

Arb.O.P. (Com.Div.) No.98 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 12.08.2025

Pronounced on : 26.08.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P. (Com.Div.) No.98 of 2023

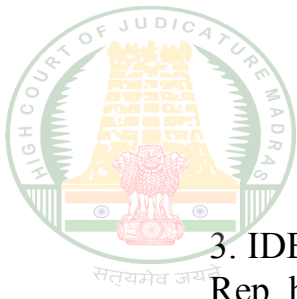
M/s. CHENNAI METROPOLITAN WATER
SUPPLY AND SEWERAGE BOARD,
Rep. by its Superintending Engineer /
Assistant Contracts Engineer,
No.1, Pumping Station Road,
Chintadripet,
Chennai - 600 002.

... Petitioner

Vs.

1. M/s.GKC VISHWA CONSORTIUM,
Rep. by its Authorized Signatory,
Sy. No.9(P), CII Green Building Lane,
Hi-Tech City, Kondapur,
Hyderabad - 500 084.

2. ICICI Bank Ltd.,
Rep. by its Branch Manager,
Commercial Building Level - 1, West Wing,
1-11-256, Wall Street Plaza,
Begumpet, Hyderabad - 500 016.



Arb.O.P. (Com.Div.) No.98 of 2023

3. IDBI Bank Ltd.,
Rep. by its Branch Manager,
Hyderabad Main Road,
5-9-89/1, Chapel Road,
Post Box No.370,
Hyderabad - 500 001.

... Respondents

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitral award dated 25.03.2022 passed by the Sole arbitrator to the extent to which it is challenged and to direct the respondents to pay the costs.

For Petitioner : Mr.Gautam S. Raman

For Respondents : Mr.Satish Parasaran,
Senior Counsel,
for P.J. Rishikesh for R1

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned arbitral award dated 25.03.2022. The petitioner is the respondent and the first respondent is the claimant in the arbitration. The arbitral Tribunal under the impugned arbitral award dated 25.03.2022 has allowed the claim of the first respondent against the petitioner to the tune of Rs.33,87,43,444/- and has denied the counter claim of the petitioner made against the first respondent to the tune of Rs.57,35,03,000/-. Aggrieved by the same, the



Arb.O.P. (Com.Div.) No.98 of 2023

petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996.

2. The petitioner is the employer and the first respondent is the contractor, who was awarded the contract by the petitioner for "providing comprehensive water supply scheme to Manapakkam, Nandambakkam, Okiyam Thuraipakkam, Ramapuram and providing comprehensive underground sewerage scheme to Ramapuram". This scheme has been taken up by the petitioner Board under the Chennai Mega City Development Mission Fund at an estimated cost of Rs.143.96 crores under 5 schemes.

3. The petitioner has challenged the impugned arbitral award on the following grounds:

a) The arbitrator has erroneously awarded loss of profit of Rs.5,99,56,072/- in favour of the first respondent. According to the petitioner, by total non application of mind to the fact that the first respondent was the one, who approached the petitioner for extension of time for completing the said contract and having stopped work since



Arb.O.P. (Com.Div.) No.98 of 2023

2018, even after granting extension of time by them till 31.03.2019, was alone responsible for the breach of contract, for which the petitioner cannot be penalised, by directing them to pay damages by way of loss of profit for a huge sum of Rs.5,99,56,072/- to the first respondent;

b) Stoppage of work by the first respondent lead to termination of contract by the petitioner. According to the petitioner, the first respondent had completely stopped work from April, 2018 onwards, because of which, the petitioner was forced to terminate the contract as there was fundamental breach committed by the first respondent;

c) The impugned arbitral award passed in favour of the first respondent, declaring that the termination of the contract made by the petitioner is void, despite the first respondent stopping work from April, 2018 onwards, is not only perverse but also patently illegal;

d) The arbitrator did not consider the fact that the first respondent did not have the financial means to perform the contract, as their lead partner was facing CIRP proceedings under the provisions of the Insolvency and Bankruptcy Code, 2016 (In short 'IBC'). Therefore, the termination of the contract by the petitioner can never be declared to be illegal;



Arb.O.P. (Com.Div.) No.98 of 2023

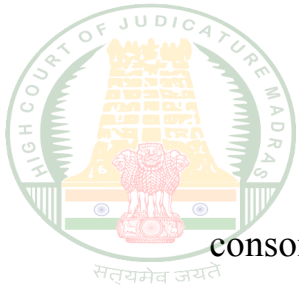
e) Time is the essence of the contract. Since the first respondent

had sought for various extensions of time over and above the contractual period, which was also granted by the petitioner till 31.03.2019, there was no breach of contract committed by the petitioner. According to the petitioner, the first respondent has stopped work from April, 2018 onwards and the extensions cannot be granted by the petitioner for an indefinite period;

f) Liquidated damages can be levied without proving actual loss.

According to the petitioner, the arbitrator has erroneously held that for levying liquidated damages, the petitioner did not prove the actual damages suffered by them and therefore, the first respondent is entitled for the recovery of the liquidated damages adjusted by the petitioner from and out of the first respondent's bills. According to the petitioner, for levying liquidated damages, actual loss need not be proved as per Section 74 of the Indian Contract Act, 1872;

g) An insolvent entity cannot be allowed to legally continue with the arbitral proceedings. According to the petitioner, a consortium agreement was executed on 05.01.2013 between GKC Projects Limited and Vishwa Infrastructures and Services Pvt. Ltd. and the said



Arb.O.P. (Com.Div.) No.98 of 2023

consortium was named as GKC Vishwa Consortium, the first respondent herein. The lead partner is GKC Projects Ltd. According to the petitioner, the arbitrator failed to take note of the fact that the insolvency proceeding under Section 7 of the IBC was initiated against GKC Projects Ltd., which is the lead partner of the first respondent. According to the petitioner, the arbitrator also failed to take note of the fact that the lead partner was placed under CIRP and put in moratorium as per Section 14 of the IBC. Since the moratorium order has been passed under Section 14 of the IBC against the lead partner of the first respondent, the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor in any Court of Law, Tribunal, arbitration panel or other authority is prohibited. However, according to the petitioner, in the case on hand, the arbitrator has erroneously encouraged the first respondent, whose lead partner was in moratorium to continue with the arbitral proceedings and therefore, the arbitral proceedings is non est in law.

4. The learned counsel for the petitioner, in support of the petitioner's contentions, relied upon the following authorities:



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Arb.O.P. (Com.Div.) No.98 of 2023

- a) Batliboi Environmental Engineers Ltd. Vs. Hindustan Petroleum Corporation Ltd. and Another reported in 2024 (2) SCC 375;
- b) Colles Cranes of India Ltd. Vs. Speedeo Spares Corporation of India reported in 1969 SCC Online 40;
- c) Cotton Corporation of India Ltd. Vs. M/s.Ramkumar Mills Pvt. Ltd. reported in 2008 SCC Online Bom 488;
- d) ONGC Ltd. Vs. Saw Pipes Ltd., reported in 2003 (5) SCC 705;
- e) K.S. Oils Ltd. Vs. State Trade Corporation of India Ltd. reported in 2018 (146) SCL 588.

5. Relying upon the aforesaid decisions, the learned counsel for the petitioner would submit as follows:

- a) The first respondent, who has claimed loss of profit due to delay in execution of work, must prove that other works were lost due to the said delay;
- c) For levying liquidated damages, actual loss need not be proved as per Section 74 of the Indian Contract Act, 1872;
- b) Section 46 of the Indian Contract Act, 1872 stipulates that the promise must be performed within a reasonable time. The time was fixed,



Arb.O.P. (Com.Div.) No.98 of 2023

but, the promisee extended the time. The extensions could not go on indefinitely, even by applying the doctrine of reasonable time. The promise could terminate the contract after certain extensions;

d) The moratorium order passed by the National Company Law Tribunal (NCLT) under Section 14 of the IBC will apply to proceeding in any other law for time being in force, including the Arbitration and Conciliation Act, 1996.

6. On the other hand, the learned senior counsel appearing for the first respondent, after drawing the attention of this Court to the impugned arbitral award, would submit as follows:

a) The impugned arbitral award is reasonable and fair. The award passed by the arbitrator is not exaggerated or unwarranted. Only based on the oral and documentary evidence submitted by both the parties, the impugned arbitral award came to be passed;

b) Most of the delays were caused solely by the petitioner, which has been extensively discussed by the arbitrator in the impugned arbitral award;

c) A categorical finding has been rendered by the arbitrator that



Arb.O.P. (Com.Div.) No.98 of 2023

the petitioner failed to handover the work fronts to the first respondent, thereby preventing the first respondent from proceeding with the works in various sections;

d) Even if there was any delay on the part of the first respondent, the same was condoned by the petitioner through the grant of extensions;

e) The arbitrator has clearly given a finding that there was delay on the part of the petitioner in certifying the bills and making payments to the first respondent, which resulted in severe financial difficulties for the first respondent;

f) The arbitrator has also given a finding based on the evidence with regard to the contributory factors for the delay viz., stoppage of work due to pending Court cases, assembly elections, and the effects of governmental decisions such as demonetization, all of which, adversely impacted the performance of the contract;

g) The arbitrator has rightly relied upon Section 55 of the Indian Contract Act, 1872 for coming to the conclusion that the time was not the essence of the contract, given that the delay events were attributable to the petitioner. Therefore, according to the first respondent, levy of liquidated damages by the petitioner against the first respondent was



Arb.O.P. (Com.Div.) No.98 of 2023

rightly found to be unjustified by the arbitrator;

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h) Additionally, the arbitrator cited Section 74 of the Indian Contract Act, 1872 that the petitioner has neither suffered any legal injury nor incurred any actual monetary loss that would justify the imposition of liquidated damages;

i) The arbitrator has rightly held that the delay was attributable to the petitioner and has rightly declared the termination of the contract to be illegal and has rightly awarded the first respondent with loss of profit amounting to 10% of the total value of the works;

j) The petitioner failed to demonstrate any specific loss resulting from the alleged delay on the part of the first respondent. The same is also recorded by the arbitrator in the impugned arbitral award;

k) In spite of the contract having been terminated by the petitioner in the month of November, 2018 itself, the petitioner till date has been unable to complete the works even when the award was passed on 25.03.2022, and the same is also captured in the impugned arbitral award. This would mean that in spite of the termination of the contract, the pending works could not be completed by the petitioner and this would show that the constraints and hindrances continued and the



Arb.O.P. (Com.Div.) No.98 of 2023

petitioner alone is to be held responsible for the same;

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l) The petitioner has not challenged the dismissal of the counter claim, which is with respect to risk and cost and this would mean that they have indirectly admitted that the termination is illegal and void;

m) The moratorium under Section 14 of the IBC applied only to one consortium member and bars proceedings against the corporate debtor, not arbitral proceeding initiated by the Corporate Debtor. The lead partner of the petitioner has not been declared as an insolvent but only a new investor has taken over its management, and it remains a going concern. No relief on this issue was sought or pressed by the petitioner before the arbitrator;

n) Section 14 (1) (a) of the IBC restricts only debt recovery action that may affect a corporate debtor's assets. Arbitration proceedings initiated by the corporate debtor are outside the scope of Section 14 (1) (a) of the IBC.

DISCUSSION:

7. As seen from the impugned arbitral award, the claims that were allowed and the claims that were rejected by the arbitrator are detailed hereunder:



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Claim No.	Nature of Claim	Claim Amount in Rs.	Awarded / Rejected
1.	To declare the termination of the contract by the petitioner as null and void and consequently, award a sum of Rs.5,99,56,072/- in favour of the first respondent.	5,99,56,072	Awarded
2.	To direct the petitioner to make payment towards the compensation on account of deployment of additional machinery and equipment beyond the original schedule.	2,29,10,164	Rejected
3.a.	To direct the petitioner to make payment towards compensation on account of deployment of additional manpower beyond the original schedule of contract.	3,41,95,291	Rejected
3.b.	To direct the petitioner to make payment towards compensation on account of administrative costs incurred due to delay on the part of the petitioner.	80,37,099	Rejected
3.c.	To direct the petitioner to make payment towards compensation on account of BG/ Insurance charges incurred beyond the original schedule.	1,07,02,351	Rejected
3.d.	To direct the petitioner to make payment towards compensation on account of other miscellaneous costs (Head Office Overheads) incurred beyond the original schedule	1,00,63,757	Rejected
4	To direct the petitioner to make payment towards compensation on account of other financing costs due to negative cash flows during the original schedule	8,25,76,612	Rejected
5	To direct the petitioner to make payment towards the compensation on account of outstanding dues against interim payments	11,90,37,264	Awarded
6	To direct the petitioner to make payment towards Retention monies	2,58,26,833	Awarded
7	To direct the petitioner to make payment towards the amount withheld on GST from RA Bill No.15 and 16	1,02,55,864	Awarded



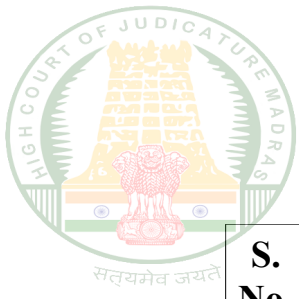
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Claim No.	Nature of Claim	Claim Amount in Rs.	Awarded / Rejected
8	To direct the petitioner to make payment towards the liquidated damages	2,02,00,000	Awarded
9	To direct the petitioner to make payment towards compensation towards interest charges on delayed payments on interim bills amounting to Rs.2,11,02,417/- together with interest at the rate of 9% p.a. for the delayed payment of RA Bills (Except Bill Nos.10 and 12)	1,62,04,547	Awarded
10	To direct the petitioner to make payment towards refund of recovered amount towards material advance	4,30,00,000	Awarded
11	To direct the petitioner to return the performance Bank Guarantee	2,40,07,000	Awarded
12	Interest for the outstanding amounts payable by the petitioner under claim Nos.1 to 10. Interest at the rate of 10% p.a. of award from 05.07.2019 till the date of the passing of the award		Partly Awarded
13	Costs towards arbitration and other litigation expenses		Rejected

8. The following are the undisputed facts:

a) The contract entered into between the petitioner and the first respondent permits the petitioner to grant extension of time to the first respondent to complete the contract;

b) The following extensions were granted by the petitioner to the first respondent and the said extensions were also marked as exhibits as detailed hereunder:



Arb.O.P. (Com.Div.) No.98 of 2023

S. No.	Name of Scheme	Schedule Date of Completion	Extension granted upto	Reference to Exhibits
1	Ramapuram UGSS	19.08.2016	18.05.2018	Ex.C18 (letters dated 18.05.2015, 12.11.2015), Ex.C27, C28, C32
2	Ramapuram WSY Scheme	19.02.2016	31.03.2019	Ex.C18 (letters dated 18.05.2015, 12.11.2015), C22, C23, C29, C31, C32, C33
3	Manapakkam WSY Scheme	19.02.2016	31.03.2019	Ex.C18 (letters dated 18.05.2015, 12.11.2015), C22, C23, C31, C32, C33
4	Okkiam Thoraipakkam WSY Scheme	19.02.2016	31.03.2019	Ex.C18 (letters dated 18.05.2015, 12.11.2015), C22, C23, C30, C32, C33
5	Nandambakkam WSY Scheme	19.08.2015	31.05.2018	Ex.C18 (letters dated 18.05.2015, 12.11.2015), C22, C24, C25, C26
6			31.03.2019	Ex.C6

c) The delay on the part of the petitioner in certifying the bills, which have been disclosed by the arbitrator in the impugned arbitral award in paragraph No.128 has not been disputed by the petitioner. It is once again reproduced by this Court in this order:



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R.A. Bill No.	Date of Submission of Bill	Particular			
		Net Value of Bill in Rs.	Due date as per contract	Certified on	Delay in days
1	31.10.2013	117,600,000	14.11.2013	05.01.2014	52
2	10.09.2014	6,481,145	24.09.2014	09.10.2014	15
3	09.03.2015	6,719,812	23.03.2015	11.05.2015	49
4	30.03.2015	17,884,162	13.04.2015	15.07.2015	93
5	18.08.2015	28,476,048	01.09.2015	12.10.2015	41
6	05.10.2015	25,130,978	19.10.2015	02.02.2016	106
7	16.11.2015	4,423,336	30.11.2015	29.03.2016	120
8	15.02.2016	15,507,692	29.01.2016	29.06.2016	121
9	08.03.2016	19,237,971	22.03.2016	31.08.2016	162
10	07.04.2016	57,448,415	21.04.2016	25.10.2016	187
11	06.05.2016	24,426,923	19.12.2016	02.03.2017	286
12	09.03.2017	15,201,706	23.03.2017	25.05.2017	63
13	06.04.2017	7,189,618	20.04.2017	21.06.2017	62
14	29.06.2017	20,765,703	13.07.2017	30.11.2017	140
15	26.10.2017	14,323,918	09.11.2017	13.03.2018	124
16	26.10.2017	28,248,166	09.11.2017	13.06.2018	216
17	06.06.2018	40,057,259	20.06.2018	24.06.2019	369

d) As seen from the aforesaid tabular column, there was a delay on the part of the petitioner in certifying the bills and making payments to the first respondent, which has also been reproduced by the arbitrator in paragraph No.129 of the impugned arbitral award, and the same has also not been disputed by the petitioner.

e) The last extension of time granted by the petitioner through the petitioner's letter dated 01.06.2018 (Ex. C6) granted extension of time upto 31.03.2019. But, even before the expiry date of the said extension,



Arb.O.P. (Com.Div.) No.98 of 2023

the petitioner through its communication dated 10.11.2018 (Ex.C13) has terminated the contract awarded to the respondent;

9) The petitioner contends that the arbitrator under the impugned arbitral award has failed to take note of the fact that time was the essence of the contract awarded to the first respondent. The arbitrator under the impugned arbitral award, after giving due consideration to the evidence, more particularly, the various extensions granted by the petitioner for various reasons has held that time was not the essence of the contract and the said finding was rendered only after taking into consideration the ratio laid down by various decisions rendered by the Constitutional Courts.

10. In *Mc. Dermott International INC Vs. Burn Standard Co. Ltd* [2006 (11) SCC 181], the Hon'ble Supreme Court held that it is normal for the parties to proclaim that "time is the essence of the contract", but, in actual practice, it is not so. The case on hand is also one such case. Mere words in the contract that time is the essence of the contract are not enough to prove that "time is the essence of the contract". The conduct



Arb.O.P. (Com.Div.) No.98 of 2023

of the parties plays a pivotal role to decide whether time is the essence of the contract.

11. The Honourable Supreme Court in its judgment rendered in the case of *Welspun Speciality Solutions Ltd. Vs. Oil and Natural Gas Corporation* reported in 2021 SCC Online SC 1053 has reiterated the principles for deciding whether time is the essence of the contract. The Honourable Supreme Court held that collective reading of the entire contract and its surrounding circumstances is imperative to decide whether "time is the essence of the contract". The arbitrator under the impugned arbitral award has followed the aforesaid decision of the Honourable Supreme Court for coming to the conclusion that based on the evidence placed on record which includes the extensions granted to the petitioner by the first respondent that "time was not the essence of the contract".

12. The Honourable Supreme Court in the aforesaid decision concurred with the arbitral Tribunal's conclusion that the existence of extension clauses has diluted the employers clause that time was the



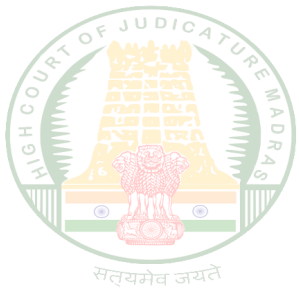
Arb.O.P. (Com.Div.) No.98 of 2023

essence of the contract.

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13. The arbitrator has rightly appreciated the evidence placed on record before him which includes various extensions granted by the petitioner in favour of the first respondent for completing the project and has come to the right conclusion that time was not the essence of the contract and has rightly partly allowed various claims made by the first respondent and has also rejected the counter-claim of the petitioner.

14. The view taken by the arbitrator under the impugned arbitral award is reasonable, plausible and has to be sustained. The arbitrator has rightly held, based on the evidence available on record, that the time was not the essence of the contract if the contract provides for extension of time as well as liquidated damages. Once the petitioner has waived the claim for liquidated damages in the earlier extensions issued by the petitioner, the petitioner cannot claim liquidated damages for further extensions.

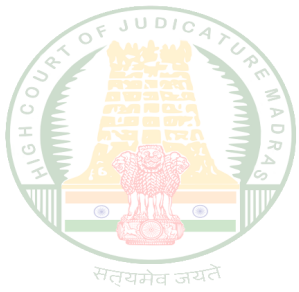


Arb.O.P. (Com.Div.) No.98 of 2023

15. In *Welspun Speciality Solutions Ltd. case referred to supra*,

the Honourable Supreme Court has also observed that the Court should not interfere or set aside awards in a casual manner. While doing so, the Court should come to a clear understanding that the award is patently illegal. In the case on hand, eventhough the contract was extended by the petitioner in favour of the first respondent through the petitioner's letter dated 01.06.2018, marked as Ex.C6, which gets expired only on 31.03.2019, the petitioner had terminated the contract even before the expiry date through the petitioner's communication dated 10.11.2018 (Ex.C13).

16. The petitioner contends that the first respondent had completely stopped the work which forced the petitioner to terminate the contract even before the deadline fixed under the letter of extension dated 01.06.2018 (Ex.C6) granted to the first respondent which is 31.03.2019.



Arb.O.P. (Com.Div.) No.98 of 2023

17. The Honourable Supreme Court in Welspun Speciality

Solutions Ltd. case referred to supra, also observed as follows:

a) Subject to the nature of the contract, the promisor is bound to complete the obligation by the date for completion stated in the contract;

b) The same is subject to the exception that the promisee is not entitled to the liquidated damages, if the promisee's own act or omission, the promisor was prevented from completing the work before the completion date;

c) It must be culled out from the reading of the entire contract as well as the surrounding circumstances as to whether time is the essence of the contract and nearly having explicit clauses to these things may be sufficient.

18. In the case on hand, on account of the various extensions granted by the petitioner to the first respondent for completing the contract and on account of the fact that there was a delay on the part of the petitioner in certifying the bills of the first respondent in settling their dues, the arbitrator has rightly come to the finding that time was not the essence of the contract. The arbitrator has rightly held that merely having



Arb.O.P. (Com.Div.) No.98 of 2023

an explicit clause in the contract that "time is the essence of the contract"

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is not sufficient to conclude that time is the essence of the contract as it depended upon other surrounding circumstances and the conduct of the parties. The conduct of the petitioner in granting several extensions to the first respondent for completing the project makes it clear that time was not the essence of the contract as rightly held by the arbitrator in the impugned arbitral award.

19. Section 55 of the Indian Contract Act deals with failure to perform the contract within the agreed time in the event, time is of the essence, and the failure to perform an obligation within the stipulated time renders the contract voidable at the option of the innocent party. In such a case, the innocent party is entitled to (a) terminate performance of the contract; and (b) claim damages from the breaching party on the basis that it has committed the fundamental breach of the contract. However, inspite of avoiding the contract, if the innocent party accepts to hold the performance of the contract, it may not claim compensation for any loss occasioned by the non performance of the contract at the time granted, unless, at the time of such acceptance, he gives notice to the promisor of



Arb.O.P. (Com.Div.) No.98 of 2023

his intention to do so.

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20. In the case on hand, as observed earlier, the conduct of the petitioner in granting extension of time to the first respondent for various reasons not attributable to the first respondent will lead to the conclusion that time was not the essence of the contract and the petitioner had committed breach of the contract. In order to signify time as the essence of the contract, there must be a specific and fixed date within which the extended performance of the obligation has to be effected, failing which, it has to be held that the parties themselves by their conduct have waived the original terms of the contract, more particularly in respect of the time being the essence of the contract.

21. Sections 73 and 74 of the Contract Act deal with the law of damages in India. Section 73 provides for actual damages suffered by a party in the usual course (unliquidated damages). Section 74 applies wherein the same has been specified in the contract which is a genuine estimate of the loss agreed by the parties.



Arb.O.P. (Com.Div.) No.98 of 2023

22. Most of the delays were caused solely by the petitioner. The

delays caused by the petitioner has been extensively discussed by the arbitrator in the impugned arbitral award. The arbitrator has given adequate reasons in the impugned arbitral award for arriving at a finding that the amount of Rs.2,02,00,000/- levied on the first respondent as adhoc liquidated damages is unjustified. The arbitrator has thereafter directed the return of the adhoc liquidated damages amounting to Rs.2,02,00,000/- to the first respondent adjusted by the petitioner erroneously without justification. The reasons given for arriving at such a finding by the arbitrator are as follows:

a) The petitioner has to prove that it had suffered loss or legal injury due to the breach of contract alleged to have been committed by the first respondent, which they have failed.

b) The petitioner has not even pleaded that loss has been caused to the petitioner for the purpose of levying liquidated damages on the first respondent;

c) A party claiming compensation has to show that quantified amount of loss has been caused due to act or omission of the other party;

d) In the case on hand, the petitioner has not shown with sufficient



Arb.O.P. (Com.Div.) No.98 of 2023

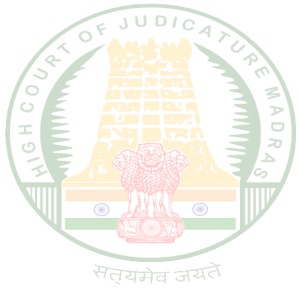
evidence that loss has been caused to them due to the delay caused by the first respondent in executing the work;

e) The levy of liquidated damages by the petitioner will amount to unjust enrichment at the cost the first respondent;

f) Several authorities on the subject of levy of liquidated damages listed out in the impugned arbitral award have also been considered by the arbitrator for coming to the conclusion that the amount of Rs.2,02,00,000/- levied by the petitioner against the first respondent towards adhoc liquidated damages is unjust;

g) The petitioner has not satisfied the requirements of Section 74 of the Indian Contract Act, 1872 for the levy of liquidated damages on the first respondent.

23. The above findings were given by the arbitrator only based on the evidence placed on record before him by both the parties to the dispute. This Court does not find any infirmity in the findings of the arbitrator, who has rightly held that the levy of liquidated damages by the petitioner is unjustified.



Arb.O.P. (Com.Div.) No.98 of 2023

24. The Arbitrator has rightly held that the termination of the contract by the petitioner is invalid as the petitioner was responsible for the first respondent in not proceeding with the work due to the delay on the part of the petitioner in certifying the bills payable to the first respondent and for the delay in making payments to the first respondent for the said bills. The Arbitrator has given proper and valid reasons for adjudicating various claims made by the first respondent as well as the counter-claim made by the petitioner.

25. Most of the delays were caused solely by the petitioner on account of the delay in certifying the bills, delay in making payments and the delay in handing over the land; and only due to the same, the first respondent was unable to complete the project. The Arbitrator has rendered findings with regard to each of the claims made by the first respondent as well as the counter-claim made by the petitioner only based on the evidence available on record.

26. The Arbitrator has rightly found that the termination of the



Arb.O.P. (Com.Div.) No.98 of 2023

contract dated 10.11.2018 made by the petitioner terminating the contract of the first respondent is void. The Arbitrator has rightly allowed the claim of the first respondent for a sum of Rs.5,99,56,072/- towards the loss of profit. The first respondent is entitled for the said sum, since the work could not be completed only due to the fault of the petitioner. The first respondent in the normal course of its business would have earned a minimum profit of 10% on the total value of the contract. The Arbitrator has rightly followed the decision of the Hon'ble Supreme Court in the case of *A.T.Brij Pant Singh (cited supra)* and *K.Baskaran (cited supra)*, wherein the Hon'ble Supreme Court had granted compensation towards loss of profit at 10% on the total contract value in identical circumstances. Therefore, this Court does not find any infirmity in the award passed by the Arbitrator with regard to claim No.1 made by the first respondent.

27. The Arbitrator has rightly rejected claim Nos.2, 3(a), 3(b), 3(c), 3(d) and 4. The said claims pertain to; (a) compensation on account of deployment of additional machinery and equipment beyond the original schedule of the contract; (b) compensation on account of deployment of



Arb.O.P. (Com.Div.) No.98 of 2023

additional manpower beyond the original schedule of the contract; (c) compensation on account of administrative costs incurred due to the delay on the part of the petitioner; (d) compensation on account of BG/insurance charges incurred beyond the original schedule of the contract; (e) compensation on account of other miscellaneous costs (Head office overheads) incurred beyond the original schedule of the contract; and (f) compensation on account of other financing costs due to negative cash flows during the original schedule of the contract.

28. In respect of claim No.5, the Arbitrator has rightly awarded a sum of Rs.11,90,37,264/- in favour of the first respondent. The Arbitrator has rightly found the following while adjudicating claim No.5:-

(a) The claim made by the first respondent for a sum of Rs.3,82,57,706/- towards payment of RA bill No.7 has been admitted by the petitioner in their statement of defence dated 30.10.2019.

(b) The petitioner has also admitted a sum of Rs.3,46,55,564/- in their statement of defence. Though the said sum for the unbilled and executed works, the petitioner is liable to pay the said sum to the first



Arb.O.P. (Com.Div.) No.98 of 2023

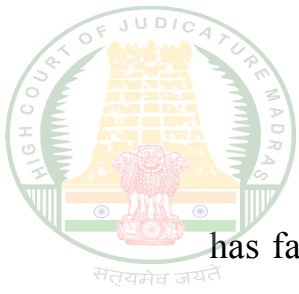
respondent.

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(c) The commissioning of the project could not take place only due to the improper termination of the contract by the petitioner. Hence, a sum of Rs.4,61,23,994/-, which was withheld by the petitioner from RA bill Nos.1 to 16, should be paid to the first respondent.

29. The findings rendered by the Arbitrator for claim No.6 made by the first respondent against the petitioner cannot be faulted with as those findings are based on the evidence placed on record. The Arbitrator while adjudicating claim No.6 made by the first respondent has rightly determined that a sum of Rs.2,58,26,833/- was erroneously withheld by the petitioner as retention money from RA bill Nos.1 to 16. The Arbitrator for coming to such a finding with regard to claim No.6 has taken into consideration the admission made by the petitioner in its statement of defence. Therefore, the Arbitrator has rightly directed the petitioner to pay the said sum of Rs.2,58,26,833/- to the first respondent.

30. The Arbitrator has rightly given a finding that the petitioner



Arb.O.P. (Com.Div.) No.98 of 2023

has falsely withheld the payment of Rs.1,02,55,864/- towards GST from RA bill Nos.15 and 16 of the first respondent. The Arbitrator has rightly taken into consideration the admission made by the petitioner in their statement of defence filed before the Arbitrator for awarding a sum of Rs.1,02,55,864/- in favour of the first respondent in respect of claim No.7.

31. In respect of claim No.8, the Arbitrator has rightly awarded a sum of Rs.2,02,00,000/- to the first respondent, which is the amount withheld by the petitioner as liquidated damages. The Arbitrator has rightly found that withholding of the liquidated damages is invalid, since the first respondent is not responsible for the delay in completing the project. The first respondent having produced evidence before the Arbitrator that the petitioner was responsible for the delay in completing the project, the Arbitrator was right in directing the petitioner to return a sum of Rs.2,02,00,000/- falsely withheld by them by way of liquidated damages.

32. In respect of claim No.9 made by the first respondent, the



Arb.O.P. (Com.Div.) No.98 of 2023

Arbitrator has rightly awarded a sum of Rs.1,62,04,547/- in favour of the petitioner for the delayed payment of RA bills (except bill Nos.10 to 12) in favour of the first respondent, though awarding interest at the rate of 9% per annum instead of 13.5% per annum claimed by the first respondent. Admittedly, there were delays on the part of the petitioner in making payments to the first respondent under RA bills raised by the first respondent. Therefore, this Court does not find any infirmity in the finding of the Arbitrator in respect of claim No.9 made by the first respondent.

33. Claim No.10 was made by the first respondent seeking refund of the Material Bank Guarantee amounting to Rs.4,30,00,000/-. The Arbitrator has rightly held that since the termination of the contract by the petitioner is invalid and the evidence placed on record also proves that the materials had been used by the first respondent at the work site, the first respondent is entitled for the fund of Material Bank Guarantee amounting to Rs.4,30,00,000/-.

34. Claim No.11 was made by the first respondent seeking refund



Arb.O.P. (Com.Div.) No.98 of 2023

of the Performance Bank Guarantee furnished by the first respondent to the tune of Rs.2,40,07,000/-. The Arbitrator has rightly held that the first respondent is entitled to the refund of the said amount, since the termination of the contract made by the petitioner is invalid.

35. In respect of claim No.12, the interest awarded by the Arbitrator at the rate of 10% per annum on the determined amount from the date of filing of the claim statement before the Arbitrator, i.e., on 05.07.2019, till the date of the passing of the award, is also proper, and this Court does not find any infirmity in the said finding, since the petitioner has wrongfully terminated the contract awarded to the first respondent.

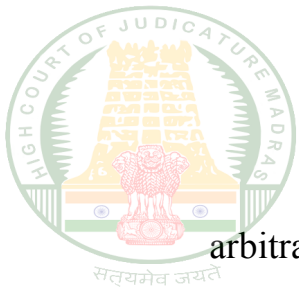
36. Since only based on the evidence available on record, the Arbitrator has rightly held that the termination of the contract made by the petitioner is invalid, the question of awarding counter-claim in favour of the petitioner does not arise. The Arbitrator has rightly rejected the counter-claim made by the petitioner against the first respondent in the arbitration.



Arb.O.P. (Com.Div.) No.98 of 2023

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37. Section 14 of the IBC Insolvency and Bankruptcy Code, 2016, does not bar the proceedings initiated by the corporate debtor. The Insolvency and Bankruptcy Code, 2016, is a beneficial legislation, which endeavours to revive the corporate debtors and ensures that the corporate debtor continues as a going concern during the insolvency process. The moratorium imposed in terms of Section 14 of the Code does not in any express terms apply to proceedings which are to the benefit of corporate debtors. The entire object, purpose and import of Section 14 is to protect and preserve the assets of the corporate debtor during the resolution process by halting the proceedings initiated against the corporate debtor, which may result in depreciation or alienation of the assets of the corporate debtor. Section 14 does not in any express terms impinges upon or halts proceedings initiated by the corporate debtor which result in appreciation of its assets or its enrichment. The aforesaid scheme of the act is discernible from various provisions of the Insolvency and Bankruptcy Code. Therefore, the contention of the petitioner that since the lead partner of the petitioner "GKC Projects Ltd." was facing CIRP proceedings and on account of the passing of the moratorium order, the



Arb.O.P. (Com.Div.) No.98 of 2023

arbitral award passed in favour of the first respondent is in violation of Section 14 of the IBC, has to be rejected by this Court.

38. The decisions relied upon by the learned counsel for the petitioner referred to in paragraph No.4 of this order have also got no bearing to the facts of the instant case for the following reasons:-

(a) Since the termination of the contract by the petitioner is invalid, the first respondent is entitled for the loss of profit at 10% on the total value of the contract as held by the Hon'ble Supreme Court in *A.T.Brij Pant Singh (cited supra)*.

(b) In the case on hand, the first respondent has proved through oral and documentary evidence that the petitioner had erroneously terminated the contract even before the deadline fixed under the earlier extension and the Arbitrator has also rightly given a finding that the termination of the contract by the petitioner is invalid. Therefore, since the termination of the contract is found to be invalid, the question of levy of liquidated damages by the petitioner does not arise. Therefore, no amount of money can be retained by the petitioner, which is due and payable to the first respondent as per the contract.



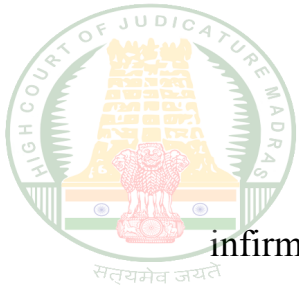
Arb.O.P. (Com.Div.) No.98 of 2023

(c) Time was not the essence of the contract in view of several extensions granted by the petitioner in favour of the first respondent for completing the project. Once extensions have been granted, Section 46 of the Indian Contract Act relied upon by the learned counsel for the petitioner does not arise.

(d) The moratorium order passed by the NCLT under Section 14 of the IBC will not apply to the proceedings initiated by the corporate debtor for the recovery of money against its debtors.

(e) The scope of Section 34 of the Arbitration and Conciliation Act is limited. Only in cases where the award has been passed in violation of public policy and the arbitral award suffers from patent illegality or it falls under the various other grounds mentioned in Section 34 of the Arbitration and Conciliation Act, the question of interfering with the arbitral award does not arise.

39. Only based on the evidence available on record, the Arbitrator has passed the impugned arbitral award in favour of the first respondent and the Arbitrator has rightly rejected the counter-claim made by the petitioner against the first respondent. This Court does not find any

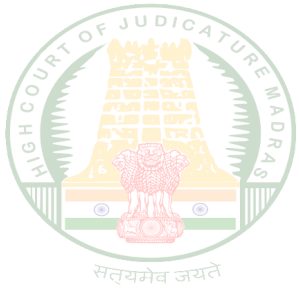


Arb.O.P. (Com.Div.) No.98 of 2023

infirmity in the findings rendered by the Arbitrator. The law is well settled that this court cannot re-appreciate the evidence and if the view taken by the Arbitrator is a plausible view, this Court cannot interfere with the arbitral award. In the result, there is no merit in this petition and accordingly, this petition is dismissed. No Costs.

26.08.2025

Index: Yes
Speaking order
Neutral citation : Yes
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Arb.O.P. (Com.Div.) No.98 of 2023

ABDUL QUDDHOSE, J.

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Pre-delivery order in

Arb.O.P. (Com.Div.) No.98 of 2023

26.08.2025