2026 INSC 274

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3658-3659 of 2022

M/s ABS Marine Services … Appellant(s)

Versus

The Andaman and Nicobar Administration … Respondent(s)

J U D G M E N T

K. V. Viswanathan, J.

1. Are the non-negotiable principles of Rule of Law alien to interpretation of contractual clauses, especially when the State and its instrumentalities are parties to the same? This is one of the central issues that arise for consideration in this matter. Accepting the stand of the respondent would be tantamount to answering that issue in the affirmative, which we are certainly not disposed to do.

2. The present appeals call in question the correctness of the judgment of the High Court at Calcutta (Circuit Bench at Port Blair) in CAN No. 054 of 2018 with FMA No. 002 of 2018 dated 11.07.2018. By the said judgment, the Division Bench of the High Court set aside the judgment of the District Judge dated 08.01.2008, which in turn had upheld the award passed by the arbitrator dated 08.05.2017. The net result of the impugned judgment is that the arbitral award dated 08.05.2017 stands set aside since the Division Bench held that it was without jurisdiction and in derogation of the specific prohibitory clause found in clause 3.20 of the agreement between the parties.

BRIEF FACTS: -

3. On 26.12.2008, a "Manning Agreement" was entered into between the appellant and the respondent for manning 17 vessels. The scope of the work was that the appellant was responsible for providing complement of officers on board the vessel at all times (clause 2.1); the period of the contract

was from 01.10.2008 to 30.09.2009 (clause 3.14); and the fee payable was Rs. 12,67,200/- per month per ship (clause 3.15). The governing law was Indian law (clause 3.23).

4. By a separate agreement, Shipping Corporation of India Ltd. was appointed as the Technical Manager for the vessels.

5. On 06.07.2009, the vessel, M.V. Long Island, when on its way back to Campbell Bay from Mazahua started drifting from its intended track due to rough sea with winds and struck a submerged rock. At high tide, it refloated on its own and using its engines proceeded to be berthed at Campbell Bay. However, damage was done.

6. On 15.02.2013, the respondent issued a Show Cause Notice to the appellant as to why penalty should not be imposed and the recovery process not be initiated. By a reply of 12.03.2013, the appellant denied its liability. On 25.09.2014, the respondent unilaterally recovered a sum of Rs. 2,87,84,305/- towards penalty for grounding of the vessel, from the pending bills of the appellant.

7. Ultimately, the matter came to be referred to arbitration pursuant to a Section 11 application. By an order of 02.11.2015, when the matter came to this Court, this Court appointed Hon'ble Mr. Justice S.S. Nijjar, a former Judge of this Court, as a sole arbitrator to resolve the disputes.

AWARD DATED 08.05.2017 : -

8. It appears from the award that the plea with regard to lack of jurisdiction to arbitrate the dispute was not taken in the initial written objections by the respondent. It was further not taken in the reply to the amended statement of claim. On the day when the oral evidence was closed, a handwritten application was filed to frame additional issues and the same was allowed.

9. The arbitrator held that clause 3.20 was void and that it contravened Section 28 of the Indian Contract Act, 1872 as it plainly puts a total restraint on any decision being challenged in any Court of law. The clause also, according to the arbitrator, prohibited the parties from invoking arbitration and for this reason also, it breached Section 28.

10. Learned Arbitrator found that the arbitration clause was very widely worded and clause 3.20 has to be read in conjunction with clause 3.22 as reading in isolation would leave the claimant without a remedy. The learned arbitrator held that an endeavour has to be made by the tribunal to interpret the clause which would not lead to absurdity and inconsistency. The clauses have to be construed harmoniously and the arbitrator held that clause 3.22 would prevail over clause 3.20. The arbitrator also held that the respondent accepted the fact that arbitration was permissible and had at no point taken up the plea in any of the courts that the arbitrator could not be appointed as the recovery had been made under Clause 3.20. The arbitrator held that the respondent could not be permitted to claim that the arbitration proceedings were without jurisdiction.

11. The arbitrator ordered the payment of Rs. 2,87,84,305/- with interest @ 9 per cent from the date of recovery till the date of the award. The arbitrator directed that payment shall be made within three months and in default thereon interest

was to be paid @ 12 per cent from the date of the award till the date of the payment. Costs of Rs. 27,21,222/- were also ordered.

CHALLENGE TO THE AWARD: -

12. The respondent challenged the award by filing a Section 34 application under the Arbitration and Conciliation Act, 1996 (for short 'A&C Act') but the same was dismissed. The District Judge, while dismissing the Section 34 petition under the A&C Act, held that Clause 3.20 was contrary to Section 28 of the Indian Contract Act of 1872.

13. On further appeal by the respondent, the impugned judgment has come to be passed. The Division Bench, while setting aside the award, recorded that parties could decide which disputes are arbitrable and which are not; that the arbitrator, who is the creature of the agreement may not have any authority to decide on the propriety of such an agreement or the relevant clause, except to the extent that it concerns his jurisdiction; that a Court of law may have plenary authority to decide on the validity of the clause; that if the contention was

that the part of the clause prohibiting resort to legal remedies in a Court of law is illegal, it is not for the arbitrator to adjudicate and Courts have to step in; that if on a meaningful and conjoint reading of other clauses with the arbitration clause, it was intended that certain matters be kept out of arbitration, any adjudication thereon by the arbitrator would be an error of jurisdiction and that in view of the default clause viz., 3.20, especially sub-Para 4 thereto, the dispute was not within the jurisdiction of the arbitrator.

14. Aggrieved, the appellant is in appeal.

QUESTION FOR CONSIDERATION : -

15. The main question that arises for consideration is whether the reasoning of the High Court, as set out hereinabove, while allowing the Section 37 appeal of the respondent under the A&C Act, is correct in law? Certain other incidental questions which arise are also discussed hereinbelow.

CONTENTIONS OF THE APPELLANT: -

16. We have heard Mr. S. Niranjan Reddy, learned Senior Advocate for the appellant and Mr. Vikramjit Banerjee, learned Additional Solicitor General for the respondent.

17. Mr. S. Niranjan Reddy, learned Senior Advocate, contends that disputes concerning the breach of agreement and alleged negligence can be decided by the arbitrator; that the endeavour of every authority should be to interpret Clauses in a manner so as to not lead to any absurdity and inconsistency; that interpretation of the contract is within the jurisdiction of the arbitrator; that what is 'excepted', is the quantification and not the decision with respect to whether there was "wilful action /omission/commission or negligence" on the part of the appellant; that Clause 3.20 insofar as it excludes resort to a Court of law and Arbitration is void as it will render the appellant remediless; that the respondent had acquiesced to the arbitrability of dispute and is estopped from challenging the jurisdiction of the arbitrator; that the arbitration clause is very widely worded and, that the

High Court has exceeded its jurisdiction under Section 37 of the A&C Act.

CONTENTIONS OF THE RESPONDENT : -

18. Mr. Vikramjit Banerjee, learned Additional Solicitor General, supported the reasoning of the High Court and defended the impugned judgment. Learned ASG contends that the arbitrator derives his authority solely from the contract and as such could not sit in judgment over the validity of the clause; that the proper remedy was to challenge the clause in the Civil Court; that Clause 3.20 and 3.22 together demarcate the boundaries of arbitral jurisdiction by explicitly excluding certain "excepted matters" from arbitration and bars recourse to courts only to the extent that they fall within the arbitrator's mandate and that the arbitrator could not have trespassed into the zone of "excepted matter".

DISCUSSION: -

19. The two clauses in question which come up for interpretation are as follows:-

"**3.20. Default**:

A willful act of omission or neglect on the part of Manning Agent or his Personnel /Complement, that causes loss of life accidents or serious financial loss to the ship shall be treated as default. The Manning Agent's services can be terminated within 10 days notice, and without paying compensation.

If the Manning Agent fails to place the required officer on any of the vessel, the manning fees for the particular period shall be disallowed and the penalty @ Rs. 25,000/- per vessel per day shall be imposed for such period the vessel was short manned.

If the vessel is unavailable due to the fault of the manning agent at any time during the contract, the administration, may opt for terminating the contract with the manning agent without any compensation and penalty of 0.75% of Annual fees per vessel per day shall be imposed for such period the vessel was unavailable. In addition to this, the Administration may opt for terminating the contract with the manning agent without compensation and the EMD/Bank guarantee/ security deposit held by the department shall be forfeited. The Administration reserves the right to recover any financial loss occurred to it or to the vessel/due to willful action/ omission / commission or negligence of the Agent or its employees on board from the amounts due to the Agent. In cases where such amounts exceed **the amounts due to the Agent (Including Performance Bank Guarantee), the Administration shall initiate proceedings, against the Agent for the recovery of the difference amount. Administration's decision shall be final and binding on the Agent, which cannot be challenged in any court of law. No arbitration proceedings on this account.**

3.22. Arbitration

In case of any dispute between the parties arising out of this Agreement, that shall be settled amicably by the parties. In case of failure, the same shall be referred for arbitration to a sole Arbitrator appointed by the Lieutenant Governor (Administrator), A & N Islands.

> **The decision of the Arbitrator so appointed shall be final and binding upon the parties.** The Arbitrator appointed under this clause shall pass award within a period of 6 (six) months' from the date of reference made to him. Subject to aforesaid, the provisions of Arbitration and Conciliation Act, 1996 shall apply to arbitration proceeding under this clause. The arbitration proceeding shall be held at Port Blair."
>
> (Emphasis supplied)

20. At the outset, to decide whether the award was without jurisdiction and in derogation of Clause 3.20, we need to first understand the true meaning and purport of clause 3.20 and Clause 3.22 which are set out hereinabove.

21. Clause 3.22 is the arbitration clause which is widely worded. It encapsulates any dispute between the parties arising out of this agreement which cannot be amicably settled between the parties. The words are of the widest amplitude and all disputes are encompassed within the said phrase.

22. However, what is contended by the respondent is that, in Clause 3.20, the administration's decision was to be final and cannot be challenged in any court of law and there shall be no arbitration proceedings also.

23. What is the true scope, sweep and ambit of clause 3.20 is the central question that arises for consideration in this case? A close reading of clause 3.20 reveals that:-

a) A wilful Act of omission or neglect on the part of Manning Agent or his Personnel/Complement, that causes loss of life accidents or serious financial loss to the ship was to be treated as default.

b) Apart from other rights which the administration had, insofar as the present case is concerned, what is relevant is the right of the administration to recover any financial loss that had occurred to it or to the vessel due to wilful action/omission /commission or negligence of the agent or its employees on board from the amounts due to the agent.

c) In case where such amounts exceed the amounts due to the agent (including performance bank guarantee), the administration shall initiate proceedings, against the agent for the recovery of the difference amount.

d) The administration's decision was to be final and binding on the agent which cannot be challenged in any Court of law and there was to be no arbitration proceedings also on this account.

ANALYSIS AND REASONS: -

WHAT IS FINAL?

24. The issue is what decision of the administration is accorded finality under Clause 3.20 and whether such decision is immune from challenge before any Court of law or before an Arbitrator. Before we answer these issues, certain fundamental rules of interpretation of contracts need to be highlighted.

ONE PARTY TO THE CONTRACT CANNOT BE THE DECISION MAKER, ON BREACH BY THE OTHER : -

25. Firstly, **whether at all there was a wilful act of omission or negligence** on the part of Manning Agent or his Personnel/Complement, when the manning agent disputes, liability cannot be decided by the respondent administration which is the party alleging the breach. The interpretation

canvassed by the respondent, if accepted, would militate against the fundamental principle of the Rule of Law that no party shall be a judge in its own cause. Notions of justice and fair play would be rendered a mockery, if the interpretation canvassed by the respondent is countenanced.

26. This Court had occasion to interpret similar clauses earlier. In ***State of Karnataka*** v. ***Shree Rameshwara Rice Mills Thirthahalli***[1], it was held as under: -

> **"7.** On a consideration of the matter we find ourselves unable to accept the contentions of Mr Iyenger. The terms of clause 12 do not afford scope for a liberal construction being made regarding the powers of the Deputy Commissioner to adjudicate upon a disputed question of breach as well as to assess the damages arising from the breach. The crucial words in clause 12 are "and for any breach of conditions set forth hereinbefore, the first party shall be liable to pay damages to the second party as may be assessed by the second party". **On a plain reading of the words it is clear that the right of the second party to assess damages would arise only if the breach of conditions is admitted or if no issue is made of it.** If is was the intention of the parties that the officer acting on behalf of the State was also entitled to adjudicate upon a dispute regarding the breach of conditions the wording of clause 12 would have been entirely different. **It cannot also be argued that a right to adjudicate upon an issue relating to a breach of conditions of the contract would flow from or is inhered in the right conferred to assess the damages arising from a breach of conditions.** The power to assess damages, as pointed out by the Full Bench, is a subsidiary

[1] (1987) 2 SCC 160

and consequential power and not the primary power. **Even assuming for argument's sake that the terms of clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause.** ***Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the officer party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the State, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of clause 12.***

8. We are, therefore, in agreement with the view of the Full Bench that the powers of the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined only to those cases where the breach of conditions is admitted or it is not disputed."

(Emphasis supplied)

27. In ***J.G. Engineers Private Limited*** v. ***Union of India and Another.***[2], this Court, in Para 19, held as under: -

"19. In fact the question whether the other party committed breach cannot be decided by the party alleging breach. A contract cannot provide that one party will be the arbiter to decide whether he committed breach or the other party committed breach. That question can only be decided by only an adjudicatory forum, that is, a court or an Arbitral Tribunal."

[2] (2011) 5 SCC 758

28. Hence, when the appellant disputed the wilful action or negligence on its part for the financial loss the aspect of liability had to be adjudicated. In view of the above, when clause 3.20 speaks of administration's decision being final it can only be in those cases where the wilful action or negligence is not disputed and in that scenario when a quantification is done by the administrator. That is not the situation here as the appellant disputed their liability. A reading of clause 3.20 leaves us only with one interpretation that where wilful action or negligence is disputed, the administration cannot claim that it is within its ken to decide on the aspect of liability also.

29. Further, in this case, as held earlier, the arbitration clause (Clause 3.22) is widely worded and covers all disputes between the parties. When "wilful act or omission or neglect" is disputed by the Manning Agent, such a dispute will be within the ambit of the arbitration clause.

UBI JUS IBI REMEDIUM*-REMEDY FOR EVERY WRONG*: -

30. Secondly, what is even more glaring in this case is, Clause 3.20 states that the administration's decision would be final and neither a Court of law nor an Arbitrator could examine the correctness. If the respondent's contention is to be accepted the said interpretation strikes at the very heart of the fundamental legal maxim '*Ubi jus ibi remedium'* – there is no wrong without a remedy (Brooms Legal Maxims 10th Edition, page 118).

NO CONSTRUCTION CAN LEAD TO A 'VACUUM' IN LEGAL REMEDIES: -

31. Thirdly, what is alarming in the clause is that it bars any action either in a court of law or before the arbitrator. Section 9 of the Code of Civil Procedure states that Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Section 28 of the Contract Act states that a contract providing for arbitration will not be opposed to public policy.

Section 9 of CPC and Section 28 of Indian Contract Act with exception 1 are extracted hereinbelow.

> **"9. Courts to try all civil suits unless barred.—** The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
>
> Explanation I.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
>
> Explanation II.— For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.
>
> **28. Agreements in restraint of legal proceedings, void.—** Every agreement,—
> (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
>
> (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.
>
> Exception 1.—Saving of contract to refer to arbitration dispute that may arise.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

32. There is a fundamental rule of interpretation that no construction shall be placed which would lead to a vacuum in legal remedies. In ***Sri Vedagiri Lakshmi Narasimha Swami Temple*** v. ***Induru Pattabhirami Reddi***[3], this Court emphatically stated the law as under: -

> **"16.** Under Section 9 of the Code of Civil Procedure, the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is a well settled principle that a party seeking to oust the jurisdiction of an ordinary civil court shall establish the right to do so. Section 93 of the Act does not impose a total bar on the maintainability of a suit in a civil court. It states that a suit of the nature mentioned therein can be instituted only in conformity with the provisions of the Act; that is to say, a suit or other legal proceeding in respect of matters not covered by the section can be instituted in the ordinary way. It therefore imposes certain statutory restrictions on suits or other legal proceedings relating to matters mentioned therein. Now, what are those matters? They are : (1) administration or management of religious institutions; and (2) any other matter or dispute for determining or deciding which provision is made in the Act. The clause "determining or deciding which a provision is made in this Act", on a reasonable construction, cannot be made to qualify "the administration or management" but must be confined only to any other matter or dispute. Even so, the expression "administration or management" cannot be construed widely so as to take in any matter however remotely connected with the administration or management. The limitation on the said words is found in the phrase "except under and in conformity with the provision of this Act". To state it differently, the said phrase does not impose a total bar on a suit in a civil court but only imposes

[3] 1966 SCC OnLine SC 243

> a restriction on suits or other legal proceedings in respect of matters for which a provision is made in the Act. **Any other construction would lead to an incongruity, namely, there will be a vacum in many areas not covered by the Act and the general remedies would be displaced without replacing them by new remedies."**
> (Emphasis supplied)

33. It is shocking that the respondent administration with all seriousness at their command contend that under Clause 3.20 not only have they a right to decide wilfulness or neglect on the part of the manning agent in cases where liability is disputed, but also that such decision cannot be challenged in any court of law or before the arbitrator. We reject the contentions, since we have held the dispute to be within the jurisdiction of the arbitrator.

SEQUITUR OF THE ABOVE: -

34. The sequitur of what has been discussed hereinabove leads to the sole irresistible conclusion that one party to a contract cannot decide whether the other party was in wilful breach or has committed neglect, when liability by the other party is disputed. Not just the weighty precedents, but even plain common sense dictates that Clause 3.20 cannot be so

construed as to let one party to a dispute decide whether the other party is in breach. The further contention that such a decision by the administration even on the liability cannot be called in question in any court of law or before the arbitrator is opposed to all cannons of the rule of law.

35. All that the Clause 3.20 means is that in a given case where the manning agent does not dispute a wilful act on their part or neglect on their part which has resulted in financial loss the administration may quantify and recover the amount from the manning agent. It is this decision (in an admitted scenario vis-à-vis liability of the manning agent) on the quantification that is put beyond the realm of adjudication. We have serious reservations even here on denying access to courts of law on the grievance about wrongful quantification. However, since the issue does not directly arise here, we refrain from commenting on the same.

36. The further contention that even if Clause 3.20 is contrary to law, the arbitrator could not have declared its invalidity and it is for the parties to move the Court for appropriate relief

need not detain us any further. We have construed the clause to mean that it does not foreclose legal remedies before the arbitrator under Clause 3.22, where the manning agent disputes the liability and contends that there was neither wilfulness nor neglect on their part.

37. As the Clause stands what can at best be said to be an "excepted matter" from the arbitration are only those cases where a manning agent admits liability and wants to question the quantum fixed by the administration. That situation does not obtain here. Hence, we reject the contention of the respondent that the arbitrator entered into the arena of an "excepted matter".

38. A close reading of Clause 3.20 reveals an interesting aspect. Even on the aspect of quantification in cases where liability is admitted by the agent, where the administration is not able to fully recover, they have reserved for themselves the right to initiate proceedings for recovery of the differential amount. To say the least, this is grossly discriminatory. It is high time that clauses of these types are not incorporated in

contracts between a private party on the one hand and the State and its instrumentalities on the other, ***foreclosing even redress through Courts of law.*** Matters may be 'excepted' from arbitration, for that is a well-recognized concept, but a vacuum in legal remedies cannot result. 'Except' matters one may but 'Exclude' justice, one cannot.

39. These clauses negating redress through Courts of law, after 'excepting' them from arbitration proceedings also, harkens back our memory to what we read of the happenings in times when might was right. Expounding on the necessity of the 'Administration of Justice', and how without a system of administration of justice parties would resort to violent self-help leading to anarchy, "Salmond on Jurisprudence (Twelfth Edition)-P.J. Fitzgerald" graphically states as follows: -

> "**Without institutionalised law enforcement man tends to redress his wrongs by his own hand. A more civilised substitute for such primitive practice is provided by the modern state's system of administration of justice.**
>
> **Private vengeance is transmuted into the administration of criminal justice; while civil justice takes the place of violent self-help. As Locke says (c), in the state of nature the law of nature is alone in force,**

and every man is in his own case charged with the execution of it. In the civil state, on the other hand, the law of nature is supplemented by the civil law, and the maintenance of the latter by the force of the organised community renders unnecessary and unpermissible the maintenance of the former by the forces of private men. The evils of the state of nature were too great and obvious to escape recognition even in the most primitive communities. **Every man was constituted by it a judge in his own cause, and might was made the sole measure of right.** Nevertheless the substitution was effected only with difficulty and by slow degrees. **The turbulent spirits of early society did not readily abandon the liberty of fighting out their quarrels, or submit with good grace to the arbitrament of the tribunals of the state.** There is much evidence that the administration of justice was in the earlier stages of its development merely a choice of peaceable arbitration or mediation, offered for the voluntary acceptance of the parties, rather than a compulsory substitute for self-help and private war**. Only later, with the gradual growth of the power of government, did the state venture to suppress with the strong hand the ancient and barbarous system, and to lay down the peremptory principle that all quarrels shall be brought for settlement to the courts of law (d).”**

(Emphasis supplied)

We need to say nothing more on this aspect.

NO GROUNDS TO INTERFERE WITH THE AWARD: -

40. The arbitrator in paras 6.4 and 6.6 rightly held that Clause 3.20 has to be read in conjunction with Clause 3.22 and that the Tribunal should make every endeavour to interpret the

clauses in such a manner so as to not lead to any absurdity and inconsistency. The Arbitrator was also right in holding that the clauses in the contract have to be harmoniously construed. Further at para 6.20, the arbitrator rightly held that recovery under Clause 3.20 can only be made on proof that the Manning Agent or personnel/complement has committed "a wilful act, omission or neglect, that causes loss of life, accidents or serious financial loss to the ship." The arbitrator has rightly held that only on such default being proved recovery/liquidated damages could be imposed on the Manning Agent. Interpreting the contract, the arbitrator has also held that the manning agent's duty was limited to recruiting and placing the seafarers with the technical agent/owner of the ship. Further it was held that the seafarers enter into employment contracts with the technical agent and only on their qualifications, fitness and suitability being certified by the technical agent, the seafarers are placed on board the vessel. The arbitrator has further held that the duties of the manning agent come to an end with the seafarers

entering into an employment contract with the technical agent and the manning agent has no on-board functions to perform. Thereafter, the role of the manning agent was only with regard to the welfare and social security of the seafarers engaged and has no obligation for the safe operation of the ship.

41. Once the dispute was arbitrable, these are matters which are within the domain of arbitrator. In fact, it must be pointed out that other than the point of the dispute falling within domain of "excepted matter", before us no other arguments were canvassed on behalf of the respondent administration.

42. In view of what we have held hereinabove, we find none of the judgments cited on behalf of the respondent are germane to the issue at hand. Those cases including the judgment in ***Northern Railway vs. Sarvesh Chopra***[4] turned on the interpretation of the clauses in the respective matters to decide what the "excepted matters" in those cases were.

[4] (2002) 4 SCC 45

43. Equally, in view of what we have presently held, the reasoning of the High Court, we find, is seriously flawed.

44. Accordingly, we set aside the judgment and order dated 11.07.2018 passed by the High Court at Calcutta (Circuit Bench Port Blair) in CAN No. 054 of 2018 and FMA No. 002 of 2018. The appeals are allowed. The consequence would be that the award of the arbitrator dated 08.05.2017 would stand restored. No order as to costs.

.....J.
[**J.B. PARDIWALA**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
23rd March, 2026