IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. 416 of 2004 & I.A. No. 10758 of 2012

Reserved on: 23rd July, 2012
Decision on: 17th August, 2012

OIL INDIA LIMITED. ..... Petitioner

Through: Mr. Shanti Bhushan, Senior Advocate with Mr. Navnit Kumar and Ms. Deepika Ghotawar, Advocates.

Versus

ESSAR OIL LIMITED. ..... Respondent

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Rishi Agrawal, Ms. Megha Mehta Agarwal and Ms. Misha Rohtagi, Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
17.08.2012

Introduction

1. Oil India Limited ('OIL') has in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenged the majority Award dated 6th August 2004 of the three member Arbitral Tribunal ('AT') that adjudicated the disputes between OIL and the Respondent Essar Oil Limited ('EOL') arising out of a contract dated 8th May 1995 entered into between the parties for drilling of offshore wells on turnkey basis offshore Saurashtra Coast, Gujarat and offshore North East Coast ('NEC'), Orissa for the purpose of exploration of oil and/or gas.

Background Facts

2. OIL issued Notice Inviting Tender ('NIT') dated 19th July 1993 for setting of four Offshore Exploratory Oil/Gas Wells, three Wells at Saurashtra Offshore of the West Coast of Gujarat and one Well in NEC, Offshore of Orissa (drilled with self-propelled floater including all supporting services for the exploration of oil and/or gas on turnkey basis).

3. In response to the NIT, EOL submitted its offer on 6th December 1993 which was subsequently clarified / amended. EOL submitted its final priced bid dated 13th January 1995 offering to deploy one Turret Moored Self-Propelled Drillship "Essar Discoverer" on turnkey basis complete with drilling and other associated equipment, personnel and services for the purpose of drilling of exploratory oil and gas wells and performing the Auxilary Operations and services for OIL (referred to in the contract as 'Operator'). After some exchange of correspondence, OIL accepted EOL's offer and a Letter of Intent ('LOI') dated 20th February 1995 was issued. Consequent upon the acceptance of EOL's offer, the parties entered into a contract dated 8th May 1995.

4. Certain relevant definitions contained in the contract read as under:

> "1.1 "Drilling Unit" means the Turret Moored Drillship Essar Discoverer with all equipment supplies and supporting services in good operating condition as detailed in Annexures 2 to 4.
>
> 1.3 "Commencement Date" means the date when the drilling unit arrives on first or standby location with all equipment, supplies as detailed in Annexure 2 to 4 and personnel as detailed in Annexure-5.
>
> 1.4 "Termination Date" means the date when the drilling unit

is released by Operator, all equipment of Operator and other contractors of operator having been off-loaded, and the Drilling Unit is available to contractor after deanchoring for cruising from Demobilization site, i.e. the location drilled last.

1.13 "Operations Base": Contractor shall establish an operations base at Rajkot, Gujarat for Saurashtra Offshore operations and at Bhubaneswar, Orissa for North East Coast Offshore operations, to keep close liaison with Operator and shall ensure that services of operations manager of contractor or his representative shall be available to operator for emergencies.

1.14 "Supply Base": Contractor shall establish a Supply Base at Okha Port, Gujarat and/or any other port suitable to the contractor with prior permission of the Operator to feed drilling operation at Saurashtra Basin. In the event of establishment of base other than at Okha Port all expenses pertaining to shift of operators equipment and materials shall be at Contractor's account. An offshore supply base will also be established by the Contractor at Paradip Port, Orissa for North East Coast Offshore Operations. Both the supply bases should be equipped with cranes, warehouse and storage facilities and shall also receive all the materials of operator for further transportation to the Drilling Unit at such bases."

5. Under Article 2.2, the four offshore wells were to be completed within a period of one year with a provision for extension to complete the Wells, if necessary. The Contractor (EOL) confirmed that the Operator (OIL) shall not have to pay EOL during the extension period required for completing the four wells, except for meal charges beyond 12 Operator's personnel as per the contract and additional day rate operations, if carried out by OIL other than indicated in the contract. The first drilling location was L-2, the second L-3 and third L-4, on the offshore of Saurashtra Coast, Gujarat. The last drilling location was to be L-1 on the NEC, Orissa. Under Article 2.3, a precondition for commencement of actual drilling work by EOL was to be a

written declaration drawn and signed at the first drilling location i.e. L-2 by the representatives of the OIL and EOL as to the availability of the equipment, material, other allied items and the fulfillment by EOL of both the personnel requirements and the objective conditions to satisfactorily commence uninterrupted drilling operations by the Drilling Unit ('DU') at the drilling locations.

6. Under Article 3.1, OIL held out that it had a Petroleum Exploration Licence ('PEL') in the Arabian Sea off the Saurashtra Coast, Gujarat and in Bay of Bengal off the NEC. Under Article 3.3, EOL was to provide its drillship (Essar Discoverer) along with material, associated services and personnel. Four locations were to be set up in a period of one year as per the following schedule:

Location Number	Depth in Mtr. in Days	Drilling	Testing in Days	Total in Days
L-1	5000	135	28	163
L-2	3100	45	21	66
L-3	2800	45	21	66
L-4	1600	30	21	51

7. The inter-location move time between L-2 and L-3 was one day, from L-3 to L-4 one day and from L-4 to L-1 fifteen days. The drilling days included 43 days wire line logging period and 9 days coring period. Under Article 3.25, EOL personnel were to inspect all materials to be furnished by OIL upon delivery and were to notify OIL representative of any apparent defect found so that OIL could replace such defective materials. If EOL failed to notify OIL of any defects, it was to be conclusively presumed that such appliances and materials were free from apparent defects.

8. Article 4 dealt with mobilization and demobilization of the DU. Under Article 4.4, the mobilization of the DU could be delayed for better weather conditions, if mutually agreed between OIL and EOL. Article 5 dealt with termination. Under Article 5.1, OIL could by giving 30 days written notice to EOL with a copy to their Head of Team at the drill site, terminate the contract at any time during the period of contract, if OIL was satisfied that EOL "is incompetent and incapable of performing any of its obligations under this contract, including change of any crew member in spite of being advised in writing to improve upon its performance".

9. Under Article 27, the parties agreed that all disputes and differences between them were to be referred to arbitration under the Rules of the Indian Council of Arbitration ('ICA'). The venue of the arbitration was to be New Delhi or Rajkot or Bhubaneswar at the option of OIL.

10. OIL states that there was an initial delay of 6 days in the commencement of the operations at L-2. The first well was spudded only on 14th June 1995. The drilling at L-2 was completed after the expiry of 161 days on 21st November 1995. There was a delay of 119 days in drilling which included 45 days lost for repair of EOL's various equipments and four days lost for cementing squeeze. The inter location move time from L-2 to L-3 took 19 days resulting in a delay of 18 days. The operation at L-3 took 46 days. Three days were lost for improving the cementing of the casing and two days were lost in repairs. The inter location move time from L-3 to L-4, took 8 days thereby causing a delay of 7 days. The delay of 25 days in inter location movement resulted in the stipulated time for drilling being exceeded by 92 days. Consequently, the further inter location movement from L-4 to

L-1 was delayed.

11. The work at L-2 commenced on 8th June 1995 and work at L-4 was completed on 16th July 1996, whereas under the contract EOL was obliged to drill all the four wells within 365 days. The inter location movement from L-4 to L-1 which ought to have been completed on 31st July 1996 did not commence till 3rd September 1996. It is the case of OIL that the drillship (Essar Discoverer) reached at L-1 around 24th September 1996. According to OIL the drill ship did not conform to the definition of a DU in terms of Article 1.1 of the contract.

12. At this stage, it is necessary to note certain relevant facts. By a letter dated 19th July 1996, EOL informed the OIL that the Essar Discoverer was in the process of pulling up BOP stack after release at location L-4 and was awaiting a better weather for travel. The Ministry of Petroleum and Natural Gas ('MoPNG'), Government of India granted PEL for Offshore NEC under the cover of a letter dated 22nd July 1996.

13. In a letter addressed to EOL on 23rd July 1996, OIL pointed out various shortcomings and operational deficiencies in EOL's performance of the contract as noticed during the drilling operation at L-2, L-3 and L-4. EOL replied on 23rd July 1996 denying the contentions of OIL and *inter alia* setting out decisions of EOL to ensure that the standard of equipment maintenance was further improved. On 13th August 1996, EOL informed OIL that Essar Discoverer had been "waiting on weather till 12th August 1996" and that the period between 18th July and 12th August 1996 should be added to the time allowed for completion of the contract without levying any

penalty.

14. By letter dated 20th August 1996, OIL informed EOL that it was "pleased to extend the contract under Article 2.2 for a period for completion of the wells, one in location L-4 in SEP and the other in location L-1 in NEC or until 31st March 1997 whichever is earlier at the same rate, terms and conditions". By a separate letter dated 20th August 1996, EOL informed OIL that it would be able to mobilize to the NEC only by the end of September 1996 and further that the period from October to December was unfit for carrying out drilling operations in the NEC. It also expressed its apprehension that even after mobilization EOL would not be able to complete anchoring and commence drilling operations due to adverse weather conditions.

15. OIL claimed to have written to EOL on 22nd and 24th August 1996 showing various defaults and deficiencies on the part of EOL while drilling the wells at locations L-2 and L-3. This was followed by a meeting which took place between the parties on 26th August 1996 at Rajkot. In the technical presentation made by EOL at the meeting it claimed that it had lost considerable amount of time and money on drilling at location L-2 due to incorrect data provided by OIL and it was in the interest of OIL and the safety of the well to review the drilling programme for location L-1. EOL had carried out a third party inspection of the casing pipes offered by OIL at Bhubaneswar and Paradip. Many of the casings had been rejected due to heavy corrosion and not meeting the required oilfield standards, there was need to immediately replace them. The clearances between 10-3/4" and 8-5/8" casings were inadequate. Several vital parameters of 14" casing were

found in not conformity with API recommendations. It was pointed out that this deficiency had serious consequences endangering the well, the rig and the life of the people on board. This was reiterated by EOL in its letter dated 3rd September 1996 to OIL.

16. On 13th September 1996, EOL informed OIL that Essar Discoverer which had sailed from Okha to location L-1 was estimated to arrive at Paradip on 24th September 1996 and that all associated services required to be provided by EOL would be mobilized in time for the drillship to commence drilling operations on arrival at location L-1. EOL asked OIL to arrange to obtain Offshore Defence Advisory Group (ODAG) clearance as well as other clearance that may be required for the drillship. On 20th September 1996, EOL informed OIL that the drillship had been taken directly to location L-1. On 21st September 1996, OIL insisted that Essar Discoverer should reach at Paradip soon to obtain clearances from the different authorities before moving to location L-1. EOL in response asserted that there was no need for drillship to call at any port. However, OIL's stand in its letter dated 23rd September 1996 was that the Essar Discoverer should be brought to Paradip for taking clearances from the various authorities. In its letter dated 23rd September 1996, EOL stated that the responsibility for obtaining clearance, under Article 9.9(b) of the contract from the naval authorities and ODAG was of OIL. By another letter dated 25th September 1996, EOL informed OIL that it would be charging Day Rate D-3 from 24th September 1996 till such time OIL arranged the clearances.

17. In the meanwhile, on 24th July 1996 itself OIL had written to the

Defence Research and Development Organisation ('DRDO') about the drilling in the NEC being proposed to be started by 3rd week of August 1996. The Secretary, MoPNG also wrote a letter dated 11th September 1996 to the Ministry of Defence ('MoD') making a fervent plea for clearance to be granted for oil exploration in the NEC. This was reiterated in a letter dated 25th September 1996 from OIL to the Chief Controller (R&D), MoD. OIL also wrote to the MoPNG on 16th September 1996 stating that it had approached the naval authorities for grant of "No Objection Certificate" ('NOC') and requested the MoPNG also to suitably advise the Naval Headquarters for instructions to appropriate naval command for carrying out the inspection of the drillship immediately. The DRDO rejected the grant of permission for any period after 31st December 1996. In its letter dated 1st October 1996, the DRDO stated that operation in the NEC would be stopped with effect from 1st January 1997, since the zone was needed by the DRDO for undertaking defence related missions.

18. Without mentioning the above efforts made by it to obtain naval and DRDO clearances, OIL wrote to EOL on 1st October 1996, calling upon it to fulfill its contractual obligation to obtain necessary clearance stating that all possible assistance would be provided by OIL in terms of Article 6.9 of the contract. EOL was asked to position its drillship at location L-1 immediately. On 10th October 1996, OIL wrote to EOL stating that it was EOL's obligation to obtain clearance from the Naval Authorities as per Article 6.9 of the contract. It took the stand that the requirement that the OIL should obtain the clearances was outside the provisions of the contract and not acceptable to them.

19. Within two days thereafter on 12th October 1996, OIL addressed the following letter to EOL:

> "Dear Sirs,
>
> Whereas you are incompetent and incapable of performing your obligations under the aforesaid contract, please take notice that Oil India Limited hereby terminates the above contract in terms of the relevant conditions thereof with immediate effect.
>
> This is without prejudice and in addition to all other rights and contentions which Oil India Limited has against you under the aforesaid contract and in law."

20. On 11th October 1996, the naval authorities visited the drillship Essar Discoverer, carried out an inspection and granted clearance that was valid till 31st December 1996 which was the period up to which DRDO had also granted permission to OIL. On 18th October 1996, the naval clearance was conveyed to OIL by the Flag Officer Commanding-in-Chief of the Eastern Naval Command.

21. It is the case of EOL that under Article 3.3 of the contract a total time of 163 days had been allocated for completion of drilling at location L-1. By 12th October 1996, OIL realised that only less than 80 days would be available for this purpose up to 31st December 1996 and therefore, the drilling process at location L-1 could not be completed by then. Also, OIL's liability to compensate EOL for non-utiltisation of the DU for the entire period would stand attracted. To avoid this, OIL decided unilaterally to terminate the contract. EOL further contends that this termination was contrary to Article 5 of the contract in terms of which 30 days' prior notice was to be given. Admittedly, no such notice was given by OIL to EOL. As a

result of the sudden termination of the contract, EOL was compelled in turn to terminate its contracts with various parties for rig positioning services, supply services, mud logging services, cementing services and ROV services etc.

22. It is the case of OIL that EOL did not have a complete DU at location L-1 on 24th September 1996. It was supposed to have two Offshore Supply Vessels ('OSV') and one Blowout Preventer ('BOP'). According to OIL only one OSV Nand Cauvery carrying material from Base Station at Okha reached location L-1 on 1st October 1996. The BOP stack had been sent for maintenance to Abu Dhabi, and one OSV was waiting at Dubai. The BOP was loaded on the said OSV by 7th October 1996. It was therefore contended that EOL was not in a position to commence drilling operation at L-1 on the date when the Essar Discoverer reached L-1.

23. On 17th October 1996, EOL submitted three invoices to OIL, one claiming amount in lieu of notice period, the second for demobilization charges after completion of operations at L-4 and the third for Day Rate charges for 18 days on the basis of denial of access to L-1.

Arbitral proceedings

24. The disputes and differences were referred to the AT comprising Mr. Justice R.S. Pathak, former Chief Justice of India as Presiding Arbitrator, Mr. Justice Rajinder Sachar, retired Chief Justice of High Court of Delhi and Mr. Justice J.K. Mehra, retired judge of Delhi High Court as co-Arbitrators. EOL filed its statement of claims, claiming the following

amounts:

"(a) Value of work done but payment not made	Rs.113,707	$7,761,754
(b) Wrongful and unauthorised deduction by OIL from Essar's invoices		$2,620,460
(c) Expenses incurred by Essar at Rajkot and Bhubaneswar for completing the Well L-2, that is to say, from 17 July 1996 to 3 September 1996.	Rs.11,966,059	$837,292
(d) Value of extra work done at Location L-2.		$4,377,674
(e) Damage for wrongful invocation of bank guarantee.	Rs.6,172,600	
(f) Damages for breach of contract.	Rs. 502,900,000	$2,180,950"

25. While denying the above claims, OIL filed its counter-claims, which are as under:

"1) Recovery of cost being the difference of the cost between 9-5/8" casing and 7" casing used in well at Loc. L-2.	(In Rs.) 19,16,923
2) Recovery towards excess payment made to Claimant due to variation in exchange rate in view of delay in drilling of wells in Saurashtra.	1,56,08,446
3) Liquidity damages for the period from 1 August 1996 to 11 October 1996 @ US$7,500.00 per day amounting to US$540,000.00 (Excange rate @ Rs.36.00/US$).	1,94,40,000

4) Delay in inspection of the defendant's materials for Loc.L-1 — 23,38,644

5). Defendant's third party materials which were not handed over in time as per contract resulting in extra expense to OIL for the period 12 November 1996 to 28 December 1996

(i) Hire charges for wireline logging equipment@US$1,13,000.00 per month for 44 days: $165,733.33

(ii) Production Testing:

(a) Hire charges of essential equipment @US$39,631.00 per month for 44 days: $58,125.47

(b) Hire charges of additional equipment @US$18,600.00 per month for 44 days: S$27,280.00

Total : $251,138.80

(Exchange rate @ Rs.36.00/US$) — 90,40,997

6) Service of third party (Schlumberger) availed by the Claimant: $47,139.80

(Exchange rate @ Rs.36.00/US$) — 16,97,033

7) Telephone and other charges, the services of which have been availed by the Claimant from OIL's different offices:

- For Saurashtra Operations:
  - Telephone charges from November 1995 to September 1996: 3,24,856
  - Port space hiring charges at Okha for the period September 1995 to March 1997: 2,04,925
  - Port electricity charges paid on behalf of Essar: 4,244
  - Car used by Essar: 2,897
  - Transportation charges of Dressing Mill as per the request of Essar: 12,000
  - Wireless license fee paid by OIL for the period June 1995 to 30th September 1996: 20,267

-Transportation charges for Regan Slope Indicator:	12,000
- Off-loading of OIL's third party contractor's material at Okha:	19,854
- Recovery of excess amount paid while settling Invoice No.EOL/02/96/MISC/6, EOL/02/96/12, 8; EOL/03/96/MISC/20 for boarding and lodging charges of Essar:	78,961
- Expenses for NEC Operation	
- Telephone charges for the period 16 April 1996 to 15 June 1996 spent by OIL's Bhubaneswar Office:	3,448
- Supply of labour at Paradeep Port paid to Orissa Stevedors Ltd.	92,074
- Amount paid to M/s. M.J. Engineers.	3,000
- Payment made for cleaning and servicing of 30" Casing and wellhead items.	2,876
- Advance rent for Plot paid to Paradeep Port Trust for open area and go-down for the period from 1 October 1996 to 31 December 1996	46,094
- Compressor hire charges, HSD cost etc. paid to Paradeep Port Trust on behalf of Essar.	8,734
Total:	5,08,78,273"

26. The AT framed the following issues:

> "1. Whether the Claimant or the Respondent was obliged to obtain any clearance for drilling at location L-1 from the Government including DRDO and Naval authorities?
>
> 2. Whether under the facts and circumstances of the case the Claimant was incompetent and incapable of performing the contract?
>
> 3. Whether under the facts and circumstances, the contract was rightfully terminated by the Respondent?
>
> 4. Whether the various claims and counter-claims made

by the parties are maintainable under the contractual terms and conditions?

5. Whether under the facts and circumstances, the Claimant is entitled to relief on any or all of its claims?

6. Whether the Respondent is entitled to relief on its counter-claim?

7. To what other relief is the Respondent entitled?"

27. On behalf of EOL Mr. N. Ramesh was examined as CW-1, Mr. A.D. Amladi as CW-2 and Mr. E. Kotylak as CW-3. The said witnesses filed their affidavits and were cross-examined. OIL's witnesses were Mr. Ranabir Sircar, RW-1, Mr. Tradip Kataky, RW-2 and Mr. Dwijaraj Dash, RW-3. They filed affidavits and were cross-examined by EOL.

The Majority Award

28. The majority Award dated 6th August 2004 by Justice Pathak and Justice Mehra decided as under:

(i) It was OIL and not EOL which was obliged to obtain prior clearances from DRDO and the naval authorities for drilling at location L-1;

(ii) OIL failed to prove that EOL was incompetent and incapable of performing the contract. Consequently, the contract was not rightfully terminated by OIL;

(iii) EOL was entitled to US Dollar ('USD'):

1,296,880 as acknowledged by OIL towards well completion

charges for L-4

2083.33 being the Day Rate 3 for one hour in terms of Article 4.3 of the contract being the time during which the drillship was on 15th July 1996 waiting for orders from OIL; and

750,000 on account of inter location move from L-4 to L-1;

3,000,000 towards demobilization charges;

540,000 for waiting at location L-1;

2,166 material procured by EOL for OIL

112,388 for Brine Solution

2,580 for Filter Cartridges

Rs.50,630 + Rs.25,280 + Rs.37,548 towards telephone and fax charges

(iv) EOL was held entitled to (in USD):

124,277 towards delay in payment of invoice dated 1st December 1995 at 12% per annum

12,740 being the interest at 12% per annum for delay in payment of invoice dated 1st January 1996

3,478 towards interest for delay in payment of invoice dated 1st February 1996

27,707 towards interest at 12% per annum on the delayed payment of the well completion charges;

(v) EOL was entitled to (in USD)

595,781.25 for wrongful deduction by OIL of Liquidated Damages ('LD') from the invoice raised by EOL, beyond the scope of Article 15.2,

292,101.95 in respect of invoice on account of deductions made disallowing the time spent on remedial jobs

590,000 as regards the deductions made in respect of the period of 409 and 63 hours in December 1995 and January 1996

94,374.30 being 5% retention from the invoice of EOL by OIL

259,375 in respect of claims of EOL upon unjustified deduction from other invoices

313,985 for expenses incurred at Rajkot and Bhubaneswar after completing location L-4

349,423.51 for the cost of additional material purchased and used at location L-2

Rs.7,31,178 as damages for wrongful invocation of the bank guarantee and

Rs.15 lakhs towards costs and expenses of litigation.

(vi) Interest at 12% per annum from 1st May 1997 till the date of the Award and post-Award interest at 8% per annum till the date of actual payment was awarded to EOL. However, EOL's claim for USD 1,500,000 for compensation in lieu of notice of termination, was rejected. The total claims of EOL allowed were in the sum of USD 8,369,339 and Rs. 68,30,504 together with interest at 12% per annum till the date of the Award and at 8% per annum thereafter till the date of payment.

(vii) The following counter-claims of OIL were allowed (in Rs.):

3,28,304 towards reimbursement of telephone expenses (Counter Claim No. 6)

2,51,019 towards hire charges for port space at Okha in Paradip (Counter Claim No.7)

4,244 towards electricity charges (Counter Claim No.8)

2,897 towards hiring charges for cars (Counter Claim No. 9)

20,267 towards wireless licence fee (Counter Claim No. 10)

12,000 towards transportation charges of dressing mill (Counter Claim No. 11)

19,854 towards cost of off-loading third party Contractors' material (Counter Claim No. 12)

1,66,884 towards compensation for labour force provided for inspection of material (Counter Claim No. 14)

77,00,000 towards recovery of material cost (Counter Claim No.15)

(viii) The remaining counter-claims of OIL were rejected. A total of Rs. 85,05,469 of OIL's counter-claims were allowed together with interest at 12% per annum till the date of the Award and at 8% per annum thereafter till the date of payment.

The Dissenting Award

29. Justice Sachar who gave the dissenting Award first held that OIL could not be held to have acted illegally in terminating the contract. The claim for the inter location move from L-4 to L-1 was rejected, since even up to 18th October 1996, the BOP and OSV were not in a position to reach L-1. The claim for USD 3 million towards demobilization of the DU was allowed. Justice Sachar rejected the claim of EOL in the sum of USD 900,000 for waiting at location L-1. Justice Sachar had rejected the claims for delayed payment of invoices or the reimbursement of the deductions made by OIL.

EOL's claims for telephone and fax charges, procurement of material, brine solution, filter cartridges were allowed. EOL's claim for cost of additional material at location L-2, the damages for wrongful invocation of bank guarantee as well as claim for past interest were all rejected. On the claims of EOL that he allowed, Justice Sachar granted post-Award interest at the rate of 12% per annum. Barring one counter-claim relating to entitlement of OIL to refund of the differences between cost of 9-5/8" and 7" casing, all other counter-claims were rejected. On the question of *pro rata* refund of mobilization charges, EOL was directed to refund to OIL half of USD 6.5 million.

Delay in pronouncement of Award and I.A. No.10758 of 2012

30. The first submission by Mr. Shanti Bhushan, learned Senior counsel appearing for OIL, was that the impugned Award was delivered more than three years after it was reserved and extraordinary delay by itself rendered it contrary to the public policy of India. Referring to the judgments of the Supreme Court in ***Kanhaiyalal v. Anupkumar (2003) 1 SCC 430***, ***Bhagwandas Fatechand Daswani v. HPA International (2000) 2 SCC 13***, ***Anil Rai v. State of Bihar (2001) 7 SCC 318*** and ***R.C. Sharma v. Union of India (1976) 3 SCC 574***, he submitted that where an unexplained delay in the delivery of a judgment by a High Court itself gave "rise to unnecessary speculations in the minds of parties to a case" could be the sole ground for it being set aside, then *a fortiori* an arbitral Award that was delivered after an unexplained delay should be set aside as being opposed to the public policy of India. He referred to the decision in ***Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705*** (hereafter '***the ONGC case***') and submitted that the phrase 'public policy of India' was wide enough to

include ‘some matters which concern public good and the public interest’ and expeditious pronouncement of arbitral Awards was one such.

31. Mr. Shanti Bhushan referred to the decision of the learned Single Judge of this Court in ***Harji Engg. Works Pvt. Ltd. v. M/s Bharat Heavy Electricals Ltd. 2009 I AD (Delhi) 50*** and urged that in that case an Award that was delayed for over three years was set aside on that ground by the Court. Mr. Bhushan’s attention was drawn to another judgment of this Court on the issue in ***Peak Chemical Corporation Inc. v. National Aluminium Co. Ltd. 2012 II AD (Delhi) 304*** which sought to distinguish the judgment in ***Harji Engg. Works*** on facts. OIL then filed I.A. No. 10758 of 2012, praying that since a view contrary to ***Harji Engg. Works*** had been taken in ***Peak Chemical*** the issue ought to be referred to a larger Bench. In the said application, the Petitioner also sought to formally add a ground to the main petition to challenge the Award on the ground of delay in pronouncement. Referring to the decision in ***U.P. Power Corporation Ltd. v. Rajesh Kumar 2012 (4) SCALE 687***, Mr. Bhushan submitted that a failure to refer the issue to a larger Bench would be a ‘deviation from the judicial decorum and discipline’. He referred to the decisions in ***Tarini Kamal Pandit v. Prafulla Kumar Chatterjee (Dead) by LRs. (1979) 3 SCC 280*** and ***Gurucharan Singh v. Kamla Singh (1976) 2 SCC 152*** in support of the amendment sought to the petition to add a ground at the stage of arguments.

32. Mr. Sandeep Sethi, learned Senior counsel appearing for EOL, referred to Rule 58 of the ICA Rules, and submitted that since OIL failed to raise an objection at the first available instance before the AT about exceeding the time limit of two years specified in Rule 63 for completion of the arbitral

proceedings and continued to participate even thereafter, OIL should be deemed to have waived such objection as to the delay in the completion of arbitral proceedings and pronouncement of the Award. He referred to Section 4 of the Act and to the decisions in ***Bharat Sanchar Nigam Ltd. v. Motorola India Private Limited (2009) 2 SCC 337*** and ***Shyam Telecom Ltd. v. ARM Ltd. (2004) 3 Arb.LR 146 (Delhi)*** and submitted that where a party which knows that the requirement under the arbitration agreement has not been complied with still proceeds with the arbitration without raising an objection it should be held to have waived its right to object. Reliance was placed on the decisions in ***Indian Oil Corporation Limited v. Devi, Constructions Engineering Contractors (2009) 2 Arb.LR 361 (Madras) (DB)*** and ***Reliance Industries Ltd. v. Madan Stores Pvt. Ltd. 146 (2008) DLT 543***. It was further submitted that the Petitioner had to demonstrate the prejudice caused to it on account of such delay. Reliance was placed on the decisions in ***C. Beepathumma v. Velasari Shankaranarayana Kadambolithaya (1964) 5 SCR 836*** and ***Narayan Prasad Lohia v. Nikunj Kumar Lohia (2002) 3 SCC 572.*** Referring to the decision in ***National Thermal Power Corporation Ltd. v. Wig Brothers Builders and Engineers Ltd. 2009 (2) Arb.LR 238 (Delhi)*** Mr. Sethi submitted that an amendment sought to the petition eight years after it was filed, and that too at the stage of final arguments, ought not to be permitted. He further submitted that if OIL was aggrieved by the delay in pronouncement of the Award it could have initiated steps under Section 14(2) read with Section 14(1) of the Act by seeking intervention of the Court. However, it did not do so.

33. The question whether an Award is vulnerable to invalidation on account of the unexplained delay in its pronouncement, in the context of the 1996

Act, was considered by the Supreme Court in the ***ONGC case*** in which in para 30 it said:

> "30. It is true that under the Act, there is no provision similar to Sections 23 and 28 of the Arbitration Act, 1940, which specifically provided that the arbitrator shall pass award within reasonable time as fixed by the Court. It is also true that on occasions, arbitration proceedings are delayed for one or other reason, but it is for the parties to take appropriate action of selecting proper arbitrator(s) who could dispose of the matter within reasonable time fixed by them. It is for them to indicate the time-limit for disposal of the arbitral proceedings. It is for them to decide whether they should continue with the arbitrator (s) who cannot dispose of the matter within reasonable time. However, non-providing of time-limit for deciding the dispute by the arbitrators could have no bearing on interpretation of Section 34. Further, for achieving the object of speedier disposal of dispute, justice in accordance with law cannot be sacrificed. In our view, giving limited jurisdiction to the Court for having finality to the award and resolving the dispute by speedier method would be much more frustrated by permitting patently illegal award to operate. Patently illegal award is required to be set at naught, otherwise it would promote injustice."

34. In ***Harji Engg. Works Pvt. Ltd.***, while the later paragraph in the ***ONGC case*** which explained when an Award could be said to be contrary to the 'public policy of India' was noticed, the above observations in para 30 were not. In any event, as explained in ***Peak Chemical Corporation Inc.***, the decision in ***Harji Engg.*** turned on its own facts. The decision in ***Harji Engg.*** should not be understood as laid down as an inviolable law that irrespective of the facts and circumstances of a case, if there is delay in pronouncing an Award then it should be set aside. OIL is therefore mistaken in concluding that there is a conflict between the decisions in ***Harji Engg.*** and ***Peak Chemical Corporation Inc.*** In a subsequent decision in ***Union of India v. Niko Resources 2012 V AD (Del) 573*** the Court noticed both the above

decisions and further explained the circumstances under which the delay in pronouncement of the Award could be but one factor, among others, that might persuade the Court to set it aside. It was explained that when an Award was challenged on the ground of delay in its pronouncement, the Court would examine the facts and circumstances and ascertain if such delay had led to the Award being rendered patently illegal or opposed to the public policy of India. On the facts of ***Niko Resources*** it was observed that the delay in that case had indeed led to an invalid Award being passed. Consequently, the Court declines the prayer of OIL that the said issue should be referred by the Court to a larger bench.

35. As regards the plea of OIL that it should be permitted to challenge the impugned majority Award, on the ground of delay in its pronouncement, by way of amendment to the petition, the Court notes that this plea was sought to be urged first only in the written submissions filed by OIL on 20th October 2008, four years after the petition was filed. The formal amendment to the grounds was sought only in 2012 during the course of final arguments. In ***National Thermal Power Corporation Ltd. v. Wig Brothers Builders and Engineers Ltd.*** the Court did not entertain a plea urged for the first time in written submissions without seeking amendment to the petition. In the present case, since OIL has filed a formal application, although belatedly, seeking permission to amend the petition without urging any new facts, the Court permits it to do so.

36. Turning to the challenge to the impugned majority Award on the ground of delay in its pronouncement, the Court notes that Rule 63 of the ICA Rules, which was applicable to the arbitration agreement between the

parties, does set a time limit of two years for the conclusion of the arbitral proceedings by the AT. Rule 58 of the ICA Rules, provides that: "Any party who proceeds with the arbitration with the knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object." OIL continued to participate in the arbitral proceedings beyond the period of two years without objecting to the delay beyond two years in its completion. The waiver under Rule 58 read with Section 4 of the Act did result. The decisions in ***Bharat Sanchar Nigam Limied v. Motorola India Private Limited***, ***Shyam Telecom Ltd. v. ARM Ltd.*** and ***Indian Oil Corporation Limited v. Devi Constructions*** support this conclusion.

37. After the AT reserved the Award, and when no Award was pronounced for over a year thereafter, OIL could have, in the first instance persuaded the AT to expedite the pronouncement of the Award and if that was unsuccessful OIL could have filed an application in the Court under Section 14 (2) read with Section 14 (1) (a) of the Act to seek the termination of the mandate of the AT on the ground that there was unreasonable delay in the pronouncement of the Award. Section 14 (1) (a) specifically refers to the failure of the Arbitrator to act "without undue delay". This aspect was adverted to in ***Union of India v. Niko Resources Ltd.*** OIL for reasons best known to it did not opt for this course.

38. The Court notices an inconsistency in the plea of OIL as regards its challenge to the impugned Award. OIL states in para 'A' (page 2) and para 18 (page 29) of the petition that it confines its challenge to the extent the impugned majority and dissenting Awards allow the claims of EOL and

disallow wholly or partially the counter claims of OIL. In other words OIL accepts the impugned Awards, even if there is a delay in their pronouncements, as long as they allow wholly or partly some of OIL's counter claims. This inconsistency contradicts and deprives OIL's plea of its force.

39. The Court proposes to apply the test explained in ***Niko Resources*** to examine if the delay in the pronouncement of the impugned Award has led to its being vitiated in law. As will be discussed hereafter, the impugned Awards, both the majority and the dissenting Awards, are detailed and reasoned and deal with each claim and counter claim at great length. The passage of time since the reserving the Award has not led to any plea or submission of the parties being overlooked. Unlike in ***Union of India v. Niko Resources Ltd.*** where this Court found that the majority Award had failed to deal with the issues raised in the dissenting Award, in the present case the majority Award deals with each of the issues dealt with by the dissenting Award. It cannot therefore be said that delay in pronouncement of the Award has rendered it patently illegal or opposed to the public policy of India.

40. The challenge to the impugned Award on the ground of delay in its pronouncement is hereby rejected.

Challenge to the majority Award on merits

41. On merits, it was submitted by Mr. Bhushan that one of the essential conditions of the contract which had to be fulfilled by the Respondent was that the DU had to comprise the BOP and OSV at all times and that they had

to necessarily be made available to commence the drilling. The obtaining of DRDO and naval clearance was the obligation of EOL and that had to mandatorily precede the commencement of drilling operations. The majority Award erred in holding that the obligation to obtain such clearance was not that of EOL. The majority Award overlooked the undisputed fact that when it reached the L-1 site, the DU did not have the BOP and the two OSVs.

42. Mr. Bhushan pointed out that EOL had acted in defiance of OIL's direction that the DU should report at Paradip port for the purpose of naval clearance. After initially informing OIL that the DU would report at Paradip on 24th September 1996, EOL unilaterally decided to take the DU to L 1 straightway. This was clearly in breach of the contract. Therefore, OIL was justified in concluding that EOL was incapable and incompetent to perform its obligations under the contract. There was no requirement in law that OIL had to give detailed reasons for such conclusions in its letter dated 12th October 1996 terminating the contract. As long as facts and documents on record supported the decision of the OIL, it was perfectly justified in terminating the contract. The requirement under Article 5 was only that 30 days' advance notice of termination had to be given and not a show cause notice. Mr. Bhushan submitted that the majority Award purported to sit in appeal over the decision of the OIL to terminate the contract, which was legally impermissible for it to do. Mr. Bhushan commended for acceptance the conclusion in the dissenting Award that there was no justification for EOL to have taken the DU directly to L-1. Reference was also made to the evidence of Mr. Tradip Kataky, the witness on behalf of OIL.

43. Turning to the majority Award in respect of the individual claims of

EOL and counterclaims of OIL, Mr. Bhushan submitted that the drilling operations in relation to the wells at locations L-2, L-3 and L-4 in Saurashtra Offshore were not completed by EOL within the contractually stipulated periods. There were inordinate delays caused by EOL. The 365 days' period for completion of the drilling of all the four wells including the one at L-1 was exceeded. The facts showed that EOL was unwilling to proceed to location L-1 to complete the drilling operations within the stipulated time. The majority Award erred in interpreting Article 15.2 of the contract pertaining to levy of LD charges. There was no justification for the AT to award EOL USD 750,000 for interlocation move from L-4 to L-1 since the interlocation had not been completed as per the terms of the contract. Further, awarding USD 3,000,000 for de-mobilization of the DU was not justified. Awarding of USD 900,000 in favour of EOL for waiting at location L-1 was not justified as the DU as defined in Article 1.1 was not available at Location L-1 and there was no question of EOL being able to commence drilling at L-1. The application of Article 10.7 (B) for awarding a sum of USD 540,000, the awarding of USD 112,388 for procurements made by EOL and the applicability of Article 14.7 for interest on the delayed payments was also challenged. It was submitted that the contract was on a turnkey basis and therefore, the provisions of Article 18.11 were not applicable. The disallowing of the deductions made by OIL by the majority of the AT was also challenged as being contrary to the contractual provisions. The award of the amounts in foreign currency and the award of interest @ 12% per annum from 1st May 1997 till the making of the Award and post-Award interest @ 8% per annum were also challenged.

44. Mr. Sandeep Sethi, learned senior counsel appearing for EOL, referred to

the evidence on record which showed that OIL itself had accepted that EOL satisfactorily had drilled the wells at L-2 to L-4. OIL had itself renewed the contract on 20th August 1996 by extending the time for completion of the drilling at L-4 and L-1 up to 31st March 1997.There was no basis for OIL to suddenly conclude on 12th October 1996 that EOL was incompetent and incapable of performing its contractual obligations. OIL was pursuing the issue of grant of naval clearance with the DRDO even as of October 1996. This itself showed that requisite security clearance had to be obtained by OIL from the DRDO and naval authorities. Even before naval clearance could be granted on 18th October 1996, OIL abruptly terminated the contract on 12th October 1996. Mr. Sethi pointed out that the total number of days to be spent on each location, L-1 to L-4 were set out in the contract itself. OIL realized that on account of the delay in obtaining naval clearance, the number of days required for drilling at location L-1 would exceed the outer time limit for carrying such operations, as permitted by the DRDO i.e., 31st December 1996. The liability to pay 'well compensation charges' to EOL damages would accrue in the event that the DU mobilized by EOL at L-1 was unable to be used to its full potential in terms of the contract. OIL would also have to pay EOL the de-mobilisation charges in terms of the contract if the drilling operations at L-1 concluded prior to the scheduled completion date. It was with a view to avoiding this that OIL abruptly terminated the contract.

45. Referring to the decision in ***Fertiliser Corporation of India Ltd. v. I.D.I Management (U.S.A.) AIR 1984 Del 333***, Mr. Sethi submitted that the dissenting Award could not be looked into by the Court for any purpose and even for determining the correctness of the majority Award. It was necessary

for the Petitioner to show that the majority Award suffered from patent illegality. It was submitted that the majority of the AT had correctly interpreted the contractual provisions whereas the dissenting Award misread and misinterpreted them. Reliance was placed on the decision in ***Steel Authority of India Ltd. v. Salzgitter Mannesmann International GMBH 189 (2012) DLT 8*** to urge that the scope of interference by the Court with an Award under Section 34 of the Act is limited. The Court is not to sit in appeal over the correctness of the findings of the learned Arbitrator on facts.

Decision on merits

46. Before dealing with the submissions on merits, it is necessary to briefly recapitulate the scope of the powers of the Court in a petition under Section 34 of the Act. In ***McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181*** the Supreme Court reiterated the dictum in the ***ONGC case*** and explained that (SCC, p.210): "the public policy violation, indisputably, should be so unfair and unreasonable as to shock the conscience of the Court." Further, "what would constitute public policy is a matter dependent upon the nature of transaction and nature of the statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the Court to judge what is in public good or public interest, and what would otherwise be injurious to the public good at the relevant point, as contradistinguished from the policy of a particular government." It was explained in ***P.R.Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. (2012) 1 SCC 594*** that (SCC, p.601): "A Court does not sit in appeal over the award of an Arbitral Tribunal by re-assessing and re-appreciating the evidence."

47. The central issue first determined in the majority Award was whether OIL's decision to terminate the contract by its letter dated 12th October 1996 was justified. In answering the said question in the negative the majority Award referred to the clauses of the contract, the correspondence between the parties and other relevant documents. The Court has perused the contract and the evidence only for the purpose of examining whether the view taken by the majority of the AT was a plausible one or suffers from a patent illegality.

48. Article 5.1 of the contract permits the Operator to terminate the contract "by giving 30 days' written notice to the Contractor's office and/or with a copy to their head of team at drill site." This was subject to the condition that the Operator is satisfied "that the Contractor is incompetent and incapable of performing any of his obligations under this contract including change of any crew member in spite of being advised in writing to improve upon his performance." The wording of Article 5.1 does not give OIL an unrestricted discretion to terminate the contract as was suggested by Mr. Bhushan. The word "satisfied" preceding the conclusion of OIL that the Contractor was "incompetent and incapable" had to be based on some material and not the *ipse dixit* of OIL. The notice to be given to the Contractor 30 days in advance would have to necessarily set out the reasons for such conclusion. Given the nature of the operations expected to be undertaken by EOL, and the investment it would have to make to execute it, it was but expected that it would be put on notice of any such proposed decision of OIL to terminate the contract. The wording of Article 5.1 also suggests that the ground for termination had to be that despite OIL's "advice" to EOL "in writing to improve upon its performance", EOL had

not. This was a further indication that a decision to terminate the contract could not be taken by OIL at the spur of the moment. Article 5.1 is an instance of a power coupled with a duty to act reasonably and fairly. This must therefore be viewed as a mandatory requirement. Admittedly in the present case, this mandatory requirement was not complied with. OIL does not deny that it did not give 30 days' notice of termination to EOL. OIL was therefore in breach of its obligation under Article 5.1 of the contract.

49. The events leading up to the termination do not show that at any point in time OIL had expressed its dissatisfaction with the work done thus far by EOL or had asked EOL to "improve upon its performance." On the other hand, on 20th August 1996, OIL extended the time for EOL to complete the drilling at locations L-4 and L-1 up to 31st March 1997. If OIL was unhappy with EOL's discharge of its obligations under the contract it could not have possibly extended the time for completion of the drilling at locations L-4 and L-1.

50. The two major reasons highlighted by Mr. Bhushan as justifying OIL's decision to terminate the contract was EOL's failure to obtain naval and security clearance for the drilling operations at L-1 and the fact that the DU that reached L-1 was incomplete as it did not comprise the BOP and the two OSVs. In the first place it requires to be noted that under Article 6.9 of the contract the obligation of the Contractor was to obtain and maintain, with the Operator's assistance "all approvals, permits and authorizations required by laws and governmental regulations and orders, for labour, material, services and supplies to be furnished by contractor as specified herein." Significantly, this does not mention security clearance to be obtained by the Contractor.

On the other hand Article 9.9 (A) sets out OIL's representation that "it is entitled to carry out in the operating area, the drilling operation herein contracted for." Article 9.9 (B) states that apart from the permits to be obtained by the Contractor under Article 6.9, "Operator shall obtain and keep informed, at its expense, all permits, licences and other governmental authorizations, if any, which are required to be obtained by operator for the performance of the contract." In the present case the PEL for the NEC was granted to OIL only on 22nd July 1996. This however did not mean that drilling could start at L-1 soon thereafter. In terms of Clause (13) of the PEL "at least two months clear advance notice on commencement of exploration work" had to be given to the MoD "so that exploration work does not clash with any naval exercise in the area." Further, under Clause (18) of the PEL "all vessels deployed in the area by contracted companies shall undergo naval security inspection prior to their deployment" and one month's notice was to be given to facilitate clearance. Para 7.2 of Annexure 8 to the contract specified that all permits and licences required to be obtained for the drilling site were the responsibility of OIL. All the above clauses unmistakably show that the obligation to obtain naval and security clearance was that of OIL. The said conclusion of the majority of the AT was not only plausible but based on a correct interpretation of the above provisions of the contract. The view of the dissenting Arbitrator that "it cannot be said with certainty from the record whether naval clearance was the sole responsibility of the claimant or the respondent" is contrary to the unambiguous clauses of the contract and is unacceptable.

51. OIL understood the position correctly as is evident from the fact that it was OIL that applied to ODAG on 5th May 1995 for security clearance for

drilling the wells at locations L-1 to L-4. On 24th June 1996 OIL wrote to the DRDO stating that it was starting drilling operations in the NEC by the third week of August 1996 and asked what action was to be taken at its end. It wrote a similar letter to the Flag Officer Commanding-in-Chief at the Eastern Naval Command on 25th July 1996. The letter dated 11th September 1996 from Mr. Vijay Kelkar of OIL to the Scientific Adviser to the Defence Minister is significant. It pleaded that in light of the fact that the "drillship is expected to reach the location in the NEC area and start drilling by the end of September 1996", it was essential "that OIL is given permission, temporarily, for about 7 months till completion of this important exploratory well." It added that in case DRDO's permission was not given it would "lead to OIL's paying about $3.5 million to the contractors on account of early termination of the drilling contract and *force majeure* condition. Obviously this would make every serious impact on the company's finance." OIL wrote in the same vein to the Secretary MoPNG seeking his intervention "to advise Naval Headquarters, New Delhi to instruct appropriate Naval Command to carry out the inspection of the Drillship immediately." On 25th September 1996, the Director (Exploration and Development) OIL wrote to the Chief Controller (R&D) in the DRDO requesting earnestly for "immediate approval for our drilling operations in the NEC area as the contractor has already moved the drillship into that particular location and is awaiting our clearance." In response on 1st October 1996 the Chief Controller (R&D), DRDO conveyed to OIL that it was agreeable to "a maximum period of 3 months (i.e. up to 31st December 1996) for carrying out the drilling operations." In response to a question in his cross-examination, Mr. Ranabir Sircar, OIL's witness, admitted that "Essar had no role to play in the DRDO clearance." Referring to letters written by OIL seeking security clearance,

Mr. Sircar admitted that "permission to drill from DRDO was the obligation of Oil India."

52. Strangely, after this entire exercise was undertaken by it, OIL wrote to EOL on 10th October 1996, not mentioning a word about the DRDO clearance given on 1st October 1996, and asked EOL to obtain security clearance as per Article 6.9 of the contract. This stand of OIL followed by its abrupt termination of the contract two days thereafter was inexplicable. The insistence by OIL that EOL should bring the DU to Paradip was not a requirement of the DRDO or the naval authorities. As it transpired, the naval authorities inspected the DU on 11th October 1996 at the location L-1 and granted naval security clearance by a letter dated 18th October 1996 to OIL with a copy to EOL. This negated the justification for OIL terminating the contract on the ground that EOL had failed to obtain naval and security clearance. EOL could not have commenced drilling operations at L-1 without the above clearances and so the question of it commencing spudding operations immediately upon reaching L-1 did not arise. Before EOL could be conveyed the naval clearance, OIL terminated the contract. At that stage therefore OIL could not have possibly concluded that EOL was incapable or incompetent to perform its obligations.

53. The second reason offered by OIL for terminating the contract was the absence of the BOP and the two OSVs at L-1 when the DU reached there on 24th September 1996. The majority Award has rejected this as not being a valid reason for termination of the contract and the Court finds, for reasons explained hereafter, that this conclusion was correct. There is no dispute that after EOL made two presentations, one at Rajkot on 26th August 1996 and

another at Delhi on 2nd September 1996, OIL was satisfied of the drill worthiness and competence of EOL and consented to EOL moving the DU from L-4 to L-1. After the DU left L-4 on 3rd September 1996, daily progress reports were dispatched to OIL till the DU reached L-1. Consistent with its obligation under Articles 6.4 (E) and (F) of the contract, EOL sent the BOP to Abu Dhabi for repairs after dismantling it at L-4. OIL was informed of this by a letter dated 31st July 1996. In terms of the Drilling Programme, set out in Annexure -3 to the contract, the BOP could not have been installed before running and cementing of a casing of diameter less than 18.5/8". The BOP was therefore not required till the 29th day after spudding of the well at L-1. The BOP was overhauled and loaded on to the OSV in the first week of October 1996 and would have reached L-1 in time. The so-called reason for terminating the contract, i.e. the absence of the BOP and OSVs at L-1, was never communicated to EOL. Mr. Ranabir Sircar, a witness for OIL, in his cross-examination when asked if there was "any letter or document addressed to Essar between 1st and 11th October 1996 pointing out to alleged shortcomings relating to material, equipment, OSV and the like" sated "I do not find any document with me at present." Even subsequently no such document was produced before the AT by OIL. The conclusion of the majority of the AT that "the drillship did not contain the BOP and was not accompanied by both OSVs on 1 October 1996 at Location L-1 cannot be made the subject of a grievance by OIL" was correct.

54. As regards the other individual items of claims and counter claims, both the majority Award as well as dissenting Award have analyzed the evidence thoroughly. Merely because another view is possible does not constitute a

valid reason for the Court to interfere with the majority Award. Although the Court has perused the entire evidence with the help of counsel, it is not necessary for the Court to discuss the evidence in respect of each claim and counter claim. OIL has been unable to persuade the Court to come to the conclusion that the majority Award in respect of the claims and counter claims suffers from any patent illegality and is opposed to the public policy of India.

Conclusion

55. For all the aforesaid reasons, this Court does not find any ground having been made out for interference with the impugned majority Award. The petition is dismissed with costs of Rs.50,000 which will be paid by OIL to EOL within a period of four weeks from today. I.A. No. 10758 of 2012 is disposed of.

S. MURALIDHAR, J

AUGUST 17, 2012
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