

PATEL ENGINEERING LTD.

pyrshah

NORTH EASTERN ELECTRIC POWER CORPORATION LTD. (NEEPCO)

(*Special leave* Petition (C) Nos. 3584-3585 of 2020)

JYMMANG 22, 2020

[R. BANUMATHI, INDU MALHOTRA

AND

ANIRUDDHA BOSE, JJ.]

Ka aiñ *Arbitration bad Conciliation Act, 1996* – Kyndon ain ba 34 bad 37 – Ka nongshahmudui ka North Eastern Electric Power Corporation Ltd. (NEEPCO) ka la pynrung lai tylli ki *application* hapoh ka *Kyndon ain ba 34* jong ka *Act, 1996* da kaba pyrshah ia ki lai tylli ki rai ne ki *arbitral awards* tarik 29.03.2016 – U Additional Deputy Commissioner (Judicial)) lyngba ka rai kyllum ne *common judgement* tarik 27.04.2018 u la kyntait ia kitei ki *application* bad la pynneh ia ki lai tylli ki rai (arbitral awards) – Ka nongshahmudui NEEPCO ka la mudui da ki mukotduma ban kyrpad (*appeals*) pyrshah ia ki rai (arbitral awards) hapoh ka Kyndon ain ba 37 jong ka *Act, 1996* ha khmat jong ka iingkashari *High Court* bad kita kijuh ki rai ki la shah pynneh biang sa shisien lyngba ka rai jong ka iingkashari *High Court* tarik 26.02.2019, bad ia ka rai jong u Additional Deputy Commissioner kaba 27.04.208 la pynduh noh – Da ka jingsngewsih, ki nongshahmudui ki la mudui da ki mukotduma *Special Leave Petition* ia kiba la shah kyntait – Hadien ka jingshah kyntait katei ka mukotduma *SLP*, ki nongshahmudui ki la mudui biang ia ki dorkhas ban khmih biang (*review petition*) ha khmat ka iingkashari *High Court* halor ka nongrim ba ka rai jong ka iingkashari *High Court* tarik 26.02.2019 ka don ki jingbakla kumba ka paw ha ka jingbuhjingthoh jong ka mukotduma – Ia kita ki dorkhas ban khmih bniah (*review petition*) la kyntait da ka iingkashari *High Court* da ka hukum kaba 10.10.2019 – Ha ka mukotduma ba kyrpad pyrshah (*appeal*) la rai ba: Ha kane ka mukotduma ba mynta , ka iingkashari *High Court* ha ka rai ba 26.02.2019 ka la kdew sha ka rai jong ka iinghashari Bahakhliehduh *Supreme Court* ha kaba iadei bad ki *Associated Builders* hadien ka jingsngap kaba jlan, bad ka la poi sha ka jingpynkut ka badei, ba lah ban weng noh ia ka rai *arbitral award* hapoh ka kyndon ain ba 34, lada ka long beaiñ bad kynriang –Kane ka jingshem jong ka iingkashari *High Court* ka long kaba iahap bad ka rai jong ka iinghashari *Supreme Court* ha kaba iadei bad ka Ssangyong Engineering – Ka iingkashari *High Court* ka ieng nongrim ba uno uno ruh u briew uba biang jingpyrkhat un ym lah ban pynkut da kumwei pat haba batai shaphang ki *clause 2.7* bad 3.4 jong ka *BoQ* bad ki *clause 32(ii) (a) 33(iii)* jong ki kyndon jong ka dostabit lane *contract* – Ia ka mukotduma la rai halor ka nongrim ba ka rai (*arbitral award*) ka long ka rai kaba bakla bad haba pule kyllum lang ia baroh ki kyndon ba la iateh jong ka dostabit, ia ka jingpyrkhat jong u *Arbitrator* kam long ka jingpyrkhat kaba lah ban long– Ka jingpynkut jong ka iingkashari *High Court* ka long kaba dei

- Kumta, ka iingcashari *High Court* ka leh ia kaba dei da kaba kyntait noh ia ki mukotduma *review petition* kiba la mih na ka hukum uxor pyrshah ne ka *impugned order* tarik 10.10.2019
- Ha kaba kut ka long ba ia baroh ki mukotduma *Special Leave Petitions* la kyntait noh.

Ssangyong Engineering and Construction Company Limited pyrshah *National Highways Authority of India (NHAI)* (2019) 15 SCC 131 : [2019] 7 SCR 522; *Associate Builders* pyrshah *Delhi Development Authority* (2015) 3 SCC 49; [2014] 13 SCR 895 – la shaniah.

Bussa Overseas and Properties Private Limited and Another pyrshah *Union of India and Another* (2016) 4 SCC 696 : [2016] 1 SCR 266; *Durga Shankar Mehta* pyrshah *Thakur Raghuraj Singh bad kiwei* [1955] 1 SCR 267; *Shanker Motiram Nale* pyrshah *Shiolalsing Gannusing Rajput* (1994) 2 SCC 753; *Thungabhadra Industries Ltd.* pyrshah *Government of Andhra Pradesh la mihkhmat da u Deputy Commissioner of Commerical Taxes, Anantapur* [1964] 5 SCR 174; *Oil & Natural Gas Corporatoin Ltd.* pyrshah *Saw Pipes Ltd.* (2003) 5 SCC 705 : [2003] 3 SCR 691; *Oil & Natural Gas Corporation Ltd.* pyrshah *Western Geco International Limited* (2014) 9 SCC 263 : [2014] 12 SCR 1; *HRD Corporation (Marcus Oil and Chemical Division)* pyrshah *GAIL (India) Limited* (2018) 12 SCC 471: [2017] 11 SCR 857; *Board of Control for Cricket in India* pyrshah *Kochi Cricket Private Limited and Others* (2018) 6 SCC 287 : [2018] 2 SCR 829 – La khmih.

Jingkdew Mokotduma lane Case Law Reference

[2016] 1 SCR 266	khmih sha	lyngkhot Paragraph 8
[1955] 1 SCR 267	khmih sha	lyngkhot Paragraph 8
(1994) 2 SCC753	khmih sha	lyngkhot Paragraph 8
[1964] 5 SCR 174	khmih sha	lyngkhot Paragraph10
[2003] 3 SCR 691	khmih sha	lyngkhot Paragraph13
[2014] 12 SCR 1	khmih sha	lyngkhot Paragraph13
[2017] 11 SCR 857	khmih sha	lyngkhot Paragraph13
[2019] 7 SCR 522	shaniah ha	lyngkhot Paragraph 13
[2018] 2 SCR 829	khmih sha	lyngkhot Paragraph 15
[2014] 13 SCR 895	shaniah ha	lyngkhot Paragraph 17

CIVIL APPELLATE JURISDICTION: *Special Leave Petition (Civil) Nos. 3584-3585 of 2020.*

Na ka rai bad ka hukum jong ka 10.10.2019 jong ka iingcashari *High Court* jong ka Meghalaya ha Shillong ha ka dorkhas ban khmih bniah *Review Petition No. 16 of 2019* bad ka *MC (Review Petition) No. 14 of 2019* la ka bynta bynta.

Ryngkat

Special Leave Petition (Civil) Nos. 3438-3439, 3434-3435 of 2020.

Tushar Mehta, SG, Harish Salve, Neeraj Kishan Kaul, Huzeffa Ahmadi, ki Muktiar Rangbah, Syed Jaffar Alam, Ketan Gaur, Ashish Bhan, Rajendra Dangwal, Mohit Rohatgi, Aayush Mitruka, Deepak Joshi, Ms. Liz Mathew, ki Muktiar na ka bynta ki mamla kiba wan mih.

Ka iingcashari ka la pynmih ia ka hukum harum:

HUKUM

1. Kine ki mukotduma *special leave petition* ki mih na ka hukum uxor pyrshah jong ka tarik 10.10.2019 ia kaba la pynmih da ka iingcashari *High Court* jong ka Meghalaya ha Shillong ha kaba ka iingcashari *High Court* kam shym la treh ban pdiang ia ki dorkhas ban khmih bniah (review petition) kiba la pynrung da ki nongmudui kiba kwah ban khmih biang ia ka rai bad ka hukum ba la mih ha ka 26.02.2019 ha ka mukotduma jingkyrpad pyrshah *Arbitration Appeal Nos. 3, 4* bad 5 jong ka snem 2018 halor ka nongrim ba ym shym la don kano kano ka nongrim kaba la ai ban khmih bniah biang bad ba ka la don ka jingslem ha kaban pynrung ia ka dorkhas na ka bynta ban khmih bniah biang ia ka.

2. Ngi la sngap ia u Mr. Harish Salve bad u Mr. Neeraj Kishan Kaul, ki muktiar rangbah kiba stad kiba la mih khmat na ka bynta ki nongmudui. Na ka bynta ki nongshahmudui, ngi la sngap ia u Mr. Tushar Mehta, u muktiar Solicitor General bad ia u Mr. Huzeffa Ahmadi, u muktiar rangbah ha ka por kaba lah kham jlan, wat ha ka por ba dang pdiang nyngkong ne *admission*.

3. U *abritrator* ba stad, marwei u la pynmih ia ka rai (arbitral award) ha ka 29.03.2016 ha kaba iadei bad ka *Package-I holding* kumne harum:

“Da kaba pynshong nongrim halor kitei ki jingshem jong nga, ngam don jingartatien ban pdiang ia ka jingshem ba ka dostabit lane ka contract ha lade ka pynbiang ia ki dor (rates) na ka bynta ban siew ia kaba la kit tam na ka jaka kaba la iakut (extra lead) ha kaba iadei bad ki mar Nos. 2.7 bad 3.4 jong ka *BOQ (Bill of Quantities)* lane ka dor jingsiew na ka bynta ki jingtei ha madan bad hapoh khyndew la ka bynta bynta. Ka long kaba shisha ba ia ki tiar ki tar la wanrah kham slem na ka jaka ba dei ban pynkit (lead) ban ia kaba la khmihlynti ha ka por ba la aiti ia ka kam sha u nongshimti kam ne u claimant. Ka long ruh kaba la dep ban kubur da baroh ki mamla ba u nongshimti kam u dei hok ban ioh ia ka jingsiew tam na ka bynta ka jingkit tam (extra lead). Tang kawei ka mat ba hap ban wohdong ka long ba la ka Clause 33(ii)(a) lane ka Clause 33(iii) kin lah mo ban treikam na ka bynta ban kheiñ ia ka dor ba la buh ban

siew na ka bynta ka bai kali ne bai kit. Ha ka jingpynkut jong nga, ngam don jingartatien ban ieng skhem ba ia ka jingsiew na ka bynta ka bai kit tam (extra lead) la dei ban kheiñ katkum ka Clause 33(ii)(a) na ka bynta ki mar ki bym shym la mang ne ia kiba la kdat (deviated) hynrei kiba lah don lypa ha ka dostabit.

Namarkata, nga jubab ia ka jingkhmih (reference) kumne harum:

Ka dor (rate) na ka bynta ka jingkit tam (extra lead) ia u shyiap bad ki mawthup na ki par maw ba la ithuh da ka Sorkar sha ki jaka trei na ka bynta ki kam jong ka package-I hapoh ka KaHEP yn bishar ia ki halor ki Clause 33(ii)(a) jong ka Bynta III (Part III), Volume I, ki kyndon jong ka dostabit jong ka kot –II jong ka dostabit ba lah ia mynjur lang (Conditions of Contract of Book-II of Contract Agreement) No.NEEPCO/ED/QP/C&P/R/C/KaHEP/560 jong ki snem 2004-05 tarik 17.12.2004.”

Ki rai kiba iasryiem ia ki rai Declaratory Arbitral Award tarik 29.03.2016 la pynmih da u arbitrator ba marwei ha kaba iadei bad ki artyli ki rai ba khmih Arbitral References ha kaba iadei bad ki dostabit kiba hap ha ka Package-II bad Package-III jong ka projek.

4. Ka nongshahmudui ka North Eastern Electric Power Corporation Ltd. (NEEPCO) ka la mudui lai tylli ki jingkyrpad mukotduma ne *application* hapoh ka Kyndon ain ba 34 jong ka aiñ *Arbitration and Conciliation Act, 1996* ha khmat u Additional Deputy Commutioner (Judicial), Shillong da kaba pyrshah ia ki lai tylli ki rai *arbitral award* jong ka 29.03.2016 ha kaba iadei bad ki kam hapoh ka Packages-I, II bad III. U Additional Deputy Commissioner (Judicial) lyngba ka rai kyllum tarik 27.04.2018 u la kyntait ia ki jingkyrpad mukotduma ne *application* hapoh ka Kyndon Ain 34 jong ka *Act* bad u la pynskan ia baroh lai tylli ki rai *arbitral award*. Ka nongshahmudui NEEPCO ka la pynrung lai tylli ki jingkyrpad mukotduma ne *appeal* hapoh ka Kyndon ain ba 37 jong ka *Act* ha khmat jong ka ĩngkashari *High Court* ha ki mukotduma *Arbitration Appeal No(s) 3, 4, bad 5* jong u snem 2018. Da ka rai kyllum kaba 26.02.2019, ka ĩngkashari *High Court* ka la pynksan ia ki jingkyrpad mukotduma jong ka nongshahmudui bad ka la pynduh ia ka rai kyllum jong ka tarik 27.04.2018 ia kaba la pynmih da u Additional Deputy Commissioner (Judicial).

5. Da ka jingsngewsih ia ka rai kyllum jong ka tarik 26.02.2019, ka nongmudui ka la leit rah shakhmat ia ki mukotduma *special leave petitions* hakhmat ka ĩngkashari Bahakhliehduh *Supreme Court* ha ka *SLP (C) Nos. 13629-13631 of 2019*. Hadien ba la sngap ia ki arliang mamla, ka ĩngkashari Bahakhliehduh *Supreme Court* lyngba ka hukum ba ha ka tarik 19.07.2019 ka la kyntait noh ia baroh lai tylli ki SLP kiba la pynrung da ka nongmudui da kaba pynshongnia ba ka ĩngbishar kam sngewdonkam ban tuklar ha kine ki kam.

6. Hadien ka jingshah kyntait noh ki SLP, ka nongmudui ka la mudui sa da ki dorkhas ban khmih bniah (*review petition*) ha khmat jong ka ĩngkashari *High Court* halor ka nongrim ba ka rai jong ka ĩngkashari *High Court* tarik ba 26.02.2019 ka don

ki jingbakla kumba ka paw ha ki jingthoh, namar ba kam shym la khmih ia ki jingpynkylla kiba la pynbha ha ka aiñ *Arbitration bad Conciliation Act, 1996* da ka aiñ pynbha (*Amendment Act*) jong ka snem 2015. Ia kitei ki dorkhas ban khmih bniah (review petition) la kyntait noh da ka ĩngkashari *High Court* lyngba ki hukum uxor pyrshah ne *impugned orders*.

7. Ngi la sngap ia ki jingiasaid la katto katne por ha ka por ba la pdiang ia ka mukotduma bad ngi la khmih bniah bha ia ki nia kiba la ai da ki muktiar kiba stad kiba mihkhmat ia ki mamla ,bad ki rai ba la shaniah da baroh arliang mamla bad ia ka rai jong ka ĩngkashari *High Court* tarik 26.02.2019 bad kiwei kiwei kiba lah buh jingthoh.

8. Ka ñia iasiad kaba la pyni da u muktiar rangbah uba stad na ka bynta ka nongmudui ka long ba ka jingshah kyntait noh ka mukotduma SLP kaba mynshuwa lyngba ka hukum ba 19.07.2019 ka long ka hukum kaba khlem pynshong nongrim bha (*non-speaking order*) bad ka bym la pynshong hok bad kumta ym lah ban pyrshah ia ka jingmudui ia ki dorkhas ban khmih bniah (*review petitions*). Da kaba buh jingshaniah ha ka *Bussa Overseas*¹bad halor ki rai jong ka *Constitution Bench* ha kaba iadei bad ka *Durga Shankar Mehta*,²la pynshongnia ba ka *Article 136* jong ka Riti Synshar ka ai bor ia ka ĩngkashari Bahakhliehduh *Supreme Court* ki bor ba kyrpang (*special or residuary*) kiba lah ban pyntreikam shabar jong ki aiñ kiba ju long ha ki mukotduma ia kiba na ka bynta ka hok la dawa ban tuklar da ka ĩngkashari ba ha khliehduh *Supreme Court*. La pynpaw ba ha ka *paragraph (30)* jong ka *Bussa Overseas*,³ka ĩngkashari Bahakhliehduh *Supreme Court* ka la pynieng nongrim ba watla ka rai ha ka mukotduma *Shanker Motiram Nale*⁴ kaba la kdew sha ka hukum *Order 47 Rule 7* jong ka *Code of Civil Procedure* ka khang ban mudui pyrshah ia ka hukum jong ka iingbishar kaba kyntait ia ka mukotduma ban khmih biang (*review*), ym dei ban sngewthuh ba ka iingbishar ka pynduna ia ka bor tian bishar (*plenary jurisdiction*) hapoh ka *Article 136* jong ka Riti Synshar da kaba khmih sha ki kyndon aiñ kiba don ha ka aiñ *Code of Civil Procedure*.

9. U Mr. Tushar Mehta, u muktiar Solicitor General uba stad ruh u la shaniah ha ka *Bussa Overseas*⁵bad u la iasaid nia ba ka dorkhas kyrpad (*appeal*) kam don nongrim pyrshah ia ka hukum kaba la kyntait ia ka jingkyrpad ban khmih biang (*review*) ia ka rai, bad kum kane ka jingkyrpad ne *appeal* kam long pyrshah ia ka rai tynrai (*main judgement*). Ban kyrshan ia ka nia jong u, u muktiar Solicitor General u la pyni jingshaniah halor ka *paragraph (22)*, kaba ong kumne: -

“22. Dang shen ha ka mukotkuma *Sandhya Educational Society* pyrshah *Union of India (2014) 7 SCC 701*, ka iingbishar ka la kdew sha ka rai jong ka mukotduma *Vinod Kapoor* pyrshah *State of Goa (2012) 12 SCC 378* bad ka la pyrkhat kumne: (*SCC p. 706. para 16*)

¹*Bussa Overseas and Properties Private Limited and Another v. Union of India and Another*(2016) 4 SCC 696

²*Durga Shankar Mehta v. Thakur Raghuraj Singh and Others*(1955) 1 SCR 267

³*Bussa Overseas and Properties Private Limited and Another v. Union of India and Another*(2016) 4 SCC 696

⁴*Shanker Motiram Nale v. Shiolalsing Gannusing Rajput*(1994) 2 SCC 753

⁵*Bussa Overseas and Properties Private Limited and Another v. Union of India and Another*(2016) 4 SCC 696

“16. Kane ka ĩngbishar ha ka mukotduma *Vinod Kapoor* pyrshah *State of Goa (2012) 12 SCC 378*, ka la pynshongnia ba shisien,ba la kyntait ĩa ka mukotduma *special leave petition* ia kaba la pynkut da kaba ka nongmudui ka la weng noh khlem da ioh ia ka jingbit kaba biang ban mudui biang sa shisien da ka mukotduma *special leave petition* hadien ba la kut ki lad ki lynti ha kaba iadei bad ka dorkhas khmih bniah (*review petition*) ha khmat ka ĩngbishar *High Court*, ĩa kata la khein ba ka long ka mukotduma ka bym lah ban pynsjongñia katkum ka nongrim ki aiñ..”

10. Hadien ba la dep khmih ĩa ka rai jong ka *Consitution Bench* ha ka mukotduma *Durga Shankar Mehta*⁶bad shibun kiwei kiwei pat ki rai, ha ka mukotduma *Bussa Overseas*,⁷ ka ĩngbishar ka ĩeng skhem ba ka jingiaidryntih (*consistency*) ka dei u mawdong jong ka jingai ia ka bishar hok bad ki iingbishar ki la nang ĩai pynpaw bad ki la pynwandur ĩa ka nongrim ba lada ĩa ka rai kaba tynrai ym shym lah pynkhih bad haba ka jingpyrshah ka long tang ĩa ka hukum kaba la pynmih haba ka *review* lane ka jingkhmih biang, ka ĩngbishar Bahakhliehduh Supreme Court ka la hap ban ym dei ban pdiang ĩa kum kita ki mukotduma *special leave petition*. Ha ka *paragraph* (30) bad (31) jong ka mukotduma *Bussa Overseas*,⁸ka ĩngbishar Bahakhliehduh Supreme Court ka la rai kumne harum: -

“30. Ki rai kiba iadei bad ki jingpynshong nongrim ia ka aiñ ha ki mukotduma *special leave petition* lane na ka bynta kata ka jingkyrpad ne *appeal* la dei ban da sngewthuh shai bha. Wat la ha ka rai jong ka mukotduma *Shanker Motiram Nale Shirolalsing Gannusing Rajput (1994) 2 SCC 753* ka jingbishar jong ki arngut ki nongbishar lane ka *two-Judge Bench* ka la kdew sha ka hukum ba 47 ka aiñ 7 jong ka *Code of Civil Procedure* kaba khang ĩa ka jingkyrpad ne *appeal* pyrshah ĩa ka hukum jong ka iingbishar kaba kyntait ĩa ka jingkhmih biang (*review*), ym dei ban sngewthuh ba ka ĩngbishar ka pynduna ĩa ka bor bishar (*plenary jurisdiction*) hapoh jong ka *Article 136* jong ka Riti Synshar da kaba khmih sha ki aiñ kiba don ha ka *Code of Civil Procedure*. Hap ban sngewthuh shai hangne ba ka ĩngbishar ka la nang iai pynpaw bad ka la pynwandur ĩa ka nongrim, ba lada ĩa ka rai kaba tynrai ym shym la pynkhih bad haba ka jingpyrshah ka long tang ĩa ka hukum kaba la pynmih halor ka ka jingkhmih bniah (*review*), kane ka ĩngbishar kan hap ban ym pdiang ĩa kum kita ki mulotduma *special leave petition*. Kane ka nongrim ka la dei kawei kaba la ioh bha ia ka bor bad ia kaba la niew kum ka nongrim kaba lah ban ieng mynta la palat arphew snem bad kumta ka pynlong ĩa ngi ban pyrkhath ba kam long kaba donkam ban iaidei laitei ka nongrim.

31. Ha kane ka khep, ngi lah ban iohnong da kaba sot ĩa kawei ka lyngkhot kaba donkam na ka mukotkuma *State of A.P.* pyrshah *Jaiswal (2001) 1 SCC 748*, ba

⁶*Durga Shankar Mehta v. Thakur Raghuraj Singh and Others*(1955) 1 SCR 267

⁷*Bussa Overseas and Properties Private Limited and Another v. Union of India and Another*(2016) 4 SCC 696

⁸*Bussa Overseas and Properties Private Limited and Another v. Union of India and Another*(2016) 4 SCC 696

ha ka rai jong ki lai ngut ki nongbishar (*three-Judge Bench*) ki iohi kumne: (SCC p. 761, para 24)

“24. Ka jingiaidryntih (*consistency*) kadei u mawdong jong ka jingbishar bahok. Ka dei ka jingiaidryntih kaba pynlong ia ka jingsngewskhem bad ka jingshaniah jong ki briew ha ka rukom bishar, ba kane ka jingiaidryntih ym lah ban ioh khlem da burom ia ka ain jong ka jingkut. Da ka jingkhmih lynti ban ioh ia ka jingiaid ryntih ha ki jingpynbna ia ki rai ha ki kam aiñ ,ki iingbishar ki la nang iai pynpaw ia ki kyndon jong ki aiñ ban long nuksa (*precedents*), ka jingieng skhem halor ka nongrim tynrai ba lah dep rai ha shuwa (*stare decisis*), bad kiwei kiwei. Kine ki aiñ bad ki nongrim la pynshongnongrim halor ki mat treikam paidbah (*public policy*)... (lah ban hangne halor ki mat kiba donkam)

Ka iingbishar Bahakhliehduh Supreme Court ka la bat ia ka nongrim ba ka rai kaba la pynmih ha ka mukotduma *Thungabhadra Industries Ltd.*⁹ kam long kaba dei.

11. La pyni ñia da u muktiar *Solicitor General* uba stad bad u muktiar rangbah uba mihkhmat na ka bynta ki nongshahmudui ba ia ka SLP kaba mynshuwa la sngap jlan bha bad hadien kata ia ka SLP la kyntait noh namarba ym don nongrim ban tuklar halor kitei ki mat. Hadien ka jingshah kyntait jong ka SLP bad khlem da pan jingbit, ki nongmudui ki la pynrung ia ka dorkhas khmih bniah (*review petition*) lane ban khmih biang.

12. Ha ka jingpeit bniah jong ngi, ym donkam ban peit la kumno ban pynshong ñia ia kine ki SLP ia kiba la mudui pyrshah ia ka hukum kaba kyntait ia ka dorkhas khmih bniah *review*, hadien ba ka jingpyrshah ia ka rai tynrai la kyntait noh ha ki SLP ba mynshuwa. Kumba la kdew mynshuwa, ha kane ka mukotduma, ia ka rai jong ka iingkashari *High Court* hapoh ka Kyndon aiñ ba 37 jong ka *Act* la mudui pyrshah ha khmat jong ka iingkashari ba ha khlieh duh bad ia ki SLP la kyntait noh da ka iingkashari ba ha khlieh duh hadien ba la sngap ia ki muktiar rangbah jong ki arliang mamla lyngba jong ka hukum tarik 19.07.2019. Dei ban kdew ba, haba ia kitei ki SLP ba mynshuwa la kyntait noh, ym shym la pan jingbit na ka bynta ka jinglailuid ban pynrung ia ka dorkhas khmih bniah *review* ha khmat ka iingkashari *High Court*. Da ka long kumno kumno ngin ieh ia kane kumba ka long bad ngim kwah ban tih jylliew shuh shaphang kane.

13. Na ka bynta jong ki nongmudui, u Mr. Harish Salvebad u Mr. Neeraj Kishan Kaul, ki muktiar rangbah ba stad, ki la iasaid ñia ba ha ka rai jong ka iingkashari *High Court* tarik 26.01.2019, ka iingkashari *High Court* da ka jingbakla ka la pyndonkam ia ki kyndon shuwa jong ka jingpynbha ia ka aiñ *Amenment Act, 2015* bad kumta ka rai jong ka iingbishar *High Court* ka don ka jingbakla kaba shai bha katkum ki jingbuhjingthoh mukotduma , namarba ka iingkashari *High Court* ka buh jingshaniah ha ka rai jong ka mukotkuma *Saw Pipes Ltd.*¹⁰bad *Western Geco International Limited*,¹¹kibym don nongrim aiñ shuh hadien ba la pynbha katkum ka *Amendment Act, 2015* kaba la treikam naduh ka tarik 23.10.2015. La pyni ñia shuh shuh ba ka rai jong ka iingkashari *High Court*

⁹*Thungabhadra Industries Ltd. v. Government of Andhra Pradesh Represented by the Deputy Commissioner of Commercial Taxes, Anantapur* (1964) 5 SCR 174

¹⁰*Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd.* (2003) 5 SCC 705

¹¹*Oil & Natural Gas Corporation Ltd. v. Western Geco International Limited* (2014) 9 SCC 263

tarik 26.02.2019 ka don ki jingbakla kiba paw kat kumba ka paw na ki jingbuhjingthoh bad kumta, ki nongmudui ki don ia ka hok ban wad lad ia ka jingkhmih biang (*review*) ia ka rai tarik 26.02.2019 bad ka ĩngkashari *High Court* ka bakla da kaba kyntait noh ia ka dorkhas khmih bniah (*review petition*). Kum ban kyrshan ia ka jingpyrshah jong ki nongmudui, la pynshong nongrim halor ka mukotduma *HRD Corporation*¹²bad ka *Ssangyong Engineering and Construction Company Limited*.¹³

14. U Mr. Tushar Mehta, u muktia *Solicitor General* ba stad bad u Mr. Huzeffa Ahmadi, u muktia rangbah ba stad ki la pyni ñia ba ha ka por ba sngap ia ka SLP(C) Nos.13629-13631 of 2019 ba mynshuwa, la sngap jlan por bha bad baroh ki jingiasaid nia, kynthup ia ka jingtah jong ka jingpynbha ia ka Kyndon aiñ 34, la pynpaw bad dei tang hadien kata ba ia kita ki SLP kiba mynshuwa la kyntait noh. La pyni ñia ruh ba watla ka jingkyntait ia ka hukum tarik ba 19.07.2019 ka long ka hukum kabym don nongrim (*non-speaking order*), ka nongmudui ka la pynpaw ia baroh ki ñia ban pyrshah, hangne ka kyntu, bad ka la hap ban mad ia ka hukum kaba la shah kyntait noh, bad ia ka nongmudui ym shym la shah ban iakhih pyrshah biang ha kane ka kam da kaba pynrung ia ka dorkhas khmih bniah (*review petition*).

15. Ha ka mukotkuma *Board of Control for Cricket in India*,¹⁴ka ĩngkashari bahakhliehduh Supreme Court ka la ieng nongrim ba ka aiñ ba la pynbha ne *Amendment Act, 2015* kan treikam ha ki Kyndon aiñ ba 34 ha ki mukotduma kiba la wanrah hadien ka 23.10.2015 (ka sngi ha kaba la pyntreikam ia ka jingpynbha ia ka aiñ). Ha kane ka mukotduma, la kubur, ba hadien ba la ai tarik ia ki rai *arbitral award* ha ka 29.03.2016, ki dorkhas hapoh jong ka kyndon aiñ 34 jong ka *Act* kiba la pynrung ha khmat jong u Judicial Commissioner, Shillong katkum ka rai jong ka *Board of Control for Cricket in India*,¹⁵ki kyndon jong ka aiñ ba la pynbha kin treikam.

16. Ka jingrai beaiñ ba shai na ka daw ka jingiaidlait ia ka kyndon ba la buh (*patent illegality*) kum ka daw ban pynduh ia ka rai domestic award (ka rai ba ai katkum ka rukom pyntreikam ia ki aiñ (procidal law) bad katkum ka aiñ kaba hok jong ka Ri India), la batai shai nyngkong ha ka rai ba la ai ha ka mukotduma *Saw Pipes Ltd.*¹⁶ha kaba kane ka ĩngbishar ka dei ban peit halor kane ka kam kaba iadei bad ka domestic award. Kane ka ĩngbishar ka la ai ia ka jingbatai jingmut kaba iar ia ka “public policy of India” (ki mat treikam paidbah jong ka Ri India) kaba hap ha ka kyndon ain ba 34(2)(b)(ii) ha ka Bynta I jong ka *1996 Act*. Ka ĩngbishar ka ieng nongrim ba ka rai lane Award ka long beaiñ bashai namar ba ka khlem bud ia ki kyndon ba la buh (“*patently illegal*”) lada ka long pyrshah ia ki kyndon ba donkam jong ka aiñ; lane, ki kyndon hapoh ka aiñ *1996 Act*; lane ki kyndon ha ka jingiakut.

17. Ha ka jingrai kaba bud jong ka mukotduma *Associate Builders*,¹⁷kane ka ĩngbishar ka la iakren ia ki nongrim jong ka jinglong beaiñ bashai namar ka jingiaidlait ia

¹²*HRD Corporation (Marcus Oil and Chemical Division)v. GAIL (India) Limited (2018) 12 SCC 471*

¹³*Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI) (2019) 15 SCC 131, Para No.19*

¹⁴*Board of Control for Cricket in India v. Kochi Cricket Private Limited and Others (2018) 6 SCC 287*

¹⁵*Board of Control for Cricket in India v. Kochi Cricket Private Limited and Others (2018) 6 SCC 287*

¹⁶*Oil & Natural Gas Corporation Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705*

¹⁷*Associate Builders v. Delhi Development Authority (2015) 3 SCC 49, paras 40 to 45.*

ki kyndon halor ki nongrim jong ki mat treikam paidbah (*public policy*) na ka bynta ban weng ne pynduh noh ia ka rai kaba iadei bad ka ñing ka sem *domestic award*. Ka bynta kaba iadei bad kane ba la sot na ka rai jong ka mukotduma *Associate Builders* (ha neng) lah ban pule kumne harum: -

“40. Patent Illegality (ka jinglong beaiñ bashai na ka daw ka jingiaid lait ia ki kyndon ba la buh)

Mynta ngin poi sha ka mat kaba saw jong ka mat treikam paidbah (*public policy*), bad kata ka long, ka jinglong beaiñ na ka daw ka jingiaid lait ia ki kyndon ba la buh (*patent illegality*). Dei ban kynmaw ba hapoh ka jingbatai jong ka Kyndon aiñ ba 34(2)(b), ia ka Rai lane Award la niew ba ka long pyrshah ia ki mat treikam paidbah jong ka Ri India, lada ia kata ka rai la wanrah da ka thok ka shukor lane da kaba shah pynbamsap. Kane ka nongrim lehse ka dei ka nongrim kaba la rim tam ña kaba la pyndondam ha ka iingbishar jong ka ri Bilat (England) ban pynduh ia ki rai hapoh ka aiñ Bilat. Ban kynthup shuh shuh halor kane ka nongrim (ha ka snem 1802) kadei ka nongrim ba ia ka rai arbitral award la dei ban shah pynduh noh lada ka don ia ki jingbakla ha ka aiñ da u *arbitrator*”

“42. Ha ka aiñ *1996 Act*, ha ka jaka jong kane ka nongrim, la pyndonkam noh da ka nongrim ka jinglong beaiñ bashai ‘*patent illegality*’ kaba don lai tylli ki mat hapoh jong ka –

42.1 (a) ka jingpynkhein ne jingiaid lait ña kano kano ka aiñ ba dei hok jong ka Ri India kan pynlong ña kano kano ka rai (*arbitral award*) ban iap noh. Ia kane dei ban sngewthuh bad pynshongñia ba kum kita ki jinglong beaiñ ki dei ban long kiba jylliew bad kim dei ban shu long tang na sla. Kane ruh ka dei ka jingpynkhein ne jingiaid lait ña ka Kyndon Aiñ ba 28(1)(a) jong ka *Act*, kaba lah ban pule kumne harum:

28. Ki kyndon kiba iahap bad ka phangpdeng jong ka jingiakajia – (1) Ha ka jaka kaba kata ka jingiapynbeit ia ka jingiasaidñia ka don ha ri India,:-

(a) ha ka jingiapynbeit ne arbitration lait noh ia kiba dei bad ki kam khaii bar ri (international commercial arbitration) ka kynhun nongbishar ne *arbitral tribunal* kan rai ña ka jingiakajia ba la aiti sha ka jingiapynbeit ne arbitration katkum ka phangpdeng jong ki aiñ bahok (*substantive law*) kiba treikam ha Ri India ha kata ka por;

42.2 (b) ka jingpynkhein ne jingiaid lait ña ka aiñ *Arbitration Act* yn khein ña ka kum ka jingleh beaiñ bashai namar ka jingiaid lait ia ki kyndon ba la buh (*patent illegality*) – kum ka nuksa, lada u arbitrator um ai ña ki daw ba u la pynshong nongrim ña ka rai kaba la pynkhein ña ka kyndon aiñ ba 31(3) jong ka *Act*, kum kita ki rai, lah ban pynduh noh.

42.3 (c) Kumjuh ruh, ka mat symbud (*sub-head*) ba lai jong ka jinglong beaiñ bashai namar ka jingiaid lait (*patent illegality*) ka dei ha ka jingshisha ka jingpynkhein ne jingiaid lait ña ka Kyndon aiñ ba 28(3) jong ka aiñ *Arbitration Act*, kaba lah ban pule kumne harum:

28. Ki kyndon ba iadei bad ki phangpdeng jong ka jingiakajia –

(3) Ha baroh ki mukotduma, ka kynhun nongbishar ne *arbitral tribunal* kan rai katkum ki kyndon jong ka dostabit (contract) bad kan khmih bad kheĩn ruh lang ĩa ki jingpyndonkam ĩa ki kam khaii-pateng kiba iahap bad ka jingpyniaid kam (*transaction*).

Ia kane ka jingpynkhein kaba khatduh hap ban sngewthuh da kaba ai jingmaham ne caveat. Ka kynhun nongbishar ne *arbitral tribunal* kan hap ban rai katkum ki kyndon jong ka dostabit, hynrei lada u arbitrator u pynsngewthuh ĩa ki kyndon jong ka dostabit da ka rukom kaba shongnia, kan ym mut ba ĩa ka rai yn pynduh noh halor kane ka nongrim. La shna ĩa ki kyndon jong ka dostabit nyngkong eh na ka bynta u arbitrator ba un rai, lait noh tang lada u arbitrator u pynsngewthuh bakla ĩa ka dostabit ha kata ka rukom ha kaba lah ban ong ba uno uno ne kano kano ki briew kiba trei hok lane kiba biang jingpyrkhat kin ym leh kumta.” (Ia ban halor ki mat kiba donkam)

18. Ka kynhun sorkar *Law Commission* (ki briew ba la thung bad ai bor kyrpang na ka bynta ka aiĩ) ha ka kaiphod kaba 246 (*246th Report*)¹⁸ jong ka, ka la ai jingmut ban pynrung ĩa ka nongrim ‘*patent illegality*’ (ka jinglong beaiĩ bashai na ka daw ka jingiaid lait ia ki kyndon ba la buh) na ka bynta ban pynduh noh ĩa ka rai *domestic award* (ka rai ba ai katkum ka rukom pyntrei kam ia ki aiĩ (procedal law) bad katkum ka aiĩ kaba hok jong ka Ri India) da kaba pynrung ĩa ka *clause* (2A) ha ka Kyndon aiĩ ba 34 jong ka *Act*. ĩa ki kyntien ba donkam na ka kaiphod jong ka kynhun sorkar *Law Comission* la sot kumne harum:-

“Ka dei na kane ka daw ba ka Commission ka la ai jingmut ban bynrap shuh shuh ĩa ka kyndon aiĩ ba 34 (2A) ban khmih bad treikam tang ĩa ki rai ba ai katkum ka rukom pyntreikam ia ki aiĩ kiba iadei katkum ki aiĩ kaba hok jong ka ri India ne *domestic awards*, kiba ka ĩingbishar ka lah ruh ban pynduh, lada ka ĩingbishar ka shem ba ĩa kata ka rai la pynsniew noh da ka “nongrim jingrai beaiĩ bashai da kaba iaidlait ia ki kyndon kumba ka paw shai ha ka rai ” (“*patent illegality appearing in the face of the award.*”). Khnang ban wanrah ĩa ka jingbym noh shiliang bad ban kiar noh na ki jingshah wan tuklar palat, la pynshai ha ka kyndon ba la tyrwa (*proposed proviso*) ban pynrung ha ka kyndon aiĩ ba, 34 (2A) ba dang tyrwa, ba kum “kata ka rai yn ym pynduh noh tang namar ka daw jong ka jingpyntreikam bakla ĩa ka aiĩ lane da kaba pynrung sabut biang (*reappreciating evidence*).” Ka Commission ka ıgeit ba kane kan iaidei shakhmat ban pynjah noh ĩa ka jingtieng ĩa ka tnat bishar khadar bad ruh kumjuh ĩa ki nongpyndonkam ĩa ka atiar jong ka aiĩ arbitration kiba khmih lynti ĩa kaba dei bad ban ioh ĩa ka jingiarap shaphang ki rai halor ki jingjia kiba jia ha ka Ri jongngi, kiba dei hok, ban pynbiang khamtam ba pyrshah ia ki *domestic award*. Kane kan pynduh ruh ĩa ki daw ba khlem mut khnang kiba mih na ka rai jong ka ĩingkashari Supreme Court ha ka mukotkuma ONGC pyrshah Saw Pipes Ltd. (2003) 5 SCC 705, kaba, watla ka rai ba ai katkum ka rukom pyntrei kam ia ki aiĩ kiba hok jong ka Ri India ne *domestic award*, ka kum kynthup

¹⁸ Available at : <http://lawcommissionofindia.nic.in/reports/Report246.pdf>

lang pynban ïa ki rai kiba mih ha ki kam khaii bar ri *international commercial arbitration* bad kumjuh ruh na ki rai ba mih na ka *foreign award* kumba la pyndonkam ia ki kyntien ha ki kyndon jong ka *Act. ...*” (lah ban halor ki mat kiba donkam)

Ban pyntreikam ïa katei ka jingaijingmut haneng, lah ban ai jingmut ruh ba:

“(iii) Hadien ka jingbatai ha ka kyndon aiñ synrop (sub – section) ba (2), la pynrung ia ka kyndon aiñ synrop ‘(2A). Ia ka rai *arbitral award* kaba mih na ki jingiapynebeit arbitration lait noh ki jingiapynebeit ïa ki kam khaii bar ri, lah ban pynduh noh da ka ñingbishar, lada ka ñingbishar ka shem ba ïa ka rai la pynsniew da ka nongrim jingrai beaiñ bashai kaba iaidlait ia ki kyndon kumba ka paw shai ha ka rai. Tangba ym dei ban pynduh noh ïa ka tang halor ka nongrim ba pyntreikam bakla ïa ka aiñ lane da kaba pynrung sabut biang (*reappreciating evidence*).’

[KYNMAW: Ka kyndon aiñ ba la tyrwa ka S.34(2A) ka bynrap shuh shuh ïa ka nongrim, watla kam long kaba kynthup lut, na ka bynta ban pynduh noh ïa ka rai kaba mih na ki jingiasaid poh ri (bad ym ka jingiapynebeit kam khaii pateng par ri). Ia ka lad ban khmih biang (*review*) la pynshong nongrim halor ki kyndon nongrim jingrai beaiñ bashai ba iaid lait ia ki kyndon (*patent illegality*) kiba la buh da ka ñingkashari bahakhliehduh Supreme Court ha ka mukotduma ONGC Ltd. pyrshah Saw Pipes Ltd., (2003) 5 SCC 705. Ka kyndon jingaibor (*proviso*) ka pyniaid lait noh na ka bynta ka jingpyntreikam bakla ïa ka aiñ bad kaba pynrung biang ïa ki sabut, ki bym lah satia ban long ki nongrim ban pynduh noh ïa ki rai.]” (lah ban halor ki mat kiba donkam)

19. Hadien ki jingai jingmut jong ka Law Comission, ïa ka aiñ 1996 *Act* la pynbha da ka aiñ *Act 3 of 2016*, kaba la treikam naduh ka 23.10.2015. Ia ka nongrim “jingrai beaiñ bashai ba khlem bud kyndon” (“*patent illegality*”) na ka bynta ban pynduh noh ïa kano kano ka rai poh ri (domestic award) la pynlong aiñ (*statutory*) ha ka kyndon aiñ ba 34(2A) jong ka aiñ 1996 *Act*. Ia ka nongrim “jingrai beaiñ bashai ba khlem bud kyndon” (“*patent illegality*”) ym lah ban pyntreikam ha kaba iadei bad ki jingiapynebeit ïa ki kam khaii bar ri kiba don ha India. Wat ha ki rai kiba shabar ri hapoh jong ka *New York Convention*, ïa ka nongrim “jingrai beaiñ bashai ba khlem bud kyndon” (“*patent illegality*”) ym lah ban pyntreikam kum ka nongrim ban ialeh pyrshah ia ka jingpynjari (*enforcement*), namar ba kane ka nongrim kam don ha ka kyndon aiñ ba 48 jong ka aiñ 1996 *Act*. Ka kyndon aiñ synrop ba (2A) kaba la bynrap thymmai hapoh ka kyndon aiñ ba 34 ka thoh kumne harum:-

“(2A) Ki jingrai arbitral award kiba mih na ki jingiapynebeit arbitration lait noh ki jingiapynebeit kam khaii bar ri lah ban pynduh noh da ka ñingbishar, lada ka ñingbishar ka shem ba ïa ka rai la pynsniew da ka nongrim jingrai beaiñ bashai bym bud kyndon (*patent illegality*) kaba paw ha ka rai :

Tang lada ïa ka rai yn ym shah pynduh noh tang na ka daw ba la pyndonkam bakla ïa ka aiñ ne da kaba pynrung biang ïa ki sabut.”

20. Ha ka mukotduma *Ssangyong Engineering and Construction Company Limited*,¹⁹ kane ka ĩngbishar ka dang pyrkhath ia ka jingpyrshah ia ka rai ba la pynmih ha kawei ka jingiapynebeit kam khaii bar ri, hapdeng ki Nongmudui (*Appellant*) – ka *company* bar ri kaba la pynrung ialade hapoh ki aiñ jong ka ri Korea, bad ka Nongshahmudui (*Respondent*), kaba dei kaba la pyniaid da ka Sorkar India. Ha ka *paragraph* ba (19) jong ka rai, kane ka ĩngbishar ka la buh dak ia ka jingbatai bniah shaphang “ki mat treikam paidbah ha Ri India” (“*public policy of India*”) ha ki mukotduma *Saw Pipes* (ha neng) bad ka *Western Geco International Limited*,²⁰ ia kiba ym shym la bud shuh, bad ia ka nongrim ba thymmai jong ka “jingrai beaiñ bashai bym bud kyndon” (*patent illegality*) la pynrung ha ki dorkhas kiba pynrung ha ka kyndon aiñ ba 34 ĩa kaba la pynrung ha, lane hadien ka 23.10.2015. Ha ki *paragraph*(36) bad (37) jong ka rai, kane ka ĩngbishar ka ĩeng nongrim ba ha kaba iadei bad ki jingrai hapoh ri(domestic award), ka nongrim kaba thymmai jong ka nongrim jingrai beaiñ bashai bym bud kyndon (*patent illegality*) ka lah don mynta hapoh ka kyndon aiñ synrop (2A) jong ka kyndon aiñ ba 34. Hynrei, ka jingpynrung biang ĩa ki sabut ym shym la shah hapoh ka nongrim jong ka “nongrim jingrai beaiñ bashai bym bud kyndon” (“*patent illegality*”) kaba paw ha ka rai.

21. Ha ki *paragraph* (39) bad (40) jong ka mukotduma *Ssangyong Engineering* (ha neng), ka ĩngbishar ka ban biang sa shisien ĩa ki *paragraph* (42.2) bad (42.3) jong ka mukotduma *Associate Builders* (ha neng) ha kaba la ĩeng nongrim ba ka jingshna ĩa ki kyndon jong ka dostabit nyngkong eh na ka bynta u arbitrator ba un rai, lait noh tang lada u arbitrator u pynsgewthuh bakla ĩa ka dostabit ha kata ka rukom ha kaba lah ban ong ba uno uno ne kano kano ki briew kiba trei hok lane kiba biang nongrim kin ym leh kumta, kata ka mut, lada ka jingpyrkhat da u arbitrator ka long ka bym lah ban long. Ha ki *paragraph* (39) bad (40), ka ĩingkashari Supreme Court ka ĩeng nongrim kumne harum:-

“39. Ban batai, ka lyngkhot *para* 42.1 jong ka mukotduma *Associate Builders* pyrshah ia ka *Delhi Development Authority* (2015) 3 SCC 49, kata, ka jingpynkhein ĩa ki aiñ ba donkam bad ba hok jong ka Ri India, tang kata hi, kam lah ban dei shuh ka nongrim ĩa kaba lah ban pynduh noh ĩa ka rai *arbitral award*. Ka *para* 42.2 jong ka mukotduma *Associate Builders* pyrshah ia ka *Delhi Development Authority* (2015) 3 SCC 49, watla katta ruh, kan sah hi kumjuh, namar lada u arbitrator um ai ĩa ka daw balei u la pynmih ĩa ka rai bad da kaba pynkhein ĩa ka kyndon aiñ ba 31(3) jong ka aiñ 1996 *Act*, kata hi kan long ka nongrim jingrai beaiñ bashai bym bud ia ki kyndon ba la buh, (*patent illegality*) kaba paw ka rai.

40. Ka jingpynkylla kaba la leh ha ka kyndon aiñ ba 28(3) da ka *Amendment Act* ka bud shisha ĩa kiei kiba la thoh ha ki *para* 42.3 haduh 45 ha ka mukotduma *Associate Builders* pyrshah *Delhi Development Authority* (2015) 2 SCC 49, kata, ka jingshna ĩa ki kyndon jong ka dostabit ka long na ka bynta u arbitrator ban rai, lait noh tang lada u arbitrator u pynsgewthuh bakla ĩa ka dostabit ha kata ka rukom ha kaba lah ban ong ba uno uno ne

¹⁹*Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)* (2019) 15 SCC 131

²⁰*Oil & Natural Gas Corporation Ltd. v. Western Geco International Limited*(2014) 9 SCC 263

kano kano ki briew kiba trei hok lane kiba biang jingpyrkhat kin ym leh kumta, haba kren lyngkot, ka mut ba ka jingpyrkhat jong u arbitrator ka long kabym lah ban pdiang satia. Kumjuh ruh, lada u arbitrator u iaid lait shabar ia ka dostabit bad u ktah ia kiei kiei ki bym shym la ai bor ha u, u la iaid bakla shabar jong ka jylli treikam jong u. Kane ka nongrim ban pyrshah kan hap mynta ha ka nongrim kaba thymmai ia kaba la bynrap ha ka kyndon aiñ ba 34(2-A).” (lah ban hangne halor ki mat kiba donkam).

22. Kane ka mukotduma ba mynta ka mih na ka rai hapoh ri (domestic award), hapdeng artylli ki kynhun kiba hapoh Ri India. Ka nongrim jong ka jingrai beaiñ bashai (*patent illegality*) ka long ka nongrim kaba don ha ki kyndon aiñ ban pynduh noh ia ka rai hapoh ri (*domestic award*), lada ka rai jong u arbitrator la shem ba ka long kaba mutlop, lane, kaba khlem da pynshong nongrim bha ha kaba uno uno u briew uba hok bad uba ieng halor ka nongrim um lah ban poi sha kata ka rai lane, ka jingshna ia ka dostabit ka long ha kata ka dur ba uno uno u briew uba hok un ym lah ban pdiang; lane, ba ka jingspyrkhat jong u arbitrator ka long ka bym lah ban long.

23. Ha kane ka mukotduma kaba mynta, ka ĩngkashari *High Court* ka la kdew sha ka rai jong ka mukotduma *Associated Builders* (ha neng) ha ka lyngkhot *paragraph* ba (42) jong ka rai kaba mih ha ka 26.02.2019 bad ka la poi sha ka jingpynkut kaba dei, ba ia ka rai *arbitral award* lah ban pynduh noh hapoh jong ka kyndon aiñ ba 34 lada ka long ka rai beaiñ kaba shai (*patently illegal*) lane kaba kynriang. Kane ka jingshem jong ka ĩngkashari *High Court* ka long kaba iahap bad ka *paragraph* (40) jong ka rai jong kane ka ĩngkashari ha ka mukotduma *Ssangyong Engineering* (ha neng).

24. Ha kane ka mukotduma ba mynta, ka ĩngkashari *High Court* ha ka *paragraph* ba (51) ka la ieng nongrim ba uno uno u briew uba hok un ym lah ban pynkut da kumwei haba u batai ia ki lyngkhot *Clauses* 3.7 bad 3.4 jong ka BoQ bad ia ki lyngkhot *Clauses* 32(ii)(a) bad 33(iii) jong ki kyndon (*Conditions*) jong ka Dostabit. Kano kano ka jingbatai da kumwei pat ia kitei ki lyngkhot *clause* kan long kaba khlem nongrim bad kaba pyrshah ia ka jingpynshong ñia baroh. Ka jingsot kaba iadei, ka long kumne harum:-

“51. ...Ka *Clause* 33(ii) ka ai bor tikna ba “lada ka dor (*rate*) na ka bynta kum kita ki jait kam (*items of work*) ym lah ban pynshong katkum ba la kdew ha ka *Clause* 33(ii), ia ka dor na ka bynta kum kita ki jait kam yn hap ban pynshongdor da u *Engineer-in-Charge* ha ka nongrim jong ka dor ba shisha bad ba lah dep khmih bniah (*analysed*), da kaba buh jingmut ia ka dor na ka bynta kum kita ki kam kumba la donkam ban pyntrei na ka daw ka jingiaidlaid (*deviations*) kumba la kdew ha ka *sub-clause* la hap ban siew katkum ki rukom kumba la kdew harum.....”. Ngida sngew tikna bha ba dei tang kane ka jingbatai ia ka jingmut kaba lah ban long ia ki *Clause* 2.7 bad 3.4 jong ka BoQ bad ia ki *Clause* 32(ii)(a) bad 33(iii) jong ki Kyndon jong ka Dostabit. Ym don da kawei pat ka jingbatai u briew kaba lah ban wanrah ia ka jingsngewthuh bashai bad bakhatduh ha kaba iadei bad ka jingbatai ia ki *Clause* 2.7 bad 3.4 jong ka BoQ. Kano kano ka jingbatai da kumwei pat ia kitei ki lyngkhot *clause* kan long kaba bakla nongrim bad ka ba pyrshah ia ka jingpynshong ñia baroh. (lah ban hangne halor ki mat kiba donkam)

25. Ka ĩingcashari *High Court* ha ka *paragraph* ba (52) ka la lap ba ki jingshem ha ka rai ka long ka bymshongnia bad ba kynriang, bad ka la pynĭeng nongrim kumne harum:-

“52. Ki jingrai *Arbitral Award* bad ki jingshem jong u Arbitrator ba stad ki don ka jingbakla kaba kynriang (*perversity*). U Arbitrator ba stad u la buh jingkheĩn bad jingmut ĩa ki bynta kiba bun ki bym da long kongsan ha ka ban shim rai, bad ruh u la la iaidlait noh ĩa ki bynta (*clauses*) kiba donkam kiba iadei bad ki kot thep kyrteng treikam ne *tender*, kum ka *Clause 2* bad kiwei ki lyngkhot rit *Sub-clause*, kata ka mut, ki lyngkhot rit *Sub-clause 2.1* haduh 2.8.7 hapoh jong ka bynta *Clause 2* bad bynta *Clause 3* bad kiwei ki lyngkhot rit *Sub-clause*, kata ka mut, ki lyngkhot rit *Sub-clause 3.1* haduh 3.7 hapoh ka bynta *Clause 3* jong ka BoQ, ka bynta *Clause 2* bad kiwei ki lyngkhot rit *Sub-clause*, kata ka mut, ki lyngkhot rit *Sub-clause 2.1* haduh 2.17.7 hapoh ki bynta *Clause 2* bad bynta *Clause 3* bad kiwei ki lyngkhot rit *Sub-clause*, kata ka mut, 3.1 haduh 3.10.5 hapoh ka bynta *Clause 3* jong ka kyndon “*Particular Technical Specifications*”,(ka jingbatai bniah ia ka jinglong ki tiar ki tar ba tikna shaphang ki kam ne jingtrei ba pyntrei da ka buit stad) *Vol. 2, Part II*. U Arbitrator ba stad u lah buh jingmut ĩa ka bynta ka bym da long kongsan ba haba ai ĩa ka jingsiew lypa (*provisional payment*), ka bai kit ha ka *lead* kaba sdang kaba long 3.0 km la khate noh bad ba kane ka pyni ba ka *Clause 2.7* bad 3.4 jong ka BoQ ki long kiba lah ban pyntreikam. Ka jingsiew lypa ka long ka rukom pynbeit ha ka por pdiang, bad shuwa kata la pynlong ia ka jingialang ha ki tarik 07.12.2012 bad 08.12.2012 ha kaba la mynjur hapdeng ki mamla ba ka HoP, NEEPCO kan shim ĩa ki sien jam ban phah pynbeit ĩa ka jingiakajia sha ka jingpynbeit Arbitration bad haduh ban da ioh ia ka rai *Arbitral Award*, ĩa ka jingsiew yn siew katkum ki dor ba la buh shi por khlem da pynkiew bad ba ka dor ba khatduh kaba dei ban siew ĩa ka jingkit ĩa u shyiap bad u mawthup yn siew ynda la treikam ka rai (*Arbitral award*). Kumta, ka jingshisha ba ĩa ka jingsiew lypa la leh da kaba khate noh ĩa ka *lead* kaba sdang 3.0 km ka long ka jingshisha ka bym da don jingiadei ha kaba rai ĩa kane ka kam. Ki jingshem jong u Arbitrator uba stad ki long kiba da kaba buh jingmut ĩa ki jingshisha ki bym da long kongsan ne don jingiadei, bad da kaba iaidlait ĩa ki *clause* kiba kongsan, kane namarkata ka don ka jingbakla bad jingkynriang. Ka long kaba dei ban buh jingmut ba ki rai *Arbitral Awards* kiba ĩa kren hangne ki dei ki rai ba pynbna *Declaratory Arbitral Awards* bad ki kynthup ruh ĩa ka jingbatai ka ki *Clauses 2.7* bad 3.4 jong ka BoQ bad ki *Clause 32(ii)(a)* bad 33(iii) jong ki Kyndon jong ka Dostabit bad u Arbitrator uba stad u donkam ban batai ĩa kajuh bad katkum ki kyndon (*rules*) kiba dei ban bud haba batai. Ki jingshem jong u Additional Deputy Comissioner (Judicial), Shillong katba u dang pynskan ĩa ki jingrai *arbitral awards* jong u Arbitrator ba stad ruh, ki don ia ki jingbakla kiba long kumjuh hi. Namarkata, ngi don ka jingsngewthuh hadien ka jingpyrkhat ba sani ba ka hukum kyllum jong ka 27.04.2028 kaba la pynmih da u Additional Deputy Comissioner (Judicial), Shillong ha ki mukotduma *Arbitration Case*

No. 5 (T) 2016, *Arbitration* 6 (T) 2016 bad ka mukotduma *Arbitration Case* No. 7 (T) 2016 bad ruh ki 3 tylli (lai tylli) ki jingrai *Arbitral Awards* tarik 29.03.2016 kiba la pynmih da u Arbitrator ba stad ka ai bor ban tuklar halor kine ki jingkyrpad (*appeals*) hapoh ka Kyndon aiñ 37 jong ka aiñ *Arbitration and Conciliation Act, 1996*.

53. Ki don ruh sa kiwei pat ki daw ban tuklar halor ka hukum ba 27.04.2018 kaba ka pynmih da u Additional Deputy Commissioner (Judicial), Shillong bad ki rai *Arbitral Award* tarik 29.03.2016 kiba la pynmih da u Arbitrator ba stad. Kumba u muktia na ka bynta ki nongmudui (*apellant*) u la pyni ñia halor, ka jinglah ban ktah jong ka rai *Arbitral Award* ña ki nongbat pisa paidbah lane *public exchequer* ka long ba ka nongmudui, kaba dei ka kynhun treikam jong ka sorkar, kan hap ban siew kumba 3.56 lakh tyngka na ka bynta shi trok jong kaba 10 cubic metre ka jingthew ña u shyiap lane mawthup (ha ka jingiaid lynti kaba 100 km) bad ka jingkhein kyllum kan long kumba 1,000 klur tyngka. Katkum ka jingpyrkhat jong ngi ka long ba ka jingsiew ña ka 3.56 lakh tyngka shi trok (10 cubic metre) ña u shyiap ne mawthup (100 km ka jingiaidlynti) ka long ka kam kaban pynriewspah bymhok kaba long pyrshah ña ka nongrim aiñ tynrai ha India (*Fundamental Policy of Indian Law*). Ka jingpynriewspah bymhok, haba ka long pyrshah ña ka nongrim aiñ tynrai ha India, ka long ka nongrim ban tuklar da ka jingpynmih ña ka rai *Arbitral Award* hapoh jong ka Kyndon aiñ ba 34(2) jong ka *Act*. Ka ĩngkashari Bombay High Court ha ka mukotduma *Angerlehner Structural and Civil Engeneering co.* pyrshah *Municipal Corporation of Greater Mumbai* ka la ithuh ia ka jingpynriewspah bymhok jong kano kano ka kynhun da kaba pynlutksan na ka pisa paidbah jong ka sorkar ka dei kaba pyrshah ña ka nongrim aiñ tynrai ha India. Ka ĩngkashari Bombay High Court ka la ĩeng nongrim kumne harum:

“Lada yn pdiang ña ki nia jong ki nongtreiwai lane ki *Contractor*, ka ialam sha kaba kin pynriewspah khlemraiñ khlemrem ialade palat ban ña kaba ki dei hok ban ioh. Kum kita ki rukom pynriewspah bymhok, kata ruh da kaba pynlutksan na ka pla tyngka paidbah, ka long kaba ijli hapoh jong ka nongrim jong ki aiñ hapoh India. Ka rai ha ka *AJECT*, kaba shah ña kum kata ka jingpynriewspah khlemraiñ ka lah long ka jingpynsniew noh halor ka nongrim ba ka long pyrshah ña ka nongrim aiñ tynrai hapoh Ri India.”

Ngi don ka jingsngewthuh bad jingpyrkhat ba ka rai *Arbitral Award* kaban pynriewspah bymhok ña u nongshahmudui haduh 1,000 klur tyngka ka long kaba pyrshah ña ka nongrim aiñ tynrai jong ka Ri India, bad kumta ka dawa ban shah tuklar ha kane ka khep ruh kumjuh.

Watla kane ka iingbishar kam tuklar ña ka jingkyrpad halor ka rai jong ka kynhun *arbitral tribunal*, ka jingdon jong ki nongrim hapoh ka kyndon aiñ 34[2] jong ka *Act* bad ka jingsngewhun kaba kane ka ĩngbishar ka la pynioh ha kaba iadei bad kane ka bynta, ka dawa shuh shuh ban tuklar, namar ba ki rai *Arbitral Awards* kiba iakren hangne ki long ki rai *Declaratory Arbitral*

Award bad ki kynthup ïa ka jingbatai ïa ki bynta *Clause* 2.7 bad 3.4 jong ka BoQ bad ki bynta *Clause* 32(ii)(a) bad 33(iii) jong ki kyndon jong ka Dostabit bad u Arbitrator uba stad u donkam ban batai halor kajuh, katkum ki kyndon ai jingbatai bad da kaba iahap bad ki nongrim aiñ tynrai ka Ri India.”

(lah ban hangne halor ki mat kiba donkam)

26. Watla ka ĩingbishar *High Court* ha ka *paragraph* (44) jong ka rai ka kdew sha bun ki rai, kynthup ïa ka mukotduma *Western Geco* (ha neng) [ka bym long shuh ka aiñ kaba bha mynta], ïa ka mukotduma la rai halor ka nongrim ba ka rai *arbitral award* ka long kaba kynriang bad haba pule kyllum lang ïa ki kyndon jong ka dostabit, ka jingpyrkhat jong u Arbitrator ka long ka bym lah ban long. Ka ĩingkishari *High Court* ka la bud ryntih ïa ka jingtynjuh (*test*) ïa kaba la buh ha ka *paragraph* (42.3) jong ka rai ha ka mukotduma *Associate Builders* (haneng) kaba lah ong bunsien ha ka *paragraph* (40) jong ka rai ha ka mukotduma *Ssangyong Engineering* (ha neng).

27. Ha ka jingiohi jong ngi, haba peit ïa ka jingkyrpad lane *appeal* hapoh jong ka kyndon aiñ 37 jong ka *Act*, ka ĩingkishari *High Court* ka la shim ia ka por kaba jlan ban khmih ïa kane ka kam, bad ka la ïeng nongrim ba, haba batai ïa ki kyndon jong ka dostabit, ym don uno uno u briew uba shemphang uba lah ban pynkut da kumwei, bad ba ki rai ba la pynmih da u Arbitrator ki long kiba don jingbakla bad ba kynriang.

28. U muktiar bastad u *Solicitor General* u Mr. Tushar Mehta bad u Mr. H. Ahmadi, u muktiar rangbah na ka bynta ki nongshahmudui ki la iasaid ba baroh kine ki jingiakajia la wanrah ha ka sien kaba nyngkong ha kaba ïa ka jingpyrshah ïa ka Rai Pdeng (*substantive Judgement*) jong ka 26.02.2019 la pynlong. Ia katei ka jingpyrshah la jubab da kane ka ĩingbishar lyngba ka hukum kaba 19.07.2019 da kaba kyntait ïa ki SLP kiba ha shuwa. Mynta ym lah shuh ban plie biang ïa katei ka kam da kaba pynrung biang da ka dorkhas ban khmih bniah *review petition* kaba thymmai halor kijuh ki nongrim ïa kiba la kyntait da ka ĩingkishari *High Court*. Ki nongmudui kim shym la lah ban ithuh ïa ki jingbakla ha ka rai ba 26.02.2019. Ka ĩingkishari *High Court*, da ka hukum uxor pyrshah (*impugned order*) kaba 10.10.2019 ka la leh ïa kaba dei da kaba kyntait ïa ki dorkhas ban khmih bniah *review petition* bad ngim shym la shem kano kano ka nongrim ban tuklar halor katei ka hukum ba la shah uxor.

29. Kaba mih na kata, baroh ki mukotduma *special leave petition* ki la shah kyntait (dismissed) khlem kano kano ka hukum ba iadei bad ka dor.

Ankit Gyan

Special Leave Petitions dismissed