



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 13th December, 2023

Pronounced on: 02nd April, 2024

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O.M.P. (COMM) 224/2018

M/S NHPC LIMITED

..... Petitioner

Through: Mr. Tejas Karia, Mr. Prakhar Deep,
Mr. Nishant Doshi, Mr. Nitin Sharma,
Ms. Ridhima Bhardwaj & Ms. Nitya
Nath, Advocates.

versus

M/S HINDUSTAN CONSTRUCTION CO. LTD. & ANR

..... Respondents

Through: Mr. Daya Krishnan, Sr. Advocate
with Mr. Rishi Agrawala, Ms. Shruti
Arora, Mr. Shreedhar Kale & Mr.
Jimut Mohapatra, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition under *Section 34* of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner to challenge the Arbitral Award dated 31.12.2015 passed by the Arbitral Tribunal.
2. Briefly stated, the petitioner/M/s NHPC Limited and the respondent/M/s Hindustan Construction Co. Ltd. entered into a Contract for the Work of Construction of Diversion Arrangement Concrete Gravity Dam along with Spill Way, Roller Compacted Concrete Dam, Switch Yard and other Associated Civil Works of Teesta Low Dam HE Project Stage-IV in



the State of West Bengal *vide* Contract No. NHPC/CCW/TLDP-IV/Lot-I dated 10.05.2006. The agreed price of the entire Project was Rs. 395,90,36,99.33, which was inclusive of an unconditional rebate of 17.10% offered by the Claimant. *The commencement date was reckoned from 01.05.2006 and the completion date was 30.09.2009.* The disputes arose in the execution of the Project and were referred to multiple arbitration proceedings.

3. The present disputes revolved around the entitlement of respondent/M/s Hindustan Construction Co. Ltd. to revision of rates of signing the Bill of Quantity (*hereinafter referred to as "BOQ"*) items under the Contract which were not agreed to by the petitioner. The disputes were in respect of the following Claims: -

- (a) **Claim 1A:** Revision of rate of Item 9.1.3 of Group B of BOQ, viz., 'M15A40 concrete in dam foundation, backfill concrete in dental excavation & levelling concrete in found' and consequent payments;
- (b) **Claim 1B:** Payment by rate revision in respect of Item 9.2.3 of Group B of BOQ, viz., 'M25/A40 intake structure' and consequent payments: and
- (c) **Claim 2:** Revision of rate of Item 22.2 of Group C of BOQ, viz., 'Roller Compacted Concrete (**RCC**)' and consequent payments.

4. The disputes essentially pertained to interpretation of Clauses 51 and 52 of the General Conditions of Contract (*hereinafter referred to as "GCC"*) read with modifications to these Clauses under Conditions of Particular Application (*hereinafter referred to as "COPA"*) which deal with Alterations, Additions and Omissions.

5. The *Arbitral Tribunal* in respect of the *Claim 1A and Claim 1B*,



held that the conditions stipulated in Clause 52.2 should be read as the *executed value* or the actual value of the item and not the BOQ value. It was observed by the Arbitral Tribunal that there is no bar in the Contract to enhance the rates for items executed in the delayed period of Contract. It was further observed that the Claimant was entitled to compensation by way of enhancing the BOQ rates of RCC and that such revised rates would be applicable for the quantities executed under said item in delayed period of Contract as well. Accordingly, it was held that since the executed value of the items exceeded 2% of the Contract value, the respondent in Claim 1A and Claim 1B, is entitled to revised rates and not the rates specified in BOQ.

6. Ld. Tribunal in respect of ***Claim No. 2***, accepted the assertions of the Respondent/Claimant that it had suffered loss or damage for executing the works in the year 2013-2015 at a higher cost as compared to the costs envisaged by it while quoting the rates of BOQ because of delays attributable to the Petitioner/non-Claimant due to Employer's Risks Accordingly, in terms of the Clause 20.3 of GCC, the Claimant was held entitled to receive the payment towards such loss/damage by way of revision of BOQ rates of RCC in accordance with Clause 52 of GCC and COPA.

7. The learned Arbitral Tribunal *vide* impugned Arbitral Award dated 31.12.2015 thus, held that the respondent/M/s Hindustan Construction Co. Ltd. (*claimant*) ***was entitled to be compensated by the petitioner to the tune of Rs. 439,568,707/- along with interest.***

8. *Aggrieved by the impugned Arbitral Award dated 31.12.2015, the present Petition under Section 34 of the Act, 1996 has been filed on behalf of the petitioner.*

9. The ***petitioner has challenged these findings*** as being patently illegal,



being contrary to the provisions of the Contract. It is submitted that the Arbitral Tribunal erroneously rejected the argument of the petitioner that as per Clause 52.2 of GCC, only the varied work was to be valued in accordance with Clause 52.1 of COPA. The Arbitral Tribunal has also wrongly rejected the contention of the appellant that the price adjustment is the only entitlement of the Claimant during the currency of the Contract including the extended period.

10. The petitioner has asserted that there is a patent illegality as it is contrary to the express provisions of the Contract and the Act, 1996. The petitioner has challenged these findings on the ground that Clause 52.2 of GCC read with COPA explicitly states that “*no change in rate of price of any for any item contained in the Contract shall be considered unless such items accounts for an amount more than 2% of the total Contract price and the actual quantity of work executed under the item exceeds the quantity set out in the BOQ by more than 25%*”. The Contract price is of Rs. 395,90,36,999.33/-. The Item in respect of Claim 1A is valued at Rs. 5,75,39,100/- which is 1.453% of the Contract price. The Item in respect of Claim 1B is valued at Rs. 4,76,90,800/- which is 1.21% of the Contract price.

11. The findings of *learned Arbitral Tribunal* that since the executed value of the items exceeded 2% of the Contract price, the conditions stipulated in Clause 52.2(a) should be read as the *executed value* or the actual value of the Item and not the BOQ value, is blatantly contrary to the express terms of the Contract. The observations that in the second Clause 52.2, it is expressly provided that the “*actual quality of work exceeds*” and hence in that scenario, it is the actual or the executed work which was to be



taken into account, is also not correct as no such clarification is present in Sub-Clause (a) to imply that the actual valuation of work is to be considered and not the BOQ value.

12. It is asserted that in **Claim No. 2**, the BOQ quantity as per the Contract was 1,60,000 cum and even the actual quantity as considered by the Arbitral Tribunal was 1,53,473.46 cum. The executed quantity of work did not exceed the BOQ quantity by 25% as stipulated under Clause 52.2 of GCC despite this the Arbitral Tribunal has still revised the rates for this Item, which is expressly against the terms of the Contract.

13. **The Petitioner in its Written Submission** contended that The Ld. Arbitral tribunal has unilaterally read “*executed value*” into the Contract terms, which is contrary to settled law. In terms of the Contract, it was *the BOQ value and not the executed value* which was to be taken into account, as is supported by express judicial precedents. The learned Arbitral Tribunal has attempted to act *ex aequo et bono* or as *amiable compositeur* which is prohibited under Section 28(2) of the Act, 1996. Reliance was placed on PSA SICAL Terminals (P) Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin, 2021 SCC OnLine SC 508; Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India (NHAI) 2019 SCC OnLine SC 677; Vivek Jain v. Union of India, 2008 SCC OnLine Del 263; Continental Construction Co. Ltd. v. State of M.P., (1988) 3 SCC 82; Municipal Corporation of Greater Bombay v. Thermal Engineering Corporation, 1996 SCC OnLine Bom 326; Board of Control for Cricket in India v. Deccan Chronicle Holdings Ltd. 2021 SCC Online Bom 834, in support of their argument that an arbitrator cannot rewrite, ignore or contravene the express terms of a contract.



14. Furthermore, the reliance of the Arbitral Tribunal on Clause 20.3 of GCC regarding the damage/loss due to the employer's risks was also not justified.

15. Clause 20.3 of GCC clearly states that *"in the event of any such loss or damage happening from any of the risks defined in Sub-Clause 20.4 or in combination with other risks, the Contractor shall, if and to the extent required by the engineer, rectify loss or damage or the engineer shall determine an addition to the Contract price in accordance with Clause 52."*

16. It is thus argued that the respondent was not entitled to rate revision and the findings of the Arbitral Tribunal in this regard are perverse, being contrary to the expressed terms of the Contract.

17. *Learned Senior Advocate on behalf of the respondent/HCCL(claimant)* has submitted that as per the original timelines, the work was to commence from 01.05.2006 and the schedule date of completion was of 30.09.2009. The Contract was subsequently extended by six months over the original period of 41 months, upto 30.09.2012 for no fault of the respondent/HCCL. The delay was attributable to the petitioner's risks.

18. It is further claimed that during the execution of the work, there was abnormal variation in the quantities of Item for Clause 1A and 1B which entitled the respondent/HCCL to claim variation in the rate of payment. It was further entitled to rate revisions for Items in Claim No. 2, on account of delays not attributable to the respondent/HCCL.

19. The **Respondent in its Written Submission** has asserted that Ld. Arbitral Tribunal has interpreted the Clauses 20.3 and 52.2 harmoniously and held that there is no bar on enhancement of rates for items executed in



the delayed period of the Contract. Reliance is placed on NHAI v. Elsamex-Tws-Snc-JV, 2014(3) Arb. L.R. 529; National Highways Authority of India v Hindustan Construction Company FAO (OS) 402 of 2014; NHAI v. Progressive FAO (OS) 401 of 2014; NHAI v. Hindustan Construction Company OMP (COMM) 73 of 2016; THDC v. PCI Intertech JV 2023 SCC OnLine Del 4040; State of Karnataka v. RN Shetty ILR 1990 Kar 1309; IOCL v. Shree Ganesh (2022) 4 SCC 463; Raghunath Builders Pvt. Ltd. v. Anant Raj ltd. 2023 SCC OnLine Del 7202, in support of the interpretation of the contract by the Arbitral Tribunal.

20. It is further submitted that the findings of the Arbitral Tribunal do not deserve any interference in view of the limited scope of Section 34 of the Act, 1996. The findings of the Arbitral Tribunal are factual, on the basis of interpretation of clauses, which is within the domain of the Arbitral Tribunal.

21. It is, therefore, submitted that there is not merit in the present petition which is liable to be dismissed.

22. **Submissions heard.**

23. **At the outset**, it is pertinent to observe that the grounds on which an Arbitral Award can be challenged under Section 34 of the Act, is circumscribed by the grounds as stated therein and the principles as laid down in the judicial precedents.

24. The scope of grounds of challenge of an Award under Section 34 of the Act is limited and not equivalent to an Appeal and is limited only to limited grounds as stated above. The question which arises for the consideration of this court at this stage is whether the Award of the Ld. Arbitral Tribunal warrants judicial interference. The facts of the case are



being analysed in this limited context.

(i) **Procedure for Amicable Settlement not followed: -**

25. At the outset, the objection has been taken on behalf of the Petitioner that as per the terms of the Contract, the parties were required to make an effort for amicable resolution and in case no amicable settlement could be arrived at, the parties could invoke arbitration. It has been agitated that since the procedure as contemplated under the Act has not been validly present objections, the Arbitral Award dated 31.12.2015 is liable to be set aside.

26. After the disputes arose *inter se* the parties, the respondent/Claimant made an attempt to resolve the disputes amicably by serving a Notice dated 07.12.2012 in accordance with Clause 67.1 of COPA. However, the request of the respondent/Claimant was rejected by the petitioner (which was the respondent therein) *vide* Letter dated 29.06.2013. Another attempt was made by the respondent/Claimant for amicable settlement *vide* Letter dated 15.07.2013 and also resubmitted the rate analysis, but the petitioner was not forthcoming with any further response and the efforts initiated by the respondent/Claimant for amicable settlement of disputes, did not fructify in any positive results.

27. In view of the letters and submissions of the respondent/Claimant, it cannot be said that the procedure as envisaged under Clause 67.1 of COPA has duly been complied with. **The preliminary objections taken on behalf of the petitioner is, therefore, not tenable.**

(ii) **Challenge to the findings of the Ld. Arbitrator in the Award: -**

28. Now to appreciate the rival contentions on merits, the Claims allowed in favour of the respondent/Claimant read as under: -



Claim	Particulars	Award
1A.	Revision of Rate for Item 9.1.3 of BOQ, viz. M15A40 concrete in dam foundation, backfill concrete in dental excavation and levelling concrete in foundation.	Rs. 8,21,72,489/-
1B.	Revision of Rate for Item 9.2.3 of Group B of BOQ, viz. 'M25/A40 intake structure'.	Rs. 7,05,14,386/-
2.	Revision of Rate of Item 22.2. of Group C of BOQ, viz. 'Roller Compacted Concrete (RCC)'	Rs. 26,68,81,832/-
	Pendente Lite Interest	Rs. 9,78,25,755/-
	Future Interest	@ 18%
	TOTAL	Rs. 53,73,84,463/-

29. Essentially, the petitioner has challenged the Award on two grounds; *firstly*, the *Rate Variation Formula* has been wrongly applied; and *secondly*, it was applicable to only the seven identified items in the Contract and was not applicable to other items as has been done by the Arbitral Tribunal.

(iii) Incorrect Application of Rate Variation Formula for Claims 1A and Claim 1B: -

30. It has been argued on behalf of the Petitioner that insofar as the Claim No. 1A and Claim No.1B is concerned, there was *twin requirement* for calculation of price for each Item in the Claim; the *first* was that the BOQ price should be less than 2% of the Contract price. The *value* of each Item was to be taken as the *Contract price*, but the Arbitral Tribunal has



erroneously taken each Item on the basis of *executed price*. The *value*, thus taken by the Arbitral Tribunal, was contrary to the agreed terms of the Contract and it amounted to re-writing of the Contract. The ***second threshold*** was that the ***actual quantify of work*** executed under the item exceed quantity set out in the Bill of Quantities by more than 25%, which has also not been met despite which the Arbitral Tribunal has proceeded to grant the same to the respondent.

31. To comprehend the controversy, the relevant part of Sub-Clause 52.2 of COPA reads as under: -

“Provided further that no change in the rate or price for any item contained in the Contract shall be considered unless such item accounts for an amount more than 2 per cent of the total Contract price, and the actual quantify of work executed under the item exceed quantity set out in the Bill of Quantities by more than 25 per cent. In addition, no change in the rate or price for quantities falling short of the quantity set out in the Bill of Quantities and also for the following items shall be considered for any amount of variation in quantities even if such item accounts for an amount more than 2 per cent of Contract sum.”

32. Clause 52.2 of COPA thus, stipulated that no change in the rate of any item contained in the Contract shall be considered unless such Item accounts for an amount more than 2% of the total Contract price and the actual quantity of work executed under the Item exceeded the quantities set out in the BOQ by more than 25%.

33. The Arbitral Tribunal while deciding ***Claim IA and Claim IB*** observed as under: -

“148. In consideration of above, the Arbitral Tribunal is of the considered opinion that the Claimant has rightly submitted that



the expression "such item accounts for", as used in the aforesaid condition, can only mean to be referring to the executed value of an item, and not its BOQ value.

149. Besides, the subject clause stipulates that "no change in the rate or price of any item contained in the Contract" shall be considered unless the conditions prescribed therein are fulfilled. It is, therefore, obvious that the fixing of the suitable rate or price can be done with respect to any BOQ item and not with respect to only pre-identified items of BOQ as contended by the Respondent.

.....

152. In view of above, it is abundantly clear that the phrase "unless such item accounts for" appearing in the first qualifying condition (i.e. unless such item accounts for more than 2% of the total Contract Price) for revising rate of particular BOQ item refers to the value of the executed quantity of that item (executed value).

153. It is noted that the Respondent has denied the tenability of items mentioned under claim 1A & 1B with the contention that it did not qualify first condition provided in 52.2 of COPA. However, the Arbitral Tribunal has arrived at the conclusion that the interpretation of the Respondent is incorrect in view of the evidence placed on the record and since the executed value of the item under Claims 1A & 1B exceeds 2% of the Contract Price, and the executed quantity exceeds 125% of the BOQ quantity, the said items are eligible for rate revision under clause 52.2."

34. The Arbitral Tribunal observed that from clause 20.3 of GCC the claimant was entitled to seek compensation for loss and damage consequent to happening of any of the Employer's risks or in combination with other risks where such 'addition' was to be determined by the Engineer in accordance with Clause 52. Pertinently, the Engineer was duty bound under clause 20.3 of GCC to determine the rates under Clause 52 of GCC serving as suitable compensation for loss or damage suffered by the Claimant on



account of Employer's risks.

35. It was concluded by the Arbitral Tribunal that the Claimant was entitled to enhancing of BOQ rates and the revised rates were applicable for the quantities executed under the Item in delayed period of Contract.

36. The **Arbitral Tribunal's conclusion** is based on interpretation of various phrases used in the Clause 52.2 of COPA, to state that the first qualifying condition relates to changes caused to the *value* of the *actually executed Item* in comparison to the value of the Project as a whole (Contract price). The logic for so interpreting is because of earlier "***unless such item accounts for***" which was an indicator that the value to be taken was of executed value and not the Contract Value or else this phrase would be rendered otiose which interpretation would be not tenable. The second qualifier relates to the *quantity* actually executed in respect of the Item in comparison to the BOQ quantity provided for in the Contract, in terms for any Item of the works featuring in Paragraph-1 of Clause 52.2. The Ld. Arbitral Tribunal has rightly observed that if the Contract Price was to be taken as the Value, the same could have been kept confined to the identified Seven items under the Contract. The very fact that there was a general Clause applicable to all the Clauses, the only inference can be that it was not the Contract but the Actual value which was to be taken, which is the conclusion of the Arbitral Tribunal which has adopted the harmonious interpretation, to arrive at this conclusion.

37. Based on this interpretation, the revised rates were held to be applicable for the quantities executed under Items mentioned in the Claim 1A and 1B. It was thus, held that applying the revised rates, the petitioner was entitled to a total sum of Rs. 7,05,14,386/-.



38. Clause 52.2 of GCC was interpreted by the Division Bench of this Court in the case of JSC Centrodorstroy vs. National Highways Authority of India 2014 (1) Arb. LR 148 (Delhi), wherein it was observed that Clause 52.2 of GCC indicates that where in the opinion of Engineer, the rate or price contained in the agreement for any item or work on account of variation has been rendered inappropriate or inapplicable then a suitable rate or price would be agreed upon between the Engineer and Contractor. Plainly, the rate to be agreed would be for the works executed since the rate or price as indicated in the Contract has been rendered “inappropriate” or “inapplicable”. The revised rates in such circumstances would be applicable to the entire quantity of works executed.

39. This interpretation in JSC Centrodorstroy (supra) was further clarified by making a reference to Clause 52.1 of GCC which was held to not restrict determination of appropriate rates only to variations as a result of increase or decrease in the quantities of BOQ items but would also include situations resulting from other variations.

40. The decision of JSC Centrodorstroy (supra) was followed the Co-ordinate Bench of this Court in the case of National Highways Authority of India vs. Hindustran Construction Co. Ltd., OMP (COMM.) 73/2016 decided on 28.11.2016, in this case, the facts involved in the present petition were considered and the finding of the Arbitral Tribunal that if the necessary conditions are made as stated in the Clause 51.1 and 51.2 of GCC and COPA, the revised rates are to be applied to the entire quantities of work executed. It was further held that the decision as to interpretation of a Contract is clearly within the jurisdiction of the Arbitral Tribunal and even if the interpretation is erroneous, the same would not be amenable to the



judicial review under Section 34 of the Act, 1996.

41. This does not amount to re-writing of the Contract nor is the interpretation taken contrary to the agreed terms.

42. The Petitioner has not been able to demonstrate any Patent illegality in the interpretation or Conclusion of the Arbitral Tribunal that the Claimant was entitled to be paid for the entire quantity executed by it in respect of an Item which gets revised under Clause 52.2, which calls for any interference under S.34 of the Act, 1996.

(iv) Applicability to only the seven identified items in the Contract: -

43. The second ground of challenge was that "*Price Variation Formula* " has been wrongly extended to the items other than those stipulated in the Contract. The *Arbitral Tribunal* has given cogent reasons and has duly interpreted Clause 52.2 of COPA and the terms of the Contract to come to a reasoned conclusion as to why the Clause 52.2 was not confined to the 7 items stipulated in the COPA. Its reasoning is thus:

"Besides, the subject clause stipulates that "no change in the rate or price of any item contained in the Contract" shall be considered unless the conditions prescribed therein are fulfilled. It is, therefore, obvious that the fixing of the suitable rate or price can be done with respect to any BOQ item and not with respect to only pre-identified items of BOQ as contended by the Respondent.

If the argument of the respondent is accepted then it would mean that only those items whose BOQ value exceeds 2% of the Contract Price, and no other item, would qualify for rate revision. The Claimant had pointed out that in the present contract, there are only 7 items of the BOQ (out of more than 400 BOQ items) whose value exceeds 2% of the Contract Price. However, the Respondent failed to give any reason as to why only these 7 items should be eligible to rate revision and not



others. In fact, these items could have been identified when the contract was signed between the parties, had there been no nexus or relationship with actual variation to the works.

*151. Further, it is noted that the first paragraph of clause 52.2 provides for a situation where the rate or price contained in the Contract "for any item of the Works" is rendered inappropriate or inapplicable and thus, requiring the fixing of a suitable rate or price. **Hence, the rate or - price of any item can be fixed under clause 52.2, and not any particular item(s) mentioned in the BOQ."***

44. In respect of the applicability of revised rates in terms of the conditions that the variation must exceed 25% of BOQ and that only the quantity in excess of 125% of the BOQ would be eligible for the provision, the Arbitral Tribunal concluded that since the variation under the quantity was beyond the threshold limits, it is rate mentioned in the BOQ which gets revised because the same became inappropriate or inapplicable.

45. It further concluded that the whole purpose of Clause 52.2 (first paragraph) is to meet these kinds of situations and provide for fixing of rates i.e., new rates which get substituted for the rates provided in the BOQ. The Arbitral Tribunal in respect of **Claim 2** observed that there was no bar in the Contract to enhance the rate for items executed in the delayed period of the Contract. Thus, the Arbitral Tribunal has worked out a rate of Rs. 3,978/- per cum to the Claimant and awarded a sum of Rs. 28,68,81,832/-.

46. The petitioner has merely *taken an interpretation* of Clause 52 and Clause 20.3 of the GCC of the Contract, to conclude that the Clause did not limit the rate revision only to the identified seven items, challenge to which is not within the scope of Section 34 of the Act, 1996. It does not amount to re-writing of the Contract nor is the interpretation given by the Arbitral



Tribunal, contrary to the agreed terms. **The challenge is essentially to the manner of interpretation of the Contract which neither qualifies as a patent illegality nor challenges the Public Policy and is without merit.**

47. The same clauses of GCC were also interpreted in the case of JSC Centrodorstroy (supra) followed by the Co-ordinate Bench of this Court in National Highways Authority of India vs. Hindustan Construction Co. Ltd. (supra), wherein the same view has been taken.

48. It was explained in McDermott International Inc. vs. Burn Standard Co. Ltd. (2006) 11 SCC 181, **interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.** A reference may also be made to Pure Helium India (P) Ltd. vs. Oil and Natural Gas Commission (2003) 8 SCC 593 and D.D. Sharma vs. Union of India (2004) 5 SCC 325. Therefore, the construction of the contract agreement is within the jurisdiction of the arbitrators.

49. Similarly, in Rashtriya Ispat Nigam Ltd. vs. Dewan Chand Ram Saran, (2012) 5 SCC 306, the Apex Court held that if the view taken by the arbitrator was clearly a possible if not a plausible one then it is not possible to say that the arbitrator had travelled outside his jurisdiction, or that the view taken by him was against the terms of contract.

50. In MSK Projects (I) (JV) Ltd. vs. State of Rajasthan, (2011) 10 SCC 573, the Court held that **if the arbitrator commits an error in the construction of the contract, that is an error within his jurisdiction. But if he wanders outside the contract and deals with matters not allotted to**



him, he commits a jurisdictional error.

51. To conclude, the challenge to Claim 2 neither qualifies as a patent illegality nor challenges the Public Policy and is without merit.

52. Reliance was placed on *K.N. Sathvapalan vs. State of Kerala (Dead) By LRs v. State of Kerala & Anr.*, (2007)13 SCC 43 where the Apex court held that the Arbitrator is vested with the authority to compensate the second party for the extra costs incurred by him as a result of the failure of first party to fulfil its obligations. Further reliance was placed on *Tarapore and Co. v. Cochin Shipyard Ltd. & Anr.* (1984) 2 SCC 680 where the Apex Court held that once the initially agreed upon rate becomes otiose on account of circumstances beyond the control of the contractor, then the contractor may make a claim for compensation. Reliance was also placed on *Bombay Container Terminals v. Warehousing Corporation*, 194 (2012) DLT 373 where this court relying on *Tarapore and Co. (supra)* held that if the initial rate quoted becomes irrelevant then the Contractor's claim cannot be denied in the absence of an escalation clause.

Conclusion: -

53. Thus, the Arbitral Tribunal has given substantiated reason while interpreting Clause 52.2 and Clause 20.3 of the GCC to come to a reasoned conclusion, as recorded above. The Awards does not suffer from any patent illegality. There is no ground to interfere with the impugned Award dated 31.12.2015.

54. The Petition is accordingly dismissed along with pending applications, if any.

**(NEENA BANSAL KRISHNA)
JUDGE**



2024 : DHC : 2766



APRIL 02, 2024
S.Sharma