
(2014) 04 DEL CK 0108
In the Delhi High Court
Case No : OMP No. 40/2011

National Highways Authority of India APPELLANT
Vs
Som Datt Builders-Noc-Nec (JV) RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 19, 31(7), 34, 34(2), 37
Companies Act, 1956 — Section 291

Citation : (2014) 4 AD 632

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Abhishek Kumar, Advocate for the Appellant; S.B. Upadhyaya, Sr. Advocate and Arvind Minocha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Singh, J.—The petitioner has challenged the impugned award dated 29th August, 2010 (received on 6th September, 2010) by filing of the present petition u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act") on various grounds. Brief facts leading to filing of the present petition is as under

i) The Government of India, Ministry of Road Transport and Highways launched a National Highways Development Programme, which envisages the following works:

- Four/six laning and strengthening of existing National Highways connecting 4 metropolitan cities of Delhi-Kolkatta-Chennai-Mumbai.
- Four/six laning and strengthening of existing National Highways network from north to south and east to west connecting Srinagar to Kanyakumari and Silchar to Porbandar.
- The stretch from km 470.00 to km 380.00 of Delhi-Kolkatta section of NH-2 forms the part of Golden Quadrilateral Project of National Highways Development Programme.

ii) In the year 2001, the petitioner -invited bids for the work of four laning and strengthening of existing two lane section between Km 470.00 to Km 380.00 of Delhi-Kolkatta section of NH-2 in the state of Uttar Pradesh, the contract package No. II B (GTRIP/4) (hereinafter referred to as "the project"). The respondent, amongst others, submitted its bid dated 17th December, 2001 for execution, completion and maintenance of the project and the petitioner awarded the work in respect of the project to the respondent vide agreement dated 27th March, 2002 whereby the respondent undertook to execute and complete the work of the project and remedying the defects therein at the contract price of Rs. 4,961,183,599 (Rupees Four Billion Nine Sixty one Million One Eighty Three Thousand and Five Ninety Nine Only), on the terms and conditions stated therein (hereinafter referred to as the "Agreement"). The Consulting Engineering Services (I) Pvt. Ltd. and BECA International Consultants Ltd. (JV) who was engaged by the Petitioner to supervise the construction work and was appointed as Engineer of Project in terms of the Contract Agreement (hereinafter referred to as "Engineer").

iii) The Contract being a unit rate contract contained a detailed document "Bill of Quantities (BOQ) containing the items of work to be executed by the contractor and also the estimated quantities of each item to be executed by the contractor. The rates against each item were to be filled in by the bidder/contractor.

That the parties adopted the terms and conditions of Contract as contained in the General Conditions of Contract (GCC) prescribed by FIDIC (Federation International Des Ingenieurs-Counseils). The special conditions of contract wherever provided, as contained in Condition of Particular Application (COPA), override the GCC.

iv) During the course of construction, the Respondent raised a claim for reimbursement of Entry Tax on cement vide its letter dated 20th June, 2005. In the said letter it was contended that in accordance with sub- clause 70.08 of COPA, the contractor is entitled for reimbursement of Entry Tax paid by it on cement as the increase in the rate of Entry Tax is due to "subsequent legislation". The Respondent, thereafter, vide its letter dated 26th July, 2005 referred the said dispute to the Dispute Resolution Board (DRB).

v) That the relevant clauses to be considered for the present petition are as follows:

CLAUSE 70 Changes in Cost and Legislation

Delete clause 70 in its entirety, and substitute:

CLAUSE 70.1 - Price Adjustment

The amounts payable to the Contractor, in various currencies pursuant to Sub-Clause 60.1, shall be adjusted in respect of the rise or fall in the cost of labor, Contractor's equipment, Plant, materials, and other inputs to the Works, by the applying to such amounts the formulae prescribed in this clause.

To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other

Clauses in the Contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

CLAUSE 70.03- Adjustment Formulae

Contract price shall be adjusted for increase or decrease in rates and price of labour, materials, fuels and lubricants in accordance with the following principles and procedures as per formulae given below. The amount certified in each payment certificate shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. (a) Price adjustment shall apply for work carried out within the stipulated time or extensions granted by the employer and shall not apply to work carried out beyond the stipulated time; price adjustment for reasons attributable to the Contractor, shall be paid in accordance with sub-clause 70.6.

(b) Price adjustment shall be calculated for the local and foreign components of the payment for work done as per, formulae given below; and

(c) Following expressions and meanings are assigned to the value of the work done during each month:

R1= Total value of work done during the month. It would include the value of materials on which secured advance has been granted, if any, during the month, less the value of materials in respect of which the secured advance has been recovered, if any, during the month. This will exclude cost of work on items for which rates were fixed under variation clause (51 and 52) for which the escalation will be regulated as mutually agreed at the time of fixation of rate. R1 = Portion of "R" as payable in Indian Rupee

Rf= Portion of "R" as payable in foreign currency (at fixed exchange rates)

$R = R1 + Rf$

To the extent that full compensation for any rise or fall costs to the contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs.

(i) to (vi).....xxxxxxx

(vii) Adjustment for Other Local Material

Price adjustment for increase or decrease in cost of local materials other than cement, steel, bitumen, plant spares and POL procured by the contractor shall be paid in accordance with the following formula

$V_m = 0.85 \times P_m / 100 \times R1 \times (M1 - M0) / M0$

Vm = Increase or decrease in the cost of work during the month under consideration due to changes in rates for local materials other than cement, steel, bitumen plant spares and POL.

M0= The all India average wholesale price index (all commodities) on the day 28 days prior to date of submission of bids, as published by the Ministry of Industrial Development, Government of India, New Delhi.

M1= The all India average wholesale price index (all commodities) on the day 28 days prior to the last day of the period to which a particular interim payment certificate is related as published by Ministry of Industrial Development, Government of India, New Delhi.

Pm = Percentage of local material component (other than cement, steel, bitumen, plant spares and POL) of the work. **CLAUSE 70.8: Subsequent Legislation**

"If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the works are being or are to be executed, changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law regulation or by-law which causes additional or reduced cost to the contractor, other than under the preceding Sub-Clauses of this Clause, in the execution of the contract, such additional or reduced cost shall, after due consultation with the Employer and the contractor, be determined by the Engineer and shall be added to or deducted from the contract price and the Engineer shall notify the contractor accordingly, with a copy to the employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have been taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 70.1 to 70.7."

vi. That the present dispute is arising out of clause 70.8 of COPA. Clause 70 is related to Price Escalation and sub clause 70.8 is related to Subsequent Legislation, which is reproduced below: **SUB-CLAUSE 70.8: Subsequent Legislation**

"If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the works are being or are to be executed, changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to the contractor, other than under the preceding Sub-Clauses of this Clause, in the execution of the contract, such additional or reduced cost shall, after due consultation with the Employer and the contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such

additional or reduced cost shall not be separately paid or credited if the same shall already have been taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 70.1 to 70.7".

vi. Thereafter, the petitioner submitted its response to the respondent's claim before the DRB, vide letter dated 18th October, 2005. The DRB held its hearings and gave its recommendations vide letter dated 24th November, 2005.

2. Feeling aggrieved with the recommendations passed by the DRB, the petitioner issued the notice for invoking arbitration under Clause 67.3 in respect of the said dispute vide its letter dated 10th December, 2005. Arbitral Tribunal after completion of pleadings etc. passed the impugned award.

3. The majority of the Arbitral Tribunal after deliberations between the parties held as under:

a. The Arbitral Tribunal held that provisions of the contract preference should be to use at least 43 grade cement or higher. The Respondent has filed number of Mix Design Approvals by the Engineer for various grades of concrete, where he was directed to use OPC 43/53 grade cement in work and none of the factories situated in Uttar Pradesh were producing OPC cement.

b. It was further held that the Engineer and the petitioner had consciously permitted the respondent to bring cement from factory located outside Uttar Pradesh not only before 16th May, 2003, but even after 16th May, 2003 when the entry tax became payable.

c. The petitioner himself has recognized that individual partners of JV can procure cement for the work while issuing certificates to that effect from time to time, though the work was allotted to the JV as contractor.

d. The Arbitral Tribunal further held that the auditors of the contractor M/s Somdatt Builders-NCC-NEC (JV) have certified in clear terms that the expenditure incurred by M/s Somdatt Builders Ltd. and M/s NEC Ltd. on payment of Entry Tax for the execution of the said JV project during 15th May, 2003 to 31st March, 2008 has been reflected in the accounts of the JV and the same has accordingly been consolidated in the final balance sheet of the JV.

e. The Arbitral Tribunal further held that all the requirements of clause 70.8 is fulfilled and the contractor has incurred the additional cost on account of entry tax.

f. The Arbitral Tribunal held that the JV had only one project in the State of Uttar Pradesh and its partner M/s Somdatt Builders Ltd. has one more project IIA in U.P.

g. The Arbitral Tribunal held that "Material Entry Tax" mentioned in some of the challans mean cement only.

h. The Arbitral Tribunal made an assumption that extracts of few IPCs (Nos.10,22,35,48,56,61) show that the price of the cement varied between Rs. 1960/- per MT to Rs. 4140/- per MT during the period under consideration for reimbursement of Entry Tax. "Assuming that the same quantity of cement has been brought every month during the relevant period, the average rate of cement works out as Rs. 2553/- per MT." The levy of tax is at 2% of the cost of cement. They further held that the respondent is entitled to an amount of Rs. 56,64,576/-. The Arbitral Tribunal quoted the provision of clause 60.8 and held that the respondent is entitled to receive interest on the amounts due to him as per the amounts claimed by him from time to time in the monthly statements as per the terms of the contract. This interest shall be payable from the respective due dates of payments till the date of actual payment.

4. The Co-Arbitrator Sh. K.B. Lal Singhal has delivered a separate award on the issue of total amount to be awarded to the respondent. The same reads as under:

a. The challans should indicate the date of transportation of cement, its values on that date and then the entry tax on cement brought from outside UP state in accordance with this legislation in the absence of any other evidence. Thereafter evidence is to be made available by the respondent that the cement on which entry tax has been paid has been brought to site i.e. Unit IIB and consumed. The reimbursement of entry tax will be payable only thereafter. No such procedure has been followed by the respondent. It is also not known to which site the cement has been transported.

b. There is a large amount of entry tax not paid by the respondent.

c. Consumption of cement is not an evidence that the amount of all vouchers are reimbursable to the respondent even if some of them do not relate to the entry tax on cement or even if they relate there is no evidence of the transportation of that cement to the site unit IIB.

d. Vouchers of entry tax on cement are reimbursable which indicate the site of transportation as unit IIB even after ignoring Claimant's i.e. NHAI objection that the payment is much later and entry of cement is earlier.

e. Vouchers on entry tax on materials is not reimbursable because it may include any material. Vouchers entry tax without indication of any material are also not reimbursable.

f. Based on the above observation, Mr. Singhal awarded only the amount contained in vouchers of entry tax on cement which indicate the site of transportation as Unit II-B. He awarded an amount of Rs. 33,04,804 to the respondent along with simple interest @12% per annum from 31st March, 20.08 till the date the amount is paid to the respondent contractor.

5. When the petition was listed before Court, by order dated 14th January, 2011 the Court had issued notice limited to (i) validity of the authority of Mr. H.G. Advani to represent JV in the arbitration; (ii) quantification of the amount of

entry tax; and (iii) admissibility of interest under Clause 60.8 of the contract. The Court at that time passed the detailed order.

6. Both parties have made their respective submissions. During the course of hearing, the respondent in order to clarify the objection of the petitioner has filed an affidavit confirming to the court that Som Dutt Builders is the leading partner of the joint venture and alone has been dealing in the matter and in the event any other associates raise any claims in respect of reimbursement of entry tax of Cement for IIB project, the leading partner will indemnify the petitioner in this behalf. As the court earlier had issued notice limited to three issues as mentioned above. The same are dealt with issue-wise. The petitioner in para 19 of the rejoinder by referring the minority award at least has admitted that the said learned Arbitrator has rightly awarded Rs. 33,04,805/- in respect of challans/receipts submitted by the respondent. Even admittedly the said amount was not paid by the petitioner to the respondent during the pendency of present petition.

7. Validity of Authority of Mr. H.G. Advani:

7.1 Both parties have referred various documents on this issue. Admittedly, the contract has been signed by Mr. H.G. Advani as authorized signatory of Som Dutt Builder-NCC-NEC Joint Venture. The same has been continued and operated on the authority and approval of the JV partners in favour of Mr. H.G. Advani. The word "contractor" is defined in clause 1.1 of the GCC to mean the joint venture and the joint venture is being represented in the contract by Mr. H.G. Advani. Clause 67.1 and 67.3 of the agreement provides for settlement of disputes by arbitration which can be invoked by the contractor, Mr. Advani's position has been approved by the petitioner as well as by other two partners of the JV as contractor. His signatures accepted as binding signatures of the contractor on behalf of the JV as per contract agreement which is annexed as Annexure RH-15. Mr. H.G. Advani has signed the contract agreement including the arbitration clause 67 which is part and parcel of the contract as authorized signatory of the Joint venture. The arbitral tribunal during pendency of Arbitration proceeding also passed an order dated 31st July, 2008, rejecting the objections with respect to the authority of Mr. H.G. Advani. The said order was further not challenged by the petitioner. It was held in the said order if Mr. H.G. Advani can bind parties to other Clauses of the contract, he can also bind parties to the arbitration clause. It is not denied by the petitioner that the objection was not raised at the time of referring of the dispute to the dispute review board (DRB).

7.2 Clause 5.2(c) and clause 5.2(d) of the Instructions to Bidders, requires the Joint Venture to nominate one of the partners as being in-charge. The authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners. Mr. H.G. Advani, Director of the Som Dutt Builders was nominated as being Company in-charge who was authorised to incur liabilities and receive instructions for and on behalf of any and all partners of the Joint Venture. It is alleged by the respondent which is also denied by the petitioner that entire executions of the contract including payment

were to be done exclusively with the partner in charge. The impugned claim arises from nonpayment/denial of payment of entry tax. As per requirements of ITB all the joint venture partners have signed Power of Attorney. Therefore, the plea raised by the petitioner has no merit after the work had been executed and the authority of Mr. H.G. Advani has been accepted by the petitioner. It is also a matter of fact that in other two cases of Arbitral Awards of the same contract relating to claim of payment of reinforcement of drain and ground improvement, the petitioner accepted the authority of Mr. H.G. Advani and has already made payment of the decretal amount of the award.

7.3 Similar issue has been decided by this Court in the matter reported in Powergrid Corporation of India Vs. Siemens Ltd., 2013 (4) RAJ 469 (Delhi) had held in para 28, 29, 33 and finally at para 35 that "the mere fact that POA did not contain a clause specifically empowering Siemens to sue on behalf of the JV would not make a difference to the legal position as was explained in the Syndicate Bank, Bangalore Vs. I.K. Amitha and Others, . The Division Bench of the Karnataka High Court held that "one has to look at the manner in which the power is given to the agent by the principal and the purpose for which it is given in order to ascertain the extent of power". The above principal was reiterated in the subsequent decision in Doddarajappa Vs. Venkoba Rao, . The wording of the POA in the present case indicates that the power given was neither restricted nor qualified. Once the power to receive payments and "execute the contract for and on behalf of the JV" was given to the lead partner i.e. Siemens, those words must be held to be wide enough to include the power to bring forth an action on behalf of the JV to recover amounts due to the JV".

7.4 The judgment referred by the petitioner i.e. Apple Valley Resort Vs. H.P. State Electricity Board and Another, has no bearing in the facts and circumstances of the present case since it relates to power of Board of Directors of a company under the Companies Act, 1956. The respondent joint venture is neither a company incorporated under the Companies Act, 1956 nor a registered partnership firm, rather it is a separate entity where the rights and obligations of the parties to the JV are governed by the Joint venture agreement and not by the provisions of either Companies Act, 1956. Similarly, another decision in Nibro Ltd. Vs. National Insurance Co. Ltd., , does not help the case of the petitioner as the said case pertains to the provisions of Section 291 of the Companies Act, 1956. Thus the petitioner has accepted the authority of Mr. H.G. Advani for the purpose of settlement of dispute.

8. Quantification of the amount of Entry Tax

8.1 The bid was submitted on 17th -December, 2001, contract was awarded on 23rd February, 2002 and was signed on 27th March, 2002. Neither on the date of submission of bid (base date) nor on the date of signing of the contract the entry tax was applicable. The entry tax was imposed by Govt. of UP by amending UP Taxes on Entry of Goods Act, 2000 on 9th May, 2003 with effect from 16th May, 2003. Notification of Govt. of UP dated 9th May, 2003 is filed as Annexure RH-17.

In view of that the entry tax component had not been taken into account in the price bid and was not covered in price adjustment formula.

8.2 The Learned Arbitral Tribunal has recorded the fact in the award that the only construction material in the notification for payment of entry tax was the cement. It has come on record that OPC-43 grade cement required for the project was not being manufactured in UP and therefore the engineer had permitted the respondent JV to bring OPC from outside the State. The Joint venture was engaged in project II B and there was no other project of joint venture. It is held by Division Bench of this Court in Food Corporation of India Vs. Shanti Cereals (P) Ltd. , that "as has been constantly held by this Court as well as the Supreme Court, the Forum to raise factual pleas and contention in an arbitration matter is only the arbitral tribunal." It is against the proprietary of legal regime as well as the mandate of law set out in Section 34 of the Act that the Court in objection (and more so in appeal u/s 37) should entertain the arguments that are purely factual in nature. There is no gainsaying that the arbitral tribunal is the master of factual arena and has the right to even go wrong while deciding the factual issues. Unless there is something manifest from the face of the award that is so grave as to move the conscience of the Court that the error would result in a monumental miscarriage of justice.

8.3 As far as the quantification of the amount of Entry Tax quantified in the majority award did not find favour with the minority award, though; the minority award admits the admissibility of the entry tax. It was held by a Division Bench of the Bombay High Court in Chowgule Brothers and Others Vs. Rashtriya Chemicals and Fertilizers Ltd. and Others, that the majority award cannot be set aside on the basis of what is stated in the minority award. The respondents submits the correct position that the majority award upheld the entire claim amount in respect of the entry tax on the basis of actual payment made by JV against the Entry Tax and not on the approximation. The details are referred as under: -

i) The amount awarded was paid by the joint venture and was authenticated by a statutory auditor where report is filed as Annexure RH-10. The said position is also accepted in the minority award vide para 10 of the award as under:

"I have gone through each voucher and the abstract statement A and B. It is a fact that the payment has been made by the individual partner. But AT is satisfied on the certificate of auditor RH-10 and the oral explanation of the respondent that this payment has been made by the individual partners on behalf of J/V and account rendered to J/V. Therefore there is no force in the argument of the claimant that the payment through challans has not been made by the J/V."

ii) The excise exemption certificate for cement indicating the quantity in tonnages was issued by the petitioner for procurement of cement for this project duly signed by the Chairman NHAI and counter-signed by the Ministry of Road,

Transport and Highways. Such certificates were issued only after verification of cement consumed in the work before issuing the next certificate as mentioned in para 4.9 of the majority award. In para 4.9 of the majority award, it is observed that the resident engineer had been certifying that consumption of material are as per specifications at the time of each interim payment certificate.

The petitioner itself confirmed the correctness of quantity of cement consumed vide letter dated 18th May, 2009 without a single mistake, (the details of same is referred in para 4.9 of the majority award). In para 5.7 of the majority award also observed that the entire cement brought and consumed in this project was OPC cement and was brought from outside the State of UP.

iii) In para 5.7 of the majority award, it was observed that the respondent had only one project IIB going on in the State of UP for which the claim of Entry Tax had been raised. The theoretical figure of consumption of cement was worked out and given by the respondent based on the direction of the Tribunal and was meant only for the purpose of cross-checking and verifying the claim of the respondent, however, the amount was awarded by the Tribunal for Entry Tax as per actual payment made based on challans filed which was also authenticated by the statutory auditor. It is settled law that the admissibility, relevance, materiality and weightage of evidence is solely within the domain of the Tribunal u/s 19 of the Act.

It is not denied that the date of payment of entry tax and transportation is different due to the procedure adopted by the Entry Tax collecting department. The procedure is that each consignment of cement is noted at the check post at the border of the State and the payment is made later on monthly basis in the name of Trade Tax office through nationalized bank. In para

5.11 of the majority award it was noted that there is only one voucher where the payment was not made in the same assessment year to which the voucher belonged. However, the petitioner wrongly contended that the claim payment of entry tax was made on a much later date, i.e., after 2-3 years from the date when the cement was consumed. 9.4 However, in the minority award certain observations on the amount of claim were made. The minority in its Award has considered only paid challans of Rs. 33,04,805.00 and has not considered paid challans for an amount of Rs. 23,59,772.00 on a wrong conclusion that the project site is not mentioned in respect of paid challans listed at SI. No. 68 to 75 on page 70 of minority award for an amount of Rs. 11,22,182.00. In case of paid challans listed at S. No. 2, 4, 6, 8, 10, 12, 13, 15, 17, 19, 21, 25 to 33, 35 to 37, 39, 40, 42, 44, 46, 49 to 51, 53, 55, 58, 59, 61 to 63, 66, 67, 76, 77 and 78 on page 67 to 70 of minority award for an amount of Rs. 13,73,077.00 has not considered on a wrong conclusion that the word "material" has been mentioned instead of "cement. The factual position that in case of paid challans listed at s. No. 75 on page 70 of minority award project site of II-B is given in the challans and in case of challans listed at s. No. 68 to 74 on page 70 of minority award chakeri location is mentioned which was the II-B project site of the respondent

and in case of remaining paid challans listed at s. No. 2, 4, 6, 8, 10, 12, 13, 63, 66, 67, 76, 77 and 78 on page 67 to 70 of minority award the word "material" mentioned meant only "cement" because entry tax was levied only on cement by the State Govt. at that time and not any other material. The location mentioned Defence Colony, Jajmu was the site office of NEC another JV Partner which was near the site of work. On the face of the above factual position which the petitioner is fully aware, the minority has Wrongly not considered the amount of Rs. 23,59,772.00 in the minority award. In para 5.11 of the majority award, the notification dated 9th May, 2003 of the State Government of UP mentions the levy of Entry tax only on cement and not on any other construction material.

9. Even otherwise, as per settled law, this court while hearing the objection u/s 34 of the Act would not be required to sit in appeal over the award of an Arbitral Tribunal by re-assessing or re-appreciating the evidence, vide P.R. Shah, Shares and Stock Broker (P) Ltd. Vs. B.H.H. Securities (P) Ltd. and Others, . The challenge to the award on facts is not a ground u/s 34(2) of the Act.

10. Admissibility of interest under Clause 60.8 of the Contract:

Once the amount claimed has been held admissible by the arbitrators, and there is no prohibition in the agreement, the interest becomes payable statutorily u/s 31(7) of the Act. In this case, as per Clause 60.8 of the contract and the appendix to bid, the interest is payable at the rate of 12% compounded monthly and on this issue there is a unanimity both in majority and minority award that the respondent JV is entitled to an interest of 12%. Reference may also be made to National Highways Authority of India Vs. ITD Cementation India Ltd., of this Court and Sree Kamatchi Amman Constructions Vs. The Divisional Railway Manager (Works), Palghat and Others, .

11. The scope of Section 34 of the Act has summarized that once the arbitrator after considering the rival contentions of the parties and the documents filed and evidence adduced has come to a finding of facts, the view/interpretation of contract or documents or evidence shall be final and binding even if erroneous but a plausible view. While exercising jurisdiction u/s 34 of the Act, the Court is not to substitute its opinion with that of the arbitrator and if two views are possible on a question of law the Courts would not be justified in interfering with the award of the arbitrator of the view taken is a possible view. Re-appraisal of evidence or reinterpretation of clauses of the agreement by the Court is not permissible. In the result and in view of the above objection petition filed by the petitioner u/s 34 of the Act have no merit. The same is rejected. No costs.