HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Arbitration Application No. 69/2022

Kingsroad Handelsges M.B.H, AM Heumarkt, 3/1/46, A 1030 Vienna, Austria through its Authorized Represntative Mr. Vladimir Krivonosov.

----Petitioner

Versus

Raj Grow Impex LLP., Having Registered Office at Basement, B-3, Neelgiri Apartment Plot No. D-34, Saraswati Marg, Bani Park, Jaipur-302016, also at 114, 1St Floor, Jaipur Towers, M.I. Road, Jaipur-302001 through the Designated Partner.

----Respondent

For Petitioner(s)	:	Ms. Saloni Purohit Mr. Udit Purohit
For Respondent(s)	:	Mr. Rupendra Singh Rathore

JUSTICE ANOOP KUMAR DHAND
Order

Reserved on 11/09/2025
Pronounced on 17/09/2025
Reportable

For convenience of exposition, this order is divided in the following parts: -

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Prelude:-

The classic idiom "Won the battle but lost the war" means achieving a small or temporary victory/success but ultimately failing to reach a larger, more important goal. It is often used to describe the situations where a short-term success or triumph is outweighed by a greater, long-term loss or failure.

After wining all the battles, one should not be left to feel as if he has lost the war. If someone achieves success by winning these battles, then he should not be left to feel that he has failed to achieve the overall goal.

"Whether an award-holder can be deprived of enjoying the fruits of the award even after winning a prolonged legal battle before the Arbitration Tribunal and Appellate Tribunal? Whether an award issued by a Foreign Tribunal can be executed & enforced in India or not?" These legal issues need to be adjudicated in the instant arbitration application.

Factual matrix and prayer:-

1. The instant arbitration application has been preferred under Chapter I of Part-II of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') with the following prayer:-

> "It is, therefore, respectfully prayed that this application may kindly be allowed and this Hon'ble Court may graciously be pleased to:
> 1. Declare that the Award 4618A dated 28.09.2021 rendered by the Board of Appeal, GAFTA at London be deemed to be a decree of this Hon'ble Court;
> 2. Pronounce judgment according to the Award 4618A dated 28.09.2021 rendered by the Board

of Appeal, GAFTA at London and direct the Respondent to pay to the Petitioner a sum of USD 999,382.28, equivalent to Rs.7,63,72,794 (Rupees Seven Crores Sixty Three Lacs Seventy Two Thousand Seven Hundred and Ninety Four only) along with interest as per the award 4618A from the date of filing the present petition till the date of realization;

3. Attach and cause to be sold movable and immovable assets of the respondent in order to satisfy the award 4618A dated 28.09.2021 rendered by the Board of Appeal, GAFTA at London;

4. Order the Respondent to pay the Petitioner the costs of this Petition;

5. Any other or further relief which this Hon'ble Court may deem fit in the facts and circumstances of the case may kindly be granted in favour of the Petitioner and justice be done."

2. By way of filing this arbitration application, the applicant seeks a declaration that the award dated 28.09.2021, issued by the Board of Appeal, Grain and Feed Trade Association (for short, 'GAFTA') in London, England be treated/recognized as a decree of this Court. The applicant further requests that judgment be pronounced in accordance with the aforesaid award, as referred by the Board of Appeal, GAFTA in London and direct the respondent to pay a sum of USD 999,382.28 (equivalent to Rs. 7,63,72,794/-) along with interest, as per the award 4618A, from the date of filing the instant arbitration application until its actual realization. Additionally, a prayer has also been made by the applicant for attachment and sale of movable and immovable assets of the respondent in order to satisfy the aforesaid award and further cost of the instant application be imposed on the respondent.

Submissions by the Petitioner:-

3. Counsel for the applicant submits that the applicant and the respondent entered into three separate contracts on 03.09.2018 wherein the petitioner agreed to supply a total of 4188.740 MT of Whole Yellow Peas of Russian origin, for the crop year 2018-2019, to the respondent, with Kolkata being designated as the port of destination in the contracts. These contracts were concluded through the broker M/s. Agri Impex India Pvt. Ltd., Mumbai. The petitioner shipped the grains in accordance with the terms of the contract, in 156 containers in bulk under 11 bills of lading from port Novorossiysk, Russia to Kolkata, India through various container transportation services namely Hapag Llyod, Mediterranean Shipping Company and Maersk in November, 2018. Counsel for the applicant further submits that a dispute arose between the parties and after invoking the arbitration clause of the contract agreement, the matter was referred to the GAFTA Arbitration Tribunal, who vide award dated 03.08.2020 passed the following award:-

> **"AWARD**
>
> 7.1. **THE TRIBUNAL HEREBY AWARDS THAT** Sellers' claim for non-payment for the goods **SUCCEEDS**.
> 7.2. **THE TRIBUNAL HEREBY AWARDS THAT** Buyers' counterclaim on damages for losses incurred because of non-contractual withdrawal of documents and thereby the termination of Contract 1, Contract 2 and Contract 3 by Sellers **FAILS**.
> 7.3. **THE TRIBUNAL FURTHER AWARDS THAT** Buyers shall pay to Sellers:
> 7.3.1. Interest amount for delayed payments for the goods delivered under Contract 1, Contract 2 and

Contract 3 calculated at the interest rate 4.0% (Four point zero percent) for the period till 19 July 2019 in total amount of USD 20,421.41.
7.3.2. Price difference for resale of 2 577.990 MT of the Goods to New Buyer, Shree Mahabir Udyog, Kolkata, India, in total amount USD 128,659.60.
7.3.3. Part of the price of the goods under the Contract 1, Contract 2 and Contract 3 in total amount of USD 49,138.62 with interest at rate 4% (Four point zero per cent) for the period from 17 January 2019 till 31 August 2019, and afterwards at interest rate 5.625% (Five point six hundred twenty five thousandth percent) until repayment.
7.3.4. Extra free time costs of containers with the Goods in total amount of USD 9,200.00 with interest at rate 4% (Four point zero percent) for the period from 27 February 2019 till 31 August 2019 and afterwards at interest rate 5.625% (Five point six hundred twenty five thousandth per cent) until repayment.
7.3.5. Storage/handling costs of containers with the Goods in total amount of USD 114,868.64 with no interest applied.
7.3.6. Demurrage costs of Container Lines for containers with the Goods in total amount of USD 514,366.03, namely:

-Maersk Line: USD 140 172.03 with no interest applied,

-Hapag Lloyd Shipping Line:
USD 156,750.00 with interest at rate 4% (Four point zero per cent) for the period from 27 June 2019 till 31 August 2019 and afterwards at interest rate 5.625% (Five point six hundred twenty five thousandth per cent) until repayment;

.USD 74 100.00 with interest at rate 4% (Four point zero per cent) for the period from 09 August 2019 till 31 August 2019 and afterwards at interest rate 5.625% (Five point six hundred twenty five thousandth per cent) until repayment;

-MSC Shipping Line:
.USD 92 752.00 with interest at rate 4% (Four point zero per cent) for the period from 27 June 2019 till 31 August 2019 and afterwards at interest rate 5.625% (Five point six hundred twenty five thousandth per cent) until repayment;

.USD 12 240.00 with interest at rate 4% (Four point zero per cent) for the period from 24 July 2019 till 31

August 2019 and afterwards at interest rate 5.625% (Five point six hundred twenty five thousandth per cent) until repayment;

USD 38 352.00 with interest at rate 4% (Four point zero per cent) for the period from 26 July 2019 till 31 August 2019 and afterwards at interest rate 5.625% (Five point six hundred twenty five thousandth per cent) until repayment.

7.3.7. Legal expenses for support of cases in Indian Courts to secure the property of the peas in total amount USD 3,193.65 with no interest applied.

7.4. **THE TRIBUNAL FURTHER AWARDS THAT** GAFTA's administrative costs and the fees and expenses of the Tribunal, as per attached schedule shall be payable by Buyers.

75. **THE TRIBUNAL FUTHER AWARDS THAT** Buyers' counterclaim for costs, fees and expenses of the arbitration together with interest thereon until payment, **FAILS**.

7.6. Any non-member fee should be borne by the non-member party.

7.7. We hereby reserve jurisdiction to ourselves to make any further award or awards on any and all remaining issues between the Parties, including any administrative or other formalities in relation to the preparation and signing of this award."

4. Counsel submits that aggrieved by the award passed by the GAFTA Arbitration Tribunal, the respondent preferred an appeal before the Appellate Authority, by way of filing Appeal No.4618A. However, the said appeal was rejected by the Appellate Tribunal vide award dated 28.09.2021 and the amount so awarded by the GAFTA Arbitration Tribunal was further enhanced by passing the following award:-

"11. AWARD

11.1. **WE REJECT** Buyers' request that we set aside Awards 17-848 and 17-848A.

11.2 **WE DO HEREBY FIND** that Buyers are in breach and shall pay forthwith to Sellers sums as follows:

(a) the difference between the contract prices and the resale price of US$50/mt, totalling US$128,900.50, together with interest at 4% per annum thereon, compounded three-monthly, from 19 July 2019 to the date of payment; (b) the under-invoiced balance of US$49,138.62, together with interest at 4% per annum thereon, compounded three-monthly, from 10 January 2019 to the date of payment;

(c) interest on the late payments as set out in paragraphs 10.22 and 10.23 above in the sums of US$1,558.95 and US$19,289.07, together with interest at 4% per annum thereon, compounded three-monthly, from 19 July 2019 to the date of payment.

(d) the additional cost of 14 days free time, of US$9,200.00, together with interest at 4% per annum thereon, compounded three-monthly, from 27 February 2019 to the date of payment;

(e) the storage and handling expenses of Phonex (US$ 114,868.64) were combined with the Maersk container demurrage in a total of US$140,132.63, as agreed between Sellers and the New Buyer, together with interest at 4% per annum thereon, compounded three-monthly, from 11 January 2021 to the date of payment;

(f) container demurrage of US$514,366.03, comprised of:

-Hapag Lloyd: US$156,750.00 and US$74,100, together with interest at 4% per annum thereon, compounded three-monthly, from 27 June 2019 and 9 August 2019 respectively to the date of payment;

-MSC: US$92,750.00, US$12,240.00 and US$38,352.00, together with interest at 4% per

annum thereon, compounded three-monthly, from 27 June 2019, 24 July 2019 and 26 August 2019 respectively to the date of payment;

(g) legal fees in the sum of US$3,193.65, together with interest at 4% per annum thereon, compounded three-monthly, from the date of the Appeal Award to the date of reimbursement;

(h) the costs fees and expenses of the Award 17-848 of £34,424.00, together with interest at 4% per annum thereon, compounded three-monthly, from 3 August 2020 to the date of payment;

(i) the costs fees and expenses of the Award 17-848A of £1,770.00, together with interest at 4% per annum thereon, compounded three-monthly, from 23 September 2020 to the date of payment;

(j) the costs fees and expenses of this Appeal, together with interest at 4% per annum thereon, compounded three-monthly, from the date of the Appeal Award to the date of reimbursement.

11.3 Buyers' counterclaim FAILS.

11.4 Each party shall bear its own legal and/or trade representation costs.

11.5 We hereby reserve jurisdiction unto ourselves to make any further award or awards on any issues arising in respect of any administrative or other formalities in relation to the preparation and signing of this award."

5. Counsel submits that the judgments passed by both the Arbitral Tribunal as well as the Appellate Tribunal have not been assailed by the respondent before any competent forum of law and, therefore, the same has attained finality. Counsel submits that under the provisions of Chapter I of Part II of the Act of 1996,

the instant application has been submitted in the form of execution proceedings for enforcement of the awards passed by the Arbitral Tribunal and the Appellate Tribunal, in terms of Section 48 of the Act of 1996. In support of her contentions, she has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Government of India Vs. Vedanta Ltd. and Ors.** reported in **2020 (10) SCC 1**. Counsel submits that in view of the submissions made herein above, let a decree of this Court be passed for the implementation and execution of the foreign award passed by the Arbitral Tribunal and the Appellate Tribunal in London, England.

Submissions by the Respondent:-

6. Per contra, counsel appearing on behalf of the respondent opposed the submissions made by counsel for the applicant and submitted that the award passed by the Arbitral Tribunal is contrary to the Indian Public Policy. Counsel submits that several objections relating to payment and default under Clause 12-H and Clause 21 of the Contract Agreement were raised before the Arbitral Tribunal as well as before the Appellate Tribunal. However, these objections were not entertained and overturned by both the Tribunals. Counsel submits that the petitioner was supposed to make the payment of lending charges in India for the port used by the shipping company but inspite of the above, the petitioner directly paid the aforesaid charges to the shipping company outside of India which has seriously caused losses in terms of GST charges, etc. to the respondent and the Government of India. The

Arbitral Tribunal and the Appellate Tribunal failed to adequately appreciate these facts. Therefore, under these circumstances, the awards passed by both the authorities are against the Indian Public Policy, rendering them untenable and unenforceable in the eyes of law. Therefore, the present arbitration application is liable to be dismissed.

Discussions, Analysis and Findings:-

7. Heard and considered the submissions made at the bar and perused the material available on record.

8. This Court observes that following the execution of the aforementioned contract in question between the petitioner and the respondent, some dispute arose between them, whereupon the matter was referred for arbitration in accordance with the arbitration clause contained in the contract in question. The Arbitral Tribunal (GAFTA) thereafter passed its final award on 03.08.2020 in favour of the applicant, directing the respondent to pay the awarded amount to the applicant. Subsequently, the Appellate Tribunal, vide its amended award dated 28.09.2021, upheld the original award and further enhanced the amount awarded under the award dated 03.08.2020.

9. This Court further observes that the present application has been preferred by the petitioner for the enforcement of the Foreign Award in question, while the respondent’s objection under Section 48 of the Act of 1996, is that the Foreign Award cannot be enforced as it is alleged to be contrary to public policy.

10. Contention of the respondent is that there was a patent illegality in the award, which cannot be countenanced as a valid ground for rejecting the prayer for enforcement of the award under Section 48 of the Act. The grounds for refusing enforcement are limited to the situations where the award is contrary to (i) fundamental policy of Indian law, (ii) the interest of India and (iii) justice or morality. In this context, reference may be made to judgment of the Hon'ble Supreme Court in **Shri Lal Mahal Ltd. Vs. Progetto Grano Spa**, reported in **(2014) 2 SCC 433**. The issue before the Hon'ble Supreme Court in that case was whether in the light of its earlier decisions in **ONGC Ltd. vs. Saw Pipes Ltd.** reported in **(2003) 5 SCC 705** and **Phulchand Exports Ltd. vs. O.O.O. Patriot** reported in **(2011) 10 SCC 300**, the Court can refuse enforcement of a foreign award on the ground that it is contrary to the contract between the parties and/or is patently illegal. It was argued on behalf of the respondent that the expression "public policy of India" under Section 48(2)(b) is an expression of wider import than the expression "public policy" in Section 7(1)(b)(ii) of the Foreign Awards (Recognition and Enforcement) Act, 1961. It was further argued that the expansive construction given by the Apex Court to the term "public policy of India" in the case of **Saw Pipes** (Supra) must also apply to the use of the same term "public policy of India" in Section 48(2)(b). The Hon'ble Supreme Court, upon revisiting its two previous judgments in **Saw Pipes Ltd.** (supra) and **Phulchand Exports**

Ltd., (supra) and **Renusagar Power Co. Ltd. vs. General Electric Co.** reported in **1994 Supp (1) SCC 644**, held as under:

> "25. In Saw Pipes, the ambit and scope of the court's jurisdiction under Section 34 of the 1996 Act was under consideration. The issue was whether the court would have jurisdiction under Section 34 to set aside an award passed by the Arbitral Tribunal, GAFTA which was patently illegal or in contravention of the provisions of the 1996 Act or any other substantive law governing the parties or was against the terms of the contract. This Court considered the meaning that could be assigned to the phrase "public policy of India" occurring in Section 34(2)(b)(ii). Alive to the subtle distinction in the concept of 'enforcement of the award' and 'jurisdiction of the court in setting aside the award' and the decision of this Court in Renusagar, this Court held in Saw Pipes that the term "public policy of India" in Section 34 was required to be interpreted in the context of the jurisdiction of the court where the validity of the award is challenged before it becomes final and executable in contradistinction to the enforcement of an award after it becomes final. Having that distinction in view, with regard to Section 34 this Court said that the expression "public policy of India" was required to be given a wider meaning. Accordingly, for the purposes of Section 34, this Court added a new category – patent illegality – for setting aside the award. While adding this category for setting aside the award on the ground of patent illegality, the Court clarified that illegality must go to the root of the matter and if the illegality is of trivial

nature it cannot be held that award is against public policy. Award could also be set aside if it was so unfair and unreasonable that it shocks the conscience of the court.

26. From the discussion made by this Court in Saw Pipes in paragraph 18, para 22 and para 31 of the Report, it can be safely observed that while accepting the narrow meaning given to the expression "public policy" in Renusagar in the matters of enforcement of foreign award, there was departure from the said meaning for the purposes of the jurisdiction of the Court in setting aside the award under Section 34.

27. In our view, what has been stated by this Court in Renusagar with reference to Section 7(1)(b)(ii) of the Foreign Awards Act must equally apply to the ambit and scope of Section 48(2)(b) of the 1996 Act. In Renusagar, it has been expressly exposited that the expression "public policy" in Section 7(1)(b)(ii) of the Foreign Awards Act refers to the public policy of India. The expression "public policy" used in Section 7(1)(b)(ii) was held to mean "public policy of India". A distinction in the rule of public policy between a matter governed by the domestic law and a matter involving conflict of laws has been noticed in Renusagar. For all this there is no reason why Renusagar should not apply as regards the scope of inquiry under Section 48(2)(b). Following Renusagar, we think that for the purposes of Section 48(2)(b), the expression "public policy of India" must be given narrow meaning and the enforcement of foreign award would be refused on the ground that it is contrary to public policy of India if it is covered by

one of the three categories enumerated in Renusagar. Although the same expression "public policy of India" is used both in Section 34(2)(b)(ii) and Section 48(2)(b) and the concept of "public policy in India" is same in nature in both the Sections but, in our view, its application differs in degree insofar as these two Sections are concerned. The application of "public policy of India" doctrine for the purposes of Section 48(2)(b) is more limited than the application of the same expression in respect of the domestic arbitral award.

28. We are not persuaded to accept the submission of Mr. Rohinton F. Nariman that the expression "public policy of India" in Section 48(2)(b) is an expression of wider import than the "public policy" in Section 7(1)(b)(ii) of the Foreign Awards Act. We have no hesitation in holding that Renusagar must apply for the purposes of Section 48(2)(b) of the 1996 Act. Insofar as the proceeding for setting aside an award under Section 34 is concerned, the principles laid down in Saw Pipes would govern the scope of such proceedings.

29. We accordingly hold that enforcement of foreign award would be refused under Section 48(2)(b) only if such enforcement would be contrary to (1) fundamental policy of Indian law; or (2) the interests of India; or (3) justice or morality. The wider meaning given to the expression "public policy of India" occurring in Section 34(2)(b)(ii) in Saw Pipes is not applicable where objection is raised to the enforcement of the foreign award under Section 48(2)(b)."

11. Section 58 of the English Arbitration Act, 1996 (for short, 'the English Arbitration Act')provides that an award made by the Arbitral Tribunal, pursuant to an arbitration agreement, is final and binding on both the parties and on any persons claiming through or under them, however, subject to the right to challenge such an award by any available arbitral process of appeal or review or in accordance with the provisions of the said English Arbitration Act. Section 67 of the English Arbitration Act provides that a party to arbitral proceedings may apply to the Court for challenging any award of the arbitral tribunal as to its substantive jurisdiction; or for an order declaring an award made by the tribunal on the merits to be of no effect because the tribunal did not have substantive jurisdiction. Section 68 of the English Arbitration Act provides that a party to the arbitral proceedings may apply to the court for challenging an award in the proceedings on the ground of serious irregularity affecting the tribunal, the proceedings or the award. Section 68 (2) of the said Act enumerats the type of serious irregularities referred to in sub-section (1) thereof. Section 69 of the English Arbitration Act provides that a party to arbitral proceedings may file an appeal before the Court on a question of law arising out of an award made in the proceedings in which the Court has power to confirm the award, vary the award, remit the award to the tribunal, in whole or in part, for reconsideration in the light of the court's determination, or set aside the award in whole or in part. According to Section 70 of the English Arbitration

Act, an application or appeal must be brought within 28 days of the date of passing of the award or on the grounds set out therein. Section 72 of the English Arbitration Act, which in the present case may be of some relevance, provides that a person alleged to be a party to arbitral proceedings but who takes no part in the proceedings, may question— (a) whether there is a valid arbitration agreement, (b) whether the tribunal is properly constituted, or (c) what matters have been submitted to arbitration in accordance with the arbitration agreement, by proceedings in the court for a declaration or injunction or other appropriate relief. He also has the same right as a party to the arbitral proceedings to challenge an award — (a) by an application under section 67 on the ground of lack of substantive jurisdiction in relation to him, or (b) by an application under section 68 on the ground of serious irregularity (within the meaning of that section) affecting him. Section 73 of the English Arbitration Act provides for right to object and allows a party to raise objection, when the Tribunal lacks jurisdiction or on the grounds that the proceedings have been improperly conducted or that there has been a failure to comply with the arbitration agreement or with any provision of the English Arbitration Act or that there has been any other irregularity etc. Subsection (2) of Section 73 provides that where the arbitral tribunal rules that it has substantive jurisdiction, if the party concerned does not file appeal, review or challenge the award within time allowed, he may not object to it later.

12. The Supreme Court in **Eitzen Bulk A/S Vs. Ashapura Minechem Ltd.** reported in **(2016) 11 SCC 508**, was dealing with a dispute between the parties arising out of a contract for charterers for shipment of bauxite from India to China. Clause 28 of the Contract provided that any dispute arising out of the C.O.A, is to be settled by arbitration in London and that English Law shall apply. The Arbitration was held in London according to English Law. The respondent Ashapura Minechem Limited was held liable and was directed to pay a sum of USD 36,306,104/- together with compound interest at the rate of 3.75% per annum. It was further directed to pay USD 74,135 together with compound interest at the rate of 3.75% per annum and another sum of 90,233.66 Pounds together with compound interest at the rate of 2.5% per annum. Before the arbitration had commenced, the respondent Ashapura Minechem Limited filed a suit along with an application for injunction before the Civil Judge at Jam-khambalia, Gujarat, praying for declaration of the Arbitration Clause contained therein as illegal, null and void ab-initio. The civil suit was dismissed for want of jurisdiction and appeal filed by respondent Ashapura before the Gujarat High Court was dismissed as withdrawn. The respondent Ashapura Minechem Limited thereafter resorted to Section 34 of the Arbitration and Conciliation Act, 1996 in respect to the award passed in London before the District Judge, Jamnagar, together with an injunction application. The appellant Eitzen Bulk A/S applied for enforcement of the award in the

countries of Netherlands, USA, Belgium, UK. The Courts in various jurisdictions held the Award to be enforceable in the same manner as a judgment of the Court. The District Judge, Jamnagar dismissed the injunction application where a writ of certiorari under Articles 226 and 227 of the Constitution of India was filed by the respondent Ashapura Minechem Limited before the Gujarat High Court at Ahmedabad to quash and set aside the order passed by the District Judge and for a direction not to enforce the execution of the award on the plea that their objections under Section 34 of the Arbitration and Conciliation Act, 1996 were pending. The Single Bench of the High Court set aside the order of the District Judge, dismissing the injunction application and remanded the matter for decision in accordance with the law. In Letters Patent Appeal filed by respondent Eitzen Bulk A/S, the Division Bench of the High Court of Gujarat directed the District Judge to consider all contentions. The appellant Eitzen Bulk A/S thereupon filed writ petition before the High Court questioning the very jurisdiction of a Court in India to decide objections under Section 34 of Arbitration and Conciliation Act, 1996 in respect of a Foreign Award. The Single Bench of the High Court issued notice and stayed further proceedings before the Jamnagar Court. The respondent Ashapura Minechem Limited however filed Letters Patent Appeal challenging the Order of the Single Judge. The Division Bench of the High Court reversed the judgment of the Single Bench and held that the respondent Ashapura Minechem

Limited was entitled to challenge the Foreign Award under Section 34 of Part I of the Arbitration and Conciliation Act, 1996 and further held that the territorial jurisdiction is a mixed question of fact and law and is required to be decided by the Trial Court in accordance with the Plaint and Written Statement and Evidence before it. It was this judgment which was challenged by the appellant Eitzen Bulk A/S before the Supreme Court. In those facts, the Supreme Court, while interpreting Clause 28 of the contract for charterers for shipment, held in Para 26 and 27 of the report as under:-

> "26. According to the learned counsel, Clause 28, which is the Arbitration Clause in the Contract, clearly stipulates that any dispute under the Contract "is to be settled and referred to Arbitration in London". It further stipulates that English Law to apply. The parties have thus clearly intended that the Arbitration will be conducted in accordance with English Law and the seat of the Arbitration will be at London.
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> 27. The question is whether the above stipulations show the intention of the parties to expressly or impliedly exclude the provisions of Part I to the Arbitration, which was to be held outside India, i.e., in London. We think that the clause evinces such an intention by providing that the English Law will apply to the Arbitration. The clause expressly provides that Indian Law or any other law will not apply by positing that English Law will apply. The intention is that English Law will apply

> to the resolution of any dispute arising under the law. This means that English Law will apply to the conduct of the Arbitration. It must also follow that any objection to the conduct of the Arbitration or the Award will also be governed by English Law. Clearly, this implies that the challenge to the Award must be in accordance with English Law. There is thus an express exclusion of the applicability of Part I to the instant Arbitration by Clause 28. In fact, Clause 28 deals with not only the seat of Arbitration but also provides that there shall be two Arbitrators, one appointed by the charterers and one by the owners and they shall appoint an Umpire, in case there is no agreement. In this context, it may be noted that the Indian Arbitration and Conciliation Act, 1996 makes no provision for Umpires and the intention is clearly to refer to an Umpire contemplated by Section 21 of the English Arbitration Act, 1996. It is thus clear that the intention is that the Arbitration should be conducted under the English law, i.e. the English Arbitration Act, 1996. It may also be noted that Sections 67, 68 and 69 of the English Arbitration Act provide for challenge to an Award on grounds stated therein. The intention is thus clearly to exclude the applicability of Part I to the instant Arbitration proceedings."

13. The Bombay High Court in **POL India Projects Ltd. vs. Aurelia Reederei Eugen Friederich GmbH** reported in **2015 SCC OnLine Bom 1109** was faced with a somewhat similar situation where the enforcement of an English Award was sought and the opposite party asserted that they were not governed by

the English Law and that there existed no arbitration agreement and that the composition of the arbitration proceeding was not in accordance with the agreement, rejected the arguments and held in para 97 as under:-

> "97. A perusal of the aforesaid provisions of English Arbitration Act makes it clear that the petitioners who had raised an objection about existence of arbitration agreement, composition of arbitral tribunal etc. had a right and remedy of challenging such declaratory arbitration award by filing an appropriate proceedings within the time prescribed under English Arbitration Act on the ground set out therein. Even if according to the petitioners, they were not governed by the English law and that there existed no arbitration agreement or that the composition of the arbitral tribunal was not in accordance with the agreement, once the declaratory arbitration award came to be passed by the arbitral tribunal, the same ought to have been challenged by the petitioners by exercising its remedy available under the provisions of English Arbitration Act and the petitioners not having exercised such remedy under the provisions of English Arbitration Act has lost its right to object the correctness of such declaratory arbitration award in this proceeding filed under Section 34 or while raising objection to the enforcement of the foreign award under Section 48 in the arbitration petition filed by the respondents."

14. The Arbitrator and the Appellate Tribunal in the present case have passed a reasoned award after considering the claim submissions of the petitioner. This Court in the scope of Section 48

of the Act of 1996cannot look into the merits of the case. The respondent did not participate in the arbitral proceedings, though it had ample opportunity to do so and despite being repeatedly asked by the Arbitrator to file the defence submissions, respondent failed to do so for the reasons best known to it. Invocation of force majeure reasons for the first time in the present proceedings and the reasons of delay now given by the respondent in not being able to load the Cargo pertains to the merits of the dispute. The enforcement of the foreign award cannot be withheld only because the award is in contravention of any law in India. Explanation (1) to Section 48 of the amended Arbitration Act, 1996 in that respect has amply clarified that whether there is contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute. Indisputably, the award in the present case has attained finality. The respondent having not filed appeal within the stipulated law under the English Arbitration Act, 1996, would be estopped from raising arguments on merits to stall the present proceedings. Since the respondent in the present case has failed to avail any of the remedies enumerated above within the prescribed time before the English Courts or any other Court as per the relevant law, it is therefore now precluded from questioning the correctness of the award on merits.

15. This Court also observes that Section 48 of the Act of 1996 does not give power to review the Foreign Award on merit at the

enforcement stage; the ground of Public Policy under Section 48 of the Act of 1996 cannot be sustained as the same has already been settled by the Hon'ble Apex Court in the case of **Shri Lal Mahal Ltd.** (Supra); relevant portion whereof is reproduced as hereunder:

> "30. It is true that in Phulchand Exports [Phulchand Exports Ltd. v. O.O.O. Patriot, (2011) 10 SCC 300 : (2012) 1 SCC (Civ) 131] a two-Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) accepted the submission made on behalf of the appellant therein that the meaning given to the expression "public policy of India" in Section 34 in Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] must be applied to the same expression occurring in Section 48(2)(b) of the 1996 Act. However, in what we have discussed above it must be held that the statement in para 16 of the Report that the expression "public policy of India used in Section 48(2)(b) has to be given a wider meaning and the award could be set aside, if it is patently illegal" does not lay down correct law and is overruled.
>
> 45. **Moreover, Section 48 of the 1996 Act does not give an opportunity to have a "second look" at the foreign award in the award enforcement stage. The scope of inquiry under Section 48 does not permit review of the foreign award on merits**. Procedural defects (like taking into consideration inadmissible evidence or ignoring/rejecting the evidence which may be of binding nature) **in**

the course of foreign arbitration do not lead necessarily to excuse an award from enforcement on the ground of public policy.

…..

47. **While considering the enforceability of foreign awards, the court does not exercise appellate jurisdiction over the foreign award nor does it enquire as to whether, while rendering foreign award, some error has been committed.** Under Section 48(2)(b) the enforcement of a foreign award can be refused only if such enforcement is found to be contrary to: (1) fundamental policy of Indian law; or (2) the interests of India; or (3) justice or morality. The objections raised by the appellant do not fall in any of these categories and, therefore, the foreign awards cannot be held to be contrary to

public policy of India as contemplated under Section 48(2)(b)."

16. At this juncture, this Court also considers it appropriate to reproduce the relevant portion of the judgment rendered by the Hon'ble Apex Court in the case of **Union of India v. Vedanta & Ors Ltd.,** reported in **(2020) 10 SCC 1**, as hereunder:-

> "114. The judgment in Parsons [Parsons & Whittemore Overseas Co. Inc. v. Societe Generale De L'industrie du Papier, 508 F 2d 969 (2nd Cir 1974)] has been followed in various other jurisdictions. [See, e.g., BCB Holdings Ltd. & Belize Bank Ltd. v. Attorney General of Belize, 2013 CCJ 5 (Appellate Jurisdiction, 26-7-2013); Traxys Europe S.A. v. Balaji Coke Industry (P) Ltd., 2012 FCA 276 (Federal Court of Australia, 23-3-2012); Uganda Telecom Ltd. v. Hi-Tech Telecom Pty. Ltd., 2011 FCA 131 (Federal Court of Australia, 22-2-2011);

Petrotesting Colombia S.A. & Southeast Investment Corpn. v. Ross Energy S.A., Supreme Court of Justice, Colombia, 27-7-2011; Hebei Import & Export Corpn. v. Polytek Engg. Co. Ltd., (1999) 2 HKC 205 (Hong Kong Court of Final Appeal, 9-2-1999); Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644 (Supreme Court, India, 7-10-1993); Brostrom Tankers AB v. Factorias Vulcano S.A., (2005) 30 YB Com Arb 591 (High Court, Dublin, Ireland, 19-5-2004).] In Waterside Ocean Navigation Co. Inc. v. International Navigation Ltd. [Waterside OceanNavigation Co. Inc. v. International Navigation Ltd., 737 F 2d 150 (2nd Cir, 1984)] , the Court of Appeals, Second Circuit, USA held that the public policy defence must be interpreted in light of the overriding object of the New York Convention. The Court applied the judgment in Parsons [Parsons & Whittemore Overseas Co. Inc. v. Societe Generale De L'industrie du Papier, 508 F 2d 969 (2nd Cir 1974)] , and held that the public policy defence should apply only where enforcement of the award would violate the basic notions of morality and justice of the forum State. Any interference by the national court in international arbitration on this ground should be minimal, and public policy under the New York Convention should be interpreted narrowly. This position was followed in the Southern District of New York in Telenor Mobile Communications v. Storm LLC [Telenor Mobile Communications v. Storm LLC, 524 F Supp 2d 332 (SDNY 2007)]. **It was opened that to refuse enforcement on the ground of public policy, the decision would have to directly contradict the foreign law in such a manner, so as to make compliance with one a violation of the other.**

117. The International Council for Commercial Arbitration (ICCA) Guide to the Interpretation of the 1958 New York Convention: **A Handbook for Judges (2011), states that while considering the grounds for refusal of a foreign award, the Court must be guided by the following principles: (I) no review on merits; (ii) narrow interpretation of the grounds for refusal; and (iii) limited discretionary power.**

119. Given the well-settled position in law with respect to the finality of awards in international

commercial arbitrations, and the limits of judicial intervention on the grounds of public policy of the enforcement State, we will advert to the facts of the present case.

122. Secondly, the appellants have not made out as to how the award is in conflict with the basic notions of justice, or in violation of the substantive public policy of India.

123. In the seminal judgment of Parsons [Parsons & Whittemore Overseas Co. Inc. v. Societe Generale De L'industrie du Papier, 508 F 2d 969 (2nd Cir 1974)], which has been followed in various jurisdictions, including by the Indian Supreme Court in Renusagar case [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644], it was held that enforcement may be refused only if it violates the enforcement State's most basic notions of morality and justice, which has been interpreted to mean that there should be great hesitation in refusing enforcement, unless it is obtained through "corruption or fraud, or undue means".

124. The Singapore Court of Appeal in PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA [PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA, 2006 SGCA 41] while interpreting international public policy, opined that:

> "59. **Although the concept of public policy of theState is not defined in the Act or the Model Law, the general consensus of judicial and expert opinion is that public policy under the Act encompasses a narrow scope.** In our view, it should only operate in instances where the upholding of an arbitral award would "shock the conscience" (seeDowner Connect [Downer Connect Ltd. v. Pot Hole People Ltd. CIV 2003-409-002878 (Unreported, 19-5-2004)] at p. 136), or is "clearly injurious to the public good or … wholly offensive to the ordinary reasonable and fully informed member of the public" (see Deutsche Schachbau v. Shell International Petroleum Co. Ltd. [Deutsche Schachbau v. Shell International Petroleum Co. Ltd., (1987) 2 Lloyds' Rep 246] at p. 254, per

Sir John Donaldson MR), or where it violates the forum's most basic notion of morality and justice: see Parsons & Whittemore Overseas Co. Inc. v. Societe Generale De L'industrie du Papier [Parsons & Whittemore Overseas Co. Inc. v. Societe Generale De L'industrie du Papier, 508 F 2d 969 (2nd Cir 1974)] (RAKTA) at p. 974. This would be consistent with the concept of public policy that can be ascertained from the preparatory materials to the Model Law. As was highlighted in the Commission Report (A/40/17), at para 297 [referred to in A Guide to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary by Howard M. Holtzmann and Joseph E. Neuhaus (Kluwer, 1989) at p. 914]:

> In discussing the term 'public policy', it was understood that it was not equivalent to the political stance or international policies of a State but comprised the fundamental notions and principles of justice …It was understood that the term 'public policy', which was used in the 1958 New York Convention and many other treaties, covered fundamental principles of law and justice in substantive as well as procedural respects. Thus, instances such as corruption, bribery or fraud and similar serious cases would constitute a ground for setting aside."
>
> This judgment has been recently affirmed by the Singapore High Court in Dongwoo Mann + Hummel Co. Ltd. v. Mann + Hummel GmbH [Dongwoo Mann + Hummel Co. Ltd. v. Mann + Hummel GmbH, 2008 SGHC 67].

127. The appellants are aggrieved by the interpretation taken by the Tribunal with respect to Article 15.5(c) of the PSC and its other sub-clauses. The interpretation of the terms of the PSC lies within the domain of the Tribunal. **It is not open for the appellants to impeach the award on merits before the enforcement court. The enforcement court cannot reassess or re-**

appreciate the evidence led in the arbitration. Section 48 does not provide a de facto appeal on the merits of the award. The enforcement court exercising jurisdiction under Section 48, cannot refuse enforcement by taking a different interpretation of the terms of the contract.

17. Recently, a similar matter came up for consideration before the Hon'ble Apex Court in the case of **Avitel Post Studioz Ltd. And Ors. Vs. HSBC PI Holdings (Mauritius) Limited** (Civil Appeal No. 3835-3836/2024) reported in **2024 INSC 242** wherein the legal issue came up in para 14, which reads as follows:-

> "14. Against this background, the consideration to be made in these matters is whether the High Court was correct in its decision to reject the objection under Section 48(2)(b) of Indian Arbitration Act against enforcement of the foreign Award on the grounds of arbitral bias and violation of public policy. This raises a further question as to whether the ground of bias could be raised at the enforcement stage under Section 48(2)b) for being violative of the "public policy of India" and the "most basic notions of morality or justice"?"

18. And the above issue was decided in para 15 to 26 as under:-

> "15. India was one of the earliest signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (for short "New York Convention")4. The New York Convention superseded the Geneva Convention of 1927 to facilitate the enforcement of foreign Arbitral Awards5. Article V(2) of the New York Convention reads as under:
>
> > "2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

> (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
> (b) The recognition or enforcement of the award would be contrary to the public policy of that country."

16. The precursors to the New York Convention on the contrary provided for an expansive scope for invoking the public policy ground based on the violation of the "fundamental principles of the law". Although the notion that 'public policy' is 'a very unruly horse' has gained traction over the years6, one would also do well to remember the words of Lord Denning who said that, "With a good man in the saddle, the unruly horse can be kept in control." This would suggest that a proper understanding of this branch of law by the horse rider would be necessary. In that context, one of the earliest cases that dealt with the aspect of "public policy" and the general pro-enforcement bias of the New York Convention was the decision in Parsons & Whittemore Overseas Co. v. Societe Generale de L'Industrie du Papier,8 where the United States Court of Appeals, Second Circuit noted:

> "8. …The general pro-enforcement bias informing the Convention and explaining its supersession of the Geneva Convention points toward a narrow reading of the public policy defense. An expansive construction of this defense would vitiate the Convention's basic effort to remove preexisting obstacles to enforcement… Additionally, considerations of reciprocity — considerations given express recognition in the Convention itself— counsel courts to invoke the public policy defense with caution lest foreign courts frequently accept it as a defense to enforcement of arbitral awards rendered in the United States.
>
> 9. We conclude, therefore, that the Convention's public policy defense should be construed narrowly.
> Enforcement of foreign arbitral awards may be denied on this basis only where

enforcement would violate the forum state's most basic notions of morality and justice."

17. The above decision has been followed in various jurisdictions including the Supreme Court of India in Renusagar Power Co. Ltd. v. General Electric Co9. The articulation of the "forum State's most basic notions of morality and justice" has been legislatively adopted in the Indian Arbitration Act,1996. The legal framework concerning enforcement of certain foreign awards in International Commercial Arbitration is contained in Part II of the said Act. In this jurisdiction, we must underscore that minimal judicial intervention to a foreign award is the norm and interference can only be based on the exhaustive grounds mentioned under Section 48.10 A review on the merits of the dispute is impermissible 11. This Court in Vijay Karia v. Prysmian Cavi E. Sistemi SRL,12 had noted that Section 50 of the Indian Arbitration Act,1996 does not provide an appeal against a foreign award enforced by a judgment of a learned Single Judge of a High Court and therefore the Supreme Court should only entertain the appeal with a view to settle the law. It was noted that the party resisting enforcement can only have "one bite at the cherry" and when it loses in the High Court, the limited scope for interference could be merited only in exceptional cases of "blatant disregard of Section 48". This principle of pro-enforcement bias was further entrenched by the Supreme Court in Union of India v Vedanta13.

18. At this point, we may also note that Courts in some countries have recognized that when applying their own public policy to Convention Awards, they should give it an international and not a domestic dimension14. The Arbitration legislation in France15, for instance, makes an explicit distinction between national and international public policy, limiting refusal of enforcement only to the latter ground. Scholars have noted that the New York Convention's structure and objectives argue strongly against the notion that reliance should be placed on local public policies without international limitations.16 The objective behind such a distinction is to make it less difficult to allow enforcement on public

policy grounds. Most Courts have interpreted the public policy exception extremely narrowly17.

19. The Indian Supreme Court in Renusagar (supra) had noted that there is no workable definition of international public policy, and "public policy" should thus be construed to be the "public policy of India" by giving it a narrower meaning. Later on, in Shri Lal Mahal Ltd. v Progetto Grano SpA18, the Supreme Court held that the wider meaning given to 'public policy of India' in the domestic sphere under Section 34(2)(b)(ii) would not apply where objection is raised to the enforcement of the Award under Section 48(2)(b) of the Indian Arbitration Act. This would indicate that the grounds for resisting enforcement of a foreign award are much narrower than the grounds available for challenging a domestic award under Section 34 of the Indian Arbitration Act.

20. At this point, we may also benefit by noting that the International Law Association issued recommendations19 at a conference held in New Delhi in 2002 on international commercial arbitration and advocated using only narrow and international standards, while dealing with "public policy". The recommendations have been regarded as reflective of best international practices. The ILA also defined international public policy as follows:

> "(i) fundamental principles, pertaining to justice or morality, that the State wishes to protect even when it is not directly concerned;
> (ii) rules designed to serve the essential political, social or economic interests of the State, these being known as 'lois de police' or 'public policy rules'; and (iii.) the duty of the State to respect its obligations towards other States or international organizations."

21. Being a signatory to the New York Convention, we must therefore adopt an internationalist approach20. What follows from the above is that there is a clear distinction between the standards of public policy applicable for domestic arbitration and international

commercial arbitration. Proceeding with the aforedeclared proposition to have a narrow meaning to the doctrine of public policy and applying an international outlook, let us now hark back to whether a foreign Award can be refused enforcement on the ground of bias.

22. Even though the New York Convention does not explicitly mention "bias", the possible grounds for refusing recognition of a foreign award are contained in Article V(1)(d)(irregular composition of arbitral tribunal), Article V(1)(b) (due process) and the public policy defence under Article V(2)(b). Courts across the world have applied a higher threshold of bias to prevent enforcement of an Award than the standards set for ordinary judicial review21. Therefore, Arbitral awards are seldom refused recognition and enforcement, considering the existence of a heightened standard of proof for non – recognition and enforcement of an award, based on alleged partiality22. It invokes a higher threshold than is applicable in cases of removal of the arbitrator. This is for the reasons that, greater risk, efforts, time, and expenses are involved in the non-recognition of an award as against the removal of an arbitrator during the arbitral proceedings.

23. What is also essential to note is that Courts across the world do not adopt a uniform test while dealing with allegations of bias24. The standards for determining bias vary across different legal systems and jurisdictions25. English Courts26, for instance, adopt the "informed or fair minded" observer test to conclude whether there is a "real possibility of bias". Australia 27 adopts the "real danger of bias" test and Singapore28 prefers the standard of "reasonable suspicion" rejecting the "real danger of bias" test. Therefore, the outcome of a challenge on the ground of bias would vary, depending on domestic standards.

24. Cautioning against applying domestic standards at the enforcement stage, Gary Born29 emphasizing on the adherence to international standards, makes the following observation:

> "In light of developing sources of international standards with regard to

> arbitrators' conflict of interest, it should be possible to identify and apply international minimum standards of impartiality and independence...
>
> More generally, in considering whether to deny recognition of an award under Article V, national courts should not apply domestic standards of independence and impartiality without regard to their international context. Although national standards of independence and impartiality may be relevant to identifying international standards, just as domestic standards of procedural fairness can be relevant under Article V(1)(b), these standards should be considered with caution in international contexts…..Only in rare cases should domestic standards of independence or impartiality be relied upon to produce a different result from that required by international standards".

25. Embracing international standards in arbitration would foster trust, certainty, and effectiveness in the resolution of disputes on a global scale. The above discussion would persuade us to say that in India, we must adopt an internationally recognized narrow standard of public policy, when dealing with the aspect of bias. It is only when the most basic notions of morality or justice are violated that this ground can be attracted. This Court in Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)30 had noted that the ground of most basic notions of morality or justice can only be invoked when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice.

26. In view of the above discussion, there can be no difficulty in holding that the most basic notions of morality and justice under the concept of 'public policy' would include bias. However, Courts must endeavor to adopt international best practices instead of 30 (2019) 15 SCC 131 domestic standards, while determining bias. It is only in exceptional circumstances that enforcement should be refused on the ground of bias.

19. Finally, it has been held in para 42 to 44 as under:-

> "42. This long list of events points to a saga of the award- holder's protracted and arduous struggle to gather the fruits of the Award. The Award Debtors raised multiple challenges and also defied the Court's order. They had to serve jail time for such contemptuous actions. In this backdrop, the travails of Award holders suggest a Pyrrhic victory. It is not unlike the situation articulated by the playwright & author Oscar Wilde who commented - "In this world, there are only two tragedies. One is not getting what one wants, and the other is getting it."35 As can be noticed, in this case, despite the award being in their favour, the award- holders found themselves embroiled in multiple litigations in different forums by the concerted and unmerited action of the appellants. It will bear mention here, that in every forum the award debtors have lost and Courts' verdicts are in the favour of the award holders. Despite this, the benefit of the foreign award is still to reach the respondents. This sort of challenge where arbitral bias is raised at the enforcement stage, must be discouraged by our Courts to send out a clear message to the stakeholders that Indian Courts would ensure enforcement of a foreign Award unless it is demonstrable that there is a clear violation of morality and justice. The determination of bias should only be done by applying international standards. Refusal of enforcement of foreign award should only be in a rare case where, non- adherence to International Standards is clearly demonstrable.
>
> 43. The High Court in this matter has rightly held that the award- debtors have failed to substantiate their allegation of bias, conflict of interest or the failure by the Presiding Arbitrator to render disclosure to the parties, as an objection to the enforcement of the award. The award debtors have failed to meet the high threshold for refusal of enforcement of a foreign award under Section 48 of the Indian Arbitration Act. Accordingly, the decision given by the High Court for enforcement/execution of the foreign

> award stands approved. The appeals are found devoid of merit.
>
> 44. Even as the appeals filed by the award debtors are dismissed, the respondents, notwithstanding their victory in all the legal battles until now, must not be allowed to feel that theirs is a case of winning the battle but losing the war. In the circumstances, we emphasize the need for early enforcement of the foreign award by the competent forum, without showing any further indulgence to the award debtors. It is ordered accordingly. The appeals stand dismissed on these terms."

20. In the instant case also, the respondent-award debtor has lost before the Arbitral Tribunal and Appellate Tribunal on the basis of the similar issue raised in this arbitration application. The awards passed by both the Tribunal and the Appellate Tribunal have not been challenged by the respondent before any other forum of law at London (United Kingdom) and both the awards have attained finality. The verdicts, embodied in the two awards, have been rendered in favour of the petitioner. Despite this, the benefit of the Foreign Award is still beyond the reach of the petitioner and it has been deprived to enjoy the fruits of the award. The objections raised by the respondent, at the stage of execution, cannot be allowed by this Court. This Court would not like to send a message to stake holders that the foreign award will not be executed unless it is demonstrated by the respondent that there is any violation of morality and justice. The allegation of bias can be adjudicated only by applying the international standards. Enforcement of a foreign award can only be refused in the rarest cases where there is clear non-adherence to International Standards. After contesting two prolonged battles/proceedings

before the Arbitral Tribunal and the Appellate Tribunal at London (United Kingdom), the petitioner cannot be allowed to feel that despite winning the battle it has lost the war.

21. The 246th law commission report has emphasized that Section 34 of the Arbitration & Conciliation Act, 1996 sets out an exhaustive list of grounds to challenge an award, and these mainly relate to procedural issues without going into substantive issues. Previously, the Law Commission had stated that Section 34 must expressly state that an award cannot be set aside merely because the tribunal has made a mistake of law, or because the court of law takes a different view of the evidence. Now, the law commission has suggested that section 34 also states "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."

22. In 2015, the Arbitration & Conciliation (Amendment) Act, 2015 introduced major changes to Section 34 of the Act, as suggested by the 246th Law Commission Report. These changes were focused on restricting courts from interfering with the arbitral awards on the ground of "public policy". The amendment added, explanation 2 to Section 34(2) as well as Section 2A. Explanation 2 of Section 34(2) states "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."

23. Since the 2015 amendment to the Arbitration & Conciliation Act 1996, the courts have avoided giving a wider meaning to the term "public policy" or interfering with the merits of the case.

24. This Court further observes that there is a very narrow scope to interfere with the Foreign Award on merits upon the application preferred for enforcement thereof. It is clear that there was an agreement between the parties and after the dispute, the matter was referred for arbitration, whereupon, the learned Arbitrator, after considering the material on record, passed the Award in question.

25. This Court also observes that the present application is for enforcement of the Foreign Award and at present the objections raised by the respondent do not hold any ground at the enforcement stage, as per the aforementioned precedent law laid down by the Hon'ble Apex Court.

26. Since this Court in the scope of Section 48 is not entitled to examine merits of the foreign award, therefore, arguments on merits advanced by the respondent need not be entered into in greater details. In proceedings seeking enforcement of the foreign award and making the foreign award a decree of this Court, this Court cannot sit in appeal on the findings recorded by the Arbitral Tribunal.

Conclusions and Directions:-

27. Thus, the objections raised by the respondent do not hold any substance, and the same are hereby rejected.

28. In view of the above factual situation, the Foreign Award dated 28.09.2021 passed by the Grain and Feed Trade Association (GAFTA) in Appeal Award No. 4618-A is accordingly treated as a decree of this Court, in view of Section 49 of the Act of 1996, which provides that, "Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court".

29. In view of the analysis of the afore-discussed facts and applicable laws, the subject foreign award deserves to be declared as decree of this Court and is accordingly so declared. Consequently, upon being declared decree of this Court, the said award is binding on the parties in terms of Section 46 of the Act of 1996 and is now liable to be enforced under Section 48 of the Act. Accordingly, the petitioner, upon taking further and necessary steps, is entitled to get the award executed as a decree of this Court, in accordance with the relevant provisions and the applicable laws.

30. The application is disposed of, in the terms indicated above with no orders as to costs.

31. Thus, it is ordered that the Foreign Award in question shall be enforceable and executable as a decree of this Court. For the purpose of enforcement and execution, the respondent is directed to disclose its assets by way of filing an affidavit, within a period of six weeks from today, before the Executing Court. The applicant shall be at liberty to seek further directions for the enforcement

and execution of the Foreign Award, in question, strictly in accordance with law.

(ANOOP KUMAR DHAND),J

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