

(1998) 03 CAL CK 0021

In the Calcutta High Court

Case No : Ordinary Original Civil Jurisdiction A.P. No. 15 of 1997

Steel Authority of India Ltd.

APPELLANT

Vs

Macmet India Ltd.

RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:

Arbitration Act, 1940 — Section 14(2), 30, 33
Contract Act, 1872 — Section 4, 5

Citation : (1998) 2 CALLT 264

Hon'ble Judges : Shyamal Kumar Sen, J

Bench : Single Bench

Judgement

The Court

1. This is an application u/s 30 and section 33 of the Arbitration Act, 1940 by Steel Authority of India Ltd, (SAIL) against the respondent Macmet India Ltd for setting aside the award passed on October 8, 1996. The award is a speaking award.
2. In the instant application it has been urged, firstly, the award should not have been filed in this court since this court has no territorial Jurisdiction to entertain the award and the application in the award case, and secondly, the learned Arbitrator exceeded his jurisdiction and thirdly the error of law is apparent on the face of the award.
3. For the purpose of ascertaining the question of Jurisdiction it is necessary to consider the facts in short which are set out hereinafter:-
4. By a notice dated January 12, 1987, the petitioner invited tenders for design, engineering, manufacturing and supplying of equipments/ materials of the "Cold/ Hot Scarifying Machine" for stabbing mills, to be installed at Bokaro Steel Plant, a unit and/or undertaking of the petitioner herein.
5. After a protracted negotiations, had by and between the parties herein, the

tender of the respondent was accepted by issuing three separate and distinct work orders, namely, the work order No. 159, work order No. 160 and work order No. 161 respectively all dated February 17, 1989. The said orders were issued after holding discussion and following the telex message dated 1st February 1989 addressed by the petitioner to the respondent No. 1 in modification of the telex order dated December 10, 1989, copies whereof have been collectively annexed to the petition and marked as "C".

6. The works to be executed, under the aforesaid three several work orders, were, as follows:

a) The work order No. 159 dated February 17, 1989 was for design engineering, manufacture and supply of equipments/materials of cold/hot scarifying machine for slabbing mills as per tender enquiry No. 268;

b) The work order No. 160 dated February 17, 1989, relates to civil engineering works including dismantle of the existing formation for cold/hot scarifying machine for slabbing mills, as per tender enquiry No. 268; and

c) The work order No. 161 dated February 17, 1989 relates to erection, testing and commissioning including dismantle of cold/hot scarifying machine for slabbing mills of Dokaro Steel Plant as per tender enquiry . No. 268.

7. In terms of the work order No. 159, the completion period was 20 months to be computed with effect from February 1, 1989 upto the period September 30, 1990. The other two work Order bearing Nos. 160 and 161 were for a period of 27 months to be computed from February 1, 1989.

8. The work order No. 159 relates to the supply of imported equipment only; whereas, in respect of other two contracts, there was no question of any importation of any equipment as, indeed, is evident from the scope of the said two several work orders.

9. In view, of the import components of the equipments, to be supplied, in respect of work order No. 159, the following clauses and/or stipulations appear therein-

Clause-4

Taxes & Duties on imported supplies and services

A. The contract prices are inclusive of import duty for the imported supplies @85% on CIF value. Verification in the rate of import duty and imposition of any other duty such as additional duty, auxiliary duties, ad-valorem duty and any surcharge etc. on imported supplies as per contract during the contract period will be BSL's account on production of documentary evidence. The contractor will pass on the ownership of the imported equipment to SAIL, BSL on high seas to avoid any incidence of sales tax on imported supplies. However, in case sales tax is still levied the same will be BSL's account. After receipt of the shipping documents, BSL will endorse the documents to the contractor for port clearance,

custom clearance and subsequent transportation of equipments to site etc.

B. The contractor will arrange for supervision of erection, testing and commissioning of cold/hot Scarfing Machine by I-Tec Engineer (USA) without any additional cost to BSL.

Clause-6

Exchange Rate and Variations:

The contract prices for imported supplies are based on the exchange rate of one U.S. Dollar = indian Rupees 13.13. The variations if any, in the exchange rate during the contract period will be to BSL's account.

Clause-7

Price Variation:

A. The contract prices for imported supplies and services are firm and not subject to any variation during the contract period except for adjustment due to variation in the incidence of duties and variations in foreign exchange rate as indicated.

B. The contract price for Design and Engineering is firm and will not be subject to any escalation.

C. The contract prices for indigenous supplies are subject to escalation as per the price variation clause mentioned in annexure-II. The escalation will be limited to the contract period only. The base date for the purpose of price variation will be taken as 16.12.87 (i.e. the date of opening of the price bid). However, the price variation will be subject to a debiting of 30% of the base contract price of Rs. 5,73,78.416/-only.

Clause-II Completion Period:

The completion period for supply/delivery of all the equipment/materials/(for site) will be 20 months w.e.f. 1.2.89 upto 30.9.90. The detailed schedule will be submitted by the contractor which will be mutually discussed and finalised.

10. Since no importation was involved in the other two work orders, no such corresponding clause or stipulation was incorporated in the said work order Nos. 161 and 162, respectively.

11. It is the contention of the petitioner that the work order No. 159 dated 17.2.89 deals with the supply and services of imported items which Inter alia, stipulates for the transfer of ownership on the high-seas etc. basis of the imported items. From the stipulation contained in the said agreement, it would appear that the contract price was inclusive of the import duty for imported supplies @ 85% on C1F value. Variation in the rate of import duty and imposition of any other duty, such as, additional duty, auxiliary duty etc. on imported supplies as per contract period would be on account of the petitioner's production of the documentary evidence. The respondent passed on the

ownership of the imported equipment to the petitioner on the high-seas to avoid any incidence of sales tax on the imported supplies.

12. It is the contention of the petitioner that the exchange rate variation clause would not apply at all for the release of 5% after preliminary acceptance and 5% after final acceptance, that is. 10% amount which, in fact was retained as deposit for due performance of the entire plant-both imported and indigenous supplies-until such time, complete plant was erected as tested and commissioned whereupon the preliminary acceptance test (referred to PAT) and, ultimately the final acceptance test certificates (referred to FAT) were to be issued.

13. It has also been alleged on behalf of the petitioner that the claim of the respondent arose on account of the foreign exchange variation beyond the date of actual supply, and the claim was, and is, out side the purview of the contract and the claim of exchange rate variation should not have been entertained or accepted after the actual date of supply.

14. In the premises, disputes and differences arose by and between the petitioner and the respondent and the respondent raised the dispute by addressing a letter dated July 10, 1995. Ultimately on or about 29.9.95 the respondent filed its claim before the Arbitrations inter alia claiming as under:--

- a) Award for Rs. 24,81,031.72 as enumerated in para 29;
- b) interest as claimed by the claimant/respondent enumerated in para 35 to the petition:
- c) Further interest till realisation:
- d) Costs; and
- e) Further and other reliefs.

15. The petitioner filed its counter statement of claim for rejection of claim on various grounds mentioned. The respondent filed its reply to the said counter statement of claim. On or about December 21, 1995 the respondent-claimant filed an application before the learned Arbitrator, inter alia, seeking amendment of their "claim" inter alia, enhancing the claim amount to the tune of Rs. 37,53,230.40 from Rs. 24,81,031.72.

16. On or about January 16, 1996 the petitioner filed their "Rejoinder" inter alia, praying for rejection of the "amendment* petition enhancing the claim for additional amount, as aforesaid, and also preferred a "counter claim* for damages on account of and/or due to "delay" in and/or prolonging execution of the contract amounting to Rs. 75,01,382.00 suffered due to production losses by way of liquidated damage.

17. Thereafter, the respondent filed "Reply" to the "Rejoinder" of the petitioner and ultimately, on or about March 7, 1996 the petitioner filed "Counter Reply" to the "Reply" filed by the respondent.

18. In terms of the arbitration clause, as embodied in the aforesaid agreement, the petitioner appointed one, Shambhu Kumar, Advocate, and the respondent appointed one, Abhijit Mitra, Advocate, both of them by their letters respectively dated September 9, 1995 and September 4, 1995 appointed Sri P. Jagannathan Reddy, J. as he then was, as an Umpire.

19. However, the aforesaid Arbitrators, during the deliberation of the aforesaid arbitration, disagreed on the award, to be passed, and, by reason thereof, referred the matter to Mr. Jagannathan Reddy, J. as he then was, by their letters respectively dated May 22, 1996 and June 7, 1996 along with their respective draft awards. Accordingly, by addressing a letter dated June 8, 1996 the said Mr. Jagannathan Reddy addressed letters to both the parties. Inter alia declaring assumption of Jurisdiction, as an Umpire, and fixed June 29, 1996 for hearing.

20. After hearing the parties the said Umpire was pleased to deliver his award on or about October 18, 1996 being annexure "A" to the petition.

21. The said award has been challenged in this proceeding on the ground that there is error of law apparent on the face of the award. The learned Umpire erroneously, according to the petitioner, construed the provisions of the agreement and/or contract in as much as the payment clause incorporated in annexure III, the first agreement is altogether different from "exchange rate" and/or price variation clause being clause 6 and 7 of the said first agreement of the work order.

22. With regard to the first objection on the question of jurisdiction of this court to entertain the award. It has been submitted by Mr. Shri B. J. Sen, learned advocate for the petitioner that in the context of discussions and respondent's earlier letters respectively dated November 16 and 24, 1988 and the petitioner's telex order dated December 19, 1988 the respondent submitted their "Revised Offer". While issuing the same the respondent stated that the said revised offer should be read along with the letter dated December 16, 1987 and that all other terms and conditions mentioned therein as well as letters dated November 16 and 24, 1988 would remain unaltered and their price/offer (1) for imported portion was Rs. 7,42,40,534/- considering the exchange rate prevailing at the time of offer, that was 1 Dollar = 13.13, (ii) for indigenous portion was Rs. 7,57,87,106/- and (iii) for Electrostatic Precipitator was Rs. 16,77,67,500/-.

23. On February 1, 1989 the petitioner addressed a telex message from Bokaro Steel City to the respondent's Calcutta office, inter alia stating that the order should include "cold Hot Scarifying Machine" instead of "Hot Scarifying Machine" at an additional price of Rs. 56.80.090/- and the revised contract price would be (I) Rs. 14,16,18,640/- for design engineering, manufacture and supply of all equipments/materials F.O.R Site for "Cold/ Hot Scarafing Machine; (ii) Rs. 40,96,000/- for civil engineering works and (iii) Rs. 43,13,000/- for erection testing and commissioning including supervision by foreign experts. The total completion period would be 27 months from the date of issue of telex.

24. On 2nd February, 1989 by yet another telex message from Bokaro. the aforesaid telex order was modified to include "Cold/Hot Scarifying Machine" instead of "Hot Scarifying Machine" at an additional price of Rs. 56,80,090/- and it was clarified that all other terms and conditions would remain unaltered. The respondent was further informed that detailed work order would follow shortly.

25. On February 17, 1989 the work order bearing No. 159 was issued from Bokaro Steel City for design, engineering, manufacturing and supplying of equipments/materials of "Cold/Hot Scarifying machine" for slabbing mills as per tender Enquiry No. 268, to be completed within 20 months and time to be computed with effect from February 1, 1989 upto September 30, 1990. Inter alia, stipulating at page 116 of the petition as under:

"You are requested to communicate your acceptance in writing immediately and depute your authorised representative along with a non-judicial Adhesive Stamp Paper of Rs. 5/- from the State of Bihar for signing the agreement"

26. On 28th February, 1990 the respondent, by a letter informed the petitioner that all the aforesaid work orders were acceptable to them and requested the petitioner to prepare the necessary agreements for formal execution thereof. The aforesaid letter was hand-delivered and made over to the petitioner by the respondent's representative, A.S.N. Shastri, at the petitioner's office at Bokaro Steel City, evincing its acceptability to the aforesaid three work orders to Sri Suresh Prasad. the erstwhile Superintending Engineer (Machantcal-Tender Claims) Department, Bokaro Steel City.

On December 18, 1996 the notice u/s 14(2) of the Arbitration Act, 1940 was despatched by this court to the petitioner's office at Bokaro Steel City, Bihar.

27. On December 20, 1996 the petitioner received a notice issued by this court u/s 14(2). The said notice was received by the petitioner's Chief Law Officer, Mithilesh Narayan at Bokaro Steel City, Bihar and in the usual course, has had denoted a reference bearing No. CLA(R)-2636. The words "CLA" connotes the "Chief Legal Advisor" and "R" represents "receipt" thereof and No. 2636 is the serial No. of the incoming register.

28. On the basis of the aforesaid facts as mentioned herein before it has been submitted on behalf of the petitioner inter alia as following:

- i) All the contracts were entered into at Bokaro and the three formal agreements were entered into at Bokaro.
- ii) All the three agreements were executed in Bihar by setting up the "Plant" at Bokaro".
- iii) The venue of Arbitration to be in Bokaro, Bihar.
- iv) Sitzings of the arbitrators held in Bihar, two sittings in Ballygunge Circular Road, outside the High Court's Jurisdiction and Umpire held sitting in Hyderabad.

v) No part of the "reference" or cause of action arose within the jurisdiction of Calcutta.

vi) Notice u/s 14(2) of the Arbitration Act was served at Bokaro.

29. It has further been submitted that for the purpose of ascertaining the court's territorial Jurisdiction to entertain the application, under sections 30 and 33 of the Arbitration Act two factual enquires are required and are relevant namely:--

a) the place where the contract was entered into and executed:

b) the place of execution of works under the contract

30. It has been contended in behalf of the petitioner that on 13.1.89 the respondent gave its revised offer after the discussion held with SAIL and on 1.2.89 and 2.2.89 SAIL suggested amendment of the order from "Hot Scarifying Machine to Cold/Hot Scarifying Machine" at an additional cost of Rs. 56,80,000/- by addressing telex message from Bokaro to Calcutta. It has been further submitted that if the parties were ad-Idem on 1-2.89 or 2.2.89 then the contract was entered into at Bokaro. Since the message was communicated by telex from Bokaro, and by legal fiction, it is to be assumed that parties were present across the table and/or accepted the same instantaneously. In this connection judgment and decision in the case of *Weatherhill v Pearce* reported in (1995) 2 All ER 93 at 495-496 has been relied upon.

31. It has also been submitted on behalf of the petitioner that the works order were posted under registered post and forwarded to respondent from Bokaro to Calcutta on 17.2.89. Accordingly it has been submitted that in so far-as the acceptor is concerned once the letter is put into the box for onward transmission and the letter is out of the acceptor's power, the acceptance is complete. According to the petitioner, the contract was concluded in Bokaro. It has been submitted that the allegation to the effect that the petitioner placed 3 work orders of respondent's office at Camac Street smacks of absurdity. The said allegation is patently false and should not be accepted.

32. The learned advocate for the petitioner has referred to the letter dated 17.2.89 and has submitted that in view of long negotiations and suggestions of offer and counter offer communication of acceptance in writing was necessary. However, respondent proceeded on the basis of the work order dated 17.2.90. According to him that contract was entered into at Bokaro since the letter was despatched under registered post at Bokaro.

33. Accordingly it has been submitted on behalf of the petitioner that communication of acceptance was made by letter dated 28.2.90 upon delivery by Mr. Shastri, the authorised person accepting the contract on behalf of the respondent to Suresh Prasad of SAIL at Bokaro.

34. In the premises, it has been submitted on behalf of the petitioner that the communication of acceptance was complete at Bokaro when the letter was out of

the power of the acceptor. It has further been submitted that it was out of respondent's power when Sastri made over to Suresh Prasad at Bokaro. As held by the Supreme Court in *Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and Others*, that the contract becomes complete as soon as the acceptance is made by the acceptor and intimated to the offerer.

35. It has been argued by Mr. Sen learned advocate for the petitioner referring sections 4 and 5 that the sections 4 and 5 of the Contract Act contemplated communication by "Post". However, there are other modes of communication such as telephone, telex etc. It has been argued in the instant case that communication was complete when Sastri delivered the letter to Suresh Prasad at Bokaro since it was at that time when the letter of acceptance was out of power of Sastri, representing respondent in this connection, he has relied upon the Judgment and decision in the case of *Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and Others*, Relying upon the said decision Mr. Sen has submitted that in the instant case the acceptance was communicated by Sastri the accredited representative of the respondent by delivering in hand to Suresh Prasad of SAIL at Bokaro Steel City Bokaro outside the jurisdiction.

36. It has further been submitted on behalf of the petitioner that there is no dispute with regard to the fact that the place of cause of action of 3 several work orders was at Bokaro Steel City. Bokaro where the "Hot/ Cold Scarifying Machine" was erected, commissioned and set up. It has accordingly been submitted since the place of formation of contract and place of execution of contract are in Bokaro Steel City, the appropriate civil Court in Bokaro has exclusive Jurisdiction to entertain the application. In support of his contention he has relied upon the Judgment and decision in the case of *A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem*,

37. He has also relied upon the judgment and decision in the case of *Indian Oxygen Ltd, v. National Oxygen Ltd.* reported in (1990) 1 Cal LJ 241.

38. On the question of Jurisdiction Mr. Sen has further relied upon the Judgment and decision in the case of *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710 It has been held in the said decision that the place where the contract was entered into and/or executed and the place where the work was to be performed and/or executed are the places where the cause of action arises. Further, it has been argued by Mr. Sen that in the light of the decision delivered in the case of *A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem*, the said place i.e. the place of execution and place of performance, will have jurisdiction, and none else. The meaning of the word "none-else" in the context is exclusive. Under the circumstances, the civil court in Bihar has exclusive jurisdiction, according to Mr. Sen, learned advocate for the petitioner.

39. The contention of the respondent, however is that this court has jurisdiction in view of the following:--

- i) Three work orders were placed by the petitioner on respondent at the later's office at Camac Street;
- ii) all the aforesaid three orders were accepted by the respondent at Camac Street;
- iii) the supply of indigenous materials, in terms of the contract/work order, was effect from Calcutta; and
- iv) some of the payments were made to the respondent in Camac Street.

40. Mr. Chakraborty learned advocate for the respondent has further submitted that even an infinitesimal part of the cause of action arising within jurisdiction is sufficient to confer jurisdiction. In support of his contention he has relied upon the Judgment and decision in the case of Ujjal Talukdar Vs. Netai Chand Koley, . The respondent specifically made out a case that payments were made at Calcutta and that indigenous materials were to be supplied from Calcutta. There is also no averment in the petition that payment has been made at any place other than Calcutta. There is also no averment that the respondent has any office other than at Camac Street or Park Street, both within the jurisdiction aforesaid. On the principles of the debtor seeking the creditor, payment was thus impliedly required to be made to the respondent within jurisdiction.

41. It has been argued on behalf of the respondent that the respondent has also produced several documents which show payment by the petitioner to the respondent at Calcutta and the intimation from United Bank of India, Old Court House Street, Calcutta acknowledging that payment had been credited to the respondents account in Calcutta. Thus payments were admittedly made by the petitioner to the respondent within Jurisdiction. In support of his contention he has relied upon the Judgment and decision in the case of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, and has submitted that a part of the cause of action arises where money is expressly or impliedly payable under a contract.

42. Relying upon the aforesaid decisions it has been argued by Mr. Chakraborty that in a suit for damages for breach of contract, the making of the contract is part of the cause of action and a suit on a contract therefore can be filed at the place where it was made. Further since acceptance of an offer results in a contract, hence a suit can be filed where the acceptance was communicated. Reliance is also placed on section 4 of the Contract Act.

43. It has accordingly been submitted on behalf of the respondent that the award has been correctly and properly filed in this court.

44. The contention of the respondent cannot be so lightly brushed aside.

45. I have considered the respective submissions on the question of jurisdiction which appears to me that the decisions cited on behalf of the petitioner does not assist the petitioner in any way. In all the aforesaid decisions, no part of the

cause of action arose within the Jurisdiction of the court. In the instant case, however, apart from other question payments were admittedly made to the respondent at its office within Jurisdiction.

46. It is well settled that a part of the cause of action arises where money is expressly or impliedly payable under a contract at Calcutta, this court admittedly has jurisdiction in the matter.

47. Judgment and decision in the case of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, relied upon by learned advocate for the respondent may be taken note of. In the aforesaid decision it was held that part of the cause of action arose where money is expressly or impliedly payable under a contract.

48. There is nothing on record to show that the respondent has any office other than at Camac Street or Park Street, both within the Jurisdiction of this court. Applying the principle of debtor seeking the creditor, payment was thus impliedly required to be made to the respondent within the Jurisdiction of this court. The fact that certain documents produced by the respondent which show payment by the petitioner to the respondent at Calcutta and the intimation from United Bank of India, Old Court House Street, Calcutta acknowledging that payment had been credited to the respondent's account in Calcutta. Thus payments were admittedly made by the petitioner to the respondent within Jurisdiction- in the aforesaid decision it was also held *inter alia* as follows:--

The jurisdiction of the court in matter of a contract will depend on the situs of the contract and the cause of action arising through connecting factors. In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a court within whose Jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where it was performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving Jurisdiction to the court where the suit is filed and that contract is found to be

invalid, such part of cause of the action disappears."

49. It may be noted that by letter dated 28.2.90 the respondent intimated their acceptance of the work orders from the office within Jurisdiction of this court. Even assuming the same was sent by post, the same was put into transmission from the office of the respondent within Jurisdiction and the acceptance of complete so far as the respondent is concerned at Calcutta within the Jurisdiction of this court.

50. Judgment and decision in the case of Ujjal Talukdar Vs. Netai Chand Koley, may be taken note of. In the aforesaid decision it was held by this court that even an infinitesimal part of the cause of action arising within jurisdiction is sufficient to confer jurisdiction.

51. In view of the aforesaid position in the matter. In my view, there cannot be any doubt that this court has Jurisdiction in the matter and the decisions cited by learned Advocate for the petitioner cannot have any application to the facts and circumstances of the instant case. With regard to the merit of the award, relevant clauses in the contract being clause 16 and clause 11 of the contract require serious consideration.

52. The contract between the parties was inter alia for design, engineering supply and commissioning of machinery and the same included supply of imported components. Under clause 6 of the contract "the contract price for imported supplies are based on the exchange rate of \$1 = Indian Rs. 13.13. The variation, if any, in the exchange rate during the contract period will be BSL's Account."

53. The said contract also provided that after payment of 90% of the price, 5% would be paid on Preliminary Acceptance Test (PAT) and 5% on Final Acceptance Test (FAT).

54. It is not in dispute that variation in foreign exchange rates during the contractual period were to be borne by SAIL. In fact, exchange variation was borne by the petitioner in respect of payment of 90% of the price of imported machinery. The dispute is with regard to the amounts payable on PAT and on FAT. PAT and FAT were given on March 31, 1992 and October 8, 1993. It was alleged by the petitioner on an interpretation of clause 11 (which provides that "the completion period of the supply-delivery of all equipment/material will be 20 months with effect from Feb 1, 1989 i.e. upto September 30, 1990"), that the contract period had expired on September 30, 1990 and as such no exchange fluctuation was to be borne by it thereafter.

55. It was the respondent's case in arbitration that the contractual period did not end on September 30, 1990 as the period of the contract was extended upto October 8, 1993, by the petitioner without levying liquidated damages. PAT and FAT were given on March 31, 1992 and October 8, 1993-both within the contractual period. In any event the contract period (referred to in clause 6):was

separate and distinct from the completion period for delivery of equipment (referred to in clause 11) and the contract period necessarily continued till grant of PAT and payment of the remaining 5% payable on FAT under the contract.

56. In the instant case, PAT & FAT were respectively given on 31.3.92 and 8.10.93 within the contract period and accordingly the claimant has claimed the variation due to foreign exchange fluctuation on the 5% payable on PAT and 5% payable on FAT.

57. The Umpire however upheld the contentions of the respondent by holding that the petitioner was to pay the amount of 5% on PAT and 5% on FAT at the exchange rate of 21.570 per dollar and Rs. 30.80 per dollar respectively. The Umpire has however disallowed the respondent's claim at a higher rate in respect of the amount payable on PAT by granting at the rate prevailing on the date when payment was made by the respondent to the foreign supplier. The learned Umpire has also rejected the petitioner's claim for liquidated damages.

58. It appears on consideration of the award which is a speaking award that the Umpire has considered the pleadings document? and arguments of the respective parties in detail and rejected the petitioner's. Interpretation, to clause 6. It is well settled that the court in exercising powers u/s 30 of the Arbitration Act cannot re-appreciate the material on record for the purpose of recording a finding whether in the facts and circumstances of a particular case, the award could have been made, as has been held in the case of The Hindustan Construction Co. Ltd. Vs. Governor of Orissa and others, which has been followed in the recent Judgment of the Supreme Court in the case of B.V. Radha Krishna Vs. Sponge Iron India Ltd., .

59. Judgment and decision in the case of B.V. Radha Krishna Vs. Sponge Iron India Ltd., relied upon by the learned advocate for the respondent may be taken note of. In the aforesaid decision the question that arose for consideration before the Supreme Court was whether the High Court was justified in interfering with the award by reducing the amount for the work done as well as allowing the interest only from the date of notice demanding the amount. As a bill of a contractor was not settled the appellant moved the City Civil Court, Hyderabad u/s 20 of the Arbitration Act for appointment of a Sole Arbitrator to adjudicate upon the dispute between the parties and a retired Judge of the Andhra Pradesh High Court was appointed Arbitrator, The learned Arbitrator by the award dated 1.8.1986 after giving opportunity to both the parties, determined the amount of Rs. 5,29,864.55 as payable by the respondent company to the appellant in addition to that the Arbitrator also awarded interest at the rate of 18% per annum on the said amount from 1.4.1993 till the date of award being made the rule of court.

60. In the aforesaid case, the appellant moved the City Civil Court, Hyderabad by filing O.S. No. 1027 of 1986 for making the award of the Arbitrator as rule of the court and also prayed for the grant of interest at the rate of 21% per annum

from the date of decree till the date of realisation of the amount. The respondent company on the other hand, filed O.P. No. 349/86, challenging the award. The learned Judge, City Civil Court by a common Judgment dated 30.8.1988 decreed the suit filed by the appellant for making the award as rule of the court by awarding 20% interest from the date of decree till the date of realisation of the amount and dismissed the award.

61. Aggrieved by the common judgment and order of the City Civil Court, the respondent company moved the High Court in C.M.A. No. 1277/88 and C.R.P. No. 3695/88 against O.P. No. 349/86 and O.S. No. 1027/86 respectively,

62. The Division Bench of the High Court, by a common Judgment dated 29.9.1995, partly allowed the appeal as well as the Revision Petition by reducing the amount from Rs. 5,29,864.55 to Rs. 1,72,347/- and interest at 18% from 14.6.1984, instead of from 1.4.1983. The appellant is aggrieved by the said judgment of the High Court.

63. The Arbitrator took into consideration the interpretation in the relevant clause in the arbitration agreement and in particular the expression "one kilometer lead". The Arbitrator after taking oral evidence of both the parties and also the documentary evidence placed before him to come to the conclusion that the version of the respondent company "one kilometer lead" means "one kilometer by one side" is not correct by way of understanding it.

64. The High Court however as it appears sitting in appeal upset the view of the Arbitrator which is not permissible. The Supreme Court in this context took into consideration the power of Jurisdiction of the court u/s 30 of the Arbitration Act while making an application for setting aside the award and setting aside the finding of the High Court and held that the High Court exceeded its Jurisdiction u/s 30 of the Arbitration Act by dealing with the issue as an appellate court. The Supreme Court considering several decisions held that the disposal of the matter by the High Court in the matter does not come within the ambit of section 30 of the Arbitration Act, The Supreme Court, further observed that the High Court has substituted its own view in case of Arbitrator's view dealing with an appeal which is forbidden by several decisions of the Supreme Court and the order of the High Court was set aside.

65. In State of Rajasthan Vs. Puri Construction Co. Ltd. and Another, the Supreme Court after referring two decisions of Supreme Court as well as English cases held and observed as follows:--

"On the scope and ambit of the power of interference by the court with an award made by an Arbitrator in a valid reference to arbitration, various decisions have been made from time to time by Law Courts of India including this court and also by the Privy Council and the English Courts. Both the parties have referred to such decisions in support of their respective contentions. The factual contentions of the respective parties are proposed to be tested within the conspectus of Judicial decisions governing the issues involved."

66. The Supreme Court again observed in paras 26-28 of SCC as under:

"The Arbitrator is the final arbiter for the disputes between the parties and it is not open to challenge the award on the ground that the Arbitrator has drawn his own conclusion or has failed to appreciate the facts. In *Sudarsan Trading Co. Vs. Government of Kerala and Another*, . It has been held by this court that there is a distinction between disputes as to the Jurisdiction should be exercised. There may be a conflict as to the power of the Arbitrator to grant a particular remedy. One has to determine the distinction between an error within the Jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law of fact to come to the conclusion that the Arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the Arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond Jurisdiction. If on a view taken of a contract, the decision of the Arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the Arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be, conceded the power of appraisal of evidence. The Arbitrator is the sole Judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a Judge on the evidence before the Arbitrator.

In *Municipal Corporation of Delhi Vs. Jagan Nath Ashok Kumar and Another*, it has been held by this court that appraisal of evidence by the Arbitrator is ordinarily never a matter which the court questions and considers. It may be possible that on the same evidence the court may arrive at a different conclusion than the one arrived at by the Arbitrator but that by itself is no ground for setting aside the award. It has also been held in the said decision that it is difficult to give an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasies of the individual and the time and circumstances in which he thinks. In cases not covered by authority the verdict of jury or the decision of a judge sitting as a Jury usually determines what is "reasonable" in each particular case. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows or ought to know. An Arbitrator acting as a Judge has to exercise a discretion informed by tradition methodised by analogy, disciplined by system and subordinated to the primordial necessity of order in the social life. Therefore, where reasons germane and relevant for the Arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable.

In this case, claims before the Arbitrators arise from the contract between the parties. It is well settled that if a question of law is referred to Arbitrator and the

Arbitrator comes to a conclusion, it is not open to challenge the award on the ground that an alternative view of law is possible. In this connection, reference may be made to the decisions of this court in Vaikuntam Chandrappa and Others Vs. State of Andhra Pradesh, and Kapoor Nilokheri Co-op. Dairy Farm Society Ltd. Vs. Union of India (UOI) and Others, . In Indian Oil Corporation Ltd. Vs. Indian Carbon Ltd., this court has held that the court does not sit in appeal over the award and review the reasons. The court can set aside the award only if it is apparent from the award that "there is no evidence to support the conclusions or if the award is based upon any legal proposition which is erroneous."

67. In The Hindustan Construction Co. Ltd. Vs. Governor of Orissa and others, it has been held by the Supreme Court as follows:

"It is well known that the court while considering the question whether the award should be set aside, does not examine the question as an appellate court. While exercising the said power, the court cannot re appreciate all the materials on the record for the purpose of recording a finding whether in the facts and circumstances of a particular case the award in question could have been made. Such award can be set aside on any of the grounds specified in section 30 of the Act."

68. Considering principles laid down in the aforesaid decision. I am of the view that in the instant case reasons germane and relevant for the Arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable.

69. Accordingly, in my view, the award passed by the learned Umpire does not call for any interference and the application falls and is dismissed.

There will be no order as to costs.

70. Application dismissed