IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.454 OF 2020

Future Generali India Insurance Company Limited … Petitioner
Vs.
Texport Syndicate (India) Limited … Respondent

Mr. Vineet Naik, Senior Advocate a/w. Mr. Aditya Gupte, Mr. Rajat Tamni, Mr.Sarthak Behera and Ms. Adyasha Das i/b. Tuli and Company for Petitioner.

Mr. Zal T. Andhyarujina, Senior Advocate a/w. Mr. Karan Mehra and Ms. Shruti Sardessai i/b. Mr. Karan Mehra for Respondent.

CORAM : MANISH PITALE, J.

Reserved on : 13th DECEMBER, 2022
Pronounced on: 25th JANUARY, 2023

ORDER :

. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has challenged award dated 22.01.2020, passed by an arbitral tribunal consisting of three arbitrators. By the said award, the arbitral tribunal granted an amount of Rs.5,49,41,082/-, to the respondent towards settlement of its insurance claim against the petitioner. The specific grounds pressed on behalf of the petitioner pertain to alleged contravention of fundamental policy of Indian law under Section 34(2)(b)(ii) and the award being patently illegal under Section 34(2-A) of the said Act.

2. Relevant facts for considering the contentions raised on behalf of the rival parties are that the respondent (original claimant) is a company engaged in the business of manufacturing garments through its factories. On 29.06.2015, the respondent took an insurance policy from the petitioner, which is a joint venture of three insurance companies. The insurance policy was for the period from 20.06.2015 to 19.06.2016. One of the locations covered under the insurance policy was a garment

factory of the respondent located in Dasanapura, Bangalore.

3. On 07.5.2016 at about 6:30 p.m., fire broke out at a central godown in Block B of the said factory, due to short circuit in the embroidery section. As a result of the fire, the central godown and the embroidery section collapsed and it was reduced to debris. Raw materials, finished garments, plant and machinery, furniture and fixtures, electrical installations and office equipment and even stocks were destroyed and damaged beyond repair. The firefighters took about three days to completely extinguish the fire. In the light of the aforesaid incident, the petitioner insurance company appointed surveyor to assess the losses suffered by the respondent. On 03.06.2017, the surveyor submitted his final report and assessed the loss at Rs.8,26,03,792/-.

4. The petitioner made on-account payment of Rs.3,00,00,000/- to the respondent. The respondent did not accept the offer made by the petitioner towards full and final settlement of the claim, as recommended by the surveyor and in that backdrop, the arbitration clause was invoked, leading to appointment of the arbitral tribunal. During the arbitral proceedings, one of the arbitrators unfortunately passed away and he was replaced by another arbitrator.

5. The respondent filed an application under Section 17 of the said Act, seeking payment of Rs.5,26,03,792/- from the petitioner, being the difference between the amount of Rs.3,00,00,000/- paid on account and the admitted amount as offered by the petitioner. Record shows that the petitioner did not object to the said application and accordingly, the aforesaid amount was also released in favour of the respondent.

6. The petitioner claimed that with release of the said amount offered to the respondent, the entire liability stood discharged and that therefore, there was nothing remaining for settling the claim of the

respondent. However, during the arbitration proceedings, the respondent claimed an additional amount of Rs.9,91,91,330/- under various heads, including 'building', 'plant and machinery', 'electrical installations' and 'furniture and fixtures'. The respondent filed its statement of claim while the petitioner filed its statement of defence and evidence of witnesses of the rival parties was recorded before the arbitral tribunal. The petitioner examined the surveyor, who had submitted the final survey report and also the Director of a private company, who had prepared the technical reports in relation to the improvement factor pertaining to the machinery. The respondent led evidence of its chief executive officer and the chief executive officer of an architect consultant firm, as also the managing director of a private company. The final arguments were heard by the reconstituted arbitral tribunal in September 2019 and the impugned award was pronounced on 22.01.2020.

7. Mr. Vineet Naik, learned senior counsel appearing for the petitioner insurance company relied upon the grounds of challenge raised in the petition and submitted that the findings rendered in the impugned award were erroneous, for the following reasons: the improvement factor for embroidery machines was determined without any reasoning; the cost of construction being determined at Rs.927/- per square feet, in the absence of any evidence; area of mezzanine floor being determined at 32,000 sq.ft. and re-drawing of area of the ground floor in the absence of disputes; application of rate of value at risk concerning the electrical installations, without any reasoning; similarly, determining the value at risk for furniture, fixtures and fittings without any reasoning and grant of interest @ 12% per annum for the period from 03.07.2017 till date of payment, which was 16.04.2018, even though the same had been previously offered to the respondent on 13.06.2017.

8. After referring to the said findings as being erroneous and giving rise to grounds for interference under Section 34 of the said Act, the learned senior counsel for the petitioner invited attention of this Court to the relevant portions of the impugned award. It was submitted that a perusal of the said portions of the impugned award would show that such erroneous findings were rendered on the basis of no evidence at all. The learned senior counsel placed reliance on the judgment of this Court in the case of *World Sport Group (India) Private Limited Vs. Board of Control for Cricket in India*, **2022 SCC OnLine Bom 560**, as vital evidentiary material was completely ignored by the arbitral tribunal, thereby rendering its findings patently illegal. In order to support the said contention, the learned senior counsel further placed reliance on the judgment of the Supreme Court in the case of *State of Chhattisgarh Vs. SAL Udyog (P) Limited*, **(2022) 2 SCC 275**.

9. It was further submitted that the reasoning in the impugned award was inadequate and it demonstrated a perverse approach in appreciating the evidence, inasmuch as evidence led on behalf of the petitioner was ignored, while insufficient evidence led on behalf of the respondent was accepted as gospel truth. It was emphasized that in order to conclude that the arbitral tribunal had adopted a possible view, it was necessary that cogent reasons and analysis were discernible from the contents of the award. According to the learned senior counsel for the petitioner, the impugned award clearly fell short of satisfying the said requirement. According to the leaned senior counsel for the petitioner, the award appeared to be based on mere guess work and hence it could be said to be patently illegal and unsustainable.

10. It was further submitted that if the findings rendered by the arbitral tribunal were to be accepted, it would amount to upholding unjust enrichment of the respondent, for the reason that the respondent

stood indemnified for amount beyond the scope of the insurance policy. It was further submitted that grant of damages in the absence of actual proof was also an aspect of violation of fundamental policy of Indian law, thereby giving rise to a ground to successfully challenge the impugned award.

11. The learned senior counsel appearing for the petitioner placed reliance on the following judgments in support of the contentions raised, while seeking interference with the impugned award: -

a. *Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Limited*, **2019 SCC OnLine SC 1656**;

b. *Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI*, **2019 SCC OnLine SC 677**;

c. *Chenab Bridge Project Undertaking Vs. Konkan Railway Corpn. Ltd.*, **2022 SCC OnLine Bom 3148**;

d. *Vijay Karia and others Vs. Prsymian Cavi E Sistemi SRL and others*, **(2020) 11 SCC 1**; and

e. *Punj Lloyd Ltd. Vs. IOT Infrastructure and Energy Services Limited*, **2018 SCC OnLine Bom 19741**.

12. On the other hand, Mr. Zal Andhyarujina, learned senior counsel appearing for the respondent submitted that all the grounds raised on behalf of the petitioner were nothing but an attempt to challenge the award on merits, which was impermissible within the scope of Section 34 of the said Act. The learned senior counsel submitted that post amendment of Section 34 of the said Act, with effect from 23.10.2015, the scope of interference in an arbitral award, under Section 34 of the said Act, was further narrowed down. It was submitted that prior to the amendment, certain facets of the aforementioned provision were

interpreted in a liberal manner, as a consequence of which, the Amendment Act of 2015 had to be enacted to give certain clarifications and to further specifically narrow down the scope of interference in an arbitral award under Section 34 of the said Act.

13. It was submitted that the petitioner in the present case was specifically invoking Section 34(2)(b)(ii) and (2-A) of the said Act, claiming that the impugned award was in contravention of the fundamental policy of the Indian law and that it was patently illegal. It was submitted that a proper appreciation of the judgments of the Supreme Court, particularly judgment in the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)*, which was rendered post amendment of 2015, would show that re-appreciation of evidence and consideration of the award on merits stood prohibited in a challenge raised under Section 34 of the said Act. It was emphasized that post amendment brought about in the year 2015, the position of law laid down in earlier judgments stood nullified and the regime operating under the earlier judgment of the Supreme Court in the case of *Renusagar Power Plant Co. Ltd. Vs. General Electric Company*, **1994 Supp. (1) SCC 644,** stood restored. On this basis, it was submitted that there was no substance in the contentions raised on behalf of the petitioner. The learned senior counsel then referred to the relevant portions of the impugned award, wherein the aspects highlighted on behalf of the petitioners were discussed and it was submitted that such findings could not be said to be based on no evidence. It was submitted that erroneous appreciation of evidence could certainly not be a ground for interfering with the impugned award. It was submitted that a reasonable view was taken by the arbitral tribunal and that therefore, the present petition deserved to be dismissed.

14. Before considering the specific grounds of challenge raised on

behalf of the petitioner, it would be appropriate to consider the jurisdiction available to this Court under Section 34 of the said Act for interfering with the impugned award.

15. The Amendment Act of 2015 brought about significant changes in Section 34 of the said Act. The changes had to be introduced by way of amendment in the light of judgments of the Supreme Court concerning the scope and width of power of the Court under Section 34 of the Act for interfering with arbitral awards. The Supreme Court in the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)* took note of the contents of the 246th Report of the Law Commission, as also the statement of objects and reasons of the Arbitration and Conciliation (Amendment) Bill, 2015. The relevant portion was referred to and relied upon in the said judgment. The said portion being relevant needs to be reproduced. It reads as follows: -

> "2. The Act was enacted to provide for speedy disposal of cases relating to arbitration with least court intervention. With the passage of time, some difficulties in the applicability of the Act have been noticed. Interpretation of the provisions of the Act by courts in some cases have resulted in delay of disposal of arbitration proceedings and increase in interference of courts in arbitration matters, which tend to defeat the object of the Act. With a view to overcome the difficulties, the matter was referred to the Law Commission of India, which examined the issue in detail and submitted its 176th Report. On the basis of the said Report, the Arbitration and Conciliation (Amendment) Bill, 2003 was introduced in the Rajya Sabha on 22-12-2003. The said Bill was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination and report. The said Committee, submitted its Report to Parliament on 4-8-2005, wherein the Committee recommended that since many provisions of the said Bill were contentious, the Bill may be withdrawn and a fresh legislation may be brought after considering its recommendations. Accordingly, the said Bill was withdrawn from the Rajya Sabha.
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> 3. On a reference made again in pursuance of the above, the Law Commission examined and submitted its 246th Report on

> "Amendments to the Arbitration and Conciliation Act, 1996" in August, 2014 and recommended various amendments in the Act. The proposed amendments to the Act would facilitate and encourage Alternative Dispute Mechanism, especially arbitration, for settlement of disputes in a more user- friendly, cost effective and expeditious disposal of cases since India is committed to improve its legal framework to obviate in disposal of cases.
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> 4. As India has been ranked at 178 out of 189 nations in the world in contract enforcement, it is high time that urgent steps are taken to facilitate quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered and reduce the pendency of cases in courts and hasten the process of dispute resolution through arbitration, so as to encourage investment and economic activity.
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> 5. As Parliament was not in session and immediate steps were required to be taken to make necessary amendments to the Arbitration and Conciliation Act, 1996 to attract foreign investment by projecting India as an investor friendly country having a sound legal framework, the President was pleased to promulgate the Arbitration and Conciliation (Amendment) Ordinance, 2015.
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> xxx xxx xxx "

16. A perusal of the above quoted portion clearly indicates the object for which the amendments had to be brought about in the year 2015, thereby demonstrating that the scope of interference in an arbitral award stood further reduced. The liberal approach indicated in some judgments of the Supreme Court effectively stood nullified by the amendment. In the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)*, the Supreme Court specifically took note of the effect of the amendment on earlier judgments of the Supreme Court delineating the scope of Section 34 of the said Act. This included the earlier judgment in the case of *Associate Builders v. Delhi Development Authority*, **(2015) 3 SCC 49**. In this backdrop, in the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)*, the Supreme Court held as follows: -

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

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

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

38. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental

policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

39. Secondly, it is also made clear that re-appreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

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

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42. What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."

17. In order to fully appreciate the effect of the amendment to Section 34 of the said Act, it would be appropriate to refer to the said provision. It reads as follows: -

"**34. Application for setting aside arbitral award**.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if-

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that-

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.-For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.-For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of

Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon other party."

18. An analysis of the effect of the amendment brought about in the year 2015 to the said provision indicates that when a party invokes Section 34(2)(b)(ii) pertaining to fundamental policy of Indian law, Explanation 2 appended to the said provision assumes significance. The said explanation specifically prohibits review on the merits of the dispute while testing an award on the ground of contravention of

fundamental policy of Indian law. Therefore, consideration of findings on merits is to be eschewed.

19. Similarly, when a party raises the ground of patent illegality while challenging an arbitral award, the proviso to Section 34(2-A) of the said Act specifically stipulates that the award shall not be set aside merely on the ground of an erroneous application of law or by re-appreciation of evidence. The Court while exercising power under Section 34 of the said Act cannot re-appreciate the evidence. An erroneous appreciation of evidence on the part of the arbitral tribunal, therefore, cannot give rise to a ground for setting aside an arbitral award. It is only when findings are rendered in the award without evidence that it may shock the conscience of the Court to exercise power to interfere with the award. This clearly indicates the narrowed down scope of the power available to the Court under Section 34 of the said Act, post the amendment brought about in the year 2015. The party which challenges an arbitral award is now required to cross a very high threshold and that too in the limited sphere available under the amended Section 34 of the said Act.

20. Keeping in mind the aforesaid position of law manifested by the amendment of the year 2015 and its analysis by the Supreme Court in its judgment in the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)*, this Court will now proceed to consider the rival contentions.

21. The specific challenges raised on behalf of the petitioner are noted in paragraph 7 above. At the outset, before referring to the relevant portions of the award and the material appreciated by the arbitral tribunal while rendering such findings, this Court finds that the petitioner in the present case appears to be inviting this Court to re-appreciate the evidence and to render findings on merits of the award.

As noted above, these are prohibited areas when this Court exercises jurisdiction under Section 34 of the said Act, particularly post the amendment brought about in the year 2015. It is relevant that in paragraph 15 of the judgment in the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)*, the Supreme Court has specifically declared that the amended Section 34 of the Act will apply to the petitions filed under the said provision on or after 23.10.2015. It is undisputed that the present petition is filed after the said date and that the impugned award itself was pronounced on 22.01.2020.

22. The learned senior counsel for the petitioner has criticized the manner in which the arbitral tribunal granted improvement factor for 17 embroidery machines that stood destroyed in the fire. The arbitral tribunal considered the said aspect in paragraphs 74 and 75. While considering the claim raised on behalf of the respondent wherein grievance was made about the surveyor deducting 47% in improvement factor, the arbitral tribunal found that the surveyor was unable to support such a heavy deduction. The arbitral tribunal referred to e-mails received from the manufacturer, in response to queries made by the surveyor and it was found that the surveyor had deducted 47% towards improvement factor, without reference to the contents of the email received from the manufacturer. Thereafter, the arbitral tribunal took into consideration the material on record and determined the improvement factor @ 12% for the machines in question and 6% for Category 'A' and 'B' machines. This Court is of the opinion that the arbitral tribunal did take into consideration material available on record and took a possible view in the matter, also finding that the high scale deduction by the petitioner on the aforesaid count was not supported by any material on record. No case is made out for indicating that such a finding could either fall under the head of 'contravention of fundamental policy of Indian law' or that it

could be branded as 'patently illegal'.

23. Much criticism was made on behalf of the petitioner as regards the finding rendered by the arbitral tribunal for determining the cost of construction of the ground floor at Rs.927/- per square feet, claiming that the same was based on no evidence at all. The petitioner placed much emphasis on the fact that the respondent itself had claimed cost of construction at Rs.850/- per square feet and therefore, granting amount at Rs.927/- per square feet was unsustainable. The arbitral tribunal found that the respondent in its communications had indeed claimed cost of construction at Rs.850/- per square feet during the course of the parties seeking to settle the dispute without recourse to arbitration. It was found that in the course of negotiations, the respondent may have pegged its claim at a certain level, which ought not to bind the respondent. This is a reasonable approach adopted by the arbitral tribunal. The discussion pertaining to the aspect of cost of construction is found in paragraphs 64 and 65 of the impugned award. The arbitral tribunal found that the witness of the respondent had explained the basis for claiming Rs.1140/- per square feet as the cost of construction. On the other hand, the surveyor claimed that the cost of construction could only be Rs.800/- per square feet based on 'unspecified market enquiries'. The arbitral tribunal found that the surveyor was unable to support such a claim with any document on record. In this situation, the arbitral tribunal took into consideration the claim based on the statement of the respondent's witness at Rs.1140/- per square feet and then found that the said figure admittedly included the cost of construction for column foundations and columns upto plinth level, including steel reinforcement to the extent of Rs.213/- per square feet. In this situation, the arbitral tribunal deducted the said component and arrived at the figure of Rs.927/- per square feet. For this Court to go into the matter any further would amount to

entering into the prohibited area under amended Section 34 of the said Act, as laid down by the Supreme Court in the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)*. It cannot be said that the aforesaid finding of the arbitral tribunal is based on no evidence.

24. The petitioner raised grievance about determination of area of the mezzanine floor at 32,000 sq.ft. and re-drawing of the area of the ground floor, although it was allegedly never in dispute. The discussion in the arbitral award pertaining to the said aspect of the matter is found in paragraphs 61 to 63. Much emphasis was placed by the learned senior counsel appearing for the petitioner on fire safety certificate dated 19.05.2015, issued by Karnataka Fire and Emergency Services Department wherein the area of the mezzanine floor was stated to be 27,916 sq.ft. and the ground floor as 34,456 sq.ft. It was submitted that when the certificate was issued on information provided by the respondent itself, there was no occasion for the arbitral tribunal to have gone into the question of the exact area of the mezzanine and the ground floors. It was claimed that the findings rendered were entirely based on the evidence of the witnesses of the respondent, without any specific material to support the same.

25. This Court has considered the analysis in the impugned award on the aforesaid aspect of the matter. It cannot be said that the arbitral tribunal committed an error, which will shock the conscience of the Court or would fall within the grounds available under Section 34(2)(b)(ii) or (2-A) of the said Act, for the simple reason that the surveyor of the petitioner did not make any effort to measure the built-up area. In fact, the arbitral tribunal found that the petitioner was unable to effectively cross-examine the witness of the respondent, who had come up with the specific figures pertaining to the area of the mezzanine and

the ground floors. The question is, as to whether the approach adopted by the arbitral tribunal can be said to be akin to rendering findings on the basis of no evidence available on record. At worst, the said approach may qualify to be an erroneous appreciation of the evidence on record, which cannot be a ground for exercising the limited jurisdiction available to this Court under the amended Section 34 of the said Act.

26. As regards alleged underinsurance of electrical installations and furniture and fixtures, as also alleged error on the part of the arbitral tribunal to separately grant claim for computers, printers, air conditioners etc., suffice it to say that the tribunal took the pains of considering the entire material on record at paragraphs 76 to 84 in the impugned award, demonstrating consideration, evaluation and analysis of the material and evidence on record to reach specific findings in favour of the respondent. It cannot be said that the arbitral tribunal proceeded to render findings in ignorance of the material and evidence on record. The findings rendered by the arbitral tribunal on these aspects of the matter can certainly be said to be a possible view on the basis of available material and hence, no ground is made out for interference on the said score also.

27. The petitioner claimed that grant of interest @ 12% p.a. for specific period concerning amount already offered on behalf of the petitioner was wholly erroneous. But, a perusal of Section 31(7) of the said Act would show that, it is clearly within the domain of the arbitral tribunal to determine grant of interest, its rate, for the whole or any part of the money and for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made. The arbitral tribunal, having such statutory power, has enough discretion in its hands to grant interest. The directions granted in the impugned award as regards payment of interest cannot be said to be

unreasonable, to give rise to any ground for interference at the hands of this Court exercising jurisdiction under Section 34 of the said Act.

28. Thus, none of the grounds of challenge raised on behalf of the petitioner deserve consideration. As regards reliance placed on various judgements on behalf of the petitioner, this Court is of the opinion that a proper application of the principles laid down therein, ultimately summarized in the judgement of the Supreme Court in the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)*, in the light of the amendment brought out in the year 2015, would show that the impugned award passed by the arbitral tribunal does not deserve interference. The approach adopted by the arbitral tribunal was clearly within the parameters of reasonableness laid down in the said judgments of the Supreme Court and this Court.

29. As noted hereinabove, the contention raised on behalf of the respondent was justified that the nature of grounds of challenge raised on behalf of the petitioner invited this Court to dive into the evidence, re-appreciate the same to render findings on merits, which is clearly prohibited under the amended Section 34 of the said Act, as re-enforced by the judgment of the Supreme Court in the case of **Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI** *(supra)*.

30. In view of the above, this Court finds no merits in the present petition. Accordingly, it is dismissed.

31. All pending applications stand disposed of. No costs.

(MANISH PITALE, J.)

Minal Parab