IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

Present:

The Hon'ble Justice Shekhar B. Saraf

AP No. 482 of 2021

IA NO: GA/1/2021

GA/2/2023

UNION OF INDIA AND ANR.

VS

RASHMI METALIKS LIMITED

AND

EC No. 99 of 2022

RASHMI METALIKS LIMITED

VS

UNION OF INDIA

For the Petitioner
(in AP/482/2021 and IAs) : Mr. Siddhartha Lahiri, Adv.
Mr. Deepak K Singh, Adv.
Mr. Souvik Nandy, Adv.

For the Respondent/Claimant
(in AP/482/2021 and IAs) : Mr. S.N. Mookherjee, Ld. AG
Mr. Samrat Sen, Sr. Adv.
Mr. Suman Dutt, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Amitava Mitra, Adv.
Ms. Manali Bose, Adv.
Ms. Antara Choudhury, Adv.
Mr. Subhrojyoti Mookherjee, Adv.
Mr. Naman Chowdhury. Adv.

Last Heard on : July 18, 2023

Judgment on : August 08, 2023

Shekhar B. Saraf, J.:

1. In the present case, there is an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') filed by the Union of India through South Eastern Railways seeking an order for setting aside of the arbitral award dated May 10, 2021 read with corrections dated August 18, 2021 to the said arbitral award. The award debtor/petitioner has filed two interlocutory applications being GA/1/2021 under section 36 of the Act seeking an order for stay on the entire arbitral award whilst pending adjudication of its Section 34 application and GA/2/2023 seeking amendment of the pleadings and grounds in Section 34 application.

2. In the meanwhile, the respondent/ claimant Rashmi Metaliks Limited has filed an execution application being EC/99/2022 seeking enforcement of the said arbitral award.

3. Pursuant to 2015 amendment to the Act, there is no automatic stay on the enforceability of an arbitral award in the event of filing and pendency of an application for setting aside the arbitral award. Instead the award debtor is required to successfully file a separate application for obtaining a stay on execution of the arbitral award.

4. Therefore, in this judgment, I have only dealt with the Railways interlocutory application being GA/1/2021 in AP/482/2021 seeking a stay on the entire arbitral award. The remaining applications including the Section 34 petition and its amendment shall be considered at a later stage.

Facts

5. The relevant facts for the determination of the matter are as follows –

   a. As per the Wagon Investment Scheme (hereinafter referred to as 'WIS') policy, 2005 initiated by the Indian Railways, independent investors were invited to invest in rakes or wagons and transfer it to the Railways to be merged by them in the common pool of wagons. In return, specified benefits such as freight concessions and rebates, guaranteed supply of a certain number of wagons per month, bonus rakes per month, etc., were to be extended by the Railways to those investors.

   b. The initial WIS agreement dated May 30, 2007 was executed between the East Coast Railways (hereinafter referred to as 'ECoR') and the respondent Rashmi Metaliks Limited, wherein the respondent/claimant agreed to

procure and handover five numbers of rakes as owners thereof to ECoR. The said five numbers of rakes [305 BOXN - HS wagons] along with five brake vans were to be merged and operated in the general pool of wagons of Indian Railways. As per the terms of the said agreement, the loading station for all the aforesaid rakes was at Nayagarh private siding and the unloading station for Rake 1 was at Sukinda Road, Rakes 2 & 3 were at Nirgundi and Rakes 4 & 5 were both at Sukinda Road and Nirgundi. Naturally, the loading and unloading stations were within the ECoR's jurisdiction.

c. As per clauses 5 and 6 of the said agreement, the respondent/claimant was assured of certain benefits in lieu of its investment in the rakes. The ownership of the BOXN - HS wagons procured by the respondent/claimant was to get transferred to the Indian Railways after a period of 10 years from the date on which the rakes would be handed over to the ECoR.

d. It appears, from the facts in hand, that the respondent/claimant provided three of the contractually agreed five rakes to ECoR on August 05, 2008, August 06, 2008 and May 09, 2009. The construction of private siding

at Nayagarh railway station under Khurda road division of ECoR by the claimant was delayed on account of factors completely beyond the control of the parties and the reasons contributing to such factors could be classified as force majeure events. Further, the claimant stated that the contractual clause in the said agreement obligating the claimant to set up its railway siding was rendered nugatory and unenforceable due to the aforesaid reasons that made performance of such covenant impossible.[1]

e. After due deliberations and discussions between the parties, a fresh WIS agreement dated June 15, 2009 was entered into by and between the claimant Rashmi Metaliks Limited and South Eastern Railways (hereupon, referred to as 'SER' as well as 'Railways'), whereby the rights, duties and obligations of the parties under the WIS in relation to first two rakes now came under the jurisdiction of SER.[2] The loading stations of the first two rakes being Rake 1 and Rake 2 were changed to Banspani Goods Shed under the SER's zonal jurisdiction, and Vizag Port and Gangavaram Port were included as unloading stations.

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[1] As per the WIS policy, private siding obligations will be governed by respective private siding agreements with the investor parties.

[2] It is to be noted here that the arbitral proceedings in the present matter emanated from this Agreement entered into by and with the SER.

f. Subsequently, the remaining two rakes of the contractually agreed five rakes were delivered to the ECoR on June 16, 2010. Therefore, out of a total of five rakes, the jurisdiction of three rakes continued with the ECoR, whereas, by virtue of the aforesaid agreement, the SER acquired jurisdiction over two rakes.

g. The respondent/claimant alleged breach of agreement and consequent loss of profits, denial of contractually guaranteed benefits, and other differences with the SER and by a notice dated January 04, 2016, the respondent/claimant invoked arbitration in terms of the said agreement with the SER. The invocation of arbitration was litigated before this Court and the present arbitral tribunal was appointed and entered upon reference on November 20, 2018.

h. Be that as it may, a tripartite agreement dated January 25, 2018 was also executed by and between the claimant, the ECoR and the SER, whereby the balance three rakes retained by the ECoR were transferred to the SER with mutually agreed changes in the loading station and unloading stations to Barajamnda – Barbil, and Nimpura,

Jhargram and Gokulpur respectively. The said agreement was executed as per the interim order dated December 05, 2017 of the Calcutta High Court in W.P. No. 23030 of 2017

To summarize the status of rakes with the SER, Rakes 1 and 2 were transferred to the SER on June 15, 2009, and on January 25, 2018, the SER received the remaining rakes being Rakes 3, 4 and 5.

i. In the present matter, the arbitration proceedings arose out of the agreement dated June 15, 2009 between the claimant and SER, wherein the arbitral tribunal passed an award dated May 10, 2021 awarding the claimant a sum in excess of Rs 325 crores, costs and interests therein. Further, on August 18, 2021, the said award was then corrected u/s 33(1)(a) of the Act and the claimant was awarded a sum of approximately Rs 1301 crores, costs and interests therein.

j. The petitioner, who is also the award debtor, has filed the present application under section 34 of the Act seeking an order for setting aside of the arbitral award dated May 10, 2021 read with corrections dated August 18, 2021 to the said arbitral award. The petitioner has further filed an application under section 36 of the Act seeking an order for

stay on the entire award. In the meanwhile, the respondent/claimant, who also happens to be the award holder, initiated execution proceedings seeking enforcement of the award. Further, the petitioner has also moved an application praying for amendment of the grounds filed in its Section 34 petition.

Submissions

6. I have heard the counsel appearing for the respective parties and perused the materials on record.

7. Mr. Siddharth Lahiri, counsel appearing on behalf of the petitioners propounded the following arguments :

a. The counsel submitted that the said arbitral award and the 'corrections' to the arbitral award is illegal, arbitrary and against the provisions of the Act. He further submitted that the said award is based on no evidence and is against the public policy of India and the most basic notion of the morality or justice. Thus, he continued, the award is not sustainable in law and accordingly, the same is liable to be set aside.

b. The counsel argued that the respondent/claimant has misled the arbitral tribunal on the question of placing indents which is the crux of their case. He further stated that it is the claimant's case that they had placed 'indents' for obtaining rakes under the WIS agreement and the Railways wrongfully and illegally failed to provide corresponding benefits to the claimant in terms of the agreement between the parties. He submitted that the claimant did not show a single copy of indents which they claimed to have placed on the Railways nor could they produce a single money receipt regarding the Wagon Registration Fee which they must have paid for placing such indents/ booking the rakes under the WIS scheme. The counsel added that vide Railway Board's Rates Circular No. 14/2014 dated May 16, 2014[3], the Wagon Registration Fee was hiked to Rupees 50,000 for each rake and that this payment could not have been made by cash and hence, the respondent/claimant must have proof of payment of such Wagon Registration Fee.

c. Continuing his arguments, the counsel submitted that if the indents were actually placed by the claimant, there would have been correspondences between the parties

[3] The fee revision instructions in the said circular came into force w.e.f. May 20, 2014.

regarding the same. He reiterated that every indent must include payment of Wagon Registration Fee and if such a fee was actually paid by the claimant, there would have been copies of money receipts or even proof of payment retained by the claimant. The counsel stated that it is a matter of fact that every indent must include the payment of Wagon Registration Fee and if such rakes were not given as per indent, the original Wagon Registration Fee receipts must have remained with and retained by the respondent/ claimant.

Therefore, the counsel argued, the absence of both indents and money receipts showed fraudulent exercise taken by the respondent to prove their purported case before the arbitral tribunal as without placing indents, there arose no question of rakes being allocated under WIS scheme, and the respondent would not be entitled to loss on contractual freight rebate as well as the alleged loss of future profits.

d. The counsel pointed out the lacuna in the respondent's stance before the arbitral tribunal wherein the latter claimed that several letters were issued to the petitioner for supply of rakes under the WIS scheme but, surprisingly,

none of these letters were ever produced before the arbitral tribunal. The counsel referred to the relevant cross-examination records of the respondent's witnesses which indicated non-disclosure of documents in relation to its repeated reminders and representations to the Railways for allotment of rakes.

e. The counsel contended that the arbitral tribunal has failed to consider that the cause of action in the said reference has firstly arisen at Nayagarh Private Siding within the jurisdiction of ECoR but the statement of claim has been filed against the SER which has no jurisdiction beyond its territorial limit. Further, the tribunal has failed to consider that the claimant had filed similar claims against the ECoR wherein the present reference is directly and substantially involved, and that a parallel proceeding is pending at the East Coast Railways in respect of the same disputes.

f. The counsel pointed out the concocted stand taken by the respondent as to its investment amount by stating that in paragraph 10 of the statement of claim filed with the arbitral tribunal, the respondent claimed to have invested Rs. 75 Crores being the total cost of five rakes, whereas in paragraph 34 of the same statement of claim, the

respondent asserted to have invested Rs. 87.45 Crores in the rakes.

g. The counsel contended that the arbitral tribunal has failed to appreciate that purported claim of loss of revenue to the tune of Rs 1301,27,15,638/- is solely speculative, imaginary and not covered under the WIS agreement between the parties. Infact, the arbitral tribunal totally erred by not considering the counter claim of Rs. 148,69,31,950/- which was the actual loss of railway revenue that forms part of the national exchequer.

h. Lastly and most importantly, the counsel orally pleaded for an unconditional stay on the enforcement of the arbitral award on grounds that the making of the award was induced by fraud and/or corruption. The counsel contended that there were reasons to suspect possible collusion between the parties at the time of arbitral proceedings due to which the petitioner neglected to effectively place its case. A letter dated July 24, 2023, having reference no. C375/Misc/CourtCase/Mktg/Pt, addressed to the Executive Director (FM), Railway Board was submitted to the Court wherein the Principal Chief Commercial Manager, SER has recommended disciplinary

action against certain serving and retired Railway officers for their lapses and negligence in the instant matter.

8. Mr. S.N. Mookherjee, learned Advocate General appearing on behalf of the respondent advanced the following arguments:

a. The counsel submitted that the Railways, in both their applications, have not pleaded fraud as a ground for an order of unconditional stay on the arbitral award or for an order to set aside the arbitral award. Even then, he added that fraud must necessarily be distinctly pleaded and proved with precise and specific details of such charges, and merely using the word 'fraud' or 'fraudulent' is not sufficient to satisfy the test of fraud. The counsel cited a catena of decisions such as ***Bishnudeo Narain v. Seogeni*** reported in ***AIR 1951 SC 280***, ***Gayatri Devi v. Shashi Pal Singh*** reported in ***(2005) 5 SCC 517, Electrosteel Castings Limited v. U.V. Asset Reconstruction Compant Limited*** reported in ***(2022) 2 SCC 573, Chantiers De L'atlantique S.A. v. Gaztransport & Technigaz S.A.S.*** reported in ***2011 EWHC 3383 (Comm.)***, among others to support his argument that the Railways are precluded from raising the ground of fraud in both their applications.

b. The counsel identified that it is the Railways case wherein the respondent has failed to show any evidence in support of the indents placed or even the money receipt copies of the Wagon Registration Fee, and that the respondent have misled the arbitral tribunal on these points. However, the counsel stated that the Railways have chosen not to make any averment regarding the aforesaid arguments in both their Sections 34 and 36 applications. Therefore, the case of petitioner Railways cannot be permitted to be improved at the stage of affidavit-in-reply/supplementary affidavit and that in view of the same, the Court may not delve into these arguments.

c. Moving on, the counsel relied upon the arbitral award to show that sufficient opportunity was provided to the Railways to produce oral and/or documentary evidence, cross-examine the witnesses, etc., and for this reason, it is not open to the Railways to contend that the making of the arbitral award was induced or effected by fraud, when, infact, it was the Railways which had consciously and voluntarily elected to refrain from producing any evidence, oral and/or documentary, on aspects on which it now alleges to be aggrieved. The counsel then referred to the 18th sitting of the arbitral proceedings held on February 05, 2020 and informed the Court about the time when the

Railways conveyed the arbitral tribunal about their decision to not produce any witness.

d. Supplementing the foregoing contentions, the counsel stated that the documents now sought to be relied upon by the Railways were in their possession, custody and control at all material times, and that any concealment and/or suppression has been on the part of the Railways whereby they failed to produce its best evidence in the arbitral proceedings. In this context, the counsel relied upon ***Elektrim v. Vivendi Universal*** reported in (***2007) 1 Lloyd's Report 693*** to contend that an award is said to be obtained by 'fraud' if the party which has deliberately concealed the document has, as a consequence of that concealment, obtained an award in its favour. The counsel added that the Railways failed to prove a causative link between the deliberate concealment alleged by it (since the concealment was on their own part) of the documents and the decision in the award in favour of the respondent, i.e., the successful party.

e. The counsel placed reliance upon several foreign court judgments such as ***IDDT Trucks of North America Limited v. DDT Holdings Limited*** reported in **(*2007) 2***

Llyod's Report 213*, *Chantiers De L'atlantique S.A. v. Gaztransport & Technigaz S.A.S. reported in ***(2011) EWHC 3383 (Comm.)***, and ***Westacre Investments Inc v. Jugoimport*** reported in ***(2000) QB 288*** and contended that the essence of 'fraud' in the making of the arbitral award is that the evidence now being relied on by the aggrieved party is such as could not have been obtained or produced during the arbitral proceedings with reasonable due diligence or was otherwise newly discovered at a later stage. Therefore, the counsel argued, just because the arbitral tribunal relied on the evidence led by the respondent/claimant as no evidence was being adduced by the Railways on the aforesaid aspects, the same cannot be construed equivalent to a situation where the making of the arbitral award was induced or effected by fraud.

f. Lastly, the counsel insisted upon furnishing of security by the petitioner, as a condition precedent, for the latter to obtain a stay under Section 36 of the Arbitration and Conciliation Act, 1996. Multiple judgments and orders of the Apex Court as well as this Court have been placed in support of this contention, and to further argue that the courts have also permitted withdrawal of the sum deposited upon furnishing a counter guarantee.

Observations

9. In the arbitral proceedings, the claimant (respondent herein) had filed claims under seven different heads for a total of Rs. 4,380,04,49,420/- and the respondent (petitioner herein) had submitted its counter claim of Rs. 148,69,31,950/- for the revenue loss incurred during the period from 2009 to 2017.

10. It is to be noted that the claims in the impugned arbitral award has been bifurcated into two clearly segregated compartments, wherein the first set of claims arise out of the June 15, 2009 agreement for the first and second rakes, and the second set of claims are for those arising out of the supplementary agreement dated January 25, 2018 for the third, fourth and fifth rakes. Therefore, these claims are concerned only for those time periods when the rakes were under the zonal jurisdiction of the SER, i.e., for the period between June 15, 2009 to June 14, 2019 for the first two rakes, between January 25, 2018 to May 24, 2019 for the third rake, and between January 25, 2018 to June 15, 2020 for the fourth and fifth rakes.

11. The counter claims of the Railways were rejected by the arbitral tribunal, and out of the seven heads of claims of the

respondent/claimant, the arbitral tribunal rejected four of them. The arbitral award is, therefore, based on three heads in favor of the claimant which are as follows:

a. **Claim A**: Loss on contractual freight rebate owing to the non-receipt of rakes under the WIS scheme for which Rs. 21,65,75,000/- was awarded;

b. **Claim B**: Interest amount on loss due to non-receipt of contractual freight rebate for which Rs. 15,54,21,846/- was awarded;

c. **Claim E**: Profit which the claimant could have earned if it had received all the WIS rakes for which it was contractually eligible wherein Rs. 1264,07,18,792/- was awarded.

12. At the very outset it is to be noted that post the 2015 amendment to the Act, the Court can look into the fact whether making of the award was induced or effected by fraud or corruption, and if the Court is *prima facie* satisfied of the same, the Court shall stay the award unconditionally pending disposal of the challenge under Section 34 of the Act. I have extracted below the relevant portion of Section 36 of the Act :-

36. Enforcement. —

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(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

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Provided further that where the Court is satisfied that a prima facie case is made out that, —

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

*

For grant of stay in the case of an arbitral award for payment of money, the Court is required to consider the merits of the Section 34 challenge but at the same time the Court need not undertake a thorough analysis of the arbitral award. However, the said limitation cannot be said to be applicable when the

Court is seized of the fact that the making of the award itself may be tainted with fraud and/or corruption. Hence, this Court intends to specifically go into great detail with regards to this arbitral award in the Section 36 application in order to examine the possibility of fraud and/or corruption in the making of the said award.

13. I have perused the arbitral award dated May 10, 2021 meticulously and accordingly, I could, *prima facie,* observe glaring irregularities and palpable impropriety in the conduct of the Railways in defending their stance before the arbitral tribunal by way of their crystal clear reluctance in presentation of any evidence or witness, inadequate and cursory cross-examination of claimant's witnesses, and inexplicable failure to submit documentary evidences among others.

Similarly, I have undertaken an extensive study of the arbitral tribunal's order dated August 18, 2021 wherein corrections to the arbitral award were incorporated. The puzzling rationale put together by the arbitral tribunal in the corrections has left me baffled, and I began to question myself as to whether the unfathomable reasoning provided therein could be justified by any acceptable standard of interpretation and analysis.

I have elaborated upon my observations, on both the arbitral award as well as the corrections to the arbitral award, below:

A. In the Arbitral Award dated May 10, 2021

14. The claimant had presented three witnesses in order to prove its case :

    1. Mr. Biswanath Sharma, Dy. General Manager (Technical and Operation) of the claimant ('CW1'),
    2. Mr. Basudev Banerjee, General Manager (Raw Materials) of the Claimant ('CW2'), and
    3. Mr. Vivek Gupta, Chartered Accountant, Associate Director of Transaction Square LLP ('CW3').

    The respondent, on the other side, did not produce any witness during the arbitral proceedings.

15. The CW2, who deposed that the railway operations of the claimant were handled by him and his team under his direct supervision, presented a tabulation made by him accounting the instances wherein Railways had issued rakes and utilized that data to tally for the potential losses incurred by the claimant due to less allotment of rakes to them under the WIS policy. At

the same time, the CW3 prepared an independent analysis based on averages for highlighting the potential losses incurred by the claimant due to less allotment and interest cost on those losses.

16. The SER throughout the arbitral proceedings failed to present any evidence or witness contradicting the claims and the formulas and methodology presented by the claimant for assessment of losses, leading to an adverse inference in every instance by the arbitral tribunal. The Railways have also not presented any evidence in support of its counterclaims.

17. The following are the specific instances of irregularities by the Railways in the arbitral proceedings in relation to the arbitral award dated May 10, 2021 :-

    a. At paragraph 28 of the arbitral award, the arbitral tribunal noted that the respondent did not produce any witness in the arbitral proceedings and in the 18th sitting of the tribunal on February 05, 2020, the respondent submitted that they will not be producing any witness in support of their counter claims against the claimant.

b. At paragraph 69 of the arbitral award, Exhibit H for Rakes 1 and 2, and Exhibit I for Rakes 3, 4 and 5 have been referred in support of the evidence presented by CW2. Here, CW2 has prepared a year-wise tabulation of its entitlement of rakes under WIS, indents placed by the claimant and the rakes actually allotted by the SER. The witness claimed to have prepared this chart from a 'Register' maintained by the claimant wherein details of the railway receipts were entered from the original railway receipts before they were handed back to the Railways at the time of unloading of goods. Further, as per the claimant, the inability of the Railways to allocated WIS rakes compelled them to place indents under the Oldest Date of Registration ('ODR') indent category. In a similar fashion as the afore-discussed exhibits, Exhibit J shows the year-wise tabulation of the indents placed under the ODR category and the actual number of rakes allotted by the Railways.

c. At paragraph 70 of the arbitral award, the arbitral tribunal sets out the cross examination of CW2. After perusal of questions 24 to 54, it is evident that CW2 failed to produce the 'Register' maintained by the claimant which has been referred to and relied upon by CW2 for preparation of the tabulation in Exhibits H, I and J. Despite such glaring

abnormality, the Railways, on the other hand, inspite of possessing the original railway receipts, failed to make use of them to confront CW2 and highlight either an inflated number of ODR rakes used or reduced number of WIS rakes utilized by the claimant. Due to this failure on part of the Railways, the arbitral tribunal accepted the exhibits as evidence adduced by CW 2.

d. At paragraphs 72, 73 and 74 of the arbitral award, the tribunal observed that the Railways failed to discharge its onus of suggesting whether the procedure, which was described in detail by CW2 regarding the placement/registration of indents as well as that regarding issuance of money receipts and the railway receipts were incorrect or untrue or fallacious. Essentially, the conduct of SER shows that it did nothing to contradict the deposition of CW2. Moreover, no specific questions was directed during the cross examination in respect of the veracity of the data and figures mentioned in the tabulations prepared by CW 2.

e. The arbitral tribunal noted that the Railways did not suggest, either during the cross-examination of CW2 or howsoever otherwise, an alternative or different mechanism

set in place at the relevant time for placement of indents for WIS rakes in terms whereof a record of indents placed by the claimant would necessarily also be kept with the claimant. The tribunal remarked that if the Railways really wanted to disprove or negate the evidence adduced by CW2, then it would have been a simple matter for them to have confronted CW2 with documentation evidencing the fact that the claimant should be possessed with copies of the WIS indents and if not the indents, then at least with money receipts issued by the Railways in respect of the WIS indents placed by the claimant.

f. At paragraph 78 of the arbitral award, the arbitral tribunal stated that the Railways could have demonstrated that the evidence led by the claimant was incorrect by presenting its own witness. The tribunal continued to highlight the non-serious, insincere and indifferent conduct of the Railways by adding that it could have presented a competent witness to show that the failure of the claimant to complete the private siding at Nayagarh was for reasons not attributable to them and this could have prevented the claimant from making a claim for compensation. Similarly, no endeavor was made on the part of the Railways to establish that the procedure for registration of indents was different from the

method claimant had attempted to prove. However, the Railways did nothing to prove to the contrary the claims made by the claimant. Surprisingly, the tribunal observed, the Railways elected to refrain from leading any evidence whatsoever.

g. With regard to CW3, the tribunal noted in paragraph 88 of the award that the respondent did not endeavor to assail the methodology employed by CW3 or seek to impeach the parameter, assumptions, information and inputs utilized by him in his assessment of the claims.

h. Under the heading '*Claim A – Loss on account of contractual freight rebate owing to the non-receipt of rakes under the WIS from South Eastern Railways'*, on page 61 of the arbitral award, the tribunal mentioned that CW3 demonstrated a succinct and scientific basis for computation of the loss and damage suffered by the claimant. And, on the same page itself, the tribunal pointed out that the Railways, during cross examination of CW3, did not suggest that the method employed by the claimant was untenable or that it did not depict a reasonable mode of computation of the loss incurred towards freight rebate. Not only the data and figures presented by the claimant

were not challenged but the Railways took no initiative to indicate any alternative mechanism of calculation or to denote fallacy in the claimant's methodology.

i. Under the heading '*Claim B - Interest amount lost due to non-receipt of the contractual freight rebate'*, on page 73 of the arbitral award, the tribunal noted that there was little or no cross-examination by the Railways to the methodology employed by the claimant in quantifying its Claim B. By virtue of this, the Railways also ceded to 14 percent rate of interest, which the arbitral tribunal then on its own accord decreased to a more reasonable 12 percent.

j. Likewise, on Page 79 of the arbitral award, the arbitral tribunal stated that the copies of the relevant figures with regard to the Claim B were provided at the hearing to the Railways and an opportunity was given to file their response to these documents. The Railways chose not to file its response and thus, the arbitral tribunal accepted the figures provided therein.

k. Under the heading '*Claim E - Profit which the Claimant could have earned if the Claimant had received all WIS Rakes for which it was eligible*', on Page 97 of the arbitral award, the

tribunal noted that certain figures which were assessed and presented by CW3 to show the average capacity of a rake, its usual profit margin and estimated amount of profit. The Railways not only did not cross examine him with respect to the veracity of those figures but also failed to call into question and contradict his assessment and assumption in this regard or to suggest that the figures are not reasonable.

l. At paragraph 94 of the arbitral award, the arbitral tribunal recorded that the Railways could have led evidence through officers who were involved in the matter or who were aware with the prevalent practice of placement of indents. However, it declined to present any witness in favor of its counterclaims, at its own peril. Infact, the Railways did not think the necessity to prove its counterclaim which remained an unproven and unsubstantiated bare tabulation in their pleadings and the same was wholly and absolutely without any evidence. Additionally, the Railways failed to point out any discrepancy in respect of the statement of costs furnished by the claimant.

B. In the Corrections to the Arbitral Award dated May 10, 2021

18. A comprehensive perusal of the corrections order passed by the arbitral tribunal on August 18, 2021 raises several pertinent questions as to the conduct of proceedings and operation of the tribunal. The following are the specific instances of impropriety in the said corrections order :-

a. Paragraphs 22 and 23 of the corrections order[4] explains how a typographical error has occurred on pages 100-101 of the arbitral award[5] (referring to paragraph 91 where each claims were considered by the tribunal) wherein while tabulating Claim E that is the loss on account of potential future profits, it was computed to be Rs. 1264,07,18,792[6] but was mentioned as Rs. 48,72,93,750 in sub paragraph (e) under Claim E. The following was recorded by the arbitral tribunal in the arbitral award:

"*(e) We accordingly award a sum of Rs. 48,72,93,750/- in favour of the Claimant under head (E) of the claims*."

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[4] For the sake of convenience, all references to corrections order should be understood as reference to corrections order dated August 18, 2021 of the arbitral award.

[5] For the sake of convenience, all references to arbitral award should be understood as reference to the arbitral award dated May 10, 2021.

[6] This figure was arithmetically computed as Rs. 1264,11,62,040/- on Page 101 of the arbitral award, and as per paragraph 22 of the corrections order, the said figure should read as Rs. 1264,07,18,792/-.

b. However, it must be noted that in paragraph 92 of the arbitral award where the actual calculation for the entire award in tabular format is provided, the correct amount of Rs. 1264,07,18,792/- (instead of Rs. 1264,11,62,040 /- as per paragraph 28 of the corrections order) has been used for loss on account of potential future profits. Thus, there is absolutely no adverse consequence of the figure Rs. 48,72,93,750/- appearing on page 101 on the calculation made by the arbitral tribunal for Claim E.

c. On paragraph 32 of the corrections order, it has been indicated by the arbitral tribunal that the concluding part of paragraph 92 of the arbitral award, which awards the claimant a 'reasonable estimate' of Rs. 325,32,89,721/- from the total calculated sum for all the awarded claims amounting to Rs. 1301,27,15,638/-[7] as per the tabulation in paragraph 92 of the arbitral award, has been inserted incorrectly due to a 'technical glitch' or 'typographical error' or 'slip-up' and was instead supposed to be a part of 'Claim E' as a concluding sentence to sub paragraph (d) on page 97 of the arbitral award with the figure Rs 1264,07,18,792/- instead of Rs. 325,32,89,721/-.

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[7] This figure was arithmetically computed as Rs. 1301,31,58,866/- in the arbitral award, and as per paragraph 29 of the corrections order, the said figure should read as Rs. 1301,27,15,638/-.

d. Therefore, the arbitral tribunal claimed that the figure of Rs. 325,32,89,721/- is a result of a typographical error and bears no correlation or nexus to the figure of Rs. 1301,27,15,638/-.

e. It must however be noted here that Rs. 325,32,89,721/-[8] is approximately 25% of Rs. 1301,27,15,638/- and it is perverse logic to believe that it is a result of a typographical error having no connection to the figure Rs. 1301,27,15,638/-.

f. *In arguendo,* even if the arbitral tribunal's assertion regarding the typographical error is accepted and given effect to just for the sake of our consideration, then Claim E of the claimant, sub-paragraph (d) on Page 97 of the arbitral award would read as follows —

"The claimant has estimated that it has lost revenue to the tune of Rs. 1671,85,44,960/- by reason of being precluded from availing benefits under the WIS. [<u>However, we hold that</u>

[8] The said amount was calculated to be 25 percent of the total awarded amount is further strengthened by the fact that 25 percent of the original figure in the arbitral award which is Rs. 1301,31,58,866/- comes out to be Rs. 325,32,89,716.50/- which has a difference of Rs. 4.5 only from the one present in the arbitral award.

on a reasonable estimate on account of profit which the claimant could have earned if the claimant had received all WIS rakes for which it was eligible would be (Rs. 1264,07,18,792/- Rupees twelve hundred sixty-four crores seven lakhs eighteen thousand seven hundred and ninety-two only)[9] *owing to non-cooperation of the South eastern railways.]*[10] "

This indicates that the arbitral tribunal assessed the claim before even the requirement to refer to its own tabulation for calculation of total estimated profit. Then as per the tribunal, immediately after the aforesaid tabulation in Table 3 under Claim 'E' of the claimant, sub-paragraph (e) on Page 101 of the arbitral award would again read as follows –

"*(e) We accordingly award a sum of Rs. 1264,07,18,792/- in favour of the Claimant under head (E) of the claim".*

g. In my view, the purported 'corrections' appears to be an afterthought and not a genuine 'typographical error' as it is

[9] Correction due to typographic error to Rs. 1264,07,18,792 instead of Rs 325,32,89,721.

[10] The arbitral tribunal intended to add the underlined bracketed paragraph here, but due to alleged technical glitch this was instead made a part of the concluding portion of paragraph 92 of the arbitral award.

seemingly difficult or rather impossible for this Court to accept that both the placement of the paragraph as well as the amount mentioned, which upon calculation is approximately 25% of the total computed claims awarded to the claimant, were changed in the essential parts of the award owing to a 'technical glitch' or 'typographical error'.

h. Further, paragraph 92 as part of the arbitral award reads with logical consistency and analytical coherence wherein a sum of Rs. 1301,27,15,638/- was computed to be the total computed losses of the claimant on account of potential future profits and of that a reasonable amount of approximate 25%, i.e., Rs. 325,32,89,721/- was awarded to the claimant.

i. The assertion of the arbitral tribunal that the figure of Rs. 325,32,89,721/- came into existence out of a random typographical error bearing no correlation to the figure of Rs. 1301,27,15,638/- yet coming up to be exactly 25% of the latter is a difficult pill to swallow and indicates foul play and collusion under the garb of a quasi-judicial proceedings.

Analysis

19. At the very outset, I attach a caveat herein. Throughout the course of the hearings, by way of oral and written pleadings, both sides have relied on multiple judicial precedents of the Supreme Court and High Courts in India as well as of foreign courts to buttress their respective submissions. However, I would like to place reliance upon the case law of ***L.C. Quinn –v- Leathem*** reported in ***1901 AC 495*** wherein the UK House of Lords had chosen to observe the following:

> *"….that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides…."*

Keeping in mind the principles delineated in ***L.C. Quinn (supra)***, I am of the view that certain judgments are not relevant in the first place or are merely repetitive in their exposition of the same principles or distinguishable on facts. I have, while having regard to the principles laid down in all these judgments, mentioned those principles which are germane to the issue in hand and have avoided unnecessary reiteration of judgements to avoid jeopardizing the brevity and lucidity of this decision.

20. Coming to the instant case at hand, this Court considers it prudent to discuss fraud and corruption first since these are the only two grounds outlined in the Act on which the Court may grant an unconditional stay on the arbitral award.

Fraud

21. Oxford's English Dictionary defines fraud as –

> "*/n. 1. Criminal deception; the use of false misrepresentations to gain an unjust advantage. 2. A dishonest article or trick. 3. A person or thing not fulfilling what is claimed or expected of him, her, or it.*"

22. From a legal standpoint, Black's Law Dictionary (9th Edn.) defines fraud as -

> "*fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (es.p when the conduct is willful) it may be a crime. – Also termed intentional fraud.*"

23. The Hon'ble Supreme Court in ***S.P. Chengalvaraya Naidu (Dead) By LRs. –v- Jagannath (Dead) by LRs and other*** reported in ***(1994) 1 SCC 1*** gave the definition of fraud as

> *"an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage."*

24. Referring to Kerr on Fraud, the Hon'ble Supreme Court while dealing with the challenge to an arbitral award on the grounds of fraud in ***Venture Global Engg. LLC –v- Tech Mahindra Ltd.*** reported in ***(2018) 1 SCC 656*** further deliberated on the meaning of fraud as follows –

> *"78. While dealing with the question as to what constitutes fraud, the learned author said, "What amounts to fraud has been settled by the decision of House of Lords in Derry v. Peek [Derry v. Peek, (1889) LR 14 AC 337 (HL)] where Lord Herschell said : (AC p. 374)*
>
> *'… fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false.'" (See Kerr on Fraud and Mistake, 7th Edn., pp. 10-11.)*
>
> *79. The author has said that, Courts of Equity have from a very early period had jurisdiction to set aside awards on the ground of fraud, except where it is excluded by the statute. So also, if the award was obtained by fraud or concealment of material circumstances on the part of one of the parties so as to mislead the arbitrator or if either party be guilty of fraudulent concealment of matters which he ought to have declared, or if he wilfully mislead or deceive the arbitrator, such award may be set aside. (See Kerr on Fraud and Mistake, 7th Edn., pp. 424-25.)*
>
> *80. The author said that, if a man makes a representation in point of fact, whether by suppressing the truth or suggesting what is false, however innocent his motive may have been, he is equally responsible in a civil proceeding as if he had while committing these acts done so with a view to injure others or to benefit himself. It matters not that there was no intention to cheat or injure the person to whom the statement was made. (See Kerr on Fraud and Mistake, 7th Edn., p. 7.)*

81. This rule of law is applicable not only between the two individuals entering into any contract but is also applicable between an individual and a company and also between the two companies. (See Kerr on Fraud and Mistake, 7th Edn., p. 99.)

82. The author said that this principle is also not limited to cases where an express and distinct representation by words has been made, but it applies equally to cases where a man by his silence causes another to believe in the existence of a certain state of things, or so conducts himself as to induce a reasonable man to take the representation to be true, and to believe that it was meant that he should act upon it, and the other accordingly acts upon it and so alters his previous position. (See Kerr on Fraud and Mistake, 7th Edn., p. 110.)

83. The author said that where there is a duty or obligation to speak, and a man in breach of that duty or obligation holds his tongue and does not speak and does not say the thing which he was bound to say, if that be done with the intention of inducing the other party to act upon the belief that the reason why he did not speak was because he had nothing to say, there is a fraud. (See Kerr on Fraud and Mistake, 7th Edn., p. 110)."

Corruption

25. While corruption can be difficult to define, I turn to Oxford and Merriam-Webster dictionaries which put corruption as "*dishonest or fraudulent conduct by those in power*" and "*dishonest or illegal behavior especially by powerful people*" respectively.

26. Furthermore, Rollin M. Perkins and Ronald N. Boyce in "Criminal Law 855 (3rd Ed.)" defines corruption as –

> "*The word "corruption" indicates impurity or debasement and when found in the criminal law it means deparavity or gross impropriety*."

27. Now, the observations which have been elaborated above indicate towards two separate situations of collusion and foul play and to the mind of this Court, *prima* facie, seems to be a direct consequence of fraud and/or corruption in making of the arbitral award.

Firstly, in the arbitral proceedings, the absolutely appalling conduct of SER in defending claims upwards of Rs. 4000 crores. Here, not only did the Railways not produce any witness of its own but also failed to present any documentary evidence to contradict the arguments put forth by the claimant. The ludicrous cross-examination of claimant's witnesses screams of surreptitious connivance between the parties wherein it had been already decided that the Railways must abandon all its leverage in favour of the other side and superficially continue to fight an already lost battle under the aegis of incapable generals coupled with unguarded defenses.

Secondly, the atrocious explanation given by the arbitral tribunal in justifying its order of corrections has left me at a loss of words. The aforesaid order made me wonder if the tribunal thinks so lowly of the executing courts where it may have hoped that such corrections would be permitted a safe passage without any scrutiny whatsoever.

28. Moving forward, the right of a party to seek recourse against an arbitral award on grounds of fraud or corruption has been provided under Section 34(2)(b) of the Act which provides for setting aside of an award which is in conflict with the public policy of India.

Explanation 1(i) to the aforestated Section clarifies the ambit of public policy in India and thereby, explicitly allows challenge to an arbitral award if the making of such an award was induced or effected by fraud or corruption.

29. The amendment to the Arbitration and Conciliation Act, 1996 by way of Act 3 of 2021 (w.r.e.f. 23.10.2015) permits this Court, provided Section 34 challenge to the arbitral award is pending, to grant unconditional stay on an application under Section 36 (2) of the Act if the court is *prima facie* satisfied that the making

of the arbitral award has been induced or effected by fraud or corruption. The object of this amendment is further made perspicuous by point 4 of the Statement of Objects and Reasons to the Act 3 of 2021 (Bill No. 16 of 2021) which is to '***address the issue of corrupt practices in securing contracts or arbitral awards, a need was felt to ensure that all the stakeholder parties get an opportunity to seek unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement or contract or making of the arbitral award is induced by fraud or corruption'***.

30. Thus, I am of the view that if this Court, even *suo moto*, upon *prima facie* observing that the making of an arbitral award has been induced or effected by fraud or corruption can grant an unconditional stay on the arbitral award. The relevant part of the amended section has been once again reproduced below —

> ***36. Enforcement. —***
>
> *
>
> *(3)* Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of

the operation of such award for reasons to be recorded in writing:

*

Provided further that where the Court is satisfied that a prima facie case is made out that, —

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

*

31. It must be noted that the Parliament in its wisdom has deemed it appropriate for this Court to exercise discretion to grant stay on an arbitral award when such an award is either *induced* or *effected* by fraud or corruption. The only prerequisite in exercise of such discretion is the Court must be satisfied that a *prima facie* case is being made out.

32. On bare reading of the aforementioned provision, this Court is of the view that, the conduct of the parties during the arbitral proceedings qualifies as a consideration under the proviso to section 36(3) of the Act as the same is not only indispensable in

the making of the award but also materially induces the making of the award. Therefore, to arrive at a finding that the making of the award is *induced* or *effected* by fraud or corruption, this Court can look at the conduct of the parties during the arbitral proceedings.

33. **In the present case, with respect to the conduct of the parties, this Court observes a disconcerting trend where the hallowed principles of honesty, integrity and probity seem to have gone up in smoke. It shocks the conscience of this Court to observe that the Railways, in defending a claim valued above Rs. 4000 crores, declined to present any witness and refrained from leading any evidence. Subsequently in the arbitral proceedings, the lackadaisical and indifferent attitude of the Railways during the cross examination of the claimant witnesses, as also noted in the arbitral award, leaves much to be said about the sordid state of affairs and absolute apathetic approach of the Railways which happens to be a Government of India public sector undertaking dealing with funds of the public exchequer.**

34. **Such an extraordinary misconduct of the Railways during the arbitral proceedings raises several suspicions in the eye**

of this Court. This Court is at pains to re-emphasize that dishonesty is the cornerstone for fraud and that Railway's reluctance in leading evidence, inept cross-examination, non-submission of documentary evidences, etc., does not fall short of actual and deliberate fraud and/or corruption which may have taken place in the present case. The magnitude of the claim and the consequent irreparable harm it shall have on the Railways and public exchequer cannot be ignored. There seems to be extraneous considerations at play which are beyond the comprehension of this Court.

35. **Similarly, the ridiculous explanation provided by the arbitral tribunal in the corrections award in enhancing the award amount by 4 times under the garb of a typographical error and/or technical glitch is a bitter pill to swallow for this Court and the actual truth behind these purported corrections must be unearthed.**

36. As noted by the Hon'ble Supreme Court in ***A.V. Papayya Sastry & Ors –v- Government of A.P. & Ors*** reported in ***(2007) 4 SCC 221***, fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another.

37. **In the proceedings before the tribunal, for both the arbitral award as well as the corrections order, the willing silence of the petitioner is too loud to go neglected and *prima facie* leads to the conclusion that there is unseen foul play wherein collusion between the parties to the proceedings has led the arbitral tribunal into passing an award which is deeply induced and effected either by fraud or corruption, or both.**

38. In the leading case of ***Lazarus Estates Ltd. –v- Beasley***, reported in ***(1956) 1 All ER 341***, Lord Denning observed —

> "*No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud.*"

39. Further, in ***A.V. Papayya Sastry (supra),*** the Hon'ble Supreme Court noted,

> *"Now, it is a well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; "Fraud avoids all judicial acts, ecclesiastical or temporal".*

It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings."

40. In the case of ***Sepco Electric Power Construction Corporation v. Power Mech Projects Ltd.*** reported in ***2022 SCC OnLine SC 1243***, the Hon'ble Supreme Court affirmed that this Court is well within its right to grant an unconditional stay while exercising its powers under Section 36(3) of the Act provided that the Court is satisfied that a *prima facie* case is made out wherein the arbitration agreement or contract which is the basis of the award, or the making of the award, is induced or effected by fraud or corruption.

41. The learned Advocate General relied upon several case laws to contend that an award is said to be obtained by 'fraud' if the party which has deliberately concealed the evidence has, as a consequence of that concealment, obtained an award in its favour. He added that the essence of 'fraud' in the making of the

arbitral award is that the evidence now being relied upon by the aggrieved party is such as could not have been obtained or produced during the arbitral proceedings, even with reasonable diligence and was newly discovered post the arbitral proceedings. In the instant case, the learned Advocate General argued that, evidence and documents now intended to be relied upon by the Railways were at all material times within their control, possession and special knowledge but the same was never presented by the Railways before the tribunal. Therefore, this is not a situation where the award debtor is being made to suffer an award which was obtained through concealment and/or suppression by the award holder.

42. **While I am in complete agreement that an award debtor should not be made to suffer an award obtained by way of fraudulent concealment of material evidence by the award holder, I ask myself whether this is indicative of the only possibility of an arbitral award being obtained by deliberate concealment or suppression. With great humility to the eloquence of the Learned Advocate General, I am of the contrary view that given that fraud has a very wide connotation in legal parlance, it is egregiously absurd to suggest that any award which may be fraudulently obtained is limited and restricted to the above instances cited by him**

in the preceding paragraph. The Court cannot overlook fraud being perpetuated in the making of the award by way of collusion between the parties. In any event, as at this juncture this Court is not coming into any conclusion on setting aside of the arbitral award, the case laws cited by the learned Advocate General can be comprehensively considered by the Court at the stage of adjudicating the section 34 application.

43. Before I proceed towards the concluding part of this judgment, I would like to briefly trace the purpose of arbitration law.

44. Arbitration was initially envisaged as a means to reduce litigation and promote faster resolution of disputes and over time, due to active involvement of the courts and cooperation of the parties alike, arbitration culture has been thriving in India. Now as judges, we are expected to deal with each matter on its own merits, and judgments are pronouncements on the merits of the case at hand rather than an occasion to make general comments or observations. However, in dealing with the present case, I have been plagued by a deep worry resulting from the Railways' conduct in the present matter, which I would like to put forward. Not to mince my words, the attitude of some of the parties, especially public sector companies towards the

arbitration process and utter disregard for it has made me doubt the future of arbitration in India if it keeps going the present way. Usually, much more due diligence is expected from the public sector companies given that they are the embodiment of taxpayers' trust but the way Railways has belittled its responsibility in the present case makes this Court seriously doubt the utility of arbitration with respect to public sector companies.

45. Arbitration as an alternative dispute resolution mechanism holds great significance towards economic development, and arbitration proceedings must be regarded as sacred as a court proceeding and the parties' conduct in front of an arbitration tribunal or the Court must be the same. Rather than seeing arbitration as a protective umbrella that saves the parties from spending extra time, money and efforts required in litigation, in many cases it has now become a well-oiled tool to perpetuate fraud and/or corruption in the hope that the Courts might overlook it. When the parties involved themselves work towards diluting the essence behind arbitration and defeat the very purpose for which it exists, it really brings forth doubts in the mind of this Court with regard to the efficacy of arbitration as an alternative dispute resolution mechanism. Even if only one party acts against the spirit of arbitration, its effect is not only limited

to itself but rather affects the sanctity and integrity of the entire arbitration culture. And therefore, when either of the parties disrespect the sanctities of the arbitration process, and seek, to hide under the cloak of the same to effectuate fraud and/or corruption, the process works against the foundational principles of arbitration.

46. In my view, Railways as an entity does not just carry citizens across destinations, but it is the embodiment of the hopes and dreams of a billion people, and its conduct is more than just a ripple in the ocean. It should realize the need to conduct itself according to the highest standards and not resort to dubious ways in any way or form that does not suit its character. When it comes to the facts of the present case, the manner in which Railways has conducted itself in the arbitral proceedings is truly unjustifiable, and this Court strongly condemns it.

47. For the reasons discussed above, using the power conferred under section 36 (3) of the Arbitration and Conciliation Act, 1996, as amended by Act 3 of 2021, this Court grants an unconditional stay on the operation of the Arbitral Award dated May 10, 2021 read with the corrections order dated August 18, 2021, pending disposal of the challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

48. **Furthermore, I hereby also direct the Ministry of Finance, Union of India to immediately constitute a multi-member high-level enquiry committee headed by a Secretary to the Government of India level rank officer to holistically inquire into the shocking conduct of the Railways and its officials (both serving and retired) and the other stakeholders in the aforementioned matter. The Committee shall be at liberty to take assistance of central investigation agencies as it may deem fit. The Committee is further requested to complete the enquiry and submit a report before this Court within three months from the date of this order.**

49. The Registry, Original Side is directed to inform the learned Additional Solicitor General, High Court at Calcutta of this order for immediate communication to the Ministry of Finance, Government of India.

Epilogue

50. As the custodian of the Constitution, it is the duty of this Court to speak when necessary, as it is on this very occasion. Corruption and double-dealing in the case of public officials is not just a legal offence, it is a moral offence, and it betrays the

very spirit and soul of the Indian Constitution. The officials in public service are expected to serve others rather than self-serve, a principle which, in the present case, was seen to have been thrown out of the window. Every person in public service carries the responsibility of bearing the weight of the hope and aspiration of each and every citizen of this country, and is duty bound to work towards fulfilling the dreams of our founding fathers. When a public servant leaves that behind and moves on a path of self-service, he should stop and think that his actions can shake the very bond that exists between citizenry and bureaucracy. Infact, this bond is as essential to the working of the Indian State as water to fish, and if that bond is put in peril, it can lead to disastrous consequences. While the goal of a private entity can be personal profit, a public servant works towards public prosperity, and he should treat this as a sacred oath. Every action and step that a public servant takes, he should do so while keeping in mind the Constitution as his guide and the citizens as his motivation. This Court would not have spoken today if it was not an absolute necessity, but such actions disturb the very fabric of citizen's trust in public entities, and it is a duty that this Court owes to the citizens to act where needed.

51. Accordingly, GA/1/2021 is allowed and disposed of. There shall be no order as to costs.

52. The parties are granted liberty to mention AP/482/2021 and EC/99/2022 along with any interlocutory applications for inclusion in the list after a period of three months. There shall be no order as to costs.

53. The Court acknowledges the diligence and eloquence of Counsel for both sides in rendering assistance to this Court and further places on record its deep appreciation for the valuable insights and painstaking research rendered by law clerk cum research assistant Mr. Anirudh Goyal and intern Mr. Jaspreet Singh in this matter.

54. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf J.)