HIGH COURT FOR THE STATE OF TELANGANA

****

CIVIL REVISION PETITION No. 4481 of 2007

Between:

ITC Limited- International Business House, having its office at 31, S.D.Road, Secunderabad.

....Petitioner/
Judgment debtor/
respondent

And

Wide Ocean Shipping Service Ltd., Having their office at Capitol House, Capital Way, Colindale, London NW90EQ, United Kingdon.

....Respondent/
Decree Holder/
Claimant

JUDGMENT PRONOUNCED ON : 29.07.2022

HONOURABLE SRI JUSTICE P.NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

1.	Whether Reporters of Local Newspapers may be allowed to see the Judgments ?	:	YES
2.	Whether the copies of judgment may be marked to Law Reporters/Journals	:	YES
3.	Whether Their Ladyship/Lordship wish to see fair Copy of the Judgment ?	:	No

*** HONOURABLE SRI JUSTICE P.NAVEEN RAO**
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

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!Counsel for the Petitioner: Sri G.V.S.Ganesh

Counsel for the Respondent: Sri A.Venkatesh

<Gist :

>Head Note:

? Cases referred:

(2014) 2 SCC 433
(2014) 9 SCC 263
(2019) 15 SCC 131
(2020) 10 SCC 1
(2020) 11 SCC 1

HONOURABLE SRI JUSTICE P. NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL REVISION PETITION NO.4481 of 2007

ORDER: *(Per Hon'ble Sri Justice P Naveen Rao)*

This revision is filed challenging the orders dated 24.9.2007 passed in E.P.No.54 of 2005 on the file of the XI Additional Chief Judge (FTC) City Civil Court, Hyderabad.

2. Wide Ocean Shipping Service Limited of London, England(disponent), chartered 'm.v.RIZCUN TRADERS' to ITC Limited, Secunderabad, India (the charterers) to carry a cargo of minimum 6250 mt of bagged soya bean meals extract with 5 % more at the option of charterers from Mumbai to Haichong. Charter-party (agreement) was made on 24.6.2000 in Dubai. Disputes arose between two contracting parties leading to appointment of arbitrators. The disponent owner set up claim for US $ 54,120.53 with interest and costs. The Charterers made counter claim for US $ 8,316.63 with interest and costs. The arbitrators passed award on 6.2.2003 holding that the charterers should pay the disponent owners US $ 52,153.53 together with interest thereon at the rate of 6% per annum compounded by three monthly rests from 18.8.2000 to the date of payment. Arbitrator also awarded costs and interest on costs and fee and expenses payable to the arbitrators by the charterners.

3. On 11.6.2004, the arbitrators passed award of assessed costs quantifying the costs of NOK 94.262.33 together with interest at the rate of 6 % per annum from the date of award. Arbitrator also awarded costs for passing this award.

4. Seeking enforcement of the said awards, E.P. 54 of 2005 was filed under Section 48 of Part II of Arbitration and Conciliation Act, 1996 in the Court of Chief Judge, City Civil Court at Hyderabad.

5. The petitioner herein raised several objections for enforcement of foreign award. Brushing aside the objections, by order dated 24.9.2007 the Execution Court issued warrant of attachment against Execution Petition schedule properties. Aggrieved thereby, this revision is preferred.

6. Heard learned counsel for petitioner Sri G.V.S.Ganesh and learned counsel for respondent Sri A.Venkatesh.

7. It is contended that these foreign awards are not enforceable, therefore, Execution Petition ought to have been rejected at the threshold, as it was in utter violation of provisions of Section 48 (2) (b) of the Act, 1996. It is further contended that there was denial of principles of natural justice and fair hearing; that an award shall not be recognized or enforced if the person against whom it is sought to be enforced was unable to present his case; that even though petitioner requested for oral hearing, no oral hearing was held

and award was passed based on written submissions. It was further contended that two independent awards cannot be passed as held by the Hon'ble Supreme Court. Once an award is passed, the Arbitrator becomes functus officio and therefore cannot deal with the claims and pass additional/ another award, whereas, erroneously two awards are passed by the Arbitrators. It is further contended that Section 47[1] of the Act, 1996 mandates filing of original or authenticated or duly certified copy of the Arbitration agreement, whereas, the original agreement or duly certified copy thereof was not filed, thus, Execution Petition was *per-se* not maintainable. It is contended that without appreciating the submissions of the petitioner, the Execution Court erroneously issued warrant of attachment.

8. While so, CRPMP No. 548 of 2011 (renumbered as I.A.No.1 of 2011) under Order VI Rule 7 of CPC was filed praying to amend the cause title in the CRP. It is averred that Wide Ocean Shipping Services Limited on 30.3.2009 assigned all its rights and interests to Wide Ocean Shipping Limited on all business developments and /or

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1 **47. Evidence.**

1. The party applying for the enforcement of a foreign award shall, at the time of the application, produces before the court-
a. the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
b. the original agreement for arbitration or a duly certified thereof; and
c. such evidence as may he necessary to prove that the award is a foreign award.
1.
2. If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.- In this section and all the following sections of this Chapter, "Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.

operations, including arbitration award on 'm.v.RIZCUN TRADER ITC C/P' dated 24.6.2000 and that the Wide Ocean Shipping Services Limited was dissolved and is no longer in existence.

9. The petitioner opposed said application. It is asserted that the application lacks essential details. It is contended that when the Wide Ocean Shipping Services Limited was dissolved and no longer in existence the deponent cannot claim to have been constituted as Attorney of non-existing company. Further, no details of date of winding-up are furnished. The petitioner doubts the very assignment in favour of Hong-kong based company and alleges that it may be an attempt by the Hong-kong based company, a totally different entity, to step into the shoes of a 'wound up company' based in London.

10. In the reply deposed by Sri Ashok Pardhan, he asserts that the respondent company in the CRP was dissolved on 18.8.2009; that the Wide Ocean Shipping Limited executed power of Attorney on 13.12.2010 nominating, constituting and appointing the deponent and one Mr Kishor Chandhari as true and lawful attorneys. It is further asserted that once there is an assignment any entity can enter into the shoes of the assignor.

11. On 4.4.2022 when the matter was called there was no representation on behalf of the respondent. The case was adjourned to 11.4.2022. Since Sri S Niranjan Reddy is designated as senior Counsel, the Registry was directed to reflect name of

learned counsel Sri A.Venkatesh also in the cause list on the next date of hearing (as he was earlier associated with the office of Sri S.Niranjan Reddy). On 11.4.2022 on a request by learned counsel Sri A.Venkatesh, the case was adjourned to 25.4.2022. On 25.4.2022 learned counsel Sri A.Venkatesh informed that Sri S Niranjan Reddy revoked his vakalat for the respondent, that he was not authorized to represent the respondent and that a letter is addressed to the party and awaiting response and that unless clear instructions are issued by the party, he cannot represent. Recording the same, case was adjourned to 7.6.2022. On 7.6.2022, learned counsel Sri A. Venkatesh informed the Court that the postal /courier envelop was returned un-served and that he has no instructions in the matter. At that stage, learned counsel for petitioner stated that even the petitioner in I.A. No. 1 of 2011 was also wound up and sought an adjournment to place on record relevant information. Accordingly, the case was adjourned to 13.6.2022.

12. On 9.6.2022 learned counsel for petitioner in CRP filed memo USR No. 45426 of 2022. It is stated in the memo that the petitioner engaged the services of M/s.Dun & Bradstreet (HK) Limited, a leading global provider of business data, to conduct search and provide information on status of petitioner in I.A. No. 1 of 2011. The said company conducted search and provided its report dated 28.4.2022. According to this report, M/s. Wide Ocean Shipping Limited company

Registry confirmed that the said company ceased its operations on 16.1.2015 and that presently it is inactive for the reason de-registered/dissolved or involuntary/compulsory liquidation process. Copy of the report is enclosed to the memo.

13. The memo is taken on record. Relevant entries in the Dun & Bradstreet (HK) Limited read as:

> 'This business is considered inactive due to bankruptcy, merger/acquisition, on the inability to confirm active operations at this location'.
>
> Under the heading 'OUT OF BUSINESS', it is recorded, 'The inquired subject is no longer operating at the current location. The following is our finding during current investigation:- Companies Registry confirmed that subject has ceased operation on January 16, 2015."

14. The petitioner in CRP filed reply dated 3.7.2018 to the rejoinder disputing the competence of Sri Ashok Pradhan to represent the respondent company and very existence of the respondent company. According to the deponent as per the certificate of incorporation of the company bearing certificate No.3197571 issued on 13.5.1996 the name of the company was described as '***Wide Ocean Ship Services Limited***' whereas the deponent to the affidavit in I.A.No.1 of 2011 claims to be duly constituted attorney of '***Wide Ocean Shipping Services Limited***'. It is asserted that there was no company in existence called '***Wide Ocean Shipping Services Limited***'. It is further averred that as per the provisions of the United Kingdom Companies Act, 1985 what is claimed is not valid. According to deponent Section 1003 deals with 'stiking off a company' and Section 1004 deals with 'circumstances in

which application not to be made'. According to Section 1004 (1) (c) an application under Section 1003 ought not to be made if anytime in the previous months company has made disposal of value of property or right immediately before ceasing to trade or otherwise carry on business. Whereas purported assignment was made on 30.3.2009 and purported application to stiking off was submitted on 9.4.2009. That being so, alleged dissolution on 18.8.2009 is not valid.

15. Assuming that '***Wide Ocean Shipping Services Limited***' is same as '***Wide Ocean Ship Services Limited***' it emerges that the '***Wide Ocean Shipping Services Limited***' was dissolved on 18.8.2009 and the '***Wide Ocean Shipping Limited Company***' which intended to step into the shoes of the '***Wide Ocean Ship Services Limited'*** has also ceased its operations on 16.1.2015.

16. There is no representation on behalf of the respondent or its successor, if any, to controvert these assertions.

17. More formidable challenge is on denial of reasonable opportunity by the arbitrator. According to petitioner, he was not afforded oral hearing in spite of a request made and abruptly concluded arbitral proceedings based on written submissions. Therefore, it is against public policy in India and is vitiated on that ground.

18. In paragraph 6 of the Award, arbitrators note the request made by the petitioner for oral hearing. But, taking note of the opposition by the other party for oral hearing, arbitrators refused to give oral hearing and hold the request as 'unjustifiable' on the ground that the amount claimed is modest and that lengthy written submissions were made.

19. This view of the arbitrators is illegal. A person has a right of fair hearing. Request for oral hearing can not be refused merely on the ground that the sum involved and/or ordered is modest. Further, they could not have assumed that 4635.00 UK Pounds is a small amount for the petitioner. Further, what is important is not the quantum of amount but the impact of such a decision on over all business transactions and relationships.

20. Section 48[2] of the Act stipulates conditions for enforcement of foreign awards. According to Sub-Section (2), a Court in India can

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[2] **48. Conditions for enforcement of foreign awards.—**(*1*) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—
(*a*) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
(*b*) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(*c*) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or
(*d*) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place ; or
(*e*) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(*2*) Enforcement of an arbitral award may also be refused if the Court finds that—

(*a*) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or
(b) the enforcement of the award would be contrary to the public policy of India.

Explanation:- Without prejudice to the generality of clause (b) of this section it is hereby declared for the avoidance of any doubt that an award is in conflict with the public policy of India if the making of the award was induced or effected by fraud or corruption.

(*3*) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (*e*) of sub-section (*1*) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

refuse to enforce foreign award, if the enforcement is contrary to public policy in India. Explanation 1 explains that an award is contrary to public policy in India, if it is in contravention with the fundamental policy of Indian law or with the most basic notions of morality or justice.

21. '*Audi alteram partem*' is the basic tenet of law. Opportunity of hearing is ingrained in adjudication process in India. A person is entitled to hearing before a decision is made. More so, when the decision affects him adversely, as in this case, where liability is fastened on the petitioner.

22. The scheme of Act makes it clear that ordinarily oral hearing has to be held. Proviso appended to Section 24[3] mandates that if a request is made by a party, it is mandatory to hold oral hearing. Section 29B[4] contemplates fast Track procedure. It requires parties

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[3] **24.Hearings and written proceedings.—**(*1*) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:
Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

2[Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.]
(*2*) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.
(*3*) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

[4] **29B. Fast track procedure.—**(*1*) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (*3*).
(*2*) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.
(*3*) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (*1*):—
(*a*) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;
(*b*) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
(*c*) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;
(*d*) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

to agree to resort to fast track procedure by dispensing with oral hearing. Thus, the scheme of the Act makes it clear that there must be express consent by both parties to dispense with oral hearing. Thus, it is beyond pale of doubt that the fundamental policy of Indian law is to hold oral hearing before deciding the rights of the parties, unless expressly agreed by the parties to dispense with oral hearing. The above provisions only reflect the fundamental policy of Indian Law.

23. The law on enforcement of foreign award is considered by Hon'ble Supreme Court in catena of decisions. Few landmark decisions are noted hereunder:

23.1. Scope of Section 48 of the 1996 Act was elaborately considered by Hon'ble Supreme Court in **Shri Lal Mahal Ltd. v. Progetto Grano SpA** [5]. Hon'ble Supreme Court held:

> "*27. In our view, what has been stated by this Court inRenusagar* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] *with reference to Section 7(1)(b)(ii) of the Foreign Awards Act must equally apply to the ambit and scope of Section 48(2)(b) of the 1996 Act.* In *Renusagar* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] it has been expressly exposited that the expression "public policy" in Section 7(1)(*b*)(*ii*) of the Foreign Awards Act refers to the public policy of India. The expression "public policy" used in Section 7(1)(*b*)(*ii*) was held to mean "public policy of India". A distinction in the rule of public policy between a matter governed by the domestic law and a matter involving conflict of laws has been noticed in *Renusagar* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] . For all this there is no reason why *Renusagar* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*,

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(*4*) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.
(*5*) If the award is not made within the period specified in sub-section (*4*), the provisions of sub-sections (*3*) to (*9*) of section 29A shall apply to the proceedings.
(*6*) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.]

[5] (2014) 2 SCC 433

> 1994 Supp (1) SCC 644] should not apply as regards the scope of inquiry under Section 48(2)(*b*). Following *Renusagar* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] , ***we think that for the purposes of Section 48(2)(b), the expression "public policy of India" must be given a narrow meaning and the enforcement of foreign award would be refused on the ground that it is contrary to public policy of India if it is covered by one of the three categories enumerated in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644].*** Although the same expression "public policy of India" is used both in Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*) and the concept of "public policy in India" is same in nature in both the sections but, in our view, its application differs in degree insofar as these two sections are concerned. The application of "public policy of India" doctrine for the purposes of Section 48(2)(*b*) is more limited than the application of the same expression in respect of the domestic arbitral award.
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> xxx
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> *29.* ***We accordingly hold that enforcement of foreign award would be refused under Section 48(2)(b) only if such enforcement would be contrary to (1) fundamental policy of Indian law; or (2) the interests of India; or (3) justice or morality.*** The wider meaning given to the expression "public policy of India" occurring in Section 34(2)(*b*)(*ii*) in *Saw Pipes* [*ONGC* v. *Saw Pipes Ltd.*, (2003) 5 SCC 705] is not applicable where objection is raised to the enforcement of the foreign award under Section 48(2)(*b*).
>
> *xxxx*
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> 47**.** While considering the enforceability of foreign awards, the court does not exercise appellate jurisdiction over the foreign award nor does it enquire as to whether, while rendering foreign award, some error has been committed. Under Section 48(2)(*b*) the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to : (*1*) fundamental policy of Indian law; or (*2*) the interests of India; or (*3*) justice or morality. The objections raised by the appellant do not fall in any of these categories and, therefore, the foreign awards cannot be held to be contrary to public policy of India as contemplated under Section 48(2)(*b*)."
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> (emphasis supplied)

23.2. In **Oil and Natural Gas Corporation Limited Vs. Western GCCO International Limited**[6]**,** Hon'ble Supreme Court held 'fundamental policy of Indian Law' must include all such fundamental principles as providing a basis for administration of justice and enforcement of law. The Court then went on to highlight three distinct and fundamental juristic principles, which are necessarily understood as part and parcel of the fundamental policy of Indian Law. First, in

[6] (2014) 9 SCC 263

every determination whether by a Court or other authority that affects the rights of a citizen or leads to any civil consequence, the Court or authority concerned is bound to adopt 'judicial approach', cannot act in an arbitrary, capricious or whimsical manner. Hon'ble Supreme Court held, "*Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a Court or authority vulnerable to challenge"* (para 35). Second, while determining rights and obligations of parties the Court or quasi-judicial authority must do so in accordance with the principles of natural justice; and third the decision should not be perverse or irrational. Hon'ble Supreme further held,

> **"40.** It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest."

23.3. In **Ssangyong Engg. & Construction Co. Ltd. v. NHAI**[7]**,** Hon'ble Supreme Court Considered Renusagar Power Co:

> **"20.** It is first necessary to survey the law insofar as it relates to the ground of setting aside an award if it is in conflict with the public policy of India, as it existed before the Amendment Act, 2015. In *Associate Builders* v. *DDA* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] (*Associate Builders*), this Court referred to the judgment in *Renusagar Power Co. Ltd.* v. *General Electric Co.* [*Renusagar Power Co. Ltd.* v. *General Electric Co.*, 1994 Supp (1) SCC 644] (*Renusagar*), as follows : (*Associate Builders case* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC pp. 67-68, para 18)

[7] (2019) 15 SCC 131

"*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—

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(*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.

24. Yet another expansion of the phrase "public policy of India" contained in Section 34 of the 1996 Act was by another judgment of this Court in *Western Geco* [*ONGC* v. *Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , which was explained in *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] as follows : (SCC pp. 73-77, paras 28-34)

"*28.* In a recent judgment, *ONGC* v. *Western Geco International Ltd.* [*ONGC* v. *Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held : (SCC pp. 278-80, paras 35 & 38-40)

'35. What then would constitute the "fundamental policy of Indian law" is the question. The decision in ONGC [ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest.'

29. It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.

> *30.* The *audi alteram partem* principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in Sections 18 and 34(2)(*a*)(*iii*) of the Arbitration and Conciliation Act."
>
> (emphasis supplied)

23.4. In **Union of India v. Vedanta Ltd[8].,** Hon'ble Supreme Court elaborately dealt with the issue of enforceability of foreign arbitration award pre-amendment and post amendment of Section 48 and held:

> **"94.** The enforcement court would, however, examine the challenge to the award in accordance with the grounds available under Section 48 of the Act, without being constrained by the findings of the Malaysian courts. ***Merely because the Malaysian courts have upheld the award, it would not be an impediment for the Indian courts to examine whether the award was opposed to the public policy of India under Section 48 of the Indian Arbitration Act, 1996. If the award is found to be violative of the public policy of India, it would not be enforced by the Indian courts.*** The enforcement court would however not second-guess or review the correctness of the judgment of the seat courts while deciding the challenge to the award."
>
> (emphasis supplied)

23.5. In **Vijay Karia and others vs. Prysmian Civie Sistemi Srl and others**[9], Hon'ble Supreme Court held,

> **"81.** Given the fact that the object of Section 48 is to enforce foreign awards subject to certain well-defined narrow exceptions, the expression "was otherwise unable to present his case" occurring in Section 48(1)(*b*) cannot be given an expansive meaning and would have to be read in the context and colour of the words preceding the said phrase. In short, this expression would be a facet of natural justice, which would be breached only if a fair hearing was not given by the arbitrator to the parties. Read along with the first part of Section 48(1)(*b*), it is clear that this expression would apply at the hearing stage and not after the award has been delivered, as has been held in *Ssangyong* [*Ssangyong Engg. & Construction Co. Ltd.* v. *NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] . A good working test for determining whether a party has been unable to present his case is to see whether factors outside the party's control have combined to deny the party a fair hearing. Thus, where no opportunity was given to deal with an argument which goes to the root of the case or findings based on evidence which go behind the back of the party and which results in a denial of justice to the prejudice of the party; or additional or new evidence is taken which forms the basis of the award on which a party has been given no opportunity of rebuttal, would, on the facts of a given case, render

[8] (2020) 10 SCC 1
[9] (2020) 11 SCC 1

> a foreign award unenforceable on the ground that a party has been unable to present his case. This must, of course, be with the caveat that such breach be clearly made out on the facts of a given case, and that awards must always be read supportively with an inclination to uphold rather than destroy, given the minimal interference possible with foreign awards under Section 48."

24. The above enunciation of law should govern consideration of issue of enforceability of foreign arbitration award. Guided by the principles enunciated by the Hon'ble Supreme Court, it is noticed from the decision of execution court, it has not applied its mind in assessing the scope of law of enforcement of foreign decree in India. The Execution Court has not applied its mind to relevant factors and erred in considering irrelevant aspects. Denial of request for oral hearing is against fundamental policy of Indian Law and, therefore, the award cannot be enforced in India.

25. Section 34 of English Arbitration Act deals with procedural and evidential matters. Sub-section (1) requires the Tribunal to decide all procedural and evidential matters before commencement of arbitral proceedings. No such decision was made by the Tribunal in advance, particularly on dispensing with oral hearing. Further, from the reading of sub-section (1) and sub-section 2(h) the Tribunal was also required to specify whether and to what extent there should be oral or written evidence or submissions and all that is subject to the right of the parties. Therefore, the arbitral Tribunal was required to specify in advance dispensing with oral hearing. Even such dispensation is

subject to overarching right of the parties. It appears no prior procedure was prescribed, dispensing with oral hearing.

26. The arbitrators rejected to hold oral hearing when a request was made, that too, for extraneous reasons. The arbitrators could not assume that they would not be greatly assisted by hearing oral submissions or value of claim is small. Further, five thousand pounds when converted to Indian Rupee, is not a small amount. Further, more than the value of claim what is important is reputation of a company. An adverse arbitral proceeding certainly impact the standing of a company in international business transactions. Therefore, arbitral Tribunal looked into the issue of oral hearing in a narrow parochial manner, is arbitrary and capricious.

27. The Execution Court grossly erred in not appreciating the scheme of the Arbitration and Conciliation Act, 1996. It has also erred in not appreciating the scope of Section 34 of English Arbitration Act.

28. Thus, the foreign award is contrary to fundamental policy of Indian law and is in conflict with basic notion of justice as the Arbitrators denied oral hearing even though a request was made. Such award is not enforceable in India.

29. The Execution Court grossly erred in not appreciating the scope of Section 48 of the Act, 1996. Not challenging the award, that

award has become final and/or the appellants participating in further proceedings before the arbitrators have no relevance. The award still has to pass the tests prescribed in Section 48 for its enforcement in India. A foreign award becomes a decree under Section 49 only when it passes the muster of Section 48.

30. The order of the Execution Court is not sustainable. The Revision succeeds and is accordingly allowed. No costs. Pending miscellaneous applications, if any, stand closed.

P.NAVEEN RAO,J

SAMBASIVARAO NAIDU,J

DATE: 29.07.2022
TVK/KKM

HON'BLE SRI JUSTICE P. NAVEEN RAO
&
HON'BLE SRI JUSTICE SAMBASIVARAO NAIDU

CIVIL REVISION PETITION No. 4481 of 2007

Date : 29.07.2022

Tvk/kkm