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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 22.09.2011

Date of decision : 01.12.2011

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FAO (OS) No.563 of 2010

P.C. SHARMA & CO.

..... Appellant

Through: Mr. Sandeep Sharma, Mr. Vikas Sharma &
Ms. Kanika Singh, Advocates.

Versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Mr. Bhupesh Narula, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

SANJAY KISHAN KAUL, J.

1. The disputes between the parties pertain to a contract dated 14.9.1982 awarded by the respondent/DDA to the appellant/contractor for construction of 540 houses under the Self Financing Scheme. The prescribed date for commencement of work was 24.9.1982 and the work was to be completed by 23.9.1983. The actual date of completion of work is 31.1.1986.
2. The disputes between the parties resulted in arbitration proceedings on account of the arbitration clause, the competent authority of the respondent having appointed Shri G.S. Rao, Director General (Works), CPWD (Retd.) as the sole arbitrator. The total claim laid by the appellant before the arbitrator under 34 heads was for a sum

of ₹1,07,65,314.00 along with interest and costs. The arbitrator made and published his award dated 30.4.1996 awarding a sum of ₹35,75,931.00 to the appellant along with *pendente lite* interest @ 15 per cent per annum and future interest @ 18 per cent per annum after three (3) months from the date of the award.

3. The appellant filed CS (OS) No.2057A/1996 for filing the award in the Court and making it rule of the court. The respondent, however, filed objections vide IA No.12005/1996 under Sections 30 & 33 of the Indian Arbitration Act, 1940 (hereinafter referred to as the 'said Act'). These objections have been partly allowed by the impugned order of the learned single Judge dated 2.7.2010. It is this interference by the learned single Judge which is sought to be assailed by the appellant in the present appeal.
4. The learned single Judge in paragraph 3 of the impugned order referred to various judgements relied upon by learned counsel for the appellant herein praying for non-interference in the award on account of the limited scope of scrutiny. The award was stated to be a reasoned award passed by a technically qualified person. Suffice it to say that the principles are correctly noted by the learned single Judge by referring to various judgements but the issue which arises for consideration is whether the interference was called for by the learned single Judge. There are only three claims qua which submissions have been made before us, i.e., Claim No.11 – for straightening and cutting of steel bars; Claim No.18 – for increase in costs on account of work done by the contractor beyond the stipulated date of completion; and Claim No.33 – for interest.
5. We proceed to discuss each of these claims hereunder:

Claim No.11 – For straightening and cutting of steel bars

6. The appellant laid a claim of ₹5,81,890.00 for straightening and cutting of steel bars which was allowed by the learned arbitrator to the extent of ₹1,14,400.00. The reason for the award of the amount as recorded by the learned arbitrator is that the nomenclature of item No.3.9 of the schedule of quantities defines the work “Reinforcement for RCC work including bending, binding and placing in position complete”. The actual work, however, not only included these aspects but also cutting of steel bars to actual length and straightening the bars. The plea of the respondent that placing and position including cutting and straightening was negated.
7. The learned single Judge has noticed that the principles qua this issue of straightening and cutting of steel bars stand settled in view of pronouncement of this Court in Wee Arr Construction Builders Vs. DDA 2001 (IV) AD (Delhi) 65, which has been discussed in the subsequent judgement of Anant Raj Agencies Vs. DDA 2005 (1) Arb. LR 590. It has been held that the work of bending, binding and placing in position is not exhaustive of the reinforcement of the RCC works but is only illustrative and, thus, would encompass other ancillary works such as cutting and straightening of steel bars. The effect of the two judgements of the learned single Judges of this Court in CS (OS) No.1985A/1984 titled K.C. Chhibar Vs. DDA decided on 18.1.1991 and CS (OS) No.570A/1995 titled Anant Raj Agencies Vs. DDA decided on 30.10.1998, where similar claims were alleged to have been accepted has been examined in paragraph 19 as under:

“19. The two other decisions relied upon by learned counsel for the Petitioner, that is, K.C.Chhibar and Anant Raj Agencies are clearly distinguishable. In both the cases, the

Petitioner therein had notified the DDA that the cutting of steel or the straightening of steel bars was being treated as an extra item of work. This was not objected to by the DDA. The claim of the Petitioner in both the cases was upheld. In the present case, this situation did not arise. No letter or intimation was sent by the Petitioner to the Respondent. The claim of straightening and cutting the steel bars was made by the Petitioner for the first time before the learned Arbitrator. The Respondent had no occasion to react (or not to react) to the claim, prior to the arbitral proceedings.”

8. It has, thus, also been held that the contractor cannot make such a claim for the reason of having not given any notice to the DDA at the time of carrying out the work that the same was to be treated as additional extra work.
9. The aforesaid legal position was not disputed by learned counsel for the appellant before the learned single Judge and learned counsel for the appellant apparently took time to check up and inform the Court whether in the present case any notice has been issued. The finding of the learned single Judge is that the counsel for the appellant failed to show any evidence of any notice having been given.
10. This finding is sought to be assailed by learned counsel for the appellant on the ground that a document does exist in the record as Exhibit C-39, which is a letter dated 7.9.1983, which reads as under:

“Ref No.PCS/540/III/203

Date: 7.9.83

The Executive Engineer,
Housing Division No.II,
Delhi Development Authority,
Shiekh Sarai Phase-I,
New Delhi.

Sub: Construction of 540 houses under S.F.S. at Kalkaji (West of Community Centre) Group III.

Dear Sir,

The nomenclature for the item of steel reinforcement provides for bending, binding and placing in position.

In addition, we are required to cut the steel bars after straightening. The element of cutting is obviously not provided in the rate for the said as this is not mentioned in the nomenclature.

The C.P.W.D. specification 1977 also do not make any mention of cutting of steel bars by the contractor. Since we are required to cut the steel reinforcement and this operation is not covered by the terms of agreement, we request you to kindly pay the extra cost involved therein @0.50 per kg.

In addition we bring to your kind notice that the Schedule of material to be issued to the contract provides for issue of Bars only. We are being issued steel reinforcement in bent up shape by the stores Division of D.D.A.

We are therefore required to straighten the same in the shape of a bar. This involves extra cost, not covered by the terms of contract agreement. We, therefore, request that extra cost involved in this operation @ 0.50 per kg. may kindly be paid to us.

Thanking you,

Yours faithfully,
For M/s. Prem Chand Shamra & Co.
Sd/-
Partner.”

(emphasis supplied)

11. Learned counsel, thus, submitted that the finding recorded by the learned single Judge of absence of any communication is not correct. This plea was sought to be supported by what is recorded in the award qua this claim where the respondent did not dispute the work done by the appellant. The relevant portion reads as under:

“Out of 581.89 MT of steel issued to the contractor 457.707 MT is issued for 8 & 10 mm steel which needs straightening. The contractor wants straightening to be paid at 50 paise per kg of steel. This is not contested by the respondent. However this rate appears very high and I feel that justice will be done if the element of straightening is paid at 25 paise per kg of steel. This claim is worked out at Rs.1,14,400/-.”

(emphasis supplied)

12. Learned counsel, thus, submitted that the case of the appellant was squarely covered within the parameters of paragraph 19 of the judgement in Wee Aar Construction Builders case (supra) and the extent of work carried out by the appellant is not even disputed as is recorded in the portion of the award extracted above.
13. In so far as the interpretation of the principle regarding cutting and straightening qua the clause is concerned, one of us (Sanjay Kishan Kaul, J.) has discussed various judgements in Narain Das R. Israni Vs. DDA 2005 (3) Arb. LR 455 (Delhi). In the said case another judgement regarding the same issue in Wee Aar Construction Builder Vs. DDA & Anr. 2001 (3) Arb. LR 468 (Delhi) was brought to the notice of the Court, which took notice of the earlier judgements including Wee Aar Construction Builders case (supra). The relevant paragraphs of the subsequent judgement in Wee Aar Construction Builders case (supra) were extracted in Narain Das R. Israni case (supra), which read as under:

"17. However the decision of this Court in K.C. Chibber v. D.D.A., Suit No. 1985-A/1984 and is No. 2290/1985, and Anant Raj Agencies v. D.D.A., Suit No. 570-A/1995 and 656/1995, were distinguished inasmuch as in both these cases the petitioner had notified the DDA that the cutting of steel or straightening of steel bars was being treated as an extra item and this was not objected to by the DDA and on this account the claim of the steel bars was upheld.

18. In S.K. Mangla's case as well as in Wee Aar Constructive Builder's case no such letter was sent by the contractor to the DDA. In the instant case, the petitioner had notified to the DDA that the cutting of steel or straightening of the steel bars has to be treated as an extra item of work.

19. Though on this short ground alone the award can be upheld but the very fact that both the parties tried to provide different construction to contentious clause shows that it was capable of two possible constructions.

20. According to the counsel for the petitioner had the process of cutting and straighten been inclusive of these processes for reinforcement of the steel bars the question of non-inclusion of straightening and cutting in the analysis of rate would not have arisen. In the analysis of rates item 15 does not include the element of straightening and cutting while in the current analysis of rates the process of straightening and cutting as per item 5.13 has been taken into consideration apart from bending and placing in position complete.

21. However, in M/s. Wee Aar Constructive Builders it was specifically observed that the DSR for 1997 now recognizes straightening and cutting of steel bars as a separate item of work provides for payment for it. However, in the instant case not only this material was before the Arbitrator but the petitioner had also notified and informed the DDA vide Exhibit C-9 that he would be charging extra for the straightening and cutting of the steel.

22. It is pertinent to mention here that a contrary view was taken by this very Court in Anant Raj Agencies v. D.D.A. in Suit No. 570-A/1995 and 656/1995 and in K.C. Chibber v. D.D.A. in Suit No. 1985-A/1984 which was to the effect that the process of straightening and cutting could not have been included in the item pertaining to 'reinforcement of RCC work including bending, binding and placing in position complete'. However without going into the correctness of the aforesaid two decisions the instant case being distinctive from this case inasmuch as the petitioner

duly notified and informed the DDA that the charges for straightening and cutting of the steel would be extra and the DDA did not raise any objection, the award in this respect needs to be affirmed."

14. It is thereafter that the conclusions were recorded in Narain Das R. Israni case (supra) as under:

19. The position, which emerges from the aforesaid, is that the definition of reinforcement for RCC work is illustrative and not exhaustive. Thus, no extra amount can be recovered for the same in view of the earlier judgment in M/s. Wee Aar Constructive Builders's case (supra). However, simultaneous legal position, which emerges, is that in case the contractor puts DDA to notice during the currency of the contract and DDA does not raise any objection, then amounts can be recovered on this account. It may also be noticed that a correction slip No. 4 was issued in January, 1990 clarifying that cutting would be included. Thus, it appears that there were some doubt over this proposition and, thus, the clarification was issued. Once the contractor has put DDA to notice on this account, it cannot be said that the Award made in this behalf is erroneous. If reference is made to the earlier judgment of M/s. Wee Aar Constructive Builders's case (supra), it would be found that there is, in fact, no inconsistency in the judicial approach of various judgments. It was observed in paras 19 and 20 as under :-

"19. The two other decisions relied upon by learned counsel for the petitioner, that is, K.C. Chibbar and Anant Raj Agencies are clearly distinguishable. In both the cases, the petitioner therein had notified the DDA that the cutting of steel or the straightening of steel bars was being treated as an extra item of work. This was not objected to by the DDA. The claim of the petitioner in both the cases was upheld. In the present case, this situation did not arise. No letter or intimation was sent by the petitioner to the respondent. The claim of straightening and cutting the steel bars was made by the petitioner for the first time before the learned Arbitrator. The respondent had no occasion to react (or not to react) to the claim, prior to the arbitral proceedings.

20. In view of these facts, the decision rendered in S.K. Mangla has to be followed. Moreover, this decision also recognizes pragmatic and down-to-earth facts in building contracts."

15. Thus, it is not in dispute that though the definition of reinforcement for RCC work is illustrative and not exhaustive, in case the contractor puts the DDA to notice during the currency of the contract and DDA does not raise any objection then the amount can be recovered on this account.
16. The learned single Judge in the impugned order has proceeded on the basis that there is nothing on record to show evidence of any notice being given by the appellant to the respondent. However, as pointed out by learned counsel for the appellant, the letter dated 7.9.1983 is on record and proved as Exhibit C-39, which is specific in its terms seeking payment on account of cutting and straightening. Though not stated in so many words, it is this letter which forms the basis of the award of the claim by the arbitrator. The quantum of steel required to be straightened and cut has been set out in the award and in that context it has been recorded that these figures are not even "contested by the respondent". Thus, the award of this claim by the arbitrator cannot be faulted with and no interference was called for by the learned single Judge. It appears that the letter dated 7.9.1983 escaped the attention of the learned single Judge in view of a hiatus period between the judgement being reserved on 12.8.2009 and being pronounced on 2.7.2010.
17. We, thus, hold that the award of the arbitrator is valid and this claim was not required to be interfered with by the learned single Judge and the findings to the contrary in the impugned order are, thus, set aside.

Claim No.18: Increase in cost of work beyond stipulated date of completion

18. The appellant claimed an amount of ₹40,70,423.00, which has been partly allowed by the arbitrator to the extent of ₹24,00,000.00. The award is predicated on the plea of the appellant of prolongation in the period of completion for which the respondent was alleged to be responsible. It is the delay on the part of the respondent which is stated to have occasioned the extension of time for completion of contract without imposition of any penalty under Clause 5 of the contract.
19. The claim was opposed by the respondent before the arbitrator on the plea that the appellant had given in writing while making application for extension of time that he will not be making any claim for liquidated damages under the contract. Such an undertaking is alleged to have been given by the appellant under force as the respondent was refusing to give extension of time without such an undertaking of the appellant. The arbitrator noticed that in the proforma for extension of time there is no column for a certificate of this nature but such a certification was obtained from the appellant on the body of the application.
20. The arbitrator has awarded the amount taking the cost indices as approved on yearly basis by the DG (Works), CPWD. The respondent pleaded before the arbitrator that the work done during the period of delay was of value of ₹200.00 lakh, which included the cost of cement and steel supplied by the respondent and, thus, the computation based on the figure of ₹200.00 lakh was inherently defective. In the total value of ₹263.00 lakh material supplied by the respondent was ₹82.00 lakh and, thus, the work done of

₹200.00 lakh during the period of delay would include the value of material supplied by the respondent.

21. The respondent further pleaded that no evidence had been adduced by the appellant qua the quantification of the amount and the mere fact that compensation was not demanded from the appellant would not amount to an admission of delay attributable to the respondent. The plea of an element of force while issuing endorsement was brushed aside as an afterthought.
22. The main aspect canvassed arose out of Clause 10C of the agreement providing for the mechanism for increase in price of material and labour to be reimbursed, if it arose out of causes attributable to the Government. It was, thus, the claim of the respondent that amounts other than under Clause 10C are not admissible.
23. The stand of the appellant was that while adopting a formula for increase in price of material and labour, the arbitrator has taken into account the indices of steel and cement. In so far as Clause 10C was concerned, it was pointed out that it related only to the Government increases and was prior in period of time to the introduction of Clause 10CC by the respondent. The learned single Judge found that Clause 10C in the contract was identical to the one referred to in CS (OS) No.154/1994 titled M/s. Republic Construction Co. Vs. DDA decided on 13.7.2009 and had to be construed as providing for escalation during the progress of the work not being limited only to escalation during the stipulated period of contract. The extension of the contract by the respondent was held to imply that there was deemed modification of the

stipulated period and, thus, the extended period would also be governed by Clause 10C.

24. The aforesaid finding of the learned single Judge interfering with the award on this account has been assailed by the appellant on a fundamental principle that Clause 10C does not bar claims based on escalation or general market rise in price for labour and material on the work done “beyond stipulated date of completion”. The plea, thus, is that if on account of causes attributable to the respondent, the project is delayed, then the appellant must be held entitled to the market escalations. The aforesaid plea is sought to be supported by the authoritative law laid down by two Division Bench judgements of this Court in M.L. Mahajan, Contractor Vs. DDA & Anr. 2010 (169) DLT 734; and M.L. Mahajan Vs. DDA & Anr. 99 (2002) DLT 512, where Clauses 10 & 10C have been discussed, which reads as under:

“Clause 10 - Stores supplied by Delhi Development Authority. If the specifications or schedule or items provided for the use of any special materials to be supplied from Engineer-in-Charge's stores or it is required that the contractor shall use certain stores to be provided by the Engineer-in-Charge as shown in the schedule of materials hereto annexed the contractor shall be bound to procure and shall be supplied such materials and stores as are from time to time required to be used by him for the purposes of the contractor only, and the value of the full quantity of material and stores so supplied at the rates specified in the said schedule of materials may be set off or deducted from any sums then due, or thereafter to become due to the contractor under the contract, or otherwise or against or from the security deposit or the proceeds or sale thereof if the same is held in Government securities the same or a sufficient portion thereof being in this case sold for the purpose. All materials so supplied to the contractor shall remain the absolute property of Delhi Development Authority and shall not be removed on any account from site of the work, all shall be at

all times open to inspection by the Engineer-in-Charge. Any such materials remaining unshed and in perfectly good condition at the time of the completion or termination of the contract as shall be returned to the Engineer-in-Charge at a place directed by him, by a notice in writing under his hand, if he shall so require but the contractor shall not be entitled to return any such materials unless with such consent, and shall have no claim for compensation on account of any such materials so supplied to him as aforesaid not being used by him or for any wastage in or damage to any such materials. Provided that the contractor shall in no case be entitled to any compensation or damages on account of any delay in supply or non supply thereof all or any such materials and stores. Provided further that the contractor shall be bound to execute the entire work if the materials are supplied by the Delhi Development Authority within the scheduled time for completion of the work plus 50 percent thereof (scheduled time plus 6 months if the time of completion of the work exceeds 12 months) but if a part only of the materials has been supplied within the aforesaid period then the contractor shall be bound to do so much of the work as may be possible with the materials and stores supplied in the aforesaid period. For the completion of the rest of the work the contractor shall be entitled to such extension of time as may be determined by the Engineer-in-Charge whose decision in this regard shall be final.

Clause 10C - If during the progress of the works, the price of any material incorporated in the works, (not being a material supplied from the Engineer-in-Charge's stores in accordance with Clause 10 hereof) and/or wages of labour increases as direct result of the coming into force of any fresh law, or statutory rule or order (but not due to any changes in sales tax) and such increase exceed ten per cent of the price and/or wages prevailing at the time of receipt of the tender for the work, and contractor thereupon necessarily and properly pays in respect of the material (incorporated in the work) such increased price and/or in respect of labour engaged on the execution of the work such increased wages, then the amount of the contract shall accordingly be varied provided always that any increase so payable is not, in the opinion of the Superintending Engineer (whose decision shall be final and binding) attributable to delay in the execution of the contract within the control of the contractor. Provided, however, no

reimbursements shall be made if the increase is not more than 10% of the said prices/wages and if so the reimbursements shall be made only on the excess over 10% and provided further that any such increase shall not be payable if such increase has become operative after the contract or extended date of completion of the work in question.

If during the progress of the works, the price of any material incorporated in the works (not being a material supplied from the Engineer-in-Charge's stores in accordance with Clause 10 hereof) and/or wages of labour is decreased as a direct result of the coming into force of any fresh law or statutory rule or order (but not due to any changes in sales tax) and such decrease exceeds ten per cent of the prices and/or wages prevailing at the time of receipt of the tender for the work, Delhi Development Authority shall in respect of materials incorporated in the work (not being materials supplied from the Engineer-in-Charge's stores in accordance with Clause 10 hereof) and/or labour engaged on the execution of the work after the date of coming into force of such law statutory rule or order be entitled to deduct from the dues of the contractor such amount as shall be equivalent of difference between the prices of materials and/or wages as they prevailed at the time of receipt of tender for the work minus ten per cent thereof and the prices of materials and/or wages of labour on the coming into force of such law, statutory rule or order. The contractor shall for the purpose of this condition keep such books of account and other documents as are necessary to show the amount of any increase claimed or reduction available and shall allow inspection of the same by a duly authorised representative of Delhi Development Authority and further shall, at the request of the Engineer-in-Charge furnish, verified in such a manner as the Engineer-in-Charge may require. Any document, so kept and such other information as the Engineer-in-Charge may require.

The contractor shall, within a reasonable time of his becoming aware of any alteration in the prices of any such materials and/or wages of labour give notice thereof to the Engineer-in-Charge stating that the same is given in pursuance to the condition together with all information relating thereto which he may be in a position to supply.”

25. It was held in the second pronouncement (which is in earlier point of time) that Clause 10C does not exclude the claims for increase in cost of material and wages of labour after the specified period within which the work is to be completed as a contrary interpretation would result in the opening words of the Clause being rendered wholly otiose. Thus, where a contract stretches beyond a stipulated period it was held that the claim for escalation in prices is not excluded or barred under Clause 10C. In the first judgement, which is in the same name (in latter point of time), once again, the ratio as set down in paragraphs 17 & 18 is reproduced as under:

“17. In the back drop of above settled legal position it is clear that Clause 10(c) of the contract takes within its sweep the statutory increase in the wages of labour and/or material within the maximum stipulated period of completion of work. This clause, in our view, does not in any manner exclude or prohibit the claim for increase in market prices of material or wages of labour after the stipulated period of completion of the work. Clause 10(c) encompasses the statutory increase but does not take into account the rise in market prices as per the price index beyond the 'stipulated period'. Thus Clause 10(c) is not a bar on the claims set up by the contractor towards market increase in the prices of material and the wages of labour during the delayed period of completion. In M.L. Mahajan's case (supra) it was held that contractor would be entitled to be compensated for his claim towards a rise in the market price of material and increase in the wages of labour beyond the stipulated date of completion notwithstanding Clause 10(c).

18. Similarly, in Delhi Development Authority v. S.S. Jetley reported in 2001(1) Arb. LR 289, a Division Bench of this Court held that the claim of damages on account of prolongation of contract, inasmuch as, the respondent was made to incur unnecessary expenditure due to the fault of the DDA in prolonging the contract, was a claim maintainable even as per Sections 73 and 74 of the Contract Act, 1872. It had been held as under:

In fact as noticed above, Claim No. 17 is not based on Clause 10(c) of the agreement. The respondent had preferred separate claim namely, Claim No. 19 under Clause 10CC of the agreement and there is no dispute that the said claim was entertained and adjudicated upon, keeping in view the provisions of Clause 10CC of the agreement between the parties. The Claim No. 17 is in fact founded on different premise altogether. It was the case of the respondent that because of prolongation of the Contract due to the fault on the part of the appellant, the respondent was made to incur the expenditure on idle labour, staff, machinery centering, shuttering and other ancillary requirements like electricity, water, petroleum, etc. It was the case of the respondent that it was necessary for the respondent to keep regular establishment including graduate engineer at site till the work is completed as required under Clause 36 of the agreement. The Arbitrator found that the respondent had in fact incurred expenditure on the aforesaid grounds and awarded the claim @ 5,000 per month for the period of delay which was 44 months and on this basis a sum of Rs. 2,20,000 was awarded. It was clear, therefore, that Claim No. 17 was for damages on account of prolongation of Contract inasmuch as respondent was made to incur unnecessary expenditure due to the fault of the appellant in prolonging the Contract. This claim is, therefore, maintainable as per Sections 73 and 74 of the Contract Act which gave entitlement to the respondent to claim damages/loss suffered due to breach of contract by the appellant. The award of Claim No. 17 was, therefore, justified and we see no merit in the aforesaid contention raised by the appellant.”

26. Interestingly in both the judgements the principle of award of claim for market rise based primarily on cost indices published by CPWD has also been approved, a principle followed by the arbitrator. It is, thus, submitted that the correct approach had been adopted by the arbitrator. Learned counsel also referred to certain other judgements rendered by Bench of single Judges in Uttam Singh Duggal Vs. UOI 1995 (1) Arb. LR 372; NDR Israni Vs. DDA 2008 (2) Arb. LR 410; and Bedi Construction Vs. DDA (115) 2004 DLT

157, where calculation based on such CPWD indices has been upheld.

27. Learned counsel has also drawn our attention to the award to once again contend, as pleaded before the learned single Judge, that while adopting the index, cost of cement and steel have been ignored as they were issued by the respondent at a fixed rate under Clause 10C of the agreement. In the award while calculating the amount, it has been observed as under:

“24.3:....The details of costs indices, work done and escalation payable are given under. While adopting the CI the cost of cement & steel has been ignored as these were issued by the respondent at fixed rates under clause 10 of the agreement.”

28. On examination of the submissions, we find force in the plea of the learned counsel for the appellant. The two Division Bench judgements in M.L. Mahajan cases (supra) make it clear that the issue of entitlement to claim amounts beyond the stipulated date of the contract on account of increase in cost is no more *res integra*. Thus, clause 10C cannot stand in the way of award of the amount beyond the period stipulated for the contract.
29. We are unable to persuade ourselves to agree with the conclusion of the learned single Judge that because time period for the contract was extended by the respondent, it would amount to a deemed modification in the stipulated period, the period to be governed only by Clause 10C. The extension was granted on account of lapses on the part of the respondent. This is obvious for the reason that the extension was without any penalty on the appellant. If there are contributory delays, then it is normally stated so and the period is extended accordingly. This is not so in the present case.

30. It has been rightly noticed by the arbitrator that in the proforma for extension of time, there is no such clause requiring a contractor to give an endorsement or undertaking that he will not claim any damages. This endorsement has been obtained on the letter submitted by the appellant for extension of time, which extension was claimed on the basis that the delay was attributable to the respondent. The appellant would have had to face absence of extension and other consequences, if it had failed to do the needful. Thus, clearly such an endorsement was obtained under force. In any case, this is the finding of the arbitrator which is a finding of fact and, thus, not required to be interfered with by the learned single Judge.
31. We, thus, conclude that the disallowance of this claim by the learned single Judge, as awarded by the arbitrator, cannot be sustained and the order of the learned single Judge to this extent is set aside.

Claim No.33 – Pendente lite and future interest

32. The arbitrator has awarded 15 per cent per annum simple interest from the date of entering upon reference up to the date of the award. The learned single Judge has reduced the rate of interest for this period to 6 per cent per annum (simple interest). The reason for the same is stated to be the fact that the proceedings for making the award rule of the court and the objections preferred against the award had remained pending for long, the reasons for which could not be held attributable to the respondent. It has also been observed in the impugned order that it cannot be said that the respondent had in the interregnum used the money found due to the appellant commercially.

33. We are unable to accept the plea for the reason that the dispute is quite old and the interest regime of those years would certainly entitle the appellant to interest @ 15 per cent per annum. The interest is awarded to a party for non-payment by the opposite party. The respondent did not pay the appellant.
34. If in a commercial dispute of this nature, the objections are found meritless, then the party at the losing end must bear the consequences of interest as otherwise it would amount to a premium for non-payment, the appellant having been deprived of the money. The respondent retained the money and, thus, utilized the same. We find no reason why the learned single Judge should have interfered with the award of interest and reduced it from 15 per cent (simple interest) to 6 per cent (simple interest) for the *pendente lite* period.
35. The second rate of interest in question as awarded by the arbitrator for a period beyond three (3) months from the date of the award, i.e., if the amount is not paid as per the award within three (3) months, interest would be chargeable @ 18 per cent per annum (simple interest). The learned single Judge reduced the rate of interest to 9 per cent per annum (simple interest).
36. In respect of the aforesaid, we do find that the award of interest from the date of the award @ 18 per cent per annum is clearly on the higher side keeping in mind the regime of interest. If 15 per cent is awarded for the earlier period, there is no reason why a higher rate of interest ought to have been awarded for this period. As stated above, the respondent cannot take the cover of pendency of the matter in court to deny commercial rate of interest to the appellant if it has failed to pay the amount. The award was made

on 30.4.1996 and the period from then till now has been of comparatively declining interest regime for some portion of the time. However, an interest of 15 per cent per annum (simple interest) would meet the ends of justice and the commercial stakes of the parties. We find no rationale for reduction of interest to 9 per cent per annum by the learned single Judge and, thus, consider it appropriate that the interest for this period should also be maintained at 15 per cent per annum (simple interest).

Conclusion:

37. The impugned order of the learned single Judge dated 2.7.2010 is set aside and the award made and published by the sole arbitrator dated 30.4.1996 is made rule of the court with the only modification that the interest for the period from the date of award till date of payment would also be @ 15 per cent per annum (simple interest) and not 18 per cent per annum as awarded by the arbitrator.
38. The appeal is accordingly allowed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

DECEMBER 01, 2011
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RAJIV SHAKDHER, J.