



2025:DHC:2343



\$~19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 19th MARCH, 2025IN THE MATTER OF:+ **O.M.P. (COMM) 88/2023**

M/S GR GUPTA BROTHERS PVT. LTD.Petitioner

Through: Mr. Vikas Sharma, Advocate

versus

M/S MG HOUSING PVT. LTD.Respondent

Through: Mr. Arpit Dwivedi, Mr. Manmeet
Singh Nagpal, Advocates**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)**

1. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed by the Petitioner challenging an Award dated 03.11.2022 passed by the Ld. Sole Arbitrator in Arbitration Petition No. 273/2020 (*hereinafter referred as 'Impugned Award'*) relating to rejection of claims being Claim No. 1, 2, 7, 8 and also in regard to the commencement of Defect Liability Period (*hereinafter referred as 'DLP'*).
2. The Petitioner is a private limited company incorporated under the provisions of the Companies Act and is engaged in the business of firefighting and plumbing works.
3. The Respondent is also a company registered under the provisions of Companies Act is engaged in the business of construction and real estate.
4. The Respondent Company floated a tender for the work for "Plumbing and Firefighting works for Mulberry County – Group Housing at Sector -70, Faridabad, Haryana". The Petitioner participated in the tender.



2025:DHC:2343



5. The Respondent Company issued a Letter of Acceptance (*hereinafter referred as “LOA”*) dated 22.03.2016 for Internal Plumbing and Fire Fighting Works for an amount of ₹2,00,00,000/-. The said LOA contains an Arbitration clause. The LOA was amended on 05.05.2016 whereby the original value of ₹2,00,00,000/- was enhanced to ₹2,02,83,090/-.
6. The Respondent Company floated another tender for External Plumbing Works. The Petitioner Company submitted their offer on 26.04.2016 and after detailed negotiations the Respondent Company issued LOA dated 26.05.2016 for an amount of ₹1,12,24,368/-. The Respondent Company issued another amendment on 02.09.2016 for Internal Plumbing and Fire Fighting works and External Plumbing Works and increased the value of work to ₹3,79,45,774/- from ₹3,15,07,458/-.
7. Eventually, a Contract Agreement dated 03.10.2016 was also executed between the parties which provided details of all the earlier LOAs as well as all the amendments issued by the Respondent Company, which were to be construed as the part of the said Contract Agreement. The Contract Agreement also included a General Conditions of Contract, as well as Special Conditions of Contract. It was agreed that in case of conflict the provisions of SCC would supersede GCC.
8. Disputes arose between the parties with respect to payment of RA bills issued by the Petitioner upon the Respondent for work under the Contract Agreement dated 03.10.2016.
9. The Petitioner filed a Petition under section 11 of the Arbitration and Conciliation Act, 1996 for appointment of arbitrator to adjudicate the disputes between the parties. An Arbitral Tribunal consisting of a Ld. Sole Arbitrator was constituted. On completion of pleadings the following issues regarding claims and counter claims were framed:-



2025:DHC:2343



“3. On the Completion of the pleadings, the following issues were framed:

(1) Whether the Claimant is entitled to the amount as claimed in the claim Nos. 1 to 11 of the statement of Claim? OPC

(2) Whether the Claimant is entitled to any pendente lite and/or future interest, if so, at what rate and period? OPC

(3) Whether the Claimant is entitled to the cost of the Arbitration proceedings, if so, then how much? OPC

(4) Relief.

3.1 Issues on Counter claim:-

(1) Whether the Respondent/counter- Claimant is entitled to the amount claimed in its Counter-claim Nos. 1 to 6 of the Counter Claim? OPR

(2) Whether the counter- Claimant is entitled to any pendente lite and/or future interest, if so, at what rate and period? OPR

(3) Whether the counter- Claimant is entitled to the cost of the Arbitration proceedings, if so, then how much? OPR

(4) Relief

3.2 Apart from the above issues, the following issue was also framed:

(A) Whether the Defect Liability Period had ever commenced, as per the terms and conditions of the agreement, if yes, then when and when did it end? OPC

3.3 No other issue had been pressed for by the Parties”



2025:DHC:2343



10. The learned Arbitrator first addressed the question as to when did the Defect Liability Period commence and when did it come to an end. After perusing the terms of the Contract, the learned Arbitrator held that the Defect Liability Period was to commence after the Virtual completion, which would be deemed to have been achieved upon the Virtual Completion Certificate (*hereinafter referred to as 'VCC'*) being issued by the Project Manager with concurrence of the Architect/Service Consultant and the Owner. The learned Arbitrator held that the work is completed when the work, according to the Project Manger, Owner and Architect/Services Consultant has been completed with every aspect in conformity with the contract documents and are ready and fit for the intended purpose, complete with all systems and services having been tested and commissioned. The learned Arbitrator further held that no time period for testing and commissioning of the work has been specified. Further, no time period has been mentioned for the satisfaction of the Project Manager, Owner and the Architect/Services Consultant to give the Virtual Completion Certificate. The learned Arbitrator, therefore, held that since the VCC was not issued there was no virtual completion of the work and hence the Defect Liability Period never commenced.

11. As regards to Claim No.1 & 7, the learned Arbitrator held that since the Defect Liability Period never commenced, the final Bill was not due and payable, and therefore, Respondent had the right to withhold the payment against the final bill. Learned Arbitrator, therefore, dismissed Claim No.1 & 7. Claim No.2 & 8 were regarding the payment due against the Retention money and payment due against the interest on due payment of retention respectively. The said claims were also rejected by the learned Arbitrator. The Counter Claim No.1 raised by the Respondent, which was to decide as



2025:DHC:2343



to whether the Respondent was entitled to refund of the expenses incurred by the Respondent for rectification of the defective work, has also been rejected by the learned Arbitrator on the ground that the bills annexed along with the counterclaim are all copies and no effort was made by the Respondent to either produce the original of the same and no witnesses were produced to prove the same.

12. The Ld. Sole Arbitrator passed the Impugned Award partly allowing the claims of the Petitioner.

13. The present Petition under section 34 has been filed against Claim No. 1, 2, 7, 8, and the issue of commencement of the Defect Liability Period, which were decided against the Petitioner by the Ld. Sole Arbitrator.

14. Though no substantial argument has been advanced by the learned Counsel for the Petitioner regarding Defect Liability Period. This Court has perused the reasoning of the learned Arbitrator. Since the findings on the Defect Liability Period (DLP) will have a vital bearing on Claim No.1 & 2 this Court is inclined to reproduce the relevant clauses dealing with the DLP and the other terms used therein in the Contract between the parties. Clause No. 1.11, 1.13 and 1.38 are reproduced as under:-

“1.11 Defect(s) Liability Period:

Defect(s) Liability Period shall be the 12-month period after Virtual Completion and any period extended as a result of rectification of the Work/change orders, between the Virtual Completion and the Final Completion of the Work, and during which period the Contractor shall be bound to replace and/or rectify and make good all defective materials, equipment and/or workmanship which arise in the Works or come to notice subsequent to the Virtual Completion of the Works and prior to the Final Completion of the Works.

xxx

1.13 Final Completion:



2025:DHC:2343



Final Completion will be deemed to have been achieved when at the end of the Defects Liability Period a Final Completion Certificate has been issued by the Architect & Project Manager when all the requirements of the Contract have been met and complied with and when all the defective items of Work and defects have been replaced and/or rectified and made good as directed by and to the satisfaction of the Project Manager / Owner.

xxx

1.38 Virtual Completion:

Virtual completion will be deemed to have been achieved upon a Virtual Completion Certificate being issued by the Project Manager with concurrence of the Architect / Services Consultant and the Owner, when the Work, according to the Project Manager, Owner and Architect / Services Consultant, have been completed in every respect in conformity with the Contract Documents and are ready and fit for the intended purpose, complete with all systems and services having been tested and commissioned.”

15. A perusal of Clause 1.38 of the Contract shows that the Virtual completion will be deemed to have been achieved upon a Virtual Completion Certificate being issued by the Project Manager with concurrence of the Architect / Services Consultant and the Owner, when the Work, according to the Project Manager, Owner and Architect / Services Consultant, have been completed in every respect in conformity with the Contract Documents. No time limit has been prescribed for testing and commissioning and no time period has been mentioned for the satisfaction of the Project Manager, Owner and the Architect/ Service Consultant to give the VCC. VCC has not been furnished as yet. The learned Arbitrator has held that in the absence of the VCC, the Respondent could not have



2025:DHC:2343



submitted the final bill. Clause 32.6 of the Contract specifically provides that the Final Bill can be submitted by the Contractor within one month of the date fixed for Virtual Completion of the work or of the date of the Virtual Completion Certificate furnished by the Project Manager, whichever is later. The relevant clause relating to submission of Final Bill is Clause 32.6 (i), which is reproduced as under:

“32.6 Final Bill:

i. The final bill shall be submitted by the Contractor within one month of the date fixed for Virtual Completion of the Work or of the date of the Virtual Completion Certificate furnished by the Project Manager, whichever is later.

ii. The final bill will be checked by the QS Consultant within 60 working days from the date the bill is received by the QS Consultant (provided the Contractor has complied with all formalities as described in various clauses of the Contract) and thereafter the same would be forwarded to the Architect / Services Consultant for verification and certification.

iii. The Owner representative shall verify and certify the bill within 30 days on receipt from the QS Consultant.

iv. The payment of the final bill shall be made to the Contractor by the Owner within 30 days from receipt of the QS Consultant's approvals certificate for payment.

v. No further claim shall be made by the Contractor in respect thereof even after submission of the final bill and the same shall be deemed to have been fully waived and absolutely extinguished.

vi. The final billing shall be accompanied by all substantiating documentation as required for running



2025:DHC:2343



bills with the addition of the following items that shall be supplied by the Contractor:

- a. All written guarantees / warranties and spares required by the Contract documents.*
- b. Operation and Maintenance manuals and instructions for equipment and apparatus.*
- c. One (1) reproducible and two (2) blue prints of all requisite As Built drawings along with the soft copy thereof on latest version of AutoCAD software.”*
(emphasis supplied)

16. A perusal of this clause reveals that the Final Bill was to be submitted within one month of the Virtual Completion of the work or of the date of VCC furnished, whichever is later. Even as per this clause, the date of issuance of VCC is of utmost importance. The VCC was not been furnished till date. Hence, the submission of the Final Bill is not the criteria for the commencement of DLP.

17. As per the Contract, there was no time limit mentioned for the issuance of the VCC by the Project Manager/Respondent and the Petitioner agreed to this term while signing the Contract. Therefore, the Ld. Arbitrator has rightly held that the Defect Liability Period never commenced.

18. On a perusal of the clause, the conclusion of the learned Arbitrator that the Defect Liability Period never commenced does not warrant any interference. Since the VCC has not been given and the Final Bill could not have been submitted, the claim for payment against the Final Bill or the payment against the Retention Money was premature and could not be submitted.

19. It is the contention of the learned Counsel for the Petitioner that the finding of the Ld. Arbitrator qua Claim No. 1 is totally contrary to the finding given by him qua Counter Claim No.1. It is submitted that Ld.



2025:DHC:2343



Arbitrator observed that Clause 32.6 of the GCC clearly provides that payment of the final bill should be made within 30 days but despite the same erred in holding that since clauses 32.8 & 57 of the GCC empowers the Respondent Company to withhold the payment and since the Respondent Company already put to notice the Petitioner Company of the alleged deficiencies vide email dated 17.6.2020, therefore Claim No. 1 & Claim No. 7 of the Petitioner company is not maintainable. It is submitted that the Respondent Company raised Counter Claim No. 1 on account of refund of expense incurred by them qua alleged defective works as mentioned in email dated 17.6.2020. Petitioner states that the Final Bill was certified by the Project Manager of Respondent on 16.04.2019 for gross payable amount of Rs.3,81,93,597/- (inclusive of Service Tax & GST of Rs. 25,05,604/-). After making the deductions of ₹47,45,421 /-, the bill was certified for payable amount of ₹3,34,48,177/-. The Respondent made the payment till certification of final bill was ₹3,13,42,453/-. After deduction of all payment the final bill is certified for net payment amount of Rs. 21,05,978/-.

20. The Petitioner states that as per Contract Agreement clause no. 32.6 (iv) of the GCC, the payment of final bill was to be made within 30 days from receipt of certificate for payment from Project Manager but the same has not been paid so far and therefore is in violation of the provision of the Contract agreement by the Respondent.

21. The perusal of the Impugned Award indicates that Claim no. 1 and Claim no. 7 deals with payment due against the Final Bill of ₹21,05,978/- and payment due against interest on due payment of Final Bill - ₹4,11,964/-.



2025:DHC:2343



22. A perusal of Clause 32.6 clearly shows that there has been an obligation under this clause, on the QS Consultant as well as the Owner to check and clear, respectively, the Final Bill submitted by the Contractor, within the given time frame. However, a perusal of the clause no. 32.8 revealed that the Project Manager under the said clause had been given power to withhold the payment to the Contractor or nullify the whole or a part of any payment certificate to such extent as may be necessary to protect the Owner/Project Manager from loss on account of the heads as mentioned under the said clause. Clause No. 32.8 of the GCC is reproduced and reads as under:-

“32.8 Withholding of payments

The Project Manager may withhold payment or, on account of subsequently discovered evidence, nullify the whole or a part of any payment certificate to such extent as may be necessary to protect the Owner / Project Manager from loss on account of including but not limited to the following:

- i. Defective work not remedied by the Contractor.*
- ii. Failure of the Contractor to make payments properly and regularly to his own workers, to his Sub-Contractors, to his suppliers.*
- iii. Damage by the Contractor to the work of other Contractors, Sub-Contractors or Vendors.*
- iv. A reasonable doubt that the Contract cannot be completed for the balance unpaid amount.*
- v. A reasonable doubt that the Contractor intends to leave work items incomplete.*
- vi. Failure of the Contractor to execute the Work in conformity with the Contract Documents.*
- vii. Failure of the Contractor to meet or keep-up with the approved Construction Programme.*
- viii. Failure of the Contractor to comply with and fulfill all contractual obligations and liabilities stipulated in the Contract Documents.*



2025:DHC:2343



32.8 Secured Advance-As per payment terms.”

23. The sub-clause (1) of the clause 32.8 of the GCC allows the Project Manager to withhold the payment or nullify the whole or part of the payment certificate if the defective work is not remedied by the Contractor. In fact, there is another clause in the Contract, that allows the Respondent to withhold the payment, which is Clause No. 57, which is as follows:

“57. GROUNDS FOR WITHHOLDING PAYMENTS:

The Owner/Project Manger may withhold the whole or part of any compensation due to the Contractor to the extent necessary to protect the Owner from any loss on account of any breach of Contractor’s obligations under the Contract. When the cause for withholding is rectified, such amounts then due and owing shall be paid or credited to the Contractor.”

24. The Respondent had already communicated to the Contractor, the deficiencies in the work vide its e-mail dated 17.06.2020 which was within the Defect Liability Period. The Respondent, thus, was well within his rights to point out the deficiencies of the work to the Petitioner. Hence, in view of the clause 32.8 and particularly sub-clause (1) of the said clause, the Respondent had the right to withhold the payment against the Final Bill. Therefore, the Ld. Arbitrator has rightly held that the Respondent was well within its rights to withhold the payment against the final bill, no question of awarding of interest arises.

25. The rejection of Counter Claim no. 1 by the Ld. Arbitrator was on account of lack of evidence to quantify the amount of claim for Refund of the expenses incurred by the Respondent for rectification of the defective works effected by the Claimant and for the works that were pending at the



2025:DHC:2343



part of the Respondent. There is nothing in the Arbitral Award that suggests that there were no defects in the work executed by the Petitioner Company.

26. In view of the above observations, the Claim No. 1 and 7 of the Petitioner were rightly dismissed by the Ld. Arbitrator.

27. We need to further peruse the Impugned Award to adjudicate upon the rejection of Claim no. 2 and 8 by the Ld. Arbitrator. Claim no. 2 and Claim no. 8 was payment due against retention money of ₹17,84,400/-, and payment due against interest on due payment of retention of ₹1,52,530/-.

28. The relevant clause related to retention money is Clause no. 32.4 of the GCC, which is reproduced as under:

“32.4 Retention Money:

Deduction towards Retention Money shall be made at 5% of the value of Work as certified by the QS Consultants during each running bill subject to a maximum of 5% of the contract value. 50% Retention money will be released after issue of Virtual Completion Certificate on submission of bank guarantee of the same amount and valid for the defects liability period including any extensions thereof.

The balance 50% of retention money shall be returned after issue of Final Completion Certificate on completion of Defects Liability Period including any extensions thereof, provided that the building is then free of defects and the Contractor has rectified all defects identified by the Project Managers, Architect/ Services Consultants and Owner. The Retention Money shall not carry interest.”

29. The perusal of the above clause makes it abundantly clear that the 50% of the retention money was to be released after the issue of the VCC and the balance 50% after issue of Final Completion Certificate on completion of the DLP. The DLP in the present case did not commence as



2025:DHC:2343



the VCC had not been issued. Therefore, the Respondent was well within his rights to not make the payment of the retention money and hence the question of payment of interest on the same does not arise. There is no perversity in the Impugned Order.

30. The Apex Court has given the contours of interference under Section 34 of the Arbitrator and Conciliation Act, 1996 in Delhi Metro Rail Corporation vs. Delhi Airport Metro Express Private Limited, (2024) 6 SCC 357 and has observed as under:-

“34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by “patent illegality” appearing on the face of the award.

35. In Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , a two-Judge Bench of this Court held that although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are:

(i) based on no evidence;



2025:DHC:2343



- (ii) based on irrelevant material; or
- (iii) ignores vital evidence.

36. *Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned.*

37. *A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] observed : (SCC pp. 75 & 81, paras 31 & 42)*

“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or*
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*

42.1. ... 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.”

(emphasis supplied)

38. *In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ)*



2025:DHC:2343



213] , a two-Judge Bench of this Court endorsed the position in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , on the scope for interference with domestic awards, even after the 2015 Amendment : (Ssangyong Engg. & Construction Co. case [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , SCC p. 171, paras 40-41)

“40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

41. ... Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

(emphasis supplied)

39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such



2025:DHC:2343



that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149.] A “finding” based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of “patent illegality”. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice.

40. A judgment setting aside or refusing to set aside an arbitral award under Section 34 is appealable in the exercise of the jurisdiction of the court under Section 37 of the Arbitration Act. It has been clarified by this Court, in a line of precedent, that the jurisdiction under Section 37 of the Arbitration Act is akin to the jurisdiction of the Court under Section 34 and restricted to the same grounds of challenge as Section 34. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project Undertaking, (2023) 9 SCC 85, para 18 : (2023) 4 SCC (Civ) 458 : 2023 INSC 742, para 14.]”

31. In view of the above observations, this Court is of the opinion that the Impugned Order is well reasoned. There is no patent illegality apparent on the face of the Impugned Award and therefore, the present Petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 19, 2025

hsk/mt