

**IN THE COURT OF LXXXVII ADDL.CITY CIVIL &
SESSIONS JUDGE, (EXCLUSIVE DEDICATED
COMMERCIAL COURT)
AT BENGALURU (CCH.88)**

THIS THE 28th DAY OF OCTOBER 2021

**PRESENT:
SRI.CHANDRASHEKHAR U., B.Sc., LL.M.,
LXXXVII ADDL.CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

Com.A.S.No.39/2018

PLAINTIFF : **M/s Prasad & Company (Project Works) Limited,**
Having its Registered Office at:
No.6-3-871/3, Snehalatha Complex,
Begumpet, Hyderabad – 500016,
Represented by its Manager
(Technical),
Mr. Satish Kumar Reddy Dodla.

(Reptd by Lnd. Adv - CB)

AND

DEFENDANTS: **1. Bharat Heavy Electricals Limited,**
(A Government of India Undertaking)
Having its Office at:
Prof. C.N. R. Rao Circle,
Bangalore – 560 012,
(Industrial System Group),
Represented by its Managing
Director.

(Reptd by Lnd Adv. - GH)

2.

Shri Justice V. Jagannathan (Retd.)

Sole Arbitrator,
 Arbitration & Conciliation Centre –
 Bengaluru (Domestic & International)
 ‘Khanija Bhavana’, # 49, 3rd Floor,
 East Wing, Race Course Road,
 Bangalroe – 560 001.

Date of Institution of the suit	24.07.2018
Nature of the suit (suit on pronote, suit for declaration & Possession, Suit for injunction etc.)	Arbitration Suit
Date of commencement of recording of evidence	-
Date on which judgment was pronounced	28.10.2021
Total Duration	Year/s Month/s Day/s 03 03 04

(CHANDRASHEKHAR U),
 LXXXVII Addl.City Civil & Sessions Judge,
 (Exclusive dedicated Commercial Court)
 Bengaluru.

J U D G M E N T

The plaintiff has filed the above petition under Section 34(2) of the Arbitration & Conciliation Act, 1996, (herein after called “The Act”) for setting aside the Award,

dated 24.11.2017 in Arbitral Case No. 67/2015 and for allowing the claims of the plaintiff as prayed for.

2. The brief facts of the case of the plaintiff are as follows:

The plaintiff is a reputed construction company and has been undertaken turnkey infrastructure and construction projects from the year 1960. The plaintiff has executed several landmark construction projects in India and has many accomplishments to its credit and has received several recognition and awards from various Government and Public Sector Undertakings including the Defendant No.1. It is further stated that NTPC – Tamil Nadu Energy Company Limited, a joint venture company of N T P C Ltd., - National Thermal Power Corporation Limited. Tamil Nadu Electricity Board was set up a 1500 Mega Watts Thermal Power Plant at Vallur, Thiruvallur District, Tamilnadu. In the said regard, N T E C L called for tender for the installation of the entire In Plant Coal Handling Package on 31.10.2009, wherein, the defendant No.1 was the successful bidder and was awarded the contract.

Under the said contract between the NTECL and defendant No.1, the defendant No.1 could further sub-contract certain works and accordingly sub-contracted the civil package to the plaintiff, while the mechanical, electrical, dust suppression, illumination and ventilation packages were handed over to five other sub-contractors. It is further stated that as far as the civil package was concerned, defendant No.1 issued a Tender Enquiry, dated 19.2.2010 to select contractors of repute for the “Coal Handling Plant – Civil, Piling & Structural Package”. The plaintiff company was also invited by defendant No.1, to participate in the tender enquiry process. Along with the tender enquiry, Annexure-I titled as ‘Commercial terms and conditions for civil and structural works’ was provided by the defendant No.1 to the plaintiff. Defendant No.1 also made available bid documents in two volumes, Volume 1 relating to “Technical Specification” and Volume-2 relating to Technical Specifications for In Plant Coal Handling System”. The tender process also envisaged a two stage bid and provided for a reverse auction. The last date for submission of

quotations was 12.3.2010, which subsequently stood extended to 27.3.2010. The scope of work in relation to the Coal Handling Plant comprised all civil works, piling works and structural works. The said civil, piling and structural works were to be carried out in relation to certain major structures, such as, the stacker reclaimer foundation, crusher house, transfer points, conveyors, electrical buildings, dust separation pump house, road, drains, etc. Accordingly, the plaintiff submitted a price bid for Rs.1,23,12,00,000/-.

3. After opening the price bid and to get a better price, the defendant No.1 resorted to reverse auction, with a starting price of Rs.115,00,00,000/- with a minimum decremental bid of Rs.10,00,000/-. The reverse auction was held on 19.4.2010, in which the plaintiff participated and made a bid of Rs.114,90,00,000/-. Not being satisfied with the reduction offered in the reverse auction, defendant No.1 called the plaintiff for negotiations, vide letter dated 19.4.2010, as the price offered by the plaintiff was much higher than the estimates issued by defendant No.1 itself.

Ultimately, the bid amount was rounded to Rs.105,22,27,000/- which was accepted by the defendant No.1. However, the defendant No.1 fixed the said estimate amount to a sum of Rs.105,22,27,000/- without any details of quantity and rates contrary to CPWD/BHEL work policy. The said summary of estimation amounting to Rs.105,22,27,000/-, which was submitted before the Sole Arbitrator. Based on the estimation shown during the discussion in the meeting held on 20th April 2010, and having regard to the tender drawings, the plaintiff reduced to its offer price and agreed to a revised final offer of Rs.112,90,00,000/- for the work of civil, piling and structural works for In Plant Coal Handling Package plant - 3 x 500 MW Vallur TPP and enclosed a price abstract under the three heads piling work, civil work and structural work for a total sum of Rs.112,90,00,000/-, vide letter dated 24.4.2010. Thereafter, after visiting the site, auction negotiation meeting was held on 24.4.2010, and ultimately final amount was accepted by the defendant No.1

4. The crux of the dispute before the sole Arbitrator was that there was a substantial change in the scope of work, from what was stated in the tender documents/ drawings *vis-a-vis* the actual work executed as per the approved drawings. This resulted in the plaintiff undertaking additional work in relation to the Civil Package, for which, it ought to have been compensated. It is further stated that the plaintiff carried out works in relation to the civil package for a sum of Rs.232,24,79,905/- as against the contract price of Rs.112,90,00,000/-. It is further, shocking that plaintiff has till date received a net sum of Rs.43,00,48,334/-, despite complying with all its contractual obligations. However, vide the impugned award, the sole Arbitrator has rejected all claims of the plaintiff and allowed in part, the counter claim of defendant No.1. In doing so, the Sole arbitrator has re-written the terms of the contract, which is per se perverse and against the fundamental policy of Indian law. The impugned award is also against the basics notions of justice and is vitiated from patent illegality appearing on the face of the award.

5. It is further stated that, as per the technical specifications, Volume 1, Section 'A', wherein, the scope of work, in general would comprise detailed design engineering, supply and construction of all civil, structural steel, piling, architectural and other civil and structural works for the coal handling plant. Few of the major structures/buildings, such as Stacker Reclaimer Foundation, Crusher House, Transfer Points, conveyors, etc., which were described in clause 13 of section 'A', formed a part of the scope of work. The price for the entire civil package was to be quoted as per the price schedule in Section 'G' of Volume 1. As per clause 4 of Section 'G', the plaintiff was to quote a price covering variation, if any, up to (+/-) 15% in size by assessing rationally the work involved. Clause 4 further stipulates that the rates for additional scope beyond (+/-) 15% shall be discussed and settled mutually in proportion to prices quoted for given sizes mentioned in Section 'B'. Section 'B' relates to basic dimensions of major structures/ buildings are however dealt with in clause 13 of Section A of Volume 1. Further,

as per clause 5 of Section G – volume 1, the prices was to be quoted under separate heads for piling, civil and structural works as mentioned in the price schedule. It is further stated that clause Nos. 2, 3, 4 and 5 of Section ‘G’ volume-1 are very important to understand the case. The plaintiff has quoted contract price of Rs. 112,90,00,000/- on the basis of clause No.4 of Section G of volume No.1 and the rates were quoted as per clause No.5 of Section G for civil, piling and structural works and was not quoted on the basis of the volume or length of individual structures. Though, the Arbitrator accepts that the contract provided for payment of additional works beyond + or - 15%, he erred in holding that ‘quantity’ of work executed would not be a factor to determine additional work. The sole arbitrator has held that the increase in the quantity of work, would not result in a change in ‘size’ or ‘dimension’. The finding in this regard has the effect of re-writing the terms of the contract.

6. In Para No. 25, it is categorically stated that some of the deviation from the tender drawings *vis-a-vis* the approved drawings are as under:

- a. The number of floors in the crusher house increased from 4 to 6 and T. P. 6 increased from 4 to 8. This led to an increase in the dead load and live loads like, seismic loads and wind loads. The increase in seismic weight resulted in increased base shear, which in turn increased the number of piles and the RCC works at the foundation. The structural steel work also increased, due to the increase in the dead load and shear loads at different floor levels.
- b. The height of the trestles in the conveyor belt 8 A/b as per the tender drawings, due to change in the belt profile. This again resulted in the increase of dead loads and live loads and consequently, increase in the number of piles, RCC work and structural steel work.
- c. The tender drawings and work order did not provide for piling work and structural steel work for cable trestles (To see Section 'G' Price Schedule 1 – 8). However, they were required to be executed as per the approved drawings. Thus, the plaintiff had to carry out 358 piles as against "Not applicable" as depicted in the tender document. It is pertinent that these cable trestles, which were not contemplated in the original tender drawings, had to conform to the technical specification provided under clause 4.09.00 of Part-B, sub-section III D-01 of Volume 2, resulting in substantial additional work.

7. Another major factor for the increase in cost of the project was the use of additional structural steel. Though, the defendant No.1 was to supply structural steel materials

to an extent of 5000 MT (maximum) required for the structural steel works. In fact, the plaintiff has used 12,847 MT of structural steel, cost of variation and changes in the size. Though, many letters were written to the defendant No.1, to raise the price and pay the amount, on the other hand, the defendant No.1 deducted huge amount from the regular R.A bills. In fact, the plaintiff has carried out additional work for a sum of Rs.86,95,79,477/- and the same was brought to the notice of 1st defendant and requested the 1st defendant to make good the same. The plaintiff issued interim bill and regarding the same, there was a meeting held on 15.2.2012, wherein, the defendant No.1 proposed to accept the interim claim to an extent of Rs. 9,35,34,768/-. The respondent has caused enormous delay in providing inputs in the form of electrical and mechanical drawings as well as approval of civil and architectural drawings submitted by the claimant and M/s Tata Consultant, which consultant had to be appointed at the instance of respondents. The claimant, on its part, has availed M/s Meeltech Infrastructure Limited for making pre-

engineering design and estimation of the quantity of piling work, steel work and structural work. It is contended that even after the commencement of the work, the respondent changed, modified and respondent also delayed in approving the drawings and all these factors led to delay in execution of the work. The claimant therefore, wrote several letters to the respondent pointing that the dimension and load factor, as per the approved drawings have no comparison with tender data and the deviation has huge financial implication and in particular, the deviation in respect of dimension and load factor, at transfer point and pump houses were all brought to the attention of the respondent. The claimant submitted bill for extra payment that was not considered by the 1st defendant. The plaintiff brought to the notice of the defendant about huge differences between the sizes and load data mentioned in the tender drawings, and the corresponding prices and load data mentioned in mechanical drawings and in this regard, had prepared tabular statement annexure -2 containing deviation in prices and annexure -3 containing in load data and had

written number of letters to 1st defendant, but in vain. In fact, the plaintiff had actually used the total of 12,846.54 MTS of structural steel, only 6300 MTS was estimated and therefore, the plaintiff is entitled to the difference of cost and in addition, the plaintiff is also entitled to fabrication, erecting, painting, cealing, breaking, cladding, quantity of steel. On the other hand, the defendant insisted that steel worth Rs.62 crores as recoverable and accordingly, it recovered Rs.20,81,43,343/- from the running account bill of Vallur project and 32,15,44,173.70 from the running account bills of other projects that are being executed by the claimant. The plaintiff requested to release the Bank Guarantee, so that it could fund the project in question and complete the remaining work. The defendant did not take any action and therefore, the funding of the plaintiff was blocked. Apart from that, the defendant had unilaterally deducted an amount of Rs.1,32,19,548/- as liquidated damages. All attempts made by the plaintiff to get amount for the additional project found in vain.

8. The plaintiff by aggrieved the impugned Award, has challenged the same on the ground that the award is against the public policy of India and in contravention of the fundamental policy of Indian law, further, in conflict with the most basic notions of justice and vitiated by patent illegality on the face of the award. It is against the provisions of Contract Act and learned arbitrator has failed to consider the ratio laid down in **ONGC Ltd., Vs. Saw Pipes Ltd.,** and **Hindustan Zinc Ltd., Vs. Friends Coal Carbonisation** and also in the case of **McDermott International Inc. Vs. Burn Standard Co. Ltd.,**

9. Learned Arbitrator has not considered the case of the plaintiff regarding quantity which used and failed to consider the quantity actually used by the plaintiff to raise the structure and the rejection of Ex. P2 is highly incorrect. Learned Arbitrator has failed to understand the difference between the quantity, size and dimension. The sole Arbitrator has relied upon the clause No.4 Section G with Section 'A' regarding quantity, which is incorrect. The sole Arbitrator has not considered the extra work done by the

petitioner by spending more money. The tender quote for entire work and not for individual work and if individual work would take into consideration, it would exceed more than the offer made and it cost Rs.232,24,79,904/-. Learned Arbitrator has failed to consider all these aspects and rejected all the claims and allowed the counter claims made by the 1st defendant. The observation of the learned Arbitrator regarding measurement etc., is incorrect.

10. Learned Arbitrator has re-written the terms of the contract by not taking into account the change in load data as the factor to be considered in relation to additional work executed by the plaintiff, which has caused grave prejudice to the plaintiff. The sole Arbitrator has, contrary to the record and several correspondences between the plaintiff and 1st defendant, passed the Award and rejected the claims. The sole Arbitrator has not considered the amendment – II inserted by the 1st defendant and various letters produced before it. The error committed in amendment- II was not rectified in amendment – III, which was not taken note of by the Arbitrator. The reasons

assigned by the sole arbitrator to grant liquidated damages as counter claim is incorrect. Accordingly, he has prayed for setting aside the award.

11. Though, the respondent has filed its written objection, the same was not accepted as it was beyond time stipulated.

12. Heard, learned counsel for the petitioner and respondent.

13. Now, the points that arise for my consideration are:-

1. Whether the petitioner proves that the above Award passed by learned Arbitrator is against the materials placed on record by it and further, it is against public policy of India and that learned Arbitrator has interpreted the terms of the contract against the provisions of law, particularly, regarding liquidated damages, as such is liable to be set aside?

2. What Order ?

14. My findings on the above Points are as under:

Point No.1 :- In the Negative.

Point No.2 :- As per the final Order
for the following reasons.

REASONS

15. **Point No.1 :-** Learned counsel for the plaintiff would argue that he has challenged the Award under Section 34 of the Act, based upon the decision of the Apex Court in **Ssangyong Engineering and Construction Company Ltd., Associated Builders, PSA SICAL Terminals Private Limited** and two more decisions on the ground that the Award is against the most basic notions of justice and shocks the conscience of the Court and further, the construction of contract by learned Arbitrator is not properly done, which is expected from Arbitrator and that the Arbitrator has re-written the contract, which would be in breach of fundamental principles of justice and also it is against the terms of contract and as such it is patent illegality appearing on the face of the award. To substantiate his argument, he straightway relies upon the

decision of the Apex Court in **Ssangyong Engineering and Construction Company Vs. National Highways Authority of India**, reported in **(2019) 15 SCC 131**, wherein, their lordships have held at Para No.35 that:

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

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

39. “To elucidate, para 42.1 of *Associate Builders*, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of *Associate Builders*, however, would remain, for if an arbitrator gives no reasons for an award and

contravenes Section 31(3) of the 1996, Act, that would certainly amount to a patent illegality on the face of the award”

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

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

16. The next decision is in the case of **Associated Builders Vs. Delhi Development Authority**, reported in **(2015) 3 SCC 49**, wherein, their lordships have held at No.

42.1, it is held that:

42.1. “(a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1) (a) of the Act, which reads as under:

“28. Rules applicable to substance of dispute – (1) where the place of arbitration is situated in India

–

(a) In an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India”

42.2. “(b) A contravention of the Arbitration Act itself would be regarded as a patent illegality – for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside”

42.3. “(c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the arbitration Act, which reads as under:

“28. Rules applicable to substance of dispute –(1)- (2)

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction”.

This last contravention must be understood with a caveat. 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. 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”

17. The latest decision is in the case of **PSA Sical Terminals Private Limited Vs. Board of Trustees V.O. Chidambranar Port Trust Tuticorin and Ors.**, reported in **2021 SCC Online SC 508**, wherein, at Para No. 44, it is held that:

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

18. The decision in the case of **MMTC Ltd., Vs. Vedanta Ltd.**, reported in **(2019) 4 SCC 163**, wherein, it is held at Para No.13:

13. “It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict

with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitration, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence”

19. The next decision is one in the case of **National Highways Authority of India Vs. ITD Cementation India Ltd.**, reported in **(2015) 14 SCC 21**, wherein, it is held at Para No. 25 that:

25. “it is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the contract. The Court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair minded or reasonable person could do”

20. He has also relied upon the decision in the case of **Indian Oil Corporation Vs. Lloyds Steel Industries Ltd.**, on the file of the **Delhi High Court**, reported in **2007 SCC OnLine (Delhi) 1169**, wherein, at Para No.55, it is held that:

55. "It is clear from the above that Section 74 does not confer a special benefit upon any party, like the petitioner in this case. In a particular case where there is a clause of liquidated damages the Court will award to the party aggrieved only reasonable compensation which would not exceed an amount of liquidated damages stipulated in the contract. It would not however, follow therefrom that even when no loss is suffered, the amount stipulated as liquidated damages is to be awarded. Such a clause would operate when loss is suffered but it may normally be difficult to estimate the damages and, therefore, the genesis of providing such a clause is that the damages are pre-estimated. Thus, discretion of the Court in the matter of reducing the amount of damages agreed upon is left unqualified by any specific limitation. The guiding principle is 'reasonable compensation'. In order to see what would be the reasonable compensation in a given case, the court can adjudge the said compensation in that case. For this purpose, as held in *Fateh Chand (supra)* it is the duty of the Court to award compensation according to settled principles. Settled principles warrant not to award a compensation where no loss is suffered, as one cannot compensate a person who has not suffered any loss or damage. There may be cases where the actual loss or damage is incapable of proof; facts may be so complicated that it may be difficult for the party to prove actual extent of the loss or damage. Section 74 exempts him from such responsibility and enables him to claim compensation in spite of his failure to prove the actual extent of the loss or damage, provided the basic requirement for award of 'compensation', viz., the fact that he has suffered some loss or damage is established. The proof of this basic requirement is not dispensed with by Section 74. That the party complaining of breach of contract and claiming compensation is entitled to succeed only on proof of 'legal injury' having been suffered by him in the sense of some loss or damage having been sustained on account of such breach, is

clear from Sections 73 and 74. Section 74 is only supplementary to Section 73, and it does not make any departure from the principle behind Section 73 in regard to this matter. Every case of compensation for breach of contract has to be dealt with on the basis of Section 73”.

21. With the help of the above decisions, he would argue that when the entire arbitral award is read, along with the documents and oral evidence given by the parties before the Arbitrator, it is clear that the contract is re-written and the award is against the public policy of India and that it is perverse and patent illegality is appearing on the face of the award and learned Arbitrator has passed the award by ignoring the material evidence placed before it. To substantiate his argument, with reference to the above decision and ratio laid down therein, he would argue that the Sole Arbitrator accepts that contract provides for additional work beyond +/- 15% in his award Para No.67, but, when he comes to the question of quantity of work executed, he has opined that increase in the quantity of work would not result in change in the size or dimension, which is against the terms of the contract, therefore,

learned Arbitrator has re-written the contract. He referred to Para No.72 and 73 of the award. Further, learned Arbitrator has opined while framing question for determination, has stated at Para No.71 that “the next question therefore is whether the contract document provides for assessing the value of additional work/extra payment, on the basis of either quantity or in terms of dimensions/sizes of the structure. The Para No.72 of the award, states as follows: -

- (a) A close look at very terms and conditions of the contract document reveals that in respect of additional work beyond +/- 15% in terms of the volume or area or length or number shall be discussed mutually by the parties and the prices quoted for the given phrases mentioned in Vol -1 Section ‘B’ of technical specification will be taken into consideration.

22. Nowhere, in the contract document is there any clause which provides for assessing the additional work in terms of “quantity”. So, by referring the contract document i.e., clause No.4 of Vol-1 Section ‘G’, learned Arbitrator has opined that the question of arriving at the price in respect of variation/extra work on the basis of quantity is not

contemplated in the contract between the parties. He further opines that neither the tender document, speaks of quantity anywhere. So, according to learned counsel for the plaintiff, the above observation is against the terms of the contract and against basic notions of justice, which would shock the conscience of the Court as the Arbitrator has considered the contract in a manner that no fair minded or reasonable person would do. In the said connection, he would draw the attention of the Court to clause Nos. 4 & 5 of Section 'G' Vol-1, which provide for covering of variation if any, up to +/- 15% in sizes and it is further stated that if in case of variations if any beyond +/- 15%, the rates for additional scope beyond +/- 15% in terms of either volume or area or length or number as the case may be, shall be discussed and settled mutually in proportion to the price quantity for the given sizes mentioned in Section 'B'. In case of any additional or deletion is required as per the requirement of final drawings, and employment specification for the completeness of the job, the price shall be settled after mutual agreement with BHEL for similar

type of structure. Point No.5.0 states that bidder shall quote prices separately for piling work, civil work and structural work mentioned in the price schedule. So, according to him, the clause provides for the tentative basic dimension for major structures/ building of CHP, has given in tender drawing in Vol -2 summarises as per clause No. 13. So, the main grievance of the plaintiff is that as far as the piling work is concerned, which consumed huge quantity of steel and as per the contract document, the defendant had agreed to provide 5000 MT of steel from its side and the total steel which were used by the plaintiff is more than 12000 MT and if the contention of the defendant that the plaintiff is only entitled to variation up to +/- of 15%, then, it would be huge loss to the plaintiff and the same cannot be held to be reasonable. In the said regard, according to learned counsel for the plaintiff, there was change in scope of the work, which was due to change in nature of work, dimension, volume and increase in quantity of concrete mixture for raising more piling, than one agreed under the contract. Therefore, the plaintiff has claimed

232,24,79,905/- towards the actual work executed and the amount under the contract was only 112,90,00,000/- Therefore, he has sought for payment of Rs.116.22 crores, regarding excess work done relating to piling work, civil work and structural work. According to him, there is 105.40% change in piling work, 95.80% in civil work, 115.58% in structural work, which is beyond +/- 15% as per clause No.4.0 of Section 'G' Vol -1, i.e., contract document. He would further argue that though these aspects were argued before learned Arbitrator, learned Arbitrator has not considered the same and stuck on to the definition of size and the measurement, which were provided under the contract document. Learned counsel for the plaintiff would further argue that the load data as given in the drawing at the time of bidding was only tentative and it came to the light after commencement of the work and these facts have been intimated to the defendant on time, now and then, and requested the defendant to pay the extra amount. On the other hand, the defendant by bringing amendment 1, 2 and 3 raised the contract amount from

112 crores to 126 crores, which according to learned counsel for plaintiff is insufficient. The grounds were amendment brought to the work order after mutual discussion by the defendant goes to show that there is change, deviation in the work that has been agreed upon by the plaintiff to carry on under the contract document.

23. After submitting the argument on load data, etc., he would argue that under the contract document, under the head records and measurement in Section 'B' of Vol-1 states that the contractor shall submit to the defendant No.1 claim in respect of the work done by way of quantity. The relevant portion is stated as under:

“the contractor shall, once in every month, submit to the engineer details of his claim for the work done by him up to and including the previous month, which are not covered by the contract agreement in any of the following respects:

- (a) Deviation from the items and specifications provided in the contract documents.
- (b) Extra items/new items of work
- (c) Quantities in excess of those provided in the contract schedule.
- (d) Items in respect of which rates have not been settled.

24. He refers to untitled clause that C21 that the data furnished in various Annexures, enclosed with the tender specification are only approximate and for guidance. However, the change in the design and in the quantity may occur, as usual in any large scale work. Therefore, according to learned counsel for the plaintiff, the observation of learned Arbitrator that change in quantity will not be a factor for arriving at payment above +/- 15% variation is against the contract and it is nothing but, re-appreciating the terms of the contract. He would further argue based upon the deviation of size, dimension, quantity, volume as per the Oxford dictionary and on the basis of the arguments, that learned Arbitrator has not considered the quantity, which is used for raising the structure, which is beyond the scope of the contract. According to him, the observation is in contravention of Section 70 of the Contract Act, which falls within the purview of patent illegality and against the law of the land and has held in the decision quoted above.

25. Regarding change in scope of work, he would argue by referring to the dispute between the party. To show that the finding of learned Arbitrator amounts to patent illegality, he would argue that the paragraphs No. 23 and 40(2) and (3) of the impugned award, though there is contention of the plaintiff that there is a change in scope of work and the plaintiff is entitled to a sum of Rs.116.2 crores, but the finding rendered at para No.78, that it is an admitted position that there is no change in scope of work is against the law and it is perverse, amounting to patent illegality. It is stated in para No.78, that there is no dispute between the parties that there has been no change in scope of work and learned Arbitrator has gone to the extent of stating that the claimant has not taken any stand in the pleadings or in the evidence, before the Tribunal that the entire scope of work underwent a seachnge, but, it is against the claim statement and if otherwise, why the plaintiff would approach the tribunal for resolution of dispute. He also refers to clause No.4 as I have already stated about the work and nature of work, etc. and he

claims Rs.232,24,79,905/-, which is more than 100% of the work entrusted for which, the defendant is answerable. He would further argue that learned Arbitrator has not considered the load data and the observation regarding load data at Paragraph No. 91 is perverse and it is stated therein that load data can be considered only in relation to additional of work undertaken towards stacker reclaimer and subsequently, finds that various in load data can be considered in relation to convenience and crusher work, but, Arbitrator has denied the benefit of his findings. This is the main grievance of the plaintiff that learned Arbitrator has not considered the materials placed before him. Regarding structural steel, he would argue that as per Section 'B' of Vol-1, untitled materials, it stipulated that the plaintiff shall at his own expenses provide all the construction materials required for the work including cement, reinforcement steel and structural steel. Further, under the clause 'materials supplied by BHEL free of costs', the defendant No.1 supplied structural steel materials to an extent of 5000 MT. Even, as per pretender estimate of

defendant No.1 as per Ex.R5, while, submitting the bid to NTECL, the defendant No.1 had arrived at an estimated price of 105,22,27,000/- for the entire civil project taking into account of pre-supply of 5000 MT structural steel. If that is the case, if the work goes beyond 15%, then, particularly, in respect of structural steel, then, who has to indemnify. In fact, plaintiff has used 12747 MT of steel, which is more than 7,747 MT of the steel supplied by the defendant. Therefore, who has to bear those expenses? Learned Arbitrator at Para No.123 observed that a sum of Rs.5,37,24,280/- is to be recovered from the plaintiff despite, the said amount having already been recovered by the defendant No.1. So, the main grievance is that the plaintiff has spent more money for procuring steel and what are all amounts spent by the defendant has been recovered from RA Bills. According to learned counsel for the plaintiff, a sum of Rs.69,17,95,764/- has already been recovered towards cost of the steel, then, the contract landed the plaintiff in more distress than profit.

26. Regarding, amendment 2 and 3, he would argue

that learned arbitrator has accepted second amendment though it was not correct. The contention of the plaintiff was not accepted regarding change, deviation of the work, quantity used for piling work, etc. According to learned counsel, the error committed in amendment 2 has been rectified in amendment 3, but, learned arbitrator has completely ignored the vital evidence, particularly, the Ex.P11, 14, 15, 17, 21, 22, 23 and 24. In spite of protest letters, there was no discussion about the quantity and deviation of work, the amount spent and their entitlement of the plaintiff of excess amount. Learned arbitrator has not considered the importance of pourcards, which disclose the quality of concrete mixture used for raising piling work. In fact, it was agreed for construction of 1528 pilings, but, later, the plaintiff had to construct 3785 pilings, value of 54,24,61,076/- which is above 105% from the contract price for piling work, but, learned Arbitrator has not considered this aspect and regarding liquidated damages, he would argue that when there is no proof of damage sustained by the defendant, there is no question of payment

of liquidated damages, just because contract provides for it. In the said regard, he relies upon the decision in the case of **Arosan Enterprises Ltd., Vs. Union of India and Anr.**, reported in **(1999) 9 SCC 449**, Para No.27 and **Indian Oil Corporation Vs. Lloyds Steel Industries Ltd.**, reported in **2007 SCC Online Delhi 1169** and **Kailash Nath Vs. DDA**, reported in **(2015) 4 SCC 136**. Though, it is liquidated, unless and until, it is shown that the defendant has actually suffered the said loss, the same cannot be awarded, which is against the principles of law and the ignorance of various laws, laid down by the Apex Court and various High Courts, which amounts to patent illegality and therefore, according to him, the award is liable to be set aside.

27. Per contra, learned counsel for the defendant No.1 would argue that on behalf of NTECL, NTPC invited bid on 31.10.2009 for execution of work relating to power project from electrical bidder for supply and installation of In plant Coal Handling System. The respondent emerged as successful bidder, in relation to the tender and awarded

the work and the total amount of the contract given by NTECL is 290 crores, which relates to civil, mechanical and electrical works. After defendant quoting tender, the plaintiff offered his bid, which was accepted after reverse auctioning for Rs.112 crores and further there is enormous delay in completion of work as could be seen from the document and requests made by the plaintiff to extend time. The defendant No.1 has already cleared bills raised by the plaintiff to the tune of Rs.108.94 crores and the amount claimed by the plaintiff to the tune of Rs.130,60,18,408/- towards piling work is without any basis and therefore, learned arbitrator has rightly rejected the claim. Regarding allowing of counter claim, it is contended that when the contract provides for liquidated damages, on account of delay, then, plaintiff is bound to pay the same. Ofcourse, the defendant though filed written statement, which was not accepted, but, there are no legal hurdles to proceed with the case without there being objection statement for the reason that the Court has to decide whether the plaintiff has made out any grounds

available under Section 34 of the Act. In the said regard, he relies upon the decision in the case of **Fiza Developers and Inter Trade Private Limited Vs. AMCI (India) Private Limited and another**, reported in **(2009) 17 SCC 796**. Therefore, I am of the view that even if there is no written statement, it will not help the plaintiff to take it as granted, the allegation made in the present suit. It will not confer any advantage on the plaintiff and plaintiff cannot seek relief under it.

28. Learned counsel for the defendant No.1 would further argue that the scope of Section 34 is limited and there is no provision for review of the Judgment and this Court cannot sit as Appeal Court to re-appreciate the evidence as held in the decision of **Sutlej Construction Ltd., Vs. Union Territory of India**, reported in **(2018) 1 SCC 718 and Associate Builders Vs. Delhi Development Authority**, reported in **(2015) 3 SCC 49**. Ofcourse, there is no dispute about this fact, this Court acting under Section 34 cannot re-appreciate the evidence already adduced or cannot substitute its view in place of view expressed by

learned Arbitrator, it is already settled. He would further argue that Arbitral Tribunal by considering the materials on record and after interpreting the provisions of contract has passed a well-reasoned award and it cannot be said that the award stands vitiated by non-consideration of materials and non-consideration of relevant aspect of the matter.

29. To counter the argument of the plaintiff regarding interpretation of the contract by learned Arbitral Tribunal, he would submit that the plaintiff is seeking to intervene the interpretation of the contract by the Arbitral Tribunal with its own interpretation which is not permissible. Merely because there are two interpretations possible of a contractual provision and the Arbitral Tribunal has interpreted the same in one of the two available interpretations, Section 34 the Court will not act and cannot disturb such interpretation by the Arbitral Tribunal as held in the decision in the case of **Rashtriya Ispat Nigam Ltd., Vs. Diwan Chand Ram Saran**, reported in **(2015) 5 SCC 306**, wherein, at para 43, it is held

43. "In any case, assuming that Clause 9.3 was

capable of two interpretations, the view taken by the arbitrator was clearly a possible if not a plausible one. It is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract. That being the position, the High Court had no reason to interfere with the award and substitute its view in place of the interpretation accepted by the arbitrator“

30. He would cite another decision in the case of **National Highways Authority of India Vs. ITD Cementation India Ltd.**, reported in **(2015) 14 SCC 21**, wherein, at para No. 25, it is held that:

25. “it is thus well settled that construction of the terms of a contract is primarily for an arbitrator to decide. He is entitled to take the view which he holds to be the correct one after considering the material before him and after interpreting the provisions of the contract. The Court while considering challenge to an arbitral award does not sit in appeal over the findings and decisions unless the arbitrator construes the contract in such a way that no fair minded or reasonable person could do”

31. So, with the help of these two decisions, he would argue that this Court cannot disturb the interpretations made by learned Arbitrator, which is nothing, but, substituting the view of this Court, which is not permissible under Section 34 of the Act.

32. He would further argue by relying upon the decision in the case of **MMTC Ltd., Vs. Vedanta Ltd.**, reported in **(2019) 4 SCC 163**, that the Court under Section 34 of the Act cannot sit in Appeal to review the observation made by learned Arbitrator and learned counsel for the defendant No.1 also cites decision in the case of **Sangyong Engineering and Construction Company Ltd., Vs. National Highways Authority of India**, reported in **2019 SCC Online 677**, which further reaffirms the position of law regarding construction of the terms of the contract, which is primary duty of the Arbitrator and not the Court sitting under Section 34 of the Act. With the help of the above decisions, he would argue that the plaintiff having made several claims before Arbitral Tribunal for the alleged additional work done and computed all such claims entirely in terms of quantity, but, the contract between the parties, did not recognise any claim for additional work in terms of quantity. In terms of contract between the parties, claim for additional work could only be entertained, when there was change in the scope of work in terms of area, volume, length

or number. It was not the case of the plaintiff before Tribunal that the scope of work had undergone a seachange and the plaintiff had not computed any of the claims in terms of area, volume, length or number. Learned Arbitrator has given proper reasons to arrive at conclusion that the scope of work, does not include the one which has been canvassed by the plaintiff. He refers to the reason assigned by learned Arbitrator and according to him, the reasons are just and proper and those reasons cannot be interfered by this Court as an Applet Court. Since, it is a lump sum contract and the plaintiff having accepted the terms and conditions of the contract agreement, on the basis of lump sum contract, then, there is no scope for claiming anything beyond +/- 15% relating to pilling, civil, structural work, due to variations in dimension loading data. According to learned counsel for the defendant No.1, the claimant has to consider tender specification and the line diagram given along with notice inviting tender and based on this, the claimant had to prepare basic engineering, drawing and arriving at the claims for

quotation. Keeping in view of the lump sum nature of the contract that the design and drawings is in the scope of claimant, so that claim can be entertained under any circumstances. On the other hand, by considering the request, the defendant No.1 by way of amendment Nos. 1, 2, 3, has raised the value of construction and price of contract up to 126 crores from 112 crores. Therefore, everything has been considered by the defendant No.1 regarding volume of work, quantity and deviation in the work. The plaintiff having accepted the terms and condition, now cannot claim the work more than 126 crores and the estimate given by him that he is entitled to 233 crores and odd, is nothing, but, exaggeration and there is no basis for it. Clause No. 3.6 at Page NO. 004 specifically says supply of materials within THE scope of tenderer and when the supply of all materials is within the scope of the tenderer any quantity of materials which may be required for satisfactory and successful execution of the work is the responsibility of the tenderer, except the supply of steel to the extent of 5000 MT, etc. In this regard, he drew the

attention of the Court to clause No.10, 11 of tender document. Regarding the claim under the head of quantity, he would argue that as and when the plaintiff completed the work and raised the invoices, the same has been paid by the defendant no.1 and as per the letter given by the plaintiff, the defendant No.1 has recovered the amount pertaining to steel supplied in excess of 5000 MT. In this regard, he drew the attention of the Court Ex.P7 to P9. By reading Ex.P7 to P9, it is clear that tender quantity is not given remotely contemplated or provided for in the contract between the parties and any reference to quantity is unknown to contract of this nature. In the said regard, he has also referred to cross-examination of PW1, to question No. 82 and he would further argue that the plaintiff has miserably failed to demonstrate before the Tribunal that tender quantities were prescribed in the contract and agreed upon by the parties and therefore the column No.3 in Ex.P222 is explained the financial imagination of the plaintiff and defendant is not bound by the same. He refers to various documents, though they are not required to be

considered by this Court as the scope is very limited, but, to understand the case better, this Court refers to various documents produced by both the parties and also the reason assigned by learned arbitrator in his award. According to learned counsel for the defendant, the production of pour cards is not sufficient, as it is meant for maintaining quality check and not the quantity and further regarding structural steel, he would argue that it was made known to the plaintiff that defendant No.1 would supply only 5000 MT and extra steel must be purchased by the plaintiff out of the tender amount and for that it cannot claim excess amount as contended in the claim statement.

33. Regarding, liquidated damages, he would argue that the plaintiff has stated that it has completed 95% of the work and for want of nonpayment of the amount paid by the defendant No.1, he could not complete the work. The contract clause relating to the liquidated damages, provides for liquidated damages at 5% of the tender amount, which has been awarded by the learned Arbitrator. So, according

to learned counsel for the defendant No.1, there is nothing to interfere with the findings of learned arbitrator. With this back ground, keeping in mind, the various decisions of Apex Court and other High Courts, this Court sitting under Section 34 has to see as to whether there is any patent illegality in the Award or that award is against the public policy or that learned Arbitrator has not considered the evidence placed before him, while rejecting the claim and allowing the counter claim. To know it better, it is necessary to go through the Award, produced by the plaintiff along with claim petition herein, the plaintiff specifically refers to Para No.17, wherein, it is stated that, the plaintiff had brought to the notice of the defendant about huge difference between the sizes of load data mentioned in the tender drawings and it is observed that the claimant was not satisfied with second amendment and therefore, it is not binding on it. Further, at Para No. 21 of the award, it is stated that the details of major structure under dispute according to the claimant was additional work in straker –reclaimer area, additional work in BCN 8

A/B (Belt consider 8 A/B) and cable trestles. The claimant has to carryout 1300 piles by using 1149 MT for structural steel and learned Arbitrator has specifically stated in Para No.23, about claim made by the claimant and that there is deviation in work and the work, which has been carried out beyond the scope of the work entrusted as per the bid document. Learned Arbitrator after raising suitable points at Para 40(2) that the claim made by the plaintiff towards the additional work at Rs.116.22 crores and learned arbitrator has mentioned about scope of the work in Para No. 43 and also the contention of the plaintiff about illegality in amendment No.2 and the same has not been rectified by amendment No.3. All the contentions were taken into consideration by learned arbitrator in Para No.41 to 49 and referred to various documents produced by the plaintiff at Ex.P7, 8, 18, 19, 36, 40, 61, 62 to 70. Ex.P222, 228, P39 and P40 and also the evidence of RW1, RW2 and all the decisions quoted by learned counsel for the plaintiff. After referring the argument, learned Arbitrator refers to Ex.P9 notice of change to work order and it was enhanced

to 112 crores to 122 crores and odd and as per Ex.P36 notice to change to work order, which discloses the change in additional price of 4,06,60,184/- and he has referred the Section 1 regarding scope of work, basic dimension of major structures, building, general scope of work, instructions to tenderer and various other aspects found in tender document specifically, clause No.3.0, which deals with dimensions mentioned in Section (a) and intend of specification, scope of the work, etc., and throws light on the submission made by learned Senior counsel for the plaintiff and learned counsel for the defendant No.1 and refers to the lump sum contract and observation of learned author P.C. Marthanda, in his book relating to contract. So, by referring to various documents and referring to book regarding quantity, size, etc., he would come to a conclusion that it is a lumpsum contract and which provides for extra payment up to 15% of variation. So, learned Arbitrator observes very clearly that when the contract provides for variation up to 15%, then, the claim of the plaintiff to the tune of 116 crores beyond the agreed

lumpsum contract, then, it is not defined under the contract and Tribunal cannot go beyond the terms of the contract. Though, learned arbitrator has taken into consideration, the contention raised by the plaintiff herein and defendant in his impugned Award, in Para No.71, learned Arbitrator specifically deals about payment on the basis of either quantity or in terms of the dimension, sizes of the structure. Para No. 72 to 74, he has very clearly discussed about the term 'quantity' and payment based upon it, whether the terms of the contract provide for payment of money on the basis of quantity or in terms of the dimensions /sizes of the structure. He has given ample attention to the argument canvased by learned Sr. counsel, based upon Ex.P118 to 115 i.e, the users portal and in the same way, it is observed by learned Arbitrator that the pour card is only to find out the quality of the concrete mixture used and it is mentioned in Indian Standard Plain and reinforce concrete code of practice submitted by Bureau of Indian Standard and the plaintiff mainly relies upon the pour cards to show that more quantity of mixtures has been

used for more number of piles, than, one agreed by it, but learned Arbitrator has elaborately discussed this aspect, in his impugned Award Para Nos. 76, 77 and 78. This is the main grievance of the plaintiff that learned Arbitrator has not considered the quantity, but, applied the dimensions / size principle as agreed in the terms of the contract. The total amount paid by the defendant No.1 to the plaintiff is 121 crores as per evidence of RW2 and there remains 5,22,81,839/- and it is admitted that 5% of the work remains, which has to be borne by the defendant to complete and therefore, it sought for liquidated damages. So, I do not find any mistake in the observation made by learned Arbitrator or that it is against Section 73 of Indian Contract Act. If we read the decision cited by both the counsels along with the documents and observation of learned Arbitrator, I do not find any error committed by the learned Arbitrator. The plaintiff has failed to show that it has spent Rs.116 crores, more than the contract price of Rs.124 crores. When the contract terms provide for variation of work to the tune of +/- 15% which has been

substituted by way of amendment No.3, then, where is the question of the plaintiff claiming the amount of 116 crores in addition to 121 crores received by it. Therefore, pour cards cannot be used to find out the quantity or quality, which is not stated in the terms of the contract. So, the contention that learned arbitrator has re-written the terms of the contract cannot be accepted. The other contention that the award is against the public policy and it is patently illegal as it has failed to consider the documents cannot be accepted as the award itself is very clear and well-reasoned.

34. Now, coming to the aspect of liquidated damages, as per the terms of the contract, the work has to be completed within stipulated time, then, it is entitled to liquidated damages as claimed in the contract. Admittedly, there is delay in completion of the work and defendant has extended the time, from time to time, still 95% of the work is completed and there remains 5% of the work, to be completed. Therefore, it is clear that the defendant No.1 has got every right to claim the liquidated damages, which has been calculated by learned Arbitrator and awarded the

same. Therefore, the plaintiff cannot harp upon it. Regarding the Bank Guarantee, the Bank Guarantee has been expired for want of renewal and therefore, it cannot be held that the respondent held Bank Guarantee to the tune of Rs.14,41,00,000/-, out of four Bank Guarantees and all the Bank Guarantees have been expired, as could be seen from the copies of Bank Guarantee produced by the respondent before the Tribunal. Therefore, learned Arbitrator has rightly rejected the claim made by the plaintiff and allowed the counter claim regarding liquidated damages and even after that the plaintiff has written about Bank Guarantee, which has come to an end by the afflux of time. So, when we peruse the entire materials on record, there is nothing to show that the Arbitrator has exceeded his limit or interpreted the contract against the terms of the contract, resulting in patent illegality or that the Arbitrator has failed to consider the relevant documents. This Court not being a court of appeal cannot substitute its view regarding the deviation of work, scope of work, which is beyond the scope of contract documents and the plaintiff

having accepted the bid in a reverse auction, has accepted the terms of the contract and now he cannot claim the more amount. The excess amount beyond 15% has been claimed by way of amendments to the work order up to 124 crores and major portion of the amount has been received by the plaintiff. The defendant No.1 has produced Exs.R1 to R24 and the letter written by the plaintiff also shows that he has requested to deduct the value of the steel, out of the RA bill and therefore, he cannot harp upon the said aspect in the present case. The plaintiff was aware of the nature of the work being a reputed contractor and having completed the work up to 95% and now he cannot claim 116 cores more than one agreed under the tender document. Therefore, the Tribunal has not exceeded its limit in deciding the case and there is no error apparent on record as contended by the plaintiff in the grounds urged under Section 34. So, when we consider the grounds urged along with document, terms of the contract along with the decisions, then, I am of the view that there is nothing to substitute any view other than one stated by learned

Arbitrator. There are no merits in the application. Hence, I answer the point No.1 in the **Negative**.

35. **Point No.2** :- For the aforesaid reasons, I proceed to pass the following Order.

ORDER

The suit filed by the plaintiff U/S. 34 of Arbitration & Conciliation Act, 1996 is hereby dismissed. No costs.

(Dictated to the Stenographer partly and partly on computer, typed by him, corrected and then pronounced by me in open Court on this the **28th day of October, 2021**).

(CHANDRASHEKHAR U),
LXXXVII Addl.City Civil & Sessions Judge,
(Exclusive dedicated commercial court)
Bengaluru.