



2025:DHC:6917



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

Date of decision: 05th AUGUST, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 440/2024**

L AND D JV THROUGH ITS AUTHORISED REPRESENTATIVE
BABU THOMAS,Petitioner

Through: Praveen Chauhan, Sarthak Sawhney,
Malvica Satija, Advs.

versus

CONTAINER CORPORATION OF INDIARespondent

Through: Mr. R. K. Joshi, Mr. Ojusya Joshi,
Mrs. Shabnam Joshi, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition has been filed under Section 34 of the Arbitration & Conciliation Act, 1996, challenging the Arbitral Award dated 04.07.2024, passed by the Learned Arbitral Tribunal while adjudicating the disputes between the Petitioner and the Respondent herein.

2. The facts, in brief, leading to the present Petition are as under:

- a. The Respondent herein brought out a tender in 2013 for a project involving earthwork, construction of drains and boundary walls, pavement constructions, and the manufacturing, supply and laying of heavy-duty M-50 CC blocks at the Container Freight Station in Vallarpadam, Cochin, Kerala. The bid of the Petitioner was accepted by the Respondent on 20.02.2014. The value of the Contract was Rs.24,41,29,872/-. The work was to commence on 02.03.2014



and be completed by 01.01.2015, i.e. within a period of ten months. However, the completion of the work was delayed by nearly 30 months and it finally concluded on 26.06.2017.

- b. Material on record indicates that there were several factors for delay in completion of the work including delay in getting approvals, removing site hindrances, processing payments, etc.
- c. After the contract was concluded, the final payment was done by the Respondent on 19.05.2020 and No Demand Certificate was released by the Respondent, thereafter disputes arose between the Parties regarding certain claims.
- d. An application under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 was filed by the Petitioner herein before this Court seeking appointment of an Arbitrator. This Court *vide* Order dated 09.04.2021 in ARB.P. 48/2021 appointed a Sole Arbitrator to adjudicate the disputes between the Parties.
- e. Pleadings were completed before the Sole Arbitrator. After amendment of the Statement of Claims, the following claims were made by the Petitioner which is enumerated in Paragraph No.13 of the Impugned Award and the same reads as under:

<i>Claim No.</i>	<i>Claim Heading</i>	<i>Amount Claimed (Rs.)</i>
i.	<i>On account of Non-Payment of Extra Quantities of Materials Used/ Work Executed in Refilling due to Sinking/ Settlement of site attributed to Faulty Soil Investigation, Planning, Design, Tender Drafting by the Respondent</i>	2,48,95,515.00



ii.	<i>On account of Delay in payment of Final Bill</i>	<i>As per the discretion of this Tribunal</i>
iii.	<i>Release of Non-Contractually/ Illegally Withhold Amounts from RA Bills and Final Bill, Without Interest.</i>	<i>2,38,21,931.00 along with Interest @ 10%</i>
iv.	<i>Losses on account of Delayed Release of Performance Security and Security Deposit.</i>	<i>Dropped in the Amended Statement of Claims.</i>
v.	<i>Losses on account of Delayed Payment of Running Account Bills</i>	<i>As per the discretion of this Tribunal</i>
vi.	<i>Loss of Profit/ Profitability Due to Prolonged Commitment to the Contract</i>	<i>Dropped in the Amended Statement of Claims</i>
vii.	<i>Losses Suffered Due to Prolonged Commitment to the Contract in the Form of Overheads and Establishment Charges for the Extended Contract Period</i>	<i>Dropped in the Amended Statement of Claims</i>
viii.	<i>Past, pendente lite and future interest on All Claims @ 10% per year</i>	<i>@ 10% P.A.</i>
ix.	<i>Cost of Arbitration/ Reference</i>	<i>Shall be intimated at a later stage</i>
x.	<i>Additional Liability of GST that would come on the Awarded Amount</i>	<i>@ 12% on awarded amount</i>



2025:DHC:6917



- f. The learned Arbitrator *vide* Order dated 04.07.2024, which is impugned herein, denied Claims No.1 & 5 raised by the Petitioner.
3. The challenge in the present Petition is limited to Claims No. 1 & 5. The Claim No.1, as translated to Issue No.1 by the learned Arbitrator, reads as under:
- “Whether there was faulty soil investigation, planning, design, tender drafting by the Respondent resulting in sinking/ settlement of site? If so, whether the Claimant is entitled to recover a sum of Rs. 2,48,95,515.00, or any other amount, non-payment?”*
4. The contention of the Claimant/Petitioner herein before the learned Arbitrator was that the scope of works included only development of 17 acres of land by filling with good earth, gravel, GSBC, WMM, and concrete paver blocks and top layers. It is stated that the Bill of Quantities (BOQ) was based on the site that was given by the Respondent.
5. It is stated that sinking/ settling of the site was not due to any defective work on the part of the Petitioner herein but because of the slushy nature of underlying ground which the Respondent had selected for execution of the work.
6. It is stated that the Petitioner had sent several letters on 20.05.2016, 24.06.2016, 19.10.2016 and 11.12.2017 informing the Respondent about the gradual sinking of the earth.
7. It is stated that the issue of sinking/settlement was also referred to IIT, Madras to ascertain the reasons for sinking/settlement. The IIT, Madras submitted its report on 15.11.2017 supporting the contention of the



Petitioner herein that the soil below the filling was highly plastic and with very high compressibility characteristics. It is stated that in the Report of IIT, Madras, no defect was found in the workmanship or the material used by the Petitioner in the construction. The contentions of the Petitioner herein were contradicted by the Respondent herein before the learned Arbitrator.

8. The learned Arbitrator considered the said issues and came to the conclusion that responsibility for the design/ drawing of the works to be executed was solely on the Respondent. The learned Arbitrator further held that the site was selected by the Respondent and the Claimant/Petitioner herein did not have any say in the selection of the site. It is further held that the designs and drawings of the work were prepared by the PMC on behalf of the Respondent only and the risk of the selection of the site and design and drawing of the work was solely on the Respondent. The learned Arbitrator, therefore, after placing reliance on the report filed by IIT, Madras, came to a conclusion that the sinking of the site was not due to the quantity of work of the Claimant/Petitioner herein.

9. The learned Arbitrator then examined the issue of BOQ to determine as to whether the Claimant/Petitioner herein had actually executed works over and above the quantity provided in the BOQ. Even though, the Petitioner herein argued that directions were issued by the Respondent to rectify the work and the work was executed, the learned Arbitrator held that no evidence has been placed on record to state that the Respondent had issued any direction, directing the Petitioner herein to re-execute the work/rectify the work by using additional filling. The Claimant/Petitioner herein further argued before the learned Arbitrator that the Respondent herein had alleged that since the work was under the defect liability period



of 12 months, the Claimant/Petitioner herein was responsible for re-execution/rectification of work without any additional payments from the Respondent herein. The learned Arbitrator, thereafter, placed reliance on Clause 18 and 31 of the Special Conditions of Contracts (SCC) and concluded the issue by holding as under:-

“72. The Tribunal notes that the calculation provided by the Claimant in the letter dated 11.12.2017 and the SoC would only show the alleged total area filled up (in Sq.M.), the alleged thickness of filling (in M.) and the alleged quantity of filling (in Cu.M.). From the calculations provided by the Claimant, it is impossible for the Tribunal to ascertain what was the original quantity of works (in Cu.M.) executed by the Claimant and what was the extra quantity, if any, executed as rectification/re-work.

73. Furthermore, as found earlier, the Claimant has not placed any material on record to show the alleged extra quantity of work executed by it.

74. The Respondent's submission with regard to the calculation provided in the letter dated 11.12.2017 (which has also been reproduced in para 27 of the amended SoC) is that the calculation would show that the total work executed by the Claimant is less than even the BOQ quantity.

75. The Respondent also attempted to distinguish between the concepts of "extra works" and "extra item" under the Contract. The Respondent submitted that if any work is done outside the BOQ is it called an "extra item" and if extra quantity beyond the quantity provided under the BOQ is executed it called "extra work". The Respondent further submitted that the Claimant's



claim is towards "extra work", but no such "extra work" has been executed by the Claimant.

76. *However, the Tribunal has already found that the Claimant has not placed any material at all on record to show that it has executed any work over and above the BOQ quantities. Thus, it is not necessary to delve into the difference between "extra works" and "extra items". "*

10. Since the learned Arbitrator concluded that the Petitioner herein had not executed any extra quantity of work, the Petitioner was not entitled to Rs.2,48,95,515/-.

11. The learned Arbitrator, therefore, rejected Claim No.1 of the Petitioner herein.

12. As far as Claim No.5, which is a claim towards the interest in delayed payment of RA Bills/running payments, is concerned, the learned Arbitrator held that the Contract did not stipulate that the payment shall be made within 15 days of submission of the RA Bill. The Arbitrator placed reliance on Section 46 of the Indian Contract Act, 1872 and the Judgment of the Bombay High Court in Union of India v. Richa Constructions, **2019 SCC OnLine Bom 917**, and came to a conclusion that though the Contract does not stipulate a specific time period for making payment under the RA Bills, a reasonable period can be determined within which the Respondents ought to have made the payments. The learned Arbitrator noted that most of the RA Bills were being paid by the Respondent within 25 days of the submission of the RA Bills, and therefore, held that 25 days would be a reasonable period within which the Respondent ought to have processed all the RA Bills submitted by the Petitioner herein. It was noted that the



payment under RA Bill No.1 was made on 24.10.2014 and the payment under RA Bill No.9 was made on 27.09.2016 and, therefore, the cause of action arose latest by 27.09.2016 and the limitation period for interest on the last payment would start running from 27.09.2016 and would end on 26.09.2019. Hence, the claim for interest for delayed payments for RA Bills No.1-9, which was raised for the first time by the Petitioner herein in its Statement of Claims on 09.07.2021, is barred by limitation.

13. The learned Arbitrator, therefore, rejected Claims No.1 & 5 raised by the Petitioner herein. It is the findings in the said Claim which have been challenged by the Petitioner in the present Petition.

14. The learned Counsel for the Petitioner raises the contention that the rejection of the Claims No.1 & 5 suffers from patent illegality. He states that the learned Arbitrator has ignored the vital evidence that the Petitioner had done the work during the defect liability period. He states that after holding that the Petitioner was not responsible for the sinking of the land and that there was no defect in the work and also that the Petitioner had done extra work during the defect liability period, the Petitioner was entitled to compensation for the same. As far as Claim No.5 is concerned, the learned Counsel for the Petitioner raised the contention that the period of limitation ought to have been calculated after the final bill was submitted and, therefore, the claim of the Petitioner was within the period of limitation.

15. *Per contra*, learned Counsel for the Respondent contends that the learned Arbitral Tribunal has rightly considered the material on record while observing that no evidence with respect to the work done during the defect liability period was given by the Petitioner and therefore, such a claim cannot be approved in an automated manner. Further, he submitted that the



claim of interest on delayed payments was only raised after the limitation period came to an end.

16. Heard the learned Counsels for the parties and perused the material on record.

17. As far as Claim No.1 is concerned, the learned Arbitrator, after examining the entire issue, has held that the Claimant/Petitioner herein has neither made any pleading nor has placed on record any document to demonstrate any variation in the quantities and rate of extra work executed by it. The learned Arbitrator also noted the calculations provided by the Claimant/Petitioner and held that from the calculations provided by the Petitioner, it is impossible for the Tribunal to ascertain as to what was the original work, which was to be executed by the Claimant/Petitioner herein and what extra work, if any, has been done by the Claimant/Petitioner as rectification work. The learned Arbitrator, therefore, held that in the absence of any extra work executed by the Claimant/Petitioner, the Claimant/Petitioner herein is not entitled to any amount. The learned Arbitrator also held that the calculation given by the Claimant/Petitioner herein shows that the total work executed by the Claimant/Petitioner herein is less than the BOQ.

18. The scope of interference in arbitral awards under Article 34 is no longer *res integra* and has been decided by the Apex Court in a number of judgments, the Apex Court in OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417, has held as under:

“69. Perversity as a ground for setting aside an arbitral award was recognised in Western



Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] . Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed 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.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, 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. It was also observed that 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 that score.

71. In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] , which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge



under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that 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 [See Ssangyong Engg. case, (2019) 15 SCC 131, para 41 : (2020) 2 SCC (Civ) 213] .

72. The tests laid down in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] to determine perversity were followed in Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] and later approved by a three-Judge Bench of this Court in Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd. [Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd., (2020) 7 SCC 167 : (2020) 4 SCC (Civ) 149]

73. In a recent three-Judge Bench decision of this Court in DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd. [DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357 : (2024) 3 SCC (Civ) 112 : 2024 INSC 292] , the ground of patent illegality/perversity was delineated in the following terms : (SCC p. 376, para 39)

“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. 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 its jurisdiction or violating a fundamental principle of natural justice.”

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43] , a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes 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 arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as



party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

(Emphasis Supplied)

19. Further, in Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd. & Ors., (2018) 3 SCC 133, the Apex Court has held that the Arbitral Tribunal is the master of evidence and a finding of fact arrived at by an arbitrator is on the appreciation of the evidence on record, and is not to be scrutinized as if the Court was sitting in appeal. In the said Judgment the Apex Court has held as under:-

*“51. Categorical findings are arrived at by the Arbitral Tribunal to the effect that insofar as Respondent 2 is concerned, it was always ready and willing to perform its contractual obligations, but was prevented by the appellant from such performance. Another specific finding which is returned by the Arbitral Tribunal is that the appellant had not given the list of locations and, therefore, its submissions that Respondent 2 had adequate lists of locations. In fact, on this count, the Arbitral Tribunal has commented upon the working of the appellant itself and expressed its dismay about lack of control by the Head Office of the appellant over the field offices which led to the failure of the contract. **These findings of facts which are arrived at by the Arbitral Tribunal after appreciating the evidence and documents on record. From these findings it stands established that there is a fundamental breach on the part of the appellant in carrying out its obligations, with no fault of Respondent which had invested whopping amount of Rs 163 crores in the project.** A perusal of the award reveals that the Tribunal investigated the conduct of the entire transaction between the parties pertaining to the work order, including withholding of DTC locations, allegations and counter-allegations by the parties concerning installed objects. The arbitrators did not focus on a*



*particular breach qua particular number of objects/class of objects. Respondent 2 is right in its submission that the fundamental breach, by its very nature, pervades the entire contract and once committed, the contract as a whole stands abrogated. It is on the aforesaid basis that the Arbitral Tribunal has come to the conclusion that the termination of contract by Respondent 2 was in order and valid. **The proposition of law that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the arbitrators on the basis of evidence on record are not to be scrutinized as if the Court was sitting in appeal now stands settled by a catena of judgments pronounced by this Court without any exception thereto.*** (Emphasis Supplied)

20. Upon perusal of the material on record and the impugned Award, this Court finds that the learned Arbitrator has appreciated the evidence and has rendered a finding. Learned Counsel for the Petitioner has not been able to demonstrate that the finding of the Arbitrator was based on nil evidence or that the Arbitrator has relied on the evidence which has not been placed before the Arbitrator by the parties. The Award is completely within the Statement of Claims and the calculation given by the Claimant/Petitioner herein and material, which has been meticulously examined by the learned Arbitrator to come to a conclusion that the Claimant/Petitioner herein is not entitled to any amount, as there is nothing to show that there is any extra work has been done by the Petitioner herein. The learned Arbitrator has held that even the work done by the Petitioner herein is less than the BOQ.

21. It is well settled that the learned Arbitrator is the master of the evidence placed before it and the Courts while exercising jurisdiction under Section 34 of the Arbitration Act do not re-appreciate evidence and come to a different conclusion.



2025:DHC:6917



22. This Court does not find any error in the conclusion arrived at by the learned Arbitrator. There is no patent illegality in the Award and it cannot be said that the award passed by the learned Arbitrator is in contravention of law or that it is opposed to the fundamental policy of India.

23. As far as Claim No.5 of the Petitioner herein is concerned, the Statement of Claims itself gives the date on which the bills have been raised by the Petitioner and the dates on which the payments have been made. The details of RA Bills, as given in the Petition, is reproduced herein for ready reference and the same reads as under:

RA NO	DATE CLAIMED	AMOUNT CLAIMED (LAKHS Rs.)	DATE OF PAYMENT	AMOUNT RECEIVED (LAKHS Rs.)	TOTAL DAYS TAKEN	DELAY BEYOND 15 DAYS	INTEREST @10% (LAKHS Rs.)
1	25.09.2014	129.37	24.10.2014	98.72	30	15	0.40570
2	05.01.2015	45.81	24.02.2015	44.03	48	33	0.39808
3	10.03.2015	715.1	26.03.2015	605.3	16	1	0.16584
4	01.06.2015	163.96	21.07.2015	150.3	51	36	1.48241
5	26.11.2015	66.39	03.12.2015	62.39	8	0	0.00000
6	11.01.2016	242.28	15.02.2016	218	24	9	0.53753
7	25.02.2016	245.78	08.03.2016	231.67	11	0	0.00000
8	23.05.2016	382.09	16.06.2016	358.6	22	7	0.68773
9	16.07.2016	214.29	27.09.2016	131.31	70	55	1.97864
TOTAL							5.65593

24. A perusal of the above table shows that the RA Bills have been paid by 27.09.2016 and, therefore, the period of limitation would come to an end in September, 2019 whereas the claims for delayed payments have been raised only in the Statement of Claims, which has been filed in 2021 and, therefore, the claim of the Petitioner is barred by limitation.



25. It is pertinent to mention that the Claimant/Petitioner relied on the observations made in the Judgment of the Apex Court in Union of India v. Momin Construction Co., (1997) 9 SCC 97 and the Judgment of this Court in Naraindas R. Israni v. Union of India, 1992 SCC OnLine Del 528, before the learned Arbitrator regarding the limitation aspect on the interest payment.

26. However, as rightly concluded by the learned Arbitrator, the judgments relied on by the Claimant/Petitioner herein do not apply to the facts of the present case and have been distinguished by the learned Arbitrator.

27. In the concerned opinion of this Court, the view taken by the learned Arbitrator does not suffer from patent illegality and, therefore, does not require interference by this Court.

28. Accordingly, the Petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2025

Prateek/Rahul