

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

% **Date of Decision: 13.12.2010**

+ **CS(OS) No.765/2009**

M/S KALYAN CHANDRA GOYAL & CO ..... Plaintiff  
Through: Mr. Girish Aggarwal, Ms. Mugdha  
Pandey and Mr. Abhishek  
Aggarwal, Advocates

versus

EXECUTIVE ENGINEER, SOUTHERN  
WESTERN DIVISION-8,  
DELHI DEVELOPMENT AUTHORITY ..... Defendant  
Through: Mr. Bhupesh Narula, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

1. Whether the Reporters of local papers may  
be allowed to see the judgment? : No
2. To be referred to Reporter or not? : Yes
3. Whether the judgment should be reported  
in the Digest? : Yes

**JUDGMENT (Oral)**

**VIPIN SANGHI, J.**

1. These are objections preferred by the defendant/DDA under Sections 30 and 33 of the Arbitration Act, 1940 against the award dated 22.11.2008 made by the Sole Arbitrator Mr.S.C.Kapoor. This award has been made by the learned arbitrator in pursuance of the order dated 23.07.2007 passed by this Court in CS(OS) No.2805/1995,

whereby the Court set aside the award made on claim Nos.5, 8 and 11 and remitted the said claims for re-adjudication by the learned arbitrator. The defendant/DDA challenges the award now made on all the three remitted claims.

2. Claim No.5 had been made by the petitioner/contractor to claim loss of profit @ 10%, amounting to ₹ 2 lacs on the value of the work that the petitioner could not execute as the contract was rescinded by the respondent. The learned Arbitrator observes that the petitioner did not give any details. He assessed the damages payable to the petitioner to be 20% of the claimed amount, i.e. ₹ 40,000/- only. Consequently, he awarded ₹ 40,000/- in favour of the petitioner/claimant under this claim.

3. The submission of Mr.Bhupesh Narula, learned counsel for the DDA is that the learned Arbitrator has mis-conducted the proceedings and the award made by him is without jurisdiction. He points out that under Clause 13 of the agreement between the parties, it is specifically provided as under :-

“Clause 13. If at any time after the commencement of the work the Authority shall for any reason whatsoever not require the whole thereof as specified in the tender to be carried out, the Engineer-in-Charge shall give notice in writing of the fact to the contractor who shall have no claim to any payment of compensation whatsoever on account of any profit or advantage which he might have derived from the execution of the work in full, but which he did not derive in consequence of the full amount of the

work not having been carried out, neither shall he have any claim for compensation by reason of any alterations having been made in the original specifications, drawings, designs and instructions which shall involve any curtailment of the work as originally contemplated.

Provided that the contractor shall be paid the charges on the cartage only of materials actually and bona fide brought to the site of the work by the contractors and rendered surplus as a result of the abandonment or curtailment of the work or any portion thereof and then taken back by the contractor provided however that the Engineer-in-Charge shall have in all such cases the option of taking over all or any such material at their purchase price or at local current rates whichever may be less. In the case of such stores having been issued from D.D.A. Stores and returned by the contractor to D.D.A. Stores, credit shall be given to him by the Engineer-in-Charge at rates not exceeding those at which they were originally issued to him, after taking into consideration and deduction for claims on account of any deterioration or damage while in the custody of the contractor and in this respect the decision of the Engineer-in-Charge shall be final." (emphasis supplied)

4. He submits that the learned Arbitrator has, therefore, acted without jurisdiction by ignoring the contractual terms and conditions and in view of the contractual terms aforesaid, no claim could have been entertained by the learned Arbitrator towards loss of profit on the quantum of work which remained to be executed on account of rescission of the contract by the respondent. In support of his submission, Mr.Narula has placed reliance on the decision of the Supreme Court in **Steel Authority of India Vs. J.C.Budhiraja** AIR 1999 SC 3275 and **M.L.Mahajan Vs. DDA** 76 (1998) DLT 701.

5. In ***Steel Authority of India (Supra)*** the Supreme Court was considering the effect of Clause 32 of the agreement which specifically stipulated that no claim for not giving the entire site, and for giving the site gradually will be tenable, and the contractor was required to arrange his working programme accordingly. The Supreme Court in the light of the said clause observed as follows:-

**“15.....**These conditions specifically prohibit granting claim for damages for the breaches mentioned therein. It was not open to the arbitrator to ignore the said conditions which are binding on the contracting parties. By ignoring the same, he has acted beyond the jurisdiction conferred upon him. It is settled law that the arbitrator derives the authority from the contract and if he acts in manifest disregard of the contract, the award given by him would be arbitrary one. This deliberate departure from the contract amounts not only to manifest disregard of the authority or misconduct on his part, but it may tantamount to *mala fide* action. In the present case, it is apparent that awarding of damages of Rs.11 lakhs and more for the alleged lapses or delay in handing over work site is, on the face of it, against the terms of the contract.”

6. In ***M.L.Mahajan*** (Supra) the Court was considering the effect of Clause 10 of the Contract which stipulated that no compensation could be awarded even though there was delay in completion of work on account of non-supply of any materials or stores. In that case, the Arbitrator had awarded certain amounts in favour of the contractor for breach committed by the respondent/DDA in respect of supply of materials, drawings and designs which were responsible for causing delay in the performance of the contract. By placing reliance on

another decision of this Court in ***M/s.M.L.Mahajan's*** case in Suit No.2185/1987 and Suit No.2295A/1987 decided on 20.07.1990, and ***Continental Construction Co. Vs. State of Madhya Pradesh***, AIR 1988 SC 1166, the Court held as follows:-

“11. In terms of Clause 10 of the contract no compensation is to be awarded although there is delay in completion of the work on account of non-supply of any material or stores. The Arbitrator has awarded the aforesaid amount for breaches committed by the respondent in respect of materials, drawings and decisions which were responsible for causing delays in the performance of the contract. The aforesaid decision of the Supreme Court is binding on me and relying upon which the decision in *M.L.Mahajan (supra)* was delivered, with which I respectfully agree. Since the parties have agreed upon not to claim any compensation or damages on account of any delay in supply of all or any such materials and stores, the Arbitrator as well as this Court has to give effect to the aforesaid intention of the parties in all matters and the Arbitrator could not have given an award contrary to the aforesaid express provisions of the contract. The Arbitrator had jurisdiction only to act in accordance with the contract which is also the principle enunciated in *Continental Construction Company's* case (*supra*). In that view of the matter the award passed by the Arbitrator in respect of this claim is set aside.”

7. Mr. Narula further submits that the petitioner had not provided any evidence or details in support of the said claim. He submits that the learned Arbitrator could not have arbitrarily assessed the amount to be 20% of the claimed amount. No basis has been disclosed by the learned Arbitrator, while making the award on claim No.5.

8. Claim No.8 had been made by the petitioner/claimant for an amount of ₹ 7,86,990/- on account of damages for prolongation of contract. The submission of the claimant was that the stipulated period of completion under the contractual terms was 12 months. However, the work could not be completed due to delays and defaults by the respondent/DDA. During the extended period of contract, the contractor had to maintain staff for the engineers etc. Under the terms of the agreement, which could not be disbanded by the petitioner. The learned Arbitrator, on the basis that the value of work done after the specified period of contract was ₹ 24,18,403/-, and on the basis of certain citations, which are not noted in the award, allowed 20% of the claimed amount, i.e. ₹ 1,57,398/-. Thus, the learned Arbitrator rounded the amount to ₹ 1,57,000/- while making the award.

9. The submission of Mr.Narula in relation to the award made on claim No.8 is also that the award is contrary to the contractual terms. In this regard, he places reliance on Clause 1 of the Additional Specifications and Conditions of Contract under the heading 'General' which, inter alia, provides that if part of the site is not available for any reason, or there is some unavoidable delay in materials to be supplied by the Department, the programme of construction shall be modified accordingly and the contractor shall not claim for any extra compensation on this account. Clause 10 of the Conditions of Contract, inter alia, provides that the contractor, in no case shall be

entitled to any compensation or damages on account of delay in supply or non-supply of the materials and stores. Mr.Narula submits that the learned Arbitrator has ignored these contractual terms and conditions which are binding on the parties. Consequently, he has acted beyond jurisdiction. He submits that the Arbitrator is bound to enforce the contractual terms and conditions and cannot go contrary to them. It is, therefore, submitted that the learned Arbitrator has mis-conducted himself while making the award on claim No.8. It is also pointed out that the learned Arbitrator observes in his award that the petitioner had not given full details, and there is no measure of the damages claimed by the petitioner. Despite that, the learned Arbitrator has arbitrarily, without any basis, awarded 20% of the claimed amount, i.e. ₹ 1,57,000/-.

10. Claim No.11 had been made by the petitioner/contractor for ₹ 6,04,625/- on account of extra rates. The learned Arbitrator awarded an amount of ₹ 1,20,000/- on this account. The learned Arbitrator observes that the contractual period was 12 months. However, the contract got extended for 44 months, i.e. there was an increase in the period of contract by 32 months. During this period the value of the work done was ₹ 24,18,403/-. During the extended period the claimant had to spend extra amount on labour, material, POL etc. The Arbitrator observes that the impact of extra work could not be more than 5%, considering that escalation was payable to the contract or Clause

10CC. Consequently, he awarded the amount of ₹ 1,20,000/- in favour of the petitioner/claimant.

11. The submission of the Mr. Bhupesh Narula is that the said award is in the teeth of the contractual conditions. The contract provides the formula for computation of escalation due to delay in the execution of the work for which the respondent is responsible. He submits that the claim made by the petitioner under Clause 10CC due to delays and defaults of the respondent, had been allowed by the learned Arbitrator and the said amount stands already paid to the petitioner. Once the contract provides for the manner of computation of escalation, no further amounts could be claimed or awarded in favour of the contractor.

12. Mr.Narula also submits that while making the earlier award on Claim No.11, the learned Arbitrator had rejected the said claim on the basis that the petitioner had been awarded compensation under Clause 10 CC of the contract. Mr.Narula, therefore, submits that the learned Arbitrator was conscious of the fact that the award made by him under claim No.11 was not justified, yet he made the award. This, he submits amounts to misconduct by the learned Arbitrator.

13. On the other hand, Mr. Girish Aggarwal, learned counsel for the plaintiff submits that clause 13 of the agreement relied upon by the defendant was not even cited before the learned arbitrator. In this

respect, he has drawn my attention to the written submissions filed by the respondent dated 30.06.2008. In this written submission, the defendant had made reference to only clauses 5, 10 and additional condition no.1. He, therefore, submits that the objector cannot, at this stage, seek to place reliance on clause 13 of the contract. He further submits that interpretation of the contractual terms is a matter which falls in the exclusive domain of the arbitrator, and the court cannot sit in appeal over an interpretation given to the contractual clause by the arbitrator, unless it is perverse.

14. In his rejoinder, Mr. Narula submits that no hearing had taken place before the learned arbitrator after the remand, and the learned Arbitrator merely called for the written submissions of the parties. He submits that it is for this reason that the defendant could not specifically bring to the notice of the learned arbitrator clause 13 of the agreement. He further submits that the learned arbitrator ought to have acquainted himself with the contractual terms, even if it is assumed that the parties had not referred to any particular contractual term.

15. The submission of Mr. Narula that no hearing had taken place before the learned arbitrator after the remand, is not borne out from the record. The record of the learned arbitrator shows that he had fixed the hearing on 28.02.008 vide notice dated 02.02.2008. However,

that date was not convenient to the plaintiff/claimant, and a communication dated 18.02.2008 was sent by it to this effect. Vide notice dated 07.03.2008, the hearing had been fixed on 19.03.2008. Though, no proceeding sheet appears to have been maintained of the hearing held on that day, from the following paragraphs it appears that the hearing did proceed on that date.

16. On 30.06.2008, the objector filed its written submissions. In these submissions, the respondent stated that *"in compliance of directions given by the arbitrator, submission on claim no.5, 8 and 11 are submitted as under in addition to already submitted during the hearing of arbitration case"*. Even in the impugned award, the learned arbitrator has observed while dealing with claim no.5 that *"the claimant had submitted during the hearing that they had relied on Exh. E-53 for loss of profit"*.

17. However, I find merit in the submission of Mr. Narula that the learned arbitrator should have acquainted himself with the contractual terms. I had the occasion to deal with a similar submission made in ***Delhi Jal Board v. V.K. Dewan & Co., OMP No.50/2002*** decided on 08.10.2010. I have held that the arbitral tribunal is obliged to acquaint itself with the contractual terms between the parties before making the award. He cannot ignore the contractual terms, which he is bound to

enforce. The arbitral tribunal cannot ignore the contractual terms and go contrary thereto.

18. Mr. Aggarwal has placed reliance on the decision of the Supreme Court in **A.T. Brij Paul Singh & Bros. v. State of Gujarat**, AIR 1984 SC 1703 to contend that in a works contract, if the party entrusting the work commits breach of the contract, the contractor would be entitled to claim damages for loss of profit, which he expected to earn by undertaking the works contract. The claim under this head was held to be admissible.

19. Unlike in the case of **A.T. Brij Paul Singh** (supra), in this case, the parties have consciously contracted out of the said liability, insofar as the objector is concerned. In the case of **A.T. Brij Paul Singh** (supra), the court was not confronted with contractual clauses of the kind contained in the contract in question. In my view, therefore, the said decision does not apply in the facts of this case.

20. Mr. Aggarwal has also placed reliance on **G. Ramachandra Reddy & Company v. Union of India & Anr.**, (2009) 6 SCC 414 and a decision of this court in **A.S. Sachdeva & Sons v. DDA** in CS (OS) No.73/1996 decided on 06.10.2009 by a learned Single Judge of this Court following **G. Ramachandra Reddy** (supra).

21. In **G. Ramachandra Reddy** (supra), clause 11C of the General Conditions of Contract was relied upon to contend that in terms

thereof, no damages were payable. While dealing with this submission, the Supreme Court observed as follows:

*“35. The award of the arbitrator in respect of Claim 4 has been accepted by the Division Bench. **Mr. B.B. Singh has drawn our attention to Clause 11(c) of the general conditions of the contract to contend that in terms thereof, no damages were payable.***

***36. The question as to whether damages were payable for illegal termination of contract cannot be a subject-matter of contract.** The learned arbitrator has categorically held that not only was the termination of contract illegal, the same was mala fide. Furthermore, the contention raised before us by Mr. Singh has not been raised before the High Court.*

*37. In any event, there is a delay of 411 days in filing the SLP of the respondent, for which no sufficient explanation has been given.” (emphasis supplied)*

22. The aforesaid decision was referred to and relied upon in the decision in **A.S. Sachdeva** (supra). This court, in para 8 of the said decision, held as follows:-

*“8. I would, at this stage, refer to a recent judgment of the Supreme Court reported as G. Ramachandra Reddy and Co. Vs. Union of India and Anr. 2009(6)SCC414. **The Supreme Court in this recent judgment has held that a contract cannot provide for non-payment of damages if the same are allowable in law.** The following paragraphs of the judgment of Supreme Court makes this clear:-*

... ..

***In view of the ratio of the Supreme Court in this recent judgment in G. Ramachandra Reddy’s case, it is clear that entitlement of damages cannot be denied on the ground of a contractual clause.”** (emphasis supplied)*

23. Mr. Narula in his rejoinder has placed reliance on the decision of the Supreme Court in **Ramnath International Construction Pvt. Ltd. v. Union of India**, 1 (2008) SLT 82. In this case, the Supreme Court was dealing with section 11 of the General Conditions of Contract which relate to time, delay and extension. After extracting the said clause, the Supreme Court held as follows:

*“Clause (C) provides that where extensions have been granted by reason of the delays enumerated in Clause (A) which were beyond the control of the contractor, or on account of the delays on the part of the employer specified in Clause (B), the contractor is not entitled to make any claim either for compensation or otherwise, arising in whatsoever manner, as a result of such Sub-clause (viii) of Clause (A) specifically mentions delay on account of any other cause beyond the control of the contractor. The causes for delays specified in Clause A, thus, encompass all delays over which the contractor has no control. This will necessarily include any delays attributable to the employer or any delay for which both the employer and the contractor are responsible. **The contract thus provides that if there is any delay, attributable either to the contractor or the employer or to both, and the contractor seeks and obtains extension of time for execution on that account, he will not be entitled to claim compensation of any nature, on the ground of such delay, in addition to the extension of time obtained by him. Therefore, the claims for compensation as a consequence of delays, that is Claim 24 of Hangar Contract and Claims 13 to 16 of Road Contract are barred by Clause 11(C).***

12. We are fortified in this view by several decisions of this Court. We may refer to two of them. **In Associated Engineering Co V. Government of Andhra Pradesh, 1991 (4) SCC 93**, this Court was concerned with an appeal which related to similar claims based on delays in execution. The High Court had held (reported in AIR 1990 AP 294) thus:

*“Applying the principle of the above decision to the facts of the case before us, it must be held that **Clause 59 bars a claim for compensation on account of any delays or hindrances caused by the department. In such a case, the contractor is entitled only to extension of the period of contract. Indeed, such an extension was asked for, and granted on more than one occasion.** (The penalty levied for completing the work beyond the extended period of contract has been waived in this case). **The contract was not avoided by the contractor, but he chose to complete the work within the extended time. In such a case, the claim for compensation is clearly barred by Clause 59 of the APDSS which is admittedly, a term of the agreement between the parties.**”*

*This Court noticed that the claims were set aside by the High Court on the ground that those claims were not supported by any agreement between the parties, and that the Arbitrator had travelled outside the contract in awarding those claims. **This Court held that the said claims were not payable under the contract and that the contract does not postulate, in fact prohibits, payment of any escalation under those heads. It affirmed the decision of the High Court setting aside the award of those claims.***

***In Ch. Ramalinga Reddy v. Superintending Engineer, 1999 (9) SCC 610,** while considering the similar claim, this Court observed thus:*

*“Claim 8 was for ‘payment of extra rates for work done beyond agreement time at schedule of rate prevailing at the time of execution’. The arbitrator awarded the sum of Rs.39,540. **Clause 59 of the A.P. Standard Specifications, which applied to the contract between the parties, stated that no claim for compensation on account of delays or hindrances to the work from any cause would lie except as therein defined. The claim falls outside the defined exceptions. When extensions of time, were granted to the appellant to complete the work, the respondents made it clear that no claim for compensation would lie. On both counts, therefore, Claim 8 was impermissible and the High Court was right in so holding.**”*

*We, therefore, answer the first question in the affirmative.” (emphasis supplied)*

24. Mr. Narula submits that the decision in ***Ramnath International Construction*** (supra) is an earlier decision of a co-ordinate bench of the Supreme Court. This decision, and the two decisions referred to above, have not been noticed by the Supreme Court while deciding the case of **G. Ramachandra Reddy** (supra). He further submits that the observations relied upon by the learned counsel for the plaintiff as made in **G. Ramachandra Reddy** (supra) cannot be said to be the ratio of the said decision. Evidently, that was not the issue raised before, or discussed by the Supreme Court. On the other hand, the decision in ***Ramnath International Construction*** (supra) is squarely rendered in the light of section 11 of the General Conditions of Contract. While rendering the said decision, the court has taken note of two earlier decisions in ***Associated Engineering Co. v. Govt. of Andhra Pradesh***, (1991) 4 SCC 93; and ***Ch. Ramalinga Reddy v. Superintending Engineer***, (1999) 9 SCC 61. He submits that this aspect was not brought to the notice of this court when the decision in ***G. Ramalinga Reddy*** (supra) was relied upon while deciding ***A.S. Sachdeva*** (supra).

25. Having considered the submissions and perused the judgments of the Supreme Court in ***Ramnath International Construction*** (supra)

and *G. Ramchandra Reddy* (supra), I find merit in the submission of Mr. Narula. In my view, it cannot be said that the ratio in the judgment of *G. Ramchandra Reddy* (supra) is that the entitlement to claim damages cannot be denied on the ground of contractual clauses. Moreover *G. Ramchandra Reddy* (supra) was rendered without considering the decision in *Ramnath International Construction* (supra) or the earlier decisions cited in that decision in the cases of *Associated Engineering Co.* (supra) or *Ch. Ramlinga Reddy* (supra). The decision in *Ramnath International* (supra), on the other hand, contains a detailed discussion on the very issue in question. I, therefore, reject the submission of Mr. Aggarwal founded upon decision in *G. Ramachandra Reddy* (supra).

26. A perusal of the judgment in *A.S. Sachdeva* (supra) shows that the court rejected the reliance placed on the decisions in *M.L. Mahajan* (supra); *J.C. Budhiraja* (supra); and *Republic Construction Co. v. DDA* in CS (OS) No.454/2009 decided on 13.07.2009, on the basis of, what the learned single Judge held, to be the ratio of the decision in *G. Ramachandra Reddy's* (supra) case. However, as I have already discussed, the decision in *G. Ramachandra Reddy* (supra), cannot be held be lay down that entitlement of damages cannot be denied on the ground of contractual clause. The decisions in *Ramnath International Construction* (supra), *Associated Engineering Co.* (supra) and *Ch. Ramlinga Reddy* (supra) were not brought to the notice of this court which decided *A.S. Sachdeva* (supra).

27. The decisions cited by Mr. Narula in the case of **J.C.Budhiraja** (supra) and **M.L. Mahajan** (supra), in my view, squarely apply in the facts of the present case.

28. Pertinently, Mr. Aggarwal has not, on a reading of clause 13, disputed that the said clause would bar the claim as made under claim no.5. In the face of clause 13 of the agreement, the award made on claim no.5 cannot be sustained, inasmuch, as, clause 13 specifically provides that *"the contractor ... .. shall have no claim to any payment of compensation whatsoever on account of any profit or advantage which he might derive from the execution of the work in full, but which he did not derive in consequence of the full amount of the work not having been carried out ... .."*. The same is, accordingly, set aside.

29. In response of submission of Mr. Narula objecting to the award made on claim no.8, Mr. Aggarwal submits that this court in **A.S. Sachdeva** (supra) has also considered the same clauses of the contract and rejected the reliance placed thereon by the objector DDA.

30. I have already discussed hereinabove the decision in **A.S. Sachdeva** (supra). In the light of the decision of the Supreme Court in **Ramnath International Construction** (supra), no reliance can be placed on **A.S. Sachdeva** (supra) for the proposition that the contract cannot provide for non-payment of damages if the same are allowable in law.

The Plaintiff did not challenge the validity of any of the contractual clauses before the learned Arbitrator. This dispute cannot be raised at this stage. Consequently the clause 1 of the additional specifications and clause 10 of the conditions of contract are liable to be enforced and given effect to. As already noticed, clause 1 squarely provide that if a part of the site is not available for any reason, or there is some unavoidable delay in supply of materials stipulated by the department, the programme of construction shall be modified accordingly, and the contractor shall have no claim for any extras or compensation on this account. Clause 10 of the conditions of contract provides that the contractor shall in no case be entitled to compensation or damages on account of any delay in supply or non supply of any materials and stores. As the learned arbitrator has rendered his award in contradiction of the aforesaid clauses, he has acted beyond his jurisdiction and has misconducted himself. Consequently the award made on claim no.8 cannot be sustained.

31. In relation to the objections raised to award on claim no.11, Mr. Aggarwal has placed reliance on the decision of this court in ***DDA Vs. S.S. Jetley***, 2001 (1) Arb. LR 289 (Del). In this case, it was held that in a case where prolongation of contract had taken place due to the fault of the employer, and the contractor was made to incur the expenditure towards idle staff, machinery, centering, shuttering and other ancillary requirements like electricity, water, petroleum, etc, the claim would be

maintainable to recover the unnecessary expenditure incurred by the contractor due to the fault of the employer DDA in prolonging the contract by reference to Sections 73 & 74 of the Contract Act. The court rejected the argument of the DDA that as the contractor has been compensated by resort to clause 10 CC, the contractor would not be entitled to claim any further damages.

32. Mr. Aggarwal submits that the said claim No. 11 did not pertain only to the revised rates of material or labour but it also arose on account of the extra work that the contractor was required to perform due to prolongation of the contractual period. He refers to the original award, which records that the said claim had been made, inter alia, for the extra work done by the claimant as trenches were filled with Malba due to delay on the part of the objector.

33. Having considered the award made on claim 11, it appears that despite the direction of this court requiring the learned arbitrator to give his reasons, in so far as claim No. 11 is concerned, no reasons have been furnished by the learned arbitrator while making the impugned award. In fact, the aspect of extra work (as cited by the plaintiff) has not even been considered by the learned Arbitrator. He only notes that *"the impact of extra work could not be more than 5% considering the escalation payable under clause 10 CC, i.e., 5% of Rs. 24,18,403.00 i.e Rs.1,20,920.00"*. The arbitrator does not take note of

the evidence that the parties may have led with regard to the extra work that the plaintiff contractor may have been required to perform due to prolongation of contract. No doubt, the arbitrator is entitled to resort to some amount of guess work, but that does not mean that the arbitrator can, in the process, make a wild guess which has no basis, foundation or logic.

34. Accordingly, the award made on Claim Nos. 5, 8 and 11 cannot be sustained and is set aside. I am of the view the award made on Claim No. 11 alone deserves be remitted back to the arbitrator for reconsideration. It is ordered accordingly. The arbitrator shall decide Claim No.11 after giving opportunity of hearing to the parties and by recording his reasons for the award that he may make. The petition stands disposed of.

**(VIPIN SANGHI)**  
**JUDGE**

**DECEMBER 13, 2010**  
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