

(2017) 12 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : 80 of 2012

Himachal Pradesh State Electricity Board Limited	APPELLANT
Vs	
M/s H.M. Steel Ltd.	RESPONDENT

Date of Decision : 01-12-2017

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 31](#), [Section 34](#) - Form and contents of arbitral award - Application for setting aside arbitral award

Citation : (2017) 12 SHI CK 0002

Hon'ble Judges : Sandeep Sharma

Bench : Single Bench

Advocate : Satyen Vaidya, Vivek Sharma, Ajay Vaidya

Judgement

1. Being aggrieved and dissatisfied with the award dated 30.4.2012 passed by the learned arbitrator in respect of dispute pertaining to non-payment of freight and insurance charges (in short, "F & I charges") and VAT etc. qua the supply of steel tubular poles, objector/petitioner (herein after, "objectors") has approached this Court by way of objections filed under Section 34 (3) of the Arbitration & Conciliation Act.

2. Undisputed facts, as emerges from the record are that the objectors namely Himachal Pradesh State Electricity Board Limited, which is a Company registered under the Companies Act, 1956, invited Tender inquiry No. CE (MM)-09/06 for the supply of steel poles of assorted size on the basis of tentative requirement for the year 2006-07 i.e. Annexure A-2. It is a matter of record that though M/s Fabrico India Pvt. Ltd., Meerut was the lowest bidder for all sizes of steel poles but the fact remains that the respondent-claimant (hereinafter, "claimant") being an HP based firm, i.e. M/s HM Steel, Trilokpur Road, Village Charo Kala Amb, District Sirmaur, Himachal Pradesh vide communication dated 30.11.2006, offered to supply all sizes of steel poles, as per negotiated/ approved rates, forwarded by the lowest bidder (L-1) i.e. M/s Fabrico India Pvt. Ltd. For

destination consignee's store. Pursuant to aforesaid offer made by the claimant, Objector awarded supply order to the claimant-Firm vide communication i.e. CE(MM)HPSEBL-Shimla letter No. HPSEB:CE(MM):1-SPSH. M.Steel-9/06-L-45-25-172-2003 dated 27.1.2007; as a consequence of which claimant-Firm entered into a contract agreement with the objector. As per supply order placed by the objector, the claimant-Firm was under obligation to supply various sizes of steel tubular poles (i.e. 8 m, 9m, 10m and 11m in length), bearing different specifications as per rates mentioned in the "Schedule of Material", FoR destination-consignee's store and anywhere in Himachal Pradesh. It is also apparent from the record that the claimant-Firm agreed to supply material in total FoR destination consignee stores and anywhere in Himachal Pradesh, exclusive of packing, forwarding, VAT, F & I charges and unloading charges etc. as per Clause 3.1 of the purchase order as fixed in the "Schedule of Material". Negotiations committee recommended L-1 FoR destination consignee store rates, to all the local units including claimants, which was further approved by the storepurchase committee/ whole time members of HPSEB Stores. It is also not in dispute that pursuant to aforesaid purchase order/ supply order placed by the objector, claimant-Firm made certain supplies, but since certain disputes and differences arose in between the contract parties i.e. objector and claimant-Firm, relating to F & I charges, CST/ VAT and interest in respect of purchase order dated 27.1.2007 (annexure A-5), Superintending Engineer (Operations), HPSEBL came to be appointed as an arbitrator by the competent authority, in terms of clause 8 of the agreement, which provides for appointment of arbitrator for settlement of dispute between the parties, if any, arising out of aforesaid purchase order. Claimant-Firm, claimed before the learned arbitrator that its payment regarding F& I charges and VAT charges for the supply of material (8m long steel poles) has not been regulated as per terms and conditions of the purchase/supply order/agreement. Claimant-Firm in its statement of claim, claimed an amount of Rs.17,93,296 including interest on account of following claims i.e. (1) nonpayment of F & I charges for the supply of 8 metre long ISI marked swagged steel tubular poles 410-SP-14 as per purchase order No. HPSEB:CE(MM):1-SP-H.M.Steel-9/06-L- 45-25172-00203 dated 27.1.2007 (2) wrong recovery of CST against agreement/purchase order including interest Rs.2,96,760; (3) interest on delayed payment; and (4) other miscellaneous expenses (L.S) (Rs.1,00,000/-).

3. On the other hand, objector-Board while refuting aforesaid claims put forth by the claimant-Firm, claimed that though total amount claimed by the claimant-firm for supply of 2000, 8 eight metre long steel tubular poles during the period 25.5.2007 to 3.7.2007, including F & I charges i.e. Rs.251/- per pole, is/was Rs.92,94,752/-, whereas, they were actually paid after levying F& I charges as per Good Receipt (in short, "GR") submitted by the claimant i.e. on lesser side of the above quantity, (Rs. 89,86,010). As per objector, amount of F & I charges in dispute comes out to Rs.3,08,742/- but the claimant-firm has been released an amount of Rs.1,93,270/- on account of F & I charges. Similarly, objectors also

admitted the factum with regard to recovery of Rs.1,93,548/- due to reduction in CST from 4% to 3%. Learned Arbitrator in his award dated 30.4.2012, allowed all the aforesaid claims put forth by the claimant, and held claimant-Firm entitled to an amount of Rs.3,08,730/- as a balance payment due on account of F & I charges. Learned Arbitrator also held that as per clause 5.1 and 6.1 of the purchase order/ contract agreement, claimant-Firm is to be governed as per terms and conditions of the contract agreement as such, it is entitled to an amount of Rs.1,93,548/- on account of VAT. Since learned Arbitrator after having perused record came to the conclusion that amounts due to the firm were wrongly withheld by the respondent, he also held objector-Board liable to pay simple interest at the rate of 12% on the awarded amount under Claim No.1 and Claim No. 2.

4. In the aforesaid background, objector being aggrieved and dissatisfied with the aforesaid award passed by the learned Arbitrator, has approached this Court in the instant proceedings, praying therein to quash and set aside impugned award dated 30.4.2012.

5. Mr. Satyen Vaidya, learned Senior Advocate duly assisted by Mr.Vivek Sharma, Advocate, while representing objectors, vehemently argued that the impugned award is against facts on record as such, deserves to be quashed and set aside. While referring to the findings returned by the learned arbitrator, learned Senior Advocate made a serious attempt to persuade this Court to agree with his contention that findings returned by the learned arbitrator are perverse to law and facts on record as the same have been recorded in a most mechanical manner, as a consequence of which, great prejudice has been caused to the objector-Board. Learned Senior Advocate further contended that since the learned arbitrator while passing the award ignored the material evidence adduced on record and proceeded to pass award completely ignoring the terms and conditions contained in the contract inter se parties, impugned award deserves to be set aside being against public policy of India. Learned Senior Advocate while placing reliance upon the purchase order dated 27.1.2007, contended that as per "Schedule of Material" contained in purchase order, firm was to be paid F & I charges at the rate of Rs.251/- per pole but since firm had paid F & I charges on lesser side, as is evident from the copy of GR, objectors rightly restricted freight and insurance charges to actual rate paid by the firm on account of F & I charges and as such, there was no occasion for the learned arbitrator to have allowed the claim of the claimant-Firm on account of F & I charges. Learned Senior Advocate further contended that in case, findings returned by the learned arbitrator qua claim No.1 are allowed to stand, same would result in undue enrichment of the claimant-Firm in as much as it would get amount more than it had actually paid itself. Learned Senior Advocate while justifying the action of the objectors to make deduction in F & I charges further contended that basic purpose of reimbursement of freight and insurance charges is/was that firm gets material insured, indemnified and compensated against loss /damages, which may be caused in the course of transit/supply of the

material but since the claimant had paid F & I charge on lesser side, action of the objector in deducting amount equal to F & I charges is perfectly legal, bonafide and impugned award deserves to be quashed and set aside being against public policy of India. Learned Senior Advocate while justifying the action of the objector, as far as deduction /recovery on account of reduction in CST from 4% to 3%, contended that claimant- Firm may have paid VAT @ 4% but as per agreed terms and conditions total amount of payment should not have exceeded the rates of L-1 firm as such, payment for ex-woks rates was required to be reduced by 1% to bring it at par with the rates of L-1 in as much as total rates should not have exceeded rates of L-1 in any event. Learned Senior Advocate submitted that since objector made payment on account of ex-works rates without reducing the same by 1% and only reduced VAT from 4% to 3% and therefore, in fact and substance, total amount payable remains the same for which claimant-Firm otherwise would have been entitled to and as such, findings returned by the learned arbitrator qua claim No. 2, are also contrary to the facts as well as law, as such, same also deserve to be quashed and set aside being contrary to and in conflict with the public policy of India. Lastly, Mr. Vaidya, learned Senior Advocate contended that clause 17.1 of the purchase order clearly provides that objector Board shall make endeavour to release payment within stipulated time but no interest shall be paid in case payment is not released within stipulated period. Mr.Vaidya, learned Senior Advocate contended that as per aforesaid clause, though the Board was required to release payment within stipulated period, but it has been specifically provided that no interest shall be paid by the objector in case payment is not released within stipulated period as such, grant of interest by learned arbitrator in its award dated 30.4.2012 is contrary to the agreed terms and conditions of the purchase order and as such same deserves to be quashed and set aside for being in contravention of express terms of contract.

6. Mr. Ajay Vaidya, learned counsel representing the claimant, supported the impugned award passed by learned arbitrator and contended that there is no illegality or infirmity in the impugned award, as such, same deserves to be upheld. While refuting aforesaid submissions having been made by the learned Senior Advocate on behalf of the objectors, Mr. Ajay Vaidya, strenuously argued that that none of the submissions/ arguments, advanced by the learned Senior Advocate suggests that amount awarded by the learned arbitrator is against "public policy of India", rather, findings returned by the learned arbitrator qua each claim submitted by claimant clearly suggests he has dealt with each and every aspect of the matter meticulously and his findings are based upon correct appreciation of terms and conditions contained in the contract agreement/ purchase order. while inviting attention of this Court to the findings returned by the learned arbitrator, Mr. Ajay Vaidya, strenuously argued that there is no scope of interference, whatsoever by this Court because impugned award is not only reasoned one but the same has been passed by the learned arbitrator after having heard both the parties and perusing the record. Mr. Ajay Vaidya, further

contended that it is well settled by now that award passed by the arbitrator can only be interfered with in case of bias, fraud, violation of principles of natural justice and Court while deciding objections, if any, filed under Section 34 of the Act against award passed by learned arbitrator does not sit in appeal over the findings recorded by the arbitrator, and there cannot be reappraisal of evidence while dealing with the factual aspect of the matter.

7. Mr. Vaidya while dealing with the factual aspect of the matter, contended that otherwise stand taken by the objector before the learned arbitrator is/was not tenable because as per the purchase order/ contract agreement , claimant-Firm was entitled to payment on account of F & I charges at the rate of Rs.251/- per pole and deduction, if any, in this regard could not be made by the objector, on the basis of Goods Receipt (GR) furnished by the claimant-Firm. Mr. Vaidya, further contended that it is amply clear from the purchase order/contract agreement that the claimant-Firm ought to have been regulated with VAT and not by CST, because document i.e. notification of VAT submitted by objector before the learned arbitrator itself reflects that rate of VAT during the year 2007-08 was at the rate of 4% and there was no reduction. He further contended that as per clause 6.1 of the purchase order/contract agreement, statutory variations are not applicable to the claimant-Firm. VAT at the rate of 4% was payable by claimant-Firm. Lastly Mr. Vaidya contended that since aforesaid amount came to be withheld by the objector for no fault of claimant-Firm, learned arbitrator rightly held claimant-Firm entitled to interest at the rate of 12%.

8. I have heard the learned counsel for the parties and also gone through the record of the case carefully.

9. Before ascertaining correctness of aforesaid submissions having been made by the learned counsel for the parties vis-?-vis impugned award passed by the learned arbitrator, it would be apt to take note of judgment passed by Hon"ble Apex Court in Oil & Natural Gas Corporation Limited versus Western Geco International Limited (2014) 9 Supreme Court Cases 263; wherein Hon"ble Apex Court taking note of the judgment passed by the Hon"ble Apex Court in Oil & Natural Gas Corporation Limited versus Saw Pipes Limited (2003) 5 Supreme Court Cases 705, has held as under:- "34. It is true that none of the grounds enumerated under Section 34(2)(a) were set up before the High Court to assail the arbitral award. What was all the same urged before the High Court and so also before us was that the award made by the arbitrators was in conflict with the "public policy of India" a ground recognized under Section 34(2)(b)(ii) (supra). The expression "Public Policy of India" fell for interpretation before this Court in ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705 and was, after a comprehensive review of the case law on the subject, explained in para 31 of the decision in the following words: (SCC pp.727-28)

"31. Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the

concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in *Renusagar case* 1994 Supp(1) SCC 644, it is required to be held that the award could be set aside if it is patently illegal. The result would be - award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void."

35. What then would constitute the "Fundamental policy of Indian Law" is the question. The decision in *Saw Pipes Ltd.* (supra) does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression "Fundamental Policy of Indian Law", we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the Fundamental Policy of Indian law. The first and foremost is the principle that in every determination whether by a Court or other authority that affects the rights of a citizen or leads to any civil consequences, the Court or authority concerned is bound to adopt what is in legal parlance called a "judicial approach" in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the Court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of Judicial approach in judicial and quasi judicial determination lies in the fact that so long as the Court, Tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bonafide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a Court, Tribunal or Authority vulnerable to

challenge."

10. It clearly emerge from the aforesaid judgment that the concept of "public policy" connotes some matter which concerns public good and the public interest. Similarly, award/judgment/decision likely to adversely affect the administration of justice has been also termed to be against "public policy"

11. Reliance is also placed upon a judgment passed by Hon"ble Apex Court in Hindustan Tea Company v. M/s K. Sashikant & Company and another, AIR 1987 Supreme Court 81; wherein it has been held as under:- " Under the law, the arbitrator is made the final arbiter of the dispute between the parties. The award is not open to challenge on the ground that the Arbitrator has reached a wrong conclusion or has failed to appreciate facts. Where the award which was a reasoned one was challenged on the ground that the arbitrator acted contrary to the provisions of Section 70 of the Contract Act, it was held that the same could not be set aside."

12. Similarly, Hon"ble Apex Court in M/s Sudarsan Trading Company v. The Government of Kerala and another, AIR 1989 Supreme Court 890, has held as under:- "It is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator as to what impelled him to arrive at his conclusion. In the instant case the arbitrator has merely set out the claims and given the history of the claims and then awarded certain amount. He has not spoken his mind indicating why he has done what he has done; he has narrated only how he came to make the award. In the absence of any reasons for making the award, it is not open to the Court to interfere with the award. Furthermore, in any event, reasonableness of the reasons given by the arbitrator, cannot be challenged. Appraisalment of evidence by the arbitrator is never a matter which the Court questions and considers. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisalment of the evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator."

13. Reference is also made to the judgment passed by the Hon"ble Apex Court in McDermott International Inc. v. Burn Standard Company Limited and others (2006) 11 Supreme Court Cases 181. The relevant paras of the judgment are reproduced as under:- "In terms of the 1996 Act, a departure was made so far as the jurisdiction of the court to set aside an arbitral award is concerned vis-a-vis the earlier Act. Whereas under Sections 30 and 33 of the 1940 Act, the power of the court was wide, Section 34 of the 1996 Act brings about certain changes envisaged thereunder. Section 30 of the Arbitration Act, 1940 did not contain the expression " error of law?". The same was added by judicial interpretation.

While interpreting Section 30 of the 1940 Act, a question has been raised before the courts as to whether the principle of law applied by the arbitrator was (a) erroneous or otherwise or (b) wrong principle was applied. If, however, no

dispute existed as on the date of invocation, the question could not have been gone into by the Arbitrator.

The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.

The arbitral award can be set aside if it is contrary to (a) fundamental policy of Indian law; (b) the interests of India; (c) justice or morality; or (d) if it is patently illegal or arbitrary. Such patent illegality, however, must go to the root of the matter. The public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the court. Lastly where the Arbitrator, however, has gone contrary to or beyond the expressed law of the contract or granted relief in the matter not in dispute, would come within the purview of Section 34 of the Act.

What would constitute public policy is a matter dependant upon the nature of transaction and nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the court to judge what is in public good or public interest, and what would otherwise be injurious to the public good at the relevant point, as contradistinguished from the policy of a particular government.

14. It is quite apparent from the aforesaid exposition of law that scope of interference by Court is very limited while considering objections having been filed by the aggrieved party under Section 34 of the Act. Award passed by the learned arbitrator can be interfered with in case of a fraud or bias or violation of principles of natural justice. Interference, if any, on the ground of "patent illegality" is only permissible, if the same goes to the root of the case. Violation should be so unfair and unreasonable as to shock the conscience of the Court. In the judgment referred herein above, it has been held by the Hon"ble Apex Court that what is to be constituted as "public policy" is a matter dependent upon the transaction and nature of the statute, but the same should be so unfair and unreasonable as to shock the conscience of the Court, as has been observed herein above.

15. Similarly, there can not be any dispute, as has been repeatedly held by the Hon"ble Apex Court as well as this Court that Courts while deciding objections, if any, filed by the aggrieved party under Section 34 of the Act, against the award passed by learned arbitrator, does not sit in appeal over the findings returned by the learned arbitrator and there can not be any reappraisal of evidence on the

basis of which learned arbitrator has passed the award. Otherwise also, in terms of Section 34 of the Act, objections, if any, filed by the aggrieved party can be considered by the Court, if the award is in any manner against public policy, which certainly has to be liberally interpreted in view of the facts of the case.

16. Having considered the facts of the case in light of the aforesaid exposition of law, this Court has no hesitation to conclude that the impugned award, as has been assailed before this Court by way of objections under Section 34 of the act, is neither against public policy nor has been passed in violation of principles of natural justice. Perusal of the objections filed by the objector suggests that neither there are any specific allegations that Award is against the public policy nor it has been clarified as to which finding or findings made by the learned arbitrator are against public policy, save and except general allegations that award is against express terms of the contract, unjust, unfair and unsustainable and patently illegal.

17. Objections filed in the instant case by the objector are so vague in nature that by no stretch of imagination, same can be termed to be against public policy. This court finds from the bare reading of impugned award that learned arbitrator has dealt with each and every aspect of the matter meticulously while deciding claims/counter claims of the parties concerned. Learned arbitrator after having taken note of the pleadings adduced on record by the parties, has formulated points for determination as such, this Court has no hesitation to conclude that all the issues which are raised before this court during arguments by the learned Senior counsel have been taken note of by the learned arbitrator while passing impugned award and all the issues raised by the learned Senior Advocate during the arguments stand duly answered in the impugned award itself.

18. After having carefully perused terms and conditions of contract agreement, it can not be disputed that order was placed with the claimant-Firm to supply various sizes of steel tubular poles bearing different specifications as per rates mentioned in the "Schedule of Material" For Destination, consignee stores and anywhere in Himachal Pradesh, exclusive of packing and forwarding, VAT, freight and insurance charges and unloading charges etc. As per clause 3.1 of purchase order/contract agreement as fixed in "Schedule of Material", claimant-Firm is/was entitled to Rs.251/- per pole for the supply of 2000 poles, which came to be supplied to the objector-Board with effect from 21.5.2007 till 3.7.2007. Objector-Board has nowhere disputed that as per settled terms and conditions, claimant-Firm is/was not entitled to Rs.251/- on account of freight and insurance charges for the supply of 2000 steel poles. As per objector- Board, claimant-Firm is/was required to supply 2000 number of 8 metre long ISI mark swaged steel tubular poles as per clause 1.1 of "Schedule of Material" of purchase order exclusive of interest rate on F & I charges at the rate of Rs.250/- per pole. It is also not disputed by the objector-Board that claimant-Firm supplied 2000 number of 8 metre long steel poles during 22.5.2007 to 3.7.2007. Interestingly, objector has

claimed that as per invoice and goods receipts, submitted by claimant-Firm, amount paid on account of F & I charges is/was on lesser side from the prescribed rate and as such, they were well within their rights to restrict amount to the amount actually paid by the claimant on account of freight charges as depicted in goods receipts (GR"s). Aforesaid objection having been raised by the objector deserves outright rejection being wholly untenable, once the objector by way of contract agreement had agreed to pay an amount of Rs.251/- per pole, to the claimant-Firm on account of freight and insurance charges, no amount could be deducted by the objector on the basis of goods receipts, if any, furnished by the claimant.

19. Similarly, payment on account of the VAT also came to be restricted by the objector on the ground that since claimant-Firm had accepted the rates of L-1 firm, FoR rates which includes all the charges applicable in the "Schedule of Material", they are liable to be regulated by CST not by VAT. In support of aforesaid claim, respondent also placed on record copy of notification suggestive of the fact that rate of VAT during 2007-08 was at the rate of 4%. Since, aforesaid L-1 firm was regulated by CST, claimant- Firm which entered into the shoes of L-1 firm, is to be regulated by CST and not by VAT notwithstanding the fact that claimant-Firm being a local firm is regulated by VAT. But the aforesaid explanation rendered by the objector justifying its decision to restrict the claim of the claimant- Firm, is also not tenable being not based upon proper appreciation of terms and conditions of the purchase order/contract agreement. It is not in dispute that claimant- Firm being local firm is regulated by VAT not by CST. Similarly, copy of notification of VAT placed on record by the objector itself suggests that rate of VAT during the year 2007-08 was at the rate of 4% and there was no reduction in the same. No doubt, that the claimant-firm entered into shoes of L-1, who, being an outside firm is/was governed by CST, but the claimant-Firm which is admittedly a local firm, registered in the State of Himachal Pradesh, can not be regulated by CST, especially when it was registered under VAT. Claimant deposited VAT as per contract agreement. Claimant-Firm specifically contended before the learned arbitrator that being an HP based firm, claimant-Firm is regulated by VAT as per clause 5.1 of the purchase order/contract agreement and there is no dispute that during the aforesaid period, there was no reduction in VAT. It also emerges from clause 6.1 of the purchase order/ contract agreement that statutory variations, if any, in the offer/ tender submitted by L-1 are not applicable to the claimant-Firm, rather, same is/was to be fixed and paid as per clause 5.1 of the purchase order/ contract agreement and as such, this Court sees no justification in the action of the objector-Board whereby it wrongly withheld an amount of Rs.1,93,548/- on account of VAT as levied/ charged by the claimant-Firm.

20. Similarly, though perusal of clause 17 of the purchase order/contract agreement suggests that no interest is payable to the claimant in case payment is not released within stipulated period, but interest can not be denied to the claimant, where delay in settlement of claim is on account of wrong withholding

of due and admissible amount by the objector. In the case at hand, admittedly, steel tubular poles came to be supplied to the objector- Board in terms of purchase order/contract agreement placed vide communication dated 22.7.2007 during the year 2007-08 but the objector-Board wrongly withheld substantial amount of Rs.3,08,730/- on account of freight and insurance charges and Rs.1,93,548/- on account of reduction in CST from 4% to 3%, which subsequently came to be awarded in favour of the claimant, in April, 2012 when impugned award was passed by learned arbitrator, as such, this Court sees no illegality in the award passed by the learned arbitrator, whereby it held the claimant-Firm entitled to simple interest of 12% qua amount claimed by it under claims No. 1 and 2. Since aforesaid amount was illegally withheld by the objector-Board in violation of the purchase order /contract agreement, claimant-Firm has rightly been held entitled to interest notwithstanding the fact that as per clause 17 of the purchase order/contract agreement, no interest could be claimed by the complainant on account of delay in release of payment.

21. As per Clause 17.1, it was incumbent upon the Board to release payment within stipulated period i.e. 45 days from the date of receipt of the material in consignee stores or after completion of the contractual formalities/fulfillment of terms and conditions of the purchase order, whichever is later, but second part of aforesaid provision, whereby it has been provided that no interest shall be paid in case payment is not released within stipulated period, is wholly untenable. Once, as per the agreement, objector-Board was under obligation to make payment within 45 days from the receipt of material or period of completion of all formalities, interest, if any, could not be denied on the payment made after completion of 45 days, on the amount, in view of the provision contained in clause 17.1, which otherwise is not sustainable in the eye of law.

22. In the case at hand, payment was not delayed, rather same was withheld illegally, as has been held above, as such, there is no illegality and infirmity in the Award of the learned arbitrator, as far as awarding of interest is concerned. Otherwise also, under Section 31 (7) of the Arbitration & Conciliation Act, arbitral tribunal is competent to award interest for the payment of money, at such rate, as it deems reasonable on whole or any part of money. Section 31 of the Arbitration & Conciliation Act is reproduced herein below: "(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.-The expression "current rate of interest" shall have the same

meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]"

23. Award in the case at hand as passed by learned arbitrator is definitely with regard to payment qua the work done by the claimant-Firm and there is no agreement/understanding, if any, inter se parties that no interest would be claimed/awarded on the amount wrongly withheld by any of the parties and, as such, learned arbitrator was well within his right to even award interest under Section 31 (7) of the Arbitration & Conciliation Act.

24. After having gone through the records, this Court sees no reason to interfere in the impugned award, which otherwise appears to be based upon proper appreciation of evidence. Needless to say that jurisdiction of the Courts is limited and award can be set aside only if it is against public policy of India, but, in the case at hand, neither any material has been placed on record, nor any arguments have been raised on behalf of the objector to substantiate the fact that impugned award is against public policy of India. Question of interpretation of agreement and its terms and sufficient evidence is /was well within domain of the learned arbitrator as such, no grievance, if any, could be raised qua the same by the either of the parties, as such, objections having been filed by the objector deserve to be dismissed being unsustainable in the eye of law.

25. Arguments having been raised by the learned counsel representing the objector that impugned award is non-speaking and unreasoned, are also misplaced and deserve rejection because, as has been observed above, learned arbitrator has correctly dealt with each and every aspect of the matter meticulously while passing impugned award. Otherwise also, Hon"ble Apex Court in *Markfed Vanaspati & Allied Industries versus Union of India*, (2007) 7 SCC 679, has held that arbitration is a mechanism or method of resolution of dispute that unlike courts takes place in private, pursuant to agreement between the parties. The Hon"ble Apex Court has held as under: "10. In *M/s Sudarsan Trading Co. v. Govt. of Kerala & Another* (1989) 2 SCC 38 in para 29 at page 53, Sabyasachi Mukharji, J. speaking for the Court observed that the court in a non-speaking award cannot probe into the reasoning of the award. The Court further observed that only in a speaking award the court may look into the reasoning of the award, and it is not open to the court to probe the mental process of the arbitrator and speculate, where no reasons are given by the arbitrator as to what impelled him to arrive at his conclusion. Furthermore, the reasonableness of the arbitrator"s reasons cannot be challenged. The arbitrator"s appraisalment of the evidence is never a matter for the court to entertain."

26. It clearly emerges from the aforesaid judgment passed by Hon"ble Apex Court, that scope of interference is extremely limited in non-speaking award and it is not open to Court to probe mental process of the arbitrator. The Court should endeavour to support a non-speaking arbitration award and it is not open to Court to probe mental process of the arbitrator, where he has not provided reasoning for his decision. The Hon"ble Apex Court in the judgment cited herein

above has categorically held that the arbitrator is under no obligation to give reasons in support of the decision reached by him, unless the arbitration agreement or deed of settlement so required. In the instant case, learned counsel representing the objector-Board was unable to point out specific condition, if any, contained in the agreement making it incumbent upon the learned arbitrator to assign reasons in support of his award/findings.

27. Consequently, in view of above, this Court sees no valid reason to interfere with well reasoned award passed by the learned arbitrator, as such, present case is dismissed.