IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 12.05.2022*

\+ **O.M.P.(COMM.) 390/2020**

GAIL(INDIA) LTD. ..... Petitioner

versus

TRIVENI ENGINEERING & INDUSTRIES LTD. ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Puneet Taneja, Advocate with Ms Laxmi Kumari, Mr Manmohan Singh Narula, Advocates

For the Respondents : Mr Anunaya Mehta, Mr Vinayak Thakur, Advocates

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereinafter '**GAIL**') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '**the A&C Act'**) impugning an arbitral award dated 20.11.2019 (hereinafter '**the impugned award**') rendered by an Arbitral Tribunal comprising of a former Chief Justice of the High Court of Jammu and Kashmir as the Sole Arbitrator (hereinafter '**the Arbitral Tribunal'**)

2. The impugned award was rendered in the context of disputes that have arisen between the parties in connection with an agreement dated 28.05.2012 (hereinafter the '**Agreement**').

3. The controversy in the present case arises in the following context: -

4. Tenders were invited by GAIL (being Tender no. A096/T-069/11-12/MS/38) for the works regarding setting up of a "*Dematrialised (DM) Water Plant and Condensate Polishing Unit (CPU) for GAIL Petrochemical Complex – II at Pata, Uttar Pradesh*" (hereinafter the **'Project'**), on the terms and conditions stipulated therein.

5. Pursuant to the said invitation to tender, the respondent submitted its bid for executing the Project, on 27.02.2012. The respondent's bid was accepted and thereafter, GAIL issued a Fax of Acceptance dated 03.05.2012 (hereinafter the '**FoA'**), accepting the respondent's bid to execute the Project for a consideration of ₹55 crores inclusive of all taxes and duties except service tax at the rate of 4.944%. The 'Extended Stay Compensation' was stipulated as ₹10,00,000/- per month. In terms of the FoA, the respondent was required to furnish a Performance Bank Guarantee and enter into a formal agreement within a period of fifteen days from the date of the said FoA, as per the provisions of the tender documents.

6. Subsequently, on 22.05.2012, GAIL issued the Letter of Acceptance (hereafter the '**LoA**'). M/s Engineers India Limited

(hereafter **'EIL'**) was appointed as the 'Engineer in-Charge' under the Agreement. The effective date of commencement of the Project was stipulated as 03.05.2012 and the works were to be completed within a period of eighteen months, that is, on or before 02.11.2013. Thereafter, on 28.05.2012, the parties signed the Agreement.

7. The execution of the Project was delayed. GAIL withheld amounts as reduction of price as stipulated under Clause 27 of the GCC. It also withheld an amount of ₹1,20,00,000/- as the value of Cathodic Protection System, on the ground that the same was within the scope of work but was not installed. Disputes arose between the parties regarding the Price Reduction Schedule (hereinafter '**PRS**'), installation of Cathodic Protection System (hereinafter '**CPS**'), extra works performed under the Agreement and bank charges.

8. The context in which the aforesaid dispute arose are briefly stated hereafter.

9. The respondent, by a communication dated 25.10.2013, requested EIL for provisional extension of time for a period of four months without imposition of liquidated damages. The respondent stated that the delays in execution of Project works were caused, *inter alia*, due to local disputes, delay in supply items, *force majeure* events, delay due to rainy season, delay in supply item and sequential work front. Thereafter, by a letter dated 28.10.2013 addressed to GAIL, EIL recommended that provisional extension of time be granted to the respondent till 31.01.2014 without prejudice to GAIL's right to impose

PRS as per the provisions of the Agreement, in the case the delays were attributable to the respondent.

10. On 31.10.2013, GAIL granted provisional extension of time to the respondent till 31.01.2014 without prejudice to its right to impose PRS, in terms of Clause 27.1 of the General Conditions of the Contract (hereinafter **'GCC'**).

11. By various communications thereafter, the respondent sought further extensions of time from GAIL as the completion of the Project was delayed. GAIL granted provisional extension of time till 31.12.2015 without prejudice to its right to impose PRS, in terms of Clause 27.1 of the GCC.

12. The respondent completed the contractual works on 31.12.2015. Thereafter, GAIL undertook the exercise of verification of the work done by the respondent and, found that the respondent had failed to execute the work regarding CPS, which was required for tankage and underground piping. By communications dated 10.03.2016 and 19.07.2016, GAIL called upon EIL to look into the aforesaid issue regarding CPS.

13. The respondent, by a letter dated 21.03.2016 addressed to EIL, stated that it had reviewed the entire basic engineering package, which was thoroughly reviewed and approved by EIL, and the same did not indicate the requirement of CPS and underground piping. Therefore, CPS was not a part of the scope of works as mentioned in the LoA.

14. Thereafter, the respondent, by a letter dated 23.05.2016, requested EIL to release the payment of a sum of ₹23,17,644/- on account of the additional cables provided by it during the execution of the Project works.

15. EIL responded to GAIL by a communication dated 29.07.2016 and stated that "*as per DM water tender package, CP for tank bottom plate has not been envisaged considering new plant installation*".

16. Thereafter, on 11.08.2016, the respondent requested GAIL to release the withheld amount of ₹1.20 crores on the ground that the CPS was not included in the scope of work.

17. By a communication dated 29.08.2016, EIL referred to the aforesaid letter dated 11.08.2016 issued by the respondent and informed GAIL that CPS work was not envisaged due to various factors in the scope of works and requested GAIL to release the withheld amount.

18. On 04.10.2016, the respondent issued a No Claim Certificate, in favour of GAIL and stated that after scrutinization of all its claims, contentions, disputes, issues with the Project officials, it was entitled to a sum of ₹5,55,99,888/- towards full and final settlement of its claims. It further confirmed that with receipt of the said amount, all its claims under the Agreement would stand fully discharged.

19. Thereafter, by a letter dated 04.10.2016, EIL sent the final bill for an amount of ₹5,55,99,871/-, as raised by the respondent, to GAIL and further, recommended GAIL to (i) recover an amount of ₹2,38,663/-;

(ii) release the withheld amount of ₹5,51,200/-; and, (iii) withhold a sum of ₹56.35 lacs, since the respondent had failed to complete the works in its entirety.

20. Thereafter, on 07.02.2017, the respondent requested EIL to release the withheld amount along with the Final Bill payment as it had completed the remaining works. Accordingly, EIL, by its letter dated on 07.02.2017, recommended GAIL to release the withheld amount of ₹56.35 lacs, in favour of the respondent, as all the contractual obligations had been fulfilled by the respondent and accepted by GAIL.

21. By a letter dated 18.04.2017, GAIL informed EIL regarding the recommendations received from the Tender Committee. The site recommendations included granting extension of time to the respondent without imposition of PRS, reduction in scope and consequent reduction in the contract value by a sum of approximately ₹1.20 crores on account of failure in non-execution of CPS works and closure of contract considering the aforesaid deduction. It further requested EIL to resolve the issue pertaining to installation of CPS and the corresponding deduction and further, the submission of a No Claim Certificate by the respondent.

22. Thereafter, by a letter dated 04.05.2017, the respondent informed EIL that it would bear the costs regarding CPS as a goodwill gesture, *albeit,* the same was not a part of the scope of the works. It further stated that it had invited bids from reputed vendors for CPS and received bids varying between ₹35- 40 lacs. It, therefore, requested that the balance

amount be released in its favour. However, GAIL failed to release the aforesaid amount.

23. On 17.10.2017, GAIL informed EIL that it had decided to deduct an amount of ₹1,19,17,861.70 on account of non-execution of the CPS works by the respondent and accordingly, the executed value of the contract works amounted to ₹53,80,82,138.30/-. GAIL requested EIL to issue a revised completion certificate and a "*fresh unconditional*" No Claims Certificate in view of the aforesaid deduction.

24. The respondent, by an e-mail dated 30.01.2018, invoked the agreement to refer the disputes to arbitration and requested GAIL to pay the balance sum of ₹4,65,33,000/- along with interest at the rate of 15% per annum within a period of seven days of receipt of the said letter, failing which, the disputes be adjudicated in terms of Clause 43 of the Special Conditions of Contract (hereafter '**SCC**'). However, the respondent did not receive any response to the said letter.

25. Thereafter, the respondent approached this Court by way of a petition under Section 11 of the A&C Act for the appointment of an arbitrator. This Court, by an order dated 16.05.2018, appointed the learned Sole Arbitrator to adjudicate the disputes between the parties.

Arbitral Proceedings

26. Before the Arbitral Tribunal, the respondent filed its Statement of Claims. The claims made by the respondent in the Statement of Claims are tabulated below:

CLAIM No.	PARTICULARS	CLAIMED AMOUNT
1.	(a) Retention amount due from GAIL (b) Interest on the retention amount withheld	₹2,75,00,000/- ₹1,55,39,000/-
2.	(a) Amount withheld in terms of Cathodic Protection System (b) Interest on the Cathodic Protection System amount	₹1,20,00,000/- ₹67,81,000/-
3.	(a) Amount of work additionally and actually done by the respondent (b) Interest on the said amount	₹23,17,000/- ₹7,32,000/-
4.	Charges incurred by the respondent to keep the Performance Bank Guarantee alive	₹3,46,000/-
5.	*Pendente lite* interest at the rate 18% per annum from 01.07.2018 till date of final award	
6	Future interest at the rate of 18% per annum on the sums awarded in the final award from the date of final award till date of actual payment	

27. GAIL filed its Statement of Defence and raised a counter-claim

for a sum of ₹13.84 crores on account of closure of the plant for five days. Alternatively, GAIL raised counter-claims for a direction to be given to the respondent to install the CPS at its own cost and expenses along with the costs of shutting down the plant; award of interest at the rate of 18% per annum on the sum of ₹13.84 crores from the date of filing the counter-claim to the day of payment; and, additionally, the costs and legal expenses for the arbitration.

The Impugned Award

28. By the impugned award, the Arbitral Tribunal allowed majority of the claims preferred by the respondent. The Arbitral Tribunal entered an award of a sum of ₹2,75,00,000/- towards the amount retained as PRS (Claim No.1); an amount of ₹80,00,000/- towards the amount withheld on account of Cathodic Protection System (Claim No.2); an amount of ₹3,46,000/- towards bank charges in lieu of forcing respondent to keep Performance Bank Guarantee alive beyond 31.03.2017 (Claim No.4). The Arbitral Tribunal awarded interest at the rate of 15% per annum for the pre-arbitration period (that is, from 02.07.2016 to 03.07.2018) amounting to ₹41,25,000/- for Claim No.1; and, an amount of ₹21,00,000/- under Claim No.2 for the pre-arbitration period (that is, from 04.10.2016 to 03.07.2018).

29. Additionally, the Arbitral Tribunal awarded *pendente lite* interest at the rate of 15% per annum for the period 04.07.2018 to 20.11.2019 for Claim Nos. 1 and 2 amounting to ₹56,80,822/- and ₹16,92,055/- respectively. Further, the Arbitral Tribunal awarded future interest at

the rate of 15% per annum from the date of the award till its realisation, in case the awarded amount was not paid by GAIL within a period of one month. The Arbitral Tribunal also awarded costs quantified at ₹11,25,000/, in favour of the respondent. The Arbitral Tribunal rejected the counter-claims preferred by GAIL.

Submissions

30. Mr. Taneja, learned counsel appearing for GAIL, has assailed the impugned award, essentially, on four fronts. First, he submitted that the Arbitral Tribunal had erred in awarding a sum of ₹2,75,00,000/-, which was withheld by GAIL on account of PRS. He stated that PRS is in the nature of liquidated damages and there is no dispute that execution of the work was delayed. In the circumstances, GAIL was entitled to levy damages and withhold the amount towards PRS. He submitted that the Arbitral Tribunal had allowed the respondent's claim solely on the ground that EIL, appointed by GAIL as an Engineer-in-Charge, had recommended the respondent's request for extension of time without levy of damages. He submitted that the recommendations of EIL were not binding on GAIL. Clause 27 of the GCC expressly provided that the decision of the Engineer-in-Charge would be final and binding on the contractor. However, there was no contractual provision stipulating that GAIL (Employer) would be bound by the said decision. He submitted that the decision of the Arbitral Tribunal was in disregard to Clause 27 of the GCC. He submitted that Clause 47 of the GCC also expressly provides that extension of time would not operate as a waiver of any provision of the Agreement.

31. He relied upon the decision of this Court in ***Thermospares India v. B.H.E.L. & Ors.: (2006) SCC OnLine Del 655*** and on the strength of the said decision, submitted that even though the Arbitral Tribunal had found that EIL had recommended the respondents case for extension of time as the reasons for the delay were justified; it had not concluded that GAIL was responsible for the delay. He submitted that unless the Arbitral Tribunal found that GAIL was responsible for the delay, it could not have awarded refund of PRS. He referred to paragraph 38 of the said decision, in support of his contention.

32. Second, he submitted that the Arbitral Tribunal's decision to direct the refund of a sum of ₹80,00,000/- out of the sum of ₹1,20,00,000/-, which was withheld by GAIL on account of work relating to CPS, is manifestly erroneous. He submitted that the Arbitral Tribunal had erred in proceeding on the basis that GAIL had not established the value of CPS included in the scope of work.

33. Third, he submitted that the award of bank charges is erroneous. The bank guarantees furnished by the respondent had been retained on account of the disputes between the parties and therefore, the Arbitral Tribunal's decision allowing the respondent's claim for the same, was manifestly erroneous.

34. Lastly, he submitted that the decision of the Arbitral Tribunal to award interest at the rate of 15% on the claims awarded, was excessive and is liable to be set aside.

Reasons & Conclusion

35. The first question to be addressed is whether the impugned award is vitiated by patent illegality on account of the Arbitral Tribunal deciding the dispute regarding PRS, in favour of the respondent. GAIL had, in terms of Clause 27 of the GCC, withheld an amount of ₹2,75,00,000/- (Rupees Two Crores, Seventy-five thousand only) on account of delays in execution of the works.

36. The Arbitral Tribunal found that on a plain reading of Clause 27 of the GCC, EIL (the Engineer-in-Charge) was entrusted with the primary responsibility to decide the applicability of PRS. The respondent had sought extension of time for completion of the Agreement on several occasions and the same were granted on a provisional basis. The Arbitral Tribunal found that on each occasion, the respondent had provided justification for seeking such extension of time. At the material time, the reasons for delay, as explained by the respondent, were neither accepted nor rejected by EIL; it had recommended extension of time on a provisional basis, without prejudice to the right of GAIL to impose PRS, in case the same was leviable. The Arbitral Tribunal referred to EIL's letter dated 28.10.2013, whereby EIL had recommended provisional extension of time without prejudice to the right of GAIL to impose PRS *"in case it is proved after actual completion that the delays are attributable to M/s Triveni".* The said letter also indicated that at the material time, EIL had not carried out any analysis regarding the reasons for the delay. Similar recommendations were made by EIL on other occasions as well.

37. The Arbitral Tribunal found that GAIL's right to impose liquidated damages (PRS) was dependent on whether the delay was attributable to the respondent. The Arbitral Tribunal also observed that since EIL was required to carry out the analysis of the delay, it was not open for GAIL to levy the PRS, if EIL found that the delay was not attributable to the respondent.

38. The Arbitral Tribunal examined the evidence and material on record and found that EIL had, by its letter dated 02.07.2016, recommended the final extension till 31.12.2015 for completion of the Agreement without the levy of PRS. Reference to the said letter was also found in the letter dated 04.10.2016. The respondent had called upon GAIL to produce the said letter, however, GAIL had failed and neglected to do so. In the aforesaid circumstances, the Arbitral Tribunal inferred that EIL had found that the delays were not attributable to the respondent. The Arbitral Tribunal further found that GAIL had not rejected the recommendations of EIL.

39. The findings of the Arbitral Tribunal are based on a detailed examination of the evidence and material placed on record. It is not open for this Court to e-appreciate the evidence and supplant its opinion in place of that of the Arbitral Tribunal's. In any view, this Court finds no fault with the reasoning or conclusion of the Arbitral Tribunal.

40. In view of the findings that the respondent was not responsible for the delay, the Arbitral Tribunal awarded a sum of ₹2,75,00,000/-, which was withheld by GAIL as PRS.

41. Mr. Taneja's challenge to the findings as well as the conclusion of the Arbitral Tribunal is two pronged. First, he submitted that the same were in disregard to Clauses 27 and 47 of the GCC; and, second, that in the absence of any finding that GAIL was responsible for the delays, the refund of PRS could not be granted in favour of the respondent.

42. Both the contentions are unmerited.

43. Clause 27 of the GCC is relevant and set out below:

> **"27 Price reduction schedule:** 27.1 Time is the essence of the Contract. In case the CONTRACTOR fails to complete the WORK within the stipulated period, then, unless such failure is due to Force Majeure as defined in Clause 26 here above or due to EMPLOYER's defaults, the Total Contract price shall be reduce by ± % of the total Contract Price per complete week of delay or part thereof subject to a maximum of 5% of the Total Contract Price, by way of reduction in price for delay and not as penalty. The said amount will be recovered from amount due to the Contractor/Contractors Contract Performance Security payable on demand.
>
> **The decision of the ENGINEER-IN-Charge in regard to applicability of Price Reduction Schedule shall be final and binding on the CONTRACTOR.**
>
> 27.2 All sums payable under this clause is the reduction in price due

to delay in completion period at the above agreed rate."

(emphasis supplied)

44. In terms of Clause 27 of the GCC, GAIL could levy PRS (liquidated damages) in the event the respondent failed to complete the work within the stipulated period. Thus, it is implicit in the said clause that PRS could be imposed only if the delay is attributable to the respondent. Whilst, there is no dispute that the decision of EIL (Engineer-in-Charge) regarding the applicability of PRS will be binding on the respondent; it is erroneous to suggest that GAIL could impose PRS, even in circumstances, where the delay was not attributable to the respondent and was so determined by EIL. The contention that an award for refund of PRS could be granted only if the Arbitral Tribunal found that the delay was attributable to GAIL, is unmerited.

45. Mr. Taneja relied upon the decision of a Coordinate Bench of this Court in ***Thermospares India v. B.H.E.L. & Ors.*** (*supra*) and drew the attention of this Court to paragraph no. 38 of the said decision, which reads as under:

> "38. To some extent I find force in the aforesaid contention of the learned Counsel for the petitioner. The Arbitrator is a creature of the contract and the award thus must be within the four corners of the contract. However, this clause would not, in my considered view, imply that even if the delays were attributable to the respondent the petitioner would be without any remedy. There were over runs which occurred but there is no finding that the respondent was at fault. In order for the Arbitrator to have granted any amount on account of this

> claim a finding ought to have been arrived at that the delay was occasioned on account of the factors attributable to the respondent and then only the question of compensation to the petitioner in this behalf would have arisen."

46. He assailed the impugned award on the strength of the aforesaid observations. Clearly, the said decision is wholly inapplicable to the controversy in the present case. In that case, one of the disputes related to overrun charges. The arbitral tribunal had awarded the same in favour of the respondent even though the agreement expressly provided that no overrun charges would be paid in the event the completion period is extended for any reason. It is in that context that the Court made the observations as relied upon by Mr Taneja. The finding that the question of payment of compensation to the petitioner would arise only if it was found that the delay was occasioned on account of factors attributable to respondent was made in the context of the petitioner's claim for compensation. This was not a case where B.H.E.L. (the respondent in that case) had claimed any liquidated damages from the petitioner.

47. In the present case, the respondent has not made any claim for compensation from GAIL. It is merely resisting GAIL's claim for levying liquidated damages. The reference to the case in ***Thermospares India v. B.H.E.L. & Ors.*** (*supra*) is thus, wholly misconceived. The same does not support the proposition, as sought to be advanced by Mr. Taneja.

48. The contention that the Arbitral Tribunal had disregarded Clause

47.1 of GCC is also unmerited. Clause 47.1 of GCC reads as under:

"47	**No waiver of rights:**	47.1	Neither the inspection by the EMPLOYER or any of their officials, employees, or agents nor any order by the EMPLOYER for payment of money or any payment for or acceptance of the whole or any part of the Work by the EMPLOYER **nor any extension of time**, nor any possession taken by EMPLOYER **shall operate as a waiver of any provision of the CONTRACT, or of any power herein reserved to the EMPLOYER**, or any right to damages herein provided, nor shall any waiver of any breach in the CONTRACT be held to be a waiver of any other subsequent breach."

(emphasis supplied)

49. The decision of the Arbitral Tribunal does not rest on the assumption that extension of time constitutes a waiver of any provision of the Agreement. The decision of the Arbitral Tribunal rests on the finding that the respondent was not responsible for the delay in completion of the contract. EIL was entrusted with the task of examining the causes of delay, and it had analyzed and accepted the justification provided by the respondent.

50. The next question to be examined is GAIL's challenge to award of an amount of ₹80,00,000/- out of the funds withheld by GAIL on account of CPS. GAIL had withheld a sum of ₹1,20,00,000/- as the respondent had not executed the work of CPS. According to the respondent, the work of CPS was not included in the scope of work to

be performed under the Agreement. The works had been satisfactorily completed and a Completion Certificate had been issued to the respondent. EIL had not directed installation of CPS. There were communications on record to support the said contention that it was not envisaged under the Agreement. GAIL had disputed the same and contended that installation of CPS was a part of the contract as the same was mentioned in the tender documents.

51. The Arbitral Tribunal found that CPS was included in the scope of work under the Agreement as the document titled *"Engineering Design Basis (PIPING), Part-1, Engineering Design Basis, Questionnaire"* formed part of the contract documents and was signed by both the parties. The said document clearly referred to "*Cathodic Protection of Tankage and U/G Piping"* and the respondent had agreed to EIL's observation that it was required to install the CPS. However, the Arbitral Tribunal also held that the respondent was not in the breach of the Agreement as EIL had never directed installation of CPS. In view of the finding that installation of CPS was a part of the scope of work; the Arbitral Tribunal accepted GAIL's contention that it was entitled to reduce the value of the CPS from the amount payable to the respondent. But the Arbitral Tribunal did not accept GAIL's contention that the value of the CPS was ₹1,20,00,000/-. GAIL had produced certain documents including a quotation from one M/s Raychem, in support of its claim for quantification of the said amount. The Arbitral Tribunal evaluated the evidence produced by GAIL. The Arbitral Tribunal found that the set of documents produced related to some CPS work awarded

to M/s Raychem in the year 2011, which was prior to the date of the Agreement. The Arbitral Tribunal did not find the said valuation to be credible. No person from M/s Raychem was produced as a witness to prove the said document or establish the value of CPS. The other document produced by GAIL was an unsigned and an undated computer printout, therefore, the Arbitral Tribunal rejected the same.

52. Mr. Taneja has contended that the Arbitral Tribunal had grossly erred in rejecting the said documents on the ground that nobody from M/s Raychem was produced as a witness to prove the document. He stated that GAIL had produced one of its employees as witness to exhibit the said document and therefore, the Arbitral Tribunal's decision was vitiated by patent illegality. This contention is unmerited. The document in question was produced to establish the value of CPS. The decision of the Arbitral Tribunal that the same required to be proved by someone from M/s Raychem, who had purportedly authored the said document, cannot be faulted. The person, who had estimated the value of CPS, was required to establish the same. The respondent had the right to cross-examine such a witness to question the said valuation.

53. The decision of the Arbitral Tribunal as to the evidentiary value of any material is clearly within the jurisdiction of the Arbitral Tribunal and no interference is called for unless it is found that the Arbitral Tribunal's decision is manifestly erroneous and its view is one that is impossible for any person to accept.

54. Indisputably, the decision of the Arbitral Tribunal regarding the evidentiary value of the two documents produced by GAIL – one, that was prior to the date of the Agreement and the other, that was unsigned and undated – cannot by any stretch said to be patently erroneous.

55. Notwithstanding the fact that GAIL had failed to establish the value of CPS, the Arbitral Tribunal had allowed GAIL to retain an amount of ₹40,00,000/- in view of the respondent's admission in its letter dated 04.05.2017 issued to EIL. In its letter, the respondent had claimed that it had *"received bids from reputed vendors varying between ₹35,00,000/- to ₹45,00,000/- for the total scope of CP for the project"*. The Arbitral Tribunal accepted the average of the two figures as the admitted value of the CPS.

56. In regard to the award of bank charges, the Arbitral Tribunal found that the respondent was compelled to extend the Performance Bank Guarantee for an amount of ₹5,77,19,200/- beyond the Defect Liability Period, which ended on 01.04.2017. In terms of the Agreement between the parties, the Bank Guarantee was required to be released on expiry of the Defect Liability Period, however, GAIL had not released the same. The respondent was compelled to keep the Bank Guarantee alive on the threat of invocation by GAIL.

57. In view of the above, the Arbitral Tribunal allowed the respondent's claim for bank charges quantified at ₹3,46,000/- paid to the bank for the period after 31.03.2017. This Court concurs with the view of the Arbitral Tribunal that the respondent was entitled to recover

the costs for the Bank Guarantee. Mr. Taneja's contention that the Bank Guarantee had been kept alive in view of the disputes between the parties and thus, the respondent is not entitled to any charges, is bereft of any merit.

58. This Court is also unable to accept that the impugned award requires any interference on account of award of interest at the rate of 15% per annum. The contention that pre-award interest at the rate of 15% per annum and future interest at the rate of 15% per annum is erroneous and warrants any interference from this Court, is unmerited.

59. In ***Punjab State Civil Supplies Corporation Limited (PUNSUP) and Anr. v Ganpati Rice Mills: SLP (C) 36655 of 2016, decided on 20.10.2021***, the Supreme Court had observed that "*Section 31 (7) of the Arbitration Act, 1996 grants substantial discretion to the arbitrator in awarding interest*"

60. The award of 15% interest cannot by any stretch stated to be excessive or manifestly erroneous.

61. Before concluding, it is relevant for this Court to observe that none of the contentions as advanced on behalf of GAIL fall within the limited scope of Section 34 of the A&C Act. An arbitral award can be set aside under Section 34(2)(b)(ii) of the A&C Act if it is found to be in conflict with the public policy of India or under Section 34(2A) of the A&C Act if it is vitiated by patent illegality. The Supreme Court of India has explained the scope of the said grounds in various authoritative decisions [See: ***Associate Builders v. Delhi Development***

Authority: (2015) 3 SCC 49; Dyna Technologies Private Limited v. Crompton Greaves Limited: (2019) 20 SCC 1; and, ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.: (2021) SCC OnLine SC 695***]. The Supreme Court as well as this Court have also held in various decisions that this Court does not sit as the first appellate Court and cannot re-appreciate the evidence and supplant its opinion over that of the Arbitral Tribunal. An arbitral award, which is contrary to the terms of the contract, is amenable to challenge under Section 34 of the A&C Act. However, in this case, the contention that the Arbitral Tribunal had disregarded the clauses of the Agreement is, *ex facie,* erroneous.

62. In view of the above, the present petition is dismissed with costs quantified at ₹50,000/-. All pending applications are also disposed of.

VIBHU BAKHRU, J

MAY 12, 2022
'gsr'/v