



2025:DHC:3196



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

Date of decision: 22nd APRIL, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 61/2025, I.A. 2906/2025, I.A. 2907/2025**

NEW DELHI MUNICIPAL COUNCIL

.....Petitioner

Through: Mr Anil K Airi, Sr. Advocate with
Ms Zubeda Begum, SC for NDMC,
Mr Ravi Krishan Chandna, Astd. S C
NDMC, Mr Mudit Ruhella, Mr
Malyaj Sehgal, Ms Sadhana Sharma,
Mr Vishal Tyagi, Ms Shruti A
Chandna, Ms Vidushi C Sachdeva,
Ms. Vanessa Singh, Advocates

versus

MINOSHA INDIA LIMITED

.....Respondent

Through: Mr. Harsh Kaushik, Mr. Harsh
Prakash and Mr. Gitanshu Rustagi
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The challenge in the present petition under Section 34 of the Arbitration & Conciliation Act, 1996 ("Arbitration Act") is to an Award dated 12.09.2024 (hereinafter referred to as the impugned award) passed in favour of the Respondent, whereby the Respondent was awarded a sum of INR 16.20 Crore along with simple interest of 8% from 26.04.2016 till the date of payment by the Petitioner to the Respondent.
2. The Petitioner, New Delhi Municipal Corporation (hereinafter referred to as "the Petitioner") is a Municipal Council and was constituted



under the New Delhi Municipal Corporation Act, 1994 (hereinafter referred to as the Municipal Act)

3. The Respondent, formerly known as Ricoh India Limited (hereinafter referred to as “the Respondent”) is an unlisted Public Company that was incorporated under the Companies Act, 1956 and is a well-known system integrator for IT service projects. The Respondent has in the past aided various government agencies to digitalize transformation in education, healthcare, e-governance and citizen centric initiatives.

4. The dispute in the present proceedings arises from the termination of the Agreement dated 20.02.2015 by the Petitioner. The Agreement had been entered into between the Petitioner and the Respondent whereunder the Respondent was to provide a Packaged Integrated Human Resource Management System Solution to the Petitioner.

5. The facts, shorn of unnecessary details are as follows:

- a. The Petitioner sought to eliminate and do away with manual data collection and reporting across its various departments. However, they lacked an in-house Human Resource Management System. In order to overcome this predicament they floated a tender for a comprehensive Human Resource Management System that would enable the Petitioner to undertake personal data management, payroll management, leave management, pension, grievances, training etc.
- b. The Respondent, in collaboration with its project implementation partner ABM Knowledgeware Limited, submitted a bid in response to the Petitioner’s tender for a Packaged Integrated Solution for a Human Resource



Management System (hereinafter referred to as "the ISHRM System") and was declared as the successful bidder on 16.02.2015.

- c. Pursuant to the successful bid, an Agreement was executed between the Petitioner and Respondent on 20.02.2015, for providing and implementing the ISHRM System. The Petitioner issued a letter of authorization in favour of the Respondent so that they could purchase SAP software that is to be used in the name of the Petitioner.
- d. On 21.02.2015, the Respondent furnished a Bank Guarantee of INR 1.86 crore in accordance with the terms of the aforementioned agreement.
- e. The said agreement was followed by a Purchase Order (hereinafter referred to as PO), dated 27.03.2015, for a sum of INR 16,20,00,000, issued by the Petitioner in favour of the Respondent.
- f. As per the Petitioner the project had set timelines for different stages of the project and was to be completed within one year. However, as per the Respondent there was an overall timeline of one year within which the project had to be completed.
- g. On 31.03.2015 the Respondent purchased the SAP software license that was to be used for the ISHRM system, from Comvision India Pvt Ltd. and an invoice amounting to INR 11,77,23,529 was raised by Comvision.
- h. On 27.04.2015 the Respondent supplied the SAP license to the Petitioner and raised an invoice of INR 14,67,00,000.



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- i. It has been averred that on 06.05.2015 the Respondent asked the Petitioner for a kick off meeting and on 14.05.2015 the Petitioner is purported to have replied to the request for the kick off meeting whereby a demand notice was sent by the Petitioner to the Respondent. Finally, on 15.05.2015 the Petitioner scheduled a meeting with the Respondent seeking to schedule a kick off meeting.
- j. On 17.05.2015 the Respondent issued a letter asking the petitioner to release INR 14,67,00,000 on account of supply of software, thereafter multiple rounds of correspondence were exchanged between the Petitioner and Respondent.
- k. On 27.08.2015 the Petitioner issued a Show Cause Notice (hereinafter referred to as “SCN”) to the Respondent on account of the Respondent not meeting the timelines as prescribed under the Contract.
- l. On 03.09.2015 the Petitioner terminated the Contract with the Respondent on the ground that the Petitioner had failed to perform their contractual obligations in accordance with the agreement.
- m. On 11.09.2015 the Respondent made a representation to the Petitioner against the termination and, thereafter, filed a W.P. (C) No. 9643 of 2015 challenging the said Termination Letter. The said writ petition was disposed of on 18.11.2015 by this Court.



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- n. On 17.05.2016 the Petitioner disposed of the representation made by the Respondent asking them to reconsider the termination of the Contract.
- o. Arbitration was invoked by the Respondent on 07.06.2017 thereafter the Respondent company's predecessor went into liquidation. Arbitrator was appointed by the Delhi High Court on 14.12.2020 and the impugned award was passed by the Ld. Tribunal on 12.09.2024.

6. Ld. Senior Counsel appearing for the Petitioner has assailed the impugned Award on three broad grounds. The first limb of his argument is that the Ld. Arbitral Tribunal has proceeded to pronounce the impugned award on a fallacious understanding and interpretation of the Contract. He vehemently contended that PO was a composite contract which had certain prescribed milestones and the payment of money was linked to meeting those milestones in a time bound manner. He fleshed this argument further by pointing out that the Contract had a diverse scope of work, however the Ld. Arbitral Tribunal has treated the Contract as a simple Contract concerning sale of goods. Therefore, since other contemporaneous obligations under the Contract were not fulfilled by the Respondent they were in no manner entitled to the entire value of the Contract and in a nutshell this erroneous interpretation goes to the very root of the award and renders it patently illegal. Similarly, the use of invoice dated 31.03.2015, for computation of the impugned Award, is against the terms of the PO. Ld. Senior Counsel for the Petitioner adverts to clause 33 of the PO, and contends that at the time of delivery of the ISHRM Software License and development hardware the Respondent was entitled to an amount that was



65% of the total contract value. However, in the said invoice the amount claimed was approximately 90 % of the contract value.

7. The second limb of the submission advanced by the Ld. Senior Counsel for the Petitioner is that time was of the essence in the present Contract. It is further contended that, as on the date of the termination the software had not been installed, the requisite hardware for implementation of the project was not set up and 7 out of 9 months had elapsed and therefore, the Respondent was clearly in no position to deliver the Contract and the Respondent was well within its rights to repudiate the Contract.

8. The third limb of the submission advanced by the Petitioner is with respect to the finding of the Ld. Arbitral Tribunal, that the termination letter issued by the Petitioner was invalid. He contends that the Contract was terminated in the 7th month since the commencement of the Contract i.e. 03.09.2015. It has been asserted that the Ld. Arbitral Tribunal by holding the termination letter dated 03.09.2015 to be invalid and asking the Petitioner to pay the cost of the Contract to the Respondent has ignored the utter failure of the Respondent to fulfil its contractual obligations.

9. The Ld. Senior Counsel for the Petitioner further contends that, arguendo, the termination of the Contract was to be held invalid, the Claimant would not be entitled to the entire Contract value, as it includes not only unexecuted work but also services which were never rendered by the Respondent. He argues that, at most, the Ld. Arbitrator could have awarded damages in respect of the unexecuted portion of the Contract, and not the entire contractual consideration. Since the installation process remained incomplete and no further services were rendered, it is asserted that, as on the date of termination, a substantial portion of the work remained



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unexecuted. Consequently, by awarding compensation for the unexecuted part of the Contract, the Impugned Award has been rendered in ignorance of settled principles of law and is violative of the public policy of India.

10. The Ld. Senior Counsel on behalf of the petitioner has also raised some ancillary arguments. He contends the Ld. Arbitrator has failed to take into consideration that the Respondent company was under insolvency and the same was indicative of the fact that it were incapable of performing their contractual obligations. Similarly, it has been contended that the Ld. Arbitral Tribunal has not taken into consideration that burdening the Petitioner, which is a public sector undertaking, to pay interest for the two years during which litigation was being pursued is contrary to public policy of India.

11. *Per contra*, the Ld. Counsel for the Respondent has asserted that the Petitioner has raised vague and unsubstantiated grounds which are essentially a reiteration of the averments made by the Petitioner at the time of Arbitration proceedings. He contends that the Petitioner, for instance, has failed to specify which material evidence was allegedly not taken into consideration by the Ld. Arbitrator, what are the specific findings of the Ld. Arbitrator that are against public policy of India or what is the manner in which the Impugned Award is in contravention of Section 28 of the Arbitration Act. Thus, according to the Ld. Counsel for the Respondent, the Petitioner has been unable to demonstrate how the findings of the Tribunal are perverse, irrational and such that it is not a plausible view, or ignores vital evidence.

12. In a similar vein, the Ld. Counsel for the Respondent has argued that the findings of the Arbitrator are supported by a detailed analysis of correspondences exchanged between both the parties. He contends that all



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claims and contentions were duly considered by the Arbitrator along with other materials on record and lies within the realm of being a plausible view. Therefore, by the present petition, the Petitioner is seeking an alternative interpretation of the terms of the Contract, which is not permissible under Section 34 and the interpretation given by the Ld. Arbitrator does not meet the threshold of being patently illegal.

13. The Respondent has also refuted the claims advanced by the Petitioner that the Respondent was in breach of the PO or that time was of the essence in this Contract. On the contrary, the Ld. Counsel for the Respondent has contended that the Petitioner in terms of their own lackadaisical conduct waived off the applicability of any strict timeline for the completion of work, a fact which has been noted by the Ld. Tribunal in its Award. He asserts that the Petitioner themselves were responsible for significant delays since the commencement of the project.

14. It has been contended by the Ld. Counsel for the Respondent that the reliance of the Petitioner on clause 33 of the PO is ill founded. He contends that even though the said clause provides for amounts which the Respondent would have been entitled to at different stages of the completion of the project, it does not provide the amount which the Respondent would be entitled to claim towards the supply of the software or for that matter even provides for any contingency of the PO being terminated by the Petitioner. In the instant case as the PO was terminated illegally by the Petitioner. Therefore, clause 33 cannot be used to ascertain the amount payable against the supply of the software or the amount which should have been awarded to the Respondent.



15. The Ld. Counsel for Respondent has contended that the Arbitrator has meticulously gone into the evidence on record, and has appreciated the contentions raised by the parties. He also points out that while awarding a sum of INR 14,67,00,000/-, towards the supply of the software, the Ld. Arbitrator has noted that the Petitioner has not raised any objection in respect of the said invoice. He builds this argument further by contending that there was no such contemporaneous objection to the said invoice and the Ld. Arbitrator has duly recorded the amount incurred by the Respondent for the purchase of the software as well as the amount mentioned in the invoice towards the supply of the same to the Respondent, which is indicative of the fact that the Ld. Arbitrator has duly considered both these documents. Therefore, the view taken by the Ld. Arbitrator is a plausible view and does not warrant the interference of this Court.

16. Heard Ld. Counsel for the parties and perused the material on Record.

17. The scope of Section 34 of the Arbitration Act has been analysed by the Apex Court in number of judgments. In Dyna Technologies Private Limited Vs. Crompton Greaves Limited, (2019) 20 SCC 1, the Apex Court has held as under:

" 35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons



at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

(emphasis supplied)

18. The Apex Court has further elucidated the scope of interference under Section 34 of the Arbitration Act in its judgment in Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited and Another, (2024) 2 SCC 375, wherein the Supreme Court has held as under:

"35. Sub-section (1) to Section 34 of the A&C Act requires that the recourse to a court against an arbitral award is to be made by a party filing an application for setting aside of an award in accordance with sub-sections (2) and (3) of Section 34. Sub-section (2) to Section 34 of the A&C Act stipulates seven grounds on which a court may set aside an arbitral award. Sub-section (2) consists of two clauses, (a) and (b). Clause (b) consists of two sub-clauses,



namely, sub-clause (i) which states that when the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, and sub-clause (ii), which states that the court can set aside an arbitral award when the award is “in conflict with public policy of India”. We shall subsequently examine the decisions of this Court interpreting “in conflict with public policy of India” and the explanation.

37. Explanation to sub-clause (ii) to clause (b) to Section 34(2) of the A&C Act, as quoted above and before its substitution by Act 3 of 2016, had postulated and declared for avoidance of doubt that an award is “in conflict with the public policy of India”, if the making of the award is induced or affected by fraud or corruption, or was in violation of Sections 75 or 81 of the A&C Act. Both Sections 75 and 81 of the A&C Act fall under Part III of the A&C Act, which deal with conciliation proceedings. Section 75 of the A&C Act relates to confidentiality of the settlement proceedings and Section 81 deals with admissibility of evidence in conciliation proceedings. Suffice it is to note at this stage that while “fraud” and “corruption” are two specific grounds under “public policy”, these are not the sole and only grounds on which an award can be set aside on the ground of “public policy”.

45. Referring to the third principle in *Western Geco [ONGC Ltd. v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12]*, it was explained that the decision would be irrational and perverse if (a) it is based on no evidence; (b) if the Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (c) ignores vital evidence in arriving at its decision. The



standards prescribed in State of Haryana v. Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] (for short Gopi Nath & Sons) and Kuldeep Singh v. Delhi Police [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] should be applied and relied upon, as good working tests of perversity. In Gopi Nath & Sons [State of Haryana v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] it has been held that apart from the cases where a finding of fact is arrived at by ignoring or excluding relevant materials or taking into consideration irrelevant material, the finding is perverse and infirm in law when it outrageously defies logic as to suffer from vice of irrationality. Kuldeep Singh [Kuldeep Singh v. Delhi Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] clarifies that a finding is perverse when it is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it. If there is some evidence which can be acted and can be relied upon, however compendious it may be, the conclusion should not be treated as perverse. This Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] emphasised that the public policy test to an arbitral award does not give jurisdiction to the court to act as a court of appeal and consequently errors of fact cannot be corrected. Arbitral Tribunal is the ultimate master of quality and quantity of evidence. An award based on little evidence or no evidence, which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Every arbitrator need not necessarily be a person trained in law as a Judge. At times, decisions are taken acting on equity and such decisions can be just and fair should not be overturned under Section 34 of the A&C Act on the ground that the arbitrator's approach was arbitrary or capricious. Referring to the third ground of public policy, justice or morality, it is observed that these are



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two different concepts. An award is against justice when it shocks the conscience of the court, as in an example where the claimant has restricted his claim but the Arbitral Tribunal has awarded a higher amount without any reasonable ground of justification. Morality would necessarily cover agreements that are illegal and also those which cannot be enforced given the prevailing mores of the day. Here again interference would be only if something shocks the court's conscience. Further, "patent illegality" refers to three sub-heads : (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award, as the construction of the terms of the contract is finally for the arbitrator to decide. The award can be only set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do. "



19. It is trite law that unless there is unpardonable perversity found in the award the Arbitrator's view cannot be interfered with. The Apex Court in UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116, has held as under:

"20. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the view taken above has been reiterated in the following words : (SCC p. 12, para 25)

"25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd. [South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) v. Oil India Ltd., (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows : (SCC p. 172, paras 12-13)

"12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows : (SCC p. 12, para 24)



‘24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.’

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in *Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1]* observed as under : (SCC p. 12, para 25)

‘25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning



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provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.’ ”

20. A perusal of the aforesaid judgments shows that an Award can be set aside only when the award is in conflict with the Public Policy of India i.e., has been made contrary to the well settled principles or is opposed to the law of the country. An Award can also be set aside if there is Nil appreciation of evidence or the Award is based on Nil evidence. The Court while exercising jurisdiction under Section 34 of the Arbitration Act does not go into the excruciating details of facts and conclude different from the one arrived at by the Ld. Arbitrator only because another conclusion is possible. It is now analysed the way the Ld. Tribunal has appreciated the issue pending before it keeping in mind the contentions raised by the Ld. Counsel for the Petitioner.

21. Before adverting to the merits of the Award it would be useful to set out the relevant clauses i.e., Clauses 6, 7, 9, 10, 11, 12, 13, 22 & 33, that have been relied upon by the Petitioner and Respondent from the PO. The said Clauses read as under:

"6. Arbitration

In the event of any dispute or differences arising between the contractor and the NDMC in connection with this contract, the same shall be referred to the sole arbitration of the Chairperson, NDMC or his nominee whose decision shall be final and binding on both the parties to this contract. The arbitration proceedings shall take place at Delhi and courts at Delhi shall have jurisdiction over the matter. The contract shall be interpreted in accordance with the Indian laws.



7. Schedule of completion of Project

Deliveries of the software, customization and other services shall be completed by the firm in accordance with the terms specified by NDMC with 12 months from the date of work order '(which includes 3 months of Stabilization support after Go-

Dive in 9 months). Any delay in installation & commissioning beyond 12 Months shall call for penalty as per Liquidated damages clause.

[...]

9. Software Services

The firm will provide following software services to NDMC:

a) Preparation of project plan and implementation plan for execution of various tasks involved in successful commissioning of ISHRM.

b) Preparation of Solution Design Documents (SLDD), based on analysis of various services and requirements of the concerned departments.

c) Providing ISHRM as per NDMC approved SLDD.

d) Development of Inter-operability functions applications to make Interoperability between ISHRM and NDMC's existing software applications such as e-financial system, Payment Gateway Module etc.

e) Preparation of User Acceptance Test Criteria Documents.



Preparation of Test Plan and Test cases for the User Acceptance Testing.

g) The firm will carry out the User Acceptance Test in Consultation with NDMC.

h) The firm has to integrate the operational systems with existing / new system on accrual basis as when needed.

i) After commissioning of ISHRM and on receipt of NDMC's formal "Go-Ahead"/"Go-Live", the firm shall assist NDMC in starting the live operations at various NDMC offices. NDMC shall carry out these live operations on "Trial Basis" termed as Hand Holding services, for mutually agreed period, not exceeding 30 days. On successful completion of Trial Run", NDMC shall formally announce the acceptance of ISHRM.

j) On receipt of NDMC's certificate of implementation and commissioning, the firm shall prepare and deliver one set of documentation (User manual, System Administration Manual and Inter-Operability Manual) based on commissioned version of the software.

k) All Changes and new requirements proposed by NDMC in the ISHRM have to be incorporated by the firm without any additional cost during currency of the contract.

10. Technical Support

The firm will provide four technical staff (1 at least programmer level persons minimum MCA/ B.E/ B. Tech with 2 years' experience and three functional support staff with minimum 2 implementation experiences for applicable module) for the following



services on successful Go-Live of any application module for a period of 1 year.

- i. Provide operational guidance to NDMC DMC staff & System Administrators as and when required.*
- ii. Provide application training to new users or refresher training to old users.*
- iii. To manage the control centre 24X7 for ISHRM modules.*
- iv. To make onsite changes required.*
- v. Onsite testing of patches or new versions received from Off-site before their deployment, Database management, maintenance and Backup*

All critical severity bugs have to be resolved within three days otherwise penalty will be levied by NDMC@ Rs. 5000 f- per day.

11. Data Migration

The firm would be reasonable for data migration from the existing database of NDMC to the ISHRM with proper chekcs and validations. After data migration, the firm has to submit a consolidated report on the date being migrated for validation purpose to NDMC; Provisions should be there for data corrections and verifications.

12. Delay in the Suppliers Performance

Delivery of the Goods and performance of services shall be made by the supplier in accordance with the



time schedule specified by the Purchaser in its Schedule of requirements. Any delay by the Supplier in the performance of its delivery obligations shall render the supplier liable to any or all of the sanctions forfeiture of its earnest money, imposition of liquidated damages and/or termination of the contract for default.

13. Liquidated Damages

If the supplier fails to delivery any or all the Goods or perform the services within the time period specified in the contract, the Purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as liquidated damages, (not by way of penalty) a sum equivalent to 0.5% (half) percent of the price of the delayed software or unperformed service for each and every week (part of a week being treated as a full week) of delay until actual delivery or performance, up to a maximum deduction of 10% (Ten percent) of the total contract price.

[...]

22. Termination for Default

The Purchaser may without prejudice to any other remedy for breach of contract, by written notice of default sent to the Bidder, terminate the contract in whole or in part.

- *If the Bidder fails to delivery any or all of the Goods within the time period(s) specified in the contract*

Or

- *If the Bidder fails to perform any other obligation(s) under the contract."*



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[...]

33. Payment Terms

The bidder will be legally bound to execute the order after the acceptance within the specified period as stipulated in work order. In case bidder fails to execute the order either in full or in part within the stipulated period, the department reserves the right to forfeit the Earnest Money/ Security Deposit/Bank Guarantee deposited by the firm. The standard payment terms, subject to recoveries, if any, under the Liquidated Damages clause and/or any Clause in the Tender terms and conditions will be as under on receipt of invoice induplicate.

Milestone	Payment
<i>Against delivery of HRMS software license and development hardware</i>	65%
<i>Preparation of SRS document (AS IS Study)</i>	5%
<i>Preparation of To-Be process</i>	10%
<i>System Go-Live of basic mutually agreed functions</i>	15%
<i>120 days after Go Live</i>	5%



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22. Having considered the aforesaid contentions and upon perusal of the impugned award, this Court finds itself unable to agree with the submissions advanced by the Ld. Senior Counsel for the Petitioner. By way of the present petition, the Petitioner is essentially seeking a merit-based review of the impugned award and such a review is proscribed under Section 34 of the Arbitration Act. It is trite law that Section 34 of the Arbitration Act provides a limited and extremely circumscribed jurisdiction to the Court to interfere with an Arbitral Award. A reasonable construction of the terms of the contract which is based on a plausible view and substantiated by evidence does not warrant any interference by a Court under Section 34 of the Arbitration Act. The Petitioner has been unable to show as to how any of the challenges on the basis of which they have sought to assail the impugned Award go to the root of the matter. Similarly, due consideration has been given to the material on record and appreciation of evidence and it cannot be said in any manner whatsoever that there has been a denial of the principles of natural justice.

23. The principal contention raised by the Ld. Senior Counsel for the Petitioner is that the Ld. Arbitrator has interpreted the Contract and the terms thereunder in an implausible manner. Great reliance has been placed on Clause 33 of the PO to contend that only 65% of the contract value was payable at the time of supply of software and hardware. However, material on record indicates that the Petitioner never formally objected to the amount raised in invoice dated 31.03.2015. The premise of the Ld. Tribunal's award is not merely the quantum or stage of completion of work but as a consequence of the Petitioner's repudiation of the Contract even when 3/4th of the period of the Contract was available for its performance. Similarly,



the interest awarded is neither penal nor arbitrary and aligns with commercial interest rates. This cannot by any stretch of imagination be said to be so excessive or perverse so as to shock the conscience of the Court or be violative of public policy or be patently illegal. A perusal of the impugned Award indicates that the Ld. Arbitrator has carefully examined the relevant clauses of the PO and adopted a commercially sensible interpretation of the contract terms. The Ld. Tribunal noted that a conjoint reading of Clauses 3 and 7 of the PO indicates that the project was to be completed within one year from the date of receipt of the work order. However, delays caused by the Petitioner's failure to provide critical information regarding its establishment hindered the Respondent's ability to effectively execute various stages of the project. The Tribunal has also observed that the Respondent, throughout the subsistence of the Contract, made sincere, concerted and repeated efforts to communicate with the Petitioner and to perform its obligation under the PO.

"91. As per clause 3 of the Agreement dated 20.02.2015 extracted above, the Claimants were required to complete the project within one year (12 months) from the date of receipt of the work order. Clause 7 of the purchase Order dated. 27.03.2015 requirement, 27.03.2016. also reproduced above, reiterated this setting the project completion deadline as completion of the project as per schedule.

92. The Respondent has alleged that the Claimant delayed in sending the letter of acceptance of the purchase Order and thus it was hesitant to take possession of the SAP software and licenses that had been delivered to the Respondents office. However, given that the project was in its initial stages and the Claimant had assured that they would send the



acceptance at the earliest, the Respondent took possession of the software, which was then kept in their safe custody without being opened or used.

93. The Tribunal has noted above, that the Respondent could not point out any provision either under the Agreement or the Purchase Order that stipulates that the Claimant is required to furnish a letter of acceptance of the purchase Order. Yet after taking several material steps for execution of the Contract, the Claimant sent the letter of acceptance on 01.05.2015, which too was merely five weeks after the Purchase Order was issued and when the Claimant still had a period of 10 (ten) months and 3(three) weeks of the Contract period to complete its execution and implementation.

94. **The Tribunal has detailed hereinabove the entire correspondence placed on record. Exhibit marks have been given to the documents of the parties, which have been admitted by the other side. There is a slew of emails from the side of the Claimant to the Respondent, all of which have been admitted by the Respondent. Repeated requests of the Claimant to the Respondent to appoint a nodal officer and SPOC, who would coordinate communication of the Claimant with the various establishments of the Respondent and ensure the provision of the information to enable adaptation of the software for the purpose for which it was being commissioned have fallen on deaf ears.**

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96. It is noteworthy that the respondent never objected to the delivery of the Development Server on 18.08.2015 by the Claimant. In para 68 of the SOD, the Respondent states that the hardware has been



stored for safe keeping. The Respondent has made no effort to return either the software or the hardware to the Claimant. It is noteworthy that it was the Respondent which also failed to provide the proper space for keeping the Development Server despite taking delivery of the same and several reminders from the Claimant, in order to start next phase of the project.

97. The Claimant has also placed before the Tribunal Fortnightly project Status Reports. The Respondent has not disputed or denied the correctness of the same, but has admitted the documents. There is not even a suggestion of criticism of the Claimants execution of the project.

98. **The correspondence on record in fact establishes the fact that the Respondent failed to provide the information regarding its establishment to enable the Claimant to complete the different phases of the project.** The Tribunal finds that the Respondent had to be repeatedly reminded to examine/ go through the AS-IS document submitted by the Claimant, which further steps. severely hampered the completion of further steps.

99. **Despite this, on 03.09.2015, the Respondent terminated the Contract, citing minimal progress over the preceding live months and stating that the Claimant was not interested in completing the ISHRM project. In a subsequent letter dated 17.05.2016, the Respondent reiterated that there was no possibility of the project being completed within the stipulated period.**

100. **The Tribunal finds that the above reasoning of the Respondent in the Termination Letter is not supported by the established facts on record. The Tribunal finds that there is no evidence on record that would even remotely suggest a lack of intention**



of the Claimant to go ahead with the project on the contrary, the claimant has taken substantial steps at substantial costs to perform its obligation under the PO.

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102. The above facts and circumstances lead to only one irresistible conclusion that there is no evidence in support of the contention that the Claimant was not interested in completing the ISHRM project or that there has been little progress of work in the 5 months preceding the Termination Letter dated 03.09.2015. On the contrary, the facts and evidence on record establish that the Claimant was actually performing its obligations and was always ready and willing to complete the ISHRM project.

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192. The Tribunal finds that in the present case as well, the Respondent has admittedly received the software as well as the hardware and has admittedly retained the same without making any objection or payment thereto. As discussed above, the Contract was illegally terminated when almost 3 /4th of the period of the Contract was still available for its performance. Apart from the equipment, the Claimant has admittedly deployed its manpower at the premises of the Respondent. The Tribunal has noted the repeated requests by the Claimant for permission to complete the execution of the Contract even after illegally terminated by the Respondent. The above narration of the fact amply manifests the fault of the Respondent and the obstructions created by it in the due performance of the remaining obligations under the Contract on the part of the Claimant.

193. In this background, there is no warrant at all for depriving the Claimant of the amount of



Rs.1,53,00,000.00 as well which could be towards the cost of the hardware and other expenses incurred by the Claimant."

(emphasis supplied)

24. Similarly, the contention advanced by the Ld. Senior Counsel that time was of the essence in this Contract and termination of the contract by the Petitioner rightly terminated the Contract does not merit acceptance. Material on record indicates that NDMC had failed to convene a kick of meeting until 15.05.2015 which is almost two months after the PO was issued. The conduct of the Petitioner indicates tolerance for deviation from timelines. The Ld. Arbitral Tribunal has examined the validity of the Termination Letter in a threadbare manner. The Tribunal notes that there was no prior complaint or allegation regarding any breach of the PO which had been raised before issuance of the SCN. On the contrary, the Ld. Tribunal has observed that the conduct of the Petitioner, as well as the unsubstantiated allegations relied upon to terminate the contract, indicate that the termination was an attempt to avoid payment to the Respondent for supply of the SAP software, licenses, and development server. The relevant excerpt of the Award reads as under :

"111. The Termination Letter ignored the Claimant's included clauses 10 and 11, which were not mentioned in the SCN. The Claimant had responded to the SCN, contractor to the Termination Letter's assertions. The cited clauses did not pertain to the project timeline, making the termination unjustified and at variance with the SCN.

112. The Termination Letter ignored the Claimant's reply dated 26.08.2015 and was issued without a personal hearing for the Claimant. The Respondent



alleged delay, yet the project timeline had not expired, with approximately four months remaining. The Respondent's termination of the contract was therefore baseless, as the Claimant could have completed the project with the Respondent's cooperation. The Respondent's own delays and non-compliances would not justify the termination of the contract.

113. The Termination Letter misrepresents clause headings, indicating a lack of due diligence. For instance, Clause 10 is described as "Training", instead of "Corrupt and Fraudulent Practices," demonstrating the Respondent's failure to apply proper grounds for termination.

114. The facts indicate that the Termination Letter was issued without proper basis, as no prior complaint or allegation regarding breaches of the PO had been raised before the SCN. The SCN and Termination Letter appear to have been issued with the ulterior motive of avoiding payment due to the Claimant under the PO.

115. The SCN and Termination Letter reveal the Respondent's intent to prevent the Claimant from completing the ISHRM project. The Respondent fabricated allegations to terminate the Contract, thereby avoiding payment for SAP software, licenses, and development server already supplied by the Claimant.

116. In view of the above, the Tribunal has no hesitation in holding that the termination of the Contract by the Respondent was illegal, premature, and contrary to the terms thereof."

(emphasis supplied)



25. The Ld. Tribunal then proceeds to deal with the correctness of the SCN that was issued on the ground of tardiness on the part of the Respondent and not meeting the requisite timelines. After adducing the evidence before it the Ld. Tribunal has held that the SCN dated 17.08.2015 on which the Petitioner relied upon in order to terminate the Contract is bad in the eyes of law and does not mention any action or penalty whatsoever that was proposed to be taken against the Respondent. The relevant excerpt from the Arbitral Award are as follows:

"141. The SCN dated 17.08.2015 also does not mention the penalty/ action which was proposed to be taken against the Claimant by the Respondent. In the light of the principles laid down in the above judicial precedents, the Termination Letter dated 03.09.20i5 terminating the agreement/PO in respect of the ISHRM system based on the SCN is not sustainable in law.

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144. Despite the Termination Letter, on 04.09.2015 the Claimant sent a revised project plan and on 05.09.2015 submitted the TO-BE documents. On 11.09.2015, the Claimant requested the Respondent to release the payment of the invoice dated 31.03.2015 as it had submitted both the Software License as well as the Development Hardware to the Respondent. None of these actions Respondent. evoked any response from the Respondent.

145. The Claimant also made a detailed representation dated 11.09.2015 to the Respondent negating the allegations that had been levelled by the Respondent. It was stated that the delay, if any, was on the part of the Respondent and despite the hurdles faced, because of



the Respondent, the work which had been undertaken by the Respondent.

146. So far as the allegation that the AS-IS and TO-BE documents were not properly prepared, the claimant had submitted the WIP version of the AS-IS document on 31.07.2015 and again on 14.08.20 15. However, no issue was raised by the Respondent. The Respondent has failed to explain as to what was lacking in the AS-IS document submitted Respondent. As emphasized above, the Respondent piecemeal and incomplete information and also the by the provided lack of cooperation from the Respondent's officers. The position regarding the TO-BE documents was the same. Thus, the Tribunal finds that the allegation against the Claimant with regard to the AS-IS and TO-BE Documents is devoid of merit."

(emphasis supplied)

26. Finally, in light of the above findings, the Ld. Tribunal has adjudicated whether the Petitioner was obligated to make payment of the cost of the software under the PO. The relevant excerpts from the impugned Award are as follows:

"171. So far as the question as to whether the Respondent was obliged to make payment of the cost of the software under the PO irrespective of the supply of hardware is concerned, the Tribunal has found that there is no connection between the two. This aspect has also been considered at length hereinabove. The PO stipulates the date when the payment has to be effected. The Respondent cannot avoid the liability to pay having frustrated the completion of the various steps as detailed above, more so when it is admittedly holding the software with it. The Issue No. vii is answered accordingly.



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174. The Tribunal has carefully considered the pleadings of the Claimant and evidence led by it. It is an admitted position that the PO had identified the total cost for providing the ISHRM system at Rs. 16,20,00,000.00 while laying down Additionally, several technical and general conditions .Certain deliverables and obligations were defined on the part of both the parties, without specifying the timelines against each deliverable. Therefore, the full payment became payable only 120 days after GoLive.

175. The Tribunal finds that it is also an admitted position that on 21.02.2015, the Claimant procured and submitted the Bank Guarantee for a sum of Rs. 1,86, 80,000 with the Respondent.

176. The Claimant also procured the SAP software license from Comvision India Pvt Ltd. and on 27.04.2015 supplied the same to the NDMC, while raising the invoice for the sum of Rs. 14,67,00,000.00 upon the Respondent.

177. Despite repeated reminders, the Respondent failed to make the payment of the invoice dated 31.03.2015 in respect of SAP licenses supplied to the Respondent on 27.04.2015, which was for a sum of Rs. 14,67,00,000.00. Significantly, the Respondent has not made any objection to this invoice.

178. In view of the above, the Tribunal holds that the Claimant is entitled to the amount of Rs. 14,67,00,000 from the Respondent."

(emphasis supplied)

27. Applying the dictum of the aforementioned judgments to the facts of this case, this Court is of the view that the Petitioner has not been able to



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make out a case that would fit within the four corners of Section 34 of the Arbitration Act. The impugned Award is proper, intelligible, adequate and reflects a commercially sensible interpretation of the terms of the PO. Therefore, this Court is precluded from substituting its own conclusion in place of that arrived at by the Ld. Tribunal.

28. In view of the above, the petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 22, 2025

Vibh.R.