

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8385 OF 2004

M/s. Madnani Construction Corporation
(P) Ltd.

...Appellant (s)

Vs.

Union of India & Others

...Respondent (s)

J U D G M E N T

GANGULY, J.

1. The subject matter of challenge in this appeal is the judgment and order dated 29.04.2003 passed by the High Court of judicature at Allahabad in F.A.F.O. No. 40 of 1993, in a matter arising from the order dated 1.12.1992 of the learned Senior Civil Judge, making the Award a Rule of the Court, and whereby the High Court had partly allowed the Appeal filed by the respondent.

2. The appellant, a private limited company, is carrying on, inter alia, various construction works for both the State and Central Government and their undertakings. The appellant's case is that an agreement dated 03.11.1981 was entered between the appellant and the North Eastern Railway for the construction of bridge island nos. 13 and 14 over the Kosi river. There were certain special conditions of the contract (hereinafter, SCC) and they stipulate that the General Conditions of Contract (hereinafter, GCC) and standard specifications of the North Eastern Railways shall form part of the aforesaid contract. In terms of the contract, the construction was to be completed by 15.02.1982. Certain payments were made to the appellant after completion of the contract but they were received by them "under protest". Thus, disputes cropped-up between the parties. The appellant is said to have served a notice dated 16.11.1983 for the appointment of an arbitrator to settle the

disputes. The General Manager of the respondent-Railways by an order dated 24.03.1986 rejected the appellant's prayer for appointment of an arbitrator on the ground that the disputes were not arbitrable, as they fell under 'expected matter' in the contract.

3. On or about 18.08.1987, the appellant filed an application under Section 20 of the Arbitration Act, 1940 (hereinafter, the Act) before the Court of Addl. Civil Judge, Gorakhpur for appointment of an arbitrator which was transferred on 21st February, 1990, to the Court of Judge of Small Causes /Additional Civil Judge (hereinafter, the Court below). The Court below passed an order on 2.3.1990 that 'file received, put up on the date fixed'. Then by an order dated 31.05.1991 the learned Civil Judge appointed one Mr. B. N. Shukla, the Sole Arbitrator, to adjudicate the disputes arising out of the agreement dated 03.11.1981. Against the order of appointment of arbitrator the responder approached the High Court

by filing F.A.F.O. No. 534 of 1991 (the earlier F.A.F.O.), but the same was dismissed vide order dated 27.08.1991.

4. The learned Arbitrator gave his award on 13.4.1992 holding that the Railways should pay an amount of Rs.4,48,873.22 along with compoundable bank interest prevalent at that time from 16.11.1983 to 21.3.1992. In passing the award the Arbitrator relied on the Level book No. I, the Graph Sheets, the Log Book No. IA and the Log Book No. 4. The Arbitrator found that there were subsequent alterations and over writing in the entries made in the Log Book No.IA and the same were without any initials by the concerned authority on behalf of the respondent Railways. From such materials the Arbitrator held that all the manipulations/alterations/overwritings had resulted in reducing the quantities of the work done by the appellant. It was further observed that clause 21 (iv) of the special conditions was not followed by the respondent Railways at all.

Moreover in utter violation of the Railway rules and orders on the subject, the measurements were hardly entered in the measurement book directly and mostly entries in the measurement books were copied down from subsidiary records or note books. After recording such findings, the Arbitrator gave the aforesaid award.

5. Thereafter on 08.05.1992 the appellant filed an application under Section 17 of the Act for pronouncing judgment and making decree according to the award.
6. On 20.5.1992 the respondent Railways filed application under Section 30 read with Section 33 (Section 30/33) of the Act before the Civil Judge for setting aside the award. Then on 24.08.1992 they also filed their objections against the application filed by the contractor under Section 17 of the Act. The following facts were recorded in the judgment of the High Court.

"The Railways filed an application before the District Judge for transfer of the application filed by the contractor under Section 20 of the Act and under Section 24 of the Civil Procedure Code. It was dismissed on 13th November, 1992. The Railways filed an application on 23rd November, 1992, before the court below for summoning their application and under Section 30/33 of the Act from the Court where it was filed. This was objected to by the Contractor on the same date. However, the Court below summoned it and not only rejected it but also rejected their objections against the application under Section 17 of the Act. The Court below by its order dated 1.12.1992 also pronounced judgment according to the award and decreed interest at the rate given by the Bank from the date of the award till actual payment".

7. On 1st December 1992, the Senior Civil Judge, Gorakhpur of the Court of Judge, Small Causes Gorakhpur made the award a Rule of Court and directed that a decree be prepared accordingly and directed that from the date of the award to the date of payment the rate of interest on the Bank loan is to be paid.

8. Challenging the aforesaid order of the Civil Judge, the Railways filed an appeal before the High Court.

9. Before the High Court, 7 issues were framed. The appeal was partly allowed by the High Court and in doing so the High Court came to the conclusion that the court below had the jurisdiction to entertain the application under Section 17 of the Act.
10. On the application of the Railways under Section 30/33 of the Act, the High Court held that the case is not required to be remanded as the court below decided the case correctly on merits.
11. Referring to the decision of the General Manager dated 24.03.1986 rejecting request for appointment of Arbitrator on the ground that dispute fell under excepted matters, the High Court concluded that there is difference of opinion between the parties whether the dispute falls under excepted matters or not and the decision of the General Manager regarding excepted matters is not final between the parties. The General Manager by

wrongly deciding this question could not exclude the jurisdiction of the Court.

12. On the issue as to whether the respondent Railways are entitled to raise objections regarding the excepted matters at the stage of Section 20, the High Court concluded that the trial Court did not say a word about it and the High Court merely affirmed the order passed by the trial court. As such the issue was left to be decided by the Arbitrator who has held that none of the claims of the contractor were excepted matters. It was held that as the question was not decided in the earlier litigation, it cannot be said that the Railways are precluded from raising this question in these proceedings.

13. On the issue of excepted matters the High Court held that Item Nos. 1 to 3 and 5 to 8 were excepted matters and were non-arbitrable and the Arbitrator committed an illegality in allowing them. For the remaining items viz. item No. 9 (a) &

(d) relating to supply of boats, 11 (b) relating to cost of wastage of labour, it was held that these were not covered by Clause 22 (5) or 45 (a) of the GCC, as such they do not fall in the category of non-arbitrable matters and are arbitrable.

14. On the award of interest it was contended that clause 16 (1) read with 16 (2) of GCC prohibits payment of interest on amounts payable to the appellant under the contract except the Government securities mentioned therein. In this regard, the High Court considered Clause 30 of SCC and Clause 52 of GCC and found them to be similar and these clauses, according to High Court, bar interest and damages in respect of withholding or retention under the lien. Further by placing reliance on the case of Executive Engineer, D.M.I. Division v. N. C. Budhraj, AIR 2001 SC 628 High Court held that interest could not be awarded since there was specific prohibition in the contract regarding awarding of interest.

15. On the award of interest High Court's specific conclusions are:

"(f) The contract prohibited payment of interest. Item 10 is award for interest; it could not be awarded. Similarly no interest could be awarded under clause 3 of the Award.

(g) There is no illegality in awarding interest payable at the bank rate, but it could only be awarded from the date of decree and not from the date of award."

16. Appellant also filed a review petition before the High Court but the same was dismissed vide order dated 15.05.2003.

17. This Court finds that the High Court's conclusion that Item Nos. 1 to 3 and 5 to 8 of the award are 'excepted matters' and non-arbitrable is not correct for the reasons discussed below.

18. In coming to the aforesaid finding, the High Court relied on Clause 45 (a) of GCC. Clause 45(a) of the GCC is set out below:

"45(a): It shall be open to the Contractor to take specific objection to any recorded measurement or classification on any ground within seven days of the date of such measurements. Any re-measurements taken by the Engineer or the Engineer's Representative in the presence of the Contractor or in his absence after due notice has been given to him in consequence of objection made by the Contractor shall be final and binding on the Contractor and no claim whatsoever shall thereafter be entertained regarding the accuracy and classification of the measurements."

19. A plain reading of Clause 45(a) of the GCC makes it clear that re-measurement are to be made by the Engineer or the Engineer's representative in the presence of the Contractor. It may be done in the absence of the contractor but that has to be done only after due notice. On a proper construction of Clause 45(a) it appears that it gives the contractor, (a) an opportunity to take a specific objection to any recorded measurement within seven days of such measurements; (b) Then any re-measurements is to be taken by the Engineer or the Engineer's representative in the presence of the contractor or in his absence after due notice; if

the steps under (a) and (b) are strictly followed, (c) no claim whatsoever by the contractor shall be entertained about the classification or the accuracy of the measurement.

20. Under Clause 62 of the GCC it is provided that matters for which provisions have been made in Clause 45(a) shall be excepted matters.

21. The arbitrator in his award after perusal of the level Book No.1, Graph-Sheets, Logbook No. 1A and Logbook No.4 came to a clear finding that there were manipulations/alterations/over writings by the railways and as a result of which the volume of work done by the contractor has been reduced.

22. It is well settled that the arbitrator is the master of facts. When the arbitrator on the basis of record and materials which are placed before him by the railways came to such specific findings and which have not been stigmatized as perverse by the High Court, the High Court in reaching its conclusions cannot ignore those findings.

23. But it appears that in the instant case, the High Court has come to the aforesaid finding that the items mentioned above are excepted matters and non-arbitrable by completely ignoring the factual finding by the arbitrator and without holding that those findings are perverse.

24. It goes without saying that in order to deny the claims of the contractor as covered under excepted matters, the procedure prescribed for bringing those claims under excepted matters must be scrupulously followed. The clear finding of the arbitrator is that it has not been followed and the High Court has not expressed any dis-agreement on that. Therefore, the finding of the High Court that those items are non-arbitrable cannot be sustained.

25. On the question of grant of interest by the arbitrator, the High Court held that Clause 16(2)

of the GCC contains a provision against grant of interest. Clause 16(2) of the GCC is set out below:

"16(2): No interest will be payable upon the earnest money or the security deposit or amounts payable to the contractor under the contract but government securities deposited in terms of such clause (1) of this clause will be repayable with interest accrued thereto."

26. The High Court has also relied on Clause 30 of the SCC and Clause 52 of the GCC to hold that payment of interest has been barred. The relevant portion of Clause 30 of the SCC relating to interest is set out below:

"...That the contractor will have no claim for interest and damage whatsoever on any account in respect of such with-holding or retention under the lien referred to supra and duly notified as such to the Contractor."

27. The High Court has held that Clause 30 of the SCC is similar to Clause 52 of the GCC.

28. Before discussing the implication of these clauses, it may be noted that the Arbitration Act,

1940 does not contain any provision enabling the arbitrator to give interest.

29. Section 29 of the Arbitration Act enables the Court to award interest from the date of the decree and at such rate as the Court deems reasonable.

30. The present Act of 1996 (the Arbitration and Conciliation Act, 1996), however, empowers the Arbitrator under Section 31(7)(a) and (b) to grant interest. Admittedly, in this case the 1996 Act is not attracted. Therefore, the provisions of 1940 Act will govern. The arbitrator's power to grant interest is governed by the various judicial pronouncements and the provisions of Interest Act of 1978.

31. It goes without saying that in the instant case, the provision of the Interest Act, 1978 is attracted. Under the Interest Act, 1978, Section

2(a) defines "Court" to include both a tribunal and an arbitrator.

32. Under the Interest Act, Section 3 empowers the Court to allow interest. But sub-Section (3) of Section 3 contains a proviso, namely, Section 3, sub-Section (3), Clause (a) (ii), to the following effect:-

"3. (3) Nothing in this section, -

(a) shall apply in relation to -

(i) xxx xxx

(ii) any debt or damages upon which payment of interest is barred, by virtue of an express agreement'"

33. In the context of the aforesaid provision in the Interest Act, the Clauses in the agreement quoted hereinabove assume importance.

34. Normally there are three periods for which interests are awarded - (a) pre-reference period i.e. from the date of the cause of action for going to arbitration and to the date of reference;

(b) the *pendente lite* period i.e. from the date of reference to the date of award; and (c) the post-reference period i.e. from the date of the award to the date of realization.

35. Initially there was a judgment of this Court in the case of Executive Engineer (Irrigation), Balimela and Others Vs. Abhaduta Jena and Others [1988 (1) SCC 418] which held, the arbitrator has no power to award interests in the absence of contract or any substantive law.

36. Construing the provision of the 1940 Act, the Court held:-

"..in cases arising after the commencement of Interest Act of 1978 an arbitrator has the same power as the court to award interest up to the date of institution of the proceedings, in cases which arose prior to the commencement of the 1978 Act the arbitrator has no such power under the Interest Act of 1839." (Para 4)

37. The decision in Abhaduta Jena (supra), however, was overruled by the Constitution Bench of this Court in Secretary, Irrigation Department,

Government of Orissa and Others Vs. G.C. Roy,

[1992 (1) SCC 508].

38. The Constitution Bench in **G.C. Roy** (supra) discussed several aspects of the Act of 1940 and also the provisions of Section 34 of the Civil Procedure Code and also those of the Interest Act. After discussing those provisions, the Constitution Bench formulated the question which arose in that case as follows:-

".....In the context of these provisions the question arises whether an arbitrator to whom reference is made by the parties has jurisdiction or authority to award interest pendente lite. If the arbitration agreement or the contract itself provides for award of interest on the amount found due from one party to the other, no question regarding the absence of arbitrator's jurisdiction to award the interest could arise as in that case the arbitrator has power to award interest pendente lite as well. Similarly, where the agreement expressly provides that no interest pendente lite shall be payable on the amount due, the arbitrator has no power to award pendente lite interest. But where the agreement does not provide either for grant or denial of interest on the amount found due, the question arises whether in such an event the arbitrator has power and authority to grant pendente lite interest.

39. After formulating the above question and discussing various decisions and legal issues, the Constitution Bench in paragraph 43 at page 532 further held:

"The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest..."

40. After posing the question as above, the Constitution Bench laid down the following principles in paragraph 43 at page 532 to 533:

"(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) An arbitrator is an alternative form (*sic* forum) for resolution of disputes arising between the parties. If so, he

must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) Over the years, the English and Indian courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. *Thawardas* has not been followed in the later decisions of this Court. It has been explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to, on first impression. Until *Jena* case almost all the courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete

justice between the parties, such power has always been inferred."

41. Ultimately in paragraphs 44 and 45 at page 533 to 534 of the report the Constitution Bench held as follows:

"Where the agreement between the parties does not prohibit grant of interest and where a party claims interest and that dispute (along with the claim for principal amount or independently) is referred to the arbitrator, he shall have the power to award interest pendente lite. This is for the reason that in such a case it must be presumed that interest was an implied term of the agreement between the parties and therefore when the parties refer all their disputes – or refer the dispute as to interest as such – to the arbitrator, he shall have the power to award interest. This does not mean that in every case the arbitrator should necessarily award interest pendente lite. It is a matter within his discretion to be exercised in the light of all the facts and circumstances of the case, keeping the ends of justice in view.

45. For the reasons aforesaid we must hold that the decision in *Jena*, insofar as it runs counter to the above proposition, did not lay down correct law."

42. Following the Constitution Bench ratio in **G.C. Roy** (supra), another three-Judge Bench in the case of **Hindustan Construction Company Limited** vs. **State**

of Jammu and Kashmir - (1992) 4 SCC 217, while referring to the ratio in **G.C. Roy** (supra), held in paragraph 5 at page 220:

".....Though the said decision deals with the power of the arbitrator to award interest *pendente lite*, the principle of the decision makes it clear that the arbitrator is competent to award interest for the period commencing with the date of award to the date of decree or date of realisation, whichever is earlier. This is also quite logical for, while award of interest for the period prior to an arbitrator entering upon the reference is a matter of substantive law, the grant of interest for the post-award period is a matter of procedure. Section 34 of Code of Civil Procedure provides both for awarding of interest *pendente lite* as well as for the post-decree period and the principle of Section 34 has been held applicable to proceedings before the arbitrator, though the section as such may not apply....."

43. Subsequently, in the case of **State of Orissa** v. **B.N. Agarwalla** - (1997) 2 SCC 469, before another three-Judge Bench a similar question came up for consideration and this Bench following the ratio in **G.C. Roy** (supra) and **Hindustan Construction** (supra) considered the question of payment of interest. After discussing the ratio in **Abhaduta Jena** (supra) and **G.C. Roy** (supra) and various other cases, the learned Judges in paragraph 18 at

page 477 of the report came to the conclusion that; (a) it is well settled that the arbitrator has a jurisdiction to award pre-reference interest in cases which arose after the Interest Act, 1978 had become applicable. It is no doubt that in this case arbitration proceedings were initiated after the 1978 Act became applicable; (b) for the period in which the arbitration proceedings are pending the arbitrator has the power to award interest; (c) the Court also held that the power of the arbitrator to award interest for the post-award period also exists.

44. In **G.C. Roy** (supra) this Court made it clear that the arbitration clause was silent on the payment of interest but in **B.N. Agarwalla** (supra) the Court considered Clause (4) which had the following stipulation on interest:

".....No interest is payable on amounts withheld under the item of the agreement....."

45. Considering the said Clause (4), the learned Judges held that the claim which was made before the arbitrator was for non-payment of the full amount as per the final bill submitted by the claimant and the arbitrator awarded interest on that. The interest so awarded, according to the learned Judges, is not prohibited under Clause (4) of the Contract. Therefore, the three Judge Bench clearly held that just a stipulation in the contract purporting to indicate non-payment of interest cannot denude the arbitrator of his right to pay interest.

46. In a subsequent decision of three-Judge Bench in the case of State of U.P. v. Harish Chandra and Company - (1999) 1 SCC 63, there was stipulation in the arbitration agreement against grant of interest. The relevant clause namely Clause 1.9 to the aforesaid effect is set out below:

"1.9 No claim for delayed payment due to dispute etc.—No claim for interest or damages will be entertained by the Government with respect to any moneys or balances which may be lying with the Government owing to any dispute,

difference; or misunderstanding between the Engineer-in-Charge in marking periodical or final payments or in any other respect whatsoever."

47. Considering the said clause, the Court held that the prohibition in the said clause does not prevent the contractor from raising the claim of interest by way of damages before the arbitrator on the relevant items placed for adjudication. (see paragraph 10 page 67). In saying so, the learned Judges relied on the ratio in the case of **B.N. Agarwalla** (supra) and **G.C. Roy** (supra).
48. In **Board of Trustees for the Port of Calcutta v. Engineers-De-Space-Age**, (1996) 1 SCC 516, a two-judge Bench of this Court considered the same question. That was a case under the 1940 Act. In **Engineers** (supra), the so-called prohibition in the contract relating to payment of interest was in Clause 13(g), which is set out below:-

"13(g) No claim for interest will be entertained by the Commissioners with respect to any money or balance which may be in their hands owing to any dispute between themselves and the Contractor or with respect to any delay

on the part of the Commissioners in making interim or final payment or otherwise."

49. Relying on the said clause, the appellant in **Engineers** (supra) argued that there was absolute prohibition against payment of interest. The learned Judges however, relying on the ratio in **G.C. Roy** (supra) held that Clause 13(g) merely prohibits the Commissioner from entertaining any claim for interest but it does not prohibit the arbitrator from awarding interest. The learned Judges held that such clauses must be strictly construed in view of the ratio of the Constitution Bench in **G.C. Roy** (supra). The reasoning given by the learned Judges in favour of strict construction runs as follows:-

"...Clause has to be strictly construed for the simple reason that as pointed out by the Constitution Bench, ordinarily, a person who has a legitimate claim is entitled to payment within a reasonable time and if the payment has been delayed beyond reasonable time he can legitimately claim to be compensated for that delay whatever nomenclature one may give to his claim in that behalf. If that be so, we would be justified in placing a strict construction on the term of the contract on which reliance has been placed. Strictly construed the term of the contract merely prohibits the Commissioner from paying interest to the contractor for delayed payment but once the matter goes to

arbitration the discretion of the arbitrator is not, in any manner, stifled by this term of the contract and the arbitrator would be entitled to consider the question of grant of interest pendente lite and award interest if he finds the claim to be justified." (Para 4, page 520)

50. It was argued before us by the learned counsel for the respondent that a subsequent Division Bench of this Court in the case of Union of India v. Saraswat Trading Agency & others, JT 2009 (9) SC 648, has taken a view different from the ratio in **Engineers** (supra). We do not think so.

51. In **Saraswat Trading** (supra) the Clause which was construed by the Court as clamping a prohibition on the grant of interest was Clause 31 and which is quoted in paragraph 15 of the judgment at page 656 of the report and runs as follows:-

"31. No interest or damage for delay in payment - No interest or damage shall be paid to the Contractor for delay in payment of the bill or any other amount due to the contractor for any reason whatsoever. The Railway Administration will, however, make every endeavour for payment of the bills or other amount due to the contractor within a reasonable time."

52. The learned Judges in **Saraswat Trading** (supra) in paragraph 16 held that Clause 31 is different from Clause 13(g) which was considered in **Engineers** (supra). The ratio in **Engineers** (supra) was not questioned.

53. In the instant case also the relevant clauses, which have been quoted above, namely, Clause 16(2) of GCC and Clause 30 of the SCC do not contain any prohibition on the arbitrator to grant interest. Therefore, the High Court was not right in interfering with the arbitrator's award on the matter of interest on the basis of the aforesaid clauses. We therefore, on a strict construction of those clauses and relying on the ratio in **Engineers** (supra), find that the said clauses do not impose any bar on the arbitrator in granting interest.

54. Reference in this connection may be made to another Constitution Bench judgment of this Court in the case of **Executive Engineer, Dhenkanal Minor**

Irrigation Division, Orissa and others v. N.C.

Budharaj (deceased) by Lrs. and others, (2001) 2

SCC 721.

55. In **N.C. Budharaj** (supra), Justice Raju, speaking for the majority, considered the question of the arbitrator's jurisdiction and authority to grant interest in great detail and also considered both Indian and English cases and the ratio of the Constitution Bench of this Court in **G.C. Roy** (supra).

56. In paragraph 25 of the judgment the learned Judge summed up the position as follows:-

"...By agreeing to settle all the disputes and claims arising out of or relating to the contract between the parties through arbitration instead of having recourse to civil court to vindicate their rights the party concerned cannot be considered to have frittered away and given up any claim which otherwise it could have successfully asserted before courts and obtained relief. By agreeing to have settlement of disputes through arbitration, the party concerned must be understood to have only opted for a different forum of adjudication with less cumbersome procedure, delay and expense and not to abandon all or any of its substantive rights under the various laws in force, according to which only even the arbitrator is obliged to adjudicate the claims referred to him. As long as there is

nothing in the arbitration agreement to exclude the jurisdiction of the arbitrator to entertain a claim for interest on the amounts due under the contract, or any prohibition to claim interest on the amounts due and become payable under the contract, the jurisdiction of the arbitrator to consider and award interest in respect of all periods subject only to Section 29 of the Arbitration Act, 1940 and that too the powers of the court thereunder, has to be upheld."

(Emphasis supplied)

57. We are constrained to note that Hon'ble High Court unfortunately erred in appreciating the ratio of **N.C. Budharaj** (supra) in passing the impugned judgment and order.
58. In view of such consistent views taken by both the Constitution Bench judgments, in **G.C. Roy** (supra) and **N.C. Budharaj** (supra), we are of the view that in the facts of this case, no interference is called for with the award passed by the arbitrator. The judgment of the High Court is, therefore, set aside and the award is upheld. The appeal is allowed.
59. There will be no order as to costs.

.....J.
(MARKANDEY KATJU)

New Delhi
December 07, 2009

.....J.
(ASOK KUMAR GANGULY)

