

BEFORE SHRI SURESH CHANDRA
LAW SECRETARY AND APPELLATE AUTHORITY
MINISTRY OF LAW & JUSTICE, DEPARTMENT OF LEGAL AFFAIRS
ROOM NO. 404, 'A' WING, SHASTRI BHAVAN, NEW DELHI-110001

Appeal No. 19/LS/2012
Date of Award : 26.10.2012

IN THE MATTER BETWEEN:

Bharat Petroleum Corporation, Ltd.
Kochi Refinery, Ambalamugal, Ernakulam,
Kerala - 682302

Appellant

V/s

Cochin Port Trust,
Willingdon Island, Cochin
Kerala - 682009

Respondent

APPELLATE AWARD
DATE : 17.10.2016

1. This appeal has been filed under the provisions of the Permanent Machinery of Arbitration (hereinafter called the "PMA") by Bharat Petroleum Corporation Limited, the Appellant (hereinafter called the 'BPCL') against the award dated 26.10.2012 passed by the Ld. Sole Arbitrator in the disputes/differences between BPCL and Cochin Port Trust, the respondent (hereinafter called the 'CPT') for the payment of transfer fee to 'CPT' on transfer of lease hold right from erstwhile Kochin Refineries Ltd. (hereinafter called the 'KRL') to BPCL pursuant to amalgamation between erstwhile 'KRL' and 'BPCL'.

2. Succinctly the facts of the case may be recalled as under :-

2.1 That the 'CPT' and the 'KRL' had entered into a Memorandum of Understanding (MOU) dated. 11.6.2003, for setting up of a Crude Oil Receipt Facility including a Single Buoy Mooring facility at Puthu Vypeen, Kochi . In the MOU, it was agreed that the 'CPT' shall provide the 'KRL', a maximum of 89 hectares of land on an annual lease for a period of 30 years. The lease charges were



fixed at an all inclusive fixed rate of Rs. 2.5 Lakhs per hectare per annum for the entire lease period of 30 years. As per the terms of the MOU, an area of 70 hectares of land was allotted to the 'KRL' at Puthu Vypeen, Kochi vide the letter dated. 21.9.2004. They took over the land on 31.7.2005. As envisaged in the MOU, copy of the lease deed was forwarded to the 'KRL'. However the lease deed has not been executed by 'KRL', till date, even though they are paying the annual lease rentals as per the MOU terms.

2.2 Thereafter KRL, got amalgamated with BPCL, and the same was approved by Govt. Of India vide Order dated 18.8.2006. The 'CPT' is asserting that the transfer of lease granted on annual lease is subject to payment of transfer fee equivalent to the Net Present Value of the lease rent, as provided in the land policy guidelines. Further, the 'CPT' requested the 'BPCL', to execute the lease deed and to pay transfer fee of (Rs. 1, 75, 00, 000/-) and NPV of Rs. 25, 11, 01,026/- aggregating to Rs. 26, 86, 01,026/- on 25.9.2008. But the 'BPCL' denied their liability to pay transfer fee. Thus there arose a dispute regarding the payment of transfer fee.

2.3 The terms of the MOU provides that disputes which could not be settled between the Chairman, the 'CPT' and MD the 'KRL' will have to be referred to the Permanent Machinery of Arbitration, Department of Public Enterprises, under the Ministry of Heavy Industries & Public Enterprises. Since this dispute could not be settled between Chairman, the 'CPT' and MD, the 'KRL' it was referred for Arbitration to the PMA.

2.4 The Learned Arbitrator Dr. Gita Rawat, Joint Secretary & Arbitrator vide Award Dated. 26.10.2012 allowed CPT an amount of Rs. 25,59,71,797/- with 15% interest on the awarded amount from 21.8.2006 till the date of realization and directed BPCL to pay the entire awarded amount along with interest within a period of two months from the date of receipt of the Award. It was also directed that in case the entire award amount is not paid within the period



of two months from the date of receipt of the Award, BPCL shall pay the entire awarded amount along with interest @ 18% per month till the date of realization.

2.5 Aggrieved by the Award dated 26.10.2012 passed by Learned Arbitrator Dr. Gita Rawat, BPCL filed present appeal against the said Arbitration award before the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. On 28.11.2012 Law Secretary nominated Shri M K Sharma, Additional Secretary to decide the appeal. Shri M K Sharma concluded hearing on 5.3.2013 and reserved the appeal for order. But before passing the appellate Award Sh. M K Sharma was superannuated. Subsequently, the matter was assigned to Dr. S S Chahar, Additional Secretary on 3.7.2013. Thereafter, Shri D Bhardwaj, Additional Secretary was nominated as Appellate Authority to decide the Appeal. But due to superannuation of Shri D Bhardwaj, he could not conclude the Appeal. Thus the matter was put before me.

2.6 After the hearing on 18.5.2016 and after submissions by both the parties were considered.

The issues carved out on the basis of contentions between the 'BPCL' and the 'CPT' are as follow :-

1. Whether the claim of the respondent is barred by limitation or not?
2. Whether the Land Policy for major ports introduced on 24.02.2005 is applicable to lease of land in question or not?
3. Whether the Amalgamation and Merger of the 'BPCL' with erstwhile 'KRL' is by Operation of Law and whether

the 'BPCL' is liable to pay transfer charges to 'CPT'?

4. Whether the 'BPCL' is bound to execute the lease deed as proposed by the 'CPT'?

5. Whether the amount of interest awarded by the Ld. Sole Arbitrator is liable to be revised or not?

3. Issue 1: **Whether the claim of the respondent is barred by limitation or not.**

3.1 It has been submitted by the 'BPCL' that the claim by CPT is time barred within the ambit of the Limitation Act. It has been further submitted by the 'BPCL' that Ld Arbitrator erred in ignoring that the reference was made over 5 years of cause of action arose and Ld Arbitrator has wrongly concluded that the signing of the Arbitration Agreement Form at her office by the 'BPCL' on second date of Arbitration hearing i.e. on 23.07.2012 would tantamount to an acknowledgment of certain existing disputes between the parties. It has also brought into the notice of this Appellate Authority by the 'BPCL' that Ld Arbitrator has also wrongly observed that the 'BPCL' should have raised the issue of Limitation at the time of signing of the Arbitration Agreement and also the dispute has to be treated like in-house differences and technical pleas should not be resorted to defeat the genuine claim of another PSU of the same Government.

3.2 Per contra, the 'CPT' has rebutted the submissions of the 'BPCL' by submitting that the 'BPCL' vide their letter dated 12.07.2011 has communicated to the 'CPT' that if 'CPT' is not withdrawing the demand for transfer fee and upfront premium, then the 'CPT' may treat that a dispute has arisen out of the MOU and 'CPT' may take necessary step to invoke clause 23.1 of MOU. It is further submitted by the 'CPT' that since the 'BPCL' has themselves



requested for arbitration and hence 'BPCL' is stopped from contending that the claim is barred by limitation.

3.3 I have given my thoughtful consideration to contentions and rival contentions and also meticulously pursued the material on record. The commencement of arbitral proceeding is one of the most important steps in the conduct of the arbitration. The law of limitation is applicable even in the proceedings before the arbitrator. Therefore whether the proceedings commenced within the period of limitation from the accrual of the cause of action would depend upon the date of commencement. Thus to decide the issue of limitation, it is pertinent to consider the provisions of section 43 of The Arbitration and Conciliation Act, 1996 which is reproduce here as under:

"43. Limitations.—(1) The Limitation Act, 1963 (XXXVI of 1963), shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963 (XXXVI of 1963), an arbitration shall be deemed to have commenced on the date referred in Section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be



excluded in computing the time prescribed by the Limitation Act, 1963 (XXXVI of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."

- 3.4 It is to say that the bare perusal of the section 43 of The Arbitration and Conciliation Act, 1996 reveals that the Limitation Act, 1963 is very much applicable to Arbitration proceedings and the time for commencement of Arbitration is as per section 43 sub section 2 of the Arbitration and Conciliation Act, 1996 is mentioned in section 21 of the Arbitration and Conciliation Act, 1996. Hence, it is apt to refer to section 21 of the Arbitration and Conciliation Act, 1996 which is reproduce as under:

"21. Commencement of arbitral proceedings- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

- 3.5 The perusal of Section 21 the Arbitration and Conciliation Act, 1996 suggest that the parties are given the liberty to determine the date of commencement of the arbitral proceedings. If any mode has been laid down by the parties in the arbitral agreement for commencement of arbitral proceedings, the arbitral proceedings will commence in accordance therewith. However, in the absence of any agreement between the parties providing otherwise, the arbitral proceedings in respect of a particular dispute commence on the date on which the respondent receives a request for reference of that dispute to arbitration. In other words, when one party communicates its desire to refer the dispute to arbitration, it results in commencement of arbitral proceedings. The preconditions for commencement of arbitral proceedings are that there must be a dispute and communication has been received by

one party from another. The proceedings shall be deemed to have commenced from the date when the communication is actually received.

- 3.6 In the present case, the perusal of the MoU reveals that there is no clause regarding the commencement of the Arbitration proceeding. Hence, in absence of any clause pertaining to arbitration in the MoU, the limitation period will be commence from the date on which request for that dispute to be referred to arbitration is received. In the present case, the perusal of the document on record suggests that 'BPCL' vide its letter has communicated to 'CPT' for invoking the arbitration clause in the MoU. In this light, it is also apt to reproduce the last para of letter dated 12.07.2011 which here as under:

"Under these circumstances, we once again request to withdraw your demand for transfer fee and up front premium. In case 'CPT' is not in a position to withdraw the demand you may treat that a dispute has arisen out of the Memorandum of Understanding dated 11.06.2003 with 'CPT'. Accordingly, 'CPT' may take necessary steps as envisaged under clause 23.1 of the MoU for resolution of the dispute."

- 3.7 Hence the combine reading of the relevant provision of the Arbitration and Conciliation Act, 1996 i.e. Section 21 and letter dated 12.07.2011, categorically reveals that that in actual the dispute has arisen between the present parties after the letter dated 12.07.2011 was communicated to the 'CPT' by 'BPCL' for referring the dispute to arbitration and not prior to communication of letter dated 12.07.2011. Therefore the actual date on which the cause of action arose is 12.07.2011 and not as submitted by the 'BPCL' which is 21.08.2006 i.e. date of amalgamation as submitted by 'BPCL'. Since the cause of action in actual had arisen when the 'BPCL' refused to pay the amount in question. Therefore, the limitation period would have begun to run from the

date when the cause of action arose on 12.07.2011 and the present matter the cause of action arose on 12.07.2011 when payment in question i.e. Transfer fee and Upfront Charges was denied by 'BPCL' to 'CPT'. Besides, it is a continuous breach of contract.

Hence, on the above stated reasons the claim of CPT is not hit by the provisions of Limitation Act and the claim is not time barred. Thus the findings of Ld. Sole Arbitrator regarding the execution of lease deed in question is up held.

4 Issue 2: **Whether the Land Policy for major ports introduced on 24.02.2005 is applicable to lease of land in question or not?**

4.1 The appellant i.e. the 'BPCL' has made a submission that the Ld Arbitrator failed to see that the land policy for Major ports issued by the Ministry of shipping has no statutory force and at any rate, it cannot have any retrospective effect on an MoU executed long prior to coming into force of the land policy.

4.2 Per contra the 'CPT' has contended that the 'BPCL' is functioning under the administrative control of Ministry of shipping, Government of India and as per the provisions of the Major Ports Acts. The Government of India has the authority to issue direction to major ports and major ports are bound to follow such directions.

4.3 To decide the present issue, it is imperative to examine the clauses of MoU between the present parties and after pursuing the MoU the clause 24 .0 came into the notice and the same is reproduced as here under:

"24.0 Governing laws & Jurisdiction

This MoU shall be governed by the Laws of India and the rules framed there under. The Courts in Kochi, Kerala shall



have exclusive jurisdiction in all matters relating to or arising out of this MoU"

4.4 The clause 24.0 of MoU categorically, states that MoU shall be govern by the Laws of India and the rules framed there under. One such law which governs ports in India is Major Ports Trust Act, 1963 and in pursuance of the said Act, Ministry of Shipping vide letter dated 8.03.2004 has framed the Land Policy for Major Ports to regulate the allotment of land. It is further to state that, the perusal of the Land policy for Major Ports dated 08.03.2004 suggests that it does not contain any clause which begins with expression 'unless otherwise agreed' and on the other hand, there is no such clause in the MoU which excludes the applicability of the laws in case of any dispute between the parties to the MoU. It is pertinent to mentioned that para 2 of the last lines of Land policy for Major Ports dated 08.03.2004 categorically states that "the Port Trusts shall follow the policy as enumerated in the subsequent paragraphs for allotment of land." Hence, the contention of 'BPCL' that the land policy is not applicable to them is not valid and devoid of merits. It is further pertinent to mention that, Ministry of corporate affairs vide order F. no. 24/13/2005-CL-III dated 18-08-2006 in para 2.1, has ordered that the scheme of amalgamation between 'BPCL' and erstwhile 'KRL' be effected from 01.04.2004. Therefore, the land policy is applicable on 'BPCL' and 'CPT'.

4.5 It has been further submitted by the 'BPCL' even if land Policy is applicable only to **Land outside custom Bound area** and not for the **Land inside custom bound area**, which is applicable to 'BPCL'. On the other hand, while vehemently opposing the contention of 'BPCL', 'CPT' submits that the lease in question is with respect to Land outside Custom area and not in Land inside Custom Bound Area.



- 4.6 I gave my thoughtful consideration and perused the Land Policy for Major Ports dated 8.3.2004 and the clause 5 of the said Land Policy for Major Ports, 2004 deals with land Allotment Policy and clause 5.1.1 which pertains to land inside custom bond area and in the said clause there is sub clause (b), which states that no sale or lease should be permitted. On the other hand clause 5.2 which deals with Land outside Custom bound area states that land can be allotted either on licence or lease basis. Thus, the land in question is in land outside custom bound area with the purview of Land Policy for major ports.
- 4.7 The 'BPCL' contend that the 'CPT' in pursuance of letter dated 25.02.2005 of 'KRL' has waived the requirement of payment of interest free security deposit and it is further submitted by the 'BPCL' that by allowing the request of 'KRL', the 'CPT' had taken a deviation from the land policy guidelines.
- 4.8 To decide the Contention of the 'BPCL' has mentioned in para 4.7, it is to relevant to state that the literal meaning of the word 'security deposit' according to Advanced Law Lexicon is '*money placed with a person as earnest money or security for the performance of a contract. The money will be forfeited if the depositor fails to perform.*' (Black, 7th Edn., 1999). Thus, according to the definition of the security deposit, it is asked by one party to be deposited by the other in lieu of performance of the contract. Whereas, the transfer fee which was asked by the 'CPT' from the 'BPCL' is in pursuance of the Land Policy for major ports dated 08.03.2004. Hence there appears to be no infirmity in the award of the Ld. Sole arbitrator by holding that the security deposit is money of the claimant i.e. 'CPT' and the transfer fee is the condition of the land policy.



5. Issue 3. **Whether the Amalgamation and Merger of the 'BPCL' with erstwhile 'KRL' is by Operation of Law and whether the 'BPCL' is liable to pay transfer charges to 'CPT'?**

5.1 The 'BPCL' has submitted that Ld. Arbitrator has erred in concluding that in the case of amalgamation of a company with another company, there is a voluntary transfer of assets and liabilities of the transferor company in favour of a transferee company and Ld. Arbitrator has not correctly comprehended the meaning of "Transfer" as understood in the ordinary sense. It is further submitted by the 'BPCL' that in amalgamation there was transfer of assets by operation of law and clauses in the land policy in equation relied on by CPT to demand transfer was never intended to cover situations like amalgamation which is by operation of law and under Section 394 (2) of the Companies Act 1956, when the order of the amalgamation is passed, the property shall be vested in the transferee Company without any further act or deed. The 'BPCL' has also pleaded that Ld. Arbitrator should have considered the special circumstances under which the MoU was signed between the erstwhile 'KRL' and the 'CPT'.

5.2 Per Contra the 'CPT' has contended that the transfer of assets in the present case is a voluntary act of parties and not by operation of law and the 'CPT' has relied on the judgment of the Hon'ble Supreme Court in **Hindustan Leaver's case reported in 2003(117) Company Cases 758 and general Radio & Appliances Company's case AIR 1986(SC) 1218.**

5.3 After considering the contentions of the both the parties, it is pertinent to understand the meaning of the 'Transfer by operation of Law', according to Advance Law Lexicon *'if the transfer mechanism is entirely statutory, effecting an automatic transfer without any voluntary action by the parties, than the transfer is said to be wholly by operation of law (Dodier Realty & Invest Co. v.*

St. Louis Nat Baseball Club, 361 Mo. 981 : 238 SW 2d 321 : 24 ALR 2d 683) '. In the present case, the erstwhile 'KRL' and the 'BPCL' have themselves formulated the terms and conditions and it is apparent that those terms and conditions of the amalgamation scheme in question is not dictated by any act or statute rather the 'KRL and the 'BPCL' had themselves formulated the terms and conditions of the scheme of amalgamation.

5.4 The next bone of contention of the parties is regarding the payment of transfer fee. To decide this issue it would be pertinent to mentioned that the amalgamation of erstwhile 'KRL' and the 'BPCL' constitute transfer and it is not the case that merely the 'BPCL' has stepped into the shoes of the erstwhile 'KRL'. In the case of **EL Forge Limited v State Industries Promotion Corporation of Tamil Nadu Ltd decided on 14/10/2004**, Hon'ble madras high court has held that in para 11

"11. The permission for amalgamation is different and it has nothing to do with the enforcement of the specific clauses in the lease deed. The amalgamation of the two companies does not alter the terms of the agreement. It is an indirect transfer of the rights in the land."

In the case of **Hindustan Lever & another V. State of Maharashtra & Another, 2004(9)SCC 438**, the Hon'ble Supreme Court held in Para 9 inter alia, has held:

"Section 394 provides that application and order of amalgamation under Section 394 is based on Compromise or arrangement which has been proposed for the purpose of amalgamation of two or more companies. The amalgamation scheme, which is an agreement between the companies is presented before the Court and the Court passes an appropriate order sanctioning the compromise or arrangement. The foundation or the basis for passing an order of amalgamation is agreement between two or more



companies. Under the Scheme of amalgamation, the whole or any part of the undertaking, properties or liability of any company concerned in the scheme is to be transferred to the other company. The company whose property is transferred would be the transferor company and the company to whom property is transferred would be considered as the transferee company. The scheme of amalgamation has its genesis in an agreement between the prescribed majority of shareholders and creditors of the transfer company with the prescribed majority of shareholders and creditors of the transferee company. The intended transfer is a voluntary act of the contracting parties.....”

- 5.5 In the present case, it is undisputed that the amalgamation took place between 'KRL' and 'BPCL' and the bone of contention is regarding the payment of the transfer fee. It is clear from the perusal of the above stated paragraphs, that the Land Policy, 2004 is applicable to the parties in the present appeal irrespective of the fact that they had entered into MoU governing the contractual relations between the parties to the present appeal and one of the clause of the said land policy provide for the payment of the transfer charges, the said clause is reproduced as follows:

“ 5.2.1.3 General – Applicable to existing and new leases:

- (a) The lessee may be allowed to transfer the lease after obtaining prior approval of the Port provided the transferee takes over the liability of the original licensee/allottee. Such transfer shall be for the remaining duration of the lease and for purpose in accordance with the Land Use Plan of the port. To allow this transfer, the post shall recover-
- (1) In case of leases granted on upfront basis
In the case of those lands which were originally given on lease rent, the transfer may be allowed subject to the transferee agreeing to pay the revised from time to time in



the light of provisions contained in the original lease agreement. Further,

A fee equal to 50% of the difference between the current upfront premium and the original upfront premium, weighted for the balance lease period. For example, if land was originally allotted on premium (A) for 30 years and after expiry of 12 years, it is proposed to transfer the land in question and at the time of transfer if the prevalent premium for 30 years lease period is (B), then the transfer fee shall be 50% of the amount $(B-A) \times 18/30$.

*One (1) year's lease rentals based on present SoR,
Whichever is higher.*

- (2) *in case of leases which were originally granted on annual lease rent basis in addition to the charges prescribed at 5.2.1.3 (a) above, transfer may be allowed subject to the payment of an upfront premium, equivalent to the NPV of the lease rent calculated as prescribed at 5.3 (III) for the remaining period calculated in accordance with the prevailing SoR/rates approved by the competent authority."*

5.6 It is crystal clear from the above mentioned authorities and as well as the relevant clause of the land policy 2004 that the 'BPCL' is liable to pay transfer charges and NPV to the 'CPT' as the amalgamation between the erstwhile 'KRL' and the 'BPCL', cannot help 'BPCL' in escaping the liability to pay the transfer fee and the NPV to the 'CPT'. Accordingly, I agree with the learned arbitrator and the issue is decided in affirmative.

6. **Issue 4. Whether the 'BPCL' is bound to execute the lease deed as proposed by the 'CPT'?**

6.1 The 'BPCL' has submitted that Ld. Arbitrator has erred in finding that in view of the amalgamation between the parties it is the duty of the 'BPCL' to execute the lease deed in terms of MoU, by clearing all dues of erstwhile 'KRL' on the grounds *inter alia*, that



when the government of India granted approval to Port based Special economic Zone at Puthuvypeen, 'CPT' entered into an agreement on 02.12.2006 with the 'BPCL' recognizing the 'BPCL' as successor of 'KRL' and the non-execution of lease deed at the time of allotment was due to non-clarity in stamp duty exemption available to the port based Special Economic Zone and the 'BPCL' all along was ready to execute the deed. Per contra, the 'CPT' has supported the findings of the Ld. Sole arbitrator.

6.2 After considering the contentions and the rival contentions, it will be prudent to peruse the amalgamation scheme between erstwhile 'KRL' and the 'BPCL' and also order of Ministry of Company Affairs dated 18.08.2006 and it is apt to reproduce clause 22 of order dated 18.08.2006 which as follows:

- " 22. Consequent to the amalgamation of the Companies, and the scheme becoming effective:*
- a. the transferor company shall stand dissolved without the process of winding up;*
 - b. all the property, rights and powers of KRL, the transferor company specified in the schedule hereto and all the other property, rights and powers of KRL, the transferor company shall be transferred without further act or deed to BPCL, the transferee company and accordingly the same shall, pursuant to section 394(2) of the Companies act, 1956 be transferred to and become the liabilities and duties of BPCL, the transferee company; and*
 - C. all the liabilities and duties of KRL, the transferor company shall be transferred without further act or deed to BPCL, the transferee company and accordingly, the same shall, pursuant to section 394(2) of the Companies Act, 1956, be transferred to and become the liabilities and duties of BPCL, the transferee company; and*



D all proceedings, now pending by or against KRL, the transferor company shall be continued by or against BPCL, the Transferee Company."

6.3 It is further pertinent to mention the clause 7.2 of the MoU which states that "that lease of land shall be governed by a separate lease deed, which shall form part and parcel of this MoU". Thus the combine reading of the clause of amalgamation order and the MoU reveals that the 'BPCL' has undertaken all the right and liabilities of the erstwhile 'KRL'. One of the liability of erstwhile 'KRL' is to execute the lease deed in question and the argument put forward by the 'BPCL' are baseless and without any force and devoid of merits. Hence, the 'BPCL' is liable to execute the lease deed in question. Thus the issue is decided in affirmative and the findings of Ld. Sole Arbitrator regarding the execution of lease deed in question is up held.

7. **Issue-4 Whether the amount of interest awarded by the Ld. Sole Arbitrator is liable to be revised or not?**

7.1 It is submitted by the 'BPCL' that the Ld. Sole Arbitrator has exceeded her powers by awarding interest at a rate higher than the rate of interest claimed by the responded. It is further submitted by the 'BPCL' that since the transaction involved in the present case is not commercial transaction, the arbitrator has erred in awarding interest beyond 6% per annum. Per contra 'BPCL' while vehemently refuting the contention of 'BPCL' submitted that the Ld. Sole Arbitrator has rightly found that the basic principle of awarding the interest is to compensate the person who is deprived of the use of money, which he is entitled to.

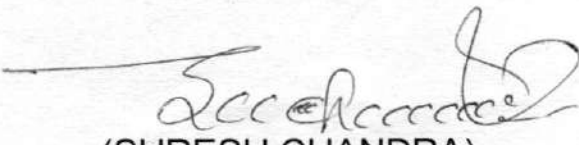
7.2 After perusing the facts and circumstances of the case, it appears that the rate of interest at the rate of 15% per annum is exorbitant and this appellate Authority is of the considered view that in the



interest of justice that the 'BPCL' is directed to pay interest at the rate of 6% to the CPT on the amount awarded by the Ld. Sole arbitrator claimed by the CPT i.e. Rs. 25,59,71,797.00 (Rupees Twenty five crore fifty nine lakh seventy one thousand seven hundred ninety seven only) from the date of transfer that is 21.08.2006 till 16.10.2016 and at the rate of 12 % w. e. f. 17.10.2016 (that is date of appellate order) till the actual realization of the amount awarded. Accordingly, the award with respect to the rate of interest stands amended.

8. As per the prevalent practice both parties are further directed to remit the following honorarium separately by each party by way of demand drafts payable at New Delhi at the address of this office, as all the communications have been done so far for the following officers/staffs member of my office on or before 17.11.2016 for their commendable secretarial/Administrative services rendered in hearing and finalization of appeal in the instant case in time in spite of heavy work load of their cases/items of work :-

1. Sh. Kamal Singh, PPS	Rs. 5000/-
2. Sh. Surender Singh, PPS	Rs. 5000/-
3. Sh. Gaurav Saini, Assistant(Legal)	Rs. 5000/-
4. Sh. Ganesh, M.T.S.	Rs. 4000/-
5. Sh. Parveen Dogra, SCD	Rs. 4000/-
6. Sh. Ahmad Deen, DEO	Rs. 4000/-


(SURESH CHANDRA)
Law Secretary and Appellate Authority

To:

1. Bharat Petroleum Corporation, Ltd.
2. Cochin Port Trust,
3. Permanent Machinery of Arbitration,
4. Judicial Section, for record

