2026:DHC:8140

* IN THEHIGH COURTOF DELHIAT NEW DELHI

% **Judgment reserved on: 01.09.2026**
Judgment pronounced on: 22.09.2026

CNR No. DLHC010277772023

\+ O.M.P. (COMM) 260/2023, I.A. 13360/2023 & I.A.13361/2023

STEEL AUTHORITY OF INDIA .....Petitioner

Through: Mr. Siddharth Yadav, Sr. Adv. with Mr. Ashish Rana, Mr. Gaurav Raj, Mr. Amitabh Yash Singh & Mr. Narendra, Advs.

versus

NORVIC SHIPPING NORTH AMERICA INC.....Respondent

Through: Mr. Amitava Majumdar, Ms. Tripti Sharma, Mr. Abhiesumat Gupta & Mr. Ishan Parashar, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 19.10.2022 passed by a three-member arbitral tribunal (for short 'the tribunal') and rectified *vide* order dated 21.02.2023 (for brevity 'the impugned award').

BRIEF FACTS

2. M/s Norvic Shipping North America Inc. (for short 'the respondent') is a company incorporated under the laws of Canada and

engaged in the transportation of dry bulk cargoes including limestone. Steel Authority of India Limited (for short 'the petitioner') is a listed public sector undertaking engaged in the manufacture of steel. The parties to the *lis* on 05.04.2019 executed a Contract of Affreightment (for short 'CoA') for shipping 16,00,000 metric tons of limestone (hereinafter referred to as 'the cargo') over multiple voyages. The cargo was to be shipped from the United Arab Emirates to India. The CoA required the respondent to nominate vessels.

2.1 During the execution of the CoA, disputes arose between the parties *inter alia* in relation to the calculation of laytime at different discharge ports and demurrage. The respondent invoked arbitration on 11.06.2020 by issuing a notice under Section 21 of the Act.

2.2 The dispute before the tribunal pertained to eight Motor Vessels (for short 'MV'). The claim in respect of MV 'River Globe' was rejected by the tribunal. The present petition pertains to the remaining seven vessels, namely, MV 'Pegasus', MV 'Esperia', MV 'Cas Avanca', MV 'Vishva Ekta', MV 'Jay', MV 'Blue Ripple' and MV 'Sparrow' (hereinafter collectively referred to as 'seven vessels').

2.3 The vessel-wise details are set out hereunder:

i. MV 'Pegasus' – Loaded the cargo at Mina Saqr Port on 19.04.2019 and proceed to Paradip Port for the first discharge and thereafter to Haldia Port. On 29.04.2019, a Notice of Readiness (for short 'NOR') was issued at Paradip Port. The operation was suspended by the port authorities on account of the incoming Cyclone

'Fani' and the vessel was instructed on 03.05.2019 to discharge the cargo at Vizag Port. The vessel arrived at Vizag Port on 05.05.2019 and the NOR was issued on the same date. After discharging the cargo, the vessel proceeded to Haldia Port. Upon arrival at Sandheads Anchorage, the NOR was issued on 10.05.2019. The vessel was called for berthing on 17.05.2019 but could not berth on account of generator problem. Without prejudice to the earlier NOR another NOR was issued on 17.05.2019. The berth was given on 18.05.2019 but the vessel actually berthed on 19.05.2019. The cargo was discharged on 20.05.2019. Demurrage at the rate of USD 12,100 per day was claimed in terms of Clause 28 of the CoA and Box 15.

ii. MV 'Esperia' – The first port of discharge was changed from Visakhapatnam Port to Paradip Port where the NOR was issued upon arrival on 10.07.2019. The total time available for discharge was five days and six hours. The berthing instructions at Paradip Port were received on 27.07.2019 but the cargo could not be discharged owing to a misunderstanding between the owner of the vessel and the respondent. Consequently, the vessel re-anchored on 27.07.2019. Ultimately the vessel re-berthed on 31.07.2019 and NOR issued on 10.07.2019 was accepted by the petitioner on 31.07.2019. After discharging the cargo, the vessel reached Haldia Port on 03.08.2019 and issued the NOR on the same day. Discharge was completed on 07.08.2019. Demurrage was claimed for eleven days, eighteen hours and fourteen minutes.

iii. MV 'Cas Avanca' – Arrived at Vizag Port and tendered the

NOR on 19.03.2020 outside office hours. The laytime commenced on 21.03.2020 but discharge had began on 20.03.2020 and was completed on 25.03.2020. The vessel proceeded to Haldia Port where the NOR was issued on 27.03.2020. However, it could not get a berth until 01.04.2020. Discharge commenced on 01.04.2020 and was completed on 07.04.2020. Demurrage was claimed for three days, eleven hours and thirteen minutes.

iv. MV 'Vishva Ekta' – The vessel arrived at Paradip Port on 10.04.2020 and tendered the NOR on the same day but berthed on 14.04.2020. The discharge of cargo commenced on 14.04.2020 and was completed on 16.04.2020. Thereafter, the vessel reached Sandheads Anchorage, Haldia Port and tendered the NOR on 16.04.2020. It berthed on 21.04.2020 and completed discharge on 22.04.2020. Demurrage was claimed for one hour and thirty-five minutes.

v. MV 'Jay' – The loading was completed at Mina Saqr Port on 09.04.2020. The vessel reached Paradip Port on 20.04.2020 and tendered the NOR on the same day. It berthed on 25.04.2020 and discharge was completed on 27.04.2020. Thereafter, the vessel reached Haldia Port and tendered the NOR on 28.04.2020 but berthed on 29.04.2020. The discharge of cargo commenced on the same day and was completed on 01.05.2020. Demurrage was claimed for one day, ten hours and thirteen minutes.

vi. MV 'Blue Ripple' – The vessel arrived at Paradip Port and tendered the NOR on 05.05.2020. After completing the discharge of cargo on 08.05.2020, the vessel arrived at Sandheads Anchorage on 08.05.2020 and thereafter at Haldia Port on 12.05.2020. It was pleaded that no berth was available from 08.05.2020 to 11.05.2020 and consequently the discharge was completed on 13.05.2020. No demurrage was claimed and only the balance freight was claimed.

vii. MV 'Sparrow' – The vessel arrived at Vizag Port on 07.05.2020 and tendered the NOR. The discharge of cargo was completed on 12.05.2020. Thereafter, the vessel arrived at Sandheads Anchorage on 13.05.2020 and tendered the NOR outside office hours, consequently the laytime commenced on 15.05.2020. The Haldia Port authorities on 18.05.2020 issued an advisory to the vessel for anchorage in view of the approaching cyclone, the Master could decide to heave up anchor and proceed to sea. The vessel proceeded to sea on 19.05.2020 and returned on 21.05.2020. It is pleaded that as no berth was available, the vessel berthed on 24.05.2020 and completed discharge on 26.05.2020. Demurrage was claimed for 3 days, 22 hours and 52 minutes.

2.4 The amounts claimed and awarded for seven vessels towards freight, demurrage and interest till filling of the statements of claims are tabulated below:

Ship ment No.	**Vessel**	**120 days from last date of Discharge**	**Freight (in USD)**	**Demurrage (in USD)**	**Amount due and payable (in USD [A]**	**Interest claimed under each Part above [B]**

1st	M.V. Pegasus	17th Sep. 2019	454.87	63,306.3	65,761.26	16,863.19
10th	M.V. Esperia	5th Dec. 2019	14,704.86	139,981.88	154,686.74	23,720.69
31st	M. V. Cas Avanca	5th Aug. 2020	49,905.68	3,798.06	53,703.74	3,478.24
32nd	M. V. Vishva Ekta	20 Aug. 2020	42,556.50	798.26	43,354.76	2,594.16
34th	M.V. Jay	29 Aug. 2020	50,038-97	17,250.90	67,289. 87	3,827.23
36th	MV Blue Ripple	10 Sep. 2020	39,373.73	0.00	39,373.73	2,084.11
38th	M.V. Sparrow	23 Sep. 2020	43,515.04	47,828 .61	91,343. 64	4.444.56

2.5 Interest at the rate of 12% on the amounts claimed from the date of filing of the claims till the date of the award and further interest at the rate of 12% from the date of the award till realisation was also claimed besides legal costs.

2.6 The respondent was granted interest as per LIBOR + 3 percentage points or 12% per annum whichever is less, from the date mentioned in the claim petition till realisation. Costs of ₹10 lakhs were awarded to the claimant. Hence, the present petition.

SUBMISSIONS OF THE PETITIONER

3. Learned senior counsel for the petitioner in respect of MV ‘Pegasus’ contends that the NOR issued at Haldia Port on 10.05.2019 was premature as the vessel when called to berth on 17.05.2019 was

unable to do so owing to a generator problem. A revised NOR was issued on 17.05.2019 and thereafter the vessel berthed on 19.05.2019. Reliance is on the literature "*Notices of readiness in a nutshell*" (hereinafter 'literature') provided by West of England P&I Club (for short 'the club') to contend that laytime would not commence from the issuance of an invalid NOR and that an invalid NOR shall not be validated by subsequent events. Relevant part of the literature is reproduced below:

> "1) ***The general requirements for a valid NOR***:
> *There are three requirements to be met in order to tender a valid NOR:*
> *a) The vessel must have reached the agreed place (being an "arrived ship");*
> *b) The vessel must be "physically ready"; and*
> *c) The vessel must be "legally ready".*
>
> **b) The vessel must be physically ready:** In order to be ready the ship must be prepared in such a way that it is able to commence cargo operations without delay and to comply with charterers' orders whenever they are given. The vessel must therefore be "physically ready" and "legally ready". The requirement for the vessel to be physically ready will include that the holds are suitable to receive cargo in accordance with the charter.
> The vessel generally needs to be ready in all respects to load or to discharge the whole cargo. This extends to all equipment required for the cargo operations (such as, hatches, cargo gear and equipment etc.). …. It does mean that the vessel has to be ready and able to commence the charter service required of the vessel without delay when charterers give orders to load or discharge.
>
> **5) Does an invalid NOR become valid once the requirements are met?**

> No. If the NOR is tendered before the ship arrives at the contractual destination or is not "ready", the NOR is invalid. An invalid NOR will never become valid. The owners, therefore, have to serve a new NOR when the conditions are met in order not to have the charter cancelled or run the risk that time does not count. If there is any doubt, it is recommended to serve fresh NORs without prejudice to the previous NOR/s.
>
> **6) What is the effect of tendering an invalid NOR?**
>
> b) NOR tendered during the charter -commencement of laytime and hire
>
> With regard to the running of laytime or hire, if the NOR is invalid, time will not start to count. If however charterers start using the ship (loading or discharging), there is an argument that time will start to count from that moment."

3.1 The submission is that the literature was issued by the Club which was writing on behalf of the respondent. The grievance is that the calculation of the laytime for MV 'Pegasus' should have commenced from 20.05.2019 and not from 10.05.2019. The tribunal without recording reasons or detailing the evidence relied upon erred in accepting that the valid NOR was issued on 10.05.2019.

3.2 For MV 'Esperia', it is argued that *albeit* the NOR was issued on 10.07.2019 but due to the conflict between the respondent and the owner of the vessel the Master of the vessel on 27.07.2019 refused to allow discharge. The port authorities shifted the vessel to anchorage and it ultimately re-berthed on 31.07.2019 and the NOR was accepted by the petitioner. The contention is that the NOR dated 10.07.2019 was false and that the tribunal failed to note that the vessel was not ready on 10.07.2019. The submission is that calculation of the laytime should have commenced from 31.07.2019.

3.3 For MVs 'Cas Avanca', 'Vishva Ekta', 'Jay', 'Blue Ripple' and 'Sparrow' the common contention is that at the time of arrival of the vessels COVID-19 was declared a pandemic by the World Health Organization (WHO). In terms of Clauses 55 and 56 of the CoA force majeure had been invoked and laytime was to be calculated accordingly but this was not considered by the tribunal. The emphasis is that the tribunal relied upon the Office Order dated 23.03.2020 issued by the Government of India (for short 'office order dated 23.03.2020') but failed to consider the Letter dated 31.03.2020 issued by the VIZAG Chamber of Commerce & Industry (for short 'Vizag letter dated 31.03.2020'), the Ministry of Shipping Circular No. PD-14300/4/2020-PD VII dated 31.03.2020 (for short 'Ministry circular dated 31.03.2020'), the Trade Circular dated 05.04.2020 issued by the Kolkata Port Trust, Haldia Dock Complex (for short 'Haldia circular dated 05.04.2020'), the Ministry of Shipping Circular No. PD-14033/4/2020-PD VII dated 21.04.2020 (for short 'Ministry circular dated 21.04.2020') and Section 53 of the Major Port Trust Act, 1963 (for short 'Port Act').

3.4 The contention is that the tribunal failed to consider the combined effect of the Ministry circulars dated 31.03.2020, 21.04.2020 and Section 53 of the Ports Act pursuant to which no demurrage would be levied on any vessel consequent to force majeure.

3.5 It is further contended that the petitioner being a 'State' within the meaning of Article 12 of the Constitution of India was entitled to invoke the benefit of force majeure. The submission is that the evidence produced by the petitioner was discarded and no reason was assigned for not considering the force majeure. It is submitted that the judgments relied upon by the respondent before the tribunal were wrongly relied upon and were distinguishable on facts.

3.6 With regard to MV 'Sparrow' the further challenge to the awarded amount is that the tribunal failed to consider the aspect that apart from the COVID-19 situation the vessel was also affected by the cyclone and the period affected by the cyclone was not excluded.

3.7 It is argued that the impugned award is liable to be set aside as the tribunal failed to apply judicial mind, consider the voluminous documents and to deal with the contentions raised. The grievance is that the award is non-speaking and is in violation of principles of natural justice. Reliance is placed on the decisions of the Supreme Court in ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Limited***, (2019) 20 SCC 1, ***McDermott International Inc. v. Burn Standard Co. Ltd. & Ors.***, 2006 11 SCC 181 and the decision of the Division Bench of the Calcutta High Court in ***State of Bengal v. Bharat Vanijya Eastern Pvt. Ltd.***, MANU/WB/2778/2019 to buttress the submission that an award bereft of reasons is liable to be set aside.

3.8 Reliance is on the decisions of the Supreme Court in ***Vijay Karia and Ors. v. Prysmian Cavi E Sistemi SRL and Ors.***, (2020) 11 SCC 1 and ***Ssangyong Engineering & Construction Co. Ltd. v.***

National Highways Authority of India, (2019) 15 SCC 131 to fortify the contention that the language of Sections 34 and 48 of the Act is on the same footing. It is contended that ignoring the submissions of the petitioner in totality and failure to record reasons vitiates the award for being contrary to public policy.

3.9 Lastly, reliance is placed on ***Halliburton Offshore Services Inc. v. Vedanta Limited & Anr.***, 2020 SCC OnLine Del 2068 to contend that open-ended interest cannot be granted to the respondent, leaving it uncertain as to which rate of interest would be applicable and who would decide it.

SUBMISSIONS OF THE RESPONDENT

4. *Per contra*, reliance is on Clause 36 of the CoA to support the argument that the NOR is to be tendered upon the vessel reaching the port limits of discharge port and is not dependent on the availability of berth. Clause 41 of the CoA is pressed into service to support the contention that the period of inefficiency is not to be considered as laytime and it is not that the laytime is to be calculated afresh thereafter. The decision in ***Steel Authority of India Ltd. v. M/s Dampskibsselskabet Norden A/S,*** MANU/DE/1055/2014 is relied upon to contend that this view on similar clauses was upheld by the Supreme Court.

4.1 The argument of learned senior counsel for the petitioner that the Ministry circulars dated 31.03.2020 and 21.04.2020 were produced by the petitioner but were not considered is refuted. The submission is that these circulars were produced by the respondent to show that the case was not one of force majeure as cargo activities were declared to be essential services. Moreover, the word used in Clause 56 of the CoA is 'prevented' and not 'hindered'. The vessels were not prevented from discharging the cargo in view of the Office Order dated 23.03.2020. Further, the Haldia circular dated 05.04.2020 relied upon by the petitioner providing that no demurrage on any vessel was related to demurrage to be levied by the port and not by a private party.

4.2 It is contended that the objection that MV 'Sparrow' faced the cyclone is an argument beyond the pleadings as no such plea was raised in the statement of defence. In any case, the suspension of work due to the cyclone had not affected the unloading of cargo but no berth was available on that day and the vessel could not discharge cargo as per schedule.

4.3 The grant of interest is defended by stating that the applicable rate of interest is unambiguous i.e. LIBOR + 3 percentage points or 12% per annum whichever is less.

4.4 It is argued that the reliance placed by learned senior counsel for the petitioner on the decisions in ***Vijay Karia*** (supra) and ***Ssangyong Engineering*** (supra) does not enhance the case of the petitioner as it is held therein that the ground of 'patent illegality' is not available in international arbitration. The submission is that a non-speaking award and the alleged non-judicial approach of the tribunal constitutes patent illegality and is not a ground available in an international arbitration.

4.5 The reliance placed on ***McDermott International Inc.*** (supra) is refuted on the ground that the decision was rendered prior to the 2015 amendment to the Act. With regard to ***Dyna Technologies*** (supra) and ***Bharat Vanijya Eastern Pvt. Ltd.***(supra) it is submitted that the cases were not of international arbitration.

4.6 The limited scope of interference under Section 34 of the Act in an international award is emphasised stating that the tribunal had gone into the facts, submissions of the parties, considered the evidence on record and agreed with the interpretation advanced by the respondent. It is contended that the Court cannot sit in appeal over these aspects.

RELEVANT CLAUSES AND STATUTES

5. Before proceeding further, it would be relevant to reproduce Sections 2(1)(f) and 2(2) of the Act, Section 53 of the Port Act and the relevant clauses of the CoA:

> "**2. Definitions.** - (1) In this Part, unless the context otherwise requires, -
>
> *** *** ***
>
> (f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is-
>
> (i) an individual who is a national of, or habitually resident in, any country other than India; or

(ii) a body corporate which is incorporated in any country other than India; or

(iii) [* * *] [Omitted words 'a company or' by Act No. 3 of 2016 dated 31.12.2015.] an association or a body of individuals whose central management and control is exercised in any country other than India; or

(iv)the Government of a foreign country;

*** *** ***

Scope

(2) This part shall apply where the place of arbitration is in India:

[Provided that subject to an agreement to the contrary, the provisions of sections 9,27 and [clause (a)] of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognized under the provisions of Part II of this Act.]"

"**53. Exemption from, and remission of rates or charges**. - A Board may, in special cases and for reasons to be recorded in writing, exempt either wholly or partially any goods or vessels or class of goods or vessels from the payment of any rate or of any charge leviable in respect thereof according to any scale in force under this Act or remit the whole or any portion of such rate or charge so levied."

Clause 28

At loading port, demurrage, if any, incurred by the vessel in the event Charterers fail to maintain the loading rate guaranteed here-in shall be at the rate of USD 12.100/- (U.S. Dollars Twelve Thousand One Hundred only) per day or prorate.

At discharging port, demurrage, if any, incurred by the vessel in the event Charterers fail to maintain the discharging rate guaranteed here-in shall be at the rate of US$ 12.100/- (U.S. Dollars Twelve Thousand One Hundred only) per day or prorate.

Despatch, if any, earned by the Charterers at the loading/discharging port, as a result of completion of loading/discharging the vessel earlier than here-in provided, shall be calculated at half the demurrage rate on the basis of working time saved.

Laytime for loading and discharing to be non-reversible.

Clause 35

Notice of Readiness of the vessel to discharge cargo (Master's Notice of Readiness) to be served, in writing, in business hours between 0930 hours and 1630 hours on working days (Monday to Friday) between 0930 hours to 1200 hours on Saturday at each discharge port to port office of charterers as per details given below:-

VISAKHAPATNAM

Steel Authority of India Limited

Branch Transport & Shipping Office,

Harbour Approach Road,

Visakhapatnam – 530001

Fax +91 891 2563698/91 891 2562308

Phone +91 891 2563041/ 91 891 2563611/ 91 891 2704074

Email:

PARADIP

Steel Authority of India Limited

Branch Transport & Shipping Office,

Ispat Bhawan, Paradip – 754142

Fax +91-6722-222730

Phone +91-6722-222631/ +91-6722-222526

Email:

<u>HALDIA</u>

Steel Authority of India Limited

The Branch Manager,

Branch Transport & Shipping Office,

Super Market Building 1st Floor,

Durgachak, Haldia-721602,

Fax +91 -3224-274249

Phone + 91-3224-274194/91 3224 274218

Email:

<u>Clause 36 Time Counting Provision:</u>

At each discharging port, even if at second discharge port the vessel arrives on demurrage, time to count 24 hours after Notice of Readiness is served on arrival of the vessel within port limits at port of discharge and whether in berth or not and in free pratique and ready in all respects to discharge the cargo, even if used. If the turn time of 24 hours expires on Saturday afternoon, Sundays or Charter party holidays, laytime will commence at 0600 hours on first working days Sundays. Charter party holidays included, even if used. If discharge operations begins before commencement of laytime, such duration will be deemed as free period only. Time shall not count between noon on Saturday and 8 a.m. on Monday nor between 5 p.m. (noon if Saturday), on the last working day proceeding a Charter party holiday and 8 a.m. on the first working days thereafter, unless used and if used actual time used to count, unless the vessel is already on demurrage.

If the vessel is ordered to Haldia and is unable to give

Notice of Readiness by reasons of congestion at Haldia, time shall commence to count 24 hrs after Notice of vessel's arrival off Sandheads has been given by radio to Charterers or their agents and received by them during ordinary office hours. Whilst waiting off Sandheads Sundays C/P Holidays and Saturdays after 12 noon until 8 a.m. Monday not to count unless vessel is on demurrage. Time used in proceedings from Sandheads to Haldia not to count.

Laytime to be reversible between discharge port (s).

Clause 41

In the event of breakdown of Gears/ Cranes and other equipment of the vessel by reason of disablement or insufficient power, etc. the period of such inefficiency shall not count as laytime, on a prorata basis to the number of cranes affected by such cause.

Clause 50 Arbitration Clause

The disputes or differences of any kind arising out of or in connection with or concerning the contract shall be settled under the rules of Delhi International Arbitration Centre. The number of the Arbitrators shall be three from amongst the members of the DAC Panel of arbitrators. The language of arbitration proceedings shall be English. The place of arbitration shall be Delhi (International Arbitration Centre at Delhi). The provisions of Arbitration and Conciliation Act, 1996 shall apply to the arbitration proceedings. The Court at Delhi shall have the exclusive jurisdiction upon any matter arising out of this contract.

Clause 55

At the discharge port, time lost by reason of all or any of the following causes shall not be counted as discharge time unless vessel is already on demurrage.

a) War, Rebellion, Tumult, Political Disturbances, Insurrectioins

b) Lockouts, Strike, Riots, Civil Commotions.

c) Epidemic, Quarantines, Landslips, Floods, Frost or Snow, Bore Tides, Bad Weather;

d) Stoppage of work whether partial or general by workmen….. men or other hands essential to the working of the vessel or discharge of cargo from the vessel;

e) Accidents at the ……

f) Intervention of Sanitary customs and/or other constituted authorities.

g) Any other causes beyond the control of the Charterers.

Clause 56 Force Majeure Clause

If either Shippers/charterers be prevented from discharging their or its obligations under this agreement by reasons of arrests or restraints by Government or people, War Blockade, Revolution, Insurrections, Mobilization, Strikes, Civil commotions, Acts of God, Plague or other epidemic breakdowns of mining, Rail, Road or Port equipment, destruction of materials by fire or flood or other natural calamity interfering with production, loading or discharging, the obligations under this agreement shall be deferred to a date be agreed considering the length of time required to resume natural operations.

However, if any one occurrence of force majeure continues uninterrupted for 30 days or more if the total of such occurrence within the agreed shipment period adds to 90 days or more. Owners/charterers may opt to cancel this agreement without in any way being liable to the other party for such cancellation. Party invoking protection under such clause within 20 days of the occurrence of force majeure put the other party on notice supported by Certificate of Chamber of Commerce or concerned Government authority and shall likewise intimate the cessation of such causes. The delivery shall be resumed by the party/parties fifteen (15) days from cessation of force majeure causes."

ANALYSIS

6. Section 2(1)(f) of the Act defines 'international commercial arbitration' and covers legal relationships, whether contractual or not, considered commercial under the law in force in India, where at least one of the parties satisfies the requirements specified therein, including where a body corporate is incorporated in any country other than India. In the case in hand, the respondent is a company incorporated under the laws of Canada and fulfils the condition laid in Section 2(1)(f) of the Act and the arbitration is an international commercial arbitration. In the definition under Section 2(1)(f) pivotal is party for determining the nature of the arbitration. For determining the applicability of Part I of the Act, Section 2(2) adopts a place-focal approach and provides that Part I applies where the place of arbitration is in India. In the present case, Clause 50 of the CoA stipulates Delhi as the seat of arbitration. Reference in this regard may be made to the following judgments of the Supreme Court:

6.1 In ***Balaji Steel Trade v. Fludor Benin S.A.***, (2026) 5 SCC 802 it was held:

> "25.Section 2(1)(f) of the 1996 Act defines 'international commercial arbitration' as arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is a foreign national, whether that party is an individual, a body corporate, an association or body of individuals or a

foreign Government. Respondent 1 being a company incorporated under the laws of Benin, the present dispute squarely falls within the ambit of international commercial arbitration. Once this characterisation is made, Section 2(2) of the Act becomes immediately relevant, for it stipulates that Part I shall apply only where the place of arbitration is in India, thereby mandating that Part I stands excluded where the parties have chosen a foreign seat.

26.This Court has consistently held, beginning with *Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.* [*Bharat Aluminium Co.* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810 : (2013) 180 Comp Cas 311] *(BALCO)*, that Part I of the 1996 Act has no application to arbitrations seated outside India. The seat has a juridical significance in arbitration law: it determines the courts that exercise supervisory jurisdiction over the arbitral proceedings."

6.2 In ***Pasl Wind Solutions (P) Ltd. v. GE Power Conversion (India) (P) Ltd.***, (2021) 7 SCC 1 it was held:

"38. As a matter of fact, the reason for the insertion of the proviso to Section 2(2) by the Arbitration and Conciliation (Amendment) Act, 2015 was because the judgment in Bhatia International v. Bulk Trading S.A. [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] ["Bhatia"] had muddied the waters by holding that Section 9 would apply to arbitrations which take place outside India without any express provision to that effect. The judgment in Bhatia [Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105] has been expressly overruled by a five-Judge Bench in Balco [Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] . Pursuant thereto, a proviso has now been inserted to Section 2(2) which only makes it clear that where, in an arbitration which takes place outside India, assets of one of the parties are situated in India and interim orders are required qua such assets, including preservation thereof, the courts in India may pass such orders. It is important to note that the expression "international commercial arbitration" is specifically spoken of in the context of a place of arbitration being outside India, the consequence of which is an arbitral award to be made in such place, but which is enforced and recognised under the provisions of Part II of the Arbitration Act. The context of this expression is, therefore, different from the context of the definition of "international commercial arbitration" contained in Section 2(1)(f), which is in the context of such arbitration taking place in India, which only applies "unless the context otherwise requires". The four sub-clauses contained in Section 2(1)(f) would make it clear that the definition of the expression "international commercial arbitration" contained therein is party-centric in the sense that at least one of the parties to the arbitration agreement should, inter alia, be a person who is a national of or habitually resident in any country other than India. On the other hand, when "international commercial arbitration" is spoken of in the context of taking place outside India, it is place-centric as is provided by Section 44 of the Arbitration Act. This expression, therefore, only means that it is an arbitration which takes place between two parties in a territory outside India, the New York Convention applying to such territory, thus making it an "international" commercial arbitration."

6.3 The Supreme Court in ***Amway (India) Enterprises (P) Ltd. v. Ravindranath Rao Sindhia***, (2021) 8 SCC 465 held:

"In this view of the matter, the argument that there is no international flavour to the transaction between the parties has no legs to stand on. Indeed, an analysis of Section 2(1)(f) would show that whatever be the transaction between the parties, if it happens to be entered into between persons, at least one of whom is either a foreign national, or habitually resident in, any country other than

> <u>India; or by a body corporate which is incorporated in any country other than India; or by the Government of a foreign country, the arbitration becomes an international commercial arbitration notwithstanding the fact that the individual, body corporate, or government of a foreign country referred to in Section 2(1)(f) carry on business in India through a business office in India.</u> This being the case, it is clear that the Delhi High Court had no jurisdiction to appoint an arbitrator in the facts of this case."
>
> (Emphasis supplied)

7. The scope of interference in an international commercial arbitration is limited. After the 2015 amendment to Section 34 of the Act, the grounds available under Section 34(2A) for challenging a domestic award are not applicable to an international commercial arbitration. Reference in this regard be made to the following decisions of the Supreme Court:

7.1 In ***Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd.***, (2020) 7 SCC 167it was held:

> "18. The Law Commission in its 246th Reportrecommended the insertion of the ground of "patent illegality" for setting aside a domestic award by the insertion of sub-section (2-A) in Section 34 of the Act. The relevant extract from the Report of the Law Commission is extracted hereinbelow:
>
> > *"35. It is for this reason that the Commission has recommended the addition of Section 34(2-A) to deal with purely domestic awards, which may also be set aside by the court if the court finds that such award is vitiated by "patent illegality appearing on the face of the award". In order to provide a*

balance and to avoid excessive intervention, it is clarified in the proposed proviso to the proposed Section 34(2-A) that such "an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciating evidence". The Commission believes that this will go a long way to assuage the fears of the judiciary as well as the other users of arbitration law who expect, and given the circumstances prevalent in our country, legitimately so, greater redress against purely domestic awards. This would also do away with the unintended consequences of the decision of the Supreme Court inONGC v. Saw Pipes Ltd. [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705] , which, although in the context of a purely domestic award, had the unfortunate effect of being extended to apply equally to both awards arising out of international commercial arbitrations as well as foreign awards, given the statutory language of the Act."

(emphasis supplied)

To give effect to the said recommendation, it was suggested that:

"*18. ... (iii) After the Explanation* in sub-section (2), insert sub-section "(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

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

[*Note*.—The proposed Section 34(2-A) provides an additional, albeit carefully limited, ground for setting aside an award arising out of a domestic arbitration (and not an international commercial arbitration). The scope of review is based on the patent illegality standard set out by the Supreme Court inONGC v. Saw Pipes Ltd. [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705] The proviso creates exceptions for erroneous application of the law and reappreciation of evidence, which cannot be the basis for setting aside awards.]"

(emphasis supplied)

19. Pursuant to the recommendations of the Law Commission, the 1996 Act was amended by Act 3 of 2016, which came into force w.e.f. 23-10-2015. The ground of "patent illegality" for setting aside a domestic award has been given statutory force in Section 34(2-A) of the 1996 Act. The ground of "patent illegality" cannot be invoked in international commercial arbitrations seated in India. Even in the case of a foreign award under the New York Convention, the ground of "patent illegality" cannot be raised as a ground to resist enforcement, since this ground is absent in Section 48 of the 1996 Act. The newly inserted sub-section (2-A) in Section 34, reads as follows:

"34. (2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

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

7.2 In ***Ssangyong Engineering*** (supra) it was held:

"42. Given the fact that the amended Act will now apply, and that the "patent illegality" ground for setting aside arbitral awards in international commercial arbitrations will not apply, it is necessary to advert to the grounds

> contained in Sections 34(2)(*a*)(*iii*) and (*iv*) as applicable to the facts of the present case."
>
> (Emphasis supplied)

8. Section 53 of the Port Act empowers the Board in special cases to consider the scale in force under the Act and for reasons to be recorded in writing, to wholly or partially exempt goods, vessels or class of goods from payment of any rate/charges leviable. The Board may remit the charges so levied in whole or in part.

9. Clause 28 of the CoA provides the demurrage at the rate of USD 12,100 per day or pro-rate.

9.1 Under clause 35 of the CoA, for discharging the cargo NOR in writing is to be served at the discharge port, at the office of the charterers specified therein. The NOR is to be served between 0930 hours and 1630 hours from Monday to Friday and between 0930 hours to 1200 hours on Saturday.

9.2 Clause 36 of the CoA provides the procedure for calculating the time on arrival of the vessel on demurrage either at the first or second discharge port. The NOR is to be served upon the arrival of the vessel within the port limits of the discharge port, irrespective whether in berth or not, provided the vessel is in free pratique and ready in all respects to discharge the cargo. The 24 hour time is to be counted after issuance of NOR. In case of expiry of 24 hours on Saturday afternoon, Sundays or charter party holiday, laytime commences at 6:00 hours on the first working day. In the eventuality of the discharge operation beginning before the commencement of laytime, the duration shall be deemed to be a free period. The time is neither to be counted from noon of Saturday until 8:00 AM on Monday nor between 5:00 PM on the last working day preceding a charter party holiday and 8:00 AM on the first working day thereafter. Further that the inability to give NOR by vessel arriving at Haldia for the reason of congestion, the 24 hours period is to be counted after notice of vessel arrival at off Sandheads and NOR is to be given by radio to charterers or their agents. The time used in proceeding from Sandheads to Haldia shall not count.

9.3 Clause 41 of the CoA provides that time of inefficiency consequent to breakdown of crane and other equipment shall not be counted as laytime.

9.4 Clause 55 of the CoA stipulates the circumstances in which time shall not be counted as discharge time at a discharge port unless the vessel is already on demurrage. The circumstances includes, epidemic, quarantine and any other causes beyond the control of the charterers.

9.5 Clause 56 of the CoA deals with force majeure. Where the discharge of obligation by a shipper/charterers under the agreement is prevented for the reasons mentioned therein including plague, other epidemics, natural calamity interfering with production, loading or discharging the obligation shall be deferred to a date agreed upon, having regard to the time required to resume natural operations. The intervening period during which force majeure continues till resumption of natural operations shall be excluded for compliance of the obligations.

10. The issue raised by learned senior counsel for the petitioner is whether an award bereft of reasons and ignoring contentions of the petitioner in totality is violative of the principles of natural justice, violates the public policy of India and is a ground for setting aside an international commercial award? To support this issue, learned senior counsel for the petitioner relied on the decisions in ***Vijay Karia*** (supra) and ***Ssangyong Engineering*** (supra).

11. Before dealing with the issue raised and the judgments relied upon by learned senior counsel for the petitioner in support thereof, first it would be necessary to consider if the impugned award is bereft of reasons and the contentions of the petitioner in totality have been ignored.

12. For MV 'Pegasus', the tribunal took into consideration Clause 35 of the CoA whereunder the NOR was to be served to port office of the petitioner at each discharge port. It was also considered that under Clause 36 of the CoA the vessel ready in all respects shall serve NOR upon arrival of the vessel within the limits of the port of discharge irrespective of whether in berth or not and in free pratique. The issue as to whether the vessel was ready on 10.05.2019 when the NOR was tendered was framed. The contention of the petitioner that the NOR should commence from 18.05.2019 was rejected. It was held that the NOR issued on 10.05.2019 was not premature and the subsequent

event of breakdown of the generator would not invalidate the NOR already issued. It rightly held that the time was calculated as per Clauses 35 and 36 of the CoA, that laytime should commence after 12.05.2019 and that the vessel exceeded the laytime of 5 days, 9 hours and 32 minutes.

13. Clause 41 of the CoA is unambiguous that the period of breakdown of equipment rendering the vessel inefficient shall be excluded from laytime. No clause is brought to the notice of this court stipulating that the breakdown of equipment renders NOR issued to be invalid and fresh NOR is to be issued. The NOR was issued on 10.05.2019, the vessel was called to berth on 17.05.2019 but could not do so due to a generator problem. Without prejudice to the NOR earlier given, a revised NOR was issued on the same day and the vessel berthed on 19.05.2019. The unchallenged finding of fact recorded by the tribunal is that the crane became operational on 17.05.2019 itself. In the absence of evidence that the vessel was not ready to discharge cargo on 10.05.2019, the NOR issued on 10.05.2019 is rightly held to be valid.

14. The reliance on the literature of the club to lend support to the argument that the vessel was not physically ready was rightly not considered by the tribunal. The petitioner failed to prove the admissibility of the literature and no expert or authorised representative of the club issuing the instructions was examined. Another aspect is that nothing was brought on record that on 10.05.2019 vessel was not ready for discharge of cargo. The

demurrage claimed was rightly allowed along with the amount due towards freight.

15. In proceedings under Section 34 of the Act, the court cannot sit in appeal over the conclusion arrived at by the tribunal especially in an international commercial arbitration wherein the additional grounds under Section 34(2A) of the Act are not available.

16. The MV 'Esperia' on 10.07.2019 complied with Clause 35 of the CoA at Paradip Port. Due to misunderstanding between the respondent and the owner of the vessel, the cargo could not be discharged on 27.07.2019 and the port authority directed the vessel to be re-anchored. The NOR issued on 10.07.2019 was accepted by the petitioner on 31.07.2019. The tribunal after considering the material on record gave the factual finding that no misunderstanding existed between the owner of the vessel and the respondent as on 10.07.2019 when the NOR was issued and that exclusion of the entire period from 10.07.2019 to 31.07.2019 was against the spirit of the contract. The finding recorded that the misunderstanding arose on 27.07.2019 and was resolved on the very same day is not under challenge. The argument of the petitioner that the laytime should be calculated from 31.07.2019 was rightly rejected. The conclusion of the tribunal is backed by the factual findings recorded and cannot be held to be bereft of reasons.

17. For MV 'Cas Avanca', MV 'Vishva Ekta', MV 'Jay', MV 'Blue Ripple' and MV 'Sparrow' there is no dispute that the vessels

arrived at the onset of COVID-19 and that COVID-19 was declared a pandemic by the WHO on 11.03.2020. It would be relevant to quote the following office order/letter/circulars relied upon by learned senior counsel for the petitioner:

17.1 The office order dated 23.03.2020 is as under:

"No.PD-14033/4/2020-PD-VII
Government of India
Ministry of Shipping
(Ports Wing)

1, Parliament Street
Transport Shawan, New Delhi
Dated: 23.03.2020

OFFICE ORDER

1. In order to contain the spread of Corona virus, various State Government/Union Territories have issued prohibitory orders, imposing restrictions on non-essential services.
2. In this regard, it is brought to the notice of all concerned that 'transport service for carriage of goods by water and any service connected with loading, unloading, movement or storage of goods in any port are essential service.
3. All Ports and IWAI are requested to take action accordingly. While dealing with incoming vessel, Ports should act in compliance with DGS order no. 4 of 2020 dated 20.03.2020, SoP issued by Ministry of Shipping dated 11.03.2O2O and any other order/SoP issued by Ministry of Shipping of DG Shipping from time to time.

4. Chairmen of Major Ports shall set up a control room and intimate the details to this Ministry."

17.2 The Vizag letter dated 31.03.2020 is as under:

"31st March 2020

TO WHOMSOEVER IT MAY CONCERN

This is to inform that the whole of India was on shutdown on 22nd March 2020 and Lockdown from 24th March 2020 up to 14th April, 2020, due to the onset of CORONA VIRUS.

The District Collector issued orders under Section 144, the State Government ordered shutdown of normal activities and the Central Government has ordered a Lockdown of 75 Districts (including Visakhapatnam) from 22nd March 2020 and the whole country from 24th March 2020.

In view of this extra-ordinary situation, it is impossible to carry out any normal operations at the Port of Visakhapatnam, in spite of GOI declaring Port Services as essential services.

Accordingly, it is hereby declared and confirmed that **Force majeur** conditions prevail at the Port of Visakhapatnam from **22nd March 2020 to 14th April 2020.**

For The Vizagapatam Chamber of Commerce & Industry,"

17.3 The relevant portion of Ministry circular dated 31.03.2020 is as under:

"No.PD-14300/4/2020-PD-VII
Government of India
Ministry of Shipping

Transport Bhawan,
1, Parliament Street
New Delhi-110001
Dated: 31st March, 2020

*** *** ***

Part B- Issues relating to Force Majeure

7. The aforesaid orders do not impact or dilute the fact that each Major Port needs to remain operational during the COVID-19 pandemic and continue cargo operations in all respects."

17.4 The Haldia circular dated 05.04.2020 is as under:

"KOLKATA PORT TRUST
HALDIA DOCK COMPLEX

GM(T)/51/GMT-925 Date: 05.04.2020

TRADE CIRCULAR

Sub: Waiver/remission on various Port Charges due to the lockdown from 22nd March to 14th April 2020 to prevent the outbreak of Covid-19 pandemic.

There has been a severe disruption in normal life due to outbreak of Covid-19 pandemic which has affected globally as well as in India also. The Ministry of Shipping vide no.PD-13/33/2020-PPP/e-339106 dated 24.03.2020 (copy enclosed) stated that in consideration of difficulties being faced by stakeholders, Major Port Trusts may consider COVID-19 pandemic as a valid ground for invoking Force Majeure Clause on port activities and port operations also. Thus, KoPT has considered the COVID-19 pandemic as a natural calamity and invokes Force Majeure from 06:00 Hrs on 22nd March to 06:00 Hrs on 15th April 2020.

In addition, as per the directive of the Order of Ministry of Shipping vide no.PD-14300/4/2020-PD VII dated 31.03.2020 (copy enclosed), KoPT has considered grating the following waivers/remissions for the period from 06:00 Hrs on 22nd March to 06:00 Hrs on 15th April 2020.

a) Exemption from levy of demurrage charges/rent for all types of cargo &container for the above period.

b) The contractors operating, Mobile Harbour Cranes at Berth Nos. 1, 5, 9 & 14, Haldia Floating Terminal, Container Terminal will not be penalized for achieving less productivity than the MLP as per the contract agreement.

c) Penal berth hire charges will not be levied from the vessel's agent for achieving less productivity at Berth no.10, than the agreed benchmark productivity rate as per the Berthing Policy.

d) The above period will be exempted from consideration of MGT period for Strategic Plans & other similar schemes and way leave licensees as well as for plots allotted on long term basis against MGT commitment. However, the tonnage handled during this period will be considered against fulfilment of MGT commitment."

17.5 The relevant portion of Ministry circular dated 21.04.2020 is as under:

"No.PD-14033/4/2020-PD-VII
Government of India
Ministry of Shipping

Transport Bhawan,
1, Parliament Street
New Delhi-110001
Dated: 21st April, 2020

*** *** ***

6. Force Majeure

The aforesaid orders do not impact or dilute the fact that each Major Port needs to remain operational during the COVID-19 pandemic and continue cargo operations in all respects."

18. The office order dated 23.03.2020 issued in view of the spread of COVID-19 relied upon by the tribunal clearly records that the transport service for carriage of goods by water and any service connected with the loading and unloading, movement or storage of goods in any port are essential services.

19. Ministry circulars dated 31.03.2020 and 21.04.2020 are unambiguous that Ports are to remain operational and continue cargo operations. On perusal of these circulars relied upon by learned senior counsel for the petitioner, it is not forthcoming that the position declaring the loading and unloading of the cargo to be essential

services was diluted. In other words, the COVID-19 restrictions had not prevented the discharge of cargo.

20. The contention of learned senior counsel for the petitioner that the Ministry circulars dated 31.03.2020 and 21.04.2020 produced by the petitioner were ignored in totality by the tribunal is misconceived. It would be apposite to note that these circulars now being relied upon by learned senior counsel for the petitioner were documents produced by the respondent to prove that the unloading of cargo was not affected by restrictions imposed due to COVID-19.

21. The vizag letter dated 31.03.2020 does not dent the case of the respondent. It would be relevant to note that none of the vessels except MV 'Cas Avanca' reached Vizag Port from 22.03.2020 to 14.04.2020 when the force majeure clause was invoked at the port.

22. MV 'Cas Avanca' tendered the NOR at Vizag Port on 19.03.2020 and completed discharge of the cargo on 25.03.2020. It was not the pleaded case of the petitioner before the tribunal that demurrage should not to be charged for the period from 22.03.2020 to 25.03.2020 when the vessel remained at Vizag Port and force majeure was in force. It is pertinent to note that the discharge of the cargo had commenced on 20.03.2020 even before the laytime began. In the absence of any specific plea and evidence that the discharge was affected by COVID-19, the view taken by the tribunal cannot be held to be perverse or unreasonable. Under Section 34 of the Act more so in an international commercial arbitration this court cannot

reappreciate the evidence or substitute the plausible view taken by the tribunal.

23. The Haldia circular dated 05.04.2020 dealing with demurrage to be charged by the Port authorities is not relevant to the present facts where the contract is between two parties. Even otherwise it does not mention that force majeure will be invoked despite the Government of India declaring port services as essential services.

24. Section 53 of the Port Act is an enabling provision empowering the board to wholly or partially exempt the charges leviable. It is not a provision dealing with the contractual provisions inter se the parties and therefore need not be dilated upon.

25. The tribunal dealt with the effect of COVID-19 on the vessels and whether COVID-19 had actually impacted the vessels so as to invoke the force majeure clause. For failure of the petitioner to adduce evidence to prove that discharging of cargo was hindered by COVID-19, the tribunal was right in rejecting the invocation of Clause 55 and 56 of CoA. The witness examined by the petitioner testified only on the basis of personal knowledge and there was no evidence to support the invocation of force majeure. On the other hand, the respondent produced the office order dated 23.03.2020 and the Ministry circulars to prove that the transport service for carriage of goods by water and activities related thereto including loading, unloading, transporting and storage were declared essential services. The reliance of the tribunal on the office order dated 23.03.2020 cannot be faulted with.

26. The submission that the petitioner is a 'State' within the meaning of Article 12 of the Constitution of India and should be covered by force majeure, lacks merit. When a State under Article 12 enters into a contract with a private party, the relationship shall be governed by the contractual terms and no special status in a commercial contractual matter can be granted to the limb of the State.

27. The contention raised for MV 'Sparrow' that it faced the cyclone restrictions and it was not considered by the tribunal was not a pleaded case in the statement of defence and finds mention only in the statement of facts. Be that as it may, the contention that the tribunal failed to exclude the period affected by the cyclone while calculating the demurrage cannot be considered in the proceedings under Section 34 of the Act against the international commercial arbitration. Even otherwise, the factum of instructions issued regarding the upcoming cyclone finds mention in the award. The calculation by the respondent stopping laytime from 19.05.2020 at 08:50 hours till 21.05.2020 at 15:30 hours, period affected by cyclone was accepted. It was considered that due to non-availability of berth the vessel berthed on 24.05.2020 and accordingly the demurrage calculated was accepted albeit, disputed by the petitioner.

28. The valiant attempt of learned senior counsel for the petitioner that the award is non-speaking and there is a failure to consider the contentions of the petitioner in totality has no merit. The conclusions arrived at by the tribunal with regard to each vessel are backed by the factual findings recorded, consideration of clauses of the CoA and

have a basis. The non-mentioning of the Vizag letter dated 31.03.2020, Ministry circular dated 31.03.2020, Haldia circular dated 05.04.2020 and Ministry circular dated 21.04.2020 does not affect the conclusion arrived at. It has already been stated that these circulars have not changed the effect of the office order dated 23.03.2020 wherein the cargo unloading and activities related thereto were declared to be essential services and as discussed above the Vizag letter dated 31.03.2020 does not support the case of the petitioner.

29. The contention that the voluminous evidence produced by the petitioner was not considered is noted to be rejected. It is not the volume but the quality of evidence that matters. The law is well settled that the quality of evidence to be considered falls within the domain of the arbitrator. Reference in this regard be made to the following decisions:

29.1 The Supreme Court in ***Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.***, (2019) 7 SCC 236 held:

> "9.1. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], this Court had an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, this Court has considered the limits of power of the Court to interfere with the arbitral award. It is observed and held that only when the award is in conflict with the public policy in India, the Court would be justified in interfering with the arbitral award. In the aforesaid decision, this Court considered different heads of "public policy in India"

which, inter alia, includes patent illegality. After referring Section 28(3) of the Arbitration Act and after considering the decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] , SCC paras 112-113 and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , SCC paras 43-45, it is observed and held that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score."

29.2 The Supreme Court in ***Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.***, (2018) 3 SCC 133 held:

"51. Categorical findings are arrived at by the Arbitral Tribunal to the effect that insofar as Respondent 2 is concerned, it was always ready and willing to perform its contractual obligations, but was prevented by the appellant from such performance. Another specific finding which is returned by the Arbitral Tribunal is that the appellant had not given the list of locations and, therefore, its submission that Respondent 2 had adequate lists of locations available but still failed to install the contract objects was not acceptable. In fact, on this count, the Arbitral Tribunal has commented upon the working of the appellant itself and expressed its dismay about lack of control by the Head Office of the appellant over the field offices which led to the failure of the contract. These are findings of facts which are arrived at by the Arbitral Tribunal after appreciating the evidence and documents on record. From these findings it stands established that there is a fundamental breach on the part of the appellant in carrying out its obligations, with no fault of Respondent 2 which had invested whopping amount of Rs 163 crores in the project. A perusal of the award reveals that the Tribunal investigated the conduct of the entire transaction between the parties pertaining to the work order, including withholding of DTC locations, allegations and counter-allegations by the parties concerning installed objects. The arbitrators did not focus on a particular breach qua particular number of objects/class of objects. Respondent 2 is right in its submission that the fundamental breach, by its very nature, pervades the entire contract and once committed, the contract as a whole stands abrogated. It is on the aforesaid basis that the Arbitral Tribunal has come to the conclusion that the termination of contract by Respondent 2 was in order and valid. The proposition of law that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinised as if the Court was sitting in appeal now stands settled by a catena of judgments pronounced by this Court without any exception thereto."

(Emphasis supplied)

30. Here, it may be hastened to add that the award passed by the tribunal is not to be placed at the pedestal of judgments passed by judicial courts for testing the reasons recorded. Reference in this regard be made to the following decisions of the Supreme Court:

30.1 In ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*** (2019) 20 SCC 1 it was held:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute."

30.2 In ***Som Datt Builders Ltd. v. State of Kerala*** (2009) 10 SCC 259 it was held:

> "25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give......"
> (emphasis supplied)

31. Having held that the award is not bereft of reasons and the contentions of the petitioner were not totally ignored, the issue raised by leaned senior counsel for the petitioner whether a non-speaking award falls within ambit of violation of the public policy of India needed not be propounded upon.

32. The reliance of learned senior counsel for the petitioner on the decisions in ***Dyna Technologies*** (supra), ***McDermott International Inc.*** (supra) and ***Bharat Vanijya Eastern Private Ltd.*** (supra) does not advance the case of the petitioner. Suffice it to say that these cases were not of international commercial arbitration. Moreover, the decision in ***McDermott International Inc.*** (supra) is prior to the 2015 amendment to Section 34 of the Act.

33. The reliance on the decision in ***Halliburton Offshore Services Inc.*** (supra) to challenge the grant of interest is of no avail. In that case the challenge was to the uniform rate of interest granted in both the Indian rupee and Euro components whereas in the present case the interest awarded is as per LIBOR + 3 percentage points or 12% per annum, whichever is less. The argument that it is an open-ended interest rate leaving it undecided which rate is to be claimed is factually misconceived. The language is unambiguous that out of the two whichever is less the respondent shall be entitled to it.

34. The impugned award calls for no interference and no case is made out under the grounds available under Section 34(2) of the Act.

35. The petition is dismissed.

36. All pending applications are also disposed of.

AVNEESH JHINGAN, J

SEPTEMBER 22, 2026
Ch

Reportable:**-Yes**