



2025:DHC:3321



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

Date of decision: 22nd APRIL, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 529/2023 & I.A. 25679/2023, I.A. 25680/2023,
I.A. 25681/2023, I.A. 25682/2023**

DELHI DEVELOPMENT AUTHORITY

.....Petitioner

Through: Mr. Karanjot Singh, Ms. Kiran Chander, Mr. Sumit Chander, Mr. Gurdeep Chauhan and Mr. Amit Agarwal, Advocates.

versus

M/S SWASTIC CONTRUCTION CO.

.....Respondent

Through: Mr. Vivekanand and Mr. Abhishek Semwal, 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 20.06.2023 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 Notice Inviting Tender bearing no. 17/EE/ED-8/DDA/2019-20, inviting tenders from contractors for restoration and rejuvenation of River Yamuna flood plains



from Nizamuddin Bridge to DND Flyway, admeasuring 100 Hac.

- b. It is stated that the Respondent emerged as the Lowest Bidder and was awarded the work. A formal agreement was entered into between the parties on 07.11.2019. In terms of the Agreement, the Respondent had to give an amount of Rs. 27,50,153/- to the Petitioner as earnest money and submit a Performance Bank Guarantee of Rs. 34,63,200/-. In the Agreement, it was further stated that the term of work will be 180 days starting from 20.11.2019 till 17.05.2020.
- c. The work site was handed over to the Respondent on 18.11.2019, i.e., two days prior to the actual commencement date.
- d. It is stated that the Respondent, since the commencement date submitted various letters for extra items and that the rate of such items was much higher than the Petitioner's sanctioned rate. It is stated that most of the extra items, as asked for by the Respondent were duly considered and approved with modifications.
- e. It is stated that Extension of Time ("EOT") was granted by the Petitioner upto the actual date of completion i.e., 15.07.2021 without levying compensation under Clause 2 of the Agreement on the ground of COVID-19. It is stated that the work was completed with a delay of approximately 14 months.
- f. It is stated that the Respondent/Claimant raised certain disputes with regards to the amount allegedly due and payable. The said



disputes were referred to the Sole Arbitrator vide Letter No. EM2(7)/2020/Arbn./Vol.VIII/Pt.160/DDA/890 dated 28.07.2021 and the Sole Arbitrator entered reference on the same day.

- g. It is stated that the Statement of Claims ("SOC") was filed by the Respondent/Claimant on 03.12.2021 and the Statement of Defence and the Rejoinder was filed subsequently. It is stated that the SOC filed contained 5 Claims.
- h. The Award with respect to the 5 Claims was reserved by the Sole Arbitrator on 26.09.2022.
- i. In the meanwhile, additional 18 claims were also referred by the Engineer Member to the Sole Arbitrator. The Additional SOC referring to the additional claims was filed by the Respondent/Claimant on 05.01.2023 and the SOD and rejoinder were filed thereafter.
- j. The final RA Bill was paid by the Petitioner to the Respondent/Claimant on 17.05.2022 and the Security Deposit of the Respondent/Claimant was also released.
- k. It is stated that for the disputes which arose due to measurement, an expert Mr. Sajal Mitra was appointed for site inspection. For the first 5 Claims a detailed report were submitted on 08.08.2022. Objections to the said report was filed by the Petitioner on 31.08.2022. For the Additional 18 Claims, the expert report was submitted on 04.04.2023.
- l. The final award was passed on 20.06.2023.



3. It is this award that is challenged by the Petitioner by way of the present petition under Section 34 of the Arbitration and Conciliation Act, 1996.

4. Before going on the merits the Learned Arbitrator formulated eight issues which clarifies the position regarding all the preliminary objections and claims raised by the Parties. The issues are as follows:-

"Issue No.1: The Respondent raised the issue of undertaking on EOT Proforma and argued that the Claimant had not suffered any loss and not entitled for any payment in this regard.

Issue No.2: The Respondent raised the issue of Final bill settlement as final and there is no further obligation to pay anything under this contract to the claimant.

Issue No.3: The Respondent raised the issue of damages/compensation claimed by the Claimant is not as per the contract.

Issue No.4: The Respondent raised the issue of Escalation when it is not made applicable in the contract, how can the Claimant entitled for escalation.

Issue no.5: Attributability of delay and the breach of contract?

Issue No.6: Whether the Claimant is entitled to compensation of losses allegedly suffered by the Claimant due to breach on part of the Respondent during stipulated period and prolongation period.

Issue No.7: Dispute on facts regarding measurements, whether the Report of Expert can be relied?



Issue No.8: General submission of the parties."

5. Regarding Issue No.1, the learned Arbitrator after relying on various judicial pronouncements came to the conclusion 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. The Learned Arbitrator 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. The bills were signed under protest for the quantities produced in the abstract and not for the rates.

6. The learned Arbitrator again after relying on various judgments including judgments on estoppel came to the conclusion that mere signature on the final bill does not amount to full and final settlement and does not fall within the four corners of accord and satisfaction more so when there are letters of discontent and the intention to claim is evident from the record. The Learned Arbitrator also held that the Respondent herein, i.e., the Claimant before the Arbitrator, could claim overheads as damages/compensation under Section 73 of the Indian Contract Act.

7. Regarding Issue No.4, the Learned Arbitrator held that the Claimant can also maintain his claim of escalation under the head of compensation/damages. On the question of delay, the Arbitrator attributed the delay to the following reasons:-

- i. Construction activities suspended due to order of EPCA.
- ii. Work held up due to the decision pending of water body No.1.
- iii. Decision of Bush Cutting, Extra depth cutting earth, execution of work in or under water, extra land within 1 km lead.



- iv. Construction activities suspended Due to COVID-19 (1st and 2nd wave).
- v. Construction hindered due to Rains.
- vi. Encroachment near water body no.1.

8. The learned Arbitrator held that due to admitted hindrances, the work was delayed and because of the delays, extension of time was granted. The learned Arbitrator also held that the delay also occurred due to the COVID-19 situation for which no one can be held responsible. However, the learned Arbitrator came to the conclusion that delay attributable to the Petitioner herein is more due to working of the system as a whole and has held the issue in favour of the Respondent herein. The learned Arbitrator came to the conclusion that the Respondent herein was entitled to compensation for loss due to prolongation of the contract provided, that the loss is not too remote or indirect. The learned Arbitrator held that the Respondent herein is entitled to compensation for i) loss due to price escalation and idling of resources ii) losses due to extra overheads because of prolongation of contract period for 424 days beyond the period of 180 days. The learned Arbitrator thereafter relied on the expert evidence regarding measurements etc.

9. The learned Arbitrator has Awarded a sum of Rs. 6,59,61,984/- with simple interest @10% per annum from 27.11.2020 to the date of the Award for Claim No. 1, 2, and 3 and from 03.10.2022 to the date of making of the award for Additional Claim No. 1, 2, 4, 5, 7, 9, 10, 11, 12, 13 and 14 to the Respondent/Claimant. It is also clarified by the Sole Arbitrator that no interest is awarded on Claim No. 5 and Additional Claim No. 16 and, further has also said that the Claim No. 17 is declaratory and not monetary.



10. The learned counsel for the Petitioner states that the Impugned Award has been passed in contravention of the public policy of India and the Sole Arbitrator has taken a view without considering material evidence as placed before him. It is further stated that the Impugned award is not supported by any cogent reasoning.

11. It is further contended that the Sole Arbitrator while adjudicating the 8 core issues has only relied on the submissions, assertions, and allegations of the Respondent/Claimant and has not even mentioned what was argued by the Petitioner. It is further submitted that deciding a dispute without considering the submissions of either of the parties, is sufficient for setting aside the impugned award.

12. It is also argued by the learned Counsel for the Petitioner that while dealing with Issue No. 1 as mentioned above, the Sole Arbitrator has not dealt with the contentions of both the parties and instead of adjudicating the same on the basis of evidence, the Sole Arbitrator has merely relied upon judgments which were cited by the Respondent/Claimant. It is further stated that while deciding Issue No. 2 & 3 the Sole Arbitrator has not relied on any document that was placed on record and has just relied upon the submissions of the Respondent/Claimant. It is also stated that while deciding on the issue regarding escalation, the Sole Arbitrator has travelled beyond the Agreement by holding that "*there ought to have escalation made affective in this contract*".

13. It is further stated that while dealing with the issue related to delay and compensation, the Sole Arbitrator first says that the whole system and natural calamities like COVID-19 are responsible for the delay and then holds the Petitioner accountable for the same and awards the



Respondent/Claimant compensation on this account. It is stated that these findings are perverse and unintelligible.

14. It is stated that the Sole Arbitrator has solely relied upon the findings of the expert by merely stating that *"tribunal has no reason to deviate from the expert report after examining the reason given by the Expert"*. It is stated by the learned Counsel that it is trite law that expert deposes and does not decide. It is stated that the Sole Arbitrator has not even considered the objections which were filed by the Petitioner to the expert report and without applying his mind has straight away relied upon the expert report to come to a conclusion that the delays were only because of the Petitioner herein.

15. The learned Counsel for the Petitioner contends that the Sole Arbitrator has failed to consider Clause 12 of the GCC of the Agreement dated 07.11.2019 which clearly states that in case of extra items that are in addition to the items contained in the Agreement, the Respondent/Claimant was bound to issue a formal communication to the Engineer-in-Charge, along with proper analysis for the work, which was not done by the Respondent/Claimant. It is stated that the Respondent/Claimant did not wait for any approval and assumed that the Engineer-in-Charge had accepted the extra items, despite a clear lack of acceptance or approval by the Petitioner

16. It is further contended that the Sole Arbitrator has traversed beyond the Agreement which had led to re-writing the terms of the Agreement, which is not permissible as per law, and has taken all the submissions made by the Respondent/Claimant as gospel truth. Hence, the Impugned Award is liable to be set aside



17. *Per contra*, the learned Counsel for the Respondent/Claimant states that the impugned award has been passed by the Sole Arbitrator after consideration of the entire record, documents and submissions of both the parties. It is also stated that it is settled law that a plausible view taken by the learned Arbitrator is final, binding, and does not require any interference by the Court. It is submitted that the Sole Arbitrator has noted all the contentions of both the parties and then gave his reasoning for passing the impugned award.

18. It is stated that the contention of the Petitioner that the Sole Arbitrator has not considered Clause 12 of the GCC of the Agreement is wrong and was never raised in the SOD filed by Petitioner nor was it argued. The learned Counsel for the Respondent/Claimant also submits that the procedure as given under Clause 12 is not mandatory but directory. It is further stated the allegation that the Sole Arbitrator has traversed beyond the agreement or rewritten terms of the Agreements is devoid of any substance and basis. It is stated that the Petitioner had not put forth any specific interpretation with reference to any specific clause of the contract and as such there was no question of not following the terms as laid in the agreement or going beyond the Agreement.

19. It is further stated that without pointing out which submission of the Petitioner has not been considered or dealt with by the learned Arbitrator while making the award has not been pointed out by the Petitioner. It is submitted that the allegation that the award is made without considering the contentions of the Petitioner is baseless.

20. It is also argued that while considering the issue of delay and compensation, the Sole Arbitrator has held that one of the reasons for delay



was COVID-19 and rest of the factors for delay were attributed to the Petitioner herein. It is further stated that the amount of compensation was also reduced by the Sole Arbitrator keeping in mind that a small chunk of the delay was caused by natural calamities and the Petitioner was not responsible for the same. This shows that the Sole Arbitrator has applied his mind and conscience while making the award.

21. It is further stated that the learned Arbitrator has also given reasons as to why reliance has been placed upon the Expert report. It is also stated that the Sole Arbitrator has found the expert report worthy of acceptance and has made some corrections in the findings of the expert where it was necessary.

22. The learned counsel for the Respondent also states that it is trite law that the Award need not be as detailed as a judgment of the Court. The learned Arbitrator has to just define his thought process for allowing or disallowing a claim.

23. Heard learned Counsel for the parties and perused the material on record.

24. 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. "

25. 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.] "

26. This Court now proceeds to apply the parameters laid down by the Apex Court to the facts of the case to see as to whether the award needs to be sustained or set aside.

27. A lot of stress has been laid on the fact that the award is unreasoned. A perusal of the Award shows that the learned Arbitrator has first summarized the submissions given by the parties and then discussed the case laws on each and every issue to come to a conclusion. The conclusion therefore is based on the submissions of the both the parties and the law on the point. The style of the learned Arbitrator in drafting the Award cannot by itself be the reason to set aside the Award. It cannot be said that the present award is completely unreasoned.

28. Much emphasis has also been laid that the learned Arbitrator has blindly accepted the expert's report. The learned Arbitrator in Para 8.6.7 of the Award has given his reasons and findings as to whether the Expert Report as submitted can be relied upon. Para 8.6.7 of the Award reads as under:-



"8.6.7. Issue No.7: Dispute on facts regarding measurements, whether the Report of Expert can be relied?"

8.6.7.1. *There are some disputes on facts for which an expert Sh. Sajal Mitra, Retd. E.E, CPWD was appointed who has submitted his report after inspecting the site for claims and additional claims vide his report no. Expert/SM/60/2022 dated 08.08.2022 with Page- 1 to 177 and Expert report dated 04.04.2023 (page- 1 to 100).*

8.6.7.2. *The expert appointed is a retired Executive Engineer from CPWD who has no relation with both the parties hence, there is no question of his biased opinion. The expert has given equal opportunity to both the parties for remeasurement of the disputed measurement. The Respondent has given their remarks on the measurements particularly for RCC post and RBT wire. The expert has given his comments in his report regarding these items.*

8.6.7.3. *The Respondents has submitted the comments on expert report vide his letter dated 31.08.2022. The Respondent has given some unwanted comments also which can not accepted. However, the expert report and comments of both the parties on same has been considered by the Tribunal. The Tribunal has noted that the expert report is factually correct and can be relied as there is no reason on record to deviate from expert report. However, at some places the report has been accepted with minor corrections."*

29. A perusal of the above paragraph shows that the learned Arbitrator has not blindly relied on the expert report but has considered the expert report in light of the documents and other materials placed before him by the parties. This Court is not persuaded to accept the submissions of the Petitioner that



the learned Arbitrator has accepted the claim of the Respondent herein without any basis.

30. The learned Arbitrator has held that the Respondent/Claimant is entitled to compensation for loss caused by the failure of the Petitioner to perform its reciprocal promise with progression of time. The learned Arbitrator has opined that the construction work involves numerous activities and operations which require advanced planning and mobilization of resources and that there has been delay on the part of the Petitioner herein in performing its duties and that failure on the part of the Petitioner in performing its reciprocal promise has caused huge time afflux thereby disrupting the planning of the Respondent.

31. After perusing and analyzing the material, the learned Arbitrator has held that even though the Petitioner has relied on numerous letters alleging shortcomings and lack of due diligence on the part of the Respondent herein, the Petitioner has miserably failed to cover its failure to perform its reciprocal promise to provide full site and decisions upto date of completion. The learned Arbitrator has observed as under:-

"8.6.6.2.6. Construction work involves numerous activities and operations and calls for advanced planning for mobilization of resources, installation of requisite equipments, plant and machinery and execution, more so for the given type of work. However, there is no gainsaying that the monumental delay by the respondent in performing its fundamental reciprocal promise caused huge time afflux, thus disturbing and disrupting the planning of the claimant.

8.6.6.2.7. Even though the respondent has relied upon numerous letters alleging shortcomings and lack of due diligence on the part of the claimant; in my view, these assertions miserably failed to cover its own



monumental failure to perform its fundamental reciprocal promise to provide full site & decisions upto date of completion after the work was awarded without which the claimant could not have planned and organized things so as to execute the work in the most economical, efficient and time bound manner. Thus, non-handing over full site/decisions/drawings prevented the claimant from working in a planned and systematic manner and impeded the momentum.

8.6.6.2.8. The respondent has also made following allegations.

➤ It is a practice that the claimant takes multiple works at same time with same set of equipment's and man power and executes the works with same set of T&P. The claimant has not incurred any loss due to long stay at the site because he had brought man and machinery and material to the site when the work front was available only. These works are not like construction of a flyover where claimant make the office and stations his T&P and technical staff at the site only. In such works the claimant bring the man & machinery to the site only when there is need of that particular man & machinery. Therefore, claimant has not suffered any loss due to extended period.

8.6.6.2.9. The claimant has rebutted all the above allegations in its rejoinder. In any case, as it appears to me, the respondent, in its bid to deny the claim has gone in to over drive mode as these allegations do not have any merit as there is no specific date intimated to claimant for removal of hindrances and site overheads are fixed expenditure. The allegations is simply presumptions."

32. The learned Arbitrator has meticulously looked into the facts. The Arbitrator is the master of the evidence adduced before it and as held by the



Apex Court times without number that 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 learned 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.

33. A perusal of the Associate Builders (supra) and the Delhi Metro Rail Corporation Limited (supra) indicates that the interpretation of the terms of the Contract which is before the learned Arbitrator is within the domain of the learned Arbitrator and only if it is found that the contract has been construed in a manner that no fair minded or reasonable person would, then only patent illegality arises. It has to be demonstrated that the view taken by the learned Arbitrator is not a plausible view in any sense possible. Observations made by the learned 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 learned Arbitrator are based on nil evidence, based on irrelevant material or it ignores vital evidence.

34. 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 learned Arbitrator which was devoid



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of merit or was made without considering the submissions made by the Petitioner or the Respondent/Claimant. The argument of the Petitioner that the Sole Arbitrator cannot rely on the Expert Report is vague and misplaced. The Arbitration and Conciliation Act allows the learned Arbitrator to appoint independent experts to assist them in matters of technical nature to adjudicate the disputes between the parties with accuracy.

35. All the 8 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.

36. The abovementioned findings of this Court shows that the Sole Arbitrator has applied its mind to the issue as to whether the Expert report can be relied upon and has given his observation which cannot be said to be baseless. The findings of the learned Arbitrator are based on cogent material and evidence not warranting any interference under Section 34 of the Arbitration and Conciliation Act.

37. In the view of the above, this Court does not find any reason to interfere with the Award dated 20.06.2023.

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

SUBRAMONIUM PRASAD, J

APRIL 22, 2025

hsk/yc