

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

%

Judgment delivered on: 02.08.2021

+ **O.M.P. (COMM.) 78/2021**

**NATIONAL PROJECTS CONSTRUCTION  
CORPORATION LIMITED**

..... Petitioner

versus

**M/S INTERSTATE CONSTRUCTION  
COMPANY**

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr Rajat Arora and Ms Renu Bhandari,  
Advocates.

For the Respondent : Mr M. Lall and Mr Sajjan Singh,  
Advocates.

**CORAM  
HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. National Projects Construction Corporation Limited (hereinafter 'NPCC') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning an arbitral award dated 28.10.2020 (hereafter 'the impugned award') rendered by the Arbitral Tribunal comprising of Justice (Retired) R.C. Jain, as the Sole Arbitrator.

2. The impugned award was rendered in the context of disputes that had arisen between the parties in connection with the two separate Work Orders: (i) Work Order No. 917344/838 dated 19.06.1984 in respect of the work “excavation of foundation package work-II 3 x 500 MW of National Thermal Power Corporation Limited, Ramagundam Super Thermal Power Project, Ramagundam”; and (ii) Work Order No. 917344/2382 in respect of “Foundation package work etc. Ramagundam”. NPCC was engaged by National Power Thermal Corporation (NTPC) for execution of certain works. NPCC, in turn, had entered into the contract with the respondent for completion of the said works in terms of the aforementioned Work Orders. The works contracted to the respondent in terms of the Work Orders was completed in the year 1987. NPCC paid the respondent for the work done after withholding certain sums on account of recoveries. The respondent disputed the said recoveries. In addition, the respondent also raised certain claims but they were not accepted by NPCC. It was stated that recommendations were made by certain officers of NPCC in respect of certain claims made by the respondent. However, NPCC asserts that the said recommendations were not accepted by its superior officers.

3. The respondent invoked the Arbitration Clause by a notice dated 17.05.1993. However, NPCC did not take immediate steps for the appointment of an arbitrator. Finally, by a communication dated 07.10.1997, the then Chairman and Managing Director of NPCC appointed Sh. Shivo Moy Ghosh, Additional General Manager, NPCC as a Sole Arbitrator to adjudicate the subject disputes. Thereafter, on

20.01.1998, the respondent filed its Statement of Claims before the learned Arbitrator claiming an aggregate amount of ₹4,46,29,404/- along with *pendente lite* and future interest at the rate of 24% per annum. The disputes remained pending with the learned Arbitrator for a considerable period of time. The averments made in the petition indicate that certain directions had been passed by the learned Arbitrator. The respondent being aggrieved by the said directions, had filed a petition under Section 14 of the A&C Act (being OMP 214/2002), *inter alia*, praying that the mandate of the learned Arbitrator be terminated and an independent arbitrator be appointed in his place.

4. By an order dated 11.10.2004, this Court terminated the mandate of Sh. Shiva Moy Ghosh and appointed Sh. A.S. Chandhiok, Senior Advocate as the Sole Arbitrator. NPCC challenged the said order before the Division Bench of this Court [FAO (OS) 241/2004]. The said appeal was disposed of by an order dated 02.02.2005 and the Division Bench of this Court, appointed Sh. L.R. Gupta, former Director General of CPWD as the Sole Arbitrator in place of Sh. A.S. Chandhiok.

5. Shri L.R. Gupta, entered upon reference on 26.01.2006. At that stage, NPCC filed its reply to the Statement of Claims before the Arbitral Tribunal. NPCC also moved an application dated 23.02.2007 seeking to challenge the authority of Sh. Jagdish Raj Yadav to file the Statement of Claims on behalf of the respondent. The learned Arbitrator dismissed the said application by an order dated 03.08.2007. NPCC challenged the said order by filing a petition under Section 34 of the A&C Act (being OMP No. 537/2007). While the said petition was

pending, Sh. L.R. Gupta resigned as the Arbitrator on 23.06.2008. It is stated in the petition that he expired in the year 2013.

6. The petition filed by NPCC – OMP No. 537/2007 captioned “*National Project Construction Corporation Ltd. v. M/s. Inter State Constructions*” – was disposed of by this Court by an order dated 30.01.2017.

7. The respondent filed a petition under Section 15 of the A&C Act [being OMP (T) (COMM) 30/2018] seeking appointment of a Sole Arbitrator in place of Sh. L.R. Gupta. The said petition was disposed of by an order dated 31.05.2018 and Justice (Retired) R.C. Jain, former Judge of this Court, was appointed as a Sole Arbitrator to adjudicate the disputes between the parties.

8. The learned Arbitrator accepted his appointment and held the first hearing on 03.05.2019. It is seen from the above that the arbitral proceedings between the parties spanned over twenty-seven years and, finally culminated in the impugned arbitral award.

9. The parties did not lead any oral evidence before the Arbitral Tribunal and agreed to rely on the documents and material placed on record.

10. A tabular statement indicating the claims made by the respondent before the Arbitral Tribunal’s award in respect of those claims is set out below:

| Claim No. | Particulars                                                                                                                                                                                                                                               | Amount Claimed                                                                                      | Amount Awarded                               |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------|
| (a)       | Escalation at 10% for work order 48/4                                                                                                                                                                                                                     | ₹20,71,322.00                                                                                       | ₹20,71,322.00                                |
| (b)       | Escalation at 10% for work order 47/11                                                                                                                                                                                                                    | ₹1,84,418.77                                                                                        | ₹1,84,418.77                                 |
| (c)       | Refund of panel recovery of steel taking 5% of scrap wastage in place of 3% wastage:-<br>I) Steel difference<br>II) M.S. Found Steel<br>III) 12 Dia M.S.<br>IV) Structural Steel<br>V) Steel Plates<br>VI) Scrap made in Labour rates<br><br><b>Total</b> | ₹1,75,132.00<br>₹1,806.42<br>₹68,750.00<br>₹2,513.28<br>₹2,649.84<br>₹12,000.00<br><br>₹2,62,850.70 | <br><br><br><br><br><br><br><br>₹1,82,463.70 |
| (d)       | Unreasonable Recoveries:-<br>i) Cribes<br>ii) Shutter Plates<br>iii) B.F.P. Hire charges for shutter plates<br>iv) B.F.P. Hire charges for shutter plates<br>v) Refund of 28% overhead supply for metal                                                   | ₹3,747.75<br>₹38,322.65<br>₹15,776.31<br>₹64,521.00<br>₹60,833.00                                   |                                              |

|     |                                                                               |              |            |
|-----|-------------------------------------------------------------------------------|--------------|------------|
|     | vi) Dozer Recovery for work order no. 48/4                                    | ₹10,676.00   |            |
|     | vii) Cubes failure (never given in writing of any cube failure of any member) | ₹34,701.92   |            |
|     | viii) Chain pulley block (not with us)                                        | ₹8,000.00    |            |
|     | ix) Clamps (already returned)                                                 | ₹14,990.00   |            |
|     | x) Pipes (already returned)                                                   | ₹89,353.00   |            |
|     | <b>Total</b>                                                                  | ₹3,40,921.63 | ₹60,833.00 |
| (e) | Work done by other agencies but not in our scope like plastering etc.         | ₹84,447.00   | ₹84,447.00 |
| (f) | Held amounts:-                                                                |              |            |
|     | i) Amount held on account of grouting T.G.                                    | ₹3,95,000.00 |            |
|     | ii) Amount held on account of grouting C.E.P                                  | ₹20,000.00   |            |
|     | iii) Staging held amount of T.G.                                              | ₹3,09,203.14 |            |
|     | iv) Work order no. 48/4 withheld amount                                       | ₹43,000.00   |            |
|     | v) Work order no. 47/11 withheld amount                                       | ₹51,803.00   |            |
|     | vi) Work order no. 48/ shutter plates held                                    | ₹23,000.00   |            |
|     | vii) Curing held amount 48/4                                                  | ₹3,000.00    |            |

|     |                                                                                                                                                                                                              |                           |              |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|--------------|
|     | viii) Work order no. 48/4 E.S.P. rectification held amount                                                                                                                                                   | ₹10,000.00                |              |
|     | ix) Work order no. 48/4 T.G. held amount for final shape                                                                                                                                                     | ₹5,000.00<br>₹8,60,004.14 | ₹8,60,004.14 |
|     | <b>Total</b>                                                                                                                                                                                                 |                           |              |
| (g) | Balance payable in bills                                                                                                                                                                                     |                           |              |
|     | i) Payable in bills 47/11                                                                                                                                                                                    | ₹64,376.76                |              |
|     | ii) S.D. 47/11 total balance                                                                                                                                                                                 | ₹2,02,870.00              |              |
|     | iii) Work Order no. 48/4 money payable in bills                                                                                                                                                              | ₹84,000.00                |              |
|     | <b>Total</b>                                                                                                                                                                                                 | ₹3,51,246.76              |              |
| (h) | Difference in excavation                                                                                                                                                                                     | ₹1,31,464.00              |              |
| (i) | Booking of C.E.P. in Package-IV as agreed by E.D.S.R. differences                                                                                                                                            | ₹17,690.00                |              |
| (j) | Claims of not allotting quarry as agreed by E.D.S.R.                                                                                                                                                         | ₹2,66,000.00              |              |
| (k) | 1200m <sup>3</sup> of stone aggregate brought from Karim Nagar for rate differences of ₹70/- m <sup>3</sup> extra and the claim was agreed by EDSR referred to our letter ISC/Claims/1 dt. 14.10.89 para III | ₹13,40,000.00             |              |
| (l) | Idle labour charges refer our letter ISC/Claims/1 dt. 14.10.89, para IV                                                                                                                                      | ₹4,81,000.00              |              |

|     |                                                                                                                 |                 |               |
|-----|-----------------------------------------------------------------------------------------------------------------|-----------------|---------------|
| (m) | 2% interest rate difference on mobilization advance                                                             | ₹50,000.00      |               |
| (n) | Interest on delayed release of S.D. refer para 9 of our letter ISC/Claims 1 dt. 14.10.89                        | ₹2,40,000.00    |               |
| (o) | Mental anguishes, torture and loss of social status suffered refer Letter No. ISC/Claims/1 dt. 14.10.89 para II | ₹60,00,000.00   |               |
| (p) | Addl. 24% interest for 10.5 years w.e.f. July 1987 up to Dec. 1997                                              | ₹3,19,57,039.00 |               |
|     | <b>Total</b>                                                                                                    | ₹4,46,38,404.00 | ₹34,43,490.61 |

11. Apart from the above amount, the Arbitral Tribunal also entered an award for payment of interest to the respondent as under:

- (a) Pre-reference/past period interest at the rate of 18% per annum on the sum of ₹34,43,490.61/- with effect from July 1987 up till 19.01.1998.
- (b) *Pendente-lite* interest at the rate of 12% per annum with effect from 20.01.1998 up till 31.12.2008 on the total amount (that is, principal amount and the amount of interest of the pre-reference/past period).

(c) *Pendente-lite* interest at the rate of 12% per annum with effect from 01.01.2017 till the date of the award on the total amount (that is, principal amount plus amount of interest of the pre-reference/past period).

(d) Future interest at the rate of 18% per annum from the date of the award till the date of payment on the total amount (that is, principal amount added to the amount of interest of the pre-reference/past period).

12. Apart from the above, the Arbitral Tribunal also awarded costs quantified at ₹12,50,000/- to the respondent and directed NPCC to bear its own costs.

### ***Submissions***

13. Mr Rajat Arora, learned counsel appearing for NPCC, assailed the impugned award, principally, on two fronts. First, he submitted that the award of escalation in respect of the two separate Work Orders (₹20,71,322/- plus ₹1,84,418.77/-) is without any justification and the respondent did not establish the same. He submitted that there was no material placed before the Arbitral Tribunal by the respondent to substantiate that there was any escalation in either the labour rates or the cost of material used. He also pointed out that the Work Orders in question did not include any clause, which entitled the respondent to claim any escalation. Notwithstanding the same, the Arbitral Tribunal had awarded escalation on the ground that NPCC had not produced the documents as required by the respondent. He stated that the approach

of the Arbitral Tribunal is patently erroneous as no adverse inference could have been drawn against NPCC. He submitted that the burden of proof to establish its claims rested on the respondent and NPCC was not required to disprove the same. He also submitted that initially orders had been passed allowing respondent's application for inspection of records but despite the same, the respondent had not taken the necessary steps to inspect the records available with NPCC. He submitted that the works was completed way back in 1987 and NPCC could not be expected to produce the records pertaining to the said works after more than two and a half decades.

14. He also submitted that there was no basis for the claim of escalation of ₹1,84,418.77/-. He submitted that the Work Order No. 47/11 was only for a sum of ₹5 lacs and even if it is assumed, that NPCC had agreed to reimburse escalation in respect of the work done beyond that amount, the escalation calculated at 10% of the contract value would be much less than the amount awarded by the Arbitral Tribunal. He submitted that the Arbitral Tribunal had noted that the respondent had not provided any reason for quantifying its claim in respect of Work Order No. 47/11 at ₹1,84,418.77/- and yet had awarded the said amount in favour of the respondent.

15. Next, he submitted that the Arbitral Tribunal had awarded interest at exorbitant rates. It had awarded interest for the pre-reference period from July 1987 to 19.01.1998 at the rate of 18% per annum. The Arbitral Tribunal had awarded *pendente lite* interest at the rate of 12% per annum for the period between 20.01.1998 till 31.12.2008. The

Arbitral Tribunal had awarded future interest at the rate of 18% per annum in view of the provisions of Section 31(7)(b) of the A&C Act. He submitted that the Arbitral Tribunal had failed to notice that the provisions of Section 31(7)(b) of the A&C Act had since been amended and the interest had been reduced to 2% per annum above the current rate of interest prevalent on the date of the award. He submitted that the current rate of interest was in the vicinity of 7% per annum and therefore, award of future interest at the rate 18% per annum was patently illegal.

### ***Reasons and Conclusion***

16. The first and foremost question to be examined is whether the impugned award is patently illegal inasmuch as the Arbitral Tribunal has accepted the respondent's claim for escalation.

17. The respondent had claimed escalation at the rate of 10% on the value of work done and had quantified its claim at ₹20,71,322/- in respect of Work Order No. 48/4 and ₹1,84,418.77/- in respect of Work Order No. 47/11. It is apparent from the record that the respondent had not produced any material to establish that it had incurred additional costs justifying its claim for escalation. However, it is material to note that NPCC had not raised any dispute on that count. A plain reading of the reply filed on behalf of NPCC to the Statement of Claims indicates that NPCC had sought to contest the aforesaid claim on the ground that there was no provision for payment of escalation under the Work Orders. NPCC claimed that the respondent was not entitled to any

escalation as it had accepted the Work Orders on its terms, which did not include any provision for payment of escalation. Nonetheless, it did not dispute that subsequently it had agreed to pay the escalation to the respondent. By its letter no. 917337/2383 dated 24.12.1984, NPCC had agreed to delete the clause that stated that no escalation would be payable and had replaced the same by a clause that provided that 85% of the amount of escalation received from clients would be paid subject to a maximum of 10% of the contract value. It also provided that the base date for calculation of escalation would be 15.09.1984. It was pointed out that only Work Order No. 48/4 had been modified and no such modification was carried out insofar as the terms and conditions of Work Order No. 47/11 was concerned. However, NPCC had also agreed to provide escalation above the value of ₹5 lacs.

18. Before the Arbitral Tribunal, NPCC claimed that the escalation that was accepted by NPCC was paid and nothing further was required to be paid to the respondents. Insofar as the respondent's claim that it was entitled to 85% of the escalation paid by NTPC (the principal employer to NPCC) subject to 10% of the value of work is concerned; NPCC had contested the said claim principally on the ground that the base date on which the escalation was required to be computed was 15.09.1984 whereas NTPC had awarded the contract to NPCC earlier and therefore, the escalation payable by NTPC to NPCC was to be calculated in reference to a different base date.

19. It is, thus, clear that there was no controversy whether the respondent had incurred the escalation as claimed by it. NPCC did not contest the respondent's claim on that ground.

20. The respondent's claim for escalation in respect of Work Order No. 48/4 was based on Clause 14.1 of the Special Conditions of Contract as modified by a letter dated 24.12.1984. Clause 14.1 of the Special Conditions, as applicable to the Work Order, reads as under:

“The item rates quoted by the Contractor will be treated as firm rates till the completion of work and no escalation will be paid to the contractor on any account or for any reasons, whatsoever on any of the items.”

21. However, by a letter dated 24.12.1984, NPCC communicated to the respondent that it had awarded the contract to the respondent on the terms and conditions as stated in the tender documents with certain modifications. The modification being that Clause 14.1 of the Special Conditions, as included in the tender documents, was deleted and substituted by the following clause:

“Eighty five percent of the amount of escalation received from clients will be paid to you subject to a maximum of ten percent of the contract value. Base date for calculation of escalation will be 15.09.84.”

22. It was also admitted by NPCC in its reply to the Statement of Claims that even though Work Order 47/11 did not provide for any such modification, NPCC had considered the respondent's request in this regard and agreed to apply the same clause as modified in Work Order No. 48/4. However, in respect of claim relating to Work Order No.

47/11, NPCC raised an additional defence that the escalation as agreed was to be applicable only in respect of works executed beyond the value of ₹5 lacs.

23. In view of the above, the principal controversy before the Arbitral Tribunal was whether the respondent was entitled to 85% of the escalation amount received by NPCC from its client (NTPC) in respect of the work executed by the respondent. In respect of Work Order No. 48/4, the only defence that was raised by NPCC was that the respondent was not entitled to such escalation as claimed because the base date for the escalation received from NTPC was much earlier than the base date of 15.09.1984 as agreed between the parties. Therefore, escalation could not be calculated on that basis and consequently, no escalation was payable. As noticed above, in respect of Work Order no. 47/11, NPCC raised an additional defence that the respondent was entitled to escalation only in respect of work done beyond the initial award of ₹5 lacs.

24. As is apparent from the above, the controversy did not require the respondent to place the actual escalation incurred by it.

25. In the supplementary written submissions filed by NPCC before the Arbitral Tribunal, it was contended that the Work Orders in question also provided that the payments would be made on submission of Running Account Bills (RA Bills). NPCC had referred to Clause 7.0 of the Work Orders, which stipulated that 75% of the value of work done would be paid as an advance on submission of the RA Bills and on

receipt of the payments from NTPC against its RA Bills. The balance amount would be paid after verification. NPCC contended that in terms of the terms and conditions as applicable to the Work Orders in question, it was essential for the respondent to submit a RA Bill for claiming any payment from NPCC and, the said bill was required to be prepared on the basis of actual measurements recorded by the authorized person in the presence of the concerned party. NPCC had contended that since all items having financial value were required to be entered into the measurement book, the respondent's claim could not be accepted as it had failed to produce the RA Bills, Measurement Books, Level Books etc., which were essential for adjudicating the respondent's claim.

26. As noticed above, this is not the defence raised by NPCC in its reply to the Statement of Claims.

27. The Arbitral Tribunal examined the aforesaid controversy. Since it was admitted that Clause 14.1 of the Special Conditions as applicable to the Work Order had been modified to provide for payment of 85% of the amount of escalation received from clients subject to maximum of 10% of the contract value, there was no doubt that the contract between the parties stipulated for payment of escalation.

28. The Arbitral Tribunal also noted that there was no dispute that NPCC had received the escalation from NTPC in respect of the works falling within the scope of the Work Orders.

29. The Arbitral Tribunal accepted the respondent's claim that it was entitled to receive escalation in terms of the said clause. And, thus, was entitled to 85% of the escalation amount that was received by NPCC from NTPC subject to a maximum of 10% of the contract value. The respondent proceeded on the basis that the respondent was not required to produce any other document since its claim was based entirely on the interpretation of Clause 14.1 of the Special Conditions as modified by the letter dated 24.12.1984.

30. It is in the aforesaid context that the Arbitral Tribunal noted that NPCC had not disclosed the amount of escalation received by it from NTPC despite the Arbitral Tribunal passing orders for the same. The same coupled with the fact that NPCC did not dispute that it had received escalation from NTPC in respect of the works executed under the Work Orders in question, the Arbitral Tribunal concluded that the escalation would be payable at the maximum amount of 10% of the contract value under the work orders.

31. Clearly, the respondent could not have produced any material to establish the quantum of escalation received by NPCC from NTPC as that fact was only within the special knowledge of NPCC (or NTPC) and it was required to disclose the same pursuant to the directions issued by the Arbitral Tribunal.

32. The contention that NPCC could not be called upon to produce the said details more than two and a half decades after the contract had been completed, is also unpersuasive. The issue of escalation was not a

dead issue and was a subject matter of controversy between the parties even prior to the respondent issuing the notice of arbitration on 17.05.1993. It has been averred by NTPC in the present petition that certain recommendations had been made by GGM, NPCC, by a letter dated 27.12.1990 but the same was not accepted by the superior officers. Thus, NPCC was required to preserve the records relevant to the dispute. In any view of the matter, the respondent had invoked the arbitration on 17.05.1993 and thereafter, there can be no excuse for NPCC not to have preserved the relevant records. The quantum of escalation received by NPCC from NTPC was relevant as the respondent had claimed 85% of the said escalation received in respect of the work executed under the Work Orders, which was to be paid to it. In this context, the adverse inference drawn by the Arbitral Tribunal cannot be faulted.

33. The Arbitral Tribunal also did not accept the contention that no escalation was payable in respect of the initial amount of ₹5 lacs. The Arbitral Tribunal found that there was no material to substantiate the same. It found that there was no reason to confine the escalation only to the value of the work exceeding ₹5 lacs. The Arbitral Tribunal accepted that NPCC had agreed to pass through the escalation received from NPCC to the extent of 85% subject to 10% of the contract value under the Work Orders in question. In this view, there was no requirement for any further calculation to be made.

34. Accordingly, the Arbitral Tribunal entered an award in the sum of ₹20,71,322/- being 10% of the value of work executed under Work

Order No. 48/4. Insofar as Work Order No.47/11 is concerned, the Arbitral Tribunal found that the value of the Work Order was extended initially for a sum of ₹5 lacs but by a corrigendum letter dated 07.08.1986, it was enhanced to ₹20,71,322/-. Thus, the respondent would be entitled to 10% of the said amount. However, the respondent had restricted its claim only to an amount of ₹1,84,418.77/-. Although the respondent had not provided any calculation for the said amount, since the same was less than 10% of the contract value, the Arbitral Tribunal awarded the said amount in favour of the respondent. The Tribunal also noted that NPCC had not challenged any of the figures as put forth by the respondent. It had also not provided material to compute the amount of escalation as payable in terms of the clause as agreed between the parties. In addition to the above, the Arbitral Tribunal also noted that the GGM (NPCC) had, by its letter dated 27.12.1990, approved the escalation as claimed by the respondent and had recommended payment of the same. Although the said recommendations may not have been accepted by the superior officers, there can be no dispute that the value of the said claims at some stage had been examined by the officials of NPCC and no dispute regarding the figures had been raised at least. None was placed before the Arbitral Tribunal.

35. As noticed above, the dispute raised by NPCC was on the principle that the escalation as claimed could not be awarded. According to NPCC, it was not required to pass through the escalation

received from NTPC but the same had to be recomputed based on a different base date.

36. The view expressed by the Arbitral Tribunal is plainly a plausible one and warrants no interference by this Court in proceedings under Section 34 of the A&C Act. The contention that the respondent was required to produce sufficient material to substantiate its claim as noticed above, is unmerited. In view of the interpretation of modified Clause 14.1 of the Special Conditions as applicable to the Work Order, the Arbitral Tribunal's decision to draw an adverse inference against NPCC for not producing the documents to substantiate the amount of escalation received from NTPC, cannot be faulted.

37. The next question to be examined is whether the interest awarded by the Arbitral Tribunal is exorbitant and unsustainable.

38. The respondent had claimed interest at the rate of 24% per annum for a period of ten years and six months with effect from July 1987 to December 1997. The respondent had quantified the said amount at ₹3,19,57,039.00/-. In addition to the above, the respondent had also claimed *pendente lite* and future interest at the rate of 24% per annum.

39. The Arbitral Tribunal had considered the said claim for pre-reference interest, *pendente lite* interest and future interest separately. In respect of the pre-reference interest, the Arbitral Tribunal awarded interest at the rate of 18% per annum on the claims awarded with effect from July 1987 to 19.01.1998 being the date on which the Statement of Claims was filed. The Arbitral Tribunal did not allow the respondent's

claim for interest at the rate of 24% per annum as it found the said rate to be on a higher side. The Arbitral Tribunal noted that the primary lending rates of nationalized banks were at their peak during the last two decades of the twentieth century and the first decade of the present century. Keeping that in view, the Arbitral Tribunal considered the rate of interest at 18% per annum to be appropriate. Although it is contended on behalf of NPCC that the said interest is excessive, there is no material that has been placed on record to contradict the aforesaid reasoning. The Arbitral Tribunal had noted that during the period in question, that is, July 1987 to 19.01.1998, the nationalized banks were also lending at the rate of 18% per annum. NPCC had produced no material to dispute the same. It is common knowledge that the interest rates during the said period were high. The A&C Act was enacted in the year 1996 and Clause (b) of Section 31(7) of the A&C Act as originally enacted also provided for future interest at the rate of 18% per annum. Thus, the Arbitral Tribunal's decision to award pre-reference interest at the rate of 18% per annum warrants no interference by this Court.

40. As far as *pendente lite* interest is concerned, the Arbitral Tribunal has awarded 12% per annum for the period 20.01.1998 till 31.12.2008 and from 01.01.2017 till 28.10.2020. Plainly, *pendente lite* interest at the rate of 12% per annum cannot by any stretch be considered to be exorbitant or unreasonable. Moreover, the Arbitral Tribunal has not awarded interest for the period 31.12.2008 to 01.01.2017. The Arbitral Tribunal did not award any *pendente lite* interest for the period of eight years from 2009 to 2016 as it accepted that during this period, the

respondent was remiss and had pursued its claim before the Arbitral Tribunal diligently. Sh. L.R. Gupta, the then Arbitrator had resigned with effect from 26.03.2008, however, the respondent had not taken reasonable steps for seeking appointment of another arbitrator in his place. Such a petition was filed after this Court had disposed of NPCC's petition under Section 34 of the A&C Act on 30.01.2017.

41. The respondent has not challenged the decision of the Arbitral Tribunal in rejecting its claim for *pendente lite* interest for the said period of eight years.

42. The Arbitral Tribunal has awarded 18% future interest from the date of the award till the date of the payment. The Arbitral Tribunal has awarded the said interest relying on the provisions of Section 31(7)(b) of the A&C Act on an assumption that the said provision has also provided for award of future interest at the rate of 18% per annum. However, Clause (b) of Section 31(7) of the A&C Act was substituted by the Arbitration and Conciliation (Amendment) Act, 2015 with retrospective effect from 23.10.2015. In terms of the amended clause, the arbitral award, unless the award otherwise directs, would carry interest at the rate of 2% higher than the current rate of interest prevalent on the date of the award. The explanation to Section 31(7)(b) further provides that the expression "current rate of interest" would have the same meaning as assigned to it under Clause (b) of Section 2 of the Interest Act, 1978.

43. Section 2(b) of the Interest Act, 1978 defines the expression "current rate of interest" to mean the highest of the maximum rates at

which interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949.

44. In view of the above, the Arbitral Tribunal's reasoning to award future interest at the rate of 18% is *ex facie* erroneous.

45. The Arbitral Tribunal had also noted that the interest rates during the last two decades of the last century and the first decade of this century were at their peak and the same has since reduced. Thus, the award of interest at the rate of 18% per annum from the date of the award is not in consonance with the observations made by the Arbitral Tribunal, which recognized that the interest rate had fallen considerably during the second decade of this century.

46. In view of the above, this Court considers it apposite to set aside the impugned award to the extent the Arbitral Tribunal had awarded future interest at the rate in excess of 9% per annum.

47. The Arbitral Tribunal had awarded a sum of ₹1,82,463.70 in respect of penal charges for recovery of steel beyond three percent. The Arbitral Tribunal found that NPCC could recover penal charges for steel by adjusting 5% as scrap wastage and not 3%. The Tribunal noted that NPCC by its letter dated 05.05.1992 had confirmed that an allowance of 5% wastage of steel had been accepted by NPCC and necessary adjustments were under process. In view of the above, the decision of

the Arbitral Tribunal to enter an award for excess recovery on account of steel cannot be faulted.

48. In addition, the Arbitral Tribunal also entered an award of ₹60,833/- on account of excess recovery as it found that NPCC had already recovered charges for the aggregate and 28% overheads on the same and thus, no additional recovery on account of supply of aggregate could be made. This Court finds no ground to interfere with this reasoning as well.

49. The Arbitral Tribunal had further accepted the respondent's claim for a sum of ₹84,447/-, which had been deducted by NPCC from its final bill as work done by another agency. The respondent had claimed that the said work did not fall within the scope of works and therefore, no amount could be deducted for getting the said work done from another agency. The Arbitral Tribunal found that there was no material to establish that the said charges were in relation to works that fall within the scope of the two Work Orders awarded to the respondent. The Arbitral Tribunal also allowed the respondent's claim aggregating to a sum of ₹8,60,006.14/- on account of amounts withheld by NPCC. NPCC had withheld the said amounts on various grounds including on account of work claimed to be done at the respondent's risk and cost. The Arbitral Tribunal found that NPCC had been unable to substantiate withholding of such amounts. This Court finds no reason to interfere with the said award as well.

50. Although Mr Arora had briefly touched upon the said claims, he had fairly stated that the decision of the Arbitral Tribunal on merits

could not be assailed as perverse, without any material or patently illegal. As noticed above, he had largely confined his arguments to award of the respondent's claim for escalation and interest.

51. In view of the above, the present petition is partly allowed to the extent that the award of future interest at the rate exceeding 9% per annum from the date of the award till the date of the payment is set aside.

52. The petition is disposed of in the aforesaid terms.

**VIBHU BAKHRU, J**

**AUGUST 02, 2021  
RK**



नित्यमेव जयते