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

Reserved on : 6th September, 2018

Date of Decision: 1st October, 2018

+ **O.M.P. 611/2014 & I.A. 6038/2018**

IRCON INTERNATIONAL LIMITED

..... Petitioner

Through: Mr. Chandan Kumar, Advocate (M-9810312011).

versus

M/S BABA BUILDERS

..... Respondent

Through: Mr. Pankaj Bhatia, Mr. Ashish Choudhary & Mr. Dhruv Surana, Advocates (M-9836411111).

CORAM:

JUSTICE PRATHIBA M. SINGH
JUDGMENT

Prathiba M. Singh, J.

1. Ircon International Limited (*hereinafter 'Petitioner'*) was awarded a contract for the construction of 317 dwelling units for Married Accommodation Projects, Ministry of Defence at Old Cantonment (Works) on 17th February, 2005 to M/s Baba Builders (*hereinafter 'contractor'*) which was the Claimant before the Arbitrator. The notice inviting tender (*hereinafter 'NIT'*) for the said works was issued on 22nd November, 2004 in response to which the bid was awarded to the contractor which thereafter resulted in letter of intent (*hereinafter 'LOI'*) being issued on 17th February, 2005. The period of completion of work was 18 months from the LOI i.e. 16th August, 2006.

2. Within a few months, after the work was awarded i.e. on 24th August,

2005, notice was issued by Ircon to the contractor that the progress of the work was very slow. The said notice records that instead of 25% of work which ought to have been completed as per the milestones, less than 3% of the work was in fact executed. Accordingly, show cause notice was issued seeking a reply within 7 days as to why action ought not to be initiated under Clause 50 of the General Conditions of Contract (*hereinafter 'GCC'*).

3. This letter was followed by letter dated 16th September, 2005 wherein it was recorded that no improvement was found on site and accordingly 48 hours notice was issued.

4. Finally on 21st September, 2005, a notice was issued "*partly withdrawing the works*".

5. In September, 2005, the performance security was forfeited. In December, 2006, Ircon demanded a sum of Rs.248.54 lakhs as risk purchase cost. On 10th February, 2007, after adjusting a sum of Rs.47.22 lakhs the balance of Rs.201.3 lakhs was demanded. Time period for executing part of the contract which was remaining with the contractor was extended till 30th June, 2010. On 8th August, 2011, the arbitration was invoked by the contractor, who raised various claims and Ircon also raised counter claims.

6. The Sole Arbitrator published the award on 7th March, 2014. The following claims of the contractor were allowed:

- i) refund of 60% security deposit – para 9.2;
- ii) refund of performance bank guarantee which was invoked by Ircon by holding that the contract was not part terminated but was merely modified under Clause 55 of G.C.C.;
- iii) directed payment of final bills RA 26 and 27 which were withheld for risk and cost recovery on the ground that since the contract was

merely modified, no risk purchase was involved;

iv) interest was awarded at 12%;

v) counter claims were rejected on the basis that no recovery in respect of work executed on the basis of risk and cost could be permitted as there was no termination of work.

7. Counsel for the Petitioner submitted that the Arbitrator has erred in holding that the present case involved modification of the work under Clause 55 and not part termination of the contract under Clause 50. According to counsel, the three notices that were issued by Ircon were clear and a reading of the same would show that, as per Clause 50, initially a 7 day notice was issued, thereafter a 48 hours notice and finally, part termination of the contract took place. He submits that the withdrawal of a large portion of works cannot be treated as modification. Accordingly, his submission was that the Arbitrator had interpreted the contract wrongly and hence the rule *Noscitur a sociis* applies. He relies on ***Hindustan Construction Co. Ltd. v. National Hydro Electric Power Corporation. C.S.(OS) 554-A/1997 decided on 11.02.2010.*** Counsel also submits that the Arbitrator has gone beyond what was claimed by the Claimant and on this proposition he relies on ***D.D.A. v. Krishna Construction Company. Steel Authority of India v. J.C. Budharaja, Government and Mining Contractor (1999) 8 SCC 122.*** According to counsel, the contractor had not sought a declaration that the termination was in fact a modification. In the absence of the said relief sought by the contractor, the Arbitrator has gone beyond his mandate by holding that the termination is merely a modification. It is further submitted that partial termination of the work took place in 2005 where as the arbitration was invoked only in 2011. Thus, according to him,

the claims were also barred by limitation. According to him, the contractor having accepted the termination, the consequences ought to follow.

8. On the other hand, counsel for the contractor/Respondent submits that the security deposit was released by the Arbitrator as per what was argued by Ircon in the arbitration proceedings. He submitted that the issues that are being raised today were never argued before the Arbitrator. He further relies on the minutes of the meeting dated 12th July, 2011 wherein it was admitted that the termination of the work was not correct. In fact, Mr. Pankaj Bhatia, counsel for the contractor submitted that all the legal issues which are currently being raised by Ircon were never raised before the Arbitrator. He submitted that the entire work having not been taken away, the action of Ircon only constitutes modification under Clause 55 and not termination under Clause 50. Finally, he submitted that the scope of interference under Section 34 being of a limited nature and the view of the Arbitrator not being perverse, no interference is called for. He relies on the following judgments:

- *M/s JSC Centrodstroy v. M/s National Highways Authority of India bearing case number FAO (OS) 508/2013;*
- *Ircon International Ltd. v. Satya Prakash Builders Ltd. bearing case number FAO(OS)(COMM) 106/2017;*
- *Ircon International Ltd. v. Patil Rail Infrastructure Pvt. Ltd. bearing case number FA (OS)(COMM) 104/2018.*

Analysis and Findings

9. The court has heard the submissions of the parties. In order to determine as to whether there was Termination or Modification, the relevant clauses are required to be considered. As per the NIT dated 22nd November,

2004, the 'work' is described as under:

“Construction of 317 Dwelling Units for Married Accomodation Project (MAP), Ministry of Defence, at Old Cantonment (Stanley Road, Prayag Vihar, Wellington Road and Pawan Vihar) at Allahabad (Uttar Pradesh)”

10. At the time of submission of bid, earnest money of Rs.5 lakhs was given by the contractor. The work which was awarded was part of the project which was awarded by the Ministry of Defence to Ircon International Limited. The approx. cost of the work was Rs.1239 lakhs. The completion period and the defect liability period was stipulated as under:

“Completion Period:-

18 (Eighteen) Months except for Sample Floors. The Completion period for Sample Floors shall be 6 (Six) Months. The completion period of 18 months is inclusive of period required for completion of sample floors.

Defect Liability Period:-

24 (Twenty Four) Months from the date of handing over of completed works to the Clients. This period for specialised.... such as waterproofing and Anti-termite treatment shall be 10 (Ten) years.”

11. Under Clause 3 of the Special Conditions, performance security was to be given for an amount equivalent to 5% of the contract value. The said security was to be operative until the Engineer approves the same for discharge on satisfactorily completion of the defect liability period i.e. 24 months from the date of handing over of the works. As per Clause 3.2, the release of performance security would happen only upon the issue of certificate of satisfactory completion:

“3. 2 Release of Performance Security:

The whole of the Performance Security shall be liable

to be forfeited by the Employer/Engineer at the discretion of the Employer/Engineer, in the event of any breach of contract on the part of the Contractor or if the Contractor fails to perform or observe any of the conditions of the contract. On due and faithful completion of the Defect Liability Period, the Performance Security shall be returned to the Contractor, subject to the issue of Certificate of satisfactory Completion of Defect Liability Period by the Engineer.”

12. Ircon was also entitled to retain 10% of the value of each bill after adjusting the EMD amount till the total amount added up to 5% of the contract value. This was called as Retention Money. The said retention money, under Clause 3.3 was to be released in the following manner:

“3.3 Release of Retention Money:-

i) 60% of the Retention Money recovered shall be released to the Contractor along with the payment of final bill and acceptance of the same by the Contractor. The balance 40% shall be release after successful completion of defect liability period specified in the Contract, reckoned from the date on which the works have been handed over to the Client. This portion of retention money shall be released after all failures, defects, imperfections, shrinkages and faults have been rectified by the Contractor to the satisfaction of the Engineer and issue of Defect Liability certificate by the Engineer.

Where different defect liability periods are applicable to different parts of the works, the expression – “expiration of the defect liability period” shall for the purpose of this clause deemed to mean the expiry of last of such periods.”

13. All bills of the contractor were to be paid as per the procedure as

contained in Clause 21 of the Special Conditions. The billing was to be done on a monthly basis and the same was to be certified by the Engineer. The defect liability period was defined in Clause 23. The mile stones that were to be achieved by the contractor as per Clause 25.1 are as under:

<i>“At the end of 3 months</i>	<i>10%</i>
<i>At the end of 6 months</i>	<i>25%</i>
	<i>plus sample</i>
	<i>floors</i>
	<i>complete in</i>
	<i>all respect.</i>
<i>At the end of 9 months</i>	<i>45%</i>
<i>At the end of 12 months</i>	<i>70%</i>
<i>At the end of 15 months</i>	<i>95%</i>
<i>At the end of 18 months</i>	<i>100%”</i>

14. As per Clause 29, any delay in completion of work would attract a penalty of 0.5% per week subject to maximum of 10% of the contract value. Thereafter, the Engineer could get the left over work done at the risk and cost of the contractor. Clause 29 reads as under:

“29 COMPENSATION FOR DELAY (Ref. Clause 49.6 of G.C.C.)

Any delay in completion of the work shall bear penalty at the rate of 0.5% per week subjected to maximum of 10% of the contract value. Thereafter, Employer/Engineer may get the left over work done at the risk and cost of the Contractor and no claim will be entertained by the Employer/Engineer on this account.”

15. The terms “permanent works” and “defect liability period” have been defined in the General Conditions of Contract as under:

“1.0 s) “Permanent Work (s) / Work (s)” means the

works (other than temporary works) to be executed in accordance with the Contract or part/s thereof as the case may be and shall include extra or additional, altered or substituted items of work as required for performance of the Contract.

1.0 y) “Defect Liability Period” means the specified period of defects liability from the date of completion of the work as certified by the Engineer.”

16. As per Clause 8, a performance security of 2% of the original contract value had to be submitted by the contractor.

17. Clause 50 and Clause 55 which relate to termination and modification respectively read as under:

“50.1 Conditions leading to determination of contract

i. If the Contractor

a. becomes bankrupt or insolvent, or,

b. makes arrangements with or assignment in favour of his creditor, or agrees to carry out the contract under a committee of inspection of his creditors or

c. being a company or corporation goes into liquidation by a resolution passed by the Board of Directors/General Body of the share-holders or as a result of court orders (other than voluntarily liquidation for the purpose of amalgamation or reconstruction); or

d. has execution levied on his goods or property or the works, or

e. assigns or sublets the contract or any part thereof otherwise than as provided for under conditions of this contract, or

f. abandons the contract, or

g. persistently disregards instructions of the Engineer or contravenes any provisions of the

contract, or

h. fails to adhere to the agreed programme of work or fails to complete the works or parts of the works within the stipulated or extended period of completion, or is unlikely to complete the whole work, or part thereof within time because of poor record of progress; or

i. fails to remove materials from the site, or pull down or pull down and replace work, after receiving notice from the Engineer to the effect that the said materials or works have been condemned or rejected, or

j. fails to take steps to employ competent and/or additional staff and labour, or

k. fails to afford the Engineer or his representative proper facilities for inspecting the works of any part thereof,

l. promises, offers or gives any bribe, commission, gift or advantage, either himself or through his partners, agents or servants to any officer or employee of the Engineer or the Employer, or to any person on their behalf, in relation to obtaining or execution of this or any other contract with the Employer, or

m. suppresses or gives wrong information while submitting the tender.

In any such case the Engineer on behalf of the Employer may serve the Contractor with a notice in writing to that effect and if the Contractor does not, within 7 days after delivery to him of such notice, proceed to make good his default in so far as the same is capable of being made good, and carry on the work or comply with such instructions as aforesaid to the entire satisfaction of the Engineer, the Employer shall be entitled after giving 48 hours notice in writing to terminate the contract, as a whole or in part or parts (as may be specified in such

notice.)

ii. In such a case of termination, the Employer/Engineer may adopt the following courses

a) Take possession of the site and any materials, constructional plants, equipment, stores, etc.

b) Measure up whole or part of the work from which the Contractor has been removed, and get it completed by another contractor. The manner and method in which such work is to be completed, shall be completely at the discretion of the Engineer whose decision shall be final and binding.

c) Carry out the whole or part of the work from which the Contractor has been removed, by the employment of the required labour, materials, plants and equipment and other resources.

55.0 MODIFICATION TO WORK

The Engineer shall be competent to order in writing to enlarge or extend, diminish or reduce the works or make any alterations in their design, character, position, site, quantities, dimensions or in the method of execution or use of materials for the execution thereof and to any additional works to be done or any work not to be done.

The enlargement, extension, diminution, reduction, alternations or additions, referred to above shall in no way affect the validity of the contract, but shall be performed by the Contractor as provided therein and be subject to the same conditions, stipulations, obligations and rates as if they had been originally and expressly included and provided for in the Bill of Quantities, specifications and drawings, and the amount to be paid therefore shall be calculated in accordance with accepted rates and other extra items of works at the rates, determined as per contract. However, the rates of quantities exceeding 25% of those provided in Bill of Quantities shall be finalised as per clause 58 of these conditions.”

18. The Arbitrator has interpreted Clauses 50 and 55 and has held that there was no termination of the contract but merely modification. On the said basis, the Arbitrator has gone on to award refund of the security deposit, release of performance bank guarantee, and the amount which was held back from the RA bill. The Arbitrator has also rejected the counter claims.

19. A perusal of Clause 50 which relates to determination of contract due to contractor's default shows that Ircon had the power to terminate the contract "*as a whole or in part or parts*" as may be provided in the notice of termination. The manner in which the termination could take place was by issuance of, firstly, a 7 day notice to make good the default; secondly, a 48 hours' notice and finally, a notice of termination. The reasons for issuance of such a notice could be failure to adhere to the programme of work, failure to complete the work or part of the work within the stipulated/extended period of completion or even because of poor record of progress of work. Upon issuance of the notice, the consequences of the same would be that Ircon would be entitled to first take possession of the site, carry out measurements of the work executed and get the same completed. Under Clause 50.2 upon 50.1 (ii) (being satisfied), Ircon has the power to forfeit the entire performance security and the amount which is to be recovered which was executed at the risk and cost of the contractor would be deductible from the retention money which was retained by Ircon. In contrast to Clause 50, Clause 55 deals with *enlargement, extension, diminution, reduction or alterations or additions*. This Clause is quite specific.

20. The question that arises is as to whether the action of Ircon in the

present case is part termination/withdrawal or modification. The decision on almost all the claims depends on this issue.

21. While part termination/withdrawal is as per Clause 50, modification is as per Clause 55. There is no doubt that confusion has been created due to the manner in which the clauses are worded. A perusal of Clause 55 reveals that it relates to enlargement, extension, diminution, reduction, alteration or addition. But a further reading of Clause 55 clearly shows the intention behind the said Clause. Such enlargement relates to the *design, character, position, site, quantities, dimensions, method of execution or use of materials and to additional works*. It does not contemplate a withdrawal or termination of a substantial portion of the work. The words enlargement, extension, diminution, reduction and alteration have to be read together in the context in which the words have been used and not by their strict dictionary meaning.

22. While large scale reduction could constitute part withdrawal/termination of the work, the manner of reduction contemplated in Clause 55 is a small scale reduction/modification which may occur during the execution of work and not withdrawal or termination of a major portion of the works itself. Clause 55 thus primarily relates to enlargement, extension, reduction, alteration during the execution of the works and not a termination of the works itself. The termination of a whole or part of a work is of immediate consequence i.e. in the sense that, the contractor can no longer carry out that part of the work whereas reduction, diminution and modification results in the contractor continuing to do the work and carrying out the modifications or reductions. Withdrawal/termination brings stoppage to the work whereas modification does not.

23. Viewed in this context, the three notices issued by Ircon have to be seen. The first notice dated 24th August, 2005 reads as under:

“Dear Sir,

The above work was awarded to you vide Letter of Acceptance bearing No.IRCON/CC/MOD-ALBD/41/Pkg-I/827 dated 27.2.2005 issued by IRCON as per clause 25.0 of the Special Conditions of Contract in the agreement, you were required to submit the programme for completion of work within two weeks but it is regretted that the same has not been submitted so far in spite of lapse of more than five months. A number of letters have also been written to you in this regard.

*The progress of work is very slow and there is no improvement in spite of repeated verbal and written requests and notices. Whereas up-to-date progress as per the milestones laid down in the agreement should have been more than **Twenty five percent**, the actual progress of work is less than **Three percent**. This is undoubtedly due to lack of interest on your part in deploying sufficient resources in terms of the manpower, materials and machinery/equipment.*

You are, therefore, by your wrongful actions made yourself liable for action as per conditions laid down in para (g), (h), (I) & (j) of clause 50.1 of the contract

WHEREAS it appears to the undersigned that by reason of your slow progress and not following contractual obligations the work entrusted to you under the agreement referred to above will not be completed within the stipulated date of completion.

Therefore, I, V.S. Chauhan, Additional General Manager, in exercise of powers conferred on me by the aforesaid agreement for and on behalf of IRCON hereby give you notice to show cause within seven days to my satisfaction as to why appropriate action under clauses 50.1 (i), 50.1(ii) and 50.2 of the above agreement should not be taken against you on account

of the breach of contract on your part. Please note that in case no cause is shown by you within the stipulated period or the cause shown is not upto my satisfaction, I shall take such actions against you as are contemplated under clause 50 and sub-clauses thereunder of the said agreement and/or other clauses thereof.”

24. The first notice thus clearly records that while the contractor ought to have completed 25% of the work, the progress at that stage was less than 3%. The contractor is also put to notice as to why within 7 days action under Clause 50 ought not to be taken. This does not contemplate a modification or reduction but clearly a much bigger action i.e. termination.

25. The second notice dated 16th September, 2005 reads as under:

*“Dear Sir,
While acknowledging receipt of your letter under reference in response to this office letter No.IRCON/7001/MAP-ALLAHABAD/Conf./693 dated 24.8.2005, you are hereby informed that the said reply submitted by you is considered consciously and not found satisfactory. Also, no physical improvement of the work at site is found. Therefore, I, V.S. Chauhan, Additional General Manager, in exercise of powers conferred on my by the aforesaid agreement for and on behalf of IRCON hereby give you notice to show cause within 48 (forty eight) hours to my satisfaction as to why appropriate action under clauses 50.1(i), 50.1(ii) and 50.2 of the above agreement should not be taken against you on account of the breach of contract on your part. Please note that in case no cause is shown by you within the stipulated period or the cause shown is not upto my satisfaction, I shall take such actions against you as are contemplated under clause 50 and sub-clauses thereunder of the said agreement and/or other clauses thereof without any further notice.”*

This notice also makes it abundantly clear that despite the 7 days period which was given to the contractor which is a notice under Clause 50, there was no physical improvement at the site. Thus, the second notice for termination was issued with 48 hours notice.

26. Finally, vide letter dated 21st September, 2005, the contract was in effect withdrawn/terminated in the following terms:

“Dear Sir,

While acknowledging receipt of your letter under reference in response to this office letter No.IRCON/7001/MAP-ALLAHABAD/Conf./772 dated 16.09.2005, you are hereby informed that the said reply submitted by you is considered consciously and found not convincing and satisfactory. Also, no physical improvement in the works at site is noted. The resources deployed at site are not matching with the required rate of progress in term of contract agreement.

Therefore, I, V.S. Chauhan, Additional General Manager, in exercise of powers conferred on me by the aforesaid agreement for an on behalf of IRCON hereby determine the contract under clause 50.1(i) and 50.1(ii) and 50.2 of the agreement and decide to partly withdraw the works from this agreement and reduce the scope of work limited to the construction of 23 no. of OR Block at Stanley Road which are already started by you. All other building blocks/DUs where the works have not been started by you at Stanley Road, Pawan Vihar, Prayag Vihar and Wellington Road, are hereby withdrawn from your scope of work. The other terms and conditions of the contract remain unchanged. Please acknowledge receipt of this letter.”

27. This was a final notice to ‘determine the contract’ i.e., terminate the same. Counsel for the contractor argues that the word partly withdrawn

constitutes a modification under Clause 55 and not a termination under Clause 50. This submission though appealing at first blush, when seen in the context of all the three letters and a reading of the contract, is clearly untenable. The intention behind issuance of all three letters is clear i.e. this was a termination under Clause 50.

28. Clause 50 permits Ircon “*to terminate the contract as a whole or parts*”. The three letters have to be read as a termination in part. Use of word ‘withdrawal’ does not change the nature of action. In effect, what happened was that except the construction of 23 numbers of OR Blocks out of a total of 47 blocks at Stanley Road, all other building blocks i.e., at the other localities i.e. Stanley Road, Pawan Vihar, Prayag Vihar and Willington Road were withdrawn from the scope of work itself - meaning thereby, that the contractor was to no longer carry out the said works at all in their entirety. Thus, this was a surgical termination of a substantial portion of the contract, barring 23 OR Blocks, rather than modification or reduction carried out during the execution of the works.

29. The use of terms ‘reduction in the scope of works’ does not mean modification, it was only a dignified exit to the contractor. The effect of the three letters was that, Ircon took possession of the site and carried out the said entire work on its own by engaging third parties. Mr. Bhatia, counsel for the contractor has argued that there was no reason as to why letter dated 21st September, 2005 did not use the word termination but used the word part withdrawal. This is more than a mere question of semantics. The last letter uses the term ‘*determine the contract*’ which is nothing but termination. Also, what is to be seen is the actual events that transpired rather than the mere wording in a letter. In effect the contractor merely

executed the construction of 23 numbers of OR Block and a substantial portion of the work was taken away from him. This cannot by any stretch of imagination be called as modification. The finding of the Arbitrator that the action of Ircon resulted in modification is thus completely contrary to the terms of the contract and is not a plausible view to take. This is more than a trivial illegality. The interpretation of Clauses 50 and 55 goes to the root of the matter and hence as per the view taken by the Supreme Court in *Associate Builders v. Delhi Development Authority A.I.R. 2015 SC 620*, the same calls for interference under Section 34.

30. In *Associate Builders (supra)*, the Supreme Court has held that “an award would be set aside if there were an error of law by the arbitrator” or even if the arbitrator interprets the contract unreasonably. The relevant extract from *Associate Builders (supra)* is set out below:

“42. In the 1996 Act, this principle is substituted by the “patent illegality” principle which, in turn contains three subheads:

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

*“28. Rules applicable to substance of dispute.—(1)-(2)****

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract

is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."

31. This view also finds resonance in an earlier judgment of Division Bench of this Court in ***M/s JSC Centrodostroy v. M/s National Highways Authority of India bearing case number FAO (OS) 508/2013*** wherein the Court held:

*"21. We are conscious of the fact that primarily it was for the Arbitral Tribunal to interpret the contractual terms and that if the interpretation adopted by the Arbitral Tribunal is a plausible interpretation i.e. if it is one of the various interpretations that could reasonably be given to the contract, then the Court would not interfere with the award merely because, according to the Court's understanding, another interpretation is preferable. However, it is equally well settled that if the interpretation adopted by the Arbitral Tribunal in respect of the contractual terms is so unreasonable that no reasonable person would adopt, which is so unfair and unreasonable as to shock the conscience of the Court, the illegality is one which goes to the root of the matter and is not merely a trivial illegality and the interpretation of the contractual terms goes contrary to the contractual terms themselves and is patently incorrect, the court while hearing the objections to such an award, would be justified in interfering with such an award and setting aside the same (See *ONGC Ltd. (supra)* paragraphs 55 and 56)."*

32. The Arbitrator has held that since the scope of the work itself was reduced, there was no termination. The fact remains that in the notices, the contractor has clearly been informed that action is being taken under Clauses 50.1 and 50.1(2) as also 50.2. The consequence of the same is clear i.e. that

the work which was terminated and withdrawn from the contractor would be got executed at risk and cost. The finding of the Arbitrator that Ircon's action was one under Clause 55 is untenable, when the notices expressly stated that they were intending to proceed under Clause 50. From the chronology of events and the facts, the contractor having not rectified his conduct despite receipt of two notices with 7 day notice period and 48 hour notice period, a substantial part of the work had been completely withdrawn/terminated. This Court having come to the conclusion that the contract was not merely modified but was partly terminated under Clause 50, the consequences ought to follow. The Arbitrator's findings are contrary to the express terms of the contract. Resultantly, the award is set aside, in respect of all claims. O.M.P. is disposed of.

33. Parties are free to seek fresh arbitration in light of the above findings.

OCTOBER 01, 2018

Rahul

**PRATHIBA M. SINGH
JUDGE**