



2025:DHC:3316



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

Date of decision: 22nd APRIL, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 350/2024**

GOVT OF NCT OF DELHI

.....Petitioner

Through: Mr. Dinesh Malik, Panel Counsel
with Mr. Puneet Jain, Mr. Lavish
Arora, Advocates.

versus

M/S HARBEL SINGH AND SONS

.....Respondent

Through: Mr. Avinash Trivedi and Mr. Rahul
Aggarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed by the Petitioner challenging the Impugned Arbitral Award dated 19.04.2024 passed by the learned Sole Arbitrator.

2. Shorn of unnecessary details, the facts leading to the filing of present petition are as under:-

- a. The Petitioner floated a Tender for Construction of Additional classrooms in existing premises under jurisdiction under EO Zone-24 of DDE (South) (Priority-I) SH: C/o SPS type Classrooms, Labs & MP Halls including Internal & External water supply sanitary & Electrical Installations, Development of site and firefighting system etc., at School of Bhatti Mines (School ID: 1923026) (Package-2) ("Work")



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- b. It is stated that the Respondent emerged as the Lowest Bidder and was awarded the works on 27.02.2016. A formal Agreement bearing no. 36/EE/EMD/S&SE/PWD/2015-16 was entered into between the parties. In terms of the Agreement, the Respondent had to complete the Work in 135 days starting from 07.03.2016 and the stipulated date of completion was 19.07.2016
- c. It is stated that Extension of Time ("EOT") was granted by the Petitioner upto the actual date of completion i.e., 03.10.2017 without levying compensation. It is stated that the work was completed with a delay of approximately 14 months.
- d. It is stated that the Respondent/Claimant raised certain disputes with regards to the amount allegedly due and payable. The disputes were referred by the Respondent/Claimant to the Chief Engineer vide a letter dated 17.10.2022 for appointment of Arbitrator under Clause 25(ii) of the abovementioned Agreement.
- e. The Chief Engineer vide a Letter bearing No. 55(60)/CE(Proj.)/PWD/Arb./FO./1073(E) dated 08.12.2022 appointed a Sole Arbitrator to decide and adjudicate the claims/disputes and make an Award.
- f. The Arbitrator entered reference on 14.12.2022 and filed a disclosure as per Section 12 of the Arbitration and Conciliation Act. It is stated that both the Parties waived the applicability of Section 12(5) of the Arbitration and Conciliation Act by an express agreement in writing.



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- g. It is stated that the Respondent/Claimant had filed 8 heads of Claims which were further divided into 17 Claims and one Counter Claim was filed by the Petitioner.
 - h. The Oral hearing was concluded on 16.10.2023 and the Award was reserved
 - i. The final award was passed on 19.04.2024.
3. It is this award that is challenged by the Petitioner only with respect to Claim No. 1.2 (Substituted Item No. 1), 2.3, 4, 5.2, 5.3 and 8, by way of the present petition under Section 34 of the Arbitration and Conciliation Act, 1996. It is stated that the remaining part of the Award is accepted by the Petitioner.
4. The Arbitrator before going on the merits, found it necessary to adjudicate upon the preliminary issues as raised by the Petitioner. The issues are as follows:-

"Issue No.1: The Respondent raised the issue that the claims are barred by limitation.

Issue No.2: The Respondent raised the issue of undertaking given by the Claimant on EOT Proforma, so it has got binding force or not.

Issue No.3: The Respondent raised the issue final bill was accepted by the Claimant as full and final.

Issue No.4: The Respondent stated that Notice under Section 55 of the Indian Contract Act is necessary to claim compensation under Section 73 of the Indian Contract Act. "

5. Regarding Issue No. 1, the learned Arbitrator, after considering the argument of the Petitioner that Clause 25 of the Agreement provides for a



limitation period of only 120 days and the reply of the Respondent/Claimant that the argument of the Petitioner herein is hit by Section 28 of the Contract Act has held that in view of Section 28 of the Indian Contract Act, the Limitation Act and the exclusion of period under COVID-19 up to 28.02.2022 and various judicial pronouncements, the Claims of the Respondent/Claimant were within limitation. The Arbitrator has further held that since huge amounts were stuck with the Petitioner herein, i.e., the Respondent before the Arbitrator, the undertaking given by the Respondent herein on the EOT proforma surrendering his claims is not voluntary and given under duress.

6. The Arbitrator has also held that the contention of the Petitioner herein that all the legitimate payments have been made and the final bill was acceptable to the Claimant is not correct as amounts were found withheld on one count or the other and merely signing on the final bill does not mean that a final settlement has been reached but it only proves that what is mentioned in the bill is accepted but never that the bill is final in all respects.

7. The Arbitrator again after relying on various judgments came to a conclusion that the Agreement between the parties contains a clause for EOT and levy therefore time was not the essence of the Agreement and hence Notice under Section 55 of the Indian Contract Act is not necessary to claim compensation under Section 73 of the Indian Contract Act

8. The Arbitrator has awarded a sum of Rs. 2,76,69,866/- (principal amount) under Claim Nos. 1.1, 1.2, 1.4, 2.1, 2.2, 2.3 & 4. The Arbitrator has also awarded interest under Claim No. 5.2 and 5.3

9. The learned Counsel for the Petitioner contends that the Impugned Award has been passed in contravention of the public policy of India and



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frivolous claims have been allowed by the Arbitrator without any cogent reasoning

10. It is further stated that the Arbitrator has awarded Rs. 2,28,422/- against Extra Item Nos. 2/3, 3/12, and 5/3 stating that the rates were not rendered as per the provisions of the agreement. This award has been accepted by the Petitioner.

11. The learned Counsel for the Petitioner submits that an amount of Rs. 1,13,22,658/- has been awarded against Substitute Item No. 1 which has been worked out arbitrarily by the Arbitrator by considering 90% of the rate as proposed by the Contractor which was on the higher side and was not as per the actual market rate prevailing at that time. It is further stated that the rate paid in the RA bills for Substitute Item No. 1 was not the approved rate but was only the provisional rate paid to the Respondent/Claimant for helping him to make interim bill payments. It is also stated that the market rate was not approved by the Petitioner herein but was paid to the Respondent/Claimant in accordance with Clause 12.2B of the Agreement. It is therefore contended that the Arbitrator has rewritten the terms of the Agreement. It is also stated that this part of the Award is contrary to Clause 12.2 & 12.4 of the Agreement and is liable to be set aside.

12. The learned Counsel of the Petitioner further submits that the Claim No. 2.3 has been awarded by the Arbitrator by grossly neglecting the provisions of the Agreement. It is stated that there is no provision for compensation for escalation due to increase in cost of materials other than cement and steel in the agreement and the Arbitrator while granting the same has gone beyond the terms of the Agreement. It is further contended that no objection was ever raised by the Respondent/Claimant to any



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extension of the Agreement and no modification to the terms of the agreement was ever asked by the Respondent/Claimant. It is also stated that no Notice under Section 55 of the Indian Contract Act was served on the Petitioner.

13. It is stated by the learned Counsel for the Petitioner that while allowing Claim No. 4, the Arbitrator failed to consider that no Notice under Section 55 of the Indian Contract Act was served on the Petitioner. It is also stated that there is no evidence led by the Respondent/Claimant to show that there was any coercion or the undertaking i.e., no claims will be made for this delay, was given under duress. It is also contended that no proof of losses was submitted by the Respondent/Claimant and the Arbitrator has awarded Rs. 21,62,073/- simply based on a formula without any proof of losses. The Arbitrator has also erroneously awarded interest @12% per annum pre and post award which is without any cogent reasoning and is liable to be set aside.

14. It is further stated that the Arbitrator could not have awarded Claim No. 8 in favour of the Respondent/Claimant as the Work was awarded on 27.02.2016, i.e., in pre-GST era when only DVAT was applicable. It is also stated that DVAT in the pre-GST era was much more than GST which was applicable at the time when the award was passed.

15. *Per contra*, the Learned Counsel for the Respondent/Claimant has supported the findings given by the Arbitrator in the Impugned Award.

16. Heard the Counsels for the Parties and perused the material on record

17. The Parameters of inference by Courts under Section 34 of the Arbitration and Conciliation Act has been laid down by the Apex Court in



plethora of judgments. The Apex Court in Associate Builders v. DDA, (2015) 3 SCC 49, has held as under:-

"29. It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.

30. The audi alteram partem principle which undoubtedly is a fundamental juristic principle in Indian law is also contained in Sections 18 and 34(2)(a)(iii) of the Arbitration and Conciliation Act. These sections read as follows:

"18.Equal treatment of parties.—The parties shall be treated with equality and each party shall be given a full opportunity to present his case.

*34.Application for setting aside arbitral award.—
(1)****

(2) An arbitral award may be set aside by the court only if—

(a) the party making the application furnishes proof that—

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;"



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

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)

“7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.”

In Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)

“10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person



would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.”

33. It must clearly be understood that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows: “General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong”.It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In *P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd.* [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held : (SCC pp. 601-02, para 21)



“21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”

34. It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood. ”

18. Further the Apex Court in Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express Private Limited, (2024) 6 SCC 357, has observed as under:-

"34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be



assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the Court finds that it is vitiated by “patent illegality” appearing on the face of the award.

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

- (i) based on no evidence;*
- (ii) based on irrelevant material; or*
- (iii) ignores vital evidence.*

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

37. A fundamental breach of the principles of natural justice will result in a patent illegality, where for



instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court in Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] observed : (SCC pp. 75 & 81, paras 31 & 42)

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

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision,

such decision would necessarily be perverse.

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

(emphasis supplied)

38. In Ssangyong Engg. & Construction Co. Ltd. v. NHAI [Ssangyong Engg. & Construction Co. Ltd. v.



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

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

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

(emphasis supplied)



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

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

19. Applying the principles as laid down by the Apex Court in Delhi Metro Rail Corporation Limited (*supra*), this Court proceeds to apply them to the facts of this case.



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20. A lot of stress has been given on the fact that the Arbitrator has gone beyond the provisions of the Agreement *vide* which work was awarded to the Respondent/Claimant. A perusal of the Award shows that the Arbitrator while adjudicating Claims, was well within the four corners of the Agreement.

21. The Arbitrator while deciding the preliminary issues has discussed case laws on each and every point to come to a conclusion. While deciding Claim No. 1.2 related to Substitute Item No. 1, reliance was placed on Clause 12B of the Agreement which reads as under:-.

"B. For Maintenance works:

In the case of Substitute Item(s) being the schedule items (Delhi Schedule of Rates items), these shall be paid as per the schedule rate plus cost index (at the time of tender) plus/minus percentage above/ below quoted contract amount. Payment of Substitute in case of non-schedule items (Non-DSR items) shall be made as per the prevailing market rate."

22. The Arbitrator after considering and interpreting the provisions of the Agreement has held that the Respondent/Claimant had submitted the rate analysis of Substitute Item No. 1 on 22.02.2017. It was stated that in accordance with Clause 12.2B of the Agreement, the Petitioner had to finalise the rate within 60 days of submission of the rate analysis i.e., up to 20.04.2017 but no proof was given by the Petitioner as to whether such a rate was approved within the time prescribed under the Agreement or not. The Arbitrator has also applied its mind by stating that using his experience and expertise in the field of building work, the reasonable rate should be 90% of the rate claimed by the Respondent/Claimant.



23. Adjudicating Claim No. 2.3, which has been disputed by the Petitioner, the Arbitrator, after thoroughly considering the submissions made by both the parties, has held as under:-

"15.24. The pleas taken by the respondent regarding notice u/s 55 and undertaking given have been decided by the Tribunal under para 15.10 herein before and held that claimant is entitled to be compensated.

15.25. The claim is on account of increase in prices of materials which are not covered under clause-10CA i.e. other than cement & steel. The formula adopted by the claimant is as provided in clause-10CC of GCC appended with the agreement. It is fact that clause-10CC is not applicable in the present agreement. However, since this is damage claim and only formula has been adopted to arrive at the amount of compensation due to increase in prices of materials for the work done during prolongation period so is allowed in view of various judgments. The increase in prices are very well established by cost indices issued by the Govt. of India from time to time. The claimant adopted the % component of material as 40% which is very reasonable because if % component of materials under clause-10CA is calculated on actual work done then it comes to 23% (reference clauses 10C & 10CA page-18 of NIT and the quantity of material used as per page-299 to 302 of SOC). Then adding 25% for labour will come to 48 %. Thus, the component for materials other than cement & steel would come to 52% (100-48) whereas the claimant has adopted only 40%. The claimant is found eligible for payment due to increase in rates of materials for the work done from SDOC up to ADOC. Considering 40% component and various price indices at various times, the amount of claim has been worked out as Rs. 25,35,193/- for civil portion and Rs.4,55,550/- for electrical portion totaling Rs. 29,90,743/- by adopting base indices for



the period under consideration and placed at exhibit C-2.3A of SOC. The data, date & amount of bills, price indices adopted by the claimant and the calculations checked by the respondent and found correct as per joint reconciliation submitted vide letter dated 19.08.2023. However, it is seen that the claimant has adopted base cost index (CI) prevailing as on date of tender in Jan., 2016. Since, clause-10CC is not applicable so the claimant itself has to absorb the increase in rates of materials under claim upto SDOC that is upto July, 2016 as well as to mitigate the same being the claim u/s 73 of ICA. The claimant has calculated total amount under the claim as Rs. 29,90,743/- at page-375 of SOC. However, due to factors of base cost index & mitigation to my mind a reasonable amount can be arrived by allowing 70% of the claimed amount which would meet ends of justice. Accordingly, payable amount comes to Rs. 20,93,520/- (29,90,743 x 70%) and is awarded in favour of claimant under claim No. 2.3."

24. On perusal of the same, it can be said that the Arbitrator has given cogent reasoning while granting Claim No. 2.3 to the Respondent /Claimant after taking in view the objections of the Petitioner herein.

25. The Arbitrator while granting compensation to the Respondent/Claimant has meticulously analysed the submissions of both the Parties and has held as under -

"17.4 The pleas taken by the respondent regarding limitation, undertaking and notice u/s 55 of ICA have already decided by Tribunal under para-12.5, 12.14 & 12.25 herein before and so are not tenable.

17.5. From the perusal of the documents, submissions, arguments advanced by the parties and court judgments relied upon by the parties, it reveals that the



work was delayed primarily due to various delays not attributable to the claimant which is further strengthened by the fact that the respondent has granted EOT for the entire delay without levy of any compensation under clause-2 of the agreement and so I hold that the claimant is entitled for the compensation.

17.6. Total delay justified by the respondent as per exhibit C-6, is 532 days including 205 days on account of extra work whereas actually extra days on account of extra work comes to 218 day (page-398 of SOC). Thus total justified days comes to 545 days (532-205+218). It is also revealed from exhibit C-6, based on which EOT was granted, at entry No. 6,7 & 8 at page-80&81 of SOC, that a delay of 109+9+144 totaling 252 days have been considered which were due to non availability of material and ban on construction activities on account of statutory orders and not On account of respondent. Therefore, I feel it appropriate that for the purpose of damages, justified delays attributable to the respondent be taken by deducting these 252 days from the justified 545 days which comes to 293 days as net delay. Further, on perusal of the pleadings and provisions contained in clause-12.1 of the agreement, allowable extra days on account of actual extra work done calculated by the claimant as 218 days (page-398 of SOC] which is found correct. These 218 days are due to extra work allowed by the respondent which means claimant's resources were gainfully used during this period and are to be deducted from the net delay. Thus justified delay for purpose of overhead damage is considered as 75 days (293 minus 218) as reasonable therefore I hold that claimant is entitled for a net prolongation of 75 days for compensation on account of delays under this head on account of loss suffered due to additional liability of overheads. It is also hold that such a loss



cannot be treated as remote loss in terms of Section-73 of the Indian Contract Act, 1872.

17.7 As per the judgment in the matter of McDermott International Inc. Vs Burn Standard Company Ltd.(supra) wherein it has held by the Apex Court that- "Section 55 and 73 of the Indian Contract Act do not lay down the mode and manner as to how and in what manner the computation of damages or compensation has to be made. There is nothing in Indian Law to show that any of the formula adopted in other countries is prohibited in law or same would be inconsistent with the law prevailing in India". It was further held that "As computation depends upon circumstances and method to compute damages, how quantum thereof should be determined in a matter which would fall for the decision of the arbitrator".

17.8. It is fact that the claimant did not provide any details/proof of loss as claimed but it is also fact that the claimant has remained for 442 days more at site, for no fault on its part i.e. beyond the stipulated period of contract which definitely cannot be ignored that no extra expenses were not incurred.

17.9. In my view, the compensation for loss of overheads can be reasonably assessed by taking help from Schedule 'F' of the agreement. In this schedule, percentage on cost of material and labour to cover 'all overheads and profit' has been mentioned as 15% (Page-18 of agreement) which is evidently based on DGW(CPWD)'s guidelines. CPWD guidelines which are in public domain also state that out of 15%, 7.5% accounts for overheads. Hence, overheads in this case can be taken as 7.5% of tendered cost according to which average overheads per day, for the stipulated period, works out as under:



S.N.	Items		Amount in Rs.
1.	Contract price including all overheads & profit @15%	=	8,52,47,456.00
2.	Prime cost (excluding overheads and profit) = (8,52,47,456 x 100/115)	=	7,41,28,222.61
3.	Overheads @7.5% of prime cost	=	55,59,616.70
4.	Stipulated time of completion in days	=	135
5.	Average overheads per day =(Overheads/135)	=	41,182.35
6.	Net prolongation for purpose of present claim in days	=	75

17.11. Based on above calculations, average overheads charges per day worked out Rs.41,182.35, the additional overheads charges for 75 days of net prolongation period comes to Rs. 30,88,676/-. This amount however calls for some moderation as the contractor has to mitigate the losses when work is prolonged which however in the nature of the work to my mind cannot be more than 30%.

17.12. Having regard to the facts as stated above, 75 days being considered compensable against total delay of 442 days, in my assessment that it would be just and fair to allow 70% of amount as worked out above i.e. $30,88,676 \times 70/100 = \text{Rs. } 21,62,073/-$ as compensation on account of additional overheads. Accordingly, considering all the facts, circumstances and the legal position, I award Rs. 21,62,073/- in favour of claimant against claim No.4(i)"

26. Claim No. 5 has been dealt by the Arbitrator by holding as under:-

"20.14. I have perused the record before me, the submissions made and judgments relied upon by the parties. The present claim is for interest on various amounts, the claimant has claimed all the three interest i.e. pre suit, pendent lite and future interest. Whereas respondent has refuted the claim on the ground that claims are not maintainable hence claim of interest is also not maintainable.



20.15. So far as presuit interest is concerned, notice under section 3(l)(b) of Interest Act-1978 is mandatory which the claimant has first time given notice of interest on 17.10.2022 (C-13 & C-14) hence the claimant is held entitled to interest from 17.10.2022 to date of award. Therefore, keeping in mind the provisions of Section 31(7) (a) of the A&C Act, 1996, I award simple interest @10% per annum w.e.f 17.10.2022 till the date of this award on the awarded amounts under claim Nos.1.1, 1.2, 1.4, 2.1, 2.2, 2.3 and 4.

20.16. No future interest will be payable in case respondent make the payment of awarded amount within a period of 90 days from the date of award received by the respondent, failing which future interest will be payable @ 11% p.a. from the date of award till the date of actual payment."

27. The Arbitrator while adjudicating the issue regarding Goods and Service Tax on the awarded claims has held as under;-

"23.3. So far as the Arbitration agreement is concerned, there is no limitation with regard to power for making any declaratory award. Section 7 of the Arbitration & Conciliation Act, 1996 also covers disputes in respect of a defined legal relationship. Section 28(1) of the Arbitration & Conciliation Act mandates the Arbitrator to decide the dispute submitted to Arbitration in accordance with the substantive Law for the time being in force in India. Hence, I do not find any prohibition in law or bar regarding arbitrability for making declaratory awards by the Arbitrators. In fact, it is a practice in most jurisdictions to make declaratory awards, including on interpretation of contracts, by the Arbitral Tribunals.



23.4. In this case, the declaratory award is based on the plea that in case the claimant has to pay GST on award amount, the said amount of GST should be reimbursed by the respondent. I find no reason if the claimant incurs liability of GST on awarded sum and lawfully and properly pays the same to the Government, then the same should be reimbursed by the respondent. This shall be an additional tax burden and is covered under clause 38 of the GCC forming part of the contract.

23.5. In view of above, I make a declaratory award that the claimant shall submit details within 30 days of receipt of award amount, the GST amount actually paid to the Government on the awarded sum which shall be reimbursed by the respondent within 30 days of submission of details of such payment by the claimant failing which a simple interest @ 10% will be payable by the respondent to the claimant till actual date of payment."

28. The Arbitrator has therefore meticulously looked into the facts and the Arbitrator being the master of the evidence adduced before it and as held by the Apex Court times without number that the Courts while exercising jurisdiction under Section 34 of the Arbitration & Conciliation Act does not substitute its own conclusion to the one arrived at by the Arbitrator unless there is some material or basis to come to a conclusion that the perversity of the Award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the award and that the Court exercising jurisdiction under Section 34 of the Arbitration & Conciliation Act should not interfere with the conclusion of the arbitrator even if there is a more stronger conclusion which is more probable or plausible.



29. A perusal of the abovesaid judgment indicates the interpretation of the terms of the Contract which is before the Arbitrator is within the domain of the Arbitrator and only if it found that the contract has been construed in a manner that no fair mind or a reasonable person would, then only patent illegality arises. It has to be demonstrated that the view taken by the Arbitrator is not a plausible view in any sense possible. Observations made by the Arbitrator cannot be regarded as a plausible view where the Court is of the opinion that no reasonable person could plausibly have taken it. Further, to set aside an Award, it has to be demonstrated that the findings of the Arbitrator are based on nil evidence, based on irrelevant material or it ignores vital evidence.

30. This Court is of the opinion that the Sole Arbitrator has dealt with and has considered all the material that was placed before him. There is no prescribed format under the Arbitration and Conciliation Act, in which an arbitral award must be made. After going through the award this Court could not find any observation made by the Arbitrator which was devoid of merit or was made without considering the submissions made by the Petitioner or the Respondent/Claimant or was outside the purview of the Agreement entered into between the parties.

31. All the 4 issues laid down by the Sole Arbitrator before getting into the merits of the matter have been dealt with by relying on the material as well as submissions made by the parties before the Sole Arbitrator and this Court is of the opinion that the view taken by the Sole Arbitrator is a plausible one.

32. In the view of the above, this Court does not find any reason to interfere with the Award dated 19.04.2024.



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33. The present petition is dismissed along with pending applications, if any.

SUBRAMONIUM PRASAD, J

APRIL 22, 2025

RJ/YC