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

Date of decision: 22nd September 2025

+ **FAO(OS) (COMM) 146/2025 & CM APPL. 60278/2025**

M/S LARSEN AND TOUBRO LTD

.....Appellant

Through: Mr. Manu Seshadri, Ms. Prachi Jain, Mr. Siddharth Shekhar, Mr. Sahil Mahganani, Mr. Sarthak Mongha, Advocates.

versus

RAIL VIKAS NIGAM LIMITED

.....Respondent

Through: Mr. Udit Seth, Mr. Divyanshu Singh, Advocates (through VC).

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT (ORAL)

ANISH DAYAL, J.

1. This appeal has been filed under *Section 37* of the Arbitration & Conciliation Act, 1996 (*'A&C Act'*), assailing the judgment dated 01st July 2025 passed by the Single Judge in ***OMP (COMM) 278/2017***, dismissing the petition under *Section 34* of the A&C Act filed by the appellant (*'impugned judgment'*).

2. The proceedings arise out of an impugned award dated 31st March 2017 passed by Arbitral Tribunal comprising of three Arbitrators (*'AT'*)

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in respect of the Contract Agreement dated 15th December 2011 for the work of “*construction of viaduct including related works for 5.400 km length excluding station areas from Ch.20006.60 to Ch.26394.60 between CBD-1 to Rabindra Tirtha in New Garia Airport corridor of Kolkata Metro Railway Line Package-ANV-4*” at an accepted cost of Rs.199,10,44,060/-.

3. Letter of acceptance was issued to the appellant on 21st October 2011. Completion period for work was 30 months. Stipulated date of start was 21st October 2011, and stipulated date of completion was 20th April 2014. Actual date of completion was 30th June 2018.

4. Appellant approached AT and filed six claims, out of which the AT allowed *Claim Nos.2, 4 and 5* and rejected *Claim Nos. 1, 3 and 6*.

5. The grievance of the appellant essentially relates to rejection of *Claim No.1*, which was for idling of resources, where appellant had claimed Rs. 6,52,70,847/-.

6. Appellant contended that on account of delay on the part of respondent in providing drawings & permissions, change of alignment, arranging GTS mark and providing the requisite land within the specified time, appellant was entitled to compensation for delay, which led to idling of its resources. Appellant claimed that it had submitted various letters to the respondent with respect to delay & idling of resources from time to time.

7. Respondent, however, resisted the claim relying upon *Clause 2.2 & 8.3* of General Conditions of Contract (‘GCC’). Respondent claimed that



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the progress achieved by the appellant in the fronts, which were already available to them, was not up to the mark, and the question of idling of resources does not arise. He relied upon correspondence with the appellant in this regard.

8. As regards the appellant's contention that the land needed for erection of permanent structure pertains to HIDCO and was not provided within 30 days of issuance of LOA, as per *Clause 8* of Special Conditions of Contract ('*SCC*'), respondent contended that the delay in the diversion of public utility was due to poor coordination between appellant and HIDCO. Appellant was responsible for liaison with the utility-owning agency for diversions and getting the diversions scheme approved as per *Clause 4.0 and 3.1.5 of Section 5, Chapter I*. Appellant was also supposed to obtain the necessary approval from transport authorities and police department for temporary traffic diversion and control of public road.

9. The AT took note of *Clause 2.2* and *Clause 8.3*, which are extracted as under:

Clause 2.2

"The Employer shall grant the Contractor right of access to, and possession of, the Site progressively within the time (or times) stated in the Contract Data for the completion of Works. Such right and possession may not be exclusive to the contractor. The contractor will draw/modify the schedule for completion of Works according to progressive possession/right of such sites.

If the contractor suffers delay from failure on the part of the Employer to grant right of access to, or possession of the Site, the Contractor shall give notice to the Engineer in a period of 28 day of such occurrence. After receipt of such

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notice the Engineer shall proceed to determine any extension of time to which the Contractor is entitled and shall notify the Contractor accordingly. For any such delay in handling over of site, Contractors will be entitled to only reasonable extension of time and no monetary claims whatsoever shall be paid or entertained on this account.

Clause 8.3

“In case of delay on the part of the Contractor, the Contractor shall be liable to pay liquidated damages and any other compensation for the damages suffered by the Employer as per Clause 8. 5. This is without prejudice to the right of the Employer to rescind the Contract.

Failure or delay by the employer or the Engineer, to hand over to the contractor the Site necessary for execution of Works, or any part of the Works, or to give necessary notice to commence the Works, or to provide necessary Drawings or instructions or clarifications or to supply any material, plant or machinery, which under the Contract, is the responsibility of the Employer, shall in no way effect or vitiate the Contract or alter the character thereof, or entitled the contractor to damages or compensation thereof but in any such case, the Engineer shall extend the time period for the completion of the Contract, as in his opinion is/ are reasonable.

(emphasis added)

10. Taking into account these provisions of GCC, the AT held that respondent was providing extension of completion period, considering delays not attributable to the claimant, including delay in making work site available for execution of work. The AT accepted the submission of respondent that, as per *Clause 2.2* and *Clause 8.3* of GCC, appellant at



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best was entitled to extension of time period for completion of contract, and no monetary claims could be entertained.

11. Submissions of the parties are noted in detail in paragraphs 7.1-7.19 (*appellant/claimant's submission*) and paragraphs 8.1-8.13 (*respondent's submissions*) of the Award.

12. Counsel for appellant submitted that AT had not given any reason and had mechanically applied *Clause 2.2* and *Clause 8.3* while the case of the appellant was that '*the time was of the essence of the contract*'.

13. It is contended that AT had failed to consider that the parties had reciprocal obligations and whether *Clause 8.3* could insulate the respondent from any claim for losses or damages for breach or failure to perform the obligations, particularly in light of provisions of Contract Act.

14. It was, therefore, contended that *Clause 8.3* was inconsistent, *inter alia*, with *Sections 55 and 73* of the Indian Contract Act, 1872 (*'ICA'*), and therefore, contrary to fundamental policy of Indian Law. For this, he relied upon *Simplex Concrete Piles (India) Ltd. v. Union of India* 2010 SCC OnLine Del 821.

15. Respondent submitted before the Single Judge that this argument was neither canvassed before the AT nor was the judgment of *Simplex Concrete* (*supra*) placed before it for consideration, and, therefore, this objection cannot be raised.

16. Moreover, the decision in *Simplex Concrete* (*supra*) was challenged by Union of India under *Section 37* of A&C Act in *Union of India v. Simplex Concrete Piles (1)* FAO (OS) No.348/2010 and leave had



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been granted. The said judgment had also been distinguished by Division Bench in the judgment of ***PLUS91 Security Solutions v. NEC Corpn. India (P) Ltd.*** 2024 SCC OnLine Del 5114, where it was clarified that contractual bargains between the parties have to be given effect to.

17. With respect to appellant's arguments under *Section 55* of ICA, respondent contended that the appellant had not intimated its intention to seek compensation; only the letter dated 25th February 2013 was issued by the appellant seeking extension of time. It further contended that clauses similarly worded to *Clause 2.2* and *Clause 8.3* of the GCC were upheld by the Supreme Court in ***K. Marappan v. TBPHLC*** (2020) 15 SCC 401. Reliance on ***PLUS91 Security*** (*supra*) and ***K. Marappan*** (*supra*) was contested by appellant before the Single Judge.

18. After assessing these and other contentions made by the parties, the impugned judgment zeroed in on the basic issue of whether the decision of the AT disallowing the claim for idling of men, machinery and resources suffered from shortcomings, which would allow interference under *Section 34* of the A&C Act.

19. Impugned judgment, while analysing *Clause 2.2* and *Clause 8.3* of GCC, observed that, as per these provisions, delay in providing the work site to the contractor would trigger a notice by the contractor within 28 days of such failure in delivery of site, leading to only extension of time, barring any corresponding monetary claim. *Clause 8.3* of GCC, which relates to delay on the part of the employer or engineer in handing over the site or providing necessary drawings, etc., stipulated that such delay would



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neither vitiate the contract nor entitle the contractor to claim damages or/and compensation, but only to an extension of time.

20. The Single Judge in the impugned judgment noted that there was no challenge to the said provisions before the AT or any time prior to the signing of the contract or during its execution or thereafter, and, therefore, it was not open to assail the arbitral award under *Section 34* by raising, for the first time, the issue of legality of these provisions. The Single Judge further noted that the appellant was conscious of the absence of its right to claim compensation, which is evident from letter dated 25th February 2013, where the petitioner, while seeking extension of time, attributes the delay to lack of requisite approvals and site availability, but does not seek any compensation.

21. Extension of time was granted by letter dated 21st March 2013, and it was specifically provided that the extension was without any penalty. Compensation was sought only subsequently, on 22nd June 2013, but was denied by respondent on 09th July 2013.

22. The impugned judgment, therefore, notes that the Court cannot be asked to reappreciate evidence, and the AT has the power and authority to interpret the provisions of a contract and give a decision on the basis of the *factual matrix*. On issues of interpretative differences, the Court was not inclined to interfere under provisions of *Section 34* of A&C Act.

23. Single Judge placed reliance on the decision of the Supreme Court in *Union of India v. Susaka Pvt. Ltd.* (2018) 2 SCC 182, noting that if a



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plea was not raised before the AT, it amounts to a waiver and/or abandonment of a plea at the initial stage.

24. Appellant had also referred to another dispute between the parties, which culminated in an award dated 30th December 2023, where AT had awarded idling claim on the basis of delay by the respondent in providing drawings.

25. Appellant claimed that this award had been accepted and attained finality. In this respect, reliance on the different award between the parties was rejected by the Single Judge on the ground that each case has to be dealt with as per its own merits.

26. Counsel for appellant, therefore, emphasized that the rejection of their submission that *Clause 2.2* and *Clause 8.3* were unconscionable and that *Clause 17.1* of GCC itself provided additional payment under any clause or otherwise in connection with the contract. It was submitted that any exemption defeating the statutory right to compensation under *Section 73* of ICA was contrary to fundamental policy of Indian Law.

27. Moreover, it was argued that the disentitlement to statutory benefits under *Sections 54 & 55* of the ICA would be void as being against public policy and violative of *Section 23* of the ICA. The interference was, therefore, invited under *Section 34(2)(b)(ii)* of the A&C Act on grounds of patent illegality, perversity, and conflict with the fundamental policy of Indian law.



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Analysis

28. This Court, after having assessed the submissions of counsel for appellant, and examining the impugned judgment as well as the impugned award, finds that the appeal under *Section 37* of the A&C Act is unmerited for reasons which follow.

29. *Firstly*, Scope of interference under *Section 37* is quite limited, as evident from the provision of *Section 34* itself, as well as the determination which has been made by the Supreme Court in ***Associate Builders v. Delhi Development Authority*** (2015) 3 SCC 49. The Supreme Court held that the interference under *Section 34* is limited and extremely circumscribed and is permissible only when the award is tainted by patent illegality, i.e. illegality going to the root, and not mere erroneous application of law. In ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*** (2019) 15 SCC 131, the Supreme Court narrowed the scope of "*public policy*" under *Section 34*, observing that it is confined to cases where the award is in conflict with the fundamental policy of Indian law, is patently illegal, or is in conflict with most basic notions of morality or justice. Moreover, in ***MMTC Ltd. v. Vedanta Ltd.*** (2019) 4 SCC 163, the Supreme Court reiterated that *Section 34* is not a provision for appeal, and courts cannot reappraise evidence or substitute their view for that of the arbitrator. Interference is permissible only on the limited grounds specified in the Act.

29.1. In fact, under *Section 37*, the scope of interference is even further circumscribed as articulated by the Supreme Court in ***Somdatt Builders-***



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NCC-NEC (JV) v. NHAI (2025) 6 SCC 757 and ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*** (2023) 9 SCC 85.

29.2. In ***Somdatt Builders-NCC-NEC (JV) v. NHAI*** (2025) 6 SCC 757, the Supreme Court held that it cannot reopen the merits of a case while hearing a *Section 37* appeal and further, cannot interpret contractual clauses. The relevant paragraphs are extracted as under:

“45. In MMTCL Ltd. Vs. Vedanta Ltd. [(2019) 4 SCC 163], this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As far as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.

48. In Reliance Infrastructure [(2024) 1 SCC 479], this Court referring to one of its earlier decisions in UHL Power Co. Ltd. v. State of H.P. [(2022) 4 SCC 116] held that scope of interference under Section 37 is all the more



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circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed”.

(emphasis added)

29.3. Similarly, in **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project** (2023) 9 SCC 85, the Supreme Court reiterated that the scope of jurisdiction under *Section 34* and *Section 37* of the A&C Act is not akin to normal appellate jurisdiction, and interference with an arbitral award should not be done in a casual and cavalier manner. The relevant paragraph is extracted as under:

“25. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under



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Section 37 of the Act cannot reverse an award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. ...”

(emphasis added)

30. Secondly, it is settled law that interpretation of contractual clauses lies within the arbitrator’s jurisdiction, and Courts cannot reappraise evidence or substitute their view.

30.1. In **McDermott International Inc. v. Burn Standard Co. Ltd.** (2006) 11 SCC 181, it was held that interpreting the terms of a contract, even when it involves legal questions, is a matter for the arbitrator to decide. Relevant paragraphs of the judgment are extracted as under:

“112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law.

113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.”

(emphasis added)



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31. *Thirdly*, appellant's reliance on the decision in ***Simplex Concrete*** (*supra*) cannot be determinative of the issue. In ***Simplex Concrete*** (*supra*), the Single Judge of this Court dealt with the issue whether contractual clauses would disentitle a person from claiming damages which they were otherwise entitled to under law, and whether the Arbitrator could be prevented from awarding such damages or losses merely because the contract prohibited the same. The discussion involved two judgments of the Supreme Court dealing with the same clauses.

31.1. In ***Ramnath International Construction (P) Ltd. v Union of India*** (2007) 2 SCC 453, the Supreme Court held that even if the Union of India/employer was at fault, the contractual bar to the entitlement of the contractor to damages would still operate.

31.2. However, in ***Asian Techs Ltd. v. Union of India*** (2009) 10 SCC 354, the Supreme Court held that such clauses merely prevent the department from granting damages but do not prevent the Arbitrator from awarding damages.

31.3. Faced with these two conflicting judgments of the Supreme Court, the Single Judge in ***Simplex Concrete*** (*supra*) relied on precedents that guide High Courts to follow the judgment that more correctly lays down the law. The Single Judge opined that if *Sections 73 and 55* of ICA are not allowed to prevail, then parties would in fact not even enter into contracts, which are essentially for the purpose of profit and benefits. This would enable deliberate breaches without consequence.



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31.4. That being so, the Single Judge noted that this was clearly a matter of “*public policy*” and “*public interest*”, and that the sanctity of contracts must be preserved and any contractual clauses intended to defeat the contract’s own object would violate *Section 23* of ICA, and therefore, be void.

31.5. The Supreme Court’s interpretation in ***Ramnath International Construction*** (*supra*) was characterised as literal and strict interpretation of clauses. The Single Judge, therefore, struck down the award which had interpreted the clauses and upheld the same.

31.6. The decision in ***Simplex Concrete*** (*supra*) was subsequently referred to by the Division Bench of this Court in ***PLUS91 Security Solutions*** (*supra*), while dealing with an intra-court appeal under *Section 37* of the A&C Act. One of the issues therein related to a clause which excluded liability for any indirect, special or consequential loss or damage due to loss of goodwill or loss of revenue or profit. The AT therein had relied on ***Simplex Concrete*** (*supra*) and held that the appellant/*PLUS91 Security Solutions* would be entitled to damages notwithstanding the said clause. Respondent/*NEC* assailed the award, stating that the AT had misinterpreted the MoU and the award of loss or damages was contrary to the terms of the MoU. The Single Judge, while deciding petition under *Section 34* of A&C Act, held that the clause had to be read in context of other clauses of the MoU, which was essentially for parties to collaborate with each other, and did not create binding commitments.



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31.7. The Single Judge in **PLUS91 Security Solutions** (*supra*) held that AT had erred in applying the ratio of **Simplex Concrete** (*supra*), as it was rendered in a different context. While dealing with the issue, the Division Bench of this Court noted that it had reservations as to the decision in **Simplex Concrete** (*supra*) and stated that the said decision had no application in the present context since the observations made in **Simplex Concrete** (*supra*) were in context of specific clauses. In this regard, the Court noted as under:

“65. This Court has some reservations as to the decision rendered by the learned Single Judge in Simplex Concrete Piles (India) Ltd. v. Union of India. However, it is not necessary to examine the same as it is not applicable to the facts in the present case. Reliance on the said decision is clearly misplaced. In that case, the Court was considering a clause, which precluded a contractor from claiming loss on account of delay in execution of the contract even though the delay in execution of the contract was for the reasons attributable to the employer. The learned Single Judge observed that there was a conflict of decision between the Supreme Court in regard to award of damages notwithstanding such a clause. The learned Single Judge noted that whereas, in the case of Ramnath International Construction (P) Ltd. v. Union of India, the Supreme Court had held that even if the employer (Union of India) is at fault, the award of damages is barred. However, in a latter decision in Asian Techs Limited v. Union of India, the Supreme Court had held in the context of a similar clause, that it only prevented the department from granting damages but did not prevent the arbitrator from awarding damages. After noting the said conflicting decision, the learned Single Judge held that the decision in the case of Asian Techs Limited v. Union of India furthered the object



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of the Contract Act. However, the learned Single Judge also observed that “To permit a contractual clause having the object to defeat the very contract itself, is a matter of grave public interest. If such a clause is allowed to stand, then, the same will defeat the basis and existence of the Contract Act.” For the aforesaid reasoning the learned Single Judge held that the contractual clauses such as the Clauses in question in the said case [Clause 11(A) to 11(C)] which disentitle a party to the benefits of Sections 55 and 73 of the Contract Act would be violative of Section 23 of the Contract Act.

66. Clearly, the said decision has no application. The observations were made in the context of the said clauses. More importantly, the observations were based on the assumption that the contractual clauses would defeat the very contract itself. The said reasoning presupposes that a contractual clause is not a part of the contract between the parties. The said assumption is flawed.”

(emphasis added)

31.8. The Division Bench of this Court in **PLUS91 Security Solutions** (*supra*) further analysed the decisions in **Ramnath International Construction** (*supra*) and **Asian Techs Ltd.** (*supra*) in the following manner:

“68. In *Ramnath International Construction (P) Ltd. v. Union of India*, the Supreme Court found that the said Clause 11(C) of the contract in question barred claims for compensation as a consequence of delays. A similar view was upheld by the Supreme Court in an earlier decision in *Associated Engineering Co. v. Government of Andhra Pradesh* and in *Ch. Ramalinga Reddy v. Superintending Engineer*, whereby claims of compensation on account of delays were rejected as being proscribed by the relevant clauses.



69. The decision in the case of *Asian Techs Ltd. v. Union of India* is not an authority for the proposition that a clause which barred claims for damages of a particular nature would be inoperative as opposed to public policy. As noted above, the Supreme Court had interpreted Clause 11(C) as not debarring a contractor from making a claim for compensation before an Arbitral Tribunal. However, the decision in the case of *Ch. Ramalinga Reddy v. Superintending Engineer* is a binding authority on a proposition that if a contractual clause bars certain claim of damages, the same would be binding on the parties.”

(emphasis added)

31.9. The Division Bench of this Court further relied on several decisions of the Supreme Court and the High Courts, where it was held that the integrity of the contract could not be interfered with, even if an absolute power has been granted in favour of another party in the contract. The decisions adverted to by the Division Bench were ***Oil & Natural Gas Corporation v Wig Brothers Builders & Engineers Pvt. Ltd.*** (2010) 13 SCC 377, ***Her Highness Maharani Shantidevi P. Gaikwad vs. Savjibhai Haribhai Patel*** (2001) 5 SCC 101, ***Indian Oil Corporation Ltd. v. Amritsar Gas Services*** (1991) 1 SCC 533, ***Union of India v. Manraj Enterprises*** (2022) 2 SCC 331 and ***Bharathi Knitting Co. v. DHL Worldwide Express Courier Division of Airfreight Ltd.*** (1996) 4 SCC 704.

31.10. Upon assessment of these decisions, the Division Bench opined as under:

“76. There is no ambiguity in the ratio of the aforesaid decisions. If the parties have agreed that a particular type of damages would not be paid, the said agreement is



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required to be implemented. In terms of Section 28(3) of the A&C Act, the Arbitral Tribunal is required to render a decision having regard to the terms of the contract.”

(emphasis added)

31.11. In these circumstances, appellant’s reliance on **Simplex Concrete** (*supra*) simpliciter may not be tenable, considering that not only are there different views before the Supreme Court, but also the principle enunciated in **Simplex Concrete** (*supra*) has been diverted from in **PLUS91 Security Solutions** (*supra*).

32. Fourthly, in **K. Marappan** (*supra*), issue concerned appeals arising out of arbitration conducted under the A&C Act. The High Court recorded that the arbitration awards were unsustainable in view of *Clause 59* of the Agreement, which denied any claim for compensation on account of delays or hindrances to the work from any cause whatsoever. The Court upheld the principle of the clause and its applicability and stated as under:

“25. It is our view that it will not be open to a contractor to claim compensation which arises on account of the fact that the work is delayed or hindrance caused to the work from any cause whatsoever. To demystify this further, it means that should the work be delayed on account of reasons which are attributable either partially or entirely to the employer, namely, the respondent herein, the claim for compensation is barred. Equally, the clause interdicts raising claim for compensation by the contractor if the employer poses hindrance to the work. If work gets delayed on account of the contractor himself, it is axiomatic that he cannot claim compensation as it would amount to a person taking advantage of his own wrong. Delay from any cause cannot found a claim for compensation. It may also happen that the work may get delayed not due to the fault of the



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employer. There may be natural causes such as natural calamities which may cause delay in carrying out the work. Even in such cases, in our view, Clause 59 would cast an embargo against a claim by the contractor. This interpretation gives full play to the words “delays from any cause whatsoever”. Equally, if there is hindrance to the work from any cause whatever, a claim for compensation would not lie.”

(emphasis added)

32.1. While dealing with the specific claim of the contractor for compensation for collected materials lying on the site, and for enhanced compensation, the Court endorsed *Clause 59*, which barred compensation for delay regardless of the cause. The Court, in relation to the claim, held as under:

“85. As regards this claim, the claim appears to be that the appellant collected materials and it was lying at the site. Admittedly, the appellant has not used this material for the purpose of doing the work. Only the case set up by the appellant is that he was given an assurance that he will be permitted to carry out the work and therefore, since he has spent money for the same, he must get the amount which is claimed for having spent on the material. We are of the view that insofar as the appellant has not used any of the materials to carry out the work and sets up the claim only on the basis of assurance which has not been admitted, the action of the appellant in purchasing the materials cannot result in establishing his claim for compensation. It is to be noticed that the appellant raised a claim for enhanced compensation. He alleged that there was delay on the part of the respondent on various grounds. This is apart from alleging other factors like breakout of malaria, unfavourable weather and delay in taking decision by the departmental officers, which contributed to escalation in



cost. Correspondence was exchanged with the Executive Engineer and the Superintending Engineer, the Superintending Engineer and the Chief Engineer and finally between the Chief Engineer and the Government. It appears that at that stage, the appellant invoked the arbitration clause and a panel of arbitrators gave their award. In fact, the work itself was stopped. Clause 59 prevents the court from awarding compensation on account of any factor relating to the delay which may be due to any cause whatsoever. In such circumstances, we are of the view that the appellant has also not made out any cause for compensation in regard to this claim.”

(emphasis added)

32.2. References in these decisions have also been made to Section 28(3) of the A&C Act, which states as under:

“Section 28

(3) The Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”

(emphasis added)

33. Lastly, reliance of the respondent on **Susaka Pvt. Ltd.** (*supra*) is also merited as the Supreme Court has clearly held that if a plea is available, whether on facts or law, it must be raised by party at an appropriate stage, and if not, the party would be precluded from raising it at a later/belated stage. The Supreme Court opined as under:

“27. If a plea is available, whether on facts or law, it has to be raised by the party at an appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of



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waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case.

33. It is a well-settled principle in Arbitration Law that the award of an Arbitral Tribunal once passed is binding on the parties. The reason being that the parties having chosen their own arbitrator and given him an authority to decide the specific disputes arising between them must respect his decision as far as possible and should not make any attempt to find fault in each issue decided by him only because it is decided against one party. It is only when the issue decided is found to be bad in law in the light of any of the specified grounds set out in Section 34 of the Act, the Court may consider it appropriate to interfere in the award else not. The case at hand falls in the former category.”

(emphasis added)

33.1 It is quite clear from the pleadings before the Arbitral Tribunal, in particular the statement of claim, reply by respondent and rejoinder thereto, that no plea was taken that *Clause 2.2 and 8.3* were unconscionable, against the grain of *Section 55 and 73* of the ICA, or void on the basis of *Section 23* of the ICA. Perusal of the pleadings before the AT bear out that this issue was never placed before the AT. This is also evident from the impugned award itself where this aspect does not come up for discussion. The AT simply went into the reasons for the delay and applied *Clause 2.2* and *Clause 8.3* to state that appellant would not be entitled to monetary claim, damages, or compensation. The Single Judge was, therefore, not amiss in recognising this and dismissing the petition under *Section 34*.



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33.2. A perusal of the statement of defence filed by the respondent before the AT bears out that specific defence was taken to the claim filed by the appellant/claimant that there was no idling of resources as was being claimed. Moreover, it was contended that the entitlement was merely to extension of time period for completion of contract, and not as such to vitiate the contract, alter its character thereof, or entitle the appellant/claimant to damages or compensation. These defences, in particular, were taken in paragraphs *nos. 15-18* of the statement of defence.

33.3. In rejoinder as filed by the appellant/claimant thereto, a simple denial has been made, and the appellant has not chosen to raise the issue of *Clauses 2.2 and 8.3* being disharmonious with principles enshrined in *Sections 55 and 73* of the ICA, or being void on the basis of *Section 23* thereof. It is quite clear that these aspects were not pleaded in any manner whatsoever before the AT, and, therefore, appellant cannot raise the issues at a belated stage before the Court under *Section 34 or 37*, contending that the AT ought to have considered the same.

33.4. For ready reference, *paragraph 11* of the rejoinder, which rejoins to *paragraph nos. 15-18* of the statement of defence, is extracted as under:

“11. With reference to paragraphs 15, 16, 17 and 18 the respondent is merely repeating clause 8.3 of GCC in an attempt to escape its liability for its gross default. It is evident that the respondent is impliedly accepted its breach of obligation otherwise it would not have resorted to clause 8.3. It is denied and disputed that all material times the respondent had given sufficient drawings to execute the work and thus there was no idling of resources as alleged. It is not a question of furnishing the GFC drawings but it



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was the obligation of the respondent to furnish such drawings in a systematic manner in order to the claimant to execute the work in a planned manner. Admittedly, the respondent had failed to make available the GFC drawings for certain stretches. It is an elementary principle of law that a party in default cannot escape its liability by resorting to an exemption clause. The defaulting party is bound to compensate the innocent party for any damages.”
(emphasis added)

33.5. Even otherwise, the Single Judge has relied upon the decision in **Susaka Pvt. Ltd.** (*supra*) to buttress the reasoning that new aspects cannot be taken up at the stage of *Section 34* petitions, considering that they would be deemed to have been waived if not taken up before the AT.

33.6. What is important is to appreciate that in all the correspondence prior to 22nd June 2013, when the appellant was complaining about delays on various accounts and blaming it on the employer/respondent, no specific claim for compensation was ever made. Only an extension of time was sought, as is evident from the communication dated 25th February 2013 and communications prior to that, *inter alia*, 31st August 2012, 17th May 2012, 22nd June 2012, 9th August 2012, and 22nd November 2012. Failure of the appellant to notify the respondent of a claim for compensation can be considered as waiver and abandonment of the same. A conscious choice was made by the appellant, for reasons best known to them, not to raise a claim of compensation.

34. The Arbitral Tribunal, being a creature of the contract, is, therefore, confined to the four corners of the contract and expected to uphold its sanctity, and not provide a supervening interpretation. In the spirit of this



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provision, the rejection of the objections to the award *vide* impugned judgment is, therefore, fully merited. The AT has dismissed the claim for idling of resources, taking note of *Clause 2.2* and *Clause 8.3*, and, therefore, has respected the express terms of the contract, which were binding and sacrosanct between the parties.

35. The AT, after having considered the facts of the matter, particularly on the issue of reasons for the delay, appreciated the evidence in its own right, and did not consider it necessary to entertain the claim of compensation. The AT also noted that during the extended period, compensation for price variation has also been made to the claimant.

36. For these reasons, the Court is not inclined to allow this appeal and, therefore, appeal stands dismissed along with the pending applications.

37. Judgment be uploaded on the website of this Court.

**ANISH DAYAL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

SEPTEMBER 22, 2025/ak/bp

Signature Not Verified

Digitally Signed
By: MANISH KUMAR
Signing Date: 07.11.2025
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