



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	20.10.2022
Judgment pronounced on	10.11.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Com. Div)No.289 of 2021
&
A.Nos.1488 of 2021 & A.No.1967 of 2022

Chennai Metropolitan Water Supply and Sewerage
Board,
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.
Now at No.75, Santhome High Road,
MRC Nagar, Chennai-600 028.

... Petitioner

vs.

M/s.Tecton Engineering and Constructions LLC
New No.808, G R Complex,
II Floor, Nandanam,
Chennai-600 035.

... Respondent

PRAYER: Original Petition filed under Section 34(2) of the Arbitration and
Conciliation Act 1996 prayed that the Court may be pleased to set aside the
Arbitral Award dated 20/07/2019.



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For Petitioner : Mr.Gowtham S. Raman

For Respondent : Mr.Amalaraj S.Penikilapatti
Ms.R.Maria Sathya
Mr.Judy Selva

ORDER

The Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB/the employer) floated a tender in relation to the provision of sewerage facilities to the Thirumazhisai Town Panchayat. M/s.Tecton Engineering and Constructions LLC, the respondent herein/contractor, was the successful bidder. Consequently, an agreement dated 10.02.2010 was executed between the petitioner and the respondent. The contract documents included the agreement, letter of acceptance, conditions of contract, specifications, bill of quantities, drawings, etc. These documents collectively constitute the Contract. The Contract stipulated that work should be completed within a period of 24 months. The execution of work was delayed and work was eventually completed on 15.03.2015.

2. The conditions of contract comprised both General Conditions of Contract (GCC) and Special Conditions of Contract (SCC). The GCC



defined the term “Adjudicator” and provided for the appointment of an Adjudicator jointly by the employer and the contractor to resolve disputes in the first instance.

3. Upon disputes arising between the petitioner and the respondent, 8 claims, which were labelled as claims 1, 2, 3(a), 3(b), 4, 5, 6 and 7, were referred to the Adjudicator under letter dated 25.01.2016 of the respondent. The award dated 16.09.2016 was pronounced in respect thereof by the Adjudicator(the Adjudicator's Award). By the Adjudicator's Award, an aggregate sum of Rs.2,83,39,260.86 was awarded to the contractor against 4 claims. The other 4 claims were completely rejected. By communication dated 04.10.2016, the petitioner refused to abide by the Adjudicator's Award. By a subsequent communication dated 08.10.2016, the petitioner informed the respondent that the decision of the Adjudicator would be referred to an arbitrator by the petitioner. In these circumstances, the arbitral tribunal was constituted.

4. Before the arbitral tribunal, the petitioner did not assail the



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Adjudicator's decision before the arbitral tribunal. Instead, the respondent herein submitted a statement of claim wherein 19 claims were made by the respondent. The petitioner herein filed a counter statement and refuted these claims. Upon considering the pleadings, the arbitral tribunal framed 8 issues, which are set out at paragraph 8.1 of the arbitral award dated 20.07.2019 (the Arbitral Award). The respondent herein adduced documentary evidence by filing 384 documents, which were exhibited as Exs.C1 to C384. The petitioner herein also adduced documentary evidence by filing 7 documents, which were exhibited as Exs.R1 to R7.

5. An Advocate Commissioner was appointed for the limited purpose of verifying the documents produced before the arbitral tribunal by learned counsel for the claimant, and he filed a report dated 17.02.2019. The petitioner herein cross-examined the Commissioner with regard to the report. Eventually, by the Arbitral Award, the arbitral tribunal awarded a sum of Rs.4,19,19,719/- towards claim Nos. 1 to 4, 6 to 10 and 14 (part) with interest thereon at 12% p.a. from the date of award until the date of payment. In addition, the petitioner herein was directed to refund the



remainder of the retention amount of Rs.38,90,560/- upon completion of the defect liability period of 2 years from 21.05.2018. The petitioner herein was further directed to pay *pendente lite* interest on Rs.2,98,49,986/- at 9% p.a. from 13.10.2016 till the date of award. The petitioner was also directed to discharge and return the performance security deposit of Rs.38,48,700/- and the original performance guarantee and bank guarantee within one month from the date of award and, in case of default, the respondent herein is entitled to 12% p.a. as interest on the bank guarantee and the security deposit of Rs.38,48,700/-. A sum of Rs.44,300/- and a sum of Rs.12,500/- were directed to be paid by the petitioner herein to the respondent as costs. The Arbitral Award is impugned by the petitioner herein.

6. Oral submissions on behalf of the petitioner were advanced by Mr.Goutham S. Raman, learned counsel; and on behalf of the respondent by Mr.Amalaraj S. Penikilapatti, learned counsel.

7. Mr.Gowtham Raman invited my attention to the material clauses of the contract documents. After pointing out that clause 7.1 of the Instructions



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To Bidders (ITB) specifies that the bidder is entitled to undertake a site visit before submitting the bid, he submitted that the bidder was therefore presumed to be fully aware of site conditions. He also pointed out that the technical bid is required to include details of construction equipment proposed to be used in the execution work. By turning to clause 2.3 of the GCC, he submitted that the said clause sets out the order of priority of the contract documents. In the order of priority, both the GCC and SCC are clubbed under Sl.No.5 pertaining to conditions of contract. With reference to the definitions under the GCC, he submitted that the term Adjudicator was defined therein. As regards disputes, he submitted that disputes arising out of the Contract were required to be decided by the Engineer. As against the decision of the Engineer, the person aggrieved could refer the matter to the Adjudicator within 14 days of notification of the Engineer's decision. Within 28 days of receipt of notification of a dispute, the Adjudicator is required to give his decision. If aggrieved by the decision of the Adjudicator, either party is entitled to refer such decision to an arbitrator within 28 days thereof.



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8. By relying on the dispute resolution clauses (clauses 24 and 25) of the GCC, learned counsel for the petitioner submitted that the Contract envisages the submission of the decision of the Engineer to the Adjudicator by the contractor, if aggrieved by such decision. In respect of the decision of the Adjudicator, if aggrieved, either party may refer the Adjudicator's decision to the arbitral tribunal. Consequently, according to learned counsel, the scope of reference to the arbitral tribunal was confined to the decision of the Adjudicator. In this case, he pointed out that the respondent herein raised 8 claims before the Adjudicator. By drawing reference to the Adjudicator's Award, he pointed out that the said 8 claims are set out at internal pages 1 and 2 thereof. He further submitted that out of the 8 claims, the Adjudicator awarded an aggregate sum of about Rs.2,83,39,260/- against claim Nos.1, 2, 3(a) and 4. By communication dated 04.10.2016, the petitioner informed the respondent that it did not accept the decision of the Adjudicator on these 4 claims. The reference to arbitration was made in that context. Hence, learned counsel contended that the arbitral tribunal exceeded the scope of reference by admitting and entertaining 19 claims for an aggregate sum of Rs.9,07,31,710/-. By referring to paragraph 3.14 of the



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Arbitral Award, he pointed out that the 19 claims of the respondent herein are set out therein. Therefore, he submitted that the arbitral award calls for interference under Section 34 (2)(a)(iv) read with Section 34 (2A) of the Arbitration and Conciliation Act 1996 (the Arbitration Act).

9. By referring to paragraphs 13.5 to 13.13 of the Arbitral Award, he contended that the findings recorded therein are erroneous and call for interference by this Court. In particular, he submitted that the finding of the arbitral tribunal to the effect that the claims may be considered although they were not the subject of the Adjudicator's decision is in disregard of clause 25 of the GCC. Since it is in disregard of the contractual stipulation and beyond the scope of reference to arbitration, the Arbitral Award is vitiated. In support of this contention, he cited *State of Goa v. Praveen Enterprises*(***Praveen Enterprises***), (2012) 12 SCC 581 .

10. Without prejudice to the contention that the arbitral tribunal exceeded the scope of reference, learned counsel for the petitioner further contended that the Arbitral Award calls for interference even on the merits.



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By drawing reference to paragraph 14.38 of the Arbitral Award, he pointed out that the arbitral tribunal noticed that the respondent herein was also responsible for the delay. While claims 11 to 13 were rejected on that basis, learned counsel contended that the arbitral tribunal committed patent errors in allowing other claims in spite of such finding. With specific reference to claim 6, which pertains to the cost of transportation of excavated earth to a different location and thereafter bringing back that earth for refilling the trenches, he submitted that the findings at paragraphs 20.1 to 20.9 of the Arbitral Award are in disregard of clause 5.10 of the specifications. For all these reasons, he submitted that the Arbitral Award is liable to be set aside.

11. Mr.Amalaraj, learned counsel, made submissions in response and to the contrary. His first contention was that the SCC will prevail over the GCC in the event of conflict. Although clauses 24 and 25 of the GCC provide for dispute resolution by the Engineer and the Adjudicator before such disputes are referred to arbitration, he submitted that clause 3 of the SCC does not contain any restrictions in respect to the submission of a dispute for arbitration. By placing emphasis on the use of the expression



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“dispute or difference between the Employer and Contractor relating to any matter arising out of or connected with this agreement” in clause 3 (a), he contended that the language makes it abundantly clear that the arbitral tribunal is entitled to decide any dispute or difference between the employer and contractor provided it arises out of or is connected with the Contract between the parties.

12. By turning to the Arbitral Award, he pointed out that the arbitral tribunal framed an issue on the jurisdiction of the arbitral tribunal to determine issues not found in the Adjudicator's decision. On the said issue, the reasoning of the arbitral tribunal is set out in paragraphs 13.5 to 13.12 of the Arbitral Award. With reference thereto, he submitted that the tribunal noticed that claim Nos.1, 2 and 3 before the arbitral tribunal were akin to claims 1, 2 and 3 before the Adjudicator. Likewise, claim 4 before the tribunal was construed as akin to claim 4 before the Adjudicator. Claims 5 and 6 before the arbitral tribunal were construed as akin to claims 5 and 6 before the Adjudicator. Claim 7 before the arbitral tribunal was construed as akin to claim 3(b) before the Adjudicator. Claim 8 was considered as linked



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to claim 3(a) before the Adjudicator. Claims 9, 10, 11, 12, 13, 14 and 15 were considered as consequential or the sequelae to the performance of work under the Contract. He pointed out that the arbitral tribunal took into account the fact that the rejection of these claims solely on the ground that the claims were not submitted for adjudication by the Adjudicator would be antithetical to the Arbitration Act and would result in multiplicity of proceedings. He also pointed out that the arbitral tribunal noticed clause 3 of the SCC before concluding that the tribunal is entitled to receive these claims.

13. On the merits, by drawing reference to paragraph 32.1 of the Arbitral Award, he submitted that several claims for damages, such as claims 11 to 13, were rejected in spite of the respondent adducing necessary evidence before the arbitral tribunal. All the claims that were allowed related to work carried out by the respondent for the petitioner or related to refund of amounts paid in relation to the execution of the contract. As against the principal claim of Rs.9.07 crore, only a sum of Rs.2.98 crore was awarded. Therefore, he submitted that no case is made out for interference with the Arbitral Award.



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14. The principal ground on which the Arbitral Award is assailed is that it deals with claims that do not fall within the terms of submission to arbitration. Section 34(2)(a)(iv) of the Arbitration Act deals with challenges on this ground. The said provision is set out below:

“(2) An arbitral award may be set aside by the Court only if -

(a) the party making the application furnishes proof that -

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

PROVIDED that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside.”

15. In ***Praveen Enterprises***, which was relied upon by learned counsel for the petitioner, the Hon'ble Supreme Court held as follows with



regard to the methods by which and/or the terms on which a dispute is referred for arbitration:

“41. The position emerging from the above discussion may be summed up as follows:

(a) Section 11 of the Act requires the Chief Justice or his designate to either appoint the arbitrator(s) or take necessary measures in accordance with the appointment procedure contained in the arbitration agreement. The Chief Justice or the designate is not required to draw up the list of disputes and refer them to arbitration. The appointment of the Arbitral Tribunal is an implied reference in terms of the arbitration agreement.

(b) Where the arbitration agreement provides for referring all disputes between the parties (whether without any exceptions or subject to exceptions), the arbitrator will have jurisdiction to entertain any counterclaim, even though it was not raised at a stage earlier to the stage of pleadings before the arbitrator.

(c) Where however the arbitration agreement requires specific disputes to be referred to arbitration and provides that the arbitrator will have the jurisdiction to decide only the disputes so referred, the arbitrator's jurisdiction is controlled by the specific reference and he cannot travel beyond the reference, nor entertain any additional claims or counterclaims which are not part of the disputes specifically referred to arbitration.”



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The relevant contractual clauses and the documents relating to the reference of the dispute to arbitration should be examined in order to decide whether the present reference to arbitration falls within the scope of clause (b) or c) or both of ***Praveen Enterprises***, and to decide whether interference with the Arbitral Award is called for.

16. As per the definitions in the GCC, the Engineer is the person appointed under the Contract to supervise the contractor, administer the Contract, issue variations, grant extensions of time, etc. Clause 4.1 of the GCC prescribes that he decides contractual matters as the employer's representative. The Engineer is also named by designation in the Contract Data as the Chief Engineer (C) Sewerage. The GCC defines the Adjudicator as “the person appointed jointly by the Employer and the Contractor to resolve disputes in the first instance, as provided for in clauses 24 and 25.” The name of the Adjudicator is found in the Contract Data. The Adjudicator named in the Contract Data is one Thiru. V.Rajagopal. Upon perusal of the GCC and SCC, it appears that several decisions relating to the execution of work are taken by the Engineer. Clauses 24 and 25 of the GCC deal with disputes arising out of the Engineer's decisions and, in turn, the



Adjudicator's decision on the Engineer's decision, and the procedure in relation thereto. The said clauses are set out below:

“24. Disputes

24.1 If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.

25. Procedure for Disputes

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

25.2 The Adjudicator shall be paid daily at the rate specified in the Contract Data together with reimbursable expenses of the types specified in the Contract Data and the cost shall be divided equally between the Employer and the Contractor, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above



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28 days, the Adjudicator's decision will be final and binding.

25.3 The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of the Contract.”

17. The above clauses of the GCC should be construed in the light of clause 3 of the SCC. Clause 3(a) is relevant, in this connection, and is set out below:

“3. ARBITRATION

The procedure for arbitration will be as follows:

(a) In case of Dispute or difference arising between the Employer and Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996. The arbitration tribunal shall consist of 3 arbitrators one each to be appointed by the Employer and the Contractor. The third arbitrator shall be chosen by the two arbitrators so appointed by the parties, shall act as presiding arbitrator. In case of failure of the



two arbitrators appointed by the parties to reach upon a consensus within a period of 30 days from the appointment, this shall be done in accordance with the Arbitration and Conciliation Act, 1996.”

18. Thus, the Contract envisages that the decisions taken by the Engineer would be subject to reference by the contractor to the Adjudicator within 14 days of the notification of the Engineer's decision. The Adjudicator, in turn, is required to decide the dispute within 28 days of receipt of notification of the dispute. Upon receiving the decision of the Adjudicator, either party, if aggrieved, is entitled to refer such decision for arbitration within 28 days of receipt thereof. Clause 25.3 provides that the arbitration shall be conducted as per the procedure stated in the SCC.

19. From the above scheme, it appears that a dispute resolution mechanism with two tiers is provided for with regard to disputes arising out of decisions by the Engineer in course of supervision of work under the Contract. As noticed earlier, the Engineer supervises the execution of work under the Contract for and on behalf of the employer, and the Contract



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empowers the Engineer to take several decisions while performing such duty. These decisions may be challenged by the contractor before the Adjudicator within 14 days of being notified of such decision and, in turn, the decision of the Adjudicator may be challenged by the aggrieved party before an arbitral tribunal within 28 days of being notified of the decision.

20. Turning to clause 3 of the SCC, as contended by learned counsel for the respondent, the said clause provides for reference to arbitration of 'dispute or difference between the employer and the contractor relating to any matter arising out of or connected with this agreement'. No limitations or restrictions have been placed on the jurisdiction of the arbitral tribunal by clause 3. The dispute resolution clauses in the GCC and the SCC were, therefore, required to be construed by the arbitral tribunal.

21. The findings of the arbitral tribunal should be examined by bearing in mind the above contractual context. The arbitral tribunal framed Issue No.5 as follows: "5. Whether this arbitration tribunal can go into the issues not found in the Adjudicator's decision?". This issue was examined



in paragraphs 13.1 to 13.15 of the Arbitral Award. In paragraphs 13.5, 13.6, 13.7, 13.8, 13.9 and 13.10, the arbitral tribunal identified the corresponding claim before the Adjudicator and concluded that claims 1 to 8 are akin to or linked with specific claims made before the Adjudicator. In paragraph 13.8, the arbitral tribunal set out several reasons in support of the conclusion that the claims made by the respondent herein may be determined by the arbitral tribunal. Paragraph 13.8 is set out below:

“13.8 The Claim Nos.5 and 6 are relating to sheet pile shoring and excess labour for executing the work in sandy soil and relating to additional lead which are akin to Claim Nos.5 and 6 before the Adjudicator and those are intrinsically linked to the execution of the work, which got completed only during the pendency of this Arbitration and as such, the Respondent Board cannot call upon this Tribunal to reject them on the sole ground that the said claims were not made before the Adjudicator. If this Tribunal dismisses the claim only on the sole ground that those claims cannot be subject matter of reference to Arbitration, then it will lead to multiplicity of



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proceedings, which would be antithetical to the object of the Arbitration and Conciliation Act, 1996, including the relevant Amendment of the Act. In this context, it is relevant to refer Clause 3 of the Special conditions of Contract Part I found at page 69 of Contract Volume I, dealing with the procedure for Arbitration, reads as follows:

“In case of dispute or difference between the Employer and the Contractor relating to any matter arising out of or connected with this agreement, such disputes or difference shall be settled in accordance with the Arbitration and Conciliation Act, 1996.”

22. As regards claims 9 to 19, the arbitral tribunal concluded that these claims were a sequelae to the performance of work and that such work was concluded after arbitral proceedings commenced. The tribunal further concluded that these claims are connected with the performance of the Contract in question. The reasons specified by the arbitral tribunal may be summarised as under:

(i) The claims before the Adjudicator were akin to the



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claims before the arbitral tribunal or were linked thereto.

(ii) The claims were intrinsically linked to the execution of work.

(iii) Work was completed only after commencement of arbitral proceedings.

(iv) If the claims are rejected on the sole ground that these claims cannot be subject matter of reference to arbitration, it will lead to multiplicity of proceedings and be antithetical to the object of the Arbitration Act.

(iv) Clause 3 of the SCC provides for reference to arbitration if any dispute or difference arises between the employer and the contractor relating to any matter arising out of or connected with this agreement.

23. The question that arises for consideration in the light of the rival contentions and the findings is whether the arbitral tribunal exceeded the scope of reference and whether interference with the Arbitral Award is warranted. For such purpose, the following aspects are material: (i) the



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arbitral tribunal took into account the contention of the petitioner herein to the effect that only 8 claims were made before the Adjudicator, whereas 19 claims were submitted before the arbitral tribunal; (ii) the arbitral tribunal identified the corresponding claims before the Adjudicator as regards claims 1 to 8 before the arbitral tribunal; (iii) as regards claims 9 to 19, the arbitral tribunal recorded that these claims were closely linked to the claims before the Adjudicator and a sequelae to the performance of work after noticing and recording, in paragraph 13.4, that the completion certificate was issued by the petitioner herein on 27.09.2018 after the arbitral tribunal entered upon reference; and (iv) the arbitral tribunal also noticed clause 3 of the SCC which empowers the reference of any dispute or difference provided it relates to a matter arising out of or connected with the Contract.

24. Another significant aspect should not be lost sight of. Clause 25 of the GCC provides for the Adjudicator's decision to be referred to the arbitral tribunal by the aggrieved party. In effect, the Clause 25 remedy is in the nature of an appeal to the arbitral tribunal by the aggrieved party. In this case, the Adjudicator's Award was in favour of the respondent/contractor as regards 4 claims. The communication dated 04.10.2016 of the petitioner



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disputes that may be referred for arbitration both because dispute resolution under clause 25 is confined to disputes originating in the Engineer's decision and in view of the wide ambit of clause 3. Hence, in this case, the reference to arbitration is, in substance, within category (b) of paragraph 41 of *Praveen Enterprises* and not category c).

25. When the factual and contractual context is considered cumulatively, the conclusions of the arbitral tribunal are based on a reasonable construction of the dispute resolution clauses. The appraisal of the nature of the claims, including the identification of the corresponding claim before the Adjudicator, and the conclusion on the strong links between the claims before the Adjudicator and the claims before the arbitral tribunal are also in consonance with the requirement of Section 34(2)(a) (iv) of the Arbitration Act, which calls for an inquiry into whether the dispute is “contemplated by” or “falling within the scope of submission to arbitration”. Hence, the Arbitral Award does not call for interference on this count. The challenge on the merits of the dispute is not required to be considered in detail but nonetheless warrants brief consideration.

26. On the merits of the dispute, learned counsel for the petitioner



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pointed out that the arbitral tribunal examined the causes for delay and the attribution of responsibility in respect thereof in paragraph 14 of the Arbitral Award. He submitted that the conclusions of the arbitral tribunal were contrary to the evidence on record. On the contrary, learned counsel for the respondent submitted that the arbitral tribunal took into account the Adjudicator's Award on delay and, thereafter, closely examined the evidence on record before concluding, on that basis, that the delay by the petitioner herein outweighed the delay on the part of the respondent herein.

27. In paragraph 14.26 of the Arbitral Award, the arbitral tribunal reproduced the tabulation by the Adjudicator on the attribution of responsibility for delay in execution of the Contract. In paragraph 14.35, after examining the evidence, the arbitral tribunal concluded that the delay by the petitioner herein in handing over the STP site caused the delay in completing the project. Paragraph 14.35 is set out below:

“14.35 This Tribunal is satisfied that the non-handing-over of the STP site at the appropriate time caused the delay in completing the project. As such, we are of the firm opinion that the delay



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on the part of the Respondent Board was significant and not a poco curante one. In the meanwhile, as pointed-out by the Adjudicator, the Claimant also was responsible to some extent for the delay in carrying-out the work, which in our view, the delay has not hindered the progress of the work of Project and not significant.”

28. In paragraph 14.37, the arbitral tribunal recorded that the delay by the petitioner herein outweighs the delay by the respondent herein. Significantly, the arbitral tribunal also recorded the following finding in paragraph 14.37:

“14.37 ... As rightly contended on behalf of the Claimant that though the Project / System was completed on 15.3.2015 itself even according to the Respondent, it was lying idle and unutilised for the last three years on account of the Respondent's failure to provide sewage for commencing operation and maintenance. Such inordinate delay in this regard has to be attributed only to the Respondent. In these circumstances, even if there were some delays on



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the part of the Claimant during the earlier period of the performance of the contract referred in the letter dated 17.9.2014. Annexure IV of Ex C318, in our view such delays are not significant and material. Further such delays also had not in any way hindered the progress of the work of completion of commissioning work including O &M for 120 days which took place more than 3 years after the completion of all other works of the Claimant.”

29. Since some delays were attributed to the respondent herein, the arbitral tribunal rejected claims 11,12 and 13. Thus, the conclusions of the arbitral tribunal on delay and the attribution of responsibility in respect thereof are based on a reasonable appraisal of the evidence on record. Therefore, such conclusions do not call for interference under Section 34 of the Arbitration Act.

30. Learned counsel for the petitioner also focused on the arbitral tribunal's conclusions on claim 6. The said conclusions are recorded in paragraph 20.1 to 20.9 of the Arbitral Award. After examining the clause



cited by the petitioner to resist the claim, the arbitral tribunal concluded that the said clause does not justify non-payment of additional lead. The said conclusion was drawn by interpreting clause 5.10 of the specifications. Since the petitioner failed to establish that the interpretation is implausible, these conclusions also do not call for interference under Section 34 of the Arbitration Act.

31. For reasons set out above, the petitioner has failed to make out a case to interfere with the Arbitral Award. Accordingly, Arb.O.P.(Com.Div.) No.289 of 2021 is dismissed without any order as to costs. Consequently, connected applications are closed.

10.11.2022

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SENTHILKUMAR RAMAMOORTHY,J

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Pre-delivery order in
Arb.O.P.(com.div)No.289 of 2021

10.11.2022

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