

(1994) 01 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No's. 127, 128, 129, 431, 432 and 433 of 1990

G.S. Atwal and Co. and Others

APPELLANT

Vs

Rajasthan State Mineral Development Corporation Ltd.

RESPONDENT

Date of Decision : 18-01-1994

Acts Referred:

Arbitration Act, 1940 — Section 14, 30, 6
COMPANIES ACT, 1956 — Section 617

Citation : (1994) 1 WLN 194

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Judgement

N.L. Tibrewal, J.—These appeals are brought against the common judgment of the learned District judge, Jaipur City, Jaipur in Civil Miscellaneous (Arbitration) Cases No. 189/1988, 190/1988 and 191/1988, and arise from a contract between the parties. Hence, they can be conveniently disposed of by a common order.

2. The facts leading these appeals are as follows. The Rajasthan State Mineral Development Corporation (for short the Corporation") a Government Company within the meaning of Section 617 of the Companies Act, 1956, after negotiations vide its letter dated June 7, 1982, awarded a contract to M/s G.S. Atwal & Co. (hereinafter to be referred as "the Contractor") for raising the mineral "dolomite"/rockphosphate in their leased area known as "Kanpur Mines" in Kolin project in Udaipur District, at the following rates:

Description	of	work.	Quantity	Rate	per	cub.m.
----- Mining						
and stacking of roc- 10,000 cub.m. per month Rs. 44.00 per cub.m. kphosphate						
at a distance of including ore and waste 50 Meters and removal of rock.						
aforesaid rock as per mining plan upto 1000 meters.						

Clauses 4,5 and 6 of the aforesaid letter read as under:

4. The work is allotted with the condition that you will immediately depute earth moving machinery and mechanising the mines such as loader dozer, dumpers and blast-hole drills etc. not later than 21st June, 1982.

5. You have to achieve the production and excavation rate of 10,000 cub. meters per month by the end of July, 1982 failing which the contract is liable for termination.

6. Total excavation for the year ending March 1982-83 should not be less than 1,20,000 cub.mtd.

3. The Contractor accepted the offer of the Corporation and accordingly, the mining work was started on June 21, 1982. Thereafter, the parties executed an agreement in writing on September 13, 1982 for a period of three years commencing from June 21, 1982. The relevant terms of the agreement with regard to the rates, quantity escalation etc. are referred to as under:

1. The Corporation hereby appoints the second party as its contractor for following raising work of rock-phosphate Dolomite for a period of three years w.e.f. the date of commencement of the work i.e. 21.6.1982:

Description of work. Quantity. Rate.
----- Mining

and stacking of 10,000 cub.m. per month Rs. 44.00 per cub-m. rock-phosphate at a including ore and waste (kg. Fort four). distance upto 50 meters and rock. removal of waste rock as per mine plan and throwing upto 1000 meters.

----- 2. The
above rate would be applicable for 12 months from the date of commencement of work,

3. Escalation will be allowed 8% after every 12 months. This escalation will cover increase in all respect i.e. labour wages, oil & lubricants, spare parts etc.

4. While the above contract was in force, the Corporation, vide letter dated January 20, 1984, informed the contractor that payment henceforth would be made @ Rs. 39/- per cub.m. for the work done under the agreement. However, this was not acceptable to the contractor. The Corporation wanted to pay the above rate as subsequently for the nearby area it received tenders at that rate.

5. Then, after fresh negotiations, they arrived at a mutual settlement, which was recorded in the form of Memorandum of Understanding (for short "MOU") on April 19, 1985. It will be useful to reproduce the MOU in extenso:

After detailed deliberations, the following understanding was arrived at:

1(a). RSMDC and Mis G.S. Atwal & Co. (Gua) have signed an agreement for

excavation of ore at Udaipur Goup of Mines for a period of three years w.e.f, 21st June, 1982. This contract is operative and subsisting upto 20th June, 1985.

(b). As per this contract, M/s G.S. Atwal & Co. (Gua) has to excavate 10,000 cub.m. rock per month. Against this, the contractor, party has been excavating more than 10,000 cub.m. as per the requirement of the project.

(c). It is now agreed by both the parties that w.e.f. January 20, 1984 RSMDC will continue to make payments to M/s G.S. Atwal & Co. (gua) as per the rates, terms and conditions of original agreement/contract on the first 10,000 cub.m. of excavation done by them and rates of all quantities above 10,000 cub.m. will be at Rs. 39/- per cub. m. It is also agreed that RSDMC will make payments for all works done upto 19.1.84 as per rates terms and conditions of the original agreement/contract.

(d). it is further agreed that RSMDC will extend contract of M/s G.S. Atwal & Co. (Gua) to work in the are a allotted to them for another three years w.e.f. 21.6.85 for quantity of 40,000 cub.m. per month subject to availability of economically mining ore on the modified terms and conditions -

i). The rate for entire work after 21.6.85 shall be at Rs. 39/- per cubic meter.

ii). escalation if payable to other parties shall also be payable to M/s G.S. Atwal & Co. (GUa).

2. M/s G.S. Atwal & Co. (gua) have pointed out that their payments are not released timely which is causing heavy losses to them, RSMDC shall clear the entire outstanding payments by 15th May, 1985.

3. For the claims, the additional bills already submitted by M/s G.S. Atwal & Co. (Gua) towards extra lead involved in dumping, ore, over-burden, RSMDC after due verification, shall pay for the extra lead at the BSR rate prevalent at the time of operation or actual rate paid for such work of City Division PWD/Irrigation, Udaipur, whichever is less. RSMDC shall carry out the verification of the extra lead as soon as possible and the claim shall also be settled within a fortnight of signing this Memorandum of Understanding.

The above Memorandum of Understanding shall be binding both on M/s G.S. Atwal & Co. (Gua) and RSMDC only after the same is approved by the Board of Directors of the RSMDC. All other terms and conditions except clause(3) of the said agreement will remain as per the contract between RSMDC and M/s G.S. Atwal & Co. (Gua).

In case the Memorandum of Understanding is not approved by the Board of Directors of RSMDC, no clause of this understanding shall be binding and operative on M/s G.S. Atwal & Co. (Gua) also.

6. The Board of Directors of the Corporation, in its 88th meeting held on April 19, 1985, approved the MOU.

7. The Contractor, alleging that the Corporation failed to make regular and timely payment, served notice dated October 7, 1985 on the Corporation and claimed a sum of Rs. 1,61,08,104,96 for the work done by it upto June 20, 1985 as per rates of the original agreement/contract. The Corporation also, thereafter, served a three months' notice on the contractor terminating the contract from 26.3.1986. It appears that the Contractor stopped the work thereafter.

8. As disputes and differences had arisen between the parties, the matter was initially referred to two arbitrators, each party appointing its one arbitrator. But, this reference was revoked and under an order of reference dated November 24, 1987, of the District Judge, Jaipur City all disputes between the parties were referred to the sole arbitration of Mr. Justice S.K. Mal Lodha, a retired judge of this Court on a joint prayer of the parties.

9. There were three claims before the arbitrator. Claim No. 1 was made by the Contractor for Rs. 1,82,16,939.00 which was later on revised and reduced to Rs. 72,98,439.00. This claim related to the original period of the Contract i.e., 21.6.1982 to 20.6.1985. The Corporation also made a counter claim No. 2 against the Contractor for Rs. 2,74,06,706.31. Claim No. 3 was also filed by the Contractor against the Corporation for Rs. 3,39,93,297.00, which related to the period after June 21, 1985. The learned Arbitrator gave separate awards for each of the claims on 11.10.1988, 24.9.1988 and 4.10.1988 respectively.

10. The Arbitrator filed the Awards before the District Judge, Jaipur City to make them as Rule of the Court. The Contractor also filed separate applications u/s 14(2) of the Arbitration Act, 1940 (hereinafter referred to as "the Act") to make the Awards as Rule of the Court. Objections were filed by the Corporation challenging the Awards and the matters were registered as Civil Miscellaneous (Arbitration) Cases 189/1988, 190/1988 and 191/1988. The learned District Judge decided all the three cases by a consolidated order dated February 20, 1990, which is under challenge in the appeals.

11. (i) Under Claim No. 1, the Arbitrator held that the contractor was entitled to get Rs. 23,05,434.41 as principal amount from the corporation as per findings on Issues No. 1, 2 and 3, Rs. 65,326.03 was awarded as interest as per finding on Issue No. 4. It was also held that the corporation shall refund the security amount of Rs. 6,07,788.95 lying deposited with it. Thus, under claim No. 1, the contractor was held entitled to get a sum of Rs. 29,78,539.39 from the corporation. The learned District Judge on the contrary, held that against the aforesaid amount payable to the contractor the corporation was entitled to deduct a sum of Rs. 31,69,503.93 as retained by him. Thus, according to the District Judge, the Corporation was entitled to get Rs. 1,90,964.50 from the contractor.

(ii)-The Arbitrator dismissed Claim No. 2 of the Corporation. The learned District Judge, though maintained the dismissal of the claim, but held that the corporation was entitled to retain with it a sum of Rs. 2,57,000/- towards

surface-rent and this amount was to be kept as "Amanat" (security) so that if the case regarding payment of surface rent was decided, the amount payable as surface rent might be adjusted; and if any excess amount remained with the corporation, the same could be returned to the contractor with interest @ 9% per annum.

(iii). In Claim No. 3, the Arbitrator held the corporation to be liable for Rs. 56,80,300.50 (Rs. 58,61,680 less Rs. 1,81,880.00 on account of income tax deduction @ 26). He further held that the corporation will pay Rs. 10,79,257.00 as interest @ 12% per annum on the aforesaid amount from the date of notice i.e. 29.5.1986 to 31.12.1987 as per finding on issue No. 4.

13. The learned District Judge, on the other hand, held that the contractor was entitled to get only Rs. 33,43,742.48 from the corporation with interest. Consequently, the learned District Judge passed a consolidated order in the following terms:

(i). That, the contractor was entitled to receive Rs. 28,95,777.94 from the corporation and on this amount, they were also entitled to get Rs. 4,12,498.36 as pendentalite interest @ 9% per annum. Interest @ 9% per annum on the principal amount of Rs. 28,95,777.94 from the date of award i.e. 4.10.1988 until the date of realisation was also awarded.

(ii). That, Rs. 2,57,000-00 shall be retained by the Corporation with it as security for the surface rent. If the case of surface rent was not decided within a period of two years, the Corporation would return the aforesaid amount to the Contractor on Bank guarantee to be furnished by them. And, whatever amount shall be paid by the Corporation towards the surface rent, the same would be paid by the contractor. The parties were left to bear their respective costs.

14. In each claims the Corporation and the contractor have filed separate appeals, challenging that part which was decided against them.

CLAIM No. 1

15. the contractor had initially made the claim for Rs. 1,82,16,939/- and interest @ 18% from 1.1.1986 till the date of payment by the Corporation. Subsequently, in pursuance of the direction given by the Arbitcator, the contractor reduced their claim to Rs. 72,98,480.50 vide clarification dated 14.4.1988. The break-up of the amounts due from the corporation as per the MOU was also appended with the clarification.

16. After giving full opportunity to the parties to file their statements and to produce oral and documentary evidence, the Arbitrator decided claim No. 1 by a speaking award. He awarded the following amounts in favour of the contractor as per findings on issue No. 2 and 3.

(i). for the difference of rates; (a). for the period 17.9.83 to 19.1.1984. Rs. 10,21,721.30 (b). for the period 20.1.84 to 20.6.84 Rs. 2,50,000.00 (c). for the

period 21.6.84 to 20.6.85 Rs. 6,00,000.00 (ii). Escalation amount from 21.6.83 to 19.1.84 Rs. 11,43,660.30 from 20.1.84 to 19.6.85 Rs. 28,83,792.71
----- Total Rs. 58,99,174.31 -----

Towards this amount the contractor had received Rs. 35,93,789.80, as such, balance amount payable to the contractor was calculated as Rs. 23,05,434.41.

17. The arbitrator also awarded interest @ 12% per annum on the aforesaid amount from 7.10.1985 to 30.12.1985 (from the date of notice to the date when the claim was filed). The amount of interest Was calculated as Rs. 65,326.03. Thus, the total amount payable to the contractor under claim No. 1 was decided as Rs. 23,70,750.44. (Rs. 23,05,434.41 Rs. 65,326.03) in addition to the aforesaid amount, the corporation was also directed to refund security amount of Rs. 6,07,788.93 to the Contractor. The rest of the claim of the contractor was dismissed.

18. The District Judge, on the other hand, held that from the amount awarded by the arbitrator, the Corporation was entitled to get the following deductions:

(i). Rs. 28,83,792.71 Escalation amount from 20.1.84 to 19.6.85. (ii). Rs. 2,00,000.00 from the amount awarded as rate difference. (iii). Rs. 65,326.03 Interest amount. (iv). Rs. 8,493.00 (v). Rs. 11,892.19 Rs. 81,69,503.93

19. The District Judge, therefore, held that on allowing the above deductions in favour of the corporation a sum of Rs. 1,90,964.54 remained to be paid to the corporation by the contractor.

20. The District Judge, in his findings, held that the contractor was entitled "to get escalation from 20.6.83 to 19.1.84 only and the Arbitrator rightly calculated and awarded Rs. 11,43,407.30 to the contractor towards escalation for this period. For the remaining period of the contract i.e. 20.1.84 to 20.6.85, it was held that the contractor was not entitled to get escalation. For the rate difference he held that after 20.1.1984 the contractor was entitled to get the rate of Rs. 44/- per cub.m. on the total quantity of 10,000 cub.m. and the arbitrator wrongly awarded this rate on 10,000 cub.m. per month. For the interest amount it was observed that when no principal amount was payable to the contractor the question of interest did not arise.

21. Before I advert to the submissions of the learned Counsel for the parties, I would like to discuss the legal position and the four corners under which an award can be set aside, modified or remitted by a court of law. The general rule, in matter of arbitration, is that when parties have agreed upon arbitration, thereby displacing a court of law and a domestic from, they must accept the award for good or ill. In such cases, the descretion of the court either for remission or setting aside the award will be strictly confined to be specific of grounds set out in Section 30 of the Act. Merely because the court may come to a different conclusion on re-appreciation of evidence, it do not mean that the arbitrator has committed any misconduct. An arbitrator is the sole judge of the

quantity and quality of evidence and it is not for the court to take upon itself the responsibility of being a judge of the evidence before the arbitrator. Section 30 gives the grounds on which an award can be set aside. An award can also be set aside for the error of law appearing on the face of it. It may be stated that it is not misconduct on the part of an arbitrator to give an erroneous decision whether his error is of fact or law and whether or not his findings are supported by evidence.

22. The ambit and scope of the jurisdiction of the court vis-a-vis the award of an arbitrator was laid down in very lucid and clear terms by the Privy Council in *Champsey Bhara & Co. v. Jeevraj Balloo Spq. & Wvg. Co. Ltd.* AIR 1923 PC 66. The law as laid down by William J., in *Hodgkinson v. Pernie* (1957) 3 C.B.N.S. 189 was approved as under:

The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact. The only exceptions to that rule are cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think firmly established viz., where the question of law necessarily arises on the face of the award or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established.

23. The controversy with regard to error in law on the face of the award was set at rest in the following words.

An error in law on the face of the record means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating that reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound.

24. In *Firm Madan Lal Roshan Lal Mahajan v. Hukamchand Mills Ltd., Indore* AIR 1987 SC 1030, the ratio of the decision in *Champsey Bhara & Company's* case was approved and it was held that the arbitration's award both on fact and law is final and there is no appeal from his verdict. The same principle of law was reiterated in *Union of India (UOI) Vs. Bungo Steel Furniture Pvt. Ltd.,*

25. In *Allen Berry and Co. Pvt. Ltd. Vs. The Union of India (UOI), New Delhi*, it was emphasised that when the parties had chosen their arbitrator, they cannot object to the award either upon the law or the facts when the award is good on the face of it and the mistake alleged is not apparent from a perusal of the award. It was also laid down as under.

Before we proceed to consider those propositions, it is necessary to ascertain the scope of Section 30 of the Arbitration Act, 1940, and the principles underlying that section. The general rule in matters of arbitration awards is that where parties have agreed upon an arbitrator, thereby displacing a court of law "or a domestic forum, they must accept the award as final for good or ill. In such cases the discretion of the court either for remission or for setting aside the award will not be readily exercised and will be strictly confined to the specific grounds set out in Sections 6 and 30 of the Act.

26. In *Jivarajbhai Ujamshi Sheth and Others Vs. Chintamanrao Balaji and Others*, it was observed that if the interpretation of the deed lies with the arbitrator then there is no question of sitting in appeal over his interpretation,

27. In *N. Chellappan Vs. Secretary, Kerala State Electricity Board and Another*, , it was observed:

The umpire as sole arbitrator was not bound to give a reasoned award and if in passing the award he makes a mistake of law or of fact, that is no ground for challenging the validity of the award. It is only when a proposition of law is stated in the award and which is the basis of the award, and that is erroneous, then the award be set aside or remitted on the ground of error of law apparent on the fact of the record.

Where an arbitrator makes mistake either in law or in fact in determining the matters referred, but such mistake does not appear on the face of the award, the award is good notwithstanding the mistake, and will not be remitted or set aside.

28. In *U.P. Hotels and Others Vs. U.P. State Electricity Board*, , it was laid down that even assuming that there was an error or construction of the agreement or even there was error of law in arriving at a conclusion but such error is not an error which is amenable to correction even in a recent: award under the law. In order to set aside an award, there must be a wrong proposition of law laid down in the award as the basis of the award.

29. In *Sudarsan Trading Co. Vs. Government of Kerala and Another*, , it was held that when there is no dispute as to the contract, the interpretation of that contract is a matter for the arbitrator and on which the Court cannot substitute its own decision. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded, is a possible view though perhaps not the only correct view, the award cannot be examined by the Court. It was observed as under:

But in the instant case the court had examined the different claims not to find out whether these claims were within the disputes referable to the arbitrator, but to find out whether in arriving at the decision, the arbitrator had noted correctly or incorrectly. This, in our opinion, the court had no jurisdiction to do merely, substitution of its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the

parties. Whether a particular amount was paid of damages liable to be sustained was a decision within the competency of the arbitrator in this case. By purporting to construe the contract the court could not take upon itself the burden of saying that this was contrary to the contract and, as such, beyond jurisdiction. It has to be determined 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. There may be a conflict as to the power of the arbitrator to grant a particular remedy. See: Commercial Arbitration by Sir M.J. Mustill and Steward C. Boyd Page 84,

(Emphasis supplied).

30. In *M/s. Hind Builders Vs. Union of India*, , it was held as under:

This, therefore, is not a case where the arbitrators can be said to have ignored or overlooked a term of the contract; on the contrary, they have acted upon a particular interpretation of certain clauses of the contract on which two views are possible. This case certainly cannot be brought under the principle that the arbitrators have ex-facie exceeded the authority or jurisdiction conferred on them by the contract. At worst, what can be said is that they may have committed an error in deciding the issue referred to them but the error is not apparent on the face of the award even if the contract is read as part of it both because the arbitrators have not given their reasoning and because the view taken by them of the relevant terms of the contract cannot be said to be clearly erroneous. In a matter on which the contract is open to two equally plausible interpretations, it is legitimate for the arbitrators to accept one or the other of the available interpretations and even if the Court may think that the other view is preferable, the court will not and should not interfere. This view is too well settled to need any reference to any precedent other than *Sundershan Trading Co.* case referred to earlier. That is why we think that this case does not fall within the principle referred to by *Shri Banerjee* and that *Dr. Ghosh* is right in his submission that the Division Bench exceeded its Jurisdiction in interfering with this part of the award.

(Emphasis supplied).

31. In *Associated Engineering Co. Vs. Government of Andhra Pradesh* and another, , the Supreme Court held that an error of construction of the contract was not a jurisdictional error. It was observed:

If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Such error going to his jurisdiction can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be

said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award

32. In *S. Harcharan Singh Vs. Union of India*, the claim of the contractor was based on the interpretation of Clause 12 of the Contract. It was held by their Lordships:

While considering the claim of the appellant the arbitrator was required to consider the terms of the contract and to construe the same. It was, therefore, permissible for the arbitrator to consider whether Clause 12 of the contract enables the Engineer-in-Charge to require the appellant to execute additional work without any limit or a reasonable limit should be placed on the quantity of the additional work, which the appellant may be required to execute at the rate stipulated for the main work under the contract.

33. In the background of the proposition of law enunciated by their Lordships of the Supreme Court the disputes involved in the case may be examined now.

34. At the outset it may be stated that none of the parties has made any grievance against the Arbitrator on the ground that he misconducted himself or in the proceedings. It was also not the case that he was biased in any manner or that he committed any...that the construction of the clauses of the MOU as made by the arbitrator was erroneous and thereby he committed an error of law on the face of the award. On the same ground the judgment of the District Judge is being challenged in relation to that part of the claim which has been allowed in favour of the Contractor. On the other hand, the contractor's case is that the construction/interpretation of the agreement/contract or the MOU made by the arbitrator was the only plausible and reasonable interpretation and there was no jurisdictional error to vitiate the award but still the learned District Judge travelled beyond the competence in setting aside/modifying the award.

35. The first main dispute between the parties, in claim No. I, relates to escalation price. The arbitrator has allowed to the contractor escalation amount of Rs. 11,43,660.30 from 21.6.83 to 19.1.84 and Rs. 28,83, 792.71 for the period 20.1.84 to 24.6.85, but the District Judge disallowed escalation amount of Rs. 28,83, 792.71. Before me, the contention of the Corporation is that no escalation for any period as the MOU excluded C1.3 of the original agreement and the contractor was wrongly allowed escalation payable amount for the period 21.6.83 to 19.1.84. On the other the Contractor in their appeals challenge the order of District Judge disallowing escalation amount for the period 20.1.1984 to 20.6.85.

36. Mr. B.P. Agrawal, learned Counsel for the corporation has contended that the MOU modified and altered the original agreement dated 13.9.1982 and it amounted to renovation of contract under S;62 of the Contract Act; that

penultimate para 3 of the MOU expressly excluded the operation of C1.3 of the original agreement, as such no escalation for any period was payable to the contractor. According to the learned Counsel, the rule of interpretation of a document required that each clause should be so interpreted as to bring them in harmony with other provisions of the deed, and all the clauses in an agreement should be read together to give effect to the intention of the parties. Lastly, it was contended that even as per original" agreement the payment of escalation charges was not automatic but it was subject to the proof of increase in labour wages, or in the price of oil and lubircants or spare parts etc. and in the absence of the proof the contractor was not entitled to get escalation charges.

37. Mr. M.L. Garh, learned Counsel for the contractor, on the other hand, contended that the arbitrator had competence to construe the various clauses of the agreement and the MOU to arrive at a conclusion whether escalation was payable or not and if so, for what period. According to the learned Counsel, the arbitrator was referred all the disputes between the parties and the dispute about the payment of escalation charges also included in it, and as such, the dispute was within the award. It was also contended that the interpretation to the MOU given by the arbitrator was white plausible and reasonable and while interpreting the same he had taken into consideration the basic rules of interpretation of a contract. Learned Counsel contended that the present case is not one where the arbitrator ignored or over looked the terms of the contract or the MOU and it cannot be said that he exceeded his authority or jurisdiction. The arbitrator had mightly awarded ascalation for the entire period, and the District Judge by Wrongly deducted escalation amount of Rs. 28,83,792.71 for the period 20.1.84 to 20.6.85.

38. I have given my careful and anxious consideration to the submissions made by the learned Counsel for the parties: in the present case the arbitrator has chosen to make a speaking award. He has given reasons for his conclusions. Since the arbitrator has chosen to give the reasons, unless it is demonstrated to the court that such reasons are erroneous as such as proposition of law or the view taken by him could not possibly be sustained on any view of the matter, then the challenge to the award of the arbitrator cannot be sustained.

39. A perusal of the award would show that the arbitrator has construed the effect of the relevant clauses of the original agreement and the MOU in the light of the basic rules of interpretation of a deed, referred to in the award, an held as under:

In the light of the above rules, I now proceed to examine Cl (c), (D) and penultimate para of the MOU. The Corporation agreed to pay to the contractor from 20.1.84 as per rates, terms and conditions of the agreement dated 13.9.82 on first 10,000 cum. of excavation. Rates, terms and conditions of the original agreement include payment of escalation as per Clause 3 of the agreement. In other words, the contractor was to be paid at the rate of Rs. 44/- per cubmic meter for first 10,000 cum. and besides that, escalation was to be paid at the

rate of 8% from 20.1.84 in accordance with Clause (3) of the original agreement. From 20.1.84, rate of the quantities about 10,000 cum was Rs. 39/- per cum. and escalation is to be paid at the rate of 8%. As regards payments to be made to the contractor upto 19.1.84, it was agreed between the parties that for all excavation work, the rate would be Rs. 44/- per cum. and escalation is to be paid at the rate of 8% p.a. in accordance with Clause 3 of the original agreement, Clause 1(d) of MOU lays down that from 21.6.85, which a quantity of 40,000 cum. per month, the rate would be uniform at Rs. 89/- per cum. and that escalation would be paid if it is payable to other parties. It is clear that in Clauses 1(c) and (d), provisions have been made, inter alia, for payments for excavation work and escalation, (1) upto 19.1.84 (2) from 20.1.84 to 20.6.85 and (3) from 21.6.85 to 20.6.83 (Second contract was rate for three years.) When the provisions were only for payment of escalation up to the expiry of extended period of the second contract it was not essential that cl(3) of the original agreement which deals with escalation should have been excluded. It could not be incorporated, Therefore, the parties mentioned that all other terms and conditions except Clause 3 of the original agreement will remain Clause 3 of the original agreement will remain as per the contract between FSMDC and M/s G.S Atwal & Co. (Gua). Reference to the expression as per rates, terms and conditions" of the original agreement in Clause 1(a) of the MOU makes it clear that the term/condition mentioned in Clause 3 of the agreement relating to payment of escalation has been included and so, escalation is payable upto 20.6.85 according to the terms of the MOU.

40. The arbitrator, then, calculated the amount of escalation as under:

- (i) from 20.6.83 to 19.1.84 Rs. 11,43,660.30
- (ii) from 21.1.84 to 20.6.85 Rs. 28,33,792.71

41. The calculation of the amount of escalation is not disputed by any of the parties. The dispute is whether it was payable to the Contractor after the MOU.

42. The Contention of Mr. Garg, the learned Counsel for the Contractor, is correct that the dispute about payment of escalation price to the contractor in the present case, was a dispute within the award; and the arbitrator was required to decide on consideration of relevant clauses of the original agreement and the MOU, whether this amount was payable or not, and if so, for what period. The arbitrator, therefore, had the competence and jurisdiction to decide as to whether the contractor was entitled to get the escalation price under the agreement as claimed by him. Further, here is not a case where the arbitrator can be said to have ignored or overlooked the terms of the agreement and the MOU, on the contrary, he has acted on a particular interpretation on certain clauses on which at best, it could be said that two views may be possible. This case, therefore, is not covered under the principle where the arbitrator exceeded the authority or jurisdiction conferred on him...is that he might have committed error in deciding the issue referred to him but the error is not apparent on the face of the award.

The Apex Court of the country has held repeatedly in various judgments, some of which have been referred to above, that in a matter on which the contract is open to two equally plausible interpretations, it is legitimate for the arbitrator to accept one or the other of the available interpretations and, even if the court may think that the other view is preferable the court will not and should not interfere.

43. I would also like to express that the interpretation given by the arbitrator to the escalation clauses is more plausible and reasonable. There is no dispute before me that as per Clause 3 of the original agreement/contract the contractor was entitled to get escalation from 21.6.83 to 20.6.1985, the date when the contract period was to end. The escalation was provided to cover increase in all respect, i.e. labour wages, oil and lubricants, spare parts etc. Therefore, if there had been no MOU, the contractor was entitled to get escalation price as per the original agreement. The MOU came in existence on 19.4.85 as the corporation stopped payment and a dispute was raised by it for the rates of the work and it also wanted to make a contract for the next three years from 21.6.85. Various clauses of the MOU have, therefore, incorporated to make provisions, interlia, for payment of excavation work and escalation in all the three situations i.e. (1) upto 19.1.1984; (ii) from 20.1.84 to 20.6.85 and (iii) from 21.6.1985 to 20.6.1988, the period of second contract. For the period upto 19.1.84 clause I(c) provides:

It is also greed that FSVDC will make payments for all works done upto 19.1.1984 as partites, . . . and conditions of the original agreement/Contract?

The expression "rates, terms and conditions of the original agreement/contract"also included Clause 3 of the agreement which provides escalation. The arbitrator and the District Judge have rightly concurred on the point that escalation was payable Upto 19.1.1984, as the expression "rates, terms and conditions of the original agreement/contract" incorporated in Clause 1 (c) for the period upto 19.1.1984 included the escalation as per Clause 3 of the original agreement.

44. For the period from 20.1.1984, Clauses 1(c) of the MOU provided:

It is now agreed by both the parties that w.e.f. 20.1.1984 RSMDC will continue to make payments to MIS G.S. Atwal & Co. (qua) as per the rates terms and conditions of original agreement/contract to the first 10,000 cub.m. of excavation done by them and rates of all quantities above 10,000 cub.m. will be at Rs. 39/- per cub.m.

As per this clause also RSMDC was to make payment: "as per the rates, terms and conditions of the original agreement/contract" on the first 10,000 cub.m. of excavation done by the contractor but the rates of all quantities above 10.000 cub.m. was reduced to Rs. 39/- per cub.m. Hence it is clear that from 20.1.84 also provision was made for the excavation. This part of the clause is not happily worded but on a deep probing it would be clear that the interpretation made by the arbitrator was the only just and plausible one.

45. Clause (d) of the MOU related to the terms and conditions of the contract for another three years from 21.6.85 to 20.6.88. The modified terms and conditions were provided as under:

(i) The rate for the entire work after 21.6.85 shall be @ Rs. 39/- per cub.m.

(ii) escalation if payable to the other party shall also be payable to M/S G.S. Atwal & Co.

Thus, the MOU expressly provided for escalation for the entire period of the first contract, as well as the second contract and in that situation Clause 3 of the original agreement was not essential to be kept further. Hence it was rightly provided in the MOU that all other terms and conditions except Clause 3 of the said agreement will remain as per the contract. It was necessary for the second contract as it was to be governed by the terms and conditions of the first contract. The arbitrator was, therefore, right when he observed that the MOU made provisions for escalation for the entire period of the first contract and the second contract with modification in the rates for the work, The argument of Mr. Agrawal does not carry and weight that the effect of penultimate Clause of the MOU was that no escalation was payable to the contractor for any period of contract. It is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein, while the other will render one or more of them nugatory, it is former that should be adopted on the principle expressed in the maxim "ut res magis valeat quam per eat."

46. It may also be stated here that the Corporation in its statement dated 5.4.1986, submitted before the arbitrator, has admitted that escalation was payable on the whole amount from 20.6.1983 to 19.6.1984 and actually it had paid the same to the contractor. The statement is reproduced as under:

Quantity	in	M3	Rate	paid	in	S. Rs.	Period No.
to	21.6.83	4,39,564.46	Rs.	44.0	per	1.	22.6.82
to	19.1.84	3,22,645.54	Rs.	44.00	per M3.	2.	22.6.83
to	21.6.84	2,06,691.87	Rs.	89.00	per	3.	20.1.84
to	20.6.85	3,85,568.89	Rs.	14.00	7.84 for	4.	22.6.84
							1,20,000....

47. In para No. 4 of the petitioner submitted by the corporation it was stated that the above details are clear showing that the excavation and also the escalation have been fully paid in terms of Memorandum of Understanding. This also shows that the subsequent stand of the corporation that no escalation was payable to the contractor for any period, in view of the pen-ultimate clause in the

MOU, is in contradiction to the earlier stand taken before the arbitrator.

48. Therefore, the view taken by the arbitrator that escalation price was payable to the contractor even after the MOU is quite plausible and reasonable, and the interpretation of the relevant clauses of the original agreement and the MOU made by him cannot be said to be erroneous. Learned District Judge, though accepted that the expression "the rates, terms and conditions of the original agreement contract" also included the escalation price as the Clause 3 of the original agreement, but still he awarded escalation upto 19.1.1984 only. This views on the question of escalation upto the period of 19.1.1984, and thereafter from 20.1.1984 to 20.6.1985 are based on conflicting interpretations made by him. It is also not correct when he observed that the penultimate para came in operation from 20.1.1984 and from that date the condition of escalation ceased to have cooperation. The reasons given in support of his interpretation are not valid and sound. I reject the argument of Mr. Agrawal that the interpretation to various clauses of the agreement and the MOU given by District Judge is the only possible interpretation and should prevail over the interpretation made by the arbitrator. The additional argument of Mr. Agrawal that escalation was payable on the proofs of increase in wages, oil and lubricants or spare parts etc. is also not acceptable and can be rejected conveniently. A bare perusal of Clause 3 of the original agreement would show that the escalation at the rate of 8% was allowed after every twelve months from the date of commencement of the work to cover up increase in all respect. The language of Clause 3 is clear and admits no other interpretation except that escalation was automatic after expiry of every twelve months @ 8%. The same interpretation has been given by the arbitrator and the District Judge. It is also noteworthy that no such argument was advanced on behalf of the corporation before the District Judge.

49. Thus, judged from all angles, it is held that the learned District Judge has travelled beyond his limits and erred in deducting escalation amount of Rs. 28,83,792.71 for the period 20.1.84 to 20.6.85. The Contractor is entitled to get the amount from the corporation as held by the Arbitrator.

50. The next major dispute between the parties relates to rate difference of Rs. 5/- per cub.m. (Rs. 44/- minus Rs. 39/- per cub-m.). The dispute of the amount under this head is as under:

(i) for the period from 20.1.84 to 20.6.84 i.e. 5 months Rs. 2,00,00.00

(ii) for the period 21.6.84 to 20.6.85 i.e. 12 months, on the total quantity of 1,20,00 cub.m. i.e. 10,000 cub.m. per month @ Rs. 5/- per cub.m.

Rs. 6,00,000.00

51. The arbitrator allowed the aforesaid amounts holding that from 20.1.1984 the contractor was entitled to get the rate of Rs. 44/- per cub.m. on the first 10,000 cub.m. every month; while the District Judge allowed Rs. 50,000/- in total towards this head and rest of the claim was disallowed holding that after

20.1.1984 the contractor was entitled to get the rate of Rs. 44/- per cub.m. on the total quantity 10,000 cub.m. only and for the rest the rate was payable @ Rs. 39/- per cub.m. After giving my careful consideration and taking into consideration the relevant clauses of the original agreement and the MOU, I am of the confirmed opinion that the view taken by the Arbitrator is correct. As per original agreement, dated 13.9.1983, the contractor was required to excavate minimum 10,000 cub.m. per month and Clause 11 further provided that in case the contractor failed to achieve monthly 10,000 cub.m. excavation work a penalty of Rs. 3/- per cub.m. would be recovered on shortfall quantity. Thus, the contractor was required to achieve the excavation target of 10,000 cub.m. per month as minimum and on his failure a penalty was provided in Clause 11. Then Clause 1(b) of the MOU provided that the contractor has to excavate 10,000 cub.m. rock per month, and against this they were excavating more than 10,000 cub.m. as per the requirement of the project. If clause 1(c) of the MOU is read alongwith Clause 1(b) of the MOU and the relevant clauses of the original agreement/contract, then there remains no doubt that from 20.1.1984 the rate of Rs. 44/- per cub.m. was payable to the contractor on the first 10,000 cub.m. per month as per the rates of the original agreement. The interpretation given by the arbitrator in this connection is well founded and is the only possible interpretation. He did not commit any error when he awarded the rate of excavation on the first 10,000 cub.m. per month as Rs. 44/-. Therefore, the rate difference, as indicated above, awarded by the arbitrator was correct. The view of the District Judge that the words "per month" were not mentioned in clause 1(c) of the MOU, as such, the contractor was entitled to get the rate of Rs. 44/- on the first total excavation of 10,000 cub.m. only from 20.1.1984 to 20.6.1985 is not correct. The learned District Judge failed to appreciate that Clause (c) was to be read alongwith the original agreement and Clause (b) of the MOU to ascertain the intention of the parties. The rules of interpretation require that the deed must be read as a whole to ascertain the true meaning of its several clauses and the intention of the parties.

52. It is also pertinent to state here that the corporation in his petitioner, dated 5.4.1986 and the statement submitted before the arbitrator, has admitted that it has paid the rate @ Rs. 44/- per cub.m. upto 19.1.1984 and thereafter, the rate of Rs. 44/- was paid on 1,20,000 cub.m. p.a. and the rate of Rs. 39/- per cub.m. for the quantity in excess of 1,20,000 cub.m. as per MOU. This shows as to how the MOU was understood and acted upon by the corporation in relation to the rates. The relevant paras 1 and 2 of the petition may be reproduced as under:

1. That as per directions of the learned Arbitrators, a statement showing the work done and the payments made for the period from 20.6.1982 to 20.6.85, is enclosed herewith.
2. That this statement clearly establishes and proves that the claimants have been paid for the entire excavation work upto 20.6.1985 @ Rs. 44/- per M.T. upto 19.1.84 and after that @ Rs. 44/- upto 1,20,000 M3 p.a. and Rs. 39/- per

M3 for the quantity in excess of 1,20,000 M3 as per Memorandum of Understanding dated 19.4-1985.

53. In the statement submitted by the corporation payment has been shown @ Rs. 44/- per cub. m. upto first 10,000 cub. m. per month. The corporation has no explanation for the admission made before the arbitrator. Further, in the objections filed by the corporation before the District Judge, also no specific objection was raised by it that the rates of Rs. 44/- per cub.m. was payable on the total quantity of 10,000 cub.m. for the entire period of the contract after 20.1.1984 to 20.6.1985. Thus, the contractor was entitled to get the rate of Rs. 44/- per cub.m. on the excavation work on the first 10,000 cub.m. per month after 20.1.1984 and the arbitrator rightly considered the relevant it was within his competence. The learned District Judge has decided the entire matter as he was hearing and deciding an appeal against the award and, as such, he has exceeded his jurisdiction. The deduction of Section 2,00,000.00 made by the learned District Judge towards rate difference from 21.1.1984 to 29.6.1984 is, therefore, not legally sustainable. Similarly, after the above conclusions and findings, the argument of Mr. Agarwal, on behalf of the corporation, loses its significance that Rs. 6,00,000/- should be further deducted as rate difference from 21.6.84 to 20.6.85.

54. The arbitrator awarded interest to the contractor @12% per annum on the amount due from the date of notice i.e. 7.10.1985 to the date of filing the claim i.e. 30.12.1985. This amount was calculated as Rs. 65,326.03 on Rs. 23,05,434.41 (the amount awarded to the contractor). This amount was deducted by the District Judge simply on the ground as no amount was payable to the contractor and as such, the question of payment of interest did not arise. The jurisdiction of the arbitrator to award interest has not been challenged before me, nor it could be challenged after the authoritative decision of the Apex Court in Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy, . The contractor is, therefore, held to be entitled to get interest @ 12% on the amount payable to him.

55. The other deductions made by the District Judge are of Rs. 8, 493.00 and Rs. 11,892.19 as per his findings on issues No. 2 and 8 framed by him. The learned Counsel for the contractor has not challenged these deductions as they were not challenged before the District Judge also. The deduction of Rs. 11,992.19 is from the security amount and the District Judge calculated in....

56. The net result of the above discussion is that in claim No. 1 the contractor was entitled to get Rs. 22,96,941.41 (i.e. Rs. 23,05,434.41 calculated by the arbitrator minus Rs. 8,493.00 as per the preceding paragraph) as principal amount from the corporation. On this amount he is entitled to get interest @ 12% p.a. from 7.10.85 to 30.12.85 as awarded by the arbitrator and this amount comes to Rs. 65,082.44. The total of these two amounts come to Rs. 23,62,023.85. In addition to this, the contractor is also entitled to get refund of security amount of Rs. 5,95,896.76. The award made by the arbitrator is,

therefore, upheld for Rs. 23,62,023.85 Rs. 5,95,896.76 = Rs. 29,57,920.61 (Rs. Twenty-nine Lacs fifty-seven thousand nine hundred twenty and paise sixtyone). On this amount the contractor shall get interest @ 9% from 11.10.1988 (the date of award) to 29.4.91 and further interest @ 12% p.m. from 29.4.91 till the date of realisation in view of the order dated 29.4.1991 passed by this Court on the stay application in the appeal filed by the corporation. Thus; the appeal filed by the corporation deserves to be dismissed and the appeal of the contractor deserves to be allowed as indicted above. CLAIM No. 2-

57. In Claim No. 2 the corporation claimed Rs. 2,74,06,706.31 from the contractor, the detail which has been given in the award. After considering the entire material on the record, the arbitrator dismissed the entire claim by a speaking award after giving reasons for his conclusions. The corporation, amongst others, had claimed Rs. 2,57,000/- as surface rent. The arbitrator rejected the claim of this amount also on various grounds including that the corporation required any surface right on the land and no was paid by it to the Government, as such, it has no locus stands to demand any payment of surface rent. Learned District Judge, however, directed that the corporation shall be entitled to keep with it a sum of Rs. 2,57,000/- by way of deposit (Amanat) to be paid to the State Government towards surface rent and after a period of two years, in case no surface amount is paid to the Government, the amount shall be returned to the contractor on furnishing bank guarantee for the amount, except the above modification, the award of the arbitrator was confirmed.

58. So far the corporation's appeal in relation to claim No. 2 is concerned, it may be stated that it has no merit at all. The findings of the arbitrator rejecting the claim are of facts, based on appreciation of evidence and these findings have been confirmed by the District Judge also. Mr. Agarwal could not point out any jurisdictional error in the award to set aside or modify it. During the course of arguments before me, the main stress on behalf of the Corporation was that the claim of the Corporation for surface rent was based on Clause 7 of the original agreement, which provided that the contractor will have negotiations with khatedars of mineral bearing land after getting surface rights from them he will undertake the excavation work. The cost of land for obtaining surface rights shall be borne by the contractor. On behalf of the contractor, on the other hand, it was contended that the learned District Judge committed serious error in allowing the corporation to keep with it Rs. 2,67,000/- as deposit (Amant) and to return the Save after two years .. getting and garantee from the contractor in case the dispute of surface rant is not decided. Mr. Garg alsourged the two years have passed after the judgment of the District Judge, is such, the contractor is entitled to get this amount and the rider of furnishing bank guarantee placed on him should be removed as the same is unwarranted and unjust. The contention of Mr. Garg has merit. The corporation has neither acquired surface rights from the khatedars, nor it has paid any amount towards surface rent. The question of realising any amount from the contractor by the corporation would arise only if any amount towards surface rent is paid by it. The arbitrator was right in

rejecting the claim of corporation for surface rent as no right has accrued in Us favour to recover the amount. The District Judge has erred in modifying the award in relation to surface rent. The condition for furnishing bank guarantee to get the amount is not valid. Consequently, the appeal preferred by the contractor for claim No. 2 deserves to be allowed. CLAIM No. 3:

59. Claim No. 3 was made by the contractor for the work done by him from 21.6.1985 to 26.3.1986. For this claim the arbitrator gave the award on 4.10.1988. The award is a speaking one. He has given reasons for his conclusions. After making an elaborate discussions and analysing the evidence and other material produced before him, the arbitrator awarded Rs. 67,59,557.50 to the contractor under the following heads:

-----				(i) for
the worked done from 21.6.1985 to 26.3.86 on a Rs. 56,80,330.50 quantity of				1,50,299.50 cub.m. @ Rs. 49/- per cub.m. Rs. 1,81,281.00 for income tax @ 2%
(Rs.	58,61,680.50	minus	Rs.	1,81,380.00)
-----				(ii)
Interest of Rs. 56,80,300.50 from the date of notice Rs. 10,79, 257.00 i.e.				29.5.86 to 31.12.1987 when the claim was filed.
-----				Total
Rs.				67,59,557.50

The arbitrator held that the contractor was entitled to get the price for excavation work on a,50,290.50 cub.m. for the period from 21.6.1985 (date of...contract) to 26.3.1986) (the date when three months notice reminating the contract expired) @ Rs. 39/- per cub.m. The amount was calculated as Rs. 58,61,680.50, out of which Rs. 1,81,380.00 were deducted for Income Tax @ 2%. The learned District Judge, however, held that the contractor was entitled to get the price on the quantity of 1,19,660.09 cub.m. and the arbitrator wrongly allowed payment for excess quantity of 30,639.41 cub.m. Hem therefore, allowed reduction of Rs. 11,94,937.00 @ Rs, 39/- per cub.m. on the excess quantity. The District Judge also deducted Rs. 8,76,884/- in award amount on the ground that this amount was already paid by the corporation on the excavation work done after 21.6.1985. He also allowed deduction of following amounts on the basis of admission made on behalf of the contract as recorded in the order-sheets.:

-----				(i) Order-
sheet dated 26.4.1989 (further amount paid Rs. 71,874.50 towards Income Tax				on
	behalf	of	the	contractor).
-----				(ii)
Order-sheet dated 26.4.1989 (as price of explosives Rs. 1,11,619.50 used by the				contractor
	in	the		work).
-----				(ii)
Order-sheet dated 29.8.1989 (price of explosives) Rs.				81,743.02

Rs.	2,65,	Total 257.02
-----	-------	-----------------

The interest rate was also reduced from 12% to 9% on the amount found due against the corporation. The District Judge, thus Ordered deduction of the following amounts from principal amount of Rs. 56,80,300.50 as awarded by the arbitrator:

		(i) As per Finding on issue No. 3 on the quantity reduced by Rs. 11,94,937.00 him
		(ii)
Under issue No. 2 (Rs. 8,76,234.00	Rs. 2,65,237.02	Rs. 11,41,821.02
Rs.	23,36,	Total 568.02

60. The aforesaid amount was, therefore, deducted from the principal amount awarded by the arbitrator; The District Judge, thus held that Rs. 33,43,742.48 (Rs. 56,80,200.50 minus Rs. 23,36,538-02) was payable to the contractor as principal amount towards Claim No. 3.

61. The District Judge, then passed a consolidated order as per his findings in all the three claims. From the amount of Rs. 33,43,742.48 (as per his findings in claim No. 3) he deducted Rs. 1,90,964.54 as per his findings in claim No. 2. After deducting the aforesaid amount, he held that Rs. 28,95,777.94 were to be paid by the corporation towards principal amount. On this amount, he awarded interest @ 9% p.a. instead of 12% p.a. from 29.5.1986 (date of notice given by the contractor) to 31.12.1987 (the date of filing the claim) and this amount was calculated as Rs. 4,12,498,36. Thus, the total amount for which the contractor was held entitled in all the three claims was calculated as Rs. 33,08,276.30 and future interest @ 9% p.a. from the date of award i.e. 4.10.1988 till realisation on the principal amount of Rs. 28,95,778.94.

61a. A perusal of award, in Claim No. 3 would show that the contractor had claimed Rs. 3,39,93,297.00 and this claim related to excavation work for the period of second contract, which started from June 21, 1985. The parties filed documents in support of their respective case. Three witnesses were examined by the contractor, namely; S/Shri V.K. Sharma (CW1), Rupendra Water (CW2) and Pradeep Ghosh (CW3); while in rebuttal, the corporation examined Shri R.C. Dutta (Project Manager) and Shri Rajeev Kauar (Assistant Manager, Accounts of the Corporation). The....by the parties included various nills, extracts of measurement books, site plans and survey reports etc. The arbitrator accepted the claim of the contractor only in part, as detailed out in the preceding paragraph and the rest of the claim was dismissed. The arbitrator dismissed the claims of the contractor for Rs. 6,31,800/- for the loss of profits, Rs. 61,78,300.00 claimed for various losses detailed in sub-para 2(b) of para 32 of

the claim petition, Rs. 07,13,636.00 on account of expenses incurred on construction/repairs of roads, buildings, approach roads and staff quarters etc.

62. While deciding issues No. 3, the arbitrator held that from 21.6.1985 to 26.3.1986, the quantity of the excavation work done by the contractor was 1,50,299.50 cub.m. and for this quantity the price was calculated as Rs. 56,80,300.50 at the rate of Rs. 39/- per cub.m. after making deductions of Rs. 1,81,380.00 for income tax @ 2%. The District Judge, on the contrary, measured the excavation work as 1,19,660.09 cub.m. Hem therefore, reduced the price on excess quantity of 30,639.41 cub.m. @ Rs. 39/- per cub.m. which was calculated as 11,94,937.00. Thus, the first major dispute before me relates to the deduction of Rs. 11,94,937.00 made by the District Judge.

63. At the out-set, I may state that the question of calculation/determination of the quantity of excavation work is primarily and basically a question of fact, and it was for the arbitrator to decide this question. It is not a misconduct on the part of the arbitrator to come to an erroneous decision on a question of fact and whether his findings of fact are supported by evidence or not. A limited obit and scope & special appeal does not permit the Court to make a co-appraisal of evidence for setting aside/modifying or remmitting an ward. The arbitrator is the sole judge of the quantity and quality of evidence and merely because the Court may come to a different conclusion or re- appreciation of evidence, is no more a ground to set aside or modify the award. The general rule in the matter of arbitration of award is that the parties must accept the award as final for good or ill as they had agreed upon an arbitration. After going through the award and the judgment/order of the district Judge, I have no hesitation in emphatically expressing that the District Judge travelled out-side his bounds when he decided the above referred question of fact by making re-appreciation of evidence as he was hearing an appeal against the award. The arbitrator has considered the above dispute in issue No. 3 framed by him. A* perusal of finding on this issue would reveal that he has perused the record very minutely and every document filed by the parties has been referred and considered by him. The finding recorded by him in relation to the above dispute may be reproduced as under:

Having considered the document relied upon by the parties, which have been adverted herein (CW1) and Shri R.C. Dutta (RW1) (officer-in-charge of the Corporation) and Rajeev Kumar Singh (RW2) and also the submissions made by the learned Counsel for the parties be arising on the questions, which have been stated herein above, I am of opinion that the contractor is 1,50,229.50 cum. for the period from 21.6.85 (commencement of the second contract period) to 26.3.86 (the date when the three months notice of termination of contract expired) @Rs. 39.00 per cum. The amount according to the contractor comes to Rs. 58,61,680.00 which has been claimed by him. The contractor has redeed the amount to Rs. 56,80,300.00 stating that the Corporation is entitled to deduct 2% of Income Tax. The amount of Income Tax is stated by the contractor is Rs. 1,81,380.00 ? Thus, the balance of the amount payable to the contractor by the

Corporation is Rs. 56,80,800.50. Issue No. 3 is, therefore, decided in favour of the contractor and against the Corporation. The contractor is entitled to a sum of Rs. 56,80,300.50. Thus, the net amount payable to the contractor is Rs. 56,80,300.50 for the excavation work from June 21, 1985 to March 26, 1986.

64. The District Judge replaced his own finding on the question of measurement of the excavation work when he held that the contractor has excavated 1,19,660.09 cub.m. of ore during the relevant period and that Rs. 11,94,937.00 be reduced from the price calculated by the arbitrator for excess quantity of 30,629.41 cub.m. For setting aside the finding of the arbitrator, the ground given by the District Judge was the measurements given by the contractor for the period 1.7.1985 to 10.9.1985, 11.9.1985 to 19.10.1985 and 20.10.1985 to 19.10.85 were in round figures and at was corporation were acceptable. In my view, the whole approach of the District Judge in the matter was erroneous and his finding on the quantity/measurement of the ore excavated by the contractor during the relevant period is not sustainable in the eye of law. He was not sitting as an appellate authority to disturb the finding of fact arrived at by the arbitrator. The District Judge also erred when he observed that the arbitrator has committed an error on the face of the record in calculating the measurements of excavation work at p.43 of the award. Suffice it to say, in this connection, that at p.43 of the award. Suffice it to say, in this connection, that at p.43 of the award, the arbitrator has only referred to the arguments made by the counsel for the contractor and no finding has been recorded by him. I, therefore, agree with the learned Counsel for the contractor that the District Judge committed an error in reducing measurement of excavation work to 1,19,660.09 cub.m. and, thereby in deducting Rs. 11,94,937.00 in the price as calculated by the arbitrator.

65. The next dispute relates to the deduction of Rs. 3,76,384.00 made by the District Judge in the amount awarded by the arbitrator. The arbitrator had held that the payment of Rs. 18.50 lacs, which were disputed by the corporation, was, in fact, towards the excavation work upto 20.6.1985, i.e. the period of the first contract. The arbitrator, after considering oral and documentary evidence relating to the dispute held as under:

I have carefully considered the cross-examination of the witness pertaining to the payments and adjustment and also Ex. R20 RW 2, pp. 366 and 367. On the basis of EX.R19/RW2, Ex R20IRW2 and the oral statement of Rajeev Kumar Singh (RW 2) it were paid towards the excavation work from 21.6.85 to 26.3.88 126.5.85....

66. The District Judge, on the other hand, held that out of the aforesaid amount Rs. 9,73,615.00 relate to the excavation work from 18.5.85 to 20.6.85 the period of first contract and the rest amount of Rs. 8,76,384.00 related for the excavation work carried out after 20.6.85. The reasoning given by him in support of his above finding, was that as he had accepted the measurements given by the corporation, as such, the corporation was also believable on this question also. This was against a strange approach. It is not permissible under the law

that the findings of the award on fact should be re-appreciated and altered or modified by the Court as an Appellate Court. I, therefore, hold that the District Judge also committed as error in deducting Rs. 8,76,384.00 from the amount awarded by the arbitrator.

67. The next dispute relates to the deduction of Rs. 1,11,619.50 paid to M/s D.M. Mehta for explosives, Rs. 81,743.02 paid to M/s Khiatan & Co. for explosives and Rs. 71,874.50 towards Income Tax. A perusal of the ordersheet, dated 20.4.1989 on the file of the District Judge it is clear that the counsel for the contractor has agreed for the deduction of Rs. 1,11,619.50 in the amount of the award. He also agreed for income tax deduction of Rs. 71,874.50 on furnishing a certificate by the corporation. Then, from the order sheet dated 29.8.89, is.... the counsel further agreed for deduction of Rs. 81,743.02 paid to M/s Khaitan & Co. for the explosives. Before me also, the learned Counsel for the contractor did not dispute the above deductions from the award.

68. For the income tax deduction it was contended by M.L. Garg that it should be allowed on furnishing a certificate by the corporation to this effect. This prayer is reasonable and in consonance with the concession made before the District Judge. Hence, the order of the District Judge allowing deduction of the aforesaid amounts from the award is upheld. But, it is made clear that for the incometax amount, the corporation shall issue a certificate to the effect that it deposited the income tax amount with the Income Tax Department on behalf of the contractor. For the interest rate, as reduced from 12% to 9% by the District Judge for the period 29.5.86 to 31.12.87, it may be stated that the arbitrator had the discretion to award the interest and to decide the rate. There was no justification for the District Judge to have reduced the rate of interest from 12% to 9% p.a.

69. The net result of the above discussions is that the appeal filed by the Corporation, in relation to claim No. 3, deserves to be dismissed; while the appeal filed by the contractor deserves to be accepted as under:

(i) that the contractor shall be entitled to get from the corporation Rs. 56,80,300.50 as awarded by the arbitrator minus Rs. 71,874.50 (Income tax decudtion), Rs. 1,11,619.50 (explosive expenses) and Rs. 81,743.02 (towards explosive expanses) as discussed above. The total principal amount payable to the contractor, after the above deductions course to Rs. 54,15,063.48. the contractor shall be entitled to get interest on this amount @12% from 29.5.86 to 31.12.87 which is calculated as Rs. ...This, the total amount for which the contractor is held to be entitled to get from the corporation in claim No. 3, comes to Rs. 64,43,925.05. On this amount, the contractor will be entitled to get future interest @ 9% p.a. from the ate of award i.e. 4.10.1988 to 29.4.1991 and, therefore, at the rate of 12% p.a. in view of the order dated 29.4.1991 passed by the court on the stay application, till the date of realisation of the amount. For income tax deduction of Rs. 71,874.50 the corporation shall furnish a certificate to the contractor as stated above, within three months failing which that mount shall also be paid by it to the contractor.

70. Consequently, all the three appeals filed by the corporation, inrelation to claim No. 1, claim No. 2 and claim No. 3 are dismissed and the appeals filed by the contractor are allowed with costs. The award made by the Arbitrator, with the modifications as directed in the judgment, be made Rule of the Court u/s 14(2) of the Arbitration Act.