

(2000) 09 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : M.P. No.CIMA/1/93

Hotel Corporation of India	Vs	APPELLANT
State and others		RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Jammu and Kashmir Arbitration and Conciliation Act, 2002 — Section 14, 30, 33

Citation : AIR 2001 J&K 36 : (2001) KashLJ 394 : (2001) SriLJ 30

Hon'ble Judges : B.P.SARAF, C.J and SYED BASHIR-UD-DIN, J

Bench : Division Bench

Advocate : B. A. Bashir, M/s. M. A. Goni, General, assisted by M. Amin, Govt. Advocate, Advocates appearing for the Parties

Judgement

1. This appeal is directed against the judgement of learned Single Judge in AA No. 207/ 91 dated 27th of August, 1992, Whereby objections under Sections 30 and 33 of the Arbitration Act, (vide CMP NO. 417/91) have been rejected and consequently, the award of the arbitrator dated 26.01.1991 had been made rule of the court.
2. Brief facts giving rise to this case need to be noted. Respondent was allotted work of sanitary installation at centaur Lake view Hotel, at Srinagar to be completed by 15th of April, 1982. According to respondent, this could not be done as other agencies failed to perform their functions. At the time of hearing of the case, learned counsel for the parties were not at variances that the work instead of being completed in terms of the agreement was extended by a further period of four years and was thus completed some where in the year 1986.
3. This resulted in a petition by the respondent for making a reference of dispute in terms of the arbitration Clause, existence whereof is also not in

dispute between the parties; and this court after hearing the learned counsel for the parties on 11th of April, 1986, appointed two arbitrators

namely R.D. Desai, Chartered Engineers and Sh. T.K. Saran, retired Advisor (Construction), Bureau of Public Enterprises Ministry of Finance,

Govt. of India, New Delhi, from amongst the list of arbitrators furnished by both the sides. They were directed to enter upon the reference and

submit their award.

4. After entering upon reference, the Arbitrators adjudicated the matter and on 12th of November, 1996, made an award in the sum of Rs.

3415383/ till full and final settlement of the claim of the repentants alongwith 15 % per annum interest with effect from January 25, 1984 till date of

payment or decree, which ever was earlier. This award when filed in the Court was questioned on a variety of grounds and was questioned on a

variety of grounds and was finally set aside on 09th of November, 1989. At the same time, Sh. Swami Dial, Retired Chief Engineer, CPWD was

appointed as new arbitrator to submit his award. He after proceeding in the matter, on 26th of August, 1991 gave his award and thus held

respondent entitled to Rs. 3628570.49 payable by the corporation appellant. For paying this amount, two months time was allowed failing which it

was held that interest will be payable at the rate of 18 % P.A. from the date of award (i.e. 26.08.91) till the date of payment or decree whichever

is earlier. When this award was questioned under sections 30 and 33 of the Arbitration Act, by dismissing the objections, it has been ordered to be

made rule of the court. Hence this appeal.

5. With a view to appreciate the submissions properly, it is felt that the award of the arbitrator which is subject matter of controversy in this appeal

needs to be extracted which is as under:

Award

In the matter of Arbitration between M/S Northern Sanitation claimant And M/s Hotel Corporation of India Ltd. Name of work: Sanitary

Installation of Centaur Lakeview Hotel at Srinagar.

Whereas, the disputes between parties were referred to me vide order dated 09.11.1989 passed by Hon'ble High Court of Jammu and Kashmir in

A.A. No. 403 titled M/s Northern Sanitation Vs Hotel Corporation of India.

And whereas in pursuance to the order of the court. I entered upon the reference and summoned the parties for appearance before me. During the course of arbitration proceedings, the parties filed their claims, counter claims, produced documentary evidence as well as oral evidence, first hearing was held on 09.12.1989. Thirty five days hearings were conducted and the last was held on 14.08.1991. The high court of Jammu and Kashmir extended the time for making the award upto 31.08.1991 vide order dated 08.05.1991.

And whereas after hearing the parties at length and considering their respective contentions raised before me as also their pleadings, documents placed on record and the evidence produced. The work of the claimant being of plumbing installation and the same was dependent upon the execution and completion of civil work, Marble work etc. I am of the opinion that the delay in execution and completion of the work is caused by the respondent. The respondent has failed to fulfill their obligation under the contract and committed various breaches of the contract which are basic and go the root of it.

AND NOW THEREFORE

1. Claim No.

The claimant has claimed that amount in two parts i.e. under part (i) a sum of Rs, 1989039.87 being expenditure incurred on labour upto 25.01.85, under part (ii) of the claim a sum of Rs. 338650.00 is claimed. I award a sum of Rs. 2175000.00 under this claim to the claimant.

2. Claim No. 2.

Under this claim the claimant has claimed a sum of Rs. 432134.00 on account of expenditure on travelling (air, train/road), local conveyance, telephones, expenses etc. from 16.04.82 to 25.01.85. I award a sum of Rs. 375000.00 to the claimant.

3. Claim No. 3.

Under this claim a sum of Rs. 29967.12 is claimed on account of insurance charges incurred by the claimant in obtaining the In insurance Policies beyond 16.04.1992. I have award a sum of Rs. 29967.12 to the claimant.

4. Claim No. 4.

Under this claim a sum of Rs. 18624.00 is claimed on account of Bank Guarantee

charges incurred by the claimant in keeping Bank Guarantee alive beyond 16.04.82. So I award a sum of Rs. 18624.00 to the claimant.

5. Claim No. 5

The claimant claimed a sum of Rs. 487243.00 towards refund of the amount of rebate recovered by the respondent upto 21st R.A, Bill. I disallow this claim.

6. Claim No. 6

A sum of Rs. 495344.15 is claimed being the interest of Rs, 532579.75 from 16.04.72 and also the interest on the blocked amount of Rs.

150000/ being the margin money of Rs. 6 lacs bank Guarantee and Rs. 25000.00 being the margin money of Rs. 1 lac of the Bank Guarantee. I

disallow the claim for Rs. 451258.40 but allow the amount of Rs. 44093.75 to the claimant.

7. Claim No. 7

A sum of Rs. 895939.62 is claimed by the claimant being the increase on all types of accessories and materials used in the work. I hold that the

claimant is entitled to the claimed amount and I award Rs. 895939.62 to the claimant.

8. Claim No. 8

Under this claim the claimant has claimed a sum of Rs. 532579.75 being the amount of the profit which according to the claimant would have been

earned but because of prolongation of contractual period, the same has been reduced to zero. I disallow this claim.

9. Claim No. 9

This claim was withdrawn by the claimant in arbitration proceedings with liberty to take it up at the final bill stage.

10. Claim No. 10

Under this claim a sum of Rs. 89946.00 being the certified payment of 23rd R/A bill is claimed. I hold there was no justification for not making

payment of the certified 23rd R.A. Bill and I award the sum of Rs. 89946.00 to the claimant.

11. Claim No. 11

Under this claim interest is claimed by the claimant with effect from 16.04.82 @ 21 % per annum being commercial transaction. I award 18 %

P.A. interest to the claimant from 01.02.85 to 19.12.89.

COUNTER CLAIMS

The respondent claimed a sum of Rs. 11845000.00 in three parts i.e. the revenue loss Rs. 91.75 lacs, profit loss Rs. 18.40 lacs and loss of interest Rs. 8.30 lacs.

After considering the respective contentions of the parties, there pleading, documents placed on record and there evidence produce, I hold that the counter claims cannot be granted in as much as they are attributable to the delays caused by the respondent themselves and dis allow the country clais of the respondent.

Now therefore in consideration of the claim of the claimant and counterclaims of the respondents. I do Hereby made the publish my award that the

respondents do pay to the claimant Rs. 3628570.49 (Rupees thirty six lacs twenty eight thousand five hundred seventy and paise forty nine only),

in addition to the interest awarded and the claimant do pay to the respondent rupees nil. Thus respondent is allowed two months time to make the

payment failing which interest will be payable at the rate of 18 % from the date of award till the date of payment or decree whichever is earlier.

The parties will bear their respective costs. Sd/

In witness whereof, I have signed this award at New Delhi this 26th day of August, 1991.

Sd/ SWAMI DIAL, SOLE ARBITRATOR AND CHIEF ENGINEER (RETD.) CPWD
PLACE: NEW DELHI, DATED 26TH AUGUST,

1991

6. A perusal of the award clear shows that it is a case of non speaking award. As such, error has to be found out on its reading apparently or on

the basis of the record that was before the Arbitrator. In this context, it may be appropriately observed that when objections against the award

were filed under sections 30 and 33, those were duly replied to on behalf of the respondents and following issues were framed on 20th December,

1991 :

1. Whether the arbitrator has misconducted himself and the proceedings ? OP objector corporation.

2. Whether the award is invalid by person of its being nonspeaking one ? O

Objector corporation.

3. Whether the award is otherwise invalid on any other ground? OP objector corporation;

4. To what relief parties are entitled O.P. Parties.

7. Record of CMP 417/91 and A.A. 207/91 clearly suggests that no evidence was examined by the appellant/objector before the learned single

Judge in support of its objections, with a view to show that the award suffers from error apparent on the face of the record and thus liable to be set

aside. On a further reference to the record of proceedings before the learned single Judge it is also found that at the instance of the appellant a

prayer was made to impound the award. Respondent paid the necessary penalty as well as cost of the requisite stamp and thus the matter did not

proceed further in that behalf.

8. At the time of hearing of this appeal, clause 18 of the agreement entered into between the parties was referred to which is in the following terms:

18Time of completion:

a. All time limits stated in the contract documents shall be the essence of the contract. The contractor obligates himself to complete the work in the

respects within the time schedule stipulated in the special conditions subject to any adjustment that may be granted by the owner on the

recommendation of the Architect in writing under the conditions of the contract. He shall submit to the Architect and owner detailed verified

progress reports on the first and fifteenth of each and every month.

b. A bar chart showing the programme of proposed construction within the scheduled time of completion is attached as appendix IV to this

document. The contractor shall carefully study the bar chart and obligate himself to carry out the work in conformity with the various stages of

completion as shown in the bar chart.

c. Should the contractor be delayed or impeded in the execution of works by reason of:

i. Force majeure (See clause 48).

ii. By the works or delays of other contractors or tradesmen engaged or nominated by the owner and not referred to in the contract documents,

iii. The non-delivery or delay in the delivery to the contractor, of any materials or

equipment or drawings which under the contract, the owner or the Architect is to supply; or

iv. Any cause whatever, arising out of the acts or defaults of the owner or the Architect.

v. Any accident happening to the works during their progress not arising from the neglect, default of the contractor or his workmen or subcontractors; or

vi. Extras or variations being ordered by the Project Engineer on recommendations of the Architect; or

vii. Any other cause which in the opinion of the Architect has caused delay, the contractor may from time to time, within 14 working days of the

happening of any of aforesaid, apply in writing to the Architect for an extension of time on account thereof, setting forth the cause of such

application.

d. The architect, shall, if he thinks the cause sufficient but not otherwise, write to the Owner for extension of time, the owner may extend the time

for completion of the works and the time for completion of the works and the time for completion of the works so extended, shall for all purposes

of the contract be deemed the time specified for completion of the works.

e. Unless the contractor shall apply for an extension of time within the period and the manner aforesaid, and unless and until the owner on

recommendation of the Architect shall extend the time as aforesaid, the contractor shall not by reason of any delay arising from cause aforesaid, be

relieved in anyway rto any extent from his obligations to proceed with, execute and complete the works within the time specified in the contract for

the completion of the work.

f. In granting extensions of time under this clause as aforesaid, it is an express condition that there shall be no. claims whatsoever by the

contractor.

9. As per this clause, owner i.e. the appellant had an agency of Architect who was to look into the work and time could be extended in terms of

the said clause; however, it is an express condition that for delay there shall be no claim whatsoever by the contractor.

10. Sh D.S. Thakur, learned counsel appearing forthe appellant, to be precise

raised following questions in this appeal;

a. that despite direction of the court, Arbitrator has not given a speaking award and has thus misconducted himself and the proceedings, therefore,

the award in question is liable to be set aside. By up holding the same, learned single Judge according to him has gravely erred;

b. Despite being nonspeaking award, this court can still look into it and thus, set aside the same; & c. Award is contrary to as well as beyond the

terms of the agreement, therefore, in no case it can be upheld.

11. Accordingly, he prayed for allowing this appeal and consequently, setting aside the award in question and remitting the matter for adjudication

of the dispute between the parties to the Arbitrator.

12. All these pleas have been controverted by the learned Senior Counsel appearing of the respondents who submitted that the judgement of the

learned Single Judge calls for no interference as it is based on sound reasoning. Besides this, he stated that the award is strictly as per terms and

conditions of the agreement subject to which the work was allotted to his client; and further that neither the award nor the judgement off the

learned Single Judge suffers from anything so as to warrant interference in these proceedings, it has further been stated by him that this being the

case of nonspeaking award, and on its perusal no ground much less circumstances is made out calling for any interference, as such, he has prayed

for dismissal of the appeal with costs and thereby upholding the judgement of the learned single Judge.

13. When a reference is made to the terms of agreement, no doubt clauses 18 (c) (iv) and 18 (e) clearly suggest that petitioner shall not be entitled

to claim any compensation for any ground including delay. Fact remains that this is not only clause which is material for determination of this case.

In this behalf, the Arbitration clause under the heading of 'settlement of Disputes' at page 46 of the General Conditions of the Agreement reads as

under:

All disputes and differences of any kind whatever arising out of or in connection with the contract of the carrying out of the works (whether during

the progress of the works or after their completion, and whether before or after the determination, abandonment or breach of the contract) shall be

referred to and settled by the Architect who shall state his decision in writing.

Such decisions may be in the form of a final certificate or otherwise.

The decisions of the Architect with respect to any or all of the following matters shall be final and without appeal:

- a. The variation or modifications of the design.
- b. The quality of quantity of works or the addition or omission or substitution of any work.
- c. Any discrepancy in the drawings or between the drawings and / or specifications and scheduled of quantities.
- d. The removal and / or reexecution of any works executed by the contractor.
- e. The dismissal from works of any person employed thereupon.
- f. The opening up for inspection of any work covered up.
- g. The amending and making good of any defects under defects liability period,
- h. Acceptability of material, equipment and workmanship.
- g. The amending and making good of any defects under defects liability period,
- h. Acceptability of materials, equipment and workmanship,
- i. Materials, labour, tools, equipment and appurtenance necessary for the proper execution of work,
- j. Assignment and Subletting,
- k. Delay and extension of work.
- I. Termination of contract by the owner.

But if either the owner or the contractor be dissatisfied with the decision of the Architect on any matter, question or dispute of any kind except the

matters listed above, then and in any such case, either party (the owner or the contractor) may within twenty eight days, after receiving notice to

such decisions give a written notice to other party through the architect requiring that such matters which are in dispute or difference of which such

written notice has been given and no other shall be and is hereby referred to the arbitration and final decision of a single Arbitrator being a person

who is a professional Engineer/Chartered Architect Chartered Surveyor (Building and quantities / land surveying) to be agreed upon and appointed

by both the parties or in the case of disagreement as to the appointment of a single arbitrator to the arbitration of two Arbitrators both being

persons who are professional engineers / Chartered Architects/Chartered Surveyors (building and quantities/Land Surveying), one to be

appointed by each party, which arbitrators shall, before taking upon themselves the burden of reference appoint an Umpire, who must also be a professional engineer/chartered Architect/Chartered Surveyor as described earlier. The Arbitrator, the Arbitrators or the Umpire shall have power to open up, review and revise any certificate, opinion, decision requisition or notice pertaining to the matter referred to them and to determine the same by his/their award. Upon every or any such references the cost of and incidental to the reference and award respectively shall be at the discretion of the Arbitrator or Arbitrators or umpire who may determine the amount thereof or direct the same to be taxed as between Attorney and client or as between party and party, and shall direct by whom and to whom and in what manner the same shall be borne and paid. This submission shall be deemed to be submission to Arbitration within the meaning of the Indian Arbitration Act, 1940 or any statutory modifications thereof. The award of the Arbitrator or Arbitrators or the Umpire shall be final and binding on the parties. The owner and the contractor hereby also agree that arbitration under this clause shall be a condition precedent to any right of action under the contract.

14. Thus, a perusal of this clause clearly suggests that the decision of the Architect with respect to or any or the matters mentioned in this clause were to be final and without appeal. Matter relating to delay and extension of work is one of the factors. Further, this aspect of the case will be taken up while dealing with the points at 'b' and 'c' referred to in the preceding paras.

15. So far the first point regarding misconduct of the arbitrator on account of not giving a speaking award is concerned, this is being taken first of all. With a view to advance this argument, Sh. Thakur placed reliance on the following observation of the court while referring the dispute between the parties for adjudication by the Arbitrator namely Sh. Swami Dial, Retired Chief Engineer, CPWD, "It will be appreciated that the new Arbitrator give the award item wise of the claims and counterclaims preferred the parties and reasons for the same, if he deems proper". This, according to learned counsel would mean that the Arbitrator was bound to give reasons while giving his award in terms of the reference made to him on 09th of November, 1989 when objections against the earlier award dated

12th of November, 1986 were allowed.

16. Learned counsel for the petitioner fairly stated that the Arbitrator in law is required to give his award in case it is a condition of the Arbitration

Agreement, or he was specifically and expressly called upon either by the parties, or by the reference order to do so, or the statute governing the

same enjoined a duty by law upon the Arbitrator to give a speaking reasoned award. Faced with the situation, he further stated that the

observation of the court underlined here in above is to be treated as a mandate to the Arbitrator who was bound to give a reasoned award. With a

view to advance his case, Sh. Thakur placed reliance on a decision on the Hon'ble Supreme Court in the case of Indian Oil Corporation Limited

v/s Indian Carbon Limited, AIR 1988 S.C. 1340. However, this matter need not detain in view of the subsequent decision of the constitution

bench in the case of Raipur Development Authority etc. etc., V/S M/S Cholhamal Contractothers etc. etc., AIR 1990 S.C., 1426. What was held

by the constitution Bench was in the following:

Having given our careful and anxious consideration to the contention urged by the parties we feel that law should be allowed to remain as it is until

the competent legislature amends the law. In the result we hold that an award passed under the Arbitration Act is not liable to be remitted or set

aside merely on the ground that no reasons have been given in its support except where the arbitration agreement or the deed of submission or an

order made by the Court such as the one under Section 20 or section 21 or section 34 of the Act or the statute governing the arbitration requires

that the arbitrator or the umpire should give reason for the award. These cases will now go back to the division bench for disposal in accordance

with law and the view expressed by us in this decision, order accordingly.

17. Thus, the plea that the award needs to be reasoned was not accepted. In the face of this position, the submission of Sh. Thakur cannot be

accepted.

18. Another reason to take this view is that when reference was made to the above named Arbitrator namely Sh. Swami Dial, learned Judge had

left it all to the discretion of the Arbitrator to give reasons if he deemed proper. In case it was felt that there had to be a mandate requiring the

arbitrator to give reasons, there was nothing that prevent the Court to have

issued positive directions in terms. Purposely no such direction was given. On the other hand, it was left for the arbitrator to decide whether he deems it proper to give reasons. That having not been done, by no stretch of imagination, on examination of the aforesaid order or by reading down the same of any other principle of interpretation it can be said that a duty was enjoined on the arbitrator to have given a reasoned/speaking award. In this view of the matter, point(a) is decided against the appellant.

Reference in this behalf can also be made to the decision of M/s Kundale and Associates V/S M/s. Konkan Hotels (P) Ltd. J.T. 1999 (2)S.C.55.

19. Now coming to the points 'b' and 'c'. Both these points are being taken up together since they are interrelated and the materials which are

going to be referred to are common, as such, it will also avoid repetition. As noted immediately hereinabove, after extracting the Arbitration clause

that there was another authority namely Architect who could extend the time, he was to state his decisions writing. Such a decision of the Architect

was final and it included as well as extinction of work under clause (k), Supra.

20. A reference to some communications on record clearly shows that architect did not give any opinion in the matter though respondent had

referred its claims to the arbitrator (see letter dated 28th of March, 1985 at page c83 in vol. II (i). Contents of this letter from Architect addresses

to the Director Development of the appellant corporation are in the following terms:

The Director Development

Hotel Corporation of India, Ltd.

The centaur Hotel Palam Airport Gurgaon Road,

New Delhi 110037.

Dear Sir,

Centaur Lakeview Hotel, Srinagar Sanitary and Plumbing Installation. Please refer to Hotel Corpn. of India's letter No. CDP/P PE4914/1436

dated February 20, 1985 and the earlier correspondence exchanged between Hotel Corp. of India, M/s Northern Sanitation. It is generally

understood that the work of sanitary and plumbing Contractor would by and large depend upon the progress made by the Civil contractor. The

work of the civil contractor has been delayed and extension of item for

completion of work has been given to the civil contractor on our recommendation in consultation with HCI. The time of completion of the sanitary and plumbing contractor had to be extended accordingly.

The contractor has listed several reasons for the delay in the completion of their part of the work in the several letters addressed to HCI and

ourselves. One of the reason advanced in the delay in delay in handing over the site and the contractor as such has claimed idling of labour,

additional expenditure on travel, over heads, increase in the price of materials, increases in the price of materials, extra expenses for extending

insurance cover and Bank Guarantees, etc. The contractor has quantified their claims in their letter Nos.NS:3852:85 dated 25th of January 1985

and NS: 234984 dated 29th February 1984 addressed to us copy to HCI/A5/510 Dated 6th March 1984. We reiterate that as in our opinion

legal interpolation in the over all context of the provisions of the contract is necessary, we forward the matters raised by Northern sanitation for

consideration and necessary action at your end. 21. Similarly, some relevant correspondence which has bearing on the merits of this case is being

reproduced herein below which in our opinion goes a long way to show that delay in question was abnormal and on the showing of the appellant, it

was attributable to all other agencies except the appellant. Letter dated 22.04.85 from appellant to the Architect is the first communication.

Relevant portions of this letter are asunder:

...We agree with your remarks that the responsibility for completion of work cannot be put squarely on the contractor, M/s Northern Sanitation.

But, it would have been proper if you had clarified the position item wise based on our agreement dated 24.04.84 with the contractor, a copy of

which was forwarded to you vide our letter No. HCI/CLVH/DD dated 26.04.1984 and then expressed your opinion as to what extent the delay is

on the part of M/s Northern Sanitation visavis other agencies. ...

.....in view of the above, we would request you to please review the case again and forward us your opinion indicating clearly the delay on the part

of M/s Northern Sanitation and other agencies for each item of work mentioned in the agreement, immediately. Any delay on this account would

affect our case in the arbitration and as such we would request you to accord highest priority to this letter.

22. Letters dated 15th of April, 1985 and 2nd of May, 1985 from the Architect are as under:

Please refer to your letter No. DD/ PF4014 dated 25th February 1985.

15th April. 1985

You have called our attention to your letter No. HCI/CLVH/DD dated 26th April 1984 and the agreement dated 25th April 1984 entered into

between Hotel Corporation of India and M/s Northern Sanitation.

As per the above referred agreement to contractor was to complete work progressively in various areas and the entire work within 60 days of the

date of the agreement i.e. by 24th June 1984.

We have gone through the Minutes of various meetings held at site including those held on 26th May 1984: 16th June 1984: 18th June 1984/joint

site inspection report dated 26th June 1984 and meeting held at site on 5th September 1984 and subsequent site meetings. We have also taken

note of contractor's letters dated 3rd June 1984 and 24th June 1984 addressed to our office and 16th June 1984 addressed to the Managing

director, HCI besides the correspondence between the project Manager and M/s Northern Sanitation.

According to the above records the responsibility for delay in completion of work cannot, in our opinion, be put squarely on the contractor. It is

pertinent to note that spaces were not made available to the contractor so that he could finish entire work within 60 days of April 25, 1984.

Therefore, in our considered opinion, it would not be correct to say that M/s Northern Sanitation have committed breach of agreement entered

into between HCI and Northern Sanitation on 25th April 1984.

2nd May, 1985

Please refer to your letter No. DD/ PF4014/1529 dated 22nd April, 1985.

We have given careful consideration to your letter under reply including the various letters referred therein. Letter No. HCI/AS/842 dated 15th

April 1985 was written by us after reviewing the whole situation and correspondence exchange between the parties.

As already communicated to you and also in view of the points and counter points made by the concerned parties, it is our considered opinion that

no breach of Agreement has been committed by Northern Sanitation with

regard to the agreement dated 25th April 1984 entered into between HCI and M/s Northern Sanitation.

No further review as such on our part is necessary.

23. Other communications which further go to demolish and case of the appellant are also extracted herein below:

Hotel Corporation of India Ltd.

Ref: HCI/CLVH/111/4760 dated 221 03/83

To M/s Amar Nath Charanji Lal

Civil Engineers and Builders.

Dear Sir,

Subject : Civil Work at CLVHSrinagar

The following works may please be taken up on top most priority as it has hindering works of other agencies: Ad/13.K. mattu Project Manager.

Letter Dated 31.03.83 from project Manager HCIL to M/sAmarNath Charanji Lai, Civil Engineerand Builders.

'You are once again requested to complete these works immediately as it is hindering the progress of other agencies. In addition your attention is

invited to minutes of meeting held at site on 16.03.83 and 17.03.83. The progress on corridor flooring of wing 4 which you have started five days

back is very slow. Similarly the progress on external development, title fixing and water proofing in toilets is very slow and has to be expedited.'

Letter dated 20.08.83 from project Manager HCIA to M/sAmarnath Charanji Lai Civil Engineers and Builders.

'We regret to notice that irrespective of our repeated verbal request, your labour is not taking any care for the bath tubes while fixing the tiles

around these tubes. This has resulted in spillage of cement mortar which has hardened inside the tube inspite of protective layer given by the bath

tub contractor. You are requested to advise your labour to protect the tubs while working. It protect the tubs while working. It has been noticed

that bags of cement and T and P are stored in tubs. Kindly note that any damage to the bath tubs will be your responsibility and in case the tubs

are beyond repair the same will have to be got replaced at your cost. This is for your information and necessary action.

Telegram dated 03.05.1983 from project Manager, B.K. Mattu to M/s Parry Ltd.

Madras.

Please despatch your remaining Materials immediately

Telegram dated 04.10.83 from DPI, HCI to M/s Rajnagar Marble and Minerals Industries (P) Ltd. R33 Ambe Niketan Chiya Marg

BanipariJaipur.

'Refour Tel Dated 8th September and discussions in Del on 16 Sept(.) Despite your assurances progress of work very slow (.) Other agencies

work held up (.) Telegram dated 16.10.83 from project manager HCISgr. to M/s Gemico (Gem Sanitary Co.)

'Attn Mr. Chander Shekhar (.) Despatch balance fittings immediately (.) All work held up on this account.

Letter dated 10.01.84 from Project Manager HCI to M/s Amar nath Charanji lai Civil Engineers and Builders. This has reference to your site

office letter No. AC : HP : 8384/1458 dated 06.01.84.

We do not agree with the contention of your letter... from the above it can be noticed that the delay in completion of the work is entirely due to non

availability of adequate men and materials at site and can not be attributed to any other agency.

You are once again requested to mobilise your resources i.e men and materials to avail of the unusual good spell of weather existing in the valley at

present. We find that except for a few local carpenters and one painter, there is practically no labour at site. Also no responsible site representative

is available to take day today instructions, look after the work.'

Letter dated 14.01.1984 from project Manager HCI to M/s Rajnagar Marble and Minerals Industries.

Tell date the marble has not reached site with the result that except for polishing work, your labour is idling. This is seriously hindering the inter

connected work of all agenesis.'

Letter dated 01.02.1984 from project engineer, HCI to M/s Amarnath Charanji Lai Civil Engineers and Builders. 'Please be informed that the

tilling of F block main floor toilet needs rectification and repair. Also you are requested to complete your work in requested to complete your work

in toilets of F Block FF level attic floor level and service floor levels.

' Letter dated 09.02.84 from project manager HCI to M/s Amrnath Charanji Lal

Building Engineers and Builders. 'We regret that there is hardly any action at your end to expedite the balance work rectification of defects mentioned in above quoted letters. The interconnected work of any agencies is getting hampered.'

Letter dated 21.02.84 from Project Manager, HCI to M/s Ranjnagar marble and Minerals industries.

'Wherein we have informed you that your labour has stopped working since 17.01.1984 and this is seriously hampering the work f all

interconnected agencies. Your labour contractor Mr. Mishra has also written to us on 17.01.84 that due to shortage of material and break down in

cutting machine, he is topping work w.e.r. 17.1.84. Due to nonavailability of marble counters, the work of all agencies in wing 6,7 10 and 11 and

public areas toilets has come to a stand still. Letter dated 15.05.84 from B.K. Mattu Project Manager H.C.I to M/s Rannagar Marble and Mineral

Industries.

'We regret to note that you are lagging behind in every activity as per the programme given by you. Materials for flooring and skirting and counters

are not available at site. This is hampering the work of every connected agency and ultimately delay the completion schedule of the project.'

Letter dated 01.06.84 from Project manager HCI to M/s Amarnath Charanji lal Civil Engineers and Builders.

'Your contention is not correct. All suites of wing 10 were lying vacant. In wing 7 only one suite was occupied by your men only. In wing 6, two

suites were occupied by M/s Ahuja Furnishers and one by Orient Carpets and same have been got vacated since then days. It is incorrect to say

that all the suites were occupied. Please complete your work without further loss of time.

Letter dated 04.09.84 from D.D..H.C.T. to M/s Stein Doshi and Balla, 5 Sunder Nagar, New Delhi.

'Please refer to various telegrams sent by our project Manager to M/s Rannagar Marble (Last such telegram being sent on 16th August 1984) with

copies marked to you.

We regret to state that so far there has been no improvement in the procurement as well as mobilization of additional man power and equipment on

the part of the contractor to complete the job. This has resulted in not only delay

in completion of M/s Rajnagar Marble Industries work, but is also coming in way of completion of activities of other contractors. We would be thankful if you would look into the matter and ensure that M/s Rajnagar marble take up the matter seriously and complete the job on top priority. In case the contractor fails to do this necessary recommendation should be sent from your office to us regarding cancellation of this contract and awarding the work to another suitable agency. An early action in this regard will be appreciated.'

Letter from Project Manager, HCI to M/s Amarnath Chirnji Lal Civil Engineers and Builders Dated 29.09.84

'Dear Sirs,

Please complete the water proofing work in remaining suites i.e. of wings 6,7,10 and 11 immediately as bath tubs in these areas are to be fitted.'

Telegram dated 5 November. 1984 to M/ s Rajnagar Marble and Minerals Industries from Project manager, B.K. Mattu. 'No work going on site

(.) Labor for fitting suite does not working since last one week Hindering work of every connected agency (.) Rush additional labour to site and be

present at site personally to complete your work (.) Your labour has no money and we have advanced five hundred rupees to your Mr.

Bal for their daily expenses (.)'.

Telegram dated 12 November 1984 to M/ s Rajnagar Marble and Mineral Industries from Project Manager B.K. Mattu.

'Refer telegram dated 16 Nov. (.) No improvement in labour position till date. Rush labour immediately and be present personally (.) Have

conveyed this message at your residence telephonically today (.) work of all agencies held up on your account (.)'

Letter dated 03.01.85 to M/s Stein Doshi and Bhalla, 5 Sunder Nagar, New Delhi from B.B. Bagga Director Development, HCI.

'Dear Sir,

1. Please refer your letter No. HCI/A3. 3/2567 dated 27.11.84 on the above subject.

2. In this connection, you have recommended that in view of the progress of work at site and assurances offered by the contractor, the revised date

of completion of the above work be fixed as December 31, 1984, you have also mentioned that the contractor has assured that the work could be

further expedited if heating arrangement is provided in the working areas of HCI.

In the context please clarify the following:

- a. Whether your letter under reference is for grant of extension of the contractor without imposing liquidated damages, if so, it may be clarified as to how it can be agreed to, since the entire project got delayed because of this activity.
- b. the assurances now offered by the contractor visvis his earlier assurances/ commitments.
- c. The status of work on December 31.12.1984.

24. Matter does not rest here only. Even the project Manager of the applicant has on 7th/ 8th of May, 1985 informed M/s Rajnagar Marble and

Minerals Industries that how could sanitary contractor fix the bath tubs in balance suites. The contents of this letter as an under:

Dear Sir,

This has reference to your letter No. Nil dated 27.04.1985.

It may please be noted that the balance work pointed out by you have since been completed by other agencies and you have started fixing marble tiles on both tub facing.

It is not correct to say that these works were pointed out by you in December, 1984. How could the sanitary contractor fix the bath tubs in 6 Nos.

balance suites (wings 7 and 10) or civil contractor complete the brick work in front of bath tubs unless you had fixed marble tiles upto tub level last year. This work has executed by you only this year and hence the delay.

Hope this clarifies the issue. Please complete your balance work in suites and public toilets immediately.

25. There are few instances to show that what could the respondent do when other agencies appointed by the appellant failed to make the site available. (These documents are in Vol. II (ii) and start from pages 27 onwards to page 50 marked in blue ink and as C110 to C131 of this volume.

26. In addition to this, respondent contractor had taken specific stand in its reply to these objections under sections 30 and 33 of the Arbitration Act, filed by the appellant, explaining therein date wise as to how it was not a blame and delay was on the part of appellant and other agencies

who were much behind the schedule. Documentary evidence extracted here in above clearly supports the plea of the respondents.

27. Despite all these factothers, Sh. Thakur, learned counsel for the petitioner persisted with vehemence that even if it is accepted that delay was

on the part of the owner, i.e. the appellant as well as on the part of the other agencies who were engaged by his client for the completion of the

project, still, appellant is not entitled to any relief whatsoever on account of work getting delayed.

28. In this behalf, it may be appropriate to observe that while tendering, contractor had furnished rates to the appellant keeping in view reasonable

and normal delay depending upon so many factothers But then the question that needs consideration of the court is whether the delay when

stretched beyond reasonable limits can be taken to the length and extent as was urged by Sh. Thakur ? Answer be, No. Otherwise, it will result in

absurdity. This is one reason not to uphold the plea of Sh. Thakur and thereby hold that for whatever reason the delay may occur as also for how

so long it may be there, respondent was not entitled to any compensation for the same, particularly, when from the contemporaneous officials

record, i.e. the communications exchanged between the appellantowner and its Architect clearly establish that the delay was on the part of other

agencies and not of the respondent and his opinion in that behalf was conclusive and did not call for any review in reply of appellants wanting that

way.

29. Besides this, all disputes were referred to the Arbitrator who has after going into those has thereafter pronounced his award. Its those has

thereafter pronounced his award. Its perusal clearly shows that he has given item wise award, and has further taken into account pleadings of the

parties, documents placed on the record and the evidence produced and has thus given the award. Under these circumstances, it cannot be said

that the award is either the result of nonconsideration of the documents or evidence that was before the Arbitrator.

30. While considering An Arbitratothers' award, courts generally view it with an object to uphold the same; unless of course it falls within the four

corners of sections 30 and 33 of the Arbitration Act. Reason being that it is an adjudication by a person of the choice of the parties outside the

court in whom both of them repose confidence. It may also be observed that an Arbitrator is the master of quality and quantity of evidence and

while examining the award, it is not for this court to go into the process of reasoning that weighed with the Arbitrator. Simply because the court

would take another view of the matter can in no case be made a ground for setting aside the award given by an Arbitrator Thus, what follows from

this is that with a view to set aside the award, fault, has to be found either in the award or it is to be based on the material which is there on the

record so as to show that award is liable to be set aside. In the instant case, all the disputes were referred for adjudication to the Arbitrator. This

included the question relating to the interpretation of the agreement which was within his power. Thus, we are of the view that this court would not

examine the terms of agreement and thus, come to a different view. It is also by now well settled that where two views are possible, the court

would not upset the award ? (See JT 1999 (7) S.C. 122 and 2001 (3) SCC 397).

31. The plea that the court can always look into a nonspeaking award and set aside the same, is a plea which cannot be accepted in the

circumstance of this case. Arbitrator was required to give item wise award, that he has given after consideration of all the materials that was before

him. In this behalf when a reference is made to the documents before the Arbitrator, it cannot be said that the same suffers any error which may

call for any interference in this appeal.

32. Similarly, the plea that award is contrary to the beyond the terms of agreement also cannot be accepted. In this behalf, it may be observed that

admittedly, the architect appointed by the appellant who was to give an opinion in the matter never decided such question including one relating to

the extension of time. Secondly, there is enough documentary evidence to suggest that delay was abnormal on the part of the owner, i.e. the preset

appellant as well as other agencies who were un(able to complete the work so as enable respondent to complete the part of the work allotted to it

of the sanitary installations.

33. Admittedly, it was dependent on the completion of the works allotted to other agencies who had filed to do the needful within the time allowed

as well as within the extended period. Correspondence exchanged between the appellant and its architect clearly suggests that the former wanted

the architect to fix the responsibility of delay on the respondent, but he (architect) declined in line with the appellant and refused to review its

earlier opinion, relevant portion of the communication has been extracted herein above. No claim being available to the respondents on account of

delay cannot be stretched to the extent of infinity otherwise it will lead to a situation for which there will be no end. Therefore, this contention urged

on behalf of the appellant is hereby rejected.

34. Arbitrator has already interpreted the terms of the agreement in a particular manner. As already observed, simply because this court would

take another view is no ground to substitute the same and prefer it over view of the arbitrator. In this context, it may also be noted that the

reasoning given by the learned single Judge at page 12 of his judgement is reasonable and we find no reason to take a different view in this appeal.

As such, in the face of this position we are in respectful agreement with the same. In addition to this, on examination of the record of this case, we

find no reason to take a different view.

35. In *Jivarajbhai Ujamashi Seth and others V/s Chintamanrao Balaji and others*, AIR 1965 S.C. 214, it was held that where the arbitrator

assumed jurisdiction not possessed by him, the award was invalid and was thus, set aside. So far this proposition of law is concerned, learned

counsel for this proposition of law is concerned, learned counsel for the respondent even did not dispute it. However, he pointed out that in the

application under section 20 of the Arbitration Act where on initial reference was made, claim set up on account of compensation for abnormal

delay also stood referred, and therefore, arbitrator after interpreting the clause of agreement has given its award. It cannot be said that he assumed

jurisdiction not possessed by him. As such, the award was not liable to be set aside. This is the conclusion that has also been arrived at by us on

examination of the whole case. As such, this decision has no applicability to the present case.

36. *M/s Sudarshan Trading Co. V/s The Govt. of Kerala and another*, AIR 1989 S.C. 890 is a decision relied upon on behalf of both the sides. It

deals with two aspects; one is that court cannot interfere with the award when reasons for the same are not given by the Arbitrator. A view that

has been taken in the present appeal on examination of the whole matter

including claimset up under Section 20 of the Arbitration Act on the basis whereof reference was made and which order admittedly has attained finality, following observation from the decision of the Supreme Court has material bearing on the present appeal:

31)... 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 acted correctly or incorrectly. This, in our opinion, the court had no jurisdiction do, namely, substitution of its own evolution of the conclusion that the arbitrator had acted contrary to the bargain between the parties, whether a particular amount was liable to be paid or damages liable to be paid or 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 dispute 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 SirM.J. Mustil and Stewart C. Boyd page 84. 32)... It may be mentioned that in so far as the decision given that it was possible for the court to construe the terms of the contract to come to a conclusion whether an award made by the arbitrator was possible to be made or not, in our opinion, this is not a correct proposition in law an the several decisions relied by the learned Judge in support of that proposition do not support this proposition. Once there is no dispute as to the contract, what is the in the interpretation of that contract is a matter for the arbitrator and no which matterforthe arbitrator and on which court cannot substitute its own decision.

37. This decision squarely covers the case of the respondent and in no way advances case of the appellants.

38. In New India Civil Erectothers (P) Ltd. V/s Oil and Natural Gas Corporation, AIR 1997 S.C. 980, it was held that where there was express stipulations between the parties as to price being firm and not subject to any escalation till completion of work, a contractor was held not entitled to

any escalation and award granting such amount was held to be beyond the authority of the arbitrator. Again, there is no dispute with this legal

proposition. It may also be incidentally noted that in the absence of formal contract, arbitrator having construed relevant stipulations as contained in

schedule to tender notice and correspondence between the parties and then award having been made, it was held that it calls for no interference.

This is precisely the situation in the present case.

State of J and K and another V/s Dev Dutta Pandit, AIR 1999 S.C. 3196 is another decision relied on behalf of the appellant. But, after having

examined the same, we are of the view that it is inapplicable to the facts of the present case.

39. In case M/s Krishan Kumar Madhok V/s Union of India, AIR 1982, Delhi 332, Division Bench while dealing with the power of the arbitrator

to grant interest held as under:

An arbitrator has power to award interest pendent lite. Though S. 34 does not in terms apply, the arbitrator has the same power as the court has.

The court can award pendent lite interest¹ at such rate as the court deems reasonable'. So can the arbitrator. Though no statute gives him that

power the judicial decisions recognize as of necessity that power in him as an implied term of reference. If the arbitrator's award of interest is

reasonable the law forbids the court to interfere with it".

40. To similar effect is a three judge decision of the Supreme Court in case of Hindustan constructed Co. Ltd. V/s State of Jammu and Kashmir,

1992 (4) S.C.C. 217. In this very decision, while allowing the appeal of the contractor and dealing with the question of misconduct under section

30 of the Arbitration Act, it was held, that in case of non speaking award, court cannot deduce reasons from the claims accompanying the award

and examine whether those reasons were erroneous or not by placing its own interpretation on the relevant clauses of the contract. 'Reliance was

also placed on a number of decisions of the Supreme Court including that of M/s Sudarshan Trading Co. V/s The Govt. of Kerala and another

(Supra).

41. In case Municipal corporation of Delhi V/ s M/s Jagan nath Ashok Kumar and another, Air 1987 S.C. 2316 it was held as under:

The reasonableness of the reasons given by an arbitrator in making this award

cannot be challenged in a special leave petition. In the instant case, there was no evidence of violation of any principle of natural justice. The arbitrator is the sole judge of the quality as well as quantity of evidence and it will not be for the Supreme Court to take upon itself the task of being a judge of the evidence before the arbitrator it may be possible that on the same evidence the court might have arrived at a different conclusion that the one arrived at by the arbitrator but that by itself is no ground for setting aside the award of the arbitrator".

42. This is what exactly the appellant wants this court to do by substituting its view for that of the arbitrator.

43. In case Puri Construction Pvt. Ltd. V/s Union of India, 1969 (1) Arbitration law Reporter 306, Supreme Court took a view that the court

cannot reexamine the merits of the award with regard to the materials produced before the Arbitrator. It cannot sit in appeal over the views of the

Arbitrator. Its jurisdiction is limited to the grounds available under the Arbitration Act. The appeal was allowed with costs in this case after holding

so.

44. In case B.V. Radha Krishana V/s Sponge Iron India Ltd., (1997) 4 SCC 693 it was held that High Court has no jurisdiction se aside an

award by substituting its own view in place of Arbitrator.

45. In a case before the Bombay High Court, Union of India V/s M/s Shyam Charan Agarwala and Sons, Arbitration petition No. 86 of 1995 in

Award No. 233 of 1994, Arbitrator gave his award against certain items. Condition No. 11 (C) in this agreement was like the one for

compensation being not claimable in this case which is extracted herein below:

Clause 11 (C) was under: 'No claim in respect of compensation of or otherwise howsoever arising' as a result of extensions granted under

conditions A and B above shall be admitted,'

46. While upholding the objections of the Union of India liability of the petitioners to pay the amount in respect of claim No. 8 and interest pendent

lite and future thereon was set aside and the rest of the award was upheld. This matter was taken up in appeal by the contractor, being Appeal No.

1249 of 1996. The appeal was dismissed by a Division Bench of the court.

47. Feeling aggrieved by the said decision, contractor filed petition for Special

leave to Appeal (Civil) No. 5757/98, which was allowed on 7th of September, 1998 in the following terms:

... In view of the decision of this court in K.R. Ravindran V/s State of Kerala (1996(10) SCC 36, the appeal is allowed and the impugned

judgement and order of the High Court is set aside. There will be, therefore, a decree also in respect of claim No. 8 of the award.

48. Review petition was filed against this Judgement by the Union of India vide review petition No. Civil 2243 of 1998 which was dismissed on

12th March, 1999. Only correction made was regarding citation of the case of K.R. Ravinderan V/s State of Karala as 1998 (9) S.C.C. 410. Net

result of this all was that the award made by the arbitrator was upheld including that of interest by the Supreme Court while setting aside the

decision of the Division Bench of the Bombay High court. This is a decision nearer to the facts of the present case where almost identical clause

existed in the agreement before the Bombay High Court as in the present case extracted herein a above. 49. In case P.V.Subba Naidu V/s Govt.

of A.P. And others, (1998) (9) Supreme Court Cases 407 While examining the arbitration clause like the present one, it was held as under:

3. In the judgements which are under appeal in these appeals, the approach of the High Court has been similar. The High Court has examined the

terms of the contract and has been similar. The High Court has examined the terms of the contract and has come to conclusion that on the

interpretation of the contract, the claims which were raised before the arbitrator others would not arise under the contract itself and hence they were

beyond the jurisdiction of the arbitrator. 5. In the present case all the claims in question were expressly refereed to arbitrator and were raised

before the arbitrator. The High Court was, therefore, not right in examining the terms of the contract or interpreting them form the purpose of

deciding whether these claims were covered by the terms of the contract.

7. Learned counsel for the state of Andhra Pradesh placed strong reliance on the judgement of this court in the case of Ch. Ramalinga Reddy Vs.

Superintending Engineer 4. In that case the arbitrator was required to decide the claims referred to him, having regard to the contract. His

jurisdiction was expressly limited to decide claims under the terms of the contract. The court, therefore, examined various items of the contract.

The court therefore, examined various terms of the contract to see whether the appellant was barred from considering any part of the claim on

account of any express prohibition in the terms of the contract to that effect. In the present case we have not been shown any clause of the contract

which prevents the arbitrator from examining the claims which were put up before the arbitrator.

50. While dealing with a matter relating to the construction of contract matter in the case of K.R. Raveendranathan V/s State of Kerala, (1998) 9

supreme court cases 410, it was held as under:

The Learned counsel for the appellant points out that the question in issue in the present appeal is squarely covered by the decision of this court

Hindustan Construction Co. Ltd. V/s State of J and K. In particular, it draws our attention to para 10 of the judgement and the portion extracted

from the decision in Sudarsan Trading Co. case 2 wherein it was said that 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. That is exactly what the court has done in the

instant case, therefore, the issue stands covered by this decision and the learned counsel for the respondents court not in the face of this decision

argue otherwise.

51. In H.P. State electricity board V/s R.J. Shah and company, (1999) 4 S.C.C. 214, it was held that in case of the non reasoned award, if it is

made in excess of the jurisdiction of the Arbitrator, then it is liable to be set aside; but if it is within his jurisdiction on the basis of construction of

contract which the arbitrator was required to do, so then the court cannot set it aside merely because another view was possible. And test to

determine whether the arbitrator acted in excess of his jurisdiction was that court has to examine certain documents including the contract and

reference of the dispute to the arbitrator for the limited purpose of determining whether the arbitrator had the jurisdiction or not. After applying

these tests to the facts of that case, it was held that the award was not in excess jurisdiction of the arbitrator.

52. In M/s Kundel and associates V/s M/s Konkan Hotels (P) Ltd. JT 1999 (2) S.C. 556, while finding a legal misconduct in case of nonspeaking

award, when there was no condition to give reasoned award, Arbitrator having

considered evidence both oral and documentary and having visited the site himself, to these facts on application of mind by him (Arbitrator), it was held by S.C., that there was no misconduct or nonapplication of mind.

53. In *M/s Arson Enterprises Ltd. V/s Union of India and anr.*, JT 1999 (7) S.C. 122, while dealing with the objections, it was reiterated that in

the event of two view being possible on the question of law, court would not be justified in interfering with the award. Similarly error apparent on

the face of award does not give any right to examine reasoning of view of the arbitrator. It was held that reappraisal of the evidence by court was

not permissible where the award was based on the appreciation of material on record. Relevant portions of this judgement are as under:

35. Be it noted that by reason of a long catena of cases, it is now a well settled principle of law that reappraisal of evidence by the court is not

permissible and as a matter of fact exercise of power by a court to reappraise the evidence is unknown to a proceeding under section 30 of the

Arbitration Act. In the event of there being no reason in the award, question of interference of the court would not arise at all. In the event,

however there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total

perversity in the award or the judgement is based on a wrong proposition of law: In the event however two views are possible on a question of law

as well, the court would not be justified in interfering with the award. 36. The common phraseology 'error apparent on the face of the record¹ does

not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record: The Court as a matter of fact, cannot

substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the

arbitrator is a possible view the award or the reasoning contained therein cannot be examined. In this context, reference maybe made to one of the

recent decision of this court in the case of *State of Rajasthan V/s Pur Construction Co. Ltd.* JT 1994 (6) SC 412 whether in this court relying upon

the decision of *Sudarshan Trading Co.'s case (Sudarshan Trading Co. V/s Govt, of Kerala and Anr.* JT 1989 (1) Sc 339 observed in paragraph

31 of the report as below:

'Account of competent jurisdiction has both right and duty to decide the lis presented before it for adjudication according to the beset

understanding of law and facts involving in the lis by the judge presiding over the court. Such decision even if erroneous either in factual

determination application of law correctly, is a valid one and binding inter parts. It does not, therefore, stand to reason that the arbitrator's award

will be per se invalid and inoperative for the simple reason that the arbitrator has failed to appreciate the facts and has committed error in

appreciating correct legal principle in basing the award. An erroneous decision of the court of law is open to judicial review by way of appeal or

revision/in accordance with the provisions of law. Similarly, an award rendered by an arbitrator is open to challenge within the parameters of

several provisions of the arbitration Act. Since the arbitrator is a judge by choice of the parties and more often than not a person with little or no

legal background, the adjudication of disputes by an arbitration by way of an award can be challenged only within the limited scope of several

provisions of the Arbitration Act and the legislature in its wisdom has limited the scope and ambit of challenge to an award in the arbitration Act.

Over the decades, judicial decisions have indicated the parameters of such challenge consistent with the provisions of the Arbitration Act. By and

large the court have disfavoured interference with arbitration award on account of error of law and facts on the score of misappropriation and

misreading of the materials on record and have shown definite inclination to preserve the award as far as possible. As reference to arbitration of

disputes in commercial and other transactions involving substantial amount has increased in recent times, the courts were impelled to have fresh

look on the ambit of challenge to an award does not get undesirable immunity. In recent times, error in law and fact in basing an award has not

been given the wide immunity as enjoyed earlier, by expanding the import and implication of "'legal misconduct' of an arbitrator so that award by

the arbitrator does not perpetrate gross miscarriage of justice and the same is not reduced to mockery of fair decision of the lis between the parties

to arbitration. Precisely for the aforesaid reasons, the erroneous application of law constituting the very basis of the award and improper and

incorrect findings of fact, which without closer and intrinsic scrutiny, are demonstrable on the face of the materials on record, have been held, very

rightly, as legal misconduct rendering the award as invalid. It is necessary, however, to put a note of caution that in the nicety to render justice to the party to arbitration, the court should not reappraise the evidence intrinsically with a close scrutiny for finding out. That the conclusion drawn from some fact, by the arbitrator is, according to the understanding of the court, erroneous. Such exercise of power which can be exercised by an appellate court with power to reverse the finding of fact, is a line to the scope and ambit of challenge of an award under the Arbitration Act. Where the error of finding of facts having a bearing on the award is patent and is easily demonstrable without the necessity of carefully weighing the various possible viewpoints, the interference with award based on erroneous finding of fact is permissible. Similarly, if an award is based by applying a principle of law which is patently erroneous, and but for such erroneous application of legal principle. The award could not have been made, such award is liable to be set aside by holding that there has been a legal misconduct on the part of the arbitrator. In ultimate analysis it is a question of delicate balancing between the permissible limit of error of law and fact and patently erroneous finding easily demonstrable from the materials on record and application of principle of law forming the basis of the award which is patently erroneous it may be indicated here that however objectively the problem may be viewed, the subjective element inherent in the judge deciding the problem, is bound to creep in and influence the decision by long training in the art of dispassionate analysis, such subjective element is, however, reduced to minimum keeping the aforesaid principle in mind, the challenge to the validity of the impugned award is to be considered with reference to judicial decisions on the subject. 37. It is on the basis of this well settled proposition that the learned single Judge came to a conclusion that the findings of the Arbitrators in regard to the extension of delivery period and failure to fix the fresh date has resulted in breach of the contract on the part of the government and the same being purely based on appreciation of material on record by no stretch it can be termed to be a error apparent on the face of the records entitling the court to interfere. The Arbitrators have in fact, come to a conclusion on a closer scrutiny of the evidence in the matter and reappraisal of the evidence by the court is unknown to a proceeding under section 30 of the Arbitration Act. Re appreciation of evidence is not

permissible and as such we are not inclined to appraise the evidence ourselves save and except what is noticed hereinbefore pertaining to the issue

as the time being the essence of the contract. In this context, reference may be made to a decision of this court in the case of M. Chellapan V/s

Secretary, Kerala State Electricity Board and another (1975 (1) SCC 289).Methew, J.Speaking for the three Judge Bench in paragraph 12 and

13 observed as below : 12. The High court did not make any pronouncement upon this question in view of the fact that the remitted the whole case

of the arbitrators for passing fresh award by its order. We do not think that there is any substance in the contention of the board. In the award,

the umpire has referred to the claims under this head and the arguments of the Board for disallowing the claims under this head and the arguments

of the board for disallowing the claim and then awarded the amount without expressly advertng to or deciding the question of limitation. From the

findings of umpire under this head it is not seen that these claims were barred by limitation. No mistake of law appears on the fact, that is no

ground for challenging the validity of the award. It is only when a prosecution of is stated in the award and which is the basis of the award, and that

is erroneous, can the ground of error of law apparent on the face of the record:

Where an arbitrator makes a 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.

The general rule is that, as the parties choose their own arbitrator to be the judge in the disputes between them, they cannot, when the award is

good on its face, object to his decision, either upon the law or the facts. (See russell on Arbitration, 17th Ed. P.322). 13. An error of law on the

face of the award means that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the

arbitrator stating the reasons for his judgement, same legal proposition which is the basis of the award and which you can then say is erroneous

(See Lord Dunedin in Champsey Ehara and Co. Vs Jivraj Baloo Co.). In Union of India Vs. Bungo Steel Furniture Pvt. Ltd. This Court adopted

the proposition laid down by the privy council and applied it. The court has no jurisdiction to investigate into the merits of the case and to examine

the documentary and oral evidence on the record for the purpose of finding out, whether or not the arbitrator has committed an error of law.

54. In case *Paradip Fort Trust and others M/s Unique Builders*, (2001) 2 SCC 680, What was held and is relevant for the present case was in the

following terms:

11. From several decisions of this court and the provisions contained in the act, it is clear that generally on award passed by the arbitrator is

considered binding between the parties for the reason that the parties selected the arbitrator and powers of the court to set aside the award are

restricted to cases set out in section 30 of the Act. It is not open to the courts to guess or speculate reasons for the award, when it is non

reasoned. Courts cannot attempt to investigate the mental process by which the arbitrator arrived at conclusion where it is not visible from the

award. The jurisdiction of courts including High Courts is not independent of the statute. The arbitrator's award is final both on facts as well as law.

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

law already settled by this court, we consider it unnecessary to cite long list of decisions in this regard. We will refer to few of them including those

relied upon by the learned counsel for the parties in support of their respective contentions, hereinafter.

12. In *Javarajbji Ujamshi Sheth V. Chintamanrao Balaji* 1 this court in AIR para 18, has stated that:

'An award made by an arbitrator is conclusive as a judgement between the parties and the court is entitled to set aside an award if the arbitrator

has misconducted himself in the proceedings or when the award has been made after the issue of an order by the court superseding the arbitration

or after arbitration proceedings have become invalid under Sec. 35 of the arbitration Act or where an award has been improperly procured or is

otherwise invalid (section 30 of the Arbitration Act). An award may be set aside by the court on the ground of error on the face of the

award, but an award is not invalid merely because by a process of inference and agreement it may be demonstrated that the arbitrator has

committed some mistake in arriving at his conclusion.

13. This Court in *Puri Construction (P) Ltd. V/s Union of India* 2 has taken the

view that: (SCC p.415, para 7)

Even on accepting the suggestion and interpreting the objection petition of the respondent liberally, the decision of the High Court cannot be

maintained. When a court is called upon to decide the objections raised by a party against an arbitration award, the jurisdiction of the court is

limited, as expressly indicated in the Arbitration Act, and it has no jurisdiction to sit on appeal and examine the correctness of the award on merits.'

14. This court in *State of Orissa V/s Lail Bros.* 3 had held that the fact that there is a nonreasoned award, is no ground to set it aside and that lump

sum award is not had per se, as such. 18. The learned counsel for the company pointed out that the High Court, placing reliance on the judgement

of this court in *Executive Engineer (irrigation). Abhaduta Jena* denied interest pendente lite. But in a subsequent decision by the constitution bench

of this court in *secy., Irrigation Deptt. Govt, of Orissa V.G.C. Roy* it is held that the decision in *Abhaduta Jena* case 7 did not lay down good law

on this aspect. The constitution bench decided the case on 12.12.1991. The impugned order of the High Court was passed on 25.08.1992. We

agree with the submission of the learned counsel for the company as to the power of the arbitrator to award interest pendente lite. However, the

High Court having denied the interest on ground that there was no claim for interest pendente lite before it nor any argument was advanced in that

behalf was are not inclined to upset that part of the order of the High Court in relation to denial of interest to the company. However, we do not

find good ground or valid reason to deny further interest from the date of the decree to the company. Hence, having regard to the facts and

circumstances of the case we consider it just and appropriate to award future interest at the rate of 12 % per annum from the date of decree till

payment. The award of interest from 28.09.82 to 10.01.1985 was justified by the High Court in the impugned judgement. The contention that

there was no basis for choosing the date 28.09.1982 is answered in the judgement of the High Court itself stating that it was on 28.09.82 that the

trust udated the contract and forfeited the deposit made by the company and that the arbitrator entered into reference on 10.01.1985. We agree

with the reasons recorded by the High Court in this regard. Further as already noticed above, the award is made in lump sum. As rightly observed

by the High Court, unless there appears to be a mistaken on the face of the award and the documents appended or incorporated thereto which

form part of the award, it cannot be set aside even with respect to interest part of it. In this view of the matter, we hold that the company is entitled

for interest @ 18 % per annum from 28.09.82 to 10.01.85 and further interest @ 12 % per annum from the date of decree till payment.

55. One of us, Goel (J), while dealing with the objections under sections 30 and 33 of the Arbitration Act in case M/s J.K. Plastic Udyog V/s

New India Assurance Co. Ltd., A.A. No. 156/96, while dismissing the objections on 30.12.1999, made the award rule of the court together with

interest at the rate of 18 % per annum.

56. On the overall examination of the whole case, are satisfied that the appellant cannot be permitted to say that where the delay was abnormal as

in the present case, still respondent was not entitled to claim any compensation. The decision of the Hon'ble Supreme Court in the case of Shyama

Charana Agarwala V/s Union of India (Supra); is a complete answer to this. In addition to this, that situation was only to come when the Architect

had given his decision on the question of extension. There was nothing brought to our notice on behalf of the appellants in that behalf. Still such a

decision could be questioned again in the manner in terms of the clauses extracted herein above. Therefore, in this court also the grievance of the

appellant cannot be accepted.

57. No other point is urged.

58. From whatever angle the case of the appellant may be perused, it has not merit and thus the appeal deserves to be dismissed and is ordered

accordingly. Costs on the parties.

59. We are told that in terms of the order of the court, awarded amount after it was deposited in the registry, has been released in favour of the

respondent on furnishing a bank guarantee. Since the appeal has been dismissed, as such, Bank guarantee shall stand discharged if it is still in force.