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

% *Date of Decision: 25.05.2022*

\+ **FAO(OS) (COMM) 135/2022 and CM Nos. 25139/2022, 25140/2022, 25141/2022, 25142/2022 & 25143/2022**

UNION OF INDIA REPRESENTED BY DG MAP ..... Appellant
Through: Mr Rakesh Kumar, CGSC with Mr Sunil, Advocate.

versus

M/S VASCON ENGINEERS LTD ..... Respondent
Through: Mr Arvind Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. *(ORAL)*

1. The appellant has filed the present appeal impugning a judgment dated 03.09.2021 passed by the learned Single Judge, whereby the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter **'the A&C Act'**) seeking to set aside an arbitral award dated 31.12.2020 (hereafter '**the Award**'), was rejected.

2. The Award was rendered in the context of the disputes that had arisen between the parties in connection with the work of *"Completion of Balance Works of Construction of Dwelling Units Including Allied External Services at Khirkee (Aundh) Pune Army"* which was awarded

to the respondent (hereafter **'Vascon'**).

3. The work was to be completed in three phases. It was stipulated that the first phase would be completed on or before 16.01.2010 and the remaining two phases – phase two and phase three – would be completed on or before 16.07.2011 and 04.03.2014 respectively. The time for completion of the work was extended and there is no dispute that the work was completed during the extension period.

4. In the context of the disputes that arose between the parties, Justice (retd) Badar Durrez Ahmed, former Chief Justice of the Jammu and Kashmir High Court was appointed as the Sole Arbitrator to adjudicate the disputes. Before the Arbitral Tribunal, Vascon raised several claims. The appellant also raised certain counter-claims. A tabular statement indicating the claims raised by Vascon is set out below:

CLAIMS OF VASCON

Issue No.	Description	Amount Claimed (in Rs)	Amount awarded (in Rs)
1	Balance payments for works, including deviations, additional works (Parts 1 to 9 of Claim 1)	Rs 2,53,43,288/-	Rs 24,16,874/-
2	Increase in rates of cement, steel, sand and coarse aggregates.	Rs 1,17,09,737/-	Nil
3	Increase in excise duly	Rs 9,96,678/-	Rs 9,96,678/-
4	Increase in labour costs	Rs 78,85,812/-	Nil

5	Stoppage of work between September to December 2009 and March to June 2010	Rs 1,81,07,757/-	Rs 1,16,58,459/-
6	Shortfall in steel under schedule of credit	Rs 66,79,365/-	Nil
7	Loss due to incorrect progress stage stated in the tender	Rs 46,99,208/-	Nil
8	Maintenance and operation of water supply installation after handing over to users	Rs 750,000/-	Nil
9	Delayed / Underpayment of RARs	Rs 35,45,629/-	Rs 3,73,578/-
10(a)	Prolonged commitment to contract	Rs 163,71,838/-	Nil
10(b)	Prolonged commitment of Claimant's T&P	Rs 31,17,663/-	Nil
10(c)	Prolongation of the validity period of the Bank Guarantee	Rs 42,39,644/-	Nil
11	Costs of arbitration	Rs 40,39,471/-	Rs 25,85,153/-
12	Interest on due amounts for past, pendent-lite and future.	@20% p.a.	Rs 39,90,559/- @8% p.a. for past and pendente lite. For future interest also @ 8% p.a."

5. In the proceedings initiated by the appellant under Section 34 of the A&C Act, the appellant confined its challenge to the Award of the amounts awarded against four claims – Claim No. 3 (increase in excise duty); Claim No.5 (stoppage of work between September to December

2009 and March to June 2010); Claim No.11 (cost of arbitration); and Claim No.12 (award of interest).

6. The learned Single Judge considered the aforesaid challenge and found that the impugned order did not warrant any interference on the anvil of standards under Section 34 of the A&C Act.

7. As noticed above, the appellant's challenge in these proceedings is confined to the decision regarding award of compensation for loss due to stoppage of work, costs, and interest.

8. In terms of Clause 11(b) of the General Conditions of Contract (GCC), Vascon was entitled to compensation in respect of salaries and wages paid during the period when the work was suspended for the specified reasons. Clause 11 of the GCC is relevant and is set out below:

> "11. **Suspension of Works**:
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> (a) The Contractor shall, on receipt of the order in writing of the P.M., suspend the progress of the Works or any part thereof for such time and in such manner as the P.M. may consider necessary for any of the following reasons:
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> (i) on account of any default on the part of the Contractor; or
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> (ii) for proper execution of the Works or part thereof for reasons other than the default of the Contractor; or
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> (iii) for safety of the Works or part thereof.

The Contractor shall, during suspension, properly protect and secure the works to the extent necessary and carry out the instructions given in that behalf by the P.M.

(b) If the suspension is ordered for reasons (ii) and (iii) in Sub para (a) above: -

(i) the Contractor shall be entitled to an extension of time equal to the period of every such suspension plus 25% for completion of the item or group of items of work for which a separate period of completion is specified in the Contract and of which the suspended work forms a part, and

(ii) if the total period of all suspensions in respect of an item or group of items of work for which a separate period of completion is specified in the Contract exceeds 60 days the Contractor shall, in addition, be entitled to compensation, as the P.M. may on the basis of facts consider reasonable, in respect of salaries and / or wages paid by the Contractor to his employees and labour at Site actually remaining idle during the period of suspension.

(c) If the Works or part thereof is suspended on the orders of the P.M. for more than four months at a time, except when suspension is ordered for reason (i) in sub Para (a) above, the Contractor may after 60 days from receipt of such order serve a written notice on the P.M. requiring permission within fifteen days from receipt by the P.M. of the said notice, to proceed with the Works or part thereof in regard to which progress has been suspended and if such permission is not granted within that time, the

> Contractor if he intends to treat the suspension, where it affects only a part of the Works as an omission of such part by Government under Condition 9 or where it affects the whole of the Works, as an abandonment of the Works by Government, shall within ten days of expiry of such period of 15 days give notice in writing of this intention to the P.M. In the event of the Contractor treating the suspension as an abandonment of the Contract by Government, he shall have no claim to payment of any compensation on account of any profit or advantage which he may have derived from the execution of the work in full but which he could not derive in consequence of the abandonment. He shall, however, be entitled to compensation, as the P.M. may on the basis of facts consider reasonable, in respect of salaries and / or wages paid by him to his employees and labour at Site actually remaining idle in consequence and also for loss on materials collected which could not be utilized on these or other works including 5% as overheads on materials, salaries and wages."

9. Vascon had claimed an amount of ₹1,81,07,757/- as compensation for stoppage of work between the period September to December 2009 and March to June 2010. In support of his claim, Vascon had produced statements which were marked as 10A, 10B and 10C. Vascon had also produced a Chartered Accountant's Certificate in support of the said claim.

10. The statement marked as 10A indicates that Vascon had incurred an expenditure of ₹3,42,697/- on salaries during stoppage of work from 18.09.2009 to 12.12.2009 (a total of 85 days). A tabular statement

appended to the said statement marked as 10A sets out the details of the individual employees and the remuneration paid to them during the period in question.

11. In addition, Vascon had also produced a statement indicating the salaries paid to the staff during the period 12.03.2010 to 02.06.2010. The same indicated that a sum of ₹22,16,784/- was paid on that account. The said statement was marked as '10B'. The statement marked as 10C indicated the amount paid to labour during the said period. In addition Vason also produced a Chartered Accountant's Certificate certifying as under:

> "(1) Salary paid to named site employees (8 persons) with employee Code V-1016, 1023, 1039, 1123, 287, 540, 725, and 925 for the month of November 2009 as Rs 120,952/-.
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> (2) Salary paid to site staff during the period 12.03.2010 to 02.06.2010 as worked out from the books of the company as Rs 22,16,784/-.
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> (3) Total amount for the security guard and security supervisor as per the bills and as recorded in the books of the company as Rs 166,987/- March 2010 to June 2010."

12. Mr Kumar, the learned counsel appearing for the appellant states that there is no cavil with the calculation in statement 10B. However, the Arbitral Tribunal has erred in accepting the statement of expenses as claimed under the statements marked as 10A and 10C. He submits that the Chartered Accountant's Certificate certified the amount paid to eight employees (as covered under the Statement 10B) during the month

of November 2009; it was silent in respect of payments made during the period September, October and December 2009. He states that similarly, the amounts claimed as paid to the labour were also not certified. He contends that first of all, Vascon was required to satisfy that certain employees had remained idle during the period work was suspended; and second, that Vascon had paid salary and wages to those workers. He submits that none of the two ingredients were satisfied in this case. No evidence was produced by Vascon to support the claim for compensation in terms of Clause 11(b) of GCC. Notwithstanding the same, the Arbitral Tribunal has re-calculated the expense on unsubstantiated assumptions as to the number of employees and average wages, and has awarded the same.

13. In addition to the above, he submits that the costs as awarded is unwarranted and the interest rate is excessive.

14. Insofar as Claim No.5 is concerned, the Arbitral Tribunal had examined the material on record including the aforementioned three statements marked as 10A, 10B and 10C and allowed the claim to the extent of ₹1,16,58,459/- as against a sum of ₹1,81,07,757/- claimed by Vascon. The relevant extract of the Award as also set out in the impugned order, reads as under:

> "150. Detail 10-A is in respect of the period 18/09/2009 to 12/12/2009 (i.e., the first period of stoppage). Under serial no.1, claims have been made for "Site staff salary expense" and an additional "10% Head Office expense & staff". The additional 10% is not permissible under the said clause 11 as

only employees and labour at site have to be considered. Under serial no.2 rent of machinery has been claimed which, also in not permissible under the said clause 11 of the GCC. The salary paid by the Claimant to its eight employees for the month of November 2009 has been shown as Rs 1,20,952/-. On this basis, the per day salary has been computed at Rs 4,032/-. The Claimant has shown the stoppage to be of 85 days when, in fact, it was of 84 days. Hence, the claim on this account would be 84 x 4,032/- which would be Rs 3,38,688/-. The salary paid has been certified by the Chartered Accountant vide certificate no. 02/08/2018 dated 28/08/2018 (page 168 of Volume 5). No contrary evidence has been provided by the Respondent apart from simply refuting the calculation. Hence, for the period 18/09/2009 to 12/12/2009 the Claimant would be entitled to a sum of Rs 3,38,688/- by way of compensation under clause 11 of the GCC.

151. Detail 10-B is in respect of the period 12/03/2010 to 02/06/2020 (i.e., the second period of stoppage). Under serial no. 1, claims have been made for “Site staff salary expense” and an additional “10% Head Office expense & staff’. As stated above, the additional 10% is not permissible under the said clause 11 as only employees and labour at site have to be considered. Under serial no.2 rent of machinery has been claimed which, also in not permissible under the said clause 11 of the GCC. The Claimant has claimed an amount of Rs 1,66,987/- towards security guard and security supervisor under serial no.3. The Claimant has claimed interest on mobilization advance under serial no.4 and alleged loss due to Bank Guarantee & margin money remaining blocked under serial no. 5. These items under serial nos. 4 & 5 are clearly outside the ambit of clause 11 of the GCC and are not admissible. The salary of Supervisors, engineers

and dedicated staff at site has been claimed at Rs 22,16,784/- for this period. Both the amounts of Rs 22,16,784/- and Rs 1,66,987/- have been certified by the Chartered Accountant vide the said certificate No. 02/08/2018 dated 28/08/2018 (page 168 of Volume 5). No contrary evidence has been provided by the Respondent apart from simply refuting the calculation. Hence, for the second period of stoppage the Claimant would be entitled to a sum of Rs 23,83.771/- by way of compensation under clause 11 of the GCC in respect of Detail 10-B.

152. Detail 10-C is also in respect of the period 12/03/2010 to 02/06/2020 (i.e., the second period of stoppage) but pertains to the wages of labourers at site. Referring to the Claimant's letter dated 12/03/2010 (C-14), it was submitted that the work was directed to be stopped suddenly on 11/03/2010 when the strength of the labour force engaged by the Claimant at site was 850. It was pointed out that this was clearly stated in the said letter dated 12/03/2010. There was no denial of this fact by the Respondent at that point of time. It was also contended that since the likely period of stoppage was not indicated, the workforce at site had to be continued. It was further stated that the entire workforce could not be demobilised without paying compensation to them and consequently it had to be retained till the end of March 2010 and thereafter tapered off steadily to about 150. The Claimant has worked out the wages for 20 days of March at 54,40,000/- based on the assumption of average wages of 320/- per day for 850 workmen. For the balance period up to 02/06/2010 it has computed a figure of 58,56,000/- assuming the remaining workforce to be about 300. Thereby, the Claimant has computed a total figure of 1,12,96,000/-. This amount has not been certified by the chartered accountant. Therefore, no sanctity can be placed on the amount computed by the

> Claimant. However, the fact remains that it would have taken time for the Claimant to demobilise the workforce at site and therefore at any point of time during the period of the second stoppage a substantial number of labourers would have been sitting idle at the site. The Respondent, however, has filed R-112 indicating, inter alia, the deployment of labour during this period. Taking those figures against the Respondent, it can be seen from the said document (R-112) that the total labour deployed (skilled and unskilled) during the period 12/03/2010 to 02/06/2010 (83 days) was 27,925 (or 337 per day on an average). Taking the number of 27,925 workmen as being idle during this period and multiplying this with the average wages of Rs 320/- per day, reasonable compensation has been worked out as Rs 89,36,000/-.
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> 153. Hence, the Claimant is entitled to an amount of Rs 1,16,58,459/- (i.e., Rs 3,38,688/- under Detail 10-A PLUS Rs 23,83,771/- under Detail 10-B PLUS Rs 89,36,000/- under Detail 10-C). Claim No. 5 is allowed to this extent and Issue 5 is decided in favour of the Claimant to this extent."

15. The learned Single Judge had examined the Award and had found that it was based on material available on record and the methodology of computation of compensation as accepted by the Arbitral Tribunal was not grossly unreasonable.

16. This Court is unable to accept the contention that the Award is not based on any material on record. Mr Kumar is correct that the certificate issued by the Chartered Accountant only certified the salaries paid to eight employees during the month of November 2009; however, it did not preclude the Arbitral Tribunal from assessing Vascon's claim

for compensation for the month of September, October and December 2009, as well. The statement produced and marked as 10A reflected the salaries paid during the said period. The Chartered Accountant's Certificate did support the quantum of monthly salaries. The Arbitral Tribunal had taken account of the same and had accepted the claim made by Vascon to that extent.

17. The scope of interference under Section 34 of the A&C Act is limited. This Court is not required to re-adjudicate or re-appreciate the disputes between the parties. The Arbitrator is the sole adjudicator of the evidentiary value of material produced by the parties. In the present case, the Arbitral Tribunal has evaluated the material and this Court does not find that the decision of the Arbitral Tribunal is manifestly erroneous or one that no reasonable person could possibly accept. The learned Single Judge has rightly held that no interference in the Award would be warranted under Section 34 of the A&C Act.

18. The contention that it was not open for the Arbitral Tribunal to assess the compensation payable as direct evidence regarding payment of salaries was not produced, is unpersuasive. The Arbitral Tribunal has accepted the average rate of wages as ₹320/- as claimed, as it is, *ex facie*, reasonable. There is no material to indicate that the same was seriously disputed by the appellant. There was ample material on record for the Arbitral Tribunal to reasonably assess the damages as claimed. As observed above, re-evaluation of evidence or material is not the remit of this Court under Section 34 of the A&C Act.

19. Insofar as the payment of costs and interest is concerned, there is

no ground whatsoever to assail the same. Vascon has prevailed in the arbitration before the learned Arbitrator and therefore, there is also no infirmity with the Arbitral Tribunal awarding costs. Vascon had claimed interest (pre-award and future) at the rate of 20% per annum. However, the Arbitral Tribunal has awarded interest at the rate of 8% per annum.

20. This Court concurs with the decision of the learned Single Judge. The present appeal is unmerited and, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MAY 25, 2022
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