

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29th September, 2021

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O.M.P. (COMM) 183/2021 & I.A. 7631/2021

RAIL VIKAS NIGAM LIMITED

..... Petitioner

versus

SIMPLEX INFRASTRUCTURES LIMITED..... Respondent

Advocates who appeared in this case:

For the Petitioner :Mr Anil Seth and Mr Prateek, Advocates.

For the Respondent :Mr Udayaditya Banerjee, Mr Samrat
:Sengupta and Mr Parag Chaturvedi, Advs.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

Introduction

1. The petitioner, Rail Vikas Nigam Ltd. (hereinafter 'RVNL'), has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning the arbitral award dated 08.02.2021 (hereinafter the 'impugned award') delivered by the Arbitral Tribunal comprising of three arbitrators, namely, Mr R. Rajamani, Mr N.K. Gupta and Mr B.S. Sudhir Chandra as the Presiding Arbitrator (hereinafter the 'Arbitral Tribunal').

2. The impugned award was rendered in the context of disputes that had arisen between the parties in connection with their contract – Contract Agreement No: RVNL/KOL/WCA/JMS1/2012-13/2 dated 24.08.2012 (hereinafter ‘the Agreement’) – in respect of package, JMS1 Contract for “*Construction of Joka, Thakurpukur, Sakher Bazar and Behala Chowrasta Stations including all related works (Architecture, Electrical & Mechanical (E&M), HVAC, Fire Detection, Fire Suppression System and Public Health Engineering Works) in Joka-BBD BAG Corridor of Kolkata Metro Railway Line*”.

3. The disputes, essentially, relate to the interpretation of Item 5(b)(ii) of Schedule A of Bill of Quantities (hereinafter ‘BOQ’), which was required to be executed in terms of the Agreement. Whilst, RVNL claims that it included the work of ‘fabrication’. The respondent, Simplex Infrastructures Ltd. (hereinafter ‘Simplex’), disputes the same. In the aforesaid context, Simplex had preferred claims relating to execution of the fabrication work as an additional item as, according to it, such work was not covered under BOQ Item 5(b)(ii). The Arbitral Tribunal accepted Simplex’s contention and made the impugned award holding RVNL liable to make additional payment in respect of the said BOQ Item 5(b)(ii) at the rate of ₹21,067/- per MT. In respect of the quantities already certified, the Arbitral Tribunal awarded an amount of ₹1,15,93,907/- in favour of Simplex and also held that RVNL would be entitled to escalation in terms of the Agreement in respect of the aforesaid claim. Further, the Arbitral Tribunal awarded interest at the rate of 9% per annum on the

awarded amount from the date of receipt of the impugned award till the date of actual payment in the event, the awarded amount was not paid within three months from the date of the impugned award.

4. RVNL contends that the impugned award is patently illegal and falls foul of the public policy of India.

Factual Context

5. On 01.12.2011, RVNL issued a notice inviting tender for the purpose of construction of four elevated stations on Joka-BBD Bag Corridor of Kolkata Metro Railway Line – Package JMS-1. Along with the tender documents, RVNL provided the pricing documents including Schedules A to G. The tenders invited were for a Rate Contract and the bidders were required to quote a percentage above, or below, or at par with the prices mentioned in the schedules. The said schedules comprised of BOQ and the item base rates. The bids were evaluated on the basis of rate of discount/premium quoted by the bidders against the base rates for the BOQ items as specified in the said schedules.

6. Simplex participated in the competitive bidding process and was awarded the contract for JSM-1 Package for construction of *Joka, Thakurpukur, Sakher Bazar and Behala Chowrasta Stations including all related works (Architecture, Electrical & Mechanical (E&M), HVAC, Fire Detection, Fire Suppression System and Public Health Engineering Works) in Joka-BBD BAG Corridor of Kolkata Metro Railway Line*. Accordingly, on 14.04.2012, RVNL issued the Letter of

Acceptance (LoA) in favour of Simplex. Thereafter, on 24.08.2012, the parties entered into a formal contract for execution of the works (the 'Agreement'). The work awarded was to be completed within a period of 24 months from the date of the LOA, that is, by 13.04.2014 and, the Contract Price was computed at ₹200,91,29,786/- based on the BOQ. Along with the tender documents, RVNL also provided certain drawings for the roof structure to be erected. It is Simplex's case that the same did not provide any details to assess the quantum of fabrication required for executing the BOQ Item 5(b)(ii).

7. In terms of the Agreement, Simplex was required to make shop floor drawings on the basis of Approved for Construction (hereinafter the 'AFC drawings') to be provided by RVNL. There was a significant delay on the part of RVNL as the AFC drawings were provided to Simplex after almost two years after the date of the LoA.

8. Simplex claimed that the AFC drawings indicated that substantial quantity of fabrication work was involved, which was covered under the relevant BOQ item [BOQ Item 5(b)(ii)]. Accordingly, Simplex sent a letter dated 05.07.2014 seeking an introduction of a new BOQ item *in lieu* of the existing BOQ Item 5(b)(ii) of Schedule A, which would support the work as per the AFC drawings furnished by RVNL. Simplex followed up with RVNL by sending another letter dated 07.10.2014 reiterating its request to introduce a new item of work. Thereafter, a meeting took place in the office of RVNL on 16.10.2014 to discuss the matter regarding the BOQ item in question.

9. Simplex claimed that in the said meeting, its representative demonstrated that the AFC drawings were entirely in variance with the drawings provided along with the tender documents and RVNL was convinced that a separate BOQ item was required to be introduced. Whilst, RVNL does not dispute that a meeting took place; it claims that the meeting was only a general meeting with respect to the contract in question.

10. Simplex asserted that RVNL had called upon Simplex to submit a rate analysis for the purpose of determining the new BOQ item and accordingly, it submitted the rate analysis on 27.10.2014.

11. Simplex claims that on 12.12.2014, it received an email from RVNL's DGM forwarding an internally prepared rate analysis for the said item of work. The rate analysis furnished by Simplex was for a sum of ₹21,080/- for the cost of fabrication, loading, unloading and transportation of fabricated structural members. The rate analysis for the said work as mentioned in the email dated 12.12.2014 sent by RVNL was ₹21,067/-.

12. Simplex claims that believing that the new item of work of fabrication of trusses would be introduced in the BOQ based on the aforementioned rate analysis, it continued to prepare the shop drawings for fabrication of structural roof trusses in accordance with the AFC drawings furnished by RVNL.

13. On 10.01.2015, Simplex forwarded sixteen numbers of shop drawings for fabrication of the structural roof trusses and also

mentioned that the delay in approving the new item of BOQ would also delay the execution of that work. This was followed by another letter dated 23.04.2015, whereby Simplex stated that it was unable to commence the fabrication of roof structures pending approval of the said item of work. Simplex claims that it prepared and submitted working drawings and thereafter, also commenced execution of the roof structure in one of the stations.

14. On 30.11.2015, RVNL sent a letter rejecting the request of Simplex to introduce a new item of work. According to RVNL, the same was covered under BOQ Item 5(b)(ii) of Schedule A of the tender documents.

15. In 2016, Simplex invoked the arbitration clause and the Arbitral Tribunal was constituted to adjudicate the disputes between the parties. In July 2020, after the arguments were heard, the then Presiding Arbitrator expired. Consequently, a new Arbitral Tribunal was constituted in October 2020 by filling up the vacancy resulting from the demise of the learned Arbitrator. The arbitral proceedings culminated on 08.02.2021 with the newly constituted Arbitral Tribunal delivering the impugned award.

16. The tabular statement setting out the claims made by Simplex in its Statement of Claims is as under:

“Claim	Particulars	Claimed amount
Claim no.1	Certified amount for quantities from RA bill	₹1,28,32,302/-

	37 to RA bill 77.	
Claim no.2	Estimated quantity of balance work remaining beyond RA bill 77.	₹58,02,418/-
Claim no.3	Escalation calculated on the amounts certified up to RA bill 77.	₹2,61,712/-
Claim no.4	Interest on the amounts payable towards fabrication works from RA bill 37 to RA bill 77 up to 31.10.2018.	₹36,52,241/-
Claim no. 5	Further interest and cost on the above up to RA bill 77.	₹30,17,017/-
Claim no.6	Cost of arbitration	₹10,00,000/-”

17. RVNL also preferred counter-claims and sought compensation for the financial loss for defending the claims made by Simplex. In addition, it also claimed costs of arbitration quantified at ₹53,20,000/-.

18. The Arbitral Tribunal partially allowed the claims of Simplex in terms of the impugned award. RVNL has been held liable to make an additional payment for the subject work as an additional item of work at the rate of ₹21,067/- per MT for the quantity of 550.335 MT invoiced under RA Bills 37 to 70 (both inclusive) amounting to ₹1,15,93,907/-. RVNL is also liable to pay an additional amount for the item in question from RA Bill no.71 onwards at the rate of ₹21,067/- per MT subject to due verification along with escalation in terms of the Agreement. The counter-claims made by RVNL were rejected. The Arbitral Tribunal also awarded future interest at the rate

of 9% per annum from the date of the award till the date of payment, if the same was not paid within a period of three months from the date of the award.

Submission

19. Mr. Seth, learned counsel appearing on behalf of RVNL contended that the Arbitral Tribunal has grossly erred in holding that BOQ Item 5(b)(ii) was not a complete item and did not include fabrication, painting, etc. He submitted that the Agreement was clear and BOQ Item 5(b)(ii) entailed “providing and erection of Structural Steel in floor, beam / roof etc.”. He further submitted that RVNL had issued a pre-bid clarification clearly indicating that the cost of fabrication would not be paid through different items. Next, he submitted that the tender drawings accompanying the tender documents were tentative but indicated the extent of work involved. The actual work was required to be executed as per the detailed drawings. He has also referred to Note 13 of the tender drawing, which reads as under:

“Tender Drawing indicates the extent of work involved. However, actual work shall be executed as per detailed drawing and specification for which no adjustment for process shall be admissible payment shall be as per respective pricing and price document.”

20. He referred to the BOQ preamble which expressly indicates that the pricing document was required to be read in conjunction with the technical specifications, construction specifications, BOQs for the

work and other provisions of the tender documents including the General Conditions of the Contract (hereafter ‘GCC’). He then referred to Clauses 7.1 to 7.6 of the Technical Specifications and submitted that the same made it clear that Simplex was to provide all material and equipment to complete the works and to also provide the fabrication shop drawings. In addition to the above, he also drew the attention of this Court to Clause 4.1 of the GCC and submitted that in terms of the said clause, the contract price would cover all obligations for execution and completion of work including testing and commissioning.

21. He contended that in view of the express terms of the Agreement, Simplex’s claim that fabrication of trusses for the roof structure was not included in the Agreement was untenable and ought to have been rejected. However, the Arbitral Tribunal had accepted the aforesaid claim and therefore, the impugned award is contrary to the terms of the Agreement. He referred to the decisions of the Supreme Court in *Ssangyong Engineering and Construction Company Ltd. v. National Highways Authority of India* (2019) 15 SCC 131 and *Associate Builders v Delhi Development Authority* (2015) 3 SCC 49 and submitted that an arbitral award, which is contrary to the terms of the contract is liable to be set aside as patently illegal and also as opposed to the public policy of India.

22. Mr. Seth further submitted that the Arbitral Tribunal has ignored that Simplex had altered its case in the rejoinder filed before the Arbitral Tribunal. In its Statement of Claim, Simplex had asserted

that BOQ Item 5(b)(ii) did not include fabrication, painting, transportation etc. However, in its rejoinder, it accepted that some fabrication was required to be done at the shop floor but asserted that extensive fabrication was not involved. The witness (CW1) examined on behalf of Simplex also admitted that nominal fabrication work was required to be carried out for cutting, bending, welding of structural steel in desired shape and therefore, his testimony did not support the case set up by Simplex. The Arbitral Tribunal accepted that the roof structure was required to be constructed with minor fabrication of rolled up sections. However, the Agreement between the parties did not indicate the same. Thus, the impugned award is not only contrary to the terms of the Agreement but also contrary to the case set up by Simplex in its Statement of Claim wherein it had asserted that no fabrication was involved within the BOQ item in question.

23. Lastly, he submitted that the impugned award was contrary to the principles of natural justice as the Arbitral Tribunal had not permitted RVNL to make its submissions. He referred to the order of the Arbitral Tribunal in respect of the virtual hearing held on 04.11.2020 and drew the attention of this Court to paragraph 9.1 of the said order which indicates that the counsel for RVNL was not permitted to refer to a Supreme Court decision or to make further submissions in addition to submissions made earlier.

24. Mr Udayaditya Banerjee, learned counsel appearing for Simplex countered the aforesaid submissions. He stated that the arguments advanced on behalf of RVNL amount to re-agitating the

entire case, which is impermissible. He submitted that the Arbitral Tribunal had examined the terms of the Agreement and had correctly interpreted the same. The word ‘fabrication’ is not mentioned anywhere in BOQ Item 5(b)(ii) of Schedule A forming a part of the Agreement and therefore, the contention that the impugned award is contrary to the terms of the contract is unsustainable. He further submitted that the Clauses of Technical Specifications as well as GCC were general in nature. The same did not enlarge the scope of the BOQ items, which were required to be interpreted in their own terms.

Reasons & Conclusions:

25. The disputes between the parties essentially relate to interpretation of BOQ Item 5(b)(ii) of Schedule A which reads as under:

5.	Reinforcement of steel and structural steel	Unit	Quantity	Basic Rate Rs	Amount Rs
(a)					
(b)	Providing and erection of Structural Steel in floor, beams/roof etc.				
(i)	Floor beam - Grade Fe540B including launching	MT	2.00	150,670.00	301,340.00
(ii)	For Roof Structure –	MT	2,321.21	59,500.00	138,111,995.00

	Grade Fe410B				
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26. Before the Arbitral Tribunal, Simplex claimed that in terms of its understanding, Item 5(b)(ii) of the BoQ was limited to procuring the readily available members from the approved vendors and erecting the same. It also claimed that the drawings provided along with the tender documents did not indicate any extensive fabrication work. However, almost two years after the issuance of the LoA, RVNL had provided AFC drawings of the roof structure to be erected and the same indicated extensive fabrication work. According to Simplex, such work was not included in BOQ Item 5(b)(ii).

27. The RVNL had disputed the above and claimed that fabrication was included in the BOQ Item 5(b)(ii).

28. The RVNL relied upon the pre-bid clarification issued by it and Clauses 7.1 to 7.6 of the Technical Specifications and Clauses 4.10 and 5.1 of the GCC in support of its contention.

29. At the pre-bid stage, one of the bidders had raised a query in regard to which RVNL had issued a clarification, which is reproduced as under:

“Query	Answer
The bidder request to clarify whether the cost of fabrication shall be paid through different items.	No”

30. According to RVNL, the said clarification settled the issue beyond the pale of any controversy.

31. The Arbitral Tribunal had examined the controversy and concluded that BOQ Item 5(b)(ii) did not include any fabrication work. Concededly, a plain reading of the aforesaid BOQ item does not indicate that the same also entails fabrication of structural roof trusses as claimed by RVNL. The Arbitral Tribunal had examined the language of BOQ Item 5(b)(ii), evaluated the material placed on record, and held as under:

“A plain reading of the above item, according to us, shows only the grade of steel to be used for the roof structure, and does not indicate any other specific requirement of the Respondent. The Respondent neither through their pleadings nor through their oral evidence and submissions could justify why the type of roof structure they required was not properly and completely described and included in the item. Even though, the item refers to providing and erection of structural steel in roof, there was no reason why, the Respondent did not include the full description of the item and stopped with merely expressing their requirement of the grade of steel alone. This point remains completely unanswered.”

32. Simplex had contended that the said pre-bid clarification relied upon by RVNL was only a general clarification; issued in response to the query raised by another bidder. Simplex had not sought any clarification as the terms of the BOQ item were clear and the fabrication, if any, under the said BOQ item was understood as nominal or basic fabrication work and, not extensive fabrication work

as subsequently required by RVNL. The Arbitral Tribunal accepted the aforesaid explanation after appreciating the other material on record.

33. The Arbitral Tribunal was also persuaded to accept that BOQ Item 5(b)(ii) did not entail any extensive fabrication as another item (BOQ Item No.6.10) which entailed some fabrication had expressly provided for the same. The BOQ Item No.6.10 is set out below:

6.10	Providing, fabricating to required profile & shape, transporting, erecting and fixing in position MS members made of built up/rolled or hollow structural steel sections to be used as fixtures /supports/ hangers etc for system/ roofing Contractors at any location or as directed by engineer in charge. The	MT	2.00	Rs 78,791.27	Rs 157,582.54
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	rate shall include the cost of scaffolding, application of prime & paint as per specification.				
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34. The Arbitral Tribunal had taken note of the above item and had reasoned as under:

“129. The above description includes fabricating to required profile and shape and transporting etc., and accordingly the basic rate was stated by the Respondent as Rs 78,791.27. In contrast, in the BOQ item 5(b)(ii) the Respondent had given the basic rate of Rs.59,500/- per MT only even though the activities / operations involved in this item 5(b)(ii) for making built-up sections best fits the work involved in item 6.10. Further, AT noted that the Respondent had taken so much care and had been meticulous in giving a detailed description of item 6.10 which is for a meager quantity of 2 MT with basic rate of Rs.78,791.27 per MT and par cost of Rs.1,57,582.24, but failed to give similar type of description for item. 5(b)(ii) for a much higher quantity of 2321.21 MT at a par cost of Rs.13,81,11,995.00 leading to the ambiguity that item 5(b)(ii) included only minor fabrication and not extensive fabrication to make built-up sections as per AFC drawings. Respondent should have taken adequate care to avoid such ambiguities which he failed. In fact the tenders should be absolutely explicit, free of contradictions so that all the tenderers are clear regarding the items and their execution.

Attention is also drawn to the description of item 5 (a) in BOQ (which is a high value item) where it is elaborately explained, going to minute details including notes where payments for items of work like providing laps / providing couplers, welding will not be paid is clearly mentioned. In contrast, in item 5(b)(ii) the description is so short, and hardly conveying any clear meaning of various items of work involved in this 'roof structure work'. AT finds a huge difference in the basic rate of these two items, viz 5(b)(ii) and 6.10. Now looking at the rate analysis exchanged between the parties which are on record, the one submitted by the Claimant vide CD 5 dated 27/10/2014 indicates the cost of the new item for fabrication etc., as per the description given by the Claimant in the request letter at Rs 21,080/- per MT. The one prepared by the Respondent through its department and forwarded to the Claimant vide Mr Koley's email dated 12/12/ 2014 (CD- 6) [refer S.No.6 of the Table attached with Memo of Admission and Denial of the documents filed by the Claimant as submitted by Respondent vide their memo dated 13.06.2018] gives the worked out rate as Rs 21,067/- per MT. So it becomes evident that a huge quantity of fabrication work was not in the mind of the Respondent when the tender for this work was floated and the required BOQ was prepared by them.”

35. It is clear from the above that the Arbitral Tribunal has carefully examined the BOQ items and had taken an informed view. This Court is unable to accept that the said reasoning is perverse or patently illegal. On the contrary, this court finds no infirmity with the aforesaid reasoning.

36. The next question to be examined is whether the impugned award runs contrary to Clauses 1.1 and 7.1 to 7.6 of the Technical

Specifications and/or Clauses 4.10 and 5.1 of the GCC. The relevant sub-clauses of Clause 1.1 of the Technical Specifications are set out below:

“1. General

1.1 General

- i) These Specifications contained herein shall be read in conjunction with other tender documents and Tender Drawings issued under this Contract.
- ii) Generally the work shall be carried out as per the latest edition of Codes and Standards of Indian Railways, Metro Railways Kolkata, ‘Specifications for Road and Bridge works’ of Ministry of Road Transport & Highways (MORTH) as published by Indian Roads Congress and CPWD specifications – 1996/2002 with correction slips & amendments upto date to the extent they are applicable to the works covered under scope of works in order of precedence and as decided solely by RVNL. Tender price should be deemed inclusive of all aspects related to this project.
- iii) The Work shall be carried out in accordance with the “Good for Construction” drawings and designs as would be issued to the Contractor by the engineer duly signed and stamped by him. The Contractor shall not take cognisance of any drawings, designs, specifications, etc. not bearing Engineer’s signature and stamp. Similarly the Contractor shall not take cognisance of instructions given by any other Authority except the instructions given by the Engineer in writing.

- v) Absence of terms such as providing, supplying, laying, installing, fixing etc. in the descriptions does not even remotely suggest that the Contractor is absolved of such providing, supplying etc. unless an explicit stipulation is made in this contract. The Employer / Engineer shall bear no costs of materials, labour, equipment, duties, taxes, Octroi, cess, royalties etc.

- vii) The classification of various items of works for purposes of measurements and payments shall be as per Bills of Quantities (BOQ). Except where distinguished by BOQ, the rates apply to all heights, depths, leads, lifts, sizes, shapes and locations. They also cater for all cuts and wastes. No height-wise / floor-wise separation shall be made for the rates. Likewise all heights of cantering, shuttering, staging, formwork and scaffolding, launching trusses and other launching methods are covered by the quoted rates including multi stage propping for heights greater than one life / floor as per drawings.”

37. As is apparent from the above, the provisions of sub-clauses of Clause 1.1 of the Technical Specifications are general in nature. The same do not in any manner materially extend the scope of the express terms of the BOQ item. Sub-clause (v) of Clause 1.1 of the Technical Specifications also makes it clear that absence of terms such as providing, supplying, laying, installing and fixing in the description, does not absolve the contractor from performing the said activities. However, there is no mention of fabrication. In view of the above, it is difficult to accept that in terms of Clause 1.1 of the Technical Specifications, Simplex was required to carry out the work even

though the same was not expressly provided in the BOQ item in question. In any view of the matter, the impugned award cannot be held to be contrary to Clause 1.1 of the Technical Specifications.

38. Clauses 7.1 to 7.6 of the Technical Specifications also do not expressly provide that the contractor would necessarily be required to carry out fabrication work, even though it does not find any mention in the BOQ item. Clauses 4.10 of the GCC relied upon by RVNL reads as under:

“Sufficiency of 4.10 accepted Contract Amount	The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the Contract Price. Unless otherwise stated in the Contract, the Contract Price shall cover all his obligations under the Contract and all things necessary for the proper Design (to the extent specified in the Contract), execution and completion of the Works, testing and commissioning (including Integrated Testing and Commissioning) and remedying of any defects.”
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39. There is no dispute that the contract price would cover all the obligations undertaken by Simplex under the Agreement. However, that is not the dispute/controversy in this case. The dispute/controversy, as noted above, is whether the work of extensive fabrication is included in the BOQ Item 5(b)(ii) of Schedule A. Clearly, if fabrication work is not included in the said BOQ item,

Simplex would have no contractual obligation to execute the same. In such circumstances, obviously, the contract price would not cover execution of the fabrication work. Clause 5.1 of GCC relates to preparation of shop drawings. Simplex has not disputed that it is required to prepare shop drawings based on the construction drawings issued by RVNL.

40. Mr. Seth had also referred to the cross-examination of CW1 and had contended that there were clear admissions made by CW1 – witness examined on behalf of Simplex – which was ignored by the Arbitral Tribunal. This Court finds the said contention to be unmerited. The Arbitral Tribunal has extensively considered the oral testimony of the said witness and this Court is not required to re-appreciate the same. The scope of Section 34 of the A&C Act does not entail re-appreciation and re-evaluation of evidence. The Supreme Court, in a number of decisions, has reiterated the same. In a recent decision in *Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.: 2021 SCC OnLine SC 695*, the Supreme Court had observed that the approach of the courts to set aside the arbitral award after dissecting and reassessing the factual aspects of the cases would lead to corrosion of the objective of the A&C Act. The relevant observations made by the court are set out below:

“24. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by courts while examining the validity of the arbitral awards. The limited grounds available to courts for annulment of arbitral awards are

well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the courts. There is a disturbing tendency of courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal without appreciating the contours of the said expressions.

25. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression 'patent illegality'. Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression 'patent illegality'. What is prohibited is for courts to re-appreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons

for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression 'patent illegality'."

41. As noticed above, the conclusion of the Arbitral Tribunal is informed by reason. The Arbitral Tribunal has evaluated the evidence and material on record and, this Court finds no ground to interfere with the same under Section 34(2)(b)(ii) or under Section 34(2A) of the A&C Act.

42. The only question that remains to be addressed is whether the principles of natural justice were violated and RVNL was prevented from contesting the claims made by Simplex. It is pertinent to note that on 04.11.2020, the counsel appearing for RVNL had made oral submissions before the Arbitral Tribunal and during the course of the said proceedings, he had sought to refer to the decision of the Supreme Court in (*Sethi Auto Service Station v DDA: 2009 (1) SCC 180*). This was objected to, as the hearing before the Arbitral Tribunal had been concluded and the parties had also filed their written submissions. The said decision was not referred to by RVNL in its submission made earlier or in the written submissions. Since one of the members of the Arbitral Tribunal had expired after the hearings were concluded, the vacancy caused had been filled by the appointment of another Arbitrator. In the circumstances, the Arbitral Tribunal with the

consent of parties, decided that the counsels shall be afforded an opportunity to make oral submissions spanning over three hours each. This was to enable them to once again submit their case for the benefit of the learned Arbitrator who had been appointed to fill up the vacancy caused by the demise of the Arbitrator appointed earlier. Concededly, the counsels were required to confine themselves to the submissions already made. However, the learned counsel for RVNL now desired to cite another judgment, which was not cited earlier and thus, was prevented from doing so. The decision of the Arbitral Tribunal to not consider the judgment cited by the counsel for RVNL cannot be held to be violative of the principles of natural justice. Undisputedly, RVNL was provided full opportunity to contest the claims made by Simplex. The counsels were not only heard extensively but were also permitted to file written submissions. In this view, the contention that the impugned award is vitiated as RVNL was not afforded full opportunity to contest the claims made by Simplex or to advance its counter-claims, is unpersuasive.

43. In view of the above, the petition is unmerited and accordingly dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

SEPTEMBER 29, 2021

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