

Steel Authority of India Ltd. Vs. Htc Engineering (1958) Private Ltd.

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Court : Kolkata

Decided On : Apr-25-2016

Judge : Harish Tandon

Appellant : Steel Authority of India Ltd.

Respondent : Htc Engineering (1958) Private Ltd.

Judgement :

IN THE HIGH COURT AT CALCUTTA ORDINARY ORIGINAL CIVIL JURISDICTION ORIGINAL SIDE A.P218of 2006 STEEL AUTHORITY OF INDIA LTD. -VSHTC ENGINEERING (1958) PRIVATE LTD. CORAM: HONBLE MR. JUSTICE HARISH TANDON For the Petitioner For the Respondent Judgment on Mr. A.K. Chatterjee, Sr. Adv., Mr. D. Ghosh, Adv. Mr. Debasish Kundu, Sr. Adv., Mr. Sayantan Bose, Adv. 25.04.2016 Harish Tandon, J.: The challenge is made to an award made and published on 17th March, 2006 by the Arbitrators allowing the part of the claims of the Petitioner and counter claims of the Respondent herein. In other words, by the said award the Petitioner is directed to pay a sum of Rs. 7,48,56,134/- to the Respondent together with interest @ 18% per annum on the amount from the date of the award till payment apart from the costs and expenses for the arbitration. The facts revealed from the respective stands of the parties before the Arbitrator and before this Court are adumbrated herein below:-- (i) The Petitioner being the claimant published a tender notice dated 5 / 6th August, 1996 inviting applications from the experienced contractors who can handle the iron and steel materials at the Petitioners stockyard located at Paharpur, 20 Coal berth and

DP-II sighting of Kolkata Branch Sales Office of the Petitioner. (ii) The eligibility criterion enshrined in the said tender notice was that the contractor should be capable of handling iron and steel materials of minimum quantity of 1.25 lacs metric tons (MT) during any of the last financial years. (iii) The period of contract shall be initially for two years which can be extended at the sole discretion / option of the Petitioner for further period of one year. (iv) The Respondent participated in the said tender and submitted the relevant papers and documents having fulfilled all the criterion enshrined under the said tender notice. (v) After proper scrutiny the Petitioner awarded the contract to the Respondent to commence from 23rd November, 1996. (vi) Clause 9 of the Contract clearly provides that the contract labourers employed in Paharpur stockyard shall not be deployed as it would contravene the order of the High Court passed on 24th July, 1995 in FMAT1460 of 1984 directing the parties to maintain status quo in relation to such employment. (vii) The Respondent asked for furnishing a statement of workers working in the said stockyard which was responded by the Petitioner in providing a list of over 560 workers already employed since last several years in the Paharpur stockyard. The disputes were raised during the initial period of the contract not only on the excess payment made towards the wages to large number of contractual labourers who are not covered under an order of the High Court in the said appeal but also on non-providing the estimated quantities of the materials during the first 17 (seventeen) months and causing huge losses and damages to the Respondent. (viii) The parties exhausted their remedy before the Arbitral Tribunal and an award was passed in favour of the Respondent to the tune of Five Crore and odd together with interest and costs to the proceeding which was assailed under Section 34 of the Arbitration and Conciliation Act, 1996 before this Court. (ix) The said application was allowed upon setting aside the award which is further challenged before the Division Bench of this Court and the matter is still pending. (x) After the expiration of the initial term of the contract, the Petitioner unilaterally extended the period for one year and the present arbitration proceeding was initiated relating to the dispute arose during the said extended period. (xi) The present arbitration proceeding originated from a claim of damages on alleged non-performance by the Respondent between the period from 23rd November, 1996 to 31st March, 1999 and the claim was further enhanced for the extended period. As

it appears from the impugned award the Petitioners claim were made under the following heads, namely unpaid wages to the contract labourers, dues on account of the provident funds of those labourers, unpaid gratuity from 23rd November, 1996, non-payment of privileged leave salary from 23.11.1996, interest on outstanding advances, liquidated damages, contingent liabilities, compensation for workmen and losses due to total stoppage in delivery of materials from the said stockyard for the period from 01.01.1999 to 31.03.1999. Before the Arbitral Tribunal the Respondent made a counter claim to the tune of Rs. 15,42,98,768/- under various heading viz. non-supply of payments and assured quantity of material for handling, wrongful detention of machineries, imposition of liability for excess contract labourers, non-payment of the outstanding bills, refund of scrutiny deposit and performance guarantee and interest. Several issues were framed by the Arbitrator which are jotted down as under:-

1. (a) Was not the Claimant under the contract obliged to supply 21250 MT and effect delivery 21250 MT totalling 42500 MT per month on an average?.
2. (b) If yes, did the Claimant commit breach of such obligation?.
- (a) Is the Claimant entitled to a sum of Rs. 5,16,000.00 as enhanced up to 2nd November, 1999 or any other sum on account of alleged unpaid wages to the contract labourers claimed in Claim No.A. of paragraph 27 in the Statement of Claim and Annexure-I of paragraph 14 to the Rejoinder to the Counter statement of facts?.
- (b) Is the Claimant entitled to a sum of Rs. 1,28,46,217.00 as enhanced up to 22nd November, 1999 or any other sum on account of alleged Provident Fund dues of contract labourers as claimed in Claim No.B. of paragraph 27 of the Statement of Claim and Annexure-II of paragraph 16 to the Rejoinder to the Counter Statement of facts?.
- (c) Is the Claimant entitled to a sum of Rs. 74,40,240.00 enhanced up to 22nd November, 1999 or any other sum of account of alleged bonus to the contract labourers with effect from 23rd Novemeber, 1996 as claimed in Claim No.C. of paragraph 16 to the Rejoinder to the Counter Statement of facts?.
- (d) Is the Claimant entitled to a sum of Rs. 40,43,312.78 as enhanced up to 22nd November, 1999 or any other sum on account of alleged unpaid gratuity to the contract labourers with effect from 23rd November, 1996 as claimed in Claim No.D. of paragraph 27 of the Statement of Claim and Annexure-

IV of paragraph 16 to the Rejoinder to the Counter Statement of facts?. (e) Is the Claimant entitled to a sum of Rs. 65,71,933.33 as enhanced up to 22nd November, 1999 or any other sum on account of unpaid alleged privilege leave salary of the contract labourers with effect from 23rd November, 1996 as claimed in Claim No.E. of paragraph 27 of the Statement of Claim and Annexure-V of paragraph 16 to the Rejoinder to the Counter Statement of facts?. (f) Is the Claimant entitled to an alleged sum of Rs. 14,37,273.00 or any other sum towards alleged interest on outstanding advance as claimed in Claim No.F. of paragraph 27 of the Statement of Claim?. (g) Is the Claimant entitled to a sum of Rs. 28,36,53,203.00 or any other sum on account of alleged liquidated damages as claimed in Claim No.G. of paragraph 27 of the Statement of Claim?. (h) Is the Claimant entitled to a sum of Rs. 1,29,26,188.00 as enhanced up to 22nd November, 1999 or any other sum on account of alleged contingent liabilities as claimed in Claim No.H. of paragraph 27 of the Statement of Claim and Annexure-VIII of paragraph 16 to the Rejoinder to the Counter Statement of facts?. (i) Is the Claimant entitled to a sum of Rs. 30,000.00 or any other sum on account of alleged workers compensation as claimed in as claimed in Claim No.I. of paragraph 27 of the Statement of Claim?. (j) Is the Claimant entitled to a sum of Rs. 99,70,030.00 due to loss on account of alleged stoppage in delivery of materials from Paharpur and Coal Berth Stockyards from 01.01.1999 to 31.03.1999 as claimed in Claim No.J. of paragraph 27 of the Statement of Claim?.

3. Is the Claimant entitled to interest at the rate of 18 percent per annum as claimed in paragraph 31 of the Statement of Claim?.

4. To what reliefs, if any, is the Claimant entitled to?.

5. Is the Respondent entitled to a sum of Rs. 12,40,93,043.00 on account of nonsupply of promised and / or assured quantity of materials to be handled during the period of 1st May, 1998 to 22nd November, 1999 as pleaded in paragraph 29 of the counter claim?.

6. Is the Respondent entitled to a sum of Rs. 36,99,500.00 on account of wrongful detention of machinery as pleaded in paragraph 31 of the counter claim ?.

7. Is the Respondent entitled to a sum of Rs. 1,79,00,400.00 towards additional claims made on account of 224 contract labours as pleaded in paragraph 32 and 33 of the counter claim?.

8. Is the Respondent entitled to a sum of Rs. 86,05,825.00 on account of outstanding bills and interest as pleaded in paragraph 34 of the counter claim?.

9. Is the Respondent entitled to a sum of Rs. 11,50,000.00 on account of refund of security deposit and performance guarantee by way of bank guarantee as pleaded in paragraph 35 of the counter claim?.

10. Is the Respondent entitled to interest at the rate of 24 percent per annum as claimed in paragraph 39 of the Counter Claim?.

11. To what reliefs, if any, is the Respondent entitled to?.

. The Arbitrator answered the aforesaid issues in the following manner:-Issue View No.1(A) & Affirmative 1(B) 2(A) Negative 2(B) Negative 2(C) Negative 2(D) Negative 2(E) Negative 2(F) Negative 2(G) Negative 2(H) Negative 2(I) Negative 2(J) Negative 3 Negative 4 Negative 5 Partly Allowed 6 Affirmative 7 Negative 8 Partly Allowed 9 Affirmative 10 Partly Allowed The claims awarded in the impugned award can be summarized that all the claims of the Petitioner except on account of re-imposition of the advances made to the contract labourers were allowed. On the other hand, the counter claims on account of non-providing the minimum quantity of materials to be handled, wrongful detention of machineries and equipments, non-payment of the outstanding bills and refund of scrutiny and performance guarantee together with interest are allowed. The claim on account of re-imposition of advances to the contract labourers have been allowed to set off against the counter claim awarded by the Arbitrators. Mr. Ajay Krishna Chatterjee, learned senior Advocate would submit that Clause 2.1, 2.4 & 4 of Invitation to Tender does not create any obligation on the part of the Petitioner but are relatable to an eligibility criteria to participate in the tender process and therefore, the Arbitral Tribunal have wrongly interpreted those provisions to be a part of an obligations requiring strict adherence by the Petitioner. It is, further submitted that Clause 5 of Invitation to Tender clearly indicates that the estimated quantities

reflected under Clause 4 thereof are only for the purpose of finding out the value of the tender and the Petitioner is no way responsible and / or liable for actual quantity of work. Mr. Chatterjee vehemently submits that the general terms and conditions, forming part of the agreement, were not considered by the Arbitral Tribunal. By referring Clauses 8.3 and 8.7 of general terms and conditions, Mr. Chatterjee contends that the plain and simple reading of the aforesaid clauses would give a sufficient indication that the Respondent would not claim for any item of work in the contract and the Petitioner does not give any guarantee about the definite volume of work to be entrusted upon the Respondent at any time or even through out the tenure of the contract. According to Mr. Chatterjee, the Prohibitory Clause (8.3) and Non Guarantee Clause (8.7) have to be construed in such perspective and conveying the intention that non providing the definite volume of work does not give right to the Respondent to claim such which the Arbitral Tribunal omits to consider. In other words, it is submitted that the Arbitral Tribunal have ignored and overlooked the aforesaid Clauses and proceeded simply on the other Clauses of the Invitation to Tender which are merely the Eligibility Clauses, not conferring any right to claim such definite quantity of work during the period of an agreement. By referring Section 28(3) of the Arbitration and Conciliation Act, 1996, Mr. Chatterjee submits that though the Arbitral Tribunal is required to decide in accordance with the terms and conditions and further taken into account the usages of the trade applicable to transaction but where there is an absolute prohibition in the agreement, the principle of business efficacy cannot be imported in the contract. He impugned the award allowing the claim for wrongful detention of the machineries that unless the payment is made to the provider of the cranes the claim is prematured. It is, thus, submitted that though the bills issued by the cranes were produced before the Arbitral Tribunal but in absence of any proof of payment, the Arbitral Tribunal should not have allowed such claims. On the claim of outstanding bills and interest, Mr. Chatterjee would contend that the Arbitral Tribunal could not have presumed an admission solely on the ground that no dispute is raised thereupon. Mr. Chatterjee, learned Senior Advocate appearing for the Petitioner attacks the award as the Arbitrators have proceeded beyond the terms of the contract. According to him, the Arbitrators are confined to act within the boundaries of the contract and cannot travel beyond it and if traveled, such

award is liable to be set aside having acted in excess of the jurisdiction. In support of the aforesaid contentions, the reliance is placed upon a judgment of the Supreme Court in case of Associated Engineers Company -Vs- Government of Andhra Pradesh & Anr. reported in AIR 1992 SC232. It is succinctly argued that the terms of the contract should be interpreted by providing plain and simple meaning of the words incorporated therein without adding or subtracting any words into it as held in case of Central Bank of India Limited vs Hartford Fire Insurance Company Limited Reported in AIR 1965 SC1288. Mr. Chatterjee audaciously submits that although the Arbitrators are the authority for interpretation of the terms of the contract but the regard must be given to each of the expressions given therein and any omission to consider the expressed terms given in the agreement would amount to acting without jurisdiction and placed reliance upon a judgment of the Supreme Court in case of Steel Authority of India Ltd. -Vs- J.C. Budharaja, Government and Mining Contractor reported in (1999)8 SCC122. He, thus, submits that if the Arbitrators have omitted to consider the relevant terms of the contract and have proceeded on a wrong premise in arriving at a perverse conclusion the award is liable to be set aside. To buttress the aforesaid submission, he placed reliance upon a judgment of the Apex Court in case of ONGC Ltd vs Garware Shipping Corporation Limited reported in AIR 2008 SC456 & Hindustan Zinc Ltd. - Vs Friends Coal Carbonisation reported in (2006) 4 SCC445. He succinctly argues that the Arbitrators cannot take an external aid and borrow something beyond the contract in arriving at the conclusion. On the scope of the challenge under Section 34 of the Arbitration and Conciliation Act, 1996 the reliance is placed upon a judgment of the Supreme Court rendered in case of Oil & Natural Gas Corporation Ltd. -Vs- Saw Pipes Ltd. reported in (2003) 5 SCC705. He, thus, concludes that if the Arbitrators have traveled beyond the periphery of the contract and applied extraneous factors, such award is patently illegal and therefore, liable to be set aside. Mr. Kundu refuted the contention of the Petitioner that the Arbitral Tribunal did not consider the Prohibitory Clause and Non Guarantee Clause embodied in the general terms and conditions. According to him, the Clauses embodied under Invitation to Tender cannot be segregated for the purpose of gathering the intention of the parties from the general terms and conditions. He, thus, submits that the golden rule of interpretation of the contract is that the contract should be

read as a whole and not in piecemeal. He would contend that the Clauses under Invitation to Tender postulates that the tenderers should have experience in handling the requisite quantity of goods preceeding 5 years and must own half of the equipment required for handling such quantities. The Invitation to Tender further provided the estimated quantities to be handled during the first year of operation for the purpose of finding out the value of the tender and in such Perspective Clause 5 was incorporated that the Petitioner shall not be liable if actual quantity differs from estimated quantity. He further submits that by virtue of Clause 11.1 of instruction to tenderer, the advertisement for tender, instructions to tenderers, terms and conditions of the contract along with all enclosures and the letters exchanged between the parties shall form part of the contract and therefore the general terms and conditions of the contract and the Clauses incorporated therein are binding upon the parties. He relies upon Clause 6.2 of the terms and conditions containing the rates of the estimated value, in support of the contentions that the reasonable quantities be provided for handling though differs from the actual estimated quantity does not mean that the contractor would be allowed to handle a negligible quantity as has been done in the instant case. He vehemently submits that Clauses 8.3 and 8.7 of the general terms and conditions cannot be rigidly construed as a bar to claim the exact estimated quantity of the work but at least a minimum quantity known to the commercial working of any similar nature of work because of the fixed costs for keeping the equipments which do not meet to the quantities of goods allowed to be handled. He took a strong exception to the submission of the Petitioner that the Prohibitory Clause and Non Guarantee Clause have not been considered by the Arbitrator. According to him, the Arbitrator took into account the aforesaid Clauses and a harmoniously interpreted the same with other Clauses and therefore such interpretation cannot be faulted with as the Arbitrator is a sole authority for interpretation of the Contract. In support of the aforesaid contentions, he relies upon a judgment of the Supreme Court in case of Pure Helium India (P) Ltd. -v- Oil & Natural Gas Commission reported in (2003)8 SCC593 Mr. Kundu is very much vocal in his submission that the Court should not interfere under Section 34 of the Act on the views expressed by the Arbitrator if such view appears to be reasonable and plausible even if the Court thinks that the other view should have been taken and placed reliance upon

judgment in case of Madhya Pradesh Housing Board -v- Progressive Writers and Publishers reported in (2009)⁵ SCC678 and McDermott International Inc. - v- Burn Standard Co. Ltd. & Ors. reported in (2006)¹¹ SCC181 He thus submits that the Court exercising jurisdiction under Section 34 of the Act cannot reappraise or reassess the evidence acting as a Court of an appeal as held in case of P.R. Shah, Shares & Stock Brokers Pvt. Ltd. -v- B.H.H. Securities Pvt. Ltd. & Ors. reported in (2012)¹ SCC594 Mr. Kundu fervently submits that Section 28(3) of the Act empowers the Arbitral Tribunal to decide the dispute in terms of the contract by taking into account the usages of the trade applicable to the transaction. It is, thus submitted that the principal of business trade or business efficacy can be a factor in interpreting commercial document for the purpose of upholding the contract rather to invalidate it. In support of the aforesaid contentions, the reliance is placed upon a judgment of the Supreme Court in case of The Union of India -v- M/s. D.N. Revri And Co. & Ors reported in (1976)⁴ SCC147 and a judgment of this Court in case of Dwarakadas & Co. -Vs- Daluram Goganmull reported in AIR 1951 CALCUTTA.

10. Mr. Kundu further contended that the Arbitral Tribunal have given due regard to all the Clauses and have provided a reasonable reasons to the ultimate conclusion which is not open to be challenged before the Court under Section 34 of the Act and relied upon judgment of the Supreme Court in case of M/s Sudarsan Trading Co. -Vs- Government of Kerala & Anr. reported in (1989)² SCC38 In such perspective it is submitted that the approach of the Court should not be to destroy or render the award illegally but to uphold the same as held in case of Smt. Santa Sila Devi & Anr. -Vs- Dhirendra Nath Sen & Ors. reported in AIR 1963 SC1677 Lastly, it is submitted that the Petitioner have not successfully made out a case before this Court that the impugned award is opposed to public policy or the findings recorded therein is perverse. Before advertng to deal with the respective submissions in extenso, it is apposite to record that the challenge to the impugned award is essentially based on awarding the sum than on rejection of the claims by the Arbitral Tribunal. Admittedly the initial period provided under contract was two years extendable for another year at the sole discretion and option of the Petitioner. It is undisputed that the Petitioner exercised such option and extended the period of the agreement for a term of one year. During the first

17 (seventeen) months of the contract period, the estimated quantities of the materials were not given for handling and a further liability to pay the extra contract labourers were also imposed upon the Respondent which raised a dispute and first arbitration proceeding was initiated thereupon which culminated into award in favour of the Respondent. The first award was challenged before this Court under Section 34 of the Arbitration and Conciliation Act, 1996 and the Honble Single Bench set aside the said award which is further challenged before the Division Bench and the learned Counsels of the respective parties uniformly submit that the appeal is still pending. The instant arbitral proceeding has commenced at the behest of the Petitioner alleging non-performance of its obligation by the Respondent which causes damage to be suffered by the Petitioner. The claims were subsequently enhanced by the Petitioner because of the subsequent events, which are clearly discernable from the impugned award. On the other hand, the Respondents made a counter claim under various heads and the Arbitral Tribunal awarded some of the claims as indicated herein before. The sheet-anchor of the challenge to the impugned award is basically founded on non-consideration of the relevant clause of the contract and foundation of the decision on some other clauses which cannot be segregated and divorced from the other clauses which are equally relevant and important to gather the intention of the parties. The definition of the contract under terms and conditions would mean and include the agreement between the Petitioner and the Respondent duly signed by them for execution of the work together with all documents annexed / attached therewith or referred thereto. The whole of the contract is broadly divided in three parts namely, Invitation of Tender, Instruction to Tenderers and Terms and Conditions of Contract for handling iron and steel materials in the stockyards of the Petitioner. It ambits no ambiguity to say that all the terms and conditions and the recordings under the aforesaid broad heads constitute the valid and binding contract and the intention of the parties to the contract can be derived by giving plain and simple meaning to the terms and conditions embodied therein. Clause 2 of Invitation of Tender relates to eligibility of the tenderers which imbibed within itself the experience of the tenderers in handling at least 1 Lac 25 Thousand Metric Tons of a steel materials in preceding five financial years. Clause 2.4 thereof requires the tenderer to own at least 50% of the equipments specified in Clause No.2.1 of

Instruction of Tenderers on its own name and style and the short fall, if there be any, would be required to make good by procuring on ownership within 30 days from the date of the letter of intent if the contract is awarded in its favour. It is, therefore manifest that the clause under Instruction of Tenderers constitute a part of the contract by way of reference as well. Clause 4 of the Invitation to Tender which assumes center of debate speaks of the estimated quantities proposed to be handled during the first year of operation of the contract based on the calculation of sales plan. Clause 5 thereof is clarifactory clause in the sense that it clearly provides that the estimated quantities for the first year of operation of the contract are only for the purpose of finding out the value of tender and the Petitioner was in no way responsible / liable if the actual quantity of work differs from the aforesaid estimated quantity. Clause 9 of the Invitation of Tender unequivocally expresses that such tender is subject to the interim order passed by this Court on 24.07.1995 in FMAT1460of 1994 by which the employment of the contract labour working in the Paharpur stockyard shall not be removed from employment and the status-quo in this regard shall be maintained. Clause 2.1 of the Instruction to Tenderers indicates the minimum number of cranes tools and other equipment to be deployed to handle the expected cargo in the yard. Whereas in Clause 4 thereof reiterated the estimated quantities proposed to be handled during the first year. According to the Petitioner, Clause 5 of the Invitation to Tender and Clause 8.3 and 8.7 of terms and conditions of contract have not been taken into account by the Arbitral Tribunal which would lead to an inescapable conclusion that it does not foist any liability on the Petitioner nor confer any right on the Respondent to demand any item of work at all times and also gives no guarantee about the definite volume of work to be entrusted upon the Respondent at any point of time or through out the tenure of the contract. It is sought to be contended that the Clauses 2 & 4 of the notice to tender is reletable to eligibility of the tenderers and does not create any right on the tenderer to demand such quantity to be handled during the period of the contract. In the other words, it is contended that the impugned award is silent about those relevant clauses which does not confer any right on the Respondent to claim for estimated quantity of work nor gives any guarantee and therefore the Arbitral Tribunal have acted in excess of the contract and misdirected themselves in awarding the claim

in favour of the Respondent. In this regard, the reference can be safely placed upon a judgment of the Supreme Court in case of Associated Engineers Company - Vs- Government of Andhra Pradesh & Anr. reported in AIR 1992 SC232 wherein it is held that the arbitrator cannot travel beyond the permissible territory and if he does so it strikes at the root of the jurisdiction. It is no longer *res integra* that the jurisdiction of the arbitrator emanates from the contract. He assumes jurisdiction because of the contract and the entire dispute is required to be adjudicated within the periphery of the contract and cannot embark its journey to any question not provided in the contract and / or unrelated thereto. The existence of an express bar against a particular claim under the contract, if decided by the arbitrator he would be doing in excess of the jurisdiction. The support can be lend from a judgment of the Apex Court in case of Pure Helium India Pvt. Ltd. -Vs- Oil & Natural Gas Corporation reported in (2003)8 SCC593 in this regard wherein it is held:33. Yet again in Sushil Kumar Kayan it was held: (SCC p. 684, para

11) In order to determine whether the arbitrator has acted in excess of his jurisdiction what has to be seen is whether the claimant can raise a particular claim before the arbitrator. If there is a specific term in the contract or the law which does not permit the parties to raise a point before the arbitrator and if there is a specific bar in the contract to the raising of the point, then the award passed by the arbitrator in respect thereof would be in excess of his jurisdiction.

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34. Some of the aforementioned decisions have been considered by us in Bharat Coking Coal Ltd. v. Annapurna Construction.

. I am also not unmindful of the proposition that each terms of the contract must be construed and given effect to the plain and simple meanings of the words irrespective of the fact that it may act harshly on the parties as held in case of Central Bank of India Limited vs Hartford Fire Insurance Company Limited reported in AIR 1965 SC1288 The distinction must be drawn between an error in construction of the contract and an addition and / or incorporation of some words within the contract as in case of former, it is an error within the jurisdiction but in later case, it is a jurisdictional error which may invite an interference in the award

by the Court under Section 34 of the Act. The observations of the Supreme Court in case of Associated Engineers Company (Supra) can be conveniently referred to, which runs thus: If the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to him, he commits a jurisdictional error. Such error going to his jurisdiction can be established by looking into material outside the award. Extrinsic evidence is admissible in such cases because the dispute is not something which arises under or in relation to the contract or dependent on the construction of the contract or to be determined within the award. The dispute as to jurisdiction is a matter which is outside the award or outside whatever may be said about it in the award. The ambiguity of the award can, in such cases, be resolved by admitting extrinsic evidence. The rationale of this rule is that the nature of the dispute is something which has to be determined outside and independent of what appears in the award. Such jurisdictional error needs to be proved by evidence extrinsic to the award. [See *Alopi Parshad & Sons, Ltd. v. Union of India*; *Bunge & Co. v. Dewar & Webb*; *Christopher Brown Ltd. v. Genossenschaft Oesterreichischer*; *Rex v. Fulham*; *Falkingham v. Victorian Railways Commission*; *Rex v. All Saints, Southampton*; *Laing (James), Son & Co. (M/C) Ltd. v. Eastcheap Dried Fruit Co.*; *Dalmia Dairy Industries Ltd. v. National Bank of Pakistan*; *Heyman v. Darwins Ltd.*; *Union of India v. Kishorilal Gupta & Bros.*; *Renusagar Power Co. Ltd. v. General Electric Company*; *Jivarajbhai v. Chintamanrao*; *Gobardhan Das v. Lachhmi Ram*; *Thawardas Pherumal v. Union of India*; *Omanhene Kobina Foli v. Chief Obeng Akessee*; *F.R. Absalom, Ltd. v. Great Western (London) Garden Village Society, Limited* and *M. Golodetz v. Schrier*.].

. There may be a situation where the Arbitral Tribunal have proceeded to pass an award in total disregard to the express terms of the contract and therefore acts arbitrarily, capriciously and without jurisdiction. In this regard the reliance is placed upon the judgment of the Supreme Court in case of *Steel Authority of India Ltd. - Vs- J.C. Budharaja, Government and Mining Contractor* reported in (1999)8 SCC122 wherein it is held: it was not open to the arbitrator to ignore the said conditions which are binding on the contracting parties. By ignoring the same, he has acted beyond the jurisdiction conferred upon him. It is settled law that the

arbitrator derives the authority from the contract and if he acts in manifest disregard of the contract, the award given by him would be an arbitrary one. This deliberate departure from the contract amounts not only to manifest disregard of the authority or misconduct on his part, but it may tantamount to mala fide action.

. On the above initiation of law led me consider whether the Arbitral Tribunal have totally ignored the relevant clauses so relied upon by the Petitioner to have been overlooked and / or not considered by the Arbitral Tribunal. In paragraph 6.2 of the impugned award, the Arbitral Tribunal recorded the submissions of the Petitioner that no definite volume of work are required to be entrusted with the contractor and there cannot be any imposition of any liability on sale if the actual quantities differs from the e

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