 1st Respondent has discharged its obligations and demands made by the PMC.

37.a. About this ground, the learned Advocate for the Petitioner has argued about the burden of proof lies on the 1 st Respondent for production of RA Bills and satisfaction of the requirements of Ex.R.36 and that this aspect has been ignored by the learned Arbitrator. With this background if this ground is read, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not

Com.A.S.No.108/2017 available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

38. The Twenty Sixth ground is that at Para No. 12 to 19 of the Award, though has referred to the dates of submission and re-submission of the RA Bills, has not appreciated the fact that such re-submissions were necessitated on account of improper submissions and non-compliance of Ex.P.1 and Ex.R.36.

38.a. The learned Advocate for the Petitioner has argued that it is a facts on record which cannot be ascertained by a perusal of Ex.R.4, Ex.R.6, Ex.R.7 which are the copies of the Bills obtained from the PMC which would categorically indicate and establish that the requirement as stated in Ex.P.1 and Ex.R.36 had not been complied while submitting the RA Bills. With this background if this ground is read, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal Com.A.S.No.108/2017 and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

39. The Twenty Seventh ground is that the learned Arbitrator has completely misconstrued the recommendation made by the PMC for adhoc payments to the certification of the RA Bills.

39.a. The learned Advocate for the Petitioner has argued that the 1st Respondent submitted insufficient, incomplete, inadequate false bills, that the said bills were returned from time to time by the PMC, that with an intention to keep the works going and not to cause stoppage of work, the PMC had Com.A.S.No.108/2017 recommended certain adhoc payments, that such recommendation does not amount to certification of the RA Bills, that none of the RA Bills has been certified by the PMC and that there is no such certification on record. In support of said arguments, he has relied on the decision reported in 2009 (2) - S.C.C. - 606 (U.P. State Electricity Board and Another vs. Aziz Ahamad), wherein it is held that pleadings are required to be proved by leading evidence. The learned counsel submitted that where evidence is not led by a party in support of the pleadings no reliance can be placed only on the pleadings without there being any cogent evidence in support of the pleadings.

39.b. In fact, I have already discussed about this aspect while answering Ground No. 11 and 12 above. For the same reasons, I cannot accept the said contentions of the Petitioner. Hence, this

ground is not available for the Petitioner under Sub- section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

40. The Twenty Eighth ground is that the learned Arbitrator has misapplied in holding that the claim of Rs.

Com.A.S.No.108/2017 3,31,03,442/- is towards the work done in terms of the contract, that the said claim is on account of interest and idle charges, loss of material, bank guarantee etc.

40.a. The learned Advocate for the Petitioner has drawn my attention to the table reproduced by the Tribunal at Page No. 18 of the Award and has argued that the same would indicate that the said claim is an account of interest and idle charges, demurrage, loss of material, bank guarantee etc., that the claim as regards the work done is only at Sl. No.1 at Page No. 18 for the balance for Rs. 91,83,693/-.

40.b. On perusal of said table along with the submission of the Advocate for the Petitioner is concerned, in order to answer this ground, I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary Com.A.S.No.108/2017 in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

41. The Twenty Ninth ground is that the reasoning given by the Tribunal establishes that instead of ascertaining whether the 1st Respondent has proved its case, the Tribunal has sought to ascertain the veracity of the defence of the 1 st Respondent.

41.a. The learned Advocate for the Petitioner has argued that the Tribunal has patently erred and has not adopting a judicial approach while dealing with the question, it has ignored most material evidence has not applied its mind to all the relevant facts and circumstances, that the Tribunal has not adopted a judicial approach, has completely ignored this evidence, that the Tribunal has completely failed to adopt a judicial approach while dealing with Issue No. 1 to 3, has acted arbitrarily, capriciously, ignored material pieces of evidence and Com.A.S.No.108/2017 has not at all applied its mind to all the material on record, that the award suffers from patent errors and contradictory.

41.b. If this ground is read, it is about the allegation against the learned Arbitrator about the appreciation of evidence at Issue No. 1 to 3 and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

Com.A.S.No.108/2017

42. The Thirtieth ground is that the entire reasoning as regards the submissions of bill and required format at Para No. 33 and 34 of the Award is misconceived and contrary to the facts on record, that the findings is on the basis of inferences by the Tribunal rather than on the basis of facts and documents, that the recommendation made for adhoc payment by PMC has been regarded to be certification by the Tribunal which is contrary to the records.

42.a. The learned Advocate for the Petitioner has argued that the Tribunal committed manifest and grave error by holding that the 1st Respondent is lawful custody of all the documents and the certificate, that the assertions have been made by the 1st Respondent, it was for the 1st Respondent to prove these facts and assertions, that the Tribunal having accepted that the revised bill was submitted on 24.06.2013 could not have taken any other date for the purpose of arriving at the date of payment, that having considered that the bill was submitted on 24.06.2013, the Tribunal ought to have ascertained whether bill was in the form agreed between the parties, that the Tribunal has disregarded the assertion made by the 1st Respondent in his pleadings as also in evidence that the payment were made in adhoc manner for going on with the work and not to effect the work at site.

Com.A.S.No.108/2017

42.b. If this ground is read, it is about the allegation against the learned Arbitrator about the appreciation of evidence about the revised bill submitted on 24.06.2013 and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The

nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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43. The Thirty First ground is that the Tribunal at Para No. 34 commits a grave error by referring to an I.A. filed by the 1 st Respondent on 16.04.2015 under which the 1 st Respondent had sought for certain documents as if to hold that the 1 st Respondent is required to produce documents when in fact the Tribunal has dismissed the said application by way of its Order dated 05.06.2015.

43.a. I have already discussed about this aspect while answering twentieth ground above. For the same reasons, I cannot accept the said contentions of the Petitioner. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

44. The Thirty Second ground is that the findings of the Tribunal at Para No 35 that the inadequacy pointed out by CBRE to the 1st Respondent were complied with while furnishing remaining bills is contrary to those remaining bills.

44.a. The learned Advocate for the Petitioner has argued that the inadequacy continued in the remaining bills, that Com.A.S.No.108/2017 having arrived at a conclusion that there were inadequacies in RA Bill No.1, that the Tribunal could not have held that there was delay on the part of the Petitioner in making payments of money, that the finding that there were separate adhoc recommendation and certification is not borne out by any records.

44.b. If this ground is read, it is about the appreciation of the Tribunal about the inadequacy pointed out by the CBRE while furnishing remaining bills and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Com.A.S.No.108/2017 Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

45. The Thirty Third ground is that at Para No. 36, the Tribunal committed grave errors in holding that the adhoc recommendation was a final certification and by accepting the contention of the 1st Respondent that the sum of Rs. 9,61,906/- which was withheld could not have been withheld.

45.a. The learned Advocate for the Petitioner has argued that the Tribunal has not referred Ex.R.6, Ex.R.7, Ex.R.11 in respect of the said aspect, that thus the finding that a sum of Rs. 28,63,944/- was due from the Petitioner, to the 1 st Respondent is bereft of any merits and contrary to any records, that there is no basis for the same and such a finding is contrary to the contractual document available before the Tribunal, that the Tribunal could not have gone beyond the contract to arrive at such a finding, that the Tribunal had a duty to implement the contract as it is and not on the basis of any inferences.

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45.b. If this ground is read, it is about the appreciation of the Tribunal about the withholding of sum of Rs.9,61,906/- by the Petitioner and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re- appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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46. The Thirty Fourth ground is that the finding at Para No. 37 relating to RA Bill 3 is contrary to the records and the contract.

46.a. The learned Advocate for the Petitioner has argued that the Tribunal having observed that the RA Bill No.3 was raised for an amount Rs. 73,85,862/- but final certification was made for Rs. 15,18,466/- would itself establishes the malafides on the part of the 1st Respondent which the Tribunal ought to have taken note of, that on the one hand the Tribunal contends that the payment advice is certification and it has to be accepted in totality and on the other hand the Tribunal has sought to find faults with the said payment advice, that the Tribunal ought not to have traveled beyond the references made and the contentions urged to arrive such a finding, that this being without prejudice to the fact that there was no certification was made by the PMC and all these payments were adhoc payments and further even while recommending payments it had been categorically stated that the required documents have not been submitted with the bills.

46.b. I have already discussed about adhoc payment certification by PMC while answering earlier grounds. I need not prolong my discussion to avoid repetition. For the same Com.A.S.No.108/2017 reasons, I cannot accept the said contentions of the Petitioner. Hence, this ground is not available for the Petitioner under Sub- section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

47. The Thirty Fifth ground is that the finding of the Tribunal at Para No. 38 relates to RA Bill 4 that the same was initially raised for Rs. 98,06,902/- and submitted to CBRE on 09.10.2013 and according to the Tribunal the same was certified by PMC on 11.11.2013 for a sum of Rs. 35,03,878/-, that the Tribunal comes to wrong conclusion that in the said payment advice a sum of Rs. 31,43,813/- is stated to have been paid.

47.a. The learned Advocate for the Petitioner has argued that all these findings are dehors the documents on evidence on record and or not supported by any evidence, that in the table made out by the Tribunal the due amount is at Rs. 1,30,62,320/- on account of RA Bill No.1 to 4, that this amount is even more than what is claimed by the 1 st Respondent, that this itself would indicate that the RA Bills submitted by the 1 st Respondent were completely confusing, not proper and do not Com.A.S.No.108/2017 satisfy the requirements of the contract, that the finding of the Tribunal in respect of RA Bill No. 1 to 4 is a baseless inference and presumption on part of the Tribunal.

47.b. If this ground is read, it is about the appreciation of the Tribunal about the RA Bill No. 1 to 4 and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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48. The Thirty Sixth ground is that the finding of the Tribunal at Para No. 39 that Ex.R.11 is a Bill containing voluminous documents submitted by the 1 st Respondent is false.

48.a. The learned Advocate for the Petitioner has argued that the Tribunal has ignored the fact that the 1 st Respondent has not produced any documentary evidence which would support the claim of any amounts as claimed by the 1 st Respondent, that Ex.R.11 was submitted by the 1 st Respondent but was confronted to the witness of the 1 st Respondent by the Petitioner, that while dealing with

the aspects the deductions made by the Tribunal instead of referring documents on record again misapplied itself thereby misdirecting itself by holding that any aspect relating to this evidence ought to have been led by the Petitioner through PMC, that the Tribunal failed to take note of the fact that the 1st Respondent by not leading any evidence had not discharge the burden that it had carried out the works in a proper manner, that instead the Tribunal wrongfully shifted the burden on the Petitioner which could not be done under law, that though the Tribunal holds that the inadequacy and deficiency ought to have been made note of in the daily progress report and the minutes of meeting, the Tribunal has not considered the deduction made by CBRE itself, Com.A.S.No.108/2017 it is not in dispute that CBRE had made such deduction, that the Tribunal again misdirected itself by holding that the CBRE ought to have made note of it on the daily progress report when in fact daily progress report were submitted by the 1 st Respondent and not prepared by CBRE, that the various minutes of meeting have categorically referred to the inadequacy of works carried out by the 1st Respondent and have not been looked into and have been ignored by the Tribunal, that the documentary evidence being on record, the Tribunal misapplied itself by holding that the Engineers of the Petitioner ought to have been examined, that the examination or otherwise of Mr. G. Ethiraj as a witness has nothing to do with the matter when the documents were on record and the correspondences on record indicated and established the facts, that it was for the 1 st Respondent to establish that it had carried out the works in a proper and required manner.

48.b. If this ground is read and the above argument of the Advocate for the Petitioner is concerned, it is about the appreciation of the Tribunal about Ex.R.11 and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Com.A.S.No.108/2017 Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

49. The Thirty Seventh ground is that the finding a Para No. 43 by the Tribunal is contradictory, that on the one hand it holds that the dewatering system was place and the works was going on as usual and on the other hand refers to CBRE instructions to repair the damaged header lines.

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49.a. The learned Advocate for the Petitioner has argued that if the header lines were damaged, the question of dewatering system working would not at all arise, that the Minutes of Meeting of 11.10.2013 were much after the 1 st Respondent abandoned the site on 18.09.2013, that the Daily Progress Report of 16 to 19 and 21.10.2013 do not include reference to any work done by the 1 st

Respondent, that the Tribunal has misdirected itself as regards this document.

49.b. If this ground is read and the above arguments of the Advocate for the Petitioner is concerned, it is about the finding of the Tribunal in respect of Minutes of Meeting and the damage caused to dewatering system and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the Com.A.S.No.108/2017 decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

50. The Thirty Eighth ground is that the Tribunal misapplied itself in Para No. 44 by holding that the CBRE would incorporate the deficiency in daily progress report will in fact daily progress report were submitted by the 1 st Respondent and not prepared by CBRE.

50.a. The learned Advocate for the Petitioner has argued that the entire reasoning in Para No.44 is contrary to evidence and contract between the parties, that it is not understood as to on what basis the Tribunal has concluded that nothing escaped the watchful eyes of the Engineers at site, that work was going on at multiple places and the engineers were to supervise each and every work, all the time they were at site to broadly manage the work, that the said engineers were not preparing any daily progress report, that the works done had to be Com.A.S.No.108/2017 certified by CBRE by furnishing necessary measurement sheets and documents which were not so furnished.

50.b. If this ground is read and the above argument of the Advocate for the Petitioner is concerned, it is about the finding of the Tribunal in respect of the Daily Progress Reports and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the Com.A.S.No.108/2017 setting aside of arbitral award on this ground is thwarted and rejected.

51. The Thirty Ninth ground is that the Tribunal without even considering the documentary evidence on record has come to a wrongful conclusion that an engineer of CBRE or Petitioner was to have been examined in the matter.

51.a. If this ground is read, it is in the nature and tenor of appeal. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner Com.A.S.No.108/2017 calling for the setting aside of arbitral award on this ground is thwarted and rejected.

52. The Fortieth ground is that the Tribunal has wrongly come to a conclusion that PW.1 is a highly qualified person having rich experience in pile foundation when in fact the works carried out as also his cross-examination would establish otherwise.

52.a. If this ground is read, it is in the nature and tenor of appeal. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner Com.A.S.No.108/2017 calling for the setting aside of arbitral award on this ground is thwarted and rejected.

53. The Forty First ground is that the Tribunal has not even looked into the cross-examination PW.1.

53.a. If this ground is read, it is in the nature and tenor of appeal. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the

decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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54. The Forty Second ground is that it is not known on what basis the Tribunal at Para No. 46 of the Award come to a conclusion that 32 dewatering pumps had been installed by the 1st Respondent when in fact as per the records only 32 number of pumps had been installed.

54.a. The learned Advocate for the Petitioner has argued that the records which had been marked by the 1 st Respondent and produced along with RA Bill No. 3 and 4 would categorically and unimpeachably establish that the DG sets were switched off and not working, that when the DG sets were not working, the pumps automatically switching on would not arise at all and hence the said finding is contrary to evidence and contractual agreement between the parties.

54.b. If this ground is read and the above argument of the Advocate for the Petitioner is concerned, it is about the finding of the Tribunal in respect of 32 dewatering pumps and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the Com.A.S.No.108/2017 findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

55. The Forty Third ground is that the Tribunal has also ignored several correspondences made by the Petitioner and the PMC which were on record.

55.a. If this ground is read, it is in the nature and tenor of appeal. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that Com.A.S.No.108/2017 it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

56. The Forty Fourth ground is that the Tribunal has misapplied and misdirected itself by holding that water gushed from Mantri Flora side when in fact water accumulated in the property of Mantri Flora on account of the improper works carried out by the 1st Respondent which has been accepted and observed by an independent surveyor.

56.a. The learned Advocate for the Petitioner has argued that the an insurance surveyor was appointed by the insurance company in terms of Ex.R.112, that the reports submitted though available with the 1 st Respondent, the same was suppressed by him, that the sewage pipe on which is on the Com.A.S.No.108/2017 eastern side as nothing to do with the damaged caused on the western side, they being on opposite ends and separated by more than 330 feet, that the Tribunal has completely misapplied itself and it appears that the facts have not been understood by the Tribunal.

56.b. If this ground is read and the above argument of the Advocate for the Petitioner is concerned, it is about the finding of the Tribunal in respect of the direction of the sewage pipe as observed by the Tribunal and hence, this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) Com.A.S.No.108/2017 and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

57. The Forty Fifth ground is that the Tribunal has misdirected itself while appreciating Ex.P.111 being the letter dated 04.09.2013, sent by Mr. G Ethiraj to Mantri Flora Complex.

57.a. The learned Advocate for the Petitioner has argued that it is a matter of fact and record that the Petitioner was supporting the claim of the 1st Respondent in all manner possible in respect of the insurance claim and that the Petitioner was acting as per the information and instructions provided by 1st Respondent, that the statements made both by 1st Respondent and the Petitioner have been considered by an independent insurance surveyor and the said surveyor has submitted his report after having conducted an analysis of the works done whereas the letters at Ex.P.111 and Ex.P.114

were issued on the basis of instructions and information of the 1 st Respondent, that an expert in the field, appointed by the insurance company, having come to a conclusion that the works carried out by the Respondent No.1 were improper, not in Com.A.S.No.108/2017 accordance with the drawings as also the Engineering practice, the report of the insurance surveyor ought to have been accepted by the Tribunal, more so, when such a finding as not been challenged by the insured, i.e. the 1 st Respondent from 2014 till the date of award, that admittedly no steps have been taken by the 1st Respondent to challenge the report which would lease to an inescapable conclusion, that the report is accepted by the 1st Respondent, that the report being subsequent to letters at Ex.P.111 and Ex.P.114, the question of the subsequent report being watered down by earlier letters would not at all arise, more so, when Ex.P.111 has been considered by the Insurance Surveyor.

57.b. The learned Advocate for the 1st Respondent has argued that the dispute arose between the parties after the mishap which happened on the intervening night of the 3 rd and 4th September 2013, when a portion of the compound wall of Mantri Flora collapsed due to heavy rains causing damage to dewatering system and 64 piles, that in relation to which the 1 st Respondent had taken a CAR Policy (Ex.P.115), that the Ex.P.111/Letter of Petitioner through Sri. G Ethiraj dated 04.09.2013, which also forms part of Ex.P.115, clearly states that the mishap happened on account of overflow on the western side, undertaking the existing foundation, that the Com.A.S.No.108/2017 RW.2 submitted a report and as per that report he has categorically admitted that the work executed by 1 st Respondent was in order and deflection of the piles on western side was on account of the sudden gush of water on the Mantri side, that having regard to the evidence of RW.2, on material aspects has supported the case of the 1 st Respondent and there can be no doubt about the quality of the work done by the 1 st Respondent, that the Petitioner who had admitted its liability in the Ex.R.60/Letter dated 09.12.2013, had taken a U-Turn after the loss assessed by the Surveyor, who had opined that it was a result of bad engineering obviously referring to Ex.R.5, that according to surveyor the piles were embedded in loose soil instead of rock, that the letter dated 04.09.2013 written by the Petitioner (through Sri. Ethiraj to Mantri Flora) is a part of Ex.P.115 and was referred to by the surveyor to prima facie come to the conclusion that it was open to the Petitioner to proceed against Mantri Flora and not against the Insurance company, that however the surveyor found that the claim of the insured for damage caused to 64 pile beams is established, but turned down on the basis of the letter dated 04.09.2013.

57.c. This ground is more or less similar to that of Ground No. 36. I have discussed about the contentions of both parties, while answering Ground No. 36. Hence for the same reasons, I Com.A.S.No.108/2017 cannot accept the contentions of the Petitioner. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

58. The Forty Sixth ground is that the Tribunal has apparently arrived at a conclusion that the letter was sent post collapse of the compound wall since the letter is dated 04.09.2013 and according to the 1st Respondent compound wall collapsed in the night of 03.09.2013, when in fact the collapse happened on 14.09.2013.

58.a. The learned Advocate for the Petitioner has argued that the finding of the Tribunal at Para No. 49 Page No. 31 of the Award is extremely contradictory and does not make any sense, that it is not known as to how the independent insurance surveyor's report Ex.R.12 dated 28.02.2014 could be watered down by Ex.P.111 dated 04.09.2013 and / or the Ex.P.114/letter dated 26.02.2014, which were prior to Ex.R.12.

58.b. The learned Advocate for the Respondent No.1 has argued that it is submitted that the Petitioner was also Com.A.S.No.108/2017 questioning the competence of the surveyor as to the findings recorded by him, that in fact the Petitioner has addressed Ex.P.114/ Letter to the higher authorities of the Claims Hubs of Insurance Company wherein the Petitioner has stated that the rejection of the claim by the surveyor is not correct and that the work carried out by the 1 st Respondent is correct in all respects, that the Petitioner having stated in Ex.P.114 that the surveyors report is wrong cannot now rely on it to blame the 1 st Respondent to any extent, that the question of the liability of the insurer is not a closed chapter, that it is even now open to the Petitioner to proceed against the insurance company and recover the amounts.

58.c. This Ground is more or less similar to Ground No. 44, wherein both parties have argued about Ex.P.114. This is only further contention about the appreciation of the Ex.P.114 by the Tribunal. When such being the case, the said contention of the Petitioner is not accepted for the same reasons given while answering Ground No. 44. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

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59. The Forty Seventh ground is that the finding of the Tribunal in respect of alleged RA Bill No.5 at Para No. 56 and 27 at Page No. 37 - 38 of the Award or contradictory.

59.a. I have already discussed about the finding and observation of the Tribunal about RA Bill No.5 while answering Ground Nos . 9 and 12 above. For the same reasons I cannot accept the said arguments of the Advocate for the Petitioner. Hence, this ground is not available for the Petitioner under Sub- section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

60. The Forty Eighth ground is that the finding of the Tribunal that in terms of Ex.P.73 there was unequivocal indication that the Petitioner owed monies to the 1 st Respondent prior to mishap and had assured release the same and therefore it was a justified demand is contrary to the evidence on record.

60.a. The learned Advocate for the Petitioner has argued that the Ex.P.73/ Minutes of Meeting dated 11.10.2013, which is much subsequent to the mishap which according to the 1 st Com.A.S.No.108/2017 Respondent occurred on 03.09.2013, and according to the Petitioner

occurred on 13.09.2013, that therefore Ex.P.73 being a demand of dues prior to the mishap is false, that Ex.P.73 does not speak of the quantum of money and hence that cannot be a demand as regards the dues as construed by the Tribunal.

60.b. I have already discussed about the observation and finding of the Tribunal in respect of Ex.P.73, while answering Ground No.37. For the same reasons I cannot accept the said arguments of the Advocate for the Petitioner. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

61. The Forty Ninth ground is that the finding of the Tribunal at Para No. 66 and 67 as regards the rain is again misconceived.

61.a. If this ground is read, it is in the nature and tenor of appeal. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and Com.A.S.No.108/2017 thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

62. The Fiftieth ground is that the finding of the Tribunal that the sewage line on the eastern side and permitted rain on the western side negated to the adjoining residential complex is not supported by any evidence on record.

62.a. If this ground is read, it is in the nature and tenor of appeal. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are Com.A.S.No.108/2017 correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019)

- S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

63. The Fifty First ground is that the finding of the Tribunal that Ex.R.2 was incomplete and second opinion report of Geocon resulted in descoping of excavation work is not supported by any evidence on record.

63.a. The learned Advocate for the Respondent No.1 has argued that it was pointed out that the Petitioner has misled all the parties concerned, while it served Ex.R.2/Soil Test Report, that due to the own acts of Petitioner delay has occasioned. Elaborating his arguments he has drawn my attention to the following aspects:-

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>
> a) Delay in marking of the piles by 11 days and in relation to which several correspondences have taken place between the 1st Respondent and PMC.
>
> b) Delay in taking decision about the piling work to be taken or not in so far as the south western side (curved portion). Initially there was a Meeting between the Petitioner/ PMC/ MCPL/ 1st Respondent on 09.05.2013, wherein Sri. Sailesh Mahimthura suggested that to ascertain the Rock Profile of the south western portion, pits have to be dug, that it was pointed out by the 1st Respondent on 10.05.2013 itself as could be seen from Ex.P.27 and Ex.P.83, that if the suggestion of Sri. Sailesh Mahimthura were to be followed, it would virtually make it impossible to carry out piling work in the South-Western side, that Ex.R.76 records the visit of Sri. Sailesh Mahimthura to the site on 27.06.2013.

He has drawn my attention to Item No.1 of Ex.R.76, which reads as follows:-

> General Excavation details to be followed at (besides Curved ramp, where micro pilling not carried out) southern side. MCPL informed that adjacent to curve portion short creating as well as Soil nailing not required. MCPL will send the general Com.A.S.No.108/2017 excavation details by next week. Action by MCPL, Target date 04.07.2013' By drawing my attention to the same, he has argued that the above minutes of the meeting makes it amply clear MCPL, has taken nearly 54 days to decide on the need of piling, soil nailing, short-creating on the south-western side (curved portion), that the time taken by MCPL to decide upon the said issue cannot be attributed to the 1 st Respondent.

c) On the Eastern side of the site, a sewage line was situated in the land in question, very near to the Trinity Acres and Woods, which was not shown during the time of negotiation and came to the knowledge of the 1 st Respondent later, that it is submitted that Ex.R.5 was not given to the 1 st Respondent by the Petitioner, during the negotiation process or at the time of LOI, that it was furnished to the 1st Respondent at the time of making of the site for location of pile bearing, that is was only when the drawing at Ex.R.5 was furnished to the 1 st Respondent the 1st Respondent came to know about the existence of the sewerage line on the eastern side of the property, since there is description in Ex.R.5, about the existence of the sewerage line, that the sewage line was weak and

broke down during the time of execution of work by the 1st Respondent and prevented the work being carried by 1st Respondent, that the compound wall Com.A.S.No.108/2017 of Trinity Wood and Acres fell down, which also hampered the progress of work, that several times the Petitioner and PMC were informed about the leakage of the sewer line on the Eastern side and that remedial measures have to be taken up, that neither the Petitioner nor the PMC paid any attention to the said fact, that the 1st Respondent had to spend substantial amounts for repair of the same, the suggestion of suggesting a contractor for replacing the sewer line was ruled out by the Petitioner, that the 1st Respondent was left to spend for itself in so far as the sewer line is concerned.

63.b. By considering the said arguments of the learned Advocate for the 1st Respondent, I am of the opinion that this ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary Com.A.S.No.108/2017 in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

64. The Fifty Second ground is that the finding of the Tribunal at Para No. 80 that there was delay of 11 days in marking the areas is contrary to the records.

64.a. The learned Advocate for the Respondent No.1 has argued that the crux of the matter relates to the delay, that the question is whether delay occasioned on account of the 1 st Respondent or by the Petitioner, that 1st Respondent has not committed any breach of LOI dated 15.03.2013 nor was it responsible for delay in execution of the work, that having regard to the circumstances mentioned in the Impugned Award there is absolutely no delay on the part of the 1 st Respondent in executing the work, that the delay is mainly attributed to the Petitioner due to circumstances mentioned in the Impugned Award couples with the fact that the Petitioner violated Com.A.S.No.108/2017 payment in terms of Ex.P.1, Clause No.2.A cursory glance at Ex.P.6, which is the payments details, would indicate that Petitioner was deliberately delaying payment with a view to gain time.

64.b. About this aspect, I have already discussed while answering Ground No. 32. For the same reasons I cannot accept the said contentions of the Petitioner. Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

65. The Fifty Third ground is that the finding of the Tribunal that whenever the PMC insisted on the 1 st Respondent to speed up work, the 1st Respondent had insisted for payment of the amounts due

to it immediately is also contrary to the records.

65.a. This ground is in the nature and tenor of appeal. In order to answer this ground I have to make re-appreciation of the evidence adduced before the learned Arbitrator. Section 34 of the Arbitration & Conciliation Act, 1996 does not empower Com.A.S.No.108/2017 the Courts to re- appreciate and re-evaluate the evidence produced before the Arbitral Tribunal and thereafter to judge if the findings of the Arbitral Tribunal are correct or wrong. The Superior Courts have repeatedly held that it is not permissible to a Court to examine the correctness of the findings of the arbitrator, as if it were sitting in appeal over his findings. The nature of proceedings under Section 34 of the Act is summary in nature as held in the decision reported in (2019) - S.C.C. Online - S.C. - 1244 = (2019) 9 - S.C.C. - 462 (Canara Nidhi Limited vs. M. Shashikala). Hence, this ground is not available for the Petitioner under Sub-section (2) and Sub- section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

66. The Fifty Fourth ground is that the finding of the Tribunal at Para No. 84 Page No. 58 and 59 that the Petitioner is avoiding important and useful admissions in Ex.P.111, Ex.P.114, Ex.R.60 etc., is without any basis.

66.a. I have already discussed about the Ex.P.111 and 114, while answering Ground No. 46. For the same reasons I cannot accept the said arguments of the Advocate for the Petitioner.

Com.A.S.No.108/2017 Hence, this ground is not available for the Petitioner under Sub- section (2) and Sub-section (2-A) of Section 34 of the Arbitration & Conciliation Act. Thus, the challenge flanked by the Petitioner calling for the setting aside of arbitral award on this ground is thwarted and rejected.

67. The scope of this court is limited with regard to Section 34 of the Act. The position of law stands crystallized today, that findings, of fact as well as of law, of the arbitrator/Arbitral Tribunal are ordinarily not amenable to interference under Section 34 of the Act. The scope of interference is only where the finding of the Tribunal is either contrary to the terms of the contract between the parties, or, ex facie, perverse, that interference, by this court, is absolutely necessary. The arbitrator is the final arbiter on facts as well as in law, and even errors, factual or legal, which stop short of perversity, do not merit interference under Section 34 of the Act. The Hon'ble High Court of Delhi in the decision reported in 2015 - S.C.C. OnLine - Del - 13192 (P.C.L. Suncon (JV) vs. NHAI), in Paragraph No. 24 has held as follows :-

> "24. As a postscript, this Court believes that it is imperative to sound a word of caution. Notwithstanding the considerable jurisprudence Com.A.S.No.108/2017 advising the Courts to remain circumspect in denying the enforcement of arbitral awards, interference with the awards challenged in the petitions before them has become a matter of routine, imperceptibly but surely erasing the distinction between arbitral tribunals and courts. Section 34 jurisdiction calls for judicial restraint and an awareness that the process is removed from appellate review. Arbitration as a form of

> alternate dispute resolution, running parallel to the judicial system, attempts to avoid the prolix and lengthy process of the courts and presupposes parties consciously agreeing to submit a potential dispute to arbitration with the object of actively avoiding a confrontation in the precincts of the judicial system. If a court is allowed to review the decision of the arbitral tribunal on the law or on the merits, the speed and, above all, the efficacy of the arbitral process is lost."

68. The Hon'ble Supreme Court in the decision reported in (2006) 11 - S.C.C. - 181 (McDermott International Inc. vs. Burn Standard Co. Ltd. and Ors.), has held as follows :-

> "52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving Com.A.S.No.108/2017 the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."

69. Thus, it is observed and held that the arbitral award is not marred by any patent illegality, as there is no contravention of the substantive law of India, which would result in the death knell of an arbitral award. It is also observed that there is no patent illegality in the arbitral award, which must go to the root of the matter. The arbitral award is also a well reasoned and a speaking award. The arbitral award is also held to not be in contravention of Section 28(3) of the Act, which pertains to the terms of the contract, trade usages applicable to the nature of contract and substance of dispute.

70. The Arbitration and Conciliation (Amendment) Act, 2015 made major changes to Section 34. The changes were suggested by the 246th Report of the Law Commission of India on Amendments to the Arbitration and Conciliation Act, 1996 of August 2014 and the Supplementary to the 246th Report of the Com.A.S.No.108/2017 Law Commission of India on Amendments to the Arbitration and Conciliation Act, 1996 of February 2015. These changes were aimed at restricting Courts from interfering with arbitral awards on the ground of "public policy." Accordingly, the amendment added "Explanation 2" to Section 34(2) as well as Section 2A. Explanation 2 of Section 34(2) states -

> "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."

71. Because of this amendment, Courts would no longer be able to interfere with the award passed by the arbitrator. The explanation makes it especially clear that in no way would a Court be entailed to review the award on merits of the dispute. The learned Advocate for the Petitioner has relied on a decision reported in 2003 (5) - S.C.C. - 705 (ONGC vs. Saw Pipes Limited). However, after amendment to Arbitration and Conciliation Act, Section 2A also curtails the scope of interpretation

of "patently illegal" as propounded in the said decision reported in 2003 (5) - S.C.C. - 705 (ONGC vs. Saw Pipes Limited). Section 2A states :-

> "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 Com.A.S.No.108/2017 is vitiate 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 law or by reappreciation of evidence."

72. Thus, Courts can no longer reappraise evidence or set aside awards merely because the Arbitral Tribunal has made errors when dealing with the same.

73. Hence, the scope of interference is only where the finding of the Tribunal is either contrary to the terms of the contract between the parties, or, ex facie, perverse, that interference, by this court, is absolutely necessary. The Arbitrator is the final arbiter on facts as well as in law, and even errors, factual or legal, which stops short of perversity, does not merit interference under Section 34 of the Arbitration & Conciliation Act, 1996. Courts can no longer reappraise evidence or set aside awards merely because the Arbitral Tribunal has made errors when dealing with the same. For the said aspect, the learned Advocate for the Respondent has relied on a decision reported in 2015 (5) - S.C.C. - 698 (Navodaya Mass Entertainment Limited vs. J.M. Combines).

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74. Per-contra, the learned Advocate for the Petitioner has relied on a decision reported in 2015 (3) - S.C.C. - 49 (Associate Builders vs. DDA). The ratio of the said decision is to be appreciated along with the subsequent decisions of the Hon'ble Supreme Court.

75. Subsequent to the said decision, In the decision reported in (2017) 13 - SCALE - 91 (SC) (Venture Global Engineering LLC and Ors vs. Tech Mahindra Ltd. and Ors), the Hon'ble Supreme court has held as follows:-

> "The Award of an Arbitral Tribunal can be set aside only on the grounds specified in Section 34 of the Arbitration & Conciliation Act and on no other ground. The Court cannot act as an Appellate Court to examine the legality of Award, nor it can examine the merits of claim by entering in factual arena like an Appellate Court."

76. A similar view is also taken in the decision reported in (2017) 14 - SCALE - 240 (SC) (Sutlej Construction vs. The Union Territory of Chandigarh).

77. In the decision reported in 2019 (15) - S.C.C. - 131 (Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India Ltd.), the Hon'ble Com.A.S.No.108/2017 Supreme Court has once again reiterated the law related to the examination by a Court of an Award under

Section 34 of the Arbitration & Conciliation Act, 1996 and has held as under:-

> "34. What is clear, therefore, is that the expression public policy of India, whether contained in Section 34 or in Section 48, would now mean the fundamental policy of Indian law as explained in paragraphs 18 and 27 of Associate Builders (supra), i.e., the fundamental policy of Indian law would be relegated to the "Renusagar" understanding of this expression. This would necessarily mean that the Western Geco (supra) expansion has been done away with. In short, Western Geco (supra), as explained in paragraphs 28 and 29 of Associate Builders (supra), would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, in so far as principles of natural justice are concerned, as contained in Sections 18 and 34(2) (a) (iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in paragraph 30 of Associate Builders (supra).
>
> 35. It is important to notice that the ground for interference in so far as it concerns "interest of India"

has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paragraphs 36 to 39 of Associate Com.A.S.No.108/2017 Builders (supra), as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paragraphs 18 and 27 of Associate Builders (supra), or secondly, that such award is against basic notions of justice or morality as understood in paragraphs 36 to 39 of Associate Builders (supra). Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco (supra), as understood in Associate Builders (supra), and paragraphs 28 and 29 in particular, is now done away with.

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under subsection (2A), added by the Amendment Act, 2015, to Section 34.Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within the fundamental policy of Indian law, namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the back door when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that re-

appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the Com.A.S.No.108/2017 ground of patent illegality appearing on the face of the award.

39. To elucidate, paragraph 42.1 of Associate Builders (supra), namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Paragraph 42.2 of Associate Builders (supra), however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

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

41. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being aground for challenge under public policy of India, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

Com.A.S.No.108/2017 Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse."

78. In the decision reported in 2019 (16) - SCALE - 823 (Hindustan Construction Company Limited & Anr. vs. Union of India & Ors.), the Hon'ble Apex Court has held as under:-

> "49. Further, this Court has repeatedly held that an application under Section 34 of the Arbitration Act, 1996 is a summary proceeding not in the nature of a regular suit - see Canara Nidhi Ltd. v. M. Shashikala 2019 SCC Online SC 1244 at paragraph 20. As a result, a court reviewing an arbitral award under Section 34 does not sit in appeal over the award, and if the view taken by the arbitrator is possible, no interference is called for - see Associated Construction v. Pawanhans Helicopters Limited. (2008)16 SCC 128 at paragraph 17.
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> 50. Also, as has been held in the recent decision Ssangyong Engineering & Construction Co. Ltd. vs. NHAI 2019 SCC Online SC 677, after the 2015 Amendment Act, this Court cannot interfere with an arbitral award on merits."

79. The Hon'ble Supreme Court in the decision reported in 2020 - SCC Online - S.C. - 466 (Patel Engineering Ltd. vs. Com.A.S.No.108/2017 North Eastern Power Corporation Ltd) has once again exposited the 'patent illegality' ground, appearing in Section 34 (2A) of the Arbitration and Conciliation Act, 1996. The most significant part of this judgment is the recognition and re-affirmation given to the test of patent illegality, as set out in Paragraph (42.3) of the above-mentioned decision reported in 2015 (3) - S.C.C. - 49 (Associate Builders vs. DDA) and which was reiterated in Paragraph (40) of the decision reported in 2019 (15) - S.C.C. - 131 (Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India Ltd.). The aforementioned test of 'patent illegality' lays down that any contravention of Section 28 (3) of the Arbitration & Conciliation Act, 1996 is deemed to be a sub-head of patent illegality. According to it, an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in such a way that it could be said to be something that no fair minded or reasonable person could do, the same will render the award 'patently illegal'.

80. By keeping in mind about the said legal aspects, I am of the opinion that the Arbitral Award is not marred by any patent illegality, as there is no contravention of the substantive law of India, which would result in the death knell of an Arbitral Award. It is also observed that there is no patent illegality in the Com.A.S.No.108/2017 Arbitral Award, which must go to the root of the matter. The Arbitral Award is also a well reasoned and a speaking award. The Arbitral Award is also held to not be in contravention of Section 28(3) of the Arbitration & Conciliation Act, which pertains to the terms of the contract, trade usages applicable to the nature of contract and substance of dispute.

81. On a parting note, I would like to add, that the challenge to the various clauses of contract by the Petitioner under the present petition is not tenable. It is accordingly, held that the Arbitral Award is neither against the fundamental policy of India nor in contravention of law. Therefore, I find no perversity in the Arbitral Award and the same is upheld.

82. Having given my careful consideration to the submissions urged and the complete case record in the preceding paragraphs of this judgment, I am of the view that is not a fit and proper case for exercise the jurisdiction of this court under Section 34 of the Arbitration & Conciliation Act and interfere with the Arbitral Award and the same is upheld.

83. As far as reliance placed by the Learned Advocate for the Petitioner on the recent judgment of the Hon'ble Apex Court Com.A.S.No.108/2017 reported in 2021 - S.C.C. Online - S.C. - 508 (PSA Sical Terminals Pvt. Ltd. vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others) is concerned, the Hon'ble Apex Court has held that a decision, which is perverse, though may not be a ground for challenge under public policy of India, however, the same can certainly amount to a patent illegality appearing on the face of the award. The Hon'ble Apex Court has further held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision, would be perverse and liable to be set aside.

84. In my humble opinion, it cannot be said, in the present matter, that finding recorded by the Learned Arbitrator is based on no evidence or it has ignored vital evidence before arriving at the decision. A bare perusal of the award passed by the Learned Arbitrator shows that evidence of both

the parties have been considered in detail and the Learned Arbitrator has taken into account each and every submissions advanced by the parties before him, including appreciation of evidence in proper manner before arriving at the decision to pass the impugned award and as such, the judgment cited by the Learned Counsel for the Petitioner, is of little assistance to him.

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85. For the said aspect, I wish to refer a recent decision of the Hon'ble Apex Court reported in (2021) 3 - S.C.C. - 308 (Anglo American Metallurgical Coal Pty. Ltd. vs. MMTC Limited), wherein it has laid down the parameters of judicial review and Courts have been permitted to interfere only if there is a ground of patent illegality or violation of fundamental policy of Indian law and if a possible view is based on oral and documentary evidence led in the case, which cannot be characterized as being either perverse or being based on no evidence and as such, no interference is permissible. The relevant portion of the judgment is reproduced hereunder:-

> "48. Given the parameters of judicial review laid down in Associate Builders, it is obvious that neither the ground of fundamental policy of Indian law, nor the ground of patent illegality, have been made out in the facts of this case, given the fact that the majority award is certainly a possible view based on the oral and documentary evidence led in the case, which cannot be characterized as being either perverse or being based on no evidence."

86. The learned Advocate for the 1st Respondent has relied on a recent Judgment of the Hon'ble Supreme Court in Delhi Com.A.S.No.108/2017 Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Limited in Civil Appeal No.5627/2021 (arising out of SLP (C) No. 4115/2019) decided on 09.09.2021. In the said judgment, the Arbitral Award which was challenged before the Hon'ble High Court under Section 34 was dismissed and in appeal under Section 37. The Division Bench of Hon'ble High Court has allowed the appeal and set aside the award. In this judgment, the Hon'ble Supreme Court has set aside the order of the Division Bench. In the said Judgment, the Hon'ble Supreme Court in Para 24 has held as under:-

> ["24. This court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by courts while examining the validity of the arbitral awards. The limited grounds available to courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the objection of the 1996 Act and the endeavours made to preserve this court, which is minimal judicial Com.A.S.No.108/2017 interference with arbitral awards. That apart, several judicial pronouncements of this court would become a dead letter if arbitral

awards are set aside by categorizing them as perverse or patently illegal without appreciating the contours of the said expressions."

87. The Hon'ble Supreme Court at Para 35 of the said Judgment has held that as the arbitrator is the sole judge of the quality as well as the quantity of the evidence, the task of being a judge on the evidence before the Tribunal does not fall upon the court in exercise of its jurisdiction under Section 34. The Hon'ble Supreme Court has also held in Para 39 of the said Judgment that construction of the contract is within the jurisdiction of the Tribunal and merely because another view is possible, the court cannot interfere with such construction and substitute its own view.

88. On going through these Judgments, it makes further clear that Arbitrator is sole judge of the quality and quantity of the evidence and construction of contract is within the jurisdiction of the Tribunal and the court cannot lightly interfere with the award passed by the learned Arbitrator. On considering the facts of the present case, as held in this Judgment there are no grounds to set aside the award of the learned Arbitrator under Com.A.S.No.108/2017 Section 34 of the Act. The Hon'ble Supreme Court in this Judgment has even held that patent illegality which do not go to the root of the matter and every error of law committed by the Arbitral Tribunal could not fall within the expression patent illegality.

89. Relying upon the law laid in the above-mentioned decision reported in 2015 (5) - S.C.C. - 698 (Navodaya Mass Entertainment Limited vs. J.M. Combines), it can be said that not only the reasoning of Arbitral Tribunal are logical, but all the material and evidence were taken note of by Arbitral Tribunal and this Court cannot substitute own evaluation of conclusion of law or fact to come to the conclusion other than that of Arbitral Tribunal. Cogent grounds, sufficient reasons have been assigned by Arbitral Tribunal in reaching the just conclusion and no error of law or misconduct is apparent on the face of the record. This Court cannot re-appraise the evidence and it is not open to this Court to sit in the appeal over the conclusion/findings of facts arrived at by Arbitral Tribunal. Re-

appraisal of the matter cannot be done by this Court. No error is apparent in respect of the Impugned Award. I do not find any contradiction in the observations and findings given by Arbitral Tribunal. The Impugned Award does not suffer from vice of Com.A.S.No.108/2017 irrationality and perversity. The conclusion of the Arbitral Tribunal is based on a possible view of the matter, so the Court is not expected to interfere with the award. Even impugned award passed by Arbitral Tribunal cannot be set aside on the ground that it was erroneous. The award is not against any public policy nor against the terms of contract of the parties. No ground for interference is made out. None of the grounds raised by the petitioner attract Section 34 of the Arbitration and Conciliation Act. Therefore, I answer this Point in Negative.

90. Point No. 2 :- Therefore, I proceed to pass the following Order.

ORDER The Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, is dismissed.

The Arbitral Award dated 01.06.2017 is hereby upheld.

The Petitioner shall pay the cost of this proceeding to the Respondent No. 1.

Office is directed to return the arbitral records to the Arbitration Center after the appeal period is over.

Com.A.S.No.108/2017 The Office is directed to send copy of this judgment to both parties to their email ID as required under Order XX Rule 1 of the Civil Procedure Code as amended under Section 16 of the Commercial Courts Act.

(Dictated to the Stenographer, typed by her directly on computer, verified and then pronounced by me in open Court on this the 03rd day of January, 2022).

(DEVARAJA BHAT.M), LXXXII Addl. City Civil & Sessions Judge, Bengaluru.

107 Com.A.S.No.108/2017 The Judgment is pronounced in Open Court. The operative portion of the said Judgment is as follows :-

> ORDER The Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, is dismissed.
>
> The Arbitral Award dated 01.06.2017 is hereby upheld.

The Petitioner shall pay the cost of this proceeding to the Respondent No. 1.

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Rule 1 of the Civil Procedure
Code   as   amended      under
Section 16 of the Commercial
Courts Act.

     (vide  my    separate   detailed
  Judgment dated 03.01.2022 ).
 108
              Com.A.S.No.108/2017
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(Typed to my dictation)

LXXXII ACC&SJ, B'LURU.