
(2010) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : C.M.A. No's. 2366, 2367, 2368, 2369 and 2734 of 2000 and 240, 455 and 3239 of 2001

Tarapore and Company

APPELLANT

Vs

Hindustan Steel Works Construction Ltd.

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Arbitration Act, 1940 — Section 16(1), 30, 33
Contract Act, 1872 — Section 17(2), 23

Citation : (2010) 04 AP CK 0007

Hon'ble Judges : G.V. Seethapathy, J;A. Gopal Reddy, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, for the Appellant; N. Subba Reddy, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—C.M.A. Nos. 2366 & 2369 of 2000 by the Tarapore & Company (hereinafter called as "Contractor") and C.M.A. Nos. 240 of 2001 & 2734 of 2000 by the Hindustan Steel Works Construction Limited (hereinafter called as "Employer") are directed against the common order dated 17-01-2000 made in O.P. Nos. 69 and 72 respectively; whereas C.M.A. Nos. 2367 & 2368 of 2000 by the Contractor and C.M.A. Nos. 455 & 3239 of 2001 by the Employer are directed against the common order in O.P. Nos. 70 and 71 of 1999 respectively.

2. As all the appeals have common features and raise common issues and law for consideration, they are heard together and disposed of by this common judgment.

3. Brief facts, which give rise to filing the present appeals, are as under:

The Employer, who is the principal contractor for construction of Visakhapatnam Steel Plant, invited tenders for construction of civil works in blast furnace zone of Visakhapatnam Steel Plant for Group I, II and III on 29-06-1983 for the balance

work abandoned by the earlier contractor. The Contractor submitted his tender excluding the cost of cement and steel to be issued by the Employer after negotiations between the parties. As the Contractor was successful bidder, letter of intent was issued on 16-03-1984 followed by Contract Agreement CA No. HSCL/VSP/Ast/05/02/01/22 was executed on 25-10-1984 stipulating time is the essence of the contract and the entire work has to be completed within 20 months from the date of issue of letter of intent i.e. by 15-11-1985. The Contractor though earlier commenced the work on 16-03-1984, could not complete in time and sought for extension of time upto 30-03-1987 by letter dated 25-03-1986 complaining that work could not be completed due to the various defaults committed by the Employer. As the Contractor could execute 4.5 crores of work as against 20 crores during 16-03-1984 to 15-12-1985 (within agreed 20 months), the Employer granted extension upto 31-03-1987 by letter dated 26-02-1987 with certain conditions. As the work could not be completed even 31-03-1987, the Contractor sought for further extension of time, complaining the Employer violated terms of letter of intent and agreed conditions, namely, non-issue of drawings non-supply of construction material the Contractor raised a claim on 21-04-1986. On Employer rejecting the same by letter dated 07-06-1986, the Contractor invoked arbitration clause on 28-08-1986 and gave notice appointing Sri K.C. Goyal as arbitrator and calling upon the Employer to inform their nominee within the period. The Employer by its letter dated 18-09-1986 appointed Sri Kartik Prasad before whom claim petition was filed on 20-06-1987 in two parts; Part-I for legality of the grant of extension of time for completion of the contract till 31-03-1987, Part-II for justification of the claims raised under claimant's letter dated 21-04-1986. Meanwhile, the Employer granted extension upto 31-03-1987 by its letter dated 26-02-1987 incorporating certain conditions. As the work could not be completed within the extended time, the Contractor sought for further extension of time, the second extension was granted upto 30-09-1988 subject to certain conditions. As the work could not be completed within the extended period i.e. 30-09-1988, the contract was rescinded on 19-10-1988 and after rescission of the contract, the Employer filed counter to the claim statement on 08-02-1989 (hereinafter called first reference). After rescission of the contract the Contractor raised a dispute for the second period in which the same arbitrators, viz., K.C. Goyal and Kartik Prasad were appointed to resolve the dispute; the High Court in A.A.O. No. 1670 of 1989 dated 27-12-1989 confirmed the order passed by the Subordinate Judge in O.P. No. 362 of 1989 dated 09-11-1989 referring the matter to the arbitrators (hereinafter called second reference). The arbitrators by separate awards dated 26-09-1996, 28-09-1996 respectively awarded the following amounts, some of which are confirmed and some of which are set aside by the lower court as per the table shown below.

-----				Sl.
No.	Claim	Arbitrator awarded	Court confirmed/set aside in O.P. Nos.	69 & 72/1999

Claim	No.	1	73,800	Confirmed	1.
Claim	No.	2	96,480	Confirmed	2.
Claim	No.	3	19,400	Confirmed	3.
Claim	No.	4	17,30,968	Modified	4.
Claim	No.	5	10,69,510	Confirmed	5.
Claim	No.	6		Nil	6.
Claim	No.	7		Nil	7.
Claim	No.	8	5,50,000	Set aside	8.
Claim	No.	9	4,95,000	Set aside	9.
Claim	No.	10		Nil	10.
Claim	No.	11	17,15,268	Set aside	11.
Claim	No.	12		Nil	12.
Claim	No.	13		Nil	13.
Claim	No.	14	4,18,000	Set aside	14.
Claim	No.	15		Nil	15.
Claim	No.	16		Nil	16.
Claim	No.	17		Nil	17.
Claim	No.	18		Nil	18.
Claim	No.	19	Deal with interest	Modified	19.
Claim	No.	20	Deal with interest	Modified	20.

4. Out of five counter claims raised by the Employer, claim No. 2, viz., liquidated damages have been withdrawn. With regard to counter claims 1, 3, 4 and 5 the arbitrator held that the same would be decided along with the final bill, which is

subject matter of reference No. 2.

5. In the second reference the following amounts were awarded.

-----								Sl.
No.	Claim	Arbitrator	awarded	Court	confirmed/set	aside	in	O.P. Nos. 70 & 71/1999
-----								1.
Claim	No.	1	4,81,780				Confirmed	
-----								2.
Claim	No.	2	Amount	included	in	the	final	bill
-----								3.
Claim	No.		3(a)				Nil	
-----								4.
Claim	No.		3(b)				Nil	
-----								5.
Claim	No.4	(a)				Nil		
-----								6.
Claim	No.		4(b)				Nil	
-----								7.
Claim	No.	5	3,12,980				Confirmed	
-----								8.
Claim	No.		6				Nil	
-----								9.
Claim	No.	7	Accounted	in	the	final	bill	Confirmed
-----								10.
Claim	No.	8	Accounted	in	the	final	bill	
-----								11.
Claim	No.	9	6,08,619			Set	aside	
-----								12.
Claim	No.	10	59,960			Set	aside	
-----								13.
Claim	No.		11				Nil	
-----								14.
Claim	No.		12				3,57,000	
-----								15.
Claim	No.	13	70,000				Confirmed	
-----								16.
Claim	No.		14				Nil	
-----								17.
Claim	No.		15				Nil	
-----								18.
Claim	No.		16				Nil	
-----								19.
Claim	No.		17				Nil	
-----								20.

6. On passing the award, the Employer filed O.P. No. 69 of 1999 for setting aside the award dated 26-09-1996 made in first reference which pertains to contract period, and Contractor filed O.P. No. 72 of 1999 for making the award as rule of Court. On passing the award under the second reference covering the extension period, the Employer filed O.P. No. 70 of 1999 u/s 30 and 33 of the Act to set aside the award; whereas the Contractor filed O.P. No. 71 of 1999 for making the award as rule of Court. Though the dispute referred to the arbitrator consists of 20 claims in reference No. 1 and 18 claims in reference No. 2, only three of the claims + interest are contested in this batch of appeals. Claim Nos. 4, 8, 9, 11 which are covered by Clause 15(ii)(A).

7. The learned Senior Civil Judge, Gajuwaka by separate orders upheld claim Nos. 1, 2, 3 and 5 in its entirety and partly upheld claim No. 4 as aforementioned and set aside the award amount insofar as claims 8, 9, 11 and 14 and modified interest under claim Nos. 9 and 20 in O.P. Nos. 69 and 72 of 1999. Similarly, O.P. Nos. 70 and 71 of 1999 he upheld claims 1, 5, 10 and 13 and so far as claim Nos. 7 and 9 while upholding claim remitted the matter to the Arbitrator as there are arithmetical error in calculation and modified interest awarded by the arbitrator.

8. Questioning the same present appeals have been filed by the Employer and Contractor.

9. Sri C.V. Mohan Reddy, learned senior Counsel appearing for the Contractor argued that once specific question of law, viz., provision of Clause 15(ii)(A) is unconscionable or not, is referred to the arbitrator and the arbitrator decided the specific issue, it is not open for the lower Court to set aside the said finding. Even assuming that there is no consensus before the arbitrators to frame a specific issue and the issue has arisen in the course of pleadings, the parties agreed to frame a specific issue, they are bound by the findings. For the said proposition reliance is placed on the following judgments.

1. Seth Thawardas Pherumal Vs. The Union of India (UOI),
2. Alopi Parshad and Sons Ltd. Vs. Union of India (UOI),
3. Union of India (UOI) Vs. A.L. Rallia Ram,
4. Tarapore and Company Vs. Cochin Shipyard Ltd., Cochin and Another,

10. It was further argued that once the trial Court found specific issue is not referred, it ought not to have gone into merits of the claim. Once the arbitrator gave a finding on the issue, which was specifically referred, the same cannot be interfered.

11. Sri P. Nageswara Sree, learned Counsel appearing for the Contractor contend that the lower court is not justified in setting aside claim Nos. 8, 9, which were awarded by the arbitrator on the ground Clause 15(ii)(A) is valid; when once the

validity of the clause is referred to the arbitrator and arbitrator decided that the said clause is unconscionable, the Court cannot interfere with the said decision.

12. Sri N. Subba Reddy, learned senior Counsel appearing for the Employer contends that unless there is a consensus ad idem among the parties for making a specific reference by any stretch of imagination, it cannot be held specific question of law with regard to validity of Clause 15(ii)(A) is referred to arbitrator. Expected matters are not arbitrable. Therefore, award of any amount on expected matter is liable to be set aside. For the said proposition reliance is placed on General Manager Northern Railways and Another Vs. Sarvesh Chopra, and K. Marappan Vs. Superintending Engineer and Another, He further contends that Clause 15(ii)(A) prohibits compensation whatsoever which includes interest also. Therefore, awarding of interest on the awarded amount has to be set aside. He alternatively contends that grant of interest at 12% is excessive and the same has to be reduced to 9% keeping in mind the market rate of interest prevalent. He also contends that under claim No. 4 amount of Rs. 1,16,625/- admittedly paid which has not been given credit to has to be deducted from the awarded amount.

13. In view of rival submissions made by the counsel, referred to above, the points that arise for consideration in these appeals are:

1. Whether specific question of law with regard to validity of Clause 15(ii)(A) has been referred to the arbitrator and agreement to frame a specific issue will amount to referring the question to arbitrator or not?
2. Whether the Court is justified in setting aside the award in respect of claims 8, 9, 11 and 14?
3. Whether the Employer is entitled to give credit to Rs. 1,16,625/- under claim No. 4 of the award (first award)?
4. Whether the interest awarded by the lower court has to be modified or not?

Point No. 1

14. The joint arbitrators on the additional issue held that they have jurisdiction to interpret the provisions of Clause 15(ii)(A) and other similar clauses as SPC and the same has been made as specific issue by both the parties to be decided by the arbitrator and accordingly held provisions of Clause 15(ii)(A) is unconscionable.

15. Clause 15(ii)(A) reads as under:

In the event of any failure or delay by the Employer (Hindustan Steel Works Construction Ltd.) to handover to the Contractor possession of the land/site necessary for the execution of the work or to give the necessary notice to commence the work or to provide the necessary drawings or instructions or any other delay caused by the Employer due to any other cause whatsoever then such failure or delay shall in any way affect or vitiate the contract or alter the

character thereon or entitle the Contractor to damages or compensation therefor, but in any such extensions for the completion date as may be considered reasonable by the Employer.

16. After receipt of claim statements, the arbitrators by proceedings dated 21-01-1991 framed the following issue.

Whether Clause 15(ii)(A) of special conditions of contract and other similar clauses in the contract are unconscionable and one sided and opposed to public policy and therefore not enforceable in view of Section 23 of the Indian Contract Act.

17. The Employer filed a Memo before the arbitrator on 14-01-1992 stating that during the course of hearing held on 14/15-12-1991 counsel for the Contractor argued that the issue regarding enforceability of Clause 15(ii)(A) as being opposed to Section 23 of the Contract Act was framed as a specific issue and the arbitrators have jurisdiction to decide the same and it would amount to referring a pure question of law to the arbitrators. As claim statement was filed on 21-06-1987 to which a counter was filed on 08-02-1989 and in the counter it was specifically made Section 17(2)(a) is a typographical mistake for Clause 15(ii)(A). The Respondent has been contending that by virtue of Clause 15(ii)(A) of the Special Conditions of Contract and similar other clauses the claim is not tenable and arbitrators are bound to apply the terms of the contract and they cannot declare terms as invalid. Since the pleadings were filed and as the claim was contended as being barred by Clause 15(ii)(A), the determination of question became necessary for deciding the claims on merit. In view of assertion by the Contractor and denied by the Employer, framing an issue would become necessary and, therefore, Employer has agreed to frame all the issues, but not for referring whether the clause is invalid or not. The arbitrators decided the additional issue in pages-14 to 28 of their award and held that the provisions of Clause 15(ii)(A) is onerous to the Contractor and is unconscionable.

18. In view of the same, we have to see whether a specific question of law with regard to validity of Clause 15(ii)(A) has been referred to or not. The reference made to the arbitrator by both the parties do not indicate referring a specific question of law with regard to validity of Clause 15(ii)(A) nor it has been asserted by the learned senior Counsel appearing for the Contractor that the same has been referred to the arbitrator. What the senior Counsel contends is, a specific issue arisen in the course of pleadings by the parties and once the issue is framed and decided, the parties are bound by the decision of the arbitrator.

19. In Thawardas Pherumal's case (1 supra) the Supreme Court while considering the power of the Court to remit the award for reconsideration "where an objection to the legality of the award is apparent on the face of it" u/s 16(1) (c) of the Arbitration Act, 1940 and law as applied and expounded by the Privy Council in AIR 1949 334 (Privy Council) held an arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks is just and

reasonable. He is a tribunal selected by the parties to decide their disputes according to law and so is bound to follow and apply the law, and if he does not, he can be set right by the Courts provided his error appears on the face of the award. The single exception to this is when the parties choose specifically to refer a question of law as a separate and distinct matter. After noticing the observation of the Supreme Court in *A.M. Mair and Co. Vs. Gordhandass Sagarmull*, it was held it is also necessary that the parties should define what the dispute is and agree to refer the dispute so set out and defined to arbitration, or, if they do not, that the Court should compel them to do so. If, therefore, no specific question of law is referred, either by agreement or by compulsion, the decision of the arbitrator on that is not final however much it may be within his jurisdiction, and indeed essential, for him to decide the question incidentally. In para-14 it was held as under:

We stress the word "specifically" because parties who make a reference to arbitration have the right to insist that the tribunal of their choice shall decide their dispute according to law, so before the right can be denied to them in any particular matter, the Court must be very sure that both sides wanted the decision of the arbitrator on a point of law rather than that of the Courts and that they wanted his decision on that point to be final.

20. In the case of *Alopi Parshad and Sons Ltd.* (2 *supra*) when the Subordinate Judge rejected the application for setting aside the award; in appeal the High Court held certain questions had been specifically referred to the arbitrators, and it was open to the arbitrators to make the award, which they made, on the basis of quantum merit. The High Court further held that there was no specific reference of any questions of law to the arbitrators, and the decision of the arbitrators was not conclusive and was open to challenge, because it was vitiated by errors apparent on the face of the award. The High Court reversed the order passed by the Subordinate Judge, and set aside the award of the arbitrators, holding that there was no "legal basis for awarding any compensation" to the Agents for any loss which they might have sustained. On further appeal, the Supreme Court held if, however, a specific question is submitted to the arbitrator and he answers it, the fact that the answer involves an erroneous decision in point of law, does not make the award bad on its face so as to permit of its being set aside. In para-17 it was held as under:

Was the reference made by the parties to the arbitrators a specific reference, that is, a reference inviting the arbitrators to decide certain question of law submitted to them. If the reference is of a specific question of law, even if the award is erroneous, the decision being of arbitrators selected by the parties to adjudicate upon those questions, the award will bind the parties.

On facts it was held in the reference originally made to the arbitrators by the letter of the Agents and the reply of the Government, a general reference of the dispute was made in terms of Clause 20 of the agreement and accordingly upheld view of the High Court that the reference made was a general reference

and not a specific reference on any question of law. The award may, therefore, be set aside if it be demonstrated to be erroneous on the face of it.

21. In A.L. Rallia Ram's case (3 supra) in para-10 it was held the authority of an arbitrator depends upon the authority conferred by the parties by agreement to refer their differences to arbitration. In para-14 it was held filing of pleadings pursuant to the directions of the arbitrators and agreeing to a trial of the dispute on the issues raised by the arbitrators cannot be regarded as reference of specific questions implying an agreement between the parties that they intended to give up their right to resort to the Courts even if the award was vitiated on account of an error apparent on the face thereof. The only permissible inference from the agreement recorded by the arbitrators was that the parties agreed to have the disputes adjudicated on the issues raised and not to submit the issues raised for adjudication.... In these two letters there is no reference to any specific questions to be referred to the arbitrators: nor can the filing of pleadings in support of their respective cases by the parties pursuant to the direction given by the arbitrators, and the framing of issues arising thereon with the object of focussing the attention of the parties on the questions to be decided for adjudicating upon the dispute amount to a reference on specific question, rendering the award binding upon the parties. The Supreme Court after referring the observation in Thawardas' case (1 supra) in para-14 held as under:

Therefore, when a question of law is the point at issue, unless both sides specifically agree to refer it and agree to be bound by the arbitrator's decision, the jurisdiction of the Courts to set an arbitration right when the error is apparent on the face of the award is not ousted. The mere fact that both parties submit incidental arguments about a point of law in the course of the proceeding is not enough.

22. In Tarapore & Co. (4 supra) the Supreme Court held question of law may figure before an arbitrator in two ways, it may arise as an incidental point while deciding the main dispute referred to the arbitrator or in a given case parties may refer a specific question of law to the arbitrator for his decision. There is no more gainsaying the fact that a pure question of law may and can be referred to an arbitrator for his decision. Russell on the Law of Arbitration Twentieth Edition at page 22 states as under:

A pure question of law may be referred, to an arbitrator and where such a question is specifically referred his award will not be set aside merely upon the ground that his decision is wrong.

23. In the above case, it is undoubtedly true that in the letter dated 29-03-1976 by which the Cochin Shipyard agreed to refer the dispute to the arbitrator, it was in terms stated that the reference is being made without prejudice to the position of the Respondent as adopted in the letter meaning thereby without prejudice to its rights to contend that the claim of the Appellant is not covered by the arbitration clause. The Supreme Court after considering the reference was of the

view that a specific question as to whether the claim of compensation made by the Appellant-contractor and demurred and disputed by the Respondent would be covered within the scope, ambit and width of the arbitration clause, was specifically referred by the parties for the decision of the arbitrator. Therefore, it is a case where a specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties. Even if the view taken by the arbitrator may not accord with the view of the Court about the scope, ambit and width of the arbitration clause, the award cannot be set aside on the ground that there is an error of law apparent on the face of the award. The view taken by the High Court is palpably untenable and appeal has to be allowed and accordingly allowed the appeal.

24. In the case on hand, the Contractor nominated the arbitrator, viz., K.C. Goyal by letters dated 28-08-1986 and dated 05-01-1987 to arbitrate in the disputes arising out of contract between the parties which is the subject matter of first reference and award dated 26-09-1996. The Employer nominated Sri Kartik Prasad as arbitrator through their letters dated 18-09-1986 and 26-02-1987 to arbitrate the dispute. It is only general reference but a specific reference about validity of Clause 15(ii)(A) was not referred to the arbitrators. Similarly, the Contractor appointed Sri K.C. Goyal as arbitrator as their nominee by letter dated 23-10-1988 to resolve the dispute, which is the subject matter of second reference. The learned Subordinate Judge referred the dispute to the arbitrators in O.P. No. 362 of 1989 on 09-11-1989 to dispose of the disputes arisen during the extension period and the High Court in A.A.O. No. 1670 of 1989 appointed the same arbitrators to dispose of all the dispute between the parties by order dated 27-12-1989 for the extended period in reference No. 2. The Contractor conceded for framing an additional issue. The Employer filed a written memo on 04-01-1992 before the arbitrators making it clear that by virtue of Clause 15(ii)(A) of the Special Conditions of Contract and similar other clauses the claim is not tenable and the arbitrators are bound to comply the terms of the contract and being creatures of contract they are bound by the terms of the contract and they cannot declare the Clause 15(ii)(A) as unconscionable, since the same has not been referred specifically.

25. The learned trial Judge after elaborately considering the contentions held it cannot be said that specific question of law was referred in the first instance and subsequently withdrawn by a memo filed by the Respondents; that no specific question of law under Clause 15(ii)(A) was referred, it is incidentally arisen by framing an issue. The issue framed on 27-04-1990 also discloses that no issue has been framed with regard to validity of Clause 15(ii)(A) which was admittedly raised in the supplemental rejoinder dealing with Clause 15(ii)(A) of the Special Conditions of Contract which has been the sheet anker of opposing the claims of the Contractor.

26. From the law declared by the Supreme Court, as aforementioned, and considering the facts in the present case, it has to be held in the reference made

to the arbitrators no specific question of law has been referred to about the validity of Clause 15(ii)(A) of the Special Conditions of Contract which is unconscionable or contrary to the provisions of Section 23 of the Contract Act. After filing the claim statement, rebuttal statement and additional rejoinder, they have agreed to frame an issue whether the claim is sustainable or not in view of above clause. The parties agreeing to frame an issue are only to focus the attention but not determination of the dispute about validity of Clause 15(ii)(A).

27. In view of the same, it is rather difficult to accept the contention of the Contractor, as contended, that the arbitrator has jurisdiction to decide the issue, viz., validity of Clause 15(ii)(A) of the Special Conditions of Contract.

28. Further, the Courts have consistently held that such a clause, prohibiting the Contractor to claim any compensation, was held to be valid. See Continental Construction Co. Ltd. Vs. State of Madhya Pradesh, In view of the same, we hold that no specific question of law with regard to validity of Clause 15(ii)(A) has been referred to the arbitrator and mere agreement to frame a specific issue will not amount to referring the question to arbitrator.

29. Point No. 1 is accordingly answered.

Point No. 2:

30. As the claims 8, 9, 11 and 14 are depending upon declaration that Clause 15(ii)(A) of Special Conditions of Contract, which is conscionable and hit by Section 23 of the Contract Act, on point No. 1 we have held the validity of Clause 15(ii)(A) has not been referred to the arbitrator, which prohibits making any claim, the arbitrator misconducted in entertaining the claim, since contractor having obtained extension of time under 5 supplemental agreements cannot claim above amounts. See Ch. Ramalinga Rddy v. Superintending Engineer; Ramachandra Reddy and Co. Vs. State of Andhra Pradesh and Others, ; Ramnath International Construction Pvt. Ltd. Vs. Union of India (UOI) and Another, Therefore, the lower Court rightly set aside claim Nos. 8, 9, 11 and 14.

31. The Supreme Court in Ramnath International Construction Pvt. Ltd. Vs. Union of India (UOI) and Another, while interpreting Clause 11 of the General Conditions of Contract held as under:

...The causes for delays specified in Clause (A), thus, encompass all delays over which the contractor has no control. This will necessarily include any delays attributable to the employer or any delay for which both the employer and the contractor are responsible. The contract thus provides that if there is any delay, attributable either to the contractor or the employer or to both, and the contractor seeks and obtains extension of time for execution on that account, he will not be entitled to claim compensation of any nature, on the ground of such delay, in addition to the extension of time obtained by him. Therefore, the claims for compensation as a consequence of delays, that is Claim 24 of the Hangar Contract and Claims 13 to 16 of the Road Contract are barred by Clause 11(C).

(para 11)

32. Learned senior Counsel appearing for the Contractor contended that when the trial court found specific question of law is not referred, it ought not to have gone merits of the claim. We do not see any force in the contention for the reason, when the Contractor made a claim, which was awarded ignoring Clause 15(ii)(A), the same has been challenged by the Employer. In view of the same, since the award has been challenged by the Employer, it is the bounden duty of the Court to go into the merits of the claim on declaring Clause 15(ii)(A) as valid and binding on the parties. Therefore, the lower court rightly set aside the award, which depends upon the validity of Clause 15(ii)(A) of the Special Conditions of Contract, which relieves the Employer from all liabilities under the above heads of claim except extension of time, which in fact, was granted. Therefore, the arbitrator was not right in awarding any sum on that account. We accordingly confirm the view taken by the lower court in setting aside the award in all respects.

33. Point No. 2 is accordingly answered.

Point No. 3

34. The learned Subordinate Judge in paragraphs 33 and 34 of his judgment held arbitrators first held that the claimants claimed Rs. 16 lakhs and odd representing 50% of the welding material and they have further stated that 20% would be justified and thereafter they worked out of the amount which is more than 20%. It cannot be stated that the arbitrators have intended to award 25% and held that the arbitrators having held that 20% is justified, should have worked out 20% out of the amount claimed which would come to Rs. 6,67,710/-. The total claim awarded under this head was 17,30,968/- and the difference between 20% and 25% would come to Rs. 1,66,928/- and thus the claimants should be entitled to Rs. 15,02,415/- as against Rs. 17,30,968/- and the same has been upheld partly. Since Rs. 1,16,625/- has already been deducted from 17,30,968/-, balance comes to Rs. 16,14,343/-, whereas the lower Court restricted to Rs. 15,02,415/-. In view of the same, we see no merit in the contention of the learned senior Counsel appearing for the Employer that the said amount has to be deducted further from the awarded amount.

35. Point No. 3 is accordingly answered.

Point No. 4

36. Sri N. Subba Reddy, learned senior Counsel appearing for the Employer contended that the arbitrator wrongly awarded interest at 15% from the date of rescission of contract i.e. 19-10-1988 and Clause 15(ii)(A) of the Special Conditions of Contract prohibits compensation which includes interest also and relied upon K. Marappan's case (6 supra).

37. It is now fairly well-settled that clause in the contract agreement prohibiting payment of interest to the Contractor for delayed payments does not prevent the

arbitrator from awarding interest pendente lite See Board of Trustees For The Board of Trustees for the Port of Calcutta Vs. Engineers-De-Space-Age,

38. It is fairly well settled that interest for pre-reference period can be awarded only if there is an agreement to that effect or if it is allowable under Interest Act, 1978. See Superintending Engineer and Others Vs. B. Subba Reddy,

39. Clause 15(ii)(A), referred to above, do not prohibit grant of interest on the amounts due to the Contractor except prohibiting damages or compensation in the event of any delay in handovering possession of the land/site necessary for execution of the work or giving notice to commence the work or providing necessary drawings or instructions or any other delay caused by the Employer due to any other cause whatsoever then such failure or delay shall in any way affect or vitiate the contract but for extension of time for completion.

40. The Supreme Court in Sayeed Ahmed and Co. v. State of U.P. 2010 (1) SCJ 237 doubted the correctness of the decision in Board of Trustees For The Board of Trustees for the Port of Calcutta Vs. Engineers-De-Space-Age, on the ground that in spite of prohibition contained in the contract against payment of interest on delayed payments, that the arbitrator could award interest pendente lite.

41. It is now held by a Constitutional Bench of the Supreme Court that a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. See Secretary, Irrigation Department, Government of Orissa and others Vs. G.C. Roy,

42. Insofar as pre-reference interest, interest pendente lite and post arbitration is concerned, the Supreme Court in State of Rajasthan v. Ferro Concrete Construction Private Limited 2009 (7) SCJ 380 : 2009(3) Arb. L.R. 140 (SC) repelling the contention held that there is no provision in the contract for payment of interest on any of the amounts payable to the contractor and, therefore, no interest ought to be awarded. In the absence of any express bar, the arbitrator has the jurisdiction and authority to award interest for all the three periods i.e. pre-reference, pendente lite and future.

43. Recently a Division Bench of this Court in G.V. Malla Reddy and Co. Vs. A.P. State Trading Corporation Limited and Another, Justice V.V.S. Rao speaking for the bench, after scanning various judgments on the specific issue of awarding interest held when there is no specific covenant in the agreement specifically barring interest, the claim for interest during pre-reference period, pendente lite and post award period is sustainable. Arbitrator is competent to award future interest from the date of the award till the date of decree or date of realization whichever is earlier.

44. The arbitrator under claim No. 14 for refund of interest recovered by the Contractor from the claimants on the advances directed to refund interest in proportionate to Employer's default. When the Employer himself recovered interest from the Contractor on the advances, the Contractor is also entitled to interest for the amounts due to him from the Employer on the same analogy, which is set aside by the lower Court. Further, the arbitrator under claim Nos. 19 and 20 dealt with pre-reference, pendente lite and future interest from the date of award till the date of payment and awarded 15% interest on the principal amount of the awarded claim. It was contended by the learned Counsel for the Contractor before the lower court that the arbitrators have went wrong in awarding 15% interest and in the absence of the contract to the contrary, they are bound by the Interest Act, 1978; that being so, interest that could be awarded would be at the rate at which the banks grant on the deposits, but never pleaded that the agreement prohibits award of interest.

45. Taking into consideration of the submissions, the learned lower Court reduced the rate of interest from 15% to 12% for pre-reference and pendente lite and confirmed the rate of interest at 15% from the date of award till the date of realization.

46. In view of the modification of the award by the lower Court by giving cogent reasons, we do not see any merit in the contention of the learned Counsel for the Employer that the claimants are not entitled to interest.

47. Point No. 4 is accordingly answered.

48. In the result, appeals filed by the Contractor, viz., C.M.A. Nos. 2366, 2369, 2367 and 2368 of 2000 are dismissed. Similarly, appeals filed by the Employer, viz., C.M.A. Nos. 240 of 2001, 2734 of 2000, 455 and 3239 of 2001 are also dismissed. No costs.