

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMM. ARBITRATION PETITION NO. 563 OF 2017  
WITH  
INTERIM APPLICATION (L) NO. 7323 OF 2021**

BST Textile Mills Pvt. Ltd. ...Petitioner  
Vs.  
The Cotton Corporation of India Ltd. ...Respondent

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Mr. Gaurav Joshi, Senior Counsel a/w. Mr. Kazan Shroff, Mr. Amit Jajoo, Mr. Darpan Bhatia and Mr. Siddhant Trivedi i/b. Indus Law, for the Petitioner.  
Mr. Simil Purohit, Mr. Vikrant Shetty, Ms. Tanjul Sharma i/b. Dhruve Liladhar & Co., for the Respondent.

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**CORAM : MANISH PITALE, J.  
RESERVED ON : 16th DECEMBER 2022  
PRONOUNCED ON : 9th FEBRUARY 2023**

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**JUDGMENT :**

. The principal question that arises for consideration in this petition is as to whether the impugned award passed by the learned arbitrator is liable to be set aside on the ground that disputes arising out of nine contracts were consolidated and single statement of claim filed on behalf of the respondent (original claimant) was entertained and allowed in favour of the respondent. The petitioner claims that the learned arbitrator had no power to consolidate disputes arising out of the nine contracts and in the absence of such power to consolidate, particularly

when the petitioner had not consented for such consolidation, the impugned award is vitiated, being opposed to the fundamental policy of Indian Law and therefore, liable to be set aside.

2. The facts in brief leading to filing of the present petition are that the petitioner had entered into nine contracts for purchasing cotton bales from the respondent, which is a Government of India undertaking engaged in the business of sale and purchase of cotton as per the policies and directions of Government of India. In the present case, nine contracts executed between the parties pertained to supply of cotton bales from three branches of the respondent – Corporation at Sirsa, Sriganganagar and Bhilwara. The nine contracts pertained to the period between 24/1/2011 to 29/3/2011.

3. It was the case of the respondent – Corporation before the learned arbitrator that the petitioner was supposed to purchase 26449 cotton bales in terms of the contract. But, it lifted only 1300 cotton bales and failed to lift the remaining 25149 cotton bales, thereby committing breach of the contracts executed between the parties. The respondent – Corporation claimed that the petitioner had failed to make payments and did not lift the contracted cotton bales, giving rise to cause of action for the respondent to proceed against the petitioner.

4. Each of the nine contracts contained an arbitration clause, which specified that in case of disputes arising between the parties, the same would be referred to an arbitrator, other than an employee of the respondent-Corporation, to be appointed by the Director (Marketing) or a Director (Finance) of the respondent-Corporation.

5. In the light of the allegations of the respondent-Corporation that the petitioner had committed breach of the aforesaid contracts, the parties exchanged communications and after issuing notice to the petitioner invoking arbitration, the Director of the respondent-Corporation, on 9/12/2011, appointed a retired Judge of this Court as the sole arbitrator for resolution of disputes between the parties. Since the appointment of the arbitrator and initiation of arbitral proceedings was prior to coming into force of the amendments of the year 2015 in the said Act, the aspect of unilateral appointment of the arbitrator is not relevant for the present case.

6. There is no dispute about the fact that the respondent filed a single claim pertaining to the disputes that arose from all the nine contracts executed between the parties. The respondent claims that the terms of the contract, the format thereto and the mutual obligations recorded therein were identical in all the nine contracts. It is submitted that only facts and figures pertaining to

each contract differed, but otherwise there was no distinction between the nine contracts.

7. The petitioner filed its written statement / statement of defence before the learned arbitrator. Apart from contesting the claims made by the respondent on merits, the petitioner did raise an objection to consolidation of claims raised under the nine contracts. As a consequence of the said objection raised on behalf of the petitioner, the learned arbitrator framed a specific issue concerning the same. It is relevant that the petitioner filed its counter claim and the same was also a single counter claim in respect of the reliefs claimed by the petitioner in respect of all the nine contracts. The learned arbitrator framed as many as 11 issues pertaining to the claim and the counter claim filed on behalf of the rival parties.

8. Issue No.2 pertained to the question as to whether the reference was proper and legal in the light of nine distinct claims arising out of nine distinct contracts being consolidated in one single reference. The parties led evidence in support of their respective stands. After recording of evidence and hearing arguments in the matter, the learned arbitrator by the impugned award dated 24/7/2017, held in favour of the respondent. The petitioner was directed to pay a sum of Rs.25,59,88,023/- to the respondent. The petitioner was further directed to pay interest

@13.5% per annum from 1/2/2012 till the date of the award on a specific sum of Rs.24,34,495.15. The petitioner was further directed to pay interest @ 18% per annum from the date of award till realization on the sum of Rs.24,34,495.15, apart from paying cost of Rs.7,50,000/- to the respondent. The counter claim of the petitioner was dismissed.

9. Aggrieved by the impugned award, the petitioner filed the instant petition. On 15/3/2021, the petition was admitted. This Court was of the view that a *prima facie* case was made out by the petitioner on the question as to whether the learned arbitrator had the power to consolidate the disputes arising out of independent and distinct contracts.

10. Mr. Gaurav Joshi, learned Senior counsel appearing for the petitioner submitted that the impugned award deserved to be set aside on various grounds, but primarily on the ground that distinct disputes arising from separate and independent contracts, could not have been consolidated without consent of the petitioner. It was submitted that the arbitrator had no power to consolidate such independent and distinct disputes, thereby demonstrating that the arbitral award was vitiated due to erroneous exercise of jurisdiction on the part of the learned arbitrator.

11. The learned Senior counsel submitted that under the nine contracts the respondent-Corporation was supposed to supply cotton bales from three branches located in Sirsa, Sriganaganar and Bhilwara. As a consequence, the causes of action were separate and distinct, pertaining to each independent contract and hence, the claims pertaining to each such dispute or cause of action ought to have been separate and distinct. In the present case, admittedly, the respondent filed one single claim while seeking reliefs in the context of causes of action that allegedly arose from the said nine separate and distinct contracts. One single claim filed on behalf of the respondent-Corporation ought not to have been entertained by the learned arbitrator. Since the petitioner had raised a preliminary issue on the aforesaid aspect of the matter, the learned arbitrator had framed a specific issue regarding the same as issue No.2. It was submitted that the learned arbitrator rejected the contentions raised on behalf of the petitioner on the said issue, by relying upon judgment of this Court in the case of *Jayant Industrial Packaging Ltd. Mangrol and Ors. Vs. Saraswat Co-operative Bank Ltd. Mumbai and Anr.*<sup>1</sup> which was wholly irrelevant to the aforesaid issue. It was submitted that the said judgment does not deal with the question of consolidation at all.

12. The learned Senior counsel submitted that the learned arbitrator erred in holding that no prejudice was caused to the

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<sup>1</sup>2011(4) Mh.L.J.

petitioner by consolidating such disputes, when the real question raised on behalf of the petitioner was, as to whether the learned arbitrator had power and jurisdiction at all to consolidate such separate disputes arising from independent and distinct contracts. It was submitted that merely because the petitioner had filed a common counter claim, it could not have been a ground to reject the fundamental issue raised on behalf of the petitioner that the learned arbitrator had no jurisdiction to consolidate the separate references pertaining to independent and distinct contracts. The learned Senior counsel emphasized on the aspect that the petitioner had never agreed for such course to be adopted. On this aspect, the learned Senior counsel relied upon judgment of the Supreme Court in the case of *Duro Felguera, S.A. Vs. Gangavaram Port Limited*<sup>2</sup>.

13. The learned Senior counsel submitted that prejudice was certainly caused to the petitioner since separate and distinct alleged acts of breach of contracts were not taken into consideration by the learned arbitrator while holding in favour of the respondent-Corporation. It was submitted that the petitioner was prejudiced in leading evidence to repudiate the claims made on behalf of the respondent. It was further submitted that the learned arbitrator in this context did not appreciate that the respondent-Corporation had no right to unilaterally extend the contract and carry forward delivery period.

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<sup>2</sup>(2017) 9 SCC 729

14. It was further submitted that the learned arbitrator erred in relying upon letters that were not proved. It was sought to be contended that the invocation of arbitration in the present case was invalid. On this basis, the learned Senior counsel submitted that the impugned award deserved to be set aside.

15. On the other hand, Mr. Purohit, learned counsel appearing for the respondent-Corporation submitted that the petitioner is not justified in contending that the impugned award deserves to be set aside on the ground that the learned arbitrator had no jurisdiction to consolidate the disputes arising out of nine contracts executed between the parties. It was submitted that the material on record would show that separate contracts executed between the parties pertained to supply of cotton bales, which the petitioner had agreed to purchase. All the terms of contract were identical, save and except the figures stated therein. On this basis, the learned counsel appearing for the respondent-Corporation submitted that when the respondent filed the statement of claim, details of each separate claim arising out of each separate contract were specifically stated. The petitioner was clearly aware about the claims raised on behalf of the respondent-Corporation in the context of each separate contract. The petitioner responded to the same and the manner in which the evidence was appreciated by the learned arbitrator demonstrated that each such transaction



was taken into consideration separately and the claims made on behalf of the respondent-Corporation were determined on the basis of evidence and material on record. Therefore, it was submitted that although a single statement of claim was filed before the learned arbitrator, it pertained to separate contracts and the facts and figures therein clearly demonstrated the nature of claims raised on behalf of the respondent – Corporation pertaining to each such separate contract.

16. The learned counsel further submitted that the reasoning adopted by the learned arbitrator was sound and it was found that even otherwise, the petitioner suffered no prejudice in the matter.

17. As regards, the other grounds raised on behalf of the petitioner, the learned counsel appearing for the respondent – Corporation submitted that such grounds amounted to asking this Court exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, to re-appreciate the evidence and to enter into the merits of the award, which is clearly prohibited as per the law laid down by the Supreme Court in the case of *SSangyong Engineering and Construction Co. Ltd. Vs. National Highways Authority of India (NHAI)*,<sup>3</sup> particularly in the light of the amendment of Section 34 of the said Act by the Amending Act of 2015. The learned counsel for the respondent-Corporation specifically relied upon judgment in the case of *P. R.*

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<sup>3</sup>(2019) 15 SCC 131

*Shah Shares and Stock Brokers Private Limited Vs. B. H. H. Securities Private Limited*<sup>4</sup>, *The State of Bihar & Anr. Vs. Gulabi Devi & Ors.*<sup>5</sup> and *Sanjay Suganchand Kasliwal Vs. Jugalkishor Chhaganlal Tapadia*<sup>6</sup>, in support of its contention as regards the principal ground of challenge raised on behalf of the petitioner.

18. The learned counsel submitted that reliance placed on behalf of the petitioner on the judgment of Supreme Court in the case of *Duro Felguera, S.A. Vs. Gangavaram Port Limited (supra)* was misplaced for the reason that the said case was clearly distinguishable on facts from the present case. On this basis, the learned counsel submitted that the present petition deserved to be dismissed.

19. Having heard the learned counsel for the rival parties, before considering the principal ground of challenge and the other grounds raised on behalf of the petitioner, this Court is of the opinion that it would be appropriate to examine the scope and extent of jurisdiction available to this Court while exercising power under Section 34 of the said Act. The said provision pertains to the grounds on which this Court can set aside an arbitral award.

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<sup>4</sup>(2012) 1 SCC 594

<sup>5</sup>1986 SCC Online 254

<sup>6</sup>2013 SCC Online Bom 1470

20. It is necessary to note that by the Amending Act of 2015, significant amendments were brought about in Section 34 of the aforesaid Act. The said provision, post amendment, reads as follows:

*34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*

*(2) An arbitral award may be set aside by the Court only if-*

*(a) the party making the application '[establishes on the basis of the record of the arbitral tribunal that]-*

*(i) a party was under some incapacity; or*

*(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*

*(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings otherwise unable to present his case; or or was otherwise unable to present his case ;or*

*(iv) the arbitral award deals with a dispute 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, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be aside; or*

*(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*

*(b) the Court finds that-*

*(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*

*(ii) the arbitral award is in conflict with the public policy of India.*

*[Explanation 1.-For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,-*

*(i) the making of the award was induced or affected by*

*fraud or corruption or was in violation of section 75 or section 81; or*

*(ii) it is in contravention with the fundamental policy of Indian law; or*

*(iii) it is in conflict with the most basic notions of morality or justice.*

*Explanation 2.-For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]*

*[(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*

*Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.]*

*(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:*

*Provided that if the Court is satisfied that the*

*applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.*

*(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.*

*[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.*

*(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon other party.]*

21. In the case of *SSangyong Engineering and Construction Co. Ltd. Vs. National Highways Authority of India supra*, the Supreme Court specifically took into consideration the position

of law prior to the amendment brought about in Section 34 of the said Act in the year 2015, and the manner in which the scope and jurisdiction of the Court under the said provision stood narrowed down, post amendment. In fact, the Supreme Court in the said judgment referred to the 246<sup>th</sup> report of the Law Commission, which suggested amendment to the aforesaid Act particularly to Section 34 thereof. The Supreme Court also referred to the statement of objects and reasons of the Arbitration and Conciliation (Amendment) Bill, 2015. It was found that the Amendment Act of 2015 had to be enacted, interalia, for the reason that interpretation of provisions of the said Act by the Courts in some cases had resulted in delay in disposal of arbitration proceedings and the interference of the Courts in arbitration matters had the tendency of defeating the very object of the Act. Thus, the amendment brought about in the year 2015, was for the purpose of diluting the effect of certain judgments wherein liberal interpretation was given to certain parts of Section 34 of the said Act. The Supreme Court analyzed the same and deliberated upon the effect of amendment to Section 34 of the said Act and the manner in which earlier judgments were to be applied. It was held as follows:

*34. What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in*

*paras 18 and 27 of Associate Builders i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco expansion has been done away with. In short, Western Geco, as explained in paras 28 and 29 of Associate Builders would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a) (iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders.*

*35. It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 of Associate Builders, as it is only such arbitral awards that shock*



*the conscience of the court that can be set aside on this ground.*

*36. Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders, or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders, Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco, as understood in Associate Builders, and paras 28 and 29 in particular, is now done away with.*

*37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an*

*award on the ground of patent illegality.*

*38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.*

*39. To elucidate, para 42.1 of Associate Builders, namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders, however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.*

*40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall*

*within the new ground added under Section 34(2-A).*

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

22. Hence, it becomes evident that arbitration awards cannot be lightly interfered with, as the Court does not exercise appellate jurisdiction. The Court is prohibited from re-appreciating the evidence and the findings on merits in the arbitral award cannot be gone into. The scope of interference is limited and unless the specific grounds stated in the aforesaid provision are satisfied, the Court in ordinary course cannot interfere with an arbitral award.

23. The principal contention raised on behalf of the petitioner is that the award deserves interference as consolidation of disputes arising from nine contracts, without the consent of the petitioner, was entirely without jurisdiction and that therefore, the learned arbitrator could not have proceeded with the matter. It is submitted that such a specific objection was raised in the statement of defence / written statement and a specific issue was also framed. The sheet anchor of the contention raised on behalf of the petitioner is the judgment of the Supreme Court in the case of *Duro Felguera, S.A. Vs. Gangavaram Port Limited supra*. According to the petitioner, disputes arising out of distinct contracts pertaining to purchase of cotton bales from three different locations of the respondent, could not have been made subject matter of a single arbitral proceedings, particularly in the absence of consent on the part of the petitioner for such course of action. Therefore, it would be necessary to consider the law laid down by the Supreme Court in the case of *Duro Felguera, S.A. Vs. Gangavaram Port Limited supra*.

24. In order to appreciate the same, it is necessary to first consider the backdrop in which the said case was decided by the Supreme Court and the nature of questions that arose for consideration. A perusal of the said judgment shows that the first question framed by the Supreme Court concerned the aspect as to whether a memorandum of understanding executed between the

parties covered split up contracts and whether a composite single reference to an arbitral tribunal was justified, particularly in the backdrop that it was an international commercial arbitration. The second question that arose for consideration was as to whether there ought to be multiple tribunals for each of the five split up contracts awarded to a foreign company. It is in the backdrop of the specific facts of the said case, which concerned contracts that were entered into with a foreign company and involved international commercial arbitration that the Supreme Court found that a composite reference before a single arbitral tribunal could not have been undertaken. It was specifically found that since there were five separate contracts, which had independent existence and also because one of the contracts was with a foreign company requiring international commercial arbitration, there could not be a single arbitral tribunal.

25. It is to be understood that in the present case, the facts are distinguishable, for the reason that the nine contracts in question were executed between the same parties, consisting of identical arbitration clauses and the only difference was with regard to the actual figures of sale and purchase. The nature of dispute arising from the nine contracts was identical and accordingly reference to arbitration to the learned sole arbitrator was made in the context of dispute arising from the nine contracts, essentially for the same reasons.

26. The learned arbitrator found that in the statement of claims, the respondent raised specific distinct claims pertaining to the nine contracts, to which the respondent placed its defence on record. It is significant that the witnesses for the respondent (original claimant) deposed in respect of each separate distinct contract and the extent of claim that arose from the dispute pertaining to such separate contracts. This is particularly evident from observations made by the learned arbitrator in the impugned award wherein reference is made to charts graphically setting out requisite details pertaining to the claims made on behalf of the respondent about the amounts due, the interest claimed thereon and the related charges as per each contract. Such evidence was found to be creditworthy and it was not disturbed in cross examination.

27. Although it may not be a deciding factor, but the learned arbitrator cannot be said to have erred in observing that the petitioner had also raised a composite counter claim. The facts of the present case do indicate that the ratio of the judgment of the Supreme Court in the case *Duro Felguera, S.A. Vs. Gangavaram Port Limited supra*, is not applicable.

28. The Supreme Court in the case of *P. R. Shah Shares and Stock Brokers Private Limited Vs. B. H. H. Securities Private*

*Limited (supra)* considered a question as to whether single arbitration could be undertaken in a manner that would not only be convenient, but necessary for avoiding multiplicity of proceedings and possibility of conflicting decisions. Although the said observations were made in a different set of facts, they are relevant for considering the specific contention raised on behalf of the petitioner herein. The relevant portion of the aforesaid judgment of the Supreme Court reads as follows:

*19. If A had a claim against B and C, and there was an arbitration agreement between A and B but there was no arbitration agreement between A and C, it might not be possible to have a joint arbitration against B and C. A cannot make a claim against C in an arbitration against B, on the ground that the claim was being made jointly against B and C, as C was not a party to the arbitration agreement. But if A had a claim against B and C and if A had an arbitration agreement with B and A also had a separate arbitration agreement with C, there is no reason why A cannot have a joint arbitration against B and C. Obviously, having an arbitration between A and B and another arbitration between A and C in regard to the same claim would lead to conflicting decisions. In such a case, to deny the benefit of a single arbitration against B and C on the ground that the arbitration agreements*

*against B and C are different, would lead to multiplicity of proceedings, conflicting decisions and cause injustice. It would be proper and just to say that when A has a claim jointly against B and C, and when there are provisions for arbitration in respect of both B and C, there can be a single arbitration.*

29. In this situation, it was sought to be contended on behalf of the petitioner that since objection was specifically raised on behalf of the petitioner, the same learned arbitrator ought to have undertaken nine separate arbitral proceedings for the nine contracts in question, particularly when consent of the petitioner was a *sine qua non* for consolidating the arbitral proceedings pertaining to all the nine contracts. This Court is of the opinion that when specific claims pertaining to each of the nine contracts were placed distinctly in the statement of claim filed on behalf of the respondent, to which the petitioner had ample opportunity to respond and the fact that the petitioner also chose to file a consolidated counter claim pertaining to all the nine contracts, it cannot be said that the learned arbitrator committed a jurisdictional error in proceeding with the arbitration.

30. It is in this context, that the question of prejudice does become relevant. It was not even forcefully argued on behalf of the petitioner that there was any prejudice caused to it, due to the



manner in which the arbitral proceedings were undertaken by the learned arbitrator. The emphasis was on the aspect that in the absence of consent on the part of the petitioner, the learned arbitrator could not have conducted the consolidated arbitral proceedings pertaining to the dispute that arose, as regards all the nine contracts. This Court is not impressed with the said contention, primarily for the reason that in the facts and circumstances of the present case, distinct claims arising out of all the nine separate contracts were set out by the respondent. Evidence was specifically led in respect thereof, in the context of which, the petitioner had ample opportunity to cross examine the witnesses and to lead its own evidence. The counter claims were also raised in a consolidated manner by the petitioner, thereby indicating that it was in the interest of justice that the learned arbitrator chose to proceed in the said manner. Therefore, the principal contention raised on behalf of the petitioner is found to be without any substance.

31. As regards the other contentions raised on behalf of the petitioner, that the respondent-Corporation had no right to unilaterally extend the contract and carry forward delivery period and that the learned arbitrator erred in relying upon letters that were not proved, suffice it to say that these do not amount to any substantial grounds for this Court to exercise limited jurisdiction available under Section 34 of the said Act, to interfere with the

impugned award. In the light of the nature and scope of jurisdiction now available after the amendment to the said Act in the year 2015, and its effect considered and laid down by the Supreme Court in the case of *SSangyong Engineering and Construction Co. Ltd. Vs. National Highways Authority of India (NHAI) supra*, quoted hereinabove, this Court is of the opinion that sufficient grounds are not made out for interfering with the impugned award, either under the head of the award being opposed to public policy of India or it being patently illegal.

32. The other grounds of challenge noted hereinabove essentially pertain to appreciation of evidence and challenge to the merits of the award, which this Court cannot go into as the quantity and quality of evidence is within the domain of the learned arbitrator and interpretation placed on terms of contract is also within the domain of the learned arbitrator. Even if any term is erroneously interpreted, it does not give rise to sufficient ground to exercise jurisdiction under Section 34 of the said Act.

33. In view of the above, this Court is of the opinion that no ground for interference with the impugned award is made out.

34. Accordingly, the petition is dismissed with no order as to costs. Pending applications, if any, stand disposed of.

**MANISH PITALE, J.**

