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

Date of Decision: 21.08.2025

+ **O.M.P. (COMM) 169/2020**

DELHI TRANSCO LTD.

.....Petitioner

Through: Mr. Ajay Bansal, Ms. Veena Bansal,
Mr. Gaurav Yadava, Mr. Sourav
Jindal, Advs.

versus

SUPREME ADVERTISING PRIVATE LIMITED (FORMERLY
HYTHRO ENGINEERS PVT. LTD.)

.....Respondent

Through: Mr. Prateek Gupta, Mr. Raghav
Tiwari, Ms. Vishaka Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH.J (ORAL)**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("*the Act*") seeking to challenge the Award dated 01.12.2008 and additional/ corrected Award dated 13.12.2008 passed by the Sole Arbitrator in "*M/s. Hythro Power Corporation Ltd. and Delhi Vidyut Board (Delhi Transco Ltd.).*"
2. The dispute arises out of a Contract dated 05.02.1997 (Order No. XEN (220KVL) 1-73/591), whereby the petitioner, Delhi Transco Ltd. ("*DTL*") (then Delhi Vidyut Board), awarded to the respondent, M/s Hythro Power Corporation Ltd., the work of erection, testing and commissioning of loop-in and loop-out of 220 KV double circuit tower line from Mandola to Patparganj at the 220 KV sub-station,



south of Wazirabad, under Contract T-73. The value of the Contract was Rs. 27,44,695.30 (+/- 25%), and the work was to be completed within six months, i.e., by 04.08.1997, time being the essence of the Contract.

3. Since there were disputes between the parties by letter dated 03.08.2000, Mr. Ramesh Chander, Retired Chief Engineer (Civil), was appointed as the Sole Arbitrator.
4. Before the Sole Arbitrator, the respondent raised thirteen claims, to which the petitioner filed a reply along with ten counterclaims. After the balance work was completed through other agencies, the petitioner revised its counterclaims. During the course of proceedings, certain claims and counterclaims (Claim Nos. 6, 8, 11 and Counterclaim Nos. III, VI, VII and VIII) were, with mutual consent, withdrawn and referred to the arbitration of Justice S.S. Chadha (Retd.), as they pertained to highly technical issues concerning material reconciliation.
5. On 01.12.2008, the Sole Arbitrator passed the impugned Award whereby he allowed Claim Nos. 1, 2, 3, 4, 5, 7, 9, 10, 12 and 13 of the respondent, dismissed most of the petitioner's counterclaims, and referred some issues to Justice S.S. Chadha (Retd.). Thereafter, an additional Award dated 13.12.2008 was issued for the correction of typographical errors.
6. Aggrieved by the said Awards, the petitioner has filed the present petition under Section 34 read with Sections 28(3) and 16(6) of the Act seeking to set aside the impugned Awards.
7. Mr. Dev, learned counsel for the petitioner, submits that the impugned



Award dated 01.12.2008 and the additional Award dated 13.12.2008 are unsustainable in law. It is urged that the Sole Arbitrator failed to appreciate the petitioner's case in its entirety and recorded findings based on conjectures rather than evidence. The corrected Award, running into only two pages, is stated to be perfunctory and contrary to the requirement of a reasoned decision under the law.

8. It is contended that the Sole Arbitrator misconstrued several material provisions of the Notice Inviting Tender ("**NIT**"), including Clauses 10B, 3.7.1, 3.7.3, 1.10.3 and 1.10.3a, and overlooked breaches attributable to the respondent.
9. It is further argued that the Sole Arbitrator wrongly assumed that excavation at Location No. 2 commenced in June 1997, although contemporaneous records and measurement books reflected otherwise, and overlooked the fact that monsoon conditions made such execution improbable. While bottlenecks like right-of-way, foundation design and route profile were noticed, the Sole Arbitrator failed to recognise that adherence to NIT provisions by the respondent could have obviated such impediments.
10. The petitioner submits that despite the respondent's defaults, several claims were wrongly allowed. Refund of earnest money and security (Claim No. 1) was granted without finalisation of material recoveries; escalation was awarded under Claim No. 7 in breach of Clause 1.9.2 by treating a firm price contract as variable; and interest on earnest money and security was allowed contrary to Clauses 1 and 1A of the GCC. Likewise, interest on running account bills was awarded despite Clause 7 treating them as advances. Counterclaims of the petitioner



were also rejected without appreciating that the respondent had delayed and eventually abandoned the project, requiring the petitioner to re-tender.

11. It is lastly urged that time was the essence of the contract, completion being stipulated within six months, but the respondent failed to perform, ignored essential obligations, and abandoned the work. The impugned Awards, in overlooking these fundamental breaches and disregarding the contract, are stated to be patently illegal.
12. Mr. Gupta, learned counsel appearing on behalf of the respondent, states that the challenge by the petitioner does not fall within the ambit of Section 34 of the Act. The petitioner is seeking to challenge the findings on facts recorded by the Sole Arbitrator which are beyond the scope of Section 34 of the Act.
13. The impugned Award dated 01.12.2008 and the corrected Award dated 13.12.2008 passed by the Sole Arbitrator, is reasoned, well-founded, and based on a correct appreciation of facts, evidence, and contractual provisions. The Sole Arbitrator, being appointed by the petitioner itself and conversant with the technical nature of the project, rightly appreciated that the delays in execution and eventual non-completion were solely attributable to the petitioner's breach of its reciprocal obligations, including failure to approve route profiles in time, delay in foundation design clearance, failure to provide right of way, non-supply of cement and steel, withholding of payments, and non-issue of tower parts and line material.
14. It is submitted that the Sole Arbitrator was justified in awarding Claim Nos. 1, 2, 3, 4, 5, 7, 9, 10, 12, and 13 in favour of the



respondent and in rejecting the petitioner's counterclaims, since the petitioner had failed to substantiate them either factually or legally. The award of interest on the earnest money deposit ("**EMD**"), security, and running account bills were rightly granted as compensation for the wrongful deprivation of money due, particularly as there was no prohibition on payment of interest under the contract and the petitioner had unjustifiably withheld admitted dues. The Sole Arbitrator's rejection of the petitioner's risk purchase counterclaim was also correct, as the subsequent tender was floated after five years with different parameters and increased scope of work, contrary to the principle that risk purchase must be on identical terms and conditions and within a reasonable period.

15. The objections raised by the petitioner, in essence, seek a re-examination and re-appreciation of evidence and contractual interpretation, which is impermissible in law. It is settled that the Arbitrator is the final judge of facts, evidence, and contractual construction, and that so long as the Arbitrator's view is a plausible one based on the record, the Court cannot substitute its own interpretation. The impugned Awards are neither contrary to public policy nor vitiated by any illegality apparent on the face of the record. Accordingly, it is submitted that the objections deserve to be dismissed, and the Award dated 01.12.2008 and corrected Award dated 13.12.2008 be upheld in toto.
16. I have heard learned counsels for the parties.
17. Before going into further discussion regarding the present factual matrix, it is important to briefly state the extent and scope of the Court



while hearing a petition under Section 34 of the Act. The scope of scrutiny under Section 34 of the Act, is circumscribed, as has been repeatedly emphasized by the Hon'ble Supreme Court. The Court is not to sit in appeal over the findings of the Arbitrator or re-appreciate evidence merely because another view is possible. Interference is warranted only if the Award suffers from the vices contemplated under Section 34 of the Act, namely patent illegality, perversity, violation of natural justice, or contravention of the fundamental policy of Indian law. (**Ref. Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, 2025 SCC OnLine SC 956 and Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1).**

18. A perusal of the petitioner's contentions reveals that the challenge is, in essence, directed against the factual findings recorded by the Sole Arbitrator. The petitioner has failed to establish any patent illegality or violation of public policy. What is sought instead is a re-examination of the evidence and a re-interpretation of the contractual terms, grounds which fall outside the permissible scope of interference under Section 34 of the Act.
19. In this context, it is apposite to note the settled position of law on what constitutes a reasoned award, as laid down by the Hon'ble Supreme Court in **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1**. The Hon'ble Court held that an award must contain reasons that are proper, intelligible, and adequate, though not necessarily as detailed as a judicial judgment. Even if certain gaps in reasoning exist, the award must be appreciated in the backdrop of the



pleadings, evidence, and submissions, to determine whether the decision-making process remains fair and comprehensible.

20. The fulcrum of the petitioner's challenge to the impugned Awards lies in the finding of delay, which, according to the petitioner, was wrongly attributed to it by the Sole Arbitrator. It is contended that because the delay in completion of the work was fastened upon the petitioner, the majority of the respondent's claims were allowed, while the petitioner's counterclaims were rejected.
21. The petitioner has argued that the Sole Arbitrator wrongly assumed that the petitioner failed to supply cement and steel in time, overlooking Clause 10B of the GCC, which obligated the respondent to furnish advance statements indicating the quantities of materials required and the approximate time of their requirement. On record, it was shown that the respondent submitted an indent through phonogram only on 29.10.1997, and cement was issued on 10.11.1997, thereby negating any delay on the petitioner's part. The petitioner further submits that the work was awarded in February 1997, but it was the respondent who failed to fulfil its contractual obligations and delayed, and ultimately abandoned, the work.
22. The Sole Arbitrator, after an elaborate discussion of the obligations of both parties, concluded that the delay was attributable to the petitioner. In arriving at this conclusion, the Sole Arbitrator recorded detailed factual findings relating to the late issuance of cement, right of way difficulties, and belated comments on the route profile, holding that these factors collectively resulted in the overrun of the



contract period, thereby causing delay. While examining the availability of cement in the DTL Store, the Sole Arbitrator directed the petitioner to furnish particulars regarding the total requirement of cement indented by various wings of the DTL (including the Civil Wing, Electrical Construction Wing, and Maintenance Wing), along with the month-wise position of availability, issues, and stock balances during the pendency of the contract, including the overrun period. Despite having assured the Sole Arbitrator on several occasions, the petitioner failed to furnish this information, even though such details would ordinarily have been readily available in the Store records. The findings of the Sole Arbitrator regarding delay read as under:

“Excavation on Location No.2 was started in June 1997 but Cement could only be issued as late as 10th to 12th November 1997, concreting was completed on 08-01-1998 and the Tower was erected on 20-03-1998.

ROW problem for Location No. I was pursued by Claimant, but it could be solved only on 07-01-1998 consuming the most precious time and fair weather working condition for carrying field activities. Excavation was completed on 21-01-1998 but concreting could be done by 07-03-1998 after Cement was issued by the Deptt., from 15-01-1998 to 20-01-1998. The deptt. commented on route profile for first time on 07-01-1998 i.e. after 11 months of award (though the completion period for all the activities under this Contract



was six months) stating that the route profile was not found technically feasible as it was not matching with the Sub-Station Gantry and existing line.

...

After pursuance and awaiting for a long time, the Claimant sent a telegram on 29-10-1997, requesting issue of Cement, which was not available. This was followed by another letter, informing Respondent that DVB Store received consignment of Cement recently and the Claimant be issued Cement for this work. The Respondent arranged issue of Cement on 10-11-1997 to 12-11-1997 and also argued that the Cement could not be issued earlier since no proper indent/requirement was submitted by the Claimant, required as per Clause 10B of the GCC. Had they placed indent, the Respondent could have arranged Cement by purchasing from local market or taking loan from other departments if it had not been available in their Store.

The Claimant raised embankment with good earth for Location Nos. 3 & 4 in order to be ready to cast foundation on release of decision by Respondent. Raising of Platform for making access to these low lying locations were in the scope of work, of course payable as extra work.

The Claimant submitted that the Respondent commented on Route Profile in January 1998 which was submitted on 05-



03-1997 i.e. after 10 months stating that the Profile was not matching with the Sub-Station Gantry Structure. This according to Claimant was due to change in position of Gantry layout which work was executed between March 1997 and January 1998. However, as already brought above, foundations for Locations No. 1 & 2 had already been cast by Claimant in line with the Profile submitted.

The Respondent stretched discussion on non-placement of indent for Cement by Claimant, giving an impression as if procurement of Cement, in Central Store i.e. DVB Store had to be done on receipt of requirement from each and every Contractor, as and when received.

I retired as CE (Civil) from DVB am well aware with the procedure for procurement of cement by the stores department, particularly when cement was largely used by the civil department. Cement procurement planning is done based on yearly budget for various works to be undertaken along with previous year's spillover and the procurement of cement is not tied with award or execution of each work. Normally quarterly procurement planning is done well in advance so that the cement is available in 3 to 4 months period (normally it takes 2 weeks for NIT four weeks as bidding time, another 3 to 4 weeks for award and 5 to 6 weeks for supply. In all it consumes 12 to 16 weeks from NIT to receive cement in store). So the plea of the



Respondent that cement was not issued since proper indent was not placed, was far from reality and had no locus standi. It had been my experience that often interruption in regular supply of cement had been a big bottleneck in smooth progress and had been instrumental in sliding of completion date of various works / projects in hands.

...

To find out the correct position of Cement availability, Arbitrator directed the Respondent to file a detailed statement of availability of Cement, issues, stock balances of Cement in DYB Store during the period of pendency of this Contract. The Respondent, despite assuring in several hearings, could not submit these details and rather shown their helplessness in producing these details. Inference is drawn from various letters placed on record that the Cement was not issued by the Respondent, as and when required, for work and the completion time was allowed to over-run, thereby stretching the Contract from short-term to long-term completion attracting price escalation due to rise in index."

23. Clause 10 B of GCC reads as under:

“CLAUSE 10B: INDENT FOR MATERIALS

The Contractor shall furnish to the Engineer in charge at least one month in advance a statement showing the



quantities of materials as specified in the schedule and the approximate time when the same are required by him for work.”

24. A perusal of the above findings reveals that the Sole Arbitrator undertook a detailed consideration of the issues and the clauses of the Contract, especially 10B of GCC, relating to indents, approval of the route profile, pile foundation proposals and rates, right of way, and the availability of cement and steel. These four bottlenecks were found to be interlinked, such that removal of any one of them in isolation would not have resolved the difficulties unless the others were also addressed. The Sole Arbitrator observed that timely availability of cement, particularly after clearance of the right of way and completion of excavation, was critical to avert damage from flood water in a flood-prone catchment area. However, such timely arrangements were lacking on the part of the petitioner, leading to a time overrun and consequent breach attributable to the petitioner. The finding, being a reasoned and factual determination, is not vitiated by any of the grounds recognised under Section 34 of the Act.
25. Even, the petitioner’s contention that the findings of the Sole Arbitrator constitute personal observations is without merit. As an expert in the field, the Sole Arbitrator is entitled to render findings informed by his professional experience. This principle has been upheld by the Hon’ble Supreme Court in ***Hindustan Construction Company v. NHAI, (2024) 2 SCC 613***. The relevant para reads as under:



“25. This Court in Voestalpine Schienen GmbH v. DMRC [Voestalpine Schienen GmbH v. DMRC, (2017) 4 SCC 665 : (2017) 2 SCC (Civ) 607] commenting on the value of having expert personnel as arbitrators, emphasised that “technical aspects of the dispute are suitably resolved by utilising their expertise when they act as arbitrators.””

(emphasis added)

26. Turning to Claim No. 1 concerning non-release of EMD, the Sole Arbitrator, upon consideration of Clauses 1 and 1A of the GCC, held that the EMD was liable to be adjusted towards the security deposit. Instead, the Department deducted the entire security afresh, thereby retaining the EMD without justification. The Arbitrator, therefore, directed a refund of the said sum, holding that while payment of interest was contractually barred, refund of the principal was due. The findings of the Sole Arbitrator with regard to Claim No. 1 read as under:

“As per Clause 1 and I A of GCC, EMD of the successful bidder had to be retained and adjusted against Security Deposit deduction at the time of making payment for the work done. The amount of Rs. 21,000/- deposited as EMD, therefore, gets converted to Security Deposit after the award on 05-02-1997. The Deptt., however, had deducted full Security Deposit as required under Clause 1 in the first Running Bill submitted on 22-12-1997 without adjusting the EMD of Rs. 21,000/-. This Bill, as per terms and conditions



of Clause 1.10 of Technical Specifications read with Clause 8 of GCC, was payable within 30 days i.e. by 21-01-1998. Thus, this extra deduction of Rs. 21,000/- (initially deposited) had become outstanding dues to the party after 21-01-1998. The Contract Clause, however, provides that no claim shall be made for interest on EMD/S.D. Considering all the angles, the Arbitrator awards Rs. 21,000/- in favour of the Claimant's due.”

27. Clauses 1 and 1A of the GCC read as under:

“CLAUSE-1 SECURITY DEPOSIT

The person/ persons whose tender(s) may be accepted herein-after called the ‘Contractor(s) shall permit D.E.S.U at the time of making any payment to him for work done under the contract to deduct such sum as done with the sum already deposited as earnest money, will amount.

...

Such deductions are to be held by DESU by way of Security Deposit, provided always that the DESU for this purpose shall be entitled to recover, such amounts from such running bill as indicated above till the balance of the amount of security deposit is released. All compensation or other sums of money payable by the contractor under the terms of this contract may be deducted from on paid by the sale of sufficient part of his security deposit, or from the



interest arising therefrom, or from any sums which may be due to or may become due to the contractor by DESU on any account whatsoever and in the event of his security deposit being reduced by reason of any such deductions or sale as aforesaid the contractor shall within 10 days make good in such or guarantee Bonds in favour of the DESU executed by Scheduled Banks (in case of guarantee offered by scheduled banks, the amount shall be within the financial limits prescribed by the Reserve Bank of India) or Govt. Securities Life deposited for more than 12 months) closed in favour of the Engineer-in-charge any sum or sums which may have been deducted from or raised by sale of his security deposit or any part thereof security deposit shall be collected from the running bills of the contractor at the rates mentioned above and the earnest money if deposited in cash at the time of tenders will be treated as part of the security deposit.

iv. No claim shall be entertained against the owner on account of interest on the security deposit or if the same is withheld for guarantee performance.

CLAUSE-1A EARNEST MONEY:

a) Earnest money to the extent specified must be deposited by the tenderer by Bank Draft of any Scheduled Bank. No other mode of deposit earnest money except as specified



- above, will be considered by the Comer. Tenders not accompanied by earnest money in the form specified above will be rejected.*
- b) Earnest money of the tenderers will be refunded within 150 days of the tender opening if no award is made.*
- c) No claim shall be entertained against the owner on account of interest on earnest money and/or security deposit.”*
28. From a perusal of the findings and the clauses of the GCC it is clear that the determination by the Sole Arbitrator is grounded in a proper appreciation of the contractual clauses and contemporaneous evidence, and is a pure finding of fact. The petitioner’s contention that material recoveries were not finalised and that the award is contrary to the NIT or GCC has not been substantiated. No inconsistency with the NIT or GCC is demonstrated in the face of the clear finding that the deduction was contrary to the contract. Such a finding does not warrant interference under Section 34 of the Act.
29. The claim 2(a) is admitted by both parties.
30. Claim No. 2(b) relates to price variation. The Sole Arbitrator recorded a finding that the respondent had quoted a firm price till the delivery period, and had specifically sought escalation if delay occurred for reasons attributable to the petitioner. Since the delay was found, on facts, to be occasioned by the petitioner’s defaults, the Sole Arbitrator held the respondent entitled to escalation and awarded Rs. 1,69,057/-

on that account. The findings of the Sole Arbitrator read as under

“The Claimant had submitted their Bid with 'Firm' Price till the delivery period and asked for Price Variation beyond the delivery schedule if the delay occurs due to non-fulfillment of contractual obligations by the Respondent. The Claimant Party is entitled to Price Variation as the delays had occurred at the instance of the Respondent, leading to breach of Contract.”

31. This finding is challenged by the petitioner contending that the bid was on firm rates and that awarding price variation amounted to converting a firm price offer into a variable one. Reliance is placed on Clause 1.9.2 to urge that all contingencies, including increase in labour and material costs, stood subsumed in the firm price originally quoted. It was submitted that by granting escalation, the Sole Arbitrator effectively rewrote the bargain, which is impermissible.

32. Clause 1.9.2 reads as under:

“1.9.2 Erection Components : Price Variation

For calculating the monthly price variation of the cost for erection portion of the work, the following formula shall be used.

$$Em = Eo (0.20 + a Am/Ao + b Bm/Bo)''$$

33. The respondent, however, pointed out that its offer was expressly firm only up to the stipulated completion period, and that it was entitled to escalation beyond that period where the delay was attributable to the petitioner. Clause 1.9.2 itself envisaged monthly price variation along



with running account bills. The minutes of the meeting dated 16.01.1997 also recorded a consensus to allow price variation. These findings are based on the interpretation of the Contract and appreciation of evidence. The Sole Arbitrator's view that escalation was contractually permissible where delay was due to the petitioner's breach is a plausible construction of Clause 1.9.2. This Court cannot, under Section 34 of the Act, substitute its own reading of the Contract for that of the Arbitrator as no perversity or patent illegality is made out.

34. With respect to Claim No. 3, the Sole Arbitrator noted that although four running account bills had been submitted by the respondent, no payments were released. Referring to Clauses 1.10 and 8 of the Technical Specifications, the Sole Arbitrator held that upon issuance of the winding-up notice dated 20.02.1998, the pending bills ceased to be treated as "running bills" and instead crystallised into final dues. On this basis, the Sole Arbitrator found the respondent entitled to interest on the said sums for the period from 06.09.1998 to 31.07.2000, and accordingly awarded Rs. 2,30,290/- towards simple interest at 12% per annum on Rs. 10,10,050.66. The findings of the Sole Arbitrator read as under:

"In the instant case, the Claimant had preferred four Running Bills but had not been paid even a single Bill till date. A notice for winding up was given by the Claimant on 20-02-2008 and the work could not proceed further thereafter. Thus, the amount due as per Claim No.2 did not



only remain Running Bill amount but also became a final amount due. Even Counsel for Respondent, while arguing during hearing on 21-01-2005, stated that the work had been stopped after notice for winding up and as such there was no question of running bill payment but only final bill settlement was to be done after completing the material reconciliation. The interim payment preferred as Running Bills, after notice for winding up of the Contract, loses the status as such and had become outstanding dues payable to the Claimant. This Notice had been served on 20-02-1998 and all the formalities regarding measurement, accountal of material and finalization of payment should have been completed within 6 months i.e. by 05-09-1998. Having not done so and keeping in view that breach of Contract is attributable to the Respondent, the Claimant is entitled to interest on final dues w.e.f. 06-09-1998 till 31-07-2000.”

35. The plea that the award of interest on the running account bills and price variation bills is contrary to Clauses 1, 1A or 7 of GCC cannot be sustained. The Sole Arbitrator has correctly held that the respondent, having raised four running account bills which remained unpaid, was unjustifiably deprived of amounts that had become due under Clause 1.10.2. With the issuance of the winding-up notice, these dues crystallised into final amounts payable, entitling the respondent to interest as compensation for such deprivation. The Sole Arbitrator, on a proper construction of the Contract, rightly awarded



interest, noting also that there is no prohibition in the contract against such a grant.

36. In respect of Claim No. 4, the Sole Arbitrator awarded Rs. 69,600/- towards depreciation and idling of machinery as against the claim of Rs. 1,47,250/-, noting the flooding of the site, non-availability of cement, and submersion of equipment, while also observing that certain machinery could have been withdrawn. The findings of the Sole Arbitrator read as under:

“...The Claimant Party had carried out excavation but the Cement was not made available though pursued by the Claimant Party. In the meanwhile the site got flooded due to the release of water in the upper reaches of Jamuna River. After receding of the flood water, the Claimant Party had to clear the site of water and mud. cleaning of reinforcement and shuttering, thereby increasing expenditure apart from submersion of his machinery, tools and tackles. The claim raised for depreciation of mixture, vibrator, survey instruments, water tanker, water pump and shuttering material and idling of T &P from November 1997 to May 1999 was not only on the higher side, but was exorbitant. The mixture vibrator and surveying equipment were not required to be maintained at site but were normally called for at the time of concreting/survey respectively. When the Cement had not been available, the Claimant should have shifted T &P and these were not required to be maintained



at site throughout except the pumping arrangement for de-watering and the shuttering material. Allowing idling of T &P and depreciation of shuttering material, payment to the extent of Rs.69600/- is considered adequate and justified to compensate the losses suffered by the Claimant.”

37. The petitioner’s challenge, premised on the delay in commencement of work, is untenable. The Sole Arbitrator, on appreciation of record, found that work could not commence prior to May 1997 owing to the petitioner’s own defaults in providing approvals and materials, including the late release of cement in November 1997. The finding that delay was attributable to the petitioner and that compensation was warranted is factual in nature and has already been addressed above in paragraph 24.
38. Claim No. 5 pertained to compensation for extra work, wastage of material, and damages suffered on account of flooding at the site. The Sole Arbitrator noted that the respondent had produced bills for the work executed, which were neither returned nor repudiated by the petitioner. On this basis, the Arbitrator held the respondent entitled to reimbursement and awarded a sum of Rs. 2,72,637/-.
39. Claims No. 7 and 9 are interlinked, as they arose out of the prolongation of the Contract. Under Claim No. 7, the respondent sought compensation for establishment and overhead charges during the extended period, while under Claim No. 9, compensation was claimed for labour expenses incurred during such period. The Sole Arbitrator found, on the basis of correspondence and progress reports,



that delays were attributable to the petitioner, who failed to supply drawings in time, delayed approvals, and did not ensure availability of requisite materials and right of way. In view thereof, the Sole Arbitrator reasoned that the respondent had no option but to retain staff, maintain site establishment, and incur labour costs. Accordingly, the Arbitrator awarded Rs. 2,49,700/- under Claim No. 7 towards overheads and a separate sum of Rs. 1,55,400/- under Claim No. 9 for continuation of field labour. Additionally, the said claims have duly been proved by the respondent through evidence before the Sole Arbitrator.

40. Claim No. 10 related to loss of profit on the unexecuted portion of work. The Sole Arbitrator noted that since the petitioner was responsible for the delay and eventual non-completion of the contract, the respondent had been deprived of its legitimate expectation of profit and awarded Rs. 1,44,350/- to the respondent. Viewed collectively, Claims No. 5, 7, 9, and 10 are founded on the common finding that the petitioner was solely responsible for the delay and disruption in execution of the work. The petitioner has assailed these findings as being contrary to the contractual provisions. However, once the factual premise of delay was established, the consequential heads of damages namely, compensation for extra work performed, overhead and establishment costs for maintaining site operations, labour expenses on account of idle workmen, and loss of anticipated profit on the balance work naturally followed. Claim No. 12 awarding interest and Claim No. 13 awarding costs are likewise consequential



to the above findings. Since this Court finds that the reasoning of the Arbitrator regarding delay is based on a reasoned appreciation of evidence, no interference is warranted under Section 34 of the Act.

41. The final objection urged by the petitioner, that the Sole Arbitrator misconstrued certain clauses of the GCC and other provisions of the contract, also stands answered in view of the discussion above. No interference is warranted having regard to the detailed reasoning adopted by the Sole Arbitrator. It is well settled that the construction and interpretation of contractual terms fall within the exclusive domain of the Arbitrator. In ***McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181***, the Hon'ble Supreme Court held that once the jurisdiction of the Arbitrator is established, the Court will not substitute its own interpretation for that of the Arbitrator unless the view taken is one that no fair-minded or reasonable person could have adopted. Similar principles have been reiterated in ***Pure Helium India (P) Ltd. v. ONGC (2003) 8 SCC 593*** and ***D.D. Sharma v. Union of India (2004) 5 SCC 325***, where it was held that the Arbitrator is entitled to construe the contract by taking into account both the contractual terms and the conduct of the parties.
42. Applying the above principles, the interpretation placed by the Sole Arbitrator on the NIT clauses, even if another plausible view could exist, cannot be interfered with under Section 34 of the Act. The grievance of the petitioner on this ground is therefore without substance.
43. Equally, the rejection of the petitioner's counterclaims, including



those founded on alleged risk purchase, is based on factual findings of the Sole Arbitrator. It has been noted that the subsequent tender was floated nearly five years later with altered scope and parameters, and therefore could not legitimately be made the basis to impose liability upon the respondent. These findings are pure findings of fact which are not open to re-examination by this Court under Section 34 of the Act. In any event, the Sole Arbitrator correctly held that the delay in execution was attributable to the petitioner itself, which failed to discharge its obligations, thereby frustrating further progress of the works. Having itself repudiated the contract, the petitioner was not entitled to raise claims on account of risk purchase.

44. In light of the foregoing discussion, it is evident that none of the objections advanced by the petitioner fall within the narrow grounds of interference contemplated under Section 34 of the Act. The petitioner's submission that the impugned Awards are unsustainable for allegedly lacking reasoning and being based on conjectures is without merit.
45. A reading of the Awards demonstrates that the Sole Arbitrator has meticulously set out the rival claims and counterclaims, examined the evidence and contractual provisions, and thereafter provided reasons for accepting or rejecting each claim. The corrected Award dated 13.12.2008 was confined solely to rectification of typographical errors and does not in any way detract from the reasoned nature of the principal Award. The present petition is, in effect, an attempt to convert Section 34 proceedings into a first appeal on facts, which is



impermissible in law.

46. Accordingly, the petition is dismissed. The arbitral Award dated 01.12.2008, along with the corrected Award dated 13.12.2008, are upheld.
47. Pending applications, if any, stand disposed of.

JASMEET SINGH, J

AUGUST 21, 2025/sp

(Corrected and released on 03.09.2025)