

(2018) 09 CAL CK 0055

In the Calcutta High Court

Case No : Appeal From Order No. 34 of 2016, Government Appeal No. 4026 of 2000, Award Case No. 32 of 2000

GMB Ceramics Ltd

APPELLANT

Vs

Neycer (India) Ltd

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Arbitration Act 1940 — Section 30, 33

Citation : (2018) 09 CAL CK 0055

Hon'ble Judges : Jyotirmay Bhattacharya, CJ;Arijit Banerjee, J

Bench : Division Bench

Advocate : Ranjan Deb, Suparna Mukherjee, Meghajit Mukherjee, Shamayem Fasih, Goutam Chakraborty, Reetobroto Mitra, Prithwiraj Sinha, S. Dhar, I karfa

Final Decision : Disposed Off

Judgement

,,,,

Arijit Banerjee, J." ,,,,

(1) GMB Ceramics Ltd. (in short "GMB"), the appellant in APO 34 of 2016 entered into a Consultancy Agreement dated 29 November, 1986" ,,,,

with Neycer (India) Ltd. (in short "Neycer") for setting up a factory for manufacture of vitreous sanitary ware products. The said agreement ,,,,

was converted into a Collaboration Agreement by an addendum dated 26 June, 1987. Disputes and differences arose between the parties in relation to" ,,,,

the said agreement. The agreement contained an arbitration clause for resolution of disputes between the parties. The disputes were referred to Joint ,,,,

Arbitrators nominated by each of the parties. In view of disagreement between the Joint Arbitrators, the matter was referred to the Umpire. Learned" ,,,,

Umpire published an award dated 23 June, 1999 for Rs. 1169.63 lacs along with

interest at the rate of 15 per cent per annum in favour of GMB." ,,,,

Neycer filed an application under Secs. 30 and 33 of the Arbitration Act, 1940 being GA No. 4026 of 2000 for setting aside the said award of the" ,,,,

Learned Umpire. The said application was disposed of by the learned Single Judge by a judgment and order dated 14 October, 2015. The learned" ,,,,

Judge in effect held that the claim that GMB referred to arbitration was for a sum of Rs. 2 crores and any award in excess of that sum cannot be ,,,,

sustained. ,,,,

Being aggrieved by and dissatisfied with the said judgment and order of the learned Single Judge, GMB has preferred an appeal being APO No. 34 of" ,,,,

2016. Neycer has also preferred an appeal being APOT 42 of 2016 contending that the Award should have been set aside in its entirety. Both the ,,,,

appeals are taken up for hearing and disposal together. ,,,,

Contention of GMB:- ,,,,

(2) Appearing for GMB, Mr. Ranjan Deb, learned Sr. Counsel submitted that the Collaboration Agreement between the parties provided, inter alia, as" ,,,,

follows:- ,,,,

(i) Neycer was to make available to GMB technology, know how expertise including manufacturing process. Engineering data, consumption norms," ,,,,

fire cycles utility requirements and all information necessary for setting up a manufacturing unit for production of vitreous sanitary wares with installed ,,,,

capacity of 7000 tonnes per annum and manufacturing target of 600 tonnes per annum. ,,,,

(ii) Neycer would provide its marketing network and sales infrastructure to GMB. ,,,,

(iii) GMB would have the right to manufacture and sell products using the name of Neycer. ,,,,

(iv) Neycer would train unskilled labour employed by GMB and would help in selection and training of personnel, technicians and supervisory staff." ,,,,

(v) Neycer was to set up the manufacturing unit and business market of GMB's products. ,,,,

(vi) Neycer would jointly set up the factory and assist GMB to obtain guaranteed optimum production in terms of both quality and quantity. ,,,,

(3) Mr. Deb submitted that Neycer failed, neglected and/or refused to perform its obligations under the said Collaboration Agreement. As a result," ,,,,

GMB suffered substantial loss and damage. According to Mr. Deb, in view of the breaches committed by Neycer, the said agreement stood",,,,

terminated.,,,,

(4) In September 1989, Neycer invoked the arbitration clause contained in the said agreement and nominated its arbitrator. In October 1989, GMB",,,,

nominated its Arbitrator. In so far the claim of GMB was concerned, the Joint Arbitrators were in disagreement and consequently they referred the",,,,

disputes and differences to the Umpire. The Umpire passed an award in favour of GMB as indicated above.,,,,

(5) The learned Single Judge while disposing of the application filed by Neycer, set aside the portion of the award in excess of Rs. 2 crores. Mr. Deb",,,,

submitted that there was no specific reference of disputes to the Arbitrators. The learned umpire culled out the disputes and differences between the",,,,

parties from the correspondence exchanged between the parties contemporaneously. On a meaningful reading of such correspondence it would be",,,,

clear that the parties referred all disputes and differences between them to arbitration. It is not that GMB limited its claim to cost incurred due to",,,,

overrun of the contract caused by breach of Neycer's obligations under the Agreement. Hence, the learned Single Judge erred in setting aside the",,,,

portion of the arbitral award in excess of Rs. 2 crores. We will refer to the relevant correspondence between the parties later in this judgment.,,,,

(6) Mr. Deb relied on two decisions. The first is a decision of this Court in the case of Juggilal Kamlatpat-vs.-N. V. Internationale Crediet-En- Handels",,,,

Vereeninging â??Rotterdamâ?? (alias Rotterdam Trading Co Ltd.), AIR 1955 Cal 65. The other decision that Mr. Deb relied on was that of the",,,,

Apex Court in the case of State of Orissa-vs.-Asis Ranjan Mohanty, (1999) 9 SCC 249. We will revert back to these judgments later.",,,,

Contention of Neycer:-",,,,

(7) Mr. Gautam Chakraborty, learned Sr. Counsel appearing for Neycer referred to the same correspondence exchanged between the parties prior to",,,,

reference of disputes to arbitration as were referred to by Mr. Deb. He submitted that it would appear from the said correspondence that GMB had",,,,

raised a claim only on account of time overrun. The word â??overrunâ?? has been used in nine different letters written on behalf of GMB. Nothing",,,,

more than Rs. 2 crores was claimed by GMB on account of time overrun till the date of appointment of Arbitrators. GMB could not reserve any claim,,,,

for a period beyond the date of appointment of Arbitrators.,,,,

(8) Mr. Chakraborty placed the judgment of the learned Single Judge in extenso. He submitted that GMB's claim in Schedule E to the statement,,,,

of claim which was a claim for loss or profit in the sum of Rs. 396.96 lacs was entirely speculative and should not have been entertained by the,,,,

Learned Umpire. The learned Single Judge also erred in allowing part of the said claim. According to Mr. Chakraborty, the entire arbitral award",,,,

should have been set aside by the learned Single Judge since there was no evidence on record to support even an award for Rs. 2 crores in favour of,,,,

GMB.,,,,

Court's view:-,,,,

(9) The short question that falls for determination by this Court is whether or not GMB's claim before the learned Arbitrators/learned Umpire was,,,,

restricted to Rs. 2 crores. The Learned Umpire held that the scope of the reference was not restricted to time overrun for which approximately Rs. 2,,,,

crore was claimed by GMB. Learned Umpire analysed the correspondence exchanged between the parties contemporaneously prior to reference of,,,,

the disputes to arbitration and came to the conclusion that all the disputes as pleaded in the statement of claim both before and after amendment, had",,,,

been referred to arbitration. He held that there is no merit in the contention of learned Counsel for Neycer that the only claim that GMB had is the,,,,

claim of overrun cost of Rs. 2 crores.,,,,

(10) The Learned Single Judge differed with the Learned Umpire with regard to the aforesaid point. According to the learned Single Judge,",,,,

GMB's claim was restricted to Rs. 2 crores. Thus, it is necessary for us to analyse the pre-reference correspondence between the parties to",,,,

decide whether the learned Single Judge was justified in coming to the conclusion as stated above.,,,,

(11) A letter dated 9 August, 1989 was written by the Managing Director of GMB to the Managing Director of Neycer which reads as follows:-",,,,

Dear Sir,",,,,

On my return from Madras after having discussions with you on 7th and 8th August, 1989, I received your letter dated 30th July, 1989 in regard to Mr.",,,,

Umatosh Sarkar. As mutually discussed and agreed in our meeting at Madras, we will not offer him employment on our Roll but take his advice to run",,,,,

the show of the factory until you depute a senior technician of general supervisory level to stay at our factory until the optimum level of production is,,,, achieved.,,,,

In order to avoid delay we would be thankful if you inform us whom you are intending to send so that we may discuss with Mr. R. M. Mehra, one of",,,,,

our Board Members to assess the suitability of the person. Since Mr. Mehra was president of your company for many years, it will be very easy for",,,,,

him to judge the suitability and acceptability of such a person as because it is implied that the person you intend to send will be of your company only,,,,,

having all technical knowledge and competency for general supervision.,,,,

As informed to you, we have already come to the stage of trial production and your quick action on the matter will be of great help to us to come out",,,,,

with our production in the market as because the delay is causing a lot of overrun in the form of interest, depreciation and overheads.",,,,,

During our meeting with Mr. Kale, the Managing Director of NCRL on 03.12.88 and 05.12.88 it was decided then also that a senior technician as",,,,,

described above will be deputed immediately but was not deputed with the result that such delay as already been caused to us to come out with the,,,,

production which we were contemplating sometime around March, 1989 end.â??",,,,,

(12) This was followed by a letter dated 28 August, 1989 written by the Managing Director of GMB to the Managing Director of Neycer complaining",,,,,

that with regard to deputing a senior level man for general supervision of setting up of GMBâ??s factory, the same had still not been done resulting in",,,,,

overrun cost of Rs. 2 crores. It was also stated that with regard to sale assistance, it was not clear about the help that Neycer would extend to GMB",,,,,

and Neycer was requested to inform GMB as to what sales infrastructure Neycer has got and how Neycer intended to assist GMB.,,,,

(13) In response Neycer wrote a letter dated 29 August, 1989 stating therein that it was in no way responsible for the cost overrun and that Neycer",,,,,

had fulfilled its obligations under the Collaboration Agreement.,,,,

(14) By a letter dated 4 September, 1989 GMB again complained of non-performance of Necyerâ??s obligations under the Collaboration Agreement." ,,,,

The material statements in the said letter are as follows:-,,,,

IS IT NOT REALLY VERY SURPRISING THAT A AMAN FOR GENERAL SUPERVISION SHOW YOU HAD AGREED TO,,,,

BE SENT FOR OUR FACTORY AFTER OUR MEETING ON 3RD AND 5TH DEC., 1988 COULD NOT BE SENT UNTIL NOW. " ,,,,

IT WAS EXPECTED THAT YOU WOULD TAKE NECESSARY CARE TO FULFIL YR OBLIGATION AS PER THE COLLABORATION,,,,

AGREEMENT. I THEREFORE STILL STAND ON MY VIEWS THAT THE COST OVERRUN SHOULD DEFINITELY BE CLAIMED,,,,

FROM YOU BECAUSE IN ABSENCE OF YOUR POSTING A SENIOR LEVEL PERSON FOR OUR GENERAL SUPERVISION OUR,,,,

PRODUCTION HAS BEEN DELAYED CONSIDERABLY. MOREOVER, Mr. U. SARKAR HAS BEEN COMING WITH A STOP GAP" ,,,,

ARRANGMENT AND YOUR OTHER TECHNICIANS COMING TO BALASORE FREQUENTLY HAVE NOT RELINQUISHED YOU,,,,

FROM THE OBLIGATION FROM PUTTING UP A SENIOR LEVEL PERSON FOR YOUR GENERAL SUPERVISION TO HAVE PROPER,,,,

CONTROL ON THE DAY TO DAY WORKING. I THEREFORE STILL HOLD NCRL RESPONSIBLE FOR THE OVERRUN" ,,,,

WITH REGARD TO SALES ASSISTANCE SINCE YOU DO NOT HAVE ANY SALE INFRASTRUCTURE OF NEYCER AND HAVE NOT,,,,

MADE ANY PROPOSAL TO US" WE ARE GOING AHEAD ORGANIZING SALES AND HERE ALSO WE FEEL,,,,

THAT YOU HAVE NOT BEEN ABLE TO PERFORM AS PER CONTRACT AND THEREFORE YOU ARE NOT ELIGIBLE TO GET 2 PER,,,,

CENT COMMISSION AND ALSO FOR CLAIM OF DAMAGE CAUSED TO US" ,,,,

(15) This was followed by a letter dated 7 September, 1989 written by Neycer to GMB making counter allegations. It was inter alia stated in the said" ,,,,

letter that GMB was entirely responsible for the delay in arrangement of general supervisor. Further, regarding use of brand name GMB would not be" ,,,,

entitled to use Neycer's brand name in view of the numerous breaches made by GMB and obstructions caused in implementation of the contract. ,,,,

In conclusion, it was stated that the best course of action would be to have a meeting to discuss and settle all matters amicably." ,,,,

(16) In response, GMB wrote a letter to Neycer reiterating that the time overrun and other damages had been caused by Neycer's breach of",,,,

obligations under the Collaboration Agreement. It was also stated in the said letter that Neycer had failed to perform its obligations under the",,,,

Collaboration Agreement and therefore, GMB would definitely have a claim against Neycer for time overrun apart from the damages which had been",,,,

caused to GMB by not providing any sales assistance. It was further stated in the said letter as follows:-",,,,

"WHILE OUR CLAIM FOR DAMAGES AND OVERRUN IN THIS RESPECT STILL STAND, WE ARE DENINITELY ENTITLED TO",,,,

USE YOUR BRAND NAME. LASTLY, A STAGE AS COME WHERE WE ARE COMPELLED TO MENTION THAT YOU HAVE",,,,

ALWAYS ULTERIOR MOTIVE TO SEE HOW GMB DO NOT COME UP FOR WHICH WE HAVE CONVINCED NOTIONS WITH",,,,

FACTS N FIGURES!..",,,,

(17) On 19 September, 1989 Neycer wrote a letter to GMB stating therein inter alia as follows:-",,,,

"as you are aware, certain disputes have arisen between our company and yourselves regarding the respective rights and obligations under the",,,,

aforesaid Collaboration Agreement read with the addendum thereto!..from the exchange of such correspondence and your action, including",,,,

entertaining of an ex-employee or ours, we have to conclude that you are not interested in honouring your commitments under the agreement, but, on",,,,

the other hand, you only want to secure and utilize the licence which we had agreed to grant you to use our logo as part of the mark of you product for",,,,

marketing the same. You cannot expect us to grant such a licence in view of your breaches of the Collaboration Agreement and your attempt to claim",,,,

the right only to the use of the logo as a licensee while giving a go-by to the rest of the agreement!..",,,,

Inasmuch as the contract between the parties provides for a reference of all disputes to arbitration, we hereby invoke the said clause and we have",,,,

appointed Retd. Justice P. Rama Rao as one of the Arbitrators and call upon you to nominate an Arbitrator within 15 days from the date of receipt of",,,,

this notice!..the dispute referred to the said Arbitrators will be the compensation payable to us for the breaches of Collaboration Agreement",,,,

committed by you and your disentitlement to any licence or permission to use the logo. You are also hereby put on notice that failure on your part to,,,,

nominate an Arbitrator to decide the said disputes and any other dispute that may be raised between the parties will result in our nominee being,,,,

nominated as sole arbitrator to proceed with the arbitration â?|â?|â?|â?|â?|â?|â?|.â?? (emphasis is ours),,,,

SCHEDULES,"Original Statement of

Claim","Amended Statement

of Claim","Award given by the

Ld Umpire","Findings of Learned

Single Judge

â??Aâ? [Damages

for delay in

commissioning]",60.27 Lakhs,61.52 Lakhs,39.15 Lakhs,Sustained

â??Bâ? [Research

& Technology

Development

Expenditure]",15.00 Lakhs,15.66 lakhs,(Disallowed),Not Considered

â??Câ? [Damages

for preventing GMB

to use logo

GMBNeycer]",350.00 Lakhs,350.00 Lakhs,203.43 Lakhs,"GMB not entitled to

any sum

â??Dâ? [Damages

for Nâ??s failure,

neglect & refusal to

set up inter alia sales

personnel recruitment

& dealerâ??s

network &

dealerâ??s network

& guidance for marketing policy]",199.43 Lakhs,123.61 Lakhs,123.61 Lakhs,"Award for Rs. 123.61 Lakhs granted by Ld Umpire accepted

â??Eâ? [Damage for loss of profit due to delay of 1 year in achieving optimum production which the Company proposed to obtain by Nov. 1990]",187.22 Lakhs,396.96 Lakhs,346.45 Lakhs,"Award passed by Ld Umpire for Rs. 346.45 Lakhs accepted.

â??Fâ? [Claim for Payment of interest on a/c of delay in commissioning plant]",70.81 Lakhs,770.82 Lakhs,456.99 Lakhs,"Learned Single Judge did not give any finding as according to the Learned Single Judge the claim of GMB was already satisfied

â??S.30. Grounds for setting aside award._An award shall not be set aside except on one or more of the following grounds, namely:" ,,,

(a) That an arbitrator or umpire has misconducted himself or the proceedings;,,,,

(b) That an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become,,,,

invalid under Section 35;,,,,

(c) That an award has been improperly procured or is otherwise invalid.

S. 33. Arbitration agreement or award to be contested by application. _Any party to an arbitration agreement or any person claiming under him,

desiring to challenge the existence or validity of an arbitration agreement or an award or to have the effect of either determined shall apply to the,

Court and the Court shall decide the question on affidavits:

Provided that where the Court deems it just and expedient, it may set down the application for hearing on other evidence also, and it may pass such"

orders for discovery and particulars as it may do in a suit.â??,

In the case of Puri Construction Pvt. Ltd.-vs.- Union of India AIR 1989 SC 777, the Apex Court held that when a court is called upon to decide the"

objections raised by a party against an arbitral award, the jurisdiction of the Court is limited, as expressly indicated in the Arbitration Act, and it has no"

jurisdiction to sit in appeal and examine the correctness of the award on merits. A Court while examining the objections taken to arbitral award is not,

required to examine the correctness of the claim on merits. It is not open to the Court to examine the correctness of an award on a reappraisal of the,

evidence.

In the case of M/s. Sudarsan Trading Co.-vs.-The Govt. Of Kerala & Anr., AIR 1989 SC 890, Sabyasachi Mukharji, J., speaking for the Division"

Bench observed that an Arbitrator in deciding a dispute under a contract is surely bound by the contract. However, the court cannot substitute the"

decision of the arbitrator as to what was meant by the contract, once that decision is conceded to the arbitrator. At paragraphs 35 and 36 of the"

reported judgment it was held as follows:-

â??35. In the instant case, the High Court seems to have fallen into an error of deciding the question on interpretation of the contract. In the aforesaid"

view of the matter, we are of the opinion that the High Court was in error. It may be stated that if on a view taken of a contract, the decision of the"

arbitrator on certain amounts awarded is a possible view through perhaps not the only correct view, the award cannot be examined by the court in the"

manner done by the High Court in the instant case.,,,,

36. In light of the above, the High Court, in our opinion, had no jurisdiction to examine the different items awarded clause by clause by the arbitrator",,,,

and to hold that under the contract these were not sustainable in the facts found by the arbitrator.â??s",,,,

In Associated Engineering Co.-vs.-Government of Andhra Pradesh & Anr., AIR 1992 SC 232, the Apex Court observed that an Arbitratorâ??s",,,,

function is to arbitrate in terms of the contract. He cannot act arbitrarily, irrationally, capriciously or independently of the contract. He has no power",,,,

apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract he has acted without jurisdiction.,,,,

But if he has remained inside the parameters of the contract and has construed the provisions of the contract, his award cannot be interfered with",,,,

unless he has given reasons for the award disclosing an error apparent on the face of it. If the Arbitrator commits an error in the construction of the",,,,

award, that is an error within its jurisdiction. In the facts of that case, however it was held that the Umpire had out-stepped the confines of the",,,,

contract and had decided the matter strikingly outside his jurisdiction.,,,,

In Paradip Port Trust & Ors.-vs.-Unique Builders, (2001) 2 SCC 680, the Apex Court observed that from several decisions of the Apex Court and the",,,,

provisions contained in the Arbitration Act, 1940, it is clear that generally an award passed by the Arbitrator is considered binding between the parties",,,,

for the reason that the parties select the arbitrator and powers of the Court to set aside the award are restricted to cases set out in Sec. 30 of the Act.,,,,

The jurisdiction of Courts including High Courts is not independent of the statute. The arbitratorâ??s award is final both on facts as well as law.,,,,

There is no appeal from his verdict. However, an award can be set aside only in situations specified in Secs. 30 and 33 of the Act.",,,,

In Bharat Coking Coal Ltd.-vs.-Annapurna Construction, (2003) 8 SCC 154, the Apex Court observed, inter alia, that if an arbitrator has travelled",,,,

beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be",,,,

questioned on the ground that it contains an error apparent on the face of the record.,,,,

(29) Let us first take the point of scope of the arbitral reference. It is not in

dispute that there was no specific reference of disputes by either of the,,,,
parties when they nominated their respective Arbitrators. In other words, specific
heads and amounts claimed under each head were not enumerated" ,,,,
in the letters whereby Arbitrators were nominated. Hence, in our opinion, the
learned Umpire rightly held that the disputes that formed the subject" ,,,,
matter of the reference would have to be gathered from the pre-reference
correspondence exchanged by and between the parties. We have set out,,,,
the relevant portions of such correspondence in this judgment for the sake of
convenience. We have no doubt in our mind that the scope of the,,,,
reference was not restricted to overrun amount of Rs. 2 crores. To that extent,
we are in disagreement with the learned Single Judge and His" ,,,,
Lordship's finding to that effect is set aside.,,,,

(30) In our view, all the disputes and differences between the parties were
referred to arbitration. This would be clear from Neycer's letter dated" ,,,,
19 September, 1989 referring to the said disputes and any other dispute that
may be raised between the parties to arbitration. Further, we agree" ,,,,
with the learned Umpire that the term "overrun amount" is one of very wide
connotation. It would include within its ambit all kinds of loss and,,,,
damage sustained by an aggrieved party by reason of overrun of a contract
caused by breach of obligation of the other party to a contract.As,,,,
aforesaid, the way we read the pre-reference correspondence exchanged
between the parties is different from the way in which the learned Judge" ,,,,
read the same. Our reading is the same as that of the learned Umpire. Further,
the way in which the learned Umpire construed the correspondence" ,,,,
between the parties, cannot be said to be perverse or arbitrary or unreasonable.
It is surely a plausible manner of reading the correspondence between" ,,,,
the parties as a whole. It is trite law that so long as the meaning given by an
Arbitrator/Umpire to a document or a series of documents is a plausible,,,,
one, the Court will not interfere and substitute such meaning with its own
understanding of such documents even if the Court differs from the" ,,,,
Arbitrator or Umpire. The Court in exercise of an application under Secs. 30 and
33 of the Arbitration Act, 1940 does not act as an Appellate Court." ,,,,
(31) Although a point was taken by Neycer in the pleadings filed by it before the
Arbitral Tribunal that GMB's claim in excess of Rs. 2 crores is,,,,
not within the scope of the reference, Neycer resisted the entire claim raised by

GMB on merits by adducing evidence before the Arbitral Tribunal." ,,,,

Having contested all the claims raised by GMB on merits, in our view, it is not open to Neycer to contend that GMB's claim was restricted to Rs. ,,,,

Crores. ,,,,

(32) Hence, we are of the firm view that there was no reason for the learned Judge to restrict the award under Schedule E to Rs. 37,34,090/-while in" ,,,,

principle upholding the learned Umpire's award of Rs. 346.45 lacs on that count. ,,,,

(33) We also find no justification in the learned Judge disallowing the learned Umpire's award of Rs. 203.43 lacs on account of damages for ,,,,

preventing GMB to use the logo GMB-Neycer. The learned Umpire has discussed the said claim in great details and analysed the evidence, both oral" ,,,,

and documentary in respect of the said claim with great care. A Court hearing an application for setting aside an arbitral award does not have the ,,,,

power to reappraise the evidence before the Arbitrator/Umpire. So long as there is some evidence on the basis of which an award has been made, the" ,,,,

Court shall not go in the sufficiency or otherwise of such evidence. Only if an award is based on no evidence at all, the court would be justified in" ,,,,

interfering. We have carefully gone through the award of the learned Umpire and we are of the considered view that the same is supported by ,,,,

evidence. It is not for the court to enquire into the veracity or adequacy of such evidence. ,,,,

(34) Mr. Deb relied on the Apex Court decision in the case of Juggilal Kamlapat-vs.-N. V. Internationale Crediet-En-Handels Vereeniging ,,,,

Rotterdam (alias Rotterdam Trading Co Ltd.), (supra). It was held in that case that where no specific sum is claimed and the particulars of" ,,,,

the claim are not given in the statement of claim the arbitrators may be guilty of misconduct if they make an award for a definite sum of money ,,,,

without calling for particulars of the claim and without giving opportunity to the other party to meet the specific case. In that case the petitioner who ,,,,

was challenging the arbitral award before the High Court had contended that there was no pre-existing dispute with regard to the quantum of damage ,,,,

prior to the date of reference before the arbitral Tribunal and the Arbitrators had no jurisdiction to decide the quantum of damage. Such contention ,,,,

was negated by the Learned Judge. It was held that the correspondence

exchanged between the parties prior to the reference showed that there was,,,,
a dispute between the parties with regard to breach of contract and consequently
damages. The jurisdiction of the Arbitrator was therefore attracted,,,,
and the Arbitrator was competent to assess the damages. The claim for a definite
sum of money is not a condition precedent to the exercise of,,,,
jurisdiction of the Arbitrator. Indeed, on a general submission the Arbitrator could
determine and assess even prospective damages arising after the",,,,,
date of the submission.,,,,,

(35) In State of Orissa-vs.-Asis Ranjan Mohanty (supra), it was held that if
subsequent claims raised by the claimant pertain to the disputes which",,,,,
were in existence at the time when the arbitration clause was invoked and were
within the scope of arbitration clause and reference, the same can be",,,,,
raised. Additional claims raised by the claimant subsequently could be considered
by the Arbitrator.,,,,,

(36) These two decisions support the view we have taken regarding arbitrability
of all the disputes and claims raised by GMB in the arbitration,,,,,
proceeding.,,,,,

(37) In view of the aforesaid, we find no reason to interfere with the award of
the Learned Umpire. Mr. Chakraborty, Learned Sr. Counsel, appearing",,,,,
for Neycer argued in his appeal that even the sum of Rs. 2 crores should not
have been sustained by the learned Single Judge as there was no,,,,,
evidence to support such claim. We are unable to accept such submission as we
have already indicated that in our view the learned Umpire's,,,,,
award cannot be said to be based on no evidence.,,,,,

(38) No case has been made out by Neycer that the Learned Umpire
misconducted himself or the arbitral proceedings or that the Arbitral Award has,,,,,
been improperly procured or is otherwise invalid. No ground for interference with
the Award has been made out.,,,,,

(39) In the result, GMB's appeal succeeds. The impugned judgment and order
is set aside to the extent it interferes with the award of the Ld.",,,,,
Umpire. The Ld. Umpire's award is upheld. Neycer's appeal stands
dismissed.,,,,,

(40) APO 34 of 2016 and APOT 42 of 2016 are accordingly disposed of. There
will, however, be no order as to costs.",,,,,

(41) Urgent certified photocopy of this judgment and order, if applied for, be

given to the parties upon compliance of necessary formalities." ,,,,

I Agree.,,,,

(Jyotirmay Bhattacharya, CJ.)" ,,,,

(Arijit Banerjee, J.)" ,,,,

Later: ,,,,

After the judgment is delivered, prayer is made on behalf of Neycer for stay of operation of this judgment and order for a period of three weeks. To" ,,,,

give an opportunity to Neycer to approach the higher forum, let the operation of this judgment and order remain stayed for a period of three weeks" ,,,,

from date.,,,,