IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 22.11.2023

\+ **FAO (COMM) 5/2023 & CM APPL. 886/2023, CMAPPL. 884/2023**

M/S METAL ENGINEERING AND FORGING COMPANY ..... Appellant

versus

CENTRAL WAREHOUSING CORPORATION & ANR. ..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Anurabh Chowdhary, Sr. Adv. with Mr. Abhishek Roy, Adv.

For the Respondents : Mr. Prabhas Bajaj & Mr. Priyanshu Tyagi, Advs. for R1&2.

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The appellant, M/s Metal Engineering and Forging Company (hereafter '**MEFC**') has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning an order dated 13.09.2022 (hereafter '**the impugned order**') rendered by the learned Commercial Court.

2. By virtue of the impugned order, the learned Commercial Court had rejected MEFC's application preferred under Section 34 of the A&C Act, being OMP(Comm.) No. 1/19 captioned ***M/s Metal Engineering & Forging Company v. Central Warehousing Corporation & Anr.***, whereby MEFC had challenged an Arbitral Award dated 29.09.2018 (hereafter '**the impugned award**') rendered by an Arbitral Tribunal comprising of a Sole Arbitrator.

3. The disputes between the parties essentially relate to MEFC's claim for a refund of the amounts withheld/recovered by respondent no.1, Central Warehousing Corporation (hereafter '**CWC**') on account of delay in transporting cargo. MEFC claims that CWC is not entitled to recover any amount as it has not proved that it has suffered any loss on account of any delay in transportation of the goods. MEFC also claims that delays were on account of reasons beyond its control. CWC claims that in terms of the contract between the parties, it is entitled to impose a penalty. It disputes that it has not suffered any loss and claims that it has suffered loss of goodwill, which cannot be precisely quantified or proved. The Arbitral Tribunal accepted CWC's contention. However, since the Committee constituted by CWC had quantified that a penalty in the sum of ₹22,00,000/- was imposed on account of delays that were for justifiable reasons, the Arbitral Tribunal had allowed MEFC's claim to the said extent against MEFC's claim for a sum of ₹49,89,124/- along with interest. MEFC is aggrieved to the extent that its claim for the remaining amount was not allowed and assailed the impugned award to the said extent.

4. There is no serious dispute that CWC had recovered transportation charges from its customers, and that, the penalty levied for the delay in transportation of goods does not correspond to any monetary loss suffered by CWC, on account of any deduction or discount in the charges payable by CWC's customers for the transportation of goods. However, CWC has sought to justify the levy of penalty on the ground of loss of goodwill suffered by it.

5. The principal question to be addressed is whether the decision of the Arbitral Tribunal to accept CWC's contention vitiates the impugned award on the ground of patent illegality.

6. MEFC is a proprietorship concern and is stated to possess technical expertise in the business of handling and transportation of cargo and manufacturing of defence stores. MEFC is carrying on the business of providing the aforesaid services to government organisations, semi-government organisations and public sector companies, in terms of the respective contracts entered into with them.

7. On 17.09.1997, CWC invited tenders for appointment of contractors (H&T Contractors) (on regular basis) for providing handling and allied services, and transportation by road of Import and Export Cargo at ICD Kanpur. MEFC submitted its offer pursuant to the aforesaid notice and was successful. On 09.10.1997, an *ad hoc* contract for the aforesaid work was entered into between MEFC and CWC, which was extended on a month-to-month basis till 09.12.1997.

8. On 17.12.1997, CWC awarded the regular contract to MEFC for the period of two years for handling and transportation of containers from ICD Kanpur to JNP, Navi Mumbai and vice versa. The agreement dated 17.12.1997 (hereafter '**the Agreement**') stipulated that the transportation period would be seven days, commencing from the date of the job order. CWC reserved the right to impose penalty at the rate of ₹2,000/- per Twenty Equivalent Units (TEU) per day for delay in transportation of container(s) beyond seven days.

9. CWC recovered various amounts on account of penalties imposed on MEFC in terms of Clause 3 of the Agreement.

10. Aggrieved by the same, on 29.04.1998, MEFC requested the Ministry of Food and Consumer Affairs to intervene in the matter regarding deduction effected by CWC from the invoices raised by MEFC.

11. On 30.06.1998, MEFC received a letter from CWC, *inter alia*, calling upon it to furnish the dates of collection of documents from the shipping agency for the purpose of reconsidering the penalty levied. MEFC submitted certain details under cover of its letter dated 20.07.1998 and thereafter, also sought an appointment with the Managing Director of CWC for resolving the issues.

12. In view of the representations made by MEFC to the Ministry of Food and Consumer Affairs, on 27.11.1998, the Managing Director of

CWC constituted a committee (hereafter '**the Committee**') comprising of the Joint Manager (A/cs) and the Deputy Manager (H&T) to review the penalties imposed on MEFC. The Committee submitted its recommendations, which were placed before the Board of Directors of CWC. However, the Board of CWC did not take any decision pursuant to the said recommendations.

13. MEFC invoked the Arbitration Agreement and the disputes were referred to the Arbitral Tribunal comprising of a Sole Arbitrator.

14. MEFC filed its Statement of Claims claiming an amount of ₹49,89,124/- being the amount withheld/recovered by CWC from MEFC along with interest at the rate of 24% per annum. MEFC also sought refund of an amount of ₹2,50,000/- and ₹60,000/- furnished as security in respect of the regular contract and the *ad hoc* contract respectively along with interest at the rate of 24% per annum. In addition, MEFC also sought compensation for loss of profits quantified at ₹2,25,000/- per month from April, 1998 to December 15, 1999 along with interest at the rate of 24% per annum, per month.

15. CWC filed its Statement of Defence countering the claims made by MEFC. CWC claimed that it was entitled to recover the penalties as imposed in terms of Clause 3 of the Agreement. It claimed that apart from the recoveries made, it was also entitled to recover a further amount of ₹15,52,327/-. In addition, CWC claimed an amount of ₹19,17,104.60/- for the settlement of various claims.

16. MEFC raised several contentions in support of its claims before the Arbitral Tribunal. First, that the penalty was imposed without issuing any show cause notice. MEFC claimed that the respondents released the payment after recovering their unadjudicated penalty claim towards transit time allegedly exceeding beyond seven days without giving any opportunity of being heard. Second, MEFC claimed that the penalty is not mandatory and that the period of seven days is not the essence of the contract, as on several occasions, CWC had released *ad hoc* payments without penalty. Third, MEFC submitted that CWC had allegedly recovered penalty up to 400% of the charges and at the same time realised 100% payments, including profits, from their clients. Thus, no loss was suffered by CWC. Fourth, MEFC pleaded that there was no delay due to its negligence and CWC had not suffered any monetary loss due to such delay, if any. Fifth, MEFC claimed that CWC had appointed M/s Kataria Carriers as an additional contractor without terminating MEFC's contract, resulting in a loss to MEFC.

17. CWC countered the aforesaid contentions. It contended that the claim was not arbitrable as the levy of penalty was an excepted matter. It was further contended that the services rendered by MEFC were not satisfactory and that there were unreasonable delays on the part of MEFC in transporting the goods on account of non-availability of adequate infrastructure required to provide the services of handing and transportation of cargo.

18. Considering the rival pleadings, the learned Sole Arbitrator framed the following issues:

> "1. Is the Arbitrator competent to adjudicate on the point of penalty, the same being alleged to be an excepted matter in terms of the contract?
> 2. Are the Claimants entitled to the refund of their with-held amount of Rs. 49,89,124/-
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> 3. Are the Claimants further entitled to recover a sum of Rs. 43,87,500/- as business loss?
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> 4. Are the Claimants also entitled to the refund of their security deposit/ earnest money amount of Rs. 3,10,000/-?
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> 5. Are the Respondents entitled to a sum of Rs. 61,56,000/- towards penalty from the Claimants?
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> 6. Are the Respondents also entitled to recover a sum of Rs. 54,120/- towards ground rent from the Claimants?
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> 7. Are the Respondents entitled to recover a sum of Rs. 19,17,104.60/- as compensation from the Claimants in terms of the Contract Conditions?
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> 8. Are the parties entitled to interest @ 24% p.a. on the respective amounts claimed, as aforesaid?"

19. The Arbitral Tribunal rendered an Arbitral Award dated 03.02.2003 (hereafter '**the first award**'). The Arbitral Tribunal rejected the contention that the claims raised by MEFC were not arbitrable. In respect of issue no.2 (MEFC's claim for a refund of the amount of ₹49,89,124/- withheld by CWC), the Arbitral Tribunal noted that the Committee had examined the question of waiver of penalty on the anvil of, (i) Whether the delays were on account of natural factors such as cyclones and strikes etc., which were beyond the control of MEFC; (ii) Whether the delay was for want of complete

documents for the import cargo; (iii) Whether the delay was on account of job orders issued in late hours of working days followed by public holidays and weekly/monthly holidays; and, (iv) Whether the delay caused due to unloading at the ports was due to holidays and strikes at the port etc.

20. The Committee noted that in several cases, the amount of penalty imposed was more than the transportation charges payable and, in such cases, the penalty should be restricted to the amount of freight. The Arbitral Tribunal noted that in addition to the factors considered by the Committee, MEFC had also sought waiver of penalties on account of delays caused due to breakdown of trailers and tractors *en route* which may not be admissible. In view of the above, considering the recommendations of the Committee, the Arbitral Tribunal held that a sum of ₹22,00,000/- ought to be refunded to MEFC.

21. It is material to note that insofar as the refund of security deposit is concerned, the Arbitral Tribunal awarded refund of the security amount of ₹60,000/- furnished in respect of the *ad hoc* contract in favour of MEFC, however, rejected MEFC's claim for refund of the security deposit of ₹2,50,000/- furnished in respect of the Regular contract. The Arbitral Tribunal found that MEFC had committed a breach of the obligations under the Agreement and had refused to perform the work. The Arbitral Tribunal held that CWC's business had suffered a setback and in view of the above, MEFC

deserved to lose its security amount, which was rightly forfeited by CWC. However, CWC's claim for the remaining loss was rejected. CWC's claim for additional sum on account of penalty (₹11,66,876/-) as well as further compensation of ₹19,17,104.60/- was also rejected. The Arbitral Tribunal awarded interest at the rate of 9 % per annum, which would increase to 12% per annum, after thirty days of the publication of the Arbitral Award till its actual payment; if the awarded amount was not paid within the said period.

22. On 29.07.2003, MEFC filed an application (OMP No.191/2003) under Section 34 of the A&C Act before this Court seeking to set aside the Arbitral Award.

23. During the course of the proceedings in OMP No.191/2003, MEFC confined its challenge to the Arbitral Award in respect of issue no.2 – Whether MEFL was entitled to refund of ₹49,89,124/- being the penalty recovered by CWC.

24. After hearing the parties, this Court was of the view that the Arbitral Award rendered in respect of issue no. 2 needed reconsideration, essentially, on two grounds. First, that the Arbitral Tribunal had proceeded on the basis of equity, and second, that the Arbitral Tribunal had rendered the award on the premise that no proof of loss or damage was required to be furnished. This Court held that it may not be necessary to prove the actual quantum of damage or loss; but proof of some damage or loss, was essential. Accordingly, by an order dated 17.02.2014, this Court set aside the award in respect of the

aforesaid issue and relegated the parties to arbitration afresh. The relevant extract of the order dated 17.02.2014 is set out below: -

> "Learned counsel for the petitioner, after advancing submissions in respect of the award, has limited his challenge to the award made on Issue No.2. The submission of learned counsel for the petitioner is that while computing the amount ofRs.22 Lakhs, the Arbitral Tribunal has given no reasons, or basis for arriving at the said figure. He submits that merely because the contract provided for imposition of penalty, as aforesaid, it does not entitle the respondent to impose the said penalty, as it was incumbent upon the respondent to establish sufferance of lessor damage. Learned counsel submits that the Arbitral Tribunal has proceeded on the basis that, because the time limit of seven days for transportation of the containers to/from ICD Kanpur to Mumbai had been breached, and the contract provides for penalty ofRs.2,000/- per TEU per day it does not call for proof of loss or damages. He submits that this basics premises on which the Arbitral Tribunal decided Issue No.2, is fundamentally flawed.
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> In support of his submissions, learned counsel for the petitioner has placed reliance on the judgment of this Court in Indian Oil Corporation Vs. M/s Lloyds Steel Industries Ltd., 144 (2007) DLT 659, which has been followed in Vishal Engineers and Builders Vs. Indian Oil Corporation Limited, 2012 (1) Arb.L.R. 253 (Delhi) (DB).
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> The submission of learned counsel for the respondent, on the other hand, is that before the Arbitral Tribunal, the breakup of the penalty-imposed bill-wise was provided. He submits that notices were issued to the petitioner regarding the deductions. The respondent has drawn attention of the Court to some of the documents placed in Volume IV of the Arbitral record in this respect from page 425 onwards.
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> Learned counsel further submits that since the contract pertained to international transactions, as the containers had to be sent from ICD Kanpur to Mumbai for onward transport

overseas and also for bringing the containers from ports to lCD Kanpur, sufferance of loss was inherent. He submits that claims were made by several parties upon the respondent which were claimed by the respondent in their counter claim. However, they were denied by the learned Arbitrator.

Learned counsel further submits that damages were suffered on account of ground rent, which has been awarded by the learned Arbitrator. It cannot, therefore, be said that no loss, or damages were suffered by the respondent. He further submits that in this case it was not possible to quantify the exact amount of loss or damages.

In this regard, he has placed reliance on the judgment of this Court in M/s Forbes Gokak Ltd. Vs. Central Warehousing Corporation, O.M.P. No.306/2000 decided on 01.02.2010, which, according to the respondent, has been upheld by the Division Bench.

Having heard learned counsel for the parties, I am of the view that the award made on Issue No.2 needs re-consideration, as from the award itself, it can be seen that, firstly, the learned Arbitrator has proceeded on the basis of equity- which he was not so entitled to. It is also seen that he has founded the award on Issue No.2 on the premise that no proof of loss, or damages was required to be furnished in the light of the contractual terms. Though, it is true that it may not be necessary to prove the exact quantum of damages/ loss, it cannot be said that without proof of some damage or loss, the respondent could impose and recover the penalty.

In the light of the aforesaid, the award made on issueNo.2 is set aside. I am informed that the learned Arbitrator is no longer available, as he has since passed away. Accordingly, Issue No.2 is referred for fresh adjudication to the Arbitral Tribunal consisting of Ms. Kanwal Inder, retired ADJ. The fees payable to the learned Arbitrator, it is agreed, shall be paid in accordance with the schedule of fees prescribed by Delhi International Arbitration Centre, to be shared equally by the

parties. The same shall be computed on the value of claim covered by issue no.2".

25. This Court further proceeded to appoint an Arbitrator for re-adjudication of MEFC's claim for refund of the amount of ₹49,89,124/- withheld by CWC.

Arbitral Proceedings

26. Before the Arbitral Tribunal, MEFC sought refund of the amount of ₹49,89,124/- essentially on three grounds. First, that the imposition of penalty was without any show cause notice. Second, that there was no material on record to establish that the penalty had been imposed by the Regional Manager, CWC. And third, that no loss or damage was suffered by CWC.

27. The Arbitral Tribunal rendered the impugned award on 29.09.2018. It rejected the contention that any show cause notice was required to be served prior to imposing the penalty. The Arbitral Tribunal held that there was no requirement under the Agreement between the parties for issuance any such notice; therefore, the levy of penalty could not be set aside on this ground.

28. The Arbitral Tribunal did not accept MEFC's contention that recovery of penalty was contrary to the Agreement as no such penalty was imposed by the Regional Manager, CWC. This was mainly for the reason that MEFC had not made any averments in its pleadings to challenge the levy of penalty on that ground.

29. Insofar as MEFC's contention that no penalty could be levied without CWC establishing that it had suffered any loss or damage is concerned, the Arbitral Tribunal found that there was material on record to establish that CWC has suffered a loss of goodwill and hence, rejected the contention that the penalty, as claimed by CWC could not be imposed.

30. Notwithstanding the above, the Arbitral Tribunal concluded that MEFC was entitled to a sum of ₹22,00,000/- as already refunded by CWC in terms of the first award.

31. MEFC filed an application for setting aside the impugned award before the learned Commercial Court, which was rejected by the impugned order.

Reasons and conclusions

32. As noticed at the outset, MEFC had challenged the impugned award essentially on the ground that the Arbitral Tribunal had accepted CWC's contention that it was not required to prove or establish any loss for imposing a penalty under Clause 3 of the Agreement.

33. The learned counsel for MEFC has contended that the question whether CWC was required to establish some loss or damage for recovering any penalty was no longer *res integra.* He submitted that this Court, in OMP No.191/2003, had accepted MEFC's contention that it may not be necessary for CWC to prove the exact quantum of

damages or loss, but it was required at least to establish some damage or loss before recovering any penalty. He submitted that MEFC's claim that CWC had recovered the entire amount from its customers without any deduction on account of delay had not been controverted. He contended that it was, thus, established that CWC had not suffered any loss yet the Arbitral Tribunal had proceeded to accept CWC's right to recover penalty.

34. Before proceeding further, it would be relevant to refer to the Clause 3 of the Agreement and the same is set out below: -

> "3. The contractor shall complete the work of transportation of empty/loaded container (Import/Export) Ex-ICD, Kanpur to Gateway Port of Calcutta, Haldia/ Mumbai (JNPT/MPT) and ICD, Tughlakabad Delhi and any other specified place within Kanpur city or vice-versa within 6 days, 6 days, 7 days, 2 days and 24 hours (1 day) respectively from the day of issue of job order subject to the condition that the container in each case should be removed from ICD Kanpur or taken delivery from Gateway Port of Calcutta, Haldia, Mumbai (JNPTIMPT) and ICD Tughlakabad, Railway loading points at Kanpur as the case may be, for transportation within one day of the date of issue of job order which shall be part of above mentioned time limit prescribed for transportation irrespective of any detention due to off-loading/loading delay or traffic congestion enroute etc. failing which ACWC Lucknow reserves the right to impose the penalty @ Rs.2000/- per TEU per day for delay in transportation of containers and in addition to the above an amount equivalent to ground rent at the maximum slab of prevalent tariff (liable for revision from time to time) for delay in removal or taking delivery of container within stipulated time in each case and his decision in this regard will be final and binding on the contractor"

35. In terms of Clause 3 of the Agreement, CWC was entitled to levy penalty at the rate of ₹2,000/- per TEU. In addition, CWC was

also entitled to recover the ground rent at the maximum slab of the prevalent tariff. CWC's claim in respect of the ground rent (which was issue no.6 in the earlier round of arbitral proceedings) was allowed in terms of the first award and is no longer a subject matter of dispute.

36. Undisputedly, there were delays in delivery of goods and it was also found that at least part of the delays were for the reason attributable to MEFC. This Court is not required to examine the question whether the delays were beyond the control of MEFC and whether, the penalty could be leviable in such an eventuality. This is because, this was not the challenge raised by the MEFC before the Arbitral Tribunal. The impugned award records that during the course of the final arguments, MEFC had confined its challenge in respect of issue no.2 on only three grounds. First, that the penalty had been imposed without the issuance of a show cause notice; second, that CWC had not established that the penalty had been imposed by Regional Manager, CWC; and third, that the imposition of penalty was not sustainable without proving loss or damage.

37. The controversy before this Court is now confined to a singular ground – that the levy of penalty under Clause 3 of the Agreement is not permissible without CWC proving loss or damages.

38. The law regarding the levy of compensation for breach of a contract is now well settled. Section 74 of the Indian Contract Act, 1872 reads as under: -

> "74. Compensation for breach of contract where penalty stipulated – When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so name or, as the case may be, the penalty stipulated for."
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> (Emphasis Added)

39. In the case of ***Fateh Chand v. Balkishan Das***[1], the Constitution Bench of the Supreme Court had referred to Section 74 of the Indian Contract Act, 1872 and authoritatively explained that where a contract stipulates payment of a specified sum on the contract being broken, the court has jurisdiction '*to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture*'.

40. In ***Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.***[2], the Supreme Court emphasised that if a compensation named in the contract for breach of contract is a genuine pre-estimate of loss, which the parties were aware of at the time of entering into the contract, the same was not required to be proved. The parties claiming such loss were not required to lead any evidence to prove the actual loss suffered by it.

[1] 1963 SCC OnLine SC 49
[2] (2003) 5 SCC 705

41. In the case of ***Kailash Nath Associates v. Delhi Development Authority & Anr.***[3], the Supreme Court referred to the earlier decisions and distilled the law regarding compensation for breach of contract under Section 74 of the Indian Contract Act, 1872 as under: -

> "43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:
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> 43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if itis a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.
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> 43.2. Reasonable compensation will be fixed on well known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.
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> 43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.
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> 43.4. The section applies whether a person is a plaintiff or a defendant in a suit.
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> 43.5. The sum spoken of may already be paid or be payable in future.

[3] (2015) 4 SCC 136

> 43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.
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> 43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."
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> (Emphasis Added)

42. The question whether the impugned award is vitiated by patent illegality is required to be considered on the anvil of the aforesaid principles. As noticed above, the controversy is confined to examining whether the recovery of penalty could be sustained without CWC proving that it has suffered actual loss. In this regard, the observations made by the Supreme Court in paragraph no.43.6 of the decision in ***Kailash Nath Associates v. Delhi Development Authority & Anr***.[3], is instructive. CWC was required to prove the actual damage or loss only if it is possible to establish the same. In cases where the damage and loss was impossible or difficult to prove, the liquidated damages as set out in the contract were required to be accepted. In the present case, the Arbitral Tribunal found that CWC had claimed loss on account of goodwill. Undisputedly, it would be difficult for any party claiming loss of goodwill to prove or establish the same with any mathematical precision. However, the same did not absolve CWC from establishing

that it had, in fact, suffered such a loss. The Arbitral Tribunal, after evaluating the evidence, found CWC had suffered loss of goodwill on account of breach on the part of MEFC to perform its obligations in terms of the Agreement. Paragraph no.32 of the of the impugned award clearly reflects the same and is set out below: -

> "32. Having already concluded that the various acts of omission and commission of the claimants attracted penalty as specified in the contract, 1 have to observe further that an excess sum of ₹22 lakhs imposed as penalty, found refundable. In fairness, the claimants are entitled to interest at this amount and security amount of Rs. 60,000/- (for ad-hoc contract) as well for the period it remained in the possession of the respondents. The statement submitted by the claimants along with their claims (Annexure 46 (a) shows that on an average, this sum remained with-held for a period of five years ending with the publication of this award. In the light of these facts, it would be fair and equitable to concede interest to the claimants @9% for five years on the aforesaid sum. In the event of any failure in this behalf, the rate of interest would increase to 12% after 30 days commencing from the date of publication of the award till its actual payment."

43. We are unable to accept that the Arbitral Tribunal's conclusion that CWC had suffered a loss of goodwill, is patently illegal. The conclusion is based on evaluation of evidence and therefore, the same warrants no interference by this Court. As stated above, it is difficult to prove the quantum of actual loss suffered on account of loss of goodwill. Thus, no such burden was required to be discharged by CWC. It was required to prove that it had suffered a loss and it had placed adequate material to establish the same.

44. We find no ground to interfere with the impugned award and find no fault with the learned Commercial Court declining MEFC's application under Section 34 of the A&C Act.

45. The appeal is unmerited and accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBBER 22, 2023
Ch