

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

Judgment reserved on 22nd April, 2016
Judgment delivered on 28th April, 2016

+ ARB.P. 78/2016

**WINNER CONSTRUCTIONS PRIVATE
LIMITED**

..... Petitioner

Through: Ms.Renuka Arora, Adv.

Versus

UNION OF INDIA

..... Respondent

Through: Mr.Jaswinder Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 to refer additional Claim No. 1, additional claim No. 1A, Claim No.1, Claim No.2, Claim No. 10 and Claim No. 15 to learned Arbitrator Mr.V.K. Malik appointed by the respondent.

2. It is suffice to state during the course of the submissions, the learned counsel for the petitioner has stated that the relief is only confined to additional claim no. 1, which is reproduced as under:

“Whether the respondent is in breach of contract? If yes, whether the action of the respondent in levying the L.D/ compensation is illegal and arbitrary. Contractor claims declaratory award declaring the action taken

under clause 2 of the agreement as illegal and uncontractual.”

3. Some of the facts relevant for deciding the present petition are that pursuant to NIT for "Construction of Residential Quarters for staff and officers of Lok Sabha Secretariat etc. at R.K. Puram, New Delhi including internal and external water supply and sanitary installation, development work and internal electrical installations, the Petitioner submitted its bid and was awarded the contract on 15.06.2011.

4. The petitioner submitted the earnest money amounting to Rs.53,92,792/- and Performance Bank Guarantee for an amount of Rs. 2,40,25,063/-.

5. It is the case of the petitioner that the work was completed on 10.12.2014, but the respondent gave the completion certificate only on 24.04.2015 w.e.f the said date.

6. It is averred by the petitioner that the respondent has withheld the amount of Rs.2,34,02,878/- towards Civil Work & Rs.4,66,940/- towards Electrical Works (totalling to Rs.2,38,69,818/-) on account of alleged milestones not having been adhered to by the Petitioner.

7. Vide letter dated 03.07.2015, respondent levied the compensation under clause 2 of the agreement for an amount of Rs.4,80,50,126/-. The plea of the petitioner for personal hearing was rejected. On 30.07.2015, respondent directed the petitioner to deposit the aforesaid amount of Rs. 4,80,50,126/- towards levy of compensation under Clause 2 of the agreement imposed by the Superintending Engineer within 15 days. The petitioner filed a petition under Section 9 of the Arbitration and

Conciliation Act, 1996, being OMP. No. 352/2015, which was disposed of by this Court vide order dated 17.07.2015 observing that in case the respondent admits that certain amounts are admittedly payable/retained to of the petitioner under the subject contract and such amounts are in excess of the claim of the respondent, then, in such a case only the respondent will not withhold the amounts from any other contracts in which the petitioner has to receive the payments.

8. The petitioner filed another petition under Section 9 of the Arbitration and Conciliation Act, 1996 being OMP No. 452/2015, wherein this Court stayed the encashment of the bank guarantees.

9. On 14.09.2015, the petitioner invoked the arbitration clause and requested for appointment of an Arbitrator. On 23.12.2015, after some correspondence, the Chief Engineer (NDZ)-VII, CPWD, appointed Mr. V.K. Malik as a sole Arbitrator to adjudicate the disputes between the parties.

10. It appears that while invoking the arbitration, the petitioner had raised 20 claims, whereas while referring the disputes to the arbitration vide letter dated 23.12.2015, the Chief Engineer, Chief Engineer (NDZ)-VII, CPWD had referred only 18 claims of the petitioner. He did not refer amongst other claims, additional claim no.1, which has already been reproduced above.

11. The petitioner vide its letter dated 31.12.2015 brought to the notice of the respondent that the Chief Engineer was only an appointing authority to refer the disputes to arbitration and therefore all the disputes were to be referred to arbitration and in that regard, petitioner relied

upon a circular dated 22.01.2007. That apart, it is also the submission of the petitioner that the amounts of certain claims have been reduced. The petitioner relied upon clause 25 of the settlement of disputes and arbitration to contend that all disputes need to be referred.

12. When the matter was listed on 05.02.2016, Mr. Jaswinder Singh, learned counsel appeared for the respondent accepted the notice. Liberty to file the reply was granted. But no reply has been forthcoming and Mr. Jaswinder Singh argued the matter without any reply.

13. Learned Counsel for the petitioner apart from reiterating the stand taken in the petition would submit that Clause-25 of the contract being very clear and all disputes need to be referred to arbitration. She also states that additional claim no. 1 of which reference is sought in the present application does not flow from Clause-2 on which reliance has been placed by the counsel for the respondent. She states that the issue is not with regard to the quantification made by the Superintending Engineer but the issue is whether the petitioner or the respondent were in breach of contract. Determination of such an issue precedes the determination of the damages by the superintending charges. She would rely upon the judgment of the Supreme Court in the case reported as **2011 5 SCC 758 J.G. Engineering Pvt. Ltd. v. Union of India and Anr.** in support of her contention.

14. Mr. Jaswinder Singh, learned counsel for the respondent would submit that even though Clause-2 of the contract which refers to compensation for delay has not been filed on record, a reference to the same has been made in the judgment of the Supreme Court in **Vishwanath Sood v. Union of India AIR 1989 SCC 1952** on which he

has placed reliance to contend that determination of the Superintending Engineer with regard to liquidated damages being final, such a dispute is not arbitrable. He would draw my attention to Para 8 and 10 of the judgment.

15. As noted above, the only issue which arises for determination is whether Claim No. 1 need to be referred to by the Arbitrator.

16. In substance, the stand of the respondent is that such a claim is not arbitrable.

17. Before I deal with the issue, as pointed out by Mr. Jaswinder Singh from the judgment of *Vishwanath Sood (supra)*, clause 2 and 25 of the Contract reads as under:-

"Clause 2: Compensation for delay: The time allowed for carrying out the work as entered in the tender shall be strictly observed by the contractor and shall be deemed to be the essence of the contract on the part of the contractor and shall be reckoned from the fifteenth day after the date on which the order to commence the work is issued to the contractor. The work shall throughout the stipulated period of the contract be proceeded with all due diligence and the contractor shall pay as compensation an amount equal to one per cent, or such smaller amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the amount of the estimated cost of the whole work as shown in the tender for every day that the work remains

uncommenced, or unfinished, after proper dates. And further, to ensure good progress during the execution of the work, the contractor shall be bound in all cases in which the time allowed for any work exceeds, one month (save for special jobs to complete one-eighth of the whole of the work before one-fourth of the whole time allowed under the contract has elapsed; three-eighth of the work, before one-half of such time has elapsed, and three fourth of the work, before three-fourth of such time has elapsed. However, for special jobs if a time-schedule has been submitted by the Contractor and the same has been accepted by the Engineer-in- charge, the contractor shall comply with the said time-schedule. In the event of the contractor failing to comply with this condition, he shall be liable to pay as compensation an amount equal to one per cent or such smaller amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the said estimated cost of the whole work for every day that the due quantity of work remains incomplete; provided always that the entire amount of compensation to be paid under the provisions of this clause shall not exceed ten percent, on the estimated cost of the work as shown in the tender."

"CLAUSE 25:-

Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the

specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

(i) If the contractor considers any work demanded of him to be outside the requirements of the contract, or disputes any drawings. record or decision given in writing by the Engineer In-Charge on any matter in connection with or arising out of the contract or carrying out of the work, to be unacceptable, he shall promptly within 15 days request the Superintending Engineer in writing for written instruction or decision. Thereupon, the Superintending Engineer shall give his written instructions or decision within a period of one month from the receipt of the contractor's letter.

If the Superintending Engineer fails to give his instructions or decision in writing within the aforesaid period or if the contractor is dissatisfied with the instructions or decision of the Superintending Engineer,

the contractor may, within 15 days of the receipt of Superintending Engineer's decision, appeal to the Chief Engineer who shall afford an opportunity to the contractor to be heard, if the latter so desires, and to offer evidence in support of his appeal. The Chief Engineer shall give his decision within 30 days of receipt of contractor's appeal. If the contractor is dissatisfied with this decision, the contractor shall within a period of 30 days from receipt of the decision, give notice to the Chief Engineer for appointment of arbitrator on prescribed proforma as per Appendix XV, failing which the said decision shall be final binding and conclusive and not referable to adjudication by the arbitrator.

(ii) Except where the decision has become final, binding and conclusive in terms of Sub Para(i) above, disputes or difference shall be referred for adjudication through arbitration by a sole arbitrator appointed by the Chief Engineer, CPWD, in charge of the work or if there be no Chief Engineer, the Additional Director General of the concerned region of CPWD or if there be no Additional Director General, the Director General of Works, CPWD. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid. Such person shall be entitled to proceed with the reference from the stage at which it was left by his

predecessor.

It is a term, of this Contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute alongwith the notice for appointment of arbitrator and giving reference to the rejection by the Chief Engineer of the Appeal.

It is also a term of this Contract that no person, other than a person appointed by such Chief Engineer CPWP, or Additional Director General or Director General of Works, CPWD, as aforesaid, should act as Arbitrator and if for any reason that is not possible, the matter shall not be referred to arbitration at all.

It is also a term of this contract that if the contractor does not make any demand for appointment of arbitrator in respect of any claims in writing as aforesaid within 120 days of receiving the intimation from the Engineer-in-charge that the final bill is ready for payment, the claim of the contractor shall be deemed to have been waived and absolutely barred and the Government shall be discharged and released of all liabilities under the contract in respect of these claims.

The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) or any statutory modifications or re-enactment thereof and the rules made thereunder and for

the time being in force shall apply to the arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any of the arbitrator shall

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18. At the first instance, I would refer to the judgment relied upon by the Mr. Jaswinder Singh in *Vishwanath Sood (Supra)*. In the said case, facts were that appellant Vishwanath Sood undertook the construction of a Farmers' Community Centre Building at Thanedhar by an agreement entered into with the Union of India and the State of Himachal Pradesh

dated 20.6.1968. Certain disputes arose between the parties to the agreement and in terms of clause 25 of the agreement, they were referred to a sole Arbitrator. The appellant submitted a claim of Rs.1,28,000/- while the respondents also submitted a counter-claim. By an award dated 20.3.1972, the arbitrator awarded an amount of Rs.31,932/- to the appellant and a sum of Rs.21,504/- to the respondents. The award was filed in the court. The appellant filed an application in the court for modification or correction of the award in respect of three items of his claim (1, 8 and 9) and item no.1 of the respondent's counter claim. The respondent also filed its objections to the award and prayed that a sum of Rs.8,080.29/- should be awarded in favour of the Department or the award remitted to arbitrator. The learned single Judge dismissed the objections of the respondents. So far as the appellant's prayers were concerned, he allowed the same only in respect of item no.1 of the respondent's counter claim. He held that the arbitrator was not justified in granting to the Government a sum of Rs.20,000/- against a claim of 10% compensation on the tendered amount for not executing the work in accordance with the terms and conditions of the agreement, having regard to clause 2 of the contract read with clause 25 it was clear that any compensation under clause 2 could be adjudicated upon only by the superintending Engineer or the Development Commissioner and that it was not open to the arbitrator to have entered upon a reference in regard to this claim at all. Both the appellant and the respondents preferred appeals to the Division Bench. The Bench reversed the order of the learned single Judge. It set aside the order of the learned single Judge in so far as the sum of Rs.20,000/- was deleted thereby from the award of the arbitrator. It pointed out that, while in the ordinary course, the rate of

compensation payable by the contractor is one per cent of the amount of the estimated cost of the whole work, under clause 2, the Superintending Engineer is authorised to depart from this figure and determine the compensation at a smaller amount if there are any extenuating circumstances in favour of the appellant. The question however was whether the compensation determined under clause 2 is excluded from the scope of arbitration under clause 25. The Division Bench answered this question in the negative. It pointed out that the *sine qua non* of clause 2 was that the contractor should have been guilty of delay in commencing the work or in completing it but the clause did not specify either the authority or the procedure for determining whether the contractor is responsible for the default. Observing that there can be a serious dispute in a particular case as to the person who is responsible for the delay, the Bench took the view that the determination of this dispute cannot be excluded from the scope of clause 25. The Bench observed that inasmuch as a bona fide dispute can be raised by the contractor in regard to his liability to compensation under clause 2 and no machinery is provided in clause 2 for the resolution of that dispute, there is ample justification for holding that resort can be had to arbitration under clause 25. The statement in clause 2 that the decision of the Superintendent Engineer is final, according to the Bench, merely constituted a declaration that no officer in the department could disturb his quantification. But this finality cannot be construed as extending to exclude the jurisdiction of the Arbitrator under clause 25. On this view of the matter, the Division Bench found itself unable to agree with the learned Single Judge that the Arbitrator had travelled outside his jurisdiction in awarding a sum of Rs.20,000/- as compensation to the

Government against the appellant for the delay in executing the work. The award was restored to its original terms and the appellant was held entitled to interest at 6 per cent on the award amount found due to him after adjusting the sum awarded by the arbitrator in favour of the Government against the sum awarded in favour of the appellant.

19. Before the Supreme Court the appellant (contractor) pressed his three claims which were rejected by the Arbitrator. Suffice to state, the Supreme Court also did not find any illegality in the rejection of those claims. Insofar as, the award of counter claim of the respondents is concerned, the Supreme Court, in para 10 of the judgment has held as under:-

“10. We may confess that we had some hesitation in coming to this conclusion. As pointed out by the Division Bench, the question of any negligence or default on the part of the contractor has many facets and to say that such an important aspect of the contract cannot be settled by arbitration but should be left to one of the contracting parties might appear to have far reaching effects. In fact, although the contractor in this case might object to the process of arbitration because it has gone against him, contractors generally might very well prefer to have the question of such compensation decided by the arbitrator rather than by the Superintending Engineer. But we should like to make it clear that our decision regarding non arbitrability is only on the question of any compensation which the Government might claim in

terms of clause 2 of the contract (emphasis supplied). We have already pointed out that this is a penalty clause introduced under the contract to ensure that the time schedule is strictly adhered to. It is something which the Engineer- incharge enforces from time to time when he finds that the contractor is being recalcitrant, in order to ensure speedy and proper observance of the terms of the contract. This is not an undefined power. The amount of compensation is strictly limited to a maximum of 10% and with a wide margin of discretion to the Superintending Engineer, who might not only reduce the percentage but who, we think, can even reduce it to nil, if the circumstances so warrant. It is this power that is kept outside the scope of arbitration. We would like to clarify that this decision of ours will not have any application to the claims, if any, for loss or damage which it may be open to the Government to lay against the contractor, not in terms of clause 2 but under the general law or under the Contract Act. As we have pointed out at the very outset so far as this case is concerned the claim of the Government has obviously proceeded in terms of clause 2 and that is the way in which both the learned single Judge as well as the Division Bench have also approached the question. Reading clauses 2 and 25 together we think that the conclusion is irresistible that the amount of compensation chargeable under clause 2 is a matter which has to be

adjudicated in accordance with that clause and which cannot be referred to arbitration under clause 25.”

20. From the reading of the aforesaid paragraph of the judgment, it is clear that the Supreme Court has clearly held, the issue of non arbitrability is only on the question of any compensation, which the Government might claim in terms of clause 2 of the Contract. In other words, the issue whether the contractor had delayed the project would still be arbitrable.

21. The judgment of the Supreme Court, on which the learned counsel for the petitioner relied ***J.G. Engineers Pvt. Ltd. (supra)***, is also on similar lines. The Supreme Court in paras 17, 18 and 19 has held as under:-

“17. Clauses (2) and (3) of the contract relied upon by the respondents, no doubt make certain decisions by the Superintending Engineer and Engineer-in-Charge final/final and binding/final and conclusive, in regard to certain matters. But the question is whether clauses (2) and (3) of the agreement stipulate that the decision of any authority is final in regard to the responsibility for the delay in execution and consequential breach and therefore exclude those issues from being the subject matter of arbitration. We will refer to and analyse each of the ‘excepted matters’ in clauses (2) and (3) of the agreement to find their true scope and ambit :

(i) Clause (2) provides that if the work remains uncommenced or unfinished after proper dates, the contractor shall pay as compensation for everyday's delay an amount equal to 1% or such small amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the estimated cost of the whole work as shown in the tender. What is made final is only the decision of the Superintending Engineer in regard to the percentage of compensation payable by the contractor for everyday's delay that is whether it should be 1% or lesser. His decision is not made final in regard to the question as to why the work was not commenced on the due date or remained unfinished by the due date of completion and who was responsible for such delay.

(ii) Clause (2) also provides that if the contractor fails to ensure progress as per the time schedule submitted by the contractor, he shall be liable to pay as compensation an amount equal to 1% or such smaller amount as the Superintending Engineer (whose decision in writing shall be final) may decide on the estimated cost of the whole work for everyday the due quantity of the work remains incomplete, subject to a ceiling of ten percent. This provision makes the decision of the Superintending Engineer final only in regard to the percentage of compensation (that is, the quantum) to be levied and not on the question as to whether the contractor had failed to complete the work or the portion of the work within the

agreed time schedule, whether the contractor was prevented by any reasons beyond its control or by the acts or omissions of the respondents, and who is responsible for the delay.

(iii) The first part of clause (3) provides that if the contractor delays or suspends the execution of the work so that either in the judgment of the Engineer-in-Charge (which shall be final and binding), he will be unable to secure the completion of the work by the date of completion or he has already failed to complete the work by that date, certain consequences as stated therein, will follow. What is made final by this provision is the decision of the Engineer-in-Charge as to whether the contractor will be able to secure the completion of the work by the due date of completion, which could lead to the termination of the contract or other consequences. The question whether such failure to complete the work was due to reasons for which the contractor was responsible or the department was responsible, or the question whether the contractor was justified in suspending the execution of the work, are not matters in regard to which the decision of Engineer-in-Charge is made final.

(iv) The second part of clause (3) of the agreement provides that where the contractor had made himself liable for action as stated in the first part of that clause,

the Engineer-in-Charge shall have powers to determine or rescind the contract and the notice in writing to the contractor under the hand of the Engineer-in-Charge shall be conclusive evidence of such termination or rescission. This does not make the decision of the Engineer-in-Charge as to the validity of determination or rescission, valid or final. In fact it does not make any decision of Engineer-in-Charge final at all. It only provides that if a notice of termination or rescission is issued by the Engineer-in-Charge under his signature, it shall be conclusive evidence of the fact that the contract has been rescinded or determined.

(v) After determination or rescission of the contract, if the Engineer-in-Charge entrusts the unexecuted part of the work to another contractor, for completion, and any expense is incurred in excess of the sum which would have been paid to the original contractor if the whole work had been executed by him, the decision in writing of the Engineer-in-Charge in regard to such excess shall be final and conclusive, shall be borne and paid by the original contractor. What is made final is the actual calculation of the difference or the excess, that is if the value of the unexecuted work as per the contract with the original contractor was Rs.1 lakh and the cost of getting it executed by an alternative contractor was Rs.1,50,000/- what is made final is the certificate in writing issued by the Engineer-in-Charge that Rs.50,000 is the excess cost.

The question whether the determination or rescission of the contractor by the Engineer-in-Charge is valid and legal and whether it was due to any breach on the part of the contractor, or whether the contractor could be made liable to pay such excess, are not issues on which the decision of Engineer-in-Charge is made final.

18. Thus what is made final and conclusive by clauses (2) and (3) of the agreement, is not the decision of any authority on the issue whether the contractor was responsible for the delay or the department was responsible for the delay or on the question whether termination/rescission is valid or illegal. What is made final, is the decisions on consequential issues relating to quantification, if there is no dispute as to who committed breach. That is, if the contractor admits that he is in breach, or if the Arbitrator finds that the contractor is in breach by being responsible for the delay, the decision of the Superintending Engineer will be final in regard to two issues. The first is the percentage (whether it should be 1% or less) of the value of the work that is to be levied as liquidated damages per day. The second is the determination of the actual excess cost in getting the work completed through an alternative agency. The decision as to who is responsible for the delay in execution and who committed breach is not made subject to any decision of the respondents or its officers, nor

excepted from arbitration under any provision of the contract.

19. In fact the question whether the other party committed breach cannot be decided by the party alleging breach. A contract cannot provide that one party will be the arbiter to decide whether he committed breach or the other party committed breach. That question can only be decided by only an adjudicatory forum, that is, a court or an Arbitral Tribunal.”

22. In para 21, the Supreme Court has also, by relying upon its judgment in **BSNL vs. Motorola India Pvt. Ltd (2009) 2 SSC 337** held as under:-

“21. The question whether the issue of breach and liability are excluded from arbitration, when quantification of liquidated damages are excluded from arbitration was considered by this Court in Bharat Sanchar Nigam Ltd. vs. Motorola India Ltd. (2009 (2) SCC 337). This court held:

“23. The question to be decided in this case is whether the liability of the respondent to pay liquidated damages and the entitlement of the appellant, to collect the same from the respondent is an excepted matter for the purpose of Clause 20.1 of the General Conditions of contract. The High Court has pointed out correctly that the authority of the purchaser (BSNL) to quantify the liquidated damages payable by the supplier Motorola arises once it is found

that the supplier is liable to pay the damages claimed. The decision contemplated under Clause 16.2 of the agreement is the decision regarding the quantification of the liquidated damages and not any decision regarding the fixing of the liability of the supplier. It is necessary as a condition precedent to find that there has been a delay on the part of the supplier in discharging his obligation for delivery under the agreement.

24. It is clear from the reading of Clause 15.2 that the supplier is to be held liable for payment of liquidated damages to the purchaser under the said clause and not under Clause 16.2. The High Court in this regard correctly observed that it was not stated anywhere in Clause 15 that the question as to whether the supplier had caused any delay in the matter of delivery will be decided either by the appellant/BSNL or by anybody who has been authorized on the terms of the agreement. Reading Clause 15 and 16 together, it is apparent that Clause 16.2 will come into operation only after a finding is entered in terms of Clause 15 that the supplier is liable for payment of liquidated damages on account of delay on his part in the matter of making delivery. Therefore, Clause 16.2 is attracted only after the supplier's liability is fixed under Clause 15.2. It has been correctly pointed out by the High Court that the question of holding a person liable for Liquidated Damages and the question of quantifying the amount to be paid by way of Liquidated

Dmages are entirely different. Fixing of liability is primary, while the quantification, which is provided for under Clause 16.2, is secondary to it.

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26. Quantification of liquidated damages may be an excepted matter as argued by the appellant, under Clause 16.2, but for the levy of liquidated damages, there has to be a delay in the first place. In the present case, there is a clear dispute as to the fact that whether there was any delay on the part of the respondent. For this reason, it cannot be accepted that the appointment of the arbitrator by the High Court was unwarranted in this case. Even if the quantification was excepted as argued by the appellant under Clause 16.2, this will only have effect when the dispute as to the delay is ascertained. Clause 16.2 cannot be treated as an excepted matter because of the fact that it does not provide for any adjudicatory process for decision on a question, dispute or difference, which is the condition precedent to lead to the stage of quantification of damages." (emphasis supplied)."

23. In view of the limited submissions made by the counsel for the parties on the interpretation of clauses 2 and 25, the claim made by the petitioner herein primarily relating to the fact that the respondent was responsible for the delay, it must be held that the claim is arbitrable and should have been referred to by the competent authority. Accordingly, the present petition needs to be allowed. The limited prayer of referring

the additional claim No.(I) to the arbitration is allowed. The petition is disposed of. No costs.

(V.KAMESWAR RAO)
JUDGE

APRIL 28, 2016

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