$~

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

Date of Decision:- 10.07.2020

\+ **O.M.P(T)(COMM) 28/2020**

RAIL VIKAS NIGAM LTD. .....Petitioner
Through: Mr.Udit Seth, Adv.

versus

SIMPLEX INFRASTRUCTURES LTD .....Respondent
Through: Ms.Aanchal Mullick, & Mr.Pranjit Bhattacharya, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition preferred under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') seeks termination of the mandate of the 3-member Arbitral Tribunal constituted to adjudicate the disputes between the parties, on the ground that the Tribunal has willfully disregarded the ceiling provided in Schedule IV of the Act while fixing its fee.

2. The petitioner Rail Vikas Nigam Limited is a public sector undertaking engaged in the business of railway construction projects for the Indian Railways. On 27.09.2010, the petitioner issued an Invitation to Bid for construction of Viaduct and related works for 4.748 km length in Joka-BBD Bag Corridor of Kolkata Metro Railway Line, excluding the station areas from Ch.1250 to Ch.4128.00 between Joka to Behala Chowrasta including Depot Approach at Joka. In

response thereto, the respondent submitted its bid which was accepted by the petitioner by way of the letter dated 28.12.2010. Shortly thereafter, on 28.01.2011, the parties executed a formal contract to carry out the work, however the date of commencement was taken as the date on which the Letter of Acceptance was issued, i.e., 28.12.2010.

3. Initially, as per the terms of the contract, the project was earmarked for completion on 27.06.2013, but for various reasons the original schedule could not be adhered to and the project completion date kept being extended. Finally, on 20.11.2017, the respondent completed the construction work as outlined in the Scope of Work in the contract dated 28.01.2011. However, since the respondent claimed that the petitioner's failure to discharge its obligations under the contract in a timely manner delayed the contract from a 30-month long to an 84-month long project, it sought cost escalation from the petitioner. Since repeated claims in this regard went unanswered, the respondent invoked arbitration under Clause 17.3 of the General Conditions of Contract (GCC) but the petitioner failed to appoint its nominee arbitrator. Resultantly, the respondent approached this Court by way of Arb. Pet. 519/2018 which was allowed on 11.12.2018. This Court appointed Hon'ble Mr. Justice Swatanter Kumar (Retd.) as the nominee arbitrator on behalf of the petitioner herein with a specific direction that the fee of the learned arbitrator would be fixed as per Schedule-IV appended to the Act.

4. In its first sitting which took place on 15.01.2019, the learned Tribunal recorded that its fee would be assessed as per Schedule IV to

the Act. The parties completed all pleadings thereafter and made part payment towards fees. On 09.01.2020, in its 8th sitting, the Tribunal extended the time for rendering an award by six months with the consent of the parties, and after observing that only two installments of Rs.5 lakh each had been paid towards arbitrators' fee, directed the parties to pay the outstanding dues which, in terms of Schedule IV to the Act, was observed as Rs.49,87,500/-. Consequently, the parties were granted four weeks' time to pay the fee.

5. Aggrieved by the fixation of fee, the petitioner preferred an application before the learned Tribunal on 27.02.2020 averring that the fee fixed exceeds the statutory ceiling limit of Rs.30,00,000/- prescribed in Schedule IV of the Act and is, therefore, contrary to the statutory provisions set out in the Act. The Tribunal examined the objections raised by the petitioner and rejected them by way of its order dated 03.03.2020, the relevant extract whereof reads as under:

> *"8. On a reading of the plain language of Schedule IV reproduced hereinabove, it becomes clear that the same provides for payment of fix fee with certain percentage if the claim exceeds Rs.5,00,000/- or more. If the claim is more than Rs.20,00,00,000 then in addition to the fixed fee of Rs.19,87,500/- the parties are liable to pay 0.5% of the claim amount over and above Rs.20,00,00,000/- with a ceiling of Rs.30,00,000. The word 'plus' appearing in Column 3 of Schedule IV is disjunctive and divides the table into two parts creating a liability for payment of fee for first Rs.20,00,00,000 and then for the amount over and above Rs.20,00,00,000. In terms of Entry 5 of Schedule IV, which relates to the claims above Rs.10,00,00,000 and up to Rs.20,00,00,000 the fee payable is Rs.12,37,500 plus 0.75% per cent of the claim amount over and above*

Rs.10,00,00,000/- Similarly, in terms of Entry 6, the fee payable for disputed amount which is more than Rs.20,00,00,000 is a fixed amount of Rs.19,87,500 for Rs.20,00,00,000 and 0.5% of the claim amount over and above Rs.20,00,00,000 crores. For the second parcel of the fees a ceiling of Rs.30,00,00,000 has been imposed. Once the fixed sum is provided then the concept of ceiling would not operate to that sum. The ceiling is obviously applicable to the fee payable on the balance of the claim. Such an interpretation would be in consonance with the principle of plain construction as well as harmonious construction else the concept of fixed sum would stand negated by the concept of ceiling.

9. If the legislature intended that the parties shall pay fix fee irrespective of the quantum of claim and/or counter claim then it would have straightaway indicated that the maximum fees payable would be Rs.30,00,000. That would have meant that irrespective of the quantum in dispute, the fees payable would not exceed Rs.30,00,000. However, in its wisdom, the legislature has specified Rs.19,87,500 + 0.5% of the claim amount over and above Rs.20,00,00,000 with a ceiling of Rs.30,00,000, which means that the ceiling of 30,00,000 is applicable qua claim over and above Rs.20,00,00,000.

10. It would be rather incongruous that irrespective of the quantum in dispute, which in many cases would run into hundreds of crores or even more, the ceiling of Rs.30,00,000 would apply to the fees payable to the arbitrator(s).

11. Another fact that needs to be inculcated to further substantiate the above point of view is the concept of proportionally and pro rata distribution. The said principle means an increase in liability proportionate to the claim raised by the party. Of course, this facet is applied with due

regard to reasonableness and limitations. For instance, if the claims are for Rs.20,00,01,000 the Arbitral Tribunal would get Rs.19,87,505/- and if the claim runs into thousands of crores, the fee would be Rs.30,00,000 even inclusive of Rs.19,87,500 which does not stand to reason, proportionally and is not in the intent of the language of the table under the schedule.

12. The limitation of Rs.30 lakhs is obviously intended to be placed on the additional sum and not inclusive of the fixed fee for twenty crores as per the table under the schedule.

13. In the light of the above discussion, the application filed on behalf of the respondent for revision of direction contained in the minutes of the meeting held on 09.01.2020 for payment of Rs.10,00,000 by each party apart from the expenses of Rs.50,000 is rejected."

6. Almost four months after the learned Tribunal had rejected the petitioner's application for reduction of fees, during which period the learned Tribunal fixed the matter for arguments on 13.07.2020, the present petition under Section 14 came to be filed seeking termination of the mandate of the 3-member Arbitral Tribunal.

7. In support of the petition, Mr Udit Seth learned counsel for the petitioner submits that in view of the order passed by this Court on 11.12.2018 specifically directing the fee of the learned Tribunal to be governed by Schedule IV to the Act, the Tribunal was entitled to fix its fee solely according to the statutorily prescribed ceiling. He submits that while Schedule IV prescribes the model format for fixation of fee, entry No.6 thereof deals with arbitrations where the sums in dispute exceed Rs. 20 crores. He thus contends that considering the

respondent's claim which is being arbitrated by the Tribunal is for approximately an amount of Rs.102 crores, the fixation of fee was required to be done in accordance with entry no. 6 of Schedule IV; this provision permits fixation of fee at Rs.19,87,500/- and 0.5% of the claim amount over and above Rs.20 crores, which cumulative amount is further subject to a ceiling of Rs.30 lakh. He, therefore, submits that notwithstanding this fact, the learned Tribunal has erroneously concluded that in all claims qualifying under Entry No.6, the maximum fee chargeable per arbitrator is Rs. 49,87,500, i.e., Rs. 19,87,500/- of base fee added to *an additional amount* of 0.5% of the claim amount over and above 20 crores and that the ceiling of Rs.30 lakh is only applicable to the second half of the Model Fee clause under Entry No. 6 of Schedule IV.

8. Mr. Seth further submits that not only does the English version of Schedule IV show that the ceiling of Rs.30 lakh is inclusive of the base fee of Rs.19,87,500/- but even the Hindi version of the notification, bearing a comma before the figure of Rs. 30,00,000/-, makes it clear that the ceiling limit of Rs. 30,00,000/- is applicable on the cumulative sum charged as arbitrator's fee under Entry No. 6. Mere absence of a comma in the English version cannot imply that the ceiling of Rs.30 lakh is exclusively applicable to the second half of the Model Fee clause under Entry no.6, as has been held by the learned Tribunal. By relying on the decisions of the Supreme Court in ***R.S. Nayak Vs. A.R. Antulay*** *(1984) 2 SCC 183* and ***Mithilesh Kumari Vs. Prem Behari Khare*** *(1989) 2 SCC 95*, he submits that even if there is any ambiguity in the statutory provision, the same ought to be resolved by referring to an external aid of interpretation, i.e. the 246th Law

Commission Report, to gauge the true legislative intent behind the provision. After all, the 246th Law Commission Report, which lamented the practice of arbitrators charging exorbitant fee thereby making arbitration disproportionately expensive, recommended incorporation of a fee schedule which ultimately resulted in Schedule IV getting appended to the Act. He submits that with this in mind, the ceiling was envisaged as an effective way to curb costs associated with arbitration by limiting the fee chargeable by an arbitrator since Rs. 30,00,000/- is now the maximum amount of fee which can be charged under Entry No. 6 of Schedule IV, irrespective of the extent to which the claim exceeds Rs.20 crores.

9. Mr. Seth submits that in fact, the 246th Law Commission Report specifically recommended the schedule to be drafted on the basis of the fee schedule set out by the Delhi International Arbitration Center Administrative Costs and Arbitrators Fees Rules (DIAC Rules) which was ultimately adopted verbatim in the Act. This makes the DIAC Fee Schedule the primary source of law as far as Schedule IV is concerned. He submits that while the Hindi version of the notification has adopted the DIAC Rules in spirit and includes the comma, the English version omits to do so and appears to be an inadvertent mistake. By relying on the decisions in ***Indore Development Authority Vs. Manoharlal*** *2020 SCCOnline SC 316* and ***Jamshed N. Guzdar Vs. State of Maharashtra*** *(2005) 2 SCC 591*, he submits that due attention ought to be given to grammar/punctuation employed in a statute to cull out the correct interpretation when multiple interpretations thereof are possible and that, in this case as well, the comma has a crucial role to play in the interpretation of Entry No. 6. He further submits that the comma

disjoins the phrase 'with a ceiling of Rs. 30,00,000/-' from the preceding phrase 'Rs. 19,87,500/- plus 0.5% of the claim amount over and above Rs. 20 crore' thereby capping the maximum limit of chargeable fee under Schedule IV as Rs. 30 lakh. He submits that the petitioner, who has been a part of several arbitration proceedings in the past which required fixation of fee under Schedule IV of the Act, has watched most Tribunals follow this interpretation and adhere to the ceiling limit of Rs.30,00,000/- on the entire fee chargeable under Entry No. 6 of Schedule IV. However, in the event the comma is not taken into account while interpreting the Schedule, one more plausible interpretation of the statute arises and the ceiling limit of Rs. 30,00,000/- can then be read to apply only to the second portion of Entry No.6, i.e., the amount which is equivalent to 0.5% of the claim amount which is over and above Rs. 20 crores. He submits that such an interpretation is a blind adherence to the literal rule of interpretation and if it were to be effected, the maximum fee which can be charged by an arbitrator under the Schedule rises exponentially from Rs. 30,00,000/- to Rs. 49,87,500/- (19,87,500 + 30,00,000], which is contrary to the intent of the provision. By relying on ***Abhiram Singh Vs. C.D. Commachen*** *(2017) 2 SCC 629*, he submits that when a statute is enacted for the benefit of the people and the literal interpretation of a provision therein does not further such an object, it is important to carry out a purposive interpretation of the same. He, therefore, submits that the comma furthers the object of the statute and should be read to exist in the English version of the notification, just as it exists in the Hindi notification and the DIAC Rules.

10. Mr. Seth finally submits that evidently, the manner in which the learned Tribunal interpreted Schedule IV and dealt with the petitioner's objections regarding fee fixation on 03.03.2020 is contrary to the legislative intent of the provision. He submits that when Entry No. 6 of Schedule IV of the Act clearly prescribes that the highest amount which could be charged as fee by an Arbitrator is Rs. 30,00,000/-, the purpose of this provision cannot be defeated by the minor, inadvertent omission of a comma. By relying on the decisions in ***National Highways Authority of India Vs. Gayatri Jhansi Roadways Limited*** *2019 SCCOnline SC 906,* ***Doshion Pvt. Ltd. Vs. Hindustan Zinc Limited*** *2019 SCCOnline Raj 6* and ***Madras Fertilisers Ltd. Vs. SICGIL India Limited*** *2007 SCCOnline Mad 748* he submits that any instance of charging excessive fee, in violation of the fee schedule which is statutorily prescribed, is a valid ground for termination of the arbitrator's mandate under Section 14 of the Act. In these circumstances, he prays that the present petition be allowed and the mandate of the learned Tribunal be terminated effectively.

11. Per contra, learned counsel for the respondent submits that the petitioner's challenge to the interpretation of Schedule IV as carried out by the learned Tribunal is baseless and completely arbitrary and arises out of a deliberate misinterpretation of Schedule IV appended to the Act. She submits that when the plain text of the Schedule is clear and pronounced and explicitly stipulates that the ceiling of Rs.30,00,000/- is applicable on the latter half of the Model Fee Clause corresponding to Entry No. 6, i.e., 0.5% of the sums in dispute over and above Rs. 20 crores, there is no occasion to refer to external aids such as the 246th Law Commission Report and the DIAC Rules to

understand the Schedule. She further submits that phrasing employed in statutes in Hindi and English language are always different owing to the difference in script, but contrary to the petitioner's submissions, the addition of a comma in the Hindi notification does not change the meaning of Entry No. 6 in Schedule IV at all. It is clear and evident that the ceiling of Rs. 30,00,000/- is in addition to the amount of Rs. 19,87,500 prescribed in Entry No.6 as the base fee chargeable. She submits that if the legislature wanted to impose a ceiling of Rs.30,00,000/- as the maximum amount which could be charged as arbitrator's fee under the Act, it would have stated the same explicitly in Entry No. 6.

12. She further submits that although the petitioner has alleged that the mandate of the learned Tribunal is liable to be terminated on account of the fact that it has now become de jure/de facto unable to perform its functions, the petitioner has miserably failed to establish this argument. Ultimately, the learned Tribunal fixed its fee as per Schedule IV of the Act and in doing so, complied with the order passed by this Court on 11.12.2018. When the petitioner was aggrieved by the same, the learned Tribunal even examined its objections comprehensively before passing the impugned order dated 03.03.2020. She submits that merely because the petitioner is choosing to misinterpret Entry No.6 of Schedule IV by referring to the minute addition of a comma in the Hindi version of the notification, instead of reading the plain text of the provision in English itself, does not conclude any inability on the part of the learned Tribunal to effectively discharge its mandate.

13. She further submits that in any event, this petition under Section 14 is merely an attempt on the petitioner's part to defeat the rights of the respondent which is evident from the fact that this application has been moved rather belatedly, i.e., after a lapse of 4 months from the date of the order dated 03.03.2020. Even during this period of 4 months, the petitioner has been continuously moving applications before the learned Tribunal seeking various reliefs, while simultaneously building the narrative that the learned Tribunal has become de-jure/de-facto unable to effectively perform its functions. In fact, before the learned Tribunal, the petitioner had even undertaken to pay the Tribunal's fee as per the order dated 09.01.2020, which it then proceeded to challenge before the Tribunal and now before this Court. She submits that the petitioner's conduct has been wrought with contradictions and the reliefs it seeks under the present petition, if granted, would cause great harm to the respondent by way of delaying the adjudication of the disputes between the parties. She, therefore, prays that the present petition be dismissed with costs.

14. I have heard learned counsel for the parties and perused the record with their assistance.

15. To begin with, it may be noted that the parties are ad idem that while embarking on the task of fixing fee, the learned Tribunal was to be guided by Schedule IV appended to the Act, specifically Entry No. 6 therein on account of the quantum of sums in dispute in arbitration. It is also undisputed that a cap has been placed on the quantum of fee which can be fixed by an arbitrator under Schedule IV of the Act. The short question raised in this petition is regarding the interpretation of

Entry No. 6 of Schedule IV: is the ceiling limit of Rs. 30,00,000/- inclusive of the base fee of Rs.19,87,500/- or is it only applicable as a cap on the latter portion of the Model Fee prescribed, i.e., 0.5% of the claim amount over and above Rs. 20 crores

16. Since this dispute hinges on the interpretation of Schedule IV appended to the Act, reference may be made to the said Schedule in entirety to ascertain the implication of Entry No.6:

The Fourth Schedule

S.No.	***Sum in Dispute***	***Model fee***
1.	*Upto Rs.5,00,000*	*Rs.45,000*
2.	*Above Rs.5,00,000 and upto Rs.20,00,000*	*Rs.45,000 plus 3.5 per cent of the claim amount over and above Rs.5,00,000*
3.	*Above Rs.20,00,000 and upto Rs.1,00,00,000/-*	*Rs.97,500 plus 3 per cent of the claim amount over and above Rs.20,00,000*
4.	*Above Rs.1,00,00,000 and upto Rs.10,00,00,000/-*	*Rs.3,37,500 plus 1 per cent of the claim amount over and above Rs.1,00,00,000*
5.	*Above Rs.10,00,00,000 and upto Rs.20,00,00,000/-*	*Rs.12,37,500 plus 0.75 per cent of the claim amount over and above Rs.10,00,00,000*
6.	*Above Rs.20,00,00,000/-*	*Rs.19,87,500 plus 0.5 per cent of the claim amount over and above Rs.20,00,00,000 with a ceiling of Rs.30,00,000*

17. On a perusal of this Schedule, it becomes evident that every entry under Sums in Dispute bear upper and lower limits, barring Entry No. 6 which is the last entry and does not bear an upper limit, and every entry against Sums in Dispute has a corresponding model fee prescribed. Even the Model Fee column bears two kinds of figures, the base fee component and the variable fee component. It is apparent that the base fee is a fixed fee prescribed against the lower limit of the sums in dispute, whereas the variable fee component is prescribed in relation to the upper limit of the sums in dispute. The variable fee component, being additional in nature and calculated on a percentage basis, is dependent on the sums in dispute by virtue of the fact that the percentages decrease as the sums in dispute increase from Entry nos.1 to 6. Evidently, the word 'plus' employed in the preceding rows containing Entry Nos. 1 to 5 disjoint the two components of the Model Fee, which implies that the same is true for Entry No. 6.

18. In fact, the plain text of Entry No. 6 reveals that for all arbitrations involving sums in dispute exceeding Rs. 20,00,00,000/-, there is a base fee prescribed of Rs. 19,87,500/-. However, a certain amount of fee, i.e., the variable fee component, follows the word 'plus' and can be further charged by the arbitrator by way of a formula provided to calculate this amount, i.e., 0.5% of the sums in dispute which is over and above Rs. 20,00,000/-. The disputed phrase 'ceiling of Rs. 30,00,000/-', as per the petitioner, includes the base fee of Rs.19,87,500/-, and, as per the Tribunal, is only applicable to the variable fee component. In the light of the discussion in the preceding paragraph that the word 'plus' is the disjunctive between the base fee

and variable fee component, it is evident that the ceiling of Rs. 30,00,000/- has been imposed on the variable fee component.

19. The petitioner has sought to contend, by relying on the Hindi version of Entry No.6, that the crucial point of disjunction in this piece of legislation was the comma which is absent from the English version. It would, therefore, be apposite to refer to the Hindi version of Entry no.6 which reads as under:-

English Notification	Hindi Notification
Rs.19,87,500/- plus 0.75 percent of the claim amount over and above - Rs.20,00,00,000/- with a ceiling of Rs.30,00,000/-.	19,87,500/- रुपए + 20,00,00,000 रुपए से अधिक की दावा रकम का 0.5 प्रतिशत, 30,00,000 रुपए की अधिकतम सीमा सहित।

20. Even a glance at this extract fails to show how it furthers the case of the petitioner considering even the Hindi version stipulates that the ceiling of Rs.30 lakh is applicable only on the amount payable in addition to the base amount of Rs.19,87,500/-. In my considered opinion, the absence of a comma in the English version does not materially alter the legislative intent of placing the ceiling of total chargeable fee per arbitrator under Entry no. 6 at Rs. 49,87,500/-. I have also considered the decisions in ***Jamshed N. Guzdar*** *(supra)* and ***Indore Development Authority*** *(supra)* which the petitioner has relied upon to contend that grammar has an important role in ascertaining the true interpretation of a statute, and that the comma in the Hindi version of the notification ought to be taken into account while interpreting Entry No. 6 of Schedule IV. Be that as it may, since the plain text of both the notifications in Hindi and English reiterate the same rule that

the ceiling limit of Rs. 30,00,000/- is only applicable on the second parcel of the Model Fee prescribed, the English version of Schedule IV clearly shows that the point of disjunction is earmarked by the word 'plus' and that the whole body of the Schedule itself is self-explanatory, the presence of a comma in the Hindi notification does not make any difference. On this aspect, I find merit in the respondent's contention that if the legislature had truly intended to place an overall ceiling limit on any fee chargeable under Entry No.6, it would have explicitly done so using words to this effect.

21. The petitioner has also contended that in order to correctly interpret the legislative intent behind incorporating Schedule IV, reference may be made to the 246th Law Commission Report and the DIAC Rules as external aids of interpretation. The relevant extract of the 246th Law Commission Report reads as under:

> *"10. One of the main complaints against arbitration in India, especially ad hoc arbitration is the high costs associated with the same-including the arbitrary, unilateral and disproportionate fixation of fees by several arbitrators. The Commission believes that if arbitration is really to become a cost effective solution for dispute resolution in the domestic context, there should be some mechanism to rationalize the fee structure for arbitrators. The subject of fees of arbitrators has been the subject of the lament of the Supreme Court in Union Of India v. Singh Builders Syndicate (2009) 4 SCC 523, where it was observed.*
>
> *The cost of arbitration can be high if the arbitral Tribunal consists of retired judge.. There is no doubt a prevalent opinion that the cost of arbitration becomes very high in many cases where retired judges are arbitrators. The large number of sittings and charging of very high fees per sitting with several add ons, without any calling, have many a time resulted in the cost of arbitration approaching*

or even exceeding the amount involved in the dispute or the amount of the award. When an arbitrator is appointed by a court without indicating fees either both parties or at least one party is at a disadvantage. Firstly, the parties feel constrained to agree to whatever fees is suggested by the arbitrator, even if ti is high or beyond their capacity. Secondly, if a high fee is claimed by the arbitrator and one party agrees to pay such fee, the other party who is unable to afford such fee or reluctant to pay such high fee, is put to an embarrassing position. He will not be in a position to express his reservation or objection to the high fee, owing to an apprehension that refusal by him to agree for the fee suggested by the arbitrator, may prejudice his case or create a bias in favour of the other party who readily agreed to pay the high fee"

11. In order to provide a workable solution to this problem, the commission has recommended a model schedule of fees and has empowered the High Court to frame appropriates rules for fixation of fees for arbitrators and for which purpose it may take the said modal schedule of fees into account. The model schedule of fees are based on the fee schedule set by the Delhi High Court International Arbitration Centre, which are over 5 years old, and which have been suitably revised. The schedule of fees would require regular updating and must be reviewed every 3-4 years to ensure that they continue to stay realistic."

22. Since the 246th Law Commission Report provided reasons for incorporation of the Schedule and the DIAC Rules lent the format on which the Schedule was ultimately modelled, there is merit in the petitioner's contention that these two documents are useful external aids of interpretation. In fact, the reliance on the decisions in ***R.S. Nayak*** *(supra)* and ***Mithilesh Kumari*** *(supra*) has been placed to

contend that a Law Commission Report can be referred to as an external aid of interpretation when there is ambiguity present in the statutory text, to understand the legislative intent behind the ambiguous provision. The petitioner is also correct in contending that the amount of fee fixed by the arbitrator ought to be regulated in order to reduce the costs associated with arbitration in the country and encourage alternate disputes resolution mechanisms, a mischief which the Law Commission sought to address in its 246th Report. There is absolutely no dispute with this proposition or the admissibility of external aids of evidence, which can be resorted to when the plain text of the statute is insufficient to gauge the meaning behind the text. However, in the present case, the plain text of Schedule IV is sufficient to shed light on the meaning and implication of Entry no. 6 insofar as it expressly provides the ceiling of Rs.30,00,000/- on the latter portion of the Model Fee, i.e., 0.5% of the claim amount over and above Rs. 20 crores. I am supported in my view by the decision in ***Ben Hiraben Manilal*** *(supra)*, which has been relied upon by the petitioner. In Ben Hiraben, although the Supreme Court observed that when confronted with an issue of statutory interpretation, the Court ought to read the statute in a manner which furthers the legislative intent conveyed through the express language of the provisions, it also clarified that when the language is plain and explicit, no problem of construction arises.

23. Even otherwise, considering the fact that arbitrations can involve enormous sums in dispute, often running into hundreds and thousands of crores, the cap of Rs. 49,87,500/- in Entry no.6 as the maximum fee which can be charged per arbitrator under Schedule IV is reasonable

and in furtherance of the recommendations made in the 246th Law Commission Report. In a similar vein, even the DIAC Rules show that the ceiling limit is applicable on the variable component of the Model Fee prescribed under Entry No.6 in Schedule IV. The prevalent practice in some arbitration proceedings conducted under the aegis of DIAC, of capping the overall fee chargeable under Entry No.6 at Rs.30,00,000/- does not change the text, spirit or effect of the Schedule and it is always open for a Tribunal to charge fee which is lower than that set out in Schedule IV. Keeping in view that the language of Schedule IV is quite clear and consonant with the very purpose of its enactment and that Entry No. 6 is not in conflict with the recommendations of the Law Commission Report or the DIAC Rules, I have no hesitation in holding that the ceiling limit of Rs. 30,00,000/- is not inclusive of the base fee of Rs. 19,87,500/-, but has rightly been interpreted by the learned Tribunal as a cap on the additional fee chargeable, i.e., 0.5% of the claim amount which is over and above Rs.20 crores.

24. In these circumstances, when the interpretation of the learned Tribunal is in consonance with Schedule-IV of the Act, I find that the petitioner has been unable to make out a case for termination of the mandate of the learned Tribunal under Section 14. Before, I conclude, I deem it necessary to observe that, in view of my finding that the learned Tribunal has fixed the fees strictly in accordance with Schedule IV of the Act, the decisions in ***Madras Fertilisers*** *(supra)*, ***Doshion*** *(supra)*, ***Gayatri Jhansi Roadways*** *(supra)* reiterating the settled principle of law that non-adherence to Schedule IV while fixing fee for

arbitration can be a valid ground for termination, are wholly inapplicable to the facts of the present case.

25. The petition, being meritless, is dismissed with no order as to costs.

REKHA PALLI, J

JULY 10, 2020