Reserved On : -
Pronounced On : 01/05/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 7110 of 1998

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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DISTRICT MANAGER, FOOD CORPORATION OF INDIA & ANR.
Versus
B M SAMANI . & ANR.

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Appearance:
MR NIRAD D BUCH(4000) for the Appellants
MR MITUL SHELAT, SR. ADVOCATE with MR PRERAK P OZA(8279) for the Respondent No.1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. The present appeal is preferred under Section 39 of the Arbitration Act, 1940 (in short “the Act”), calling in question the legality and validity of the common judgment and order dated 5.12.1992 passed in CMA No. 69 of 1991 and CMA No. 132 of 1991, whereby CMA No. 132 of 1991 filed by the appellant - Food Corporation of India was dismissed, and CMA No. 69 of 1991 filed by the contractor was allowed, directing the award dated 18.3.1991 passed by the learned Arbitrator

to be made as rule of the court and registered as a decree with interest at the rate of 18% per annum from the date of the award till realisation, along with costs. Thereby, the application filed under Sections 30 and 33 of the Act was rejected and the award dated 18.3.1991 was upheld.

2. Brief facts leading to filing of present First Appeal are as under:-

2.1 The appellant, Food Corporation of India, had awarded stevedoring, clearing, handling and transport contract to the respondent contractor M/s B.M. Samani for a period of two years between 25.8.1980 and 24.8.1982. Disputes having arisen between the parties, the FCI filed an application under Section 20 of the Act for appointment of an Arbitrator, being CMA No. 170 of 1984, which was allowed vide order dated 13.7.1989 by the learned Civil Judge, (SD), Jamnagar. The learned trial court directed that the Managing Director of the FCI shall appoint an Arbitrator within four months from the date of the order, and that the Arbitrator so appointed shall proceed in accordance with the terms and conditions of the agreement and resolve the dispute as per clause 20 of the agreement. Pursuant to the said order, the Managing Director of the FCI appointed Mr. R.K. Gupta as Arbitrator to resolve the disputes between the parties.

2.2 Since Mr. R.K. Gupta could not publish the award within the stipulated time i.e. within two months from the date of the award, the FCI filed CMA No. 127 of 1990 under Section 20 of

the Act seeking extension of time for the arbitration proceedings. Simultaneously, contractor M/s B.M. Samani preferred CMA No. 111 of 1990 under Sections 5 and 12 of the Act seeking revocation of the authority of the Arbitrator. Subsequently, Mr. R.K. Gupta resigned from his position as Arbitrator, and the FCI thereafter appointed Mr. Shiv Prakash, Additional Legal Advisor, Ministry of Law, New Delhi, as Arbitrator for resolution of the dispute. After conducting the arbitration proceedings and issuing notice under Section 14(1) of the Act, Arbitrator Mr. Shiv Prakash published the award of 18.3.1991.

2.3 Thereafter, contractor M/s B.M. Samani filed CMA No. 69 of 1991 directing the FCI to file the original award along with depositions so as to make the award as rule of the court. As against the said application, the FCI filed CMA No. 132 of 1991 seeking to set aside the award published by the Arbitrator. The impugned order records dismissal of the FCI's application and allowance of the contractor's CMA, being aggrieved by which the FCI has preferred the present first appeal.

2.4 Before the learned Arbitrator, contractor M/s B.M. Samani had filed following claims:-

> *"I. Claim of Rs 44,015.93 towards amount illegally withheld/deducted from the bills.*
>
> *II. Claim of Rs 15,78,681.68 towards dispatch money earned on account of early release of 11 vessels during the contract period.*

III. Claim for release of Bank Guarantee of Rs 45,000/- furnished as security deposit

IV. Claim for interest at the rate of 18% on claimed amount.

V. Claim for legal expenses of Rs 2000/-."

2.5 Against the aforesaid claims, the FCI had filed following counter claims:-

"I. Counter Claim No.1 for Rs 64,931.25 as per para 7 of the CC

II. Counter Claim No.2 for Rs 1,92,413.86 toward destination shortages

III. Counter Claim No.3 for adjustment of Rs.45,000 bank guarantee against the above two claims

IV. Counter Claim No.4 towards interest."

2.6 The Arbitrator allowed Claim No. 1 of the contractor pertaining to illegal deduction of Rs.44,015.93; Claim No. 2 to the extent of granting benefit of dispatch money amounting to Rs. 13,65,352.52, and Claims No. 3 and 5 were also allowed, however, interest was disallowed.

2.7 As regards the counter claims of the FCI, Counter Claim No. 1 was allowed to the extent of Rs. 6,40,931.35, Counter Claim No. 2 to the extent of Rs. 1,92,413.86, and an adjustment of Rs. 45000/- was granted in favour of the claimant against encashment of counter claims No. 1 and 2 and disallowed counter claim No.4 towards interest.

2.8 It is in aforesaid background that the FCI, being aggrieved by the allowance of the contractor's claims by the Arbitrator, has preferred the present first appeal.

3. Learned Advocate Mr. Nirad Buch appearing for the FCI and learned Senior Counsel Mr. Mitul Shelat appearing for the contractor have filed their respective written submissions, both of which are taken on record.

4. Submissions of learned advocate Mr.Nirad Buch in short are as under:-

- That an Arbitrator or umpire has misconducted himself or the proceedings;
- That an award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under section 35;
- That an award has been improperly procured or is otherwise invalid.
- That the learned Arbitrator has transgressed the jurisdiction and the agreement.
- That the learned Arbitrator has committed a material impropriety and a legal misconduct and grievous favor to the contractor.
- That no clause in the agreement entitles the contractor to get dispatch money. P. 26 of the Agreement (Clause I, Part XX-I, Part I).

- That even as per the custom, practice and rules of business, the contractor was not entitled, for claim of dispatch money.
- That dispatch money stems from Charter Party agreement between the FCI and the charterer, in which the Contractor is not a party and thus, cannot validly claim the dispatch money.
- That dispatch money was in fact Rs. 12,99,923.62, but calculated at Rs. 15,78,681.68.
- That the claim was Rs. 15,78,681.68; The learned Arbitrator awarded Rs. 13,65,352.52 and although the Contractor did not challenge it, the learned court increased it to Rs. 15,78,681.68.The learned Arbitrator refused to award interest to the Contractor, and the court allowed it without challenge by the contractor.
- That the learned Arbitrator passed the award in ignorance of material evidence and decides the matter not in accordance with the terms of the contract and has construed the contract in unreasonable manner.
- That it is well-settled that Arbitrator is the creature of contract executed between the parties and thereby, the Arbitrator cannot ignore the terms of the contract. Consistent view is prevailing that if the learned Arbitrator does not adhere to or disregard the terms of the contract, it would amount to a jurisdictional error and the Court can therefore, interfere with the award.
- That it was incumbent upon the learned civil court to examine as to whether the Arbitrator had acted in excess of his jurisdiction, by disregarding the terms of reference

or the arbitration agreement or the terms of contract, which would indeed be a jurisdictional error in rendering the award.

- That a deliberate departure or conscious disregard of the contract would have resulted in not only manifesting the disregarding of his authority by the Arbitrator or misconduct on his part, but also tantamount to mala fide action/patent illegality. The Arbitrator could not have acted arbitrarily, irrationally, independently or capriciously of the contract even under the old regime of Arbitration Act. In a case where the Arbitrator acted beyond his jurisdiction, interference by the Court in setting aside the award was permissible.

4.1 Mainly upon above submissions, learned advocate Mr. Buch seeks to allow this appeal and to quash and set aside the impugned award.

4.2 In support of his submission, learned advocate Mr. Buch has relied upon following authorities:-

1. P. C. Snehal Construction Co. Versus Municipal Corporation of Ahmedabad - First Appeal No. 617 of 2005 (Para 37)
2. S.D.Shinde Tr. Partner Versus Govt. Of Maharashtra 2023 (0) AIR(SC) 4174 (Para 24)
3. Rajasthan State Mines & Minerals Ltd. (1999) 9 SCC 283 [para 25-29 & 31 to 44]
4. National Buildings Construction Corporation Limited

Versus U.P. State Bridge Corporation Ltd (FA/2359/2010) – Para 57 to 71.

5. Amratlal B. Tank vs. Surat Municipal Corporation (2012 (2) GLH 15)
6. M/s. Cochin Shipyard Ltd. (2015) 10 SCR 994 (Para 10, 12, 16, 18)

5. Learned senior Counsel Mr. Mitul Shelat assisted by learned advocate Mr. Prerak Oza for the respondent No.1, as against the aforesaid submissions, would mainly submit that scope of review under Section 39 is extremely circumspect and it does not permit a re-appreciation of evidence or substitution of the Arbitrator's findings on merits. Interference is only for patent misconduct. He would further submit that in the case on hand, the Arbitrator is appointed by the Appellant. He would further submit that in the present case, the appellant has firstly appointed Mr.RK Gupta and then Mr. Shiv Prakash, Additional Legal Advisor, Ministry of Law, New Delhi as Arbitrator. He would further submit that considering the impugned order, whereby the learned Arbitrator allowed the claim as well as counterclaim leaves no room for alleging any bias or misconduct on the proceedings. He would further submit that this impugned award demonstrates that while passing the award, the learned Arbitrator has applied his mind. He would further submit that the learned civil Court while making the award as as rule of the court confirmed the findings of the learned Arbitrator which infers that there is no misconduct of the proceedings. He would further submit that the appellant failed to establish

any ground, which would warrant interference with the impugned award.

5.1 In support of his submission, learned Senior Counsel Mr. Shelat has relied upon following authorities.

1. State of Gujarat, Executive Engineer vs. Nitin Construction & Co., First Appeal No.692 of 1990
2. BB Yadav through legal heirs and others Vs. Food Corporation of India and another, 2025 SCC Online Guj 2085
3. Food Corporation of India Vs. Harish Transport Corporation, 2007 AIJEL Hon'ble Court 219527

5.2 In addition to above arguments, learned senior Counsel Mr. Shelat would submit that the main dispute between the parties about passing of dispatched money received by the FCI under the chartered agreement to the contractor. He would further submit that the learned Arbitrator recorded the finding on fact that since the liability of demurrage arising under the chartered agreement is passed upon the contractor in converse benefit of receiving of dispatched money for doing the work earlier than the stipulated time period has to be passed to the contractor. This is prevailing commercial practice, which has been rightly observed by the learned Arbitrator and confirmed by the learned civil Court. Therefore, he would submit that the reasoning demonstrates that the Arbitrator's view was not only plausible but also aligned with equity and fairness. He would further submit

that the tone and tenor of the award passed by the learned Arbitrator, whereby he has allowed the claim and counterclaim and disallowed the appellant's claim and counterclaim, demonstrate that the learned Arbitrator has not misconducted himself or misconducted the proceedings, as impugned award suffers from any legal flow. He would further submit that looking to this aspect, it cannot be said that the award passed by the learned Arbitrator is contrary and the decision confirming the same passed by the learned civil Court is erroneously illegal. He would further submit that application of mind of the learned Arbitrator would be seen as he has noted minor discrepancies and miscalculation in the claim and thereby, he has acted in the best interest of both the parties. Such award being on fact, full of reasons and application of mind cannot be said to be non-speaking award.

5.3 In light of the aforesaid argument, learned senior Counsel Mr. Shelat would submit that this Court u/s 39 of the Act should not examine sufficiency of the correctness of the fact and reasoning nor can it attempt to reconstruct the reasoning process of the Arbitrator.

5.4 In support of his submission, learned senior Counsel Mr. Shelat has referred to and relied upon the judgment in case of **Atlanta Limited through its Managing Director vs. Union of India represented by Chief Engineer, Military Engineering Service, (2022) 3 SCC 739** and in case of **Nitin Construction (supra)** and in case of **Administrator**

of the Specified Undertaking of the Unit Trust of India and another Vs. Garware Polyester Ltd., 2005(10) SCC 682.

5.5 With the aforesaid submissions, learned senior Counsel Mr. Shelat prays to dismiss the petition.

6. Having heard the learned advocates for both parties and having gone through the facts, circumstances, record and proceedings of the case, as well as the authorities cited at bar, this Court proceeds to decide the matter. Before adverting to the rival submissions of the contesting parties, worthy reference is taken from the Division Bench judgment of this Court in the case of **Nitin Construction (supra)**, wherein the Division Bench analysed the scope of interference in an arbitral award in the context of the prevailing position of law. The relevant paragraphs 13, 14, 15, 16 and 17 of the said judgment are reproduced as under:-

> *"**13.** Analysis :-*
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> *[As regards the award of an arbitrator under the Act, the law is well settled that the Arbitrator's adjudication is generally considered binding between the parties for he is a Tribunal selected by the parties and the power of the Court to set aside the award is restricted to cases set out in Sec. 30 of the Act, viz. (a) if the Arbitrator has misconducted himself or the proceedings; or (b) when the award has been made after the issue of an order by the Court superseding the arbitration or after arbitration proceedings have become invalid under Sec. 35; or (c) when the award has been improperly*

produced or is otherwise invalid.]

14. *Under clause (c) of Sec. 30, the Court can set aside the award which suffers from an error on the face of the award. It is, however, not open to the Court to speculate, where no reasons are given by the Arbitrator, as to what impelled the Arbitrator to arrive at his conclusion. The jurisdiction of the Arbitrator is limited by the reference and if the Arbitrator has assumed jurisdiction not possessed by him, the award to the extent to which it is beyond the Arbitrator's jurisdiction, would be invalid and liable to be set aside. This position of law has been well settled by the Constitution Bench of the Supreme Court in Raipur Development Authority V/s. Chokhamal Contractors and ors., reported in 1989 (2) SCC 721. In Raipur Development Authority (supra) it has been held that an Arbitrator or umpire is under no obligation to give reasons in support of the decision reached by him unless under the arbitration agreement or the deed of submission he is required to give such reasons, and if the Arbitrator or umpire chooses to give reasons in support of his decision it is open to the Court to set aside the award if it finds that an error of law has been committed by the arbitrator or umpire on the face of the record on going through such reasons, and an award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decisions reached in it except where the arbitral agreement or the deed by submission requires him to give reasons.*

15. *The position of law as aforesaid answers one of the main contentions of the appellant that the Arbitrator has failed to assign reasons while passing the award. As a matter of fact, on perusal of the award we find that the arbitrator in his own way has assigned reasons and we are convinced by the reasons assigned by the Arbitrator.*

16. *The scope and extent of examination by the Court of an award made by the Arbitrator has been laid down in various decisions. We may profitably quote decision of the Supreme Court in the case of*

Guj. Water Supply & Sewerage Board V/s. Unique Erectors (Gujarat) (P) Ltd., reported in AIR 1989 SC 972, wherein the Bench held in para 9 as under :-

> *["It has to be noted that there is a trend in modern times that reasons should be stated in the award though the question whether the reasons are necessary in ordinary arbitration awards between the parties is pending adjudication by the Constitution bench of this Court. Even,however, if it be held that it is obligatory for the arbitratorto state reasons, it is not obligatory to give any detailed judgment. An award of an arbitrator should be read reasonably as a whole to find out the implication and the meaning thereof Short intelligible indications of the grounds should be discernible to find out the mind of the arbitrator for his action even if it be enjoined that in all cases of award by any arbitrator reasons have to be stated. The reasons should not only be intelligible but should also deal either expressly or impliedly with the substantial points that have been raised. Even in a case where the arbitrator has to state reasons, the sufficiency of the reasons depends upon the facts and the circumstances of the case. The Court, however, does not sit in appeal over the award and review the reasons. The Court can set aside the award only if it is apparent from the award that there is no evidence to support the conclusion or if the award is based upon any legal proposition which is erroneous. See the observations of this Court in Indian Oil Corporation Ltd. V/s. Indian Carbon Ltd.[1988] 3 SCC 36.]*
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> *[In M.CD. V/s. M/s. JaganNath Ashok Kumar, reported in (1987) 4 SCC 497, the Supreme Court observed thus :-]*
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> *["In this case, there was no violation of any principles of natural justice. It is not a case where the arbitrator has refused cogent and material factors to be taken into consideration.*

The award cannot be said to be vitiated by non-reception of material or non-consideration of the relevant aspects of the matter. Appraisement of evidence by the arbitrator is ordinarily never a matter which the Court questions and considers. The parties have selected their own forum and the deciding forum must be conceded the power of appraisement of the evidence. In the instant case, there was no evidence of violation of any principle of natural justice.]

[The arbitrator in our opinion is the sole judge of the quality as well as quantity of evidence and it will not be for this Court to take upon itself the task of being a judge of the evidence before the arbitrator. It may be possible that on the same evidence the Court might have arrived at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground in our view for setting aside the award of an arbitrator."]

[The Supreme Court further concluded:-]

["After all an arbitrator as a judge in the words of Benjamin N. Cardozo, has to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life".]

[In P. M. Paul V/s. Union of India, reported in (1989) Supp 1 SCC 368, the Supreme Court held as under :-]

["It was submitted that if the contract work was not completed within the stipulated time which it appears was not done then the contractor has got a right to ask for extension of time, and he could claim difference in price. This is precisely what he has done and has obtained a portion of the claim in the award. It was submitted on behalf of the Union of India that failure to complete the contract was not the case. Hence, there was no substance in the objections raised.

Furthermore, in the objections raised, it must be within the time provided for the application under Sec. 30 i.e., 30 days during which the objection was not specifically taken, we are of the opinion that there is no substance in this objection sought to be raised in opposition to the award. Once it was found that the arbitrator had jurisdiction to find that there was delay in execution of the contract due to the conduct of the respondent, the respondent was liable for the consequences of the delay, namely, increase in prices. Therefore, the arbitrator had jurisdiction to go into this question. He has gone into that question and has awarded as he did."]

[In one of the recent pronouncements of the Supreme Court in the case of Ravindra Kumar Gupta and Company v. Union of India, reported in (2010) 1 SCC 409, the Supreme Court has considered the law with regard to the scope and ambit of the jurisdiction of the Courts to interfere with an arbitration award after taking note of catena of judgments. The relevant paragraphs are quoted below :-]

[9. The law with regard to scope and ambit of the jurisdiction of the Courts to interfere with an arbitration award has been settled in a catena of judgments of this Court. We may make a reference here only to some of the judgments. In the case of State of Rajasthan V/s. Puri Construction Company Ltd. 1994 (6) SCC 485 : (1994 AIR SCW 5061), this Court observed as follows :-]

["The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. V/s. Govt. of Kerala, 1989 Ind law SC 463 : (AIR 1989 SC 890) it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator

and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the Court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a possible view though perhaps not the only correct view, the award cannot be examined by the Court. Where the reasons have been given by the arbitrator in making the award the Court cannot examine the reasonableness of the reasons. If the parties have selected their awn forum, the deciding forum must be conceded the power of appraisement of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the Court to take upon itself the task of being a judge on the evidence before the arbitrator.]

[In the case of Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar, 1987 (4) SCC 497 : (AIR 1987 SC 2316), it has been held by this Court that appraisement of evidence by the arbitrator is ordinarily never a matter which the Court questions and considers. It may be possible that on the same evidence the Court may arrive at a different conclusion than the one arrived at by the arbitrator but that by itself is no ground for setting aside the award. It has also been held in the said decision that it is difficult to give an exact definition of the word 'reasonable'. Reason varies in its

conclusions according to the idiosyncrasies of the individual and the time and circumstances in which thinks. In cases not covered by Authority, the verdict of a jury or the decision of a judge sitting as a jury usually determines what is 'reasonable' in each particular case is The word reasonable has in law prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably knows or ought to know. An arbitrator acting as a judge has to exercise a discretion informed by tradition, methodized by analogy disciplined by system and subordinated to the primordial necessity or order in the social life. Therefore, where reasons germane and relevant for the arbitrator to hold in the manner he did, have been indicated, it cannot be said that the reasons are unreasonable."]

[10. In the case of Arosan Enterprises Ltd. v. Union of India, 1999 (9) SCC 449 : (1999 AIR SCW 3872), this Court upon analysis of numerous earlier 35 decisions, held as follows :-]

["36. Be it noted that by reasons of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the Court is not permissible and as a matter of fact exercise of power by the Court to reappraise the evidence is unknown to proceedings under Sec. 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the Court would not arise at all. In the event, however, there are reasons, the interference would still be, not available within the jurisdiction of the Court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the Court would not be justified in interfering with the award.]

[37. The common phraseology "error apparent

on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The Court as a matter of fact cannot substitute its evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. If the view of the, arbitrator is a possible view the award or the reasoning contained therein cannot be examined."]

[11. This view has been reiterated by this Court in the case of Oil and Natural Gas Corporation Ltd. V/s. SAW Pipes Ltd. 2003 AIR SCW 3041 :-]

["53. In the light of the aforesaid decisions, in our view, there is much force in the contention raised by the learned Counsel for the appellant. However, the learned senior Counsel Mr. Dave submitted that even if the award passed by the arbitral Tribunal is erroneous, it is settled law that when two views are possible with regard to interpretation of statutory provisions and or facts, the Court would refuse to interfere with such award.]

[54. It is true that if the arbitral Tribunal has committed mere error of fact law in reaching its conclusion on the disputed question submitted to it for adjudication then the Court would have no jurisdiction to interfere with the award. But, this would depend upon reference made to the arbitrator : (a) if there is a general reference for deciding the contractual dispute between the parties and if the award is based on erroneous legal proposition, the Court could interfere; (b) It is also settled law that in a case of reasoned award, the Court can set aside the same if it is, on the face of it, erroneous on the provision of law or its application; (c) If a specific question of law is submitted to the arbitrator, erroneous decision in point of law does not make the award bad, so as to permit of its being set aside, unless the Court is satisfied that the arbitrator had proceeded illegally."]

[12. In the M/s. Kwality Manufacturing Corporation V/s. Central Warehousing Corporation it was held :-]

["10. At the outset, it should be noted that the scope of interference by Courts in regard to arbitral awards is limited. A Court considering an application under Sec. 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it re-assess or re-appreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Secs. 30 and 33 of the Act. Therefore, on the contentions urged, the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings."]

[13. Again it is reiterated in the judgment of Madhya Pradesh Housing Board v. Progressive Writers and Publishers (2009) 5 SCC 678 : (2009 AIR SCW 2484) as follows :-]

["28. The finding arrived at by the arbitrator in this regard is not even challenged by the Board in the proceedings initiated by it under Sec. 30 of the Act. It is fairly well settled and needs no restatement that the award of the arbitrator is ordinarily final and the Courts hearing applications under Sec. 30 of the Act do not exercise any appellate jurisdiction. Reappraisal of evidence by the Court is impermissible."]

[14. In this case, the Supreme Court notice the earlier judgment in the case of Ispat Engineering and Foundry Works, B.S. City, Bokaro V/s. Steel Authority of India, B.S. City, Bokaro [(2001) 6 SCC 3471 : (2007 AIR SCW 2723) wherein it was held as follows :-]

["4. Needless to record that there exists a long catena of cases through which the law seems to

be rather well settled that the reappraisal of evidence by the Court is not permissible. This Court in one of its latest decisions [Arosan Enterprises Ltd. V/s. Union of India (1999) 9 SCC 449 : (W99 AIR SCW 3872)] upon consideration of decisions in Champsey Bhara and Co. v. Jivraj Balloo Spg. and Wvg. Co. Ltd. [AIR 1923 PC 66], Union of India v.. Bungo Steel Furniture (P) Ltd. [(1967) 1 SCR 324] : (AIR 1967 SC 1032) N.Chellappan V/s. Secy., Kerala SEB [(1975) 1 SCC 289] : (AIR 1975 SC 230), Sudarshan Trading Co. V/s. Govt.of Kerala [(1989) 2 SCC 38], State of Rajasthan v. Puri Construction Co.Ltd. [(1994) 6 SCC 485] : (1994 AIR SCW 5061) as also in Olympus Superstructures (P) Ltd. V/s. Meena Vijay Khetan [(1999) 5 SCC 651]: (1999 AIR SCW 1831) has stated that reappraisal of evidence by the Court is not permissible and as a matter of fact, exercise of power to reappraise the evidence is unknown to a proceeding under Sec. 30 of the Arbitration Act, 1940 . This Court in Arosan Enterprises. categorically stated that in the event of there being no reason in the award, question of interference of the Court would not arise at all. In the event, however, there are reasons, interference would still be not available unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. This Court went on to record that in the event, however, two views are possible on a question of law, the Court would not be justified in interfering with the award of the arbitrator if the view taken recourse to is a possible view. The observations of Lord Dunedin in Champsey Bhara stand accepted and adopted by this Court in Bungo Steel Furniture to the effect that the Court had no jurisdiction to investigate into the merits of the case or to examine the documentary and oral evidence in the record for the purposes of finding out whether or not the arbitrator has committed an error of law. The Court as a

> *matter of fact, cannot substitute its own evaluation and come to the conclusion that the arbitrator had acted contrary to the bargain between the parties."]*
>
> ***17.*** *From the various decisions referred to above, it could safely be stated that :-*
>
> *[(a) In the award, the arbitrator is not required to give reasons in detail.]*
>
> *[(b) The award can be set aside only on the ground of error of law on the face of it, i.e. to say, if the award is based upon any legal proposition which is erroneous.]*
>
> *[(c) The Civil Court has no jurisdiction to sit in appeal over the award and review the reasons assigned by the arbitrator and the award cannot be set aside merely because by process of inference and arguments it could be demonstrated that the arbitrator has committed some mistake in arriving at his conclusion.]*
>
> *[(d) The award cannot be interfered with even in the case where on an interpretation of any contract or documents, two views are plausible and the arbitrator accepts one view while the other view is more appealing to the Court.]*
>
> *[(e) The award can be set aside by the Civil Court if the arbitrator has misconducted himself or the arbitrator has acted contrary to or gone beyond the terms of the reference.]"*

7. In the case of **Atlanta Limited (supra)**, the Hon'ble Apex Court held that once an Arbitrator has interpreted the clauses of a contract by taking a possible view and has gone to great lengths to analyze several reasons offered by the appellant-claimant to justify its plea for extension of time to execute the contract, the High Court, exercising jurisdiction under Section 39 of the Act, ought not to have sat over the

said decision as an appellate court seeking to substitute its own view for that of the Arbitrator. The relevant paragraphs are 19 to 22 of the said judgment, which read as under:-

> *"**19.** It is also a well-settled principle of law that challenge cannot be laid to the Award only on the ground that the Arbitrator has drawn his own conclusion or failed to appreciate the relevant facts. Nor can the Court substitute its own view on the conclusion of law or facts as against those drawn by the Arbitrator, as if it is sitting in appeal. This aspect has been highlighted in State of Rajasthan v. Puri Construction Co. Ltd. And Another, (1994) 6 SCC 485 where it has been observed thus:*
>
>> *"26. The arbitrator is the final arbiter for the dispute between the parties and it is not open to challenge the award on the ground that the arbitrator has drawn his own conclusion or has failed to appreciate the facts. In Sudarsan Trading Co. v. State of Kerala [Sudarsan Trading Co. v. State of Kerala, (1989) 2 SCC 38] it has been held by this Court that there is a distinction between disputes as to the jurisdiction of the arbitrator and the disputes as to in what way that jurisdiction should be exercised. There may be a conflict as to the power of the arbitrator to grant a particular remedy. One has to determine the distinction between an error within the jurisdiction and an error in excess of the jurisdiction. Court cannot substitute its own evaluation of the conclusion of law or fact to come to the conclusion that the arbitrator had acted contrary to the bargain between the parties. Whether a particular amount was liable to be paid is a decision within the competency of the arbitrator. By purporting to construe the contract the court cannot take upon itself the burden of saying that this was contrary to the contract and as such beyond jurisdiction. If on a view taken of a contract, the decision of the arbitrator on certain amounts awarded is a*

> *possible view though perhaps not the only correct view, the award cannot be examined by the court. Where the reasons have been given by the arbitrator in making the award the court cannot examine the reasonableness of the reasons. If the parties have selected their own forum, the deciding forum must be conceded the power of appraisement of evidence. The arbitrator is the sole judge of the quality as well as the quantity of evidence and it will not be for the court to take upon itself the task of being a Judge on the evidence before the arbitrator."*

[emphasis added]

20. *As long as the Arbitrator has taken a possible view, which may be a plausible view, simply because a different view from that taken in the Award, is possible based on the same evidence, would also not be a ground to interfere in the Award. In Arosan Enterprises Ltd. v. Union of India and Another, (1999) 9 SCC 449 this Court has held as follows:*

> *"36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award."*

(Also refer Municipal Corporation of Delhi v. Jagan Nath Ashok Kumar and Another, (1987) 4 SCC 497)

21. *In Rajasthan State Mines & Minerals Ltd. (supra), relied on by the respondent - Union of India, on a*

conspectus of the case law relating to an Award made under the Arbitration Act, 1940 and the scope of interference by courts in such an arbitral Award, the legal position was summarized by the court in the following words :

> *"44. From the resume of the aforesaid decisions, it can be stated that:*
>
> *(a) it is not open to the court to speculate, where no reasons are given by the arbitrator, as to what impelled arbitrator to arrive at his conclusion.*
>
> *(b) It is not open to the court to admit to probe the mental process by which the arbitrator has reached his conclusion where it is not disclosed by the terms of the Award.*
>
> *(c) If the arbitrator has committed a mere error of fact or law in reaching his conclusion on the disputed question submitted for his adjudication then the Court cannot interfere.*
>
> *(d) If no specific question of law is referred, the decision of the arbitrator on that question is not final, however much it may be within his jurisdiction and indeed essential for him to decide the question incidentally. In a case where specific question of law touching upon the jurisdiction of the arbitrator was referred for the decision of the arbitrator by the parties, then the finding of the arbitrator on the said question between the parties may be binding.*
>
> *(e) In a case of non-speaking Award, the jurisdiction of the court is limited. The Award can be set aside if the arbitrator acts beyond his jurisdiction.*
>
> *(f) To find out whether the arbitrator has travelled beyond his jurisdiction, it would be necessary to consider the agreement between the parties containing the arbitration clause. The arbitrator acting beyond his jurisdiction is a different ground from the error apparent on the face of the Award.*

(g) In order to determine whether arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant could raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit or give the arbitrator the power to decide the dispute raised by the claimant or there is a specific bar in the contract to the raising of the particular claim then the Award passed by the arbitrator in respect thereof would be in excess of jurisdiction.

(h) The Award made by the Arbitrator disregarding the terms of the reference or the arbitration agreement or the terms of the contract would be a jurisdictional error which requires ultimately to be decided by the Court. He cannot Award an amount which is ruled out or prohibited by the terms of the agreement. Because of specific bar stipulated by the parties in the agreement, that claim could not be raised. Even if it is raised and referred to arbitration because of wider arbitration clause such claim amount cannot be awarded as agreement is binding between the parties and the arbitrator has to adjudicate as per the agreement.....

(i) The arbitrator could not act arbitrarily, irrationally, capriciously or independently of the contract. A deliberate departure or conscious disregard of the contract not only manifests the disregard of his authority or misconduct on his part but it may tantamount to mala fide action.

(j) The arbitrator is not a conciliator and cannot ignore the law or misapply it in order to do what he thinks just and reasonable; the arbitrator is a tribunal selected by the parties to decide the disputes according to law."

22. *In a recent ruling in NTPC (supra), decided by a three Judge Bench of this Court, drawing strength from the decision in Kwality Manufacturing Corporation (supra), it has been held thus:*

"13. From the above pronouncements, and from

> *a catena of other judgments of this Court, it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the Court [See State of U.P. v. Allied Constructions, (2003) 7 SCC 396; Ravindra Kumar Gupta and Company v. Union of India, (2010) 1 SCC 409; Oswal Woollen Mills Limited v. Oswal Agro Mills Limited, (2018) 16 SCC 219].*"
>
> *[emphasis added]"*

8. Keeping in mind the aforesaid parameters, this Court proceeds to examine the plea advanced by the learned Advocate for the appellant. Learned Advocate Mr. Buch mainly argued that, in the absence of terms and conditions of passing the dispatch money earned by the FCI to the contractor in the contract executed between the parties with regard to the stevedoring, clearing, handling and transport contract, the learned Arbitrator committed a serious error in awarding dispatch money in favour of the contractor. He had further submitted that if the learned Arbitrator recorded findings beyond the terms and conditions of the contract, the award would be rendered as nullity. He had further submitted that the learned Arbitrator, in his findings, categorically held that there are no terms and conditions executed between the parties entitling the contractor to have benefit of dispatch money, yet, by taking recourse to the prevailing commercial

practice, the learned Arbitrator proceeded to award dispatch money to the contractor.

9. Explaining the term “dispatch money,” learned Advocate Mr. Buch argued that the contract with the contractor is subsequent to a charter party agreement executed between the owner of the ship/vessel and the appellant, the Food Corporation of India (FCI). If the ship/vessel is alighted and offloaded within the stipulated time period stated in the charter agreement, the owner of the vessel would pay dispatch money to the appellant FCI, as these terms and conditions remained confined to the agreement between the owner of the vessel and the appellant FCI. He contended that, in the absence of contractual terms and conditions between the contractor and the FCI entitling the contractor to dispatch money, the contractor would not be legally entitled to claim dispatch money even if the contractor had completed his work before the time limit, which in turn enabled the FCI to earn dispatch money under the charter party agreement.

10. In regard to aforesaid submissions of learned Advocate Mr. Buch, let refer the order passed in CMA No. 170 of 1984. Early offloading of the ship/vessel would permit owner to depart from the port, because of which, owner of ship/vessel will save port staying charge. To trace root of dispute, by the order in CMA No.170 of 1984, the learned Civil Court, in exercise of jurisdiction under Section 20 of the Act, directed the FCI to appoint an Arbitrator. That order has not been challenged. In an unnumbered paragraph at the bottom

portion of paragraph 4 of the said order, the learned Civil Court, while directing appointment of an Arbitrator to resolve the dispute between the FCI and the contractor, referred to the tender agreement and held that, though it does not speak about dispatch money earned by the claimant or as to who would get the benefit earned out of such dispatch money, if the defendant is liable for the demurrage for delayed execution of contract, they have an equal right to demand dispatch money earned by the other side due to efficiency on the part of the defendant. Treating this as a dispute between the parties, the learned Civil Court took the cue from the terms and conditions of the contract between the FCI and the contractor and held that the dispute is covered under the purview of the arbitration clause, and consequently ordered appointment of an Arbitrator. At the cost of repetition, it has to be observed that these findings have not been challenged, but rather accepted and as per order, Arbitrator was appointed.

11. Looking to the history of the arbitration proceedings as stated hereinabove, this Court does not venture further into re-appreciating the same. The real dispute between the parties pertains to Claim No. 2, as prepared by the contractor and decided by the learned Arbitrator. Claim No. 2 and the award thereon reads as under:-

> *“Claim No. 2)*
>
> *The claimants claim a sum of Rs. 15,78,681/68 on account of despatch money earned in early release of*

11 Vessels arrived at Beli/Rozi Court during the contract period from 25.8.80 to 2418.82.

Award No. 2)

The claim is allowed to the extent of Rs. 13,65,352/52 for the following reasons:-

It is admitted position that the subject contract does not speak asito who will get the benefit earned out of despatch money. The Admittedly quantum of Rs. 15,78,681/68 earned as despatch money against the subject contract is also not disputed as the 11 Vessels were discharged in a shorter time than the number of lay-days provided to the claimants contractor. As per the settled commercial practice, if the Charterer discharges the Vessels in a shorter time than is allowed to him by the lay-days, he may be entitled to despatch money. In the instant case the claimants contract was responsible for Stevedoring, Clearance, Handling and Transport of stores and if the despatch money is earned by his efficient efforts by discharing the Vessels in a shorter time than is allowed to him by the lay-days, the benefit of said despatch money earned shall go to the claimants, particularly for the reason that the claimants contractor was liable for any demurrage or warfage charges that may occur for payment by the Corporation to Railways, Court or any other party on account of the delay on their part in leading or unloading etc. beyond the free time allowed to them for the work under the terms of the contract. The claim is allowed to the extent of Rs. 13,65,352/52 against the claim of Rs. 15,78,681/68 for the reason that the respondents F.C.I. shall also be entitled to recover the balance amount of Rs. 2,13,329/16 against their counter claims as mentioned below after adjusting the withheld amount of Rs. 44,015/95 as already stated in award against Claim No. 1) above."

12. It is the aforesaid finding that bothered the FCI. The first contention of learned Advocate Mr. Buch, that the reference,

which was made beyond the terms and conditions of the agreement, fails to sustain on the ground that the order passed by the learned Civil Court in CMA No. 170 of 1984 directing appointment of an Arbitrator has not been challenged at any point of time; rather, it has been accepted by the FCI and without hesitation, participated in the arbitral proceedings by raising counter claims. FCI having obtained an adverse order from the learned Arbitrator, confirmed by the learned Civil Court, the FCI cannot now contend that the terms and conditions of the agreement did not permit the learned Civil Court to appoint an Arbitrator.

13. It is an uncontroverted fact that 11 vessels were discharged in a shorter time period than the number of lay days provided to the contractor, having been stevedored and offloaded before the date stipulated by the FCI. Adopting the practice prevailing in commercial transactions, the learned Arbitrator held that if the stevedore discharged a vessel within a shorter time period than the lay days allowed to him, the charterer would, under the charter party agreement between the owner of the vessel and the charterer, be entitled to dispatch money. In the present case, the charterer, i.e., the FCI, earned the dispatch money. The contract was in respect of stevedoring, clearing, handling and transport of stores, and the contractor was responsible for the performance thereof.

14. If the charterer, i.e., the FCI, was required to adhere to the time limit for completion of stevedoring, clearing, handling and transport in order to earn dispatch money, the

corollary follows that the contractor who actually performed the said work would equally be entitled to earn dispatch money if he completed the work within the time limit stipulated by the charterer. In other words, if the contractor completed the work of stevedoring, clearing, handling and transport of the stores within the time limit specified by the charterer, the contractor would be entitled to receive dispatch money to the extent that the charterer received dispatch money. This is just, fair and equitable.

15. The charter party agreement between the owner of the vessel and the FCI, more particularly Clauses 35,37 and 42, contemplates earning of dispatch money. If discharge of the vessel is completed before the stipulated time, and liability to pay demurrage if the discharge of the vessel is not completed within the lay days. The agreement between the contractor and the FCI does not speak to the payment of dispatch money, as has consistently been held by the competent Civil Court and the learned Arbitrator. It is evident that while the FCI retained the benefit of earning dispatch money arising under the charter party agreement, it cast the liability of demurrage upon the contractor. Clause 49 of the agreement between the FCI and the contractor expressly provides that, in case the contractor fails to complete the work within the lay days provided by the FCI, the contractor would be liable to pay demurrage and other consequential costs. This is unfair practice and rules against equity. FCI cannot observe double standard The FCI on one hand, retains clause to earn benefit of dispatch money, which could only be achieved by the

contractor by offloading ship/vessel before lay days, on the other hand, cannot pass liability of demurrage which could be occurred due to non-observance of offloading within the lay days. The FCI thus, either can retain both; benefit of earning of dispatch money and risk of demurrage or can pass both to the contractor. As far as passing of the benefit of earning dispatch money is concerned, the FCI, by executing contract, can retain same share.

16. The FCI cannot be permitted to blow hot and cold. If the FCI earned dispatch money on account of the early discharge of the vessel, it is obligated to pass the same or part thereof to the contractor. As observed hereinabove, the FCI, instead of providing for payment of dispatch money to the contractor, retained it for itself by not incorporating any clause in the agreement in that regard, while simultaneously incorporating a liability clause, i.e., a demurrage clause, upon the contractor in case the vessel was not discharged within the lay days. The learned Arbitrator rightly recorded the unfairness on the part of the FCI and passed the award in favour of the contractor. The said award was thereafter subjected to scrutiny before the learned Civil Court, which did not find any compelling reason to set aside the impugned award and has accordingly made the award a decree of the court. This Court, exercising jurisdiction under Section 39 of the Act, does not find any reason to interfere with the impugned order.

17. In the case of **Parasa Raja Manikyala Rao And Anr vs State Of A.P reported in AIR 2004 SC 132**, the Hon'ble

Supreme Court has observed and held as under:

> *"...Each case, more particularly a criminal case depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

17.1 In expose of aforesaid law on binding precedent, the authorities relied on by the learned advocate for the appellant would not be of any assistance to the case of the appellant, as they are on different facts.

18. Before parting with this judgment, worthy assistance may be drawn from the judgment of the Hon'ble Apex Court in the case of **Himachal Pradesh State Electricity Board Versus R.J.Shah And Company , reported in (1999) 4 SCC 214**, wherein the Hon'ble Apex Court, in paragraph 26, laid down the relevant position of law, which is adopted and applied in the present case.

> *"**26.** The decision in Associated Engineering Co. case relied upon by Sh. Maninder Singh does not in any way persuade us to take a view different than the view arrived at by the High court. At page 103 Thommen, J. speaking for the court observed as follows:*
>
> > *"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. But if he has remained inside the parameters of the contract and has construed the provisions on the contract, his award cannot be interfered with unless he has given reasons for the award disclosing an error apparent on the face of it.*"
>
> *Applying the ratio of the present case it is not possible to say that the arbitrator in the present case travelled outside the bounds of the contract. Correspondence exchanged between the parties prior to the making of the reference shows that the arbitrators were called upon to construe the contract in order to determine whether the contractor was entitled to claim revision of rates and if so what should be the revised rates. The construction placed on contract by the contract by the contractor cannot be said to an implausible one. Even if the arbitrators construed the terms of the contract incorrectly it cannot be said that the award was in excess of their jurisdiction. Their jurisdiction clearly was to construe the terms of the contract and their decision thereon is final and binding on the parties.”*

19. For the foregoing reasons, present First Appeal fails and stands dismissed. Notice discharged. Interim relief, if any, stands vacated forthwith.

20. Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

(J. C. DOSHI,J)

SHEKHAR P. BARVE