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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 17th August, 2026
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\# **CNR No. DLHC011094262025**

\+ **FAO(OS) (COMM) 17/2026 & CM APPL. 6374/2026**

STEEL AUTHORITY OF INDIA LIMITED .....Appellant

Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Ajay Sabharwal, Mr. Sidhartha Sharma, Ms. Priyanka Tibrewal, Mr. Rishav Dutt, Mr. Aman Katrina, Mr Anirudh Pandit and Ms Neelakshi Singhal, Advocates (M) 9643017972

versus

BRITISH MARINE PLC .....Respondent

Through: Mr. Ramesh Singh, Sr. Adv. with Mr. Sumit K. Batra, Mr. Anupam Dighe, Mr. Manish Khurana & Ms. Chandini Tanna, Advs. (M) 9911100900.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

JUDGEMENT

Prathiba M. Singh, J.

1. The present appeal has been filed by the Appellant under Section 37 of the Arbitration and Conciliation Act, 1996 read with Section 10 of the Delhi High Court Act, 1966 read with Section 13 of Commercial Courts Act, 2015, *inter alia*, assailing the judgment dated 13th October, 2025 passed by a ld. Single Judge of this Court in ***O.M.P. (COMM) 20/2023*** titled ***'Steel Authority of India Limited v. British Marine PLC'*** and ***OMP (ENF.) (COMM.)***

50/2023 titled ***'British Marine PLC v. Steel Authority of India'.***

2. *Vide* the impugned judgment, the petition filed by the Appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter, *'the Act'*) was dismissed and the Arbitral Award dated 13th September, 2018 was upheld.

<u>Brief background</u>

3. The Appellant-Steel Authority of India (*hereinafter 'SAIL'*), a Public Sector Undertaking, is India's largest steel producer and regularly imports coking coal from various locations for the purpose of manufacturing steel.

4. The Respondent-British Marine PLC is an International Ocean Freight Transportation Company based out of the United Kingdom. It operates and manages various types of chartered-in vessels of Supramax, Handymax (H-MAX) and Panamax (P-MAX).

5. The Ministry of Shipping, Government of India has a division called 'Transchart' which operates a centralized framework for arranging of ships for transportation of coking coal. Transchart floated an enquiry on 27th November, 2007 for shipping of coking coal for a period of three years for a total quantity of 45 lakhs MTs by 30th September, 2012 or for a period of five years for a total quantity of 50 lakhs MTs by 30th September, 2012 subject to certain conditions. The said shipments were to be sent from Australia/New Zealand to various ports in India including Vishakhapatnam.

6. The Respondent had expressed its interest to the enquiry floated by Transchart which led to the execution of a Contract of Affreightment (*hereinafter, 'CoA'*) dated 5th December, 2007. The broad agreement under the CoA was for shipment of 3 million MTs (+ or - 5%) for a period of five

years through Handymax Vessels. The detailed terms of the contract were set out in the CoA. The period for shipment was from June, 2008 to December, 2012. The manner in which the STEM[1] (*booking/order*) was to be declared and tonnage was to be nominated was agreed upon in the CoA.

7. The CoA also contains an Arbitration clause which reads as under:

> *"60. Arbitration Clause: All disputes arising under this Charter Party shall be settled in India in accordance with the provisions of the Arbitration and Conciliation Act, 1996, (No.26 of 1996) or any further amendments thereof, and under the Maritime Arbitration Rules of the Indian Council of Arbitration. The Arbitrators to be appointed from out of the Maritime Panel of Arbitrators of the Indian Council of Arbitration. The Arbitrators shall be commercial men."*

8. The CoA also contained a default clause which reads as under:

> ***"62. DEFAULT***
> *Should Suppliers/Charterers fail to provide materials for shipment or to ship the materials by the time or times agreed upon or should Suppliers/Charterers in any manner or otherwise fail to perform the contract or should a receiver be appointed on its assets or make or enter into any arrangements or composition with creditors or suspend payments (or being a company should enter into liquidation either compulsory or Voluntary), the Suppliers/Charterers shall be entitled to declare the contract as at an end* ***without any liabilities on either side****."*

9. Various STEMS were issued by SAIL in the year 2008 and more than 8 lakhs MTs of shipment was made by the Respondent from different ports in

[1] STEM is an acronym of *Subject to Enough Merchandise* which is in the nature of a booking or an agreement to load cargo which is conditional upon the actual availability of goods at the port on the loading date.

Australia to India. Sometime in November, 2008, SAIL informed the Respondent that it would not be in a position to declare any more STEMS in view of the global economic situation and unpredictable market conditions. At that stage, the Respondent informed the Appellant that it would take steps to mitigate its losses for such shipments.

10. On 10th March, 2010, intimation was given by SAIL to Transchart to inform the Respondent that it would not be able to meet its commitments under the CoA and was invoking the Default Clause *i.e.*, Clause 62 to terminate the contract *without liability on either side*. Thereafter negotiations were undertaken and an Addendum-2 was signed on 20th April, 2011. Certain further quantities were agreed for shipment between the parties in May, 2011. However, thereafter no other STEMS were issued.

11. Subsequently, further correspondence had taken place between the parties and the Appellant had argued that there was novation of the agreement. An extension of three years was negotiated and demanded by the Appellant but the same did not fructify. Finally, on 25th October, 2011, the Appellant alleged that there was a breach of CoA by the Respondent and a termination letter was issued on 12th September, 2012.

12. Disputes arose between the parties which led to the constitution of a three-member Arbitral Tribunal as under:

1. Captain S.M. Berry as Presiding Arbitrator.
2. Mr. Niranjan Chakraborty – Respondent’s Nominee;
3. Mr. Ashok Sharma – Appellant’s Nominee;

13. Claims and counter-claims were filed by the parties and issues were framed by the Arbitral Tribunal on 10th October, 2014. At that stage, the Appellant objected to the appointment of Captain S.M. Berry and Mr.

Niranjan Chakraborty on the premise that the said two Arbitrators had served on another Arbitral Tribunal which had interpreted identical clauses in a similar dispute between the Appellant-SAIL and M/s SeaSpray Shipping Company Ltd. This application was rejected on 3rd March, 2015 by the Maritime Arbitration Committee of Indian Council of Arbitration *(hereinafter, 'ICA').* The same was then challenged before a ld. Single Judge of this Court in ***O.M.P.(T)(COMM) 48/2016*** titled '***Steel Authority of India v. British Marine PLC'***. The ld. Single Judge *vide* order dated 20th October, 2016 observed as under:

> *"38. The scheme of the Act and, in particular, Section 5 thereof does not permit interference by the Court in arbitral proceedings at intermediate stages unless expressly permitted per se by other provisions of the Act.* ***<u>The Court is not persuaded to hold that the Petitioner has been able to make out a case on the alternative ground viz., that by declining to make a disclosure in terms of Fifth Schedule of the Act, the arbitrators have rendered themselves "unable to perform their functions" in terms of Section 14 (1) (a) of the Act. In any event, as held in Progressive Career Academy Pvt. Ltd. v. FIITJEE Limited (supra), once a party has adopted the challenge procedure under Section 13 of the Act, it cannot seek to invoke Section 14 of the Act but will have to wait for the pronouncement of the Award.</u>***"

14. This order dated 20th October, 2016 was challenged before the Supreme Court in ***Civil Appeal No.11384/2016*** titled '***Steel Authority of India v. British Marine PLC'***. The Supreme Court disposed of the said appeal *vide* order dated 14th September, 2022 in the following terms:

> *"During the course of hearing, our attention has been drawn to the judgment of this court in 'HRD*

Corporation (Marcus Oil and Chemical Division) Versus GAIL (India) Limited' [(2018) 12 SCC 471], wherein, it has been observed:-

"12. After the 2016 Amendment Act, a dichotomy is made by the Act between persons who become "ineligible" to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1)(a), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as "ineligible". In order to determine whether an arbitrator is de jure unable to perform his functions, it is not necessary to go to the Arbitral Tribunal under Section 13. Since such a person would lack inherent jurisdiction to proceed any further, an application may be filed under Section 14(2) to the Court to decide on the termination of his/her mandate on this ground. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator's independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal under Section 13. If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings under Section 13(4) and make an award. It is only after such award is made, that the

party challenging the arbitrator's appointment on grounds contained in the Fifth Schedule may make an application for setting aside the arbitral award in accordance with Section 34 on the aforesaid grounds. It is clear, therefore, that any challenge contained in the Fifth Schedule against the appointment of Justice Doabia and Justice Lahoti cannot be gone into at this stage, but will be gone into only after the Arbitral Tribunal has given an award. Therefore, we express no opinion on items contained in the Fifth Schedule under which the appellant may challenge the appointment of either arbitrator. They will be free to do so only after an award is rendered by the Tribunal."

The appellant before us viz. Steel Authority of India Limited has relied upon Item No. 24 of the Fifth Schedule, which, it believes, is applicable in view of the arbitration clause (paragraph 60) in the agreement dated 05.12.2007 (Annexure P-1) read with the Indian Council of Arbitration Maritime Arbitration Rules, as amended on and with effect from 1st October, 2012.

In view of the aforesaid submissions, and the dictum of this Court in HRD Corporation (Marcus Oil and Chemical Division), we are in agreement with the impugned judgment that the appellant would be entitled to raise all grounds and contentions in the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "A&C Act") and not at the intermediate stage.

Learned Additional Solicitor General appearing for the appellant, however, submits that the impugned order makes some observations and comments on the merits of the plea raised by the appellant, predicated on Item No. 24 of the Fifth Schedule. Learned senior counsel appearing for the respondent viz. British Marine PLC fairly states that the said observations may be treated as erased and not made. If the appellant files any objections under Section 34 of the A&C Act, the same *would be considered on merits, including the assertion relying upon Fifth Schedule. Learned senior counsel for the respondent, however, clarifies that the aforesaid statement should not be construed as admitting the case of the appellant; that the arbitrators were disqualified in terms of Item No. 24 of the Fifth Schedule or otherwise in terms of Section 12, pre and post amendment vide Act No. 3 of 2016. Learned senior counsel for the respondent also reserves his right to argue that the Fifth Schedule would not be applicable. The statement and concession made by the respondent is taken on record.*

<u>In view of the aforesaid position, we dispose of the present appeal with liberty to the appellant to file objections, on all grounds as are available to them under the law and in terms of the dictum in HRD Corporation (Marcus Oil and Chemical Division), before the High Court having jurisdiction to entertain such application.</u>

The award, a copy of which has not been made available to the parties, and is kept in a sealed cover, would be made available to the learned counsel for the parties. For this purpose, the parties/their representatives would appear before the Registrar concerned and obtain a copy of the said award on 20th September, 2022 at 3:00 p.m. Service of the copy of the award to the learned counsel/authorised representatives of the parties will be treated as service on the parties.

We have consciously not made any observations on the merits of the matter in view of the order passed. <u>The present order would not be treated as an expression of opinion on any aspect relating to disqualification of the arbitrators in terms of Item 24 of the Fifth Schedule or otherwise under the pre and post amendment Section 12 of the A&C Act.</u> The appeal is accordingly, partly allowed and disposed of without any order as to costs.

Pending application(s), if any, shall stand disposed of."

15. However, SAIL continued to raise challenges in respect of the said Arbitrators and filed applications seeking disclosures from them on forms specified in the Sixth Schedule of the Act. These applications were not acceded to by the Arbitral Tribunal on the ground that the disclosures were already made by the two Arbitrators in terms of ICA Rules.

16. The Arbitral Award was, thereafter, pronounced on 13th September, 2018 which was initially placed before the Supreme Court and the Supreme Court *vide* its order dated 14th September, 2022 as extracted above, observed that SAIL was free to take all its objections against the said award in terms of the dictum in ***HRD Corporation v. GAIL (India) Ltd., (2018) 12 SCC 471.*** The Supreme Court also clarified that it had not expressed any opinion on the aspect of disqualification of the Arbitrators in terms of Item no.24 of the Fifth Schedule or under Section 12 of the Act - pre and post amendment.

17. Thereafter, the petition under Section 34 of the Act was filed by the Appellant. The primary grounds alleged therein were that the Award was vitiated by patent illegality and the award is in conflict with public policy as also contrary to fundamental policy of law in India. The ld. Single Judge of this Court considered the various objections which were raised before the Court.

18. Broadly, the grounds raised before the ld. Single Judge and her findings are as under:

A. *Issue of conflict of interest qua members of the Arbitral Tribunal, namely, Captain S.M. Berry and Mr. Niranjan Chakraborty.*

i) The ld. Single Judge, on this issue, analysed various rules of ethics including International Bar Association Rules of Ethics for International Arbitrators, 1987, UNCITRAL Arbitration Rules, 2013 and Section 12 of the Act. Ld. Single Judge came to the conclusion that the dispute relates to Charter Party Agreement which requires specialized Arbitrators owing to the restricted pool of Arbitrators who are available. Ld. Single Judge also came to the conclusion that the possibility of the same legal issues recurring in different disputes cannot be ruled out.

ii) The Court then analysed Item No. 24 of the Fifth Schedule as also the decision in ***HRD Corporation (Supra)*** and various other judgments rendered in similar cases. The finding of the ld. Single Judge on this issue is captured in paragraphs 52 to 54 of the impugned judgment which reads as under:

> *"52. From a conspectus of the aforesaid judgments, it is palpably clear that merely because an Arbitrator has decided an issue in another arbitration where one party may be common to the arbitration in question, is by itself not a ground to hold that there are justifiable doubts on the impartiality of the Arbitrator rendering him ineligible under Section 12 of the 1996 Act. It must be shown that Arbitrator's ability to decide the issue arising in the second case is clouded and that he will not be able to approach the issue with an open mind so as to do justice to the party. It is not uncommon in arbitration regime for same Arbitrators to be appointed in multiple references involving same or common parties with same or similar questions of law. It is equally not uncommon that parties prefer to appoint same Arbitrators for different contracts involving similar questions or in fresh arbitrations, where there are pending arbitrations involving similar issues. The reason to make such a choice is the familiarity of the Arbitrator with the background, technical details and nuances as also complicated legal issues, which in turn leads to more informed, efficient and expeditious*

adjudication. In many International Institutional arbitrations under ICC, SIAC etc., it is a common practice for Arbitrators to preside over multiple related disputes involving the same issues and parties, particularly, where Arbitrator is chosen for its subject-matter expertise or where the disputes arise in related contracts where arbitrations are ongoing in respect of master contracts. Illustratively, in a number of standard format contracts or contracts arising under framework agreements such as Franchise Agreements, EPC Contracts, Power Purchase Contracts, invariably Arbitrators rule on aspects of delay, force majeure, liquidated damages etc., and in my view, the mere fact that an Arbitrator has rendered a particular interpretation on any of these aspects, cannot automatically lead to his disqualification to decide a similar issue in a subsequent arbitration, unless it is substantially demonstrated that the Arbitrator will be unable to decide objectively, impartially or independently. Law does not treat mere prior knowledge of a subject or decision on the issue as per se bias, unless it is coupled with proof that having prejudged the issue, the Arbitrator will decide the same with closed mind and subjectively or that on an earlier occasion the Arbitrator was not impartial or independent.

53. The judgment in CC/Devas (Mauritius) (supra), in fact, supports the argument of the Respondent. In the said case, Respondent claimed that there were justifiable doubts on the impartiality of the Presiding Arbitrator and Professor Orrego Vicuna, not owing to lack of independence or inappropriate action, but on issue conflict i.e., pre-existing views held by Professor Orrego Vicuna and Mr. Lalonde regarding an issue in dispute between the parties. It was argued that the two Arbitrators had strongly articulated their positions on interpretation of the "Essential Security Interests" provision in two cases i.e. CMS and Sempra and Professor Orrego Vicuna repeated this view in Enron.

Overruling the challenge, it was held that to sustain any challenge, one would require to demonstrate more than simply showing a prior view or opinion, such that the Arbitrator will not be able to decide the issue again objectively or with an open mind. The fact that both Arbitrators in two cases adopted a consistent view on the concept of "essential security interests" was not surprising, as those Tribunals applied the same provisions to similar facts.

54. Applying the aforementioned judgements to the present case and tested on the anvil of the law laid down and observations made, in my view, Capt. Berry and Mr. Chakraborty were not de jure ineligible on the touchstone of doctrine of issue conflict. No doubt both had dealt with interpretation of Clause 62 in the SeaSpray arbitration and taken a particular view, but as elucidated in the aforesaid judgments, this by itself is not a disqualification sans any evidence that the Arbitrators will decide the issue with a closed mind and without any objectivity or were not impartial in the earlier arbitration involving the Petitioner, which I may note, Petitioner has failed to demonstrate. Objection of the Petitioner is mere presence based and no cogent material has been placed which shows that the two Arbitrators were partial or decided with a predetermined disposition. This contention is thus rejected."

B. *Declaration by the Arbitrators under the Sixth Schedule of the Act*

i. On the question of declaration under the Sixth Schedule of the Act, the ld. Single Judge held that the disclosure was given prior to the amendment to Section 12 of the Act, though in a different format and that the same was sufficient. The relevant portion of the impugned judgment is set out below:

> *"55. Insofar as the contention that the two Arbitrators did not give a declaration in the format prescribed under Sixth Schedule of the 1996 Act is concerned, be it noted that as a matter of fact, disclosure was given albeit not in the format given in Sixth Schedule since the disclosure was given prior to the amendment in Section 12.*
> *………."*

C. *Interpretation of Clause 62 of the CoA*

i. According to the ld. Single Judge, the Arbitral Tribunal had held categorically that if the interpretation of the Appellant is accepted, it could lead to a situation wherein the Appellant would be able to put an end to the CoA for its own breach - thereby, benefiting from its own wrongs.

ii. Insofar as Clause 62 of the CoA is concerned, the Arbitral Tribunal had concluded that there was no breach by the Respondent to ship the product if the STEM was not provided by the Appellant. There were no justifiable reasons for not providing the STEM for the entire period. In fact, the Respondent had established that SAIL had shipped coal from Australia to India during the relevant period in the spot market. Thus, the termination was held to be extraneous to Clause 62 and not sustained by the Arbitral Tribunal.

iii. Further, the Arbitral Tribunal's finding was also recorded to the effect that the *Force Majeure* Clause *i.e.*, Clause 61 was not invoked by the Appellant.

iv. These findings of the Arbitral Tribunal were upheld by the ld. Single Judge who came to the conclusion that the scope of interference against an award of an Arbitral Tribunal being limited, there was no justification to interfere in the present case.

D. *Award of damages*

i. Insofar as the aspect of damages is concerned, the award of damages was tested on the anvil of Section 73 of the Indian Contract Act, 1872.

ii. The allegation of SAIL that no evidence was produced by the Respondent before the Arbitral Tribunal was rejected by the ld. Single Judge.

iii. While, on the one hand, the Arbitral Tribunal held that damages could not be awarded on the basis of the difference between the rates stipulated in the agreement and the rates prevailing in the spot market, it nevertheless held that damages were liable to be granted on account of the non-declaration of STEM, which constituted a breach on the part of the Appellant. The Arbitral Tribunal further held that the grant of damages, calculated on the basis of the difference between the contractual rate and the rate paid by the Appellant for similar ships, constituted an adequate measure of damages. In fact, the Arbitral Tribunal observed that, had the contractual rates been higher than the prevailing spot market rates, the Appellant may not have been entitled to any damages.

iv. Ld. Single Judge came to the conclusion that the methodology adopted by the Arbitral Tribunal was not erroneous. The difference between the average spot rate and the contractual rate was the basis of award of damages and hence, the Arbitral Tribunal came to the conclusion that no further evidence would be required to prove damages.

v. Insofar as the quantum of damages is concerned, the same was also upheld by the ld. Single Judge.

vi. The interest in the present case has been awarded at the rate of 6% from the date of breach till date of award. Three months' time was granted for payment of the amount and in the event of non-payment, 9% interest was directed to be paid from the date of award till payment. The ld. Single Judge notes that this award of interest was fully covered by the decision of a Co-ordinate Bench of this Court in ***Nobel Chartering Inc. v. Steel Authority of India Limited, 2024: DHC: 5183-DB.***

19. On all these grounds, the ld. Single Judge of this Court had upheld the award dated 13th August, 2018.

Submissions of behalf of the parties

20. According to Mr. Rajshekhar Rao, ld. Senior Counsel for the Appellant, Item No.24 of the Fifth Schedule makes it clear that in the past three years if the Arbitrator has served on a Tribunal on a related issue involving one of the parties, the same would give rise to justifiable doubt as to the independence or impartiality of the Arbitral Tribunal in terms of Section 12 of the Act.

21. Ld. Senior Counsel for the Appellant further submits that though the Appellant was aware of the previous Arbitral Award, the two arbitrators still had a duty to disclose the view they had taken in the previous award dated 20th August, 2014 with M/s Seaspray Shipping Co. Ltd.

22. According to Mr. Rao, ld. Senior Counsel, the Appellant had filed an application before the ICA on 6th January, 2015 which referred the same to the Maritime Arbitration Committee. This objection was also raised on 7th January, 2015 before the Arbitral Tribunal which was, however, not acceded to. On 3rd March, 2015, ICA dismissed the objections raised by SAIL under Section 12 of the Act. According to the Appellant, no hearing was given

before dismissing the said application. The observations in the order rejecting the challenge are set out below:

> *"For resolution of the dispute raised by the Respondent in the present arbitration the matter was referred to the Maritime Arbitration Committee. In consideration of the submissions made by both parties and after carefully going though the relevant facts and circumstances of the objection raised by the Respondent, the said Committee, at its meeting dated 4th February, 2015, decided to dismiss Respondent's application by a speaking order on the ground of delay."*

23. Mr. Rao, ld. Senior Counsel further submits that the Arbitral Tribunal having not disclosed their interest in the present case, there exists a possibility of bias. Ld. Senior Counsel submits that under Section 12 of the Act, even a possibility of bias needs to be avoided and the challenge, though belated by a few days, cannot lead to a situation where the serious doubt raised to the impartiality of the Arbitral Tribunal can be ignored.

24. According to Mr. Rao, ld. Senior Counsel under Section 12 of the Act, the fact that the Arbitrators had taken a view on Clause 62 of the CoA would have a direct bearing on the decision in the present case as well and since there was no disclosures by the Arbitrators, which duty was incumbent upon them, the award is vitiated.

25. In addition, it is submitted on behalf of the Appellant that insofar as Clause 62 of the CoA is concerned, the said clause makes it clear that there would be no liabilities on either of the parties. The CoA was merely in the nature of an assurance to use the services of the Respondent for a particular quantum and the obligation did not kick-in unless and until the STEM was declared. According to Mr. Rao, ld. Senior Counsel since the declaration was

to be in parts over a longer period of time, it could not be held that there was any breach as there was no minimum guarantee which was agreed in the CoA. In addition, it is submitted that no compensation including interest was liable to be granted as no losses were even proved by the Respondent.

26. On the other hand, Mr. Ramesh Singh, ld. Senior Counsel for the Respondent has submitted that there is a distinction between the Fifth Schedule and Seventh Schedule of the Act. The view taken by an Arbitrator in a different arbitral proceeding between different parties, even if one party is common, would not constitute a justifiable doubt under Section 12 of the Act. Reliance has been placed on the decision in ***HRD Corporation (Supra).***

27. In addition, it is argued that under Section 4 of the Act, if a prompt objection is not raised, the same would constitute waiver. In this regard, reliance is placed on '*Redfern and Hunter on International Arbitration*'**.**

28. Finally, insofar as Clause 62 of the CoA is concerned, Mr. Singh, ld. Senior Counsel has relied upon the two decisions of the Co-ordinate Bench of this Court being ***M/s Seaspray Shipping Co. Ltd. v. Steel Authority of India Ltd. & Connected Matter, 2025: DHC: 2238-DB*** and ***Noble Chartering Inc. (Supra).***

Analysis and Findings

A. Grounds of challenge raised in this appeal

29. In this appeal, the challenge is to the judgment dated 13th October, 2025 passed by the ld. Single Judge and in effect, to the Arbitral Award dated 13th September, 2018 which has been upheld by the ld. Single Judge. The facts set out above are not in dispute. The three issues that have been raised before this Court in this appeal are:

i) Whether the two Arbitrators *i.e.,* Captain S.M. Berry and Mr. Niranjan Chakraborty were disqualified in view of Section 12 read with the Fifth and Sixth Schedule of the Act or not;

ii) Whether the interpretation given to Clause 62 of the CoA is correct in law?;

iii) Whether the award of damages/compensation and interest is justified?

30. At the outset, it is relevant to point out that the Arbitration Clause in the CoA *i.e.*, Clause 60 contemplates that the disputes arising out of the CoA shall be referred to an Arbitral Tribunal constituted under the Indian Council of Arbitration and shall be in accordance with the Act. Moreover, as per the said clause, the Arbitrators for the said Tribunal shall be appointed from the Maritime Panel of Arbitrators of the ICA and the rules governing the arbitration are Maritime Arbitration Rules of the ICA.

31. The Respondent being a United Kingdom based company, this is an international commercial arbitration under Section 2(1)(f) of the Act and not a domestic arbitration. The grounds of challenge in respect of Awards passed in such arbitration proceedings are very limited in nature. The ld. Single Judge, in the impugned judgment, has also rightly treated the present case as one arising out of an international commercial arbitration and held that the scope of interference is limited.

32. A Co-ordinate Bench of this Court, in ***M/s Seaspray Shipping Co. Ltd. (supra),*** while considering a dispute between the Appellant herein and M/s SeaSpray Shipping Co. Ltd. arising from an identical agreement, also held that the dispute constituted an international commercial arbitration and observed as under:

*"62. **<u>There can be no cavil as to the scope of interference with an arbitral award rendered in the context of an international commercial arbitration. An international award can be set aside only on ground of contravention of public policy. The concept of patent illegality applies exclusively to domestic awards and as such, is not relevant in this case.</u>** The confines of the jurisdiction of this Court in respect of an award rendered in the context of "international commercial arbitration" has been reiterated and restated time and again and most recently by the Supreme Court in OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions India (P) Ltd.[13], wherein the Supreme Court has observed as under— (SCC pp. 464-467, paras 47-48 and 53-55)*

> *"47. The Amendment Act, 2015 by inserting sub-section (2-A)[14] in Section 34, carves out an additional ground for annulment of an arbitral award arising out of arbitrations other than international commercial arbitrations. Sub-section (2-A) provides that the court may also set aside an award if that is vitiated by patent illegality appearing on the face of the award. This power of the court is, however, circumscribed by the proviso, which states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.*
>
> *48. Explanation 1 to Section 34(2)(b)(ii), specifies that an arbitral award is in conflict with the public policy of India, only if,:*
>
> *(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or*
>
> *(ii) it is in contravention with the fundamental policy of Indian law; or*
>
> *(iii) it is in conflict with the most basic notions of*

morality or justice.

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51. In Ssangyong Engg. & Construction Co. Ltd. v. NHAI[15], this Court dealt with the effect of the Amendment Act, 2015. While doing so, it took note of a supplementary report of February 2015 of the Law Commission of India made in the context of the proposed 2015 amendments. The said supplementary report has been extracted in para 30 of that judgment. The key features of it are summarised below:

(a) Mere violation of law of India would not be a violation of public policy in cases of international commercial arbitrations held in India.

(b) The proposed 2015 Amendments in 1996 Act (i.e. in Sections 34(2)(b)(ii) and 48(2)(b) including insertion of sub-section (2-A) in Section 34 were on the assumption that the terms, such as, 'fundamental policy of Indian law' or conflict with 'most basic notions of morality or justice' would not be widely construed.

(c) The power to review an award on merits is contrary to the object of the Act and international practice.

(d) The judgment in ONGC v. Western Geco International Ltd.[16] would expand the court's power, contrary to international practice. Hence, a clarification needs to be incorporated to ensure that the term 'fundamental policy of Indian law' is narrowly construed. The applicability of Associated Provincial Picture Houses, Ltd. v. Wednesbury Corpn.[17] principles to public policy will open the floodgates. Hence, Explanation 2 to Section 34(2)(b)(ii) has been

proposed.

After taking note of the supplementary report, the Statement of Objects and Reasons of the Amendment Act, 2015 and the amended provisions of Sections 28, 34 and 48, this Court held: (Ssangyong Engg. & Construction Co. Ltd. case[15], SCC pp. 169-171 and 194, paras 34, 37-41 and 69)

> *'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 v. DDA[10] i.e. the fundamental policy of Indian law would be relegated to Renusagar Power Co. Ltd. v. General Electric Co.[18] understanding of this expression. This would necessarily mean that Western Geco International Ltd. case[16] expansion has been done away with. In short, Western Geco International Ltd. case[16], as explained in paras 28 and 29 of Associate Builders case[10], 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 the grounds of challenge of an award, as is contained in para 30 of Associate Builders case[10].*
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> *****
>
> *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 back door 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 case[10], 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 case[10], 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 case[10], 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 *the 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 case[10], 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.

***

69. We therefore hold, following the aforesaid authorities, that in the guise of misinterpretation of the contract and consequent errors of jurisdiction, it is not possible to state that the arbitral award would be beyond the scope of submission to arbitration if otherwise the aforesaid misinterpretation (which would include going beyond the terms of the contract), could be said to have been fairly comprehended as disputes within the arbitration agreement or which were referred to the decision of the arbitrators as understood by the authorities above. If an arbitrator is alleged to have wandered outside the contract and dealt with *matters not allotted to him, this would be a jurisdictional error which could be corrected on the ground of patent illegality, which, as we have seen, would not apply to international commercial arbitrations that are decided under Part II of the 1996 Act. To bring in by the back door grounds relatable to Section 28(3) of the 1996 Act to be matters beyond the scope of submission to arbitration under Section 34(2)(a)(iv) would not be permissible as this ground must be construed narrowly and so construed, must refer only to matters which are beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal.'*

55. The legal position which emerges from the aforesaid discussion is that after the '2015 Amendments' in Sections 34(2)(b)(ii) and 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. Without intending to exhaustively enumerate instances of such contravention, byway 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).”*
>
> *(emphasis supplied)”*

33. Similarly, in the decision in ***Noble Chartering Inc. (Supra),*** a Co-ordinate Bench of this Court held as under:

> *“**96.** The learned Single Judge had also erred in not considering the scope of examination in the present case. **The learned Single Judge failed to note that the impugned award was rendered in an international commercial arbitration as defined under Section 2(1)(f) of the A&C Act. Concededly, the impugned award cannot be assailed on the ground of patent illegality as in terms of Section 34(2A) of the A&C Act, the challenge to an arbitral award on the ground of patent illegality is not available in respect of arbitral awards in an international commercial arbitration. Thus, SAIL's challenge to the impugned award was required to be tested solely on the anvil whether the impugned award is in conflict with the public policy of India.***
>
> ***97.** The Explanations to Section 34(2) of the A&C Act clarify the scope of an arbitral award being in conflict with the public policy of India and states that an arbitral award would be considered in conflict with the public policy of India if there was fraud or corruption in the making of the award; if it falls foul of the fundamental policy of India; or offends the most basic notions of*

morality and justice.

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99. In Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India18, the Supreme Court held that the expression "fundamental policy of Indian law" would necessarily have to be understood as explained in paragraphs 18 and 27 of its decision in Associate Builders v. Delhi Development Authority19 and, its earlier decision in Renusagar Power Co. Ltd. v. General Electric Company20. The relevant extract of the said decision21 is set out below:

> *"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 [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], 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 [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204].

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 sof Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], 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 [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. 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 [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], and paras 28 and 29 in particular, is now done away with."

xxxx

101. In HRD Corporation (Marcus Oil and Chemical Division v. GAIL (India) Limited (Formerly Gas Authority of India Limited)23, Ssangyong Engineering *and Construction Co. Ltd. v. National Highways Authority of India24 and Vijay Karia v. Prysmian Cavi E Sistemi SRL25, the Supreme Court explained that after the amendment in the A&C Act introduced by the Arbitration & Conciliation (Amendment) Act, 2015, Section 48 of the A&C Act, which concerned the enforcement of a foreign award is amended to delete the provision for declining enforcement of the foreign award on the ground of "contrary to interest of India". Further, Explanation 2 to Section 48 of the A&C Act was added clarifying that the question whether there is contravention of the fundamental policy of Indian law, shall not entail a review on the merits of the dispute. Similarly, Explanation 2 was added to Section 34(2)(b) of the A&C Act, which clarify that the tests "as to whether there is a contravention with the fundamental policy of Indian Law shall not entail a review on the merits of the dispute"*

102. Sub-section (2A) was also introduced in Section 34 of the A&C Act, which would be applicable to arbitral awards other than those delivered in an international commercial arbitration. In terms of said Sub-section, an arbitral award could be set aside if the same is vitiated by patent illegality appearing on the face of the award.

xxxx

104. A plain reading of the above clearly indicates that the scope of setting aside an arbitral award on the ground that it falls foul of public policy of India is extremely narrow. The grounds that an arbitral award is perverse or irrational does not necessarily qualify as a ground to set aside an arbitral award on the ground that it is in conflict with the public policy of India. Thus, even if we accept (which we do not) that the Arbitral Tribunal's interpretation of the COA is erroneous, the impugned award could not be set aside on the ground of being in conflict with the public policy of India."

Thus, the present dispute being an international commercial arbitration the only ground available for challenge is whether the Award is contrary to the public policy of India. The ground of patent illegality is not available for challenging the Award in question.

B. Conflict of interest

34. The grievance of the Appellant is that the two Arbitrators *i.e.*, Captain S.M. Berry and Mr. Niranjan Chakraborty, who had rendered the award in the present case were also Arbitrators in a dispute between SAIL and M/s SeaSpray Shipping Company Ltd. and had taken a particular view in respect of the interpretation of Clause 62 of the CoA. Hence, according to SAIL, the Arbitrators have dealt with a related issue involving one of the parties in terms of Item No.24 of the Fifth Schedule of the Act. The submission on behalf of the Appellant, therefore, is that since the same very Arbitrators had taken a view on the same issue, the award itself is vitiated.

35. In order to appreciate this argument, it is necessary to consider the chronology of events. The CoA is itself dated 5th December, 2007. The dispute arose between the parties when the Respondent invoked the Arbitration Clause *i.e.*, Clause 60 of the CoA on 31st March, 2014.

36. On 29th May, 2014, SAIL appointed its nominee Arbitrator namely, Mr. Ashok Sharma. On 25th June, 2014, Captain S.M. Berry was appointed as the Presiding Arbitrator and on the same day the constitution of the Tribunal was notified by the ICA. The requisite declarations in terms of ICA Rules were furnished by the Arbitrators. The declarations having been submitted, the claims and statement of defence were filed before the Tribunal. The Arbitral Tribunal framed issues on 10th October, 2014. By then, the Arbitral Award in the matter between the Appellant and M/s SeaSpray Shipping Company Ltd.

had been rendered on 20th August, 2014.

37. In the said M/s. SeaSpray award, the Arbitral Tribunal had interpreted the default clause *i.e.*, Clause 62 of a similar agreement with M/s SeaSpray Shipping Company Ltd. The Appellant-SAIL was a party to the said dispute and Award as well. Thus, it was fully aware of the interpretation given in the said award.

38. The question in the present case is whether the interpretation of Clause 62 in the Arbitral Award with M/s SeaSpray Shipping Company Ltd. would operate as a disqualification for the Arbitrators to continue to adjudicate the disputes with the Respondent – as a corollary, is there any justifiable doubt as to the independence or impartiality of the Arbitrators or not.

39. In order to decide this issue, Item No.24 of the Fifth Schedule of the Act and Explanation 3 of the Fifth Schedule of the Act would be relevant. The same are extracted below:

> *"THE FIFTH SCHEDULE*
> *[See section 12(1)(b)]*
> *The following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrator:*
> *xxxx*
> ***Previous services for one of the parties or other involvement in the case***
> *xxxx*
> *24. The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.*
> *xxxx*
> *Explanation 3. – For the removal of doubts,* ***it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small,***

> ***<u>specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases</u>***, *this is a relevant fact to be taken into account while applying the rules set out above."*

40. The above provisions of the Fifth Schedule of the Act are essential to determine whether the Arbitrators in the present case were in any manner conflicted in rendering the impugned award or not. In order to appreciate this issue, the nature of the dispute needs to be considered i.e., it is a dispute relating to maritime arbitration. It is governed by the Maritime Rules of the ICA. The explanation in the Fifth Schedule clearly takes into consideration the limited number of Arbitrators who are available in such specialized areas. The arbitration rules of the ICA require specialized knowledge and impartiality required in such arbitrations. Rule 5 of the Maritime Arbitration Rules of the ICA in this regard is relevant and reads as under:

> *"**5. Panel of Arbitrators**:*
> *a) The Committee shall maintain a Panel of Maritime <u>Arbitrators who should have experience and reputation in shipping and maritime practice, knowledge in maritime and shipping law and are persons of integrity</u>.*
> *b) The persons who have attained the age of more than 80 years will automatically cease to be member of the Panel of Arbitrators. In case of a person, who has been appointed as Arbitrator before attainment of the age of 80 years his panel membership will continue till the pronouncement of the Award in pending arbitration matters referred to him."*

41. A perusal of the above extracted Rule 5 of the Maritime Arbitration Rules of the ICA would show that on panel of Arbitrators, persons who have knowledge and reputation in the maritime world are included. Rule 10(4)(b)(c) of the Maritime Arbitration Rules of the ICA is also relevant in

the present case as the same is regarding the appointments and disqualifications of the Arbitrators. The said rule reads as under:

> ***"10. Nomination / Appointment/Removal of Arbitrators:***
>
> *xxxx*
>
> *4) (b) Before accepting his nomination the prospective arbitrator shall disclose any circumstances such as financial or personal interest in the outcome of the award, likely to disqualify him as an impartial or independent arbitrator. Upon receipt of such information, the Registrar shall disclose it to the parties, who if willing to proceed under the circumstances disclosed, shall advise the Registrar accordingly. If either party declines to waive the presumptive disqualification, the prospective arbitrator shall be disqualified from acting as arbitrator and the vacancy so created shall be filled, in accordance with the applicable provision of these Rules.*
>
> *(c) The arbitrator while making the aforesaid disclosure should take notice of the grounds enumerated in the Fifth Schedule of the Act or such other schedule or amendment as may be made from time to time in respect thereof. "*

42. As per these above Rules, a disclosure is to be made by all nominated Arbitrators, prior to the acceptance of the nomination, of any financial or personal interest which could disqualify them from being impartial or independent Arbitrators.

43. In the present case, the nomination was accepted between March to June, 2014. In the arbitration between the Appellant and M/s SeaSpray Shipping Company Ltd., the same two Arbitrators *i.e.*, Captain S.M. Berry and Mr. Niranjan Chakraborty had already been nominated on 21st May, 2012 *i.e.*, almost two years prior to the nomination in the present dispute. SAIL

being a party in both the arbitrations was fully aware of these facts. Under Rule 10(4)(e) of the Maritime Arbitration Rules of the ICA, the challenge to the constitution of the Arbitral Tribunal or to any specific Arbitrator was to be raised within 15 days from when the appointment was communicated to the Appellant. The constitution of the Tribunal in the present case was notified on 25th June, 2014. SAIL had time till 24th July, 2014 to raise a challenge. However, SAIL filed its statement of defence on 24th June, 2014 *i.e.*, a day prior to the appointment of the Presiding Arbitrator. The Award in M/s. SeaSpray dispute was rendered on 20th August 2014. Thereafter, issues were framed by the Arbitral Tribunal on 10th October, 2014.

44. After some months, in January 2015, SAIL raised a challenge to the continuation of the two Arbitrators on the Tribunal which was not allowed by the Maritime Arbitration Committee on 3rd March, 2015. Thus, any challenge raised after a period of 15 days, was clearly beyond the period specified Rule 10(4)(e) of the Maritime Arbitration Rules of the ICA.

45. Now coming to Section 12 of the Act which reads as under:

> *"**12. Grounds for challenge.—**[(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—*
>
> ***(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality**; and*
>
> *(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.*

<u>Explanation1.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.</u>

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.]

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

[(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.]"

46. Under Section 12(1)(a) of the Act, an Arbitrator has to disclose in writing any factor which is likely to give rise to justifiable doubts as to his/her independence or impartiality. Explanation 1 to Section 12 of the Act clearly states that guidance as to the circumstances which could rise to such justifiable doubts can be obtained from the Fifth Schedule of the Act and if an Arbitrator

feels that there could be a doubt as to his or her independence or impartiality, the disclosure has to be made in the Forms specified in the Sixth Schedule of the Act.

47. Usually, these disclosures and the forms in the Sixth Schedule of the Act would apply to Arbitration proceedings governed by the Act. In the present case, the Arbitrators had given their declaration in terms of the Maritime Arbitration Rules of the ICA. Moreover, the disclosure in this case has no meaning inasmuch as SAIL was fully aware that these two Arbitrators *i.e.,* Captain S.M. Berry and Mr. Niranjan Chakraborty were already on the Arbitral Tribunal adjudicating the dispute between the Appellant and M/s SeaSpray Shipping Company Ltd. Thus, from the inception itself, SAIL was aware that these two Arbitrators were serving on another Arbitral Tribunal involving a similar dispute relating to SAIL and M/s SeaSpray Shipping Company Ltd.

48. A conjoint reading of the Maritime Arbitration Rules of the ICA and the Explanation 3 to Item no.24 of the Fifth Schedule of the Act, would show that one of the most relevant facts to be taken into account while resolving issues of conflicts is the required specialization of Arbitrators. Rule 5 of the Maritime Arbitration Rules of the ICA and Explanation 3 to the Fifth Schedule of the Act, lend sufficient credence to the fact that such arbitrations involving technical matters requiring specialization may have a smaller pool of Arbitrators from which the parties can choose. A maritime contract by its very nature requires domain knowledge for quick adjudication. Merely because an Arbitrator has served in another maritime arbitration which involves interpretation of the same or a similar clause by itself cannot raise justifiable doubts as to the independence or impartiality of an Arbitrator. The

manner in which such disputes are resolved through specialized Tribunals is well entrenched both in India and internationally. If it were to be held that experts who serve as Arbitrators on such arbitrations, ought to be bound by such stringent conflicts, it may lead to scarcity of such expert Arbitrators and also their perpetual disqualification. The interpretation canvassed by SAIL cannot, therefore, be accepted. In the opinion of this Court, the entire purpose of invoking arbitration in such cases for expeditious disposal would be defeated if such specialised Arbitrators are held to be conflicted or disqualified.

49. Moreover, the challenge to such Arbitrators has to be raised within the prescribed period which in this case unfortunately was not done. Even under Section 13 of the Act, the time prescribed for raising such objections is as under:

> *"**13. Challenge procedure.**—(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.*
>
> *(2) Failing any agreement referred to in sub-section (1), **<u>a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.</u>***
>
> *(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.*
>
> *(4) If a challenge under any procedure agreed upon by the parties or under the procedure under subsection (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.*
>
> *(5) Where an arbitral award is made under sub-*

section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees."

50. As per the above provision, the time period prescribed for filing a challenge is 15 days from the date of becoming aware of the constitution of the Arbitral Tribunal or 15 days from the date when the circumstances giving rise to justifiable doubts comes to the notice of the party. In the present case, the Appellant failed to raise the challenge within the prescribed period under either Sections 12/13 of the Act or Rule 10(4)(e) of the Maritime Arbitration Rules of the ICA. The Arbitral Award dated 20th August, 2014 in the dispute with M/s SeaSpray Shipping Company Ltd. was communicated to the Appellant on 1st September, 2014. However, the Appellant requested disclosure from the Arbitrators only on 19th November, 2015 which was belated both under the Maritime Rules of the ICA and under Section 13 of the Act.

51. The Arbitral Award of the Arbitral Tribunal dated 13th September, 2018 as also the impugned judgment dated 13th October, 2025 passed by the ld. Single Judge of this Court, therefore, rightly hold that the Arbitrators in the present case are not disqualified in any manner from dealing with the dispute in question. In fact, SAIL having full knowledge of the Tribunal's constitution, ought to be held to have waived its right to raise a challenge. In this regard, the extract from *'Redfern and Hunter on International Arbitration'* is relevant and is extracted below:

*"(e) **Waiver***

*A question arises concerning the obligation of a party to raise promptly any objection concerning the independence or impartiality of an arbitrator (or any other ground of challenge), when the facts upon which the challenge is based come to the attention of the objecting party. As noted above, such a question may not arise in the US because there is no procedure available for challenges to a court until after the award has been rendered. Nevertheless, even there the objection should be made in a timely way to the arbitral tribunal 'for the record'. In the ICSID system Arbitration Rule 27 states clearly chat **<u>a party who fails to 4.133 object promptly to an alleged violation of a relevant rule is deemed to have waived its right to object</u>**.*

Waiver
A party which knows or should have known that a provision of the Administrative and Financial Regulations, of these Rules, of any other rules or agreement applicable to the proceeding, or of an order of the Tribunal has not been complied with and which fails to state promptly its objections thereto, shall be deemed-subject to Article 45 of the Convention—to have waived its right to object.

***<u>Under the Model Law, challenges related to impartiality or independence must be filed with the arbitral tribunal within 15 days of the party becoming aware of the circumstances giving rise to justifiable doubts as to those issues</u>**. Is the objection to be deemed to be waived if the time limit is not met, or may the objection be raised in a challenge to the award or on enforcement proceedings? This question has not been resolved definitively**<u>. The better view is that on policy grounds a failure to comply with the time limits should bar any attack of the award on this basis.</u>**"*

52. From the above, it is clear that the timeline for raising challenges for appointment of Arbitrators has to be strictly adhered to in order to ensure that belated challenges are not raised leading to delays in the arbitration process.

53. Now coming to the merits as to whether the Arbitrators were indeed conflicted at all or was there a justifiable doubt as to their impartiality or independence. A similar issue was raised in ***HRD Corporation (Supra)*** wherein a challenge was raised to the appointment of an Arbitrator on the ground that the same very Arbitrator had rendered an award between the same parties in an earlier arbitration for a different period but concerning the same disputes. In the context of the said case, the Supreme Court considered various materials and commentaries and held that merely because the same Arbitrator has rendered the award in a previous arbitration between the parties, the same would not be a ground of likelihood of bias so as to render it ineligible. The Supreme Court also found that there was no reason to hold that the Arbitrator would be biased in any manner. In the said case, the Supreme Court observed as under:

> *"23. Coming to Justice Doabia's appointment, it has been vehemently argued that since Justice Doabia has previously rendered an award between the same parties in an earlier arbitration concerning the same disputes, but for an earlier period, he is hit by Item 16 of the Seventh Schedule, which states that the arbitrator should not have previous involvement "in the case".* ***<u>From the italicized words, it was sought to be argued that "the case" is an ongoing one, and a previous arbitration award delivered by Justice Doabia between the same parties and arising out of the same agreement would incapacitate his appointment in the present case. We are afraid we are unable to agree with this contention.</u>*** *In this context, it is important to refer to the*

IBA Guidelines, which are the genesis of the items contained in the Seventh Schedule. Under the waivable Red List of the IBA Guidelines, para 2.1.2 states:

"The Arbitrator had a prior involvement in the dispute."

24. On reading the aforesaid guideline and reading the heading which appears with Item 16, namely "Relationship of the arbitrator to the dispute", it is obvious that the arbitrator has to have a previous involvement in the very dispute contained in the present arbitration. Admittedly, Justice Doabia has no such involvement. Further, Item 16 must be read along with Items 22 and 24 of the Fifth Schedule. The disqualification contained in Items 22 and 24 is not absolute, as an arbitrator who has, within the past three years, been appointed as arbitrator on two or more occasions by one of the parties or an affiliate, may yet not be disqualified on his showing that he was independent and impartial on the earlier two occasions. Also, if he currently serves or has served within the past three years as arbitrator in another arbitration on a related issue, he may be disqualified under Item 24, which must then be contrasted with Item 16. Item 16 cannot be read as including previous involvements in another arbitration on a related issue involving one of the parties as otherwise Item 24 will be rendered largely ineffective. It must not be forgotten that Item 16 also appears in the Fifth Schedule and has, therefore, to be harmoniously read with Item 24. It has also been argued by learned counsel appearing on behalf of the respondent that the expression "the arbitrator" in Item 16 cannot possibly mean "the arbitrator" acting as an arbitrator, but must mean that the proposed arbitrator is a person who has had previous involvement in the case in some other avatar. According to us, this is a sound argument as "the arbitrator" refers to the proposed arbitrator. This becomes clear, when contrasted with Items 22 and 24, where the arbitrator must have served "as arbitrator" before he can be *disqualified. Obviously, Item 16 refers to previous involvement in an advisory or other capacity in the very dispute, but not as arbitrator. It was also faintly argued that Justice Doabia was ineligible under Items 1 and 15. Appointment as an arbitrator is not a "business relationship" with the respondent under Item 1. Nor is the delivery of an award providing an expert "opinion" i.e. advice to a party covered by Item 15.*

25. The fact that Justice Doabia has already rendered an award in a previous arbitration between the parties would not, by itself, on the ground of reasonable likelihood of bias, render him ineligible to be an arbitrator in a subsequent arbitration. *As has been stated in H. v. L & others, [2017] 1 W.L.R. 2280 at 2288-2289:*

> *"26. If authority were needed it is to be found in AMEC Capital Projects Ltd v Whitefriars City Estates Ltd [2005] 1 All ER 723. An adjudicator had decided a case without jurisdiction as a result of defects in the procedural mechanism for his appointment. His adjudication was set aside and he was then reappointed to decide the same dispute, between the same parties, and decided it in the same way. At first instance it was held that his second adjudication should be set aside for apparent bias because, amongst other things, he had already decided the same issue. The Court of Appeal reversed the decision. Dyson LJ said:*
>
> > *"20. In my judgment, the mere fact that the tribunal has previously decided the issue is not of itself sufficient to justify a conclusion of apparent bias. Something more is required. Judges are assumed to be trustworthy and to understand that they should approach every case with an open mind. The same applies to adjudicators, who are almost always professional persons. That is not to say that, if it is asked to re-*

determine an issue and the evidence and arguments are merely a repeat of what went before, the tribunal will not be likely to reach the same conclusion as before. It would be unrealistic, indeed absurd, to expect the tribunal in such circumstances to ignore its earlier decision and not to be inclined to come to the same conclusion as before, particularly if the previous decision was carefully reasoned. The vice which the law must guard against is that the tribunal may approach the rehearing with a closed mind. If a judge has considered an issue carefully before reaching a decision on the first occasion, it cannot sensibly be said that he has a closed mind if, the evidence and arguments being the same as before, he does not give as careful a consideration on the second occasion as on the first. He will, however, be expected to give such reconsideration of the matter as is reasonably necessary for him to be satisfied that his first decision was correct. As I have said, it will be a most unusual case where the second hearing is for practical purposes an exact rerun of the first. 21. The mere fact that the tribunal has decided the issue before is therefore not enough for apparent bias. There needs to be something of substance to lead the fair-minded and informed observer to conclude that there is a real possibility that the tribunal will not bring an open mind and objective judgment to bear."

27. Those comments apply with as much force to arbitrators in international reinsurance arbitration as they do to adjudicators in building disputes. Just as an arbitrator or adjudicator can be expected to bring an open mind and objective *judgment to bear when redetermining the same question on the same evidence between the same parties, it is all the more so where the evidence is different and heard in a reference between different parties.*

28. The position in Bermuda Form arbitrations is accurately summarised in a leading textbook, Liability Insurance in International Arbitration, 2nd ed (2011), at para 14.32 in these terms:

> *"14.32 Commencing a Bermuda Form Arbitration The decision in Locabail (UK) Ltd v Bayfield Properties Ltd [2000] QB 451, and the foregoing discussion, is also relevant in the fairly common situation where a loss, whether from boom or batch, gives rise to a number of arbitrations against different insurers who have subscribed to the same programme. A number of arbitrations may be commenced at around the same time, and the same arbitrator may be appointed at the outset in respect of all these arbitrations. Another possibility is that there are successive arbitrations, for example because the policyholder wishes to see the outcome of an arbitration on the first layer before embarking on further proceedings. A policyholder, who has been successful before one tribunal, may then be tempted to appoint one of its members (not necessarily its original appointee, but possibly the chairman or even the insurer's original appointee) as arbitrator in a subsequent arbitration. Similarly, if insurer A has been successful in the first arbitration, insurer B may in practice learn of this success and the identity of the arbitrators who have upheld insurer A's arguments. It follows from Locabail and AMEC Capital Projects Ltd v Whitefriars City*

Estates Ltd [2005] 1 All ER 723 that an objection to the appointment of a member of a previous panel would not be sustained simply on the basis that the arbitrator had previously decided a particular issue in favour of one or other party. It equally follows that an arbitrator can properly be appointed at the outset in respect of a number of layers of coverage, even though he may then decide the dispute under one layer before hearing the case on another layer."

26. We were, however, referred to Russell on Arbitration (23rd edition), in which the learned author has referred to the ground of bias in the context of previous views expressed by an arbitrator. In Chapter 4-124, the learned author states as follows:

> *"In certain circumstances, previously expressed views of an arbitrator, which suggest a certain pre-disposition to a particular course of action, outcome or in favour of a party, can constitute grounds for removal. One of the Locabail v. Bayfield applications ([2000] 1 All E.R. 65 at 92-93) against a judge was successful on this basis. The judge had written four strongly worded articles which led the Court to conclude that an objective apprehension of bias may arise on the part of one of the parties. However, a challenge against a sole arbitrator in a trade arbitration which alleged apparent bias because the arbitrator had previously been involved in a dispute with one of the parties failed. The judge found this on the facts to be no more than "an ordinary incident of commercial life" occurring in the relatively small field of trade arbitrations where it was thought the parties and arbitrators were quite*

likely to have had prior dealing with each other (Rustal Trading Ltd. v. Gill and Duffas SA [2000] 1 Lloyd's Rep. 14). Similarly, the fact that an insurance arbitrator had previously given a statement in another arbitration (and may have been called to give evidence subsequently) about the meaning of a standard form clause which might have had a tentative bearing on the present arbitration would not give grounds for removal (Argonaut Insurance Co v. Republic Insurance Co [2003] EWHC 547)."

27. The judgment referred to in Russell is reported in Locabail v. Bayfield, (2000) 1 All E.R. 65. In paragraph 89 thereof, the Court of Appeal stated:

"We have found this a difficult and anxious application to resolve. There is no suggestion of actual bias on the part of the recorder. Nor, quite rightly, is any imputation made as to his good faith. His voluntary disclosure of the matters already referred to show that he was conscious of his judicial duty. The views he expressed in the articles relied on are no doubt shared by other experienced commentators. We have, however, to ask, taking a broad commonsense approach, whether a person holding the pronounced pro-claimant anti-insurer views expressed by the recorder in the articles might not unconsciously have leant in favour of the claimant and against the defendant in resolving the factual issues between them. Not without misgiving, we conclude that there was on the facts here a real danger of such a result. We do not think a lay observer with knowledge of the facts could have excluded that possibility, and nor can we. We accordingly grant permission to appeal on

this ground, allow the defendant's appeal and order a retrial. We should not be thought to hold any view at all on the likely or proper outcome of any retrial."

28. We have not been shown anything to indicate that Justice Doabia would be a person holding a pronounced anti-claimant view as in Locabail (supra). Therefore, we are satisfied that there is no real possibility that Justice Doabia will not bring an open mind and objective judgment to bear on arguments made by the parties in the fourth arbitration, which may or may not differ from arguments made in the third arbitration."

54. Thus, in ***HRD Corporation (Supra)*** the Supreme Court holds that merely because an Arbitrator has rendered an Award in a previous arbitration between the same parties would not create a likelihood of bias or render him ineligible in a subsequent arbitration.

55. The reliance placed by Mr. Rao, ld. Senior Counsel for the Appellant upon ***Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) a Joint Venture Company, 2024 INSC 857*** in respect of the doctrine of bias is slightly different from the issue which is being considered in the present case. The observation relied upon by Mr. Rao, ld. Senior Counsel is paragraph 88 in ***Central Organisation for Railway Electrification (Supra)*** which reads as under:

> *"88. The principle governing the doctrine of bias is that a member of a judicial body with a predisposition in favour of or against any party to a dispute or whose position in relation to the subject matter or a disputing party is such that a lack of impartiality would be assumed to exist should not be a part of a tribunal composed to decide the dispute.*
> *………"*

56. The above observation is to be read in the context of deciding the contours of independence and impartiality of Arbitral Tribunals. It is only under circumstances where an assumption has to be made that the Arbitrators would not be impartial, that such a disqualification would arise. The Supreme Court in the decision in ***Central Organisation for Railway Electrification (Supra)*** was considering the general framework of independence and impartiality of Arbitral Tribunals. In the present case, except the fact that the two Arbitrators, against whom the challenge has been raised by the Appellant, had rendered an Arbitral Award in the dispute with M/s SeaSpray Shipping Company Ltd, there are no other allegations of lack of impartiality which have been raised before this Court.

57. Bearing in mind the specialization required, SAIL's knowledge of the two Arbitrators and the delay in raising the objections contrary to the timelines prescribed under Section 13 of the Act and Rule 10 of the Maritime Arbitration Rules of the ICA, this Court concludes that the disqualification under Section 12 read with the Fifth Schedule of the Act is not attracted in the present case. Further even on merits, the rendering of an earlier Award deciding a similar issue by the same Arbitrators would also not attract the disqualification as held in ***HRD Corporation (supra)***.

C. <u>Interpretation of Clause 62 of the CoA</u>

58. Insofar as the interpretation of Clause 62 of the CoA is concerned, a mere reading of the Default Clause along with the *Force Majeure* clause *i.e.,* Clause 61 of the CoA, would reveal that the manner in which it applies is completely different to what is being argued by SAIL. Under Clause 61 of the CoA, SAIL had the option to invoke the *Force Majeure* clause if any of the factors named in Clause 61 of the CoA had occurred *i.e.,* arrests or restrain by

Government or people, war, blockade, revolution, insurrection, mobilization, strikers, civil commotions, Acts of God, plague or other epidemics, breakdown of mining, rail, road or port equipment, destruction of material by fire or flood or other natural calamity. Clause 61 of the CoA permitted the owners and the charterers to opt for cancellation of the agreement without any liability for such cancellation, provided that Clause 61 was invoked within 20 days of the occurrence of the *Force Majeure* event. However, SAIL did not invoke Clause 61.

59. Insofar as Clause 62 of the CoA is concerned, if the suppliers failed to provide material for shipment or to ship the materials within the timeline as agreed or if the suppliers failed to perform the contract, then the suppliers or charterers shall be entitled to declare the contract as an end without any liabilities. In respect of this clause, the Arbitral Tribunal has explained in paragraphs 152 and 154 of the impugned award as under:

> *"152. It appears to us that the real bone of contention between the parties is part of the Clause 62, which entitles the Respondent to declare the Contract (COA) at an end at will, without any liability to either side when "Suppliers/Charterers in any manner or otherwise fail to perform the contract". The Respondent asserts that this phase gives it unfettered and absolute freedom to declare the contract at and end at any time whenever it wishes without assigning any reason. We are unable to accept the aforesaid submission for a number of reasons.*
>
> *A. Such an interpretation of Clause 62 would be absurd and vulnerable to being declared void under Section 23 of Indian Contract Act, 1872. Such an interpretation would also be contrary to Section 73 of the Indian Contract Act, 1872 ("The Contract Act 1872").*
>
> *b. Such interpretation would also be in violation of*

> *Section 23 read with Section 28 of The Contract Act, 1872. It is well settled in law that parties cannot contract against this statute.*
>
> *xxx xxx xxx*
>
> ***154. The Tribunal has critically analysed the contention and submissions made by the parties and hold that the Clause 62 was designed to legislate for events constituting frustration of the Agreement and is directed at the supplier in Australia rather than the Respondent or at events which prevent performance such as the liquidation/insolvency of the supplier of coal. Considering the factual matrix in the present case, Clause 62 could only have been invoked if a supplier in Australia failed or was unable to supply material for shipment. It cannot be said to operate if the supplier provides coal to the Respondent but the Respondent does not provide the same to the Claimant for shipment, as argued by the Respondent. The failure must be a failure by the supplier which in turn leads to a failure by the Respondent. Clause 62 cannot be interpreted to mean that the Respondent was within its rights to put an end to the COA when it was in fact executing fixtures in the spot market for the shipment of coal from Australia in the same period as per the dispute, which should have been given to the Claimant instead. If one were to accept the Respondent's interpretation of Clause 62, it would lead to a situation where the Respondent would have the right to put an end to the contract for its own breachers and thus benefit from its own wrongs.*** *This kind of interpretation would be absurd as it would render other Clauses in the Agreement including Clause 61 totally redundant."*

60. A perusal of the above paragraphs would show that the Arbitral Tribunal has correctly interpreted Clause 62 of the CoA to mean that if there were any events that resulted in constituting frustration of the agreement, leading to a situation where the supplier in Australia is unable to supply, then

the contract can be terminated. In order to invoke Clause 62 of the CoA, SAIL would have to show that its suppliers had failed to supply goods to them and therefore, the same resulted in non-issuance of STEMS to the Respondent. However, such a situation did not arise and hence, Clause 62 of the CoA could not have been invoked by SAIL. The interpretation given by SAIL to Clause 62 of the CoA is completely contrary to the bare reading of the clause itself.

61. In fact, two Co-ordinate Benches of this Court have interpreted and upheld this very interpretation of Clause 62. In ***M/s SeaSpray Shipping Co Ltd. (Supra),*** the ld. Division Bench of this Court has held as under:

> *"63. A perusal of the impugned award, reveals that in respect of the issue of termination, the conclusion drawn by the Arbitral Tribunal largely turns on the interpretation accorded by the Arbitral Tribunal to Clause 62 of the Agreement between the parties.*
> *64. It has been held in the award that (i) Clause 62 must be read in context with the other provisions of the Contract of Affreightment; (ii) if there are two possible constructions of Clause 62 then the one which would give effect to all the Clauses of the Agreement must be adopted and not another which would nullify them; (iii) it was found that the claimant's interpretation gave effect to the rest of the provisions of the Agreement, in contradiction to the interpretation canvassed by the SAIL; (iv) it was noticed that the construction sought to be canvassed by SAIL made it impossible to reconcile with its binding obligation to ship at least 1,900,000 MT of coal; (v) any interpretation which rendered the obligation of SAIL to ship the requisite amount of cargo in the relevant period "optional" would lead to an absurdity; (vi) reading of the Contract as a whole made it evident that the SAIL was obliged to ship a minimum of 1,900,000 MT and maximum of 2,100,000 MT of coal; (vii) it was noticed that there was nothing optional and/or non-binding as regards (a) cargo/quantity, (b)*

shipment period, (c) type of vessels, (d) details of vessels likely to perform COA and (e) Nomination of Vessels. Even where flexibility was permitted, the limits of that flexibility were strictly mentioned in the Contract; (viii) on the basis of the above, it was concluded that SAIL's interpretation would practically annihilate the binding nature of many clauses in the Agreement including Clauses 1, 2, 3, 4 and 5, even though they expressly convey that the parties intended for them to be binding; (ix) Clause 62 could only have been invoked if a supplier in Australia failed or was unable to supply material for shipment. It cannot be said to operate if the supplier provides coal to SAIL but SAIL does not provide the same to Seaspray for shipment; the failure must be a failure by the supplier which in turn leads to a failure by SAIL.

65. It can be seen that the conclusion drawn and the findings rendered by the Arbitral Tribunal is based on an interpretative exercise."

62. Similarly, in ***Nobel Chartering Inc. (Supra)***, it has been held as under:

"76. Concededly, it was not Noble's case that construing Clause 62 of the COA to mean that SAIL had a unilateral right to terminate the COA at will, would render it void on the ground of public policy. It was Noble's case that on a proper construction of Clause 62 of the COA, it could not be construed to empower SAIL to terminate the COA without any reason and on account of its own default.

77. It is, thus, necessary to carefully examine the Arbitral Tribunal's interpretation of Clause 62 of the COA and the reasons for the same.

xxxx

87. Whilst the Arbitral Tribunal made observations to the said effect by construing Clause 62 of the COA in the manner as canvassed by SAIL would render it vulnerable on the ground of public policy, the Arbitral Tribunal's interpretation of Clause 62 of the COA is

> ***<u>not founded on that reason alone. The Arbitral Tribunal's decision is founded on its finding that Clause 62 of the COA was required to be construed in accordance with the nature of the contract (COA) and SAIL's interpretation of the said clause would render it inherently conflicting.</u>***
>
> ***<u>88. SAIL's contention that Arbitral Tribunal's interpretation of Clause 62 of the COA was plainly contrary to the language of the COA and no other view is possible, is not persuasive. It is settled law that the deed has to be construed as a whole. The intent of the parties is to be ascertained by the language of the written contract read as a whole and not by reading parts of the clauses of the contract literally dehors their context. The Arbitral Tribunal undertook precisely the same exercise.</u>***
>
> *89. It is well settled that interpretation of a contract falls within the jurisdiction of the Arbitral Tribunal, thus, it is the final adjudicator of the said construction and its decision cannot be interfered unless it is found that the Arbitral Tribunal's view is not a possible one."*

63. Therefore, reliance on Clause 62 of the CoA being a justification for SAIL to terminate the agreement is not tenable.

D. <u>Damages and Award of Interest</u>

64. Coming to the question of damages/compensation and award of interest, the Arbitral Tribunal has undertaken a complete and detailed factual analysis as to the manner in which the compensation has been calculated. The Respondent had already put SAIL to notice that in view of the cancellation by SAIL, it would take steps towards mitigation.

65. Under such circumstances, the Arbitral Tribunal has adopted a rational and logical approach in the calculation of damages by considering the difference between the contractual rate and the spot rate and applying the

same to the tonnage. This approach cannot be held to be unreasonable. Moreover, there is no violation of public policy in the manner in which damages have been calculated. Accordingly, the view taken by the Arbitral Tribunal is upheld.

Conclusion

66. Under these circumstances, this Court is of the opinion that the Arbitral Award dated 13th September, 2018 was rightly not interfered with by the ld. Single Judge of this Court.

67. Accordingly, the present appeal is dismissed. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

VIKAS MAHAJAN
JUDGE

SEPTEMBER 17, 2026
Rahul/Ck

$~J1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC011094262025**

\+ **FAO(OS) (COMM) 17/2026**

STEEL AUTHORITY OF INDIA LIMITED .....Appellant

Through: Mr. Rajshekhar Rao, Sr. Adv. with Mr. Ajay Sabharwal, Mr. Sidhartha Sharma, Ms. Priyanka Tibrewal, Mr. Rishav Dutt, Mr. Aman Katrina, Mr Anirudh Pandit and Ms Neelakshi Singhal, Advocates (M) 9643017972

versus

BRITISH MARINE PLC .....Respondent

Through: Mr. Ramesh Singh, Sr. Adv. with Mr. Sumit K. Batra, Mr. Anupam Dighe, Mr. Manish Khurana & Ms. Chandini Tanna, Advs. (M) 9911100900.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE VIKAS MAHAJAN

O R D E R

% **17.09.2026**

1. This hearing has been done through hybrid mode.

2. *Vide* detailed judgment pronounced today, the appeal filed by the Appellant has been dismissed.

3. Ld. Counsel for the Appellant prays for stay of the judgment dated 17th September, 2026 in order to enable the Appellant to challenge the same.

4. Since, this Court has only upheld the Arbitral Award dated 13th September, 2018, no ground for stay of the judgment is made out.

PRATHIBA M. SINGH, J.

VIKAS MAHAJAN, J.

SEPTEMBER 17, 2026/*Rahul/Ck*