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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 05.05.2025

\+ **O.M.P. (COMM) 538/2020 & I.A. 10390/2020**

HPCL-MITTAL PIPELINE LIMITED .....Petitioner

versus

COASTAL MARINE CONSTRUCTION AND ENGINEERING .....Respondent

\+ **O.M.P. (COMM) 200/2021, CAV 21/2021 & I.A. 8600/2021**

COASTAL MARINE CONSTRUCTION AND ENGINEERING LIMITED .....Petitioner

versus

HPCL MITTAL PIPELINES LIMITED .....Respondent

\+ **OMP (ENF.) (COMM.) 95/2021, EX.APPL.(OS) 621/2021 & EX.APPL.(OS) 623/2021**

HPCL-MITTAL PIPELINE LIMITED .....Decree Holder

versus

COASTAL MARINE CONSTRUCTION AND ENGINEERING .....Judgement Debtor

Appearance:-

Mr. Sandeep Sethi, Sr. Adv. with Mr. Ashwin Shankar, Ms. Ridhi Nyati, Mr. Aditya Verma, Mr. K. Rigved Prasad, Ms. Riya Kumar, Mr. Samar Singh, Advocates for Coastal Marine Construction and Engineering.

Mr. Kartik Nayar & Mr. Rishab Kumar, Advocates for HPCL-Mittal Pipeline Ltd.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. These three proceedings concern an arbitral award dated 14.01.2020, rendered by a majority of a three member Arbitral Tribunal, adjudicating disputes between the parties under Contract Agreement dated 17.07.2012. The dissenting arbitrator rendered a separate opinion on 17.02.2020.

2. HPCL-Mittal Pipelines Ltd. [hereinafter, "HMPL"] was the claimant in the arbitral proceedings and Coastal Marine Construction and Engineering Limited [hereinafter, "CMCEL"] was the counter claimant.

3. CMCEL has filed OMP(COMM) 200/2021, under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter, "the Act"], challenging the majority award. HMPL has filed OMP(COMM) 538/020 for setting aside of the award, to the extent that interest has not been awarded on its claims. It has also filed OMP(ENF) 95/2021, under Section 36 of the Act, for enforcement of the same award.

4. As all three proceedings concern the same award, they have been taken up for hearing together. I have first heard learned counsel for the parties in O.M.P.(COMM) 200/2021, as the substantive challenges to the award have been advanced by CMCEL in the said petition.

A. FACTS:

5. HMPL has laid a pipeline of 1024 km from Mundra Port, Gujarat to Bathinda, Punjab, where its sister concern has an oil refinery.

6. HMPL invited tenders for operation and maintenance of its SPM

[Single Point Mooring] terminal. It issued a letter of award in favour of CMCEL on 14.06.2012, and a contract agreement was signed on 16.07.2012, with an effective date of 14.06.2012. The agreement was for a period of two years.

7. Disputes arose with regard to performance, which led to show cause notices being issued by HMPL, and finally to termination of the contract on 21.11.2012. The work was subsequently awarded by HMPL to a third-party agency (Underwater Services Company Limited) on 22.11.2012.

8. As the disputes between HMPL and CMCEL could not be amicably resolved, arbitration proceedings were set in motion, under Clause 14.3 of General Conditions of Contract. Upon constitution of the Arbitral Tribunal, HMPL filed its Statement of Claim ["SOC"] and CMCEL made a counter-claim.

9. The claims raised by HMPL in the arbitral proceedings were as follows[1]:-

Claim No.	**Particulars**	**Amount**
A) Demurrage Charges paid by the Claimant:		
(i)	Losses incurred on account of demurrage, port charges, birth hire charges, pull back charges, pilot standby charges, etc.	Rs. 92,23,820
(ii)	Losses incurred towards demurrage, port charges, birth hire charges, pull back charges, pilot stand by charges, etc. for the upcoming vessels.	Rs. 2,40,72,483

[1] As mentioned in paragraph 7.0 of the SOC.

B) Expenses incurred towards replacement of floating hose strings:		
(i)	Claim towards damages towards purchase and replacement of the 24“ mainline floating hose strings (Which was damaged by the MV Coastal Cheetah during Maintenance operations).	Rs. 29,32,620
(ii)	Further, loss / damages incurred towards cost of accessories such as stud bolts and nuts, gaskets etc. used in the process of replacement of the floating hose.	Rs. 48,849
C) Expenses incurred towards replacement of west side sub-sea hose strings:		
(i)	Claims towards/damages incurred by the Claimant towards the charges of the purchase and replacement of the sub-sea hose of west string (which became ruptured owing to the lack of inspection/diving works).	Rs. 33,66,190
(ii)	Further Claims towards, loss/ damages incurred by the Claimant towards the costs incurred in accessories such as stud bolts and nuts, gaskets, etc. used in the process of replacement of the sub-sea hoses.	Rs. 78,415
(iii)	Costs incurred for the purpose of carrying out the replacement of the sub-sea hoses	Rs. 24,75,540
(iv)	Claim towards loss/damages incurred by the Claimant towards purchase and replacement of the sub-sea hoses of the west string (which were damages by the MV Halani -2 during the replacement of one sub-sea hose on the intervening night of 26/27 October 2012 and also owing to	Rs. 1,16,94,059

	its poor O&M activities).	
(v)	Further claim towards, loss/damages incurred by the claimant towards the costs incurred in accessories such as stud bolts and nuts, gaskets, etc. used in the process of replacement of the sub-sea hoses.	Rs. 78,415
(vi)	Costs for the purpose of carrying out the replacement of the sub-sea hoses (which were damaged by the Respondent), supervision charges were paid to M/s SBMA.	Rs. 43,50,224
D) Other expenses incurred:		
(i)	Cost/loss incurred by the Claimant towards hiring charges paid for DSV Dolphin 11 to Adani.	Rs. 50,56,200
(ii)	Claim for loss/costs towards damage and replacement of two floating beads on the west side sub-sea hose string.	Rs. 5,38,190
(iii)	Costs incurred by the Claimant for the replacement of one winker light.	Rs. 50,000
(iv)	Claim for additional costs incurred by the Claimant by awarding the O&M contract to another contractor being M/S Underwater Services limited.	Rs. 12,12,67,151
E) Refund of the *ad hoc* advance:		
(i)	Amount paid towards the work being carried out by the Respondent	Rs. 56,96,416.

10. CMCEL's counter-claims were under the following heads[2]:

[2] As mentioned in paragraphs 1 to 4 of the counter-claims.

Counter Claim No.	Particulars	Amount
1.	Claims arising out of wrongful termination of the contract by the Claimants	Rs. 16,00,31,374
2.	Outstanding invoices, that remain due and payable by the claimants	Rs. 5,00,03,201
3.	Performance bank guarantee which has been wrongly enchased	Rs. 2,09,41,000
4.	Interest on the abovementioned amounts @ 12% p.a.	

11. In the impugned award, the majority has awarded Rs. 16,42,55,439 out of HMPL'S claim of approximately Rs.19 crores, and a sum of Rs. 4,16,64,625 out of CMCEL'S counter-claims of Rs. 23,09,75,575. Consequently, the net award has been made in favour of HMPL for Rs. 12,25,90,814 alongwith costs of Rs.1,30,35,000 towards the arbitration proceedings.

B. SCOPE OF THE PRESENT JUDGMENT: NATURAL JUSTICE CHALLENGE – RELEVANT EXTRACTS OF THE MAJORITY AWARD:

12. CMCEL's first ground of challenge is based upon an allegation of failure of natural justice, inasmuch as it is contended that the majority has failed to consider its statement of defence at all. At this stage, I have heard learned counsel for the parties only on this contention, and intend to dispose of this objection by the present judgment.

13. CMCEL's argument is based upon paragraphs 11 and 12 of the majority award, and requires a detailed understanding of the approach taken in the majority award. That approach is reflected in two paragraphs

of the majority award, which are set out below[3]:

> *"11. The Respondent COMACOE has filed a Statement of Defence (SOD).* ***The Respondent has chosen not to give any para wise reply to the various paragraphs of the SOC in the SOD filed by it and the same is completely silent about the averments made therein.*** *In order to get an idea, the very first page of the SOD (written as page 1406) is reproduced below:*
>
> > *ANNEXURE (V) (A) (1) - DEMURRAGE CHARGES PAID BY THE CLAIMANT FOR M.T. LANTANA*
> >
> > *Annexure (V) (A) (1) (1)*
> >
> > *(1): This is the Respondent's reply to the claim for M.T. Lantana's demurrage charges, owing to slow discharge by M.T. Lantana caused by the failure of the West subsea hose string and hawser fouling. All the following arguments are in the alternate and without prejudice to each other. All the claims made are remote and not enforceable by the Claimant; the claimed losses are due to the Claimant's own fault.*
> >
> > *(2): The Respondents are not responsible for the failure of the West subsea hose string. This was damaged due to normal wear-and-tear, accompanied by design failure and high tidal variations. No causal breach has been alleged by the Claimants against the Respondent.*
> >
> > *(3): The Respondents had conducted underwater diving inspections of the West subsea hose string on 29th August 2012, and again on 26th September 2012 and found it to be in good order.*
> >
> > *……*
> > *……*
> >
> > *(8):*
> >
> > *……*
> > *……*
> >
> > ***In the end of the SOD at page 1456 there is a short Affidavit of Mr. Wyane Williams which is reproduced below:***
> >
> > *I Wayne Williams aged 38 years, residing at*

[3] In the majority award HMPL and CMCEL are referred to as "Claimant" and "Respondent" respectively.

……

……..*do hereby solemnly affirm and state as follows:*

1. I am fully conversant with the facts of the present case and duly authorized to swear and file this affidavit on behalf of the Respondents.

2. The contents of the Defence and /or the counter-claim are true and correct to my information as derived from the records of the case while the legal submission contained therein are based on advice from counsel.

3. The documents filed along with the accompanying Defense and/or the counter claim are true copies of the respective originals.

Deponent

It is very important to note that what has been written at page 1456, which has been described as Affidavit, has not been sworn before any Competent Authority, Oath Commissioner or Notary. *The SOC is supported with an Affidavit of Mr. M.P. Singh, General Manager (Legal) of the Claimant and has been sworn before the Oath Commissioner of Delhi High Court which bears his signature and seal.*

Order VI Rule 15 CPC provides that every pleading shall be verified at the foot by the party or one of the party pleading. The person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verifies upon information received and believed to be true. Sub Rule (4) lays down that the person verifying the pleading shall also furnish an Affidavit in support of his pleadings.

12. ***In the first hearing of the Arbitral Tribunal held on 27.7.2015 the parties were given time for filing Statement of Claim, Statement of Defence and Rejoinder Statement. In the second hearing of the Tribunal held on 29.3.2016 it was pointed out to the learned counsel for the Respondent that there is no properly sworn Affidavit in support of SOD and counter claim. Learned counsel for the Respondent then made a request for granting time for filing the Affidavit. The relevant portion of the proceedings is reproduced below:***

……
……

The respondent has sent the Statement of Defense and Counter Claim in a single compilation. Mr. Balaji Harish Iyer, learned counsel for Respondent has made a statement that the respondent will not file any other document. It was pointed out by the Tribunal that there is no properly sworn affidavit in support of the Statement of Defense and Counter Claim. Mr. Balaji Harish Iyer, learned counsel for respondent requested that four weeks time be granted to file an affidavit. ***The respondent is accordingly granted four weeks time to file an Affidavit in support of the Statement of Defense and Counter Claim. It will be open to the respondent to file a fresh Statement of Defense and Counter Claim.***

It is not the function of Arbitral Tribunal to give advice to a party how to draft and file the pleadings, but sufficient indication was given. Though liberty had been granted to the Respondent to file a fresh Statement of Defence and Counter Claim, yet the same was not done. The Respondent only filed a short Affidavit in support of the SOD already filed.

Order 8 Rules 3, 4 and 5(i) of CPC are reproduced below:

3. Denial to be specific. - It shall not be sufficient for a defendant in his written statement of deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Evasive denial. - Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount. but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. - Specific denial. - [(1)] Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading

> *of the defendant, shall be taken to be admitted except as against a person under disability:*
>
> *Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.*

In view of the fact that the Respondent COMACOE has given no reply and has also not denied the various averments made in the Statement of Claim the same shall be taken to be admitted. Inspite of a clear order by the Tribunal on 29.3.2016 to the effect that it will be open to the Respondent to file a fresh Statement of Defence and Counter Claim, the Respondent has consciously chosen not to avail the opportunity to file a fresh SOD. Therefore, all the facts stated in the SOC regarding the various breaches committed by the Respondent and also regarding failure to mobilize a contractually compliant Diving Support Vessel (DSV) and further that the vessel mobilized suffered from many shortcomings and did not meet the requirement of the Contract Agreement stand admitted by the Respondent*. Likewise the fact that there was kinking in the West subsea hose which resulted in cracks and rupture was not noticed by the Respondent and on account there of only the East subsea hose could be used. The consequence there of was that the discharge rate of the crude oil from the tankers to SPM got considerably reduced and because of extra time incurred, the Claimant had to pay demurrage both to the tankers and also to the port authorities. There was hawser fouling at the time of berthing of MT Lantana which caused delay in berthing and incurring of demurrage. Besides above, damage was caused to new Subsea hose string which was being installed in the night of 26/27 October 2012 and again in the night of 31 October 2012 on account of anchor dragging of M.V. Halani - 2. The Claimant booked a DSV namely, Dolphin 11 after making payment of Rs. 50,56,200 /- to APSEZL as maintenance vessel for replacement of subsea hose string which had been damaged. **All these facts stand admitted by the Respondent.***

The Tribunal is therefore, fully entitled to proceed on the basis that the facts stated in the SOC are correct*."*[4]

C. SUBMISSIONS ON BEHALF OF PARTIES:

14. Mr. Sandeep Sethi, learned Senior Counsel for CMCEL, pointed out that the majority of the Arbitral Tribunal has proceeded on the basis

[4] Emphasis supplied.

that, in the absence of a para-wise denial to the SOC in the SOD, the averments in the SOC could be taken to be admitted. On this basis that CMCEL failed to file another SOD and counter-claim despite opportunity, the majority has held that all the facts stated in the SOC regarding the breaches committed by CMCEL, "*stand admitted*" by it. Mr. Sethi submitted that this approach is unjustifiable, and is tantamount to allowing HMPL's claims, virtually by default. He contended that no particular form of pleadings is prescribed by the Act, and none was agreed between the parties, or set by the Tribunal. While the SOD admittedly did not include a para-wise reply, Mr. Sethi urged that specific para-wise traverse of averments, as required in Order 8 Rule 5 of the Code of Civil Procedure, 1908 [hereinafter, "CPC"], is not required in arbitral proceedings at all, by virtue of Section 19 of the Act. He argued that no such requirement was clearly signified to the parties, so as to warrant such a drastic consequence.

15. Mr. Sethi submitted that CMCEL had, in fact, filed a substantive SOD, running into more than 40 single spaced pages. The SOD was in a claim-wise form. It dealt with the facts, and also provided the basis for contesting HMPL's claim, both on liability and breach. He argued that this ought to have been considered by the Arbitral Tribunal.

16. Mr. Sethi contended that two further documents were filed by CMCEL at the stage of arguments, including a written submission dated 15.05.2018 and a note, providing paragraph references from the statement of defence, against each contention of HMPL. Mr. Sethi argued that these documents were intended to provide a comprehensive and readily useable

summary of the case advanced by CMCEL, with reference to the supporting pleadings. Learned Senior Counsel submitted that all these documents have been ignored by the majority in entirety. He argued that the majority award goes on to ignore CMCEL's defence completely including the SOD, the oral evidence of its witness [who was cross examined by HMPL], as well as the oral and written submissions filed by it.

17. In fact, Mr. Sethi submitted that the approach ultimately taken by the majority– which became known to the parties only when the reserved award was pronounced – was inconsistent with several procedural steps taken during the course of the arbitration, including filing of an affidavit in support of the SOD, in terms of the Tribunal's order dated 29.03.2016, filing of a pleading in response by HMPL, framing of issues, permission to amend the SOD, and other procedural orders of the Arbitral Tribunal. These are referred to in detail later in this judgment.

18. As far as the natural justice ground is concerned, Mr. Kartik Nayar, learned counsel for HMPL, first argued that, although the CPC does not strictly apply to arbitral proceedings, in the absence of any agreement as to the procedure to be adopted, the Arbitral Tribunal was free to set its own procedure, including by applying the provisions of the CPC. He submitted that Section 19(1) of the Act does not lead to a prohibition on application of CPC principles, as laid down in *Srei Infrastructure Finance Limited v. Tuff Drilling*[5]. In these circumstances, the Tribunal was free to invoke the principles of Order VIII Rule 4 and 5 of CPC. Mr. Nayar

[5] (2018) 11 SCC 470, paragraphs 17 and 26 [hereinafter "*Srei Infrasturcture Finance Limited*"].

contended that the requirement of specific denial, in the absence of which a pleading is taken to be admitted, has been emphasised in several judgments, including *Badat & Co. Bombay v. East India Trading Co*[6], *Shutham Electric v. Vaibhav Raheja*[7] and *Thangam & Anr. v. Navamani Ammal*[8].

19. Factually, Mr. Nayar contended that the Arbitral Tribunal, in fact, cautioned CMCEL at the hearing on 29.03.2016, that the SOD as filed was deficient. CMCEL, however, did not remedy the defect, despite opportunity. The SOC contained detailed factual averments, which were not denied at all, and the SOD dealt only with the claims *in seriatim*. The written statement and chart relied upon by Mr. Sethi only came at the close of the arbitral proceedings. HMPL thus did not have an opportunity to understand the case which CMCEL sought to advance. Mr. Nayar also submitted that the majority award does, in fact, consider the substantive defences pleaded by CMCEL.

20. Without prejudice to this contention, Mr. Nayar urged that, if at all the award is found deficient in this respect, the hearing of this petition should be adjourned, to enable the Tribunal to cure the defect, under Section 34(4) of the Act. He contended that such a course was adopted by the Supreme Court in *NHAI v. P. Nagaraju*[9].

21. In rejoinder, Mr. Sethi submitted that the procedure provided by Section 34(4) of the Act cannot be invoked in the present case, as the said provision only addresses a situation of a lacuna which can be filled

[6] AIR 1964 SC 538.
[7] 2024 SCC OnLine Del 4226.
[8] (2024) 4 SCC 247.

without disturbing the ultimate award. He relied upon the judgments of the Supreme Court in *Kinnari Mullick v. Ghanshyam Das Damanai*[10], and *I Pay Clearing Services (P) Ltd. v. ICICI Bank*[11] in this regard.

D. RELEVANT STATUTORY PROVISIONS:

22. Sections 18 and 19 of the Act, reproduced below, have been cited by learned counsel for the parties:

> *"Section 18. Equal treatment of parties.—The parties shall be treated with equality and* ***each party shall be given a full opportunity to present this case.***
> *Section 19. Determination of rules of procedure.—(1)* ***The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).***
> *(2) Subject to this Part, the* ***parties are free to agree on the procedure*** *to be followed by the arbitral tribunal in conducting its proceedings.*
> *(3)* ***Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.***
> *(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence."*[12]

23. Section 34(4) of the Act provides as follows:

> "*Section 34. Application for Setting aside arbitral awards.*
>
> *xxx* *xxx* *xxx*
>
> *(4) On receipt of an application under sub-section (1),* ***the Court may****, where it is appropriate and it is so requested by a party,* ***adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.****"*[13]

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[9] (2022) 15 SCC 1 [hereinafter "*P. Nagaraju*"].
[10] (2018) 11 SCC 328 [hereinafter "*Kinnari Mullick"*].
[11] (2022) 3 SCC 121 [hereinafter "*I Pay*"].
[12] Emphasis Supplied.
[13] Emphasis supplied.

24. Paragraph 12 of the majority award, which is extracted in paragraph 13 above, sets out Order VIII Rule 3, 4 and 5 of the Code of Civil Procedure, 1908, on which the impugned findings are based. Those provisions are, therefore not set out again.

E. ANALYSIS:

I. Should the hearing be adjourned under Section 34 (4) of the Act?

25. I propose to deal with the Section 34(4) argument first, as an order thereunder will defer further adjudication of this petition until the Tribunal has had an opportunity to consider the matter.

26. The aforesaid provision has been explained in several judgments of the Courts, including in *Kinnari Mullick*, cited by Mr. Sethi wherein the Supreme Court held that the power under Section 34(4) of the Act can be exercised only prior to setting aside of an arbitral award, upon an application by a party, and in a situation where the deficiency set up may be "curable".

27. This was explained in some detail in *I Pay*, which also considers earlier judgments of the Court in *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd*[14]. and *Som Datt Builders Ltd. v. State of Kerala*[15]. The Court held that recourse to Section 34(4) of the Act is not permissible where no finding has been recorded on a particular point. It can be used to record reasons for findings already given in the award, or to fill gaps in the reasoning, but not to cure deficiencies which would amount to "patent

[14] (2019) 20 SCC 1 [hereinafter "*Dyna*"].
[15] (2019) 10 SCC 259.

illegality", rendering the award itself liable to be set aside. The Court also clarified that the power is discretionary.

28. The judgments of the Supreme Court in *Dyna* and *Kinnari Mullick* were considered by the Division Bench of this Court in *Bentwood Seating System Ltd. v. Airport Authority of India*[16]. The Division Bench made it clear that Section 34(4) of the Act cannot be resorted to in a situation where the award might undergo a change as a result of the reconsideration:

> *"17. We are in agreement with the observations made by the learned Single Judge. The plea of grant of specific performance of the contract was dependent on the outcome of the defence raised by the respondent that the Purchase Order/contract itself was vitiated by fraud. This defence has clearly not been adjudicated upon by the learned Arbitrator. It is not the case of merely not recording reasons for his finding, but one where there is no finding by the learned Arbitrator on this issue.* ***It cannot also be termed as a deficiency in the Arbitral Award which may be curable by allowing the Arbitral Tribunal to take measures which can eliminate the ground for setting aside the Arbitral Award****, which was stipulated as one of the conditions for exercise of power under Section 34(4) of the Act in Kinnari Mullick (supra).* ***A finding on this issue may in fact, bring about a total change in the Award.***
>
> *18. The submission of the learned counsel for the appellant that the e-mails relied upon by the respondent in support of its submission of fraud were even otherwise not admissible, cannot be considered by this Court in its powers under Section 37 of the Act and could not even have been considered by the learned Single Judge in exercise of its powers under Section 34 of the Act. These are submissions which had to be considered by the learned Arbitrator in the first instance."*[17]

29. In the present case, the impugned award, as extracted above, proceeds on the basis that, in the absence of a para-wise reply in the SOD,

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[16] 2021 SCC OnLine Del 3989 [hereinafter "*Bentwood"*].
[17] Emphasis supplied.

the averments in the SOC are to be taken as admitted. The ground of challenge under consideration concerns breach of natural justice, occasioned by the Tribunal's complete rejection of CMCEL's SOD. In such a case, if the Court were to uphold that submission, it would certainly constitute a case of patent illegality. On this reasoning, no findings have been recorded, adjudicating the defences taken in CMCEL's SOD. It is thus not merely a case where reasons would have to be supplied, but one where new findings are likely. *I Pay* indicates quite clearly that such cases are not appropriate for invocation of Section 34(4). The decision of the Division Bench in *Bentwood* would also come in the way of such a course, as consideration of the SOD by the Tribunal at this stage, which it failed to consider in the impugned award, would potentially affect the outcome of the case itself.

30. Mr. Nayar referred to the judgment in *P. Nagaraju*, to contend that Section 34(4) of the Act affords the power to "remand", which can be exercised by the Court, even if the consequence would potentially involve a change in the award itself. In that case, the Supreme Court did exercise the power under Section 34(4), *albeit* in a statutory arbitration arising under the National Highways Act, 1956, for compensation in lieu of acquired land. The Court found that patent illegality has been committed by the arbitrator and further directed as follows:

> *"81.* ***From the conclusion reached above, in both the set of cases it is evident that awards passed by the learned arbitrator are to be set aside and the matters be remanded in terms of Section 34(4) of the 1996 Act so as to enable the learned arbitrators to assign reasons to arrive at their conclusion****. In this regard, it is made clear that we have approved the guideline value Notification dated 28-3-2016 being reckoned for determining the market value. Hence, the claimants in*

> *any event would be entitled to determination of market value at the guideline value indicated vide Notification dated 28-3-2016 for the respective properties in Madhapura, Mayaganahalli, etc. as against what is awarded by SLAO if there is no other evidence indicating higher market value. The consideration to be made by the learned arbitrator however is as to the material and evidence if any available to treat the acquired land as comparable to the lands situate in "City Greens" and "Zunadu" layout and award the compensation based on the guidance value indicated for the lands in the said layout if found comparable. The reason for not applying the guideline value indicated for the lands in the very survey number of the acquired lands is to be disclosed on such consideration."*[18]

The Court thereafter "remanded" the arbitration proceedings to the concerned Deputy Commissioner and arbitrator.

31. The decision in *P Nagaraju*, in my view, stands on a different footing. First, it was a statutory arbitration with a named arbitrator. In such arbitrations, the Arbitration and Conciliation Act, 1996 applies only to the extent that the matter is not covered by the National Highways Act, 1956. Arbitration is entrusted to a designated officer. In essence, setting aside of the award, with liberty to invoke arbitration afresh, as is the normal procedure under Section 34 of the Act, would have taken the parties before the very same authority to which the matter was remanded. Further, although the Court refers to Section 34(4) of the Act in paragraph 81 of the award, the judgments in *Kinnari Mullick* and *I Pay* have not been referenced. The facts of our case are, in my view, much closer to the facts of the other cases noted above, which line of decisions must therefore be followed in the present case.

[18] Emphasis supplied.

32. For the aforesaid reasons, I do not consider it appropriate to accede to Mr. Nayar's contention that Section 34(4) of the Act be brought into play in this case.

II. *Contents of the Statement of Defence and documents filed by CMCEL:*

33. Before dealing with the approach of the Tribunal, it is necessary to summarise briefly the pleadings filed by both parties, particularly CMCEL, because it is in that context that the Tribunal's decision must be understood.

34. The claimant before the Tribunal was HMPL. After describing the nature of the contract between the parties and setting out various terms, the SOC contains various factual assertions, including as to the alleged breaches by CMCEL. HMPL's claims have thereafter been enumerated, including on account of demurrage charges due to slow discharge of crude oil from various vessels, expenses in repair and replacement of parts, payment made to the third-party service provider and other expenses.

35. As against this SOC, CMCEL filed a SOD running into 49 single-spaced pages but, as noted in the majority award, without a para-wise reply to the contents of the SOC. The structure of the SOC was instead to narrate the defence to each claim serially. The defences, although structured claim wise, contained CMCEL's response on liability, and also contested causation and quantum of damages claimed.

36. By way of example, the response to the first claim of HMPL may be considered. This dealt with demurrage charges paid by HMPL in

respect of a vessel called MT Lantana. The following points find mention in the SOD, under this head:

i. The claims are remote and not enforceable.

ii. The losses were due to HMPL's fault.

iii. CMCEL was not responsible for the failure of the West Sub-Sea Hose String as alleged by HMPL, which was damaged due to normal wear and tear accompanied by design failure and high tidal variations.

iv. No causal breach was alleged.

v. CMCEL had conducted underwater diving inspections on 29.08.2012 and 26.09.2012 and found the West Sub-Sea Hose String to be in good order.

vi. There was no evidence of improper underwater inspection or pre-existing failure.

vii. The claim was unsupported by documentary evidence, including blank and illegible documents.

viii. The demurrage rate was not admitted.

ix. The charter party had not been provided.

x. The delay imposed did not co-relate to the alleged fault.

xi. The pumping of the cargo from the vessel was slow.

xii. No evidence had been given of the normal discharge rate and to corelate the reduced rate with the alleged fault.

xiii. Diving operations are normally not carried out during the monsoon season, from May to September.

xiv. HMPL was not entitled to the full value of a new hose as the hose under replacement was already old.

37. While dealing with the other demurrage claims, several of these arguments have been repeated, in addition to specific arguments with regard to the particular vessel in question.

38. CMCEL also filed a counter-claim arising out of alleged wrongful termination of the contract and unpaid invoices. HMPL filed a rejoinder and defence to the counter-claim, in which it reiterated the contents of its SOC, and also dealt with the contents of the SOD in detail, para-wise.

39. As stated above, in addition to the SOD, CMCEL filed written submissions dated 15.05.2018, and a note.

III. *Was the Tribunal justified in overlooking the statement of defence ?*

40. As noted above, the majority award proceeds on the basis that the contents of the SOC are taken to be admitted in the absence of a para-wise denial. Although Mr. Nayar argued that the defences of CMCEL have, in fact, been considered, I shall advert to that argument later. For the present, suffice it to note that the majority award expressly considered the SOD to be deficient, and held that it was therefore entitled to proceed on the basis that the facts stated in the SOC were correct.

41. In reaching this conclusion, the Tribunal proceeded on the basis of Order VIII Rules 3, 4 and 5 of the CPC. Learned counsel on both sides have therefore made submissions with regard to the applicability of the CPC to arbitral proceedings. Mr. Sethi submitted that Section 19 of the Act specifically excludes the applicability of the CPC, whereas Mr. Nayar

submitted that the Act grants sufficient discretion to the Tribunal to apply the principles of CPC to its procedural determinations[19].

42. I do not consider it necessary to embark upon a detailed analysis of each of the judgments cited, as the propositions advanced by both sides are, in my view, easily reconciled. The provisions of the CPC and the Indian Evidence Act, 1872 are not binding upon an Arbitral Tribunal, which is free to set its own procedure. Section 19(3) of the Act makes this power subject to two qualifications – (i) agreement of the parties, under Section 19(2) of the Act, and (ii) the other requirements of Part I of the Act, including Section 18. In determining its own procedure, however, the Tribunal is also free to draw upon the principles of the CPC[20]. As far as evidence is concerned, Section 19(4) of the Act clothes the Tribunal with power to assess the evidence, including its admissibility, relevance, materiality, and weight.

43. On this understanding, Mr. Nayar is right in submitting that the Tribunal could have taken a decision to enforce the rules of pleadings, as contained in the CPC, strictly. But this begs the question as to whether the Tribunal, in fact, took such a decision at the right time, and put the parties on notice thereof. It is here that, in my view, the procedure adopted by the Tribunal fell short.

44. After the SOD was submitted to the Tribunal on 25.02.2016, it passed an order dated 29.03.2016, which has been referred to in the impugned award. The said order of the Tribunal is reproduced below:

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[19] *Srei Infrastructure Finance Limited.*

[20] *Gammon India Ltd. v. Sankanarayana Construction (Bangalore) Pvt. Ltd.*, 2011 SCC OnLine Mad 2266.

"***Minutes of Proceedings dated 29.03.2016 (Second Hearing)***

xxxx xxxx xxxx

The respondent has sent the Statement of Defence and Counter Claim in a single compiliation. Mr. Balaji Harish Iyer, learned counsel for respondent has made a statement that the respondent will not file any other document. ***It was pointed out by the Tribunal that there is no properly sworn affidavit in support of the Statement of Defence and Counter Claim. Mr. Balaji Harish Iyer, learned counsel for respondent requested that four weeks time be granted to file an affidavit. The respondent is accordingly granted four weeks time to file an Affidavit in support of the Statement of Defence and Counter claim. It will be open to the respondent to file a fresh Statement of Defence and Counter Claim.***

Mr. Karthik Nayar, learned counsel for claimant requested that four weeks time be granted for filing Rejoinder to the Statement of Defence and Reply to the Counter Claim. The Claimant shall file the Rejoinder to the Statement of Defence and Reply to the Counter Claim within four weeks thereafter.

As prayed the respondent is granted two weeks time for filing Rejoinder to the Reply to the Counter Claim.

Learned counsel for respondent has filed a draft of issues which arise for consideration in the matter. Learned counsel for claimant is granted four weeks time to send a draft of issues.

The next sitting of the Tribunal shall take place at 11 AM on 07.06.2016."[21]

45. The order thus records that the SOD and counter-claim was not supported by a properly sworn affidavit, and time was granted to CMCEL to file an affidavit, in support of the pleading. CMCEL was also granted liberty to file a fresh pleading. It is undisputed that an affidavit was, in fact, filed on 03.05.2016 in support of the SOD and counter-claim and was taken on record.

46. In the majority award, as also in Mr. Nayar's submissions, much is made of CMCEL's failure to file a fresh SOD and counter-claim, despite opportunity. That "opportunity" was, according to them, granted by the order dated 29.03.2016. However, I am of the view that no such course

was clearly mandated by the said order. The defect identified in the Tribunal's order was that the SOD was not supported by a properly sworn affidavit, not that it lacked a para-wise reply. The liberty granted was intended to overcome this lacuna, giving CMCEL the choice of either filing an affidavit in support of the existing SOD, or filing a fresh SOD and counter-claim. It opted for the former. The affidavit was accepted and taken on record. The lack of a supporting affidavit is also not the basis on which the SOD has been disregarded.

47. The majority award holds that CMCEL has "*consciously chosen not to avail the opportunity to file a fresh SOD*". Such an observation, with respect, is misconceived. No particular form of pleadings was mandated by the Arbitral Tribunal at any stage. A proper reading of the order dated 29.03.2016 gave CMCEL a choice in rectifying the defect pointed out by the Arbitral Tribunal, and no adverse inference ought to have been drawn against it for exercising that choice in one way rather than the other. No requirement of a para-wise reply was even mentioned in the order dated 29.03.2016, so as to correlate the opportunity granted thereby, with the defect the Arbitral Tribunal ultimately found to be fatal.

48. There are several other factors which also support the conclusion that CMCEL was never informed that its SOD was to be treated as defective. Those include the following:

a) Issues were framed by an order dated 03.08.2016, which covered both the claims of HMPL and the counter-claims of CMCEL. The issues were as follows:

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[21] Emphasis supplied.

> *"1. Whether the Respondent committed breach of its contractual obligations? If not, whether the Claimant was entitled to terminate the contract (OPP).*
>
> *2. Whether the Claims made by the Claimant are maintainable? (OPC)*
>
> *3. Whether the Counter Claims made by the Respondent are maintainable? (OPR)*
>
> *4. Whether the Counter Claims made by the Respondent are barred by the law of limitation? (OPC)*
>
> *5. Whether the Claimant has uscceeded in establishing that it was entitled to terminate the contract. If so, whether the damages claimed by the Claimant are fair and reasonable? (OPP)*
>
> *6. Which party is entitled to cost of Arbitration proceedings and what should be the quantum of cost? (OPP)"*

The framing of issues on HMPL's claims would have been entirely superfluous if the SOD was taken to be deficient, and the claims thus admitted.

b) Evidence was led, both on HMPL's claims and CMCEL's counter-claims. Again, if HMPL's case was to be taken as admitted by CMCEL, the entirety of the arbitral proceedings from the stage of framing of issues, were redundant.

c) Evidence was permitted to be led by CMCEL also, which does not appear to be limited to its counter-claim.

d) By order dated 28.08.2017, the Tribunal permitted amendment of the SOD, a course which presumes the existence of an original SOD.

e) In the minutes of proceedings held on 23.01.2019, the Tribunal recorded certain submissions made on behalf of CMCEL, and stated that the arguments "*will be considered in the final award*".

Counsel for CMCEL addressed an email dated 01.09.2019 to the Arbitral Tribunal, pointing that certain submissions that were fully presented in the oral submission, and that the minutes represented a summary of what was discussed. The Tribunal was requested to refer to the written submissions and case law(s) tendered on behalf of CMCEL. To this, the learned Presiding Arbitrator responded the next day, i.e. 02.09.2019, stating as follows:-

> *"In Minutes of Proceedings complete argument advanced by the parties is not written.* ***The submissions made will be considered in Award.****."*[22]

49. All these factors, in my view, weigh against the majority's final decision to treat the SOD, virtually as a "*non-est*" filing. Before coming to such a drastic conclusion, the Tribunal ought to have laid down the rules of procedure with clarity, and enforced them at the appropriate juncture, rather than permitting parties to proceed on the basis of pleadings, which it regarded as fundamentally flawed.

50. The view taken in the majority award is supported by Mr. Nayar, on the basis of judgments which hold that non-traverse of a pleading amounts to an admission. Mr. Nayar submitted that lack of a para-wise reply, in the present case, was rightly treated by the Tribunal as an admission, and an award was therefore rendered on principles analogous to Order XII Rule 6 of the CPC. Proceeding on the basis that such a course could have been adopted by the Tribunal, in the light of the procedure adopted in this case, I am of the view that CMCEL was not given any or adequate notice of this intention. If the Tribunal proposed to

ignore the SOD altogether in the absence of a para-wise denial, it should have said so clearly. The consequence of such a decision, as manifest in the present case, is that the claims of HMPL have been awarded without consideration of the defence. The general rule is that pleadings must be read holistically and meaningfully, rather than in a pedantic manner, which places a premium upon form rather than substance[23]. This general rule has been overlooked.

IV. *Reference to the Dissenting Opinion:*

51. Learned counsel for both sides have referred to a dissenting opinion dated 17.02.2020, rendered by one of the three arbitrators. Before considering the minority opinion, reference may be made to the judgment of the Supreme Court in *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.*[24], which dealt with the effect of a dissent by a minority arbitrator. The Court emphasised that only the majority decision constitutes the "*arbitral award*", and the dissenting opinion is just that – an opinion, which has no legal effect. That said, the Court also noted that the dissenting opinion can be relied upon by a party challenging the award, and the Court is not precluded from considering the findings and conclusions of the dissenting arbitrator[25]. In *Hindustan Construction Co. Ltd. v. NHAI*[26], the Court clarified that the dissenting opinion "*might provide useful clues in case there is a procedural issue*

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[22] Emphasis supplied.
[23] *Ram Sarup Gupta v. Bishun Narain College*, (1987) 2 SCC 1.
[24] (2021) 7 SCC 657 [hereinafter "*Dakshin Haryana*"].
[25] *Ibid*, Paragraph 39.
[26] (2024) 2 SCC 613 [hereinafter "*Hindustan Construction"*].

which becomes critical during the challenge hearings"[27]. In the context of these judgments, and the specific procedural challenge laid in the present case, reference to the views of the dissenting arbitrator is warranted.

52. The dissenting arbitrator cited Section 19 of the Act and specifically recorded as follows:

> "*xxxx xxxx xxxx*
> *1.3* ***There is no agreement between the parties as regards the procedure under the present case****. We have the right to conduct proceedings in the manner as we consider it appropriate, including all matters of admissibility, relevance, materiality and weight of evidence.* ***If it was the Majority's Opinion that the CPC ought to be strictly followed in this Arbitration, then, as the Tribunal we ought to have given notice to both parties well in advance of our intention to do so. As a Tribunal, we never discussed the procedure amongst us, nor did we notify the parties of any intention to follow the CPC strictly.***
> *1.4. As per Order dated 28.08.2017* ***we had specifically allowed an amendment to the SOD.*** *I do not think it fair, just and appropriate to disregard the amendment that we the Tribunal, have ourselves allowed and also the SOD which contains denials and defence.*
> *1.5 Issues were framed by the Tribunal and cannot be ignored, which is the basis of the Minority Award being passed here.* ***Issues could not have been framed unless we had considered the defence.***
> *1.6. Interrogatories were exchanged and an order was passed by us on the same. In considering the relevance of the documents that were being sought for in the interrogatories,* ***we had examined the claim and the defence submissions, and the relevance of the documents that was sought to be made.***
> *1.7 O. VII R. 5. of the CPC dealing with specific denials includes denials by necessary implication as well.* ***I find that the Respondent's Statement of Defence apart from denials, also clearly lists out the defences against each of the Claimant's claim with sufficient detail, wherein there are specific denials and denials by implication****. These defences in my opinion qualify as specific denials under Order VILL Rule 5. We must bear in mind that the purpose of arbitration proceedings is to do away with the technicalities and conduct the proceedings liberally otherwise it will defeat the purpose of the legislature.*
> *xxxx xxxx xxxx*

[27] *Ibid,* Paragraph 32.

1.10 From the evidence on record and the oral arguments made, ***there appears to be no doubt about the matters in issue****. Both parties extensively argued on the merits of the claim. The Minutes of the Meetings prepared by the Tribunal for each arbitral session during the final arguments contained a brief statement of the arguments made.* ***In all the minutes of the meetings for final arguments, it was recorded that the arguments raised, including those on merits by both parties, will be considered in the final award****. Given the same, disregarding the defences raised and arguments made by the Respondent in my humble opinion would lead to injustice to one party. The defence clearly highlights points that the Respondents raised, which were are bound to consider. In MSEB Vs. Dattar Switchgear 2003 (105) (1) Born. LR. 937, it was held "In sub-section (1) of Section 19, the Act as prescribed as the Arbitral Tribunal shall not be bound by the Civil Procedure, 1908 or the Evidence Act, 1872. These are words of amplitude and not restriction. These words do not prohibit the Arbitral Tribunal from drawing sustenance from the fundamental principles underlying the Civil Procedure Code or Evidence Act, but free the Tribunal from being bound, as would a Civil Court, by the requirement of observing the provisions of the Code and the Law relating to evidence with all its vigor.*

1.11 I am reminded of our duty as laid down under Hindustan Shipyard Vs. Essar Oil Ltd. 2005 (1) ALD 421, "Where parties have not agreed to any specific procedure, the Arbitral Tribunal has to follow the statutory procedure, which means that we have to weigh the entire evidence on record properly and come to a just conclusion within the parameters of the dispute."

1.12 ***I do not agree with the Majority Award that the Statement of Defence, "…is completely silent about the averments made therein". There are clear denials. By way of examples, I have extracted the below from the Defense:***

"(108) It is denied that there was any poor planning and improper handling while reconnecting the floating hose before arrival of m.t. MAJESTIC.

(108A) This is the Respondent's reply to the Claimant's claim for Rs.4,98,016/- allegedly for the delay in making the SBM ready for M.T. Majestic and incurring anchorage charges. Respondents deny abovementioned charges.

(111A) The Claimants' claim for excessive Port charges due to slow discharge of M.T. Majestic being Rs.20,77,797/- is denied.

(152) It is denied that there was any poor planning and improper handling while reconnecting the floating hose before arrival of m.t. MAJESTIC.

> *(273) The entire Contract awarded to Underwater Service has not been provided. Replacement would normally be part of the Contractual obligations of M/s Underwater, within the ordinary scope of words, and M/s Underwater and/or the Claimants would not be entitled to separately bill and charge for this. It is denied that any such payments have been made by the Claimants to M/s Underwater Services.*
> *(295) Under the circumstances, all the claims stand denied expressly.*
> *1.13* ***I do not agree with my Learned Brothers that all facts in the Statement of Claim are deemed to be admitted by the Respondent.*** *I also find it inconsistent to suggest, on the one hand that all facts in the Statement of Claim shall be considered to be admitted, yet on the other, certain claims of the Claimants have been disallowed. I find that there are both specific denials and denials by implication. The Respondents confirmed during final hearing that those parts of the Claim Submissions not dealt with, may be considered as admitted. This is a practical and fair approach, which I am inclined to follow.*
> *1.14 In my humble view, the need for a pedantic or formal line denial in an arbitration is not necessary. Issues have been framed arising out of the Defense. Once Issues have been framed, there is no question of the Statement of Claim averments being considered as admitted."*[28]

53. The observations in the dissenting opinion suggest that no procedure was, in fact, discussed between the members of the Arbitral Tribunal, so as to lead to strict application of the CPC requirements for pleadings, and no such decision was therefore communicated to the parties.

V. *Does the majority award in fact consider the defences in the SOD and deal with the claims in full ?*

54. Although, as noted above, the majority award records that the facts stated in the SOC were treated to be correct, it also purported to examine the evidence before rendering its final award. Mr. Nayar submitted that, in this process, the defences had in fact been adequately considered.

[28] Emphasis supplied.

55. As far as this aspect is concerned, I find that the Tribunal has analysed the documentary and oral evidence and the terms of the contract, to return a finding of breach against CMCEL, which justified termination by HMPL. While doing so, the Tribunal has not adverted to the defences on the question of liability, as articulated in the SOD. The Tribunal has thereafter proceeded directly to consider the claims asserted by HMPL, and has accepted the quantum of the claims without any substantial discussion. Although some of the claims have been disallowed[29], this is also on an analysis of HMPL's documents and evidence, and not by accepting the defences adduced by CMCEL. In contrast, the dissenting opinion contains detailed issue-wise discussion on each of the assertions, with reference to the specific defences taken.

56. In the written submissions filed on behalf of CMCEL before this Court, it has been pointed out that several claims awarded in the majority award are in excess of the amounts quantified in the SOC itself. Mr. Nayar submitted that these claims were, in fact, kept open at the stage of filing of the SOC as they were then not quantified. A challenge has also been laid on the ground that several of the claims have been allowed without any findings at all. On the questions of causation and quantum of damages, for example, there are no substantive findings in the impugned award. However, I do not consider it necessary to enter into these aspects in greater detail, in view of my finding that the majority award erroneously ignores CMCEL's defences altogether. They are noted only to

[29] Demurrage incurred with respect to vessel MKT Sakamandor; Claim for purchase and replacement of 24 Main Line Floating Hose String; Claim towards replacement of westside Sub-Sea Hose String; Amount paid to third party towards replacement activity of the west side subsea hose.

state that, upon a consideration of the majority award as a whole, I am unable to agree with Mr. Nayar's suggestion that CMCEL's defences have been adequately considered, notwithstanding the view expressed therein, that the SOD was liable to be ignored.

VI. *Do these findings call for interference under Section 34 of the Act ?*

57. Mr. Nayar's final submission was that the narrow scope of interference with an arbitral award, under Section 34 of the Act, precludes interference in a case of this nature.

58. The principles with regard to exercise of jurisdiction under Section 34 of the Act, are now all too well established to require detailed analysis. Suffice it to summarise that matters of procedure, interpretation of pleadings and assessment of evidence, are all matters within the domain of the Arbitral Tribunal, and do not ordinarily call for interference under Section 34 of the Act. The Court will interfere with an award on such grounds only if it is found to be manifestly arbitrary or perverse, in the sense that no reasonable Tribunal could have rendered the same finding.

59. Mr. Nayar submitted that the majority award does reflect the Arbitral Tribunal's reasoning. He argued that detailed reasoning is not required in an arbitral award, and that inadequacy of reasoning is not itself a ground for setting aside the award. So long as the thought process of the arbitrator is revealed, the effort should be to preserve the award, rather than to set it aside. I accept these principles, as submitted by Mr. Nayar, but I find that the reasoning in the majority award, proceeds on non-consideration of the SOD. In my view, such a course, in the factual situation outlined above, simply does not meet the required standard of

fairness. The Arbitral Tribunal did not, at any stage, communicate to the parties, its intention to apply the provisions of CPC in this manner. As held above, where the consequence would be to render the defence wholly out of consideration, clear and unequivocal directions should have been given. In the absence of such directions, CMCEL was, in my view, not given an adequate opportunity to present its case in a manner the Tribunal found acceptable. The case therefore comes within the relatively narrow range of cases where, despite deference to the Tribunal's determination on matters of procedure, pleadings and evidence, the Court finds itself unable to uphold the award.

60. Where fundamental matters of natural justice and arbitral procedure are involved, I am of the view that the Court is not powerless to intervene. Section 34(2)(v) of the Act specifically refers to an arbitral procedure which was not in accordance with Part I of the Act. Part I includes Section 18. Thus, if the Court comes to the conclusion that a party has not been given a full opportunity to present its case, the Court is duty bound to exercise its jurisdiction under Section 34 of the Act.

61. It may be noted that, in the course of hearing, learned counsel for the parties were requested to take instructions as to whether they would be agreeable to setting aside of the impugned award, and initiate a fresh final hearing of the claims and counter-claims on the pleadings, and evidence on record. Regrettably, no consensus could be reached on these lines. The award must, therefore, be set aside, leaving parties to the remedies available to them in law.

F. CONCLUSION:

62. For the reasons aforesaid, O.M.P.(COMM.) 200/2021 is allowed and the impugned award dated 14.01.2020 is set aside.

63. O.M.P.(COMM.) 538/2020, being HMPL's challenge denial of interest in the same award, is rendered infructuous, and is disposed of.

64. Similarly, O.M.P.(ENF.)(COMM.) 95/2021, for enforcement of the same award, is also disposed of as being infructuous.

65. The parties are free to reagitate their claims and counter-claims in accordance with law.

66. All pending applications stand disposed of.

67. Parties will bear their own costs.

PRATEEK JALAN, J

MAY 5, 2025
Bhupi/PV/Kuber/