IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 579 OF 2024
WITH
INTERIM APPLICATION NO. 3509 OF 2024

Hindustan Petroleum Corporation Ltd. *.....Petitioner*

: Versus :

Aegis Logistics Pvt. Ltd. *....Respondent*

Mr. Zal Andhyarujina, Senior Advocate with Mr. Nilesh Modi. Ms. Akanksha Agarwal, Ms. Serena Jethmalani, Ms. Drishti Modi, Mr. Ashish Rebello & Ms. Pratishtha Chari i/b Rustamji & Ginwala, for Petitioner

Mr. Mustafa Doctor, Senior Advocate with Ms. Spenta Kapadia. Mr. Aruz Gazdar, Mr. Dhruv Dhandekar & Ms. Prarthana Balasubramanian i/b Veritas Legal, for Respondent

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CORAM: SANDEEP V. MARNE, J.

Reserved On: 05 December 2025.

Pronounced On: 19 December 2025.

JUDGMENT:-

1) By this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**), Petitioner has challenged Arbitral Award dated 30 May 2024 passed by the learned sole Arbitrator. By the impugned Award, the learned Arbitrator has set aside order dated 3 March 2017

passed by the Petitioner terminating the Operating and Services Agreement dated 5 May 2015 (**OSA**). The learned Arbitrator has awarded to the Respondent sum of Rs. 1,93,79,734/- together with interest @13% p.a. from 30 October 2017 till date of the Award towards unpaid dues of the Respondents. The Arbitral Tribunal has further awarded claim in favour of the Respondent in sum of Rs. 2,31,78,733/- towards damages in the form of loss of profit with interest @13% p.a. from 30 October 2017 till date of the Award. The Arbitral Tribunal has also awarded sum of Rs. 13,05,135/- towards wrongful invocation of Bank Guarantee together with interest @ 13% p.a. from 30 October 2017 till date of the Award. The Arbitral Tribunal has also granted post award interest @13% p.a. The Arbitral Tribunal also issued certain directions with regard to PF/ESIC contributions in the impugned Award. The Arbitral Tribunal has awarded costs of arbitration in favour of the Respondent in the sum of Rs.1,60,00,000/-.

FACTS:-

2) Petitioner-Hindustan Petroleum Corporation Ltd. (**HPCL**) is a Government of India Enterprise involved in the business of refinery and marketing of petroleum products. The Respondent-Aegis Logistics Pvt. Ltd. **(Aegis)** is an oil, gas and chemical logistic company. On 29 April 2014, Petitioner-HPCL floated a tender inviting bids for management, operation and maintenance of oil terminal facility located at New Pol Depot, Alur Road, Guntakal, Andhra Pradesh (**Guntakal Depot).** The Respondent emerged as successful bidder and the Petitioner issued letter of acceptance and purchase order in favour of the Respondent on 25 November 2014. The Respondent commenced

operations pursuant to completion of Handing Over /Taking Over Operations w.e.f. 22 February 2015. On 5 May 2015, the OSA was executed between the Petitioner and the Respondent, under which the Respondent undertook the management, operations and maintenance of Guntakal Depot.

3) The Oil Industry Safety Directorate (**OISD**) is a part of Ministry of Petroleum and Natural Gas, Government of India, which conducted surprise safety audit at Guntakal Depot on 12 August 2016 and 13 August 2016 and issued Audit Report dated 7 September 2016. The report pointed out certain concerns with regard to updating of PESO License, name of the operator not being reflected in the license, regarding safe filling height of tank with regard to calibration chart, drains, OWS and mainly raising safety concerns of railway siding. The report contemplated initiation of implementation of mitigating measures in a time bound manner and submission of action plan with a target date and monitoring on regular basis with monthly updates to OISD. The Respondent issued stop work notice on 26 September 2016 to the Petitioner stating that it was stopping the operations at the railway siding of Guntakal Deport with immediate effect on the basis of the OISD report and in terms of Stop Work Authority issued by the Petitioner.

4) According to the Petitioner, even after issuance of stop work notice, the Respondent indented 3 rakes/wagons on 30 September 2016, which arrived at Guntakal Deport on 3 October 2016 and were required to be decanted by the Respondent. According to the Petitioner despite indenting the rakes/wagons, Respondent failed to decant the same and that the activity was

required to be performed by the Petitioner. Petitioner also responded to stop work notice vide letter dated 17 October 2016 contending that the Respondent had been operating the siding since 23 February 2016 and that if there was any deterioration of the siding, the same was on account of actions of the Respondent. Petitioner issued first show cause notice dated 3 October 2016. The Respondent responded to the first show cause notice on 24 October 2016 denying the allegations. The Petitioner issued rejoinder to the Respondent on 26 December 2016. Petitioner also issued second show cause notice dated 20 January 2017 calling upon the Respondent to show cause as to why contract should not be terminated under Clause 41 of OSA. The Respondent responded to the second show cause notice on 10 February 2017.

5) In the above background, Petitioner terminated the contract by issuance of termination notice dated 3 March 2017 and demanded amount of Rs.1,72,55,998/- towards penalty, expenses and other recoverable amounts. The Respondent replied to the termination notice on 3 April 2017 and disputed the allegations in the termination notice. On 27 March 2018, the Respondent invoked arbitration clause in the OSA. Accordingly, the learned sole Arbitrator entered arbitral reference by his letter dated 27 March 2018. The Respondent filed Statement of Claim challenging termination notice dated 3 March 2017 and raising various claims against the Petitioner as under:-

Rs.2,78,20,000/-	Towards amount due under the contract
Rs.9,00,000/-	Mobilizing expenses
Rs.3,00,00,000/-	For loss of market reputation on account of wrongful termination
Rs.2,31,92,000/-	Towards loss of profit on account of wrongful termination.
Rs.28,23,000/-	Towards repayment of Bank Guarantee amount.
Rs.1,00,00,000/-	Towards loss of reputation because of illegal invocation of Bank Guarantee
Interest @18%	

6) Petitioner filed Statement of Defence resisting the claim of the Respondent. Additionally, Petitioner also filed Counterclaim for various sums against the Respondent aggregating Rs. 6,05,34,263/- alongwith 18% interest. Based on the pleadings, the Arbitral Tribunal framed issues. Both the parties led evidence in support of their respective cases. The Arbitral Tribunal has thereafter made Award dated 30 May 2024 partly allowing the claims of the Respondent and rejecting the Counterclaim of the Petitioner. The Arbitral Tribunal has declared termination notice dated 3 March 2017 to be wrongful, illegal and has accordingly set aside the same. The Arbitral Tribunal has directed the Petitioner to pay to the Respondent sum of Rs.1,93,79,734/-towards amount due under contract together with 13% interest from 30 October 2017. The Arbitral Tribunal has however rejected the claims of the Respondent towards mobilisation expenses as well as loss of market reputation on account of termination of OSA. The Arbitral

Tribunal has fully granted the claim of the Respondent for loss of profit of Rs.2,31,78,733/- together with interest @13% p.a. from 30 October 2017. The Arbitral Tribunal has rejected the claim of the Respondent towards overhead costs, towards engagement of manpower, etc. The Arbitral Tribunal has awarded a sum of Rs.13,05,135/- towards wrongful invocation of Bank Guarantee alongwith 13% interest per annum w.e.f. 30 October 2017 till date of the Award. The Arbitral Tribunal has directed the Petitioner to pay to the Respondent post Award interest @ 13% p.a. The Arbitral Tribunal has also issued certain directions with regard to PF/ESIC contributions by directing the Respondent to furnish proper documents to the Petitioner with further directions to the Petitioner to determine the amount payable and to pay the same to the Respondent. In case it is found that no dues are payable in respect of the PF and ESIC to the Respondent, the amount is directed to be transferred to the authorities controlling PF and ESIC. The Arbitral Tribunal has also awarded costs of arbitration of Rs.1.60 crores in favour of the Respondent. Aggrieved by the Award dated 30 May 2025, the Petitioner-HPCL has filed the present Petition under Section 34 of the Arbitration Act.

7) By order dated 12 December 2024, this Court has stayed implementation of the Award dated 30 May 2024 subject to deposit of principal amount and costs of Rs.5,98,63,602/-. Respondent filed Interim Application No.1048 of 2025 for withdrawal of the deposited amount. By order dated 12 August 2025, this Court has permitted the Respondent to withdraw the deposited amount subject to provision of bank guarantee covering the entire withdrawal amount.

SUBMISSIONS:-

8) Mr. Andhyarujina the learned Senior Advocate appearing for the Petitioner would submit that the impugned Award is perverse since the Arbitration Tribunal has held that issuance of stop work notice by Respondent is proper, not constituting breach of OSA. That the learned Arbitrator has failed to notice that conditions of railway siding was known to the Respondent before accepting the tender. That the Arbitral Tribunal has upheld the contentions of the Petitioner about knowledge on the part of the Respondent of condition of railway siding. That the Respondent had expressly undertaken that it has physically inspected the site and the concerned areas and had satisfied itself of existing facilities and had also undertook not to make any claims or raise objections. That the learned Arbitrator has noticed the fact that the Respondent was carrying out its activities at the terminal since 20 February 2015 and that it noticed unsafe conditions for the first time after receipt of OISD report in September 2016.

9) Mr. Andhyarujina would further submit that the learned Arbitrator's has recorded a perverse finding that the Respondent was justified in ceasing its operations under the guise of OISD report is contrary to the contract. As per OISD report said findings is also contrary to the contractual obligation of the Respondent under the OSA. That the OISD did not specifically report closure of operations at the siding and that therefore there is no reasoning to support the finding of the learned Arbitrator that the stop work notice was rightly issued. That the Respondent did not demonstrate or substantiate

reasons for ceasing operations overnight on 26 September 2016 when it was aware of the alleged condition of railway siding much prior to OISD report. That the learned Arbitrator has interpreted the OISD report in a way that no fair minded or reasonable person would. That the OISD report had made recommendations and mitigating measures, which were supposed to be implemented in a time bound manner and that the report nowhere recommended or directed immediate ceasing of the operations. That the findings of the learned Arbitrator are contrary to the clauses 38 and 39 of the OSA. That it is well settled position that Arbitrator, being a creature of contract, is bound to act in terms of the contract under which the tribunal is constituted. That failure on the part of the learned Arbitrator to act in terms of the contract constitutes patent illegality as held by the Apex Court in ***Indian Oil Corporation Ltd through its Senior Manager V/s. Shree Ganesh Petroleum Rajgurunagar*** [1]***, Oil and Natural Gas Corporation Ltd. V/s. Saw Pipes Ltd.*** [2]

10) Mr. Andhyarujina would further submit that the arbitral Award is perverse as the Tribunal has recorded contradictory findings on the obligations regarding indenting and decanting and has, without any reason, rejected claim for demurrage. That the learned Arbitrator has noted that although the Respondent was not supposed to indent the rakes after issuance of stop work notice, he has still rejected the claim of the Petitioner for expenses incurred, demurrage charges, etc. That indenting of rakes was done by the Respondent after issuance of stop work notice and the Respondent violated its obligation

1 (2022) 4 SCC 463
2 (2003) 5 SCC 705

under clause 10.1 and 14(C) of OSA under which it was Respondent's obligation to unload/decant product from the rakes. That suspension of operations at the siding constitutes breach of obligation under the OSA. That Respondent's witness admitted liability to pay demurrage charge to the railway if products were not decanted within maximum of eight hours. That he also admitted failure to decant the very product off the rakes which was unsafe and dangerous. That the learned Arbitrator has erroneously based his findings on assumption that the Respondent must have taken time to study the implication of OISD report in order to arrive at decision to issue stop work notice. That the Arbitral Tribunal has erroneously held contrary to the terms of OSA that the Respondent was justified in seeking guidance regarding additional safety measures to continue its obligations. That despite holding that the Respondent should not have indented the product after issuance of stop work notice, the learned Arbitrator erroneously held in favour of the Respondent on the ground that the Petitioner ought not to have called for the products on the basis of three indents made by the Respondent. Relying on judgment of this Court in ***Rakesh S. Kathotia V/s. Milton Global Ltd. and Ors.***[3] it is contended that an Award, which is in conflict with basic notions of justice and morality, being riddled with inherent contradictions, leading to an implausible outcome, becomes perverse.

11) Mr. Andhyarujina would further submit that the Arbitral Tribunal has gone beyond the scope of contract in upholding Respondent's contention that ceasing of the operations by the Respondent was not in breach of the contract and that the

[3] Arbitration Petition No.544 of 2018, decided on 3 November 2025

Petitioner is not liable to recover demurrage charge from the Respondent. He would rely upon judgment of the Apex Court in ***Union of India V/s. Manraj Enterprises***[4]. By relying on judgment of the Apex Court in ***Som Datt Builders Limited V/s. State of Kerala***[5] it is contended that mere reproduction of submissions of both the parties does not amount to assignment of reasons in the arbitral award. Mr. Andhyarujina would further submit that the Arbitral Tribunal has failed to deal with Petitioner's submission that OSA is a composite contract and Respondents cannot elect to perform part of its obligation under an OSA. Though the argument is noted, the same is not decided. Relying on judgment of the Apex Court in ***Alopi Prashad and Sons Limited V/s. Union of India***[6] it is contended that all terms of the contract are required to be adhered to and the contract must be performed in entirety.

12) Mr. Andhyarujina would further submit that the findings of the Arbitral Tribunal that termination letter dated 3 March 2017 is illegal, suffers from perversity and patent illegality. That the Arbitral Tribunal has recorded a patently illegal finding that non-initiation of any action by the Petitioner against the Respondent would mean that there was no failure on the part of the Respondent to carry out its contractual duties. That while recording such findings, the Arbitral Tribunal failed to consider the aspect of issuance of two show cause notices and termination of OSA by recording reason of breach of contractual conditions. Additionally, there was also correspondence between

4 (2022) 2 SCC 331
5 (2009) 10 SCC 259
6 (1960) 2 SCR 793

the parties as well as minutes of the meetings communicating breaches of the Respondent.

13) Mr. Andhyarujina would further submit that the findings of the Arbitral Tribunal invalidating termination notice on the ground of validity of stop work notice are perverse. That the same are vague as evident from paragraphs 242 to 267 of the impugned Award. That the learned Arbitrator did not consider the OISD report in its entirety, which also highlighted shortcomings on behalf of the Respondent. That therefore consideration of only observations pertaining to the railway siding in the OISD report constitutes perversity. That the Award is not only devoid of reasons but also unintelligent and vague making it liable to be set aside as per judgment of the Apex Court ***Dyna Technologies Private Limited V/s. Crompton Greaves Limited***[7]. That the Award is patently illegal as it rejects Petitioner's counterclaim without considering the evidence on record. That the Award is also vague and perverse holding that the Petitioner is liable to pay amounts claimed by the Respondent under PF/ESIC Rules. On above broad submissions, Mr. Andhyarujina would pray for setting aside the impugned Award.

14) Mr. Doctor, the learned Senior Advocate appearing for the Respondent would oppose the Petition submitting that the Arbitral Tribunal has passed a detailed and a well-considered Award dealing with each and every aspect of disputes between the parties. That the findings recorded by the Arbitral Tribunal are well supported by the evidence and material on record. That the Petitioner has failed to make out a case of absolute perversity

[7] (2019) 20 SCC 1

in the impugned Award. That the Petitioner is urging this Court to reappreciate the material on record for arriving at the different conclusions than the one recorded by the Arbitral Tribunal. He would rely upon judgments of the Apex Court in ***Associate Builders V/s. Delhi Development Authority***[8]**,** and ***OPG Power Generation Private Limited V/s. Enexio Power Cooling Solutions India Private Limited and Another***[9]**,** and of Delhi High Court in ***National Building Construction Corporation*** (supra)

15) Mr. Doctor would further submit that the Arbitral Tribunal has interpreted the terms and conditions of OSA, which is primarily for the Tribunal to decide. That error in interpretation of contractual term does not constitute the error outside the contract. He would rely upon judgments of the Apex Court in ***Parsa Kente Collieries Limited V/s. Rajasthan Rajya Vidyut Utpadan Nigam Limited*** [10], and ***Rashtriya Ispat Nigam Limited V/s. Dewan Chand Ram Saran***[11]**, *National Highways Authority of India V/s. ITD Cementation India Limited*[12].** He would submit that the view taken by the learned Arbitrator is a plausible view, which cannot be substituted by this Court with its own view. He would rely upon judgment of the Apex Court in ***S.V. Samudram V/s. State of Karnataka and Another***[13]

16) Mr. Doctor would further submit that most of the cases argued before this Court are entirely different than the one argued before the Arbitral Tribunal. That the only case argued

8 (2015) 3 SCC 49
9 (2025) 2 SCC 417
10 (2019) 7 SCC 236
11 (2012) 5 SCC 306
12 (2015) 14 SCC 21
13 (2024) 3 SCC 623

before the Arbitral Tribunal was whether issuance of stop work notice by the Respondent amounted to breach of contract and whether termination of the contract by the Petitioner was valid. That the Petitioner is arguing new case directly before this Court which is impermissible as held by the Delhi High Court in ***National Building Construction Corporation V/s . Sharma Enterprises***[14] and by this Court in ***Azizur Rehman Gulam and Others V/s. Radio Restaurant and Others***[15] that points not raised before the Arbitral Tribunal constitute waiver as held in ***Union of India V/s. Susaka Private Limited and others***[16]

17) Mr. Doctor would then toke me through the broad structure of the Award contending that the learned Arbitrator has rightly appreciated the position that the Petitioner was aware of the shortcomings of railway siding and that for the first time in August 2016, OISD expressed serious concerns about security and safety of siding and unsafe condition in operation thereof. That the Respondent was therefore required to issue stop work notice. That the stop work notice was not absolute and the Respondent had communicated its willingness to continue services at the site after adopting of necessary safety measures. That the learned Arbitrator has rightly appreciated the position that the Petitioner failed to prove allegation of the Respondent not maintaining the siding or being responsible for its deterioration. Taking me through the OISD report, Mr. Doctor would submit that the OISD had clearly indicated that continuation of operations was unsafe. That the learned

[14] 2025 SCC OnLine Del 8505

[15] 2023 SCC OnLine Bom 2320

[16] (2018) 2 SCC 182

Arbitrator has rightly upheld reading of OISD report of Respondent from standpoint of safety and security and issuing the stop work notice. That the learned Arbitrator has rightly held that Petitioner's Stop Work Authority enabled issuance of stop work notice of operations if operator faced situation concerning safety issues. That the Arbitral Tribunal has rightly held that stop work at the siding did not constitute breach of Agreement. That stop work notice contained necessary information justifying stoppage of work at the siding. That therefore termination letter dated 3 March 2017 was clearly unsustainable and has rightly been declared null and void. That the Arbitral Tribunal's findings about validity of stop work notice and consequential invalidation of termination notice are well supported by the evidence on record.

18) Mr. Doctor would further submit that the Petitioner's argued case before this Court of composite contract is different than the one argued before the Arbitral Tribunal. That before the Arbitral Tribunal, Petitioner contended that failure to decant the indented rakes amounted to non-performance of contract in entirety. That before the Arbitral Tribunal Petitioner did not argue that it was not open to the Respondent to stop operations only at siding while continuing to operate the rest of the depot. He would submit that the Arbitral Tribunal has accordingly conducted a detailed enquiry into the action of the Respondent in not decanting the indented rakes and held that same does not constitute breach of OSA. That the Arbitral Tribunal has conducted enquiry in the direction which the Tribunal was driven at by the Petitioner. He would submit that the stoppage of activity at the railway siding did not *ipso facto* meant that the

contract is frustrated. That the contract involved rail plus road movement. That the products were incoming and outgoing by road movement as well. That therefore it is fallacious to contend that mere stoppage of activity at railway siding automatically frustrated the contract. That even otherwise argument of frustration of contract was not raised before the Arbitral Tribunal and cannot be permitted to be raised directly before this Court.

19) Mr. Doctor would further submit that the claim of the Respondent for loss of profit is well supported by evidence on record. That material placed on record through Respondent's witness Mr. Radhakrishnan Srinivasan has not been challenged by the Petitioner in any manner and that there is no cross examination on that aspect. He would take me through the manner in which the conservative computations @ 24 % profits are made for the purpose of determining loss of profits faced by the Respondent. That findings recorded by the Arbitral Tribunal while awarding the claim of loss of profit does not warrant any interference in exercise of powers under Section 34 of the Arbitration Act.

20) Mr. Doctor would further submit that there is no serious challenge by the Petitioner to award of claim of Rs.1,93,17,734/- towards services performed by the Respondent. Even otherwise, there was no challenge to the particulars submitted in support of the said claim and the findings recorded by the Arbitral Tribunal in respect of the said claim and are also well supported by evidence on record.

21) That the Arbitral Tribunal has rightly rejected all the five Counterclaims of the Petitioner-HPCL. That Counterclaim Nos.1, 3, 4 and 5 towards penalty for non-performance, differential product placement cost, differential transportation cost and penalty emanate out of the issue of validity of termination notice. Once termination notice is held to be invalid, all the four Counterclaims automatically fall flat. That the Counterclaim towards reconciliation of accounts has rightly been rejected by the Arbitral Tribunal by undertaking item wise detailed discussion not warranting any interference by this Court in absence of any case of perversity being made out. On above broad submissions Mr. Doctor would pray for dismissal of the Arbitration Petition.

REASONS AND ANALYSIS:-

22) The disputes between the Petitioner-HPCL and the Respondent-AEGIS have arisen out of performance of OSA dated 5 May 2015. The OSA was executed for the purpose of operation, management and maintenance of Guntakal Depot, which was spread over 12.5 acres of land with several tankers for storage of petroleum products. According to the Petitioner Guntakal Depot met the supply of approximately 140 retail outlets around Guntakal in Andhra Pradesh. The scope of work by the Respondent under the OSA *inter alia* included operation of facilities including supervision, receipt of petroleum related products by various modes of transportation, maintenance of the equipment, movement of material, provision of necessary tools, etc. The Respondent was responsible under the OSA to undertake all activities required for operation of the depot so as to make

product supply requirement of the HPCL. The essential part of scope of services included unloading of tank wagons containing petroleum products, which arrived at the railway siding at the depot and thereafter transferring the petroleum products from the tank wagons to storage tank via an underground pipeline laid by HPCL inside the storage tank at the depot. The Respondent was also responsible for loading HPCL's tank trucks with petroleum products for supply to third parties.

23) On the Mumbai-Chennai Railway line, the Indian Railways have provided a siding facility at Guntakal Depot, which is a short stretch of low speed section of rail track, which bridges from the main railway track and is used to enable the rake wagons to supply petroleum related products to the depot. It appears that a common railway siding was provided by the Indian Railways for use by India Oil Corporation Ltd. and HPCL for operation of their respective depots, which are located on either side of the railway line.

24) Respondent commenced operations at Guntakal Depot w.e.f. 22 February 2015 i.e. prior to the execution of the formal OSA on 5 May 2015. The commencement of the operations apparently took place in pursuance of purchase order issued by the HPCL on 25 November 2014. It appears that operation activities went on smoothly from 22 February 2015 till OISD conducted surprise audit inspection of Guntakal Depot on 12 and 13 August 2016. It is this audit report of OISD which has become the reason for disputes between the parties. Based on report of the OISD, Respondent issued stop work notice dated 26 September 2016 informing the Petitioner that it was stopping its

operations at the railway siding at Guntakal Deport on the basis of the OISD report and in terms of Stop Work Authority, which enabled the Respondent to stop work in view of any safety concerns. However, even after issuance of stop work notice, Respondent indented 3 rakes/ wagons. The products in the indented rakes was supplied by the Petitioner and the same arrived at Guntakal Terminal. The Respondent however, refused to decant the arrived rakes. According to the Petitioner, the decanting activity was carried out by it, though the same was contractual obligation of the Respondent. This led to issuance of first show cause notice dated 3 October 2016. After receipt of response from the Respondent to the first show cause notice and after noticing that the Respondent was refusing to perform operations at the siding, second show cause notice was issued on 20 January 2017. However, it appears that the Respondent had not given up entire work of operation of Guntakal Depot. Its stop work notice was only in respect of operations at the railway siding. Despite refusing to operate the railway siding, the Respondent however continued operating the depot, which *inter alia* involved loading the tank trucks with petroleum products for supply to retail outlets. It appears that some quantity of products were also received through other modes of transportation than railways, and this is how the depot remained operational under the Respondent for the next four months. However since main supply of products was through the Railway siding, the Petitioner apparently diverted the supply of products at other depot at Kadappa and supplied the same from Kadappa depot to Guntakal area retail outlets. In the meantime, second show cause notice was issued by the Petitioner on 20 January 2017 calling upon the Petitioner to show cause as to why the contract should not be

terminated. After receipt of response from the Respondent, the agreement was finally terminated by the Petitioner on 3 March 2017.

25) After termination of the OSA, the arbitral proceedings were initiated at the instance of the Respondent, who raised following claims against the Petitioner :-

> a. Rs.2,78,20,000/- towards the monies due to the Claimant withheld by the Respondent contrary to the terms of the Agreement on one pretext or the other.
>
> b. Rs.9,00,000/- towards mobilization expenses
>
> c. Rs.3,00,00,000/- for loss of market reputation on account of wrongful termination of the OSA.
>
> d. Rs.2,31,92,000/- towards Loss of Profit on account of wrongful termination of the OSA.
>
> e. Rs.28,23,000/- towards repayment of the Bank Guarantee amount.
>
> f. Rs.1,00,00,000/- towards Loss of Reputation suffered by the Claimant in the open market for illegal invocation of the Bank Guarantee.
>
> g. Interest at 18% is sought up to the date of payment.

26) Petitioner, in addition to defending the claims of the Respondent, also filed Counterclaim against the Respondent as under:-

> (a) Rs.1,72,55,998/- (Rupees One Crore Seventy Two Lakhs Fifty Five Thousand Nine Hundred and Ninety Eight only) towards penalty for non-performance of the OSA for the period 30 September, 2016 to 26th December, 2016 as per clause 19.3 of the OSA;
>
> (b) Rs.1,82,88,838/- (Rupees One Crore Eighty Two Lakhs Eighty Eight Thousand Eight Hundred and Thirty Eight Only) towards amounts recoverable by the Respondent from the Claimant on reconciliation of accounts after termination in accordance with the terms of the OSA as per letter dated 18 October, 2017 (Ex. CCR-4)

(c) Rs.38,59,913/- (Rupees Thirty Eight Lakhs Fifty Nine Thousand Nine Hundred and Thirteen only) towards differential product placement cost at Kadapa for the period from January 1, 2017 to April 6, 2017.

(d) Rs.1,73,99,942/- (One Crore Seventy Three Lakhs, Ninety Nine Thousand Nine Hundred and Forty Two only) towards differential transportation cost incurred by HPCL for feeding the Guntakal Market from Kadapa for the period from January 1, 2017 to April 6, 2017.

(e) Rs.37,29,572/- (Rupees Thirty Seven Lakhs Twenty Nine Thousand Five Hundred and Seventy Two Only) towards penalty for non-performance of the OSA for the period 27th December, 2016 to 6th April, 2017 as per clause 19.3 of the OSA.

Aggregating in all to Rs.6,05,34,263/- (Rupees Six Crores Five Lakhs Thirty Four Thousand Two Hundred and Sixty Three Only)

(f)Interest on the aforesaid sum of Rs.6,05,34,263/- at the rate of 18% p.a. and/or at such other rate as the Hon'ble Arbitral Tribunal may award from the date of the Counter Claim till the date of the Award and from the date of the Award till payment/realization thereof;

(g) All legal and other costs, charges and expenses incurred by the Counter Claimant (Respondent) in the present Arbitration;

(h) Such further and other reliefs, orders and directions as the nature and circumstances of the case may require.

27) As observed above, all the Counterclaims of Petitioner are rejected by the Arbitral Tribunal. Similarly, several claims raised by the Respondent are also rejected. The Arbitral Tribunal sanctioned only three claims of the Respondent as under:-

(i) Rs.1,93,79,734/- towards amounts due under OSA

(ii) Rs.2,31,78,733/- towards damages in the form of loss of profit

(iii) Rs.13,05,135/- towards wrongful invocation of Bank Guarantee.

28) The Arbitral Tribunal has also held the termination letter dated 3 March 2017 to be wrongful and illegal and has set aside the same. It must be observed at the outset that the main adjudication made by the learned Arbitrator is on the issue of validity of termination letter dated 3 March 2017. Adjudication of this issue has a reflection on grant of two claims of Petitioner towards loss of profit and unlawful invocation of bank guarantee as well as on four out of the five Counterclaims of the Petitioner relating to penalties towards non-performance of OSA, differential product placement at Kadappa and differential transportation cost for feeding Guntakal market from Kadappa. Thus, only one claim of the Respondent for amount due under OSA Rs.1,93,79,734 (which is granted) and one Counterclaim of the Petitioner for Rs.1,82,88,838/- arising out of reconciliation of accounts after termination (which is rejected) do not hinge upon the issue of termination of OSA. Thus, if the decision of the Arbitral Tribunal about illegality in the termination order dated 3 March 2017 is upheld, the findings on most of the claims and Counterclaims would automatically be validated. Conversely, if the termination is held to be correct, Petitioner's entitlement to the four Counterclaims and Respondent's entitlement to the claim of loss of profit and wrongful invocation of bank guarantee will have to be set aside. Thus validity of Petitioner's action in terminating the contract is the fulcrum on which the grant of claims in favour of Respondent and rejection of Counterclaims of Petitioner by and large depends.

29) Thus, the main issue to be decided in the present Arbitration Petition is whether the findings recorded and the Award made by the Arbitral Tribunal holding termination order

dated 3 March 2017 to be wrongful and illegal and setting aside the same suffers from any of the enumerated vices under Section 34 of the Arbitration Act. I accordingly proceed to decide this issue.

VALIDITY OF TERMINATION ORDER DATED 3 MARCH 2017

30) The issue of validity of termination order dated 3 March 2017 largely hinges on the issue of correctness of action of the Respondent in issuing the stop work notice dated 26 September 2016. This is because the main reason for termination of OSA is by the Petitioner is the act of the Respondent in refusing to operate railway siding at Guntakal Depot by issuance of stop work notice dated 26 September 2016. It must be observed here that there is also a connected issue of Respondent refusing to decant the rakes indented by it after issuance of stop work notice dated 26 September 2016, which may also have some reflection on validity of termination order. However refusal by Respondent to decant the products from indented rakes, ultimately is a part of its action in refusing to operate the railway siding. There are certain other minor issues raised by the Petitioner in the second show cause notice dated 20 January 2017 about alleged failure on the part of the Respondent in not rectifying certain issues at the depot. However, from the reading of the entire Award and the manner in which submissions are canvassed before me, it is clear that refusal by the Respondent to operate railway siding at Guntakal depot is the main reason why Petitioner has terminated the OSA. Therefore the pivotal issue which arose for determination by the Arbitral Tribunal, which ultimately was the fulcrum to the adjudication of most of the

claims and the counterclaims of the rival parties, was whether the Respondent was justified in refusing to operate the railway siding by issuing the stop work notice on 26 September 2016.

VALIDITY OF STOP WORK NOTICE DATED 26 SEPTEMBER 2016

31) As observed above, the issue of termination of OSA vide notice dated 3 March 2017 hinges largely on the issue of Respondent's act in refusing to operate railway siding. Since the issues are interconnected, both the issues of validity of termination and validity of stop work notice have been decided by the Arbitral Tribunal while answering the Issue Nos.1, 3 and 4, which read thus:-

> i. Does the Claimant prove that termination of the Operating Services Agreement dated 5th May 2015 vide Termination Order dated 3rd March 2017 is wrongful and illegal?
>
> iii. Whether the Claimant proves that the condition of the railway siding was unsafe for carrying out operations?
>
> iv. Does the Claimant prove that on account of the unsafe conditions at the railway siding it was (impossible for the Claimant to perform the contractual obligations so far as this project is concerned?

32) Thus, while deciding the issue of validity of stop work notice dated 26 September 2016, the Tribunal has conducted factual enquiry into the aspect of condition of the railway siding and whether the same was safe for carrying out the operations. The Arbitral Tribunal has also conducted factual enquiry as to whether it had become impossible for the Respondent to perform contractual obligations on account of unsafe conditions of the railway siding. Before proceeding to examine the detailed

findings recorded by the Arbitral Tribunal on Issue Nos.3 and 4, it must be observed at the outset that what is conducted by the Arbitral Tribunal is a factual enquiry by assessing the evidence on record. In exercise of power under Section 34 of the Arbitration Act, this Court is not supposed to reappreciate the evidence on order to arrive at a conclusion different than the one recorded by the Arbitral Tribunal on factual aspects. This Court cannot comment upon quality or quantum of evidence available before the Arbitral Tribunal based on which findings of fact are recorded. All that needs to be enquired is whether the approach of the Arbitral Tribunal is arbitrary or capricious. If it is not, this Court will have to accept the verdict of the Arbitral Tribunal on factual disputes. Reference in this regard can be made to judgment of the Apex Court in ***Associate Builders*** (supra). It is well settled position that the Arbitral Tribunal is the master of evidence and findings of fact recorded by it cannot be disturbed by entering into the realm of reappreciation of evidence. This Court cannot reassess the factual matrix or embark upon even a mini trial to find out whether there is adequate or sufficient evidence to support the findings of fact [**See:** ***OPG Power Generation Private Limited*** (supra)]. It is only when findings recorded by the Arbitral Tribunal are perverse that the Section 34 Court can interfere in such findings. A case of perversity involves either existence of no evidence or total ignorance of vital evidence. Perversity does not include cases of inadequacy or insufficiency of evidence. So long as there is some evidence on record to support findings of fact recorded by the Arbitral Tribunal, Section 34 Court must show deference and latitude to the views expressed by the arbitral tribunal The Court cannot

substitute the findings of the Arbitral Tribunal with its own findings merely because another view is also possible.

33) Keeping in mind the above broad contours on jurisdiction of this Court, I proceed to examine whether Petitioner has been successful in making out any valid ground for disturbing the findings of fact recorded by the Arbitral Tribunal on Issue Nos.2 and 3.

34) The Tribunal began its journey by examining the condition of the railway siding when tender was floated and operations had commenced. The Tribunal has recorded certain findings in favour of the Petitioner in paragraph 107 of the Award, in which it is held that the Respondent had full idea of the condition of the siding before it submitted its bid. The Tribunal has held that the Respondent accepted the work on the project with open eyes, with full knowledge of the flaws and commenced the operations at the siding. The Tribunal has thereafter held that the Claimant had informed the Petitioner about the condition of siding and also need to attend the certain aspect considering safety angle. The Tribunal took note of communications addressed by HPCL and IOCL to Railways requesting for execution of certain works. The Tribunal has noted in paragraph 109 that though certain shortcomings at railway siding were in the knowledge of the Respondent right since commencement of the activity, it was for the first time in August 2016 that serious concerns were expressed by the OISD report.

35) Some capital is sought to be made by the Petitioner of the above findings recorded by the Arbitral Tribunal in its favour. However knowledge on the part of the Respondent about conditions of the railway siding would have been a relevant factor if the Respondent was to walk out of the contract on its own by contending that it no longer desired to work in unsafe conditions. Here, the formation of opinion about unsafe conditions at the railway siding is not the voluntary or unilateral act of the Respondent. It has taken a decision to stop the operations at the railway siding by relying on the report of OISD. Since report of the OISD is the reason for stoppage of activities by the Respondent at the railway siding, Respondent's familiarity with the condition of the siding since floating of tender becomes irrelevant. Therefore what became necessary to enquire is whether OISD report could have been relied on by the Respondent for stopping the operations at the railway siding. Therefore the findings recorded by the Arbitral Tribunal in Petitioner's favour about Respondent's familiarity of condition of railway siding since inception do no enure to the benefit of the Petitioner for deciding the issue at hand.

36) It is therefore necessary to consider the contents of the OISD report. The Tribunal has taken note of the observations made by the OISD in its report dated 7 September 2016. The major areas of concerns reported in the OISD Report were as under:-

> The major area of concerns are as follows:-
>
> (a) Statutory norms:

- PESO license needs to be updated w.r.t facilities not included in the approved drawing eg. Tank lorry unloading facility: to be incorporated.
- Present occupier name (M/S Aegis) has not been included in the factory license: to be updated.
- Amendment to be obtained from PESO as mismatch has been observed in PESO approved quantity vs safe filling capacity of the tanks.
- PCB quantity needs to be amended in line with PESO quantity.

(b) Automation:

- Safe filling height of tank is different w.r.t. calibration chart. HHH alarm setting made in automation system to be rectified.
- Height of AOPS probes fitted in most of the tanks were short by 300mm; needs to be replaced with correct height of AOPS probes.
- Alarm system has not been provided for dyke drain position indicator in the control room; to be provided.

(c) Facilities related:

- Some of the earthpits (EP-104, 105, 106) were found non-standard; needs to be replaced in line with IS3043.
- 21 MOVs have been installed and operating in manual mode; to be connected with control room in remote mode.
- 21 ROSOVs have been installed and operating in remote mode from outside of the dyke. No communication is establishment with the control room.
- Biometric access control system has not been installed in line with ATR Hazira recommendation.
- Electrical panel installed for emergency power input is not connected with DG set.
- Drains not provided around the tank lorry loading area to take care accidental spillage; surrounding drain to be provided and connection to be made with OWS. Similarly drain to be provided in pump house and to be connected to OWS.

(d) Industry Tank Wagon Unloading Siding:

The railway siding owned and maintained by railways has 3 spur siding. This siding is adjacent to the main line. Currently mainline is electrified. Wagons are placed and removed using a diesel locomotive. 11 KV traction line has been commissioned on the main track and siding is located 3 to 5 meter away from the main track. View cutter has been placed between the siding

and the mainline. HPCL has provided emergency shutdown (ESD) at the tank wagon siding. Following observations were made!

- TWD siding does not meet the inter-distance norms w.r.t. firefighting facilities.
- The tracks of the siding does not have concrete apron.
- Siding does not have proper drainage system.
- All the tracks in spur no. 1, 2 & 3 sunk towards the dead end and throughout the length the tracks are uneven. Derailment has been reported in the past.
- The siding ballast is completely oil soaked and has become soft. Congeste siding has also become slippery.
- Fire resulting from throwing of cigarettes from passenger of passing train cannot be ruled out.
- No oil water separator has not been provided at the siding.

In view of the above, Industry should take partial/full shutdown of the siding and revamp in consultation with railway board. Incase significant improvement in safety does not take place in a time bound manner, industry needs to review about the continuity of the operation at the existing siding in future since continuing operation in the existing siding under present condition is unsafe.

(e) M.B.L'al recommendations:

- 21 nos. ROSOVs, 21 nos. MOVs, 4 nos. HC detectors, 6 nos remote operated HVLRs installed. Overfill protection system have been installed in all 7 nos. AG tanks. Functionality of the equipment have been checked and found to be in working condition.

The aforesaid observations and recommendations were discussed at length with management representative from South Central Zone on the concluding session of the audit on 13.08.2016. The deficiencies along with recommendations and suggested mitigation measures are listed in Annexure-A with 20 nos recommendations. The same needs to be implemented in a time bound manner. An action plan should be made for liquidation of each recommendation with target date and should be monitored on regular basis. Status on liquidation-report should be sent to OISD on monthly basis.

(emphasis added)

37) Petitioner seeks to contend that the first part of the concerns expressed in the OISD report related to activities under control of the Respondent, for which Petitioner cannot be held responsible. However, in my view these are minor concerns and have nothing to do with the issue of stoppage of siding operations by the Respondent. Therefore it cannot be contended that failure on the part of the Arbitral Tribunal to record findings on those aspects would constitute perversity. As observed above, stoppage of siding operations is the main reason why the contract has been terminated. Therefore, it is not necessary to digress into the other concerns raised by the OISD in its report. So far as the siding is concerned, the OISD recommended 'partial/full shut down of the siding'. OISD further recommended that if significant improvements in safety do not take place in time bound manner, the operator needed to review continuity of the operations at the existing site. It was specifically recommended not to continue operations in the existing site under the then prevalent conditions which was unsafe.

38) One of the contentions raised by the Petitioner before the Arbitral Tribunal was that activities of the Respondent were responsible for deterioration of the railway siding. The said contention is rejected by the Arbitral Tribunal after considering the evidence on record. The conclusion recorded in paragraph 121 about the Respondent not being responsible for deterioration of siding, apart from well supported by evidence on record, is not challenged before me by the Petitioner during the course of oral submissions. It is therefore not necessary to delve deeper into this aspect.

39) The Arbitral Tribunal has enquired in the matter of issuance of stop work notice after receipt of OISD report. The Tribunal took note of the fact that the OISD report did not specifically ordered closure of operations at the siding. However, after assessing the material on record, including the evidence of witnesses, the Tribunal has concluded that the stand taken by the Respondent about possibility of continuance of operations despite receipt of OISD report was something which no prudent man could have taken. The Arbitral Tribunal has accordingly upheld the Respondent's interpretation of OISD report that carrying out the operations at the siding was unsafe. The conclusion so arrived at by the Respondent is held to be display of prudent attitude on its part.

40) In my view, the above findings recorded by the Arbitral Tribunal cannot be termed as irrational to such an extent that no fair minded person would ever record such findings. Respondent had earned the contract after participating in competitive bidding process. The operation of Guntakal Depot commenced on 22 February 2015 and the stop work notice was issued by the Respondent on 26 September 2016. Ordinarily, no prudent business entity, who has earned a contract with State Oil Company would voluntarily surrender the same or seek excuses for walking out of the contract within 1 and 1/2 years. In the present case, Respondent No.1 got alarmed by the scathing report of OISD which directed 'partial/full shut down of the siding'. However, it is not that the Respondent altogether refused to perform operations at the railway siding vide notice dated 26 September 2016. Thus, all that was stated by the Respondent in the stop work notice was that the operations were stopped till

receipt of confirmation and instructions by HPCL in writing that it was safe to operate the site. The learned Arbitrator has treated this as display of prudent attitude by the Respondent and I fully agree with the said findings. It may be that same other entity could have continued taking risks even after receipt of OISD Report with the sheer motive of earning profits by putting the men and machinery under the risk but in the present case, the Respondent took the risk of not earning profits and decided to stope operations at the railway siding till receipt of confirmation about its safety. In my view, the Arbitral Tribunal has taken a plausable view considering the facts and circumstances of the case in holding that action of the Respondent in discontinuing the operations at the railway siding after receipt of OISD report was prudent.

41) The Arbitral Tribunal thereafter considered the issue of issuance of stop work notice based on the 'Stop Work Authority' directives issued by the Petitioner. It appears that the Petitioner-HPCL had issued circular dated 18 April 2014 introducing concept of 'stop work authority'. The circular was issued with the objective of zero tolerance to the accident and to make the work places safe. Under the circular, employees, contractors, etc could exercise stop work authority in the event of facility being reported in unsafe condition. The Arbitral Tribunal has taken into consideration the correspondence between the parties and has concluded in paragraph 146 of the Award that the Respondent rightly utilised the stop work authority to stop the work at the siding keeping in mind the OISD report.

RESPONDENT'S ACT OF INDENTING OF RAKES AFTER STOP WORK NOTICE

42) While deciding the issue of validity of stop work notice, the Arbitral Tribunal faced objection on the part of Petitioner that the Respondent itself did not act on the stop work notice and indented the rakes on 30 September 2016, 7 October 2016 and 10 October 2016. The Arbitral Tribunal accordingly proceeded to examine the effect of the three indents placed by the Respondent after issuance of stop work notice. The Tribunal found that on three occasions, the indented rakes had arrived at the site. The Tribunal has conducted an in-depth enquiry into the Respondent's act of indenting of rakes at various places in the Award. The Award does suggest that the act of the Respondent in placing indents after issuance of stop work notice was inconsistent with the Respondent's stand of unsafe conditions at the railway siding. However the Tribunal has given the benefit of doubt to the Respondents by holding that the Respondent took some time in analysing the exact effect of the OISD report. So far as the Petitioner is concerned, the Tribunal has concluded that though indents were placed by the Respondent, Petitioner should not have supplied the products and to this extent, some fault is found with the Petitioner. Ultimately, the Tribunal has found the act of placing the indents by the Respondent on three occasions after issuance of stop work notice to be insufficient for holding that the stop work notice was either erroneous or rendered ineffective. Here Mr. Andhyarujiuna criticizes the arbitral tribunal for recording inconsistent findings and reliance on judgment of this Court in ***Rakesh S. Kathotia*** (supra). The contention, I must say, is based on myopic and skewed reading of the findings in the Award. In my view, Section 34 Court is not

expected to pluck out stray reasonings/findings and find out whether there are inconsistencies amongst them. The jurisdiction of this Court is to broadly enquire whether the inconsistency, if any, in any of the findings has affected the ultimate view taken by the Arbitral Tribunal. Broadly seen, what needs to be enquired is whether the Respondent had walked back on its action of issuance of stop work notice? The tribunal has found the answer to this question in the negative.

43) As observed above, the issue of validity of termination order depends on validity of Respondent's action in stopping the operations at the railway siding. Respondent's act of indenting on three occasions after issuance of the stop work notice would assume importance only for deciding whether such act rendered the stop work notice redundant? May be the Respondent was not entirely right in sending indents to the Petitioner on three occasions after issuance of stop work notice. However Respondent corrected its course of action and remained consistent with its stand that it would not carry out the decanting activities due to unsafe conditions at the railway siding. It refused to decant the arrived rakes. Whether that action was valid or not is being discussed in the latter part of the judgment. However based on the overall conduct exhibited by the Respondent, there is room to assume that it remained consistent with its stand of refusing to work at the railway siding site due to report of the OISD, notwithstanding its slight departure in indenting on three occasions. This is how I would read the award of the Arbitral Tribunal and reject the contention of it being riddled with inconsistencies.

FAILURE TO DECANT THE INDENTED RAKES

44) Respondent is accused of failure to decant the products from the arrived rakes, which it has indented. Failure on the part of the Respondent to decant the products from the indented rakes was perceived by the Petitioner as breach of contractual obligation under the OSA. As a matter of fact, the termination of OSA is mainly attributable to the Respondent's conduct of not decanting the indented rakes. The aspect of failure to decant the indented rakes also has some reflection on 'composite contract' argument raised by the Petitioner, which aspect is being dealt with separately.

45) Decanting activity was to be performed at the railway siding on which the Respondent had stopped operations. The Respondent's act of stopping the operations at the Railway siding was open and bold and was expressly communicated vide stop work notice. It is not to be inferred from the act of failure to decant the indented rakes. Therefore the admitted act of not decanting the indented dates after issuance of stop work notice has little relevance to the termination of the OSA. As observed above, the issue of validity of termination of OSA depends on validity of Respondent's stop work notice. I have already upheld the finding of the Arbitral Tribunal about validity of stop work notice. If Respondent's act of not decanting the product from indented raken is erroneous, then Petitioner would recover cost of decanting from Respondent. But the act of failure to decant the product has little relevance to the issue of termination of OSA. It is therefore not necessary to delve deeper into the aspect of Respondent's act of refusing to decant the rakes while deciding

the issue of validity of termination of OSA. Suffice it to observe at this juncture that the Arbitral Tribunal has conducted an in-depth factual enquiry by assessing the evidence on record about the act of the Respondent in not decanting the products. No case is made out before me to point out an element of perversity in the said findings of fact recorded after assessing the evidence on record.

RESPONDENT JUSTIFIED IN STOPPING OPERATIONS AT RAILWAY SIDING

46) As observed above, stopping of operations at railway siding is not a voluntary act of the Respondent. It was forced to do so on account of safety report submitted by a government agency. Based on OISD Report, Respondent called upon the Petitioner to address the safety concerns and discontinue operations at the siding till the issues were addressed. The Arbitral Tribunal has taken into consideration the circumstances under which the Respondent was constrained to discontinue the sliding operations.

47) This is how the Arbitral Tribunal has approached the pivotal issue of stoppage of railway siding operations by the Respondent and has concluded that the act did not constitute breach of the OSA. Apart from the fact that the finding is well supported by evidence on record and that the Tribunal has recorded detailed findings in support of its ultimate conclusion, as Section 34 Court I do agree with the ultimate view taken by the Arbitral Tribunal that the Respondent cannot be faulted for stopping siding operations after receipt of OISD report flagging the safety concerns. There can be no doubt to the position that

the OISD report had recommended shutting of siding operations till necessary mitigative steps were taken. OISD report recommended that '*industry should take partial /full shut down of the siding and revamp in consultation with railway board'*. OISD report further recommended '*continuing operation in the existing siding under present condition is unsafe'*. As a contractor Respondent thought it prudent to stop the siding operations. However, it is not that the Respondent communicated to the Petitioner that it would not ever perform the part of the contract relating to siding operations. What is relevant are the contents of following paragraphs in the stop work notice dated 26 September 2016.

> 1. The railway siding is most unsafe to operate. In the interest of safety of human beings, national assets, reputation of HPCL-AEGIS and with due respect to HPCL's 'STOP WORK AUTHORITY (Your circular O&D/KSU/JSR/HSE dated 18.04.2014)', we are constrained to stop providing our operation and maintenance services in the railway siding at Guntakal IRD with immediate effect unless you confirm and instruct us in writing that the railway siding is safe to operate in all respects & further instruct us to operate the same.

48) Thus, if HPCL was to confirm in writing that railway siding was safe to operate and if HPCL was to instruct in writing to the Respondent that the siding operation be continued even in existing condition, the Respondent was willing to carry out the operations. There is nothing on record to indicate that the Petitioner confirmed to the Respondent in writing that the railway siding was safe to operate.

49) Thus, considering the overall circumstances of the case the Arbitral Tribunal has recorded a finding of fact that the Respondent was justified in stopping the operations at railway

siding and that stoppage of operations did not amount to breach of contractual obligations under the OSA. This is a plausible finding recorded by the Arbitral Tribunal not warranting any interference by Section 34 Court. What Petitioner wants me to do is to hold that the OISD report did not warrant shutting of depot and that therefore the Respondent could have taken the risk and continued the siding operations. This finding is something which a prudent and fair minded person would ordinarily not arrive at. However even if Petitioner's contention of impossibility to guarantee 100% safety in the operations of handling hazardous petroleum goods is to be momentarily accepted as another possible view, the same cannot be a ground for setting at naught the arbitral Award. The Arbitral Tribunal has refused to accept Petitioner's contention that Respondent ought to have taken the risk and continued the siding operations because it was contractually obliged to operate the siding under the OSA. The Tribunal has not acceded to this extreme view propounded by the Petitioner and has taken the other possible view that carrying out siding operations after receipt of OISD report was unsafe. It cannot be contended that the view taken by the Arbitral Tribunal is such that no fair minded person would ever take. As a Section 34 Court, I am not expected to sit in appeal over the view adopted by the Arbitral Tribunal. The findings recorded cannot be termed either as perverse nor approach of the Arbitral Tribunal can be treated as non-judicious, arbitrary or capricious. This Court would show deference to the views expressed by the Tribunal for not disturbing its findings. I am justified in doing so by series of judgments of the Apex Court. [SEE: ***Parsa Kente Collieries***

Limited (supra), ***National Highways Authority of India*** (supra) and ***S.V. Samudram V/s. State of Karnataka and Another***[17]].

COMPOSITE CONTRACT

50) The next issue which is strenuously raised by the Petitioner, and which is the main point argued before me, is that the OSA was a composite contract comprising of siding operations as well as depot operations and it was not open to the Respondent to elect performance of only one out of multiple operations under OSA. It is contended that railway siding operation was integral part of the contract as the products essentially arrived at the depot through railway siding and if railway siding operations are not performed, operation of depot becomes meaningless. It is sought to be suggested that the contract envisaged receipt of products at railway siding, storage thereof in the tanks located in the depot and loading the truck tanks with the stored products. It is therefore suggested that if activity of receipt of products is halted, nothing much remains to be operated at the depot. It is therefore contended on behalf of the Petitioner that the Respondent could not conveniently avoid performance of obligation relating to receipt of product at railway siding, but continued charging fees from railways at the main depot. It is contended that the Respondent cannot repudiate contract in part and demand operation fees for balance part of the contract.

51) Though the argument of composite contract and impermissibility to repudiate part of contract canvassed before

[17] (2024) 3 SCC 623

me appears to be attractive in the first blush, the same has no substance. It also appears that the contention of composite contract was not presented before the Arbitral Tribunal in the same manner as is sought to be canvassed before me. Though 'composite contract' case was argued before the Arbitral Tribunal but it was not canvassed before the Tribunal that part-repudiation was impermissible. Instead what was argued before the Arbitral Tribunal was that the act of Respondent in not decanting the three indented rakes constituted breach of 'composite contract'. This is captured by the Arbitral Tribunal in paragraph 179 of the Award:-

> 179) Ld. Counsel for the Respondent submitted that the OSA is a composite contract and once the Claimant was handed over the Depot for carrying out operation, the Claimant was required to carry out all the operation at the siding as well as at the terminal. He submitted that on account of not decanting the products at the terminal on the aforesaid three occasions amounted to the violation of the terms of OSA thereby causing breach of the OSA. The Respondent was entitled to impose penalty in the aforesaid circumstances as per Paragraph No.19.3 of the OSA. He also submitted that the Respondent has imposed penalties by specifically mentioning in the letter dated 26.12.2016 as regards the various amounts demanded from the Claimant. He submitted that the Respondent has righty imposed the penalty in terms of the OSA and the Claimant cannot dispute the same.

52) Thus, what was argued before the Arbitral Tribunal was that OSA was a composite contract and that therefore it was incumbent for the Respondent to carry out all operations at the siding as well as at the terminal and that on account of non-decanting of the rakes at the terminal, there was breach of contractual obligations. Thus, 'part repudiation' agreement was not raised before the Arbitral Tribunal. Thus, Petitioner drove the Arbitral Tribunal in the direction of allegation of breach of

contract by failure to decant the products at the terminal while raising the argument of composite contract. The Tribunal accordingly conducted factual enquiry as to whether failure to decant the product at the terminal was breach of contractual obligation. It has answered the issue in the negative after assessing the evidence on record. I have already held that said finding is not perverse and need not be interfered with while exercising power under Section 34 of the Arbitration Act.

53) Petitioner never argued before the Arbitral Tribunal that stoppage of operations at the siding rendered the depot inoperational. Thus the Petitioner never raised the argument of 'part repudiation' before the Arbitral Tribunal and now cannot be permitted to raise that issue for the first time before this Court. In this regard reliance by Mr. Doctor on judgments in ***National Highways Authority of India V/s. ITD Cementation India Limited***[18], ***Azizur Rehman Gulam and Others*** (supra) and ***Susaka Private Limited and others*** (supra) is apposite.

54) However, even if the issue of non-raising of 'part repudiation' argument before the Arbitral Tribunal is to be momentarily ignored and some leeway is granted to the Petitioner in this regard, I do not find the argument of 'part repudiation' much compelling to accept. The present case involves a situation where safety concerns were flagged on account of OISD report. It is not that the Respondent voluntarily walked out of its contractual obligation to perform the siding operations. It was willing to perform siding operations and demanded confirmation in writing from the Petitioner that the

[18] (2015) 14 SCC 21

siding operations were safe. It urged the Petitioner to take necessary measures for improving the conditions at the siding operations. Siding is owned by railways and it was not possible for the Respondent to take any steps to revamp the siding. I have already upheld the findings of the Arbitral Tribunal validating the act of the Respondent in stopping work at the railway siding. Therefore the case does not involve voluntary repudiation of part of contract by a party. The Arbitral Tribunal has held that Petitioner is responsible for forcing the Respondent to stop the siding activity.

55) Also, once the Respondent's act of stopping siding activities through stop work notice dated 26 September 2016 is upheld, the argument relating to composite contract and part repudiation becomes meaningless. The said contention would have carried some meaning if the act of the Respondent in stopping the siding activities was to result in breach of contractual obligations. If the act of stopping the siding activity is held to be not constituting breach of contractual obligations, there is no question of any breach being committed by the Respondent and therefore the composite contract argument becomes meaningless.

56) I therefore, do not find any serious flaw in the award of the Arbitral Tribunal not accepting the 'composite contract' argument in the manner the same was placed before it by the Petitioner. Even if the argument of composite contract was to be canvassed in the right perspective, the same would not have yielded any positive outcome for the Petitioner. Once the finding about validity of stop work notice recorded by the Arbitral

Tribunal is upheld, the termination notice dated 3 March 2017 gets automatically rendered invalid. I therefore do not find any error in the declaration made by the Arbitral Tribunal that the termination notice dated 3 March 2017 is unlawful and illegal. The Arbitral Tribunal has rightly set aside the same.

57) Having upheld the Award of the Arbitral Tribunal with regard to the declaration of illegality of termination order dated 3 March 2017, I now proceed to examine the correctness of findings recorded by Tribunal while granting the claims in favour of Respondent and for rejecting the Counterclaims of the Petitioner.

AWARD OF CLAIM OF RS. 1,93,79,734/- TOWARDS WORK DONE BY OSA

58) So far as the Award of claim of Rs.1,93,79,734/- towards work performed under the OSA is concerned, no serious objection is raised before me by the Petitioner in the present Petition. Even otherwise, the Arbitral Tribunal has made a detailed discussion for awarding of claim of Rs.1,93,79,734/-. No element of perversity is demonstrated in the said findings recorded by the Arbitral Tribunal. In that view of the matter, there is no warrant for interference in award of claim of Rs. 1,93,79,734/- towards work performed by Respondent under the OSA.

AWARD OF CLAIM OF RS. 2,31,78,733/- TOWARDS LOSS OF PROFITS

59) The Petitioner has raised serious challenge to the Arbitral Award awarding the claim for damages in the form of loss of profit and loss of commission in Respondent's favour. According to the Petitioner, the claim was raised without providing any particulars and in any case, no evidence is led to prove cause of actual loss to the Respondent. However, here the Petitioner appears to be factually incorrect as Respondent examined the witness, Mr. Radhakrishnan Srinivasan, who has led evidence in support for damages. The Arbitral Tribunal has discussed the evidence of the witness, the chart produced by him and the supporting material. Thus, there was some material before the Arbitral Tribunal to arrive at a factual finding that operation of the Depot during remainder of contract period could have earned revenue receipts of Rs.9,65,78,054/-. The Arbitral Tribunal has also accepted 24% profit margin on the revenue receipts. Curiously, Petitioner did not conduct any cross-examination of the witness to demonstrate any error in the computations of figure of loss of profit of Rs.2,31,78,733/-. This is clear from the following findings recorded in the Award :-

> On behalf of the Claimant the total outlet of the contract is set out in Page No.746 and the Claimant has candidly pointed out the Loss of Profit is being claimed at 24% margin keeping in view the figure of Rs.9,65,78,054/- being the total revenue lost of course taking into consideration that the Claimant would have to continue to render services as per OSA but for termination of the same by Termination Order. There is no cross-examination of the witness what is stated in Paragraph No.57 of the evidence which states as to how the figure of Rs.2,31,78,733/- was arrived at particularly keeping in view the 24% of the conservative rate to which the witness has referred to.

60) Having not disputed the figures proved by the Respondent's witness before the Arbitral Tribunal, it would be impermissible for the Petitioner to contend before me that the claim of loss of profits is allowed without any proof.

61) In the present case, what needs to be borne in mind is that the Respondent had secured the contract for operating the Depot after participating in competitive bidding process. The act of Respondent in issuing stop work notice is found to be legal and the act of the Petitioner in terminating the contract is found to be illegal. After receipt of report of OISD recommending stoppage of operations at Railway siding and after issuance of stop work notice by the Respondent, Petitioner did not take any steps for ensuring safety of operations at the Railway siding. Instead, it proceeded to terminate the contract. It appears that after the contract was terminated, no other contractor was appointed to operate the Depot. It appears that Petitioner serviced the retail outlets in Guntakal area by sourcing products from other Depots. Mr. Doctor has submitted that the Depot was later shut and remains shut as of now.

62) It is proved that the Petitioner decided to contract out operations at Guntakal Depot which had unsafe siding. It did not take any steps for ensuring that the concerns expressed by OISD in respect of the Railway sliding were addressed and expected Respondent to carry out operations of decantation of highly inflammable products at the siding certified to be unsafe. Petitioner did not raise the plea of frustration of contract on account of OISD report. On the contrary, it expected Respondent to act on the contract. If Petitioner was to take a plea of

frustration of contract and was to communicate to the Respondent that performance of contract was rendered impossible or unlawful on account of OISD report, the whole contract would have been rendered void relieving the Petitioner in respect of the claim for damages. However, in the present case, the Petitioner did not raise the plea of frustration of contract and instead terminated the contract and alleged that Respondent did not perform the contractual obligations. Since the case does not involve the plea of frustration by the Petitioner, it cannot be relieved of the obligation to pay damages to the Respondent once the termination is held to be invalid.

63) Therefore, award of damages due to wrongful termination in the present case would be a natural consequence. The Respondent had raised the claim of Rs.9,00,000/- towards expenses of mobilization, demobilization and other overheads incurred by it under the OSA. The said claim is rejected by the learned Arbitrator. Respondent had also raised the claim in the sum of Rs. 1,70,00,000/- towards overhead costs for engaging manpower to provide services by OSA, training such manpower on account of termination. This claim is also rejected by the Arbitral Tribunal. The Arbitral Tribunal has also not granted claim for loss of reputation on account of illegal termination in the sum of Rs. 3 crores. The Arbitral Tribunal has also not granted further claim of Rs.1 crore for loss of reputation with bankers as a result of wrongful invocation of bank guarantee. All that is granted by the Arbitral Tribunal, as a consequence of wrongful termination of the OSA, is claim towards loss of profit of Rs.2,31,78,733/-. The claim is well supported by the evidence on record. As observed above, Petitioner has failed to cross-examine

the Respondent's witness in respect of the figures of loss of revenue, as well as percentage of profits on such figures of loss of revenue. I therefore do not find any reason to interfere in award of claim of loss of Rs.2,31,78,733/-.

AWARD OF CLAIM OF Rs.13,05,135/- TOWARDS WRONGFUL INVOCATION OF BANK GUARANTEE

64) Nothing is argued before me as to how award of this claim is erroneous in any manner. Even otherwise, award of the claim is well supported by cogent reasons and material on record recorded in paras-460 to 473 of the Award. Therefore, there is no reason to interfere in the award of this claim.

DIRECTIONS IN RESPECT OF PF AND ESIC DUES

65) This is not a separate claim dealt with by the learned Arbitrator. The same appears to have been discussed while dealing with reconciliation Counterclaim of the Petitioner. It appears that the Petitioner had withheld amount of Rs. 9,84,607/- from some invoices on the ground of Respondent not furnishing the documents of compliance with PF and ESIC Rules and Regulations. It appears that the Petitioner made a submission before the Arbitral Tribunal that if Respondent was to furnish the documents relating to compliance with PF/ESIC Rules and Regulations, the Petitioner would release the withheld amount. All that is done by the Tribunal is to direct release of the said withheld amount on Respondent on producing the proof of compliance with the Rules and Regulation of PF and ESIC.

66) Beyond contending that the directions are vague, no attempt is made before me to demonstrate as to how directions issued in Clause-(p) of the operative part of the Award are erroneous. Furthermore, no specific sum is directed to be paid by the Arbitral Tribunal to the Petitioner. It is therefore not necessary to delve deeper into the correctness of the said directions.

REJECTION OF COUNTERCLAIMS OF PETITIONER

67) As observed above, the counterclaims raised by the Petitioner towards (i) penalties for non-performance of OSA from 30 September 2016 to 26 December 2016 (Rs.1,72,55,998/-) (ii) penalties for non-performance of OSA during the period from 27 December 2016 to 6 April 2017 (Rs.37,29,572/-), (iii) towards differential product placement cost of Rs.38,59,913/- and (iv) differential transportation cost incurred by Petitioner for feeding the Guntakal market from Kadapa of Rs.1,73,99,942/- arise out of validity of termination notice. The first two counterclaims are towards penalties for non-performance of OSA and have direct bearing on liability to perform contractual obligations after issuance of stop work notice. Petitioner has terminated the contract on account of Respondent's refusal to operate the railway siding. Respondent's action is found valid and Petitioner's termination of OSA is found to be invalid. Petitioner has thus wrongfully prevented the Respondent from performing the OSA. Therefore, there is no question of Respondent paying penalties for non-performance of OSA. The third and fourth counterclaims are towards the additional costs incurred by the Petitioner-HPCL in supplying the products from another

location/depot. This again is related to termination of OSA. Petitioner has prevented the Respondent from operating the Guntakal Depot and its termination is found to be illegal. Therefore, there is no question of Respondent being made liable to pay for extra costs, if any, incurred by Petitioner for supplying the products from Kadappa depot to Guntakal market. In that view of the matter, rejection of the said four counterclaims is perfectly justified.

68) So far as the fifth counterclaim of Rs.1,82,88,838/- arising out or reconciliation of Accounts is concerned, it appears that the Arbitral Tribunal has made long, detailed and item-wise discussions. This claim arising out of reconciliation comprises of several items and each of the items have been discussed by the Arbitral Tribunal. No submissions are canvassed before me to demonstrate as to how the findings recorded by the Arbitral Tribunal while rejecting the reconciliation Counterclaim are perverse in any manner.

INTEREST

69) The Arbitral Tribunal has awarded interest of 13% on claims sanctioned in favour of the Petitioner upto the date of Award. Post-Award also, 13% interest is awarded. The Respondent had claimed 18% interest. However, the Arbitral Tribunal has awarded reasonable interest @ 13%. No submissions are canvassed before me pointing out any error in respect of the award for interest.

COSTS OF ARBITRATION

70) The Arbitral Tribunal has awarded costs of arbitration of Rs. 1.60 crores in favour of the Respondent. It must be observed here that no specific ground of challenge is raised in the Petition with regard to direction for costs. However, during the course of submissions, some comments have been made on behalf of the Petitioner about the quantum of the costs awarded by the Tribunal. As held by the Apex Court in ***State of Maharashtra Vs. Hindustan Construction Company***[19] and ***State of Chhattisgarh Vs. Sal Udyog***[20] and by this Court in ***Ravi Raghunath Khanjode Vs. Harsiddh Corporation***[21], the Court exercising powers under Section 34 of the Arbitration Act can *suo moto* interfere with any direction in the Award, in absence of a pleaded ground, on account of use of the words '*if court finds that*' in Section 34(2)(b) and (2A) of the Act.

71) The Arbitral Tribunal has awarded three claims of the Respondent in the sums of Rs.1,93,79,734/-, Rs. 2,31,78,733/- and Rs. 13,05,135/-. As compared to the sums awarded in favour of the Respondent, amount of costs of arbitration appears to be on a higher side. This is not to suggest that the Arbitral Tribunal has erred in determining the quantum of costs. However, this Court is mindful of the fact that the Petitioner is a state-owned oil corporation. The Depot apparently was required to be shut for reasons not wholly attributable to the Petitioner as the revamping of railway siding was not entirely in the hands of the Petitioner. Therefore, Petitioner need not be saddled with liability

19 (2010) 4 SCC 518
20 (2022)2 SCC 275
21 Arbitration Petition No. 95 of 2024 decided on 19 November 2025

to pay costs of Rs. 1.60 crores, especially considering the quantum of claims awarded in Respondent's favour. Respondent is already compensated in terms of what it would have earned if it was to operate the Depot during the contract tenure though it was not actually required to invest in equipment, labour and skills in real terms. It is also awarded interest @ 13% p.a. on awarded sums. The Tribunal has awarded the entire sum claimed to have been spent by the Respondent in arbitration as costs. It is not that in every case, actual costs of the arbitration must be awarded. Explanation to sub-section (1) of Section 31-A uses the expression 'reasonable costs'. While ordinarily the loosing party must bear the entire costs of arbitration, the Arbitrator and the Court is empowered to make a different order by recording reasons. Conduct of parties can be taken into consideration while determining the quantum of costs. In the present case, Respondent is not found to be entirely blemish free by the Arbitral Tribunal. Respondent's conduct in indenting the rakes after issuance of stop work notice and not decanting the product therein also needs to be borne in mind. In the facts of the present case, entire costs of arbitration allegedly incurred by the Respondent need not be awarded to it. In my view, therefore award of reasonable costs of Rs. 25,00,000/- in favour of the Respondent would be appropriate considering the facts and circumstances of the case and provisions of Section 31-A of the Arbitration Act. To this extent only, slight modification is warranted in the impugned award by following the severance doctrine propounded in ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited***[22].

[22](2025) 7 SCC 1

CONCLUSIONS

72) In view of the discussions made above, in my view, the Petitioner has failed to make out any of the enumerated grounds under Section 34 of the Arbitration Act for invalidating the Arbitral Award. The Award of the learned Arbitrator is a detailed one and the Tribunal has recorded elaborate reasons in support of each of its findings. Petitioner has raised misplaced contention of mere reproduction of submissions of parties not constituting reasons. Perusal of the award would indicate that each submission of the parties has been dealt with in the Award running into 417 pages. Therefore, reliance of the Petitioner on judgments of Apex Court in ***Som Dutt Builders Ltd.*** (supra) and ***Dyna Technologies*** (supra) is inapposite. The Arbitral Tribunal has not re-written the contractual terms and has strictly acted within the four corners of contractual terms between the parties. Therefore, reliance of the Petitioner on judgment in ***IOCL vs. Shree Ganesh Petroleum Rajgurunagar*** (supra) and ***UOI vs. Manraj Enterprises*** (supra) is inapposite. I have already observed that the Petitioner did not raise the issue of part repudiation of the contract before the Arbitral Tribunal and instead drove it in the direction of breach of contractual obligations on account of non-decantation. The argument of 'composite contract' was argued in that fashion before the Arbitral Tribunal. In that view of the matter, reliance by the Petitioner on judgment of the Apex Court in ***Alopi Parishad and Sons Limited*** (supra) in support of the contention of need for performance of contract in entirety is inapposite. Reliance by the Petitioner on judgment in ***Union of India vs. Reckon, Mumbai***[23] is

[23] 2020 (6) Mh.L.J. 509

also misplaced as there is no error in law which is evident on face of the Award. The Arbitral Tribunal has not excluded any vital material and its interpretation of contractual terms in the Award is also fair and reasonable.

73) In my view therefore, there is no warrant for interference in the impugned Award, which appears, to my mind, to be unexceptional. Only some modification in the amount of arbitration costs is being directed.

ORDER

74) I accordingly proceed to pass the following Order:

(i) The Award is upheld, except the direction for payment of costs of arbitration.

(ii) The direction awarding costs of arbitration is modified by directing that the Petitioner shall pay to Respondent costs of arbitration of Rs. 25,00,000/-.

75) The Arbitration Petition is accordingly **disposed of.** Considering the facts and circumstances of the case, I deem it appropriate not to impose any further costs in the present Petition. With dismissal of the Petition nothing would survive in the Interim Application and the same is disposed of.

[SANDEEP V. MARNE, J.]

76) After the judgment is pronounced, Mr. Andhyarujina would submit that the Respondent has already withdrawn the deposited amount while submitting the Bank guarantee. He prays for direction for continuance of Bank guarantee by 8 weeks. The request is opposed by the learned Counsel appearing for Respondent. Considering the facts and circumstances of the case the Respondent shall continue maintaining the Bank guarantee for a period of 8 weeks.

[SANDEEP V. MARNE, J.]