2026:DHC:5268

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

Judgment reserved on: 20.03.2026
Judgment pronounced on: 01.07.2026

\+ **O.M.P.(EFA)(COMM.) 5/2017, EX.APPL.(OS) 279/2020, EX.APPL.(OS) 3804/2022, EX.APPL.(OS) 82/2023, EX.APPL.(OS) 195/2024, EX.APPL.(OS) 197/2024, EX.APPL.(OS) 1105/2024, EX.APPL.(OS) 1106/2024, EX.APPL.(OS) 1593/2024, EX.APPL.(OS) 702/2025, I.A. 11351/2017, I.A. 14824/2018, I.A. 7674/2019**

VEDANTA LIMITED, & ANR. ……Petitioners

Through: Mr. Akhil Sibal, Sr. Adv., Ms. Shruti Sabharwal, Ms. Surabhi Lai, Mr. Rachit Bansal, Advs.

versus

GOVERNMENT OF INDIA, THROUGH JT. SECRETARY, MINISTRY OF PETROLEUM AND NATURAL GAS

……Respondent

Through: Mr. Vikramjeet Banarjee, ASG, Mr. Abhishek Singh, Ms. Anuja Tiwari, Mr. Amitesh Chandra Mishra, Ms. Vishakha, Mr. Mrityunjai Singh, Ms. Aparna Tiwari, Mr. Shikhar Thukral, Mr. Harshit S Gahlot, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. This is an enforcement petition filed under Sections 47 and 49 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking enforcement of Partial Award dated 12.10.2004 ("***Partial Award***") in the arbitral proceedings titled as "*Cairn Energy India Pty Limited and Ravva Oil (Singapore) Pte Limited vs. The Government of India*" and Final Award dated 26.10.2016 ("***Final Award***") in the arbitral proceedings titled as "*Cairn India Limited (Legal Successor to Cairn Energy India Pty Limited) and Ravva Oil (Singapore) Pte Limited vs. The Government of India*" passed by the Arbitral Tribunal ("***AT***").

2. The petitioners were claimants in the arbitral proceedings, and the respondent was the respondent therein.

3. The respondent has preferred an application i.e., I.A. No. 11351/2017 *via* which it has raised its objections under Section 48 of the 1996 Act.

FACTUAL MATRIX AS PER THE PETITIONERS

4. The petitioner No.1 i.e., Vedanta Limited, is an Indian company registered under the Companies Act, 1956 and the petitioner No.2 i.e., Ravva Oil (Singapore) Pte. Limited, is a Singapore based corporation.

5. The respondent is the Government of India through, Ministry of Petroleum and Natural Gas, Shastri Bhawan, Dr. Rajendra Prasad Marg, New Delhi - 110001.

6. In 1994, the respondent entered into a Production Sharing Contract dated 28.10.1994 ("***PSC***") with Videocon Petroleum Ltd. ("***Videocon***"), Oil & Natural Gas Corporation Ltd. ("***ONGC***"), petitioner No. 2 and Command Petroleum (India) Pty. Ltd, who later came to be known as Cairn Energy India Pty. Ltd. (said name change

was acknowledged *vide* an Addendum dated 31.07.1998). In 2012, *vide* Amendment No. 3, Cairn Energy India Pty. Ltd. assigned its interest in the PSC to its affiliate i.e., Cairn India Ltd. Later, in 2017, Cairn India Ltd. and Vendanta Ltd. amalgamated and every interest of Cairn India Ltd. stood vested with Vendanta Ltd. i.e., petitioner No.1, including Cairn India Ltd.'s interest in PSC.

7. The objective behind executing the PSC was to invite private equities to invest in development of Ravva Oil Field in Krishna Godavari Basin. As per the terms of the PSC, the petitioners and Videocon are collectively referred to as "the Companies" (Article 1.19 of the PSC) and with ONGC also combined they are referred to as "the Contractor" (Article 1.25 of the PSC).

8. The PSC contains the arbitration clause being Clause No. 34.3, which reads as under: -

> *"34.3 Unresolved Disputes*
> *Subject to the provisions of this Contract, the Parties hereby agree that any matter, unresolved dispute, difference or claim which cannot be agreed or settled amicably within twenty one (21) days may be submitted to a sole expert (where Article 34.2 applies) or otherwise to an arbitral tribunal for final decision as hereinafter provided."*

9. Since disputes arose between the parties pertaining to interpretation of the terms of the PSC, arbitration was invoked *vide* Notice of Arbitration dated 16.08.2004 ("***NoA***"). The venue of the arbitration proceedings was Kuala Lumpur, Malaysia. The following issues were framed by the AT, wherein issue no. (a) is referred to as the "ONGC Carry Issue": -

"a. Are the companies entitled to include in the accounts, for the purposes of the PTRR calculation (in accordance with Article 16 and Appendix D of the PSC) sums paid by the Companies in accordance with Article 3.3 of the PSC?
b. Should the PTRR calculation be performed individually for each Company or on a joint basis?
c. In the calculation of "notional income tax" in the computation of PTRR (in accordance with Paragraph 2(viii) of Appendix D), should an allowance be made for tax pursuant to Section 115-0 of the Income Tax Act 1961?
d. Should provisions made by a Company in its accounts for future Site Restoration costs be treated as Contract Costs for the purposes of the PSC and, if so, are the amounts of those provisions (i) properly included in the estimates of Cost Petroleum under Article 15 of the PSC, and (ii) to be taken into account for the purposes of the PTRR calculation under Article 16 and Appendix D of the PSC?
e. Should the cost of certain items that were purchased by the Contractor for use in Petroleum Operations but which were subsequently not immediately used in Petroleum Operations, be recoverable/allowable as Contract Costs at the time of purchase, for the purposes of Articles 15 and 16 and Appendix D of the PSC?
f. Should certain monies deposited or paid by the Contractor in advance for goods and services in connection with Petroleum Operations, be treated as Contract Costs at the time of payment for the purposes of Articles 15 and 16 of the PSC?"

10. After hearing both parties, the AT passed the Partial Award, wherein two issues were decided in favour of the petitioners and four in favour of respondent. The issue of quantification was left open, so that parties have an opportunity to come to an agreement, while AT reserved

jurisdiction to decide the same if parties fail to come to an agreement.

11. Consequently, the parties held meeting to resolve the quantification issue and for the four issue decided against the petitioners, the petitioners made payments with interest to the respondent, which were acknowledged by the respondent as "full and final" settlement of Partial Award except ONGC Carry Issue, *vide* letter dated 23.01.2006.

12. Later, the respondent challenged the Partial Award, which was set aside by the Kuala Lumpur, Malaysia High Court *vide* judgement dated 12.01.2009 and later, in appeal filed by the petitioner the Malaysian Court of Appeal *vide* judgment dated 15.09.2009 upheld the Partial Award, which was later also upheld by the Malaysian Federal Court *vide* judgment dated 11.10.2011.

13. The respondent issued a Show Cause Notice dated 10.07.2014 ("***SCN***") claiming USD 64 million and USD 35 million against the petitioner No.1 and 2, respectively, otherwise the same would be recovered from sale proceeds payable by Oil-Marketing Companies ("***OMCs***") to the petitioners. The petitioners duly replied to the SCN.

14. Subsequently, the petitioners approached the AT for award on quantification, and the Final Award was passed in favour of petitioners. The Final Award was challenged by the respondent before Courts in Malaysia and has been upheld by all Courts, including the Malaysian Federal Court *vide* judgement dated 28.02.2019.

15. Later, *vide* Addendum No. 2 dated 24.10.2019 the parties extended the duration of the PSC by a further period of 10 years till 28.10.2029.

16. Hence, the present petition seeking enforcement of the Partial Award and the Final Award (collectively referred to as "***impugned Awards***").

OBJECTIONS ON BEHALF OF THE RESPONDENT

17. Mr. Banarjee, learned ASG for the respondent, submits that the impugned Awards are in conflict with the Public Policy of India as they are in violation of the Fundamental Policy of Indian law and most basic notions of morality/ justice and also patently illegal, and shocks the conscience of the Court and therefore, should not be permitted to be enforced in India under Section 48(2) of the 1996 Act. Reliance is placed on ***Vijay Karia and Others v. Prysmian Cavi E Sistemi SRL and Others, 2020 SCC OnLine SC 177; Shri Lal Mahal Limited v. Progetto Grano SPA, (2014) 2 SCC 433*** and ***ONGC Ltd. v. Western Geco International Ltd. (2014) 9 SCC 263.***

18. Also, in response to petitioners' contention that interpretation of a contract in a foreign award lies outside the ambit of the enforcing Court, reliance has been placed on ***Technology Information Forecasting & Assessment Council (IFAC) v. Strategic Engineering (P) Ltd. , 2025 SCC OnLine Del 9486***, wherein it has been held that interpretation of contractual terms lies under ambit of an arbitrator, however, the same does not permit substitution or modification of the terms of the contract. The leaned counsel has placed heavy reliance on the dissenting opinion in the Partial Award.

Present Petition is Barred by Limitation

19. The petitioners' reliance on the judgment of ***Union of India v. Vedanta Ltd., (2020) 10 SCC 1,*** to argue that the limitation period starts from issuance of SCN is misplaced, as in said judgment the Hon'ble Supreme Court did not, as a matter of law, ruled on interpretation of the expression "from when the right to apply accrues"

in Article 137 of the Limitation Act, 1963 ("***the Limitation Act***") and only on facts observed that right to apply accrued upon issuance of SCN and also noted that any delay was liable to be condoned given the vagueness prior to the judgment. Further, in response to petitioners' contention that limitation began only on issuance of SCN as prior to that there was no dispute to the award, it is submitted that ***Vedanta (supra),*** does not lay down when the limitation period starts and only that Article 137 of the Limitation Act and not Article 136 of the Limitation Act applies to foreign awards.

20. In response to petitioners' submission that cause of action triggering limitation period is action of refusal/denial by respondent, it is submitted that there were three such occasions/strikes before 2014, namely: (i) respondent's letter dated 14.04.2005 to AT expressing its disagreement with approach to ONGC carry issue; (ii) meeting held on 06.06.2005 wherein parties agreed upon quantification for other five issues but excluded quantification of ONGC Carry Issue; and lastly (iii) letter dated 23.01.2006 of respondent iterating its position. Further, petitioners' contention that they did not seek enforcement because of the pending challenge to the Partial Award before Court in Malaysia is also meritless as pendency of a challenge does not bar execution.

21. The petitioners' reliance upon ***Rajeev Gupta and Others v. Prashant Garg and Others, 2025 SCC OnLine SC 889; Khatri Hotels (P) Ltd. v. UOI, (2011) 9 SCC 126; Shakti Bhog Food Industries Ltd. v. Central Bank of India, (2020) 17 SCC 260*** and ***Hari Shankar Singhania & Ors. v. Gaur Hari Singhania and Ors., (2006) 4 SCC***

658 are irrelevant, as these judgments concern Section 58 of the Limitation Act. Reliance is placed on ***Rinkoo Aggarwal v. Gaurav Sabharwal, 2025 SCC OnLine Del 3658*** and ***State of Orissa and Anr v. Damodar Das, (1996) 2 SCC 216***, to content that under Section 137 of the Limitation Act limitation period starts from when cause of action first arises (maximum period of 3 years). Lastly, it is submitted that not only have the petitioners failed to explain the inordinate delay and without a formal application the same cannot be condoned. Lastly, petitioners argument that ***IMAX Corpn. v. E-City Entertainment (I) (P) Ltd., 2024 SCC OnLine Bom 3555,*** has already been dealt with in the ***Vedanta (supra)*** is also incorrect as ***Vedanta (supra)*** was passed in 2020 whereas ***IMAX (supra)*** was passed in 2024.

Post Tax Rate of Return ("PTRR") Was Depressed

22. It is submitted that Partial Award by permitting inclusion of ONGC Carry Cost in PTRR calculations rewrote the terms of the PSC."ONGC Carry Costs" is the cost parties to the PSC, except ONGC, had to bear till it was equivalent to 60% of total cost incurred by ONGC post the PSC and the upper ceiling of the said cost was USD 33 million under Article 3.3 of the PSC. This way, parties paid the Past Costs to ONGC. Further, after deducting Cost-Petroleum all petroleum produced was Profit-Petroleum and as per Article 16 of PSC, Profit-Petroleum was to be shared between respondent and the Contractor, in ratio of PTRR achieved by parties to the PSC other than ONGC in the preceding year. Appendix D of the PSC explained how to calculate PTRR and the same did not include ONGC's Past Costs. Therefore, respondent's Profit Petroleum had no nexus to the

Companies' profitability rate, contrary to the Contractor's profitability rate, which excluded ONGC's profitability rate and costs incurred by ONGC under Appendix D. Hence, the Companies had motive to depress PTRR to lower respondent's share of Profit Petroleum and increase theirs. Adding ONGC's Carry Cost in PTRR calculations and adding Past Costs Payments to ONGC as Exploration, Development and Productions Costs ("***EDP Costs***") was in complete violation of the PSC's terms, which reduced respondent's Profit Petroleum by USD 99 million.

23. It is further submitted that, as per Article 16 and Appendix D of the PSC, PTRR measures companies' profitability and is calculated with respect to the Companies and not for the Contractor, which includes ONGC. ONGC incurred USD 49 million as Past Cost, out of which the Companies had to incur USD 29.39 million, as per Article 3.3 of PSC. Therefore, the Companies carried ONGC's 40% share in Contract Cost to make good of their 60% Participating Interests ("***PI***") in the Past Cost, and these payments are not Companies' EDP/Contract Costs, as is evident from wordings of Article 3.3, Article 16 and Appendix D of the PSC. The same was also observed in the dissenting opinion of the Award.

24. Combined reading of Article 16.1, Article 16.4 and paragraph 1 of Appendix D of PSC shows that Profit Petroleum had to be calculated on basis of PTRR actually achieved by the Companies as computed by the Companies' net cash flows in paragraph 2 of Appendix D, under which only 4 item were deductible namely: (i) Companies' share of Production Costs; (ii) Companies' share of Exploration Costs; (iii)

Companies' share of Development Costs; and (iv) notional income tax. Neither does Article 16 nor Appendix D mentions "Past Costs" or "Payments under Article 3.3" nor definitions of EDP Costs in Articles 1.67, 1.40 and 1.30 of the PSC, include Companies' payments towards ONGC's Past Costs under Article 3.3 of the PSC. Hence, if Past Costs reimbursement under Article 3.3 of PSC was a deductible item under paragraph 2 of Appendix D of PSC it would have been so stated.

PI Of Companies' Contract Cost Contribution Was Never 100%

25. It is submitted that from the effective date of PSC, PI of the parties has been 40% of ONGC and 60% of the Companies and no clause of the PSC stated that only after discharge of Past Costs under Article 3.3 of the PSC, the PI of parties would come into effect. Hence, the majority AT holding in paragraph No. 238 of the Partial Award that "*Article 3.3 makes it clear that, under the agreement, the Companies' share of Contract during the relevant period was 100 per cent and ONGC had no responsibility or obligation to share in those costs during that period*." is wrong and if that was the case, the PSC would have stated so. In doing so, the majority AT amended/rewrote the terms of PSC and hence, violated fundamental principle of Indian law. Reliance has been placed on ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131; Nabha Power Ltd. v. Punjab SPCL, (2018) 11 SCC 508; Delhi Development Authority v. Jitender Pal Bhardwaj, (2010) 1 SCC 146*** and ***Travancore Devaswom Board v. Thanath International (2004) 13 SCC 44.***

Impugned Awards Are Contrary To The Public Policy Of India - Violated Doctrine of Public Trusteeship ("DPT")

26. PSCs are public contract and DPT is intrinsic for their interpretation. Petitioners' contention that PSC is not "special contract" is unsound, as applicability of DPT to PSC's interpretation accentuates such contracts' special nature of being executed in public interest. Further, in a different proceeding pending before the Andhra Pradesh High Court (WP (C) No. 19705/2019), petitioners have taken the stance that PSC is a statutory and binding contractual framework with the Government of India ("***GoI***") under the Oilfields (Regulation and Development) Act, 1948. Recently, the Hon'ble Supreme Court in ***State Bank of India v. Union of India, 2026 SCC OnLine SC 202***, reaffirmed DPT's applicability to contracts of natural resources and held that such transactions are part of sovereign privilege vested with GoI. Similarly, in the present case, PSC is a special contract, as it is a contract with GoI for exploitation of natural resources and consequently, DPT is applicable.

27. It is submitted that PSC should be interpreted in furtherance of DPT, which is not limited to just environmental cases, but mandates protection of public's interest in all resources like oil and gas, exploited through commercial contracts like PSCs, reliance is placed on ***Reliance Natural Resources v. Reliance Industries Ltd., (2010) 7 SCC 1,*** upheld in ***Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1,*** wherein the Hon'ble Supreme Court also held that strict judicial scrutiny is required over contracts of natural recourses. In the present case, the majority AT has passed the impugned Awards in favour of petitioners at cost of the people of India. Reliance has been placed upon ***Union of India v.***

Reliance Industries Ltd., 2025 SCC OnLine Del 841, wherein this Court held that the interpretation of PSC cannot bestow a benefit neither contemplated nor intended by the PSC or the parties. By treating PSC like a commercial contract, the AT (majority view) ignored PSC's public nature and adopted an interpretation favouring unjust enrichment of private party.

28. It is submitted that Article 14 of the Constitution of India espouses principle of equality, which in reference to PSC means equality between people of India and private party, with whom GoI executes the PSC. However, the calculation of PTRR adopted by the AT, reduces respondent's profit share on the principle of actuality. Thus, the AT has without any reasonable classification created two class within the parties, who stand on equal footing under the PSC. The same is violative of both provision of the PSC and Article 14 of the Constitution of India. Reliance has been placed on ***Reliance Natural Resources (supra)*** and ***Natural Resources Allocation (supra).***

29. It is submitted that the interpretation of the PSC should be the one that optimizes GoI's return. The State, petroleum resource's sovereign owner, has vested right to lion's share of the profit, while private oil corporation are entitled to adequate economic benefits, refer to ***Reliance Natural Resources (supra).*** Hence, when private corporations capitalize on State's resources, Articles 14 and 39(b) of the Constitution of India allow the State to optimize public revenue and forestall exploitation of national resources at hands of private parties to prevent transfer of national wealth, reliance has been placed on ***Natural Resources Allocation (supra).*** In the present case, the said

principles have been being ignored and the AT has allowed the Companies to recover and earn profit on Past Cost. Further, the reliance placed upon ***Vedanta (supra),*** is misplaced, as in the said judgment the Hon'ble Supreme Court did not rule on the issue of public policy, as raised herein by the respondent and also is differentiable on facts and issues. The said judgment was based on Article 15.5(e)(iii)(dd) of the contract and not if Past Cost could be incorporated into PTRR cash flow.

30. In response to petitioners' contention that the objection of violation of DPT has been raised for the first time in oral arguments, it is submitted that the respondent did raise the issue of public interest in its reply and the learned counsel for the petitioners addressed the said objection in its pleadings, thereby the issue is duly mentioned in the pleadings of the parties. Further, under Order 6 Rule 2 of the CPC, 1908, pleadings are only to contain concise form of the material facts and not detailed evidence or law on the subject. As for the argument of DPT not being raised before AT, it is submitted that firstly, just because the seat Court upheld the impugned Awards does not bar the enforcement Court from rejecting enforcement since the Awards are in violation of the public policy of India, as enforcement court follows enforcement jurisdiction's law. Secondly, the jurisprudence of DPT concerning PSC first came through the judgment of ***Reliance Natural Resources (supra),*** upheld in ***Natural Resources Allocation (supra),*** hence, respondent pleaded the same during enforcement proceedings.

31. Lastly, it is submitted that the end result of Awards is the GoI, faces a loss of USD 99 million and results in a huge windfall gain for the

petitioners and hence, enforcement of the impugned Awards of this nature is contrary to the public policy of India.

AT Was Rendered Functus Officio

32. It is submitted that Final Award was passed by a reconstituted AT after original AT become *functus officio*. The original AT in Partial Award stated that its jurisdiction on quantification issue could be invoked by either party on or before 12.04.2005, however, neither party invoked the jurisdiction by then. Even if petitioners' request of 180 days extension is accepted, yet they did not invoke AT's jurisdiction during that period and hence, jurisdiction of the AT ceased to exist.

33. Even the reasoning given by the reconstituted AT in the Final Award to assume jurisdiction i.e., in lieu of the Federal Court's decision, is wrong as the said decision came in October 2011 and petitioners waited till 26.09.2014 to approach AT. Additionally, the letter of the then Secretary of original AT's dated 04.05.2005 stating that "*the Tribunal Would await the request from one of the parties before commencing the quantum phase of the arbitration*" cannot be construed to mean that AT would await indefinitely. The reconstituted AT to exercise jurisdiction also relied upon the letter dated 04.05.2005, wherein it stated that upon either party's request it will commence quantification, however, respondent never consented to extension of the original AT's jurisdiction. It is further submitted that the illegally reconstituted AT rejected respondent's jurisdictional objection and proceeded on the ground that jurisdiction once vested remains vested, irrespective of time, until AT declares that arbitration

proceedings have concluded. The said interpretation is in violation of most basic notion of justice and morality.

34. Further, the dispute of quantification of ONGC Carry Issue for which AT was revived was just a pretext, whereas the actual issue was self-enforcement of the Partial Award, by diversion of USD 99 million by petitioners, which award was yet to be recognised in India. The AT in the Final Award only reaffirmed the PTRR calculation as per the Partial Award and thereby, in guise of quantification exercised jurisdiction and passed the Final Award to enforce Partial Award, which was time-barred. The parties took no actions for almost 8 years and the agreement to arbitration stood abandoned and hence, AT lost its jurisdiction on ground of undue delay. Even the petitioners failed to seek enforcement of the Partial Award within limitation and instead revived the original AT, with the only objective to sneak out of the limitation issue. Lastly, resumption of the AT was contrary to Article 34(2) of the UNCITRAL Rules, as it stood terminated in the year 2006 as a result of petitioners' failure to seek its claims.

Enforcement Of A Foreign Award Is Mandatory And Petitioners Self- Enforced the Partial Award

35. It is submitted that a foreign award become binding and enforceable in India only after recognition by Indian court, as provided in Sections 44 to 49 of the 1996 Act and is not on the discretion of the award-holder, reliance has been placed on ***Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2001) 6 SCC 356***. Petitioners' contention that there was no occasion to seek Partial Award's enforcement until 2014 is unsustainable and without having Partial Award enforced, they should

not have recovered any amount in lieu of the Partial Award.

36. After the Court of Appeal's decision to uphold the Partial Award, petitioners did not seek enforcement or approached AT, instead they recovered USD 99 million by not paying respondent's share of Profit Petroleum and thereby, self-enforced a foreign unrecognised award. Even after Federal Court of Malaysia affirmed Court of Appeal's decision, petitioners did not seek enforcement of the Partial Award under Sections 46 to 49 of the 1996 Act, due to which the respondent could also not raise objections under Section 48 of the 1996 Act. Once the Partial Award became time barred, respondent rightly issued the SCN. Further, by the filing the present petition, the petitioners concede to the statuary requirement of judicial enforcement of foreign award.

37. It is further submitted that both parties by their actions i.e., respondent by recovering USD 99 million through OMCs and petitioners by recovering USD 99 million back by adjusting respondent's Profit Petroleum dues, agreed that quantification of ONGC Carry issue is USD 99 million and hence, no quantification was required. Further, petitioners did not approach AT for quantification and both parties' abandoned arbitration by 2006.

AT Went Beyond the Submissions and Issues

38. It is submitted that petitioners' submission was that its application was based on paragraph 4(a) of the Agreed Terms of Reference, instead, the reconstituted AT held that the submission was made under paragraph 4(b) of the Agreed terms of Reference. Thus, the Final Award is liable to be set aside under Section 48(1)(c) of the 1996 Act.

Further, it was only due to the SCN, the petitioners referred the matter to the AT, which was beyond the jurisdiction of AT.

39. It is further submitted that in the Partial Award the ONGC Carry issue was whether the Companies can include sums paid by them in PTRR calculation as per Article 3.3 of the PSC, whereas in Final Award, the ONGC Carry Issue was "*should certain monies deposited or paid by the Contractor in advance for the goods and services in connection with Petroleum Operation be treated as Contract costs at the time of payment for purposes of Article 15 and 16 of the PSC*", which is different from original ONGC Carry Issue agreed by parties and the initial AT. Further, the majority AT also went into calculation of total Profit Petroleum after recovery of Contract Cost and Past Cost (paragraph Nos. 252 to 260 of Partial award), which was not a dispute. Even the formula for computing the cash flow was amended by majority AT by applying its own 'commercial sense' (paragraph No. 261 of Partial Award).

SUBMISSIONS ON BEHALF OF THE PETITIONERS

40. Mr. Sibal, learned senior counsel for the petitioners, has made the following submissions.

Present Petition Is Within Limitation

41. It is submitted that the Hon'ble Supreme Court in ***Vedanta (supra)***, held that the limitation of an enforcement petition under Sections 47 and 49 of the 1996 Act is governed by Article 137 of the Limitation Act, as per which it is 3 years from when the right to apply accrues and it does not necessarily accrue on passing of an award. The present petition is within limitation as it was filed on 18/22.05.2017 and the

right to apply in the present petition arose on 10.07.2014 i.e., date of SCN. Further, right to seek Partial Award's enforcement also arose when Final Award was passed and on 28.02.2019 when the Federal Court of Malaysia dismissed the challenge to the Final Award.

42. It is further submitted that the petitioner had no cause to seek enforcement of Partial Award earlier, as firstly the Partial Award approved petitioners' interpretation of the PSC in calculating PTRR and the amounts stood satisfied as per petitioners and secondly, the AT reserved the jurisdiction to decide on the quantification issue in case the parties failed to come to an agreement.

43. Further, even assuming that the present petition is barred by limitation, it is submitted that there are sufficient causes for condonation of delay. Firstly, AT retained jurisdiction to pass the Final Award. Secondly, the four issues decided in respondent's favour were implemented when respondent accepted payments from petitioners and the respondent never challenged the fifth issue decided in petitioners' favour. As for the sixth issue i.e., ONGC Carry Issue which was challenged by the respondent, the same was finally dismissed by Federal Court of Malaysia and the Partial Award attained finality. Hence, no cause ever arose which could have led to petitioners seeking enforcement of the Partial Award and even the respondent never elevated any quantification issue until SCN, because of which petitioners approached the AT for Final Award, after passing of which the petitioners instituted the present petition. Hence, it was issuance of SCN which accrued the "right to apply" upon the petitioners. Additionally, the delay in filing of enforcement petition

can be condoned even without an application as Court exercise discretion in such matters under Section 5 of Limitation Act, reliance is placed on ***Sesh Nath Singh v. Baidyabati Sheoraphuli Co-operative Bank Ltd, (2021) 7 SCC 313.***

44. It is also stated that respondent on one hand argued that the present petition is barred by limitation and on the other hand, argued that the petition is premature as when the petition was filed, challenge to Final Award was pending before Courts in Malaysia. The contention that petition is premature shows that the petition is within limitation as the right to seek enforcement of the Awards arose after the challenge to the Final Award was decided.

45. In response to respondent's argument of 'three strikes' i.e., cause of actions that accrued right to enforce Partial Award, it is submitted that the same were mere intentions to challenge the Partial Award and not attempt to recover amounts deducted by the petitioners. Additionally, as per Article 137 of the Limitation Act, limitation starts from when "right to apply accrues" and not when "right to apply first accrues", reliance is placed on ***Rajeev Gupta (supra); Khatri Hotels (supra); Shakti Bhog Food Industries (supra)*** and ***Hari Shankar Singhania (supra).*** Regardless, the said argument was not raised in the objections and could not be raised at such later stage of submission. Further, respondent's contention that right to apply for enforcement accrued on the passing of the Partial award was dealt with in ***Vedanta (supra)*** and is covered by the same.

46. In response to respondent's contention that petitioners are barred from seeking enforcement of the Partial Award as they failed to do so

despite their submission in arbitral proceedings that the award was per se enforceable, it is submitted that the submission made in the arbitral proceedings was not in particular about the Partial Award in question but in the general context. Also, the submission was that a partial final award would be enforceable "in the normal way in India" easily and not an admission by petitioners that formal enforcement proceedings are necessary for enforcement.

Respondent's Objection That Petitioners Depressed PTRR Is Misconceived

47. It is submitted that there is a difference between Past Costs under Article 1.63 of the PSC and costs incurred under Article 3.3 of the PSC, which are EDP Costs incurred after effective date and paid by petitioners and hence, deductible under Appendix D for calculating PTRR. Respondent's objection that AT rechristened "Past Costs" as "Contract Costs" and that PTRR was depressed by including costs paid by petitioners under Article 3.3 of the PSC, which was impermissible as they were Past Costs and not Contract Costs is wrong. It is further submitted that for costs not included under Contract Costs and Past Costs, there is Articles 18.1 and 18.3 of PSC. Hence, the costs incurred under Article 3.3 of the PSC needed to be included in calculation of PTRR, as there is no exclusion for it.

48. Further, the AT rightly held that Article 3.3 forms part of the PSC and that respondent being a signatory to the PSC agreed to the said clause. Respondent's argument that Article 3.3 of PSC is an intra-contractor arrangement and does not affect respondent's share of Profit Petroleum has been dealt with and rejected by the AT in paragraph

No. 250 of the Partial Award and the same needs no interference.

No Alteration of PI of Parties or Fudging Of Accounts By AT

49. It is submitted that the purpose of Article 3.3 of PSC was that parties to the PSC bear the overall cost proportionate to their respective PI and Partial Award achieved the same. The outcome of the Partial Award is in accordance with Article 3.3 of the PSC, which was to ensure that the overall cost would be borne by ONGC and by the petitioner along with the other parties to the PSC in proportion to their respective PI and to ensure that all of them have been involved in development of Ravva Oil field from day one. Reliance is placed upon paragraph Nos. 227 and 239 of Partial Award.

50. Further, respondent's contention that AT has allowed fudging of accounts leads to re-interpretation of the PSC and the Partial Award follows principle of equalisation, as founded in the PSC.

No Violation Of Fundamental Policy Of Indian Law/ Public Policy

51. It is well settled law that the expression "fundamental policy of Indian law" is very narrow and under Section 48(2)(b) of the 1996 Act merits of a foreign award is not to be interfered with and contentions raised by respondent require interpretation of the PSC, which is in exclusive domain of the AT and the same cannot be interfered with by adopting an alternative interpretation. Reliance is placed on ***EIG (Mauritius) Limited v. McNally Bharat Engineering Company Limited, 2021 SCC OnLine Cal 2915, Ssangyong Engineering (supra)*** and ***Shri Lal Mahal (supra).*** Further, interpretation of a contract is outside the scope of the Court in enforcement proceedings, reliance is placed on ***Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1.***

52. In response to respondent's submission that the impugned Awards are violative of public policy as AT failed to apply DPT, it is submitted that the said submission ought to be rejected. Firstly, it was not raised before the AT or Courts in Malaysia or in respondent's objections and has been argued for the first time in oral arguments before this Court, reliance is placed on ***Ssangyong Engineering (supra).*** Secondly, DPT has no relevance to the findings in the impugned Awards and the judgements relied upon by respondent in furtherance of its DPT arguments are also irrelevant as even they do not state that the GoI has right to bypass the terms of PSC.

53. Additionally, the Hon'ble Supreme Court in ***Vedanta (supra)*** (wherein the parties and PSC were same as herein) rejected respondent's similar arguments attempting to classify PSC as 'special contracts'. Lastly, it is submitted that post PSC, companies induced huge investments of minimum USD 188.98 million for development of Ravva Oil Field and till today are paying such costs and the Partial Award has also duly taken note of the same.

Respondent's Objection That AT Become Functus Officio From 12.04.2005 Is Meritless

54. It is submitted that in the Partial Award, AT gave 6 months to parties to arrive at agreement over the quantification issue, however, the same did not end AT's jurisdiction, which is further evident from Agreed Terms of Reference and the Dispositive Provisions of Partial Award (paragraph Nos. 220 and 325 of Partial Award). Even the curial Courts in Malaysia rejected the said submissions.

55. AT *vide* letter dated 04.05.2005 informed parties that on request from

either party it will proceed to decide quantification and respondent never objected to the said letter and cannot now say that it never agreed to this proposition. Lastly, it is wrong to contend that inaction of the parties resulted in abandonment of the arbitration agreement, as the said letter itself shows that the parties were cognizant that the AT continues to retain the jurisdiction.

Respondent's Objection That There Was No Dispute On Quantification and That SCN Did Not Demonstrate Existence Of Dispute On Quantification Is Meritless

56. It is submitted that respondent by issuing the SCN seeking recovery of USD 99 million from the OMC's itself affirmed that there were disputes pertaining to quantification of ONGC Carry Issue. Also, the parties never reached any agreement on quantification of ONGC Carry Issue and the same was the respondent's stance before the AT. The AT rejected respondent's objection to it exercising jurisdiction over SCN and the Malaysian Courts have upheld the said finding of AT. Further, respondent only challenged the ONGC Carry Issue and hence, the issue of quantification of the ONGC Carry Issue was naturally adjudicated by the AT.

57. In response to respondent's objection that SCN was issued on account of petitioners' recovering USD 99 million without seeking enforcement of the Partial Award and not due to quantification issue, it is submitted that petitioners did not self-enforce the Partial Award and it was only after the Malaysian Court of Appeal upheld the Partial Award, the petitioners recovered USD 99 million from respondent and once petitioners recovered the amounts, it stopped making adjustments

against Profit Petroleum payments. Hence, the issue of USD 99 million recovery was resolved and the only reason SCN could have been issued was for ONGC Carry issue quantification.

58. Further, in response to respondent's allegation that petitioners self-enforced the Partial Award it is submitted that the respondent did the same when it accepted payments in furtherance of four issues decided in their favour, without formal enforcement proceedings. Additionally, the parties have contracted under the Malaysian law and UNCITRAL Arbitration Rules, where there is an obligation to satisfy the award without enforcement proceedings.

59. The petitioners did not violate any terms of the PSC by recovering USD 99 million and only attained *status quo ante* as it was when the Partial Award was passed. Also, the Partial Award is not causing loss of USD 284 million to GoI, only USD 99 million is the amount for ONGC Carry Issue and the same is based on interpretation of PSC for calculation of the PTRR.

60. In response to respondent's objection that no dispute on quantification *qua* ONGC Carry Issue existed, it is submitted that as per the respondent USD 99 million were due as evident from SCN, whereas as per the petitioners no amount was due, hence, clearly there is a dispute. Petitioners recovering USD 99 million from respondent did not amount to an agreement on quantification and it was respondent's own stand before AT that parties had failed to reach an agreement. Further, USD 292 million and USD 162 million were recovered by respondent from the petitioner Nos. 1 and 2, respectively and hence, it is misleading to say that only USD 99 million was recovered by

respondent towards ONGC Carry Issue.

Respondent's Objection That AT In Final Award Exercised Jurisdiction Over SCN Is Misleading

61. It is submitted that respondent's objection that the Final Award is not enforceable as the AT lacked jurisdiction over the SCN is misleading. In paragraph No. 142 of the Final Award the AT itself observed that it has not exercised jurisdiction as asserted by respondent on the SCN but has adjudicated the issue of "quantification". The said observation has been affirmed by Malaysian High Court.

Respondent's Objection That AT Rendered Partial Award On Its "Commercial Sense" Is Misconceived

62. It is submitted that the said objection of the respondent is based upon fallacious interpretation of paragraph Nos. 258 and 261 of the Partial Award. The interpretation of the PSC given in the said paragraphs by the AT is not based on its own notions of "commercial sense" but is in conformity with the PSC terms and "commercial sense" reference only meant that the interpretation is consistent with commercial considerations. Further, the said argument was also rejected by the Curial Courts in Malaysia.

63. Hence, in view of the aforesaid submissions, it is urged that the impugned Awards be enforced and the Bank Guarantees maintained by petitioners pursuant to the order dated 29.10.2018 be released.

ANALYSIS AND FINDINGS

64. I have heard learned counsels for the parties and perused the documents on record.

I. Present Petition Is Not Barred By Limitation

65. The first and foremost issue which needs to be decide is whether the present enforcement petition is barred by limitation and the said issue is squarely covered by the judgment of ***Vedanta (supra)***, which was between the same parties as herein and in relation to the same PSC.

66. On the issue of limitation, the Hon'ble Supreme Court in ***Vedanta (supra)*** observed as under:-

> *"61. On this issue, divergent views have been taken by some High Courts with respect to the period of limitation for filing a petition for enforcement of a foreign award under the 1996 Act. It has therefore become necessary to settle the law on this issue.*
>
> ***xxxxxxxx***
>
> *65. The limitation period for filing the enforcement/execution petition for enforcement of a foreign award in India, would be governed by Indian law. The Indian Arbitration Act, 1996 does not specify any period of limitation for filing an application for enforcement/execution of a foreign award. Section 43 however provides that the Limitation Act, 1963 shall apply to arbitrations, as it applies to proceedings in court.*
>
> *66. The Limitation Act, 1963 does not contain any specific provision for enforcement of a foreign award. ... Article 136 provides that the period of limitation for the execution of any decree or order of a "civil court" is twelve years from the date when the decree or order becomes enforceable.*
>
> *67. Article 137 is the residuary provision in the Limitation Act which provides that the period of limitation for any application where no period of limitation is provided in the Act, would be three years from "when the right to apply accrues".*
>
> *69. Section 36 of the Arbitration Act, 1996 creates a statutory fiction for the limited purpose of enforcement of a*

"domestic award" as a decree of the court, even though it is otherwise an award in an arbitral proceeding…. The deeming fiction is restricted to treat the award as a decree of the court for the purposes of execution, even though it is, as a matter of fact, only an award in an arbitral proceeding….

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71. In Bank of Baroda v. Kotak Mahindra Bank [Bank of Baroda v. Kotak Mahindra Bank, (2020) 17 SCC 798] this Court took the view that Article 136 of the Limitation Act deals only with decrees passed by Indian courts. … The legislature has omitted reference to "foreign decrees" under Article 136 of the Limitation Act. The intention of the legislature was to confine Article 136 to the decrees of a civil court in India. The application for execution of a foreign decree would be an application not covered under any other Article of the Limitation Act, and would be covered by Article 137 of the Limitation Act.

72. Foreign awards are not decrees of an Indian civil court. By a legal fiction, Section 49 provides that a foreign award, after it is granted recognition and enforcement under Section 48, would be deemed to be a decree of "that court" for the limited purpose of enforcement. The phrase "that court" refers to the court which has adjudicated upon the petition filed under Sections 47 and 49 for enforcement of the foreign award. In our view, Article 136 of the Limitation Act would not be applicable for the enforcement/execution of a foreign award, since it is not a decree of a civil court in India.

73. The enforcement of a foreign award as a deemed decree of the High Court concerned [as per the amended Explanation to Section 47 by Act 3 of 2016 confers exclusive jurisdiction on the High Court for execution of foreign

awards] would be covered by the residuary provision i.e. Article 137 of the Limitation Act. ....

74. The exclusion of an application filed under any of the provisions of Order 21 CPC from the purview of Section 5 of the Limitation Act, was brought in by the present Limitation Act, 1963. ...

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76. In view of the aforesaid discussion, we hold that the period of limitation for filing a petition for enforcement of a foreign award under Sections 47 and 49, would be governed by Article 137 of the Limitation Act, 1963 which prescribes a period of three years from when the right to apply accrues.

77. The application under Sections 47 and 49 for enforcement of the foreign award, is a substantive petition filed under the Arbitration Act, 1996. It is a well-settled position that the Arbitration Act is a self-contained code. The application under Section 47 is not an application filed under any of the provisions of Order 21 CPC, 1908. The application is filed before the appropriate High Court for enforcement, which would take recourse to the provisions of Order 21 CPC only for the purposes of execution of the foreign award as a deemed decree. The bar contained in Section 5, which excludes an application filed under any of the provisions of Order 21 CPC, would not be applicable to a substantive petition filed under the Arbitration Act, 1996. Consequently, a party may file an application under Section 5 for condonation of delay, if required in the facts and circumstances of the case.

78. In the facts of the present case, the respondents submitted that after the award dated 18-1-2011 was passed, the cost account statements were revised, and an amount of US $22 million was paid to the Government of India. On 10-

7-2014, a show-cause notice was issued to the respondents, raising a demand of US $77 million, being the Government's share of profit petroleum under the PSC. It was contended that the cause of action for filing the enforcement petition under Sections 47 and 49 arose on 10-7-2014. The enforcement petition was filed on 14-10-2014 i.e. within 3 months from the date when the right to apply accrued. We hold that the petition for enforcement of the foreign award was filed within the period of limitation prescribed by Article 137 of the Limitation Act, 1963. In any event, there are sufficient grounds to condone the delay, if any, in filing the enforcement/execution petition under Sections 47 and 49, on account of lack of clarity with respect to the period of limitation for enforcement of a foreign award."

(Emphasis added)

67. A perusal of the paragraphs, reproduced above, shows that the Hon'ble Supreme Court held that limitation of enforcement of a foreign award as a deemed decree of the High Court concerned is to be governed by Article 137 of the Limitation Act, as per which it is 3 years from when the right to apply accrues. Applying the said law to the facts of the case, the Hon'ble Supreme Court agreed with the respondents' contention that the cause of action arose on 10.07.2014 i.e., when SCN was issued and not on 18.01.2011 i.e., date of the award and hence, the enforcement petition which was filed on 14.10.2014 was considered within the period of limitation of 3 years. Applying the said principles to the present case, the date of issuance of SCN is 10.07.2014, same as ***Vedanta (supra),*** and the present enforcement petition was filed on 18/22.05.2017 is within 3 years

from date of the SCN. Hence, the present enforcement petition is within the limitation period as per Article 137 of the Limitation Act, as the clock of the limitation period began to run from the date of issuance of SCN i.e., 10.07.2014.

68. The respondent has contended that in ***Vedanta (supra)*** the Hon'ble Supreme Court did not rule on law and only on facts of that case held that right to apply accrued upon issuance of SCN and noted that delay was liable to be condoned given the vagueness in law. While, it is true that the Hon'ble Supreme Court in ***Vedanta (supra)*** did observe that there were sufficient grounds to condone the delay "*on account of lack of clarity with respect to the period of limitation for enforcement of a foreign award.*", however, the same does not dilute the applicability of ***Vedanta (supra)*** considering similarity in facts of the both the cases. In the present case, the right to apply is the same as in ***Vedanta (supra)*** i.e., the issuance of SCN dated 10.07.2014, when the respondent sought to recover the amounts, adjusted by the petitioners. Hence, the present enforcement petition filed on 18/22.05.2017 i.e., within the 3 years from SCN dated 10.07.2014, is within the period of limitation under Article 137 of the Limitation Act. In view of the said observation, the argument of the respondent regarding "three strikes" i.e., occasions before SCN when the right to seek enforcement accrued due to respondent's alleged refusal/denial has become immaterial.

69. Further, reliance on the judgments of ***Rinkoo Aggarwal (supra)*** and ***Damodar Das (supra)*** is inapposite as this Court is bound by the judgment of ***Vedanta (supra)*** by the Hon'ble Supreme Court. ***Rinkoo Aggarwal (supra)*** was a petition filed under Section 11(6) of the 1996

Act for appointment of an arbitrator and the issue was when the limitation period for filing such petition begins. In ***Damodar Das (supra),*** it was observed that the limitation period commences from the date when cause of arbitration is accrued i.e., when dispute arises due to unequivocal refusal of one party's claim by the other party resulting in claimant's right to refer the dispute to arbitration. Although both these judgements are discussing right of accrual under Article 137 of the Limitation Act, however, they are not related to enforcement of foreign award, like in the present case. The respondent has also placed reliance on ***IMAX (supra),*** however, the facts are distinguishable. In ***IMAX (supra)***, there was no show cause notice and hence, the period of limitation began from the date of the award. Once ***Vedanta (supra)***, in similar circumstances has held the period of limitation to begin from the date of show cause notice seeking recovery, I am bound by the same.

70. Since, the present enforcement petition is within limitation, respondent's contentions that the petitioners have failed to explain the inordinate delay or have not filed any application seeking condonation of delay, is irrelevant.

71. The arguments of the respondent is that the dispute of quantification of ONGC Carry Issue was a mere pretext as the AT in the Final Award only reaffirmed PTRR calculation as per the Partial Award and since, the petitioners failed to seek enforcement of the Partial Award, the entire exercise is time barred. Though the argument is attractive but I am bound by the judgement of the Hon'ble Supreme Court in ***Vedanta (supra)*** holding that the issuance of SCN gives the party the

right to apply for enforcement.

II. Scope of Interference Under Section 48 of the 1996 Act

72. Having held that the present enforcement petition is within limitation, I will now be dealing with merits of the matter.

73. Learned ASG's primary objection on merits is issue regarding the ONGC Carry Issue, which emanates from the interpretation of the terms of PSC leading to calculation of the PTRR. Respondent's objections are to be judged on the grounds laid down in Section 48 of the 1996 Act. Here, I agree with learned senior counsel for the petitioners, that the scope of the enforcing Court under Section 48 of the 1996 Act is very narrow and the enforcement court must be circumspect to interfere expect for the grounds mentioned in Section 48 of the 1996 Act.

74. At this juncture it is relevant to look at the Section 48 of the 1996 Act, which reads as under: -

> *"48. Conditions for enforcement of foreign awards.—*
> *(1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the Court proof that—*
> *(a) the parties to the agreement referred to in Section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or*
> *(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*

(c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

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

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

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

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

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

75. Perusal of Section 48(2) of the 1996 Act shows that the objections do not include the merits of the dispute. Explanation 2 to Section 48(2) of the 1996 Act, as reproduced above, explicitly excludes objections on merits of the dispute.

76. The Hon'ble Supreme Court in the judgment of ***Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd., (2024) 7 SCC 197 ,*** while relying upon ***Vijay Karia (supra), Shri Lal Mahal (supra)*** and ***Vendata (supra),*** held as under:-

"24. The above decision in Parsons & Whittemore Overseas Co. [Parsons & Whittemore Overseas Co. Inc. v. Societe Generale de L'industrie du Papier, 508 F 2d 969 (2d Cir 1974)] has been followed in various jurisdictions including the Supreme Court of India in Renusagar Power Co. Ltd. v. General Electric Co. [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] 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. [Union of India v. Vedanta Ltd., (2020) 10 SCC 1] A review on the merits of the dispute is impermissible [Shri Lal Mahal

Ltd. v. Progetto Grano SpA, (2014) 2 SCC 433 : (2014) 2 SCC (Civ) 1] .

25. This Court in Vijay Karia v. Prysmian Cavi E Sistemi SRL [Vijay Karia v. Prysmian Cavi E Sistemi SRL, (2020) 11 SCC 1 : (2021) 1 SCC (Civ) 389] , 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. Vedanta Ltd. [Union of India v. Vedanta Ltd., (2020) 10 SCC 1] , Shri Lal Mahal Ltd. v. Progetto Grano SpA [Shri Lal Mahal Ltd. v. Progetto Grano SpA, (2014) 2 SCC 433 : (2014) 2 SCC (Civ) 1] and Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd. [Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd., (2019) 11 SCC 465 : (2019) 4 SCC (Civ) 724]

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27. *The Indian Supreme Court in Renusagar [Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644] 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 SpA [Shri Lal Mahal Ltd. v. Progetto Grano SpA, (2014) 2 SCC 433 : (2014) 2 SCC (Civ) 1] , 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."

(Emphasis added)

77. A perusal of the paragraphs, reproduced above, shows that the respondent's objections with respect to the impugned Awards, are to be strictly assessed within the boundaries of Section 48 of the 1996 Act.

III. ONGC Carry Issue Rightly Interpreted by the AT

78. In a nutshell what respondent is contending is that there is a difference between Contract Costs and Past Costs. Article 16 and Appendix D of the PSC, provides the formula to calculate the PTRR and deals only with EDP costs incurred after the Effective Date, which should be divided as per PI of the parties. Payments made under Article 3.3 of PSC are intra-contractor adjustments towards Past Costs and are Contract Costs of ONGC and hence, should not be included while computing the PTRR of the Companies. However, the AT in the Partial Award by including ONGC's Carry Cost in PTRR calculations rewrote the terms of the PSC, which also reduced respondent's Profit Petroleum by USD 99 million. In addition, the respondent also asserts that AT in the Partial Award has wrongly held that PI of Companies' contract cost contribution was 100%, since from the effect of PSC, PI of parties is 40% of ONGC and 60% of Companies and no clause of

the PSC states that only after discharge of Past-Costs, PI of parties would come into effect.

79. Articles 3.3, 15(1) and (6), 16(1) and Appendix D of the PSC, are extracted as under:-

> *"3.3 ONGC Carry*
> *In consideration of ONGC having paid the Past Costs, the Companies covenant to ONGC that they shall:*
> *(a) during the Transfer Period, pay the share of Exploration Costs, Development Costs and Production Costs incurred by the Operator; and*
> *(b) after the Transfer Period, pay the share of Contract Costs,*
> *that would otherwise be payable by ONGC, in the proportion that their respective Participating Interests bear to their total Participating Interests, until such time as the amount paid by the Companies pursuant to this Article 3.3 equals the amount that is equivalent to the Companies' total Participating Interest share of the difference between Past Costs and Transfer Period Net Revenue PROVIDED THAT the Companies' obligations under this Article 3.3 shall not exceed the sum of thirty three million US Dollars (US$33 million) less an amount equivalent to the Companies' total Participating Interest share of Transfer Period Net Revenue to which but for Article 7.5(c) the Companies would otherwise be entitled. Thereafter, Contract Costs shall be borne and paid by the Companies and ONGC in proportion to their Participating Interests.*
>
> **xxxxxxxx**
>
> *15.1 Contractor Entitled to Recover Contract Costs and Past Costs*
> *The Contractor shall be entitled to 100% of the total volumes of Petroleum produced and saved from the*

Contract Area in accordance with the provisions of this Article until the value of such Petroleum entitlement after deduction of all applicable levies including all Royalty and Cess paid in respect of Petroleum produced and saved from the Contract Area, is equal to Contract Costs together with Past Costs. For the avoidance of doubt, it is agreed that Past Costs shall not exceed the sum of fifty five million US Dollars ($US55 million) for the purposes of cost recovery.

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15.6 Recovery of Contract Costs

The Contractor shall be entitled to recover in full during any Year the Contract Costs incurred in the Contract Area in that Year out of the Cost Petroleum. If during any Year the Cost Petroleum is not sufficient to enable the Contractor to recover in full the Contract Costs due for recovery in that Year in accordance with the provisions of Articles 15.1 to 15.5 then, subject to the provisions of Article 15.1:

(a) recovery shall first be made of the Production Costs; and

(b) recovery shall next be made of the Exploration Costs; and

(c) recovery shall then be made of the Development Costs.

The unrecovered portions of Contract Costs shall be carried forward to the following Year and the Contractor shall be entitled to recover such costs in such Year or the subsequent Years as if such costs were due for recovery in that Year, or the succeeding Years, until the unrecovered costs have been fully recovered out of Cost Petroleum from the Contract Area.

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16.1 Profit Petroleum Determined by PTRR Method

(a) The Contractor and the Government shall share in the Profit Petroleum from the Contract Area in accordance with the provisions of this Article.

(b) The share of Profit Petroleum, in any Year, shall be calculated for the Contract Area on the basis of the Post Tax Rate of Return actually achieved by the Companies at the end of the preceding Year for the Contract Area as provided in Appendix D.

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APPENDIX D

(ARTICLE 16.4)

CALCULATION OF THE POST TAX RATE OF RETURN FOR PRODUCTION SHARING PURPOSES

1. In accordance with the provisions of Article 16, the share of the Government and the Contractor respectively of Profit Petroleum from any Field in any Year shall be determined by the Post Tax Rate of Return (hereinafter referred to as PTRR) earned by the Companies from the Contract Area at the end of the preceding Year. These measures of profitability shall be calculated on the basis of the appropriate net cash flows as specified in this Appendix D.

2. In order to assess the PTRR earned by the Company (ies) in the Contract Area over any period up to the end of any particular Year, the following net cash flow of the Company (ies) arising from the Contract Area for each Year separately will first be calculated as follows:

(i) Cost Petroleum entitlement of the Companies as provided in Article 15;

plus

(ii) Profit Petroleum entitlement of the Companies as provided in Article 16;

plus

(iii) the Companies' share of all incidental income (of the type specified in Section 3.4 of the Accounting Procedure) arising from Petroleum Operations;

less

(iv) the Companies' share of those Production Costs incurred on or in the Contract Area;

less

(v) the Companies' share of those Exploration Costs (if any) incurred in the Contract Area;

less

(vi) the Companies' share of Development Costs in the Contract Area, which, for the purposes of this paragraph 2 (vi), shall be all of the Development Costs without regard to the provisions of Article 15.5(b);

less

(vii) the notional income tax, determined in accordance with paragraph 7 of this Appendix, payable by the Companies on profits and gains from the Contract Area.

provided, however, that any costs or expenditures which are not allowable as provided in Section 3.2 of the Accounting Procedure shall be excluded from Contract Costs and disregarded in the calculation of the annual net cash flow.

3. In order to determine what PTRR has been earned by the Companies from the Contract Area, the aggregate value for each Year of the net cash flow determined as specified in paragraph 2 above and earned during the Year shall be calculated and the amount obtained shall be called The Net Cash Balance. To this amount, at the end of each Year, shall be added The Opening Balance (which shall be deemed to be zero in the case of the first year for which the calculations are being made). The aggregation of The Opening Balance and The Net Cash Balance in any Year

shall be called The Closing Balance for the Year in question.

4. The Closing Balance for the Year shall then be compounded forward at the rates of return specified in Article 16 of this Contract and the results shall form The Opening Balance for the subsequent Year's calculations. A separate set of calculations (of Closing and Opening Balances) will thus be performed for each of the rates of return specified in Article 16.

5. When the Opening Balance for a Year at a particular PTRR is negative and the Closing Balance for the Year becomes positive at that PTRR, the Companies shall be regarded as having achieved that PTRR during the Year. The Profit Petroleum shares shall then be determined pursuant to Article 16, depending on which PTRR has been achieved, and that split shall apply from the start of the subsequent Year and shall remain in force until a higher PTRR is earned which, in accordance with Article 16, triggers a different Profit Share.

6. If, in any later Year, costs are incurred by the Contractor, after the approval of the Management Committee, in connection with secondary recovery or enhanced oil recovery operations in respect of an Oil Field or a Gas Field, and such costs create a negative Net Cash Balance for the Year, then, if the Closing Balance for the previous Year was positive, the Opening Balance for that Year shall be deemed to be zero and the calculations itemised at paragraphs 3, 4 and 5 above shall commence again.

7. <u>General</u>

In determining the amount of notional income tax to be deducted in the applicable cash flows specified in paragraph 2 of this Appendix, a notional income tax

liability in respect of the Contract Area shall be determined for each Company comprising the Contractor, as if the conduct of Petroleum Operations by the Company in the Contract Area constituted the sole business of the Company and as if the provisions of the Income Tax Act, 1961, with respect to the computation of income tax were accordingly applicable separately to the Contract Area, disregarding any income, allowances, deductions, losses or set-off of losses from any other contract area or business of the Company."

80. The majority AT has dealt with all these contentions and provided its interpretation of the said clauses of the PSC in paragraph Nos. 226-261 of the Partial Award, under the ONGC Carry Issue. The relevant portions of the said paragraphs are extracted below: -

"226. At the time the PSC was negotiated and signed ONGC had carried out a significant amount of work in construction of development and production facilities for the Ravva field costing in the vicinity of US$ 55 million. Further exploration and development works were required after the Effective Date. The costs of these further works were to be borne by the Contractors according to their participating interest (that is, ONGC 40 per cent, the Companies 60 per cent). Unless there was to be recompense to ONGC it would have paid 100 per cent of those costs incurred prior to the Effective Date and 40 per cent thereafter while the Companies paid only 60 per cent of the costs incurred after the Effective Date.

227. In order to equalise the obligations Article 3.3 was included in the PSC whereby the companies undertook to pay 100 per cent of Contract Costs after the Effective Date until they had, in effect, paid for 60 per cent of the pre-Effective Date costs - the result being that when that

occurred the cost obligations of ONGC and the Companies would be strictly in accord with their participating interests, both as to pre and post-Effective Date.

228. In these circumstances it is said by the Respondent that the recompense of Past Costs under Article 3.3 is, in substance, itself Past Costs, that those costs are not mentioned in Article 16 and Schedule D and should be disregarded in assessing the PTRR and the Respondent's entitlement to profit costs.

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230. ... "Contractor" (Art 1.25) means the companies and ONGC collectively. "The Companies" (Art 1.19) means the companies other than ONGC collectively. "Contract Costs" (Art 1.23) means costs incurred by the Contractor in accordance with the provisions of this Contract in connection with Petroleum Operations including, without limitation, Exploration Costs, Development Costs and Production Costs, and all payments made by the Contractor pursuant to Article 17.2 (royalty and CESS).

231. ... It is sufficient to explain that they do not include "Past Costs" which expression is itself defined to mean "the costs incurred by ONGC in the construction of development and production facilities to achieve the level of Crude Oil production from the contract area current as at the Effective Date, net of associated production costs, royalty and CESS".

232. The effect of Article 15(1) is clear. The Contractor is to be entitled to all the Petroleum produced after the Effective Date (after the deduction of royalty and CESS) until the value of that petroleum is equal to Contract Costs together with Past Costs. In other words, until the sum of Contract Costs and Past Costs has been recovered the petroleum is available to the Contractor in reimbursement of those costs.

It should be emphasized, however, that Article 15 is concerned with the subject of cost recovery.

233. Profit sharing between the Contractor and the Government is dealt with in Article 16 of which it is only necessary to set out Article 16(1) which reads: ...

234. ... It should be observed that there is no reference to Past Costs in Article 16. Profit Petroleum is simply that petroleum which is left after the Contractor has taken the Cost Petroleum. This is a subject to which it will be necessary to return.

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238. That is, the Companies between them would pay the share of Contract Costs that would otherwise have been payable by ONGC. In short, Article 3.3 placed the obligation to pay all costs for the relevant period on the Companies in the stated proportions. Thus Article 3.3 makes it clear that, under the agreement, the Companies' share of Contract Costs during the relevant period was 100 per cent and ONGC had no responsibility or obligation to share in those costs during that period. The description of those costs as carry costs in the headings is not to be taken account of in the interpretation of terms of the contract (see Article 35.6). It follows that expression can not alter the plain meaning of the words in Article 3.3 or indeed any term in the PSC.

239. In short, the general principle was that each of the four Companies would pay the Contract Costs in proportion to their participating interests except for the period to which reference is specifically made in Article 3.3 in which the Contract Costs would be borne by the Companies (excluding ONGC) until the time was reached when there had been an effective recompense of 60 per cent of the pre-Effective Date costs (the equalisation point).

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248. Appendix D(2)(iv) - (vi) refer in each instance to the Companies' share of the relevant costs. That share, considered in the context of the agreement as a whole, is not the same throughout the life of the PSC. Article 3.3 provides that until the effective equalisation is achieved the Companies' share is to be 100 per cent. Once the equalisation point is reached then the Companies' share is calculated consistently with the participating interests of the three companies which together constitute "the Companies".

249. That, as a matter of plain language, results from the words used in Appendix D(2) and Article 3.3. There is nothing in the agreement which provides an indication that the relevant sub-clauses should not be interpreted according to their plain meaning. Nor is there any reason in principle or to be found from the words of the agreement to support the view that "the Companies' share" should be treated as the same through the term of the contract notwithstanding other provisions in the agreement. There simply is nothing which would support the proposition that the share must always be treated as though ONGC was contributing a share in accordance with its participating interest despite the fact that it was not.

250. The answer to this approach which is propounded by the Respondent is that Article 3.3 is, in essence, irrelevant to the rights and obligations of the Respondent itself. It is no more than an agreement between the contracting companies which is of no concern to the Respondent. During its oral submissions senior counsel went so far as to say that the clause should be treated no differently than a totally independent contract between the contracting parties to which the Respondent was not a party. There is no difficulty in accepting that if the companies which constitute the

Contractor had entered into a totally independent agreement to vary their obligations as between themselves under the PSC that agreement could have no effect on either the Contractors' or the Companies' obligations to the Respondent under the PSC but it is not legitimate to treat an independent agreement between parties other than the Respondent as a true analogy in the present situation. Article 3.3 is part of the PSC. At the very least its provisions put the Respondent on notice that until the equalisation point is reached the Companies would be paying 100 per cent of the relevant costs. However, that is not all that Article 3.3 does. It sits in an agreement as an article to which the Respondent expressly, by its signature, agreed and it must be taken that not only did the Respondent know that the Companies would be paying 100 per cent for the stated period but the Respondent agreed to that proposition.

251. In these circumstances where the plain language does not preclude the "Companies"' share being different depending upon the period concerned and the Respondent knows and agrees to that being the case the argument of the Claimants should prevail. If the parties had intended that Article 3.3 would have no effect on other provisions of the PSC or, more specifically, that the "Companies' share" should be treated always in accordance with their participating interest then, no doubt, they would have included a provision giving effect to that intention.

252. There are other considerations which support this conclusion. The Respondent's submissions are based on a dichotomy between cost recovery (Article 15) and profit sharing (Article 16). The Respondent concedes that as a matter of cost recovery the Contractor is entitled to 100 per cent of the Petroleum produced until there has been cost recovery which includes Past Costs. But, when it comes to

profit division it argues that the strict working out of definitions, in particular the definition of Contract Costs, leads to the conclusion that Past Costs are totally irrelevant. What is clear from Article 15(1), however, is that the Contractor is entitled to all the Petroleum until the relevant recovery has been effected. If the Respondent is correct in its argument that Past Costs are to be disregarded for the purposes of profit sharing then the consequence would be that during the time when the Claimants had not recovered all their costs (and were thus entitled to 100 per cent of the Petroleum) they would nevertheless have been obliged to share profit petroleum calculated in accordance with Appendix D. In its submission of 10 April 2004 the Respondent put forward calculations which demonstrate that for the financial year ended 31 March 1999 the Companies still had unrecovered costs at year end but were nevertheless deemed to have earned a greater than zero PTRR in that year due to the fact that costs paid by them under Article 3.3 had been excluded from the PTRR calculation.

253. The notion that the Companies were entitled to all the Petroleum for the relevant period yet were nonetheless required to share some of the Petroleum to which they alone were entitled is not an easy one to grasp.

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255. There is an initial difficulty with the submission in the light of the concluding words of the definition of Cost Petroleum- in recovery of "Contract Costs as provided by Article 15". That problem, however, can be put to one side because there are more significant difficulties of substance with the submission. The Respondent, in essence, relies on a strict reading of the definitions and Article 16 while denying the relevant parts of Appendix D(2) their plain meaning.

256. The reason why this approach should be adopted, according to the Respondent, is that Article 3 .3 is an Article which does not affect the Respondent and should be disregarded in the consideration of Appendix D(2).

257. It has already been pointed out that there is no basis to disregard Article 3.3 in the Agreement. That view is reinforced by reference to Article 18, in which there is another provision dealing with the Companies and ONGC. In this Article there is a provision which is noticeably absent from Article 3. That is, Article 18(3) which makes it clear that payments under Article 18(1) are not recoverable as Contract Costs or creditable against Profit Costs. In these circumstances the absence of any clause in Article 3 excluding payments under Article 3.3 from profit division consideration is of note.

258. The fundamental difficulty with the Respondent's argument, however, is that it appears to strike at the scheme of the Agreement and to do so in a way which presents as bearing little commercial sense. The scheme of Article 15(1) is, as pointed out, simple. Until the equalisation point is reached the Contractor is entitled to all Petroleum produced. That is, there is no Petroleum left to divide between the Contractor and the Respondent. Article 16 is concerned only with the division of Profit Petroleum. The Respondent's argument requires that some Petroleum be assigned to the Respondent before the equalisation point is reached even though Article 15 grants 100 per cent of the Petroleum produced to the Contractor.

259. The Respondent can maintain the submission only by drawing a clear distinction between Cost Recovery and Profit Sharing, contending that they should be regarded as if they were entirely independent of one another. Both in the PSC and commercially there is a clear relationship. For

instance, after the equalisation point is reached Profit Petroleum is dependent on the extent of Cost Petroleum, being Petroleum to which the Contractor is entitled as a matter of Cost Recovery.

260. The Claimants' submissions propound a scheme whereby they are entitled to all petroleum until the equalisation point is reached and thereafter Petroleum is shared in accordance with Article 16. The Respondent's response is that, despite the Claimants' entitlement to 100 per cent of the Petroleum until the equalisation point, some of that Petroleum can be clawed back for Profit Sharing purposes. This argument is contrary to the general scheme to be gleaned from Articles 15 and 16, and, as pointed out, requires the reading, for instance, of Appendix D(2)(iv) as though the words "in accordance with their participating interests" appeared in it. This despite the fact that where the Parties intended that the share should be understood as participating interest share they said so (see, for instance, Articles 3.3, 3.4, 17.4, 19.2, 19.3, 19.5, 19.6, and 22.7(C)).

261. The conclusion is that granting the words in Appendix D(2)(iv)-(vi) their natural meaning accords with the general scheme of Articles 15 and 16 and, as well, commercial sense. There is simply no basis for reading Post Tax Rate of Return as excluding those expenses incurred by the Companies under Article 3.3 after the Effective Date."

81. The respondent seeks this Court to interfere with the majority AT's conclusion, which is that the PTRR includes the costs incurred by Companies under Article 3.3 of the PSC after the Effective Date and the same is based on AT's interpretation of Article 3.3, 15(1) and (6), 16(1) and Appendix D of the PSC. The AT's finding that until the equalisation point is reached the Contractor is entitled to all Petroleum produced and respondent's argument that some petroleum be assigned

before equalisation point is achieved despite Article 15 of the PSC granting 100% of the Petroleum produced to the Contractor, are in my considered opinion issues in sole and exclusive province of AT.

82. Similarly, respondent's objections that PI of Companies' contract cost contribution was 100%, since effect of PSC and no clause provides that only after discharge of Past-Costs will PI of parties come into effect, are aspects which if delved into will lead to examination of merits of the matter and the same is outside the scope of Section 48 of the 1996 Act. Additionally, the objections as to how the PTRR should be calculated in terms of Article 3.3, 15, 16 and Appendix D of the PSC, were also raised before the AT and has been dealt with in the Partial Award (in the paragraphs reproduced above from the Partial Award).

83. Interpretation of the terms of the PSC in light of the facts and circumstances of the case and approach to decoding the intentions of parties for executing the contract, *sans perversity*, lies within the sole and exclusive domain of the AT. This Court under Section 48 of the 1996 Act, is not to substitute its view as to what is the best way to interpret terms of the PSC. Once parties have vested the AT with jurisdiction to adjudicate disputes between them, they have provided the AT right to interpret the terms of the contract and the Court under Section 48 of the 1996 Act is not to interfere with the interpretation of the AT until and unless the same are perverse and of such a nature that no reasonable same person could have arrived at the same.

84. Additionally, the impugned Awards have withstood the judicial scrutiny before the curial Courts of Malaysia and the respondent

cannot seek this Court to decide the merits of the dispute because it disagrees with the majority AT's interpretation of the calculation of the PTTR *vis-à-vis* Articles 3.3, 15, 16 and Appendix D of the PSC. Hence, I find no merit in the contention raised by the respondent, which would persuade me to delve into the merits of the matter by interpreting the terms of the PSC. The view and interpretation by the majority AT are both reasonable and plausible.

IV. Objections Pertaining to Violation of Public Policy Are Meritless

85. First and foremost, we need to see what does "contrary to the public policy of India" entails under Section 48(2) of the 1996 Act. Section 48(2)(b) of the 1996 Act states that enforcement of a foreign Arbitral Award can be denied, if the award is found to be in violation of the public policy of India, which is only if, it is induced by fraud or corruption, is in contravention with the fundamental policy of Indian law or is in conflict with the most basic notions of morality or justice. A Coordinate Bench of this Court in ***Roger Shashoua v. Mukesh Sharma, 2025 SCC OnLine Del 5773,*** has reiterated the jurisprudence on scope of violation of "public policy of India" under Section 48(2) of the 1996 Act and observed as under: -

> *"**222.** The scope of the exception of public policy in the context of foreign arbitral awards was first considered by the Supreme Court in Renusagar Power Co. Ltd. v. General Electric Co. (supra). In the said decision, while considering the defence of public policy to the enforcement of arbitral awards, the Supreme Court held that the same must be construed in a narrow sense while dealing with awards*

containing a foreign element. The relevant portion of the judgment is extracted hereunder:

> *"51. A distinction is drawn while applying the said rule of public policy between a matter governed by domestic law and a matter involving conflict of laws. The application of the doctrine of public policy in the field of conflict of laws is more limited than that in the domestic law and the courts are slower to invoke public policy in cases involving a foreign element than when a purely municipal legal issue is involved. ...*

223. *This observation was consistently followed in the Indian jurisprudence. The Law Commission in its 246th report7 dated August, 2014 recommended that the scope of 'public policy' is restricted in Sections 34 and 48 of the A&C Act, 1996. It is confined only to the fundamental policy of Indian law and the most basic notions of justice or morality. The relevant portion of the report is extracted ....*

224. *A three Judge Bench of the Supreme Court, in the judgment, Shri Lal Mahal Ltd. v. Progetto Grano Spa [(2014) 2 SCC 433] further clarified the scope of the public policy exception to foreign awards. In this judgment, the Supreme Court observed that the expression 'public policy of India' in Section 48(2)(b) of the A&C Act, 1996 has a narrow scope and meaning attached to it. Unlike Section 34 of the A&C Act, 1996, which permits a broader interpretation of public policy in the context of setting aside domestic awards, Section 48(2)(b) of the Act mandates a more circumscribed and limited application when it comes to the enforcement of foreign awards. The Supreme Court in this judgment observed that the scope of Section 48(2)(b) of the A&C Act, 1996 did not extend to objections based on mere errors in foreign awards, including decisions allegedly*

contrary to the agreement between the parties. The relevant portion of the judgment is as under:

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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.

46. In what we have discussed above, even if it be assumed that the Board of Appeal erred in relying upon the report obtained by the buyers from Crepin which was inconsistent with the terms on which the parties had contracted in the contract dated 12-5-1994 and wrongly rejected the report of the contractual agency, in our view, such errors would not bar the enforceability of the appeal awards passed by the Board of Appeal.

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)."""

(Emphasis added)

86. Keeping in mind the said principles with respect to restricted judicial intervention under the ground of public policy, I will now deal with the contentions of the respondent that the impugned Awards are in conflict with the public policy of India.

87. The respondent's main grievance is with the interpretation given by the AT with respect to Article 3.3, 15 and 16 and Appendix D of the PSC. In my view, the interpretation of the majority AT is a reasonable and plausible view, and enforcement of the impugned Awards cannot be refused on this ground, as interpretation of the terms of a contract lies exclusively with the AT and the enforcement court cannot re-interpret the terms of the PSC, as already observed above.

88. The parties share a contractual relationship and how the PTRR must be calculated in terms of the PSC, to my mind cannot by any stretch of imagination lead to alleged violation of public policy of India neither can the findings arrived by the AT in this regard be said to be against justice or morality. When disputes arose between the parties, they were referred to arbitration in terms of the PSC and the majority AT, has examined the relevant terms of the PSC in the impugned Awards. It is not contention of the respondent that the AT refused to deal with or ignored any contention raised by the respondent or that AT defied procedural due process.

89. Additionally, the respondent has also contended that the PSC is a "special contract" concerning natural resources of the nation, thereby related to the public policy of India and hence, its interpretation should be governed by DPT. The said argument has already been

adjudicated by the Hon'ble Supreme Court in ***Vedanta (supra),*** and this Court maintaining the judicial discipline cannot relook into the same. The Hon'ble Supreme Court in ***Vedanta (supra)***, held as under:-

> *"129. With respect to the submission made on behalf of the appellants that the production sharing contracts are "special contracts" pertaining to the exploration of natural resources, which concerns the public policy of India, we are of the view that the disputes raised by the claimants emanate from the rights and obligations of the parties under the PSC. The award is not contrary to the fundamental policy of Indian law, or in conflict with the notions of justice, as discussed hereinabove. The term of the PSC was for a period of 25 years from 28-10-1994, which ended on 27-10-2019. We have been informed that the term of the PSC has since been extended for a further period of 10 years, through the mutual agreement between the parties. This itself would reflect that the performance of the obligations under the PSC were not contrary to the interests of India."*

90. The respondent in furtherance of its contention of application of DPT to the interpretation of the PSC and that the majority AT has passed the impugned Awards in favour of petitioners at cost of the people of India, has placed reliance upon ***Reliance Natural Resources (supra), Natural Resources Allocation (supra), State Bank of India (supra)*** and ***Reliance Industries (supra).*** However, the said judgements become irrelevant in view of the admitted fact that the PSC has been extended for a further period of 10 years, which itself shows that the terms and obligations of the parties under the PSC are not in violation

of public policy of India and not leading to unjust enrichment of private parties at cost of people of India, as also observed by the Hon'ble Supreme Court in ***Vedanta (supra)*** (in paragraph No. 129, reproduced above). In my considered view, the dispute between the parties' stem from their rights and obligations under the PSC and the AT's interpretation of the terms of the PSC and calculation of the PTRR and the same is not in violation of the fundamental policy of Indian law, or notions of morality or justice, as discussed above.

91. If the contention of the respondent is to be accepted that the impugned Awards are in violation of public policy and against the people of India, then no justifiable reason has been given by the respondent for extending the PSC with the petitioners for another period of 10 years (after passing of the impugned Awards). The respondent cannot blow hot and cold at the same time.

V. AT Was Not Rendered Functus Officio

92. Among the objections raised by the respondent, an underlying issue relates to jurisdiction of the reconstituted AT to pass the Final Award, since as per the respondent, the original AT became *functus officio* due to lapse of time and the reconstituted AT was wrong in holding that it had jurisdiction in lieu of the Federal Court's decision, as the said decision was passed in 2011 and petitioner approached AT in 2014. It is also contended that the letter of the then Secretary of original AT's dated 04.05.2005 was wrongly construed to mean that AT would await *ad infinitum* for parties to approach it.

93. The said objection to the jurisdiction of the reconstituted AT was also raised by the respondent before the reconstituted AT and the AT dealt

with the same in paragraph Nos. 123 to 134 of the Final Award, which read as under: -

> *"1. The Tribunal's Jurisdiction Generally*
> *123. As a matter of principle, once jurisdiction has been established in favour of a given arbitral tribunal to adjudicate certain issues, this jurisdiction cannot disappear at a later phase of the proceedings in relation to the said issues. The only possible subsequent event that could prevent the Tribunal from exercising its jurisdiction has to be the exhaustion of its jurisdiction either by rendering a final award on the merits regarding the entire claims initially submitted to the Tribunal, or through the mutual consent of the parties to end the task initially entrusted to the said Tribunal.*
> *2. The Tribunal's Jurisdiction to Pass a Final Award*
> *124. In conformity with the above stated general rule, Article 21 (3) of the UNCITRAL Rules provides that "a plea that the arbitral tribunal does not have jurisdiction should be raised not later than in the Statement of defence[...]". In the present case, no jurisdictional objections were initially raised, in the sense that in Respondent's Statement of Defence submitted in 2003, no jurisdictional objections existed at that time. Presently, the Tribunal is confronted, in the second phase of the arbitration, with a jurisdictional objection that falls clearly outside the scope of Article 21(3) of the UNCITRAL Rules.*
> *125. More precisely, contrary to the UNCITRAL Rules, Respondent is presently requesting the Tribunal to refrain from passing a Final Award, under the pretext that certain wording in paragraph 4 of the Agreed Terms of Reference excluded that possibility. In doing so, Respondent does not address paragraphs 2, 3, and 4 of the Agreed Terms of Reference as a whole, but quotes only a certain portion of*

paragraph 3 concerning what the Parties expressed in case the Tribunal issues a "prelimina1y partial award". The text in question simply refers to the Parties' agreement to be "allowed a period not exceeding 6 months from the date of publication of the partial award to arrive to a quantification of the sums relatable to each of the aforesaid issues". The making of the monetary award was reserved to the final stage of the proceedings. The question put to the Tribunal relates to the interpretation and impact of said agreed text, and whether it means bringing to an end the Tribunal's jurisdiction in case the 6 months period ends without a mutual agreement on the quantification of the amount due regarding one of the issues dealt with in the preliminary partial award.

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129. The Tribunal also notes that it has not issued an order for termination of the proceedings at any time and that Respondent did not object to the Tribunal's letter of 4 May 2005. In fact, none of the Parties ever requested a termination order from the Tribunal for the termination of these proceedings. The Tribunal further fails to see why, as Respondent suggests, its letter of 4 May 2005 should have lost its relevance in the present proceedings because of the specific agreement reached by the Parties on 6 June 2005. As noted, both Parties submitted that they only reached agreement in respect of the Tribunal's determinations that were not challenged before domestic courts and that their agreement on the ONGC Carry Issue was conditioned on the outcome of this challenge before Malaysian courts. But it is precisely the ONGC Carry Issue that is at issue in the present proceedings. Therefore, Claimants cannot be estopped, as Respondent has argued, from now raising a

matter that did not form part of the 6 June 2005 agreement of the Parties.

130. For similar reasons, the Tribunal disagrees with Respondent's argument that this Tribunal stands functus officio, i.e. that its mandate has expired due to the arrival of an expiry date or because its purpose has been accomplished. Under the UNCITRAL Rules, an arbitral tribunal's mandate concludes once a final award is made or a termination order is issued. Therefore, a tribunal cannot stand functus officio while there are pending issues before it and while its final award has not been rendered. For the reasons above, the Tribunal finds that it has retained its mandate in the Agreed Temrs of Reference and in the letter to the Parties of 4 May 2005 to rule on any outstanding issue relating to the determination of quantum between the Parties. In the absence of a final award on this issue, the Tribunal's mandate has neither expired nor has its purpose been accomplished.

131. In addition, the Tribunal considers that its entitlement to assume jurisdiction in this matter to finally rule on the issue that is still pending, in implementation of the final ruling of the Malaysian Supreme Court, is a necessary consequence of Respondent's ultimately unsuccessful challenge to the Partial Award before domestic courts.

132. Similarly, the Tribunal disagrees with Respondent's argument that Claimants have abandoned this arbitration and that the proceedings have thus become "unnecessary or impossible" within the meaning of Article 34(2) of the UNCITRAL Rules. The proceedings have evidently not become "impossible", and the Tribunal fails to see why the proceedings have become "unnecessary", considering that there appears to be considerable debate between the Parties

about the issues that Claimants brought to the Tribunal's attention in their letter of 26 September 2014.

133. To the extent that Respondent alleges that Claimants should have approached the Tribunal immediately after 12 April 2005 and not at this stage, and that consequently Claimants are barred or estopped from pursuing the present proceedings, the Tribunal recalls that it was Respondent, and not Claimants, that challenged the Tribunal's Partial Award ruling on the ONGC Carry Issue before Malaysian courts. The failure to reach a settlement within the time frame initially provided in the Agreed Terms of Reference was thus a direct result of Respondent's recourse to domestic courts and is not attributable to Claimants. Accordingly, the Tribunal rejects Respondent's characterization of Claimants' present actions as lacking "bonefide" or as constituting an "abuse of the process of the Tribunal".[64] Therefore, Claimants are not barred or estopped from pursuing the present proceedings.

134. The Tribunal also disagrees with Respondent's argument that the Tribunal's mandate to adjudicate the dispute terminated because it failed in its duty to act promptly and with diligence. Respondent's argument rests on Article 14 of the UNCITRAL Model Law, which contemplates that an arbitral tribunal should act "without undue delay". Article 14 of the UNCITRAL Model Law takes effect under Malaysian law through Section 16 of the Malaysian Arbitration Act 2005 (as amended by the Malaysian Arbitration (Amendment) Act 2011). While this legislation is not applicable to the present proceeding, the Tribunal accepts that arbitral tribunals have a duty to act without undue delay. However, the Tribunal disagrees that it did not live up to this standard. As previously explained, on 14 April 2005, Respondent informed the Tribunal of its

intention to challenge the Partial Award in Malaysia. The Tribunal then informed the Parties by letter dated 4 May 2005 that it would "await a request from one of the Parties before seeking to commence proceedings relating to the determination of quantum".[65] *Such a request was not forthcoming until Claimants petitioned the Tribunal to reinitiate these proceedings in 2014. While the Tribunal did not anticipate that it would receive this request some ten years following the issuance of the Partial Award, the delay was an unavoidable consequence of the fact that Respondent subjected the Partial Award to lengthy set aside proceedings before the Malaysian courts."*

94. From a perusal of the paragraphs, reproduced above, the reconstituted AT provided the following reasons to reject the respondent's objection to its jurisdiction namely: (i) AT retains jurisdiction over a dispute unless it either finally decides or jurisdiction is terminated by the parties, which was not the case; (ii) as per Article 21(3) of the UNCITRAL Rules, respondent failed to raise objection to jurisdiction in the statement of defence; (iii) the respondent reliance on paragraph No. 4 of the Agreed Terms of Reference is misleading, as it failed to read it in its entirety along with paragraph Nos. 2 and 3; (iv) *vide* letter dated 04.05.2005 the AT retained jurisdiction over quantification issue unless resolved, which never specified any time limit and the same was never objected to by the respondent; (v) the letter of 04.05.2005 did not lose its relevance because of the agreement reached on 06.06.2005, as parties only agreed in respect of AT's determinations not challenged before domestic courts and their agreement on ONGC Carry Issue was conditional on outcome of the challenge before Malaysian courts; (vi) pendency of challenge before the Malaysian

Supreme Court; (vii) respondent's reliance on Article 34(2) of the UNCITRAL Rules is misplaced as the proceedings have not become "unnecessary" as issue between parties existed; (viii) the delay in approaching the AT is attributable to respondent, as it was its action of challenging the Partial Award ruling on ONGC Carry Issue before Malaysian Courts which lead to failure to reach settlement within the time frame; (ix) reliance of respondent on Article 14 of UNCITRAL Model Law to allege that AT did not act promptly is wrong, as the said Article takes effect under Malaysian law through Section 16 of the Malaysian Arbitration Act 2005, which was found to be not applicable to the present proceeding; and lastly, (x) the AT acted as per procedure, as the request to decide on the ONGC quantification issue was made in 2014, which was unexpected after about 10 years of passing of the Partial Award, hence, the delay was inevitable repercussion of lengthy setting aside proceedings before Malaysian Courts.

95. Clearly, the respondent has reiterated the same objections pertaining to jurisdiction it raised before the AT and the AT has dealt with each one of them, and to my mind the same are plausible and reasonable views and do not shock the conscience of the court. As already observed above, the enforcing court under Section 48 of the 1996 Act has very limited grounds on which it can refuse to enforce a Foreign Award. For the said reasons, I am not inclined to interfere with findings of the AT in the Final Award on the issue of jurisdiction.

VI. AT Did Not Travel Beyond the Submissions and Issues

96. It is contended by the respondent that petitioners' application was

based on paragraph 4(a) of the Agreed Terms of Reference, however, the reconstituted AT held that the submission was made under paragraph 4(b) of the Agreed terms of Reference and hence, the Final Award cannot be enforced under Section 48(1)(c) of the 1996 Act.

97. The AT in paragraph Nos. 138 to 143 of the Final Award has explained as to why it opined that it was paragraph 4(b) of the Agreed terms of Reference under which issue has to be decided and not under paragraph 4(a) of the Agreed terms of Reference. The said paragraphs are extracted below:-

> *"138. Whether a dispute exists between the Parties that may form the basis for a final award in this matter must be considered in light of paragraph 4 of the Agreed Terms of Reference. Paragraph 4 reads:*
>
> > *"4. After the expiry of the aforesaid period (or earlier if parties mutually so request), this Tribunal would make its final award in the following manner:*
> >
> > *a. If the parties are able to arrive at a mutually agreed quantification, the Tribunal can without any further hearing, and upon intimation by the parties by way of a joint memo, pass a final award on quantification, or*
> >
> > *b. If the parties are unable to arrive at a mutually agreed quantification, then in respect of such issues of which there are differences subsisting on quantification, this Tribunal may resolve the same and then pass a final award on quantification."*
>
> *139. The Tribunal, first, finds itself unable to follow Claimants' suggestion that it may proceed under paragraph 4(a) in the present circumstances. Under this provision, the Tribunal may only pass a final award on quantification in the event of a mutually agreed quantification and "upon intimation by the parties by way of a joint memo". However,*

since it was Claimants, and not the Parties jointly, that have approached the Tribunal in the present dispute, the requirements stipulated in paragraph 4(a) of the Agreed Terms of Reference are not met and thus paragraph 4(a) does not confer jurisdiction on this Tribunal to pass a final award under the present circumstances.

140. With regard to the Tribunal's power to pass a final award on quantum under paragraph 4(b), Respondent argues that the Tribunal lacks jurisdiction because no dispute as to quantum exists between the Parties. In contrast, Claimants aver that the issuance of the Show Cause Notice by Respondent on 10 July 2014 triggered a dispute between the Parties with regard to quantification of the ONGC Carry Issue. In this regard, it is Claimants' view that they do not owe anything to Respondent in relation to the ONGC Carry Issue, i.e., that the value attributable to the ONGC Carry Issue is zero, while Respondent argues that Claimants' failure to timely enforce the Partial Award in Indian Courts results in their duty to pay USD 99 million to Respondent, i.e., that the value attributable to the ONGC Carry Issue is USD 99 million in Respondent's favour. For its part, the Tribunal considers that the quantification of the ONGC Carry Issue is clearly encompassed by the Tribunal's mandate in paragraph 4(b) of the Agreed Terms of Reference and that the Parties' different positions reflect a dispute on this issue.

141. For these reasons, the Tribunal decides that there is a dispute pertaining to quantification between the Parties within the meaning of paragraph 4(b) of the Agreed Terms of Reference. The Tribunal has jurisdiction under the terms of this provision.

142. The Tribunal wishes to emphasize that it does not seek to exercise jurisdiction over the merits of Respondent's

Show Cause Notice of 10 July 2014. This is a matter that both Claimants and Respondent agree falls outside the scope of the Tribunal's jurisdiction. Nonetheless, the Tribunal considers that, contrary to Respondent's position, the issue before it does not merely pertain to the enforcement of the Partial Award, but relates to quantification. Paragraph 4(b) of the Agreed Terms of Reference confers jurisdiction upon the Tribunal to rule on it accordingly.

143. In sum, the Tribunal finds that it is competent to render a final award pursuant to paragraph 4(b) of the Agreed Terms of Reference. There is no basis to find that the Tribunal's mandate was extinguished between the time that the Partial Award was rendered and the time that this second stage of the proceedings was commenced. Further, having established that the Partial Award is binding on the Parties despite non-enforcement in India, the Tribunal finds that there is in fact a dispute about quantification. This dispute is evidenced by the Parties' contrasting submissions on the subject of quantification."

98. A perusal of the paragraphs, reproduced above, show that since the parties failed to arrive at an agreement it was under paragraph 4(b) of the Agreed terms of Reference that the AT could pass the final award and not paragraph 4(a) of the Agreed terms of Reference, as paragraph 4(a) of the Agreed terms of Reference was applicable when the parties had mutually agreed on quantification. I do not find this objection to be falling under Section 48(1)(c) of the 1996 Act. As per the said sub-section enforcement of a foreign award can be refused if the award "*deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on*

matters beyond the scope of the submission to arbitration".

99. Additionally, the respondent has also contended that in Final Award, the ONGC Carry Issue, which was "*should certain monies deposited or paid by the Contractor in advance for the goods and services in connection with Petroleum Operation be treated as Contract costs at the time of payment for purposes of Article 15 and 16 of the PSC*", is different from original ONGC Carry Issue agreed by parties and the initial AT. The same is clearly a clerical mistake as also observed by the High Court of Malaya at Kuala Lumpur in order/judgment dated 14.05.2018. The relevant paragraphs from the said order/judgment are extracted below:-

> *"[235] This is a case where a slip of the tongue or rather the keyboard is no mistake of the mind. There cannot be any controversy that the incorrect definition of the ONGC Carry Issue did not result in the re-determination of the ONGC Carry Issue itself which remained a matter decided by the Partial Award.*
>
> *[236] The 2 issues that were interchanged due to the "slip" were the issues decided in favour of the Defendants in the Partial Award i.e. issues under paragraphs 1(a) (i.e. the ONGC Carry Issue) and 1(f) of the Agreed Terms of Reference.*
>
> *[237] I would agree with the Defendants that it is clear from reading the Final Award as a whole that where the Tribunal used the phrase "ONGC Carry Issue", it intended to refer to issue "a.". This is apparent from, inter alia: ..."*

CONCLUSION

100. In view of the aforesaid discussion, I find that the substantial objections raised by the respondent have already been decided by the

Hon'ble Supreme Court in ***Union of India v. Vedanta Ltd., (2020) 10 SCC 1,*** and the findings in the said judgment are binding on me and this Court cannot relook or revisit the same. As regards other objections are concerned, the same concern the merits of the controversy and interpretation of the AT's findings, which being plausible views, are beyond the scope of interference of this Court.

101. For the said reasons, I find that the objections urged by the respondent to challenge the enforcement of the impugned Awards are meritless and without substance. The respondent's objections contained in I.A. No. 11351/2017 are dismissed. Resultantly, the declaratory prayer made by the petitioners in O.M.P.(EFA)(COMM.) 5/2017 is allowed. Consequently, pending applications, if any, are disposed of.

102. The bank guarantees submitted by the petitioner(s) shall be released, not later than 8 weeks from pronouncement of this judgment.

103. The documents handed over in the Court are taken on record.

JASMEET SINGH, J

JULY 01, 2026/ HG