

(2013) 01 BOM CK 0085
In the Bombay High Court
Case No : Arbitration Petition No. 923 of 2009

The New India Insurance Company Limited	APPELLANT
Vs	
Pyarelal Textile Limited	RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 19, 19, 20, 21, 22
Contract Act, 1872 — Section 73, 74
Evidence Act, 1872 — Section 101, 102, 103

Citation : (2013) 2 ARBLR 476 : (2013) 2 BomCR 740

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Prakash Lad, for the Appellant; Fereshle Sethna instructed by y
Duttmenon Dunmorr Sett, for the Respondent

Judgement

Anoop V. Mohta, J.—The Petitioner (original Respondent) has challenged an award of Arbitral Tribunal, consisting of three members u/s 34 of the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act). The challenge is to the majority award of two members and also the minority award, both dated 27 July 2009. The summary of majority award is as under:-

VII SUMMARY OF AWARD:-

Our award is summarised as set out hereafter-

VIII NIA is directed to pay the total award of Rs. 91,95,046/- (Rupees Ninety One Lakhs Ninety Five Thousand Forty Six Only) before 31st August 2009. If NIA fail to do so, simple Interest @ 18% per annum on the full amount of the award of Rs. 91,95,046/- from 28th July 2009 till the date of final payment, will be applicable and shall be paid by NIA as per Sub-section 7(b) of Section 31 of the Arbitration and Conciliation Act (as amended). As stated earlier, as regards the APPTL'S customers' cloth stocks, there are considered to be in APPTL'S trust and are deemed to be covered under the Policy. There is no provision in the policy of Insurance issued by NIA to APPTL about APPTL to first pay their

customers in case of any damage and then only recover from NIA. In case of a large claim like this, any Insured would find it difficult, if not impossible to bear such an onerous burden from their own finances. As APPTL are trustees only, to avoid any undue benefit to them, while receiving the payment of the claim, APPTL shall confirm to NIA that APPTL shall obtain full satisfaction letters from their customers and submit the said letters to NIA. APPTL shall comply with this within 15 days of the receipt of the claim award from NIA. This is our joint final award which should be regarded as the Majority Award of the Tribunal. There are no further directions and/or awards.

2. The findings of minority award is as under:-

29. My findings on the issues framed under paragraph no. 6 above are as under, seriatim:-

1. The quantum of claim awarded to claimant is Rs. 4557382/-.

2. Interest at the rate of 10% from 30/10/07 till date of payment on the Rs. 4557382/-.

3. The claimants have filed a memo of cost of Rs. 1500294/- consisting of arbitrators' fees, and legal expenses other Expenses without any supporting bills but certified by their advocate. In view of the facts and the circumstances of the claim I am inclined to award 50% of the above said cost i.e. Rs. 750147/-.

4. No other relief.

29. The Respondents are directed to pay Rs. 45,57,382/- plus Interest thereon @ of 10% PA as at 27 above till date of payment plus cost of Rs. 750147/-.

30. As regards payments to be made to the third party owners of the goods the claimants to pay the respective shares within 15 days from payment received by them from the respondents and file proof of payments to the third parties with the respondents within 7 days therefrom.

3. As per the Petitioner, the basic facts are as under:-

1. The Petitioner is a company registered under the Companies Act, 1956 and a Government of India Undertaking. Respondent No. 1 is claimant company registered under the Companies Act, 1956. Respondent Nos. 2 to 4 are the Arbitrators who passed two Awards both dated 27 July 2009.

2. The processing unit of Respondent No. 1 at Plot No. 19-A, MIDC Industrial Areas, Ambarnath known as Amber Processors was sick since 2001. Since November 2004, the unit of Respondent No. 1 is under lockout till date.

3. On 18 July 2005, Respondent No. 1 has insured with the Petitioner its processing unit under policy known as Standard Fire and Special Peril Policy and paid premium of Rs. 58,500/- + Rs. 5967/- as service tax). There was heavy floods on 26 July 2005.

4. On 30 July 2005, Respondent No. 1 informed the Petitioner that damage caused to the Respondent's factory. The loss is suffered due to the calamity. Upon receipt of information the Respondent appointed surveyor.

5. On 30 March 2006, M/s. Parimal Shah and Company appointed as surveyor ultimately submitted a final survey report rejecting the claim of Respondent No. 1 of Rs. 95,81,978/-.

6. On 22 April 2008, Respondent No. 1 invoked the Arbitration clause. Respondent Nos. 2 to 4 were appointed as Arbitrators. Respondent No. 1 filed statement of claim before the Arbitrators. On 15 July 2008, the Petitioner has filed its written statement. On 25 July 2008, Respondent No. 1 filed a rejoinder to written statement. Respondent No. 1 reserved the right to adduce the evidence in rebuttal. The Petitioner filed an affidavit of evidence.

7. Tender was invited for disposal of salvage. Respondent No. 1 had participated in the bid and offered Rs. 12,57,956/- (without E.M.D.).

8. On 27 July 2009, Respondents (Nos. 2 and 3) Arbitrators have passed an award thereby allowing the claim of Respondent No. 1 to the tune of Rs. 91,95,046/- together with interest at 18% per annum.

Respondent No. 4, the Arbitrator passed separate award allowing the claim of Respondent No. 1 of Rs. 45,57,382/- together with interest @ 10% per annum.

Hence this Petition.

4. The basic dispute is between the Petitioner and Respondent No. 1. Respondent Nos. 2, 3 and 4 are the Arbitrators. There are no adverse allegations against them. They are not necessary parties.

5. The learned counsel appearing for Respondent No. 1 has cited the following Judgments in support of their contention and submitted to uphold the award.

a) Mohan Kumar Gupta Vs. Atma Ram Aggarwal and Another,

b) Om Parkash Malik (HUF) Vs. Adroit Financial Services Pvt. Ltd.

In these matters, a Judge of Delhi High Court has refused to interfere by observing that there was no gross perversity or gross illegality for the Court to interfere. This was based upon the foundation that provisions of CPC (for short, CPC) and the Evidence Act, 1872 (for short, the Evidence Act) do not apply in Arbitration proceedings. This is so specifically provided u/s 19 of the Arbitration Act also. The impugned judgment is a detailed judgment. The scope of hearing objections to the award u/s 34 is limited. There is no question of appraisal of evidence and adopting one view out of the two views.

c) In Laxmi Mathur Vs. The Chief General Manager, MTNL, Mumbai, this Court observed as under:-

10. When the Court is called upon to decide the objections raised by a party

against the arbitral award, the jurisdiction of the Court is limited, as expressly indicated in section 34 of the Act and it has no jurisdiction to sit in appeal and to examine the correctness of the award on merits with reference to the material produced before the Arbitral Tribunal. The Court cannot sit in appeal over the views of the arbitral tribunal by re-examining and reappreciating the material.

d) In *Jigar Vikamsey, An Indian National Vs. Bombay Stock Exchange Limited*, this Court has observed, after taking note of various Supreme Court Judgments, in the following words:-

11 The Petition is u/s 34 of the Act. The Apex Court recently in *G. Ramachandra Reddy and Co. Vs. Union of India (UOI) and Another*, and in *M.P. Housing Board Vs. Progressive Writers and Publishers*, , while dealing with both the Arbitration Acts and considering the principles to challenge the Arbitral Award has reiterated the following points:-

(a) The re-appraisal of the evidence by the Court is not permissible (*M/s. Ispat Engineering and Foundry Works, B.S. City, Bokaro Vs. M/s. steel Authority of India Ltd., B.S. City, Bokaro*,). An Award of an Arbitrator need to be read as a whole to find out the implication and meaning thereof of the reasons. The Court, however, does not sit in Appeal over the Award.

(b) The interference, where reasons are given would still be less, unless there exists a total perversity and/or the Award is based on a wrong proposition of law.

(c) Even if two views are possible on an interpretation of central clause, that would not be justification in interfering with the Award specially when the view so taken is possible/plausible one (*State of U.P. Vs. Allied Constructions*,). [*G. Ramchandran (Supra)*] But the interpretation of the clause which is wholly contrary to law should not be upheld by the Court. [*Numaligarh Refinery Ltd. Vs. Daelim Industrial Company Ltd.*,]

(d) The jurisdiction of the Court to interfere with an Award made by an Arbitrator is limited, unless there is an error apparent on the face of the Award and/or jurisdictional error and/or legal mis-conduct. [*Numaligarh Refinery Ltd. (supra)*].

(e) The wrong point of law and apparent, improper and incorrect findings of facts which are demonstratable on the face of the material on record, may be treated as grave error and/or legal misconduct.

6. There is no serious dispute with regard to the policy in question, its terms and conditions and even of its validity and so also the fact of heavy rains and flood on 26 July 2005. On intimation, the surveyor was appointed for assessing the damages. The final surveyor's report dated 30 March 2006, rejected the claim of Respondent No. 1. The salvage was also disposed of by the public tender and the interim report was submitted accordingly. There is no dispute that unit of Respondent No. 1 was sick since 2001. Respondent No. 1, the present owner purchased the same in BIFR Scheme. Since 8 November 2004, the unit was not in operation. As reported, most of the machines were age old and otherwise

outdated. The surveyors, after considering the material and actual position at the spot and the relevant documents including Respondent No. 1-insured's net loss for last two years by giving note of incident, insured business and process chart, claim, extent to the damages of building, machinery, stocks of grey cloth and taking note of evidence of loss, after inspection and verification and also the policy of sum insured and the loss to the building, machinery including dyes, chemicals and coal and stock of cloth, provided nil loss assessment, except value of damage to stocks and the recovery of the amount by selling the salvage in public auction. Ultimately, the surveyor rejected the claim of Respondent No. 1 on every aspect. It is specifically observed that the loss incurred due to natural calamity and therefore there is no chance to recover it from third person. It is remarked that "the subject loss also does not fall in any of the exclusions of the policy." On 3 June 2008, Respondent No. 1 therefore, filed claim of Rs. 1,41,04,600/- and odd, together with interest @ 21% p.a. on principal amount of Rs. 98,57,608.41/-. The Respondent resisted the claim by filing written statement on every point. The parties have filed their rejoinder and sur-rejoinder. The Petitioner led oral evidence. The Respondent did not. The Petitioner, undisputedly not admitted all the documents and its contents filed by the Claimant-Respondent in support of their claims. The list on record shows that all the important documents and its contents, relevant for assessing the damages or the documents contents for assessing the damages, were denied by the Petitioner.

7. The Arbitral Tribunal was of three technical expert members in the field of insurance. There was no judicial member. The expertisation on the subject has its own merit and value. The expertisation needs to be respected. But the question is when it comes to grant of damages/ compensation in view of the incident and as admittedly there was nil assessment and as the surveyor rejected the claim and expressed inability to assess the loss, the question is whether the Tribunal by overlooking the reasoned order passed by the surveyor granting nil compensation, can re-assess for the first time and award the compensation as done in the present case.

8. There is no serious dispute that the surveyor is nothing but an officer or authority under the Insurance Regulatory and Development Authority (for short, IRDA), who after inspection of the area and taking note of material and the documents, covering the damage to the building, the plant and machinery, the stock and assessed the compensation and submits the report accordingly. There are certain obligations of the Respondent-insured, including to provide supporting material and documents. The surveyor is also under legal obligation to submit the unbiased, clear and reasoned report. It is also clear that such surveyor's report, though a expert report, in given facts and circumstances, is not binding on the Tribunal. It has its own persuasive value, subject to the challenge or objection, if any. Both the parties are at liberty to challenge such surveyor's report. The Arbitral Tribunal is also empowered to consider and re-consider the merit, as well as, demerit of the reasons given by the surveyor.

There is nothing pointed out and/or referred that the surveyor's report itself is binding and the Arbitral Tribunal has no choice but to accept the same as it is.

9. The practice appears to be, after such incidence and after inspection and surveyor's report placed on record, the Petitioner and/or the insurance company in a given case, may accept and/or may not accept the said report. The insurer may accept the same surveyor's report and settle the matter and/or object to it and invoke the remedy as available under the law. In the present case, in view of the Arbitration clause, they have invoked Arbitration proceedings.

10. The learned counsel appearing for Respondent No. 1 has strongly relied upon the reasonings given by the Arbitrators for the first time whereby, they have overlooked and re-assessed and re-considered the nil surveyor's report and granted the award in their favour. Respondent No. 1 cross-examined the witness of Petitioner's officer and based upon the same, the learned Arbitral Tribunal, who are stated to be the experts in the field, re-assessed the evidence and material placed on record and has passed the award, though the Petitioner at no point of time admitted the documents and its contents. The reasoned nil surveyor's report was thereby distinguished for the first time by the Arbitral Tribunal and by setting aside the same, granted the claim as prayed.

11. The minutes of meetings were shown and referred by both the counsel. This is not the case where the Petitioner conceded and/or agreed to settle the matter though there was a clear nil surveyor's report in their favour. There is nothing on record to show that the Petitioner company after taking note of surveyor's report, overlooked and/or decided and/or agreed to grant compensation as prayed. On the contrary, there are clear material on record where the insurance company throughout contested the claim of Respondent No. 1, on all counts. Whatever the earlier order/interim report, even if any, and as contended, cannot be the basis for granting the compensation by overlooking the final surveyor's report. In the present case, factually if there is nil report and there is no settlement and/or acceptance of claim of Respondent No. 1 as prayed/ filed, the Arbitral Tribunal has no choice but to adjudicate the dispute in accordance with law.

12. This Court in Sahyadri Earthmovers Vs. L and T Finance Limited and Another, has observed as under:-

Pleading - Claim-defence- counter claim-inspection documents

(vi) The Petitioner/claimant to file claim petition with details particulars and supporting documents, if any. The Respondents be permitted to file reply/ defence/rejoinder/counter claim/ set off and supporting documents, if any. The Arbitrator may direct the parties to file a list/ compilation of documents and call for more information's or details. The parties may admit or deny the documents, after due inspection of the documents.

Binding Procedural Rules to conduct Arbitration-

(viii) Once all the parties appear, the Arbitrator must decide and/or discuss the procedure to be followed in conducting the proceedings, if not already decided or agreed, including the governing law.

List of the witnesses-Call for the witness

(xii) The parties, if they want to examine witness, may file a list of witnesses. If necessary, seek order from the Court u/s 27 of the Arbitration Act, to call necessary witness with or without documents.

The evidence in chief - through affidavits-inspection- cross examination- re-examination, if necessary, including Video conference/process.

(xiii) The Arbitrator, if decided by the parties, direct the claimant to file affidavit in support of the claims and permit the Respondents to cross-examine and also permit the Respondent to file affidavit in chief in support of their defence; and permit cross examination to the other side and/or follow such other procedure. This can be done, if agreed, through video conferences.

Equal and fair treatment

(xvii) The Arbitrator must give equal opportunity to both the parties and, therefore, bound to follow the principles of natural justice, fair play and equity.

CPC & Evidence Act

(xviii) Though CPC and the Evidence Act are not applicable strictly, (Section 19), but the settled principles do apply. The power of Arbitral Tribunal to determine the admissibility, relevance, materiality and weight of any evidence just cannot be overlooked.

Substantial laws- customs-commercial usages and practice

(xx)The Arbitrator is bound by the substantive laws of the land as well as procedural laws and practice and principle apart from the custom and usage of the trade referring the business and commerce between the parties, in all respects.

To Analyse the evidence and the record

(xxi)The Arbitrator is required to consider all the material and evidence/documents placed by the parties on record read with the evidence led by the parties. The Arbitrator is, therefore, bound to analyse and appreciate the same by giving proper and correct interpretation of terms of the contract subject to provisions of law, before passing reasoned interim or final award. The Arbitrator to pass reasoned interim and/or final award, unless agreed otherwise.

The Doctrines to be followed

(xxiii)The Arbitrator cannot disregard the substantive and procedural law. The Arbitrator is therefore bound to take note of law; of interpretation, precedent,

obiter dicta, ratio decidendi, Estoppel, acquiescence, waiver and res judicata, public policy, natural justice, fair-play and equity.

13. The expertisation of Arbitral Tribunal, even if any, that itself in my view, cannot be the reason to overlook the basic principles of law, by taking shelter of Section 19 of the Arbitration Act and the general concept that the strict principle of CPC and the Evidence Act are not applicable. This, in a given case in Arbitration proceedings, based upon the facts and circumstances and admitted documents on record, may be permissible mode to pass an award. But if there is a dispute with regard to the contents of the documents and there is nil surveyor's report, merely on the basis of cross-examination of such officers and by extracting certain material, contrary to the surveyor's written report, the Arbitral Tribunal just cannot overlook the requirement of proving the loss and/or the damages, as provided under the Evidence Act, the Contract Act, as well as, the CPC. The burden lies upon the claimant to prove the claim so made/raised specifically when there is a nil surveyor's report. Respondent No. 1 admittedly did not lead any oral evidence to support the damages, loss and/or compensation.

14. It is relevant to note that the original claimant Respondent in fact moved an application to adduce evidence and reserve right to adduce the evidence in rebuttal. The learned Arbitral Tribunal has allowed those applications. The Petitioner has filed affidavit of evidence of Mr. Parimal Shah, the surveyor in question. Respondent No. 1 cross-examined him. Admittedly, the Respondent-claimant did not lead any evidence though there is denial to the important documents and its contents. The learned Arbitrators, however, based upon the written arguments concluded the proceedings.

15. It is relevant to note that out of three learned Arbitrators, one Arbitrator has passed a separate award allowing the claim upto Rs. 45,57,382/- with interest @ 10% p.a. whereas, other Arbitrators have awarded more amount and different rate of interest, but by the different reasons.

16. The submission that the Arbitral Tribunal has no jurisdiction in view of clause 13 of the policy as there was no accepted liability. Here, I am inclined to observe that the insurer/parties can challenge the nil award by invoking the provisions of the Arbitration. The part award and/or part compensation so awarded by accepting the liability that itself though may be sufficient, but still the dispute so raised in the present case cannot be stated to be without jurisdiction. I am inclined to hold that there exists an Arbitrable dispute and the Arbitral Tribunal has jurisdiction to deal with the same. The preliminary issue with regard to the jurisdiction and Arbitrability is therefore, rejected.

17. The question still remained the grant of award by the learned expert arbitrators in such fashion. Letter dated 16 July 2007, which shows nil liability just cannot be re-opened for the first time by the Arbitral Tribunal by treating the same as it does not amount to refusal of liability. The whole purpose of surveyor's report is to assess the damages and place on record for proper

consideration the amount to be compensated in view of the valid and binding policy. Whichever way we take the nil liability that itself means the surveyor for various reasons so recorded, unable to assess the loss so caused. Therefore, the learned Arbitrators ought to have assessed the loss based upon the evidence, by giving opportunity to both the parties in accordance with law. The learned Arbitrators, in my view, cannot grant compensation for the first time as there was nil liability or nil surveyor's report in such fashion. There was no occasion and the opportunity for the Petitioner to cross-examine and/or test the evidence and/or documents filed by Respondent No. 1, specifically with regard to the assessment of loss, compensation and damages, as prayed.

18. This Court has already observed in Oil and Natural Gas Corporation Limited Vs. Oil Country Tubular Limited, , that:-

The award or order should be in accordance with law.

31 I have observed in Abeda Iqbal Patel Vs. Cormorant Investment Pvt. Ltd., , referring to the term "in accordance with law" as contemplated under Sections 19 to 25, 28 and 31(3) read with Section 34 of the Arbitration Act, as under-

c) The phrase "in accordance with law" has various facets. It is in use in every field of law. It covers various doctrines including the Doctrine of Binding Precedent, the Doctrine of Natural Justice and the practice and procedure of law specially when it affects the substantial rights of the parties. Therefore, any judgment or order need to be in accordance with law, whether interlocutory or final, if not then there is no bar, the Revision is maintainable, even against such order.

The burden of proof is on one who claims benefits, and the relevant elements for assessing the damages/compensation.

32 Considering Sections 73 and 74 of the Contract Act read with Sections 101, 102 and 103 of the Evidence Act, burden is normally on the Plaintiff/claimant to prove the claims/losses which he has suffered, and is always relevant to grant damages. Therefore, if failed to discharge the burden/onus, for want of lack of pleadings and evidence, the Court may refuses to grant any damages to such party. Draupadi Devi and Others Vs. Union of India (UOI) and Others,

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36 It is also necessary to note that adjudication of a dispute/entitlement is different than assessing the quantum of liquidated damages. Both are important. Kailash Rani Dang Vs. Rakesh Bala Aneja and Another,

Even Saw Pipes (Supra) has recognized the importance of leading evidence to prove damages or reasonable compensation

CONCLUSIONS:-

(a) The Arbitral Tribunal, though not a Court, yet bound by the doctrines; of

binding precedents ratio decidendi and obiter dicta to pass reasoned award, in accordance with law. The CPC and the Evidence Act are not specifically applicable to the Arbitration Proceedings, but the Arbitrator is still bound to take judicial notice of substantive laws and the recognized principles and practice of civil laws, natural justice, fair-play and equity, unless agreed otherwise. Therefore, merely because similar clause was interpreted in Saw Pipes (Supra) or other cases, that itself is not sufficient for the Arbitrator or to the Court to award maximum amount by treating the same to be reasonable compensation, in every matter having similar clause though contesting party and the facts are different.

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(g) In Saw Pipes (Supra), the Apex Court has observed that the party who relied upon such clause, may lead evidence to claim more, if the damage/compensation amount is not reasonable. The Court may also direct the parties to lead evidence to confirm that the action of delay amounts to breach of contract and which has caused the damages and therefore, entitled for a reasonable compensation/amount. The reasonable amount/ compensation cannot be equated with the fixed amount and/or maximum amount as per the liquidated damages clause in question. The observations that other side to prove that the claimant has not suffer any loss or damage itself contemplates necessity of leading evidence by both the parties. The burden is always on the parties who claimed compensation to prove actual loss, even for the reasonable compensation. The other doctrines; "Mitigation of loss", "Burden of Proof", "Onus of proof" and "Shift of burden" just cannot be overlooked by the Court or the Arbitrator, while determining the reasonable compensation.

19. It is relevant to note that the learned Arbitrators though objected and admittedly the Respondent-claimant did not lead any oral evidence, permitted to lead rebuttal evidence on facts, the petitioner objected even to such procedure to be followed. The learned Arbitrators rejected the Petitioner's objection and allowed the evidence in rebuttal. There was no question of casting and putting burden upon the insurance company to prove that there was no loss and/or damages to the various items/goods. It is relevant to note that while assessing and/or awarding the compensation based upon the goods, building, plants and machinery, the valuation of the property in all respect, unless admitted, need to be proved by the party one who supported it. Mere submission and/or claim and/or documents is not sufficient to accept the valuation to support even if any, without leading any supportive evidence. The loss or the damages just cannot be assessed for the first time in such fashion by the learned Arbitral Tribunal, though some portion was withdrawn by the claimant. The loss/compensation for necessary damages and/or actual loss is always subject to proof and cannot be on the presumption and assumption. There was also no details available about the purchase price of factory under BIFR Scheme and so also no supporting material to show costs of machineries and the factory and the reasons for the loss and damages and the machineries, goods and to the buildings. The price of

such plant and machineries, in view of above admitted position, just cannot be assessed for the first time without any documents. To use and utilize their expertisation, just cannot be the basis for awarding the compensation without following the due procedure of law as recorded above, including Section 73 and other provisions of the Evidence Act. The admitted position of purchase of factory in BIFR scheme in 2001, the lock-out since 2004, the conditions of the plant and machineries and stock in trade which according to the Petitioner suffered damages and thereby caused losses to them, all these are the matter of evidence.

20. The learned counsel appearing for Respondent No. 1 has relied upon the judgments to show that, though award so passed is reasoned based upon the material available on record and passed by the expert Arbitral Tribunal and as there is no perversity and/or illegality and further as the view so taken by interpreting the documents on record, just cannot be interfered with by the Court u/s 34 of the Arbitration Act. There is no bar that the Court cannot set aside the award if case is made out. I am inclined to observe, in the present matter, that this is a case where interference is necessary in view of the above settled position of law.

21. The aspect of "judicial decision", and "judicial review", just cannot be overlooked by any Court or the Tribunal who decides and adjudicates the rights between the parties. Therefore, the Arbitral Tribunal, if takes judicial decision, then in my view, the basic principles of CPC and the Evidence Act, apart from the principles of natural justice and fair-play and equity, just cannot be overlooked, basically when there is nothing on record to show that the parties have agreed and/or decided to proceed even on the basis of disputed documents in such fashion. I am not inclined to accept, in the present case, that having once lead the evidence by the parties, even for rebuttal, that itself is sufficient for the learned Arbitral Tribunal to adjudicate the claim by setting aside the nil surveyor's report. I am of the view that this is not a permissible mode in such matters to award compensation/damages without any supporting material placed on record by the original claimant. Therefore, as the case is made out, I am inclined to interfere in the majority award and so also the minority award, as same was not dissenting award as contemplated under the Arbitration Act.

22. So far as the interest is concerned, the majority Arbitrator has awarded the amount with interest @ 18%, whereas, the minority Arbitrator has awarded the interest @ 10% p.a..

23. However, considering the facts and circumstances and in the interest of justice, I am inclined to observe that the case is made out to remand the matter for re-hearing on all points. The same Tribunal and/or other Tribunal may take the existing evidence and by giving further opportunity to both the parties, pass a fresh award. If required, on application and/or otherwise, the Tribunal may grant opportunity to both the parties to lead additional evidence, if any. I am, remanding the matter only with a view to fasten and/or to dispose of the

Arbitration proceedings as early as possible, based upon the available material on record. To set aside the award without remand, in the present facts and circumstances, would cause delay and injustice to both the parties. Resultantly, the following order:-

- a) Both the majority and minority impugned awards dated 27 July 2009 are set aside.
- b) The matter is remanded back for reconsideration before the same Tribunal and/or the other.
- c) The Arbitral Tribunal to grant opportunity to both the parties to lead additional evidence, if any, and dispose of the same as early as possible.
- d) The parties to take steps, accordingly.
- e) There shall be no order as to costs.