



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 720 OF 2024

Oil and Natural Gas Corporation Limited

..... PETITIONER

:VERSUS:

Sapura Fabrication SDN BHD
now known as
VTEB Fabrication SDN BHD

.... RESPONDENT

Mr. Zubin Behramkamdin, Senior Advocate with Ms. Sana Khan, Ms. Sakshi Kashyap, Ms. Arundhati Korale and Mr. Paras Gupta i/b Jurisperitus Mumbai for the Petitioner.

Mr. Naresh Thacker with Mr. Alok Jain, Mr. Samarth Saxena, Ms. Ria Garg and Ms. Vanshika Kainya for Respondent.

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 27 APRIL 2026

PRONOUNCED ON: 9 JUNE 2026

JUDGMENT:

1. This is a Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 (**Arbitration Act**) challenging the Award made by the three-member Arbitral Tribunal dated 4 May 2024, as modified vide Section 33 Order dated 29 June 2024. By the impugned Award, the Arbitral Tribunal has rejected one claim, partly allowed two claims and has fully allowed three claims raised by the Respondent in relation to performance of contract for redevelopment of ONGC's Mumbai High South Field.

2. Petitioner-ONGC awarded contract to the Respondent for redevelopment of its Mumbai High South Field located about 160 km west-northwest of Mumbai, which included various works such as installation of Wellhead Platforms RS-18, RS-20 and RS-21, installation of clamp-on structures on Platforms RS-2 and RS-11, laying of submarine pipeline for 115.9 km, laying submarine cables etc. Respondent completed the work on time and Petitioner paid USD 214.71 million, Euro 7.81 million and INR 344.42 crores to the Respondent after completion of contract. Respondent claims to have performed additional works (*amounting to Change Order under the contract*) and raised six claims against Petitioner. Petitioner admitted that two claims related to additional work/change order, but according to Respondent, lesser amount is paid against those two claims than the one envisaged in the contract. Rest of the four claims were rejected by the Petitioner as not constituting additional work/change order. In the arbitration, the Tribunal has delivered Award dated 4 May 2024 (*read with order dated 29 June 2024*) rejecting one claim, partly allowing two claims and fully allowing three claims. Petitioner has accordingly filed the present Petition challenging the Award under Section 34 of Arbitration Act.

FACTS

3. Petitioner-Oil and Natural Gas Corporation (**ONGC**) is a public sector undertaking and a company incorporated under the Companies Act, 1956, which is engaged in the business of exploration and extraction of oil and natural gas within territory of India. Among others, Petitioner has

large scale petroleum operations at Mumbai High Field, which is India's natural gas and oil asset on the offshore of Mumbai coast.

4. Petitioner issued Invitation for Bids (**IFB**) on 19 December 2014 for carrying out the work of redevelopment of Mumbai High South Field located 160 km west-northwest of Mumbai in the Arabian Sea on the continental shelf of Western India. The redevelopment envisaged under the IFB was part of redevelopment of Phase III of Mumbai High South field (**MHSRD-III**).

5. Kencana HL Sdn. Bhd. is a predecessor of the Respondent, who submitted its bid on 16 March 2015 in response to the IFB. ONGC awarded contract to Kencana HL Sdn. Bhd. by way of Notification of Award dated 26 May 2015 at a total lump sum price of USD 211,952,770/-, Euro 7,716,347/- and INR 3,413,551,315/-. The effective date for the contract was 26 May 2015. The contract was entered into on 27 June 2015 between ONGC and Kencana HL Sdn. Bhd. The contract was amended twice - on 26 October 2015 and 12 September 2017 to reflect the change of name of the contractor from "Kencana HL Sdn. Bhd." to "SapuraKencana HL Sdn. Bhd." and finally to "Sapura Fabrication Sdn. Bhd." (**Sapura**)

6. The General Conditions of Contract (**GCC**) set out the scope of work, which *inter alia* included surveys, design, engineering, procurement, fabrication, load-out, tie-down/sea-fastening, tow-out/sail-out, transportation, installation, hook-up, testing, pre-commissioning and

commissioning of the entire facilities as described in the IFB for the following facilities:

- (a) Installation of well head platforms RS-18, RS-20 and RS-21
- (b) Installation of clamp-on structures on well head platforms RS-2 and RS-11
- (c) Laying of 15 submarine pipeline segments of 115.9 km pipelines
- (d) Laying of 11kV 1.5 MW submarine cable of 7.54 km from SLQ to SCA
- (e) Top side modifications on existing 18 platforms
- (f) Replacement of 2 Waste Heat Recovery Units ("WHRU") at ICPR platform
- (g) Installation of Intruder Detection cum Deterrence System ("IDDS")
- (h) Pile Remedial work at D1-C platform

7. The works were to be completed by 30 April 2017. The works were completed within the scheduled completion date and ONGC released the performance bank guarantee of the Respondent after being fully satisfied with the work performed. ONGC did not levy any liquidated damages towards performance of contract. ONGC paid to Respondent USD 214.71 million, Euro 7.81 million and INR 344.42 crores.

8. After completion of the work under the contract, Respondent raised 6 claims upon the Petitioner for alleged extra work. Petitioner-ONGC partly allowed two claims and rejected four claims. The details of the six claims raised by the Respondent are as under:

Claim	Particulars	Amount Claimed	Amount paid/allowed
Claim 1	SCA Jacket V bracing	Claim amount USD 2,278,933.56	Partially allowed in the sum of

			USD 917,605 + INR 280,187
Claim 2	Additional work of MHNDRD III PLP – N23 Platform	Claim amount USD 14,347,788.47	Paid amount USD 3,260,618 + INR 5,754,428 + SGD 857
Claim 3	Topside modification on SCA Platform	Claim amt USD 6,618,531.08 + GST	Paid amount – nil
Claim 4	Intruder Detection cum Deterrence System	Claim amount USD 8,106,866.15 + GST	Paid amount – nil
Claim 5	Standby charges for SK900 on account of Rig GD Chaaya	Claim amount USD 2,638,229.18 + GST	Paid amount – nil
Claim 6	Topside modification of RS11 platform	Claim amount – USD 2,224,375 + GST	Paid amount – nil

This is how ONGC partly allowed two claims and rejected four claims of the Respondent.

9. Respondent issued notice under Section 21 of Arbitration Act on 28 December 2021. By its reply dated 24 February 2022, ONGC agreed to refer the dispute to arbitration with seat as Mumbai. Accordingly, a Three-member Arbitral Tribunal comprising of Justice (Retd.) A.P. Shah, Presiding Arbitrator, Dr. Justice (Retd.) Ferdino Rebello, Co-Arbitrator and Justice (Retd.) Anoop V. Mohta, Co-Arbitrator was constituted on 30 March 2022. However, on unfortunate demise of one of the co-arbitrator Justice Anoop V. Mohta, Arbitral Tribunal was reconstituted on 17 February 2023 with all stakeholders agreeing to continue the arbitral proceedings. Justice R. G. Ketkar was substituted as the co-arbitrator.

10. Respondent filed its Statement of Claim on 31 May 2022 and ONGC filed its Statement of Defence on 5 August 2022. Respondent filed its rejoinder on 17 September 2022. Based on pleadings, the Arbitral Tribunal framed 9 issues. Parties led evidence. Respondent examined Mr. Sanket Sant (CW1) and Petitioner examined Mr. Amritsinghpal Chawla (RW1). Parties also filed rebuttal affidavit of evidence of CW1 and RW1. Cross-examination of witnesses was recorded on 24 and 25 April 2023.

11. After considering the pleadings, documentary and oral evidence, the Arbitral Tribunal has delivered a unanimous Award on 4 May 2024 rejecting one claim, partly allowing two claims and fully allowing three claims against of the Respondent. The errors in the award are corrected by passing order under Section 33 of Arbitration Act on 29 June 2024. The Arbitral Tribunal has decided the 6 claims raised by the Respondent as under:

Claim	Particular	Awarded Amount
Claim 1	SCA Jacket V Bracing	USD 1,927,254.54 + GST
Claim 2	Additional work of MHNDR III PLP – N23 Platform	USD 9,920,000 + GST
Claim 3	Topside modification on SCA Platform	USD 2,229,859.56 + GST
Claim 4	Intruder Detection cum Deterrence System	USD 8,011,865.15 + GST
Claim 5	Standby charges for SK900 on account of Rig GD Chaaya	USD 2,638,229.18 + GST

Claim 6	Topside modification of RS11 platform	Rejected
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12. The Tribunal has rejected the claim for pre-award / *pendente lite* interest but has awarded post-award interest at the LIBOR rate as prevailing on date of Award plus 2 % simple interest per annum. The Tribunal has also awarded costs in the sum of INR 1,87,82,866/- in favour of the Respondent together with 9% interest per annum from the date of the Award.

13. Petitioner-ONGC is aggrieved by the Award dated 4 May 2024 (as corrected vide order dated 29 June 2024) and has accordingly filed the present Petition under Section 34 of the Arbitration Act.

14. By order dated 1 December 2025, this Court recorded a statement on behalf of Petitioner that entire awarded sum together with interest shall be deposited with the Court. Accordingly, the awarded sum together with interest is deposited in this Court, which is directed to be invested in interest-bearing deposits. This Court has stayed the execution and operation of the Award during pendency of the Arbitration Petition. During pendency of Petition, the name of the Respondent has further undergone a change from "Sapura Fabrication Sdn. Bhd." (**Sapura**) to "VTEB Fabrication SDN BHD" w.e.f. 27 March 2026 and accordingly, the Petition was permitted to be amended for effecting change in the name of Respondent. With the consent of learned counsel appearing for the parties, the Arbitration Petition has been heard for final disposal.

SUBMISSIONS ON BEHALF OF PETITIONER

15. Mr. Behramkamdin, the learned Senior Advocate appearing for Petitioner-ONGC has canvassed extensive submissions in support of challenge to the impugned Arbitral Award. He submits that the Arbitral Tribunal has erroneously awarded five claims in favour of the Respondent and that award of the said claims is clearly contrary to the contractual stipulations agreed between the parties. He first attacks award of Claim no.4 for Intruder Detection cum Deterrence System (**IDDS**) submitting that installation of IDDS works was within the scope of contract as per clause- 2.1.1. That as per clause- 2.2.7.3 of Section 2A (Description of work) Part IV of the Bidding Documents, the Petitioner provided broad specifications for execution of works for which Respondent had quoted lump sum price of USD 1,200,000/- and INR 30,000,000/- for the material and USD 430,306/- and INR 10,599,388/- for the services. That therefore there was no additional work done and the same was covered under costs quoted by Respondent as a lump sum price. He submits that all the work is done by the Respondent as per the contractual provisions. That the Tribunal has erred in going into minute details of IDDS for holding that connecting High-Volume Long-Range monitor (**HVLR**) to both the firewater headers was never a contractual requirement by placing reliance on Notes to Clause 2.2.7.2 of the Bidding Documents, which merely mentioned modification and extension of firewater network and routing the same for hookup with HVLRs as a broad specification. That this clearly shows that the work was within the scope of contractual work, but the Tribunal failed to appreciate the broad and indicative nature of bidding document without containing all the necessary requirements. That specific requirements can always be

narrowed down after award of contract through site surveys and detailed engineering. That even after giving specifications, the Petitioner still had authority to instruct the Respondent for further specifications in order to ensure proper execution of the works as per clause 5.3.1 of GCC. That though the Arbitral Tribunal has noted clause 5, it has not afforded proper reasoning for the grant of the claim despite the said clause.

16. Mr. Behramkamdin submits that Tribunal has erred in holding that deck extension for the foam tanks amounted to a “Change Order” under Clause 8 without appreciating the position that the need for deck extension is a mere offshoot of broad scope of work mentioned. That the Tribunal has erroneously held that Respondent was entitled to costs associated with multiple pre-engineering surveys without appreciating the position that conduct of pre-engineering surveys was a part of scope of work as per clause 5.4.1. That Petitioner had asked for particulars of alleged additional work done with respect to IDDS and documents pertaining to the same on multiple occasions. However, no documents were produced by the Respondent despite multiple reminders. Despite failure to prove use of additional manpower to complete the work, the Tribunal has erroneously awarded this claim. He submits that Claim No.4 was otherwise barred by limitation as the same was rejected on 18 January 2018, whereas arbitration was invoked on 28 December 2021.

17. Mr. Behramkamdin then criticises the award in respect of Claim No. 5 for standby charges for SK900. He submits that the Arbitral Tribunal has erroneously assumed that the date for work at D1-C Platform

was mutually preponed. That the correct factual position is that preponement was done at the request of the Respondent and the same was subject to condition of carrying out simultaneous operations (**SIMOPs**). That Respondent was well aware of drilling work going on through Rig GD Chaaya and it agreed for carrying out SIMOPs. That the Arbitral Tribunal failed to appreciate the communication placed on record by the Petitioner which shows that on 13 January 2017, the Respondent was informed of drilling activities in progress and constant coordination required between SK900 and Rig GD Chaaya. In the letter, it was stated that if the simultaneous operations could take place to avoid standby, then only SK900 could proceed to location for the pile remedial work. That the Tribunal ignored letter dated 13 January 2017 and erroneously concluded that Respondent was not informed about presence of Rig GD Chaaya. Thus, the Tribunal has erred in holding that Respondent was entitled for standby and idling charges for the Barge SK900 for lack of coordination. That the Tribunal ignored clauses 5.23(a) and 5.19 of GCC which provided for effecting concurrent jobs at the site not having any cost/time impact on the Petitioner and mere drilling work not stalling other offshore activities. That it was the decision of Respondent to prepone the date of commencement of its work at D1-C platform from 1 April 2017 to 15 January 2017 and Petitioner cannot be blamed for the alleged delay in informing presence of Rig GD Chaaya at the platform. He submits that the rate applied by Arbitral Tribunal is also erroneous. He submits that Claim No. 5 was otherwise barred by limitation.

18. In respect of Claim No. 3 (Topside Modification of SCA Platform), Mr. Behramkamdin submits that the contract was on turnkey basis, requiring the bidders to quote lump sum price for different types of material, equipment, services, and labour for major component of contract and that the scope of work included cost of all surveys. That therefore it was incumbent for Respondent to bear the cost of all surveys. That the third survey was conducted due to lapse on part of the Respondent in not providing hazard identification report. That clause 5.3.1 gave Petitioner authority to seek further specifications necessary for proper and adequate execution of works in accordance with the contract. That therefore third survey cannot be treated as an extra work. That modification of deck extension was possible only post proper surveys since the deck extension size and locations were merely indicative in nature. That conduct of surveys was necessary to seek the actual parameters basis which Respondent was obliged to finish the work without any cost or time impact on the Petitioner. That therefore surveys were not additional and that no cost impact was involved due to conduct of multiple surveys. He relies on clause 5.4.1. That the Tribunal has contradicted itself by holding that change in deck extension location was not a variation and thereby rejecting Respondent's claim for additional costs citing absence of additional documentation. That ABS certification relied upon by the Tribunal applied to quantity of material/services deployed but did not show the prices at which the materials were procured.

19. Mr. Behramkamdin further submits that the findings recorded by Arbitral Tribunal *qua* Claim No. 3 are contrary to public policy. That the

Tribunal has recorded a perverse finding that there was significant change in contractor's job with respect to installation leading to costs incurred by the Respondent. That while recording such finding, the Tribunal has failed to appreciate the fact that the change in work was essentially to reduce the shutdown time from 8 days to mere 24 hours. That Respondent had agreed for the change in work without raising any objection. He relies on clause 2.3.4.2 for showcasing the shutdown requirements. That Tribunal erred in holding that Petitioner's decision to reduce shutdown time amounted to a new and different philosophy. That the Tribunal failed to consider clauses 2.3.1.2 and 2.3.1.3 by which Respondent was made aware of all risks, contingencies and circumstances affecting its obligations and responsibilities under the contract. That therefore Petitioner's decision to reduce the shutdown time did not mean entitlement for the Respondent to raise a claim over and above the lump sum price agreed under the contract. That clause 2.3.4.2 lays down the timeline for shutdown proposal, which is to be submitted by the contractor to ONGC at least 4 months in advance and approval to such final shutdown to be given by ONGC not later than 1 month prior to the actual shutdown schedule. That therefore it is incorrect to hold that Respondent was informed at the very last moment that the shutdown cannot take place. That the claim is otherwise barred by limitation as the same was rejected on 18 January 2018.

20. In respect of Claim No.1 (SCA Jacket V Bracing) and Claim No.2 relating to additional work at N23 platform, Mr. Behramkamdin submits that ONGC does not dispute that the same is an additional work. However, he questions the basis and rate at which the claims are awarded

under these subheads. He submits that Petitioner had never agreed to Annexure-C rates as claimed by the Respondent. That as per Note 5 to Item III to Annexure-C, Petitioner was entitled to apply the actual rates prevailing at a particular time. That by letter dated 10 October 2016, Petitioner had instructed the Respondent to proceed ahead with the work of strengthening of SCA-Jacket members, clarifying that the payment for the same would be made on actuals. That Petitioner has rightly applied rates for B-127 contract. That the same barge (SK900) was used in the contract in question, as well as, for performing B-127 contract. That B-127 contract was performed at the rate of USD 103,000/- per day while Respondent claimed exorbitant rate of USD 275,000/- per day (being fixed rate under the contract). That since Annexure-C to the Contract applies to the work, Note 5 to Item III is also applicable. That nowhere in the contract it was agreed that variation would be paid as per Annexure C of the contract. That Petitioner treated SK900 consistently across both claims. That both the claims were barred by limitation.

21. On above broad submissions, Mr. Behramkamdin would pray for setting aside the impugned award.

SUBMISSIONS ON BEHALF OF RESPONDENT

22. Mr. Thacker, the learned counsel appearing for the Respondent opposes the Petition submitting that the Arbitral Award is challenged as if the present Petition is an appeal in disguise. He submits that this is an international commercial arbitration under Section 2(1)(f) of the Arbitration Act since Sapura is a company incorporated in Malaysia. That

therefore the ground of patent illegality under Section 34(2A) is not available for challenging the impugned Award. That none of the objections sought to be raised fall within the parameters of various grounds enumerated under Section 34 of the Act for challenging the Award. He relies on judgment of the Apex Court in *Ssangyong Engineering & Construction Company Limited vs. National Highways Authority of India*¹, *Associate Builders vs. Delhi Development Authority*², *Punjab State Civil Supplies Corpn. Ltd. vs. Sanman Rice Mills*³ and *Prakash Atlanta JV vs. NHAI*⁴. He submits that the views of the Arbitral Tribunal on the matters of contractual interpretation are correct or at the very least, plausible. He submits that evidentiary findings are otherwise conclusive and rational. That no interference is warranted in exercise of jurisdiction under Section 34 of the Act.

23. Mr. Thacker further submits that ONGC has erroneously contended that this is a lump sum contract disentitling Sapura in respect of claims for additional works. That the case set out by ONGC is contrary to Clause 8 of GCC providing for variations and ONGC's own admission that Claims 1 and 2 are additional works for which Sapura is entitled to be compensated. If it was a lump sum contract, ONGC would have never agreed for compensating Sapura for any additional work.

¹ (2019) 15 SCC 131

² (2015) 3 SCC 49

³ 2024 SCC OnLine SC 2632

⁴ 2026 SCC OnLine SC 98

24. In respect of Claim No.1 (*SCA Member Jacket V Bracing*), Mr. Thacker submits that the Tribunal has rightly interpreted the letter dated 10 October 2016 to mean that payment was to be made on the basis of work actually performed and volumetrically measured. That the letter had no significance to adopting rates other than those contractually agreed. That reliance by the Petitioner on Note 5 to Item III of Annexure-C is misplaced and the Tribunal has rightly held that Note 5 does not override rates in Annexure-C Item III. That the Tribunal has rightly read Note-5 holistically and together with clause 8.1.1.4 (iii). That Note 5 triggers only when parties agree under clause 8.1.1.4 (iii). That rates in Annexure-C Item III are not applicable. That ONGC never invited Respondent to negotiate the rates and proceeded to unilaterally apply the rates. That ONGC had given up the argument on Clause 8.1.1.4 (iii) and it cannot now contend that Note 5 is to be read as overriding the rates under Annexure-C read with clause-8.1.1.4 (ii). That this issue was never raised before the Tribunal and contradicts ONGC's own case in arbitration. He further submits that ONGC has incorrectly applied rates for B-127 contract, which was not concurrent or comparable. That ONGC's witness admitted that he wasn't aware about bidding documents of B-127 contract and had not compared the scope of work under the two contracts. That the claim is within limitation as rightly held by the Arbitral Tribunal.

25. In respect of Claim No.2 (*pipe laying linked to N23 platform*), Mr. Thacker submits that the work is admitted as being additional by ONGC and the only dispute is about the amount payable to Sapura. That the reasonings adopted for allowing Claim No.1 apply to Claim No.2 as well.

That ONGC's reliance on letter dated 9 February 2017 is misplaced as the Tribunal has rightly interpreted the said letter to mean that it referred to the time usage of the vessel and not to the rates. He submits that the Tribunal has considered the evidence, contractual terms and has arrived at plausible findings that the claim is within limitation.

26. In respect of Claim No.3 (*deck extension of SCA platform*), Mr. Thacker submits that the main claim of Sapura about change in location amounting to variation is already rejected by the Arbitral Tribunal. That only the claim for wasteful expenditure towards unnecessary pre-engineering surveys (relating to third survey) is allowed by Arbitral Tribunal. That the third survey was insisted upon by ONGC even after it had agreed for deck extension on eastern side. That ONGC has erroneously stated in its written submissions that Sapura did not provide hazard identification report which necessitated conduct of additional survey. That this contention is different from Para 36 of the Statement of Defense, in which no such allegation was leveled. In fact, ONGC's demand for another survey for assessing south side location was raised during hazard identification and hazard operability meeting. That ONGC has now completely twisted the case to suggest that no hazard identification report was supplied by Sapura.

27. Mr. Thacker further submits *qua* Claim No.3 that the Tribunal has rightly held that ONGC cannot order multiple pre-engineering surveys merely because conduct of such surveys was Sapura's responsibility. That the Tribunal has not awarded costs of second and fourth survey. That only

third pre-engineering survey was held unnecessary in the light of second survey already confirming suitability of deck extension on eastern side. That ONGC's case of reduction of shutdown time for change in installation philosophy is completely misplaced as Sapura had given shutdown schedule 4 months in advance and it was not reasonable for ONGC to change installation philosophy without bearing costs thereof. That the findings of the Tribunal on the quantum of claim are well supported by the material on record. That the claim is correctly held to be within limitation since the same was rejected on 21 May 2019 and the arbitration was invoked on 28 December 2021.

28. In respect of Claim No.4 (*IDDS*), Mr. Thacker submits that ONGC has erroneously cited the pretext of contract being lump sum for the purpose of avoiding payment for additional work associated with *IDDS*. That notes to Section 2.2.7.2 of Volume-II of bidding documents clearly stated that preference was to be given to firefighting over HVLR operations and both systems were not to be operated simultaneously. That therefore the two connections were never envisaged in the fundamental aspects of *IDDS*. That ONGC admitted in minutes of meeting dated 11 May 2016 that deck extensions were not envisaged in the contract scope. That excess steel usage is certified by ONGC's own inspection agency. That the Tribunal has correctly awarded cost of surveys under Clause 5.4.1 since the same were conducted on account of ONGC's additional demands which were dropped subsequently. That the claim was clearly within limitation as it was rejected on 18 January 2018 but on account of COVID-19 exclusion period

from 15 March 2020 to 28 February 2022, the claim is within limitation as arbitration was invoked on 28 December 2021.

29. In respect of Claim No.5 (*standby charges for SK900*), Mr. Thacker submits that the Tribunal has rightly arrived at the conclusion that preponement schedule was mutual since it was agreed by ONGC. That the Tribunal has rightly held that the condition of SIMOPs was imposed only on 13 January 2017 i.e., a day before Sapura was to begin the work. That the condition of SIMOPs was not imposed when the request to prepone the work had been accepted by ONGC in the year 2016. That the Tribunal has correctly drawn adverse inference. That the real issue is about ONGC's failure to inform Sapura in a timely manner for avoiding the standby. That Sapura would not have known in advance about the workfront situation. That the Arbitral Tribunal has correctly considered Clauses-2.2.2.2, 5.3.5, 5.19 and 5.23 for holding that the express language of the Contract supports its views that Clause-5.19 is a *non obstante* clause. That the rate applied by the Arbitral Tribunal is correct. That the claim is within limitation after considering COVID-19 exclusion period.

30. On above broad submissions, Mr. Thacker prays for dismissal of the Petition.

REASONS AND ANALYSIS

31. Respondent was awarded the work for redevelopment of the Mumbai High South Field which comprised of setting up various facilities as enumerated above. So far as the work assigned to the Respondent is

concerned, there is no dispute about quality or quantity of the said work and even in respect of completion thereof within the contract period. The work, as envisaged in the contract, has been completed within the stipulated time and to the satisfaction of Petitioner-ONGC. ONGC has accordingly released the performance bank guarantee submitted by the Respondent after being satisfied with the work performed. There is neither any allegation of delay nor any allegation of unsatisfactory performance, and Petitioner has not imposed any liquidated damages on the Respondent.

32. Though the entire assigned work is completed within the stipulated time by the Respondent and to the satisfaction of the Petitioner, disputes still arose between ONGC and Sapura in respect of certain facets of work, which according to the Respondent, was either additional work or a part of Change Order. Accordingly, Respondent raised six claims against the Petitioner. Out of those six claims, Petitioner admitted that two claims relating to SCA Jacket V Bracing (Claim No.1) and for additional work on N-23 platform (Claim No.2) did amount to additional work and Petitioner has accordingly sanctioned part of those claims. The dispute in respect of Claim Nos. 1 and 2 is mainly about applicability of rates at which payments are required to be made to the Respondent. Petitioner had paid rates applicable to other contract (B-127 contract), whereas the Tribunal has upheld Respondent's entitlement towards rates prescribed in Annexure-C Item III of the contract executed with Respondent. ONGC is aggrieved by applicability of Annexure-C Item III rates.

33. So far as the balance of four claims (Claim Nos.3 to 6) are concerned, Petitioner-ONGC flatly refused to treat them as additional works / Change Order and has denied liability to make any payment. Out of those four claims, one claim (Claim No. 6) is rejected by the Arbitral Tribunal. Respondent has not challenged the award regarding rejection of Claim No.6 and has accepted rejection of the said claim. Since the Arbitral Tribunal has found ONGC liable for paying the sums under Claim Nos. 3 to 5, ONGC is aggrieved by the said decision.

34. ONGC is thus aggrieved by partial award of Claim Nos.1 and 2 and full award of Claim Nos.3 to 5, and has accordingly filed the present Petition under Section 34 of the Arbitration Act.

WHETHER THE GROUND OF ‘PATENT ILLEGALITY’ IS AVAILABLE FOR CHALLENGING THE AWARD?

35. This is an international commercial arbitration within the meaning of Section 2(1)(f) of the Arbitration Act since Respondent is a company incorporated in Malaysia and since the arbitration relates to disputes arising out of legal relationship considered as commercial under the laws in force in India. However, since the place of arbitration is in India, Part-I of the Arbitration Act would apply to the instant arbitration under Section 2(2) of the Arbitration Act. This is why the Award is challenged under Section 34 of the Act. However, the ground of patent illegality under Section 34(2A) is not available while challenging the arbitral award arising out of international commercial arbitrations. Sub-Section (2A) of Section 34 of the Arbitration Act provides thus:

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence

(emphasis and underlining supplied)

36. Thus, Sub-section (2A) of Section 34 of Arbitration Act does not apply to international commercial arbitrations. The instant Award therefore cannot be challenged on the ground of patent illegality. However, an Award made by a domestic seated arbitral tribunal even in international commercial arbitration can be challenged under Section 34 of the Arbitration Act, *albeit* only on the grounds under Sub-Section (2). One of the grounds for setting aside the award made even in international commercial arbitration is where the award is in conflict with the public policy of India under Section 34(2)(b)(ii).

37. Without appreciating the position that the Award is made in an international commercial arbitration, the Petitioner has filed and argued the present Petition as if the ground of patent illegality is also available for challenging the Award. The ground of perversity is repeatedly pleaded in the Petition and the elements of perversity in the findings recorded by the Arbitral Tribunal are repeatedly sought to be demonstrated on behalf of the Petitioner during the course of submissions. However, the vice of perversity is relatable to the ground of patent illegality under Section 34(2A) of the Arbitration Act, which ground is not available for challenging the Award made in an international commercial arbitration.

38. In **ONGC Vs. Western Geco International Ltd.**⁵, a three Judge Bench of the Supreme Court had interpreted provisions of Section 34 of the Arbitration Act as it stood before amendment and gave wider meaning to the expression ‘public policy of India’ by relying on its judgment in **ONGC Vs. Saw Pipes**⁶ and held that the expression would refer to three distinct and fundamental juristic principles viz. (i) duty to adopt judicial approach, (ii) following of principles of natural justice, and (iii) decision must not be perverse or irrational. Thus, the observations in ***ONGC Vs. Western Geco International Ltd.*** (supra) do seek to create an impression as if the ground of perversity is covered by the expression ‘public policy of India. However, in ***Associate Builders*** (supra), the Apex Court clarified that the expression ‘public policy of India’ would mean ‘fundamental policy of Indian law’, which needs to be understood as per the judgment in **Renusagar Power Co. Ltd. Vs. General Electric Co. Ltd.**⁷

39. However, after the 2015 amendments to the Arbitration Act, the ground of patent illegality came to be added in relation to the awards made in domestic arbitrations under Section 34(2A). At the time of effecting the 2015 amendments, the Law Commission had observed in its supplementary report that the judgment in ***ONGC Vs. Western Geco*** (supra) would expand Court’s power contrary to international practice and that a clarification needed to be incorporated to ensure that the term ‘fundamental policy of Indian law’ is narrowly construed. In ***Ssangyong***

⁵ (2014) 9 SCC 263

⁶ (2003) 5 SCC 705

⁷ 1994 Supp (1) SCC 644

Engg & Construction Ltd. Vs. NHAI (supra), the Supreme Court dealt with the effect of 2015 amendment and held as under:

“34. What is clear, therefore, is that the expression “public policy of India”, whether contained in Section 34 or in Section 48, would now mean the “fundamental policy of Indian law” as explained in paras 18 and 27 of Associate Builders i.e. the fundamental policy of Indian law would be relegated to “Renusagar” understanding of this expression. This would necessarily mean that Western Geco expansion has been done away with. In short, Western Geco, as explained in paras 28 and 29 of Associate Builders, would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post-amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders.

35. It is important to notice that the ground for interference insofar as it concerns “interest of India” has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. This again would be in line with paras 36 to 39 of Associate Builders, as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.

36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders, or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders. **Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco, as understood in Associate Builders, and paras 28 and 29 in particular, is now done away with.**

37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within “the fundamental policy of Indian law”,

namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.

38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders, however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders, while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.

42. Given the fact that the amended Act will now apply, and that the “patent illegality” ground for setting aside arbitral awards in international commercial arbitrations will not apply, it is necessary to advert to the grounds contained in Sections 34(2)(a)(iii) and (iv) as applicable to the facts of the present case.

(emphasis and underlining supplied)

40. Thus, in *Ssangyong Engg & Construction Ltd. Vs. NHAI*, the Apex Court has given narrower meaning to the expression ‘fundamental policy of Indian law’ and has held that the ground of decision being perverse is no longer a ground for challenge under ‘public policy of India’. It is held that the perversity is a ground constituting patent illegality under Section 34(2A) of the Arbitration Act.

41. In *Vijay Karia v. Prysmian Cavi E Sistemi SRL and Others*⁸, it is held by the three Judge Bench of the Apex Court that the challenge to a foreign award under Section 48 of the Act is now similar to a challenge to an award made in international commercial arbitration held in India under Section 34 so far as the ground of ‘public policy of India’ is concerned. It is held thus:

42. It will be noticed that in the context of challenge to domestic awards, Section 34 of the Arbitration Act differentiates between international commercial arbitrations held in India and other arbitrations held in India. So far as “the public policy of India” ground is concerned, both Sections 34 and 48 are now identical, so that in an international commercial arbitration conducted in India, the ground of challenge relating to “public policy of India” would be the same as the ground of resisting enforcement of a foreign award in India. Why it is important to advert to this feature of the 2015 Amendment Act is that all grounds relating to patent illegality appearing on the face of the award are outside the scope of interference with international commercial arbitration awards made in India and foreign awards whose enforcement is resisted in India. In this respect, it is important to advert to paras 41 and 69 of *Ssangyong* ...

xxx

This statement of the law applies equally to Section 48 of the Arbitration Act.

⁸ (2020) 11 SCC 1

42. The principle that a perverse decision cannot be a ground for challenge under ‘public policy of India’ is further clarified by the Apex Court in **PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust and others⁹**, in which it is held thus:

41. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders

“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

(emphasis and underlining supplied)

43. The restrictive meaning to the expression ‘public policy of India’ is further highlighted by the Apex Court in three Judge Bench decision in **OPG Power Generation Private Limited v. Enxio Power Cooling Solutions India Private Limited and another¹⁰**, in which it is held that the phrase ‘in conflict with the public policy of India’ must be accorded a restricted meaning in terms of Explanation 1 as the expression ‘in contravention with the fundamental policy of Indian law’, by use of the

⁹ (2023)15 SCC 781

¹⁰ (2025) 2 SCC 417

word ‘fundamental’ before the phrase ‘policy of Indian law’ made the expression narrower in its application than the phrase ‘in contravention with the policy of Indian law’. The Court held thus:

55. The legal position which emerges from the aforesaid discussion is that after “the 2015 Amendments” in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase “in conflict with the public policy of India” must be accorded a restricted meaning in terms of Explanation 1. The expression “in contravention with the fundamental policy of Indian law” by use of the word “fundamental” before the phrase “policy of Indian law” makes the expression narrower in its application than the phrase “in contravention with the policy of Indian law”, which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

- (a) violation of the principles of natural justice;
- (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and
- (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).

44. The principle of narrower and restrictive meaning to the expression ‘in conflict with public policy of India’ is also recognised in paragraph 33 of the recent judgment in *Prakash Atlanta (JV) Vs. NHAI* (supra).

45. The conspectus of the above discussion is that the ground of patent illegality is not available for challenging the impugned award which is made in an international commercial arbitration held in India. Also, perversity, if any, in findings recorded by the Arbitral Tribunal would constitute the vice of patent illegality and would not come in the ambit of the expression 'in conflict with public policy of India.'

46. After having outlined the limited scope of interference in Award made in an international commercial arbitration, I proceed to examine whether the Petitioner has made out any of the enumerated grounds under Section 34(2) of the Arbitration Act while challenging the Arbitral Award relating to grant of Claim Nos. 1 to 5.

CLAIM NO.1-SCA JACKET-V BRACING

47. ONGC entrusted to Sapura additional scope of work for strengthening five members/components of the Jacket of SCA Platform and the work was to be performed by injecting grout (a mixture of cement, sand and chemical) into the hollow section of the members of the jacket under water. A jacket structure in a platform is a steel structure used to support oil and gas production equipment, which comprises four legs pinned to the seafloor. The legs are connected with each other by bracings or members. Respondent was asked to strengthen the part of the jacket which is under water and such repair exercise required a saturation diving spread. The divers were required to work under a very high hydrostatic pressure. Saturation diving involves specialised diving equipment keeping the divers in a saturated state when they come out of the water, when they are

required to be kept in a specialised room where the pressure is maintained. Therefore, saturation diving spread includes vessels capable of supporting saturation divers to execute the work.

48. On 16 September 2016, ONGC requested Sapura to provide a proposal for execution of the work and the response was given by Sapura on 26 September 2016 showing willingness to execute the work based on prices as indicated in Section III for unit rate of vessels and Section IV for cost plus items from Annexure-C of the contract. In its proposal, Respondent had identified not only the marine spread to be utilized for the work but had also indicated details of specialized crew from Nautic Offshore Pte Ltd, as well as specialised material. The proposal was accepted by ONGC vide letter dated 10 October 2016 indicating that “*change order shall be issued as per the terms of the contract on completion of the scope based on actual work carried out*”.

49. The work was accordingly executed by the Respondent, who presented its claim for USD 2,271,706.94/-. After substantial gap, ONGC approved the claim, only partially, for USD 917,605/- and INR 280,187/- (excluding GST) without assigning any reasons. After some insistence by Respondent, calculation sheet was provided to the Respondent, which revealed that ONGC had applied different unit rate for marine spread used for the work. The unit rate applied by ONGC was picked up from ‘B-127 Contract’, rather than applying the rates as prescribed in Annexure-C of the contract executed with Respondent.

50. Thus, the main dispute in respect of Claim No.1 is about applicability of unit rate for marine spread used for completion of the work.

The issue before the Tribunal was whether unit rate indicated in Annexure-C could be applied or whether ONGC is justified in applying unit rate in respect of another contract (B-127).

51. In the Arbitral Award, the Tribunal has held that the Respondent was justified in applying contractual rates for the marine spread used and that ONGC was not justified in applying unit rate from B-127 contract.

52. ONGC essentially relied upon two materials for justifying application of unit rate from B-127 contract. *Firstly*, it contended that in the communication dated 10 October 2016, it had made it clear that payment shall be based on “actuals”. *Secondly*, Note 5 for item III reserved a right for ONGC to arrive at applicable rates depending on type of marine spread used and market conditions.

53. So far as letter dated 10 October 2016 is concerned, the Arbitral Tribunal has made reasonable interpretation of the word “actuals” appearing in the said letter to mean that the payment for variation would be as per work and that “as per actuals” did not empower ONGC to apply differential or discriminatory rates. The Arbitral Tribunal has held in paragraph 148 of the Award as under:

148. The Tribunal now takes up the issue with regard to the Respondent's position that it had agreed to pay for the variation as per actuals, as contained in its communication dated 10.10.2016. The Tribunal finds this declaration to be without any merit at all. Even if the phrase, "as per actuals" is taken at face value, it could only be reasonably interpreted to mean that the payment for the variation would be as per work; in other words, the variation would be measured and duly compensated, as per applicable rates. Employing the phrase "as per actuals" does not empower

the Respondent to apply differential or discretionary rates, as it has attempted to do in the present case.

54. I do not find that the above finding recorded by the Arbitral Tribunal *qua* communication dated 10 October 2016 to be such that no fair-minded person would ever record the same. The communication dated 10 October 2016 stated as under:

*"amount of **payment shall be based on the actuals** and shall be limited to the amount incurred for actual work as per your proposal or the maximum ceiling limit of US\$ 4,606,730 whichever is less"*

55. The Tribunal has correctly interpreted contents of letter dated 10 October 2016 to mean that the phrase "as per actuals" appearing therein would only mean that the payment for variation would be as per work. The letter dated 10 October 2016 did not refer to application of any particular unit rate in any manner. The finding recorded by Arbitral Tribunal is thus plausible, not requiring any interference under Section 34 of the Arbitration Act.

56. Coming to the second aspect of applicability of Note 5, the Arbitral Tribunal has taken into consideration clauses 8.1.1.1 and 8.1.1.4 in paragraph 131 of the Award. It would be necessary to cull out clause 8.1.1.4, which reads thus:

8.1.1.4

i) Any change order as stated in 8.1.1.1 comprising an alteration which involves change in the cost of the Works (which sort of alteration is hereinafter called a "Variation") shall be the subject of an amendment to the Contract by way of an increase or decrease in the Contract price and adjustment of the construction schedule if any.

ii) If the Contract provides applicable rates in accordance with Annexure 'C' of the Contractor for the valuation of the variation in question the Contract price shall subject to 8.1.1.4 (iii) be increased or decreased in accordance with those rates.

iii) If parties agree that the Contract does not contain applicable rates or that the said rates are inappropriate or the said rates are not precisely applicable to the variation in question, then the parties shall negotiate a revision of the Contract Price which shall represent the change in cost of the Works caused by the Variations. Any change order must be duly approved by the Company in writing.

57. Thus, under clause 8.1.1.4(ii), if the contract provided for applicable rates in accordance with Annexure-C, for valuation of the variation, the contract price shall be increased or decreased accordingly. However, clause 8.1.1.4 (iii) provides that the contract price would be reviewed through negotiations if (i) contract does not contain applicable rates, ii) the rates are inappropriate, or (iii) the rates are not precisely applicable to the variation in question.

58. Annexure-C (*Proforma for Price Schedule*) spells out *inter alia* the schedule of prices applicable for clause 8.1.1.4 (ii). Under Entry No.7 in the Table with a heading “DETAILS OF MARINE SPREAD”. The rate for saturation driving spread is indicated as USD 275,000 per day. However, in respect of clause 8.1.1.4 (iii), Special Notes are included in Annexure-C which read thus:

NOTES FOR ITEM (III)

1. Deleted
2. Mobilizations / demobilizations charges of above spreads are included in lump sum price I.A.
3. Adjustment shall be computed, wherever applicable on pro-rata basis for actual time/effort spent.
4. All spreads are inclusive of towing/Anchor handling tugs, work boats, supply boats, material barge, man power etc. as required.

5. Company reserves the right to mutually discuss and arrive at the applicable rates depending upon the type of marine spread actually used/ deployed and market conditions.

(emphasis supplied)

59. Under Note 5, the ONGC reserved the right to mutually discuss and arrive at applicable rates depending on type of marine spread "actually used" and market conditions. However, Note 5 becomes applicable only when clause 8.1.1.4 (iii) kicks in. In the present case, the contract clearly provides for rates applicable for Saturation Diving Spread and therefore, the case is governed by clause 8.1.1.4 (ii). In my view therefore, Note 5 has no application to the present case. This is exactly what is held by the Arbitral Tribunal. The interpretation made by the Arbitral Tribunal in respect of contract clauses is not only plausible but also a correct interpretation. I find no reason to interfere in the findings recorded by the Arbitral Tribunal in respect of second issue of non-applicability of Note 5 in the present case.

60. Thus, both the justifications sought to be canvassed by ONGC for applying unit rates of B-127 contract are totally baseless and are rightly rejected by the Arbitral Tribunal. Award of Claim No.1 therefore appears to be in order, and no case is made out by Petitioner to interfere in the same in exercise of jurisdiction under Section 34 of the Arbitration Act.

61. Some grievance is also sought to be raised about allowing cost of specialised crew and DG rent by the Arbitral Tribunal by contending that Note 4 of Item (III) of Annexure-C provides that all spreads are inclusive of towing/anchor handling tugs, work boats, supply boats, material barge, manpower etc. as required.

62. However, it appears that the claim for supply of vessel was withdrawn by Sapura in accordance with Note 4 and has not been awarded by the Tribunal. The claim for grouting spread, lab and crew was agreed upon in the Award as it is specialised equipment and crew and ONGC now cannot resile from it. About DG set rental, the Arbitral Tribunal has recorded cogent findings for award of this element of claim.

63. The Arbitral Tribunal has recorded reasons in paragraph 160 of award for awarding GST and Petitioner is unable to make out an element of violation of fundamental policy of Indian law in those findings. The objection of limitation sought to be raised by the Petitioner *qua* Claim No.1 deserves outright rejection. The claim was partially sanctioned and partially rejected on 15 January 2019 and was well within limitation as arbitration is invoked on 28 December 2021.

64. Petitioner is thus unable to make out a valid ground under Section 34(2) of the Arbitration Act *qua* award of Claim No. 1. In my view therefore, no case is made out by the Petitioner for interference in respect of award of Claim No.1 relating to SCA Jacket V Bracing which is awarded in the sum of USD 1,927,254.54/- along with GST. Therefore, award of Claim No.1 by the Arbitral Tribunal cannot be invalidated.

CLAIM No.2 –ADDITIONAL WORK OF MHNDR III PLP–N23 PLATFORM

65. A separate contract dated 19 September 2014 (MHNDR III PLP Contract) was apparently awarded to another contractor previously and that contractor did not finish the scope of laying pipelines and therefore ONGC instructed Respondent to carry out the balance unfinished work,

which was carved out from MHNDRD III PLP Contract and was awarded to the Respondent. The work involved transportation of pipes and bends (supplied by ONGC) using a transportation vessel, laying of pipes using pipelay vessels, performing tie-ins and other work using a saturation diving vessel and performing pre-commissioning works using a hydro test vessel.

66. After receiving instructions from ONGC containing broad scope of work, Sapura submitted its proposal on 27 September 2016 and after series of negotiations, Sapura made final offer on 30 January 2017, which was accepted by ONGC on 9 February 2017 stating that the subject work would be treated as additional work. After completion of the work, Respondent presented its claim for USD 14,373,208.69/-, which was revised to USD 14,347,788.47/-. ONGC only partially approved the claim for USD 3,260,618/-, INR 5,754,428/- and SGD 857/-. After receipt of calculation sheet on 21 January 2019, it was revealed that a different unit rate was applied by the Petitioner for the marine spread used for the work. On 2 March 2020, ONGC communicated that unit rates from B-127 Contract were applied. This led to dispute amongst the parties. The difference in the rates is indicated by the Arbitral Tribunal in the following table:

SI.	Marine Spread	Vessel	Sapura	ONGC
1	Rigid Pipelay Barge Spread	SK1200	USD 475,000	USD 175,000
2	Saturation Diving Spread	SK900, Kreuz Supporter and Kreuz Installer	USD 275,000	USD 103,000
3	Transportation Spread	Sagar 250 and Sagar 5	USD 75,000	USD 10,620
4	Hydro Test spread	MV Emerald	USD 155,000	USD 38,500

67. ONGC relied on Note 5 for Item III in Annexure-C to justify applicability of unit rate from B-127 Contract on the ground that no rates were available in the contract for the additional work. The Tribunal did not agree with Petitioner's stand and held that the contract contains pipe laying work in clause 2.1.1 of the GCC and that the rates in Annexure-C can apply to the additional work of the similar nature. The Tribunal referred to clause 8.1.1.4 (ii) of the GCC and found that the type of marine spread to be used for the additional work was found in item III of Annexure-C.

68. Petitioner has sought to criticise the finding recorded by the Arbitral Tribunal about applicability of Annexure-C rates for additional work of laying pipes contending that ONGC never agreed for application of Annexure-C rates and that contract did not provide for any rates for the additional work. However, Tribunal has held that contract already contains pipe laying work under clause 2.1.1, which specifically includes within 'scope of work' the work of 'laying of submarine pipelines'. The finding recorded by the Arbitral Tribunal about Annexure-C providing unit rates for the work of laying of submarine pipelines is as per the contractual arrangement between the parties. The Petitioner erroneously applied rates in relation to B-127 Contract by referring Note 5 of Item III of Annexure-C. For the reasons discussed while upholding award of Claim No.1, in my view, award of Claim No.2 by Arbitral Tribunal deserves to be upheld.

69. Here, by applying Annexure-C rates, the Respondent's claim was reaching upto USD 12,007,627.33/-. However, the Tribunal applied the

ceiling limit as set out in clause 8.1.1.7 (f) and has upheld the claim upto the ceiling limit of USD 9,920,000/-. I find no reason to interfere in the award in Claim No.2.

CLAIM NO.3 – TOPSIDE MODIFICATION ON SCA PLATFORM

70. This claim involves incurring of additional expenses and spending of more time by the Petitioner in effecting the work of deck extension in respect of the SCA platform.

71. ONGC had proposed deck extension of SCA platform on the southern side. Respondent conducted first pre-engineering survey in August and November 2015 and intimated to ONGC that the deck extension at the southern side of the SCA platform was not feasible and that deck extension on the east side be carried out. Accordingly, ONGC approved for construction the proposed drawings for deck extension on the east side. On 25 February 2016, Respondent submitted installation philosophy of deck extension for the purpose of suggesting minimum shutdown while the work of deck extension was to go on. Respondent informed ONGC that it would reroute the High Pressure (HP) and Low Pressure (LP) flare headers first, requiring the shutdown time only to 10 days.

72. SCA Survey-II was carried out in February 2016 and the Petitioner-ONGC took a position that deck extension on the south side was found feasible. Such stance adopted by Petitioner-ONGC forced the Respondent to conduct SCA Survey-III in April 2016, which again

confirmed the findings of first SCA Survey regarding non-feasibility of deck extension on south side and feasibility on the eastern side. Finally in meeting held on 11 May 2016, ONGC instructed Respondent to execute deck extension on the eastern side. However, on 23 June 2016, ONGC again instructed Respondent to carry out SCA Survey-IV to confirm the sizes of the members through a physical check. The requirement of Survey-IV was reiterated by ONGC on 4 July 2016. Accordingly, SCA Survey-IV had to be conducted in July 2016, which confirmed the sizes of the members assumed by Sapura. On 11 July 2016, Respondent informed ONGC of required shutdown time of eight days for rerouting the HP and LP headers. However, when Respondent reached SCA platform to reroute HP and LP flare headers on 8 November 2016, ONGC changed the installation philosophy for reducing the shutdown duration. According to the Respondent, additional material was required to be procured (*certified by appointed certification agency-ABS*) as well as additional time of 11 days to perform the work (*again certified by ABS*).

73. In the above manner, Respondent completed the work of deck extension on east side on 31 March 2017. It raised claim on 25 May 2017 for USD 7,610,900/-, which was rejected by ONGC on 21 May 2019. The claim raised by Respondent for executing the work of deck extension on SCA platform on eastern side comprised of three elements:

- i) USD 4,195,200/- due to substantial change in location of deck extension leading to significant increase in offshore installation time.

- ii) USD 175,131.32/- due to multiple pre-engineering surveys, and
- iii) Claims due to change in installation philosophy.

74. The Arbitral Tribunal has rejected the first element of claim relating to substantial change in the location of deck extension holding that the same did not amount to variation or change order. However, the second and the third element relating to multiple surveys and change in installation philosophy are partially allowed.

75. So far as element of claim relating to multiple surveys is concerned, here also, the Tribunal has sanctioned the claim only in respect of the third pre-engineering survey and has rejected the claims towards second and the fourth pre-engineering surveys. Petitioner has attempted to justify the conduct of third pre-engineering survey on the ground that it was conducted due to lapse on the part of the Respondent in not providing a hazard identification report. Petitioner also claims that clause 5.3.1 gave authority to it to seek further specifications, which are felt necessary for proper and adequate execution of works in accordance with the contract. It is contended that the third survey was carried out keeping in mind the proper and adequate execution of the works, which cannot be deemed as unjustified particularly considering overarching clause like 5.3.1. It is also sought to be suggested that modification of deck extension was possible only post proper surveys and conduct of surveys was necessary to see actual parameters on the basis of which Respondent was obliged to finish the work without any costs or time impact on ONGC.

76. On the other hand, the Tribunal has held that conduct of third survey was not necessary. It has held in paragraphs 314 and 315 of the Award as under:

314. With the first survey having rejected the south side as the possible location for the deck extension, and with the second survey having confirmed the east side as the preferred location for the same, the Tribunal is of the view that there was no practical need to again re-assess the infeasibility of the south side by way of a third survey. It is important to note that nothing prevents the Respondent from commissioning or demanding such a third survey, and it is also accurate that surveys were the responsibility of the contractor. However, the Respondent cannot be permitted to direct multiple surveys without necessity. When the survey in question itself is unnecessary, futile, and involves wasteful expenditure, and does not in any way further the work required to be undertaken, the Respondent must pay the costs incurred for the survey to the contractor.

315. Therefore, in response to the question as to whether the third survey was essential is relevant, the Tribunal is of the considered opinion that this third survey was really not necessary or justified, more so because the findings of the survey merely reinforced the findings of the first survey. Given that the data from the first survey was already available at hand, there was no need for this third survey to be conducted. The Tribunal is of the view that the Respondent should, therefore, bear the costs of the third survey, as this was undertaken at its behest.

77. It appears that ONGC had contended before the Arbitral Tribunal (*which contention is noted in paragraph 309 of the Award*) that Respondent had failed to provide any data on alternative locations which was agreed upon during HAZID/HAZOP (hazard identification and hazard & operability study) meeting and that therefore a third survey had to be conducted. It is sought to be suggested that the said point is not dealt with by the Arbitral Tribunal. The Respondent, on other hand, points out that in paragraph 36 of the Statement of Defence filed by ONGC, it never raised the contention about Sapura not providing hazard identification report. It is further contended that the ONGC's demand for another survey to assess

alternate location was raised during a hazard identification and hazard operability meeting. It would be relevant to quote the entire defence taken in paragraph 36 of the Statement of Defence, which reads thus:

... After 2nd survey, the Claimant had also failed to provide any data on alternative locations which was agreed upon during HAZID/HAZOP (hazard identification and hazard & operability study) meeting, and therefore, 3rd survey had to be conducted. The Claimant then conducted 3rd Pre-engineering survey of the alternative location for deck extension and submitted the deck extension proposal alongwith structural feasibility study report for SCA platform by its letter No. L-1362 dated 09/06/2015 (C-52) in which the Claimant admitted that certain dimensions were missing and the proposal was based on certain assumptions...

78. On the contrary, what is contended in paragraph 41 of the Written Submissions of ONGC is as under:

41. It is pertinent to highlight that the third survey was conducted due to the lapse on the part of the Respondent in not providing a hazard identification report as well as giving alternative locations which was mutually agreed upon during the HAZID study. (309/181-Petition). The same therefore made the third survey necessary and crucial.

79. Thus, what is pleaded in paragraph 36 of the Statement of Defence is that the third survey was required to be conducted on account of non-provision of data on alternative locations. Statement of Defence admits that the agreement for provision of data on alternate locations was identified during HAZID/HAZOP meeting. Petitioner has thus clearly twisted its stand before this Court by falsely contending that there was lapse on the part of the Respondent in not providing hazard identification report. What is alleged to be not provided in HAZID/HAZOP meeting is “data on alternative locations” and not “hazard identification report”. This Court does not appreciate twisting of its stand by the Petitioner in this

regard. Thus, the words “a hazard identification report” are clearly added by way of afterthought in the Written Submissions, which was not the pleaded case in the Statement of Defence.

80. So far as reliance on clause 5.3.1 enabling ONGC to seek further specifications is concerned, the Arbitral Tribunal has arrived at a factual conclusion that there was no practical need to reassess the infeasibility of southern side by way of a third survey. The Tribunal has noted the authority vested in favour of ONGC in demanding the third survey coupled with responsibility of contractor to conduct the same. The Tribunal has however held that ONGC cannot be permitted to direct multiple surveys without the necessity. Though it is sought to be contended that third survey was conducted to ensure proper and adequate execution of the works, no material is placed before me to conclude so. Therefore, reliance by Petitioner on clause 5.3.1 of the contract is misplaced.

81. ONGC’s contention of verifying the actual parameters by which Respondent was obliged to finish the work without cost/time impact on it again appears to be completely misplaced. It has come on record that the third survey was directed to be conducted after ONGC had already approved the proposed drawings for deck extension on east side and had merely suggested installation philosophy by conduct of second survey. Despite this, ONGC suggested the alternative of executing the deck extension on south side, which was already ruled out in the first survey. It therefore cannot be contended that the third survey was necessary to verify

the actual parameters on the basis of which Respondent was to finish the work without cost/time impact on ONGC. I am therefore not inclined to interfere in the award of element of claim relating to the third survey.

82. Coming to the next element of claim for installation philosophy, it is seen that the claim was raised essentially on account of Petitioner changing the installation philosophy (for reduction of shutdown duration) at the last moment when Respondent approached the SCA Platform for rerouting HP and LP flare headers on 8 November 2016. The installation philosophy of rerouting HP and LP flare headers first was submitted by Respondent to ONGC on 25 February 2016. ONGC had time from 25 February 2016 till 8 November 2016 to suggest changes in the installation philosophy. However, sudden change in installation philosophy was directed by ONGC, which has given rise to claims towards re-engineering, additional material and additional time spent for rerouting HP and LP flare headers. The Tribunal has allowed claims only in respect of additional material and additional time of 11 days rejecting part of the claim towards re-engineering.

83. Petitioner has sought to make out a case of perversity and conflict with public policy contending that the Tribunal did not appreciate the reasons for changing the installation philosophy which drastically reduced the shutdown time from 8 days to mere 24 hours. Reliance is placed on clause 2.3.4.2 in support of the contention that final decision with respect to shutdown duration was with Petitioner. Reliance is also placed on clauses 2.3.1.2 and 2.3.1.3 to suggest that Respondent was aware

of risks, contingencies and circumstances affecting its obligations and responsibilities under the Contract and when read together, the two clauses make it clear that both parties had to endeavour to reduce the shutdown time as much as possible and that changes made in the plans were required to be followed by Respondent within the initial lump sum consideration.

84. Petitioner's authority to change installation philosophy or its objective behind changing the same (reduction of shutdown time) cannot be disputed. No doubt, the change in philosophy resulted in reduction of shutdown time from 8 days to 24 hours. The issue however is whether Petitioner was justified in changing the installation philosophy at the last moment. This aspect is conveniently ignored by the Petitioner-ONGC. As observed above, the installation philosophy was provided to the Petitioner more than four months in advance and there is no justification as to why no changes in the philosophy were suggested until Respondent arrived at the site for execution of the work. The new rerouting process (due to change in installation philosophy) entailed procurement of additional material and spending of additional time of 11 days of marine spread to perform the work. Both procurement of additional material as well as requirement of additional time are certified by Petitioner's agency viz. ABS. Considering this position, I do not find that findings recorded by Arbitral Tribunal *qua* the element of Claim No.3 relating to change in installation philosophy to be conflicting the public policy doctrine.

85. The contention that Claim No. 3 is barred by limitation does not appeal to this Court. It is contended by the Petitioner that the claim

was raised on 30 November 2016 and was rejected by the Petitioner on 18 January 2018. However, there is no material on record to indicate that the claim was actually rejected on 18 January 2018. However, as per clause 8.1.1.7(h) of GCC, in the event of dispute as to whether work is a variation or not, Respondent was to perform the work and the cost effect was to be recorded. The work was completed in April/May 2017 and the claim was finally rejected on 21 May 2019, which is clear from ONGC's letter dated 21 May 2019 (Exhibit-C69). Since arbitration is invoked on 28 December 2021, the claim is filed within limitation. Even otherwise, the Tribunal is justified in excluding COVID-19 pandemic period from 15 March 2020 to 28 February 2022. The plea of limitation sought to be raised on behalf of Petitioner is thus totally misplaced.

86. Thus, Award of elements of claims towards wasted expenditure on third pre-engineering survey, additional material utilized and additional time required on account of change in installation philosophy totally aggregating USD 2,128,331.08/- does not warrant any interference in exercise of jurisdiction under Section 34 of the Arbitration Act.

CLAIM No.4 – INTRUDER DETECTION CUM DETERRENCE SYSTEM (IDDS)

87. Award of this claim is mainly sought to be contested by Mr. Behramkamdin, who has preferred to change the order of claims in his written submissions and Claim No.4 figures at the top of his written note of submissions indicating that emphasis in the Petition is mainly on award of Claim No.4. One of the facilities required to be installed while carrying out the work of redevelopment of Mumbai High South Field was installation of

Intruder Detection cum Deterrence System (IDDS). For augmenting security of the existing offshore installations, ONGC decided to install High-Volume Long-Range (**HVLR**) system as first line of intruder deterrence system. It was decided to provide HVLR system alongwith Intruder Protection Doors (**IPDs**) and high-resolution video cameras at MHN complex and IC complex of Mumbai High North and South respectively. It was decided to install HVLR monitors and IPDs at access locations of all boat landings and bridge-connected platforms of those complexes.

88. HVLR is similar to those used by police to disperse mobs. Thus, high-volume and long-range foam and water was to be used for deterring an intruder attempting to enter at MHN complex of Mumbai High North or IC complex of Mumbai High South. The claim towards IDDS arose essentially on account of ONGC requesting particular specifications for installation of IDDS and the issue before the Tribunal was whether certain requests made by ONGC constituted additional scope of work or not.

89. Respondent carried out IDDS Survey-I from 11 August 2015 to 19 August 2015 at IC complex and from 31 August 2015 to 9 September 2015 at the MHN Complex. During the course of the survey, ONGC made certain requests in relation to IDDS which included:

- a. Using High-Volume Long-Range foam-cum-water monitor for both intruder and fire protection,
- b. High-Volume Long-Range foam-cum-water monitor to cover escape path,
- c. Intruder protection door to be operable remotely,
- d. For MHN Complex, High-Volume Long-Range foam-cum-water monitor to cover entry points at jacket level, and

e. For MHN Complex, High-Volume Long-Range foam-cum-water monitor to be connected to both firewater headers.

It appears that in the meeting held on 11 May 2016, ONGC dropped most of the requirements admitting that the same were not envisaged in the contract scope.

90. It is not necessary to go into minute details of Claim No. 4 and suffice it to observe that Claim No. 4 essentially arose because of Respondent fulfilling two demands of ONGC viz.:

- a. High-Volume Long-Range foam-cum-water monitor to be connected to both firewater headers, and
- b. Deck extensions for foam tanks which led to structural steel tonnage exceeding the cap set in the Contract.

91. Respondent claimed that the above-quoted two demands of ONGC constituted Change Order since Respondent was required to spend more time and cost during offshore installation than envisaged. On the other hand, ONGC contends that the specifications of IDDS were broadly spelt out in the contract and since a lump sum bid was submitted for entire scope of work, Respondent was not entitled to raise a claim for any additional elements while installing the IDDS. Respondent raised a claim of USD 8,056,125/- on 25 May 2017 which was rejected by ONGC on 18 January 2018.

92. The Arbitral Tribunal took up two issues for consideration viz. i) whether the work in question constituted additional work, and ii) if it was indeed an additional work, whether adequate proof was produced by the

Respondent to support the valuation of claim / elements of claim. After considering the contractual terms, the Arbitral Tribunal has concluded that the contractual intention was only to provide single firewater header connection and that there was no requirement or expectation of providing connection to two firewater headers. This conclusion is drawn by the Arbitral Tribunal on the basis of 'Note' to Section 2.2.7.2 of volume II of the Bidding Documents and also on account of ONGC approving for construction the piping and instrumentation diagram on 3 December 2015 with a single connection. Therefore, the Arbitral Tribunal held that ONGC's instructions for connection of HVLR to both firewater headers constituted additional work and was therefore a variation/Change Order under Clause 8.1.1.1 of the GCC. The Tribunal has therefore upheld the entitlement of Respondent for additional cost of material and also for additional offshore installation time associated with providing additional connection. Arbitral Tribunal has concluded in para 446 and 447 as under:

446. The Tribunal is of the view that connecting the HVLR to both firewater headers was never a contractual requirement, as the HVLR was to be used for intruder deterrence or firefighting. This is borne out by the Notes to Section 2.2.7.2 of Volume II of the Bidding Documents, and also the fact that ONGC approved for construction the Piping and Instrumentation Diagrams on 03.12.2015 with a single connection. Therefore, the Respondent's instructions to the Claimant to connect the HVLR to both firewater headers constitutes additional work, and clearly constitutes a variation or Change Order under Clause 8.1.1.1 of the GCC.

447. By extension, the Tribunal is of the view that the Claimant is therefore entitled to the additional cost of material and also to the additional offshore installation time associated with providing this additional connection.

93. The Arbitral Tribunal has thereafter held that claim for additional material is certified by ONGC's certification agency-ABS and was supported by Purchase Orders and inward material inspection reports. It appears that for accommodating the foam tanks, Respondent was required to create deck extensions, and this again is considered as a change order in para 449 of the Award, which reads thus:

449. The Tribunal also notes that the ONGC's instructions to create deck extensions for the foam tanks clearly amounted to a Change Order, which is admitted as much by ONGC itself in the minutes of meeting held on 11.05.2016, which records that "Deck extensions, that are not envisaged in contract scope, are required at 18 locations." (emphasis supplied). Having conceded that these deck extensions are not envisaged in the contract scope, the Tribunal is of the view that the Respondent must therefore treat these instructions as being a change order.

94. The Arbitral Tribunal has accordingly awarded sum of USD 141,255.93/- in favour of Respondent. The Tribunal has thereafter considered elements of claim for additional structural steel by awarding USD 84,168.70/- for additional structural steel used in deck extension installed for IDDS. So far as additional offshore installation time is concerned, the Tribunal has ruled that offshore installation was increased by 40 days as per ABS and awarded USD 7,600,000/- in favour of Respondent. The Tribunal has thereafter considered elements of claim for additional time spent for additional surveys and has awarded USD 186,441.52/- to the Respondent. The Arbitral Tribunal has not awarded the element of claim towards multiple rounds of re-engineering allegedly performed by the Respondent.

95. This is how the Arbitral Tribunal has awarded the claim in sum of USD 8,011,865.15/- towards Claim No. 4.

96. Award of Claim No. 4 by the Arbitral Tribunal is sought to be contested by the Petitioner by submitting that Respondent was awarded a turnkey contract providing broad specifications for execution of work and submitted its bid of USD 1,200,000/- and INR 30,000,000/- for materials and USD 430,306/- and INR 10,599,388/- for the services. It is therefore contended that since IDDS is a subject matter of contract and since specifications for the same were provided in bidding documents (*Clause 2.1.1.1 of GCC and 2.7.1 of Bidding Documents*), the Respondent was not entitled to claim for any additional cost in relation to installation of IDDS. No doubt, clause 2.1.1 of the GCC included in the scope of work the facility of “installation of IDDS at MHN complex and IC complex”. In Clause 2.2.7.3 of GCC of the Bidding Documents, the broad specifications for High-Volume Long-Range foam-cum-water monitor (**HVLR**) were indicated as under:

2.2.7.3 Broad Specifications

The broad specifications of HVLR are given below -

- Each HVLR monitors shall be capable of discharging 500 USGM (113.5m³/hr) water with single nozzle at inlet pressure of 7.0 kg/cm²g.
- The HVLR monitor shall be designed for mounting on stand post of elevated platform at fixed location.
- The HVLR monitor shall have traversing mechanism to give 340 degree in either direction in horizontal plane and +90 degree and - 15 degree in vertical plane.
- All the operations of HVLR monitor viz. horizontal movement, vertical movement, operation of inlet valve & foam inducting system, etc., shall be possible manually from monitor (without use of power) as well from remote using remote control panel. The remote control system shall be electrically operated.
- HVLR monitor shall be designed for corrosive salt laden marine environment.
- HVLR monitor shall be selected meeting requirement of as per applicable code & standard.
- Motor of HVLR monitor shall be selected meeting requirement of ONGC Func. Spec. 4008.

- The typical specifications of HVLR monitor are placed at ANNEXURE-1.
- The broad specifications of video cameras are given below -
- All the operation of the high resolution video cameras viz. Horizontal movement, vertical movement, zoom in/out, etc. shall be possible from remote using remote control panel and shall be integrated with that of HVLR monitor.
- The video cameras shall have traverse mechanism to give 340 degree in either direction in horizontal plane and +90 degree and -15 degree in vertical plane.
- The video cameras shall be selected meeting requirement of ONGC Functional Spec. 4032

97. The IDDS specifications were spelt out in Volume II of the Bidding Documents at Section 2.2.7, which are as under:

2.2.7.1 BACKGROUND

For augmenting security of its existing offshore installations, it has been envisaged to install High Volume Long Range Foam-cum-Water Monitor (HVLR) as first line of intruder deterrence system. HVLR system along with Intruder Protection Doors & high resolution video cameras shall be provided at MHN complex and IC Complex of Mumbai High North & South respectively. HVLR monitors and Intruder Protection Doors will be installed at access location of all boat landings of bridge connected platforms of these complexes.

2.2.7.2 Broad Scope of Work

The broad scope of work shall include -

The broad scope of work shall include -

- i) Intruder protection system through provision of door at boat landing on NA, BHF, MNW, MNP & MLQ Platforms (MHN Complex)
- ii) Intruder protection system through provision of door at boat landing on ICD, ICP, ICW, ICG & ICP-R Platforms (IC Complex)
- iii) Intruder protection system through provision of HVLR along with high resolution (night vision) video cameras at boat landing on NA, BHF, MNW, MNP & MLQ Platforms (MHN Complex)
- iv) Intruder protection system through provision of HVLR along with high resolution (night vision) video cameras at boat landing on ICD, ICP, ICW, ICG & ICP-R Platforms (IC Complex)
- v) Infra-red (IR) based Intruder detection system on NA, BHF, MNW, MNP & MLQ Platforms (MHN Complex)
- vi) Infra-red (IR) based Intruder detection system on ICD, ICP, ICW, ICG & ICP-R Platforms (IC Complex)

vii) Intruder Monitoring System on ICW Platform (IC Complex) & MNP Platform (MHN Complex) (Refer NOTE-1)

NOTE-1 -ICW Platform (IC Complex) shall have integrated Intruder Monitoring System for RS-20 Platform (New) as well as for intruder detection-cum-deterrence system to be installed on ICD, ICP, ICW, ICG & ICP- R Platforms

...

Notes:

- **Preference shall be given to firefighting over the HVLR operation and both the systems will not be operated simultaneously.**
- HVLR operation is considered for maximum 2 monitors at a time.
- Construction of elevated platforms at spider deck near access location of boat landing for installation of HVLRs and high resolutions video cameras - one on each boat landing. Access platform shall also be provided around HVLRM and video cameras for maintenance purpose.
- Procurement, installation & commissioning of 18 nos. Remote controlled operated High Volume Long Range Foam-cum- Water Monitors (HVLRs) along with associated piping & instrumentation.
- Procurement, installation & commissioning of 18 nos. High resolution day/night short range remote control operated video cameras for detection of intruder and automatic actuation of HVLR on detection of the same.
- Procurement & installation of 18 nos. Intruder Protection Doors at each access point from the boat loading.
- Modification/extension of existing fire water network and routing of the same for hook up with HVLRs
- Installation of HVLRs related control and monitoring system in ICP/MNP control room for remote operation of the same. PLC based remote control system along with HMI & Joystick shall be provided for remote monitoring & control of the HVLR system
- Installation, routing and hook-up of electrical and instrumentation cables between new facilities (i.e. HVLRs & video cameras) and existing electrical and instrumentation system.
- Integration of HVLR operation & control logic with existing fire water system. Provision of hooter/alarm in case of actuation of HVLR to sensitize/alert on-board personal.

(emphasis supplied)

98. It appears that ONGC envisaged modification and extension of firewater network and routing the same for hookup with HVLR as a part of broad specification. Thus, under the first Note to clause 2.2.7.2 of the

Bidding Documents, it was specifically provided that preference was to be given to firefighting over HVLR operations and that both systems were not to be operated simultaneously. On the other hand, ONGC has relied upon clause 5.3.1 of GCC in support of its contention that ONGC had full power and authority to supply to the contractor or instruct it to prepare further specifications or drawings or job instructions necessary for providing adequate execution of the works in accordance with the contract and the costs of such work was deemed to be already included in the contract price. Clause 5.3.1 provides thus:

The Company's Representative on behalf of the Company shall have full power and authority to supply to the Contractor or to instruct the Contractor to prepare further specifications, drawings or job instruction necessary for the proper and adequate execution of the Works in accordance with the Contract and the cost of such Work shall be deemed to be already included in the Contract Price.

99. The Respondent, however, contends that clause 5.3.1 would operate only when instructions given by ONGC were for proper and adequate execution of works in accordance with the contract. Respondent contends that the instructions in the meeting dated 11 May 2016 to connect HVLR to both firewater headers were not for proper or adequate execution of work (methodology for carrying out the work) but were in fact, instructions leading to clear addition in scope of work. As observed above, the Tribunal has held that connecting HVLR to both firewater headers was never a contractual requirement. This conclusion is drawn on the basis of the Notes to clause 2.2.7.2 of Volume II of Bidding Documents and on account of ONGC's conduct in approving the diagrams for construction of piping and instrumentation with a single connection. Thus, the Tribunal

has recorded a finding of fact, both upon interpretation of contractual covenants and conduct of ONGC that original contractual requirement was only to connect HVLR to single firewater header. This Court cannot interfere in this finding of fact. The Tribunal's interpretation of Notes to Section 2.2.7.2 of the Volume II of Bidding Documents is a plausible interpretation and it cannot be contended that interpretation is such that no fair-minded person would ever draw the same. The Tribunal has also rightly relied upon ONGC's own conduct in approving the construction of piping and instrumentation diagrams on 3 December 2015 with a single firewater header connection.

100. Petitioner cannot be permitted to add additional work under the guise of power conferred on ONGC's representative to supply/instruct to prepare further specifications drawings or job instructions. The power to demand further specifications or drawings or to give job instructions was limited only for proper and adequate execution of work 'in accordance with contract'. The moment it is found that a particular work is over and above the scope of contract, the same would amount to a Change Order. I am therefore not impressed by submissions canvassed on behalf of ONGC that all requirements could not have been a part of Bidding Documents and that the narrower requirements could be specified only after conduct of surveys. The Tribunal has not committed any error by going into minute details of IDDS for holding that connecting HVLR to both firewater headers was never a contractual requirement.

101. So far as deck extension required to accommodate foam tanks is concerned, it is contended on behalf of the Petitioner that deck extensions were also within the broad scope of work as contained in clause 2.2.7.3 of Section 2A (Description of Work) Part IV of the Bidding Documents. It is contended that the need for deck extension is an offshoot of broad scope of work. I am unable to agree. Clause 2.2.7.3 did not include the work of deck extensions for accommodating foam tanks. ONGC instructed Respondent to create deck extensions for foam tanks. It appears that ONGC admitted in minutes of meeting dated 11 May 2016 that the work of creation of deck extensions was not envisaged in the contract scope. This is clear from following part of minutes of meeting held on 11 May 2016:

"SKHL informed that during survey it was observed that there is no space for placing Foam Tanks. Deck extensions, **that are not envisaged in contract scope**, are required at 18 locations. ONGC Asset informed that SKHL to depute their representatives for joint survey along with Asset representative to identify space for Foam Tanks with the objective of minimizing additional requirement of Deck Extensions at platforms. SKHL agreed for the same."

(emphasis supplied)

102. Having admitted that the work of creation of Deck Extensions was not in the contract scope, ONGC cannot now turn around and contend that the need for Deck Extensions was an offshoot of the broad scope of work mentioned. In view of the admission given in minutes of meeting held on 11 May 2016, it was not necessary for the Respondent to produce any additional evidence or material to prove that the work of Deck Extension amounted to Change Order. I am therefore of the view that Petitioner has failed to make out any of the enumerated grounds under Section 34 of the

Arbitration Act in respect of award of claim of USD 141,255.93/- for elements of providing HVLR to both firewater headers and additional work of deck extension to accommodate the foam tanks.

103. So far as the elements of additional structural steel and additional offshore installation time are concerned, no submissions are canvassed by Mr. Behramkamdin and therefore award of sums of USD 84,168.70/- and USD 7,600,000/- for those elements respectively cannot be found fault with.

104. So far as the last element of cost incurred due to time spent on additional surveys, Mr. Behramkamdin has submitted that carrying out pre-engineering surveys was part of scope of work and he has relied upon clause 5.4.1 of GCC which reads thus:

5.4.1 Pre-Engineering Survey & Pre-Construction/Pre-Installation Surveys

i) Pre-Engineering Survey

The Contractor shall at his own cost independently carry out pre-engineering survey of offshore site with his survey equipment like side scan sonar, multi beam survey and sub-bottom profiler etc. to verify the locations/ obstructions (if any) of the proposed facilities mentioned in the scope of work. Such verification shall include but not be limited to verification of site conditions i.e. water depth, seabed topography at the proposed location of Well Platforms as well as launch/ installation site etc. Contractor shall also carry out pre-engineering survey for modifications on existing platforms. Pre-engineering survey shall be carried out well before design engineering. Details provided in the Bidding Documents are only indicative and in the event of some deviations observed by the Contractor the same shall be discussed with Company's Representative and mutually agreed. Contractor shall be fully responsible to complete the Work as per actual parameters found during the survey without any time and cost effect to the Company other than that indicated in succeeding

paragraph. However, in case of substantial difference, if any, between the actual parameters and those given in the Survey details of Bidding Documents related to sub-soil conditions, suitable time (if it affects critical path) and cost effect will be compensated by the Company.

105. Relying on clause 5.4.1, it is contended by Mr. Behramkamdin that all costs of carrying out surveys were to be borne by the Respondent and that the lump sum price of the contract quoted by Respondent was inclusive of cost of carrying out such surveys. Once again, the plea of provision of broad specification in Bidding Documents is raised in support of the contention that the exact specifications could be narrowed down only after site surveys and detailed engineering.

106. However, as observed above, while dealing with Claim No.3 (Cost of third Pre-Engineering Survey for Deck Extension of SCA platform on eastern side), this Court has upheld the award of claim towards cost of survey if same is found to be unnecessary. Thus, clause 5.4.1 of the GCC cannot be relied upon when a particular survey is not considered necessary. IDDS survey II in April 2016 was undertaken to check the feasibility for additional requirements and it is an admitted position that most of those additional requirements were dropped later in the meeting held on 11 May 2016, citing that the same is not envisaged in the contract scope or same is not envisaged in the scope of work. This conduct of IDDS Survey-II is found to be unnecessary as the same was conducted for checking the feasibility of additional requirements and it is an admitted position that those additional requirements were beyond contract scope.

107. Similar is the position of IDDS Survey III carried out in June 2016 undertaken for minimising Deck Extension for the foam tanks. I have already upheld the findings of the Arbitral Tribunal that Deck Extensions for accommodating foam tanks amounts to additional work or Change Order. Thus, IDDS Survey III is carried out for examining the feasibility of work beyond contract scope. Thus, it is sufficiently established that IDDS Survey II and III are carried out beyond contract scope. Arbitral Tribunal has awarded USD 186,441.52/-, which is certified by ABS – ONGC's Certification Agency. The contention raised by Mr. Behramkamdin that the findings of the surveys resulted in reduction of scope of work of Respondent in meeting held on 11 May 2016 is completely misplaced for the reasons recorded above. The meeting of 11 May 2016 resulted in ONGC dropping most of the requirements as the same were not envisaged in the contract scope. Thus, the surveys did not result in reduction of scope of work envisaged in the contract. The IDDS Survey II was carried out for examining feasibility of execution of work beyond the scope, which was later dropped in meeting held on 11 May 2016. I therefore do not find any element of conflict with public policy of India in the Tribunal awarding claim for surveys in the sum of USD 186,441.52/- in favour of the Respondent.

108. Mr. Behramkamdin has also contended, without prejudice to his overall objection to sanction of Claim No.4, that Petitioner had asked for particulars and documents of additional work done with respect to IDDS on multiple occasions and that no documents were produced by the Respondent. It is contended that the Tribunal has ignored this aspect and

that Respondent couldn't prove the use of additional manpower to complete the works. Reliance is placed on ONGC's letter dated 1 October 2021 calling for details in support of multiple pre-engineering surveys and engineering surveys, purchase orders and invoices for material for additional firewater connections and details of materials used for additional piping, breakdown of costs and calculations. However, the Tribunal has recorded a finding that valuation of additional material used for connecting HVLR to both firewater headers has been certified by ONGC's certification agency - ABS. The Tribunal has also taken into consideration the purchase orders and inward material inspection reports. So far as additional structural steel used for deck extension for foam tanks is concerned, the same is also certified by ABS. Similar is the position in respect of 40 additional days for offshore installation, which are again certified by ABS. The cost of IDDS survey II and III are also certified by ABS. Therefore, the dispute with regard to quantum of claim sought to be raised on behalf of Petitioner-ONGC is clearly misplaced. The Tribunal is the best judge of quality and quantity of evidence before it. This Court cannot sit as an appellate court by holding that material produced before it was not sufficient for recording a particular finding.

109. Considering the above position, it is seen that the Petitioner has not been able to make out any valid ground to interfere in award of Claim No.4.

CLAIM No.5 – STANDBY CHARGES FOR SK900 ON ACCOUNT OF RIG GD CHAAYA

110. Under the contract, Respondent was supposed to perform pile remedial and clamp installation work at D1-C Platform. For carrying out pile remedial works at D1-C platform, Respondent had mobilised its barge 'SapuraKencana 900' (**SK 900**) along with its anchor handling and related marine spread at D1-C location. As per the agreed planning package, the work was to be executed during 1 April 2017 to 30 April 2017 (30 days). However, it appears that since the Barge SK900 had finished all other work on the project and was available in January 2017 for carrying out the pile remedial work at D1-C platform, Respondent decided to prepone the work schedule. Accordingly, Respondent requested for preponement of the work schedule to 15 January 2017 to 29 January 2017. ONGC acceded to the request of Respondent and preponed the schedule without communicating interface with any other work or vessel at the site. However, during the course of interface meeting on 11 January 2017, i.e., 4 days prior to commencement of the work by Respondent, ONGC informed Sapura that the Rig GD Chaaya was carrying out drilling operations at D1-C platform. According to the Respondent, because of the flaring activity caused by the Rig GD Chaaya, it was unsafe to execute the work from onboard SK900. Respondent contended that SK900 could not commence the work, and it suffered standby as it could not be diverted to any other work front. For idling of SK900, Respondent raised claim towards compensation of USD 2,638,229.18/- as per the day-rates in the Contract, Item III, Annexure C. ONGC rejected the claim on 18 December 2017.

111. The Arbitral Tribunal has awarded the claim towards standby charges of SK900 for 5.5 days on account of presence of Rig GD Chaaya at D1-C Platform in sum of USD 2,638,229.18/- along with GST.

112. Award of Claim No.5 is contested by ONGC by contending that the preponement of the work schedule from 1 April 2017 - 30 April 2017 to 15 January 2017 - 29 January 2017 was agreed upon by ONGC subject to carrying out simultaneous operations **(SIMOPs)**. Thus, it is ONGC's case that Respondent was made fully aware of the presence of the Rig GD Chaaya at D1-C platform and that preponement of work schedule was approved by ONGC subject to condition of Respondent's ability to perform SIMOPs. ONGC contends that Respondent had agreed to SIMOPs by it while the Rig GD Chaaya continued performance of drilling activities at D1-C platform.

113. Petitioner-ONGC has strenuously relied upon letter dated 13 January 2017 in support of its contention of Respondent being informed about drilling activities in progress by the Rig GD Chaaya. The letter dated 13 January 2017 refers to the Record Notes of the meeting held on 13 January 2017 and in the letter, it was recorded that '*it has been agreed in the meeting to grant access to SK900 at D1-C platform with directions to perform SIMOPs with rig GD Chaaya*'. Point No. 1 and 2 of Record Notes dated 13 January 2017 are as under:

1. Deployment schedule of SK900 under MHSRD-III Project and scope of work was presented by PC of MHSRD-III Project. It was discussed that tentative schedule of deployment is for the period about 14 to 15 days starting from 15.01.2017. The schedule submitted by SKHL is attached herewith for ready reference of all.

2. Drilling executives discussed the work over jobs. It was brought out that cement drilling work is completed, however during this period activities such as perforation of well, flaring through rig flare boom, well stimulation jobs, etc may be required to be carried out at rig GD Chaaya during this period. **SIMOPs shall be required during this period.** Prior program of drilling rig and SK900 shall be discussed at site in advance to avoid any standby.

(emphasis supplied)

114. Petitioner accuses the Tribunal of not considering letter dated 13 January 2017 while recording finding that Petitioner failed to inform Respondent of presence of Rig GD Chaaya.

115. Perusal of findings recorded by the Arbitral Tribunal while deciding Claim No.5 would indicate that it has rejected the defence of conditional preponement of schedule sought to be raised by Petitioner-ONGC. The Tribunal has held that Petitioner provided no evidence that preponement of schedule was conditional or that the conditions were in fact recorded. The Tribunal has held in para-517 of the Award as under:

517. The Tribunal notes that while ONGC has insisted that it imposed conditions on the preponement of the schedule, when it was asked to show proof for the same, it was unable to do so. Pointed questions directed at the Respondent in the course of sharing document production requests under the Redfern Schedule were met with the response from the Respondent that "Contract conditions, correspondence and minutes of meeting on the subject are part of the compilation produced by Claimant, and the same will be pointed out at the time of hearing." In the course of the hearing, however, no such documents, minutes or correspondence to support this position were pointed out in the compilation by the Respondent. **Indeed, the Respondent provided no evidence that the preponement of the schedule was conditional, and that these conditions were in fact recorded.**

(emphasis supplied)

116. The Arbitral Tribunal has thereafter taken note of minutes of Interface Meeting held on 11 January 2017 when Respondent was made aware of presence of Drilling Rig GD Chaaya at D1-C Platform. The Tribunal has however held that Respondent ought to have been informed about presence of Drilling Rig GD Chaaya when the work schedule was agreed to be preponed. More importantly, the Tribunal has held that ONGC did not provide information about presence of Rig GD Chhaya at D1-C Platform on 4 January 2017 in the offshore schedule against the entry 'SK 900' 'D1C Clamp Installation' 'D1C Pile and Grouting'. The information was given for the first time on 11 January 2017. This is clear from the following findings at para-518 of the Award:

518. The Respondent attempts to advance an argument, relying on Clauses 5.3.5 and 5.23 of the GCC, that Sapura had to coordinate / liaise / interface with other contractors and that no time and cost could be claimed for Sapura's failure to do so. However, it is clear from the Respondent's actions and communications that it was the Respondent that had failed to coordinate with the Claimant properly - it failed to inform Sapura of the presence of drilling rig GD Chaaya. There was clearly an opportunity to do so when Sapura's schedule to work on D1-C Platform was already agreed to be the window between 15.01.2017 to 29.01.2017, but ONGC did not provide any such information about the presence of drilling rig GD Chaaya. ONGC also did not provide this information on 04.01.2017, as shown in the Offshore Schedule against the entry "SK900" "D1 C Clamp Installation" "D1 C Pile and grouting", which does not specify any interface with Rig GD Chaaya in the column dealing with "Interface With Other Contractor". The first time ONGC informed Sapura of this interface was as late as 13.01.2017.

117. The Tribunal thereafter proceeded to draw adverse inference against ONGC for presuming that no condition was imposed of SIMOPs when the date of the works at D1-C Platform was mutually preponed. The Arbitral Tribunal has held in para 519 as under:

519. In the circumstances, the Tribunal is inclined to agree with the Claimant that adverse inference ought to be drawn as against ONGC; and in the absence of evidentiary support, the Tribunal presumes that there was in fact no condition imposed of SIMOPs on Sapura when the date for works at D1-C platform was mutually preponed.

118. Thus, adverse inference is drawn by the Arbitral Tribunal with regard to absence of imposition of condition of SIMOPs when mutual preponement took place in respect of the work schedule. Before me, Petitioner relies on letter dated 13 January 2017 in support of its contention of imposition of condition of SIMOPs. However, the said letter was issued 2 days prior to the commencement of the work on 15 January 2017. Thus, letter dated 13 January 2017 does not render erroneous the finding of Arbitral Tribunal in para 517 and 519 regarding absence of SIMOPs condition while approving preponement of work schedule.

119. Though letter dated 13 January 2017 does not bear mention in Tribunal's findings *qua* Claim No.5, it has taken note of the minutes of Interface Meeting held on 11 January 2017 when Respondent was informed of presence of Rig GD Chaaya at D1-C platform. After being informed about presence of the Rig GD Chaaya at D1-C Platform on 11 January 2017, it appears that Respondent did ultimately agree to perform SIMOPs at D1-C platform despite noting presence of the Rig GD Chaaya. The Tribunal has held in para 520 of the Award that Respondent was forced to agree for performance of SIMOPs on 11 January 2017. It is held in para 520 of award thus:

520. Since the drilling rig GD Chaaya was to carry out drilling operations, and Sapura was, perforce, required to agree to SIMOPS on 11.01.2017. This is buffered by the remarks made by CW-1 in his AOE, who explains that

this is because SK900 had completed all of the scope under the Contract and was expected for other jobs. Thus, there was no other work front where SK900 could be diverted. During SIMOPS, SK900 suffered idling. This is because the flaring activity caused by GD Chaaya made it unsafe for executing work from onboard SK900. As SK900 could not be diverted to another work front, for this idling, on 25.05.2017, the Claimant claimed compensation as per the day rates in the Contract, Item III, Annexure C.

120. Mr. Behramkamdin has strenuously contended that the letter dated 13 January 2017 renders the above finding of the Tribunal about Respondent being forced to agree for SIMOPs completely perverse and on that count, award of Claim No. 5 must be set aside.

121. On 11 January 2017, Interface Coordination Meeting was held by ONGC with all its contractors. In that meeting, the schedule of Respondent on various workfronts in respect of MHSRD-III project was submitted in OPMAC portal of ONGC. In that schedule, deployment programme of Respondent's Barge SK900 for clamp installation, pile and grouting of D1-C platform was indicated as from 16 January 2017 to 30 January 2017. At the end of the schedule, following interface between Rig GD Chaaya and vessel SK900 was reflected:

Interface: Interface reported at D1C platform between Rig GD Chaaya and Vessel SK-900. Contractor and Project group were advised to discuss the same with Drilling Services for exploring possibility of SIMOPS.

122. Thus, after indicating the interface between the Rig GD Chaaya and the Vessel SK900, the minutes of meeting recorded the directions given to Respondent and the project group to discuss exploring the possibility of SIMOPs. Letter dated 13 January 2017 submitted by the Respondent indicates that pursuant to the directions issued in Interface

Meeting of 11 January 2017, discussions were held by Respondent with representatives of ONGC on 12 January 2017. This is clear from the opening sentence of letter dated 13 January 2017 which records that “*This has reference to the above-referred subject and the discussions dated 12th Jan 2017 which CONTRACTOR's representatives had with COMPANY's representatives from project team ...*”. It appears that after holding discussions on 12 January 2017, Respondent revised its previously approved anchoring pattern for SK900 at D1-C platform to suit drill Rig GD Chaaya. Respondent accordingly communicated to the Petitioner that it would perform diving activities near D1-C platform and requested for six items from ONGC's Rig GD Chaaya for coexistence of Respondent's barge and for performance of unhindered operations. By letter dated 13 January 2017, Respondent specifically requested Petitioner to provide necessary access to its barge SK900 to work at D1-C platform as per the enclosed schedule.

123. The permission sought by Respondent by letter dated 13 January 2017 for grant of access to its Barge SK900 to perform work at D1-C Platform was granted in the meeting held on 13 January 2017 subject to adherence of various measures decided in the said meeting. One of the measures was to have SIMOPs meeting on Rig GD Chaaya on 14 January 2017 before deployment of SK900 at D1-C location. It is not known whether such meeting was held by the Respondent at the Rig GD Chaaya on 14 January 2017. In the meeting dated 13 January 2017, the proposed anchor pattern for SK900 at D1-C location and temporary schedule for deployment of SK900 was also agreed to. The schedule of deployment of SK900 agreed in the meeting more or less matched the schedule later

presented by Respondent vide letter dated 13 January 2017. Letter dated 13 January 2017 reads thus:

Dear Sir,

This has reference to the above-referred subject and the discussions dated 12th Jan 2017 which CONTRACTOR's representatives had with COMPANY's representatives from project team and RIG Move Cell regarding the COMPANY's rig "GD CHAAYA" Deployed at D1-C platform. For the first time, CONTRACTOR has been informed about the presence of rig "GD CHAAYA" at D1-C location on 11th Jan 2017.

As informed in the interface meeting held in ONGC on 11th Jan 2017, CONTRACTOR will be mobilising its barge "SapuraKencana 900" along with its Anchor handling tug and related marine spread at D1C location on 15th/16th Jan 2017 for the construction/ diving activities related to pile remedial works at D1-C platform. This is in line with the Installation work programme / plan, which CONTRACTOR has been submitted to COMPANY every week, for the past 10 weeks. The barge "SapuraKencana 900" along with its complete marine spread is expected to complete its activities at SHG platform on 15th Jan 2017 and will be, thereafter, moving to D1C platform location for further works on 16th Jan 2017 morning. The detailed work schedule along with list of activities to be performed is enclosed along with this letter in Annexure-1.

CONTRACTOR has revised its previously approved anchor pattern for SK900 at D1-C platform to suit the drill rig's requirements. Same is enclosed in Annexure-2.

CONTRACTOR's Installation barge involving "SapuraKencana 900° and its associated spread will be performing diving activities near the D1-C platform and the items listed below are required from its COMPANY's rig "GD CHAAYA" for CONTRACTOR's barge to co-exist and perform unhindered operations,

1. No Cement, powder and other fluid discharge from height at SK900 location. If required discharge to re-routed to East face of Platform or put on hold for the duration of diving.
2. Fire water pumps/ Suction pumps to put on manual mode and advise exact location and elevation of FWP to SK900 prior to commencing of diving operations.
3. No overhead lifting in vicinity of Diving Operations.
4. Strictly no scaffolding / Tubular works at sides of the Rig.

5. Any supply vessel, crew boat, Chopper landing at Rig to be informed to SK900, SK1200 and SK900 as well and take approvals from Vessel Captain prior arriving.

6. Have Communication with Vessel Master and OCS when CONTRACTOR's vessels are at location.

CONTRACTOR requests COMPANY to provide necessary access to its barge "SapuraKencana 900" along with its tugs and related marine spread to work at D1-C Platform, as per the enclosed schedule. CONTRACTOR will also give a 24 hour notice period prior deployment of its barge and will perform SIMOPS exercise prior to start of actual operations at the rig location.

Assuring you of our best service as always, we remain.

Thanks you and kind regards

For and on behalf of
SAPURAKENCANA HL SDN BHD

124. Thus, in its letter dated 13 January 2017, Respondent suggested the modalities for conduct of SIMOPs at D1-C platform by revising previously approved anchor pattern for SK900 at D1-C platform to suit the drill rig's requirements. In the letter dated 13 January 2017, Respondent informed ONGC that SK900 and its associated spread would be performing diving activities near D1-C platform and listed items were required from ONGC Rig GD Chaaya to co-exist and perform unhindered activities. The list contains six items as can be seen from above-quoted portion. Respondent accordingly requested ONGC to provide necessary access to its barge SK900 alongwith its tugs and related marine spread to work at D1-C platform as per the enclosed schedule. Most importantly, Respondent wrote that "*CONTRACTOR will give 24 hour notice period prior deployment of its barge and will perform SIMOPS exercise prior to start of actual operations at the rig location*". The Letter dated 13 January 2017 was received by ONGC after office hours after conduct of meeting for resolving

interface issues in which Respondent's representatives were also present. ONGC's letter dated 13 January 2017 indicates that the schedule and issues pertaining to SK900 operations at D-1C location were also duly deliberated in the meeting. The record notes of meeting held on 13 January 2017 clearly indicate that Respondent was clearly given idea about performance of jobs relating to rig flare boom, well, stimulation job etc. It was agreed that prior program of drilling rig and SK900 was to be discussed at site in advance to avoid any standby. Detailed methodology was agreed in the meeting for conduct of SIMOPs.

125. Perusal of Annexure 1 to letter dated 13 January 2017 (detailed work schedule alongwith list of activities) indicates that activities such as anchor setup, site preparation etc. were to be performed on 15 January 2017 and thereafter various other activities were to be performed from 16 January 2017 to 29 January 2017. The diving activities were to be conducted from 15 January 2017 to 23 January 2017 in the 1st phase and thereafter on 25 and 26 January 2017 in the 2nd phase. Thus, after noticing presence of Rig GD Chaaya and after being made aware of possible flaring activities, Respondent still prepared a schedule of performance of work at the platform by giving the details of various activities. It also revised its previously approved anchor pattern for SK900 and indicated a fresh pattern at Annexure 2 to letter dated 13 January 2017. This new pattern was effected after noticing presence of drilling Rig GD Chaaya on D1-C platform. Thus, it appears that the Respondent was fully prepared to execute the work at D1-C platform from 15 January 2017 by factoring in both presence as well as flaring activities of the Drilling Rig GD Chaaya.

However, the Arbitral Tribunal appears to have ignored i) Respondent's letter dated 13 January 2017, ii) annexures enclosed to said letter, iii) ONGC letter dated 13 January 2017, and iv) record notes of the meeting dated 13 January 2017.

126. Relying on letter dated 13 January 2017, it is contended on behalf of ONGC that the Respondent had fair idea about flaring activity by Rig GD Chaaya before it commenced SIMOPs at D-1C platform on 15 January 2017. Award of Claim No. 5 is thus sought to be questioned on the ground of perversity.

127. In the light of the above discussion, the issue for consideration is whether ignorance of some evidence by the Tribunal can be a valid ground for setting aside the Award *qua* Claim No. 5. As held by the Apex Court in ***Ssangyong Engg.*** (supra) and ***PSA Sical Terminal*** (supra), ignorance of vital evidence by the Arbitral Tribunal would constitute the vice of perversity and the decision being perverse would give rise to the ground of patent illegality under Section 34(2A) of the Arbitration Act. If the finding in the Award is perverse, the same does not constitute the ground of conflict with the public policy of India. Perversity in the Award constituting patent illegality is a ground available only under Section 34(2A) of the Act. As observed above, Section 34(2A) of the Arbitration Act does not apply to the awards made in international commercial arbitration held in India. This follows that since the ground of patent illegality is not available for challenging an award made in international commercial

arbitration, the award cannot be set aside merely because the arbitral tribunal has ignored some evidence while making the Award.

128. The Legislature has consciously excluded the ground of patent illegality in relation of commercial international arbitrations. The Legislative objective is to give maximum possible latitude to the decision of the arbitral tribunal in an international commercial arbitration. This Court will have to respect the legislative objective of minimal interference with awards made in international commercial arbitrations. Therefore, though Claim No. 5 appears to have been awarded by ignoring evidence on record and the Petitioner may be in a position to demonstrate patent illegality in award of Claim No. 5, hands of this Court are bound by the language of Section 34(2A) of the Arbitration Act. Had this been a domestic arbitration, the ground of patent illegality would have been available for the Petitioner by demonstrating perversity in the findings recorded in the Award *qua* Claim No. 5.

129. Thus, award of Claim No. 5 cannot be interfered with only on the ground of ignorance of evidence in the form of i) Respondent's letter dated 13 January 2017, ii) annexures enclosed to said letter, iii) ONGC letter dated 13 January 2017, and iv) record notes of the meeting dated 13 January 2017. The Tribunal has considered the minutes of Interface Meeting dated 11 January 2017 and has arrived at a conclusion that the Respondent was not made aware of presence of Drilling Rig GD Chaaya when approval of preponement schedule was granted by ONGC. The Tribunal has held as inadequate the notice of interface of SK 900 with Rig GD Chaaya in the

form of Interface Meeting dated 11 January 2017. The Tribunal has further held that after being made aware of interface with Rig GD Chaaya on 11 January 2017, Respondent was forced to agree for SIMOPs. Therefore, though the evidence in the form of letters dated 13 January 2017 and record notes of meeting of 13 January 2017 do not find mention in the arbitral award, the said evidence needs to be considered in the light of the Tribunal's finding that Respondent was forced to agree for performance of SIMOPs.

130. To sum up, award of Claim No.5 cannot be interfered with on the ground of patent illegality on account of exception in Section 34(2A) of the Arbitration Act. Petitioner has not been able to demonstrate that award of Claim No. 5 is in conflict with public policy of India. Therefore, award of Claim No. 5 cannot be interfered with by this Court in exercise of power under Section 34 of the Arbitration Act.

INTEREST

131. The Arbitral Tribunal has not awarded any pre-award/*pendente lite* interest. The interest is granted on the awarded sums only in respect of post-award period at the rate of LIBOR as prevailing on the date of award plus 2% simple interest per annum. No submissions are canvassed on behalf of the Petitioner on the aspect of awarded interest. Award interest by the Arbitral Tribunal therefore need not be interfered with.

COSTS

132. So far as costs of arbitration are considered, the entire costs incurred by Respondent, i.e sum of INR 1,87,82,866/- are awarded in its

favour. ONGC has been asked to bear its own cost. No submissions are canvassed regarding the award of costs in favour of Respondent. Since award of five claims in favour of the Respondent is upheld by this Court, there is no warrant for interference in the costs awarded by the Tribunal. However, considering the fact that the Award *qua* Claim No. 5 is not being disturbed on account of non-availability of ground of patent illegality for international commercial arbitrations, I deem it appropriate not to award costs of the present Petition in favour of Respondent.

ORDER

133. Arbitration Petition is dismissed. There shall be no further order as to costs.

[SANDEEP V. MARNE, J.]