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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

**Date of Decision: 14.08.2025**

+ **O.M.P. (COMM) 324/2020 & I.A. 2874/2021**

IRCON INTERNATIONAL LIMITED

.....Petitioner

Through: Mr. KR Gupta, Adv.

versus

MAGNUM BUILDERS & DEVELOPERS AND CHAWLA  
CONSTRUCTION (JV)

.....Respondent

Through: Mr. N. Prabhakar, Mr. Uday Sharma,  
Adv.

**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 (for brevity "*the Act*") challenging the Arbitral Award dated 15.01.2015 passed by the Sole Arbitrator in the matter between "*M/s. Magnum Builders and Developers and Chawla Construction (JV) vs. Ircon International Ltd.*".
2. The brief facts of the case as per the petitioner are that the petitioner awarded the work of construction of 294 dwelling units and related ancillary works for Married Accommodation Project ("*MAP*"), Ministry of Defence at Cantonment, Jhansi, Uttar Pradesh, to the respondent/claimant, by Letter of Award dated 26.04.2005 and Contract Agreement executed on 16.08.2005. The stipulated period for completion of work was 18 months from 26.04.2005.
3. The Arbitration Clause is Clause no. 72.2 of the GCC, which reads as under:-

***"72.2 Conciliation/Arbitration***



*72.2.1 It is a term of this contract that Conciliation/Arbitration of disputes shall not be commenced unless an attempt has first been made by the parties to settle such disputes through mutual settlement.*

*72.2.2 If the Contractor is not satisfied with the settlement by the Employer on any matter in question, disputes or differences, the Contractor may refer to the Managing Director of the Employer in writing to settle such disputes or differences through Conciliation or Arbitration provided that the demand for Conciliation or Arbitration shall specify the matters, which are in question or subject of the disputes or differences as also the amount of claim, item wise. Only such dispute (s) or difference (s) in respect of which the demand has been made, together with counter claims of the Employer shall be referred to Conciliator or Arbitrator as the case may be and other matters shall not be included in the reference.*

*72.2.3 Managing Director of the Employer may himself act as Sole Conciliator/Sole Arbitrator or may at his option appoint another person as Sole Conciliator or Sole Arbitrator, as the case may be. In case, Managing Director of the Employer decides to appoint a Sole Conciliator/Sole Arbitrator, then a panel of at least three names will be sent to the Contractor. Such persons may be working/retired employees of the Employer who had not been connected with the work. The Contractor shall suggest minimum two names out of this panel for appointment of Sole Conciliator/Sole Arbitrator. Managing Director of the Employer will appoint Sole Conciliator/Sole Arbitrator out of the names agreed by the Contractor.*

*72.2.4 In case, the Contractor opts for settlement of disputes through*



*Conciliation at first stage and if the efforts to resolve all or any of the disputes through Conciliation fails, the Contractor may refer to the Managing Director of the Employer for settlement of such disputes or differences through Arbitration. The appointment of Sole Arbitrator shall be done by the Managing Director of the Employer as per the procedure described above. No disputes or differences shall be referred to Arbitration after expiry of 60 days from the date of notification of failure of Conciliation.*

*72.2.5 The Conciliation and/or Arbitration proceedings shall be governed by the provisions of the Indian Arbitration and Conciliation Act 1996 or any statutory modification or re-enactment thereof, and the rules made thereunder and for the time being in force shall apply to the conciliation and arbitration proceedings under this clause. ...”*

4. Since the progress of the work by the respondent was not considered to be satisfactory, the petitioner, *vide* letter dated 03.12.2005, withdrew the work from the respondent and *vide* letter dated 28.09.2006, the Contract Agreement was terminated under Clause 50 of the GCC and the Performance Bank Guarantee furnished by the respondent was also encashed by the petitioner.
5. After the said termination, *vide* letters dated 25.01.2007 and 31.01.2007, the respondent requested the petitioner to give them another chance to prove their capability and to revive the Contract dated 16.08.2005 executed between the parties. The petitioner, *vide* letter dated 20.02.2007, agreed to the same and gave another chance to the respondent to prove their ability, by completing set targets of works with a total value of Rs. 50.19 Lakhs within three fortnights on a trial basis. The said letter is reproduced below: -



## IRCON INTERNATIONAL LIMITED

Civil, Mechanical, Electrical, Communications and Trunking Contractors  
(A Govt. of India Undertaking)

T-63/2, Ankush Panth, Tagore Lines  
JHANSI Cantt., Jhansi-264002 (U.P.)  
Ph: 0510-2473015, 2473171  
Fax: 0510-2473018

No. IRCON/7001/MAP-Jhansi/404/160

20.02.2007

M/s. Magnum Builders & Developers  
And Chawla Construction (JV)  
223, (Behind Sargam Cinema), Zone-II, M.P. Nagar.  
Bhopal-462 011

Sir,

Sub: -MAP, Jhansi project  
-Construction of 294 Dwelling Units including Internal Electrification, Water Supply, Sanitary Works and related Ancilliary Works for Married Accommodation Project (MAP), Ministry of Defence at Tagore Lines near Butchery at Jhansi (Uttar Pradesh) (PACKAGE-I-B)  
-Execution of work on Trial Basis.

Ref: (1) Your letter No. Nil dated: 25.01.2007.  
(2) Your letter No. Nil dated: 31.01.2007.

"With reference to your letter No. Nil dated 25.01.2007 and 31.01.2007 regarding your appeal to IRCON requesting to give a chance for proving your ability to carry out and complete the balance works, we wish to inform you that it has been agreed, in true spirit, to permit you to prove your ability to complete the balance works. Based on your request, you are hereby given an opportunity to complete the works as per the programme submitted by you for three (3) fortnights on trial basis.

During this period of three fortnights, works are to be executed as per the programme submitted by you vide your letter dated : 25.01.2007 by deploying sufficient manpower, Machinery, equipment and materials. The minimum value of actual works to be completed during each fortnights is reproduced below:

|    |                           |   |                 |
|----|---------------------------|---|-----------------|
| 1. | 1 <sup>st</sup> Fortnight | : | Rs. 12.18 Lacs. |
| 2. | 2 <sup>nd</sup> Fortnight | : | Rs. 13.40 Lacs. |
| 3. | 3 <sup>rd</sup> Fortnight | : | Rs. 24.61 Lacs. |
|    | Total                     | : | Rs. 50.19 Lacs. |

*fair typed copy*  
*CE*

(Contd...page 2...)



The above arrangement shall be subject to the following conditions:-

- 1) All conditions mentioned vide your letter dated : 01.12.2006, 06.12.2006 and 11.01.2007 stands withdrawn.
- 2) The works during the trial period shall be carried out as per specifications and conditions stipulated in the original contract.
- 3) You shall withdraw all the court cases unconditionally, as agreed-to by you vide your letter No. Nil dated : 31.01.2007, within 48 (forty eight) hours from the date of issues of this letter under intimation to us.
- 4) You will not remove any materials, equipment or machinery lying already at site during these three fortnight trial periods.
- 5) During trial period payment shall be released fortnightly as requested by you, on submission of bill by you, for the work done during the particular fortnight.
- 6) Secured Advance for the materials brought to site shall be released along with the fortnight bill which will not be counted in the actual work executed but as advance.
- 7) Amount towards use of materials already lying at site shall be recovered from your above bills.
- 8) During this period (trial period) the amounts withheld (if any) on any account including amount of encashed Performance Bank Guarantee prior to this trial period shall not be released.
- 9) You shall make your own financial arrangements for carrying out the works and on advance, whatsoever, shall be released during this trial period, except Secured Advance, as stated in (6) above.
- 10) This trial period does not confer on you any right for revival of the contract for the work i.e. revival of the contract shall be at the sole discretion of IRCON International Limited based on your performance of completion of the work as per three fortnights schedule submitted & agreed by you (copy enclosed) during this trial period.



- 11) If you are unsuccessful to carryout the works as per the programme submitted for three fortnights and fail to achieve the fortnightly targets of actual work executed as stated above (Rs. 50.19 lacs), IRCON shall get the works executed at your risk and cost as stipulated in the original contract agreement and terminated vide our letter No. IRCON/7001/MAP-Jhansi/404/883 dated : 28.09.2006.
- 12) You shall start the works within 48 (forty eight) hours from the date of issue of this letter under intimation to IRCON. You are also requested to sign a supplementary agreement in this regard.

This letter is issued to you in duplicate and you are requested to return the duplicate copy duly signed in token of your acceptance of this letter and conditions mentioned therein.

Thanking you,

Yours faithfully,  
For & on behalf of,  
IRCON International Ltd.

(C.K. NAYAR)  
GM/MAP-Jhansi  
Encl: As above.

Cc: GM/Buildings, IRCON International Ltd., New Delhi for information and necessary action please.

6. The said letter also required the respondent to further sign a Supplementary Agreement; in case the respondent is able to achieve the said targets within



three fortnights and also stated that this trial period does not confer on the respondent any rights for revival of the Contract and the same shall be at the sole discretion of the petitioner. The said trial period was to get over on 27.04.2007. The respondent was able to perform the said targets within the stipulated timelines.

7. Regarding the encashed Performance Bank Guarantee by the petitioner, it is evident from an internal communication of the petitioner, *vide* letter dated 28.06.2007, addressed to the General Manager (Buildings) of the petitioner, that it was proposed that the encashed Performance Bank Guarantee shall not be revived, even on revival of the Contract; instead, the said bank guarantee amount of about Rs. 86 Lakhs shall be converted into a FDR for the performance bank guarantee period and shall be kept with the petitioner.
8. Subsequently, on 11.07.2007, an undated draft Supplementary Agreement was prepared and signed by both parties on all four (4) pages. It was stated in this Agreement that “*the Terms and Conditions, scope of work, Technical Specifications, Special Conditions of the Contract etc of the original Contract dated 16.08.2005 shall remain applicable to the draft Supplementary Agreement*” as well, except for some additional conditions in the draft Supplementary Agreement, which will take precedence and supersede the existing provisions in the original Contract. The said Supplementary Agreement is reproduced as under:-

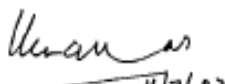


DRAFT SUPPLEMENTRY AGREEMENT (Applicable to Jhansi) (Also applicable to Bhopal after suitable modification of factual matter)

THIS SUPPLEMENTRY AGREEMENT made on \_\_\_\_\_ day of \_\_\_\_\_ 2007 between IRCON INTERNATIONAL LIMITED, C-4, District Centre, Saket, New Delhi - 110017, acting through General Manager, IRCON INTERNATIONAL LTD, T-63/2, Tagore Lines, Ankush Path, Near : Officers' Mess, Jhansi Cantt, Jhansi (hereinafter called the "Employer/Engineer") of the one part and M/s Magnum Builders & Developers and Chawla Construction (JV), 223 (Behind Sargam Cinema), Zone-II, M.P.Nagar, Bhopal - 462 011, (hereinafter called the "the Contractor") of the other part.

WHEREAS the Employer had entered into an Agreement with the Contractor on 16<sup>th</sup> Day of August 2005 (hereinafter called "the Original Contract") for Construction of 294 Dwelling Units including Internal Electrification, Water Supply, Sanitary Works and related Ancillary Works for Married Accommodation Project (MAP), Ministry of Defence at Tagore Lines near Butchery at Jhansi (Uttar Pradesh) (PACKAGE-I-B) at a total cost of Rs. 17,20,21,746.96 (Rupees Seventeen crore twenty lakh twentyone thousand seven hundred fortysix and paise ninety six only) on the terms and conditions contained in the above referred agreement with completion period of 18 (Eighteen) months IRCON's Letter No. IRCON/CC/MOD-Jhansi/33/ Pkg.IB/863 dated : 05.05.2005.

WHEREAS the work was determined in accordance with Clause 50 of General Conditions of Contract by the Employer/Engineer vide letter No. IRCON/7001/MAP-Jhansi/404/883 dated : 28.09.2006.

  
(C.K. Negam)



(..2..)





WHEREAS on the request of the contractor vide his letter no. NIL dated 25.01.07 and 31.01.07 for revival of the contract and assurance given by him for completing the balance works in months period, the contractor was given a fair chance to execute the agreed value of work on trial basis for 3(three) Fortnights ( i.e. 45 days ) vide Letter No. IRCON/7001/MAP-Jhansi/404/160 dated : 20/02/2007. The trial period was over on 27.04.07.

WHEREAS, based on the performance of the contractor during the trial period and also considering the request of the contractor for revival vide his letter no dated 07.06.07, the employer has agreed to revive the original contract.

WHEREAS, both the parties to the contract after having a detailed discussion and after having carefully analyzed their commercial interests and contractual obligations, HAVE NOW AGREED TO ENTER THIS SUPPLEMENTRY AGREEMENT WITNESSETH AS FOLLOWS:

The Terms and Conditions, Scope of Work, Technical Specifications, Special Conditions of the Contract etc of the original contract shall remain applicable for this Supplementary Agreement also, except for the under mentioned conditions which will take precedence and supersede the existing provisions in the Original Contract.

1. M/s Magnum Builders & Developers and Chawla Construction (JV) shall complete all the works covered under the contract referred above within  $10\frac{1}{2}$  months to be reckoned from \_\_\_\_\_ and the progress of works shall be as per the mutually acceptable schedule as per Bar Chart to be submitted by the contractor within 30 (Thirty) days from ----- for sequential completion of work.
2. If the contractor fails to complete all the works by \_\_\_\_\_ 2008, the Liquidated Damages shall be levied as stipulated in the Original Agreement.



3. For execution of the works, the contractor shall be paid as per BOQ and agreed rates in the Original Agreement without any Escalation & no claims for the suspended period of works shall be payable.
4. The contractor shall deploy adequate resources on works and execute the works at the required pace in consonance with the programme to be submitted by him, by virtue of which it can assure IRCON that all the balance works can be completed by the stipulated completion date i.e. by \_\_\_\_\_ 2008.
5. The Contractor shall neither slow down the work nor stop the work on the plea of having any dispute on any aspect of the contract but shall seek resolution of such disputes as per Original Contract Agreement.
6. Both the parties agree that no court case is pending against each other on this day of entering into this supplementary agreement,
7. Pending / withheld payments of the contractor shall be reviewed by IRCON as per terms and conditions of the original agreement and , if admissible, payments shall be released forthwith.
8. Clause No. 25.1 of Special Conditions of Contract i.e. 'Milestones' shall be modified as detailed below.

**25.1 Milestones :**

The dates for achieving the milestones on completion of identifiable components of balance works or sections of the balance works and will be based on the criteria considering the total time period of the contract as  $10\frac{1}{2}$  months, the basis shall be the financial progress minus the cost of materials paid as lying at site, the progress achieved at different milestones is to be as under :

|                                              |   |      |
|----------------------------------------------|---|------|
| At the end of 3 months                       | : | 10 % |
| At the end of 6 months                       | : | 30 % |
| Plus Sample Floors complete in all respects. |   |      |



At the end of 9 months : 70 %

At the end of 10½ months : 100 %

Last 1½ months (10<sup>th</sup> and 10½) shall also be used for cleaning of site, testing and commissioning rectification of defects, if any documentation etc and handing over of works to the client.

IN WITNESS whereof the parties here to have caused this agreement executed the day and year first before written.

(MANOJ SHRIVASTAVA)  
M/S MAGNUM BUILDERS &  
DEVELOPERS AND CHAWLA CONSTN. (JV)  
223, ZONE-II, M.P.NAGAR, BHOPAL

(C.K.NAYAR)  
GENERAL MANAGER  
IRCON INTERNATIONAL LTD  
MAP, JHANSI.

WITNESS

WITNESS

(C.K. Nayar)  
GM/JHANSI  
IRCON.

9. The draft Supplementary Agreement required the respondent to complete the balance work within a period of 10½ months from a particular date (which was left blank in the said draft Supplementary Agreement). As per the draft Supplementary Agreement, the progress of the work was to be gauged as per



the bar chart to be submitted by the respondent within 30 days also from a date (which was left blank in the said Agreement).

10. Subsequently, since there were disputes between the parties that could not be resolved, the respondent invoked the arbitration clause, being Clause no. 72.2 of the GCC and the Sole Arbitrator was appointed.
11. The Sole Arbitrator, *vide* the impugned Award dated 15.01.2015, granted the following claims of the respondent: -

**“(9) SUMMARY OF AWARD**

**a) Award on Claims**

*Considering all the facts and circumstances of the case and pleadings and documents filed before me and appraising the evidence on record, considering the arguments advanced, written submissions filed, as also, taking into consideration the totality of the circumstances, I make the following award:*

- i. Claim no. 1: Nil Award
- ii. Claim no 2: Rs. 41,20,000/- (Rupees Forty-One Lakhs Twenty Thousand Only) on account of refund of security deposit awarded in favour of claimant.
- iii. Claim no 3: Rs. 86,01,087/- (Rupees Eighty-Six Lakhs One Thousand Eighty-Seven Only) on account of refund of performance guarantee awarded in favour of claimant.
- iv. Claim no 4: Rs. 1,01,79,075/- (Rupees One Crore One Lakh Seventy-Nine Thousand Seventy-Five Only) on account of loss of profit awarded in favour of the claimant.
- v. Claim no. 5: Nil Award
- vi. Claim no 6: Rs 51,86,800/- (Rupees Fifty-One Lakhs Eighty-Six



*Thousand Eight Hundred only) in favour of claimant being the value of T&P and materials taken over by the respondent.*

*vii. Claim no. 7: Claim withdrawn.*

*viii. Claim no. 8: Nil Award*

*ix. Claim no. 9: Nil Award*

*x. Claim no. 10: Nil Award*

*xi. Claim no. 11: Rs. 33,44,998/- (Rupees Thirty-Three Lakhs Forty-Four Thousand Nine Hundred Ninety-Eight) being interest on the amount of encashed bank guarantee upto 30.11.2009*

*xii. Claim no. 12: (a) Rs. 52,61,186/- (Rupees Fifty-Two Lakhs Sixty-One Thousand One Hundred Eighty-Six Only) being interest @ 12% p.a. for pre-reference period i.e. upto 30.11.2009 on claim numbers 2, 4, and 6*

*(b) In addition, Simple Interest @ 10% pa on all awarded amounts for the period of arbitration i.e. from 01/12/2009 till date of award i.e. upto 15/01/2015 for claim numbers 2, 3, 4, 6, 11 & 12(a).*

*xiii. Claim no. 13: Rs 5,00,000/- (Rupees Five Lakhs Only) being costs.*

***b) Award on counter claims***

*i. The Counter Claim No. 1 of the Respondent is rejected*

*ii. The Counter Claim No. 2 of the Respondent is rejected.*

*iii. The Counter Claim No. 3 of the Respondent is rejected.*

*iv. The Counter Claim No. 4 of the Respondent is rejected.*

*v. The Counter Claim No. 5 of the Respondent is rejected.*

*vi. The Counter Claim No. 6 of the Respondent is rejected.”*

12. Mr. Gupta, learned counsel for the petitioner, has challenged the impugned Award on the ground that the Sole Arbitrator has based his entire award on



the basis of the draft Supplementary Agreement dated 11.07.2007 and awarded all the claims of the respondent on the said basis. He states that the respondent had never based the claims on existence of a Supplementary Agreement. The Award hence is de hors the pleadings.

13. The counsel for the petitioner contends that the original Contract having been legally terminated, the question is whether there was any subsequent legally enforceable agreement between the parties, in this case the draft Supplementary Agreement, by which the original Contract was restored/revived. As the draft Supplementary Agreement did not mature into a binding Contract between the parties, the status quo remained and the disputes could not be decided based on the Supplementary Agreement.
14. The learned counsel further submits that the Sole Arbitrator has erred in treating the draft as a concluded contract and in holding that time for completion of balance work was set at large, despite blanks in the draft and without there being any final agreement between the parties. It is argued that such findings are wholly contrary to the intention of the parties and amounts to re-writing the contract, which was beyond the jurisdiction of the Sole Arbitrator and hence violative of Section 34 of the Act.
15. Reliance has been placed by the petitioner on the case of **Rajasthan State Industrial Development and Investment Corporation v. Diamond & GemDevelopment Corporation (2013) 5 SCC 470**, specifically on Paragraph no. 23, which states that the contract is a creature of an agreement between the parties and has to be interpreted giving literal and actual meaning to the wording of the contract, so that its terms are not varied. The terms have to be interpreted strictly without altering the nature of the contract, so that the interests of either party are not adversely affected.



16. Mr. Prabhakar, learned counsel for the respondent, states that the essence of the entire statement of claim of the respondent is that the original contract stood revived by the letter dated 20.02.2007 and the draft Supplementary Agreement dated 11.07.2007 was annexed with the statement of the claim. He further states that even though not putting it in express words, the effect of the draft Supplementary Agreement has duly been adverted to in the pleadings.
17. He further states that the respondent could not recommence the work after the trial period was over, since the petitioner failed to communicate the commencement date for the applicability of the draft Supplementary Agreement. It is contended that the said Supplementary Agreement was duly executed between the parties, so the original Contract was revived/restored. Further, it is stated that merely because the date of commencement was to be written in the draft Supplementary Agreement, does not make the whole agreement invalid or non-existent.
18. Reliance has been placed by the respondent on the case of ***Pure Helium India Pvt Ltd v. ONGC, (2003) 8 SCC 593***, specifically on Paragraphs 25 to 27, which states that the contract can be interpreted by the Sole Arbitrator in terms of the conduct of the parties and the surrounding circumstances.
19. The Learned Counsel for the respondent has also placed reliance on various judgements to lay down the role of the court while interfering with the Arbitral Award and that it is a limited power, so the interpretation of the contract falls exclusively within the domain of the powers of the Arbitrator and that the Court under Section 34 does not act as an appellate court. Reliance has been placed by the respondent on the following judgements: ***Mc Dermott International Inc v. Burn Standard Company Limited and***



***Others (2006) 11 SCC 181; Swan Gold Mining Ltd. v. Hindustan Copper Ltd (2015) 5 SCC 739; State of Jharkhand and Others v. HSS Integrated SDN and Another (2019) 9 SCC 798; Associate Builders v. Delhi Development Authority (2015) 3 SCC 49.***

20. I have heard learned counsel for the parties and perused the material available on record.
21. 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. It has been held by the Hon'ble Supreme Court in ***Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, 2025 SCC OnLine SC 956***, particularly paragraph 23, that the Courts exercising power under Section 34 of the Act have limited powers to set aside the Arbitral Award. The Court cannot interfere with the Arbitral Award and substitute the view and interpretation accorded by the Arbitrator, as the Court under Section 34 does not sit in appeal over the findings and decision of the Arbitrator.
22. However, where an Arbitral Award (i) is founded on a premise contrary to the contract, (ii) travels beyond the pleadings and record, (iii) proceeds on a construction that no reasonable person would adopt, or (iv) evinces patent illegality apparent on the face of the award, interference is warranted.
23. In light of the above, the pivotal question that arises is whether revival of the contract through the said draft Supplementary Agreement was ever pleaded before the Sole Arbitrator. All other monetary claims (refunds, loss of profit, interest, costs) came to be allowed by the Sole Arbitrator on the assumption that such revival had in fact taken place and that the petitioner thereafter committed repudiatory breach.





24. In the present factual matrix, the material paragraphs of the statement of claim filed by the respondent in the arbitral proceedings read as under: -

***“17. Construction period -***

*The contract period for completion of the work contemplated therein was 18 months to be reckoned from 26-04-2005 i.e. date of issue of letter of acceptance and accordingly the due date of completion was scheduled as on 25-10-2006. The nonavailability of working drawings, nonavailability of labour license with the Respondent, delaying and denying payment of executed work and other laches and breaches of contract on the part of Respondent have delayed the execution of work by the Claimant. The Respondent while ignoring all such facts, audaciously terminated the contract under its office letter no. IRCON/MAP/Jhansi/7001/404/883 dated 26/09/2006. Being aggrieved by such unlawful rescission of contract the Claimant vide its letter dated 16/10/2006 requested the Respondent to revive the contract and allow the Claimant to execute and complete its contractual obligations. After much deliberation and consultation, the Respondent issued a letter bearing no. IRCON/7001/MAP-Jhansi/404/160 dated 20/02/2007 allowing the Claimant to continue with the work on the condition that a trial period of three fortnights was given with certain targets and in case of Claimant achieving such targets, the contract would be revived.*

*The financial target fixed under such condition letter was for work of Rs. 12.18 lakhs in first fortnight, work of Rs. 13.40 lakhs in 2nd fortnight and work of Rs. 24.61 lakhs in third fortnight. Thus the Claimant was required to execute the work of Rs. 50.19 lakhs within*



*the period of forty five days. The Claimant resumed the work in accordance with this conditional revival of contract w.e.f 12/03/2007 and raised running bill on 28/03/2007 for amount of Rs. 18,75,031.94 against the work executed during the first fortnight. Again on 31st Mar.07 the bill for the month of March 07 was raised by the Claimant for an amount of Rs. 3,13,134.00. The bill for 2nd fortnight working was raised by the Claimant on 14/04/2007 for an amount of Rs. 14,66,551.00. The bill for 3rd fortnight was raised by the Claimant on 30/04/2007 for an amount of Rs. 47,74,122.00. Thus the Claimant have executed the work worth Rs. 84,28,839.00 against the fixed target of Rs. 50.19 lakhs.*

*The Respondent once again exhibited its callous work approach and unprofessional conduct by making part and delayed payments of hardly Rs. 17.00 lakhs against the executed work of Rs. 84.29 lakhs. The Respondent further hindered the progress of the project by intermittent and delayed checking of inter-mediate levels of various items. The Respondent further ordered numerous and untimely changes at site causing re-execution of preliminaries of various items. The Claimant achieved the fixed target despite such odds; however the Respondent still did not allow the Claimant to continue with the work. The Respondent, since very inception of the contract, had its own plans to get the work done through the agencies of its choice for vested reasons. The Claimant herein was forced to staff some of such agencies in form of petty contractors. Subsequently the Respondent sought to oust the Claimant from its own project by awarding more and more work to these petty contractors for extraneous*



*considerations. It will not be out of place to mention here that the agencies brought by the Respondent have still not completed the work though it could have been completed long back by the Claimant had the Respondent granted extension of time and extended contractual cooperation within the frame work of duly executed agreement.*

*It is also pertinent to emphasize here that the Respondent have never breathed a single word of complaint against the Claimant that the target fixed for trial period of 45 days has not been achieved. The petty contractors hired by the Claimant on the insistence of the Respondent have executed the work of Claimant part with the tools and tackles of the Claimant even in the period between rescission of Claimant's contract and re-award of work to such petty contractors.*

*...*

#### **20. Rescission of contract -**

*The order of rescission of contract issued by the Respondent vide its office memo No. IRCON/7001/MAP-Jhansi/404/883 dated 28-09-2006 became in-fructuous due to revival of contract under its office memo no. IRCQN/700.1/MAP-Jhansi/404/106 dated 20th Feb.07 and the fixed targets fixed under such letter were duly achieved by the Claimant and thereafter no further order of rescission of contract was ever issued by the Respondent. The action of revival of contract has made the terminated contract agreement enforced in its entirety, as if it was never terminated. Hence all its clauses and terms and conditions were made applicable in toto. If the Respondent was desirous of rescinding the contract again under said clause-50 or any other clause, the mechanism depicted under the contract was required*



*to be fulfilled completely and so the issuance of notice of 7 days and 48 hours was a vital pre-condition for rescission of this contract. In fact, no such pre-requisite of show cause notice etc. have been fulfilled by the Respondent and no further order for rescission of contract is issued, thus its action for calling tenders at the risk and cost of the Claimant and retaining due sums of Claimant in the name of so called extra cost automatically become null and void ipso facto.”*

25. On perusal, it emerges that the case of the respondent was that the termination of the original contract became infructuous since the stipulated targets were achieved, and therefore the contract stood revived. However, the respondent did not plead any specific communication evidencing that the petitioner had, in fact, exercised its discretion to revive the contract. Significantly, no reliance was placed on the draft Supplementary Agreement to infer revival, yet the Sole Arbitrator proceeded to base the impugned Award on that very document.
26. The petitioner, in its reply to statement of claim in the arbitral proceedings, has duly responded to the above stated paragraphs 17 and 20 of the statement of claim, as under: -

*“17. The contents of the para are admitted to the extent that the completion period of work as per the letter of award and the contract was 18 months which was to be reckoned from 26.04.2005 i.e, the date of issue of letter of award and its acceptance by the claimant. It is denied that there was any delay on the part of respondent with regard to availability of drawings, labor license, delay in payment of executed work or any other laches and or breaches on the part of the respondent. It is also denied that the contract was terminated*



*unlawfully. The fact of the matter is that there was exceptionally slow progress of work for which claimant himself was responsible. As is clearly evident from the letters/ documents annexed herewith, the total volume of work executed by the claimant during these 17 months i.e, from 26.04.2005 to 26.09.2006 was only about 18% and the claimant failed on every front in proper execution of the work. Admittedly, there were lack of resources, lack of funds and lack of sincerity in performance of work which ultimately led to his termination of contract. Thereafter, the claimant made fervent requests and representations for being given another chance to make up his shortcomings and after due consideration, the respondent allowed him to have a trial run for 3 fortnights beginning from 12.03.2007. This conditional trial run was subject to certain conditions and assurances on behalf of claimant which the claimant had to undertake in terms of the draft supplementary Agreement which was settled by both the parties. The claimant, after being allowed to go for a trial run, even here he was not serious in starting the work immediately on being given such permission. First he, avoided to accept the letter of communication allowing him to work for this trial period of 45 days and after accepting such communication from the respondent, he further sought time for mobilization of resources at site. Even during execution of work during this trial period, he was continuously reminded of the time frame and the proper execution of work. On completion of this trial period, the claimant withdrew himself from the site and never came forward to perform the balance leftover work of the project. Despite, repeated reminders, the claimant failed to come*



*forward to sign the Supplementary Agreement. In such circumstances, the respondent had no other choice but to get the balance work executed at the risk and cost of the claimant as provided in the contract.*

*Whatever work was executed by the claimant during this trial he was paid for the same and there was no delay whatsoever in clearing his bill for the said period. It is denied that the respondent did not allow the claimant to continue the work. It is also vehemently denied that the respondent wanted to get the work of the said project executed by other agencies for vested reasons. The balance work of the project had to be re-tendered because of utter failure on the part of claimant and in this process, considerable time was lost and which in turn has delayed the over all completion of project. It is the claimant who is primarily responsible for delay in execution of work and the work has been re-tendered at the risk and cost of the claimant as per the terms of the contract. The tools and tackles of the claimant could not be used by other contractors as most of the items had been removed from the site by the claimant.*

*...*

*20. It is denied that the termination of contract in terms of the letter dated 28.09.2006 became in-fructuous as the contract was revived by respondent's letter dated 20.02.2007. It is abundantly clear from the letters on record that the revival of contract could have taken place if the contractor/ claimant had signed the Supplementary Agreement and had come forward for execution of balance work. Since the claimant never came forward to sign the Supplementary*



*Agreement and rather abandoned the work after the trial period of 3 fortnights, the contract could not be revived and as a result, the balance work was awarded to other contractors at the risk and cost of the claimant. It is denied that there was any requirement of invoking of clause 50 or any other clause after the contractor/ claimant failed to sign the Supplementary Agreement and abandoned the work.”*

27. On perusal, the petitioner was clear that revival was contemplated only upon execution of a concluded Supplementary Agreement, as the draft never matured, essential blanks remained and the respondent, after the trial period, neither executed the Supplementary Agreement nor mobilized for the balance work.
28. In addition, as specifically pleaded in paragraph 3 of its reply to the statement of claim, the petitioner demonstrated that there was an utter failure on the part of the respondent to perform in terms of the contract, as despite time being the essence and the stipulated period for completion being 26.04.2005 to 25.10.2006, only about 18% of the work was executed. The petitioner repeatedly issued warnings, granted several revised timeframes and even offered a conditional revival by way of a 45-day trial run subject to execution of a Supplementary Agreement, yet the respondent failed on each occasion to mobilize and perform.
29. Consequently, the contract was lawfully terminated on 28.09.2006 and the balance work had to be executed at the risk and cost of the respondent, strictly in accordance with the contractual provisions. The petitioner also placed on record extensive correspondence evidencing the callous and casual approach of the respondent, which directly resulted in failure to meet monthly targets and achieve completion. It is further stated that given that



the petitioner itself was bound by a back-to-back contract with the Director General, Married Accommodation Project, any delay or loss on account of the defaults of the respondent was necessarily to be passed on to the respondent. Accordingly, the petitioner maintained that there was no breach on its part and on the contrary, the respondent is liable to compensate the petitioner for the additional financial implications arising from its own persistent non-performance.

30. On these rival pleadings, the Sole Arbitrator held as under: -

*“b) On the request of the claimant vide letter dated 25.01.2007 and again dated 31.01.2007, the contract was revived by the Respondents vide letter dated 20/02/2007 (Page 125, document C1) permitting the contractor to work on trial basis for a period of three fortnights laying down financial targets and 12 other conditions during the trial run. In this connection, contents under para 10 and 11 of the contract revival letter dated 20/02/2007 are relevant which are reproduced below: - ... Bare reading of above two paragraphs reveals that if the claimant contractor achieves the financial targets of work worth Rs. 50.19 lakhs during the trial period of three fortnights, then the respondent at its discretion may revive the contract. It is not disputed that the Claimant contractor in fact achieved the given target in the trial period of three fortnights and executed work worth Rs. 55,65,230.00 (page 43 of document R 2). The draft supplementary agreement reviving the original contract duly signed by authorised persons of both the parties dated 11/07/2007 also forms part of the pleadings of both the respondents as well as claimants (Pages 398-401 of R1 and pages 186-189 of C1). It is noted that this draft supplementary agreement*





running into 4 pages is signed on each page by both the parties though operating dates and other columns are left blank to be filled at the time of signing of formal agreement. The signatory on behalf of the respondent is the same officer who signed the original agreement and is also named as the authorized signatory in the draft supplementary agreement. The intention of the parties can be gleaned from paras 3, 4, 5 & 6 of this supplementary agreement which are reproduced below.

...

c) It can be seen from above that this agreement was conceived after careful consideration of all aspects of the work by both the parties. To be noted in particular is acknowledgement by the respondent that the contractor having satisfactorily completed the targeted value of work during trial period was considered competent to be in a position to complete the balance work. At page 2 of the supplementary agreement, it is further stated that the terms and conditions, scope of work, technical Specifications, special conditions of contract etc. as laid down in the original contract shall remain applicable for this supplementary agreement also in addition to these new clauses now introduced in the supplementary agreement etc. Among other things this draft agreement provided for a 10 and a half months period for completion of work apart from modifying the milestones. Thus, the intentions of the parties were to carry on with the work as usual with revised time schedule and thus the order of rescission dated 28/09/2006 stood withdrawn after this supplementary agreement was signed by authorized representatives of both the parties. Since no formal agreement was signed, specific dates for performance of



balance work were not laid down. The time was therefore set at large as no revised target date of completion was fixed.

...

h) Thus, considering all the facts elaborated above, I hold that the respondents were in breach, the respondents were responsible for repudiation of the contract and thus execution of balance work at risk and cost of the claimant is bad in law.”

*(emphasis applied)*

31. A perusal of the impugned Award shows that the Sole Arbitrator has placed reliance on the terms of the draft Supplementary Agreement and has proceeded on the assumption that the original Agreement was in existence and binding upon the parties upon the execution of the draft Supplementary Agreement. The Sole Arbitrator has drawn conclusions on the intention of the parties from paragraphs 3, 4, 5 and 6 of the draft Supplementary Agreement and has held that, in view thereof, (i) the Order of rescission dated 28.09.2006 stood withdrawn, (ii) the parties were intending to carry out the work with revised time schedules and (iii) “time was set at large” with no further revised target date of completion fixed. These findings have formed the very basis for awarding the claims in favour of the respondent.
32. However, this line of reasoning suffers from multiple legal infirmities. A perusal of paragraphs 17 and 20 of the statement of claim, reproduced above, makes it abundantly clear that the respondent never set up a case premised on the execution or binding force of the Supplementary Agreement. The only case pleaded was that the petitioner did not allow the respondent to continue the work after issuance of the letter dated 20.02.2007. In the entire statement of claim, there is not even a reference to



the execution of the Supplementary Agreement or to any alteration of rights and obligations of the parties arising therefrom. It was never the case of the respondent that by reason of such an agreement the timelines fixed in the original contract stood extinguished, or that the parties had agreed afresh to be governed by the terms and conditions of the draft Supplementary Agreement.

33. The Sole Arbitrator, therefore, travelled wholly beyond the pleadings by treating the draft Supplementary Agreement as if it were the foundation of the claim and by proceeding to determine issues which were never pleaded or put in contest. The impugned Award thus rests on a completely new set of facts introduced *suo motu* by the Sole Arbitrator, denying the petitioner any opportunity to meet the same. This approach is *ex facie* violative of the principles of natural justice and runs contrary to the basic notions of fair play.
34. Pleadings form the foundation of the claims and counterclaims which the Arbitrator is required to adjudicate. The issues or points for determination are to be framed on the basis of the pleadings of the parties, and the Arbitrator has to decide the matter within that framework. Pronouncing an Award or adjudicating claims de hors the pleadings of the parties would be contrary to law and principles of natural justice. In doing so, the Arbitrator would base the award on facts or principles of law that were never placed before him in the first instance. An Arbitral Award that travels beyond the pleadings and decides on matters never in issue suffers from patent illegality apparent on the face of the record, warranting interference under Section 34 of the Act.



35. Secondly, the reasoning adopted by the Sole Arbitrator is flawed on the merits of the documents themselves. Where parties expressly agree that revival shall be at the sole discretion of the petitioner and condition such revival upon further formalization through a Supplementary Agreement with operative dates, bar chart and milestones, mere achievement of trial targets cannot, by itself, effect revival. The draft relied upon was *ex facie* incomplete, with blanks regarding commencement date and milestone triggers elements that go to the heart of a time-bound construction contract. The presence of signatures on every page of a draft, in the face of acknowledged blanks and the mutual understanding that a formal agreement would follow, does not convert such a draft into a concluded contract as there was no *consensus ad idem* on essential terms.
36. Thirdly, the finding that “*time was set at large*” is wholly unsustainable. The doctrine is invoked where parties abandon fixed timelines altogether. Here, the very premise of the draft Supplementary Agreement was to re-fix a defined completion period of 10½ months with milestones. The blanks left in the draft were not incidental but essential and were intended to be filled upon formalization. To treat the absence of dates as a basis to declare “*time is set at large*” is to invert the bargain of the parties in the contractual framework.
37. There is no contemporaneous communication evidencing withdrawal of termination. The letter dated 20.02.2007 merely contemplated a discretionary trial run, revival being subject to execution of a concluded Supplementary Agreement. By imputing revival without such pleading or proof and by deeming an incomplete draft as concluded while dispensing with operative conditions, the Sole Arbitrator effectively rewrote the



contract, an exercise impermissible in law, since an Arbitrator himself, being a creature of the contract, cannot alter its terms. Reliance is placed on ***Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum, (2022) 4 SCC 463*** more particularly on paragraph 43, which reads as under:

*“43. An Arbitral Tribunal, being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.”*

38. Consequently, once the premise of revival collapses as the Draft Supplementary Agreement was never pleaded before the Sole Arbitrator, all further findings of the Sole Arbitrator, namely, breach by the petitioner, repudiation, invalidity of risk-and-cost action, cannot stand. The petitioner was entitled to proceed under the termination already in force. The inability of the respondent to point to a concluded revival instrument is fatal to its claim. Moreover, the monetary awards (refund of security deposit, refund of performance guarantee, loss of profit, value of tools and plants, and interest components) are all premised on the supposed revival and, hence, lack independent footing. The rejection of counter-claims is also vitiated, being founded on the same erroneous premise.
39. Hence, the impugned Award is vitiated on multiple counts: (i) travelling beyond the pleadings, (ii) reliance on a non-existent contract, (iii) misreading of the letter dated 20.02.2007, and (iv) consequential grant of monetary reliefs without any legal foundation. The impugned Award, thus, suffers from perversity and patent illegality. The findings in the impugned Award that (i) the termination dated 28.09.2006 stood withdrawn, (ii) the



Contract stood revived, (iii) the petitioner repudiated the revived Contract, and (iv) the risk-and-cost action was unlawful, are unsustainable. These conclusions rest on a premise neither pleaded nor proved and amount to a rewriting of the contractual framework agreed between the parties.

40. As a necessary corollary, the monetary awards under Claims 2, 3, 4, 6, 11, 12, and costs under Claim 13 lack an independent foundation and are equally liable to be set aside.
41. For these reasons, the impugned Arbitral Award dated 15.01.2015 passed by the Sole Arbitrator in the matter between “*M/s. Magnum Builders and Developers and Chawla Construction (JV) vs. Ircon International Ltd.*”, is hereby set aside.
42. The amounts, if any, deposited pursuant to interim orders be released to the petitioner upon expiry of 8 weeks from the date of uploading of this judgment.
43. The petition is disposed of in the aforesaid terms.

**JASMEET SINGH, J**

**AUGUST 14, 2025 / (MS)**  
*(Corrected and released on 23.08.2025)*