



2025:DHC:3320



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

Date of decision: 22nd APRIL, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 164/2023 & I.A. 8300/2023, I.A. 8302/2023**

M/S VISHNURUPA DEVELOPERS PVT. LTD.Petitioner

Through: Mr. Manik Dogra, Senior Advocate
with Mr. Arjun Jain, Ms. Anushree
Narain, Mr. Ankit Kumar and Mr.
Dhruv Pande, Advocates.

versus

M/S S AND S TECHNOCRATS PVT. LTD & ANRRespondents

Through: Mr. Manish Vashisht, Sr. Advocate
with Mr. Abhinav Sharma and Ms.
Avsi Malik, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court under Section 34 of the Arbitration and Conciliation Act, 1996 (“**the Act**”) challenging the Award dated 29.11.2022 passed by the Arbitral Tribunal consisting of a Sole Arbitrator (“**Impugned Award**”).
2. The Petitioner is a private limited company incorporated under the Companies Act, 1956, having its corporate office at 517A, 5th Floor, Narain Manzil, 23, Barakhamba Road, Connaught Place, New Delhi – 110001, engaged in the business of developing residential and commercial projects in India.



3. The Respondent No. 1 is a private limited company incorporated under the Companies Act, 1956, having its registered office and factory at A-100, Shivalik, New Delhi – 110017, engaged in works pertaining to construction.

4. The Respondent No. 2 is a Joint Venture (JV) formed between the Respondent No. 1 and one M/s Acumen Contractors Private Limited having its office at House No. 1014, Sector 4, Gurugram – 122001, formed for the purpose of carrying out the works awarded by the Petitioner.

5. Shorn of unnecessary details, brief facts giving rise to the present Petition are stated as under:

- (i) It is stated that the Petitioner was engaged in developing a project at Amritsar, namely, Dream City Next ('DC Nxt'). A Contract dated 03.04.2018 for "*External Development Works – Road Work, Sewage, Water Supply & Storm Drainage work, etc.,*" was entered into between the Petitioner and Respondents for the Work Order bearing no. VDP;/DC-NXT/01/2017-18/30.
- (ii) The time for completion of works stipulated under the Contract was 18 months, i.e., by 30.11.2019 and the contract price was agreed at Rs. 17,77,00,000/- (Rupees Seventeen Crores Seventy-Seven Lakhs only).
- (iii) On 01.10.2019, the Petitioner issued a Show Cause Notice to the Respondents which stated that the Respondents had only been able to achieve a billing of approximately Rs. 2.45 crores in 16 months out of the total Contract Price, achieving a completion of only 14.6% of the agreed upon scope of works.



- (iv) The Petitioner had granted two Extension of Time (EoTs) to the Respondents till 31.03.2020 and thereafter till 12.06.2020. It is stated that *vide* email dated 20.11.2019, the Respondents had *inter alia* committed to complete the works by 31.03.2020 and undertaken as follows:

“...if we fail to agree to any of our commitment stated above VDPL is authorized to take any suitable action/decision in the interest of the project to which we shall have no objection.”

- (v) Another Show Cause Notice dated 05.02.2020 was sent by the Petitioner to the Respondents. In response, the Respondents acknowledged the delay being caused by them and stood firm on ensuring the works being completed by 31.03.2020. However, on account of the nation-wide lockdown in view of the COVID-19 pandemic, the works were halted in March 2020.
- (vi) When certain relaxations in the COVID-19 restrictions were granted, the parties *vide* an agreement dated 12.06.2020 consented to extend the date of completion of Contract till 15.09.2020. Pertinently, the parties had agreed that no Liquidated Damages would be claimed till 15.09.2020.
- (vii) *Vide* email dated 20.07.2020, the Petitioner informed the Respondent about removing certain works from the scope awarded to the Respondents and that the Petitioner would recover the cost of Rs. 5,21,000/- from the Respondents on



account of the over-head costs of handing over de-scoped work to the new contractor;

(viii) On 24.08.2020, the Respondents were intimated by its bankers about the bank having received a request from the Petitioner to encash the BGs that were submitted by the Respondents, on the ground of non-performance of work under the Contract;

(ix) *Vide* letter dated 01.09.2020, the Petitioner terminated the Contract with the Respondents.

6. Aggrieved by the termination of contract by the Petitioner and praying for an order to restrain the Petitioner from invoking and encashing the BGs, the Respondents invoked arbitration under Clause 35 of the Contract. Petition under Section 9 of the Act bearing OMP (I) (COMM.) 248/2023 was filed by the Respondents. Subsequently, *vide* order dated 15.09.2020 passed by this Court, Justice G.P. Mittal, former Judge of this Court, was appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties.

7. When the arbitral proceedings were at a preliminary stage, the parties had agreed to carry out a joint measurement of the works at the site in the presence of a Civil Engineer. Accordingly, the learned Sole Arbitrator *vide* an order dated 09.10.2020 had appointed Mr. Narinder Salwan, Retd. AE, PWD (B&R) as the Local Commissioner (“LC”) to measure the extent of works carried out by the Respondents. Subsequently, a mutually agreed upon statement of joint measurement dated 22.02.2021 was placed on record by the LC before the learned Sole Arbitrator.



8. In view of the submissions put forth by the parties, the learned Sole Arbitrator framed the following issues for determination *vide* an Order dated 22.03.2021:

“i) Whether the termination of the Contract by the Respondent is illegal? OPC

ii) Whether the Respondent delayed in providing necessary approvals related to providing site, releasing mobilization advances, issuance of structural drawings, providing high tension cables, and release of payments; and made unjustified deductions? OPC

iii) Whether Covid-19 pandemic impacted the Claimant's performance? If so, it's effect? OPC

iv) Whether the Claimant is entitled to claim of Rs. 1,47,26,067/- against the final bills? OPC

v) Whether the Claimant is entitled to Rs. 12,27,446/- towards withheld amount, retention money and Liquidated Damages? OPC

vi) Whether the Claimant is entitled to Rs. 33,42,934/- for the material purchased? OPC

vii) Whether the Claimant is entitled to Rs. 10,58,471/- for the preliminary work? OPC

viii) Whether the Claimant is entitled to Rs. 24,70,000/- for the remuneration paid to the staff due to prolongation of work? OPC



ix) Whether the Claimant is entitled to Rs. 1,22,83,200/- towards utilization of Machinery and Equipment deployed at the site due to prolongation of work? OPC

x) Whether the Respondent is wrongfully withholding 6 Bank Guarantees? OPC

xi) Whether the Claimant is entitled to recovery Rs. 1,07,34,815/- towards the loss of profits? OPC

xii) Whether the Claimant is entitled to Rs. 7,57,950/- on account of change of design of plots? OPC

xiii) Whether the Claimant is entitled to Rs. 10,88,086/- towards Price Escalation? OPC

xiv) Whether the Respondent is entitled to Rs. 1,35,55,252/- for extra costs incurred in completion of the work left unexecuted by the Claimant? OPR

xv) Whether the Respondent is entitled to Rs. 1,18,49,577/- for recovery against the final bill? OPR

xvi) Whether the Respondent is entitled to Rs. 11,85,000/- for GST input credit on mobilization advance and interest thereon? OPR

xvii) Whether the Respondent is entitled to Rs. 25,12,000/- as interest on unrecovered mobilization advance? OPR

xviii) Whether the Respondent is entitled to Rs. 20,64,993/- as interest on unrecovered mobilization advance? OPR



xix) Whether the Respondent is entitled to Rs. 90,48,629/- for wages and salaries of the staff on account of prolongation? OPR

xx) Whether the Respondent is entitled to Rs. 14,97,888/- for hiring the security agency? OPR

xxi) Whether the Respondent is entitled to Rs. 4,72,178/- for payment of electricity bills for prolongation? OPR

xxii) Whether the Respondent is entitled to Rs. 2,01,808/- for the payment of car policy during the prolonged period? OPR

xxiii) Whether the Respondent is entitled to Rs. 2,01,808/- for the payment of car policy during the prolonged period? OPR

xxiv) Whether the Claimant or the Respondent is entitled to any costs of arbitration. If so, to what amount?

xxv) Interest.

xxvi) Relief.”

9. During the course of the arbitral proceedings and in order to reconcile the amounts payable under the final bill, the parties had requested the learned Sole Arbitrator to appoint an expert. Accordingly, Mr. A.C. Varshney, Former Executive Engineer (Selection Grade) CPWD was appointed *vide* order dated 08.03.2022, who had submitted a report dated 14.05.2022. In the said report dated 14.05.2022, the Expert had found Rs. 74,87,054.82/- to be payable by the Petitioner to the Respondents. However, the same was objected to by the Petitioner.



10. A summary of the issue-wise findings of the learned Sole Arbitrator in the Impugned Award are as follows:-

10.1. **Issue (i):**

- (i) The learned Sole Arbitrator was of the opinion that since the parties had mutually agreed to extend the completion period of the contract on 12.06.2020, the only aspect that was required to be adjudged was whether or not the Petitioner was justified in terminating the Contract prematurely on 01.09.2020, given the lapses of the Respondents after the said extension of time.
- (ii) The learned Sole Arbitrator observed that the Petitioner was successful in proving its contention of severe delays on part of the Respondents and the Respondents in turn had failed to refute the same.
- (iii) Notwithstanding the aforesaid, the learned Sole Arbitrator found that the Petitioner had failed to adhere with the requirement of a 15-days' notice for a valid termination as per Clause 47.2 of the Contract and as such, the termination notice dated 01.09.2020 by the Petitioner was not a valid one.

10.2. **Issues (ii) & (iii):**

- (i) On the issue of whether there was a delay on part of the Petitioner in providing necessary approvals related to providing site, releasing mobilization advances, issuance of structural drawings, providing high tension cables, and release of payments, the learned Sole Arbitrator observed that delays were attributable to both the parties. However, the learned Sole Arbitrator also observed that the Respondents failed to



substantiate by way of evidence, the factum of them having raised any objection on account of the alleged delay of the Petitioner or that any such delay had impacted the execution of works under the contract.

- (ii) The Respondents were unable to prove that the delay in release of mobilization advance affected the execution of works so that the works could not be completed even as of 01.09.2020. Accordingly, both the issues were decided against the Respondents.

10.3. **Issues (iv) & (xv):**

- (i) With respect to the dispute *qua* extra items, the parties had already arrived at a consensus which had been recorded in the order dated 20.08.2022 passed by the Ld. Sole Arbitrator.
- (ii) With respect to the liability of the Petitioner to pay for an unnumbered extra item for a second topographical survey, the learned Sole Arbitrator observed that the Respondent had failed to prove that a second topographical survey was conducted by it or that it had demanded payment specifically from the Petitioner for such second topographical survey.
- (iii) An amount of Rs. 19,21,898.58/- would be deducted from the final bill, as per the adjustment of quantities as per the joint measurements.
- (iv) Insofar as the Petitioner's claim for part rates is concerned, the learned Sole Arbitrator placed reliance on the report dated 14.05.2022 of the Expert, wherein it as observed that the



Petitioner was not entitled any part rates for items that were partly executed by the Respondents.

- (v) The amount of Rs. 15,26,420/- paid by the Petitioner to the vendors of the Respondents ought to be deducted from the final bill. Accordingly, the learned Sole Arbitrator held that the Respondents would be entitled to a payment of Rs. 16,33,572.48/- towards the final bill.

10.4. **Issue (v):**

- (i) As it had been already observed that the Petitioner had illegally terminated the contract, the learned Sole Arbitrator observed that the Petitioner has unjustly withheld the retention money after the contract was illegally terminated. Accordingly, the learned Sole Arbitrator held that the Respondents would be entitled to be refunded Rs. 12,27,446/- by the Petitioner.

10.5. **Issue (x):**

- (i) Since it had already been held that delays till 12.06.2020 stood condoned in view of the agreement between the parties to extend the completion period till 15.09.2020, the learned Sole Arbitrator held that the Petitioner was not entitled to encash the BGs for any alleged deficient work prior to 12.06.2020 or even thereafter, till at least 15.09.2020.

10.6. **Issue (xvi) & (xvii):**

- (i) The instant two issues were settled *inter se* between the parties *vide* the joint conciliation statement dated 22.02.2022.

10.7. **Issue (vi) & (vii):**



- (i) The learned Sole Arbitrator held that the Respondents would not be entitled to any payment for preliminary work, as both parties were responsible for the delays in execution of works to some extent.
- (ii) The Respondents were also held as being not entitled to any payment for any material lying at the site, as some of it was sold with no hindrance from the Petitioner and it is unknown whether and how much of the material is still lying at the site.

10.8. **Issues (viii), (ix), (xiii), (xix), (xx) (xxi) & (xxiii):**

- (i) The learned Sole Arbitrator observed that since it was the Petitioner itself who had prematurely and illegally terminated the Contract, it cannot turn back around and claim monies from the Respondents for actions that have resulted as a consequence of its own actions. Therefore, neither party was held to be entitled to claim any amounts on account of prolongation and/or price escalation.
- (ii) Resultantly, issues (viii), (ix) and (xiii) were decided against the Respondents, while issues (xix), (xx), (xxi) and (xxiii) were decided against the Petitioner.

10.9. **Issue (xi):**

- (i) Insofar as the Respondent's claim of loss of profits is concerned, the learned Sole Arbitrator was of the view that the Respondent could not prove any such loss of profit.

10.10. **Issue (xii):**

- (i) It was held that the Respondent could not establish its case regarding compensation on account of change of design, nor



was the claim pressed during the course of oral arguments before the learned Sole Arbitrator. Therefore, the Respondents were not entitled to any amount on account of change of design and as such, Issue (xii) was decided against the Respondents.

10.11. Issue (xviii) & (xxii):

- (i) Since the learned Sole Arbitrator was of the view that both parties were responsible for delays, it was held that the Petitioner was not entitled to recover interest on the issued material or interest on the unrecovered amount from the customers.
- (ii) The learned Sole Arbitrator also observed that since the Petitioner had granted an extension to the Respondents on 12.06.2020 till 15.09.2020 without any LD, and then proceeded to prematurely terminate the contract with the Respondent, the extent of delay could not be ascertained.
- (iii) Accordingly, Issues (xviii) & (xxii) were decided against the Petitioner.

10.12. Issue (xiv):

- (i) The learned Sole Arbitrator took into account the tabular charts produced by the Petitioner to depict the costs incurred by it to engaged third-party agencies.
- (ii) It was observed that the works assigned to such third-party agencies included more than what was de-scoped or left unexecuted and no evidence was provided by the Petitioner to prove exactly how much of the Respondents' work had been handed over.



- (iii) Accordingly, the learned Sole Arbitrator decided Issue (xiv) against the Petitioner.

10.13. **Issue (xxiv):**

- (i) The learned Sole Arbitrator held that since the case before it involved peculiar facts and circumstances where both parties were responsible for delays caused in the Project, no party would be entitled to the costs of arbitration.

10.14. **Issue (xxv):**

- (i) It was observed by the learned Sole Arbitrator that the Petitioner ought to have made the payments to the Respondents towards the final bill in a timely manner and released the retained money upon termination of the contract.
- (ii) In the opinion of the learned Sole Arbitrator, the Petitioner had deprived the Respondents of its legitimate dues and therefore, the Respondents were entitled to pre-reference interest from 07.10.2020, *pendente lite* and future interest, all @ 10% per annum till the date of payment of the sum awarded.

10.15. Resultantly, by way of the Impugned Award, the learned Sole Arbitrator had granted the following reliefs:

- (i) a sum of Rs.16,33,572/- in favour of the Claimant as recovery against the final bill;
- (ii) a sum of Rs.12,27,446/- in favour of the Claimant towards money held by the Respondent as retention money;
- (iii) return of bank guarantees by the Respondent to the Claimant;



- (iv) Respondent's claim towards mobilization advance, mobilization advance (GST) and secured advance were adjusted in the final bill;
- (v) pre-reference interest from 07.10.2020, pendente lite and future interest @10% per annum till the date of actual payment of amount to the Claimant.

11. Since the learned Sole Arbitrator has held the Petitioner's termination of contract with the Respondents to be illegal and on that basis, has rejected the Petitioner's counter-claims, the Petitioner has now approached this Court praying for the Impugned Award to be set aside under Section 34 of the Act.

12. The overarching grievance against the impugned Award as stated by the Ld. Senior Counsel for the Petitioner is that learned Sole Arbitrator has held the Termination Notice dated 01.09.2020 as illegal, relying erroneously upon Clause 47 of the GCC which required a 15 days' notice for termination without assigning any reasons, instead of Clause 31 of the Contract, which required a 7 days' notice for termination of the Contract for specific reasons under sub-clause (c) of Clause 31.

13. The Petitioner is further aggrieved with the consequential denial of its counter-claims, as they were denied solely as the Termination Notice dated 01.09.2020 was held to be illegal.

14. *Per contra*, learned Senior Counsel for the Respondents has *inter alia* submitted as under:

- (i) Finding of the learned Sole Arbitrator *qua* the issue of illegal termination of the contract has no bearing or relation to the finding/resolution *qua* the amount payable to the Claimant/Respondent under the final bill;



- (ii) The learned Sole Arbitrator has rightly held that by way of extension of time, the parties had agreed to not levy any penalty/liquidated damages till 15.09.2020 and therefore the Petitioner was not entitled to encash Bank Guarantees for any alleged deficient work till such date;
- (iii) The Petitioner never argued before the learned Sole Arbitrator that it had terminated the contract under Clause 31 of the Contract and instead had relied upon Clause 47.2 of the GCC itself.

15. The short point raised for consideration before this Court is whether the conclusion of the learned Sole Arbitrator in holding the Termination Notice dated 01.09.2020 as illegal in the Impugned Award and forming it the basis of rejecting the counter-claims of the Petitioner deserves to be set aside or not.

16. It is trite law that the court cannot interfere with the award and substitute its view with the award and interpretation accepted by the arbitrator, the reason being that the Court does not sit in appeal over the findings and decision of the arbitrator while deciding an application under Section 34 of the Act. The Arbitral Tribunal is legitimately entitled to take a view after considering the material before him/her and interpret the contract between the parties. The judgment of the Arbitral Tribunal should be accepted as final and binding. Reference in this regard is apposite to the recent pronouncement of the Supreme Court in Hindustan Construction Co. Ltd. v. National Highways Authority of India, (2024) 2 SCC 613, wherein it has been held as under:-



“26. The prevailing view about the standard of scrutiny — not judicial review, of an award, by persons of the disputants' choice being that of their decisions to stand — and not interfered with, (save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, perverse, as to qualify for interference, courts have to necessarily choose the path of least interference, except when absolutely necessary). By training, inclination and experience, Judges tend to adopt a corrective lens; usually, commended for appellate review. However, that lens is unavailable when exercising jurisdiction under Section 34 of the Act. Courts cannot, through process of primary contract interpretation, thus, create pathways to the kind of review which is forbidden under Section 34. So viewed, the Division Bench's approach, of appellate review, twice removed, so to say (under Section 37), and conclusions drawn by it, resulted in displacing the majority view of the tribunal, and in many cases, the unanimous view, of other tribunals, and substitution of another view. As long as the view adopted by the majority was plausible — and this Court finds no reason to hold otherwise (because concededly the work was completed and the finished embankment was made of composite, compacted matter, comprising both soil and fly ash), such a substitution was impermissible.

27. For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly. The proposition was placed in State of U.P. v. Allied Constructions [State of U.P. v. Allied Constructions, (2003) 7 SCC 396] : (SCC p. 398, para 4)

“4. ... It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the



*fact-situation obtaining therein. It is submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for the arbitrator to determine (see *Sudarsan Trading Co. v. State of Kerala* [*Sudarsan Trading Co. v. State of Kerala*, (1989) 2 SCC 38]). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law.”*

28. *This enunciation has been endorsed in several cases (Ref. *McDermott International Inc. v. Burn Standard Co. Ltd.* [*McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181]). In *MSK Projects (I) (JV) Ltd. v. State of Rajasthan* [*MSK Projects (I) (JV) Ltd. v. State of Rajasthan*, (2011) 10 SCC 573 : (2012) 3 SCC (Civ) 818] it was held that an error in interpretation of a contract by an arbitrator is “an error within his jurisdiction”. The position was spelt out even more clearly in *Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , where the Court said that : (*Associate Builders case* [*Associate Builders v. DDA*,*



(2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42)

“42. ... 42.3. ... if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do.”

17. The Apex Court in Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479, it has been held as under:-

“26. In MMTC [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , this Court took note of various decisions including that in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] and expounded on the limited scope of interference under Section 34 and further narrower scope of appeal under Section 37 of the 1996 Act, particularly when dealing with the concurrent findings (of the arbitrator and then of the Court). This Court, inter alia, held as under : (MMTC case [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , SCC pp. 166-67, paras 11-14)

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of



the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] ; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445] ; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181])

13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of



Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

18. The factual matrix of the present case reveals that the last extension of the completion period of the contract was by way of a mutual agreement between the Petitioner and Respondents on 12.06.2020, till 15.09.2020. Merely 14 days before this period would have expired, the Petitioner sent the Termination Notice dated 01.09.2020.



19. The crux of the arguments which have been advanced from both the sides is on the issue of the validity of termination. The relevant clauses which are necessary for appreciating the issue at hand in the present Petition are Clause 31 of the Contract Agreement and Clause 47 of the General Conditions of the Contract and the same reads as under:

"31.0 DEFAULT OF CONTRACTOR:

If the contractor being an individual or a firm commits any "act of insolvency", or shall be adjudged an insolvent or being an Incorporated Company shall have an order for compulsory winding up made against it as pass an effective resolution for winding up voluntarily or subject to the supervision of the Court and the official Assignee or the Liquidator in such acts of insolvency or winding up, as the case may be, shall be unable within seven days after notice to him requiring him to do so, to show to the reasonable satisfaction of the Project Manager that he is able to carry out and full fill the contract and to give security therefore, if so required by the Project Manager.

Or if the Contractor (when an individual firm or incorporated Company) shall suffer execution or other process of Court attaching property to be issued against the Contractor.

Or shall suffer any payment under this Contract (to be attached by or on behalf of any of the creditors of the contractor).

Or shall assign or sublet this Contract without the consent in writing of the Owner.

Or shall charge or in cumber this Contract or any payments due or which may become due to the Contractor hereunder.



Or if the Project Manager shall certify in willing to the Owner that the Contractor

(a) Has abandoned the Contract, or

(b) Has failed to commence the works, or has without any lawful excuse under these conditions suspended the progress of the works for fourteen days after receiving from the Project Manager notice to proceed with the work,

Or

Has failed to processed with the works with such due diligence and failed to make such due progress as would enable the works to be completed within the time/agreed upon, or

(d) Has failed to remove materials from the site or to pull down and replace work for seven days after receiving from the Project Manager written notice that the said materials or works were condemned and rejected by the Project Manager under these conditions, or

(e) Has neglected or failed persistently to observe and perform all or any of the acts, matters or things by Sis contract to be observed and performed by the Contractor for seven days after written notice shall have been given to the Contractor requiring the contractor to observe or perform the same.

Has gone on strike at site due to non-performance of sub-contractor or labour or any other reason

Then and in any of the said cases the Owner may, notwithstanding any previous waiver, after giving seven days notice in writing to the Contractor, determine the Contract, but without thereby affecting the powers of



the Project Manager or the obligations and liabilities of the Contractor, the whole of which shall continue in force as fully as if the Contract had not been so determined, and as if the works subsequently executed had been executed by or on behalf of the contractor. And further, the owner by his agents or servants may enter upon and take possession of the works and all plants, tools, scaffolding, sheds, machinery, steam and other power utensils and materials lying upon the premises or the adjoining lands or roads and use the same as his own property or may employ the same by means of his own servants and workmen in carrying on and completing the works or by employing any other contracts shall not in any way interrupt or do any act, matter of things to prevent or hinder such other contractor or other person or persons employed for completing and finishing or using the materials and plant for the works, when the works shall be completed or as soon, thereafter, as convenient the Project Manager shall give a notice in writing to the contractor to remove this surplus materials and plant and should the contractor fail to do so within a period of fourteen days after receipt thereof by him, the owner may sell the same by public auction, and give credit to the contractor for the net amount realized. The FNMC/ Architect shall thereafter, ascertain and certify in writing under his hand what (if anything) shall be due or payable to or by the Owner, for the value of the said plant and materials not taken possession of by the Owner and the expense or loss which the Owner shall have been put to in procuring the works to be completed and the amount if any, owing to the contractor and the amount which shall be so certified shall thereupon be paid by the Owner to the contractor or by the contractor to the center, as the case may be, and the certificate of the Project Manager Architect shall be final and conclusive between the parties."



"47.0 Termination of Contract by Owner:

47.1 Notice to Correct:

If the Contractor fails to carry out any obligation under the Contract, the Owner may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

47.2 Termination by Owner:

Termination for convenience:

Owner may by prior written notice of 15 (Fifteen) days sent to Contractor, can terminate the Contract, in whole or part, at any time without assigning any reason (whatsoever) for its convenience. However, the payment shall be released to the extent to which performance of work executed as determined by Owner till the date upon which such termination becomes effective.

The Owner shall be entitled to terminate the Contract: In any of below events or circumstances, the Owner may, upon giving 15 (Fifteen) days notice to the Contractor, terminate the Contract and expel the Contractor from the Site if the Contractor.

- Abandons the Works or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract,*

- Without reasonable excuse fails:*

- i) To proceed with the works in accordance with the date of commencement schedule of completion as said in General conditions of Contracts.*



ii) *To comply with a notice issued under Sub-Clause "Notice to Correct within 15 days after receiving il*

- *Sub Contracts the whole of the Works or assigns the Contract without the required approvals,*
- *becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against the Contractor, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or*
- *gives or offers to give (Directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward*
 - i. *for doing or forbearing to do any action in relation to the Contract, or*
 - ii. *for showing or forbearing to show favour or disfavour to any person in relation to the Contract or*
 - iii. *If any of the Contractor's Personnel, Agents or Sub-Contractors given or offers to give (directly or Indirectly) to any person any such inducement or reward as is described in Sub-paragraph above.*
 - iv. *However, lawlul Inducements and rewards to Contractor's Personnel shall not entitle termination.*



- *The Owner's election to terminate the Contract shall not prejudice any other rights of the Owner, under the Contract or otherwise.*
- *The Contractor shall then leave the Site and deliver any required Goods, all Contractors Documents, and other design documents made by or behalf of the Contractor, to the Project manager/Owner. However, the Contractor shall use Its best efforts to comply immediately with any reasonable instruction included in the notice (i) for the assignment of any Sub Contract, and (ii) for the protection of life or property or for the safety of the works.*
- *After termination, the Owner may complete the works and/or arrange for any other entities to do so. The Owner and these entities may then use any Goods. Contractor's Documents and other design documents made by or on behalf of the Contractor.*
- *The Owner shall then give notice that the Contractor's Equipment and Works will be released to the Contractor at or near the Site, The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Owner in order to recover this payment, the dues shall be recovered out of the proceeds from the sale of the above Equipments/Temporary works. Any balance of the proceeds shall then be paid to the Contractor. "*

20. The manner in which the Contract has to be interpreted and the priority of the various documents which are relevant have been laid down in Clause 16 of the Contract Agreement and the same reads as under:

"16.0 *Sequence & Priority of Documents:*



The document forming part of the Contract shall be interpreted in the following order of priority, however, the contract shall be construed as a whole containing all of the below mentioned documents which are integral part of the contract.

- a. Contract Agreement.*
- b. Letter of Award/Work Order*
- c. Bill of Qualities*
- d. Special Conditions of Contract*
- e. GFC Drawings*
- f. Technical Specifications*
- g. General Conditions of Contract"*

21. Clause 16 of the Contract Agreement gives the order of priority in which the documents are to be interpreted, in the instance where they are in conflict. The Contract Agreement as well as the GCC both have a termination clause. Both the clauses have certain condition precedent before the contract can be terminated. The Contract has been terminated by the Petitioner on 01.09.2020. The said Termination Letter dated 01.09.2020 is being extracted in entirety and the same reads as under:

"Reference:

1. Letter of Award bearing reference no. VDPL/DC-NXT/01/2017-18/30 dated 3rd April 2019.

2. Show Cause Notice dated 1st October 2019.

3. Show Cause Notice dated 31st January 2020.

4. Letter dated 5^a February 2020 issued by M/S ACPL-SSIPL JV.

5. Various MOM's

6. Various emails and other communication exchanged.



SUB: NOTICE FOR TERMINATION OF LETTER OF AWARD BEARING NO. VDPL/DC-NXT/01/2017-18/30 DATED 3 APRIL 2018 AND ITS SUBSEQUENT AMENDMENTS DATED 15 JUNE 2018 (AMENDMENT No.1), VDPL/DC-NXT/01/2017-18/30/A 2 DATED 24th May 2019 (AMENDMENT No.2) & VDPL/DC NXT/01/2017-18/30/A3 DATED 19 AUGUST 2019 (AMENDMENT No.3) (HEREINAFTER REFERRED AS THE "WORK ORDER").

Dear Sir/Madam,

This is with respect to the captioned Work Order which was awarded to you for completion of external developments works-road work, sewage, water supply, storm drainage, electrical work etc. for our project namely DC NXT, situated at Amritsar, Punjab (hereinafter referred as the "Project"). The Work Order was awarded for an estimated amount of Rs.17,70,00,000/-(Seventeen Crores Seventy Thousand Only).

Kindly note that in terms of the Work Order, you were supposed to complete the entire scope of work as stipulated in the Work Order within 18 months from the date of commencement of work i.e. 1 June 2018 which comes out to be 30.11.2019. In terms of the Work Order it was specifically agreed that time was essence of the Work Order but despite the same, you have miserably failed to complete the work within stipulated timeline.

We have given you various opportunities to complete the work within the stipulated time as mentioned in the Work Order, but you have failed to adhere to the terms and conditions of the Work Order. We have also issued one show cause notice dated 1st October, 2019 wherein



we have cited various reasons attributable on your part which has caused delay in the completion of work. We have also categorically mentioned that if you feel to address to the grievances that we have raised the show cause notice within 3 days, we shall also reduce the scope of work. And accordingly, because you have failed to resolve our grievances, partial scope of work was de-scoped and for balance work you had submitted revised schedule targets as an another opportunity to complete the work but unfortunately, you once again failed to adhere to the revised targets. It is important to note that after seeing your performance and your failure to address to our grievances, we have appointed other vendors to complete the remaining work, as de-scoped, at your risk and cost

Due to your inability to complete the work within the stipulated time, you vide letter elated 20 November 2019, had requested us to give extension of time till 31 March 2020 and you have further agreed that no escalation on any ground shall be claimed. We acceded to your request and hand given you another opportunity to complete the work by 31 March, 2020.

Despite multiple discussions vide various minutes of meeting and your assurances and undertakings, you have not been able to overcome your shortage of manpower including labour and supervisory staff as well as shortage of material. You have miserably failed to consider that time schedule of completion of works within the agreed timeline which was essence of the Work Order. The works were awarded to you specifically upon your assurances that you would be able to achieve the targeted completion within the agreed time. However, all your assurances have turned out to be hollow and the contracted works are nowhere



near completion despite passage of 27 months approximately.

Owing to your constant failure to complete the work, we were constrained to issue another show cause notice dated 31st January, 2020 wherein we have raised our various concerns. Thereafter, your vide letter dated 5th February 2020, had duly acknowledged the delay on your part in completing the work, you also acknowledged that you shall submit the revised Bank Guarantees valid upto 30 April 2020 and further you also agreed that if you deviate from your commitments, we are at liberty to encash the Bank Guarantees. It was also agreed and undertaken by you that, by 5th February 2020, you shall be inducing at least a sum of Rs. 65 Lakhs which shall be over and above whatever you receive against running bills/advances.

To our utter shock and dismay, you failed to honour even a single word of what was stated in aforesaid letter dated 5th February 2020, so much so that you did not induce even a single penny in the project. You once again failed to fulfil your commitments as per the extended date i.e. 31st March 2020, your callous attitude has immensely affected our ability in delivering the project. Your actions have exposed us to huge liability of delay penalty towards the allottees of the prestigious Project.

As per our records, till date you have only completed an estimated value of Rs. 5.15 Crores which is about 30% of the awarded value and just 58% of the remaining works after de-scoping.

Despite our constant follow ups/show cause notices/reminders, you have miserably failed to do the following acts:



- a. Failed to complete the work within the stipulated timeline;
- b. Failed to deploy the adequate manpower and material on site;
- c. Delay in complying with statutory compliances likes GST, ESI, PF etc.
- d. Delay in renewing the Bank Guarantees.

Please note we shall not be responsible for any of your Vendor's payment, your staff's/employees salary or any other issue/claim instituted by your vendor/staff/employees/contractors against us. Further we shall also be not responsible for any governmental/department action instituted/will be instituted against us which has arisen/shall arise solely attributable because of lapse on your part in complying with the same.

*In view of the above, your persistent breaches have caused grave financial loss to us like payments of mobilization advance paid to other vendors which comes out to be Rs. 25,00,000/-, Liquidated damages to the tune of Rs. 63,00,000/-, delay caused in handing over the project Rs 4,50,00,000/-Lakhs, total amounting to Rs. 5,38,00,000/-(hereinafter collectively referred as "Loss"). **Without prejudice to above, we hereby invoke clause 31 of the Work Order** and provide you seven days' time period to pay the amount of Loss ie. Rs. 5,38,00,000/- and measure the cost of your work, failing which the cost of work done which we shall ascertain shall be final and binding upon you. Please note after the 7th day from the date of this Notice, the Work Order shall be deemed to be terminated and, further, we shall initiate appropriate*



civil and criminal proceedings against you at your own risk and cost

Please note we are sending this notice without prejudice to our rights and contentions. We reserve our rights to encash Bank Guarantees. We also reserve our right to claim any price escalation to be incurred by us in getting the balance works completed from another contractor, which shall solely be at your risk as to costs and consequences. We further reserve our right to claim damages to be suffered by us on account of your breach of contract including delay penalty payable to allottees."
(emphasis supplied)

22. A perusal of the Termination Letter dated 01.09.2020 shows that the Petitioner herein invoked Clause 31 of the Contract Agreement/Work Order, while the learned Sole Arbitrator has relied on Clause 47 of the GCC. A perusal of the impugned Award indicates that after holding that there has been delays on both sides, the learned Sole Arbitrator has relied only on Clause 47 of the GCC to hold the Petitioner's termination of the contract as illegal. Relevant portion of the Impugned Award reads as under:

"33. Be that as it may, it cannot be disputed that Clause 47.2 of the General Conditions of Contract required the Respondent to issue a 15 days' notice to the Claimant in order to terminate the Contract. Admittedly a 15 days' notice has not been given to the Claimant; and it is clear from the letter of termination dated 01.09.2020 that the Contract would be terminated 7 days thereafter. For reference, the relevant portion of the letter of termination dated 01.09.2020 is reproduced hereunder: -

"xxxx xxxx xxxx

In view of the above, your persistent breaches have caused grave financial loss to us like payments of mobilization



advance paid to other vendors which comes out to be Rs, 25, 00,000/-, Liquidated damages to the tune of Rs, 63,00,000/-, delay caused in handing over the project Rs 4,50,00,000/- lakhs, total amounting to Rs, 5,38,00,000/- (hereinafter collectively referred as "Loss"), Without prejudice to above, we hereby invoke clause 31 of the Work Order and provide you seven days' time period to pay the amount of Loss i.e. Rs. 5,38, 00,000 I- and measure the cost of your work, failing which the cost of work done which we shall ascertain shall be final and binding upon you. Please note after the 7th day from the date of this Notice, the Work Order shall be deemed to be terminated and, further, we shall initiate appropriate civil and criminal proceedings against you at your own risk and cost.

xxxx xxxx xxxx"

Thus, at best only a 7 days' notice had been given by the Respondent to the Claimant, which is contrary to the terms agreed under the Contract. Thus, in my view, a reading of the Contract would show that the Respondent has not strictly followed the procedure to terminate the Contract, as recorded in the Contract. But, given the facts of the case, whether or not such strict adherence to the terms of Contract was necessary for termination is a matter which requires consideration.

34. As an Arbitrator I am bound by the terms of the Contract however strict they may be. In the present case, the Respondent was required to give a 15 days' notice in order to terminate the Contract, but the Respondent failed to strictly adhere to this



requirement. Therefore, although there may be some merit in the Respondent's case that there were compelling circumstances to terminate the Contract prematurely, it cannot be said that the Contract was terminated legally and in accordance with the terms of the Contract. In view of the aforesaid, Point no. (i) is decided against the Respondent and in favour of the Claimant."

23. Applying Clauses 31 & 16 of the Contract Agreement as well as Clause 47 of the GCC together to the facts of the present case, this Court is of the opinion that there was an option to the Petitioner to terminate the Contract either by invoking Clause 31 of the Contract Agreement or Clause 47 of the GCC after the condition precedent in both the clauses were satisfied. In the present case, the Petitioner has invoked Clause 31 of the Contract Agreement. Show Cause Notices have also been given by the Petitioner to the Respondents, on which reliance has been placed in the Termination Letter dated 01.09.2020. Having both options available to it, the Petitioner has specifically applied Clause 31 of the Contract Agreement to terminate the Contract, and not Clause 47 of the GCC.

24. This Court exercising jurisdiction under Section 34 of the Arbitration Act is not an Appellate Court. Nor can this Court substitute the reasons or give the reasons which the arbitral tribunal has not given to uphold the award or reject the award. Simply put, this Court cannot fill the lacunae that occur in the award rendered by an arbitral tribunal.

25. In adjudicating upon the legality of the Termination Letter dated 01.09.2020, the learned Sole Arbitrator has not given any reason as to why he has preferred to follow Clause 47 of the GCC and not Clause 31 of the



Contract Agreement, which was the specific clause invoked by the Petitioner.

26. In view of the above, this Court has no other option but to set aside the findings given by the learned Sole Arbitrator in Issue No. 1.

27. Since this Court is inclined to set aside the Issue No.1, Issues No. 8, 9, 13, 19, 20, 21 & 23 which are dependent on Issue No.1, also stand set aside.

28. With these directions, the Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

APRIL 22, 2025

hsk/ap