IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 28.05.2021

\+ **O.M.P. (COMM.) 168/2021 & IA Nos. 6068/2021 & 6070/2021**

STEEL AUTHORITY OF INDIA LIMITED ..... Petitioner

versus

M/S JALDHI OVERSEAS PTE LTD. ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Joy Basu, Senior Advocate with Mr Ashish Rana, Mr Kanak Bose, Advocates.

For the Respondent : Mr Ashwin Shankar and Mr Rishi Murarka, Ms Shweta Sadanandan, Mr Aditya Raj, Mr George Rebello, Advocate.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. Steel Authority of India Limited (hereinafter 'SAIL') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning an Arbitral Award dated 02.11.2020 (hereafter 'the impugned award') delivered by the Arbitral Tribunal comprising of three Arbitrators [Justice (Retd.) V.K. Gupta, former Chief Justice of Uttarakhand High Court, Sh. R.P. Singh, Director (HR & Legal), IIFCO and Justice

(Retd.) Madan B. Lokur, former Judge of the Supreme Court of India as the Presiding Arbitrator].

2. The respondent (hereafter 'JOPL') is a company incorporated in Singapore and was the claimant before Arbitral Tribunal. SAIL is a Public Sector Enterprise, *inter alia*, engaged in manufacture of steel. The arbitration between the parties was an international commercial arbitration within the meaning of Section 2(1)(f) of the A&C Act. It was conducted under the aegis of Delhi International Arbitration Centre and in accordance with its Rules.

3. JOPL is engaged in the business of maritime logistics including vessel operations and chartering. The parties (SAIL and JOPL) had executed a Charter Party on 21.02.2018 (hereafter 'the Charter Party') whereby JOPL agreed to load, carry and discharge cargo of 75,000 metric tons (5% more or less at the owners' option) of Bulk Coking Coal to ports in India. In terms of the Charter Party, 78,798.860 metric tons of Coking Coal was shipped on board the vessel MV "Ionic Kizuna" at the load port of Norfolk, Virginia on 21.02.2018.

4. The vessel arrived at the discharge port of Vishakhapatnam on 21.05.2018 and 45,564 metric tons of the cargo was discharged at the said port. Thereafter, the vessel proceeded to the port of Haldia and discharged the balance cargo of 33,234,86 metric tons at the said port.

5. In terms of the Charter Party, SAIL also paid 90% of the agreed consideration.

6. On 05.09.2018, JOPL issued an invoice for an amount of USD 528,634.64 being the balance freight plus demurrages incurred at the load port and the discharge ports, payable by SAIL, in terms of the Charter Party.

7. On 03.10.2018, SAIL responded to the said invoice enclosing its calculations of lay time. It agreed to the demurrages in the sum of USD 278,924.49 incurred at the load port and USD 6,205.68 at the discharge ports. It accepted that a balance of USD 515,739.88 was payable to JOPL. In view of the communications exchanged between the parties, on 13.12.2018, JOPL issued a revised invoice for a sum of USD 515,739.88 as agreed by SAIL.

8. There is no dispute between the parties as to the amount payable by SAIL under the Charter Party. There is also no dispute that JOPL had duly performed its obligations under the Charter Party. However, SAIL withheld the admitted balance amount payable to JOPL for the reason that it had raised a claim of damages against JOPL in respect of another contract – Contract of Affreightment dated 28.06.2017 for shipping cargos of limestones (hereafter 'the Contract of Affreightment).

9. JOPL had not provided a vessel under the Contract of Affreightment for the 20th shipment and SAIL was compelled to make alternate arrangements for the same. SAIL claimed that JOPL had breached its obligations under the Contract of Affreightment and raised the claim for damages quantified at the additional expenses

incurred by it to arrange for shipment of balance quantity of limestone. JOPL disputed the said claim. According to JOPL, it was not obliged to provide a vessel as the shipment period under the Contract of Affreightment had come to an end.

10. The disputes between the parties arising as a result of SAIL withholding the admitted amounts due under the Charter Party, were referred to arbitration. JOPL filed its Statement of Claims before the Arbitral Tribunal, *inter alia*, claiming a sum of USD 515,739.88 along with interest at the rate of 12% per annum compounded basis at three monthly rests from 30.09.2018 until the date of payment. JOPL also prayed for award of legal costs as well as arbitral costs. The Arbitral Tribunal, after consultation with the counsels, framed the following issues for determination:

> "(a) Whether the Respondent is entitled to set-off any amount allegedly due and payable on account of the disputed counterclaim in Arbitration Case No. 2476 pending with the Delhi International Arbitration Centre?
> (b) Whether the parties are entitled to any costs and if so for what amount?
> (c) What reliefs are the parties entitled to?"

11. The Arbitral Tribunal held in favour of JOPL and against SAIL and found that the Charter Party (Charter Party dated 21.02.2018) was unconnected with the Contract of Affreightment. The Arbitral Tribunal found that there was no nexus between the two contracts. Whereas the Charter Party was a standalone contract for one shipment of Coking Coal, the Contract of Affreightment was a contract for

multiple shipments of limestones over a period twelve months. The Arbitral Tribunal also found that there was neither any provision in either of the two contracts – the Charter Party and the Contract of Affreightment – nor any understanding between the parties that payments under one contract could be set off against claims under the other contract. The witness examined on behalf of SAIL also did not testify to any such understanding. He testified that in view of SAIL's counter claim in Arbitration Case No. 2476/05-19 [arising from the Contract of Affreightment dated 28.06.2017], SAIL had "*deemed it fit to withhold/set off the claims against the dues payable in the present charter party agreement 21.02.2018*".

12. In view of the above, the Arbitral Tribunal held that SAIL was not entitled to withhold any amount from the amounts as admittedly owed by it to JOPL under the Charter Party. It, accordingly, awarded a sum of USD 515,739.88 in favour of JOPL towards the balance unpaid freight and demurrages. In addition, the Arbitral Tribunal also allowed JOPL's claim for interest at the rate of 12% per annum with quarterly rests with effect from 01.10.2018 till the date of payment.

13. Mr. Joy Basu, learned Senior Counsel appearing for SAIL, assailed the impugned award on, essentially, three fronts. First, he submitted that the Arbitral Tribunal had erred in not appreciating SAIL's claim for set off. He submitted that SAIL was entitled to claim a set off against its claims under the Contract of Affreightment on equitable principles. He relied on the decision of the Supreme Court in ***Jitendra Kumar Khan v. Peerless General Finance and Investment Co. Ltd.: (2013) 8 SCC 769***, in support of his contention.

14. Second, he submitted that the Arbitral Tribunal had erred in allowing JOPL's claim as JOPL had neither supported its Statement of Claims by affirming any affidavit nor led any evidence in support of its claims. He submitted that the Statement of Claims was not signed. He contended that therefore, the award was without a proper claim and was based on no evidence.

15. Third, he submitted that the award of interest at the rate of 12% per annum compounded with quarterly rests, is excessive and disproportionate. He referred to the decision of the Supreme Court in ***Vendanta Limited v. Shenzhen Shandong Nuclear Power Construction Company Limited: (2019) 11 SCC 465*** and on the strength of the said decision, contended that the award of such interest is contrary to the fundamental policy of Indian law.

16. Mr. Shankar, learned counsel appearing for JOPL, countered the aforesaid submissions. He submitted that SAIL was not entitled to any set off under the Contract of Affreightment. Insofar as the contention that it had not led any evidence in support of its claims, he submitted that SAIL had not raised any issue as to the rate of interest claimed by JOPL and therefore, was precluded from raising the same at this stage. He further contended that 12% interest compounded on quarterly rests was not contrary to the public policy of Indian law. He stated that there are number of legislations, which specifically provide for compound interest. In particular, he referred to Section 16 of Micro, Small and Medium Enterprises Development Act, 2006, which specifically provides that the buyer would be liable to pay compound interest with monthly rests at three times the bank rate as notified by

the Reserve Bank of India. Therefore, the same cannot be held to be contrary to the public policy of India law.

Reasons and Conclusion

17. The contention that SAIL is entitled for any equitable set off and the impugned award is contrary to public policy because the Arbitral Tribunal failed to appreciate the same, is bereft of any merit. SAIL's claim in respect of the Contract of Affreightment was a claim of damages and the same was disputed by JOPL. The said claim was rejected subsequently. However, even at the point of time when SAIL claimed it as a set off, it was unsubstantiated. More importantly, the said claim did not arise from the same transaction. The Charter Party was for a specific vessel, "Ionic Kizuna", for shipping Bulk Coking Coal and as rightly observed by the Arbitral Tribunal, it had no nexus with the Contract of Affreightment, which covered multiple shipments of limestone spanning a period of one year.

18. The reliance placed by Mr. Basu, on the decision of the Supreme Court in ***Jitendra Kumar Khan and Ors.*** (*supra*) is completely misplaced. In the judgement, the Supreme Court had referred to its earlier decision in ***Lakshmichand and Balchand v. State of A.P.: (1987*) *1 SCC 19***, wherein the Court had ruled that the doctrine of equitable set off is applicable when all cross demands arise out of the same transaction or that demands are so connected in nature and circumstances that they can be looked upon as a part of one transaction. Clearly, the said condition is not met in the present case.

19. It is also material to note that SAIL's claim in connection with the Contract of Affreightment was at best an unsubstantiated claim and not any ascertained debt. SAIL had claimed that JOPL had breached the Contract of Affreightment and therefore, it was entitled to seek the performance of the balance obligations at its risk and cost. SAIL was required to prove both its entitlement to damages and its measure. The fundamental premise that JOPL had breached the Contract of Affreightment was disputed. In ***Jitendra Kumar Khan's,*** case, the Supreme Court had also referred to the decisions in ***Dobson and Barlow Limited v. Bengal Spinning and Weaving Co.: ILR (1897) 21 Bom. 126*** and ***Girdharilal Chaturbhuj v. Surajmal Chouthmal Agarwal: AIR 1940 Nag 177*** and, had noted that an equitable set off is not to be allowed where a protracted enquiry is needed for determination of the sum due.

20. In any view of the matter, the question whether equitable set off could be claimed is a matter of discretion of the court adjudicating the claim. SAIL could not claim it as a matter of right. Clearly, in the given facts, SAIL was not entitled to claim any set off as there was no ascertained debt owing by JOPL to SAIL.

21. Although, this Court has examined the merits of the dispute, there was no requirement to do so. The scope of interference with an arbitral award under Section 34 of the A&C Act is limited. As noticed above, the impugned award is an award arising out of an international commercial arbitration and therefore, it cannot be assailed on the ground of patent illegality as contained in Section 34(2A) of the A&C Act. As explained by the Supreme Court in the case of ***Ssangyong***

Engineering & Construction Company Limited v. National Highways Authority of India: (2019) 15 SCC 131, an award arising from an international commercial arbitration can be assailed only on the limited grounds as specified under Section 34(2) of the A&C Act. In the present case, the impugned award has been made after due notice to the parties and there is no subject matter of disputes was arbitrable. There are no grounds, whatsoever, to assert that the decision of the Arbitral Tribunal to reject SAIL's contention falls foul of the fundamental policy of Indian law.

22. The contention that JOPL had not supported its claim by leading any evidence or that the Statement of Claim was not proper, cannot be entertained at this stage. Concededly, no such objection had been raised by SAIL before the Arbitral Tribunal.

23. There was no requirement for JOPL to lead any evidence. Its claim was founded on an admission on the part of SAIL that the sums as claimed, were due and payable to JOPL. The onus to prove that SAIL was entitled to withhold the admitted sums against any other claim, rested on SAIL. And, it failed to discharge the said burden.

24. The last question to be examined is whether the impugned award is liable to be set aside to the extent that it awards 12% interest compounded with quarterly rests, on the amount due to JOPL.

25. At the outset, it is important to note that a bare perusal of the pleadings before the Arbitral Tribunal indicates that SAIL did not contest JOPL's claim for interest at the rate of 12% compounded with three monthly rests. The Statement of Claims filed by JOPL set outs the grounds for claiming the amount of USD 515,739.88. And, it

specifically states that the disputes involve a solitary issue regarding balance freight payable to JOPL. Since the amount wad unjustifiably withheld by SAIL, JOPL had sought reliefs, which included payment of the amount withheld, interest as well as costs. Paragraphs 11 and 12 of the Statement of Claims are relevant and, are set out below:

> "**Issues**
> 11. The sole dispute concerns the balance freight due and payable to Jaldhi. This is in in issue as SAIL has to-date failed/refused to pay the balance freight rightfully due and payable to Jaldhi.
> **Relief sought**
> 12. The relief sought by Jaldhi is an award against SAIL for:
> i. USD 515,739.88;
> ii. Interest on USD 515,739.88 at the rate of 12% p.a. on a compounded basis with 3 monthly rests from 30 September 2018 until the date of payment
> iii. Legal costs
> iv. Arbitration costs"

26. The Statement of Defence filed by SAIL, is brief and spans only two pages. It contains four paragraphs of preliminary submissions and one consolidated paragraph to traverse the contents of the Statement of Claims. The first three paragraphs of the preliminary submissions relate to the identity of the parties and the fact that the Charter Party was executed on 21.02.2018. SAIL's entire defence is contained in paragraph 4 of the preliminary submissions of the Statement of Defence. Its para-wise reply to the Statement of Claims (articulated in eleven paragraphs), is contained in a single unnumbered paragraph. Paragraph 4 of the preliminary submissions

and SAIL's para-wise response to the Statement of Claims, filed before the Arbitral Tribunal, is reproduced below:

> "4. That the Claimant and Respondent also executed an Contract of Affreightment (hereinafter referred as COA) wherein it was agreed by the parties that Claimant will load, carry and discharge a Cargo of Limestone 13,500,000mt, the lots 50,000mt, within a period of 12 months. The disputes arose as the Claimant refused to provide vehicle for the 20th shipment to transport the remaining cargo and insisted that the COA dated 28.06.2017 has come to an end on 27.06.2018 and is not liable to provide Vessel under COA after June, 2018. However, as per the Respondent the Claimant was to provide Vessel for period of 12 months from the date of nomination of Vessel i.e. September, 2017. Resultantly, the Respondent was constrained to terminate the Agreement and engage third party vessel to transport the balance Cargo. The Respondent paid the additional freight to an amount of USD 1187847.318, which is recoverable from the Claimant. Accordingly, in order to recover its losses, the Respondent has withheld payable amount of USD 515,739.88 under the instant Charter Party dated 21.02.2018. Therefore, in view of losses suffered by the Respondent and withholding of the amount payable, thus no further amounts are payable to the Claimant. Accordingly, the Claims of the Claimant be dismissed. Copy of Statement of Defence filed in DIAC/2476/05-19 is marked and annexed as Annexure R-1
>
> Para wise Reply:
>
> The contents of Para 1 to 11 are admitted to the extent that they are matter of record. Rest all the contents are denied until and unless specifically admitted. It is denied that the Respondent is liable to pay USD 515,739.88 to the Claimant. It is submitted that the

> freight charges, demurrage charges of the Claimant are withheld as to recover the additional expenses which were incurred by the Respondent for non-completion of work by the Claimant under the COA agreement dated 28.06.2017. No further amounts are payable."

27. A plain reading of the above passages, which form the substance of the SAIL's Statement of Defence, indicates that SAIL had not contested JOPL's claim for interest on the ground that it was unreasonable and/or excessive. On the contrary, SAIL had admitted the contents of paragraph 1 to 11 to the extent that they are matter of record. As noticed above, JOPL had unequivocally stated that the only dispute between the parties was with regard to the payment of balance freight. SAIL did not traverse the said assertion. It is apparent that JOPL had premised its claim for interest and costs on the ground that SAIL had unjustifiably withheld the amounts admittedly payable by it. Thus, compelling JOPL to refer the disputes to arbitration. SAIL had contested the said Statement of Claims only on the ground that it was entitled to recover a sum of USD 1,187,847.318/- which, according to SAIL, was payable as damages by JOPL in respect of the Contract of Affreightment.

28. Further, it is not disputed that no submissions were advanced before the Arbitral Tribunal contesting JOPL's claim for interest on the ground that the rate of interest claimed by JOPL was excessive or unreasonable. In the circumstances, this court is of the view that SAIL cannot now be permitted to contest the impugned award as contrary to fundamental policy of Indian Law.

29. Mr. Basu had argued that even though SAIL had not contested the reasonableness of the rate of interest as claimed by JOPL, the Arbitral Tribunal was nonetheless required to independently apply its mind and examine the said claim. The said contention is unmerited. Clearly, if SAIL had not contested JOPL's claim for interest on the ground of it being excessive or disproportionate, there was no necessity for the Arbitral Tribunal to examine the said aspect. It is also noticed that the Arbitral Tribunal had framed issues after consultation with the parties and the reasonableness of interest was not one of the issues that was framed. There was no requirement for the Arbitral Tribunal to examine a non-existent issue.

30. It is also relevant to note that SAIL was also pursuing its claim of USD 1,187,847.318 against JOPL as arising out of the Contract of Affreightment dated 28.06.2017. The disputes relating to the said claim were at the material time being considered by the same Arbitral Tribunal (Case No. DIAC/2476/05-19). SAIL had also relied upon its Statement of Defence and Counterclaim filed by it in that case. In the said case, SAIL had quantified the damages as payable and claimed the same along with interest at the rate of 18% per annum. Plainly, if SAIL was pursuing its claim for 18% per annum, it certainly could not assert that JOPL's claim for 12% interest compounded with quarterly rests was excessive or disproportionate.

31. There is also considerable merit in the contention advanced by Mr. Shankar that the rate of 12% per annum interest compounded with three monthly rests cannot be held be contrary to the fundamental policy of Indian law. In ***Ssangyong Engineering & Construction Co.***

Limited v. NHAI *(supra)*, the Supreme Court had explained that the expression "fundamental policy of Indian law" would necessarily have to be understood as explained in paragraphs 18 and 27 of its decision in ***Associate Builders v. Delhi Development Authority: (2015) 3 SCC 49*** and its earlier decision in ***Renusagar Power Co Ltd. V. General Electric Co: 1994 Supp (1) SCC 644***. Paragraph 34, 35 and 36 of the said decision are set out below:

> "34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .

> 35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.
>
> 36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with."

32. Pargraphs 18 and 27 of the decision in ***Associate Builders v. DDA*** (*supra*) are set out below:

> **18.** In *Renusagar Power Co. Ltd.* v. *General Electric Co.* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] , the Supreme Court construed Section 7(1)(*b*)(*ii*) of the Foreign Awards (Recognition and Enforcement) Act, 1961:

"**7. *Conditions for enforcement of foreign awards*.**—(1) A foreign award may not be enforced under this Act—

***

(*b*) if the Court dealing with the case is satisfied that—

***

(*ii*) the enforcement of the award will be contrary to the public policy."

In construing the expression "public policy" in the context of a foreign award, the Court held that an award contrary to

(*i*) The fundamental policy of Indian law,

(*ii*) The interest of India,

(*iii*) Justice or morality,

would be set aside on the ground that it would be contrary to the public policy of India. It went on further to hold that a contravention of the provisions of the Foreign Exchange Regulation Act would be contrary to the public policy of India in that the statute is enacted for the national economic interest to ensure that the nation does not lose foreign exchange which is essential for the economic survival of the nation (*see* SCC p. 685, para 75). Equally, disregarding orders passed by the superior courts in India could also be a contravention of the fundamental policy of Indian law, but the recovery of compound interest on interest, being contrary to statute only, would not contravene any fundamental policy of Indian law (*see* SCC pp. 689 & 693, paras 85 & 95).

27. Coming to each of the heads contained in *Saw Pipes* [(2003) 5 SCC 705 : AIR 2003 SC 2629] judgment, we will first deal with the head "fundamental policy of Indian law". It has already been seen from *Renusagar* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] judgment that violation of the Foreign Exchange Act and disregarding orders of superior courts in India would be regarded as

being contrary to the fundamental policy of Indian law. To this it could be added that the binding effect of the judgment of a superior court being disregarded would be equally violative of the fundamental policy of Indian law."

[underlined for emphasis]

33. As is noted by the Supreme Court above, the recovery of compound interest would not contravene any fundamental policy of Indian law. As pointed out by Mr Shankar, there are number of legislations, which provide for payment of compound interest. It is also a norm of the banking industry to charge compound interest with either monthly or quarterly rests. Therefore an arbitral award cannot be held to be contrary to the fundamental policy of Indian law only because one of the parties is awarded compound interest.

34. The decision in the case of ***Vedanta Limited*** (*supra*) is of little assistance to SAIL. In that case, the Court had noted that the Arbitral Tribunal had awarded interest at the same rate on the components of the award in Indian currency as well as in Euros. It had noted that the parties did not operate in the same currency and it was, therefore, necessary to take into account the complications caused by differential rates. Undeniably, interest on amounts payable in different currencies to parties operating in their respective currencies would necessarily have to take into account the economic environment, which are relevant to the currencies, in which the parties operate. It would not be apposite to apply a uniform rate across different currency components without an understanding of the environment in which the said

currency is operated. The said decision is not an authority for the proposition that awarding 12% compound interest with quarterly rests on an award in US dollars, violates the fundamental policy of Indian law.

35. Before concluding, it is also necessary to note that during the course of arguments, Mr. Shankar had stated that if SAIL was willing to pay the awarded amount with a lesser interest (say 6% instead of 12%) and put a quietus to the disputes, JOPL would accept the same and waive its right for receiving the balance interest.

36. In view of the above offer, this Court had adjourned the hearing to enable the counsel appearing for SAIL to take instructions in this regard. Mr. Basu had subsequently informed this Court that he was instructed to state that the said offer is not acceptable to SAIL. Nonetheless, considering that public funds are involved, this Court considers it apposite to grant SAIL another opportunity to reflect on the offer made on behalf of JOPL and binds down JOPL to the offer made on its behalf for a further period of four weeks. In the event SAIL pays the amount of USD 515,739.88 along with 6% interest per annum on a compounded basis with three monthly rests from 01.10.2018 till the date of payment, in full and final settlement of its dues, within a period of four weeks from date, JOPL would accept the same as full and final settlement of its claims.

37. This Court is of the view that the present petition is speculative and has been filed by SAIL to only protract litigation. The contentions advanced on its behalf are insubstantial and as noticed above, some of them are an afterthought as they were not urged before the Arbitral

Tribunal. In the circumstances, this Court considers it apposite to impose costs quantified at ₹50,000/-. The cost shall be paid to the learned counsel for JOPL within a period of four weeks from today.

38. The petition is dismissed with costs as aforesaid. All pending applications are also disposed of.

VIBHU BAKHRU, J

MAY 28, 2021
RK