



2024:DHC:1637-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04.03.2023

+ **FAO(OS) (COMM) 284/2019 and CM APPL. 45185/2019**

**CHENNAI - ENNORE PORT ROAD
COMPANY LTD.**

..... Appellant

versus

M/S COASTAL - SPL (JV)

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Narender Hooda, Senior Advocate
with Ms Neetika Sharma, Advocate.

For the Respondent : Mr Amar Gupta, Mr R.Jawahar Lal
and Mr. Siddharth Bawa, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MS JUSTICE TARA VITASTA GANJU

JUDGMENT

VIBHU BAKHRU, J.

1. The appellant – a special purpose vehicle of the National Highways Authority of India – has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning a judgment dated 23.07.2019 (hereafter *the impugned judgment*) passed by the learned Single Judge



of this Court in *OMP(COMM) 200/2019* captioned *Chennai – Ennore Port Road Company Ltd. v. M/s. Coastal – SPL (JV)*. The appellant had filed the aforesaid application, *OMP(COMM) 200/2019*, under Section 34 of the A&C Act assailing an arbitral award dated 16.12.2018 (hereafter *the impugned award*) passed by the Arbitral Tribunal comprising of three arbitrators.

2. The impugned award was rendered in the context of disputes that had arisen between the parties in connection with the contract for widening, strengthening and improvement of three roads (hereafter *the Project*). The respondent – an unincorporated Joint Venture between M/s SPL Infrastructure Pvt. Ltd. and Coastal Project Ltd. – had submitted a bid for executing the Project at a total price of ₹2,58,64,47,956/-. Subsequently, the respondent offered a rebate of 2% by a letter dated 25.11.2010. The same was accepted by the appellant and the Contract Price was fixed at ₹2,53,47,18,997/- after taking 2% rebate on the total price.

3. The appellant issued the letter of acceptance (*LoA*) on 24.12.2010 and the parties entered into the Agreement on 07.02.2011 (hereafter *the Agreement*).

4. The Project was to be completed within a period of twenty-four months from the commencement date. The appellant issued the notice for commencement of work on 05.05.2011 and in terms of the Agreement, the work was to be commenced within thirty days from the issue of commencement notice dated 05.05.2011, that is, on or



2024:DHC:1637-DB



before the 03.06.2011 (hereafter *the appointment date*). Thus, the Project was to be completed by 02.06.2013.

5. However, the commencement of the work was delayed. The respondent claims that it mobilized the necessary resources to complete the Project but the appellant failed to handover a hindrance/encumbrance free site. The respondent also alleges that the appellant failed to approve the construction drawings and thus, further delayed the completion of the Project. Additionally, it claims that the site was handed over in a piecemeal manner, which also affected the pace of work.

6. The respondent claims that it achieved substantial completion in respect of a length of 27.933 km, out of a length of 29.138 km by 31.03.2015 and the substantial completion certificate was issued.

7. The parties entered into Supplementary Agreement (hereafter *the First Supplementary Agreement*) on 31.07.2015. The same indicates that even as on that date, no time frame for clearing the remaining encroachments on the site, could be fixed. Thus, the parties agreed that substantial completion would be given in respect of the completed lengths of 27.933 kms as on 31.03.2015 and the defect liability period would commence from the said date. The First Supplementary Agreement recorded the details of the main carriageway/service road/drain work, which could not be taken up as on the said date due to “*land acquisition problem, court case etc.*”



The respondent also agreed that no claims would be made on account of “*non-execution of the said works*”.

8. The parties thereafter entered into another Supplementary Agreement dated 12.01.2018 (hereafter *the Second Supplementary Agreement*).

9. The disputes arose between the parties including in respect of price adjustment formula used for calculation of the price variation. The disputes between the parties were referred to the Dispute Resolution Board (*DRB*). Thereafter, the disputes were referred to arbitration in terms of Clause 67.3 of the Conditions of Particular Application (hereafter *COPA*). Before the Arbitral Tribunal, the respondent raised six claims including a claim for erroneous application of rebate in calculation of the price adjustment (Claim no.2), and a claim for revised rates for BOQ items of work carried out beyond the original intended date of completion (Claim no.6). The appellant also filed counterclaims, principally, on account of liquidated damages.

10. The respondent’s Claim no.6 was in two parts. The first related to revision of rates during the extended period, and the second was in respect of price adjustment in the extended period. The Arbitral Tribunal rejected respondent’s Claim no.1, but allowed other claims. The Arbitral Tribunal awarded an amount of ₹73,43,858/- in respect of respondent’s Claim no.2, an amount of ₹45,68,04,214/- in respect of revision of rates for the extended period [Claim No. 6(a)] and



₹96,80,034/- on account of price adjustment in the extended period [Claim No. 6(b)]. The Arbitral Tribunal awarded simple interest at the rate of 10% per annum from 15.06.2018 till the date of realization. In addition, the Arbitral Tribunal also awarded costs in favour of the respondent quantified at ₹43,00,000/-.

11. The appellant assailed the impugned award by filing an application under Section 34 of the A&C Act – OMP(COMM) 200/2019. However, the learned Single Judge did not find any grounds to interfere with the impugned award and accordingly, rejected the appellant's application as unmerited.

SUBMISSIONS

12. Mr. Hooda, learned senior counsel appearing for the appellant had confined the present appeal to challenge the impugned award and the impugned judgement to the limited extent that the Arbitral Tribunal had allowed the respondent's Claim no.2 and Claim no.6. This Court issued notice in the present appeal on 15.10.2019 limited to the aforesaid two claims.

13. Mr. Hooda submitted that the Arbitral Tribunal had grossly erred in interpreting Clause 70 of COPA. He referred to Clause 70.1 of the General Conditions of Contract (hereafter *GCC*) which reads as under:

“Increase or Decrease of	70.1 There shall be added to or deducted from the Contract Price such sums in respect of rise or fall in the cost of
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**Cost**

labour and/or materials or any other matters affecting the cost of the execution of the Works as may be determined in accordance with Part II of these Conditions.”

14. He submitted that the price variation formula was required to be applied to the ‘Contract Price’ which was defined under the Contract to mean the same as set out in the LoA as payable to the Contractor for execution and completion of the works and remedying any defects in accordance with the provisions of the Contract. He submitted that the LoA had set out the Contract Price as ₹2,53,47,18,997/- after deducting rebate of 2% as offered. Therefore, any price variation (adjustment on account of increase or decrease in the rates and price of labour, material, fuels, lubricants and others) were required to be computed on the basis of the Contract Price which was arrived at after deducting the rebate of 2% as offered by the respondent. He submitted that the impugned award is vitiated by patent illegality as the Arbitral Tribunal had accepted that the formula for price adjustment on account of increase and decrease in the rates of labour, material, fuel and lubricants was to be worked out on the basis of the rates as specified in the BoQ. He submitted that the Contract Price was a product of the base rates for various items and the quantum of work. He contended that taking the base rates as quoted in the BoQ would amount to excluding the rebate as offered by the respondent. He submitted that the impugned award, to the extent that the Arbitral Tribunal had accepted the respondent’s Claim No.2, was required to be set aside.



15. Insofar as Claim No.6 is concerned, Mr. Hooda submitted that the impugned award was contrary to the terms of the First Supplementary Agreement. He submitted that the parties had expressly agreed that the respondent would not raise any claim on account of delay in execution of the works and the Arbitral Tribunal had ignored the same. However, during the course of the proceedings, Mr. Hooda fairly stated that the First Supplementary Agreement may not include any such bar in respect of works executed prior to the date of the First Supplementary Agreement.

16. Mr. Amar Gupta, learned counsel appearing for the respondent countered the aforesaid submissions. First, he submitted that the reference to Sub-clause 70.1 of the COPA was erroneous. He stated that the Clauses 70.1 and 70.2 of the GCC were substituted by the COPA and Clause 70.1 of the GCC expressly referred to the base rates and prices. He submitted that the increase or decrease price payable to the respondent was to be worked out on the basis of the rates as quoted in the BoQ. He also referred to the extract of the BoQ and contended that the respondent had not offered any rebate on the rates but had offered an overall lumpsum Contract Price. He submitted that it would thus, be erroneous to read the rebate of 2% as applicable to separate items of the BoQ. He also referred to the decision of a Single Judge of this Court in *National Highways Authority of India v. Hindustan Construction Co. Ltd.*: 2015 SCC OnLine Del 10086 as well as the Coordinate Bench of this Court in *M/s National Highways Authority of India v. M/s Oriental Structural Engineers Pvt.*



Ltd.:2018 SCC OnLine Del 10120 and submitted that the issues raised in respect of Claim No.2 are squarely covered by the said decisions.

REASONS & CONCLUSION

17. As noted at the outset, the controversy in the present case is confined to the impugned award to the extent that the Arbitral Tribunal had allowed Claim No.2 and Claim No.6.

RE: CLAIM NO.2

18. The dispute covered under the respondent's Claim No.2 relate to the calculation of the price adjustment. It was the respondent's case that the Engineer had erroneously applied the rebate to the value of work done while calculating the price adjustment component and had certified the payments accordingly. According to the appellant, it had offered a lumpsum rebate on the total price and not on separate items for the BoQ. The respondent also pointed out that the price adjustment by the formula as stipulated under the COPA is a variable factor which requires to be determined on the basis of base rates as increased or decreased in respect of the relevant index or factor. Paragraph 2.6 of the Statement of Claim is relevant and is set out below:

“2.6 It is submitted that the ‘Base rates’ are the rates quoted by the Claimant against bill of quantity items as an individual item. The rebate offered by the Claimant was only a lump sum on the total Contract price. The individual quoted rates were not revised or reduced. Therefore the base rates are rates quoted in the bid and



lump sum rebate cannot be considered for price adjustment. It will also be pertinent to submit that the price adjustment which is a variable factor during execution is not included in the contract price.”

19. At this stage, it is material to note that Clause 70.1 of the GCC as referred to by Mr. Hooda was not applicable in terms of the COPA. Clauses 70.1 and 70.2 of the GCC were substituted by Sub-clauses 70.1, 70.2 and 70.3 of the COPA are relevant. The same are set out below:

“Sub-Clause 70.1 Price Adjustment

The amounts payable to the Contractor and valued at base rates and prices in the Interim Payment Certificates issued by the Engineer, pursuant to Sub-Clause 60.1, shall be adjusted in respect of the rise or fall in the index cost for labour, Contractor's Equipment, Plant, materials, and other inputs to the Works, by the addition or subtraction of the amounts determined by the formulae prescribed in this Clause.

Sub-Clause 70.2 Other Changes in Cost

To the extent that full compensation for any rise or fall in costs to the Contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates and prices included in the Contract shall be deemed to include amounts to cover the contingency of such other rise or fall of costs.

Sub-Clause 70.3 Price Adjustment Formulae

Contract Price shall be adjusted for increase or decrease in rates and price of labour, materials, fuels and lubricants in accordance with the following principles and procedures as per formula given below. The amount certified in each payment certificate is adjusted by applying the respective price adjustment factor to the payment amounts due:



- (a) Price adjustment shall apply only for work carried out within the stipulated time or extensions granted by the Employer and shall not apply to work carried out beyond the stipulated time; price adjustment for extensions for reasons attributable to the Contractor, shall be paid in accordance with Sub-Clause 70.5; Price adjustment shall be calculated as per the formula given below:
- (b) Following expressions and meanings are assigned to the value of the work done during each month:

R = Total value of work done during the month. It would include the value of materials on which secured advance has been granted, if any during the month less the value of materials in respect of which the secured advance has been recovered, if any during the month. This will exclude cost of work on items for which rates were fixed under variations Clause 51 and 52 for which the escalation will be regulated as mutually agreed at the time of fixation of rate.

(i) Adjustment for Labour Component

Price adjustment for increase or decrease in the cost due to labour shall be paid in accordance with the following formula:

$$V_L = 0.85 \times P_1/100 \times R \times (L_1 - L_0)/L_0$$

V_L = increase or decrease in the cost of work during the month under consideration due to changes in rates for local labour.

L_a = the average consumer price index for industrial workers for the place as defined in the Appendix to Bid, in the previous month prior to the closing date of submission of bids as published by Labour Bureau, Ministry of Labour, Government of India.

L_o = The average consumer price index for industrial workers for the place as defined in the Appendix to Bid, in the previous month prior to the last day of the period to which a particular Interim Payment



Certificate is related as published by Labour Bureau, Ministry of Labour, Government of India.

P_l = Percentage of labour component of the work.

Note: For the application of this Clause, index of Industrial Workers has been chosen to represent the labour component.

ii) Adjustment for Cement Component

Price adjustment for increase or decrease in the cost of cement procured by the Contractor shall be paid in accordance with the following formula,

$$V_c = 0.85 \times P_o / 100 \times R \times (C_i - C_o) / C_o$$

V_c = Increase or decrease in the cost of work during the month under consideration due to changes in the rates for cement

C_o = The all India average wholesale price index for cement in the previous month prior to the closing date of submission of bids as published by the Ministry of Commerce & Industry, Government of India.

C_i = The all India average wholesale price index' for cement in the previous month prior to ,the last day of the period to which a particular Interim Payment Certificate is related, as published by Ministry of Commerce & Industry, Government of India,

P^c = Percentage of cement Component of the work

(iii) Adjustment for steel component Price adjustment for increase or decrease in the cost of steel procured by the Contractor 'shall be paid in accordance with the following formula:-

$$V_s = 0.85 \times P_s / 100 \times R \times (S_1 - S_o) / S_o$$

V_s = Increase or decrease in the cost of work during the month under consideration due to changes in the rates for steel.



S_o = The all India average wholesale price index for steel (Bars and Rods) in the previous month prior to the closing date of submission' of bids as published by the Ministry of Commerce & Industry, Government of India,

S_j = The all India average wholesale price index for steel (Bars and Rods) in the previous month prior to the last day of the period to which a particular Interim Payment Certificate is related as published by the Ministry of Commerce & Industry, Government of India.

P_s = Percentage of steel component of the work

Note: For the application of this Clause, index of Bars and Rods has been chosen to represent steel component.

(iv) Adjustment for Plant and machinery and spares component Price adjustment for increase or decrease in the cost of Plant and machinery spares procured by the Contractor shall be paid in accordance with the following formula:

$$V_p = 0.85 \times P_p / 100 \times R_x (P_i - P_o) / P_o$$

V_p = Increase or decrease in the cost of work during the month under consideration due to changes in the rates for Plant and machinery spares

P_a = The all India average wholesale price index for heavy machinery and parts in the previous month prior to the closing date of submission of bids as published by the Ministry of Commerce & Industry, Government of India The all India average wholesale price index for heavy machinery and parts in the previous month prior to the last day of the period to which a particular Interim Payment Certificate is related as published by the Ministry of Commerce & Industry, Government of India.

P_i = Percentage of Plant and machinery spares component of the work Note: For the application of this Clause, index of heavy machinery and parts has been chosen



to represent the Plant and Machinery spares component.

(v) Adjustment for Bitumen component

Price adjustment for increase or decrease in the cost of bitumen shall be paid in accordance with the following formula:

$$V_b = 0.85 \times P_p / 100 \times R_x (B_i - B_o) / B_o$$

V_b = increase or decrease in the cost of work during the month under consideration due to changes in the rates for bitumen:

B_o = the average official retail price of bitumen at the nearest refinery for the place as defined in Appendix to Bid, in the previous month prior to the date of submission of Bids.

B_i = the average official retail price of bitumen at nearest refinery for the place as defined in Appendix to Bid, in the previous month prior to the last day of the period to which a particular Interim Payment Certificate is related.

P_b = Percentage of bitumen component of the work.

(vi) Adjustment for Fuel and Lubricants (POL)

Price adjustment for increase or decrease in the cost of POL (fuel and lubricant) shall be paid in accordance with the following formula:-

$$V_f = 0.85 \times P_t / 100 \times R_x (P_i - P_o) / P_o$$

V_c = Increase or decrease in the cost of work during the month under consideration due to changes in rates for fuel and lubricants.

F_o = The average official retail price of High Speed Diesel (HSD) oil at the existing consumer pumps of toe for the place defined in the Appendix to Bid in the previous month prior to date of submission of bids.



F_i = The average official retail price of HSD at the existing consumer pumps of IOC for the place defined in the Appendix to Bid in the previous month prior to the last day of the period to which a particular Interim Payment Certificate is related

P_f = Percentage of fuel and lubricants component of the work.

Note: For the application of this clause, the price of High Speed Diesel oil at the lac pumps has been chosen to represent fuel and lubricants component.

- Based price index for Industrial Workers to be published by Labour Bureau, Ministry of Labour, Govt. of India he checked

(vii) Adjustment for Other Local Materials

Price adjustment for increase or decrease in cost of local materials other than cement, steel, bitumen, plant spares and POL procured by the Contractor shall be paid in accordance with the following formula:

$$V_m = 0.85 \times P_{m100} \times R_x (M, \bullet M.) / M_o$$

V_m = Increase or decrease in the cost of work during the month under consideration due to changes in rates for local materials other than cement, steel, bitumen, plant spares and POL.

M_o = The all India average wholesale price index (all commodities) in the previous month prior to date of submission of bids, as published by the Ministry of Commerce & Industry, Government of India.

M_1 = The all India average wholesale price index (all commodities) in the previous month prior to the last day of the period to which a particular Interim Payment Certificate is related as published by the Ministry of Commerce & Industry, Government of India.



P_m = Percentage of local material component (other than cement, steel, bitumen, plant spares and POL) of the work.

(viii) The following percentages will govern the price adjustment of the contract:

1. Labour - PI	20 %
2. Plant and Machinery and Spares- Pp	20 %
3. POL-Pf	10%
4. Bitumen- Ph	x %
5. Cement - P,	Y%
6. Steel- Ps	Z %
7. Other materials - Pm	50 - (x +y + z) %
Total	100 %

(Note: x, y, z are the actual percentage of material of bitumen, cement and steel respectively used for execution of work as per the Interim Payment Certificate for the month)."

20. It is apparent from the aforesaid clauses that the formula for computing price adjustment under Sub-clause 70.3 of the COPA was variable to the work done. According to the respondent, the formula clearly provided a mechanism to work the variable component. The same was based on the index / price as applicable in the previous months prior to the last day of the period for the particular interim payment certificate. According to the respondent, the base rates as quoted in the BoQ would necessarily be the base rates on which the valuable component was required to be computed. The Arbitral Tribunal accepted the aforesaid claim. The Arbitral Tribunal referred to Sub-clause 70.1 of the COPA and held that the same revealed that the works are to be valued at base rates and that the respondent had not offered any rebate on the basis of the rates as quoted in its tender.



The Arbitral Tribunal also reasoned that it is the base rates that is subject to escalation and not the rate derived after deducting the rebate amount offered by the respondent.

21. The extract of the BoQ clearly indicated that the respondent had not offered any rebate on the various items of work. The rates as tendered by the respondent and as stated in the BoQ clearly indicated that it had not offered any rebate. The column for rebate expressly indicated that the rebate offered was 'Nil'. The Arbitral Tribunal had interpreted Sub-clauses 70.1 and 70.2 of the COPA as supporting the respondent's contention. Concededly, the issue is also covered by the earlier decisions of the Coordinate Bench of this Court in *M/s National Highways Authority of India v. M/s Oriental Structural Engineers Pvt. Ltd. (supra)*. In the said case, the Arbitral Tribunal had not accepted the contention of National Highways Authority of India which was in effect the same as contended on behalf of the appellant. The Coordinate Bench of this Court, after reproducing the relevant extract of the Arbitral Award impugned in that case, had observed as under:

"9. It is evident from a plain reading that the award is coherent and spells out quite plainly why NHAI's arguments were not appealing, given the terms of the contract. The tribunal stated that BOQ consisted of individual item rates quoted by the contractor which become part of the contract. The bidder quotes base rates; prices are those basic prices which imply prices for specified materials indicated in Section VI of Volume-III of the Tender Documents. As regards base rates, the rates given in the BOQ were to be the base rates to apply for interim payment calculation and form those net payment



was to be arrived at after making the deductions. The parties agreed -in keeping the quoted rates as base rates and gross value of work is arrived at in all interim payments. The tribunal therefore concluded that the discount offered (by the claimant) was inapplicable to the value of the work to be arrived at under clause 60.1 (c) or (d). Further under clause 60.1 (g) the discount offered could not be extended to the amount price adjustment as there is no such provision either in the Form of Bid/LOA or in the provisions of the Contract Agreement. Further, the price adjustment was not a rate quoted in the BOQ but based on the rates quoted in the BOQ and therefore, discount @ 7.75% offered is not applicable to such price adjustment.

10. In this court's opinion, what NHAH argues, is to invite the court, in the guise of saying that the contract conditions were ignored, to substitute its reasons for the reasons given in the award. When the law is clear, that the interpretation of contract is the primary task – or within the exclusive domain of an arbitral tribunal, the court cannot, by a sleight of reasoning, by saying that the reasons are contrary to the contract, upset the award. In *P.R. Shah v B.H.H Securities* 2012 (1) SCC 594 it was held that:

“21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34 (2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent



and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34 (2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”

Earlier *McDermott International Inc. v Burn Standard Co. Ltd.* (2006) 11 SCC 181, held as follows:

“It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that the correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law.”

22. It is also relevant to refer to the decision of the learned Single Judge of this Court in ***National Highways Authority of India v. Hindustan Construction Co. Ltd.*** (*supra*). In that case, the Single Judge had considered a similar view and declined to interfere with the impugned award. The relevant extract of the said decision is set out below:

“28. Dispute No.9 pertained to the method of calculation of the price adjustment. This again involved the analysis of Clause 70.3 of the CA relating to ‘Price Adjustment’. While certifying the amount due to HCC, the Engineer was to



calculate and certify the price adjustment. The issues framed by the majority of the AT in this regard were as under:

- a) What was the correct method for determination of price adjustment?
- b) Whether HCC's method of determining the percentage component in the IPCs by applying the factum of 0.85 in the price adjustment formula was justified in terms of the provisions of the contract?"

32. The AT observed that there was no provision in the CA which stipulated that the rate after application of rebate was to be used as the base value. It was noted that Summary of Cost (BoQ) was on the quoted bid and not on the quoted rates. There was no change made to the terms of contract pursuant to the offer of rebate. NHAI having accepted the offer made by the HCC without changing the terms and conditions which were not affected by the rebate, could have sought modification of the relevant terms and conditions regarding to price adjustment. There was a difference between the expression 'base unit rate' and 'rebated rate'. It was therefore not permissible for the NHAI to unilaterally change the terms and conditions of contract to apply 'rebated rate', instead of 'base unit rate'.

34. As far as the majority Award in respect of Dispute No. 9 is concerned, the Court finds that a detailed analysis had been undertaken of the relevant clauses of the contract. The majority has also analyzed Clauses 14.1, 14.4, 30.3 of the Instructions to Bidders. Clause 14.4 stipulated that the rates and prices quoted by the bidder were subject to adjustment during performance of the contract in accordance with Clause 70 of the CoPA. Clause 70.1 stated that the amount payable to the contractor and valued at base rates and prices (IPCs) pursuant to Clause 60.1 shall be adjusted in respect of rise or fall in the indexed costs for labour, Contractors Equipment, etc. The interpretation placed by the majority of the AT on Clauses 60.1 to 70.1 of the CoPA was a plausible one.

23. Undisputedly, the controversy relates to the interpretation of Sub-clause 70 of the COPA. It is well settled that the question as to



the construction of the contract falls within the jurisdiction of Arbitral the Tribunal¹. The arbitral award cannot be interfered with unless the Courts finds that the interpretation is impossible to accept and strikes at the root of the dispute. In the present case, we find no merit in the contention that the Arbitral Tribunal's interpretation of Sub-clause 70 of the COPA is irrational or perverse. The Arbitral Tribunal's interpretation of the said Sub-clause is supported by its language and the Arbitral Tribunal has provided sufficient reasons to support its view.

24. In view of the above, we find no infirmity with the decision of the learned Single Judge in rejecting the appellant's challenge to the impugned award in respect of Claim No.2.

RE: CLAIM NO.6

25. As noted above, Mr. Hooda had rested his challenge to the impugned award and the impugned judgment in respect of Claim No.6 on the solitary ground that the impugned award is contrary to the terms of the First Supplementary Agreement. Clause 2 of the First Supplementary Agreement is relevant and the same reads as under:

“2. No claims shall be made by the contractor on account of non-execution of balance work as mentioned above in para E due to various unforeseen reasons and beyond the control of the parties.”

¹ MSK Projects (JV) Ltd. v. State of Rajasthan & Anr.:2011 SCC OnLine SC 986



26. It is clear from the plain language of Clause 2 of the First Supplementary Agreement as set out above, that the respondent had agreed not to make any claim on account of non-execution of the balance work as mentioned in paragraph E of the recital of the First Supplementary Agreement. Paragraph E mentions the details of the main carriage way / service road / drains work which could not be taken up in the Project Highways stretch as on the said date due to “Land Acquisition, Court case etc.” Admittedly, the claims made by the respondent are not on account of non-execution of the works as set out in the said paragraph E of the recital. The said Clause did not preclude the appellant from raising claims in respect of the works executed.

27. In view of the above, we find no infirmity with the impugned judgment. The appeal is unmerited and is, accordingly, dismissed. Pending application is also, accordingly, dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 04, 2024
RK/gsr