



2024:DHC:4999-DB



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

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Judgement delivered on: 08.07.2024

+ **FAO(OS) (COMM) 197/2023 and CM APPL. 7578/2024****UNION OF INDIA**

..... Appellant

versus

RCCIVL-LITL (JOINT VENTURE)

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Jaswinder Singh, Advocate.

For the Respondent : Ms Amrita Panda, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****JUDGMENT****VIBHU BAKHRU, J.**

1. The appellant – Directorate General Married Accommodation Project (hereafter also referred as *DGMAP*) – has filed the present intra court appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning an order dated 29.05.2023 passed by the learned Single Judge in OMP (COMM) No.200/2023 captioned *Union of India v. RCCIVL-LITL (Joint Venture)* (hereafter *the impugned order*).

2. The respondent had filed the aforesaid application [OMP (COMM) No.200/2023] under Section 34 of the A&C Act impugning an Arbitral



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Award dated 07.11.2022 (hereafter the *impugned award*) rendered by an Arbitral Tribunal comprising of the Sole Arbitrator (hereafter *the Arbitral Tribunal*).

3. By the impugned order, the said application was dismissed and the learned Single Judge had declined to interfere with the impugned award.

4. The impugned award was rendered in the context of disputes arising in connection with the agreement dated 03.02.2014 for “Completion of Balance Work for Construction of Residential Accommodation for Army at Amritsar and Tibri” (hereafter the *Agreement*) entered into between the parties. The respondent had participated in the bidding process and its bid was accepted. The contract for completion of the balance work was awarded to the respondent at a contract value of ₹261,21,11,110.93.

5. The scope of works under the Agreement included completion of balance work left by the previous contractor including construction of (i) 35 Dwelling Units for Officer’s Quarters; (ii) 260 Dwelling Units for JCO's Quarters; 1952 units for OR's Quarters; and 39 Garbage bins.

6. The respondent was required to execute these works at 3 different stations/locations i.e., Old Amritsar Cantt, New Amritsar Military Station, in 12 locations *viz.* NOC-I, NOC-II, NME Khetarpal, Kathania, Red Colony, Gulat Road, Golf Course, Military Farm, Dumping Ground, Field Regiment and, Tibri.

7. The Project was to be completed in four Phases within a period of twenty-seven months from the date of handing over of site, which was



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stipulated as 24.02.2014. The Original Date of Commencement of the Project was 24.02.2014. There was delay in the completion of the Project and extensions of time were granted to the respondent without imposition of liquidated damages. Extensions of time to complete the project were granted for Phases I to IV, as detailed in the impugned award

“33. ...The details of the extensions granted by the Respondent to the Claimant are as under:

Phase	Actual Date of Completion	Extended Date of Completion
I	23 rd November 2014	31 st March 2015
II	23 rd May 2015	15 th December 2016
III	23 rd October 2015	30 th November 2017
IV	23 rd May 2016	30 th November 2017”

8. The work of Phase IV of the Project was completed on 30.11.2017. The respondent submitted its Final Bill on 04.10.2018 (hereafter *Final Bill dated 04.10.2018*) for a sum of ₹ 71,44,01,074.76.

9. The Final Bill dated 04.10.2018 was returned by DGMAP on 22.10.2018 and the respondent was called upon to submit the final bill in two parts – ‘disputed’ and ‘undisputed’.

10. Since the payments as claimed were not made, the respondent invoked the arbitration agreement and filed Arbitration Petition No. 483/2019 under Section 11(6) of the A&C Act before this Court for reference of disputes to arbitration. The said petition was allowed by an order dated 09.08.2019 and the Arbitral Tribunal was appointed.

11. The respondent claimed that the contract did not provide for



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submission of bills in two parts. Nonetheless, on 20.09.2019 – that is after the Arbitral Tribunal was constituted but prior to the filing of the Statement of Claim – the respondent resubmitted the final bill (hereafter *the Final Bill*) setting out the disputed and the undisputed amounts.

12. The respondent filed the Statement of Claim, which was based on the Final Bill setting out ‘disputed’ and ‘undisputed’ amounts. The respondent claimed a sum of ₹5,31,23,148/- as undisputed amount of Final Bill in addition to the release of the securities (Claim no.1). In addition, the respondent had also made an aggregate claim of ₹99,40,16,602/-(Claim no.2) under various heads (Claim nos. 2A to 2U), being the disputed part of the Final Bill.

13. The Arbitral Tribunal passed the procedural order dated 06.09.2019, *inter alia*, setting out the schedule for completion of pleadings, and the admission/denial of the documents. In terms of the said schedule, DGMAP was required to file the Statement of Defence and Counterclaim, if any, on 05.11.2019. However, DGMAP failed to do so. By an email dated 25.10.2019 addressed to the Arbitral Tribunal, DGMAP sought further time to file the Statement of Defence. By a procedural order dated 25.10.2019, the Arbitral Tribunal allowed the said prayer and granted further time to DGMAP till 26.11.2019 to file its Statement of Defence and Counterclaim, if any.

14. DGMAP filed the Statement of Defence and Counterclaim on 21.11.2019. In addition to disputing the claims, DGMAP also raised the following counterclaim: an amount of ₹25,00,000/- on account of alleged



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defective works carried out by the respondent (counterclaim no.1); an amount of ₹27,20,000/- on account of non-submission of CPM chart by the respondent (counterclaim no.2); sum of ₹50,00,000/- on account of excess escalation paid on steel, cement and labour (counterclaim no.3); interest on the claims at the rate of 12% per annum (counterclaim no.4); and a sum of ₹25,00,000/- as cost of reference to arbitration (counterclaim no.5).

15. After significant delay, DGMAP sought to amend its Statement of Defence and Counterclaim and moved an application before the Arbitral Tribunal for permission to do so. The said application was allowed by the Arbitral Tribunal by a procedural order dated 24.03.2021. DGMAP filed its amended Statement of Defence and Counterclaim on 25.03.2021. DGMAP sought to delete its claim for recovery of excess escalation allegedly paid to the respondent and raised an additional claim for recovery of approximately ₹6.47 Crores on account of “minus amount of final bill (subject to audit check)”.

16. The Statement of Defence and Counterclaim was amended and, DGMAP sought the following counterclaims: Recovery of an amount of ₹6.47 Cr (Approx.) on account of minus amount of final bill subject to Audit Check (Counterclaim no. 1); Claim of ₹25,00,000/- on account of alleged defective work carried out by the contractor (Counterclaim no. 2); Claim of a sum of ₹27,20,000/- on account of non-submission of CPM Chart by contractor (Counterclaim no. 3); Interest at the rate of 12% on the amount of counterclaim (Counterclaim no. 4); a sum of ₹25,00,000/- as cost of reference to arbitration (Counterclaim no. 5).



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17. DGMAP stated that the Final Bill dated 04.10.2018 was found to be incorrect as the quantities and the amount were not matching the Measurement Books (MBs) and the bill was not made in two parts (disputed portion and undisputed portion). Thus, for the aforesaid reason, the same was returned to the respondent for submission afresh. It claimed that the respondent had resubmitted the bill on 20.09.2019, but during the scrutiny it was found that the quantities and the rates stated in the extract did not match the Measurement Books and the schedules and therefore, the same was returned.

18. DGMAP claimed that thereafter it had prepared the final bill on 01.09.2020 (hereafter also referred to as *the DGMAP Final Bill*) and called upon the respondent to sign the same. However, the respondent did not do so. According to the DGMAP, the final bill as prepared by it worked out to '6.47 Crores (minus) subject to audit check'.

19. The Arbitral Tribunal evaluated the evidence led by the parties in respect of the claims and counterclaims as raised by the parties. The Arbitral Tribunal found that the undisputed portion of the Final Bill as submitted by the respondent reflected an amount of ₹4,51,13,888.02 payable by DGMAP. The witness examined on behalf of the respondent (PW-1) affirmed that the said Final Bill is correct. The Arbitral Tribunal accepted the same and awarded a sum of ₹4,51,13,888.02 as against the sum of ₹5,31,23,148/- claimed by the respondent against the undisputed part of the Final Bill.

20. The Arbitral Tribunal did not accept the DGMAP Final Bill, which was filed at a belated stage, essentially, for three reasons. First, that the



DGMAP Final Bill was stoutly disputed by the respondent and DGMAP did not lead any evidence to establish the correctness of its version of the final bill. Second, that the DGMAP Final Bill was incomplete and was not supported by relevant material. And third, the DGMAP Final Bill had various handwritten corrections and the person carrying out the said corrections was not examined. The Arbitral Tribunal found that the DGMAP Final Bill lack credibility and thus, rejected the same.

21. In so far as the respondent's claim regarding certain disputed items is concerned (claim no.2), the Arbitral Tribunal rejected a bulk of the claims but allowed some of the claims based on the assessment and the material placed on record.

22. A tabular statement setting out the amount awarded by the Arbitral Tribunal against the claims and counter-claims, as set out in the impugned award, is reproduced below:-

"Claim No.	Brief description of claim	Amount Claimed (INR)	Awarded amount (INR)
1.	Claim towards Undisputed Part of Final Bill	5,31,23,148/-	4,51,13,888/- with interest at the rate of 8 percent per annum from 26 th August 2019 to 7 th November 2022.
2A	Ser No 1 of "Disputed" part of the Final Bill: Reimbursement of extra expenditure on	2,61,21,111.10/-	1,00,00,000/- with interest at the rate of 8 percent per annum from 26 th August 2019 to



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	account of change in location of site office, site store and labour camps		7 th November 2022.
2B	Ser No 2 of "Disputed" part of Final Bill: DO for provision of cut off wall in lieu of brick work in Officers, JCOs and ORs quarters at Amritsar & Tibri	1,22,85,158.22/-	NIL
2C	Ser No 3 of "Disputed" part of Final Bill: DI for Omission of grit wash and provn of 15mm thick plaster	54,55,192.52/-	54,55,192.52/- with interest at the rate of 8 percent per annum from 26 th August 2019 to 7 th November 2022.
2D	Ser No.4 of "Disputed" part of the Final Bill: DO for Omission of flat iron 30X3mm for bonding between Brick work and RCC columns	11,49,921.52/-	NIL
2E	Ser No.5 of "Disputed" part of the Final Bill: DO for Omission of kota stone flooring at loft floor above lobby for Officers, JCOs and ORs qtrs.	4,86,787.97/-	4,86,787.97/- with interest at the rate of 8 percent annum 26 th August 2019 to 7 th November 2022.

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2F	Ser No. 6 of "Disputed" part of the Final Bill: DO for Provn of cable pits inside and outside of all the blocks at Amritsar & Tibri	16,981.63/-	16,981.63/- with interest at the rate of 8 percent per annum from 26 th August 2019 to 7 th November 2022.
2G	Ser No.7 of "Disputed" part of the Final Bill: Do for Omission of glazed ceramic tiles in certain portions of dry out balcony	4,93,235.93/-	4,93,235.93/- with interest at the rate of 8 percent per annum from 26 th August 2019 to 7 th November 2022.
2H	Ser No 8 of "Disputed" part of Final Bill: DO for increase in roof projection of ORs DUs at Amritsar & Tibri	76,64,240.19/-	76,64,240.19/- with interest at the rate of 8 percent per annum from 26 th August 2019 to 7 th November 2022.
2I	Ser No 9 of "Disputed" part of Final Bill: Escalation towards amount of Claim 2(A) to 2(H), 2(R) and 2(S)	44,88,921/-	NIL
2J	Ser No 10 of "Disputed" part of Final Bill: Reimbursement of extra expenditure incurred for purchase of new machine/Plants to	86,73,525.98/-	NIL

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	be issued vide item No 7 to 10 of Schedule of credit		
2K	Ser No 11 of "Disputed" part of Final Bill: Reimbursement of compensation on Short/Less payment of RARs	5,77,19,935.40/-	The Claimant is granted 8 percent interest on the delayed payments.
2L	Ser No 12 of "Disputed" part of Final Bill : Reimbursement of compensation on delayed payment of RARs	3,24,69,263.12/-	The Claimant is granted 8 percent interest on the delayed payments.
2M	Ser No 13 of "Disputed" part of Final Bill: Reimbursement for idle/underutilization of plant/machineries	6,09,03,785.22/-	NIL
2N	Ser No 14 of "Disputed" part of Final Bill: Reimbursement of extra expenditure incurred on extension of BGs	1,74,14,257.50	The Claimant is awarded the actual cost incurred by it in keeping the Bank Guarantees alive
2O	Ser No 15 of "Disputed" part of Final Bill: Reimbursement of Extra recovery of VAT at source	1,79,09,829.49	The Claimant is awarded interest on the extra deduction of VAT effected by the Respondent

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			(i.e. 6% minus 3.5% = 2.5%) at the rate of 8 percent per annum instead of 18 percent claimed by the Claimant.
2P	Ser No 16 of "Disputed" part of Final Bill: Reimbursement of Escalation due to Claimant as per condition of contract including interest	7,36,22,991.93 (modified to Rs.5,41,29,905.23/- in the Rejoinder to SoC)	NIL
2Q	Ser No 17 of "Disputed" part of Final Bill: Compensation on account of various breaches	32,93,32,286.49	NIL
2R	Ser No 18 of "Disputed" part of Final Bill: Provn of 5mm thick plain PVC sheet	8,92,707.50/-	8,92,707.50/- with interest at the rate of 8 percent per annum from 26 th August 2019 to 7 th November 2022.
2S	Ser No 19 of "Disputed" part of Final Bill: Provn of 20mm solid square bar in bulaster's of stair case in lieu of 20mm square hollow tube in ORs qtrs.	21,83,119.10/-	21,83,119.10/- with interest at the rate of 8 percent per annum from 26 th August 2019 to 7 th November 2022.

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2T	Ser No 20 of "Disputed" part of Final Bill: Reimbursement of excess interest recovered on Mobilization Advance	95,77,615.18/-	83,91,338/-
2U	Ser No 21 of "Disputed" part of Final Bill: Reimbursement of GST@12 percent with effect from 1 July 2017 on total amount of Undisputed and Disputed Final Bill	9,41,16,041.75/-	NIL
Claim 3	Interest Past, Pendente Lite and Future	Past: 14,63,49,149.83 Pendente Lite at 18 percent per annum Future at 18 percent per annum	The claimant has been awarded appropriate interest while deciding the individual claims. Any other claim qua interest(past and pendent lite) stands rejected.
Claim 4	Cost of Arbitration	25,00,000/-	20,00,000/-
TOTAL		96,49,49,206.57 alongwith interest	8,26,97,491/- along with interest as granted under the respective heads.
COUNTERCLAIM			

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Counterclaim No.1	Recovery on account of Minus Amount of Final Bill subject to Audit Check	6,47,00,000/- APPROX	NIL
Counterclaim No.2	Defective Work carried out by the Contractor	25,00,000/-	NIL
Counterclaim No.3	Non-submission of the CPM Chart by the Contractor.	27,20,000/-	NIL
Counterclaim No.4	Interest	12 percent on Claim Nos.1-3	NIL
Counterclaim No.5	Cost of Arbitration	25,00,000/-	NIL
TOTAL		7,24,20,000/- along with interest	NIL”

IMPUGNED ORDER

23. The learned Single Judge did not accept that any interference with the impugned award was warranted. The learned Single Judge held that the Arbitral Tribunal's findings could not be considered implausible or irrational. It was also conceded on behalf of DGMAP that the impugned award in respect of Claim nos. 2(A) to 2(U) was based on appreciation of evidence and therefore, the challenge to the impugned award in respect of the said claims, was not pressed.

24. The learned Single Judge rejected the contention that DGMAP was not granted full opportunity to present its case as the Arbitral Tribunal had not allowed a competent technical officer to explain and argue the case. The learned Single Judge found that DGMAP was represented by counsel



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throughout the arbitral proceedings and DGMAP was granted full opportunity to lead evidence. The learned Single Judge also observed that matters relating to procedure of the Arbitral Tribunal are within its domain but subject to compliance of the rules of natural justice. And, in the present case, the principles of natural justice had not been violated by not permitting DGMAP's Engineer to address final arguments. The learned Single Judge also observed that it was always open for the counsel to take his assistance.

25. In view of the above, the application filed by DGMAP under Section 34 of the A&C Act to set aside the impugned award was dismissed by the impugned order.

SUBMISSIONS

26. Mr. Jaswinder Singh, learned counsel appearing for DGMAP advanced submissions on three fronts. First, he submitted that the impugned award is liable to be set aside under Section 34(2)(a)(iii) of the A&C Act as DGMAP was not given full opportunity to present its case. He submitted that the counsel for DGMAP had requested the Arbitral Tribunal, by an email dated 03.02.2022, to permit the Director (Contracts) to further expound on the issue involved in counterclaim no.1 as the same was technical in nature. However, the Arbitral Tribunal had declined the said request. He submitted that therefore, technical matters could not be clarified to the Arbitral Tribunal as DGMAP was, in effect, unable to present its case.

27. Second, he submitted that the Arbitral Tribunal had erred in accepting the Final Bill and allowing Claim no.1 regarding undisputed amounts. He submitted that there was no amount which was undisputed as DGMAP had



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presented its Final Bill (the DGMAP Final Bill), which reflected that a sum of ₹6.47 Crores was recoverable from the respondent. He submitted that the Arbitral Tribunal had rendered the award on an erroneous assumption that any amount was admittedly owed to the respondent.

28. Third, he submitted that the impugned award was inherently inconsistent with regard to the award of escalation. He referred to Paragraph Nos. 67 and 178 of the impugned award. He submitted that Paragraph No. 67 of the impugned award indicates that the Arbitral Tribunal had accepted that a sum of ₹10,60,00,000/- had been paid as escalation against the undisputed amount due to the respondent. However, in Paragraph no.177 of the impugned award, the Arbitral Tribunal had noted that an amount of ₹10,60,00,000/- was released to the respondent as per RAR No.69 against an escalation amount of ₹7,18,81,658.72/- as worked out by DGMAP. He submitted that therefore, the admitted amount payable against escalation was ₹7,18,81,658.72/- but an excess amount had been paid to the respondent. He contended that although the Arbitral Tribunal had noted that the escalation worked out by DGMAP was ₹7,18,81,658.72/-, an amount of ₹10,60,00,000/- was awarded as an undisputed amount.

29. Ms. Panda, learned counsel appearing for the respondent countered the aforesaid submissions. She submitted that DGMAP had not pleaded that the impugned award was liable to be set aside under Section 34(2)(a)(iii) of the A&C Act and no such plea could, thus, be orally advanced. She further contended that the request to permit a technical person to advance submissions was a ruse to lead evidence at the stage of final arguments. She submitted that counterclaim no.1 was in regard to the DGMAP Final Bill,



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which was introduced at a much belated stage. The same was fabricated later. The Final Bill submitted by DGMAP (DGMAP Final Bill) was unsigned and there were further alterations after the bill had been signed. She contended that none of the alterations had been specifically signed, which indicate that the said alterations had been carried out after the final bill had been signed by the concerned officer.

30. Lastly, she submitted that DGMAP could not challenge the impugned award in relation to Claim Nos. 2(A) to 2(U) as the learned counsel for DGMAP had not pressed the challenge in respect of the said claims.

REASONS AND CONCLUSION

31. The first question to be addressed is whether the impugned award is liable to be set aside under Section 34(2)(a)(iii) of the A&C Act. The said Clause reads as under:

“Section 34. Application for setting aside arbitral awards.

(2) ***

(a)***

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or”

32. There is no specific ground either in the application filed under Section 34 of the A&C Act or in the present appeal that specifically seeks to challenge the impugned award on the aforesaid ground. However, DGMAP has specifically pleaded that the impugned award is vitiated on account of “denial of opportunity to explain the case findings of Id Arbitrator”. Notwithstanding that the impugned award is not challenged on the ground that DGMAP was unable to present its case, we are unable to accept that



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DGMAP is precluded from raising the said ground at this stage. This is because it does not seek to introduce any new facts in the pleadings. The contention that the impugned award is vitiated under Section 34(2)(a)(iii) of the A&C Act is premised on the fact that the counsel for DGMAP had, by an email dated 03.02.2022, requested the Arbitral Tribunal to permit Mr. Sushil Kumar Jain, Director (Contracts) of DGMAP to expound on the issue involved in Counterclaim no.1 and the decision of the Arbitral Tribunal to deny the said request. The said facts are specifically pleaded. More importantly, there is no dispute that the counsel for DGMAP had made a request to permit the Director (Contracts) to address arguments on 04.02.2022 and the said request was not accepted.

33. However, we find no merit in the contention that DGMAP was unable to present its case or was denied full opportunity to do so. Concededly, both the parties had been granted ample opportunity to lead evidence including expert evidence. Undisputedly, the parties were given the opportunity to produce the documents relied upon by them and they had filed the respective affidavits of admission and denial of documents. The respondent had filed the affidavit of Sh. Luv Jain, Director of respondent (CW-1) as evidence. And, DGMAP had filed an affidavit of Sh. Rajnikant Sharma, Project Manager (MAP), Directorate General, Married Accommodation Project (RW-1) as evidence. Both the witnesses were extensively cross-examined. After its witness had submitted the evidence by way of affidavit and while its witness (RW-1) was being cross-examined, DGMAP moved an application on 04.03.2021 seeking amendment of its Statement of Defence and Counterclaim. The said application was filed on 01.03.2021. The



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Arbitral Tribunal had allowed the said application and had also called upon the parties to indicate whether they propose to lead further evidence. DGMAP did not avail the said opportunity and had declined to lead further evidence. Thus, undeniably, both the parties had ample opportunity to lead expert evidence on technical matters and to some extent, had done so. It is also not disputed that DGMAP was represented by counsel throughout the proceedings and was given full opportunity to advance oral submissions on behalf of DGMAP. It is material to note that while arguments were being advanced by DGMAP's counsel and the matter was scheduled before the Arbitral Tribunal for further hearing on 04.02.2022, the counsel for DGMAP had requested to permit Director (Contracts) to further expound on the issue relating to Counterclaim no.1 on the ground that it is technical in nature and deals with calculations prepared by the Department on the basis of Measurement Books, actual work on site etc. It is material to note that the authority of the counsel was not withdrawn. However, DGMAP's request was that in the midst of the arguments, the Director (Contracts) to DGMAP be permitted to further add explanations. Clearly, the denial of such request did not render DGMAP unable to present its case. Its counsel, who was on record, had full opportunity to address submissions on the basis of evidence led by the parties. No further technical facts or explanations could be introduced after the evidence had been closed and the matter was at the stage of final arguments. DGMAP was also required to confine itself to pleadings and the material on record. Clearly, no submissions could have been advanced, which were not supported by pleadings. In the given facts, we are unable to accept that the impugned award is liable to be set aside on the ground that DGMAP did not have notice of proceedings or was otherwise



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unable to present its case after DGMAP had fully participated in the proceedings. It is also important to note that even at this stage, no submissions have been made before this Court pointing out any particular pleading or seeking to explain any of the pleadings or documents which, according to DGMAP, it was unable to do before the Arbitral Tribunal. As noted above, DGMAP's contention rests solely on the basis that a particular technical officer was not allowed to make submissions in the midst of the arguments being advanced by its counsel.

34. We are unable to accept that the principles of natural justice were violated or that DGMAP had been denied any opportunity to meet the case set up by the respondent or to advance its counterclaims. We concur with the decision of the learned Single Judge that the matter was one regarding procedure, which was within the domain of the Arbitral Tribunal and its decision to decline the request for the technical person to join the oral submissions of its counsel, is not amenable to review in these proceedings.

35. The second question to be addressed is whether the impugned award is vitiated by patent illegality.

36. The impugned award may be set aside if it is vitiated by patent illegality appearing on the face of the award. It is also well settled that the ground of patent illegality is attracted only if the illegality strikes at the root of the arbitral award. A plausible view of the Arbitral Tribunal, even though may be considered as erroneous by the courts, is not liable to be interfered with in proceedings under Section 34 of the A&C Act. This is because it is impermissible for the court to re-adjudicate the disputes as an appellate court



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and supplant its view in place of that of the Arbitral Tribunal. The Arbitral Tribunal is the sole adjudicator of the disputes between the parties and unless the said view is perverse or one that no reasonable person can possibly accept, no interference with the arbitral award is permissible.

37. It is material to note that the proviso to Section 34(2A) of the A&C Act also expressly provides that an arbitral award would not be set aside merely on the ground of erroneous application of law or by reappreciation of evidence.

38. In the present case, the Arbitral Tribunal had rejected the DGMAP Final Bill for various reasons. The Arbitral Tribunal had first noted that the DGMAP Final Bill had seen the light of the day while the proceedings were mid-way. Even though the respondent had denied the DGMAP Final Bill, DGMAP had not taken any steps to establish its correctness or prove the same. The Arbitral Tribunal noted that it had granted opportunity to DGMAP to lead further evidence by an order dated 24.03.2021, but DGMAP had not led any evidence to prove the DGMAP Final Bill.

39. Second, that the DGMAP Final Bill was incomplete as it was not accompanied by relevant documents including the Deviation Orders (DOs). DGMAP had sought to produce the DOs at a subsequent stage, however, had not led any additional evidence to prove the same. In the given circumstances, the Arbitral Tribunal held that DGMAP had failed to prove the DGMAP Final Bill and the DO(s) placed on record.

40. The aforesaid conclusion cannot be held to be perverse or vitiated by patent illegality. There is no dispute that DGMAP had not led any evidence



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to prove the DGMAP Final Bill. The Arbitral Tribunal had noted that the DGMAP Final Bill showed handwritten/manual adjustments/alterations, which were subject matter of dispute between the parties. However, DGMAP had not examined its officer who had carried out the handwritten/manual adjustments/alterations in the DGMAP Final Bill or proved the correctness of the said alterations/corrections.

41. DGMAP Final Bill was also not confirmed as it was subject to an audit check.

42. Admittedly, the work was completed on 30.11.2017 and the defects liability period also expired on 30.11.2019. In the given facts, after evaluating the material on record, the Arbitral Tribunal concluded that the DGMAP Final Bill lack credibility and thus, rejected the same. The decision of the Arbitral Tribunal as to the quality of the evidence is not amenable to the judicial review under Section 34 of the A&C Act. It is not permissible for a Court to reappreciate the evidence and undertake a merits review of an arbitral award under Section 34 of the A&C Act. Unless the Court finds that the Arbitral Tribunal's view is *ex facie* not a plausible one, the arbitral award cannot be set aside. Clearly, in the present case, there is no ground to accept that the decision of the Arbitral Tribunal to reject the DGMAP Final Bill, is perverse or patently illegal. The Arbitral Tribunal has given cogent reasons for its conclusion and it is not possible to hold that the said conclusion is not a plausible one.

43. The respondent had also submitted the Final Bill dated 04.10.2018. The said Final Bill was returned by DGMAP on 22.10.2018 *inter alia* on the



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ground that it was not divided in two parts – disputed and undisputed. According to DGMAP, the Final Bill was required to be bifurcated into two parts. One in regard to the amounts that were disputed and the second in respect of amounts that were undisputed. The Arbitral Tribunal found that there was no contractual basis for this assertion. The relevant clause of the Agreement (Clause 56 of the Agreement) required “*those items of the Final Bill in respect of which there is no dispute*” to be paid within a period of six months from the date of receipt of the Final Bill by the Project Manager. The said Clause did not mean that the Contractor was required to submit the bill by dividing it into two parts. It merely required that the amounts in respect of which there was no dispute were to be paid within a stipulated period. However, in the present case, DGMAP had returned the Final Bill and had not processed the same.

44. The respondent had led evidence as to the correctness of the Final Bill. CW-1 had affirmed as to the correctness of the said Final Bill. He was extensively cross-examined. He testified that the Final Bill contained the details of the work done. It also contained an item wise break-up of the work executed by the respondent. He had also affirmed that the Final Bill dated 04.10.2018 was in the requisite format. However, the respondent had modified and re-submitted the same (Final Bill) as required by DGMAP.

45. The Arbitral Tribunal accepted the evidence of CW-1. Accordingly, it allowed Claim no.1 to the extent of ₹4,51,13,888/-, which was also mentioned in Appendix A to the Statement of Claim. The summary of the undisputed amounts due appearing at the said Appendix A indicated the amounts of the bills raised/gross value of the work done as



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₹2,67,79,20,650.09/- and escalation as ₹10,60,00,000/-. The summary of the undisputed amounts payable as mentioned in Appendix A and as noted by the Arbitral Tribunal is set out below:

“67. It is correct that the amount claimed in the SOC is different from the amount mentioned in Appendix A filed by the Claimant. The Summary appearing at page 5 of Appendix A filed by the Claimant reads as under:

Ser No	Description	Minus	Plus
1	Amount of the Bill		2,67,79,20,650.09
2	Gross value of work		2,67,79,20,650.09
3	Escalation		10,60,00,000.00
4	Recovery of Mobilization Advance including Interest	25,58,96,985.00	
5	Schedule of Credit	3,26,59,765.07	
6	Total Payments Made on Running Account Receipts from 01 RAR to 69 th RAR	2,45,02,50,012.00	
7	Net Amount of the bill		4,51,13,888.02
8	Net Amount of the bill		4,51,13,888.00”

46. The Arbitral Tribunal also examined the respondent’s claim in regard to the undisputed portion of the Final Bill. The same was largely considered in the 69th RAR, which was paid on 05.05.2018. The escalation amount of ₹10,60,00,000/- was accepted as the undisputed part of the Final Bill as it had been paid till the 69th RAR after due approvals at various stages.



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47. No specific dispute has been pointed out as to the gross value of the work set out in the summary appearing at Page 5 of Appendix A. The Arbitral Tribunal noted the testimony of RW-1 to the effect that payment of escalation of a sum of ₹10,60,00,000/- was made after it was examined and approved by the concerned officials at various stages.

48. There appears to be no dispute as to the total payments made on the running account.

49. In the given circumstances, the Arbitral Tribunal accepted the undisputed part of the Final Bill and accordingly, allowed Claim no.1, albeit to the extent of ₹4,51,13,888.02/- as mentioned in Appendix A to the Statement of Claims, as against a sum of ₹5,31,23,148/- claimed by the respondent.

50. The contention that the impugned award is vitiated on the ground of patent illegality as the Arbitral Tribunal has rejected the Final Bill produced by DGMAP, is also untenable and without merit. We find no ground to set aside the Arbitral Tribunal's decision to accept the undisputed portion of the Final Bill. The Arbitral Tribunal had accepted the respondent's justification for the same and the said decision cannot, by any stretch, be held to be perverse.

51. The third question to be addressed is whether the impugned award suffers from inconsistencies and is thus liable to be set aside.

52. Mr Singh had also assailed the impugned award on the ground that it was inconsistent. The said contention rested on the conclusion as recorded in



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Paragraph Nos. 67 and 178 of the impugned award. Paragraph No. 67 of the impugned award sets out a summary of the Final Bill filed as Appendix A to the Statement of Claim. As noted above, the same indicated the escalation on the value of work done as ₹10,60,00,000/-. The Arbitral Tribunal had reproduced the synopsis of the arguments. The respondent had justified including the said amount in the undisputed portion of the Final Bill on the ground that the said amount had been agreed and had been paid by DGMAP till the 69th RA Bill in May 2018. It was contended that in view of the above, there was no dispute as to the said escalation. However, DGMAP had reduced the amount to approximately ₹7.21 crores in the DGMAP Final Bill. The respondent claimed that this rejection was unjustified and arbitrary, particularly after the respondent had already agreed and paid the same.

53. The Arbitral Tribunal also noted the responses of RW-1 to the questions put in cross-examination. The relevant extract, as noted by the Arbitral Tribunal in the impugned order, is reproduced below:

“70. During cross-examination, RW1 has deposed as under:

Q.102 I put it to you that the payment in respect of escalation and earthwork done by the Claimant was duly paid by the Respondent after complete checking and verification by the PM MAP, Station Commander, Consultant and then by the Controller of Defence accounts in May 2018. What do you have to say?

Ans. Yes.

Q. 103 Did the Respondent ever take any action against any of these officials by alleging that they have wrongly made the payment?

Ans. I do not want to answer this question as it is a departmental matter and cannot be answered here.

Per Tribunal: The witness is requested to answer the



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question.

I do not know what action has been taken by DG MAP.

Q.104 I put it to you that no action whatsoever has been taken against any of those officials till date. What do you have to say?

Ans. I do not know.”

54. The Arbitral Tribunal noted that DGMAP had not led any independent evidence to dispute the aforesaid stand and thus, had accepted that escalation of ₹10,60,00,000/- was admitted. However, the Arbitral Tribunal rejected the respondent's claim for enhanced escalation, which was part of the disputed Claim no.2(P).

55. The respondent claimed that it was entitled to escalation amounting to ₹16,18,77,052.43/-. There was no dispute that it had received payment of ₹10,60,00,000/- against escalation for cement and steel. Accordingly, the respondent claimed the balance payment along with interest, which was quantified at ₹7,36,22,991.93. The said amount was included in the disputed portion of the Final Bill and claimed as Claim No. 2(P).

56. The respondent had calculated the said escalation by assuming that steel constituted 13% of the value and cement constituted 27% of the value. The said constituents were referred to as Ks and Kc in the formula as provided in the Agreement. The respondent had determined the value of steel component on the basis that it had purchased steel reinforcement of approximately ₹34 crores including material issued by DGMAP lying at site, This, according to the respondent, worked out to be 13%. The respondent had also relied on note no.7 of the special conditions of contract, which



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provided that the value/percentage of Kc and Ks (cement and steel components respectively) would be determined on the type of construction and codal provisions but their sum would be 40%. Thus, according to the respondent, the escalation was required to be computed on the basis that the steel component (Ks) is 13% and the cement component (Kc) is 27%. According to the respondent, the same would work out to ₹16,18,77,052.43/-. The respondent contended that it was the obligation of the accepting officer to ascertain the correct value of Ks and Kc based on the details submitted by the respondent, but he had not done so.

57. The Arbitral Tribunal rejected the said claim – Claim No. 2(P) – on the ground that the respondent had failed to establish the indices on which the calculations were based. In the aforesaid context, the Arbitral Tribunal also observed, in paragraph 177 of the impugned award, that the respondent had “*failed to dispute/discredit the statement of the Respondent that an amount of Rs.10,60,00,000/- was released to it as per RAR No.69 as against the escalation amount of Rs.7,18,81,658.72/- worked out by the Respondent keeping in view the constant of 15:25*”. This, according to Mr Singh, is contradictory to the finding of the Arbitral Tribunal as recorded in Paragraph 67 of the impugned award whereby the Arbitral Tribunal accepted that escalation of ₹10,60,00,000/- was not disputed.

58. We find no merit in the aforesaid contention. A plain reading of the Arbitral Tribunal’s decision in regard to the undisputed portion of the Final Bill (Claim no.1) and the disputed portion of the escalation of cement and steel (Claim no.2(P)] indicates that there is no inconsistency in the findings read in the proper context. The Arbitral Tribunal had accepted that



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escalation of ₹10,60,00,000/- was not disputed by DGMAP at the appropriate time as the said escalation had been paid till the 69th RAR after the concerned officials of DGMAP had examined and approved the same examining the calculations for the same. RW-1 had accepted that the payments were made after the calculations had been duly verified by the concerned officers including the Accounts Department and there was no material that any action had been taken against the concerned officers for accepting the calculations of escalation and payment of the said amount. However, the Arbitral Tribunal did not accept the respondent's calculation of the enhanced escalation assuming the steel component to be 13% and the cement component to be 27%. Undoubtedly, there was a dispute regarding the constants (Kc and Ks) to be applied for computing the escalation. DGMAP had subsequently computed the escalation at ₹7,18,81,658.72/-. Apparently, keeping in view the said constants at 15:25. However, this was subject matter of serious dispute. It is apparent that whilst the Arbitral Tribunal rejected the respondent's contention that the escalation was to be reduced and allowed Claim no.1, it also rejected the respondent's claim for the additional escalation as claimed by it. The observations made in Paragraph no. 177 of the impugned award cannot be read to mean that the Arbitral Tribunal had accepted that the subsequent reduction of escalation from ₹10,60,00,000/- to ₹7,18,81,658.72/-, as claimed by DGMAP, was correct.

59. Before concluding, it is also necessary to note that before the learned Single Judge, DGMAP had not pressed its challenge to amounts awarded against Claim no.2 [Claim nos.2(A) to 2(U)].



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60. Mr Singh, learned counsel appearing for DGMAP, had fairly stood by the said stand and had not advanced any contention to challenge the impugned award in respect of amounts awarded in favour of the respondent against Claim no.2.

61. We find no infirmity with the impugned order or any ground to interfere with the impugned award.

62. The present appeal is unmerited and, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JULY 08, 2024

m/RK