

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM) 190/2016**

Reserved on: 13.11.2018
Date of decision : 25.01.2019

PRASAR BHARATI Petitioner
Through **Mr.Virag Gupta and Mr.Gaurav Pathak, Advs.**

versus

M/S EISA LIFTS PVT LTD Respondent
Through **Mr.Anil Airi, Sr. Adv. with Mr.Sunil K.Chandwani, Mr.Ravi Krishan Chandna, Mr.Sameer Chandwani and Ms.Sadhana Sharma, Advs.**

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Award dated 07.07.2014(hereinafter referred to as the 'Impugned Award') passed by the Sole Arbitrator rejecting the counter claims of the petitioner, while granting the claims of the respondent to the extent of Rs.24,44,500/- plus interest thereon.
2. The petitioner by Letter of Award dated 31.10.2008 awarded the work for 'Construction of Soochna Bhawan Phase-V at New Delhi (SH-supplying, installation, testing and commissioning of 4 nos. 20 passenger lifts)' to the respondent. The lifts were numbered as Lift Nos. 3, 4, 5

and 6. The period of completion of the work as per the Letter of Award was eight months, commencing from 18.11.2008 till 17.07.2009. The contract amount for the said work was Rs.1,01,00,000/-.

3. The petitioner placed a deviation order dated 29.01.2009 with the respondent for replacement of two more Lifts, that is, Lift no. 7 and 8. The petitioner agreed to pay Rs.25,00,000/- for each of these lifts, in addition to Rs.80,000/- for dismantling each of the existing lifts.

4. The petitioner released a sum of Rs.1,26,25,000/- in favour of the respondent upto 30.03.2010.

5. On 27.04.2011, the petitioner issued a show cause notice to the respondent alleging delay/suspension of work by the respondent. The petitioner, vide its letter dated 27.07.2011, terminated the Agreement and also forfeited the Earnest Money Deposit, Security Deposit and the Performance Bank Guarantee of the respondent as also put the respondent to notice that it would be taking services of another contractor to complete the balance work.

6. The respondent, however, raised various claims against the petitioner and the same were referred to the Arbitrator.

7. The petitioner, apart from resisting the claims of the respondent, also raised its own counter claims before the Arbitrator.

8. The Arbitrator, by the Impugned Award has allowed certain claims of the respondent, while rejecting the counter claims of the petitioner. The summary of the Award is as under:

Summary of Award

<i>Claim No.</i>	<i>Amount Claimed in Rs.</i>	<i>Amount Awarded in Rs.</i>
1.	16,56,400/-	9,56,250/-
2.	18,74,000/-	Nil
3.	22,65,000/-	Nil
4.	5,05,000/-	5,05,000/-
5.	5,05,000/-	5,05,000/-
6.	5,70,000+ 148826+ 160000 + 300000	2,18,250+0+160000+0
7.	2,00,000/-	1,00,000/-
8.	1,05,600/-	Nil
9.	Intt. @ 18% p.a.	Intt. @ 10% p.a. on amounts
10.	5,00,000/-	Nil
C.C. No.1 to 7	154.84 lakh	Nil
C.C.No.8	Intt. @ 18 % p.a.	Nil

9. The learned counsel for the petitioner submits that the Arbitrator has erred in awarding a sum of Rs. 9,56,250/- in favour of the respondent under Claim no. 1 in spite of the fact that the respondent could complete only four out of six lifts and had not brought all the material to the site.

10. I do not find any merit in the said objection. The Arbitrator, in awarding the above amount, has relied upon the measurement conducted by the petitioner itself while passing the final bill in December, 2012, that is, after the termination of the Agreement. The Arbitrator, therefore, cannot be faulted.

11. The learned counsel for the petitioner further challenges the Award of Claim no. 4 (refund of security deposit inclusive of earnest money

deposit) and Claim no. 5 (refund of the amount received on forfeiture of bank guarantee).

12. The learned counsel for the petitioner submits that the Arbitrator having held that in the later stages of the work, the delay was on part of the respondent in attending to rectification of defects in the four installed Lifts and in the installation and commissioning of Lifts Nos.6 and 7, has erred in holding that the termination of the Agreement by the petitioner was not valid and consequently in awarding release /refund of the security deposit and the Performance Bank Guarantee in favour of the respondent. He submits that the findings of the Arbitral Tribunal are based on its assumption that the time was last extended only up to 31.05.2011 whereas, as a matter of fact, the same had been extended till 31.07.2011 vide letter dated 01.07.2011.

13. The learned senior counsel for the respondent, on the other hand, submits that the letter dated 01.07.2011 had not been filed by the petitioner before the Arbitrator and therefore, cannot be relied upon in the present proceedings. He further submits that the termination of the Agreement was illegal as it was the petitioner who was in default and such defaults had been repeatedly brought to the notice of the petitioner, including by the letter dated 22.07.2011 that is, just prior to the letter of termination.

14. I have considered the submissions made by the counsels for the parties.

15. The Arbitrator has given the following findings on the issue of default /delay:

“There is evidence to prove that both parties contributed to delay. In view of a large no. of letters exchanged and entries in Hindrance Register (HR) and Site Order Book (SOB), their mutual contentions can't be dismissed as entirely baseless arid irrelevant. As per entries in the HR referred above, the initial delay was on the part of respondent in handing over lift-shafts after attending to civil works; in the later stages the delay was on the part of claimant in attending to rectification of defects in the 4 installed lifts and in the installation and T&C of lifts no. 6 and 7 as revealed from letters of material time from the respondent to the claimant referred above, leading to termination of contract. In fact on 4 occasions respondent had issued show cause notices u/c 3 of the contract for determination of contract on account of delay on the part of claimant (Exh Pg R90 dated 10/6/10, Pg R91 dated 13/8/10 and Pg R92 dated 27/4/11 and on 4/5/11 Exh Pg R93).

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“As stated by me under claim no. 2 and 3 above, there is sufficient evidence on record to conclude that in the later stages of the work i.e. from 2nd half of year 2010 onward, the claimant delayed execution of lifts no. 6 and 7. The reasons given by claimant for non-completion of these 2 lifts are flimsy. So much so that the respondent had to issue show cause notices for determination of contract on 4 occasions viz on 16/6/10 (Exh Pg R90), on 13/8/10 (Exh Pg R91), on 27/4/11 (Exh Pg R92) and on 4/5/11 (Exh Pg R93). There is also sufficient evidence on record to conclude that the lifts already installed by the claimant were not working satisfactorily and despite attempts by claimant to repair the defects, the lifts continued to give problems. From letter dated 11/11/10 (Exh Pg R81) of AE in-charge and letter dated 10/11/10 of EE-incharge (Exh Pg R82) of respondent, it is apparent that a serious accident due, to defective material and /or workmanship could have taken place. List of 21 notices from respondent to claimant spread over from June '09 to April, '11 is exhibited at Pg R3-4. Further it is also on record that the Joint Secretary (P&A) of the

Ministry of I&B and the Director, DAVP, who are not connected with the parties to the contract, but in their capacity as the Chairman/ Member of the Monitoring Committee i.r.o. construction of Soochna Bhawan and as users of the lifts, commented repeatedly adversely about the functioning of the said lifts even after claimant claimed to have repaired the lifts (Exh Pg R84 dated 16/11/10, Pg R87 dated 26/4/11, Pg R89 dated 31 /5/11 and Pg R80 dated 14/7/11). I am of the opinion that their critical observations constantly made over a long period of time cannot be ignored. It is also on record (Exh Pg R125) that after determination of the subject contract, respondent engaged another contractor to rectify the defects in the said lifts. It is therefore apparent that neither the work on the remaining 2 lifts was progressing nor was there any improvement in functioning of the already installed lifts'. Under these circumstances, the decision of the respondent to take away work from the claimant can't be faulted with.

16. In view of the above findings, the contention of the learned senior counsel for the respondent that it was the petitioner who was in default, cannot be accepted.

17. In spite of the above finding, the Arbitrator has ordered the refund of the Security Deposit and the Performance Bank Guarantee amount holding as under:

“However, it is also observed that when the final notice u/c 3 of the contract for determination of contract was served on 27/7/11 (Exh Pg R94), the validity of the contract had already expired. The contract was last extended on 20-4-11/25-4-11 upto 31/5/11 (Exh Pg C32) and was not extended thereafter which had the effect of time being set at large. In other words, the respondent issued notice of determination of contract when time was no more the essence of the contract. In view of these facts and circumstances, I am

unable to uphold the determination of contract by respondent on legal grounds.

As I have not upheld the determination of contract by the respondent, the consequential forfeiture of SD and PBG by the respondent, the subject matter of claim nos. 4 and 5 respectively, is not upheld. I therefore award release/refund of SD amounting to Rs 505000/- and also release/ refund of PBG amounting to Rs 505000/- against claim no. 4 and 5 respectively.”

18. In my view, even assuming that the letter dated 01.07.2011 had not been placed on record, the Arbitrator is incorrect in reaching the above finding. The Arbitrator himself noticed that the petitioner had issued as many as four Show Cause notices before issuing the letter of termination. The Arbitrator further found that the delay in execution of the work was attributable to the respondent and the lifts installed by it were malfunctioning and in fact, the petitioner had to engage another contractor to rectify the said defects. Even assuming that time was not the essence, the work had to be completed by the respondent in a reasonable time. Having found that the respondent had abandoned the work and caused delay, apart from doing defective work, the termination of the contract by the petitioner could not have been faulted. Consequently, the award of refund of Security Deposit and the Performance Bank Guarantee cannot be upheld.

19. The learned counsel for the petitioner further challenges the Award under sub Claim no. 6A of the respondent towards extra/additional items and Claim no. 6C of the respondent towards dismantling of two lifts. The learned counsel for the petitioner submits that such amount could not have been awarded as the respondent had not supplied the complete

material for the lift and even the lifts installed by it were not functioning properly.

20. I find no merit in the submission made by the learned counsel for the petitioner. The Arbitrator has awarded the said claim on the basis of the measurement conducted by the petitioner itself while processing the final bill of the respondent. Award of such claim, therefore, cannot be faulted.

21. Counsel for the petitioner further challenges the award of Rs.1 lac under Claim no.7 towards retention of tools, scaffolding etc. He submits that the quantification of such claim has been done by the Arbitrator in an arbitrary manner and without any proof thereof. The award in relation to the said claim is reproduced hereinbelow:

“7.1 Award

The respondent has admitted to availability of 12 barricades at site. I also find from photographs of lift no. 7 (Exh Pg R138 to 140) and from reply to claim no. 4 by respondent (Exh Pg R20) and from respondent's letter dated 9/9/13 (Exh Pg C122) that scaffoldings and brackets were also left in the shaft no.7. I assess the number of brackets and scaffoldings as 80 each. The claimant has not been able to substantiate his claim i.r.o. small tools and tackles. In absence of any mention of rates of these items by either party, I value the 12 no. barricades, 80 no. of scaffoldings and 80 no. of brackets at Rs 1 lakh and award this amount to the claimant against this claim. ”

22. The Arbitrator has relied upon the correspondence exchanged between the parties as also the photographs produced before him while awarding the said claim in favour of the respondent.

23. The above being a matter of appreciation of evidence by the Arbitrator, deserves no interference by this Court in exercise of its powers under Section 34 of the Act.

24. Counsel for the petitioner further submits that the Arbitrator has wrongly rejected the counter claims of the petitioner. He submits that the material supplied by the respondent for Lift No.7 being proprietary items, had been released back to the respondent for installation but had never been installed. An advance payment of Rs.18,25,000/- had been made by the petitioner to the respondent towards the said material. The petitioner was therefore, entitled to a refund of the said amount.

25. The Arbitrator has rejected the said Counter Claim no. 1(i) holding as under:-

“10.1.1 Regarding item (i) above, there is no evidence on record to show that at the time of determination of the contract, respondent rejected the materials of lift no. 7 or asked the claimant to remove his said lift materials from the site. Making recovery at the time of finalization of bill on the plea of the lift material not being usable and at the same time not asking the claimant to remove his material is not justified. I therefore reject this counter claim.”

26. I find merit in the submission made by the learned counsel for the petitioner. The Contract in question was for supply, installation, testing and commissioning of the Lifts. As held by the Supreme Court in **Kone Elevator India (P) Ltd. v. State of Tamil Nadu**, (2014) 7 SCC 1, such Contract cannot be said to be one for sale of goods/chattel simpliciter. Such Contract is, infact, in the nature of the work contracts. The relevant extract from the judgment of the Supreme Court is as under:-

“70. Coming back to Kone Elevators, it is perceivable that the three-Judge Bench has referred to the statutory provisions of the 1957 Act and thereafter referred to the decision in Hindustan Shipyard Ltd., and has further taken note of the customers' obligation to do the civil construction and the time schedule for delivery and thereafter proceeded to state about the major component facet and how the skill and labour employed for converting the main components into the end product was only incidental and arrived at the conclusion that it was a contract for sale. The principal logic applied i.e. the incidental facet of labour and service, according to us, is not correct. It may be noted here that in all the cases that have been brought before us, there is a composite contract for the purchase and installation of the lift. The price quoted is a composite one for both. As has been held by the High Court of Bombay in Otis Elevator, various technical aspects go into the installation of the lift. There has to be a safety device. In certain States, it is controlled by the legislative enactment and the rules. In certain States, it is not, but the fact remains that a lift is installed on certain norms and parameters keeping in view numerous factors. The installation requires considerable skill and experience. The labour and service element is obvious. What has been taken note of in Kone Elevators is that the company had brochures for various types of lifts and one is required to place order, regard being had to the building, and also make certain preparatory work. But it is not in dispute that the preparatory work has to be done taking into consideration as to how the lift is going to be attached to the building. The nature of the contracts clearly exposit that they are contracts for supply and installation of the lift where labour and service element is involved. Individually manufactured goods such as lift car, motors, ropes, rails, etc. are the components of the lift which are eventually installed at the site for the lift to operate in the building. In constitutional terms, it is transfer either in goods or some other form. In fact, after the goods are assembled and installed with skill and labour at the site, it becomes a permanent fixture of the building. Involvement of the skill has been elaborately dealt with by the High Court of Bombay in Otis Elevator and the factual position is undisputable and irrespective of whether installation is regulated by statutory law or

not, the result would be the same. We may hasten to add that this position is stated in respect of a composite contract which requires the contractor to install a lift in a building. It is necessary to state here that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if a separate contract is entered into for installation, that would be a contract for labour and service. But, a pregnant one, once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. Therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site i.e. building, and prepared for delivery. The conclusion, as has been reached in Kone Elevators, is based on the bedrock of incidental service for delivery. It would not be legally correct to make such a distinction in respect of lift, for the contract itself profoundly speaks of obligation to supply goods and materials as well as installation of the lift which obviously conveys performance of labour and service. Hence, the fundamental characteristics of works contract are satisfied. Thus analysed, we conclude and hold that the decision rendered in Kone Elevators does not correctly lay down the law and it is, accordingly, overruled.”

27. Even otherwise, a bare perusal of the Minutes of Meeting dated 26.04.2011 of the Monitoring Committee of the petitioner show that the Lift provided by the respondent did not fall under “A” category and therefore, its improvement through other reputed agencies was difficult. This was reiterated in the Minutes of Meeting dated 31.05.2011 as well.

28. In view of the above, as even the installation work for lift no. 7 had not been started by the respondent except providing scaffolding and brackets, the material for the said Lift was completely useless for the petitioner and the petitioner could not have been called upon to make the payment for the same. The petitioner while passing the final bill had

accordingly made the deduction of Rs.18,25,000/- towards the payment made by it for Lift no. 7. The Arbitrator having relied upon the said bill, therefore, has erred in not allowing the said Counter Claim in favour of the petitioner. The Award, insofar as it denies the Counter Claim no. 1(i) is therefore, set aside and the petitioner is held entitled to the same.

29. Counsel for the petitioner further challenges the rejection of the Counter Claim no. 1(iii) for penalty of Rs.1,01,000/- imposed by SE(E) against the extension of time granted to the respondent.

30. The Arbitrator has rejected the said claim holding as under:-

*“10.1.3 Regarding item (iii) above, no copy of any notice/order levying such compensation (termed as penalty by the respondent on Exh Pg R19) has been exhibited/produced by the respondent. The respondent has imposed the said penalty when time was no more the essence of the contract as held by me under claim nos. 4 and 5 above. In view of above, levy of such penalty is held as unjustified on legal grounds.
I therefore award nil amount against counter claim no. 1.”*

31. The Arbitrator has held that as the petitioner had failed to produce any notice / order levying such penalty on the respondent, the demand of penalty cannot be sustained. Such finding cannot be faulted. Reliance of the petitioner on the final bill in support of such penalty cannot be sustained. The final bill had been prepared after the termination of the contract. It is not shown by the petitioner if at the time of grant of extension of time, the petitioner had levied any penalty on the respondent for the delay in execution of the work. In absence of such proof, the Arbitrator has rightly rejected the said claim.

32. Counsel for the petitioner further challenges the rejection of Counter Claim no.2, which was a claim of amounts spent on rectification

of four Lifts installed by the respondent. The Arbitrator has rejected the said counter claim observing as under:

“11.1Award

There is sufficient evidence on record relied on by the respondent as quoted hereinabove and also held by me under claim no. 4 and 5 above (which need not be reproduced here) that the lifts installed by the claimant continued to malfunction throughout the warranty period and thereafter. List of 21 such notices from respondent to claimant, spread over from June, '09 to April, '11 is exhibited at Pg R3-4. But it is also observed that the respondent did not serve, any prior notice for carrying out the rectification of lifts at the risk and cost of the claimant. Even while, finalizing the bill as late as in December '12, the respondent did not include the amount on account of rectification of defects. It is apparent from above that this CC is an afterthought. I therefore reject this counter claim on legal grounds.”

33. The learned senior counsel for the respondent submits that in the final bill prepared by the Engineers of the petitioner, it had been certified that the work had been carried out as per CPWD specification. Further, the deductions for the missing material in these lifts had already been allowed by the Arbitrator in Claim no.1. The petitioner had also failed to produce the defect or the final copies of the bills paid to M/s Omega Elevators from whom it allegedly got the defects removed.

34. I have considered the submissions made by the counsels for the parties.

35. The Arbitrator has taken note of the twenty one notices from the petitioner to the respondent spread over June, 2009 to April, 2011 complaining about malfunctioning of the lifts. Therefore, there was sufficient proof of the defects in the four lifts. There was also proof that the petitioner had placed an order to M/s Omega Elevators for

rectification of the defects in the lifts installed by the petitioner. In light of such overwhelming evidence, the rejection of the Counter Claim no.2 of the petitioner was totally incorrect and cannot be sustained.

36. Such claim of the petitioner was even otherwise justified under Section 73 of the Indian Contract Act, 1872. The petitioner was entitled to claim the damages suffered by it due to the faulty work done by the respondent. The damages had been duly proved by the petitioner through the orders placed by it on M/s Omega Elevators for rectification of the defects. No further proof in favour of the actual nature of defects and the bills raised was required to be proved on record, especially when the Arbitrator himself notes that over a period of time there were more than twenty one notices issued by the petitioner regarding the malfunctioning of the lifts in question.

37. Counsel for the petitioner further challenges rejection of Counter Claim no.3 which was on account of non-completion of the work in Lift no.6 by the respondent. He submits that as the work in the Lift was not completed, a new lift had to be installed in its place for which the petitioner incurred an expense of Rs.3 lacs towards dismantling of the earlier lift and Rs.35 lacs for installation of the new lift. He submits that the petitioner had also produced the quotation received from M/s Johnson in support of this claim.

38. The Arbitrator has rejected the above counter claim holding as under:-

“12.1 Award

Respondent have not quoted any provision in the contract in support of their entitlement for this claim. No notice has been served on the claimant. The work has neither been actually got

executed by respondent from some other agency nor even any contract entered into for the same. I therefore reject this claim as the same is not established.”

39. As noted above, at the time of determination of the Agreement, the petitioner had not called upon the respondent to remove its material from the site. The notice of termination also did not warn the respondent that the balance work would be carried out at its cost and expenses. Even in the final bill that has been cleared by the petitioner, the petitioner had allowed the payment for the supply of lift no. 6. If at all, the petitioner was therefore, entitled to claim only such amount as may be required to make the said Lift operational. Having not led such evidence, the said Counter Claim has been rightly rejected by the Arbitrator.

40. The counsel for the petitioner further challenges the rejection of the Counter Claim no. 4 which was for the non installation of lift but material taken on USR (unstamped receipt). The learned counsel for the petitioner submits that the Arbitrator has completely misconstrued the said Counter Claim. The said Counter Claim was premised on the fact that as the respondent had failed to install Lift no. 7, the petitioner was entitled to the differential amount that it would have to spend for getting the said Lift installed through a third party. In this regard the petitioner had led evidence in form of quotation from M/s Johnson Lifts (P Ltd.) who had quoted a price of Rs. 35 lakhs as the cost of the lift. As the price payable to the respondent was Rs. 25 lakhs, the differential amount of Rs. 10 lakhs was being claimed under the said Counter Claim.

41. I find merit in the submission made by the learned counsel for the petitioner that the Arbitrator has misconstrued Counter Claim no. 4 of the petitioner.

42. Counter Claim no. 4 of the petitioner reads as under:-

4. Claim on account for non-installation of lift but material taken on USR

The 6th lifts (designed as lift no. 7) material was supplied by M/s EISA which was in their custody taken on USR for installation but no action was taken by the agency for installation of lifts except providing scaffolding and some brackets. Hence claim of difference of amount to provide new lift due to price escalation i.e. Rs. 35,00,000- 25,00,000/-=10,00,000/-. (Refer Annexure XXVII & XXVIII-a & b)

Rs. 10,00,000/-

43. The Arbitrator has rejected the said Counter Claim holding as under:-

“13.1 Award

This CC is in respect of lift no. 7. The arguments of both the parties for this counter claim are same as for CC no. 1 (i) and CC no. 3. For the reasons stated by me under CC no. 1 (i) and CC no. 3 above, this claim on account of non-installation of lift but material taken against USR is rejected.”

44. A reading of the above finding of the Arbitrator clearly shows that the Arbitrator has completely misconstrued the Counter Claim of the petitioner. He has denied the same by relying upon the findings under Counter Claim no.1 (i) and Counter Claim no. 3. As discussed above, the finding of the Arbitrator as far as Counter Claim no. 1(i) is incorrect and has been set aside. As far as Counter Claim no. 3 is concerned, the same was towards the Lift that had actually been installed by the respondent,

though not made operational and therefore, was a claim totally distinct from Counter Claim no. 4.

45. Once it is held that the respondent had breached the terms of the Agreement in not supplying the Lift no. 7, the petitioner was entitled to claim damages for the same. Under Section 73 of the Contract Act, such damages can be claimed on the basis of the cost that may have been incurred for obtaining the thing contracted for from a third party.

46. The petitioner in support of this claim had filed a quotation received from M/s Johnson Lifts (P) Ltd. However, the petitioner has not placed on record the final order, if any, placed on M/s Johnson for supply of the Lift. Mere price quotation received by a party cannot be a proof of actual loss differed. It is not shown by the counsel for the petitioner if any other evidence in form of a firm order was placed before the Arbitrator. It is also not shown whether the specifications of the two lifts were identical. In the absence of such proof, Counter Claim no. 4 cannot be awarded to the petitioner.

47. The learned counsel for the petitioner further challenges rejection of Counter Claim no. 5 by the Arbitrator. Counter Claim no. 5 was on account of hardship faced by the staff due to malfunctioning of the lift. The Arbitrator has rightly rejected the said Counter Claim as being indirect and remote. I, therefore, find no merit in the objection raised by the petitioner to the rejection of the said Counter Claim.

48. The learned counsel for the petitioner further challenges the rejection of Counter Claim no. 6 which was on account of operators engaged for operation of the lifts.

49. The Arbitrator has rejected the said Counter Claim holding as under-

“15.1 Award

I observe that the lift operators were engaged by the respondent on their own during the currency of the subject contract for which no prior notice was given to the claimant. As per contract, operation of lift was not the responsibility of the claimant. The respondent have not quoted any provision in the contract in support of their entitlement for this counter claim. The claim is therefore unsubstantiated and unjustified and I reject the same.”

50. The counsel for the petitioner has been unable to show how the above finding of the Arbitrator can be said to be incorrect in any manner.

51. The counsel for the petitioner further challenges the rejection of Counter Claim no. 7, which was on account of supervision departmental staff charges. The Arbitrator has rejected the said Counter Claim on the ground that the same has not been substantiated.

52. The learned counsel for the petitioner has placed reliance on a chart showing the designation of the officers and monthly salary. A chart so prepared cannot take place of the proof of the Counter Claim. The Arbitrator has therefore, rightly rejected the same as having been not proved.

53. The counsel for the petitioner has further challenged the Award of interest as well. I do not find any merit in the said objection. Infact, no reason has even been supplied by the petitioner for challenging the same.

54. In view of the above, the Impugned Award insofar as it allows the claim nos. 4 and 5 and rejects Counter Claim nos. 1(i) and 2 of the petitioner is set aside.

55. The petition is partially allowed in the above terms. The parties shall bear their own cost for the present proceedings.

NAVIN CHAWLA, J

JANUARY 25, 2019

RN/rv

