* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 1550A/1998

MUNCHUR INDUSTRIES LTD. ..... Petitioner
Through Mr. Sandeep Sharma, Amicus Curiae

versus

MARUTI UDYOG LTD. ..... Respondent
Through Mr. S.K. Chaudhary, Advocate

% Date of Decision : 8th January, 2010

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J (ORAL)

I.A. 11475/1998

1. By way of the present application, respondent-objector has filed objections under Section 30 of the Arbitration Act, 1940 (hereinafter referred to as "Act, 1940") challenging the Award dated 17th July, 1998 passed by learned Umpire, Mr. Justice Charanjit Talwar (Retd.).

2. Since in the present case, none had appeared for petitioner-claimant on several dates, I requested Mr. Sandeep Sharma, Advocate, who happened to be present in Court, to assist this Court as Amicus

Curiae. I am happy to note that at short notice Mr. Sharma, accepted my offer.

3. Mr. S.K. Chaudhary, learned counsel for respondent-objector drew my attention to Paragraph 5 of First Schedule of Act, 1940 which prescribes that an Umpire has to make his award within two months of entering upon the reference or within such extended time as the Court may allow. Mr. Chaudhary stated that in the present case, learned Umpire had entered upon reference on 15th September, 2007 but the Award had been passed on 17th July, 1998. He contended that as the Award had been rendered much after the expiry of stipulated period of two months, the same was null and void.

4. Mr. Chaudhary submitted that the Umpire was not entitled to extend the time for making the Award. He stated that in accordance with Paragraph 5 of the First Schedule of Act, 1940, the Court alone had the jurisdiction to extend the time for publishing an award. Accordingly, Mr. Chaudhary contended that the Umpire had become *functus officio* on 15th November, 1997.

5. Mr. Chaudhary stated that extensions, if any, agreed upon by respondent-objector were without jurisdiction as by consent, the time for rendering the award could not have been extended. In any event, according to Mr. Chaudhary, even in accordance with the last unauthorised extension given by the respondent-objector, the time for

publishing the Award expired on 16th July, 1998 and since in the present case the Award was published a day later, that is, on 17th July, 1998, the same was without jurisdiction.

6. Mr. Chaudhary contended that the Umpire could not have entered upon the reference on the ground of difference of opinion between the two arbitrators as in the present case both the arbitrators had not requested the Umpire to enter upon reference. He pointed out that in fact one of the arbitrators, namely, Mr. P.K. Ganguly appointed by respondent-objector had refused to give his consent to the Umpire to enter upon reference on the ground that there was no difference of opinion between the two arbitrators.

7. Mr. Chaudhary further submitted that there was legal misconduct on the part of the learned Umpire as the letters dated 2nd June, 1997, 20th June, 1997 and 24th June, 1997 had been brought on record subsequent to the letters dated 7th July, 1997, 11th July, 1997, 17th July, 1997, 28th July, 1997 and 4th August, 1997. He stated that if the letters dated 2nd June, 1997, 20th June, 1997 and 24th June, 1997 had contemporaneously been on record, they would have been referred to by the Umpire in either his correspondence or in the order dated 4th November, 1997 by virtue of which learned Umpire had decided his jurisdiction.

8. Mr. Chaudhary also submitted that under the Act, 1940 Umpire did not have authority to decide the issue of his own jurisdiction and accordingly, the order dated 4th November, 1997 was non est.

9. On merits, Mr. Chaudhary stated that the impugned Award suffered from errors apparent on the face of the record inasmuch as the Umpire had awarded indirect cost of each horn at the rate of Rs. 10.42/- and Rs. 10.70/- as against the agreed indirect cost of Rs. 9.45/- per horn. In this connection, he referred to the price negotiation letter dated 21st April, 1994 which had been signed by the petitioner-claimant on 17th May, 1994. Mr. Chaudhary stated that the Umpire had committed legal misconduct inasmuch as the Umpire had not only misinterpreted Clause 22 of the Basic Purchase Agreement dated 1st October, 1993 but had also failed to appreciate that the petitioner-claimant had not given prior notice of 21 days as prescribed in the said Clause. Consequently, according to Mr. Chaudhary, petitioner-claimant was not entitled to any compensation/ damages.

10. On the other hand, Mr. Sandeep Sharma, learned Amicus Curiae submitted that even though paragraph 5 of the First Schedule of Act, 1940 stipulated that the Court alone had the authority to grant extension for making an Award, the accepted exception was that with the consent of the parties, time could be extended. He pointed out that in the present case, the time for rendering the award had been jointly extended

by the parties on 17th February, 1998, 15th April, 1998 and 2nd May, 1998. Consequently, he submitted that even though paragraph 5 of the First Schedule of Act, 1940 prescribed a two months period within which the Umpire had to render his award, the Umpire had the power to extend the time for rendering an award with the consent of parties. In this connection, he referred to Section 28(2) of Act, 1940 which reads as under :-

> ***"28. Power to Court only to enlarge time for making award.-***
>
> *xxxx xxxx xxxx xxxx*
>
> *(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."*
>
> *(emphasis supplied)*

11. Mr. Sharma contended that the Umpire had rightly rejected the respondent-objector's preliminary objection that the Umpire could not have entered upon reference. In this connection, he drew my attention to the following passage in the impugned Award :-

> *"……One of the learned co-arbitrators, vide his letter of 1st June, 1997, which was received by me on 5th July, 1997, however, wrote to me that differences had arisen between the Arbitrators. I was required to enter upon the reference on that ground. The other learned co-arbitrator did not agree with him that differences had arisen between them and, therefore, refused to send me a letter of request for this purpose.*
>
> *The respondent's application that I should not take upon myself the burden of entering upon the reference was decided by me on 4th November, 1997 wherein, after noticing the ingredients enumerated in Paragraph 4 of Schedule 1 of the Indian Arbitration Act, 1940. I held that in the facts and*

> *circumstances of the present case, it can not be said that differences had arisen between the learned Arbitrators. I held that :*
>
> > *"The learned arbitrators, having allowed the time to expiry without making a unanimous award or separate awards within that time, the first ingredient of the said paragraph 4 is fulfilled. A duty is thus cast upon me as an Umpire to enter on the reference in lieu of the arbitrators."*
>
> *Thus I rejected the preliminary objection of the respondent, M/s. Maruti Udyog Limited to the jurisdiction of the Umpire to enter upon the reference or recall the notice of reference issued on 15th September, 1997."*

12. Mr. Sharma also drew my attention to paragraph nos. 3 and 4 of First Schedule of Act, 1940, which clearly stipulated that the arbitrators had to render their award within four months after entering upon reference and if the arbitrators allowed the time to expire without making an award, then the Umpire was legally bound to forthwith enter upon the reference in lieu of arbitrators. Consequently, according to him, letters dated 2nd June, 1997, 20th June, 1997 and 24th June, 1997 were irrelevant.

13. Mr. Sharma further submitted that the respondent-objector by continuously participating in the arbitration proceedings had acquiesced in the said proceedings and waived off their right to challenge the authority of the learned Umpire. In this connection, he relied upon a judgment of the Supreme Court in ***Prasun Roy Vs. The Calcutta Metropolitan Development Authority and Anr.*** reported in ***AIR 1988 SC 205.***

14. Mr. Sharma also pointed out that the Umpire's authority could only have been challenged by way of a petition under Sections 5, 11 and 12 of Act, 1940 – which the respondent-objector had failed to do.

15. As far as the objections on merits were concerned, Mr. Sharma submitted that in the realm of interpretation of the contract, an arbitrator/umpire was supreme.

16. Having heard the parties at length and having perused the impugned Award, I find that in the present case, respondent-objector had itself not only willingly extended the time for rendering the award but had also participated in the same by advancing extensive arguments. The relevant portion of the three orders dated 17th February, 1998, 15th April, 1998 and 2nd May, 1998 by virtue of which time was extended are reproduced hereinbelow :-

A) Order dated 17th February, 1998

ORDER SHEET OF THE 18TH HEARING HELD AT 4.30 P.M. ON 17TH FEBRUARY, 1998 AT MY RESIDENCE

PRESENT

BENCH

Mr. Justice Charanjit Talwar ..... Umpire

ON BEHALF OF THE CLAIMANT

Mr. Daljit Singh, Senior Advocate
Mr. Amardeep Singh, Advocate

ON BEHALF OF THE RESPONDENT
Mr. S.K. Chaudhary, Advocate
Mr. Ajay Malhotra, Advocate
Mr. Rajan Sharma

<u>*O R D E R*</u>

xxxx xxxx xxxx xxxx

Learned counsel for the parties jointly submit that time for making and publishing the award be extended by two months w.e.f. today i.e. 17th February, 1998.

(Justice Charanjit Talwar)
Umpire

17th February; 1998

B) Order dated 15th April, 1998

ORDER SHEET OF THE 25th HEARING HELD AT 4.00 P.M. ON 15TH APRIL, 1998 AT MY RESIDENCE

PRESENT

BENCH

Mr. Justice Charanjit Talwar ..... Umpire

ON BEHALF OF THE CLAIMANT

Mr. Daljit Singh, Senior Advocate
Mr. Amardeep Singh, Advocate
Mr. Unnikrishnan Nair

ON BEHALF OF THE RESPONDENT

Mr. S.K. Chaudhary, Advocate
Mr. Ajay Malhotra, Advocate

<u>*O R D E R*</u>

xxxx xxxx xxxx xxxx

The parties agree to extend time by two months for making the and publishing the award w.e.f. 17th April, 1998.

(Justice Charanjit Talwar)
Umpire

15th April, 1998

C) Order dated 2nd May, 1998

ORDER SHEET OF THE 27TH HEARING HELD AT 11.00 A.M. ON 2ND MAY, 1998 AT MY RESIDENCE

PRESENT

BENCH
Mr. Justice Charanjit Talwar ……Umpire

ON BEHALF OF THE CLAIMANT

Mr. Daljit Singh, Senior Advocate
Mr. Amardeep Singh, Advocate
Mr. Unnikrishnan Nair

ON BEHALF OF THE RESPONDENT

Mr. S.K. Chaudhary, Advocate
Mr. Ajay Malhotra, Advocate

O R D E R

xxxx xxxx xxxx xxxx

The learned counsel for the parties jointly submit that time to make and publish the award be extended by another month w.e.f. 17th June, 1998, till 16th July.

(Justice Charanjit Talwar)
Umpire

2nd May; 1998

17. I am of the view that Section 28(1) of Act, 1940 gives power to this Court to enlarge the time for making an award even after the award has been made. Section 28(1) of Act, 1940 reads as under :-

> *"**28. Power to Court only to enlarge time for making award.-** (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time, the time for making the award."*

18. In view of the fact that in the present instance respondent-objector had already given its consent for enlargement of time for making the award and had participated in the arbitration proceedings, I am of the opinion that it is a fit case where I should exercise my power under Section 28(1) of Act, 1940 to extend the time till 17th July, 1998 when the impugned Award was rendered by the Umpire. Accordingly, I extend the time under Section 28(1) of Act, 1940 till 17th July, 1998 to publish the Award by the Umpire.

19. As far as the submission that learned Umpire could not have assumed the jurisdiction in the present case was concerned, I am of the view that on a conjoint reading of paragraph nos. 3 and 4 of the First Schedule of Act, 1940 as well as the admitted position that two arbitrators had not rendered a unanimous Award within the stipulated period of four months, the Umpire was obliged in law to enter upon reference in lieu of the arbitrators. Paragraph nos. 3 and 4 of First Schedule of Act, 1940 read as under :-

> *"3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.*
>
> *4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators."*

20. As far as the allegation of legal misconduct on the ground that the Umpire had not referred to letters dated 2nd June, 1997, 20th June,

1997 and 24th June, 1997 is concerned, I am of the view that the said letters are irrelevant as even without the said letters, Umpire was obliged in law to enter upon the reference in lieu of the arbitrators. I am further of the view that the aforesaid three letters are innocuous and do not show any misconduct on the part of learned Umpire as in two out of the above mentioned three letters, the Umpire had only asked for and received the addresses and telephone numbers of the arbitrators and the parties.

21. As far as the argument that learned Umpire did not have the authority to decide his own jurisdiction is concerned, I am of the view that this argument does not lie in the mouth of the respondent-objector because it was the respondent-objector who had asked the Umpire to rule on his jurisdiction. In any event, since I have already held that learned Umpire had properly entered upon the reference, this argument is irrelevant and cannot be a ground for setting aside the impugned Award.

22. As far as the challenge to the impugned Award on merits is concerned, I am of the view that the Supreme Court in ***Arosan Enterprises Ltd. Vs. Union of India & Another*** reported in ***(1999) 9 SCC 449*** has clearly outlined the scope of interference by this Court in petitions filed under Sections 30 and 33 of the Act, 1940. The relevant observations of the Supreme in the said judgment Court are reproduced hereinbelow :-

"36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

37. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined.………"

(emphasis supplied)

23. The Supreme Court in ***Sudarshan Trading Co. Vs. Government of Kerala*** reported in ***AIR 1989 SC 890*** has also held that, "*there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised."* In the present case, I find that the learned Umpire has given cogent reasons for awarding part of the petitioner-claimant's claims. With regard to the indirect cost the Umpire has held as under :

"However, there is a controversy regarding the amount of the 'indirect cost' per horn. According to the claimant, the 'indirect cost' conveyed to the respondent for MS Type horn was Rs.10.42 per horn and for Hybrid Type horn it was Rs. 10.70 per horn. According to the respondent, however, the 'indirect cost' was Rs.9.45 per horn for both types of horns.

xxxx xxxx xxxx xxxx

However, the cost break-up, which is different from the one supplied by Munchur, has been recorded on the said

document at its end wherein the 'indirect cost' is shown as Rs.9.45 per horn. That is the portion which has been encircled in blue. Mr. Hitkari, claimant's witness no. 2, asserted that this portion was not there when the document was executed. Mr. Dave, who executed the document on behalf of MUL has not been produced although Mr. Hitkari's version is being challenged. The fact that the cost break-up was submitted after the execution of the document on 17th May, 1994 stands proved. No reason has been given for not producing Mr. Dave on behalf of the respondent. In my view only he could have clarified the position. Keeping in view the evidence brought on record, it has to be held that the break-up which was given to the respondent vide letter of 30th May, 1994, could not have been incorporated in the agreement executed on 17th May, 1994.

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That the respondent has not purchased 59,658 horns as per the said agreement, is admitted. The reason stated that it was not 'practicable' for the respondent, is invalid. It, therefore, follows that it has committed breach of terms contained in the agreement dated 21st April, 1994 in terms of the quantity. The claimant is not claiming the price of the balance of 59,658 horns. What it is claiming is the 'indirect cost' agreed to between the parties for not having purchased that quantity of horns. The claimant has further proved that 'indirect cost' agreed to be paid by the respondent for MS Type horn was Rs.10.42 per horn and for the Hybrid Type it was Rs.10.70 per horn."

(emphasis supplied)

24. As far as requisite notice under Clause 22 is concerned, the Umpire has observed as under :-

"Issue No. 1: Whether the claimant had given the requisite notice about disruption of supply in accordance with the terms and conditions of Basic Purchase Agreement?

It is the claimant's case that its workmen had resorted to slow down of work in its factory causing loss in production of the horns on September 23, 1994 and went on 'tool down' strike on September 26, 1994. As per clause 22 of the Basic Purchase Agreement the intimation about the strike in the factory was sent to the respondent, it is pleaded, on October 11, 1995 within the stipulated period of 21 days. The case of the respondent, however, is that the claimant had committed breach of the terms and conditions of Clause 22 of the BPA

as it had failed to intimate and give notice of strike in its establishment within the stipulated period.

To appreciate the contention of the respective parties, the above said Clause 22 may be quoted:

> *"22. If at any time during the continuance of this Agreement, the performance in whole or in part by either party of any obligation under the Agreement shall be prevented or delayed by reasons of any war, hostility, acts of the public enemy, Government action, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine, restrictions, strikes, lockouts or acts of God as certified by the Indian Chamber of Commerce or Government Agency, then PROVIDED notice of happening of any such event is given by either party to the other within 21 days from the date of occurrence thereof, neither party shall by reasons of such event, be entitled to terminate this Agreement nor shall either party have any claim for damages against the other in respect of such non-performance or delay in performance, and delivery under the Agreement shall be resumed as soon as practicable after such event has come to an end or ceased to exist. PROVIDED FURTHER that if the performance in whole or part of any obligation under this Agreement is prevented or delayed by reason of any such event for a period exceeding 120 days, both the parties shall meet and arrive at a solution mutually acceptable. But in the event of failure in arriving at a mutually acceptable solution within 2 months of expiry of 120 days, either party may at its option terminate the Agreement."*

This clause enjoins that if either party to the contract is prevented or delayed from performing any of its obligation in whole or in part due to reasons such as war, hostility, civil commotion, sabotage, floods, epidemics, lockouts or strikes, etc. it is to give notice of such an event to the other party within 21 days from the date of occurrence of any such event. The provision further envisages that neither party shall, by reason of that event, be entitled to terminate the Agreement or shall have any claim for damages against the other in respect of such non-performance or delay in performance.

This Clause also lays down that the delivery under the Agreement shall be resumed as soon as practicable after such an event has come to an end or ceased to exist.

The respondent's case appears to be that the claimant was prevented from performing its obligation at least ' in part' much earlier to the strike stated to have occurred on 26th September, 1994. In the pleadings their case is that the

claimant knew that it was unable to meet the monthly schedule of supply of horns for the month of August, 1994.

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Shri Unnikrishnnan Nair, claimant's witness No. 1, has categorically stated that the tool down strike began on 26th September, 1994. The salary sheets for the period April, 1994 to May 1995 produced in support of this contention that the strike began on 26th September, 1994, show that no wages were paid to the workmen during the strike period which ended on October 23, 1994.

In the pleadings or in the evidence the respondent did not aver to any specific starting point of the stipulated period of 21 days notice as provided for in the said Clause 22. As noticed above, their case seems to be that as the claimant was not in a position to meet the monthly schedule for the month of August, 1994 and onwards, it must have been due to some labour problem.

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It appears that the tentative schedule for the August, 1994 (CW1/X3 at page 14 of Volume III of the record) for the respective three parts was 1360, 290 and 6800. This was changed to 1000, 400 and 7500 while issuing the firm schedule vide letter dated 22nd July, 1994 (page 15). The claimant, it appears, by then had manufactured the quantity given in the tentative schedule. It is the claimant's case that even the firm scheduled quantities were at times increased or decreased on verbal instructions of the respondent's representatives. Mr. Rajan Sharma, respondent's witness No. 2 during his cross-examination admitted that the quantity stated in the August schedule, in so far as Part No. 150 is concerned, was reduced by MUL but he added that this was done because there was an industrial dispute problem in Munchur's factory. Three of his answers on this aspect may be quoted:

"Ans 35 : Maruti changes the schedule on verbal instructions.

Ans 42: It is correct to say that for quantity No. 78054 was 1000 but the quantity supplied was 1360 horns.

Ans 44: Yes, quantity reduced because Maruti came to know that there was industrial dispute problems in Munchur."

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It is necessary at this stage to evaluate the reasons stated by Mr. Sharma for reducing the scheduled quantity of horns for Part No. 150 from 7500 to 6075. This reason of "industrial dispute problem" has been urged by him for the first time in his evidence. There is no contemporary record wherein this reason had been recorded. Even in the letter, exhibit CW1/X3, no reference has been made to this reason. It is not the case of the respondent that they had been informed about the industrial dispute problems in the month of August, 1994 by the claimant. The reply to question no. 44, quoted above, shows that the reduction in the quantity of horns of Part No. 150 from 7500 to 6075 was on Maruti's verbal instructions. Likewise, the increase of quantity for Part No. 54 from 1000 to 1360 was also on verbal instructions. A perusal of the compilation shows that Maruti Udyog Limited was, on verbal instructions, confirming the scheduled supply for the month of August, 1994 to the tentative schedule issued earlier. Otherwise, at least the increase of 1000 horns of Part No. 54 to 1360 horns and decrease of 400 horns of Part No. 64 to 290 horns cannot be satisfactorily explained. Having changed the schedule for the month of August, 1994 on verbal instructions which schedule, it is admitted by the respondent, the claimant had adhered to, no grievance can be made by the respondent about the short in that month.

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I have gone through the evidence. It appears that the quantity of horns in firm schedules was being changed on oral instructions. Thus, that quantity of horns, revised on oral instructions, was being fed into the computer and accepted at the material receiving gate of the respondent. As I have noticed above, 1000 horns of part no. 54 were changed to 1360 for that month and were duly accepted by the respondent. In my view to change the quantity given in the firm schedule on oral instructions is permissible under the contract under discussion, it could be changed till the 10th of the month in question. It is probable that Shri Unnikrishnan, claimant's witness no. 1, informed Shri Sharma, respondent's witness no. 2 about the difficulty the claimant was facing in supplying the complete quantity of 7500 horns for part no.150 and on that request Shri Sharma agreed to reduce that quantity.

Thus, it cannot be said that it was incumbent on the claimant to give notice to the respondent in the month of August, 1994 on the ground that it had been prevented from supplying the horns in whole or in part in the month of August, 1994. The revised quantity of horns, having been agreed to between the parties, no grievance can be made about the short supply.

In support of his contention that Munchur was unable to supply the horns as per the schedules and had, therefore, committed breach of Clause 22 of the Basic Purchase Agreement in as much as it did not inform the respondent about its inability to perform the contract in part, Mr. Chaudhary submitted that from the period April 1, 1994 to November 30, 1994, there was a shortfall of 18,180 units of horns. On the other hand Mr. Daljit Singh urged that shortfall during the months of April, 1994 to August, 1994 was only 0.2% which, according to him, can hardly be stated to be shortfall. He calculated this from the schedules issued by the respondent. The argument is that the short supply in the months of September and October was due to the strike and that contingency is covered under the said clause.

I may note here that this submission of Mr. Chaudhary was not raised in the pleadings. In the counter-statement it was the shortfall of August which had been referred to. At any rate, while appointing its Arbitrator, MUL's stand was that it had no disputes with the claimant. The cross-examination, as has been noticed was mainly confined to the shortfall for the month of August. Whether the short supply of horn part no. 150 totaling to 1425 in that month was on the initiative of MUL or was at the request of Munchur, is of no consequence. Likewise, the supply of horns and acceptance of that very number in earlier months, even if not strictly in accordance with schedules, shows that at that point of time respondent had no grievance on this ground. The admitted case is that the August schedule was reduced by the respondent I do not think it is necessary in that view of the matter to go into the details of the alleged short supply in the earlier months. The respondent cannot be permitted to go beyond the pleadings and its earlier assertion that it had no dispute with the claimant.

Thus, I hold that the claimant has proved that it had served the requisite notice as required under Clause 22 of the Basic Purchase Agreement within 21 days of the strike."

(emphasis supplied)

25. The Umpire has also interpreted clauses of the contract, in particular, Clause 22 of the Basic Purchase Agreement dated 1st October, 1993. I am of the view that the interpretation of a contract/agreement is a matter for an arbitrator/umpire to determine and the same cannot be impugned in Section 30 proceedings. In fact,

construction of a contract/agreement is within the jurisdiction of the arbitral tribunal. The Supreme Court in ***Mcdermott International Inc. Vs. Burn Standard Co. Ltd.*** reported in ***2006 (11) SCC 181*** has held as under:-

> *"112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law."*
>
> *(emphasis supplied)*

26. Consequently, objections to the impugned Award on merits are baseless.

27. As far as pendente lite and future interest is concerned, I deem it appropriate to reduce the interest from 12% per annum to 9% per annum simple interest. In this connection, I may refer to ***State of Rajasthan & Anr. Vs. M/s. Ferro Concrete Construction Pvt. Ltd.*** reported in ***2009 (8) SCALE 753*** wherein it has been held as under :-

> *"36. In regard to the rate of interest, we are of the view that the award of interest at 18% per annum, in an award governed by the old Act (Arbitration Act, 1940), was an error apparent on the face of the award. In regard to award of interest governed by the Interest Act, 1978, the rate of interest could not exceed the current rate of interest which means the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions given or issued to banking companies*

> *generally by the Reserve Bank of India under the Banking Regulation Act. Therefore, we are of the view that pre-reference interest should be only at the rate of 9% per annum. It is appropriate to award the same rate of interest even by way of pendent lite interest and future interest upto date of payment."*

28. In view of the aforesaid judgment and the current rate of interest, the impugned Award is modified to the extent that rate of interest from the date of reference to the date of payment is reduced to 9% per annum simple interest on the principal sum awarded. However, it is made clear that in case the aforesaid payment is not paid by the respondent-objector within a period of 90 days from today, the post-decretal rate of interest would stand increased to 11% per annum.

29. Before I part with this judgment, I would like to place on record my appreciation for the assistance rendered in the present case by Mr. Sandeep Sharma, Amicus Curiae.

30. With the aforesaid modification in the rate of interest, the impugned Award dated 17th July, 1998 is made rule of the Court and Registry is directed to prepare a decree in terms thereof. Accordingly, present application and petition stand disposed of.

MANMOHAN,J

JANUARY 08, 2010
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