IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.72 of 2017

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M/s Planners Koncept an Architects and Design Consultants firm having its Registered Office at Apartment 9, 2nd Floor, 14/145, Commerce Centre, The Mall, Chunniganj, Kanpur (U.P.) Pin-208001 and also at 288-A, Sector 47, Noida-201304 (India) National Capital Region, through its partner Pradeep Kharbanda Son of Late Sh. Krishan Lal.

... … Claimant / Petitioner/s

Versus

1. Infrastructure Development Authority, Registered Office, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna-800004 through the Executive Engineer (PDA), Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna-800004.
2. The Managing Director, Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna-800004.
3. The Executive Engineer (Technical) Infrastructure Development Authority, 1st Floor, Udyog Bhawan, East of Gandhi Maidan, Patna-800004.

... ...Opposite Parties / Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate
		Ms. Sakshi Bhatnagar, Advocate
For the Respondent/s	:	Ms. Pallavi Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV ORDER

28 22-07-2026 Heard the learned counsel for the petitioner and the learned counsel for the opposite parties.

2. This Civil Revision application is being filed under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (hereinafter referred to as the

'Act') for setting aside the award dated 25.01.2017 passed by the Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna, (hereinafter referred to as the Tribunal) by which the Tribunal has dismissed the Reference Case No. 63 of 2015, holding that the petitioner is not liable for receiving the claimed amount and that he has already been paid for the admissible executed work.

3. The brief facts of the present case is that the Petitioner, M/s Planners Koncept is a reputed architectural and design consultancy firm and he Opposite Party No. 1, Infrastructure Development Authority (hereinafter referred to as "IDA"), is an undertaking of the Government of Bihar engaged in construction and development projects and the appointment of architects, consultants and contractors for execution of such projects. The Petitioner entered into an agreement dated 25.08.2009 with IDA for a period of three years, whereunder the Petitioner firm was engaged as Architect and Design Consultant. This agreement expired on 26.08.2012. During the intervening period from 25.08.2012 to 06.01.2014, the Petitioner continued to perform its obligations upon the assurance of IDA, and was allotted seven project works vide letter dated 27.12.2012, submitting a fresh bank guarantee valid for three years, in

addition to an FDR of Rs. 50,000/- dated 23.07.2012. Thereafter, the petitioner was re-empanelled in two categories: the petitioner firm as Design Consultant, and its partner, Ms Seema Kharbanda, as an individual consultant, pursuant to which a fresh agreement dated 06.01.2014 was executed. By its letter dated 25.02.2014, IDA itself issued a chart of dues acknowledging an outstanding amount of Rs. 25,44,084/- payable to the petitioner. By further letters dated 16.04.2014 and 15.07.2014, IDA admitted that payments for the Mega Industrial Park project and other pending bills could not be released due to non-availability/paucity of funds, and would be released upon availability of funds. Aggrieved by the non-payment, the Petitioner invoked the writ jurisdiction of the High Court in CWJC No. 16850 of 2014. The High Court disposed of this writ petition on 14.10.2014, granting the petitioner liberty to approach the Arbitral Tribunal constituted under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. The petitioner informed IDA of this order. Within eight days of being so informed by Order No. 2707/PDA dated 05.12.2014, IDA terminated the agreement with the petitioner, and simultaneously encashed the bank guarantee of Rs. 2,00,000/- and forfeited the security deposit, without affording the 30 days' prior notice mandated under Clause 6.1.15 of the agreement and without any opportunity of hearing. Pursuant to the liberty granted by the High Court, the petitioner filed Reference Case No. 63 of 2015 before the Bihar Public Works Contracts Disputes Arbitration Tribunal, Patna, claiming Rs. 31,33,792/- towards unpaid professional fees, return of the encashed bank guarantee of Rs. 2,00,000/-, and relief against the termination effected without notice. IDA contested the same, asserting that payments had been made strictly in proportion to actual work performed and drawings submitted. By its award dated 25.01.2017, the learned Tribunal dismissed the petitioner's reference case, without reference to any contractual clause, document or exhibit, and without returning any finding on the seven disputed projects, the admitted dues, or the alleged illegal termination. Aggrieved by the said award, the petitioner has preferred the present Civil Revision.

4. Learned counsel for the petitioner submits that the Tribunal dismissed the case in a cryptic, non-speaking manner, without assigning reasons or considering the material on record, especially the contractual clause, document/exhibit, or finding on the seven disputed projects, which is ultimately a failure to exercise jurisdiction, and an illegal exercise of jurisdiction. He

submits that the petitioner is an architectural/design consultancy; IDA is a Bihar Government undertaking for construction/development, both entered into an agreement dated 25.08.2009 for a 3 year duration, with an expiration date of 26.08.2012. The petitioner was later re-empanelled, leading to a fresh agreement dated 06.01.2014, evidencing the petitioner's eligibility and efficiency in work. The re-empanelment was in two categories, namely the petitioner firm as Design Consultant and its partner, Ms. Seema Kharbanda as an individual consultant. He submits that between 25.08.2012 to 06.01.2014, the petitioner continued work on assurance from IDA and was allotted seven projects (vide letter dated 27.12.2012), backed by a fresh bank guarantee (3-year validity) and an FDR of Rs. 50,000/- (dated 23.07.2012).

4.i. He further submits that the dispute arose when IDA began interfering with the petitioner's work, made arbitrary/unjustified changes to drawings and specifications, and when the petitioner resisted, the latter pressured the firm with frivolous defect allegations and withheld payments, disrupting the seven projects. He submits that for the projects namely, Indo-Danish Tool Room, Interior of Bihar Foundation, Interior of Integrated Child and Women Development Office, Institute of

Driving Training and Research, and Forest Training, in each case only ~50% of billed amounts had been paid, whereas as per the agreement the petitioner was eligible for receiving 80% of bill amount and for the remaining two projects (Industrial Mega Park, Bihar; Women ITI, Siwan) PPR payments was pending entirely.

4. ii. The learned counsel for the petitioner alleges that under clause 5.0 of the 2009 agreement, the petitioner repeatedly submitted invoices and requested payment for the unpaid amount of Rs. 31,33,792/- (Rupees Thirty One Lakh Thirty Three Thousand Seven Hundred and Ninety Two Only). He argues that the two sentences of “reasoning” in the award merely reproduce the Respondent’s counter-affidavit verbatim, with no independent finding, which is a “material irregularity” since the entire dispute turned on specific clauses: Clause 5.0 (Payment Schedule), Clause 6.1.15 (Notice before Termination), and Clause 3.1.11 (Scope of Work). Thence this total non-engagement with the contract is itself a jurisdictional error.

4. iii. The learned counsel submits that the Tribunal failed to consider that IDA terminated the agreement and encashed the Rs. 2,00,000/- bank guarantee/forfeited the security deposit without the mandatory 30 days’ prior notice

required under Clause 6.1.15, and without any hearing. Failure to observe the contractually mandated notice also makes the action arbitrary and violative of Article 14 of the Constitution; this irregularity was expressly raised before the Tribunal but never addressed. He argues that IDA's own letters admit payment liability, although the same were addressed by the Tribunal, which are as follows:

> *Annexure 4- Letter dated 25.02.2014 depicting outstanding dues of Rs. 25,44,084/- and*
> *Letter dated 15.07.2014 admits petitioner's bills were pending due to paucity of funds, to be released on availability.*
> *Annexure 5- Letter dated 16.04.2014 admits non-payment for the Mega Industrial Park, Bihar, which was due to the non-availability of funds.*

4. iv. The learned counsel for the petitioner submits that Section 13 of the Act is attracted here because the Tribunal failed to exercise jurisdiction vested in it, or acted illegally/with material irregularity despite the materials on record (agreements, invoices, correspondence, admitted documents of the Opposite Parties), it dismissed the reference case without discussing the evidence or dealing with the stage-wise payment status or admitted dues. Relying on the case of ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*****, (2019) 20**

SCC 1, the counsel submits that the mandate under Section 31(3) of the Arbitration Act is to have reasoning that is intelligible and adequate and the degree of particularity required for reasons depends on the complexity of the issues. Additionally, in ***Gorkha Security Services v. Directorate of Health Services*****, O.M.P. (COMM) 453 of 2017** (Delhi High Court, Coordinate Bench), it was stated that reasons form the essential link between facts, the issue for determination, and the conclusions arrived at; absence of such reasoning renders the award arbitrary, unintelligible, and liable to be set aside. Absence of a reasoned award is contrary to the fundamental principles of natural justice, falls foul of the statutory framework, and places the award in conflict with the public policy of India. He also relied on ***State of Bihar & Ors v. M/s Kumar Construction Company 2013 (4) PLJR 239*** and ***Classicon Construction I Pvt. Ltd. v. State of Bihar, Civil Revision No. 309 of 2016*** which delineated the scope of judicial review under the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, affirming that while the court's interference is limited, broad arguments on the merits of arbitral awards are often entertained to prevent manifest injustice

4. v. He further submits that the learned Tribunal

failed to consider material on record showing admitted dues of Rs. 25,44,084/- payable by IDA; Termination Clause 6.1.15 (terminating the agreement by order dated 05.12.2014 and encashing the Rs. 2,00,000/- bank guarantee without the mandatory 30 days notice); Payment Clause 5.0.1; and the project status of the seven works allotted between the two agreements. He draws the attention of this Court to the fact that allegations of IDA are self-contradicted by the record, as the latter re-empanelled the petitioner on 06.01.2014 (after the original agreement expired on 26.08.2012), made part-payments on the very same projects, and invited tenders/appointed contractors on the basis of work scheduled by the petitioner. The petitioner invoked Hon'ble High Court jurisdiction through CWJC No. 16851 of 2014, which was disposed of on 14.10.2014, with liberty to approach the Tribunal; he then informed IDA of this order by letter dated 27.11.2014, and IDA terminated the petitioner just 8 days later, vide Order No. 2707/PDA dated 05.12.2014. The learned counsel argues that this proximity between the court order and termination gives rise to a reasonable inference of *mala fide* and retaliatory intent, which remained unexamined by the learned Tribunal.

4. vi. He further claims that the record shows IDA

interfered with the petitioner's technical work and demanded arbitrary, technically unjustifiable, and contractually impermissible changes, including changes to foundation design, and when the petitioner resisted, he was pressurised and his payments were withheld. He argues that the petitioner's structural drawings were submitted after vetting by a Government institution, and the absence of any evidence that the vetting body rejected the drawings is itself proof of adequacy. The counsel brings the notice of this Court to Clause 5.0 of both agreements dated 25.08.2009 and 06.01.2014, respectively, stipulating a stage-wise payment schedule, 20% at PPR submission, 80% at DPR/drawing submission, etc. and not by overall project completion and thus, the the respondent cannot withhold milestone payment on the ground of an alleged future failure to complete the work.

5. Learned counsel for the Opposite Parties submits that the petitioner had not provided quality service in many IDA projects, which is precisely why re-empanelment (dated 06.01.2014) was split into two categories: (a) the firm itself as Design Consultant, and (b) Ms Seema Kharbanda individually and also because the ongoing projects were already well advanced past 26.08.2012, and it was inadvisable to swap

consultants mid-project (no new work was allotted after re-empanelment). He submits that the allegation of interference by the petitioner is baseless and that IDA only issued letters to rectify mistakes in the specifications/drawings as per site conditions and departmental requirements; the petitioner did not show a responsible approach and contravened the spirit of the agreement. He next submits that all the payments to the petitioner firm were duly made as per the terms of the agreement in lieu of the actual submission of drawings/designs for allotted projects; the balance is pending because supporting drawings needed for execution were never submitted.

5.i. Learned Counsel for the Opposite Parties submits that the petitioner's allegation of him getting blackmailed and pressurised by the latter is frivolous. Additionally, he submits that the petitioner's repeated characterisation of IDA's requests as 'unscientific and unwanted interference' is contrary to Clause 3.1.11, which specifically obliges the consultant 'to carry out all modifications/deletions/additions in design/drawing documents as required by the client and IDA for proper execution of works at the site till completion and handing over.' He next submits that IDA has an experienced technical team, and the allegation from the petitioner that the changes asked by the Opposite

Parties were sound and genuinely required. The defects marked down by the IDA against the seven projects are as follows:-

> *(a) Indo-Danish Tool Room, Patliputra, Patna: Drawings not submitted for water supply line in main as well as hostel building, drain (cross-section/structural), main gate, reinforcement detail for duct; 110mm PVC pipe wrongly used instead of electrical shaft; electrical main panel provision missing from hostel drawing; conduit-laying drawing for roof wiring not submitted; no complete route chart for power cabling; no land indicated/available at site for electrical room, generator room, battery room, scrap yard as shown in the drawing.*
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> *(b) Interior of Bihar Foundation, Indira Bhawan, Patna: Items missing/under-quantified in main BOQ versus drawing; carriage cost of material not calculated; tile size/thickness specified not available in Patna market; BOQ showed only 6-7 nos. of tiles priced against 12 nos. shown in drawing, which indicates an insufficient estimate.*
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> *(c) Interior of Integrated Child and Women Development: UPVC windows were fixed on the department's own request; several extra items (laminated plywood panelling; toughened glass doors/handles/partitions; fire alarm system components; GI strip/copper loop/PVC cable laying) were all missing from the main BOQ. IDA notes it has nonetheless already paid 50% of the bill under this head.*
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> *(d) Institute of Driving Training and Research (IDTR), Aurangabad: Main*

building drawing incomplete: simulator room provision not per norms (simulator won't fit; entrance/simulator room doors too small); traffic signal drawing not submitted; PHE drawing not submitted; horticulture/road furniture drawing not submitted; auditorium floor finish/false ceiling/acoustic system missing from BOQ; workshop doors too small; electrical drawing insufficient; fire hydrant scheme not submitted; structural design drawing incomplete; model preparation/submission still pending; periodic supervision (a contractual obligation) was also not done, accordingly only 20% of the bill was paid.

(e) State Forest Training Institute, Gaya: boundary wall: Petitioner's BOQ suggested stone masonry instead of traditional brick; however, IDA suggested that stone was difficult to procure and thence requested a switch to brick masonry as a genuine site-condition need, which was evidently not a favour to the contractor. Further defects: carriage cost missing from original DPR; cross-sectional road detail, main gate drawing, and septic tank estimate not submitted (lump-sum septic tank figure used instead, called incorrect); road construction delayed for want of cross-sectional drawing (IDA cites its letter No. 452(Tech) dated 24.02.16); electrical panel position not shown in main drawing; conduit laying not shown; BOQ specification missing for changeover between the 160KVA transformer/main LT panel and 62.5 KVA DG set; SLD (single line diagram) not submitted; periodic supervision not done. IDA says it had to engage another consultant to resolve these

gaps, paid 50% of the bill against incomplete drawings, and the balance remains pending.

(f) Industrial Mega Park, Bihta: DPR was never submitted despite several reminders; the PPR submitted was insufficient/of no value for complete execution; no payment was made as Administrative Approval (AA) had not been received at that time.

(g) Women ITI, Siwan: PPR submitted was insufficient and was not approved by the concerned department; claims were examined and denied due to a faulty PPR submission that did not match site requirements.

5. ii. Learned counsel for the Opposite Parties further denies IDA withholding payment and submits that all the payments were released against whatever part-drawings were actually submitted as per the entitlement, which is marked as Annexure B. Further, the allegation of misbehaving with Mr Pradeep Kharbanda by the IDA officials is totally denied as baseless by the learned counsel for the Opposite Parties; it was merely a reminder to timely submit PPR.

6. Having considered the rival submissions advanced on behalf of the parties, and the impugned order, the point for determination arising in the present civil revision is whether the learned Tribunal has, in the lawful exercise of his duty, rightfully passed the arbitral award.

7. After considering the submissions and perusal of

the impugned arbitral award dated 25.01.2017, this Court finds that the petitioner's primary contention is that the Opposite Party (IDA), vide its letters dated 25.02.2014, 16.04.2014 and 15.07.2014, made binding admissions of payment liability towards the petitioner. However, the letter dated 25.02.2014, records a detailed complaint against the petitioner in respect of the Indo-Danish Tool Room, Hostel Block project as the petitioner had provided a defective foundation design unsuited to the site conditions (the site was low-lying and subject to water logging of 1.5 to 2 feet), that upon being confronted the petitioner raised untenable objections, that the petitioner eventually revised the design to a pile foundation but failed to submit the corresponding revised B.O.Q., and that IDA was constrained to prepare the revised B.O.Q. at its own level to avoid further disruption of Government work. The letter further records that the petitioner had already been paid in excess of the work actually rendered, given the defective DPR, and that the balance payment was expressly conditional upon rectification of the defect, rectification which, per the letter, remained undone. The letter also cautions the petitioner regarding the consequences of continued non-compliance under Clause 6.1.15 of the agreement. Thereby, the letter read as a whole is not an admission of liability but a contemporaneous record of the petitioner's default.

8. From perusal of the records, Clause 6.1.10 of the agreement states:

> "*The Consultant will give an undertaking that all drawings, designs, specifications, plans, estimates and other documents will be prepared and furnished to suit the particular local conditions of the site in the most economical manner. The consultant will work out economic design and adopt specification so as to ensure that the estimates approved by client at initial stages are not exceeded on completion of work. At any stage during the progress of execution of the work, if any defect is noticed, in the drawings, designs, specifications, plans, estimates or other documents, the consultant shall provide free of cost to IDA fresh designs/drawings/ specifications/estimates and other documents within a period of the seven days from the date of notice issued by IDA in this regard. The consultant shall also indemnify IDA for losses due to such defective drawings/designs/specifications/estimates/other documents supplied by the consultant subject to a maximum of the consultancy fees*".

It thus casts an explicit obligation on the petitioner that where any defect is noticed at any stage during execution of the work, the petitioner is bound to furnish fresh drawings/specifications free of cost, within seven days. The record demonstrates that the defect in the foundation design of the Hostel Block, Indo-Danish Tool Room, was communicated to the petitioner, and that the petitioner did not furnish the corrected B.O.Q./specifications within the stipulated period of time, or indeed within any reasonable period thereafter, necessitating IDA to undertake the correction departmentally. Thus, there is a breach of Clause 6.1.10 by the petitioner, and thereby, such withholding is expressly contemplated and justified under the terms of the very agreement the petitioner seeks to invoke.

9. As regards the encashment of the bank guarantee, effected vide letter No. 2707/PDA dated 05.12.2014, was thus not an arbitrary but a consequence of the petitioner's own continuing default under Clauses 6.1.10 and 3.1.11 of the agreement. Clause 3.1.11 of the agreement obliges the petitioner to carry out all modifications/deletions/additions in the design and drawing documents as required by the client for proper execution of the works at the site, till completion and handing over. Additionally, Clause 6.1.15 of the agreement states that

> "*The agreement may be terminated at any time by IDA upon one month's notice in writing being given to Consultant, if the consultant's work is not found to be*

> *satisfactory according to the terms of the agreement. In case the agreement is terminated on account of the consultant's work not being satisfactory, IDA will get the work done at the risk and cost of the consultant and the performance Guarantee/Security money shall be forfeited.*"

This again warrants the action of encashment by the Opposite Parties as legitimate.

10. The letter dated 25.02.2014 demonstrates that IDA's requisitions for revised drawings and B.O.Qs fell squarely within this contractual obligation, and were not, as alleged by the petitioner, unscientific or unwarranted interference. The petitioner's own conduct in resisting these legitimate requisitions, and its characterisation of legitimate contractual demands as harassment, does not detract from the petitioner's underlying contractual default. Consequently, the termination of the agreement and the encashment of the bank guarantee cannot be said to be vitiated either for want of the notice contemplated under Clause 6.1.15, or otherwise, inasmuch as the petitioner's own continuing breach of which it stood repeatedly notified in writing, including specific reference to Clause 6.1.15 in the letter dated 25.02.2014 itself, furnished sufficient and lawful

cause. The plea of *mala fide* founded merely on the proximity between the petitioner's letter dated 27.11.2014 and the termination order dated 06.12.2014 must yield to the documented history of default that preceded it by several months.

11. For the reasons aforesaid, this Court finds no jurisdictional error, patent illegality, or material irregularity in the impugned award dated 25.01.2017 warranting interference under Section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008. Hence, the learned Tribunal's conclusion that the petitioner's claims were not sustainable is borne out by the record, and the scope of revisional interference being confined to jurisdictional error or perversity, and not extending to a re-appreciation of evidence merely because another view is possible, is not attracted on the facts of the present case.

12. In view of the foregoing discussion, present Civil Revision No. 72 of 2017 is hereby dismissed.

13. The impugned award dated 25.01.2017 passed by the learned Tribunal, Patna, in Reference Case No. 63 of 2015 is upheld and affirmed, and the encashment of the bank guarantee and forfeiture of the security deposit by the Opposite Parties is

held to be in accordance with the terms of the agreement and is not interfered with.

14. No order as to costs.

(Ramesh Chand Malviya, J)

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