

(2012) 05 BOM CK 0012

In the Bombay High Court

Case No : Arbitration Petition No. 1063 of 2010 Along with Arbitration Petition No. 1065 of 2010

M/s. Oil and Natural Gas Corporation Ltd.

APPELLANT

Vs

M/s. Dolphin Drilling Ltd.
 M/s. Dolphin Drilling Ltd. Vs
M/s. Oil and Natural Gas Corporation Ltd.

RESPONDENT

Date of Decision : 09-05-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 31(7), 34
Civil Procedure Code, 1908 (CPC) — Section 34

Citation : (2012) 4 BomCR 640 : (2012) 114 BOMLR 1831

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Kevic Setalvad, with Ms. Rashna Khan with Ms. Daizy Dubash with Mr. Abhishek Singh with Mr. Satchit Bavlekar instructed by M/s. Mulla and Mulla in Arbp/1065/10 and Mr. Pradeep Sancheti, with Mr. Aziz Khan with Mr. Vinay Bhanushali instructed by M/s. Divya Shah Associates in Arbp/1063/10, for the Appellant; Kevic Setalvad with Ms. Rashna Khan with Ms. Daizy Dubash with Mr. Abhishek Singh with Mr. Satchit Bavlekar instructed by y M/s. Mulla and Mulla in Arbp/1063/10 and Mr. Pradeep Sancheti with Mr. Aziz Khan with Mr. Vinay Bhanushali instructed by y M/s. Divya Shah Associates in Arbp.1065/10, for the Respondent

Final Decision : Dismissed

Judgement

Anoop V. Mohta, J.—Both the parties, original claimants and the Respondents have challenged the impugned Award u/s 34 of the Arbitration and Conciliation Act, 1996 (the Arbitration Act) passed by the Arbitral Tribunal dated 7 April 2010 by raising respective grounds from their point of view. The operative part of the Award is as under :

(i) The Respondent do pay to the Claimant a sum of US \$ 2,699,235.63 on account of providing wellhead tools and services to the Respondent.

(ii) The Respondent do pay the Claimant a sum of Rs. 71,68,723/by way of cost

of arbitration.

(iii) The Respondent do pay the Claimant interest on the sum directed to be paid to the Claimant by this award from the date of the award till the date of payment at the statutory rate of 18% p.a as set out in section 31(7)(b) of the Arbitration and Conciliation Act, 1996.

2. The original claimant was a Dolphin Drilling Limited (DDL). Oil and Natural Gas Corporation Limited (ONGC) was the original Respondent. DDL has challenged the Award only to the extent of denial of interest on the amount of the unpaid invoices from the accrual of the cause of action up to the date of the Award and related aspect as contemplated u/s 31(7) (a) and (b) of the Arbitration Act read with Section 34 of the CPC (CPC). DDL has supported the rest of the Award on all the counts.

3. ONGC has challenged the Award on various grounds.

4. ONGC is a public sector undertaking. DDL is a company incorporated under the English Companies Act and governed by the laws of United Kingdom having their registered office at London (England). Their business is also of oil drilling and offshore operations of the Indian coast.

5. Both the parties entered into a contract on 17 October 2003 (the Contract) for hire of DDL's drilling unit "Bedford Dolphin" (the Rig) by ONGC.

6. DDL (the Contractor) agreed to carry on operations of installation of Well Head on the offshore hydrocarbon wells, for and on behalf of the ONGC (the operator) on charter hire basis with drilling unit and integrated services on the "turn key" basis along with it's personnel. The contract was for three years with effect from 1 August 2003. The drilling operation commenced on 30 November 2003. The time was extended under the contract upto 10 April 2007.

7. As per the contract, as permissible, during the ongoing contract work, DDL raised various invoices from 26 March 2004 upto 28 July 2004 and demanded reimbursement for rental of Well Head running Tools and services over the Rig day rate from 14 January 2004 to 4 May 2007 collectively aggregating to US \$ 518,026 i.e. approximately Rs. 2,699,235.63 over the Rig day rate. ONGC disputed the invoices. On 20 September 2004 DDL therefore gave notice to ONGC and demanded the amount with 12% p.a. Interest and thereby also invoked clause 28 of the agreement, if no payment is received. DDL, by letter dated 18 October 2004, by invoking arbitration clause, appointed their arbitrator and forwarded a statement of claim amounting to US \$ 1,020,163.20. ONGC appointed their Arbitrator vide letter dated 13 January 2005. Both these Arbitrators appointed a Presiding Officer. The offer to resolve the dispute through the conciliation was failed as not accepted by DDL on 23 November 2004.

8. The statement of claim was taken on record. The written statement was filed and so also the rejoinder. The following issues were framed :

(1) Whether the claimants are entitled to be paid separately for Well Head Running tools and services, in addition to the payments for Wellheads, as contemplated in paragraphs 5, 7 and 12 of the Statement of Claim? If yes, in what amount?

(2) Whether the costs of the Well head running tools and services are included in the day rate as contended by the Respondents in paragraph 6 of the Written Statement?

(3) Whether the costs of the Well head running tools and services have already been paid as service charges as contended by the Respondents in paragraph 7 of the Written Statement?

(4) Whether it is an admitted industry practice and within the Claimant's knowledge that the Well head running tools and services are included in the rig rates and are not separately charged as contended in paragraph 9 of the Written Statement?

(5) Whether the Claimants are entitled to interest as contemplated in paragraph 10 read with Annexure I of the Statement of Claim and denied by the Respondents in paragraph 17 of the Written Statement? If yes, at what rate?

(6) Whether the Claimants are entitled to the reliefs as prayed for?

(7) What orders as to costs?

9. The claimant led oral evidence of (I) Mr. Ken Fraser (CWI) and (ii) Mr. Robert Doughty (CW2). The Respondent led oral evidence of (I) Mr. B.P. Singh (RW1) and (ii) Mr. K.K. Gupta (RW2). The parties made their respective submissions, oral as well as in writing.

10. The relevant clauses of the agreements are :

Article 3 (3.1)

Operator agrees to pay contractor for work performed, services rendered, material equipment supplied and personnel furnished by Contractor, a Sum at rate specified in this Article read in conjunction with Exhibit-D.

Article 4.1(a) reads as under

Contractor shall furnish and maintain at its cost all items of Exhibit C hereto under the heading `Furnished by Contractor`.

Article 4.5 read as under :

4.5 WELL HEADS :

Contractor has to make available minimum 2 Nos. of well heads all the time on the Drilling Unit.

Contractor would have to procure the well heads from any of the vendors as

listed as per Exhibit-J. The procurement would need to be done by contractor in accordance with established/standard procurement procedure of Contractor with due diligence and has to certify that procurement has been done in accordance with Contractor's established/standard procurement procedure with due diligence, and procurement has been done at reasonable price.

In case there is shut down/interruption in operations on account of non-availability of suitable sub sea wellheads or required wellheads tools and services, Contractor will not be eligible for any of the Day Rate.

The CIF cost Nhava/Vizag plus 5% on CIF value (services charges) for Well Heads shall be reimbursed to the Contractor against documentary evidence. CIF cost shall be worked out as under :

FOB cost of the item at the rates as procured by the Contractor from the approved vendor plus charges incurred towards insurance and transportation.

Article 5.1 (a)(i) reads as under :

All items of the equipments, materials, supplies, service personnel required for operations hereunder, other than items to be supplied by Contractor as set forth in Exhibit A & B will be furnished by operator at the well site and contractor would have no liability for costs thereof.

5.2 The main agreement (main body) in the contract consists of Preamble and Articles 1 to 34, Emphasis is placed on the following Articles: Articles 2.1, 3, 4, 5.1, 7.1, 9.1, 16.3 and 34.2. There are certain annexures or Exhibits to the contract marked Exhibit A to M. Exhibits A, C and D are particularly relevant in the present arbitration.

5.2.1 Preamble:

(a) The preamble of the Contract dated 17.10.2003 states the broad intention of the parties to the contract, much like the Statement of Objects and Reasons of a statute. The preamble to the contract states that the drilling unit along with services on integrated basis have been taken on charter hire/lease, along with personnel.

(b) The preamble refers to Exhibit A (pg. 37121, Contract Volume), Exhibit B (pg. 122128, Contract Volume) and Exhibit E (pg. 194196, Contract Volume) to the contract.

(c) The preamble emphasizes the turnkey nature of the contract. Single point responsibility is placed on the Contractor/Claimant, in that it is entirely responsible for providing materials, services and personnel for the performance of drilling operations under the contract. The operator is left with a very small role in the contract, and virtually the entirety of drilling operations are placed in the hands of the Contractor.

5.2.2 Article 2.1 - Depth - General:

(b) The relevant part of Article 2.1 reads as under :

The Drilling Unit, Integrated Services and all other equipments, materials and supplies provided by Contractor, as specified or which Contractor is otherwise required to provide under the terms of this agreement, shall be in good workable condition, and together with the personnel provided by the Contractor, as specified in the Exhibit A & B shall be furnished and maintained by the Contractor at its sole cost for the rates set forth in Article 3.

The relevant part of clause 7.1 reads as under :

Operator shall make payment under this Agreement within 15 (fifteen) working days from the date of receipt of an invoice from contractor, subject always to operator's right to require contractor to furnish it with satisfactory evidence of the validity and prior payment by contractor of all labour and materials incurred by Contractor and charged to operator.

Article 28.6 reads as under

It is also a term of the Agreement that neither party to this Agreement shall be entitled to interest on the amount of award.

Article 34.2 It is not intended that there be any conflict between this Agreement and the Exhibits thereto, which are parts hereof for all purposes, but the Agreement shall take precedence in the event of any such conflict.

11. DDL's submission revolving around Exhibit "C" (Schedule of responsibilities to the contract) for wellheads, rental of running tools and overhead services, as marked to "cost of operator" in the second column of Exhibit "C" has been accepted by the learned Arbitral Tribunal. It is also accepted that ONGC as paid for other items marked the cost of operator in Exhibit "C" to the contract, they are also under obligation to pay for wellheads, running tools and services. This was on the foundation that ONGC approved and paid for some "running tools" and, therefore, having approved and paid for the same, they are estopped from denying the payments as claimed. Another reason for granting the claim in favour of DDL has been that they never disputed invoice for running tools and services within 15 days stipulated time in clause 7.1 of the contract. Therefore, the ONGC is bound by the Doctrine of Estoppels .The learned Tribunal accordingly passed the Award in question.

12. The Petitioner/ONGC's case based upon the plain reading of the terms of the contract, as contended, was completely overlooked by the Arbitral Tribunal. Admittedly, the contract was a turnkey contract. The liability was to pay "day rate" of \$ 1,91,700/per day for all materials, services, equipments, supplies and personnel supplied including wellhead, running tools and services provided by it. The materials and services as agreed to be provided and borne by DDL at its own cost.

13. Admittedly, DDL had engaged the services of subcontractor (M/s. Dril-Quip)

for wellhead, running tools and services. The Petitioner has no concern and/or bound by the said subcontract between them. Exhibit "C", as strongly relied upon, shows a schedule of responsibilities as defined. The financial and payment aspects have been specifically dealt with and defined in the Articles of the contract. The responsibility so mentioned in Exhibit "C" cannot be stated to be the main terms and conditions of the payment. It was just a supporting document/schedule to define the respective responsibilities and obligation as admittedly the contract was a turnkey contract. It is clear that the Petitioner never paid for any running tools and services. The item 9.5/8, wear bushing, stated to be "running tools" which was alleged to be paid by the Petitioner, was not a running tool. It is further clear that the Respondent paid for the wear bushing, out of good and commercial consideration as per the agreed terms. The Petitioner paid for certain items, because it was specifically provided in the agreement over and above the day rates. The Petitioner never approved for a quotation for rental of wellhead, running tools. The limited approval for replacement value, even if any, ought not to have treated as the approval in respect of the wellheads services. Therefore, if we consider and read the contract as a whole, there was no separate payment to be made for running tools and services as awarded.

14. It was specifically agreed in case of conflict between the main agreement and Exhibit "C" to the contract, the main agreement could prevail and as noted, the main agreement clauses debar the Petitioner from making any payment on account of running tools and services as the same were to be borne by DDL at its sole cost. The interpretation therefore so given by the Respondent and/or even by the Arbitrator by overlooking the Petitioner's evidence and material placed on record, therefore, needs to be tested on facts and circumstances of the present case, but definitely subject to the terms and conditions of the contract. The possible and plausible interpretation of terms and conditions of contract, the Court, in view of settled law, ought not to interfere with the reasoned award so passed, but if the situation is otherwise, on facts, as well as, on law and the case is of wrong interpretation of the clauses, the Court may interfere with the same Award. The plausible view or possible view cannot be equated with wrong interpretation. The interpretation contrary to the contract clauses is impermissible as it goes to the root of the matter.

15 Therefore, it is necessary to consider the relevant clauses of the contract read with the Annexures and/or Exhibits A, C and D. Admittedly, the drilling unit along with the services on integrated basis has been taken on charter hire/leave/along with personnel. The terms and main clauses specifically refers to these Exhibits. The turnkey nature of the contract is not in dispute. Admittedly, it was the responsibility and obligation on the DDL (the contractor) for providing materials, services, personnel for the purpose of drilling operation under the contract. It is clear from the terms and conditions and the facts on record that DDL had been given the contract of drilling operation in its entirety. The Petitioner's role was very minor.

16 In view of Article 2.1, all items in Exhibit "A" were to be furnished and maintained by DDL at their cost. This includes running tools and services also. The cost of the items in Exhibits A and B were to be borne by DDL only. The Petitioner was under obligation to reimburse the charges through the rates specified in Article 3 to the contract and/or Exhibit "D". There was no separate payment need to be made for these items. Therefore, plain reading of clause 2.1 read with Exhibit "A" shows that the cost of running tools and services to be borne only by DDL.

17. Admittedly, the rate payable under Article 3 were firm price for the duration of the agreement as the contract was turnkey in nature and as agreed only the price to be payable. There was no obligation on the part of the Petitioner to provide any material and supplies, equipments and services even as per Article 4.1 read with Exhibit "C". It is specifically agreed that DDL was furnished and maintained at its cost all items of Exhibit "C", under the heading "Furnished by Contract". Therefore, considering Article 4.1(a) read with Article 2.1, it shows that DDL has to bear the cost of all items in Exhibits A, B and C. ONGC's obligation was to pay the price, day rate under Article 3, read with Exhibit "D".

18. Articles 4.4, 4.5 and 4.6 deal with diesels, wellheads, and running tools and materials as specifically agreed and for specific items, the Petitioner was required to pay because of express provision. This was for commercial purpose with clear understanding between the parties. There is nothing mentioned that the rental for wellheads, running tools and services and charges have to be paid separately. The same has been even recorded in the evidence of B. P. Singh, RW1 (ONGC's witness) and the same remained intact. It was specifically agreed in Article 4.5 that no separate compensation was to be paid for in case of shut down or interruption in operation, on account of non availability of suitable sub sea wellheads or required various tools and services. It was agreed that DDL could not be eligible for any of the day rate in such circumstances. Even no rates are mentioned in Exhibit "D" pertaining to the rental of running tools and providing of services. It is therefore clear that wellhead, running tools and services are not covered by Article 5 since these are materials and equipments and services that are expressly mentioned in Exhibit "A" to be provided by DDL. Therefore, as the cost of rental falls within the general rule in Articles 2.1 and 4 and there is no exception carved out and as there was no specific price for the same either in Article 3 and/or Exhibit "D", there was no question of any payment.

19. Another aspect is the nature of turnkey contract dated 17 October 2003. DDL though attempted and disputed the turnkey nature of contract and argued as if it was an item rate contract and the Arbitral Tribunal right in accepting the same by overlooking the express language and terms of the contract. We have to read the whole contract clause by clause, Exhibit by Exhibit. The contract clauses are clear and so also the understanding when it was executed. To dispute the turnkey nature, in the facts and circumstances, is also a relevant factor for proper adjudicating of the dispute between the parties. Clause 9 read with other clauses

and subclauses clearly show that DDL was entirely responsible for "All work connected with the drilling operation and safety of the same". ONGC was approved and/or supervise only for the proper execution of the work. Even the role of DrilQuip was only to assist and advise DDL. The whole responsibility of the contract, as agreed, was of the DDL. The claim, therefore, of the DDL to ask for cost for certain reusable items rented and services obtained from the subcontractor is not permissible in such type of contracts and the commercial practice unless specifically agreed.

20. The relevancy of Article 34 just cannot be overlooked. The interpretation and/or importance of reading of Exhibits to the contract comes when there are any doubts in the main contract and/or agreement. When the contracts terms are clear and as agreed, in case of conflict, the agreement clauses should prevail in such situation, the reliance on the Exhibits "A" and "C" as done in the present case goes to the root and further changes the whole approach of interpretation, as well as, reading of the important clauses and its purpose. All Exhibits to the contract which includes pre contractual document, though incorporated, cannot override and/or be sufficient to overlook the agreed specific clauses of the contract between the parties.

21. Admittedly, Exhibits A, C and D have been read and relied by the Arbitral Tribunal. Exhibit "D", as noted, provides price schedule and contains the price of some items for which separate payments were made by ONGC. Admittedly, it contains no provision of price to be paid for rental of all wellheads, running tools and services. As noted, Exhibit A of the contract describe the scope of the work. It is clear that the cost of the items prescribed has to be borne by DDL. There was no question of separate payments for number of other items. There is no justification given by the claimant as submitted and as even recorded by the Arbitral Tribunal with regard to the distinction between other items and wellhead, running tools and services where no separate payments were made. Therefore, there is force in the submission that the DDL's claim so made in this regard is beyond the contract terms and conditions.

22. Next comes Exhibit "C"-Schedule of responsibility. The learned Arbitral Tribunal has accepted the case of claimant which was based on the dissected item E1 of Exhibit "C". We have to consider here again Article 2.1 and 4.1(a) first and as discussed above, which provide the obligation for the cost of rental of wellhead, running tools and services on DDL. To read Exhibit "C", for arriving at a conclusion for the payment by overlooking the main Articles basically when the Articles with other clauses are clear. If Articles nowhere provide and/or put ONGC under obligation for payment of cost of rental of wellhead, running tools and services and, therefore, to rely on this Exhibit "C", in the present facts and circumstances, is contrary to the plain provisions of main Articles and so also Article 3 and Exhibit "D" which provide and deal with price and payment clauses. The contractor was under obligation as per the contract for drilling activities to which use of running tools and services are interconnected and inbuilt part.

There was no question of making separate payment for cost of rental as claimed basically when admittedly there is no such clause provided in the main contract specifically in the Exhibits so relied upon by DDL. The whole case is based and relied upon by the claimant/DDL on the impermissible interpretation by overlooking the nature of the main contract itself. This, in my view, goes to the root of the matter. When the clauses are clear, there is no question of claim of any payment based upon unclear and vague dissected item Exhibit "C". Admittedly, when there was no specific clauses for separate payment for these items, including the items mentioned in Exhibit A, it is quite unnatural for the purposes of commerce and/or commercial practice that such Contractor would entitle to charge for the extra amount for the rentals and/or other charges, which they were supposed to pay to the subcontractor, with whom the operator/owner has no where agreed and/or entered into any kind of contract. The finding and the case revolving around Exhibit "C" or item "E" could not have been considered in view of the clear terms and conditions and considering the nature of contract, such interpretation is incorrect, unsustainable.

23. In *Reliance Natural Resources Ltd. vs. Reliance Industries Limited* 2007 (Supp.) Bom. C.R. 925 referring to various Supreme Court judgments, I have observed as under:

92 Recently, the Apex Court in *Commissioner of Income Tax, Kolkata Vs. Hoogly Mills Co. Ltd.*, , while reiterating the principle for interpretation of the agreement held that it has to be read as a whole.

95 The same author has further elaborated the principles of construing the documents as a whole as under :

6.02 In order to arrive at the true interpretation of a document, a clause must not be considered in isolation, but must be considered in the context of the whole of the document.

6.03 In construing a contract all parts of it must be given effect where possible, and no part of it should be treated as inoperative or surplus.

24. Recently, the Apex Court, in *Vodafone International Holdings B.V. Vs. Union of India (UOI)* and Another, while dealing with a commercial document/contracts/agreements/transactions held that any transaction must be looked at and the related contacts as a whole and not dissected. In the present case, the nature, the purpose and the object of the contract. The related process of drilling the well and the material and the service, personnel and entire responsibilities and the mode of lump sum payment or day rate itself shows that it was turnkey basis, integrated service contract.

25. The submission revolving around clause 7.1 and that ONGC failed to raise a dispute within 15 days and, therefore, the claim so objected is impermissible is also not correct. On facts, the objections were raised from time to time at given point of time without fail. It was never accepted and/or agreed at any point of

time. The Arbitral Tribunal failed to take into consideration that even as per the clauses only undisputed amounts have to be paid within 15 working days. All the invoices had been disputed for wellheads, running tools and services with reasons provided in the letter dated 23.08.2004 and even prior to that. There is nothing placed on record by DDL to show that regular payments were made to Drillquip as per the invoice before raising invoices in question. It appears that there was no payment made to the subcontractor by the Respondents and, therefore, the invoices so relied and referred and the claim so raised without placing any supporting material on record and as accepted by the Arbitral Tribunal, in my view, is also unsustainable. Mere filing of invoices are not sufficient. The parties whosoever want to claim any amount on such invoices need to prove the same and its contents, basically when the disputes were raised within time on all the invoices for wellheads, running tools and services. There is nothing in the contract and/or pointed out that it was agreed by the Petitioner that such charges and/or invoices would be paid to Drillquip, instead of DDL.

26. In Oil and Natural Gas Corporation Limited Vs. Oil Country Tubular Limited, after taking note of various Supreme Court judgments, I have recorded as under :

The observations that other side to prove that the claimant has not suffered any loss or damage itself contemplates necessity of leading evidence by both the parties. The burden is always on the parties who claimed compensation to prove actual loss, even for the reasonable compensation. The other doctrines; "Mitigation of loss", "Burden of proof", "Onus of proof" and "Shift of burden" just cannot be overlooked by the Court or the Arbitrator, while determining the reasonable compensation.

In that I have also observed that though provisions of Evidence Act are not strictly followed nor the provisions of CPC (CPC), yet the basic principle of assessment and/or reassessment of the breach committed by the party and quantum of claim on the foundation of mitigation and other surrounding circumstances including proof of the contents of the documents as those invoices were never admitted goes to show that the amount so awarded was not based upon the strict proof of the quantum of its claim. Admittedly, as recorded, payments were not made by DDL to the subcontractor. The external payment vouchers and/or such invoices cannot be treated as proof of payment. The Bank credit invoices or external payment vouchers in no way sufficient to accept the case that actual payments have been made. The witness Robert (CW 2) admitted in cross-examination that documents such as Exhibit "MM (Mr. Ken Fraser compilation internal document). Some of the credit advices have no particulars and/or accompanying credit documents. As recorded, DDL failed to show the prior payment for rental of wellhead, running tools and services as contemplated in clause 7.1 itself. All the invoices and its contents were specifically challenged at every stage of the proceedings. The award based upon such invoices, therefore, in the facts and circumstances, is therefore, impermissible and

contrary to the record and law. The witness and/or evidence just cannot be relied upon to support the lacuna and/or fill the gaps if the documents as well as its contents are itself not proved as required under the law, specially when the Petitioner never agreed and/or accepted and/or admitted such mode of payment based upon the unpaid invoices of DDL.

27. It is also necessary to note that the learned Arbitral Tribunal while awarding the quantum/amount referred and relied upon "the Master quote" setting it to be approved by ONGC which provides the rights for wellhead, running tools and services. The case of the witness of the Petitioner's never accepted that it was approved in its entirety as contended. It is also pointed out that DDL paid the amount to the supplier and based upon the statement of invoices granted the amount so claimed. In view of the above reasoning itself and the Master quote at different version and revised more than six times and there were discrepancies in the dates and importantly the said final "master quote" was admittedly not on record and, therefore, the decision based upon unproved "master quote" could not have been the foundation to pass such award/claim so raised. The grant of US \$ 39.750 per well was also nowhere mentioned in the "master quote" in question. ONGC was never party to the separate service agreement between DDL and its subcontractor. There is nothing on record to show that ONGC granted approval for such service rates blindly without any discussion and/or negotiations. Therefore, there is substance in the contention so raised by the learned counsel appearing for the Petitioner that while granting the compensation/damages, sufficient reasons were not provided in view of above circumstances. Normally, in a given case, considering the whole record and overall reasoning given by the Arbitral Tribunal and if supported by the reasons and the material on record, the Court need not interfere with the award for want of such elaborate and/or more exhaustive reasoning. Sufficient reasons based upon the material on record, if award is passed, there is no question of interfering with the same in every matter, but in the present case in view of above reasoning itself, there is not option, but to interfere with the award so passed. It is the case of balance amount not paid and/or part payment made and/or agreed amount not paid. The Arbitral Tribunal, for the first time, based upon the statement of claims and the invoices so raised awarded the amount wrongly as recorded above. DDL's 26 arbp-1063-1065-10.sxw claim petition, therefore, itself is liable to be rejected along with other consequential actions/orders.

28. In so far as the interest on the sum awarded, even considering Article 28.6 in view of the above reasoning and as I am inclined to interfere with the award so granted in terms of clause 1 of paragraph 39 itself and as I am inclined to set aside the same and thereby rejecting the claim of DDL as prayed, there is no question of considering the aspect of interest on any count. Therefore, the award to that extent is also liable to be quashed and set aside. As the whole claim itself is rejected, therefore, there is no question of grant of interest in the awarded amount.

29. The Arbitral Tribunal has awarded cost of the Arbitrator on a foundation that the claimant/DDL succeeded in the arbitration proceedings. The details of bills were taken note of while passing the order of cost. However, considering the above reasoning and as I am inclined to set aside the main award itself and thereby rejected the total claim of DDL and as there is no question of awarding any interest, I am inclined to modify the cost of arbitration so awarded by holding that the parties to share the costs of arbitration equally by both the parties.

30. Hence the following order :

ORDER

(a) Clauses 1 and 3 of Arbitral Award dated 7 April 2010, impugned in the Arbitration Petition No. 1063/2010 are quashed and set aside.

(b) Clause 2, with regard to the costs of Arbitration, be shared equally by both the parties.

(c) The Award is modified accordingly in Arbitration Petition No. 1063/10.

(d) Arbitration Petition No. 1063/2010 is allowed accordingly.

(e) Arbitration Petition No. 1065/2010 is dismissed.

Both the Petitions are accordingly disposed of. No costs.