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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 13.05.2025
Judgment pronounced on: 13.08.2025

\+ **O.M.P. 717/2010**

INDRAPRASTHA POWER GENERATION CO. LTD.
.....Petitioner

Through: Mr. S. Wasim A. Qadri, Sr. Adv. with Mr. R.K. Vats, Mr. Saeed Qadri, Mr. Danis Ali, Advs.

versus

E.M. SERVICES(I) PVT LTD
.....Respondent

Through: Mr. Hrishikesh Chaitaley, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is a petition filed under section 34 of the Arbitration and Conciliation Act, 1996 (***"1996 Act"***) seeking setting aside of the Arbitral Award dated 18.06.2010 wherein the claims of the respondent were allowed to the tune of Rs. 34,71,073 less Rs. 1,20,000/- as penalty, along with 9% interest per annum.

FACTUAL BACKGROUND

2. The petitioner is a public sector undertaking of Government of N.C.T. of Delhi and a company duly registered under the provisions of Companies Act, is engaged in the business of power generation and distribution. The respondent is a company duly registered under the provisions of the Companies Act, 1956 and is engaged in the business of supply of spares and maintenance of power equipments.

3. The petitioner had floated a tender for supply and replacement of critical spares and commissioning at 62.5MWGE USA make Turbine of Unit No. 2 at I.P. Station *vide* tender no. DGM (M)/IPS/T-20/1654 dated 30.01.2004. The respondent submitted its offer on 17.02.2004. Thereafter the petitioner invited the respondent for negotiation with the Tender Committee of the petitioner on 10.03.2005. Consequent to the discussions, the petitioner issued a Letter of Intent (***"LOI"***) in favour of the respondent for supply of the critical spares and commissioning of 62.5MW GE USA make Turbine Unit No.2 at I.P. Station of the respondent company *vide* LOI bearing no. DGM(M)/IPS/T-20/J 959, dated 23.03.2004.

4. In terms of the said order, the respondent was required to supply spares as per the list attached at Annexure "A" to the said order for total value consideration of Rs.83,20,000/-. It was also agreed by the respondent that it will replace the supplied spares free of cost to exhibit its capability and for developing good relations for future business.

5. During the replacement of critical spares of Turbine Unit No. 2, after dismantling the Turbine, the conditions of blade (bucket) of Stage 2, 3

& 4, Nozzle Blades und diaphragm of Stage 2, 3 & 4were found extremely damaged and beyond the scope of repair. It was then mutually decided to replace the damaged blade of Stage 2, 3 & 4with new set of Blades, the damaged Nozzle Block with repaired Nozzle Block and to rebuild & repair the damaged diaphragm of Stage 2, 3, 4 & 5. The respondent finally completed the work on 31.05.2004and the unit was synchronized on 01.06.2004. There was a delay of 33 days in the completion of the allotted work by the respondent.

6. As there were disputes between the parties, the respondent invoked the arbitration process and consequently, the learned Sole Arbitrator was appointed.

7. The respondent in its Statement of Claim (***"SOC"***) prayed for Rs. 46,40,821/-, which consisted of outstanding of invoices, dated 24.05.2004, 23.06.2004 and 29.07.2004 along with interest @15% w.e.f. 14.06.2006 apart from claiming interest @ 15% p.a. on the outstanding amount of extra work done w.e.f. 29.09.2004, till the filing of the present claim along with future interest @ 15% p.a. on the total claim till its full realization by the respondent.

8. The petitioner is in its reply dated 13.03.2008 denied all the claims made by the respondent and stated that the respondent has committed a breach of contract by causing 33 days delay coupled with the fact that the condition to impose penalty was mentioned in the contract dated 23.03.2004. The petitioner has justified the deduction made by it from the invoices of the respondent in terms of the contract dated 23.03.2004. Further, because of delay of 33 days, Unit No. 2 could not become operational in its generating capacity to the tune of 50 MW.

Consequently, the petitioner suffered due to non-functioning of Unit No.2, which resulted in loss of generation of electricity and the loss incurred by the petitioner has been estimated at Rs. 11,88,00,000/-.

9. The learned Sole Arbitrator, after hearing both the parties and considering the evidence placed on record, *vide* Arbitral Award dated 18.06.2010, allowed the claim of the respondent to the tune of Rs. 34,71,073/- less Rs. 1,20,000/- as penalty along with interest at 9% p.a.

10. Aggrieved by the said Award, the petitioner has assailed the Award before this Court in the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Mr. Qadri, learned senior counsel for the petitioner states that the impugned Award has been challenged primarily on the grounds that the same is patently illegal and prejudicial to the rights of the petitioner to adduce evidence and prove its counter claim.

12. With regard to the refusal to frame an issue of counter claim, learned senior counsel for the petitioner states that in the reply to SOC and more specifically para 8, internal page 12-13, it was specific case of petitioner that because of delay of 33 days on the part of respondent, Unit No. 2 could not become operational, hence, the petitioner suffered a loss of generation of electricity which was quantified at Rs. 11,88,00,000/-. Before the learned Arbitrator, the said loss was claimed by the petitioner as an actual loss suffered by the petitioner on account of the aforesaid delay.

13. He further submits that during 14th hearing held on 13.02.2009, the proposed issue, i.e. counter claim, on behalf of petitioner with regard

to actual loss suffered by petitioner was rejected by learned Sole Arbitrator. Refusal to frame counter claim as an additional issue is patently illegal, particularly in view of the fact that the factual foundation of the counter claim, undisputedly, was laid in the reply/written statement.

14. Learned Sole Arbitrator failed to appreciate that reply/written statement to SOC, itself contained the counter claim, which is one of the three judicially recognized modes of setting up a counterclaim and the learned Arbitrator misdirected himself on facts and in law by stating that there was no "prayer" for counter claim in reply of the petitioner.

15. Mr. Qadri, learned senior counsel argues that even if an order or decree in terms of the counter claim was not sought for by the petitioner, at best, it could have been a case of defect of deficiency in the form of "pleadings" and in these circumstances, learned Sole Arbitrator, at the outset, ought to have directed/afforded an opportunity to the petitioner to cure the defect of deficiency rather than rejecting to frame issue on the counter claim. Reliance is placed on ***Union of India v. Tata Teleservices (Maharashtra) Ltd., (2007) 7 SCC 517*** wherein in somewhat similar circumstances, the Hon'ble Supreme Court observed that in the interest of justice, the appellant therein could have been granted an opportunity to remove the defect of deficiency/vagueness.

16. In view of the above judgment, learned Sole Arbitrator was under legal obligation to direct/afford an opportunity to the petitioner to cure the defect of deficiency in the form of the pleading *qua* counter claim.

For that reason, refusal to frame counter claim as an additional issue, is patent illegality and as such impugned Award is unsustainable and liable to be set aside.

17. With regard to foreclosure of right to lead evidence/prove counter claim, learned senior counsel for the petitioner submits that the refusal to frame counter claim as an additional issue, in essence, foreclosed petitioner's right to lead evidence and prove its pleaded case *qua* counter claim and as such, aforesaid refusal was prejudicial to petitioner's right to lead evidence and prove pleaded case of counter claim. Once the learned Arbitrator refused to frame counter claim as an additional issue, the petitioner could not lead evidence and prove pleaded case *qua* counter claim. In fact, petitioner's right to lead evidence *qua* counter claim and prove the same was foreclosed by learned Arbitrator at the outset *vide* order dated 13.02.2009. Petitioner as such, could not have led evidence on an issue which was not framed despite in the pleadings.

18. My attention is drawn to paragraphs "p", "q", "r", "s" and "f" of impugned Award to submit that the findings of learned Arbitrator *qua* non-suiting petitioner for not leading evidence and proving actual loss suffered by the petitioner is patently illegal and prejudicial to the right of the petitioner to lead evidence and prove pleaded case *qua* counter claim.

SUBMISSONS ON BEHALF OF THE RESPONDENT

19. *Per Contra*, Mr. Chaitaley, learned counsel for the respondent urges that the petitioner had never during the course of the arbitration proceedings raised a counter claim (though referred to as "a claim" in

the reply) except for making bald averments. There is no formal prayer or relief sought from the learned Arbitrator in respect of the pleading raised in the reply and also, no separate fees of the learned Arbitrator for adjudication of the counter claim was paid. Hence, the argument of the petitioner is meritless. Reliance is placed on ***Akella Lalitha v. Konda Hanumantha Rao, 2022 SCC OnLine SC 928*** to submit that the relief not prayed should not and cannot be granted.

20. Learned counsel for the respondent further states that the order dated 13.02.2009 passed by the learned Sole Arbitrator not framing an issue of counter claim has never been challenged by the petitioner. Additionally, the petitioner has not amended its reply to raise formally a counter claim, pay fees thereupon and take recourse to appropriate remedies as available in law. Since then, throughout the arbitration proceedings, the petitioner has not raised any grievance regarding non-framing of an issue for adjudication in respect of the counter claim. The said plea is now raised in the present proceedings for the first time. The arbitration proceedings were permitted to proceed without objection and hence the said objection raised is belated and cannot be sustained at this stage long, after completion of the arbitration proceedings.

21. He further submits that the counter claim of the petitioner pertains to and relates to the claim for cost incurred by the petitioner for procuring electricity for the delayed period, which as per the case of the petitioner is attributable to the respondent. The learned Sole Arbitrator in the impugned Award has found no substance in the said stand and has not found a single document on record to even *prima*

facie substantiate the said claim. In the absence of any document showing entitlement to the aforesaid claim of the petitioner, the learned Sole Arbitrator has in the Award rendered a specific finding that the delay is not attributable to the respondent and in fact, it is not a case of delay.

22. Learned Sole Arbitrator has further found that there is no documentary material placed on record to even establish remotely the counter claim and as such the Award passed by the learned Sole Arbitrator is a reasoned Award and is a reasonable view taken of the matter on the basis of the material placed before the learned Sole Arbitrator. Hence, the impugned Award does not call for any interference within the limited jurisdiction of this Court.

23. Reliance is placed on ***Jakki Mull & Sons v. Jagdish Thakral, 2017 SCC OnLine Del 11667, Para 40-42*** and ***Prabhakar Nirman v. Telecommunications Consultants India Ltd., 2019 SCC OnLine Del 9559, Para 52 [i] and [ii]***.

ANALYSIS AND FINDINGS

24. I have heard learned counsel for the parties and perused the material available on record.

25. The principles with regard to interference by a Court under section 34 of 1996 Act against the Arbitral Award have been reiterated time and again by the Hon'ble Supreme Court and this Court.

26. The scope under section 34 of the 1996 Act is very limited and narrow as the Court does not sit in appeal over the Award or review the Award passed by the Arbitral Tribunal nor re-appreciate the

evidence.[1] Further, it is the prerogative of the Arbitral Tribunal to interpret the term of the Contract and if the Arbitral Tribunal has adopted a view which is plausible, the Court is not required to interfere even if an alternate view is possible.[2]

27. To set aside the Award, the Award must fall under any of the categories/grounds as mentioned in section 34 of the 1996 Act. One of the grounds, amongst other, pertains to public policy of India. Explanation 1 of Section 34(2)(b)(ii) of 1996 Act further provides that the Award in conflict with *inter alia*, the fundamental policy of Indian law or the most basic notions or morality or justice can be set aside.

28. In this regard, the Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417*** has observed as under:-

> *"55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award*

[1] ***Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375.***
[2] ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1.***

vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

(a) violation of the principles of natural justice;

(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and

(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).

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63. As we have already noticed, the object of inserting Explanations 1 and 2 in place of earlier explanation to Section 34(2)(b)(ii) was to limit the scope of interference with an arbitral award, therefore the amendment consciously qualified the term "justice" with "most basic notions" of it. In such circumstances, giving a broad dimension to this category [In conflict with most basic

notions of morality or justice.] would be deviating from the legislative intent. In our view, therefore, considering that the concept of justice is open-textured, and notions of justice could evolve with changing needs of the society, it would not be prudent to cull out "the most basic notions of justice". Suffice it to observe, they [Most basic notions of justice.] ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind. In other words, this ground would be available to set aside an arbitral award, if the award conflicts with such elementary/fundamental principles of justice that it shocks the conscience of the Court."

29. The first and fundamental argument advanced by the learned senior counsel for the petitioner is that the counter claim of the petitioner was not considered despite specific pleading in the reply filed by the petitioner and the learned Arbitrator, for the vague reason, rejected the same on the ground that there was no specific prayer in the reply filed by the petitioner.

30. It is necessary to extract the order dated 13.02.2009 passed by the learned Sole Arbitrator:-

"With the consent of the parties following issues are framed:

1. Whether the unit stopped functioning during the warranty

period due to the fault of the claimant? OPR

2. Whether it was in the scope of the work of the claimant that claimant shall be responsible for not guiding/advising the concerned executive for proper performance of the turbine? OPR

3. Whether the claimant is entitled for the relief if any? OPC

The respondent has additionally proposed an issue for counter claim. However since there is no prayer as such for the counter claim except an averment in the reply, the issue cannot be framed.

The matter is now fixed for evidence of the claimant which shall be filed by way of affidavit before the next date of hearing with copy to the respondent. The witness of the claimant shall attend the proceedings on the next date i.e. 21st March 2009 at 4.00 p.m. for cross examination by the respondent."

(Emphasis added)

31. On bare reading, the learned Sole Arbitrator denied to frame an issue on counter claim only on the ground that the same was not specifically prayed in the reply filed by the petitioner except an averment in the reply.

32. At this juncture, it is relevant to reproduce the relevant paragraph from the reply where the petitioner has pressed his counter claim.

8. The contents of Para 8 are wrong and categorically denied. It is categorically denied in view of the fact that the claimant has committed breach of contract causing 33 days delay coupled with the facts that the condition to impose penalty was mentioned in the contract dated 23.03.2004. The claimants allegation of legitimate claim is factually incorrect and legally unsustainable and in view of this admitted position of 33 days delay in execution of the work. Claimants reference to the (communication) without any specific particulars are totally denied as the same cannot form any basis for the alleged claim. The release of part payment by the respondent shows Bona fide action of the respondent and honoring its commitment / obligations in terms of contract dated 23.3.2004. The details of deductions are as under:-

The amount deducted against performance Bank Guarantee	Rs.8,32,000.00
Amount deducted against late completing of job	Rs. 3,30,000.00
Amount deducting against late delivery of supply	Rs. 5,81,037.00
Total:	Rs. 17,43,037/-

Now there is no outstanding claim against invoice No.MS-2004-05/06 dt.. 24.05.04 & MS-2004-05/010 dated 23.06.2004.

In view of the above stated position there is neither any amount due nor payable.

Because of delay of 33 days unit No.2 could not become operational in its generating capacity to the tune of 50 MW. The respondent company has suffered in its production of electricity due to non functioning of unit No.2. The supply of electricity could not be generated and could not be made available to the residence of Delhi as a consequence thereto there was a loss of generation of electricity is as under:

One unit of electricity = 01 KWH (Kilo Watt Hour)

Generation per hour = 50×10^3 KWH = 50×10^3 Units

Generation per day = $24 \times 50 \times 10^3$ Units

Generation of 33 days = $33 \times 24 \times 50 \times 10^3$ Units

Cost of electricity @ Rs. 3/- per unit approx.

Coast of generation of 33 days = Rs. $3 \times 33 \times 24 \times 50 \times 10^3$

Total generation loss incurred by respondent in Rs = 11,88,00,000/-

(Rupees Eleven crores and eighty eight lakhs)

Considering the fact that April to June is peak summer period the Delhi Govt. of which the respondent is a public sector undertaking has to incur a sum of Rs.11,88,00,000/- towards the purchase of electricity power during the said period of 33 days due to acts / omission of the claimant and therefore the respondent hereby makes a claim of Rs.11,88,00,000/- as a actual loss suffered by the respondent company. The claim of claimant is absolutely baseless and immigrate. Since the principal itself is neither due nor recoverable and therefore the question of interest does not arise at all.

33. A perusal of the above shows that the petitioner not only made a counter claim of Rs. 11.88 crores before the learned Sole Arbitrator but also gave the basis for its calculations for arriving at the said figure. *Per contra*, the respondent herein in the rejoinder, categorically denied the said claim. Relevant paragraph from the rejoinder is extracted below:-

> *6. The contents of the reply in para 8 of the respondent about the loss of the generation of electricity suffered by the respondent is denied in toto. Prior to the commissioning of the machine, the respondent Company had never generated the electricity as it is generating at present. Therefore, the respondents claim of Rs.11,88,00,000/- is absolutely false and baseless and the claimant Company is therefore entitled for the Claim as prayed."*
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> ***(Emphasis added)***

34. The respondent categorically denied the counter claim of the petitioner i.e. loss of the generation of electricity suffered by the petitioner and stated that the same is false and baseless.

35. Before dealing with the submissions and facts of the present case, it is apposite to underline the relevant principles.

36. Section 23 of 1996 Act reads as under:-

> *"23. Statements of claim and defence. — (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in*

respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.

(2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

[(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.]

(3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.

[(4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.]

(Emphasis added)

37. On perusal, the claimant is entitled to state facts supporting its claim, the points at issue and the relief sought whereas the respondent shall state his defence in respect of these particulars. The said procedure shall only be applied if the parties have not agreed otherwise. Further,

sub section 2A of section 23 states that the respondent is also entitle to file counter claim or plead set off subject to arising within that particular arbitration agreement. However, there is no fixed format for filing counter claim. In fact, what is borne out from the pleading is that the respondent was categorically aware of the counter claim of the petitioner and in pursuant thereto, denied the averment in the rejoinder filed by the respondent. Therefore, it is not the case of the respondent that the respondent was not aware of the counter claim of the petitioner.

38. In ***Trojan & Co. Ltd. v. Nagappa Chettiar, (1953) 1 SCC 456***, the Hon'ble Supreme Court clearly held that the decision of a case cannot be based on grounds outside the "pleadings" of the parties. Relevant paragraph is extracted below:-

> *"38. We are unable to uphold the view taken by the High Court on this point. It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint the court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case. The allegations on which the plaintiff claimed relief in respect of these shares are clear and emphatic. There was no suggestion made in the plaint or even when its amendment was sought at one stage that the plaintiff in the alternative was entitled to this amount on the ground of failure of consideration. That being so, we see no*

valid grounds for entertaining the plaintiff's claim as based on failure of consideration on the case pleaded by him. In disagreement with the courts below we hold that the plaintiff was wrongly granted a decree for the sum of Rs 6762-8-0 in respect of the Associated Cement shares in this suit. Accounts settled could only be reopened on proper allegations."

(Emphasis added)

39. Learned counsel for the respondent has relied upon the decision of ***Akella Lalitha (supra)***. Relevant paragraphs of the said judgment are extracted below:-

"16. Coming to address the second issue, while this Court is not apathetic to the predicament of the Respondent grandparents, it is a fact that absolutely no relief was ever sought by them for the change of surname of the child to that of first husband/son of respondents. It is settled law that relief not found on pleadings should not be granted. If a Court considers or grants a relief for which no prayer or pleading was made depriving the respondent of an opportunity to oppose or resist such relief, it would lead to miscarriage of justice.

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18. In the case of Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi held:

"Though the Court has very wide discretion in granting relief, the Court, however, cannot, ignoring

and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner.""

40. I am fully bound by the ratio of the aforesaid two judgments. It is clear that the Court cannot consider a relief which is not found in the pleadings of the parties. Further, if an opportunity to oppose or resist such relief is not granted, it will amount to miscarriage of justice. But that is not the case in the present matter. The petitioner, in the present case, in the reply before the learned Sole Arbitrator clearly claimed Rs. 11.88 crores as a counter claim whereas the said counter claim was categorically rebutted/refused by the respondent in its rejoinder.

41. Once there is counter claim of the petitioner in its pleading and the petitioner has spelt out the reasons as well as has given basis for arriving at a figure of counter-claim and moreover, the respondent in its rejoinder has denied the claim of the petitioner, it was incumbent upon the learned Sole Arbitrator to frame an issue in this regard. The order dated 13.02.2009 is erroneous to the extent as the learned Sole Arbitrator in the said hearing ought to have framed an issue with regard to the counter claim of the petitioner. Every disputed fact/claim made by a party and rebutted by the opposing party is an issue in itself which need to be framed for adjudication.

42. Issues are the questions framed for determination of the *lis* between the parties based on the averments of disputed facts or law borne out of the pleading. Hence, once the reasons/basis for a counter claim, the amount and computation of the counter claim have been made in the reply, it does not matter if there is no specific prayer in the prayer clause.

Pleadings are to be read as a whole and not in bits and pieces.

43. The order dated 13.02.2009 *vis-a-vis* non framing of issue *qua* counter claim is not appealable order under Section 37 of 1996 Act or is not an interim Award to be challenged under section 34 of 1996 Act.

44. Reliance placed on ***Jakki Mull & Sons (supra)*** is misplaced as the learned senior counsel for the petitioner therein failed to point out from the pleadings before the learned Arbitrator that the respondent was aware of the counter claim of the petitioner therein. Further, there was no such reply by the respondent of the alleged counter claim raised by the petitioner therein. In the present case, the respondent herein was categorically aware of the counter claim raised by the petitioner which was duly replied by the respondent in its rejoinder.

45. The Hon'ble Supreme Court in ***Union of India v. Tata Teleservices (Maharashtra) Ltd., (2007) 7 SCC 517***observed as under:-

> *4. It may be true that in the prayer portion in the written statement an order or decree in terms of the counterclaim had not been sought for by the appellant. But the claim as made in the written statement relates to the claim based on the failure of the respondent, after having conveyed its acceptance of the letter of intent to provide service in the Karnataka Telecom Circle and the damages allegedly suffered by the appellant as a consequence and the entitlement of the appellant to reimbursement of the specified sum from the respondent. Even if there is some vagueness in the counterclaim, as felt by tdsat, we think that tdsat might have directed the appellant before us, to make*

its counterclaim more specific and in a proper manner. After all, a defect of deficiency could be permitted to be cured. We are, therefore, not impressed by the argument on behalf of the respondent before us that the counterclaim was rather vague and the same was rightly rejected for that reason by tdsat. After all, this vagueness can be directed to be removed in the interests of justice, if it were to be held that the counterclaim can be maintained by the Union of India."

(Emphasis added)

46. Taking a cue from the above judgment, I am of the view that the learned Sole Arbitrator ought to have given an opportunity to the petitioner to rectify the said defect before rejecting to frame an issue. Be that as it may, since no issue was framed on the counter claim, the petitioner had no opportunity to lead any evidence in this regard, as the evidence is only led on the issues framed by the Court/Arbitral Tribunal.

47. Another argument raised by the learned counsel for the respondent is that the learned Sole Arbitrator in paras "p", "q" and "r" has duly considered the prayers of the petitioner and rejected the same for lack of evidence. The said paragraphs are extracted below:-

"p. In the present case, the respondent has not proved on record any loss caused to it due to alleged delay in supply of spares or recommissioning or the Turbine Unit. Though on internal page 13 of the reply submitted by the respondent an estimate of loss has been stated but neither the same has

been made a part of the prayer much so less as counter-claim nor has any evidence, to substantiate the loss, has been led by the respondent.

q. The respondent has not made any efforts to prove the loss, if any, suffered by it due to delay in supply of spares or delay in commissioning of the unit or loss of generation.

r. In the absence of any substantive material on record to demonstrate any loss suffered by the respondent, law does not allow the penalty stipulated in the contract to be recovered by the respondent from the claimant as per the provisions of Section 74 of the Contract Act."

48. I am unable to agree as regards this argument. Parties are required to lead evidence on the questions which have been framed for determination by the learned Sole Arbitrator. Once the counter-claim was not an issue before the learned Sole Arbitrator, the petitioner could not be expected to lead evidence on the same and obviously there would be no evidence before the learned Sole Arbitrator in support of its counter claim.

49. Reliance placed on ***Prabhakar Nirman (supra)*** is misconceived as the case therein does not pertain to the non framing of issue on counter claims by the learned Arbitrator. In fact, the learned Arbitrator therein framed several counter claims.

CONCLUSION

50. For the foregoing reasons, the Arbitral Award dated 18.06.2010 is in conflict with the fundamental policy of Indian Law. In addition, the said Award suffers from violation of most basic notions of justice

despite specific pleading, no issue of counter claim was framed by the learned Sole Arbitrator. Since there was no issue, the petitioner did not lead any evidence. Hence, the petitioner was clearly deprived of the adjudication of its claim and the same shocks the conscience of the Court. Accordingly, the petition is allowed and the Arbitral Award dated 18.06.2010 is set aside.

51. The petition is disposed of.

JASMEET SINGH, J

AUGUST 13th, 2025 / (MSQ)