



\$~75

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

+ O.M.P. (COMM) 203/2025, I.A. 13221/2025, I.A. 13222/2025

UNITED CONSTRUCTIONS

.....Petitioner

Through: Mr. M Tarique Siddiqui, Mr.
Abhishek K. Tanwar, Mr. Mohd Bilal
and Mr. Faisal Khan, Advocates

versus

DTE GEN MD ACCOMMODATION PROJECTRespondent

Through: Ms. Shiva Lakshmi with Mr. Madhav
Bajaj, Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

18.11.2025

%

1. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996, has been filed by the Petitioner challenging the Award dated 05.09.2024, passed by the learned Sole Arbitrator in Arbitral proceedings between the parties. The Petitioner has also sought for a direction to the Respondent to produce certain documents directly before the learned Sole Arbitrator.

2. Shorn of unnecessary details, the facts of the case reveals that the Petitioner was successful in getting a contract for construction of Married Accommodation for Major 192 dwelling units in 6 blocks having stilt plus eight floors at Baird Place, Delhi. It is stated that the said work was to be completed in 20 months. The issue in the present case primarily concerns with the 'PE-AL-PE Pipes' which were used by the Petitioner in the project



in question. It is stated that pursuant to the contract being awarded by the Respondent to the Petitioner herein in 2008, the Respondent *vide* letter dated 09.03.2009 banned the use of PE-AL-PE Pipes. It is the case of the Petitioner that after the ban on the use of PE-AL-PE Pipes, the Respondent directed the Petitioner to replace all the existing 'PE-AL-PE Pipes' with GI pipes in the project in question, which, according to the Petitioner, amounts to extra work. Disputes arose between the parties and the Petitioner approached this Court by filing ARB.P.1100/2022 for appointment of an Arbitrator to adjudicate on the disputes between the parties. It is stated that this Court *vide* Order dated 09.01.2023 appointed Maj. Gen. K. Gajria (Retd.) as the Sole Arbitrator to adjudicate on the disputes between the parties. In the Statement of Claims, the Petitioner herein raised the following points:

"9. On 19.08.2008, the Deputy Director General (A) DG MAP in Reference note 28 ante recommended use of GI pipes in all projects of MAP and recorded that:

"2. Matter discussed with CE, Vizag and Mumbai (Navy). They are of firm opinion that composite pipe has been a big failure and use of that has brought bad name to MES..... use of GI pipe is time tested and there is no such problem of frequent change due to rusting etc.

3. Keeping in view of the above use of GI pipe in all projects of MAP is recommended."

10. The Project Manager MAP sent letter dated 25.02.2009 to DG MAP regarding repeated failures of PE-AL-PE pipes stating that:

"3. The repented failures of composite pressure



pipes (PE-AL-PE) are persisting again and again. The contractor has been informed of this and necessary repairs for the same are also being carried out, however the problem is persistent."

11. The DG MAP, vide letter no. 21316/Pipes/P&S/228/MAP dated 09.03.2009, banned composite/PE-AL-PE pipes for future use.

30. The GOC, HQ Delhi Area issued letter no.3700/MAP/Q3W dated 29.03.2012 to GOC-in-C FOR REPLACEMENT OF PE-AL-PE PIPES WITH GI PIPES

The GOC, HQ Delhi Area issued letter no. 3700/MAP/Q3W dated 18.04.2012 to GOC-in-C FOR REPLACEMENT OF COMPOSIFE PIPES WITH GI PIPES for MD Qtrs of MAP PH-1 Project in Delhi. This letter dated 18.04.2012 proposed to seek approval of the Apex Committee for MAP to replace the existing composite pipes in MAP Phase-1 married quarters in Delhi by Galvanized Iron (GI) pipes, using MAP funds. The financial effect/cost in replacing the existing pipe network of PE-AL-PE pipes in MAP Phase-I at Baird Place has been quantified as Rs. 44.16 Lakhs approx. per block for internal phimbing totaling to Rs. 264.96 Lakhs (Rs. 44.16 Lakhs x 6 Blocks).

31. The Director Contracts for DG MAP issued circular no. 81811/MAP/POLICY GEN/242/E8 (B) dated 01.06.2012 issued policy circular regarding SPEEDY PAYMENTS of RARs emphasizing as under:

"1. It has been reported by many contractors that there is abnormal delay of 15 days to one month in payment of RAR's which is causing financial hardships to contractor resulting in delay in



progress of work at site which has been viewed seriously by DG.

2. It is the responsibility of all concerned that RAR of contractor has to be paid within 07 days' time after its submission to PM (MAP) including checking from PCDSs office.

3. One of the reasons for delay may be the checking of RARs by DPEMC at their HQ. Such delays can be avoided if DPEMC directs their HQ rep to check RAR at site. PM (MAP) may apprise DPEMC accordingly. Checking of RARs by DEPMC within 48 hours of submission to RE DEPMC is desirable.

4. The PM (MAP) should also expedite submission of RAR to PCDA/CDA after signature of Station Commander within 48 hours from receipt of checked RAR from DEPMC. As far as possible, RAR to PCDA/CDA be processed by hand to avoid delay in transit."

32. The HQ Delhi Area vide letter no. 200/MAP ACCN/Q-5 dated 20.09.2012 DECIDED TO REPLACE ALREADY INSTALLED INTERNAL PLUMBING PE-AL-PE PIPES TO GI PIPES for all six Blocks."

3. In reply, the Respondent herein filed its Statement of Defence wherein the issues raised by the Petitioner have been replied to by the Respondent as under:

"20.5.4 Sub Para - 9 to 11 : - Contention of Claimant is wrong and denied. Claimant failed to deploy skilled manpower and also defaulted on various other counts.



Detailed failure of the Claimant has already been brought out in para 19.8 here-in-before. The same is not being repeated for the sake of brevity.

20.5.5 Sub Para- 12 to 78 :-Contents of these paras are not based on facts, hence not agreed to. Since claimant could not complete the work, Eleven Extensions of time were granted to Claimant from time to time consequent upon request of Claimant, up to and including 15-10-2017 with "Nil" financial effect as already brought out hereinbefore. It is evident from the various reasons/grounds for extn of time as submitted by the claimant, that project could not be completed in time and prolonged substantially due to poor planning, poor workmanship & various other breaches of contractual obligations on the part of claimant. Still Respondent UoI granted Extns of time to the claimant under condition 13(A) of GCC without levying any compensation in the interest of completion of work.

23 CLAIM NO 2: CLAIM AGAINST EXTRA WORK DONE (REGARDING REPLACEMENT OF PE-AL-PE, PIPES) BUT NOT PAID (RS. 4,41,42,751.00)

23.1 Claimant this Claim is not arbitrable in terms of condition 09 of GCC at page 157 of CA.

23.2 Contention of the Claimant is not agreed to. Claimant has twisted the facts to misguide the Id AT. Factual position is brought out as under:-

(a) Since heavy leakage-seepage was observed from the plumbing works carried out in block Nos P-54 & P-55 and the Claimant was not able to arrest the same, he, at his own, proposed to replace the PE-AL-PE pipe with GI pipes vide



letter dated 07-12-2011 (Annexure RD-195). It was proposed the Claimant that the experimental purpose they want to check this problem in 2 units of Block P-54 & 2 Units in Block P-55 at their own expenditure. It was undertaken by the Claimant that they will not claim these expenses from the department in future. by for own on causes.

(b) Claimant at his kept requesting Respondent deptt to replace PE-AL-PE pipe with GI pipe to arrest the seepage in various flats. Claimant vide letter dt 20 Feb 2013 (Page 491-492 of Claimant SoC) brought out that they have changed the PE-AL-PE pipe to GI pipe in 26 units of P-55 & 09 units of P-54 and requested for the permission to change the pipes in rest of 04 blocks in Mar 2012. Permission for the same was given by the deptt in Sep 2012 and they have changed the pipe in all the balance 04 blocks. Claimant has himself admitted that this work has been done by them at 'No extra cost'.

(c) Respondent deptt convened a BOO vide letter No 30000/27/MA/DG Sectt, 100/B00 dt 26 May 2015 to as-certain the exact failure of PE-AL-PE composite pressure pipe in the subject work. As per findings of BOO submitted in Oct 2015 (Para 55 on Page 24 & 25 & Page 557-558 of SoC of Claimant refer). BOO has concluded that failure of these pipes and fittings, in the plumbing works, is due to poor workmanship and poor quality of material used by the Claimant.

(d) Still in good faith & in the interest of completion of work, Respondent deptt approved a Deviation Order amounting to Rs. 20,22,894.54 (+) for "replacement of PE-AL-PE pipes with GI



pipe in 23 DUs in blocks P-54 and P-55, 160 Servant Qtrs and piping in all shafts of 6 blocks (P-52 to P-57)" vide Respondent PM MAP dated details letter 02.06.2017. (Annexure RD-184). The DO were signed by rep of Claimant in token of their acceptance and accordingly, DO No 25 was issued vide Respondent PM (MAP) Delhi Cantt letter No 3720/126/GP-2/BP-1/AIP-DO dated 01 Jul 2017 after obtaining signature of rep of DEPMC & Dy Director of HQ DG MAP. (Annexure RD-184).

(e) Claimant vide para 10 of letter dt 20 Oct 2017 (Page 611-613 of their SoC) has admitted that subject DO has been accepted by them long back.

23.3 It is evident that part of subject change has been executed by the Claimant at 'No cost basis' as per their own proposals and requests & a DO has been placed for balance change and the same has been signed by the Claimant in token of its acceptance.

23.4 In Respondent (Project Manager) letter dt 02 Jun 2017 (Annexure RD-184) it was specifically stipulated that objections, if any, to the deviation shall be notified by the Claimant in writing to PM office within 15 days of receipt of this letter. no such objection is received from Claimant within this period, Claimant will be deemed to have accepted the order.

23.5 In this connection, an extract of Note after condition 9 of GCC on page 157 of CA is appended below :-

"Note: Any objection by the contractor to any matter concerning the Deviation Order, shall be notified by him in writing to the PM within 15 days from the date of receipt of such order. In default of such notification



the contractor will be deemed to have accepted the order and conditions stated therein without in any way affecting the right of the parties to rectify any mistake on the basis of payment only to the extent it differs from condition 5.3"

23.6 No such objection was received from the Claimant against the said change. Also there are no objections wrt basis of payment in terms of condition 53 of GCC in the present claim.

23.7 In view of specific bar in the Contract Agreement against raising such claims now, subject claim is covered under 'excepted matters' and therefore, it is outside the ambit of arbitration.

23.8 Notwithstanding to above, pricing details submitted by the Claimant against this claim (Page 895 to 932 of SoC of Claimant) are without any basis. Few items have been multiplied by four with remarks 'this work is done 4 times or more' (Page Nos 908 & 912 of Claimant SoC refer) without submitting any documentary proof. The pricing details submitted by the Claimant are exorbitantly high and without any proof. The same are therefore denied.

23.9 From the above, it is evident that this claim is false, frivolous and misleading. This claim is not tenable as per agreed provisions of Contract Agreement. In view above, Ld. Arbitrator is requested to reject this Claim of the Claimant along-with its amount in toto."

4. Pursuant to the filing of documents and issues being framed, the Petitioner herein filed an application under Order XI Rule 2 & 4 of the CPC seeking leave to deliver interrogatories and also seeking a direction to the Respondent to answer the said interrogatories. The interrogatories raised by



the Petitioner are as under:

“28. What was the reason for respondent to compel the claimant to change the defective/failed PE-AL-PE pipes with GI pipes after PE-AL-PE pipes were fully installed in all 6 blocks and not made any payment against the same, despite enjoying benefits of the changed GI pipes?”

29. Is it correct that PE-AL-PE pipes installed at the project was of the the 'approved make list'?

30. When the Polyethylene/Aluminium/Polyethylene composite pressure pipes [hereinafter 'PE-AL-PE pipes'] was recommended by the competent authority to be incorporated in the tenders issued by DGMAP for construction of multi-storey building?

31. Kindly tell when the matter relating to failure of PE-AL-PE pipes went to court of enquiry at Rajputana Rifles Regiment Delhi Cantt?

32. Is the product PE-AL-PE pipe successful in any multi-storey building/project of MAP/MES in all over India?

33. When and in which multi-storey building project of MAP/MES for the first time, complaint was made to DGMAP regarding the failure of composite/PE-AL-PE pipes?

34. When for the first time the department/ DGMAP came to know that in multi-storey building the PE-AL-PE pipe is not capable of withstanding water pressure and starts leaking from the joints?

34. When for the first time the department/DGMAP came to know that in multi-storey building the PE-AL-PE pipe is not capable of withstanding water pressure



and starts leaking from the joints?

35. Kindly see internal noting dated 19.08.2008 of DG MAP at page 455 of claimant document. Kindly tell when for the first time it was opined in the department that composite/PE-AL-PE pipes have been a big failure and use of that has brought bad name to MES?

36. When enquiry was initiated by DGMAP for the first time regarding the failure of PE-AL-PE pipes in multi-storey building project of MAP/MES?

37. Kindly see page 457 of claimant document. When this document is an internal note of the office of DGMAP regarding issuance of instruction to all PM/TAs to stop any further procurement & installation of PE-AL-PE pipes and install GI pipes in lieu, why in the admission denial affidavit respondent denied the same?

38. Is it true that PE-AL-PE pipes has been banned by DGMAP. Kindly tell the date when DGMAP banned the PE-AL-PE pipes?

39. Is it true that DGMAP/MES, came to know about the failure of PE-AL-PE pipes prior to 26.10.2017 when DO no.25 (pre-dated 01.07.2017 for execution of additional/extra work for replacement of failed 'PE-AL-PE pipes' with 'GI pipes' was issued?

40. Has any contractor of MAP/MES and/or MAP/MES at any project of multi-storey building changed the already installed PE-AL-PE pipes with GI pipes on its own cost?

41. After the completion of respective DLP period of the Block as referred in Provisional Completion Certificate dated 17.03.2016, when the MES floated the maintenance contract in the respective blocks?



42. Kindly see "Pressure Test of PE-AL-PE pipe" register (pg.790-838 C.doc). Is it correct that the same is duly signed by the contractor DEPMC/consultant?

43. Is it true that during the progress of construction and at the time of handing over the plumbing/installed PE-AL-PE pipes were checked by DEPMC/respondent, no fault in the work execution was found and the building of all 6 Blocks were seepage free?

44. When at the time of handing taking over of the respective Blocks by DGMAP the same were found fit for the occupancy, thereafter why and when the need arose for replacement of PE-AL-PE pipes with GI pipes?

45. Is it true that HQ Delhi Cantt had written letter no. 3700/MAP/Q3W dated 29.03.2012 to GOC-in-C, Western Comd relating to "Condition of new MAP ACCN at Baird Place" emphasizing that "The genesis of the problem lies in the kind of Polyethene pipes used for water supply and sewage which have been used as per contract. These have been found to be prone to leakages from the joints, which has not been within the capability of either the contractor or the MES to repair"?

46. Is it true that HQ Delhi Cantt had written letter no. 3700/MAP/Q3W dated 18.04.2012 to GOC-in-C, Western Comd relating to "Statement of case for replacement of composite pipes with GI pipes for married quarters of MAP phase-1 Project in Delhi" alongwith detailed justification and financial effect?"

5. Reply to the abovementioned interrogatories has been given by the Respondent and the same reads as under:



“12. Q-28

change the pipes completely till cancellation of contract. Contention of claimant is incorrect. Claimant could not

13. Q-29

Being matter of record, needs no reply.

14. Q-30 *PE-AL-PE pipe was part of tender and claimant has quoted the tender accordingly. Any activity prior to issue of tender is not relevant to present arbitration case. Also, no such record could be traced by Respondent.*

15. Q-31

No such document held on the record of Id Tribunal.

16. Q-32, 33 & 34 *No such record is maintained by Respondent. Also, no record pertaining to MES works is maintained by Respondent.*

17. Q-35-36

(i) Document at page 455 of claimant documents has already been 'denied' by Respondent 'being incomplete documents.'

(ii) Not withstanding above, no Internal documents/Note are to be given cognizance by the id arbitrator unless some decision based on such documents/Note are conveyed to contractor.

(iii) No record pertaining to MES is maintained by Respondent.



18. Q-37 (i) Reason for denial of document is given by the Respondent in the Affidavit itself.

(ii) Internal Note on pg 457 is an Incomplete document and if letter at Pg 458 is outcome of Note at Pg 457, it is applicable for Ph-It works and might have been issued to Project Manager of Ph-II works only where as present Project was Phase-1 work.

19. Q-38 No such document held on the record of Id Tribunal.

20. Q-39 No record of MES Is maintained by Respondent DG MAP. Further, this interrogatojy is contrary to Q-35 wherein it is alleged that Respondent came to know about the failure of PE-AL-PE pipe in 2008.

21. Q-40 No such record maintained by Respondent.

22. Q-41 No such info wrt MES works is available with Respondent DG MAP.

23. Q-42 No reply needed being matter of record.

24. Q-43 Respondent. No such document held on record of Tribunal as well as

25. Q-44

No reply needed being matter of record.

26. Q-45 & 46 (i) Document submitted by claimant have already been denied by the Respondent with reasons mentioned therein.

(ii) It will not be correct on the part of Id AT to draw any conclusion from incomplete and unsigned



documents.”

6. The Petitioner herein filed an application under Order XI Rule 12 & 14 of the CPC seeking a direction to the Respondent to file the following documents:

“9. That for fairly disposing the Arbitral Proceeding, it is necessary for this Hon'ble Tribunal to order the respondent/ concerned authority to produce the following documents:

(i) Entire file (communications & internal noting's) regarding failure of PE-AL-PE pipes and initiation of Approval in principle (AIP) for GI pipe and issuance of DO'S exchanged and recorded/noted by DDG(A) from the year 2008 to 2020 including complete documents relating to:

(a) DDG(A) Ref. note 28 ante dt. 19.08.2008 recommending GI Pipes in all projects of MAP (pg.455 C.doc).

(b) Letter no. 1010/S/410/MAP dated 25.02.2009 of Project Manager (MAP) to DG MAP regarding repeated failure of PE-AL-PE pipes (pg.456 C.doc).

(c) DG MAP letter no. 21316/Pipes/P&S/228/MAP dated 09.03.2009 whereby composite/PE-AL-PE pipes banned for future use (pg 457-458 C.doc)

(d) Letter no.3700/MAP/Q3W dated 29.03.2012 issued by GOC, HQ Delhi Area for replacement of PE-AL-PE pipes with GI pipes (pg 482-484 C.doc).

(e) Letter no.3700/MAP/Q3W dated 18.04.2012 issued by GOC, HQ Delhi Area estimating the cost of replacement of PE-AL-PE pipe as Rs.44.16 lakh per



block (pg.485-489 C.doc).

(ii) Minutes of visit of all QMG relating to subject project including OMG dated 02.01.2020 as referred in letter dated 04.01.2020 issued by PM (East) MAP (pg.644 C.doc).

(iii) All Board of Officers (BOO) minutes relating to the execution of subject contract agreement.

(iv) Communications between respondent and MES relating to handing-taking over of Blocks P-52 to P-57.

(v) Maintenance contract between MES and third party contractor of formally handed taken over Blocks P-54, P-55, P-53 & P-52.

(vi) Report submitted by Presiding Officer with reasons of delay in response to letter dated 26.02.2016 issued by the office HQ Delhi Area (Ref. pg. 560 C.doc).

(vii) DG MAP Circular no. 81811/MAP/POLICY GEN/242/E8 (B) dated 01.06.2012 for speedy payment of RARs (Ref.pg.490 C.doc).

(viii) Claimant representation dated 05.03.2018 stating project delayed for reasons attributable to the department (Ref. pg. 618-623 C.doc) and reply of respondent to said representation, if any.

(ix) Correspondence between respondent and MES Delhi Area regarding replacement of PE-AI-PE to GI Pipes in the subject contract including costing towards the said replacement.”

7. The said application has been disposed of by the learned Arbitrator



vide Order dated 05.09.2024 by holding that the content of Petitioner's applications is more of an advisory to the Tribunal and that it will enable the Tribunal to understand the matter. The Tribunal has also held that sufficient documentary evidence is placed on record by both the parties and the arguments have also been made by the parties in their respective turns and, therefore, no useful purpose will be served by adducing/ presenting additional evidence/ documents before the Tribunal. However, as a note of caution, the Tribunal has also held that in case further clarity is required by the Tribunal before publication of the Award, a call would be taken by the Tribunal at that stage as to whether to direct the Respondent to produce those documents or not.

8. It is this Order which is under challenge in the present Petition.

9. The claim of the Petitioner was that the Petitioner was asked to install the PE-AL-PE Pipes. It is stated that there was a ban on the use of those pipes; and the Respondents asked the Petitioner to replace PE-AL-PE Pipes with GI pipes. To adjudicate the dispute in question, the documents, as sought for by the Petitioner in its application under Order XI Rule 12 & 14 of the CPC, might be necessary at an appropriate stage. However, the Tribunal has held that in case these documents are required by the Tribunal, the Tribunal will call for the same.

10. In the opinion of this Court, since the Tribunal itself felt that the documents as sought for can be summoned, the Tribunal ought not to have disposed of the application filed by the Petitioner and the Tribunal ought to have kept it pending to be decided at a later stage. In any event, since the Tribunal has observed that the Tribunal, if need arises, can call for the documents, the present Petition is disposed of permitting the Petitioner to



move another application at an appropriate stage for calling the documents in question. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

NOVEMBER 18, 2025

Rahul