IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.6130 of 2014 (O&M)
Date of Decision.30.12.2016

2. **FAO No.6202 of 2014 (O&M)**

State of Haryana and another ....Appellants

Vs

J.V. of Unitech Limited and others ....Respondents

3. **FAO No.9063 of 2014 (O&M)**
4. **FAO No.9750 of 2014 (O&M)**

J.V. of Unitech Limited ....Appellant

Vs

State of Haryana and others ....Respondents

Present: Mr. Puneet Jindal, Senior Advocate with
Ms. Sakshi, Advocate and
for Mr. Ashwinie Kumar Bansal, Advocate and
Mr. Anmol Pandit, Advocate
for the appellants in FAO No.6130 and 6202 of 2014 and
for respondent Nos.1 and 2 in FAO No.9063 and 9750 of 2014.

Mr. Puneet Bali, Senior Advocate with
Mr. Vibhav Jain, Advocate
for the appellant in FAO Nos.9063 and 9750 of 2014 and
for respondent No.1 in FAO Nos. 6130 and 6202 of 2014.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J.

C.M. No.26928-CII of 2014 in FAO No.9750 of 2014
C.M. No.24913-CII of 2014 in FAO No.9063 of 2014

For the reasons stated in the application, delay of 18 days and 12 days in refiling the appeals is condoned.

Applications are allowed.

C.M. No.26929-CII of 2014 in FAO No.9750 of 2014
C.M. No.24914-CII of 2014 in FAO No.9063 of 2014

For the reasons stated in the applications, delay of 2 days in filing the appeals is condoned.

Applications are allowed.

Main cases

This order of mine shall dispose of four appeals, which have arisen, owing to the passing to two Awards namely 28.05.2009 and clarificatory Award dated 19.08.2009 in respect of contract work HR-1 and 04.07.2007 and clarificatory Award dated 19.08.2009 arising out of contract work HR-2. The contract HR-1 was in respect of four laning and strengthening of NH-1 from Karnal to Ambala i.e. from 132.675 kms to 155, for a total consideration of ₹38,05,95,389/- and contract HR-2 was for four laning and strengthening of NH-1 from Karnal to Amabala i.e. 155 kms to 212.161 for a total consideration of ₹2,06,35,78,392/-.

Both the aforementioned tenders were allotted to the contractor namely J.V. of Unitech Limited and others on 18.11.1994. The dispute, according to the State of Haryana, arose on account of the fact that the work was not completed within the stipulated period. The contract contained certain terms and conditions binding the parties, much less, the claim demand and the alleged non-acceptance of the same, resulted into seeking reference of dispute through the process of arbitration, owing to arbitration clause.

For the Contract Work HR-1, the contractor-claimant, submitted the following 10 claims.

> "***Claim No.1:*** *Claim of ₹2,36,78,550/- on account of refund of conditional rebate by way of damage/cost on account of multiple breaches.*
>
> ***Claim No.2:*** *Claim for ₹1,47,30,093/- on account of abnormal variations.*

<u>Claim No.3:</u> *Claim for ₹4,00,41,730/- on account of abnormal variations including variations in quantities as specified in the BOQ.*

<u>Claim No.4.</u> *Claim for ₹3,51,65,000/- on account of prolongation costs.*

<u>Claim No.5.</u> *Claim of ₹3,45,00,000/- account of amount due by way of sourcing of fund.*

<u>Claim No.6:</u> *Not pressed by the claimant before the learned Arbitral Tribunal.*

<u>Claim No.7</u>*: Claim for ₹49,03,289/- on account of variation claim in terms of clause 52.3 of GCC.*

<u>Claim No.8:</u> *Claim for interest pendente lite till date of SOF&C (11.06.2003).*

<u>Claim No.9:</u> *Claim for interest from 11.06.2003 till date of Award.*

<u>Claim No.10:</u> *Post award interest.*

The Arbitral Tribunal vide Award dated 28.05.2009 partly allowed Claim Nos.1, 3 & 4 and rejected claims No.2, 5 and 7. The total amount of compensation awarded was ₹4,04,13,131/- whereas claim Nos.8 and 10 regarding the interest @ 12%, had been allowed and the counter claims of the State of Haryana were rejected.

It is a matter of record that after passing of the Award dated 28.05.2009, an application under Section 33 of the Arbitration and Conciliation Act, 1996 seeking clarification was moved and the Clarificatory Award dated 19.08.2009 came to be passed.

Similarly in respect of Contract Work HR-II, following 8 claims were filed:-

"***<u>Claim No.1:</u>*** *Claim of ₹14,06,37,617/- on account of abnormal variations (subsequently restricted to ₹14,01,45,937/- due to some computational errors).*
<u>Claim No.2:</u> *Claim for ₹47,00,00,000/- on account of prolongation cost.*

<u>Claim No.3:</u> *Amount claimed nil.*

<u>Claim No.4.</u> *Claim of ₹18,00,00,000/- on account of cost of sourcing of fund.*

<u>Claim No.5</u>*: Claim for ₹74,92,000/- on account of variation claim in terms of clause 52.3 of GCC.*

<u>Claim No.6:</u> *Claim for interest pendente lite till date of SOF&C (11.06.2003).*

<u>Claim No.7:</u> *Claim for interest from 11.06.2003 till date of Award.*

<u>Claim No.8:</u> *Post award interest.*

Against the aforementioned 8 claims, the Arbitral Tribunal vide Award dated 04.07.2009 and Clarificatory Award dated 19.08.2009, awarded a total amount of ₹24,60,44,827/-. Claim Nos.1 and 2 were partly allowed and claims Nos.4 and 5 were rejected and against the claim Nos.6 to 8, interest @12% was awarded.

It it pertinent to mention here that as regards the Contract HR-1, against the claim No.1 for ₹2,36,78,550/- on account of refund of conditional rebate by way of damage/cost on account of multiple breaches, the Arbitral Tribunal awarded a sum of ₹40,54,719 and against claim No.3 for ₹4,00,41,730/- on account of abnormal variations including variations in quantities as specified in the BOQ and Claim No.4 for ₹3,51,65,000/- on account of prolongation costs, awarded ₹1,92,68,400/- and ₹1,70,90,012/- respectively. Against claims Nos.6 to 8, interest @12% had been granted.

The Objecting Court in respect of Contract HR-1, accepted the objection petition filed against the Award dated 28.05.2009 and modified the claim No.3 for ₹1,92,68,400/- to ₹19,54,600/- and reduced the rate of interest from 12% to 7%. It is in this backdrop of the matter, two appeals have been filed for non-accepting of the objection qua claim Nos.1 and 4 by the State of Haryana bearing No.6130 of 2014 titled as "State of Haryana and another Vs. J.V. of Unitech Limited and others" and the claimants-contractors also filed the first appeal bearing No.9750 of 2014 titled as "J.V. of Unitech Limited and others Vs. State of Haryana and others" against the same.

As regards the Contract Work HR-II, against claim No.1 for ₹14,01,45,937/- on account of abnormal variations and claim No.2 ₹47,00,00,000/- on account of prolongation cost. The Arbitral Tribunal vide Award dated 04.07.2009/19.08.2009, awarded a sum of ₹1,75,96,872/- and ₹22,84,47,955/- respectively.

The Objecting Court allowed the objection petition filed by the State of Haryana qua claim No.1 by reducing the same from ₹1,75,96,872/- as awarded by the Arbitral Tribunal to ₹13,74,096/- but dismissed qua claim No.2 and against claim Nos.6 to 8, reduced the interest from 12% to 7%. It is in this backdrop of the matter, the State of Haryana challenged the aforementioned order, of the Objecting Court, in First Appeal bearing No.6202 of 2014 titled as "State of Haryana and another Vs. J.V. of Unitech Limited and others" and the claimants-contractors filed the counter appeal bearing No.9063 of 2014 titled as "J.V. of Unitech Limited Vs. State of Haryana and others".

As regards the rejection of claims Nos.2, 5 and 7 in respect of Contract HR-1 and claim Nos.4 and 5 in respect of Contract HR-11, the contractor did not file any objections before the Objecting Court.

The main thrust of the argument of the State is on the variation and prolongation cost, in essence, that as per provisions of the clauses of the Contract, which had been referred to extensively, during the course of the hearing, whether the contractor was/is entitled to any amount or not, in essence, whether the deduction of the amount by the Objecting Court was justified or the Award was required to be set aside in toto.

On the contrary, the argument of the contractor had been that the order of the Objecting Court in accepting objection petition of State of Haryana qua claim No.3 in respect of Contract HR-I and claim No.1 in respect of Contract HR-II had not been in accordance with terms and conditions of the contract, much less, provisions of Section 34 of the Arbitration and Conciliation Act, 1996.

Mr. Puneet Jindal, learned Senior Counsel assisted by Ms. Sakshi, Advocate and Dr. Ashwanie Kumar Bansal, learned counsel appearing for the appellants-State in FAO Nos.6130 and 6202 of 2014, submitted, that the Objecting Court failed to address the issue with regard to claim No.4 while dealing with the arguments raised by the appellants, thus, committed perversity, much less, patent illegality in awarding the compensation. Clause 44.1 of the contract dealt with execution of work in time. It was submitted that on perusal of the aforementioned provisions, it is clear that there can be numerous circumstances where extension of time can be granted without there being any fault on the part of the employer/contractee i.e. the State of Haryana and the respondent-contractor. The extension of time is to be supported by reasons, in essence, for awarding damages regarding the prolongation as submitted by the contractor, there has to be a finding based upon the material on record as to who was the defaulter for prolongation of the contract. It is only thereafter, the damages can be quantified and for that purpose, the Arbitral Tribunal relied upon Hudson's formula. The passing the Award by the Arbitral

Tribunal on the basis of judgment rendered by the Hon'ble Supreme Court in ***McDermott International Vs. Burn Standards Co. Ltd. 2006(2) Arb LR 498 (SC)*** is incorrect interpretation.

Clause 53.4 of the contract provided that if the contractor failed to comply with any of the provisions of this clause in respect of any claim, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any Arbitrator or Arbitrators appointed pursuant to sub-clause 67.3 while assessed the claims after considering contemporary records, in essence, no contemporary record has been placed on record and therefore, the claim was wholly misplaced. For the sake of brevity, the same reads as under:-

> "*53.4* ***Failure to comply:*** *if the Contractor fails to comply with any of the provisions of this Clause in respect of any claim which he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Engineer or any arbitrator or arbitrators appointed pursuant to Sub-Clause 67.3 assessing the claim considers to be verified by contemporary records (whether or not such records were brought to the Engineer's notice as required under Sub-Clauses 53.2 and 53.3).*

The Contractor failed to produce on record books of account or any other material, much less, the evidence qua actual expenditure incurred on overheads yet the Tribunal allowed the claim on hypothesis to the tune of ₹1,70,90,012/-, though it reduced by the Objecting Court but the fact remains that the Contractor was/is not entitled to a single penny. In fact, the finding of the Arbitral Tribunal in applying the Hudson's formula to be correct being accepted by the Hon'ble Supreme Court in ***McDermott International's case*** (supra), is wholly erroneous. There has been a misinterpretation of letter dated 30.10.2000. Hudson's formula is the oldest, which has been widely criticized by many authors.

The contractor had raised the claim for prolongation cost i.e. cost of overheads and profit @29.9%, though the Tribunal rejected the claim for profit of 10% but allowed the claim only for overheads @14.53% after reducing element of profit of 10% based on Data Book of Ministry of Road Transport and Highways. The delay in completion was 8 months only but the Tribunal granted damages for 13 months, in essence, time limit of 42 months was w.e.f. 14.01.1998 to 13.06.1998. The work after delay of 8 months was completed on 28.03.1999. The defect liability period of one year expired on 28.03.2000. The Taking Over Certificate (TOC) was issued on 30.08.2000 i.e. after a delay of 5 months and the Tribunal, thus, has granted compensation for that 5 months i.e. 8+5+=13, by applying the Hudson formula.

They further submitted that High Court of Bombay in ***M/s Essar Projects Limited Vs. M/s Edifice Developers and Projects Engineers Limited*** in Arbitration Petition No.313 of 2007 decided on 11.11.2011 had considered the similar matter and rejected the Award of the Tribunal granting the damages by applying the Hudson formula.

In order to lend support to the contention that the Objecting Court committed illegality in not appreciating, that the contractor had failed to produce any proof of actual loss and therefore, the damages on the basis of prolongation of contract could not have been granted, in support of submission relied upon the judgment rendered by Hon'ble Delhi high Court in ***All India Radio Vs. M/s Unibros (Delhi) 2010(5) RCR (Civil) 757.***

As regards the entitlement of the contractor to the variation charges, it was submitted that the Arbitral Tribunal erroneously and wrongly granted higher rates for the original quantity as well as varied quantity in complete violation of clause 52.2. Though the Objecting Court reduced the awarded amount from ₹1,92,68,400/- to ₹19,54,600/- but yet it ought not to have granted the aforementioned amount. In this regard, they brought to the notice of this Court Engineer's letter dated 4.2.2000 (Ex.C-35) where it had rejected the claim of the contractor, in essence, did not find justification for higher rates on account of additional/reduced quantities. The opinion of the Engineer was on the basis of the interpretation of clause 52 as well that the rate as given in the agreement had become inappropriate and inapplicable as per the mandatory condition of clause 52.2. The Tribunal had no jurisdiction to deduce the rate than given in the agreement. The Engineer, for the first time, was approached on 12.11.1999 i.e. after 7 months of completion of the item.

They further submitted that the Tribunal violated clause No.52.1 of the agreement in granting higher rates for entire quantity including executed quantity. The Award in fact is hit by clause 52.1 which provided that variation shall be valued at the rates and prices set out in the contract. In support of their contention, reference of the Central Public Works Department (CPWD) Manual was made. The contractor executed the work of a particular quantity. There was a marginal increase of quantity beyond 125% of total work and the value thereof had already been paid, therefore, the additional amount, granted by the Tribunal, due to marginal increase in the quantity of work is not sustainable. The Arbitral Tribunal at the most could have granted suitable rate for varied quantity of 36.25 cum. In fact the chart extracted in the order of the Objecting Court is perfectly legal and justified. The Award is lacking reasons, thus, there is violation of provisions of sub-section 3 of Section 31 of the 1996 Act.

The claimants had failed to give any evidence regarding the percentage of variation. The claim lacked substantive material, in essence, neither the details as to how the amount had been worked out nor the quantitative details for new rates, had been given.

Similar arguments have been addressed with regard to claims in Contract HR-II, as the claim No.1 pertained to abnormal variations and claim No.2 pertains qua prolongation cost. In order to lend support to the aforementioned arguments, Mr. Jindal, relied upon Clauses 51.1, 52.1 and 52.2, which have been reproduced in grounds of appeal of FAO No.6130 of 2014. For the sake of brevity, the same are extracted here-in-below:-

> "**Clause No.51.1 Variations-** The Engineer shall make any variation of the form quality or quantity of the Works or on any part thereof that may, in his opinion, be necessary and for that purpose or if for any other reason it shall, in his opinion be appropriate, he shall have the authority to instruct the Contractor to do and the Contractor shall do any of the following:-
>
> (a) Increase or decrease the quantity of any work included in the Contract.
> (b) Omit any such work (but not if the omitted work is to be carried out by the Employer or by another contractor.
> (c) Change the character or quality or kind of any such work.
> (d) Change the levels, lines, position and dimensions of any part of the works.
> (e) Execute additional work of any kind necessary for the completion of the works or
> (f) Change any specified sequence or timing of construction of any part of the works.
>
> No such variation shall in any way vitiate or invalidate the Contract, but the effect, if any, of all such variations shall be valued in accordance with Clause 52.
>
> Provided that where the issue of an instruction to vary the Works is necessitated by some default of or breach of contract by the Contractor or for which he is responsible, any additional cost attributable to such default shall be borne by the Contractor.
>
> **CLAUSE 52**
>
> **52.1 Instructions for Variations -** All variations referred to in Clause 51

and any additions to the Contract Price which are required to be determined in accordance with Clause 52 (for the purposes of this Clause referred to as "varied work") shall be valued at the rates and prices set out in the Contract if in the opinion of the Engineer the same shall be applicable. If the Contract does not contain any rates or prices applicable to the varied work, the rates and prices in the Contract shall be used as the basis for valuation so far as may be reasonable, failing which after due consultation, by the Engineer with the Employer and the Contractor, suitable rates or prices shall be agreed upon between the Engineer and the Contractor. In the event of disagreement, the Engineer shall fix such rates or prices as are in his opinion appropriate and shall notify the Contractor accordingly with a copy to the Employer. Until such time as rates or prices are agreed or fixed the Engineer shall determine provisional rates or prices to enable on- account payments to be included in certificates issued in accordance with Clause 60.

52.2 - Power of Engineer to Fix Rates -

Provided that if the nature or amount of any varied work relative to the nature or amount of the whole of the Works or to any part thereof, is such that, in the opinion of the Engineer, the rate or price contained in the Contract for any item of the Works is by reason of such varied work rendered inappropriate or inapplicable, then after due consultation by the Engineer with the Employer and the Contractor a suitable rate or price shall be agreed upon between the Engineer and the Contractor. In the event of disagreement the Engineer shall fix such other rate or price as is in his opinion, appropriate and shall notify the Contractor accordingly, with a copy to the Employer. Until such time as rates or prices to enable on-account payments to be included in certificates issued in accordance with Clause 60.

Provided that no change in the unit rates or prices quoted shall be considered for items included in the priced Bill of Quantities unless such items individually account for an amount of more than 5 (five) percent of the Contract Price named in the Letter of Acceptance and the actual quantity of work performed under the item exceeds or falls short of the original billed quantity by more than 25 percent.

Provided also that no varied work instructed to be done bv the Engineer Pursuant to Clause 51 shall be valued under Sub-Clause 52.1 or under this Sub-Clause unless within 14 davs of the date of such instruction and other than in the case of omitted work, before the commencement of the varied work notice shall have been given either.

(a) By the Contractor to the Engineer of his intention to claim extra payment or a varied rate or price or

(b) By the Engineer to the Contractor of his intention to vary a rate or price.

With eloquence and vehemence, it was submitted that no doubt the contractor is entitled to the variation but there is a yardstick for the same. The procedure had been prescribed to arrive at a consensus between the contractor and the employer and in the event of failure, the discretion had been vested with the Engineer to fix the rates or prices which in his opinion are appropriate and shall be notified to the contractor with a copy to the employer. Unless and until such exercise is done, the Engineer shall determine the provisional rates or the prices to enable the interim payment.

In fact, both the parties relied to the aforementioned clauses but the State of Haryana also referred to Clause 53 which began with non obstante clause "notwithstanding with any other provision of the contract, if the Contractor intended to claim any additional payment pursuant to any clause of these conditions or otherwise, he shall be required to give notice of his intention to the Engineer with a copy to the employer, within 28 days after the event giving rise to the claim has first arisen." In fact, the entire argument, according to the both parties, hinges upon the proviso to clause 52.2, that no change in the unit rates or prices quoted shall be considered for items included in the priced bill of quantities unless and until such items individually account for an amount of more than 5% of the contract price named in the Letter of Acceptance and the actual quantity of work performed under the item exceeds or falls short of the original billed quantity by more than 25%. There had been a reference to the provisions of Section 70 of the Contract Act and its interpretation by the Hon'ble Supreme

Court in ***Food Corporation of India and others Vs. Vikas Majdoor Kamdar Sahkari Mandli Ltd. 2008(1) RCR (Civil) 284.***

In order to lend support to the order of the Objecting Court regarding reduction of the interest from 12% to 7%, reliance was placed to the ratio decidendi culled out by the Hon'ble Supreme Court in ***Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy AIR 2007 SC 817*** and on similar lines ***Rajasthan State Transport Corporation Vs. Indag Rubber Ltd. 2007(2) SCC 720.***

Per contra, Mr. Puneet Bali, learned Senior Counsel assisted by Mr. Vibhav Jain, Advocate appearing for the J.V. of Unitech Limited submitted that the Objecting Court had assigned no reasons for reducing the interest from 12% to 7% as it is against the mandate of the provisions of sub-section 7 of Section 31 of the 1996 Act and further submitted that the interpretation of the contract is within the domain of the Arbiral Tribunal and not of the Objecting Court. In this regard, reliance to the ratio decidendi culled out by the Hon'ble Supreme Court in ***Madhya Pradesh Housing Board Vs. Progressive Writers and Publishers (2009) 5 SCC 678*** was laid.

He further submitted that due to default or breach on the part of the employer, the contract got prolonged. It was substantially completed on 28.03.1999 with a delay of 13 months. The defect liability period (DLP) of 12 months was to commence from the date of substantial completion as announced in the Taking Over Certificate (TOC) which was issued belatedly on 30.03.2000, stating the date of completion as 28.03.1999. By the time of issuance of TOC, the Defect Liability Period of 12 months had already expired. Though the contractor had submitted many claims but only three claims were allowed as indicated above. The calculation done before the Objecting Court by reducing the amount of variation is the calculation submitted by the State of Haryana during the course of hearing, in fact, it was not the part and parcel of the record of the Arbitral Tribunal. The contract provided that the quantities may vary and the contractor was entitled to the payment for quantities actually executed at the agreed rates. Clause 52.2 of the Contract was also relied upon to submit that if the rate or price contained in the contract for any items of the works is, by reason of such varied work, rendered inappropriate or inapplicable then, after due consultation by the Engineer with the employer and contractor, a suitable rate or price shall be agreed upon between the Engineer and the contractor.

The thrust of the argument was whether the rate or price is to be taken for the entire quantity executed or only for the quantity executed beyond the threshold limits of 125% i.e. 100%+25% thereof and to buttress his arguments, Mr. Bali, submitted that it has to be for the quantity executed beyond 125% i.e. 100%+25% thereof, whereas the contention of the employer had been that when the rates were rendered inappropriate or inapplicable then the fresh/suitable rate or price was to be fixed for the entire quantity executed, thus, it was a case of interpretation of the contract and the Arbitral Tribunal being expert had occasion to discuss the same extensively and arrived at a finding of fact. In fact the State has not been able to point out that the Awards suffer from a patent illegality to bring the objections within the parameters of Section 34 of the 1996 Act.

He further submitted that as per clause 52.2 of the contract, not only the increased quantity was treated as variation but the decrease in the quantity was treated as a variation and valued. In other words, the varied quantity did not represent only the increase/decrease in the original quantity but the quantity actually executed after such variation and in this regard a hypothetical situation was also manifested, by submitting that 'if the given quantity of a particular item is 100 units and there is a decrease in variation of, say 35%, then the actual quantity executed thereof would be 65 units (100-35) and in case the employer's argument is accepted then the varied quantity to be valued, would be only for 35 units, being the quantity not executed and the executed 65 units would be paid at the contracted rate, in essence, when the decreased quantity of 35 units is actually not executed then there can be no rates or revised rates for the same, thus, the interpretation of the employer that the contractor is only entitled to quantity executed thereof and not of the entire quantity actually executed is incorrect/inappropriate. It is only in case if there is increase of 35% in the quantities then the quantities actually executed would be 135 units (100+35) thereof and by applying the uniform interpretation of the clause, the suitable rate would be fixed for the entire quantity actually executed namely 135 units and not only for 35 units.

He further submitted that an attempt of the State had been in reading the provisions of the clauses in between and not in their letter and spirit. If at all, they envisaged any such situation, there would have been a clarificatory condition/clause. He further submitted that the Award passed by the Arbitral Tribunal is most reasoned one whereas the Objecting Court has very limited scope to interfere with the Award. The reasoning given for reduction of the variation clause is wholly preposterous, much less, fallacious. The Objecting Court had been erroneously swayed away in holding that the Tribunal had awarded a huge amount, thus, the reasoning of

Objecting Court in reducing the awarded amount of compensation on the variation clause is contrary to the settled position of law and contract stipulations as, perusal of the date of variations would show that the quantity variation was quite high which was not disputed as the cogent evidence had been brought on record before the Tribunal.

In support of submission qua very limited scope of interference reference to ratio decidendi culled out by Hon'ble Supreme Court in ***National Highway Authority of India Vs. Cementation India Ltd. 2015(3) RAJ 1*** and ***Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49*** was laid.

As regards the awarding of interest, ratio decidendi culled out by the Hon'ble Supreme Court in ***M/s Hyder Consulting (UK) Ltd. Vs. Governor, State of Orissa through Chief Engineer 2015 (2) SCC 189*** where the award of interest @18% has been upheld, has been referred.

He further sumitted that the order of the Objecting Court reducing the rate of interest without any reasons, is not sustainable, thus, relied upon the judgment rendered by the Hon'ble Supreme Court in ***Sayeed Ahmed and Co. Vs. State of U.P. And others*** passed in Civil Appeal No.4197 of 2009 on 09.07.2009 and on similar lines, ***Bhagwati Oxygen Ltd. Vs. Hindustan Copper Ltd. (2005) 6 SCC 462.***

I have heard learned counsel for the parties, appraised the paper book, records and of the view that there is some force and merit in the submissions of Mr. Puneet Jindal, learned Senior Counsel and Mr. Ashwanie Kumar Bansal, Advocate *viz-a-viz* the application of the Hudson formula without giving reference to other formulas. This aforementioned view of mine is derived from the Divison Bench judgment of Bombay High

Court referred to by Mr. Jindal in ***Edifice Developers and Projects Engineers Ltd. Vs. M/s Essar Projects (India) Ltd.*** passed in Appeal No.11 of 2012 on 03.01.2013, for, the Arbitral Tribunal quantified the claim in terms of percentage but no such evidence had been led in this regard. In the absence of such evidence, the Arbiral Tribunal should not have done the guess work and tread on the path of imagination/figmentation. The aforementiond finding of Arbitral Tribunal, in my view, is a travesty of justice. A specific objection was taken in this regard in the objections filed under Section 34 of the 1996 Act but the Objecting Court abdicated in not referring or discussing the same except to reduce the amount with regard to prolongation cost.

The prolongation of conract is a conceded postion on record. The argument of Mr. Jindal that the Arbitral Tribunal while awarding the compensation with regard to prolongation cost heavily relied upon the Hudson Formula, though rebutted by Mr. Bali that there has been only a passing reference of the Hudson Formula but while calculating the amount they relied upon the other documents also. For the sake of brevity, the relevant portion of the Award reads as under:-

> "*4.3.8. We now advert to the next plea of the claimant, who has contended that total cost of overheads & profit is to the extent of 29.9% Direct Cost of say, 42.6% Basic Cost. It is further contended that the respondent was duly and fully aware of the claimant's direct costs at the rate of 29.9% of 'Total Cost' (corresponding to 42.6% Basic Cost) as the claimant had as early as 1997 informed the same to which the Engineer had vide its letter dated 11.7.1997(Ex.C/8) sought substantiation (break-up) of direct cost of 40% to 42.6% (of Basic Cost) for the purposes of evaluation of new rates. The said details (break-up) were duly furnished to the Engineer vide claimant's letter dated 23.7.1997 (Ex.C/10).*
>
> *The respondent had contended that the Direct Cost*

component at 29.9% of Contract Price (corresponding to 42.6% Basic Cost) has wrongly been claimed. It is contended that the claimant had vide its letter dated 16.10.2000, issued in response to the Engineer's letter dated 13.10.2000 given its acceptance to adoption 32.5% mark-up on Basic Cost (which corresponds to 24.53% Direct Cost) towards overheads and profit for the purposes of valuation of variation items. The said letter dated 16.10.2000 is on record at page 4 of Vol.III, as also at page 286 of Vol.III, of the respondent's documents. Further, the Respondent had, vide its Memo No.2842-44 dated 30.10.2000 agreed to the aforesaid 'Mark-up percentage of Contractor's overhead & profit.' This letter/memo of the respondent is available at page 287 of Vol.III, of the respondent's documents.

The Claimant's argument is that the said mark-up was for the purposes of valuation of variations and as such the claimant had agreed for a lower mark-up whereas actually its cost of overheads and profit comes to 29.9% Direct Cost. On the other hand, the respondent's contention is that despite the said agreed figure, the actual cost (of overheads and profit) to the claimant is far less. We are not agreeable to either of the said contentions of the parties. Once the claimant has agreed to a particular figure representing its cost of overheads and profit, it cannot be allowed to unilaterally increase the same. Similarly, the respondent also having agreed to a particular figure of mark-up percentage of contractor's overheads and profit cannot contend any lower figure for the same. At the same time, there is no other mutually admitted document to show and establish the said cost at a figure other than 32.5% Basic Cost (corresponding to 24.53% Direct Cost). We are, therefore, inclined to bind the parties to the said admitted figure and adopt 32.5% mark-up percentage of Basic Cost (corresponding to 24.53% Direct Cost) for the purposes of assessing the claimant's entitlement for prolongation cost during the extended period of contract and over-stay at site.

This leads us to the actual computation of the claim amount. Details of the claim amount have been given at page 66 of Vol.6 (MC) of SOFC. The said computations are in accordance with the Hudson formula by taking into account the total contract value and the stipulated contractual period. With the said two figures the *average monthly contract value has been arrived at for the stipulated contract period. This figure has then been taken at 29.9%, being the Direct Cost component (representing contractor's overheads and profit), to arrive at average monthly Direct Cost component (representing monthly overheads and profit of the contractor) during the stipulated conract period. Finally, this figure of monthly Direct Cost component (representing monthly overheads and profit of the contractor) has been multiplied by the duration of the extended/prolonged period to arrive at the total prolongation cost claim. Hudson's formula has been accepted by the Supreme Court in Mcdermott case (supra). The AT is on sure ground in adopting Hudson's formula because firstly it has been recognized by the Supreme Court and secondly it was accepted by the respondent at an earlier stage when new rates were being fixed and information was sought from the claimant as regards break-up of the rates.*

However, from the correspondence and other documents submitted by the Claimant, it is observed that the claimant's claim is on account of delays caused due to issue of drawings, non-handing over of the site by the Respondent and oher site conditions consequent to which the Engineer has to make assessment of EOT in terms of Clause 44 and additional cost in terms of Clause 6.4, 12.2, 42.2 of the Contract in consultation with the Contractor and Employer.

The Final Notice dated 10 July, 1999 of the Claimant to the Engineer (Ex.C-30, page 95 of "Written Synopsis" of the Claimant), based on which reference to Engineer under Clause 67.1 was made, was also for determination of the Engineer pursuant to Clause 6.4, 12.2, 42.2, 52.1/52.2, 44.1(d) and in accordance with clause 2.1(a) and 2.6. The reference to Engineer was accordingly for such determination.

In case the contractor suffers delay and incurs costs on account of defaults of the Engineer/Employer, Clauses 6.4, 12.2 and 42.2 of the Contract provide for determination by the Engineer of time extension under Clause 44 and such additional costs in consultation with the Contractor and the Employer.

As per Clause 1.1((g) (i) of GCC of the Contract Agreements

"Cost means all expenditure properly incurred or to be incurred, whether on or off the site, including overhead and other charges

properly allocable thereto but does not include any allowance for profit."

As per the contract clauses, there is no provision for payment for any loss of profit. Therefore, the Claimant is not entitled to any loss or profit but only overhead costs as per the terms of the contract.

In the direct cost component of 29.9% intimated by the Claimant, there was a provision of 19.9% for overheads and 10% for profit.

In the Date Book of Ministry of Road Transport & Highways, the element of profit has been adopted uniformly as 10% for all types of works with varying overheads. Accordingly, adopting profit @10% in the direct cost of 24.53% agreed between the parties, the overheads work out as 14.53% of the total cost.

Therefore, against the claim amount which is computed with the direct cost as 29.9% of the total cost, we allow it at 14.53% of the total cost, for the component of overheads only. The amount so computed works out ₹1,70,90,012/- as per details below.

Sr. No.	*Particulars*	
1.	*Gross Contract Value*	*₹38.00 cr.*
2.	*Stipulated Contract Period*	*42 months*
3.	*Gross Average monthly turn over (being (1)/(2))*	*₹90.476 lacs*
4.	*Fixed overheads*	*14.53%*
5.	*Fixed monthly cost [being (3)x(4)]*	*₹13.146 lacs*
6.	*Extended period applicable for prolongation costs*	*13 months*
7.	*Prolongation costs [(5)x(6)]*	*₹1,70,90,012/-*

The claim of the claimant is allowed. The claimant is held entitled to an amount of ₹1,70,90,012/- only by way of prolongation costs against his claim of ₹3,53,65,000/-."

A cumulative reading of the aforementioned finding leads to irresistible conclusion that the Arbitral Tribunal had applied the Hudson formula on the premise that there was no mutually admitted document to show and establish the said cost at a figure other than 32.5% Basic Cost. Once the Arbitral Tribunal itself found that there was no other document, it could not have in straight-jacket applied the Hudson formula. The correspondences would not enable the Arbitral Tribunal for conforming the claim or arrive at a conclusion. Even the reference to other documents is a final notice and nothing beyond that. The Data Book of Ministry of Road Transport & Highways could not be looked into in view of the terms and conditions of the contract to which the parties were bound in letter and spirit.

The finding of the Arbitral Tribunal is a pointer that it had not applied its own mind while dealing with the claim for "Prolongation Cost" and simply swayed away in applying the Hudson formula which is not permissible. I would be committing a fallacy in case I do not extract the finding rendered by the Division Bench of Bombay High Court in ***Edifice Developers and Projects Engineers Ltd.*** (supra) regarding the application of Hudson Formula for quantification of claim:-

> *"8. The Learned Single Judge, in our view, was justified in coming to the conclusion that the Arbitrator was manifestly in error in awarding the claim for overhead losses in spite of the fact that no oral evidence was adduced on behalf of the Appellant. In* ***Brij Paul Singh's*** *case the Supreme Court noted that it was not disputed that where in a works contract a party entrusted with the work commits a breach of the contract, the contractor would be entitled to claim damages for loss of profit which he expected to earn by undertaking the contract. The Supreme Court, however, noted that what must be the measure of the profit and what evidence should be tendered to sustain the claim are different matters. The judgment of the Supreme Court adverts to the fact that in that case the High Court had referred to Hudson's treatise on Building and Engineering Contracts. Hudson states there that in major contracts subject to competitive tender on a national basis, the evidence given in litigation on many occasions suggests that head office overheads and profits are between 3 to 7% of the total price of cost which is added to the tender. The High Court in that case had rejected the claim of the contractor. The Supreme Court noted that in an identical contract*

with regard to another portion of the same road and for the same type of work the High Court had accepted loss of profit at 15% of the price of the balance of work as a reasonable measure of damages if the State is guilty of a breach of contract. It was on this basis that the Supreme Court came to the conclusion that since for the same type of work, between the same parties involving a nearby portion of the same road a certain measure of damages had been adopted by the High Court, the same measure ought to have been adopted in that case as well.

*9. **Brij Paul Singh's** case therefore does not stipulate as a doctrine of law that the formula which has been prescribed in Hudson's treatise must invariably be accepted in all cases as a measure of damages sustained on account of loss of overheads. On the other hand in the subsequent decision of the Supreme Court in McDermott International (supra), the Supreme Court has relied upon the following observations contained in the earlier decision in **M.N.Gangappa v Atmakur Nagabhushanam Setty & Co. (1973) 3 SCC 406.***

> *"In the assessment of damages, the court must consider only strict legal obligations, and not the expectations, however reasonable, of one contractor that the other will do something that he has assumed no legal obligation to do."*

*10. The judgment in **McDermott International** (supra) considers various formulae including Hudson's Formula, Emden Formula and Eichleay Formula. As regards Hudson's Formula the Supreme Court has noted, in the following extract, that although it has received judicial support in many cases, it has been the subject matter of criticism :*

"(a) Hudson Formula : In Hudson's Building and Engineering Contracts, Hudson formula is stated in the following terms :

"Contract head office overhead & contract sum period of delay"
profit percentage x --------------------- x

contract period

In the Hudson formula, the head office overhead percentage is taken from the contract. <u>Although the Hudson formula has received judicial support in many cases, it has been criticized principally because it adopts the head office overhead percentage from the</u>

<u>contract as the factor for calculating the costs, and this may bear little or no relation to the actual head office costs of the contractor.</u>" (emphasis supplied)

*11. In **McDermott International** (supra) the Supreme Court has held that it is an accepted position that different formulae can be applied in different circumstances and the question as to whether damages should be computed by taking recourse to one or other formula, having regard to the facts and circumstances of a particular case, would fall within the domain of the Arbitrator. In the present case no other formula other than Hudson's formula has been considered in the arbitral award. In the present case the Arbitrator proceeded on the basis that it was only Hudson's Formula which was to be applied and that even though no direct evidence had been adduced on behalf of the Appellant, nonetheless the Appellant would be entitled to damages measured with reference to the aforesaid formula. This approach of the Arbitrator is manifestly in the teeth of the law laid down by the Supreme Court in McDermott International. Section 28 (1)(a) requires that the Arbitral Tribunal shall decide a dispute submitted to arbitration in accordance with the substantive law for the time being in force in India. Section 28(3) requires the Arbitral Tribunal to decide in accordance with the terms of the contract and take into account the usages of the trade applicable to the transaction. The Arbitral Tribunal under Section 28(2) can act as amiable compositeur and can decide ex aequo et bono only if parties have expressly authorized it to do so. In the present case, the Learned Single Judge was correct in coming to the conclusion that the award of the Arbitrator proceeds on the manifestly misconceived notion that a contractor is entitled to claim overhead losses even in the absence of evidence on the basis of Hudson's Formula. Similarly, the Arbitral Tribunal proceeded on a misconceived premise that this formula is invariably adopted for quantification of claims for overhead losses in India. In the present case the Appellant produced no evidence in support of its claim; this has been so stated in the Award. The award of the claim is on the misconceived basis that the Hudson's Formula must be applied despite the absence of evidence. Since the fundamental basis that has permeated the award is*

> *contrary to law, the judgment of the Single Judge cannot be faulted in setting aside the arbitral award on that aspect.*

Thus, finding of the Arbitral Tribunal and the Objecting Court qua claim of prolongation cost is not sustainable as, in my view, it falls within the scope and ambit of "patent illegality". It would be a total farcical exercise in remanding the matter back to the Arbitral Tribunal as the State Exchequer is being unnecessarily burdened with the element of interest running day by day.

As regards the argument of Mr. Bali with regard to reduction of rate of interest from 12% to 7%, in my view, though lacked reasons but the fact remains that the prevailing lending banking rates keeping in view the inflation and rising the price index, has considerably been reduced. As regards the claim qua interest, the Arbitral Tribunal after discussing the rival contentions of the parties, arrived at a finding that the interest should have been 12% simple. For the sake of brevity, the finding of the Arbitral Tribunal reads thus:-

> *"8.1 Claimant's Submissions:*
>
> *8.1.1 Under Claims No.8, 9 & 10, the claimant has claimed interest at the rate of 18% per annum on the amount awarded for the pendente-lite period till the date of award, namely, with effect from 11.6.2003 till the date of award and, thereafter, from the date of award till the actual payment of the award amount.*
>
> *8.1.2 The interest claimed at the rate of 18% per annum is in accordance with the provisions of the contract between the parties, as referred to under claim No.5 above.*
>
> *8.1.3 In addition thereto, it is submitted that even under the provisions of the Act of 1996 interest at the rate of 18% per annum is payable on the award amount.*
>
> *8.1.4 The AT is fully competent to award interest for the pendente-lite as well as future period as per the settled position of law in this regard. The claimant refers to and relies upon the judicial*

pronouncements of the Hon'ble Supreme Court, as detailed in para 5.5 above.

8.1.5 In view thereof, it is submitted that the claimant is entitled to award of interest at the rate of 18% per annum on the award amount for the pendente-lite and future period.

8.1.6 The claimant has also claimed costs of these proceedings, and, in regard thereto, it is submitted that the respondent/Employer had been acting arbitrarily and in flagrant disregard, rather breach, of contractual provisions.

8.1.7 The respondent has also not conducted itself in accordance with law of the land and had arbitrarily, whimsically and capriciously been withholding huge amount due to the claimant under the contract, in question.

8.1.8 The claimant has been constrained to pursue its legal remedies to recover its legitimate dues. The claimant, therefore, is entitled to, and the respondent is liable for the amount incurred by the claimant in pursuing its legal remedies against the respondent, inter alia, by way of present arbitral proceeding.

8.1.9 As on date, the claimant has already incurred amounts in the sum of Rs.30 lacs (approx.) which includes the amount of fees paid to the Hon'ble Members of this Arbitral Tribunal, the fees paid to the Technical Consultants and Legal Advisors for present arbitral proceedings and the amount incurred in holding of hearings of the arbitral proceedings etc.

8.1.10 Further amount is likely to be incurred by the claimant in this regard inasmuch as the proceedings are still not completed/concluded. The claimant craves leave to file a detailed statement of expense with an affidavit in this regard at a later date.

8.1.11 The claimant relies upon the following judicial pronoucements in support of its said claim:-

1. Jagdish Rai & Brother Vs. Union of India 1999(1) Arbl R696
2. Mohinder Pal singh vs. Northern Railways 143(207) DLT 634

8.2 ***Respondent's submissions***

8.2.1 The claim for interest is not maintainable amongst others on the following grounds:

In respect of claims for pendente lite interest no interest is payable inasmuch as it is only a claim for an unascertained sum of money.

The claim amount becomes ascertained sum of money only on the date of making of the award, if at all the claim is allowed which may qualify for interest at the discretion of the Tribunal from the date of award or from such date as has been fixed by the tribunal in the award.

8.2.2. Reference is being made to the following decisions of the Hon'ble Supreme Court:

Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa Vs. N.C. Budharaj (dead) by LRs AIR 2001 SC 626. (Annexed herewith as Annexure-B). The relevant part of the judgment states as follows:-

"Para 18......... the next contention is that no interest could be awarded for the period before the suit on the amount of damages decreed. Legal position with respect to this is well settled: (see Bengal Nagpur Railway Co. Ltd. Vs. Ruttanjit (AIR 1938 PC 67) that the decision of the judicial committee was relied upon by this court in Seth Thawardas Pherumal v. The Union of India (AIR 1955 SC 468). The same view was expressed by this Court in Union of India Vs. A.L. Rallia (AIR 1963 SC 1685). In the absence of any usage or contract, express or implied, or of any provision of law to justify the Award of interest, it is not possible to award interest by way of damages...."

8.2.3 It has been held by the Hon'ble Supreme Court in the following cases that having regard to down trend in the economy and lowering of interest rates by banks, interest may not be granted more than 9%. If at all having regard to the facts and circumstances of the case, the Ld AT considers a particular case fit for award of interest, it should not be more than 9%. (Krishna Bhagya Jal Nigam Ltd. Vs. Harish Chandra Reddy & Anr (2007) 2 SCC 720) & DDA and others Vs. Joginder S. Monga and others (2004) 2 SCC 297).

8.3 ***Claims 8, 9 & 10 – Findings and Award of A.T.***

8.3.1 ***Interest***

The claimant claims interest @18% p.a. From 11.6.2003. In addition cost of sourcing fund has been claimed under Claim No.5.

As regards interest, the Hon'ble Supreme Court held in the Bhagwati Oxygen ltd. Vs. Hindustan Cooper Ltd. (2005) 6 SCC 462 following the Constitution Bench in Buddhiraja's case (2001) 2 SCC

> *721, that the Tribunal has the power to grant pre-reference, pendente lite and future interest. As per the prevailing practice and as allowed in several cases by the Supreme Court and as claimed by the claimant in these proceedings a commercial rate of interest of 18% p.a. May be justified as was held in the case of Bhagwati Oxygen supra. The A.T., however, consider that the rate of 12% simple interest per annum to be just and reasonable on the sums awarded having regard to the facts and circumstances of this commercial contract."*

Since the claim of interest @18% though was not found to be justified and the reasoning given I have already held is not justifiable, in essence, lacked by any settled law or provisions but I cannot remain oblivious of the fact that the claim was for an unascertained amount of money i.e. particulary with regard to prolongation cost. No doubt, for variation clause, there had been some substance in the claim of the contractor and as well as the submission of Mr. Bali, though admittedly, the measurement book has not seen the light of the day. There could be reference to certain other documents which have not been discussed in extenso. In my view, the Arbitral Tribunal has committed illegality in awarding interest @12% and therefore, is liable to be fixed at 9%, by taking into consideration the provisions of Interest Act, 1978 and this aforementioned view of mine is derived from the judgment of Hon'ble Supreme Court rendered in ***U.P. Cooperative Federation ltd. Vs. M/s Three Circles 2009(4) RCR (Civil) 546.*** The ratio decidendi culled out in the judgment of ***Bhagwati Oxygen Ltd.'s case*** (supra) and other judgments relied upon by Mr. Bali provided particular amount of interest. Clause 60.8 does not refer to interest at compound rate with regard to outstanding amount, particularly unascertained, thus, the order of the Objecting Court reducing the interest from 12% to 7% is hereby set aside and the rate of interest would be 9% per annum.

As regards the interpretation of awarding of the amount for variation in both the contracts, there would have been a force in the submission of Mr. Jindal and Mr. Bansal as it was not backed by documentary evidence on record, in essence, the claim was not in accordance with the terms and conditions of the contract indicated above, but, the fact remains that the Department had not taken care of the fact that during the pendency of the hearing, the Tribunal directed the claimant to submit analysis of the amount claimed in respect of each of the claim made and the analaysis in respect of the claim was filed as Ex.CH-3. For the sake of brevity, the relevant portion of the same reads as under:-

> "*During the hearing of the mater, the claimant was directed by this Hon'ble AT to file analysis of the amounts being claimed in respect of the each of the claim made. The analysis in respect of such claim amount is being filed herewith as Ex.CH-3.*"

The Engineer at the relevant time never asked for the details of extra rate claimed by the claimant and this fact has been noticed by the Tribunal whereby copy of aforementioned notice issued to the Engineer under Clause 67.1, was also issued to the Employer and despite being aware of the claimant's claim, the Employer did not demand any rate analaysis. However, the Tribunal had undertaken the exercise of examining the claim and found that as per the terms and conditions of the contract, the Engineer was obliged to determine fresh rates (value the variations) and communicate the same to the Contractor. It was the Employer, who had appointed the Engineer and had the power and control over him, in essence, was to ensure that the Engineer fulfilled and performed his functions as per the terms and conditions of the Contract. The Arbitral Tribunal found that no analaysis of the fresh rate was prepared by the Engineer nor any analysis for extra claims as claimed by the contractor was called for from him. The relevant portion of the finding given by the Arbitral Tribunal reads as under:-

> "*3.3.8 The A.T. has carefully considered the rival contentions. In our view, under clause 52.2, it was incumbent on the Engineer to fix new rates for such items (with value more than 5% of the Contract Price) whose quantities got varied by more than 255. However, the Engineer did not fix new rates. When the claim was referred to him uner Clause 67.1 for Engineer's Decision, the claim was rejected as noted in an earlier paragraph. No analysis for any fresh rates was prepared by the Engineer nor any analysis for the extra rates as claimed by the Contractor was called for from him.*"

The argument of Mr. Jindal, learned Senior Counsel that the aforementioned reasoning is in isolation of the proviso to the clause falls flat. The proviso would have come into force, had the exercise of analysis been done. The Tribunal found that once the twin conditions of 5% of the contract price and variation in excess of 25% as laid down in Clause 52.2 were fulfilled for any item, the contractor shall be eligible for new rates.

There is another aspect of the matter. The Engineer in his decision on 04.02.2000 in pursuant to provisions of Clause 67.1 rejected the claim No.2 for abnormal variations in quantities and the reasoning was that twins conditions, namely the individual item exceeding 5% of the conract price and actual variation being more than 25% of the quantity were not likely to be complied with. In fact, the Engineer at the relevant time did not ask for the details of the extra rate claimed and therefore, such decision lacked by any documenary evidence. In other words, the extra rates claimed by the contractor were never disputed by the Engineer.

There is no dispute to the ratio decidendi culled out from the

Judgments referred to by Mr. Jindal, learned Senior Counsel but the facts and circumstances of the case in hand have to be looked into.

Mr. Jindal, has not been able to rebut the contention of Mr. Bali, that the calculation referred to by the Objecting Court in arriving at a calculation regarding the claim of variation was not the part and parcel of the records before the Arbitral Tribunal. In fact, it was their own calculation submitted during the course of the arguments. It is strange that it was not only a case of re-appreciation of evidence but also taking on record new evidence. The parties had raised this argument that the aforementioned calculation was only part and parcel of the written submissions submited on behalf of the State of Haryana. In my view, the alleged exercise done by the Objecting Court is alien to the provisions of Section 34 of the 1996 Act, much less, the ratio decidendi culled out from the judgment of Hon'ble Supreme Court in ***Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49*** and ***National Highway Authority of India Vs. Cementation India Ltd. 2015(3) RAJ 1.***

The ultimate result, the awards of the Tribunal and orders passed by the Objecting Court regarding “Claim No.4” and “Claim No.2” qua prolongation of cost in respect of Contract Work HR-1 and Contract Work HR-II respectively, are hereby set aside, meaning thereby the the appeals filed by the State i.e. FAO Nos.6130 and 6202 of 2014 in this regard are allowed.

The awards regarding “Claim No.3” and “Claim No.1” qua abnormal variations in respect of Contract Work HR-1 and Contract Work HR-II respectively are upheld and the orders of the Objecting Court are set aside, meaning thereby, the appeals filed by the contractor i.e. FAO

Nos.9063 and 9750 of 2014 in this regard are allowed and the appeals filed by the State i.e. FAO Nos.6130 and 6202 of 2014 are dismissed.

As regards the interest, the Awards passed by the Arbitral Tribunal and the orders passed by the Objecting Court are modified to the above extent, meaning thereby, the appeals filed by the Contractor i.e. FAO Nos.9063 and 9750 of 2014 are partly allowed and the appeals filed by the State i.e. FAO Nos.6130 and 6202 of 2014 are dismissed.

(AMIT RAWAL)
JUDGE

December 30, 2016
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No