IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Arbitration Case No. 71 of 2017
Reserved on:16.08.2019
Decided on: 23.08.2019.

Tarun Mahindroo ….Petitioner

Versus

H.P. Power Corporation Limited …Respondent

Coram:

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1] *Yes.*

For the petitioner : Mr. Suneet Goel, Advocate.

For the respondent : Mr. Sunil Mohan Goel, Advocate.

Jyotsna Rewal Dua, J.

Feeling aggrieved against the award passed by the learned Arbitrator, instant petition under Section 34 of the Arbitration & Conciliation, Act 1996, has been preferred by the petitioner/claimant.

The main point to be adjudicated in this case is:- whether loss of profits and over heads on account of prolongation of the contract, can be awarded merely on the basis of Hudson formula without the claimant leading any evidence, be it oral or documentary in respect of loss, damages suffered by him.

[1]**Whether reports of Local Papers may be allowed to see the judgment?2**

2. The **factual** position of this case, can be summarized as under:-

2(i) The respondent awarded construction work of 'Bachelor Accommodation at Sunder Nagar, District Mandi (Civil Work, Internal WS, SI and Electrical Installation)' to the petitioner/claimant vide letter of award dated 25.07.2011 (Annexure C-1). The contracted value of the work was Rs.1,96, 03,299/-. The work was to be completed within 18 months from 21st day after issuance of letter of award dated 25.07.2011. Annexure C-2, contained the terms and conditions governing the contract duly executed by the parties.

2(ii) Various representations of claimant, addressed to the respondent, in respect of the contract work have been enclosed at Annexure C-3 (colly). The details of the same can be summed up hereunder:-

i) Letter dated 31.08.2011 to the effect that work at site has been stopped by BBMB, on the ground that land belongs to BBMB. Request was made for revised handing over of the site to the claimant/contractor.

ii) Letter dated 07.11.2011 is a reminder of previous letter dated 31.08.2011, with respect to handing over the possession of the site to the claimant.

iii) Letter dated 09.2.2012, written in continuation to the previous letters that site had still not been handed over to the contractor, resultantly, huge loss on account of setting of cement, payments of chowkidars for watch and ward of material stacked at site stores and indirect losses due to prolongation is being caused to the claimant/contractor. Request was made for handing over the possession of the site for starting and completing the work in time.

iv) Letter dated 09.04.2012, to the effect that the possession of the site had still not been handed over to the contractor. Therefore, extension in time by nine months was requested by the claimant. This was followed by representation dated 07.01.2013 on the same lines.

v) Letter Dated 15.09.2014, intimating that the extension of time for completion of the project granted by the respondent up to 15.08.2014, had lapsed, however, the site had still not been handed over to the claimant. Therefore, the second extension to time from 15.08.2014 to 14.02.2016, i.e. for a period of 18 months, was sought for.

vi) Letter dated 04.10.2014, to the effect that despite repeated requests, second time extension had not been granted and accordingly, prayer was made for extending the time period for completing the work.

vii) Letter dated 23.06.2016, requesting the respondent either to appoint the Arbitrator under Clause-33 of the Contract or to provide the site for construction of the building.

2(iii) On 16.12.2016, notice (Annexure C-4), under Clause 36 of the agreement, was issued by the respondent to the claimant, intimating that despite best efforts of the respondent, the land ownership issues for undertaking the construction of the project work, could not be resolved, therefore, it was decided by the respondent to abandon the work.

2(iv) The Arbitrator was appointed by the order of this Court on 08.03.2017. Claimant preferred his claim before learned Arbitrator under following heads:-

Sr. No.	**Heads**	**Amount claimed**
1.	**Loss of profit and over heads on account of prolongation of contract.**	**Rs. 29,40,495/-**
2.	**Refund of security.**	**Rs. 10,000/-**
3.	**Refund of earnest money.**	**Rs. 3,43000/-**
4.	**Cost of Arbitration Proceedings.**	**Rs. 1,00,000/-**
5.	**Interest.**	**18% per annum.**

2(v) The respondent contested the claim and denied that contractor was put to any loss or harassment and that he had been intimated and was aware regarding non-availability of land for

construction from the very beginning. It was denied that claimant continued to deploy its labour and machinery at site.

2(vi) On consideration of the pleadings and the material available on the record, learned Arbitrator passed impugned award on 29.07.2017. The award in tabulated form is :-

Sr. No.	Heads	Amount claimed	Amount awarded
1.	**Loss of profit and over heads on account of prolongation of contract.**	**Rs.29,40,495/-**	**-nil-**
2.	**Refund of security.**	**Rs.10,000/-**	**Rs.10,000/-**
3.	**Refund of earned money.**	**Rs.3,43,000/-**	**Rs.3,43,000/-**
4.	**Cost of Arbitration Proceedings.**	**Rs.1,00,000/-**	**Rs.1,11,565/-**
5.	**Interest**	**18% P.A.**	**9%**

Thus, learned Arbitrator passed an award of Rs. 5,54,565/- @ 9% interest payable within one month from the date of the award, failing which, the respondent had to pay enhance rate of interest @ 12% till the actual payment.

3. Learned Arbitrator having not find favour with the claim of Rs. 29,40,495/- regarding alleged loss of profit and over heads on account of prolongation of the contract, the claimant has preferred

instant objections under Section 34 of the Arbitration & Conciliation Act.

4. <u>Contentions</u>:-

4(i) The main plank of the contentions of Mr. Suneet Goel, learned counsel for the petitioner/claimant is that the claim under this head was based purely on Hudson formula, where-under, claimant was not required to prove any actual damage having been caused to him; he was only required to show that the contract was prolonged, but not because of any fault on part of the claimant; he is only required to prove that the contract was extended and could not be completed because of lapses, actions, inactions on part of the respondent or reasons, which were attributable and could be sorted out only by the respondent.

His further contentions is that the learned Arbitrator, while deciding proposition No.1, in the impugned award, had already held that the prolongation of the contract period was due to the fact that though the land on which the site was located, was owned and possessed by the respondent, but the adjoining land required as a passage to reach the site, was not owned by the respondent. The adjoining land was owned and possessed by the BBMB and it is on account of this fact that the construction work at site remained blocked and could not be carried

out. Accordingly, the contention of learned counsel for the petitioner/claimant is that after having come to the conclusion that project work was prolonged on the site because of non-availability of the adjoining site, which was required as a passage by the claimant for starting the construction work at site, it was not open for the learned Arbitrator to have rejected his claim of loss of profit and over heads on account of prolongation of the contract.

Learned counsel for the petitioner/claimant, in this regard has relied upon ***(2006) 11 SCC 181***, titled as ***Mcdermott International Inc. v. Burn Standard Co. Ltd. and others*** and ***(2015) 3 SCC 49***, titled as ***Associate Builders v. Delhi Development Authority*** to contend that Hudson formula is an accepted formula by the Hon'ble Apex Court, for awarding loss of profit and over heads on account of prolongation of the contract.

4(ii). Per contra, Mr. Sunil Mohan Goel, learned counsel for the respondent, has argued that the claimant had executed certain site development works, for which due and admissible amount of Rs. 1,02,654/- stands released to him.

He further submitted that the land where the building was to be constructed by the claimant under the awarded work, belonged to

the State Government and was in possession of the respondent, however, the approached road to the site was from the land owned and possessed by BBMB, which objected to carrying out of the construction work vide their (BBMB) letter dated 24.08.2011 (Annexure-III). Copy of this objection of BBMB, had been supplied to the contractor and he was made aware about the site problems; and it is on account of this objection of BBMB that the work had to be stopped at the site at very initial stage. The work could have been undertaken only after resolving the land dispute. It was denied that contractor deployed any labour or machinery at the site after August, 2011; the land disputes could not be resolved, therefore, the work was foreclosed vide letter dated 16.12.2016 (Annexure C-4), as per Clause 36 of contract agreement. Learned counsel further contended that no loss was suffered by the contractor on account of prolongation of contract due to any reason whatsoever. Hudson formula, without proof of any actual damage suffered by the claimant, cannot advance the case of the petitioner for his claim of profit and over heads on account of prolongation of contract.

Learned counsel for the respondent relied upon ***(2010) 13 SCC 377***, titled as ***Oil and Natural gas Corporation*** Vs. ***Wig Brothers***

Builders and Engineers Private Limited, ***(2007) 4 SCC 697***, titled as ***Food Corporation of India*** *vs.* ***Chandu Constructions***, ***(1999) 9 SCC 283***, titled as ***Rajasthan Mines & Minerals Ltd.*** *v.* ***Eastern Engineering Enterprises***, in support of his contentions.

5. **Observations:-**

5(i) **Stopping of Work:-** It is seen from the record that vide Annexure-III dated 24.08.2011, BBMB, had asked the respondent to stop the ongoing construction work. It is not in dispute that this letter was forwarded by the respondent to the petitioner/claimant. This is also apparent from the fact that petitioner/claimant had himself written a letter to the respondent as early as on 31.08.2011, regarding stopping of work by BBMB Authorities on account of the fact that the adjoining land required as passage by the contractor for carrying out awarded construction work at site, belonged to BBMB, where-under, the petitioner/claimant had also requested the respondent for revised handing over of the site to him. The dispute, thus, had arisen in just over a period of one month from the date of execution of the contract agreement. The work had come to stand still in a period little over one month from the date of execution of the contract agreement and

contractor was very well aware about the stopping of the work, reasons for stopping of the work.

5(ii) **<u>Hudson Formula</u>**:-

5(ii)(a) No proof of actual damage suffered by the petitioner/claimant has been placed on record. The claimant on 29.06.2017, stated before the learned Arbitrator that but for the documents appended along with his claim petition, he did not want to lead any oral or documentary evidence in support of his statement of claim. There is no proof available on record that claimant deployed men and machinery etc. at the site. No proof whatsoever has been furnished by the claimant of having suffered any actual loss due to prolongation of contract.

5(ii)(b) In my considered view, learned Arbitrator was justified in turning down the claim of Rs. 29,40,495/- for alleged loss of profits and over heads on account of prolongation of contract for want of proof of any actual damage having been suffered by the claimant/contractor.

Hon'ble Apex Court in ***(2006) 11 SCC 181*** titled as ***Mcdermott International Inc.*** *v.* ***Burn Standard Co. Ltd. and others,*** relied upon by learned counsel for the claimant, has not held that in a case of instant nature, without there being any proof of any actual

damage having been caused to the claimant/contractor, in absence of any oral or documentary evidence in this regard, he has to be held entitled to 15% of the contracted amount on the basis of Hudson formula. The present is the case wherein just over a period of one month from the date of execution of the contract agreement, the work had admittedly come to stand still. Whatever work was done by the claimant, during this period of little over one month, has been duly paid for by the respondent. There is no proof of any deployment of any men or machinery or material to suggest that claimant suffered any loss of profit and over heads. Formula has to be applied to facts of a case; on the basis of the evidence led by the claimant. Merely on the basis of an abstract formula, without furnishing any evidence, any proof whatsoever of any loss or damage having been suffered by the claimant, claim for loss of profits and overheads cannot be allowed to him on the ground that contract period was prolonged.

5(ii)(c) In ***(2015) 3 SCC 49*** titled as ***Associate Builders*** *v.* ***Delhi Development Authority***, after adverting to an earlier judgment in ***Mcdermott International Inc.*** *v.* ***Burn Standard Co. Ltd. and others, (2006) 11 SCC 181,*** Hon'ble Apex Court reiterated that decision of Arbitrator in applying Hudson formula in construction contracts for

awarding claim for loss of profit and over heads, cannot be interfered with, in exercise of jurisdiction under Section 34 of Arbitration & Conciliation Act. However, present is the case where neither there is any oral nor documentary evidence to show any loss, or any damage having been caused to the petitioner by prolongation of contract on part of the respondent. Hudson formula cannot be applied in vacuum. No details of any men, any machinery deployed on site after August, 2011, is available. No details of any material loss has been provided. No books of accounts are there. No details of any watch and ward staff, supervisors etc. has been given. No material was produced with respect to nature of practice in the trade. Claim for loss of profits has been based on abstract Hudson formula and 15% value of contracted work has been claimed as loss of profits and over heads on account of prolongation of contract. Learned Arbitrator was justified in not applying Hudson formula for awarding alleged loss of profits and over heads in absence of any evidence. In Kalash Nath Associates vs. Delhi Development Authority & Anr., (2015) 4 SCC 136, it has been held by Hon'ble Apex Court that while considering the claim under Sections 73 & 74 of Contract Act, where it is possible to prove actual damage or loss, such proof cannot be dispensed with. Monetary compensation in

lieu of loss prayed for by claimant cannot be awarded in negation of Section 73 of Contract Act by penalizing the respondent even though claimant had not proved any loss suffered by him. Reference can also be made in this regard to a judgment passed by Bombay High Court in ***Case No. 470 of 2012***, tilted as ***Essar Procurement Services Ltd.*** vs. ***Paramount Constructions***:-

> ***"101.*** *The question that arises for consideration of this court is whether the respondent who had made claim for overhead on the basis that the respondent had considered 10% towards overhead for the work in question at the time of finalization of the contract and had incurred such amount during the contractual period ought to have proved the said claim by leading evidence including oral evidence or could have simplicitor rely upon the Hudson formula and whether in absence of any evidence of the actual expenditure incurred by the respondent, the arbitral tribunal could have allowed the claim for overhead by considering the claim on rough and ready basis by applying Hudson formula by dispensing with the proof of the overhead expenditure or not.*
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> ***103.*** *It is held that the different formula can be applied in different circumstances and the question as to whether damages should be computed by taking recourse to one or the other formula, having regard to the facts and circumstances of a particular case, would eminently fall within the domain of the arbitrator. Supreme Court noticed that the witness examined by the contractor had applied the Emden Formula while*

calculating the amount of damages having regard to the books of account and other documents maintained by the contractor. The learned arbitrator did not insist that sufferance of actual damages must be proved by bringing on record books of account and other relevant documents. In these circumstances, Supreme Court held that if the learned arbitrator applied the Emden Formula in assessing the amount of damages, he could not be said to have committed an error warranting interference by this Court. The learned arbitrator had also referred to other formulae but opined that the Emden Formula was widely accepted one.

105. *Division Bench of this court in case of Edifice Developers and Project Engineers Ltd. (supra) after adverting to the judgment of Supreme Court in case of McDermott International INC. (supra) and in case of M/s.A.T.Brij Paul Singh and Bros. vs. State of Gujarat, AIR 1984 SC 1703 which judgments were relied upon by the arbitral tribunal has held that the appellant in that case had produced no evidence in support of the claim for loss of overhead and profit and award of claim was on the misconceived basis that Hudson Formula must be applied despite there being no evidence. The Division Bench also held that no material was produced before the arbitral tribunal on the nature of the practice in the trade and claim for loss of profits was based on pure conjecture and in the absence of any evidence and was thus rightly set ppn 49 arbp-470.12(j).doc aside by the learned Single Judge. The Division Bench upheld the conclusion drawn by the learned Single Judge that the award of arbitrator proceeded on the manifestly misconceived notion that a contractor is entitled to claim overhead losses even in the absence of evidence on the basis of Hudson's Formula.*

> ***106***. *In my view the impugned award rendered by the arbitral tribunal allowing the claim for overhead merely on the basis of the Hudson Formula and not based on any evidence is contrary to the principles of law laid down by this court in case of Edifice Developers and Project Engineers Ltd. (supra) and shows patent illegality and is in conflict with public policy."*

No fault can thus be found in the award passed by the learned Arbitrator in rejecting the claim of the petitioner for loss of profits and over heads on account of prolongation of contract. The point is answered accordingly.

6. Rejection of Claim viz-a-viz Terms of Contract:-

6(i) There is yet another reason for rejecting the claim of loss of profits and over heads on account of prolongation of contract. The terms of the contract are significant in the instant case. The contract which has been executed by both the parties and in terms of Clause-33 of which, learned Arbitrator was appointed, also contains Clause-36. This being relevant for purpose of adjudication of the present petition, is being reproduced hereinafter:-

> ***"36.1*** *If at any time after acceptance of the tender the Employer decides to abandon or reduce the scope of the works for reason whatsoever and hence does not require the whole or any part of the works to be carried out, the Engineer-in-Charge shall give notice in writing to that effect to the contractor, and the Contractor shall have no claim to any payment of compensation or*

otherwise whatsoever, on account of any profit or advantage which he might have derived from th execution of the works in full but which he could not derive in consequence of the fore-closure of the whole or part of the works.

The Contractor shall be paid at contract rates for full amount of the works executed at site and, in addition,a reasonable amount as certified by the Engineer-in-Charge for the items hereunder mentioned which could not be utilized on the works t the full extent because of the foreclosure:

(a) Any expenditure incurred on preliminary works, e.g. temporary access roads, temporary labour, huts, staff quarters and site office; storage accommodation, workshop, installation and dismantling of Construction Equipment (batching plant, crushing plant) and water storage tanks.

(b) i) The Employer shall have the option to take over Contractor's materials or any prt thereof, either brought to site or of which the Contractor is legally bound to accept delivery from suppliers (for incorporation in or incidental to the Work), provided, however, the Employer shall be bound to take over the material or such portions thereof as the Contractor does not desire to retain. The cost shall, however, taken into account purchase price, cost of transportation and deterioration or damage which may have been caused to materials whilst in the custody of the Contractor.

ii) For Contractor's materials not retained by the Employer, reasonable cost of transporting such material from Site to Contractor's permanent stores or to his other Works, whichever is less. If materials are not transported to either of the said places, no cost of transportation shall be payable.

(c) If any materials issued by the Employer are rendered surplus, the same except normal wastage for the materials used in the works shall be returned by the Contractor to the Employer.
(d) Reasonable compensation for transfer of T&P from Site to Contractor's permanent stores or to his other works whichever is less. If T&P are not transported to either of the said places, no cost of outward transportation shall be payable.

36.2 *The Contractor shall, if required by the Engineer-in-charge, furnish to him books of accounts, wage books, time sheets and other relevant documents as may be necessary to enable him to certify the reasonable amount payable under this condition."*

6(ii) The above Clause empowers the respondent to abandon or reduce the scope of the work for any reason whatsoever. The contractor will have no claim, in terms of this Clause, to any compensation on account of any payment of compensation, on account of any profit or advantage which he might have derived from the execution of the works in full, but which he could not derive on account of fore-closure either of part or whole works.

Clause 36.1, when read in its entirety, though provides that in case of fore-closure of the contract, the contractor has to be paid at the contract rates for full amount of the works executed at the site and in addition, reasonable amount certified by the Engineer-in-Charge for the

items, which could not be utilized on the works to full extent because of the fore-closure. The items mentioned in this Clause are in respect of preliminary works, i.e. temporary access roads, temporary labour huts, staff quarters, site office, storage accommodation workshop, installation and dismantling of construction equipment and water storage tanks etc. Clause also provides for materials in similar way.

6(iii) Thus, in terms of Clause 36.1 of the agreement duly executed by the parties, claimant cannot have any claim for payment of compensation for any profit which he couldn't derive because of foreclosure of the work. Claimant is though entitled to amount for works actually carried out at contract rates and for items mentioned therein lying unused and expenditure incurred over them as provided in contract. However, in the instant case, there is no evidence whatsoever available on record that the above said works were actually carried out, which are yet to be paid for. Therefore, claim for loss of profit and over heads on account of prolongation of contract could not be allowed, in view of specific provision of contract agreement.

6(iv) Reference in this regard can also be made to ***(2010) 13 SCC 377***, titled as ***Oil and Natural Gas Corporation*** *v.* ***Wig Brothers***

Builders and Engineers Private Ltd., in which, Hon'ble Apex Court has held as under:-

> ***"4.*** *It is now well settled that a court, while considering a challenge to an award under sections 30 and 33 of Arbitration Act, 1940, does not examine the award, as an appellate court. It will not reappreciate the material on record. An award is not open to challenge on the ground that the arbitrator had reached a wrong conclusion or had failed to appreciate some facts. But if there is an error apparent on the face of the award or if there is misconduct on the part of the arbitrator or legal misconduct in conducting the proceedings or in making the award, the court will interfere with the award. Keeping the said principles in view, we will consider the challenge.*
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> ***6.*** *The arbitrator has observed that there is no provision in the contract by which the contractor can be estopped from raising a dispute in regard to the said claim. But clause 5A of the contract pertains to extension of time for completion of work and specifically bars any claim for damages. The said clause is extracted below :*
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> > *"In the event of delay by the Engineer-in-Charge to hand over to the contractor possession of land/lands necessary for the execution of the work or to give the necessary notice to the contractor to commence work or to provide the necessary drawing or instructions or to do any act or thing which has the effect of delaying the execution of the work, then notwithstanding anything contained in the contract or alter the character thereof or entitle the contractor to any damages or compensation thereof but in all such cases the Engineer-in-Charge may grant such extension or extensions of the completion date as may be deemed fair and reasonable by the*

> *Engineer-in Charge and such decision shall be final and binding."*

7. *In view of the above, in the event of the work being delayed for whatsoever reason, that is even delay which is attributable to ONGC, the contractor will only be entitled to extension of time for completion of work but will not be entitled to any compensation or damages. The arbitrator exceeded his jurisdiction in ignoring the said express bar contained in the contract and in awarding the compensation of Rs.9.5 lakhs. This aspect is covered by several decisions of this Court. We may refer to some of them.*

8. *In Associated Engineering Co. v. Government of A.P. - 1991 (4) SCC 93, this Court observed :*

> *"24. The arbitrator cannot act arbitrarily, irrationally, capriciously or independently of the contract. His sole function is to arbitrate in terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled outside the bounds of the contract, he has acted without jurisdiction. ..."*

9. *In Rajasthan State Mines & Minerals Ltd. v. Eastern Engineering Enterprises – this Court held: (SCC pp. 300 & 310, paras 22-23 & 44)*

> *"22.....The rates agreed were firm, fixed and binding irrespective of any fall or rise in the cost of the work covered by the contract or for any other reason or any ground whatsoever. It is specifically agreed that the contractor will not be entitled or justified in raising any claim or dispute because of increase in cost of expenses on any ground whatsoever. By ignoring the said terms, the arbitrator has travelled beyond his jurisdiction as his existence depends upon the agreement and his function is to act within the limits of the said agreement. This deliberate departure from the contract amounts not only to manifest disregard of the authority or misconduct*

on his part but it may be tantamount to mala fide action.

23. It is settled law that the arbitrator is the creature of the contract between the parties and hence if he ignores the specific terms of the contract, it would be a question of jurisdictional error which could be corrected by the court and for that limited purpose, agreement is required to be considered. ....

44.. (h)……he cannot award an amount which is ruled out or prohibited by the terms of the agreement."

10. *In Ramnath International Construction (P) ltd. v. Union of India, a similar issue was considered. This Court held that clause 11(C) of the General Conditions of Contract (similar to clause 5A under consideration in this case) was a clear bar to any claim for compensation for delays, in respect of which extensions had been sought and obtained. This Court further held that such a clause amounts to a specific consent by the contractor to accept extension of time alone in satisfaction of claims for delay and not to claim any compensation; and that in view of such a bar contained in the contract in regard to award of damages on account of delay, if an arbitrator awards compensation, he would be exceeding his jurisdiction.*

11. *In view of the above, the award of the arbitrator in violation of the bar contained in the contract has to be held as one beyond his jurisdiction requiring interference. Consequently, this appeal is allowed in part, as follows :*

(a) The judgment of the High Court and that of the civil court making the award the rule of the court is partly set aside in so far as it relates to the award of Rs.9.5 lakhs under claim No.(1) and the award of interest thereon.

> *(b) The judgment of the civil court as affirmed by the High Court in regard to other items of the award is not disturbed."*

In ***(2007) 4 SCC 697***, titled as ***Food Corporation of India v. Chandu Construction and Another,*** the Hon'ble Apex Court, held that the arbitrator being a creature of the agreement between the parties, has to operate within the four corners of the agreement and if he ignores the specific terms of the contract, it would be a question of jurisdictional error on the face of the award, falling within the ambit of legal misconduct which could be corrected by the Court. Arbitrator derives his authority from the contract and if he acts in disregard of the contract, he acts without jurisdiction. A deliberate departure from contract amounts to not only manifest disregard of his authority or a misconduct on his part, but it may tantamount to a mala fide action.

It is apt to refer to ***(2015) 3 SCC 49***, titled as ***Associate Builders*** *v.* ***Delhi Development Authority:-***

> "**31**. *The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:-*
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> *(i) a finding is based on no evidence, or*
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> *(ii) an Arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or*

> *(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*"

In the instant case, learned Arbitrator justly turned down the claim in view of clear stipulation contained in Clause 36 of the contract agreement.

7. In view of the above discussion, looking from any angle, this Court does not find any infirmity in the impugned award passed by the learned Arbitrator. Hence, the present petition being devoid of any merit, is dismissed. Pending application(s), if any, also stand disposed of.

(Jyotsna Rewal Dua)
Judge

23rd August, 2019
(reena)