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

% Judgement pronounced on: 01.05.2023

+ **FAO(OS) (COMM) 328/2022 & CM No.54795/2022**

MBL INFRASTRUCTURE LTD Appellant

versus

BITES LIMITED & ANR. Respondents

Advocates who appeared in this case:

For the Appellant : Mr Amit Sibal, Sr Adv. with Ms Anusuya Salwan, Mr Bankim Garg, Ms Nikita Salwan, Mr Rishabh Sharma, Mr Darpan Sachdeva, Mr Vinamra and Mr Rachit Wadhwa, Advs.

For the Respondent(s) : Mr G.S. Chaturvedi, Adv. for R-1.
Ms Mehak Nakra, ASC (Civil) with Mr Abhishek, Advs. for R-2.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Court Hearing/ Hybrid Hearing (as per request)]

JUDGMENT

TARA VITASTA GANJU, J.:

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Preface:

1. The present Appeal has been filed under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [hereinafter called “the Act”] against Judgment dated 14.10.2022 passed by the learned Single Judge in OMP(COMM) No. 98/2022 [hereinafter called “Impugned Judgment”] whereby the learned Single Judge has dismissed the Petition filed by the Appellant [hereinafter called “MBL”] under Section 34 of the Act against the Order dated 08.01.2022 passed by the Arbitral Tribunal [hereinafter called “Impugned Arbitral Order”].

Background:

2. Briefly, the facts in issue are that MBL filed a Statement of Claims against the Respondent No. 1 [hereinafter called “RITES”] on 15.05.2018 in respect of a contract for construction of Police lines and residential quarters for the Delhi Police [hereinafter called “DP”] at Kondli in Delhi [hereinafter called “the Project”].
 - 2.1 An Agreement dated 05.07.2012 was executed between MBL and RITES. The commencement date of the Project was 02.06.2012 and the stipulated date of completion was 01.06.2014.
 - 2.2 Disputes arose between the parties during the term of the Project.

Pursuant thereto, MBL filed a Petition under Section 11 of the Act being ARB.P. 12 of 2018, for appointment of an Arbitrator. By an order dated 23.01.2018, learned Single Judge of this Court appointed an Arbitral Tribunal comprising a Sole Arbitrator, one Mr. Ashok Kumar Purwaha [hereinafter called "Arbitral Tribunal"] to adjudicate the disputes between the parties.

- 2.3 The Arbitral Tribunal entered upon reference on 22.03.2018. MBL filed its Statement of Claim on 15.05.2018 for recovery of a sum of Rs.21,95,30,096/- along with *pendente lite* and future interest at the rate of 18% p.a. Since, the Project was still in progress at that time, the Statement of Claim filed by MBL included only those claims which arose upto the date of filing.
- 2.4 Subsequently, a Statement of Defence and Counter Claim amounting to Rs. 18,25,45,674/- with litigation expenses was filed by RITES on 14.08.2018.
- 2.5 The Project was completed on 06.03.2019, during the pendency of Arbitral proceedings.
- 2.6 The Arbitral proceedings had, in the meantime, progressed to the evidence stage. MBL filed its evidence by way of an affidavit and commenced examination of its witnesses. The cross examination of the witness was undertaken by RITES on 09.01.2020 and the witness was partly cross examined.
- 2.7 On 03.02.2020, MBL submitted its Final Bill [23rd Running Account

Bill] in the sum of Rs.9,36,89,166/- to RITES, for work done up to the completion of the Project [hereinafter called “Final Bill”]. This was ostensibly done since the Statement of Claim was filed prior to the completion of the Project on 15.05.2018.

- 2.8 Thereafter, there was a hiatus in the Arbitral proceedings due to the advent of COVID-19. Proceedings were resumed on 08.12.2020, when *inter-alia*, it was directed by the Arbitral Tribunal, that the agreed Final Bill be filed by 18.12.2020 and after receipt thereof, MBL would be at liberty to file additional evidence by way of an Affidavit. The relevant extract of the Arbitral proceedings on 08.12.2020 reads as follows:

"5. Understand that the project is complete and the final bill have been submitted by the Claimant. In view of above, the Respondent is directed to present the Final bill as agreed between the parties by 18.12.2020.

6. After the receipt of the final bill the claimant would be at liberty to file additional evidence by way of affidavit, if any, on or before next date of hearing...."

[Emphasis is ours]

- 2.9 The Final Bill was reviewed by RITES and only partially accepted and a sum of Rs.4,34,12,519/- was held as payable by RITES.
- 2.10 An application for bringing on record the subsequent developments and further claims was filed by MBL on 05.01.2021 for the following:
- (i) Recovery of amounts declined by RITES in the Final Bill; and
 - (ii) Damages on account of breach of contract by RITES.
- [hereinafter called “Amendment Application”]

- 2.11 A Reply dated 28.01.2021 and Rejoinder dated 29.01.2021 to the Amendment Application was also filed by the parties.
- 2.12 In the meantime, by its Order dated 28.01.2021, the Arbitral Tribunal impleaded DP as Respondent No. 2 in the Arbitral proceedings.
- 2.13 It was submitted by MBL in the Amendment Application that the additional claims had arisen pursuant to the completion of the Project and since, the Statement of Claim was filed on 15.05.2018, these amounts could not be included in the Statement of Claims.
- 2.14 In support of the Amendment Application, an additional affidavit in evidence was filed by MBL, which was taken on record by the Arbitral Tribunal on 07.01.2021. Thereafter, on 29.01.2021, the amended Statement of Claim was filed by MBL.
- 2.15 The Arbitral Tribunal heard and concluded the arguments on the Amendment Application on 09.03.2021. During this period, the cross examination of the MBL's witness was still underway.
- 2.16 The Arbitral Tribunal by the Impugned Arbitral Order rejected the Amendment Application as filed by MBL, *inter alia*, on the ground that the entitlements in Final Bill can be looked into by the Arbitral Tribunal without amendment of the Statement of Claim. The operative part is reproduced below:

*“14. I have gone through the documents submitted as well as the judgments cited by both the parties in favour of their arguments. I am also aware that I cannot go beyond the terms & reference of the contract agreement. The main dispute relates to levy of LD and the deductions by Respondent. **So far as Final Bill and the***

amounts passed and entitlement of Claimant is concerned, the same can be looked into by me, even without the amendment in Statement of Claim, though there is some merit in the argument of Respondent on the point that the amount of Claims cannot be changed as per Clause 25 (8) of Contract. The manner of passing of the same, can always be looked into by me, without amendment of Statement of Claim.

15. In view of above, I am disallowing amendment of Statement or Claim dated 29.01.2021 by Claimant with the above qualification pertaining to Final Bill due to above reasons and reason of delay”

[Emphasis is ours]

- 2.17 Paragraph 17 of the Impugned Arbitral Order further stated that in case the Claimant had any other claim, they could agitate the same before competent authority ‘as per contract and provisions of law’. The relevant extract is below:

"17. In case, Claimant has any other claim, they may agitate the same before Competent Authority as per Contract and provisions of Law."

- 2.18 The Impugned Arbitral Order was challenged by MBL by filing a Petition under Section 34 of the Act before the learned Single Judge.
- 2.19 It was contended by MBL before the learned Single Judge that the Impugned Arbitral Order amounts to an interim award and thus, amenable to challenge under Section 34 of the Act, while RITES submitted that the said Order cannot be challenged in a Petition under Section 34 of the Act as it is not an interim award.
- 2.20 The learned Single Judge by the Impugned Judgment, dismissed the Petition filed by MBL *inter-alia* holding that the Impugned Arbitral

Order had not resulted in a final determination of any of the Petitioner's claims and thus is not an interim award, and cannot be challenged under Section 34 of the Act.

- 2.21 The matter was heard by this Court on 14.02.2023, when Judgement was reserved and parties were directed to file written submissions and citations relied upon. The written submissions have, since, been filed by MBL and RITES.

MBL Submissions:

3. Learned senior counsel appearing on behalf of MBL, Mr. Amit Sibal, has submitted that the order rejecting the Amendment Application filed by MBL before the Arbitral Tribunal amounts to an interim award under Section 2(1)(c) of the Act. It was submitted that the claims raised by MBL in the Final Bill could not have been raised before March, 2019 as the work awarded to MBL under the Project was not complete until 06.03.2019. Since the Statement of Claim was filed by MBL on 15.05.2018, the claim for works performed after filing of the Statement of Claim and extra work, loss of profits due to prolongation of the contract and extra cost of overheads could not have been added in the original Statement of Claim.
- 3.1 It was further submitted that the learned Single Judge failed to appreciate that the recovery of amounts for work subsequently done cannot be granted with allowing amendment of pleadings and prayers, and additional evidence to be led by MBL. The additional claims were adjudicated upon finally by the Arbitral Tribunal which amounts to an

interim award. In this regard, reliance was placed on the following judgments:

- (i) *Cinevistas Ltd. vs Prasad Bharti*¹;
- (ii) *Lt. Col. H.S. Bedi (Retd) & Anr. vs STCI Finance Limited*²; and
- (iii) *National Highways Authority of India vs Abhijeet Angul Sambalpur Toll Road Limited*³.

3.2 Learned senior counsel on behalf of MBL also averred that pursuant to filing of the Amendment Application, additional evidence was also filed by MBL. Since, the cross-examination of the claimant's witness was not concluded at the relevant point in time, no prejudice was caused to RITES, much less on account of delay. Unless the Amendment Application was allowed by the Arbitral Tribunal, the Statement of Claim as originally filed by MBL could not have included the claims of MBL between the period, the Statement of Claim was filed and the completion of the construction works.

RITES Submissions:

4. *Per contra*, Mr G.S. Chaturvedi, learned counsel, who appears on behalf of RITES has submitted that the Appeal is not maintainable as the Impugned Arbitral Order is not an interim award in terms of the provisions of Section 2(1)(c) of the Act and therefore, was not amenable to challenge under Section 34 of the Act. The Impugned Judgment has rightly dismissed the Petition under Section 34 of the Act stating it to be not maintainable.

1 2019 SCC online DEL 7071

2 OMP(COMM) 546/2020 - dated 07.12.20-DHC

3 2022 SCC OnLine Del 664

- 4.1 Further, it was contended that by the Impugned Arbitral Order, the Arbitral Tribunal has kept the additional claims of MBL alive by observing that, “*so far as final bill and entitlement of claimant is concerned, the same can be looked into by me even without amendment in Statement of Claim*”. Relying on the same, he submitted that the use of the word ‘*entitlement*’ would include all the claims as in the Statement of Claim and the other claims in respect to the Final Bill. Therefore, the Impugned Arbitral Order cannot be an ‘interim award’ in terms of the Act.
- 4.2 Learned counsel further submitted that the scope of interference by the Court in an Appeal under Section 37 of the Act is extremely limited and the conclusions reached by the Arbitral Tribunal cannot be substituted by the Court in an Appeal.
5. DP has filed a short reply affidavit on 10.03.2023, *inter-alia* stating that they have absolutely no role to play in the present case as the dispute has arisen between MBL and RITES. It was also stated that DP is not privy to the Arbitration Agreement between MBL and RITES and, hence, submitted that they be deleted from the array of parties. No written submissions have been filed by DP.
6. We have heard learned senior counsel for MBL and learned counsel for RITES and DP and have perused the record.
- 6.1 Learned senior counsel for MBL has submitted that the amended claims pertain only to the extra work, recovery and damages suffered by MBL after the filing of the Statement of Claim and upto the

completion of construction, all of which arose during the pendency of Arbitral proceedings.

- 6.2 Learned counsel for RITES, on the other hand, has submitted that by the amendments, MBL was not only seeking enhancement of the quantum of claims made but also attempting to change the nature of the case initially set up and as such this cannot be permitted in the guise of amendment.

Issues:

7. As discussed above, the issue before us is whether the order dismissing the Amendment Application by the Arbitral Tribunal would constitute an interim award. MBL has submitted that the Arbitral Tribunal has made a final adjudication on the additional claims of MBL and hence, this would constitute a final award in respect to the additional claims and be subject to an Appeal under Section 34 of the Act. It is contended on behalf of RITES that the Impugned Arbitral Order is not an interim award since, the entitlement of MBL has been left open by the Arbitral Tribunal in terms of paragraphs 14 and 17 of the Impugned Arbitral Order (as reproduced in paragraphs 2.16 and 2.17 hereinabove).

The Statute and the Law:

8. Section 34 of the Act allows recourse to a Court against any Arbitral Award. Section 31(b) of the Act states that any time during Arbitral proceedings, Arbitral Tribunal may make an interim award on any matter on which it can make a final award. The Act however, does not

define what an interim award constitutes, except for a reference in Section 2(1)(c) of the Act which defines an ‘Arbitral Award’ to include an ‘interim award’. These sections are reproduced below:

“31. Form and contents of arbitral award.—

....

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.”

2. Definitions. —

(1) In this Part, unless the context otherwise requires,—

....

*(c) “arbitral award” includes an interim award;
x x x”*

9. Recently, the Supreme Court in *M/s Indian Farmers Fertilizer Co-Operative Ltd. (IFFCO) v. M/s Bhadra Products*⁴ has interpreted an “interim award” under the Act. The relevant extract is below:

“8. As can be seen from Section 2(c) and Section 31(6), except for stating that an arbitral award includes an interim award, the Act is silent and does not define what an interim award is. We are, therefore, left with Section 31(6) which delineates the scope of interim arbitral awards and states that the arbitral tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

9. The language of Section 31(6) is advisedly wide in nature. A reading of the said sub-section makes it clear that the jurisdiction to make an interim arbitral award is left to the good sense of the arbitral tribunal, and that it extends to “any matter” with respect to which it may make a final arbitral award. The expression “matter” is wide in nature, and subsumes issues at which the parties are in dispute. It is clear therefore, that any point of dispute between the parties which has to be answered by the arbitral tribunal can be the subject matter of an interim arbitral award. However, it is important to add a note of caution. In an appropriate case, the issue of more than one award may be necessitated on the facts of that case....”

[Emphasis is ours]

4 (2018) 1 SCR 848

9.1 The **IFFCO** case (supra) further held that sub-section (1) of Section 32 of the Act is also material *qua* this issue, as it states that the Arbitral proceedings can only be terminated by a final arbitral award as opposed to an interim award. For ready reference, Section 32 of the Act is reproduced hereunder :

“32. Termination of proceedings.—

(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the Arbitral Tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

(a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,

(b) the parties agree on the termination of the proceedings, or

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.”

9.2 Therefore, it was held by the Supreme Court in the **IFFCO** case (supra) that there can be an interim award which finally decides an issue, prior to culmination of proceedings by a final award. The relevant extract is reproduced below:

“10. To complete the scheme of the Act, Section 32(1) is also material. This section goes on to state that the arbitral proceedings would be terminated only by the final arbitral award, as opposed to an interim award, thus **making it clear that there can be one or more interim awards, prior to a final award, which conclusively determine some of the issues between the parties,** culminating in a final arbitral award which ultimately decides all remaining issues between the parties.”

[Emphasis is ours]

9.3 The Supreme Court in the **IFFCO** case (supra) was called upon to decide whether an award delivered by an Arbitrator, which decides

the issue of limitation, can be said to be an interim award, thereby being subject to challenge under Section 34 of the Act. Relying upon the decision in *McDermott International Inc. v. Burn Standard Co. Ltd.*⁵, the Supreme Court held that since the Arbitral Tribunal has “finally” disposed off the issue of limitation, the award is an interim award. It was held as follows:

“15. In McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181], under the heading “validity of the partial award”, this Court held:

*...
The aforesaid judgment makes it clear that an interim award or partial award is a final award on matters covered therein made at an intermediate stage of the arbitral proceedings.*

16. Tested in the light of the statutory provisions and the case law cited above, it is clear that as the learned arbitrator has disposed of one matter between the parties i.e. the issue of limitation finally, the award dated 23rd July, 2015 is an “interim award” within the meaning of Section 2(1)(c) of the Act and being subsumed within the expression “arbitral award” could, therefore, have been challenged under Section 34 of the Act.”

[Emphasis is ours]

10. The judgment of the learned Single Judge of this Court in *Cinevistaas* case (supra), relies on the *IFFCO* case (supra) to set aside an interim award of an Arbitral Tribunal under Section 34 of the Act. The facts in the *Cinevistaas* case (supra) were that the Arbitral Tribunal had rejected an application for amendment of claims, which were inadvertently missed by the claimant. The Single Judge held that the order rejecting the Amendment Application is an interim award and amenable to challenge under the provisions of

⁵ (2006) 11 SCC 181

Section 34 of the Act. Relying on the judgment of the Supreme Court in *Shah Babulal Khimji v. Jayaben D. Kania*⁶ and *IFFCO* case (supra), the learned Single Judge, held that the decision as to whether an order constitutes an interim award or not, is to be made based on the nature of order and not the title of the application for which the order was passed. The Court further held that where there was a finality attached to the award/order, it would amount to an interim award. The impugned order rejected certain substantive claims finally, and thus was an interim award, as follows:

“35. Arbitral proceedings are not meant to be dealt with in a straightjacket manner. Arbitral proceedings cannot also be conducted in a blinkered manner. There could be various situations wherein, due to inadvertent or other errors, applications for amendments/corrections may have to be moved. So long as the disputes fall broadly within the reference, correction and amendments ought to be permitted and a narrow approach cannot be adopted. The principles of Shah Babulal Khimji (supra) would have greater application in arbitral proceedings as the said judgment lays down the principle, that the substantive rights affected ought to be seen, while determining what kind of orders are challengeable. An interim order of the present kind rejecting a large number of additional amounts/claims would constitute an interim award under Section 2(1)(c) of the Act...

36. In the facts of this case, it is clear that the quantification of claims was done correctly in the notice invoking arbitration, in the application under Section 11 as also in the writ petition filed by the Petitioner. The rejection of the additional claims has in fact resulted in greater delay rather than expeditious disposal. The bona fides of the Petitioner are not in question. Rejection of additional claims by the impugned order have all the trappings of an award and hence the Section 34 petition is clearly maintainable. On the basis of the tests laid down in Shah Babulal Khimji (supra), the rejection of the application to add or expand the amounts claimed under certain heads results in a conclusive determination that the said claims cannot be adjudicated. Thus, there is not just formal adjudication but in fact a final rejection of the said claims. This constitutes a

6 (1981) 4 SCC 8

dismissal of the claims and hence would constitute an award within the meaning of Section 2(1)(c) of the Act.”

[Emphasis is ours]

10.1 The judgment of the learned Single Judge of this Court in the **Cinevistaas** case (supra) was followed in **H.S. Bedi** case (supra). The Court here was required to adjudicate upon whether an order of the Arbitral Tribunal rejecting the amendment of the Statement of Defence would constitute an interim award or not. Relying on the judgment of **Cinevistaas** case (supra) and **Shah Babulal Khimji** case (supra), it was held that the principle that substantive rights of the parties are affected ought to be looked at to determine the kind of orders that can be challenged:

“27. In the judgment in the case of Cinevistaas Ltd. (supra) on which reliance was placed by Mr. Vachher, in paragraph 35, which I have already reproduced above, the Coordinate Bench has held that as long as the disputes fall broadly within the reference, correction and amendment ought to be permitted as the principles as laid down by the Supreme Court in Shah Babulal Khimji v. Jayaben D. Kania, (1981) 4 SCC 8, would have a greater application in arbitral proceedings as the said judgment lays down principles that the substantive rights affected ought to be seen, while determining what kind of orders are challengeable.

xxx

31. Accordingly, the present petition is allowed, the petitioner is allowed to incorporate the amendments as sought for by them in the SOD, subject to payment of costs of Rs. 1 lakh to the respondent. The amended SOD shall be filed within 10 days from today.”

[Emphasis is ours]

Conclusion:

11. In the present case, the learned Single Judge, relying on paragraphs 14 and 15 of the Impugned Arbitral Order, has held that the entitlement of MBL can be looked into, even without amendment in the Statement of Claim and, hence, found that no final view in the

matter has been taken by the Arbitral Tribunal.

- 11.1 It is in these circumstances that the learned Single Judge held that the Impugned Arbitral Order does not have in it any elements of finality. Paragraphs 24 and 25 of the Impugned Judgment, in this regard state:

"24. What clearly emerges from the foregoing observations of the learned Arbitrator is that firstly, he has unequivocally said that the petitioner's entitlement to any amounts arising from the final bill as approved by respondent No. 1 (which would take account of any deductions made by respondent No. 1) "... can be looked into by me, even without the amendment in Statement of Claims". The learned Arbitrator has also observed that the "... manner of passing of the same, can always be looked into by me, without amendment of Statement of Claims." It is clear from these observations that the learned Arbitrator has not taken a view nor foreclosed a decision as to the amounts cleared by respondent No. 1 against the final bill raised by the petitioner, which would imply that the impugned order is not dispositive of any claims that the petitioner wishes to raise in relation to the final bill. If any doubt was to remain in this regard, the learned Arbitrator has, in so many words, qualified the dismissal of the amendment application by the following observations, which bear repetition:

"15. In view of above, I am disallowing amendment of Statement of Claim dated 29.01.2021 by Claimant with the above qualification pertaining to Final Bill due to above reasons and reason of delay."

25. Accordingly, in the opinion of this court, the impugned order does not comprise a final determination of any of the petitioner's claims, including the enhanced quantum of claims stated to have arisen from the final bill raised upon respondent No. 1. The impugned order is accordingly not an interim award; and is not amenable to challenge under section 34 of the A&C Act.

26. In the above view of the matter, the present petition is not maintainable; and is accordingly dismissed, taking note of the aforesaid observations made by the learned Arbitrator that he would consider the quantum of claims sought to be raised by the petitioner arising from final bill dated 03.02.2020."

[Emphasis is ours]

12. We are respectfully unable to agree with these findings of the learned Single Judge. The Impugned Arbitral Order is, to our minds, a matter of immense significance for MBL as it would decide the future trajectory of the dispute obtaining between the parties.
- 12.1 In our view, the extract from the judgment of the Supreme Court in *IFFCO* case (supra) is clear and categoric. A decision of an Arbitral Tribunal which brings a quietus to an issue before it and is an order which the Arbitral Tribunal is empowered to pass at the final stage would constitute an interim award within the meaning of Section 31(6) as also Section 34 of the Act.
13. MBL has filed a table giving a summary of claims and amended claims along with its written submissions to explain the amendments in detail, which is reproduced below:

"SUMMARY OF CLAIMS AND AMENDED CLAIMS

<i>Claim No.</i>	<i>Description</i>	<i>Claims Amount (Rs.)</i>	<i>Amended Claims (Rs.)</i>
1.	<i>Refund of amount withheld for slow progress/milestone/Liquidated Damages @10%</i>	<i>3,71,23,235.00</i>	<i>4,06,03,294.00</i>
2.	<i>Release of amount deducted from various bills for Security Deposit Rs.2,03,01,647/-</i>	<i>2,00,56,457.00</i>	<i>2,03,01,647.00</i>
3.	<i>Release of net payable (after deductions made by RITES) amount of 20th RA Bill</i>	<i>7,98,546.00</i>	<i>5,94,54,976 (4,34,12,519.00 + 7,84,988.00 + 1,32,27,336.00 + 20,30,133.96) (Claims no. 2, 4 & 5 were sought separately in the Statement of Claims</i>
4.	<i>Work done measured but part rates pending</i>	<i>1,30,17,774.00</i>	
5.	<i>Work done but not measured (BOQ items unmeasured & unpaid extra & deviated items)</i>	<i>To be quantified</i>	

			<i>but the same is merged in the amended SOC)</i>
6.	<i>Unauthorized/wrong deductions from RA Bills from time to time upto the 23rd Final Bill</i>	60,06,850.00	51,74,128.00
7.	<i>Extra cost of overheads and Loss of Profits due to prolongation of Contract</i>	12,18,09,881.00	36,75,04,959.67
8.	<i>Amount due to change in Legislation</i>	1, 11,96,681.00	Rs.1,24,92,855.66+ Rs. 3,96,820.00 on unpaid escalation and Rs.16,37,561.00 GST on unpaid work done Rs.1,45,27,236.66 Impact of environment compensation charge Rs.6,81,200.00 Total: Rs.1,52,08,436.66
9.	<i>Cost of extra work/maintenance work/ AMC charges because of delay in take-over of the project</i>	95,2 0,672.00	1,32,86,648.77
10.	<i>(a) Cost of Legal & Arbitration (b) Cost of stamp duty payable on arbitration award and other statutory costs for enforcement of award (as per actual).</i>	<i>As per actual</i>	<i>As per actual</i>
11.	<i>Account of interest on delayed payments being interest@ 18% p.a. anti-lite, pendent-lite and post-lite and interest on the amounts claimed.</i>	<i>As per actual</i>	<i>As per actual</i>
	Total:	21,95,30,096 (Except Claim no. 5, 10 & 11)	Rs.52,15,34,091.06 (Except Claim no. 10 & 11)"

14. The amended claims are stated to be claims based on events subsequent to the filing of the Statement of Claim. The Impugned Arbitral Order by rejecting the Amendment Application has finally

adjudicated upon the additional claims of MBL for the work done upto the completion of the Project, as the right of MBL to proceed further with its additional claims has effectively been foreclosed.

15. MBL would not be able to proceed with adjudication of its additional claims without an amendment to the Statement of Claim since, to adjudicate upon the additional claims, the Arbitral Tribunal would be required to allow the Amendment Application and take on record the amended claims, permit RITES to file an amended statement of defence, and thereafter, permit both parties to adduce evidence in respect of their respective contentions.
16. The Arbitral Tribunal's approach as reflected in paragraph 17 of the Impugned Arbitral Order, which is, that MBL could agitate its claim before "*competent authority*" is inexplicable. The arbitral disputes between MBL and RITES with respect to the Project are being adjudicated by the Arbitral Tribunal in the present proceedings. Clause 25 of the contract between the parties is the disputes settlement and arbitration clause which encompasses all disputes between the parties. Referring certain disputes to another forum, especially when this Arbitration has been on for more than five years, will be unnecessary and further delay the proceedings. Adjudicating upon additional claims under the Final Bill in separate proceedings will also lead to multiplicity of proceedings.
17. There is another aspect which requires to be highlighted. Admittedly, the Arbitral Tribunal reserved Judgment on this Amendment

Application for almost a period of one year prior to rejecting the Amendment Application *inter-alia* on the ground of delay. During the period, orders on the Amendment Application were reserved, the Arbitral Tribunal preceded further in the Arbitral proceedings without any decision on the Amendment Application. In doing this, the Arbitral Tribunal also delayed the final adjudication of the additional claims/counter-claims of the parties.

Directions:

18. In these circumstances, we are unable to agree with the learned Single Judge. The Impugned Judgment and the Impugned Arbitral Order is set aside with the following directions:
 - (i) The amended Statement of Claim dated 29.01.2021 shall be taken on record by the Arbitral Tribunal subject to payment of costs in the sum of Rs. 50,000/- by MBL to RITES;
 - (ii) RITES shall be permitted to file its amended Statement of Defence in response to the amendment made to the Statement of Claim within a period of 15 days thereafter;
 - (iii) Both parties shall be given an opportunity to adduce additional evidence in support or against the additional claims.
19. Since, the adjudication of the Amendment Application has taken up substantial additional time, both parties and the Arbitral Tribunal shall endeavour to conclude the Arbitral proceedings at the earliest, and no later than 6 (six) months from the date of receipt of a copy of this Judgment.
20. It is clarified that we have not examined the merits of matter, hence

all rights and contentions of the parties are left open.

21. The Appeal and all pending Application(s) are accordingly disposed off. There shall be no order as to costs.

(TARA VITASTA GANJU)
JUDGE

(RAJIV SHAKDHER)
JUDGE

MAY 01, 2023/r

