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September 28, 2024

BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street, Fort,
Mumbai 400 001
BSE Scrip Code: 500390

National Stock Exchange of India Limited
Exchange Plaza, 5th Floor,
Plot No. C/1, G Block, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051
NSE Scrip Symbol: RELINFRA

Dear Sir(s),

Sub: Disclosure under Regulation 30 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (the 'Listing Regulations')

Pursuant to Regulation 30 of the Listing Regulations and in furtherance to our earlier disclosure dated September 30, 2023, this is to inform that on September 27, 2024, the Division Bench of Hon'ble High Court of Calcutta delivered its judgment in a petition filed by Damodar Valley Corporation ("DVC") challenging the arbitration award under Section 34, dated September 29, 2023, amounting to approximately Rs. 780 crore including accrued interest in favour of the Company concerning the Raghunathpur Thermal Power Project. The copy of said order is enclosed.

The Division Bench of the Hon'ble High Court, with the exception of relief on pre award interest and reduction in rate of interest on BG totalling to Rs.181 crore and upheld the Award, totalling approximately Rs. 780 crore, including accrued interest. In addition, the BG of Rs.600 crore will also be released.

The Company is currently conducting a detailed review of the judgment and will proceed, based on legal advice, either to enforce the Award to the extent upheld or to challenge the judgment dated September 27, 2024, where it interferes with the Award.

We request you to take the same on record.

Yours faithfully,
For **Reliance Infrastructure Limited**

PARESH PURUSHOTTAMLAL RATHOD
Digitally signed by PARESH PURUSHOTTAMLAL RATHOD
Date: 2024.09.28 17:58:57 +05'30'

Paresh Rathod
Company Secretary

Encl. : As above.

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Biswaroop Chowdhury

APO 203 OF 2023
With
AP 40 OF 2020

Damodar Valley Corporation
Vs.
Reliance Infrastructure Limited

APO 204 OF 2023
With
AP 40 OF 2020

Reliance Infrastructure Limited
Vs.
Damodar Valley Corporation

For the DVC :- **Mr. R. Venkataraman,**
Ld. Attorney General of India
Mr. Ratnakar Banrejee, Sr. Adv.
Ms. Vineeta Meharia, Adv.
Mr. Amit Meharia, Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Kanishk Kejriwal, Adv.
Ms. Paramita Banerjee, Adv.
Ms. Subika Paul, Adv.
Mr. Sayan Dey, Adv.
Mr. Ameyavikrama Thanvi, Advs.

For the Reliance :- **Mr. S. N. Mookerjee, Sr. Adv.**
Mr. Tilak Kr. Bose, Sr. Adv.
Ms. Anjali Chandrukar, Adv.
Mr. Paritosh Sinha, Adv.
Mr. Saptarshi Banerjee, Adv.
Ms. Shrayashee Das, Adv.
Mr. Atanu Roy Chowdhuri, Adv.
Mr. Himanshu Bhanesinghka, Adv.
Mr. Pushan Majumdar, Advs.

Judgment On :- **27.09.2024**

I. P. Mukerji, J.:-

The subject matter of this appeal is an arbitral award made and published by a tribunal of three learned arbitrators, the presiding arbitrator being a former judge of the Supreme Court and the other two former judges of this court, on 21st December, 2019.

In paragraph 44 of the award the learned tribunal recorded a summary of it in the following manner:-

> *"In view of our findings on various issues, the claims and counter claims of the parties that are allowed are set out hereinafter along with interest which according to us is payable on the amounts quantified.*
>
> *(i) In respect of Issue Nos. 2 and 12 to 14, the Respondent is directed to pay a sum of Rs. 137, 10,67,733/- and Euro 13,791,641 with simple interest @ 10% (ten percent) per annum from 21.08.2017, being the date on which the Claimant was entitled to the said amount on expiry of 18 months from actual date of COF of Unit 2, till the date of award.*
>
> *(ii) In respect of Issue No. 15, the Respondent is directed to pay a sum of Rs.1,84,51,773.80 with simple interest @ 10% (ten percent) per annum from 20.02.2017 till the date of award.*
>
> *(iii) In respect of Issue No. 16, the Respondent is directed to pay a sum of Rs.4,28,30,000/- with simple interest @ 10% (ten percent) per annum from 15.11.2016 till the date of award.*
>
> *(iv) In respect of Issue No. 17, the Respondent is directed to pay a sum of Rs.3,83,32,062.63 with simple interest @ 10% (ten percent) per annum from 20.02.2017 till the date of award.*
>
> *(v) In respect of Issue No. 18, the Respondent is directed to pay a sum of Rs. 12,00,000/- with simple interest @ 10% (ten percent) per annum from 09.02.2016 till the date of award.*
>
> *(vi) In respect of Issue No. 19, the Respondent is directed to pay a sum of Rs.6,10,000/- with simple interest @ 10% (ten percent) per annum from 28.11.2015 till the date of award.*
>
> *(vii) In respect of Issue No. 20, the Respondent is directed to pay a sum of Rs.28,12,832/- with simple interest @ 10% (ten percent) per annum from 28.11.2015 till the date of award.*
>
> *(viii) In respect of Issue No. 21, the Respondent is directed to pay a sum of Rs.33,20,000/- with simple interest @ 10% (ten percent) per annum from 28.11.2015 till the date of award.*
>
> *(ix) In respect of Issue No. 23, the Respondent is directed to pay a sum of Rs. 12,04,88,400/- with simple interest @10% (ten percent) per annum from 26.08.2010 till the date of award.*
>
> *(x) In respect of Issue No. 24, the Respondent is directed to pay a sum of Rs. 183,40,27,812/- and Euro 4,767,801.75 with simple interest @ 10% (ten percent) per annum from 23.08.2017 till the date of award.*
>
> *(xi) In respect of Issue No. 25, the Respondent is directed to pay a sum of Rs.29,03,09,091.86 with simple interest @ 10% (ten percent) per annum from 23.08.2017 till the date of award.*

We have awarded interest from the date of filing of SOC, since the principal amount is computed relying on various bills and invoices and for the sake of clarity and fairness, we deem it appropriate to award interest from the date of filing of SOC.

(xii) In respect of Issue No. 27, the Respondent is directed to pay a sum of Rs. 126,10,84,834 and Euro 9,750,000 with simple interest @ 10% (ten percent) per annum from 23.08.2017 till the date of award.

(xiii) In respect of Issue No. 28, the Respondent is directed to pay a sum of Rs.2,49,89,529/-. No interest will be payable on the above sum.

(xiv) In respect of issue no. 42, the Respondent is permitted to deduct the sum of Rs. 6,00,00,000/- (Rupees six crores) from the amount payable to it by the Claimant. No interest is payable to the respondent on the above sum, as the amount has always been in the hands of the respondent.

(xv) In respect of issue no. 50, the Respondent is directed to release all the BGs (Bank Guarantees) of the Claimant within a month from the date of award. In default, simple interest at the rate of 15% (fifteen percent) per annum will have to be paid by the respondent till realisation of the entire sum."

The counter claim of Damodar Valley Corporation (in short 'DVC') was dismissed.

This award was challenged by DVC in this court in an application under Section 34 of the Arbitration and Conciliation Act, 1996. By a judgment and order dated 29th September, 2023, the said arbitral award was substantially upheld. Only, the award in respect of issue Nos.17, 18, 21 and 27 was set aside.

Aggrieved by the said judgment and order DVC has preferred this appeal before us under Section 37 of the said Act. Reliance Infrastructure Limited (in short 'RIL') has preferred a cross appeal, being aggrieved by the portion of the judgment setting aside part of the award.

We were addressed by most eminent counsel. The learned Attorney General appeared for DVC. Mr. S. N. Mookerjee learned senior advocate appeared for RIL. The award was for around Rs.721 crores with interest,

aggregating to Rs.898 crores as told to us by the learned Attorney General. After its part rescission by the learned single judge in the section 34 application, it was reduced to Rs.513 crores. Mr. S. N. Mookerjee, learned senior advocate submitted that the award in favour of his client was mainly a direction for return of the performance guarantee forfeited by DVC and escalation charges for prolongation of the work.

The award is voluminous. So is the impugned judgment and order substantially upholding the award and setting aside a part of it.

Three agreements containing an arbitration clause were signed by the parties on 6th December, 2008. It contemplated setting up of a thermal power plant of two units of 600 mw each for DVC at Raghunathpur. The project was a greenfield project. The land on which the project was to be set up was to be acquired. The total acquisition would be 1436.11 acres of land. Unit 1 and unit 2 were to be constructed on 928.63 acres. The contract provided for the works to be executed in sectional/segmental timelines. DVC was to supply land including access to it, and water (clarified water and demineralized water). According to DVC, it was a firm price contract relying on GCC CL 11.2 without any price escalation. Any delay could be made up by extension of time for completion without any right to claim an extra amount on account of rise in prices. Time for completion of the project was 35 and 38 months from the "zero date 14.12.2007". The completion of facilities, date for unit 1 was 14th November, 2002 and for unit 2: 14th February, 2011. However, the actual completion of facilities for unit 1 was 15th May, 2015 and for unit 2 was 23rd February, 2016.

The fundamental question which arose for consideration in the arbitration was which party was responsible for the delay and to what extent, what would be the liability of the party guilty of delay.

We need not go into the details of the obligations of the parties but it is undisputed that each of the parties had a separate obligation to discharge. There were reciprocal obligations. For example, DVC was obliged to make available land and access thereto to RIL. Each party accused the other of delay. RIL alleged that the delay was attributable to DVC for delayed handing over of site water and coal. DVC refuted the allegation by saying that the delay was not attributable to them but attributable to RIL for negligent and defective execution of construction and supply of Bottom Ring Header (BRH), Natural Draught Cooling Tower (NDCT), insulation material and delayed performance of their segmental/sectional obligations. The overall result was that the commissioning and starting of the power project was considerably delayed till about 2017.

From time to time DVC extended the time for performance of the contract. In their letter dated 3rd February, 2017 DVC tried to fix responsibility for the delay in the execution of the project. There was a delay in execution of unit 2 for which 468 days, (15.6 months) out of the total delay was attributable to RIL. If 5% liquidated damages was imposed they were liable to pay Rs.212.80 crores as damages.

However, they admitted that there was delay in handing over of land by DVC to RIL for which the compensation payable to the latter was Rs.10.16 crores. Similarly, they computed that a sum of Rs.44.71 crores was payable by RIL to DVC for deviating from the project. RIL was asked to confirm their acceptance of the above. It was also pointed out in that letter that the claim of RIL submitted during the meeting of the parties on 28th December, 2015 was unjustified, unrealistic and devoid of facts.

The contention of RIL is that during prolongation of the contract the value of each and every input used for executing it increased. They claimed extra payment for this prolongation. The learned Attorney General argued that it was a firm price agreement/contract. The

extension of time was without any price variation. Even if there was prolongation of work by which the contractor incurred unforeseen expenses, they were not entitled to be compensated for it.

NTPC Ltd. vs. Deconar Services Pvt. Ltd. reported in **(2021) 19 SCC 694** is a most relevant judgment in the field. Its ratio is that the stipulation as to fixed price is only good during the duration of the contract and is not applicable upon its extension. Mr. S. N. Mookerjee relied on this decision in support of his submission that his client was entitled to claim extra amount on account of escalation in prices and that the arbitral tribunal was justified in allowing it.

Before proceeding further with this matter, the law with regard to interference by courts with domestic awards needs to be looked into. Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) makes it explicit that challenge to an arbitral award in a court of law may be made under that section. As far as this award is concerned not all the grounds in that section are applicable. It is challenged mainly on the ground that it is in conflict with the public policy of India, to be more precise in contravention with the fundamental policy of Indian law and basic notions of morality or justice and that it is patently illegal.

Now, the said Act was amended with effect from 23rd October, 2015 with the expansion of the explanation to Section 34(2)(b) of the Act so as to explain awards in conflict with the public policy of India as one whose making was in contravention with the fundamental policy of India law or was in conflict with the most basic notions of morality or justice.

By the said amendment, it was enacted by insertion of sub-section 2A to Section 34 that an arbitral award other than one arising out of an international commercial arbitration could be set aside if it was vitiated by patent illegality appearing on the face of the award. Patent illegality had to be something more serious than an erroneous application of law,

as the proviso to Section 2A stated that an award would not be set aside merely on the ground of erroneous application of law. It added that there was no scope of re-appreciation of evidence in adjudging the validity of an award. The effect of the change in law has been explained in the leading case of **Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India** reported in **(2019) 15 SCC 131** which is now the leading case on the subject matter. It substantially adopted the law as laid down by that court in **Associate Builders vs. Delhi Development Authority** reported in **(2015) 3 SCC 49** with some modifications. An award was liable to be set aside, if it was inter alia against the fundamental policy of Indian law or patently illegal. The concept of fundamental policy of Indian law in Associate Builders was made more restrictive by describing its infraction with contravention of a "statute linked to public policy or public interest." This kind of a violation of the law by the arbitral tribunal would render the award against the fundamental policy of Indian law but would also render it patently illegal. It also clarified that the infraction of law "which was not against the fundamental policy of Indian law could not be brought in by the backdoor to render the award patently illegal." It added the following in paragraph 41:

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

In **Ravindra Kumar Gupta and Company vs. Union of India** reported in **(2010) 1 SCC 409**, the Supreme Court had held that the courts could not re-appreciate evidence appraised by the arbitral tribunal. Its powers are further restricted in Section 37 of the said Act as laid down by the said court in **MMTC Ltd. vs. Vedanta Ltd.** reported in **(2019) 4 SCC 163** (para 14).

This has been reinforced by the amendment of the said Act by insertion of Section 2A.

We notice that in the award the learned arbitrators relied on an accepted formula for the purpose of calculation of damages, after having made a detailed analysis of discharge of obligations by the respective parties and arriving at the conclusion that the liability to pay damages that the delay in execution of the project was on DVC. The learned judge while substantially upholding the award has remarked as follows:-

> *".....The arbitral tribunal, although under a mandate to follow the specifics contained in the contract between the parties by virtue of the mandate contained under Section 28(3) of the Act, is also competent to chart its own course in absence of any specific contractual stipulation. If a party has been held entitled to claim for damages, and no specific provision for arriving at the quantum of such damages is contained within the contractual provisions, arbitral tribunal is competent to adopt any legally sound formula/procedure to arrive at such quantification of damages. So long as there is no infirmity or patent illegality in the arbitral tribunal's decision, it is beyond the scope of challenge as envisaged under Section 34 of the Act."*

By their reasoning process, which we consider to be plausible and reasonable, the learned arbitral tribunal upon a very detailed narration of facts and consideration of evidence which are relevant has come to a conclusion with regard to the damages payable by DVC with regard to the delay. Although, this appeal under Section 37 was argued like a suit, we are conscious of our limitations in interfering with the award or with

the order under Section 34 under appeal before us. We refuse to accept that the award is against the fundamental policy of Indian law or is patently illegal. We are also not inclined to interfere with the impugned judgment and order upholding the award substantially, considering the same to be a valid exercise of the jurisdiction of the court under Section 34.

However, the part of the award relating to interest is in our opinion, is against the general law and the Interest Act, 1978.

As we have noted earlier, the award is substantially an award for damages.

In **Union of India vs. Raman Iron Foundry with Union of India vs. AIR Foam Industries (P) Ltd.** reported in **AIR 1974 SC 1265**, the Supreme Court ruled at page 1270 as follows:-

> *".....Now, damages are the compensation which a Court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what the liability is. But till that determination there is no liability at all upon the defendant."*
>
> *This statement in our view represents the correct legal position and has our full concurrence. A claim for damages for breach of contract is, therefore, not a claim for a sum presently due and payable and the purchaser is not entitled, in exercise of the right conferred upon it under clause 18, to recover the amount of such claim by appropriating other sums due to the contractor."*

Such damages can be taken to have been assessed and declared with the award. Therefore, any interest is payable post assessment. Grant of pre-award interest is against law, patently illegal and is set aside. Therefore, in paragraph 44 of the award grant of interest for the period in respect of (i) to (xiv) for the period prior to 21st December, 2019 is set aside.

In respect of (xv) the rate of interest granted is against law and shocking. The Bank usually retains a margin money of the account holder to furnish a bank guarantee. Certainly the account holder is denied the use of this margin money. When the guarantee is surrendered the margin money is released to the credit of the account holder. Now, to conceive this monetary loss of the provider of the bank guarantee as 15% of the guaranteed sum and an award at such rate is most erroneous, unreasonable to the point of perversity. It shocks the conscience of the court. In such circumstances the award providing for payment of interest for non-surrender of the bank guarantee after the stipulated date is set aside to the extent of the amount by which the award of interest under this head exceeds 7.5%.

Both the appeals (**APO 203 of 2023 & APO 204 of 2023**) are accordingly disposed of. No order as to costs.

Urgent certified photo copy of this judgment and order if applied for be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

I Agree:-

(Biswaroop Chowdhury, J.) **(I. P. Mukerji, J.)**