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

Judgment reserved on: 08.07.2026
Judgment pronounced on: 28.10.2026

\+ **CS(OS) 457/2000**

JAI SINGH .....Plaintiff

Through: Mr. Mandeep Singh Vinaik, Mr. S.K. Sagar, Ms. Ragini Vinaik, Ms. Hridyaa Singh, Advs.

versus

DELHI DEVELOPMENT AUTHORITY (DDA) .....Defendant

Through: Ms. Shobhana Takiar, Standing Counsel, Mr. Shivam Takiar, Mr. Prateek Dhir, Mr. Kuljeet Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. By way of this suit the plaintiff is seeking recovery of Rs. 2,28,68,176/- (Rupees Two Crores, Twenty Eight Lakhs, Sixty Eight Thousand, One Hundred and Seventy Six), along with interest *pendente lite* and future interest till actual payment, in addition to the costs of the suit. The prayer of the suit as mentioned in the plaint reads as under:

"It is therefore, most respectfully prayed that this Hon'ble

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Court may be pleased to pass a money decree, in favour of the plaintiff, and against the defendant, directing the defendant to pay to the plaintiff a sum of Rs. 2,28,68,176/- (Rupees Two Crores, Twenty Eight Lakhs. Sixty Eight Thousand. One Hundred and Seventy Six Only), along with interest pendente lite and future interest, payable till the date of actual payment. The costs of the suit may also be awarded in favour of the plaintiff."

FACTUAL MATRIX AS PER THE PLAINTIFF

2. The plaintiff, Mr. Jai Singh, is a construction contractor undertaking the business of construction in the name and style of his sole proprietorship concern by the name of J.S. Constructions.

3. The defendant i.e., Delhi Development Authority ***("DDA")***, invited tenders for the construction of 1174 MIG, 210 LIG, and 623 EWS houses at Kondli, Gharoli, Phase II, sub head construction of 176 MIG Houses including internal development group IX.

4. The plaintiff submitted his tender offer, which was accepted *vide* letter dated 15.02.1992 and the parties entered into an agreement bearing No. 47/EE/ED-492-93 ***("Agreement")***, which was later transferred to the contractual jurisdiction of Executive Engineer, Eastern No. 7 and renumbered as Agreement No. 07/EE/ED-7/93-94, and ultimately transferred to Executive Engineer, Eastern Division No. 4.

5. As per the terms and conditions, it was decided that the work was to be completed within a period of 18 months scheduled to commence from 25.12.1992 and to be completed by 24.06.1994.

6. Due to certain breaches alleged to be attributable to the defendant, the

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work could not be completed as per the fixed schedule timeline and it was completed only on 22.02.1997, i.e., after a delay of about 32 months.

7. Consequently, the defendant issued a completion certificate under Clause 6 of the Agreement and also granted extension of time ***("EOT")*** up to 22.02.1997 without levy of any compensation under Clause 2 of the Agreement, and also released compensation up to the date of final completion of work in terms of Clause 10CC of the Agreement.

8. The plaintiff by way of this suit claims further compensation under Clause 10CC as the compensation released in his favour was inadequate particularly when the delay was entirely attributable to the defendant.

9. The record of all the hindrances aggregating to 649 days was submitted by the plaintiff to the defendant along with the application dated 12.05.1997 seeking EOT.

10. The aforesaid position with respect to delayed performance was admitted by the Executive Engineer of defendant in his letter dated 15.05.1997, wherein he recommended grant of EOT to the Superintendent Engineer without levy of any compensation in terms of Clause 2 of the Agreement. The same was accordingly allowed by the Superintendent Engineer *vide* letter dated 23.05.1997.

11. Subsequently, after repeated requests to the Executive Engineer (DDA) for payment of the plaintiff's final bill, the plaintiff, on 20.08.1997 raised a final bill with respect to the undisputed items of work. The said bill was misplaced, and a copy of the bill was again

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furnished on 23.01.1999, which was again submitted afresh to the Executive Engineer on 10.03.1999 after rectifying the typographical errors.

12. The said bill was not even acknowledged by the defendant. Hence, by way of present suit, the plaintiff seeks a principal sum of Rs. 1,57,71,156/- along with interest.

13. The defendant has filed its written statement wherein the defendant vehemently opposed the present suit and also raised preliminary objections *qua* maintainability of the suit. The stand of the defendant is unequivocal and clear that nothing as claimed in the plaint, is due and payable to the plaintiff.

14. Based on the pleadings and the documents, this Court *vide* its Order dated 24.07.2007, framed the following issues for adjudication of the matter by this Court:

> *"1. Whether the suit is barred under Section 53B of the Delhi Development Act? OPD*
>
> *2. Whether the Court fees affixed on the suit by the plaintiff is deficient? OPD*
>
> *3. Whether the plaintiff is entitled for the amount claimed in the suit or any other amounts? OPP*
>
> *4. Relief."*

15. Initially, the Issue No. 1 was directed to be heard as a preliminary issue but *vide* Order dated 15.07.2011, it was agreed between the parties that the said issue may be decided along with other issues.

EVIDENCE

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16. The parties led their evidence by way of affidavits, wherein the plaintiff examined the following witnesses:

A. Mr. Jai Singh (PW1), the plaintiff, is a construction contractor running his business under the name and style of his sole proprietorship concern namely, J.S. Construction. He tendered his evidence by way of an affidavit exhibited as Ex. PW1/A.

B. Mr. Gaurav Dagar (PW2), son of the plaintiff, who assisted the plaintiff in conduct of his business also tendered his evidence by way of an affidavit exhibited as Ex. PW2/A.

17. The defendant examined sole witness namely, Mr. M.K. Gupta (DW1), who was posted as an Assistant Engineer with the defendant and he tendered his evidence by way of affidavit exhibited as Ex. DW1/A.

18. The parties have proved and exhibited the documents as described in 'Form A' annexed to this judgment.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

ISSUE NO. 1: Whether the suit is barred under Section 53B of the Delhi Development Act? OPD

19. Mr. Vinaik, learned counsel for the plaintiff, in response to the preliminary objection raised by the defendant has argued that on 14.03.2011, this Court directed the plaintiff to place on record original notice dated 28.08.1999 (Ex. PW1/89) to prove the fulfilment of the requirement laid down under Section 53B of the Delhi Development Act, 1957 ***("the Act")*** and also directed the Director of DDA to furnish an affidavit stating whether the notice was received or not.

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20. Pursuant thereto, the notice was exhibited as Exhibit PW1/89 with concurrence of both the parties as recorded in the Order dated 11.09.2015.

21. He further states that pursuant thereto in the affidavit dated 14.03.2011, the receipt of the notice dated 28.08.1999 was admitted by the defendant but an alternate ground was raised *qua* the cause of action namely, that it arose when the first final bill was raised, i.e., in the year 1997.

22. It is further stated that Section 53B of the Act is analogous to the provision contained in Section 80 of the CPC, 1908, wherein it is laid down that a prior two-month notice setting out the complete cause of action needs to be served on DDA before filing of the suit and the suit must be filed within 6 months of the said notice.

23. The plaintiff has acted in strict compliance with the provision of Section 53B of the Act as not only the notice dated 28.08.1999 explicitly disclosed the cause of action and claim, but also the suit was preferred within 6 months of the date of notice (filed on 21.02.2000). Even though the plaint was returned by the registry due to deficiency in the court fees, it was recorded in the objection sheet that the suit was filed on 21.02.2000.

24. Mr. Vinaik, learned counsel, also states that the cause of action in terms of Section 53B of the Act arose after expiry of two months of the notice having been served and the demand remaining unpaid i.e., the two month period expired by the end of October 1999, thereby giving the

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plaintiff time till end of April 2000 for filing of the present suit. Reliance is placed on *Fresh Assets Ltd. v. DDA*[1].

25. He also places reliance on the judgment of *Mayurdwaj Coop. Group Housing Society Ltd. v. DDA*[2], to state that express mention of provision of Section 53B in the notice is not a *sine qua non* for filing a suit against DDA, once all the ingredients of the provision stand satisfied, the provision is deemed to be complied with.

26. He further states that in the present factual matrix, the three years limitation period as per the Limitation Act, 1963, ***("Limitation Act")*** is applicable to the suit and not the special period of limitation under Section 53B of the Act which has to be strictly construed and should be attracted only in cases where the defendant is under statutory obligation i.e., the act complained of was done pursuant to the statutory requirement or was done by virtue of a contract which was entered into in compliance of the powers conferred by the Act. Reliance is placed on *Durga Chand Kaushish v. Union of India*[3], and *Deluxe Estates v. DDA*[4].

27. The defendant has erroneously pleaded that the date of final bill was the date of commencement of cause of action as the cause of action accrues when the final demand is made and not from the final bill. Even if the stand of defendant is accepted that the final bill was dated March 1999, the suit was still filed within limitation.

[1] 2015 SCC OnLine Del 11245.
[2] 2010 SCC OnLine Del 4409.
[3] 1971 SCC OnLine Del 158.
[4] 2003 SCC OnLine Del 497.

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ISSUE NO. 2: Whether the Court fees affixed on the suit by the plaintiff is deficient? OPD

28. Mr. Vinaik, learned counsel, has argued that the suit was initially filed on 21.02.2000, returned under objection and was refiled on 24.02.2000. Due to certain defects, it was ultimately refiled on 03.03.2000 by making the payment of the requisite court fee as computed by the Registry to the tune of Rs. 2,25,555.20/- on *ad valorem basis.*

ISSUE NO. 3: Whether the plaintiff is entitled for the amount claimed in the suit or any other amounts? OPP

29. At the outset, learned counsel for the plaintiff, states that the facts that after completion of work on 22.02.1997, the EOT was granted and payment on account of escalation under Clause 10 CC of the Agreement was released, and that the additional items assigned to the plaintiff were duly performed remain uncontested. Also, the fact that DDA had to release the final bill within 6 months and the contents of the final bill remain uncontested.

Claim No. 1: Payment of final bill of Rs. 41,77,809/- in respect of items of work done.

30. The final bill dated 20.08.1997 was raised within 6 months of completion of the work and the covering letter of the said bill containing an endorsement of receipt by the representative of the defendant is duly placed on record.

31. The claim made by way of the said final bill remained unrefuted by the defendant, in effect, establishing the said Claim.

32. Since copy of the bill dated 20.08.1997 got misplaced, another copy dated 23.01.1999 was sent by the plaintiff and owing to certain

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typographical errors in the same, a new bill dated 10.03.1999 (Exhibited as Ex. PW1/85) was submitted to the defendant.

33. It is further argued that the averment *qua* final bill was clearly made in paragraph No. 9 of the plaint which was not answered by the defendant clearly indicating if the final bill was ever paid. The defendant has only raised a defence that the submitted bill was not a final bill. Thus, the same stands admitted and cannot be disputed.

34. The stand of defendant with regard to the final bill is self-contradictory as for the purpose of calculating limitation, the defendant describes it as final bill but at the same time for the purpose of payment, they treat it as an abstract. However, the factum of final bill stands admitted by the affidavit dated 20.04.2011 filed by the EE of defendant in compliance of the Order of this Court dated 14.03.2011.

35. Additionally, no question with regards to the date of final bill was posed to the PW1 during his cross examination by the counsel for the defendant.

36. Mr. M.K. Gupta, Assistant Engineer of the defendant, in his evidence by way of affidavit (Ex. DW1/A), has not denied the fact of hindrances and has ignored the issue of delay in work. He has only briefly stated that some work was left out and had to be awarded to another agency for performance.

37. DW1 in his affidavit has failed to state any amount that has been paid towards the final bill. It only contains a statement to the effect that nothing is payable, while at the same time admitting that the completion certificate was granted.

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38. Thus, in the light of the aforesaid, the only conclusion possible is that the final bill is pending and outstanding.

Claim No. 2: Release of bank guarantee of Rs. 3 lakhs and incidental expenses of Rs. 40,000/.

39. Mr. Vinaik has argued that having proved beyond reasonable doubt that the defendant was in breach of its obligations, the encashment of bank guarantee is also illegal. The fact that no Counterclaim is preferred by the defendant establishes the fact that defendant is having no claim against the plaintiff.

Claim No. 3: Cost of work done beyond the stipulated date of completion @ 20 percent extra over the tendered rates. Rs. 48,98,553/.

40. The work was completed with a delay of 32 months, solely attributable to the defendant's non-performance of its reciprocal promises namely, failure in arranging timely supply of stipulated materials, delaying structural designs, delay in payments for the executed work, and delay in laying the electronic goods by agency of the defendant.

41. The aforesaid defaults resulted in idling of the centering and shuttering material fixed along with compensation and costing of the RC, etc.

42. By way of Claim No. 3, the plaintiff is seeking compensation over and above i.e., in addition to the compensation covered by the escalation Clause 10CC or any other such provision for that matter, as the time period for completion of work got extended by 32 months thereby entailing approximate inflation of 20% as per the cost indices issued by

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CPWD. Reliance is placed on the judgment of this Court in *G.D. Tewari v. DDA.*[5]

43. It can be seen from a perusal of letter dated 31.03.1993 (Ex. PW1/4) that the plaintiff informed the defendant about breaches of obligations and *vide* letter dated 20.06.1994 (Ex. PW1/86) it was clearly stated that the work could only be completed beyond time on payment of 20% over and above the quoted rates.

44. In response to the said letter, the defendant replied *vide* letter dated 25.06.1994 (Ex. PW1/87 also as Ex. P7) wherein the Claim was not refuted, and it was stated that the demand of the plaintiff would be considered after decision on EOT. Thus, the Claim of the plaintiff is entitled to be decreed.

Claim No. 4: Compensation for continued employment of staff, machinery beyond the stipulated date of completion. Rs. 25,27,000/-.

45. He further states that deployment of staff for the execution of work as per terms and conditions of the contract was necessary and the deployment of employees calculated at the rate of Rs. 41,500/- per month is 2.2% of the quantum of the work required to be executed in 18 months. Thus, the rate of 2.2% is justified in view of the incidental charges incorporated in analysis of rates forming basis of schedule of rates by CPWD and also supported by the textbook of GT Gajaria. Additionally, for the reasons above, the defendant cannot take defence of Clause 10CC.

Claim No. 5: Loss of profit due to prolongation of the contract. Rs. 4,56,802/-.

[5] Judgment dated 02.05.1995 in Suit No. 2376/1993.

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46. It is also stated that as on the stipulated date of completion, work valued at Rs. 1,90,33,415/- remained incomplete on expiry of 18 months due to defendant's defaults. This had the effect of depriving the plaintiff of the profit he would have earned on this work within the stipulated period. Thus, the plaintiff has computed this Claim of interest on loss of profit calculated on staggered basis at half of 32 months (i.e., 16 months) worked out at the rate of 18% p.a.

Claim No. 6: Payment of compensation under clause 10CC of the agreement.

47. It is submitted by the plaintiff that the defendant has erred in computing the compensation. The defendant prepared bills for increase in material and wage rate prevailing on the date of submission of the tender offer for each quarter and also for the extended period.

48. The defendant did not include the correct amount as the rise in subsequent quarters in the cost indices was not factored in, causing a shortfall of Rs. 26,68,300/- in the compensation payable to the plaintiff under Clause 10CC of the Agreement itself. Reliance is placed on *Anant Raj Agencies v. DDA*[6].

Claim No. 7: Cost of work done beyond the scope of agreement but not paid for.

49. Learned counsel for the plaintiff further submits that extra items of work beyond the scope of the Agreement were executed at the specific instance of the defendant and the same are payable in the following manner as stated hereinbelow:

Cost of Extra Thickness of Plaster

[6] 2009 SCC OnLine Del 3248.

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50. In respect of item No. 7.4, base plaster of 15 MM was provided as against 12 MM as per the items of work. Hence, this Claim for extra thickness of plaster is to the tune of Rs. 20,980/- as per the applicable Delhi Schedule Rates, 1989 ***("DSR")***.

Centering and shuttering for DPC (Item No. 2.4)

51. He also states that Rs. 2123/- are payable towards Centering and shuttering provided for laying DPC, as an extra item.

Cost of Yamuna Sand (Item No. 1.3)

52. It is also stated that Rs. 26,000/- (for 325 c.m. at Rs. 80/per c.m.) is payable for providing Yamuna Sand, which was beyond the scope of the Agreement.

Cost of providing SCI Collars

53. Further, an amount of Rs. 47,020/- (Rs. 28,793/- + 63.3%) is payable towards 100 MM and 75 MM SCI collars at Rs. 47,020/- as per the DSR.

Claim No. 8: Overweight Steel

54. The Claim *qua* supply of overweight steel stands proved as it was recorded by the defendant's Executive Engineer, thereby attracting compensation of Rs. 1,50,000/- for the excess steel charged. Reliance is placed on Steel Weighment Register (exhibited as Ex. PW1/88).

Claim No. 9: Illegal Deductions for alleged deficiencies, Rs. 1,26,876/-

55. Learned counsel for the plaintiff submits that illegal deduction of Rs. 1,26,876/- was made by the Executive Engineer of the defendant despite there being no deficiencies in the work executed as per specifications and under the supervision of defendant.

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Claim No. 10: Refund of illegal withholding. Rs. 3,29,693/-.

56. The learned counsel for the plaintiff also submits that the defendant has wrongly withheld Rs. 3,29,693/- across ten R.A. bills, despite the work being executed in terms of the Agreement and certificate to this effect being recorded in these bills.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

ISSUE NO. 1: Whether the suit is barred under Section 53B of the Delhi Development Act? OPD

57. At the outset, Ms. Takiar, learned standing counsel for the defendant, submits that Section 53B(2) of the Act prescribes a mandatory limitation period for suits for recovery or other claims, providing a time limit of 6 months from the date of accrual of cause of action.

58. The limitation is to be reckoned from accrual of the cause of action, which the plaintiff claims to be on 22.02.1997 when defendant released compensation under Clause 10CC, or, at the latest, 22.08.1997 when the final bill was submitted by the plaintiff or even if it is considered to be accruing from 23.01.1999 or 10.03.1999, the suit filed on 22.02.2000 is still barred by limitation.

59. It is also stated that as per the settled position, the limitation is to be calculated from the date of cause of action which is tied to the date of submission of final bill by the contractor or failure on part of the defendant to pay the same. No further demand/reminders will revive/renew the limitation period or stop the clock. Reliance in this

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regard is placed on *MCD v. Gurbachan Singh*[7], *Shah Construction Co. Ltd. v. MCD*[8], and *Satender Kumar v. MCD*[9].

60. It is further stated that in view of the paragraph No. 6 and 16 of the plaint it is clear that the date of actual completion as per the plaintiff is 22.02.1997 and the final bill was raised on 22.08.1997, which was to be paid within two weeks and in case of non-payment, the suit could have been filed within 6 months from the expiry of 2 months. Hence, the suit filed on 22.02.2000 is beyond the limitation period prescribed under Section 53B of the Act.

ISSUE NO. 3: Whether the plaintiff is entitled for the amount claimed in the suit or any other amounts? OPP

General Submissions

61. Ms. Takiar, learned counsel, states that time was of the essence of the subject Contract as the same provided for delays in its completion to be treated as a fundamental breach and the plaintiff failed to perform its obligations within the agreed timeframe despite repeated notices and opportunities.

62. In accordance with the Contract between the parties, the defendant was empowered to get the incomplete/deficient work completed/rectified at the risk and cost of the plaintiff, and the same was done after following due process and affording multiple opportunities to the plaintiff.

63. The cross-examination of the plaintiff reveals glaring inconsistencies of the following nature in his stand:

[7] 2014 SCC OnLine Del 19.
[8] 1984 SCC OnLine Del 119.
[9] 2010 SCC OnLine Del 424.

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a. On 19.01.2015, the plaintiff admitted that he had not been able to complete construction by 24.06.1994 and delay was attributable to the defendant, and on the same page he referred to the completion certificate and stated that he had completed the construction but could not tell the specific date.
b. The plaintiff acknowledged that there were unfinished/defective work but also denied that the defendant got the unfinished work performed by outside agency.
c. The plaintiff admitted that the site was handed over to him as per the schedule (Pg. 237 of the paper book) and at the same time stated that defendant has not handed over the site in whole on time and free from encumbrances.
d. The plaintiff admitted that the payment towards extended period had already been made to him but at the same time stated that it is incorrect to suggest that the entire amount as per Clause 10CC was paid.
e. It is stated by the plaintiff that he had taken the clearance certificate from the labour office but also said that he never brought the said document on record nor can he produce the said clearance certificate.

Claim-wise Submissions

Claim No. 1: Payment of final bill of Rs. 41,77,809/- in respect of items of work done.

64. It is stated by Ms. Takiar, learned counsel, that a copy of bill dated 23.01.1999 was received by the defendant but the same was not in the

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nature of a final bill or a bill as it was reflecting an abstract amount of a sum of Rs. 29,57,349.70/- and Rs. 6,04,825.75/- on account of actual work.

65. Further, on 10.03.1999, another abstract was submitted wherein the amount was revised to Rs. 31,99,124/- and Rs. 6,04,825/- and now by way of the present suit the plaintiff is seeking an amount of Rs. 9,87,680/- towards actual work, which is apparently contrary to the initial stand taken by the plaintiff.

66. Since, it is clear that finalisation of bill is done on rectification of defective work, there were defects in the work executed by the plaintiff, which were assigned to outside agency for the purpose of rectifications and the same was in his knowledge, hence, bill could have been finalised only on completion of the work.

Claim No. 2: Release of bank guarantee of Rs. 3 lakhs and incidental expenses of Rs. 40,000/.

67. She further states that the plaintiff has failed to submit the clearance certificate issued by the labour officer, which was required for release/refund of the bank guarantee in terms of Clause 46 of the Agreement. Reliance is also placed on Clause Nos. 17B, 19G, 29 of the Agreement.

Claim No. 3: Cost of work done beyond the stipulated date of completion @ 20 percent extra over the tendered rates. Rs. 48,98,553/.

68. *Qua* this Claim, it is stated that as per Clause 12 of the Agreement extra work could be executed and the compensation for the same was duly paid by the defendant in terms of Clause 10CC. Hence, no other amount is payable over and above the amount paid under Clause 10CC,

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as payment made under this Clause was all inclusive comprehensive payment.

69. The demand with respect to this amount was raised on 24.10.1996, which was declined by the defendant on 16.11.1996 and the plaintiff also declared in his application for EOT dated 12.05.1997 (Exhibit Ex. P3) that it will not claim any amount extra due to the said delay.

70. Accordingly, the plaintiff cannot claim any expenses incurred for the extra work which is performed beyond the stipulated completion date unless the same was approved/condoned by the defendant in terms of the contractual provisions. Reliance is placed on Section 55 of the Indian Contract Act, 1872, ***("Contract Act")*** and also on the judgments of *DDA v. U. Kashyap*[10], *MCD v. Rakesh Bros.*[11]

Claim No. 4: Compensation for continued employment of staff, machinery beyond the stipulated date of completion. Rs. 25,27,000/-.

71. She further submits that this Claim is merely a reiteration of Claim No. 3 and as per Section 55 of the Contract Act, the Contractor is not entitled to any compensation for the continued employment of the staff and machinery unless expressly allowed by the defendant. The amount claimed has already been settled in terms of Clause 10CC and nothing remained due.

72. The present Claim is an attempt to inflate the claims of the plaintiff as the plaintiff also executed other works and his employees were also working at other sites.

[10] 1998 SCC OnLine Del 762.
[11] (2005) 120 DLT 186.

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73. Additionally, no extra expenses paid to the staff has been proved to be working at the site and no evidence was led to this effect by the plaintiff.

Claim No. 5: Loss of profit due to prolongation of the contract. Rs. 4,56,802/-.

74. The burden is on the plaintiff for not only proving the occurrence of prolongation but also the quantum of loss of profit. There is no evidence/document placed on record to indicate the quantum of loss. Assuming even if there is any loss, the Court is also required to see clear evidence to this effect that the loss is attributable to the defendant's breach and not the plaintiff's own conduct.

75. Additionally, this Claim of the plaintiff is vague in its nature as there is an ambiguity in the Claim with regards to whether the plaintiff wants to claim loss of profit or interest on such loss of profit.

Claim No. 6: Payment of compensation under clause 10CC of the agreement.

76. Clause 10CC is clear in its ambit, exhaustively covering the scope/subject of price escalation and no other form of compensation for delay or other reason is contemplated under the Agreement. It includes the compensation for increase or decrease in the cost of materials and labour during the contract period or during the extension, and excludes the damages for other factors such as idling, loss of profit due to prolongation, etc. Hence, Clause 10CC incorporates the entire remedy available to the plaintiff under the Agreement.

Claim No. 7: Cost of work done beyond the scope of agreement but not paid for.

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77. Ms. Takiar with respect to this Claim states that the plaintiff submitted multiple bills but omitted these items, hence, the Claim for these items is just an afterthought.

78. None of the claims for extra work done is payable to the plaintiff as Clause 10CC applies only on price escalation of material and labour during the contract and approved extension period, and not on the delays attributable to the plaintiff or prolongation claims beyond the approved extension.

Cost of Extra Thickness of Plaster

79. She submits that no 15 MM base plaster was provided by the plaintiff instead of 12 MM and the same is not payable in view of Clause Nos. 42(ii) and 3.1.5 of the Agreement.

Centering and shuttering for DPC (Item No. 2.4)

80. She also states that this work was executed as per the item of Agreement and CPWD specifications. Hence, nothing more is payable.

Cost of Yamuna Sand (Item No. 1.3)

81. It is stated that this Claim for Yamuna sand is not payable because it is outside the scope of the Agreement.

Cost of providing SCI Collars

82. It is also stated with respect to this Claim that the said amount has already been paid under item No. 11.5 to 11.12 of the Agreement and nothing more is payable. Reliance is also placed on Special Condition No. 3.14 of the Agreement.

Claim 8: Overweight Steel

83. The Claim with respect to overweight steel is also an afterthought as the plaintiff accepted 30 bills and the plaintiff never raised this issue in

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any of the bills. Moreover, it is covered under the permissible variations allowed under Clause 42(iii) of the Agreement.

Claim No. 9: Illegal Deductions for alleged deficiencies, Rs. 1,26,876/-

84. The deductions for the deficiencies which is stated as illegal by the plaintiff were made under the reduction item statement duly approved by the SE, which was final and binding as per the provision contained in Clause 25B of the Agreement.

Claim No. 10: Refund of illegal withholding, Rs. 3,29,693/-.

85. All the RA bills in which the amount was withheld were already accepted by the plaintiff and the same were not disputed. The amount shown as withheld for RA bills No. 20 and 30 stood already released in favour of the plaintiff. The other amounts had been withheld in accordance with the provisions of the Agreement and on account of quality control observations and excess consumption of cement by the plaintiff during the execution of the work. Hence, nothing is payable by the defendant to the plaintiff with respect to this Claim.

ISSUE-WISE ANALYSIS AND FINDINGS

86. I have heard learned counsels for the parties and perused the documents, evidence and material placed on record.

ISSUE NO. 1: Whether the suit is barred under Section 53B of the Delhi Development Act? OPD

87. The preliminary issue raised by the defendant in the present case concerns the special limitation period prescribed under Section 53B of the Act for instituting suits against the defendant. At this stage it is pertinent to refer to Section 53B of the Act, which reads as under:

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"53B. Notice to be given of suits—

(1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person acting under the directions of the Authority or any member or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made thereunder until the expiration of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered.

(2) No suit such as is described in sub-section (1) shall, unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

(3) Nothing contained in sub-section (1) shall be deemed to apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the

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giving of the notice or the postponement of the institution of the suit."

88. From a conspectus of the aforesaid, it can be seen that Section 53B(1) of the Act bars institution of a suit against the defendant until the expiry of two months after service of notice in writing stating explicitly the cause of action, the relief sought, and the amount of compensation claimed. Section 53B(2) further provides that no such suit shall, save in specified exceptions (not relevant here), be instituted after the expiry of six months from the date on which the cause of action arose.

89. It is the preliminary objection raised by the defendant against the maintainability of the suit that the limitation period for the filing of the present suit reckoned from the date of release of compensation under Clause 10CC (i.e., 22.02.1997) and resultantly the suit filed on 22.02.2000 is filed beyond the period of limitation prescribed under Section 53B of the Act.

90. Defendant further, without prejudice to the aforesaid argument, states that even if the date of submitting of final bill dated 20.08.1997 or its corrected copies submitted on 23.01.1999 or 10.03.1999, is considered as the date of accrual for cause of action, the suit is still barred by limitation, as the maximum period of limitation in the present case would be 8 months (2 months for notice + 6 months for filing of suit). Even from the last date i.e., 10.03.1999, the suit filed on 22.02.2000 is beyond the limitation of 8 months.

91. *Per contra,* the plaintiff has argued that the final bill was submitted on 20.08.1997, which was resubmitted on 10.03.1999 and later a demand notice dated 28.08.1999 was addressed by the plaintiff to the defendant.

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Thus, the two-month period for notice must be calculated from 28.08.1999 which expires on or about 27.10.1999 and, hence, on this basis the suit filed on 21.02.2000 falls well within the period of limitation permitted, which would only expire on 27.04.2000.

92. The plaintiff has also argued that the special limitation period as prescribed under Section 53B of the Act must be strictly construed and should only be attracted in cases where the dispute is regarding the statutory obligation of the DDA under the Act itself or rule or regulation made thereunder.

93. The law with respect to operation of special period of limitation provided under Section 53B of the Act is no longer res integra and has been time and again expounded by this Court. The same has been recently explained by a Coordinate Bench of this Court in the judgment of ***DDA v. Dr Fresh Assets Ltd.***[12]**,** and the relevant paragraphs of the judgment read as under:

> *"29. For the better understanding, Section 53B DDA Act is reproduced as under: ...*
>
> *30. Pertinently,* ***the present suit is not one seeking enforcement of any right created under the DDA Act. The relief claimed by the Plaintiff is for interest on the earnest money of Rs 63,12,500 received by the Appellant on 17-12-2008, was retained by the Appellant for more than 04 years, and returned only on 29-1-2013 without any interest.***

[12] 2026 SCC OnLine Del 2376.

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31. In Lucky Star Estates (India) Pvt. Ltd. v. Delhi Development Authority in RFA(OS) 10/1987, ***this Court, dealing with a similar challenge based on Section 53B, held that a suit seeking damages/interest on the principal amount/earnest money wrongfully retained by DDA, does not ipso facto fall under the expression of "any act done or purporting to have been done under this Act" so as to attract the special 06 month limitation envisaged under sub-section (2). It was observed that the DDA cannot take refuge under Section 53B(2) DDA Act, to defeat substantive contractual or restitutionary claims which are otherwise, within the general limitation period, as per law.***

32. Admittedly, an Application i.e. I.A. 24684/2014 in CS(OS) 1936/2014, under Order VII Rule 11 CPC, was earlier filed by the Appellant, raising the identical plea that the suit was barred by Section 53B (2) of the DDA Act. By the order dated 29-7-2015, this Court rejected the said Application, holding that the suit for recovery of interest on earnest money was not liable to be rejected on the ground of Section 53B.

33. Therefore, learned trial court, rightly observed that the suit was not barred by Section 53B of the DDA Act."

94. The aforesaid judgment of ***Dr. Fresh Assets (Supra)*** is also on the same lines of reasoning as the judgment of ***Lucky Star Estates (Supra)*** by the Hon'ble Division Bench of this Court.

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95. In this view of the matter, the issue of fact which is to be decided is that whether the actions of the defendant can be said to be actions to have been done under the Act or any rules or regulations framed thereunder.

96. The present suit filed for recovery of Rs. 2,28,68,176/- along with interest is premised on non-payment of final bill, illegal withholding of multiple amounts including towards work done beyond the completion date, loss of profitability due to prolongation, and compensation payable under 10CC on the ground of delay and other additional grounds.

97. The plaintiff alleges non-performance of contractual obligations arising from the Agreement dated 23.12.1992 by the DDA to the aforestated amounts, the withholding/non-payment of the same cannot be said to be falling within the scope and ambit of an action done under the Act or any rules or regulations framed therein. It is entirely a matter of contractual disputes between the parties and does not fall within the statutory framework of the Act. Hence, section 53B of the Act will have no application.

98. The judgment of ***MS Shoes East Ltd. v. DDA.***[13] relied upon by defendant is distinguishable and operative paragraphs of the same read as under:

> *"69. Delhi Development Authority v. H. Dohil Construction Co. AIR 1984 Delhi 124 was a suit for specific performance of contract to sell land and was held to be a suit essentially*

[13] 2018 SCC OnLine Del 9074.

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for recovery of immovable property and not within the scope of Section 53B(2).

70. Ram Dulari v. Delhi Development Authority 1995 (34) DRJ 129 was a suit for recovery of damages accruing from the action of the DDA of demolishing the construction on the property of the plaintiff. It was held that the act of demolition is integrally connected with the duties of the DDA and covered by Section 53B(2) of the Act.

71. Lucky Star Estates (India) Pvt. Ltd. v. The Delhi Development Authority AIR 2004 Delhi 428 was a suit for refund of earnest money with interest. The Single Judge held the suit to be barred by limitation under Section 53B(2). However, the Division Bench in appeal found that the cancellation of the bid was after one year and without disclosing any reason, earnest money had been illegally retained. In these facts, Section 53B(2) was held to be not applicable. I may however notice that the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 were not noticed and it was generally observed that auctioning of nazul land was an act done under a contract but not required by the DDA Act.

72. For the reason of the finding in Lucky Star Estates (India) Pvt. Ltd. supra, of the DDA having acted illegally and for the reason of the said judgment not noticing the

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Rules aforesaid, I am humbly of the opinion that the same does not bind me.

73. Mayurdwaj Cooperative Group Housing Society Ltd. v. Delhi Development Authority 2011 (121) DRJ 317 (RFA (OS) No. 0549/2011 preferred whereagainst was dismissed on 19-12-2012) was a suit for refund of composition fee collected by the DDA and finding that DDA was not entitled to collect the composition fee, the suit was held to be not within the ambit of Section 53B(2).

74. Fresh Assets Ltd. v. DDA was a suit for recovery of interest on the earnest money deposited with the DDA and which was returned by DDA on its own, on sale being stayed by an order of another Court. The plaintiff claimed interest for the period for which the said money had been retained. With respect to the defence of Section 53B(2), it was held relying on Lucky Star Estates (India) Pvt. Ltd. supra that the facts of the subject case did not warrant the restriction of the larger period of limitation prescribed under the Limitation Act to be whittled down to the period prescribed under Section 53B(2) of the Act.

75. As would be obvious, in Fresh Assets Ltd. supra there was an admission of the DDA of the DDA being not entitled to retain the earnest money and DDA on its own had refunded the same but after some delay. It was in this light held that the action of the DDA of retaining the monies was

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not an act done or purported to have been done in pursuance of the Delhi Development Act or any rule or regulation made thereunder and the said judgment has no application to the facts of the present case.

76. I thus hold Section 53B(2) to be applicable and the limitation available to the plaintiff being of six months only.

77. The suit having been filed beyond the said six months, whether counted from 12-6-1995 or from 9-3-1996, is palpably barred by time."

99. The aforesaid judgment of ***MS Shoes East Ltd. (Supra)*** is distinguishable on facts from the present case as in that case not only the copy of bid and tender issued by DDA inviting tenders had *"Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981"* mentioned in the list of documents but also the allotment letter was under the *"Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981".* The same is not the case in the present suit and my attention has not been drawn to any such fact or evidence.

100. In this view of the matter, the special limitation period prescribed under Section 53B of the Act does not apply to the present suit and the suit will be governed by the provisions of the Limitation Act, thereby the limitation period of 3 years shall apply for institution of the present suit.

101. Accordingly, the present suit filed on 21.02.2000 is within the limitation period of 3 years.

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ISSUE NO. 2: Whether the Court fees affixed on the suit by the plaintiff is deficient? OPD

102. After its refiling on 03.03.2000, the plaint filed bears an *ad valorem* court fee of Rs. 2,25,555.20/- as computed and accepted by the Registry. The defendant has neither placed any material before this Court nor made any submission at the hearing stage to show that this computation is erroneous or that any further court fee remains outstanding. Thus, it is evident that the court fee affixed to the plaint by the plaintiff is sufficient and the plaint does not suffer from any defect.

103. Accordingly, the issue No. 2 is decided in favour of the plaintiff.

ISSUE NO. 3: Whether the plaintiff is entitled for the amount claimed in the suit or any other amounts? OPP

Claim No.* 1: *Payment of final bill of Rs. 41,77,809/- in respect of items of work done.

104. The onus of proof for this Claim is on the plaintiff.

105. The Claim of the plaintiff with respect to the payment of final bill to the tune of Rs. 41,77,809/- is premised on manifold arguments, which can be crystallised in the following manner:

a. Firstly, the final bill submitted on 22.08.1997 was raised within 6 months of the completion of the work. This bill was resubmitted on 10.03.1999 (Ex. PW1/85).

b. Secondly, the aforesaid covering letter submitted on 22.08.1997 contains an endorsement by representative of DDA acknowledging the receipt of the final bill. The same remains unrefuted by the DDA.

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c. Thirdly, the averment contained in the plaint under paragraph No. 9 of the plaint was not specifically answered by the defendant to clarify whether the final bill or any of its part was ever paid to the plaintiff.

d. It is admitted in the affidavit of EE (DDA) dated 20.04.2011 (submitted in compliance of Order of this Court dated 14.03.2011) that the bill submitted was a final bill and the defendant has also treated the bill as final for the purpose of raising the objection of limitation.

e. Mr. M.K. Gupta (DW1) in his evidence by way of an affidavit (Ex. DW1/A) has only made an assertion that nothing is payable while admitting that the completion certificate was granted.

106. *Per contra,* the defendant in paragraph No. 9 of its Written Statement has denied the factum of submission of bill by the plaintiff to the EE of the defendant and stated that since, there were rectifications of defects required in the incomplete work executed by the plaintiff, the same were executed by another agency at the risk and cost of the plaintiff.

107. It is also argued in the defence *qua* this Claim that the defendant only received an abstract (dated 23.01.1999) of the amount claimed by the plaintiff and that was not in the nature of a bill. Another revised abstract dated 10.03.1999 (Ex. PW1/85) claiming Rs. 31,99,124.01/- and Rs. 6,04,825.75/- (for actual work done) was also submitted. However, now by way of his plaint, the plaintiff is seeking Rs. 31,90,124/- (amount payable for undisputed work) and Rs. 9,87,680/- (for actual work done) as against Rs. 6,04,825.75/- stated in the bill

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dated 10.03.1999 for actual work done, reflecting a contradictory approach.

108. Additionally, it is the defence of the defendant that bill could only have been finalised upon completion of work by the other agency to which the rectification work to the tune of Rs. 7,14,003/- was awarded.

109. Mr. Jai Singh (PW1), plaintiff and proprietor of the plaintiff in paragraph Nos. 9, 10 and 11(1) of his evidence by way of an affidavit has deposed that on completion of work by the plaintiff, the defendant was requested for payment of final bill but to no avail. Consequently, a final bill was submitted on 22.08.1997, which was misplaced by the Executive Engineer of DDA resulting in submission of another copy of bill dated 23.01.1999, which was again resubmitted on 10.03.1999 (Ex. PW1/85) on account of some typographical errors. Despite the final bill already being submitted, the same has not been settled. The relevant portions of his affidavit reads as under:

> *"9. That on completion of work, the plaintiff had been requesting the Executive Engineer, DDA for payment of his final bill, but after having exhausted his patience, the plaintiff submitted his final bill on 22nd August, 1997 in respect of undisputed items of work. The Executive Engineer misplaced the said final bill and plaintiff submitted another copy of the bill on 23rd January, 1999 after having been so informed by the Executive Engineer. Since there were some typing errors, the plaintiff prepared the final bill afresh and submitted the same on 10th March, 1999 to the Executive Engineer. The original of the Final Bill dated 10th March,*

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1999, along with covering letter of like date, was submitted by me personally to the office of the Executive Engineer, ED-7, DDA, at School Block, Shakarpur, Delhi. The said bill and covering letter was received by the clerk on duty and an entry was duly made in the diary maintained in the said office. The concerned official of the DDA also initialled a copy of the said letter and recorded receipt. The office copy of the same is Exhibited and is marked Exhibit PW1/85. I state that the final bill contains precise measurements of the work done and the quantities worked on.

10. The Executive Engineer of the defendant has taken no action to settle my accounts so far. All personal efforts on my part to have my grievances redressed having failed, I am left with no recourse except to seek redressal through the judicial process.

…

1. <u>Payment of Final Bill of Rs.41,77,809/- in respect of items of work done</u>

The contract work was completed on 22.2.97 and in terms of the contract between the parties, the final bill was payable within 6 months from the date of completion i.e. upto 21.8.97. Even the DDA has failed to pay the final bill submitted on 22.8.97 which was misplaced in the office of the Executive Engineer and as such another copy of the same was sent on 23.1.99. Since there were some typing

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errors, a fresh copy of the final bill was submitted to the Executive Engineer on 10th March, 1999, but so far no payment has been made. The amount payable in respect of undisputed work is Rs.31,90,124.00 and another sum of Rs. 9,87,680.00 which is genuinely payable, but have not been paid by DDA are also payable. Therefore, a total of Rs.41,77,809.00 is payable in respect of the final bill for work done by me."

110. During the cross-examination of Mr. Jai Singh (PW1), after perusal of the record he stated that he did not submit the final bill dated 22.08.1997 and also stated that he had filed only one covering letter dated 20.08.1997 and the same is not attached with a final bill, i.e., no final bill is annexed along with the covering letter. While denying the suggestion that he had given only one final bill dated 10.03.1999 (Ex. PW1/85), he stated that it is correct that he has not placed on record any final bill issued prior to 10.03.1999. The relevant portions of the cross-examination recorded on 11.09.2015 read as under:

"I had submitted the final bill to the DDA. I cannot recollect the exact date, but it was after completion of the work and it was probably in the year 1996. I have filed copy thereof on court file.

Witness is allowed to see the court record with assistance of his counsel. After going through the court record, the witness states that the said final bill is already. Ex. PW1/85 along with covering letter dated 10/03/1999.

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Court observation There is no date on the Final Bill. It is incorrect to suggest that I have not given any Final Bill prior to Ex. PW1/85. I can only tell after seeing the record if I had not given any final bill to the defendant on 22/08/1997.

After seeing the record, witness submits that he did not submit any final bill dated 22/08/1997 and further volunteers that he had filed one covering letter dated 20/08/1997 and there is no final bill along with that covering letter. It is incorrect to suggest that I have given only one final bill to the defendant which is dated 10/03/1999. It is correct that I have not filed any final bill on court file prior to 10/03/1999."

111. In view of the admission made by PW1 in his cross-examination, it is clear that there is no evidence placed on record to show submission of final bill on part of the plaintiff prior to 10.03.1999, hence, the controversy at hand and the present Claim needs to be adjudicated on the basis of the only available bill dated 10.03.1999.

112. Even the defendant in paragraph Nos. 9, 10 and 10(1) of its written statement has admitted that it has duly received the abstracts (final bill and corrected final bill as per plaintiff) dated 23.01.1999 and 10.03.1999 respectively. The relevant portions of the written statement reads as under:

"9. That the contents of para 9 are absolutely incorrect, wrong and denied. It is submitted that since no bill was submitted by the plaintiff the question of the Executive

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Engineer of the defendant taking no action to settle the accounts of the plaintiff does not arise. As a matter of fact the completion certificate had recorded on certain rectification of defects and certain incomplete left out building work/items were to be completed by the plaintiff. The plaintiff did not execute the work relating to rectification of defects/left out work items and rather abandoned the work and, therefore, the defendant had no alternative except to get the rectification of defects as also left out building work/items to be got executed at the risk and cost of the plaintiff after completing all the formalities because the allottees of the dwelling unit were pressing hard to get the possession of their flats. The left out work was awarded to another agency vide award letter No. F.11 (225) ED-4/DDA/1999-2000/484 dated 23rd March, 2000 for the sum of Rs.7.14 lacs under intimation to the plaintiff. In the facts and circumstances, as stated out above, there was no occasion for the officials of the defendants to acknowledge the alleged receipt of the alleged final bill in any manner whatsoever.

10. That the contents of para 10 as stated is totally incorrect and denied. It is denied that the amount as claimed is payable to the plaintiff by the defendant. The details of the amount are being dealt with individually and separately hereafter.

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1. Payment of final bill of Rs.41,77,809/- in respect of items of work done.

In addition to the submissions made hereinabove, it is submitted that the final bill according to the contract was payable within 6 months from the date of completion. It is wrong and denied that bill dated 22nd August, 1997 have been submitted by the plaintiff to the defendant. ***It is submitted that on 23rd January, 1999 the defendant received an abstract of the amount claimed by the plaintiff****. That was not a bill. In the said so called bill the plaintiff had indicated a sum of Rs.29,57,349.70 as payable to the plaintiff by the defendant besides a sum of Rs.6,04,825.75 on account of actually work done but not paid. The said alleged bill was not a final bill or a bill at all. It was only an abstract of the amount claimed by the plaintiff.* ***Once again another abstract was submitted in the office of the defendant on 10th March, 1999 though it was not a bill strictly speaking, and according this revised abstract the plaintiff claimed Rs.31,99,124.02 as received by the plaintiff besides the sum of Rs.6,04,825.75 on account of work done but not paid.*** *Here as against a sum of Rs.6,04,825.75 the plaintiff is making a claim of Rs.9,87,680/-, thus there is an apparent contradiction in the stand of the plaintiff. It is denied that a sum as claimed is payable.* ***It may be***

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mentioned here that since the work was awarded to another agency at the risk and cost of the plaintiff and that work is yet to be completed, therefore, there was no occasion for the defendant to finalise the bill. The finalization of the bill depended upon the rectification of defects and the execution of the building work/items which were to be got executed at the risk and cost of the plaintiff. As stated in para 9 above the work to the tune of Rs.7,14,003/- awarded to another agency under intimation to the plaintiff. It is submitted that the bill is to be finalized on the completion of the work by the other agency to whom work has been awarded at the risk and cost of the plaintiff and till that time the exact figures cannot be worked out. *However, the claim put forth by the plaintiff is vehemently denied."*

113. Mr. M.K. Gupta (DW1), in his affidavit by way of evidence only reiterated the contents of the written statement and no questions in his cross-examination were put to him with respect to this Claim. The record of cross-examination of DW1 reads as under:

"On SA

XXXXX by Mr. M. S. Vinaik, Advocate for the plaintiff.

Presently, I am posted as an Executive Engineer (Hqrs), Civil Circle-12, North Zone, Ashok Vihar Phase-I, New Delhi. At the time when I sworn my affidavit ExDW1/A, I was posted as Assistant Engineer.

Q. Did you deal with this case personally?

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A. Yes, I have dealt with this case as per office record.

Q. What was the scope of your duty while dealing with this case as an Assistant Engineer?

A. As per directions of our Executive Engineer ED-IV, I was instructed to deal with this case.

As an Assistant Engineer, my duty was to see the civil construction work & maintenance etc. I used to have site visits of the places where construction work was done through contractors.

Q. You have mentioned in para 4 of your affidavit that the work was start on 25.12.92 and date of completion was 24.06.1994. Did the work start in time and end in time?

A. The work was started in time. However, the same was could not be completed in time. It was completed on 22.02.1997.

It is wrong to suggest that the delay in work was attributable to hindrances caused by DDA.

Q. Is it true that every time, DDA issues a completion certificate, it is issued subject to rectification of defects?

A. No.

Q. Is it true that in every construction contract, DDA has a defect liability period after completion?

(Objected to by counsel for defendant by submitting that question does not have any relevancy pertaining to this case).

Court observation: question disallowed since it is of general

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in nature.

Q. Is it true that DDA issued completion certificate to plaintiff after completion of work?
A. Yes, DDA issued completion certificate to plaintiff, subject to rectification of defects as detailed in completion certificate.

It is wrong to suggest that DDA issued completion certificate to plaintiff after being satisfied about the completion of work done by plaintiff.

It is correct that plaintiff had requested for extension of time for completion of work.

I did not deal with the request of plaintiff for extension of time. The officer who was posted at the relevant period in the DDA dealt with the request of plaintiff.
It is correct that plaintiff was granted extension of time without levy of compensation or fine.

Further cross examination of the witness is deferred as witness wants to answer the questions after going through record of the case.

…

On SA

XXXX by Mr. M. S. Vinaik, Advocate for plaintiff.

It is correct that in all construction contracts and in this contract also, a Hindrance Register is maintained by the

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DDA.

Q. Is it true that the Hindrance Register is prepared by the AE and is counter signed by Executive Engineer and Superintending Engineer?

A. It is correct. Vol. It is prepared by JE.

Q. Is it true that all the Hindrances faced by the plaintiff were recorded in the Hindrance Register for the contract in question also?

A. I have to check up the record of the case.

It is wrong to suggest that the delay in execution of the work by the plaintiff was wholly attributable to the Hindrances recorded in the Hindrance Register.

Concluded."

114. In view of the aforesaid admissions with regards to the factum of receipt of bill/abstract, the issues which arise for consideration is the nature of the document and the amount due and payable, if any.

115. The said argument creating distinction between the final bill and an abstract is merely a baseless assertion not supported by any cogent evidence or any argument as to how the nature of that enclosed bill is that of an abstract. Additionally, there is no particular format either of an abstract bill or that of a final bill, which is brought to my notice in support of this argument.

116. From a perusal of the enclosing letter dated 10.03.1999, it is clear that the bill enclosed therewith running around 20 pages has been categorically referred to as "Final bill" by the plaintiff and from a perusal of the same it can be seen that it is an elaborate and detailed

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bill. The same is having particulars of every sub-head and expenses that cannot in any way be said to be only an abstract especially in absence of any argument as to how it is an abstract and not a final bill. The bill enclosed with letter dated 10.03.1999 (Ex. PW1/85) reads as under:

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J.S. Constructions

Govt. Contractor & Engineer

Ref. No..... Dated... 10-3-99

To,

The Executive Engineer,
Eastern Division - 4,
Yamuna Sports Complex,
DDA, SHAHDARA,DELHI-110092.

Sub:-C/O 176 MIG Houses i/c internal development Grop IX.

Agreement No 47/EE/ED-3/A/93-94.
07/EE/ED-7/DDA/93-94.

Sir,

In continuation to my letter dt 23.1.99,I am submitting a fresh copy of the final bill for the above noted work in duplicate,since the copy of the final bill already submitted contained some typing errors and some items of work got ommitted inadvertantly while making fair typed copies.

The quantities and rates in corporated in this bill are based on the quantities of work paid in 30th RA bill prepared and paid by you and rates as entered in the agreement.

This final bill is in the respect of undisputed items of work and without prejudice to our right to claim payment for certain items of work executed beyond the scope of agreement and claim for damagee and losses sustained because of the delayed performance of contract in addition to payment of interest .

Yours Faithfully.

[redacted]

Encl

Final bill in duplicate.

J-171, Saket, New Delhi-110 016 Ph.: 656418

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BILL # SUB DIVISION

FINAL BILL IN RESPECT OF UNDISPUTED ITEMS

For the work of : C/O 1174,MIG 210 LIG and 623 EWS.

Sub Head : C/O 176, MIG Houses i/c internal development.

Agency : M/S J.S.Constructions

Agreement No : ED-7/EE/ED/3/DDA 92-93.

Date of Start : 25.12.93

Date of Completion :24.6.94

S.No. (1)	Item of work (2)	Qty (3)	Unit (4)	Rate (5)	Amount (6)
	Sub Head 1 (EARTH WORK)				
1.1	S/W in Foundations less Soil.	149.54	cum	8.80	1315.95
1.2	Filling Available in earth	5241.32	"	5.70	29875.53
1.3	Filling in plinth in to jammuna sand	295.43	"	36.05	10650.29
					41841.77

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Sub Head 2 (CONCRETE WORK)

2.1	P/L CC 1:5:10 WITH 40MM Stone Agg	374.305	cum	318.20	119122.56
2.2	P/L CC 1:5:10 with 40mm stone Agg.	760.00	cum	312.05	230917.00
2.2a.	P/L CC 1:5:10 with Brick Blast 1 - 2 level.	152.20	"	322.33	49058.62
	b.-do- 2 - 3 Level.	152.17	"	325.55	49538.94
	c.-do- 3 - 4 Level.	156.46	"	328.77	51439.35
2.3a.	P/L cc 1:2:4 Copings.				
	1-2 Level.	35.65	"	577.65	20593.22
	b.-do- 2-3 *	19.77	"	583.43	11534.41
	c.-do- 3-4 *	17.34	"	589.20	10216.73
	d.-do- 4-5 *	30.18	"	594.18	17932.35
2.4	P/DPC 40mm Thick	555.60	"	24.65	13695.54
2.5	Extra for water proofing compound	630.00	Bags	9.05	5701.50
2.6	Applying a coat Bitumen painting	5788.88	Sqm	9.25	53547.14
					633297.36

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(13)

Sub Head 3. (R C C WORK

3.1 Raft Foundation	1840.00	cum	573.35	1054964.00
3.3.Suspended floor				
a.1 - 2 Level	460.00	cum	577.60	265696.00
b.2 - 3 "	414.00	"	583.38	241519.00
c.3 - 4 "	399.18	"	589.15	235070.00
d.4 - 5 "	380.28	"	594.93	229662.00
e.5 - 6 "	50.00	"	600.70	30000.00
3.4 Shelves				
a.1 - 2 Level	22.58	"	573.55	12950.76
b.2 - 3 "	23.62	"	579.29	13682.43
c.3 - 4 "	21.65	"	585.02	12665.68
d.4 - 5 "	20.09	"	590.76	11868.87
3.5 in Chhajja				
a.1 - 2 Level	3.81	"	680.18	2316.86
b.2 - 3 "	4.45	"	614.16	2733.01
c.3 - 4 "	3.920	"	620.36	2431.42
d.4 - 5 "	3.03	"	626.34	1897.81
e.5 - 6 "	2.00	"	632.42	1264.84
3.6 in Lintel Beams				
a.1 - 2 Level	208.15	"	577.60	120227.44
b.2 - 3 "	189.65	"	583.38	110638.02
c.3 - 4 "	151.60	"	589.15	89315.14
d.4 - 5 "	138.632	"	594.93	82476.33
e.5 - 6 "	56.81	"	600.70	34125.77

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3.7 In Columns				
a.1 - 2 Level	66.69	"	593.10	38367.63
b.2 - 3 "	65.00	"	599.64	38976.60
c.3 - 4 "	64.00	"	605.57	38756.48
d.4 - 5 "	59.00	"	611.51	36079.09
e.5 - 6 "	34.00	"	617.45	20993.30
3.8 Staircases				
a.1 - 2 Level	13.00	Qm	620.75	8069.75
b.2 - 3 "	17.00	"	626.96	10658.32
c.3 - 4 "	23.00	"	633.17	14562.91
d.4 - 5 "	24.00	"	639.37	15344.88
3.9 Centering and Shuttering				
a. Foundations Footings	2361.23	Sqm	22.65	53481.86
b. Suspended Floors	13950.00	"	47.80	666810.00
c. Shelves	1482.39	"	47.80	70858.24
d. Lintel Beams	6719.00	"	29.25	196530.75
e. Chajja	230.00	"	47.80	10994.00
f. Columns	3700.00	"	38.55	142635.00
g. Staircases	540.00	"	31.70	17118.00
3.10 6m Thick Cement Plaster	18800.00	"	10.05	188940.00
3.11 a. Reinforcement work Cold Twist Bars.	425890.00	kg	9.10	3875599.00
			Rs.	7929623.09

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Sub Head (4) Brick Work

4.1	B/W 1:6 in Foundations :	2660.00		374.55	996303.00
4.2	B/W Superstructure 1:6				
	a. 1 - 2 Level	1009.02	"	408.55	412235.12
	b. 2 - 3 "	975.88	"	413.64	402687.12
	c. 3 - 4 "	1385.00	"	416.70	577129.50
	d. 4 - 5 "	1622.39	"	420.80	682701.71
	e. 5 - 6 "	128.00	"	426.89	54385.92
4.3	a. Half B/W in 1-2 Level	635.05	"	55.30	35137.31
	b. Do 2-3 "	256.74	"	55.86	14338.93
	c. Do 3-4 "	577.89	"	56.41	32598.21
	d. Do 4-5 "	560.36	"	58.96	33038.82
4.4	B/W 7m Thick				
	a. 1 - 2 Level	63.56	Sqm	40.80	2585.08
	b. 2 - 3 "	63.36	"	41.31	2611.06
	c. 3 - 4 "	63.36	"	41.62	2637.04
	d. 4 - 5 "	63.56	"	42.02	2673.73
4.5	B/W in Triangular Portion	50.50	Qm	495.00	24997.50
					Rs.3276060.05

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		Wood Work			
5.1a.	Flush Door Shutter 35mm	1285.58	Sqm	376.85	484470.82
b.	--do--	36.49	"	376.85	13751.25
5.2	Panel Door Shutter	827.12	"	555.00	459056.04
5.3	Do for Kitchen	321.11	"	532.79	171684.19
5.4	Aluminum Tower bolt				
a.	250 * 10mm	1276	nos.	11.95	15248.20
b.	150 * 10mm	1276	nos.	8.90	11356.40
5.5 a.	P/F Pull Bolt 85m * 42m	2552	nos.	56.50	144188.00
5.6	P/F Alu. Handle				
a.	100mm	2553	nos.	23.30	59461.60
5.7	Aluminum Sliding Door Ball				
a.	250 * 16 m	176	nos.	41.60	7321.60
5.8	Aluminum Door Stopper	1276	nos.	5.15	6571.40
5,9	P/F Fly proof MS Wire Gauge Kitchen Jali	125.00	Sqm	56.13	7016.00
					Rs.1366374.25

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(12)

Sub Head (6) Steel Work

6.1 P/F T Iron Frame	22465.08 kg		11.70	262841.43
6.2 P/F Steel Glazed Door Frames				
a. For over all area fixed	2983.00 m		311.75	929950.25
b. Extra of side hung, top hung	820.00	Sqm	97.75	80155.05
1. Windows :-				
2. Doors	1059.83	"	233.45	247417.31
6.3 Steel Work in Sections :				
a. Flat	0.570	Quintal	997.85	568.29
b. Sq. Bar	110.46	"	920.08	101632.03
6.4 P/F MS Plain Grill	21801.59	kg	12.45	271429.79
6.5 P/F MS Hollow pipe	14752.056	"	14.30	210954.40
6.6 P/F Mild Steel Window Fashner	1952	nos.	28.85	56315.20
6.7 P/F do Peg- stay	1952	nos.	28.85	56315.20
6.8 Welding by electroplant	173876	cms	0.30	52162.80
				Rs.2324149.43

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Sub Head (7) Flooring Works

7.1 Cement concrete flooring 1:2:4				
a. 40mm thick	2048.00	Sqm	43.35	88780.80
7.2 40m thick marble chips flooring 3149	10146.00	"	76.30	789399.80
7.3 Do 3446	2388.05	"	73.55	175641.07
7.4 White Glazed Tiles	4196.36	"	252.35	1058951.41
7.5 Kota Stone Slabs	329.14	"	204.10	67177.47
7.6 Cement Plaster skirting				
a. 10mm	247.59	cum	30.80	7625.77
b. 21mm	90.00	"	32.90	2961.00
7.7 Add or deduct glass strips	16710.76	Mtr	4.65	77701.17
7.8 Marble chips skirting				
a. 18mm	602.00	Sqm	71.40	42982.80
b. 21mm	790.00	"	73.25	57867.54
		Total		2363079.41

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(19)

Sub Head 8 (Rolling)

8.1	Painting top of roof on Bitumen	3441.03	Sqm	9.70	33377.99
8.2	10 cm thick Mud fescue	2571.30	"	46.95	120753.05
8.4	P/L Brick tiles Musty	237.62	"	39.70	9433.51
8.5	Providing gola 75 * 75	1317.04	M	12.10	14726.18
8.6	Making Khurra	176.	Nos	32.90	5790.40
8.7	P/F AC Rain Water Pipe 100mm	2146.00	Mtr	14.55	31224.00
8.8	M.S. holder Bat Clamp 700/10	490	Nos	16.25	7962.50
8.9	Hexagonal Rain Water head	176	"	30.10	5297.60
				Total	216366.75

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Sub Head (9) (Finishing Work)

9.1	(a) 12 mm C.P. of Mix 1:6 (Fine Sand)	20806.00	Cum	10.99	228657.94
	(b) 12 mm C.P. of Mix 1:4 (Course Land)	3088.00	sqm	13.85	42768.00
9.2	(a) 15 mm C.P. of Mix 1:6 (Fine Sand)	21540.00	"	12.85	276789.00
	(b) 15 mm C.P. 1:4 (Soarse Sand)				
9.3	6 mm CP with floating Coat of neat cement	1627.00	sqm	14.70	23918.00
9.4	Plastering				
	(a) 18 mm thick	486.00	"	67.00	32562.00
	(b) 21 mm thick	320.00	"	69.05	22096.00
9.5	White Washing	41265.56	"	1.40	57771.78
9.6	Snowcem	10400.00	"	9.50	98800.00
9.7	(a) Applying priming Coat	3819.46	"	4.05	15549.81
	(b) Wood Work	5750.00	"	4.05	23287.50
9.8	Painting Ready Mixed				
	(a) New Steel Work	7032.00	"	8.40	59068.80
	(b) Wood Work	5750	"	8.40	48300.00
9.9	Grit Wash	12000.00	"	46.85	562200.00
9.10	Forming Groove 15m*15m	9400.00	Mtr	2.15	20210.00
9.11	Extra for grit with height More than 10m - 13m	3000.00	sqm	4.10	12300.00
			Total		Rs.1511914.89

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Sub Head 10 (Sanitary Installations)

10.1	(a) Orissa Pattern W.C. (580 x 440 m)	176	Nos	772.10	135889.60
	(b)European w.c.	176	"	961.40	169206.40
10.2	(a)Wash Basin 550 x 400	176	"	380.00	66880.00
10.3	(a)Kitchen Sink 600x450x250	176	"	775.95	136567.20
10.4	P/F600x450 beveledge minor Aluminum	176	"	142.45	25071.20
10.5	P/F Anodized towel Rail	176	"	63.45	11167.20
10.6	(a) P/F s.c.i 100mm pipe	1705.00	Mtr	105.00	179025.50
	(b) --do-- 75mm "	2741.20	"	87.85	240814.42
10.7	(a) M.S Bat clamp 100mm	890	Nos	14.00	12460.00
	(b) --- do--- 75mm	660	"	13.85	9141.00
10.8	Plain Junction 75x75x75	528	"	60.70	32049.00
	--- do--- 100x100x100	396	"	86.45	34234.20
10.9	(a) P/F Plain Band 100mm	836	"	48.90	40880.00
	(b) ---do--- 75mm	440.	"	38.40	16896.00
10.10	P/F Terminal Guard 100mm	44	"	39.65	1744.60
	---- do ---- 75mm	132	"	30.80	4085.60
10.11	Floor traps 100x75mm	704	"	78.15	55017.60
10.12	(a) D/Band 100mm	176	"	58.35	10269.60
	(b) --do-- 75mm	308	"	46.00	14168.00
10.13	(a) P/F M.S.Stay Clamp 100mm	44	"	12.85	565.40
	75mm	132	"	11.85	1564.20
10.14	(a) P/F Lead Joint 100mm	3540	"	39.75	140715.00
	75mm	5090	"	34.55	175859.50
					Rs.1353148.62

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SUB HEAD 11

11.1 G.I.PIPE				
(a) 15mm Nominal Bore	6800	Mtr	26.30	178840.00
(b) 20mm --do--	4315	"	31.55	136138.25
11.2 P/F GI Pipe External				
(a) 20mm Nominal Bore	1660	"	26.75	44405.00
(b) 15mm --do--	70.82	"	22.70	1607.61
11.3 P/F Brass Bib cock 15mm	704	Nos	32.75	23056.00
11.4 --do-- Stop " 15mm	880	"	32.75	34715.00
--do-- " " 20mm	176	"	66.15	11642.40
11.5 P/F C.P Brass Shower	176	"	12.85	2261.60
15-20mm inlet 100mm				
11.6 Painting G.I with white	2441	"	00.90	2196.90
Paint (a) 15mm				
(b) 20mm	3600	"	1.10	3960.00
11.7 Painting G.I.with anti-				
corrosive Bitumastic paint				
(a) 15mm	3550	"	00.55	3839.00
(b) 20mm	1643	"	00.65	1068.00
11.8 P/Pilling J/mand all round	350	Mtr	2.60	927.50
11.9 P/F PVC connection 45cm	519	Nos	10.10	5241.90
11.10 P/F CI water meter Box	176	"	145.81	25662.50
11.11 P/F SW Gally trap	120	"	177.50	21300.00
11.12 P/F Brass Ferrule 6mm	176	"	19.75	3176.00
				Rs.500137.66

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(23) 90 (7)

Drainage

12.1 Loose soil	554.34	m	11.25	6336.32
12.2 P/L S.W. Pipe (a) 150mm	220.00	"	54.15	11913.00
(b) 100mm	70.50	"	34.55	2435.00
12.3 P/L CC. 1:5:10 all round 150mm	145.00	"	57.60	8352.00
12.4 Constructing Man hole 80x90cm Deep	44.00	"	894.05	39338.20
12.5 Extra Depth 90x80cm	12.62	"	453.60	1188.43
12.6 P/p R.C.C circular tank 540 ltr capacity	176	Nos	965.90	169988.40
12.7 P/F High or Low Plastic	176	"	41.50	7304.00
				Rs. 246855.35

SUB HEAD _ 13 (Miscellaneous)

13.1 Making plinth protection	193.2	Sqm	32.90	6356.28
				Rs.6356.28

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SUB HEAD-14 (Internal Development)

14.1	Exavation pipe cables. (a) Loose soil	600.00	Mtrs	11.25	7425.00
14.3	P/L L.A Pipe (a) 100mm	602.00	"	191.80	115463.60
	(b) 150mm	60.00	"	311.60	18696.00
14.4	P/L CI Tees,Bends	3.80	Qtl	849.05	2869.92
14.5	Supply Lead at site	4.948	"	1956.65	9681.50
14.6	Lead Joint LA (a) 100mm	167.00	Nos	17.55	2930.85
	(b) 150mm	13.00	"	26.05	338.65
14.7	P/F sulic valve (a) 100 mm class II	10.00	"	873.80	8738.80
	(b) 150 mm " "	3.00		1323.80	2647.60
14.9	Cart.Chamber 60x60x75	10.00	"	679.05	6790.05
14.10	Fire Hydrant chamber 60x60x75	3.00	"	464.95	1394.85
14.11	P/F CI Flange tail pec (a) 100mm	10.00	"	159.95	1590.95
14.12	P/F CI Flange spigot	10.00	"	140.00	1400.00
14.15	Disinfecting CI water Line (a) 100 mm CI pipe	602.00	Mtr	10.00	6000.00
	(b) 150 mm CI pipe	60.00	"	10.00	600.00
					Rs.186559.71

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SUB HEAD - (15) SEWERAGE

15.1(a) P/L RCC Pipe 250mm NP2	503.09	"	167.28	84156.89
15.2(a) P/L CC 1:5:10 RCC pipe	257.10	"	77.65	19963.82
(B) P/L CC 1:5:10 upto bunches.	220.14	"	49.65	10929.95
15.3 Cast circular mainhole 90cm internal dia 90cm Depth	24	Nos	1672.87	40148.88
15.4 Const mainhole 1.23 mtr Dia and 1.70 mtr deep	4	"	2578.61	10314.44
15.5 Extra per meter depth of mainhole	3.55	Mtr	626.70	2224.78
15.6 Extra per mtr Depth mainhole of 1.20 mtr Dia	2.08	"	791.02	1645.32
17.7 For pipe 250mm to 300mm	2	Nos	37.75	75.50
				169159.58

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SUB HEAD (16) S.W Drains

16.1 E/W in Excavation loose soil	3.35	Cum	8.80	29.48
16.2(a) P/ L CC 1:3:6	408.00	"	442.08	180368.64
16.3 B/W C.M 1:4 Foundation	405.00		475.00	192375.00
16.4 12mm CP 1:4	802.00	"	17.90	14359.80
16.5 CC 1:2:4 Flooring 50mm thick	300.00	"	50.50	15150.00
				402278.92

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SUB HEAD - 17

17.1 E/W in surface Dressing (a) Soft & curse sail	369.00	Cum	123.10	454.00
17.11 P/L CC 1:5:10	220.00	"	318.25	69991.00
17.12 P/L CC 1:2:4	225.00	"	550.90	123750.00
				194197.00

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EXTRA ITEMS & SUBSTITUTE ITEMS PAID BY DEPTT.

S.NO.	ITEM OF WORK	QTY	UNIT	RATE	AMOUNT
S.I.S 1	E/W in Excavation	5723.00	cum	13.67	78405.10
	(a) Soft/Loose soil				
	B/W in 1:4 in super structure				
	(a) Level 1-2	394.84	"	721.95	284477.17
	(b) " 2-3	425.36	"	729.17	310159.75
EXTRA ITEMS					
EIS	(1) 12mm CP (1:3)	3200.00	"	25.72	82304.00
EIS	(2) P/F S & S Floor				
	(a) 100mm dia	132.00	Nos.	89.82	11856.24
	(b) 75mm dia	308.00	"	74.63	22986.04
EIS	(3) Cast circular mainhole				
	1.52 mtr. internal dia 2.31 mtr deep	12.00	"	6000.00	72000.00
					862188.30

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Actual work done but not paid by deptt.

Item (1)	Brick hole cutting for sanitary stacks 30 x 30 cm Qty 1740 Nos @ 23.31	40559.40
Item (2)	Welding for manufacture of M S Grill Qty. 126000 cm @ 00.49	61740.00
Item (3)	Grooves for internal plaster work Qty 15637.44 mtr. @ 4.65/-	72714.00
Item (4)	Bitumen fillings in expansion joint concrete path Qty 5600 mtr. @ 11/-	61600.00
Item (5)	Supply earth filling under path area Qty 3200.00 Cub mtr @ 106/-	339200.00
Item (6)	Extra for bricks work i.e. for using bricks of class designation 100 instead of of class 75 Qty 62.9 cub mtr. 29.56 cub mtr	1860.00
Item (7)	Neat cement plaster of depressed portions Qty 1800.00 sqm @ 6.61	11898.00
Item(8)	Providing M S Pipe 40 cm long as spout in balconies & stair case landings for drainage of rain water:-	
	(a) 15m nominal bore 176 Nos @ 24.72 each	4350.00
	(b) 20m nominal bore 352 Nos @ 29.87 each	10514.00
Item (9)	Extra for brick work in square or rectangular pillar 9.50 cub mtr @ 41.09 cub mtr	390.35
		Rs.604825.75

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LEGENDS

ABSTRACT BILL OF QUANTITY

1.Sub Head	1.	41,841.77
2. -do-	2.	6,33,297.43
3. -do-	3.	79,29,623.09
4. -do-	4.	32,76,060.05
5. -do-	5.	13,66,374.25
6. -do-	6.	23,24,145.43
7. -do-	7.	23,63,079.41
8. -do-	8.	2,16,366.75
9. -do-	9.	15,11,914.89
10. -do-	10.	13,53,148.62
11. -do-	11.	5,00,137.66
12. -do-	12.	2,46,855.35
13. -do-	13.	6,356.28
14. -do-	14.	1,86,559.71
15. -do-	15.	1,69,159.58
16. -do-	16.	4,02,278.92
17. -do-	17.	1,94,197.00
	Total	2,27,21,432.12
Add Contactor's announcement @ 63.3% Above	(+)	1,43,82,666.53
		3,71,04,098.65

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(31)

Abstract of final bill in respect of undisputed items for the work of c/o 176 MIG Houses at Kondli.

Agreement No :- ED/EE/ED-3/DDA/92-93.

1. Amount of Agreement items:-			Rs.3,71,04,090.65
2.Amount of Extra items/Substitute items:-		Rs.	7,78,076.65
TOTAL			RS.3,78,82,175.30
Less already paid 30th R/A Bill	(-)		Rs.3,44,59,052.00
		RS.	34,23,123.30

Less contd. of Deptt materials outstanding since last Bill (30th RA Bill)

1.Cement 18.00 MT @ 2250/-	Rs.40500.00	
2.Steel 2.00 MT @ 12000/-	Rs.24000.00	
3.G.I.Pipe 15 mm 1721 mtr @ Rs.28.57.	Rs.49226.11	
4.G.I.Pipe 20 mm 1224 mtr @ Rs.34.80.	Rs.42595.20	
	(-)	Rs. 1,56,321.31
Less 2.24% (I T & S/Charg)	(-)	76,677.96
Net Payable :	(A)	Rs. 31,90,124.02

Actual work done but not paid by dept. Rs. 6,04,825.73

+ 63.3% (A+B) + 3828542.00

(C) 9876679.75

Total 41,72,809.00

Dated 11/2/97

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117. It was only when the defendant ignored the requests for payment made by the plaintiff, the plaintiff was compelled to raise this final bill and the defendant despite admitting that it has received the bill dated 10.03.1999 (Ex. PW1/85) has failed to demonstrate any steps that it had taken pursuant to the said bill. Thus, the defendant cannot be allowed to evade its liability by referring these bills as abstracts rather than final bills.

118. In this view of the matter, the aforesaid argument of the defendant is rejected and does not deserve any further consideration.

119. It is also stated in the evidence by way of an affidavit of Mr. M.K. Gupta on behalf of defendant exhibited as Ex. DW1/A that the sum as claimed in the suit is not payable. He has not specifically made any statement in the affidavit with respect to the present Claim and has in a general manner denied liability to pay any amount. This stand of the witness for defendant is merely a bald denial of its liability without establishing any cogent grounds or explaining any specific reasons for the same. The relevant paragraphs of the affidavit read as under:

> *"7. The delay in the completion of work was not in any manner attributable to the Defendant- DDA or its officers or any agency related to the Defendant. The Completion certificate was issued after grant of extension of time uptil 22.02.1997 without levy of compensation under clause 2 of the agreement at the request of the Plaintiff. The payment under clause 10CC was released till the completion of work and duly accepted by the Plaintiff vide 13th RA Bill (10CC), 14th*

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RA Bill (10CC), 15th RA Bill (10CC) and 16th RA Bill (10CC) which are marked as Ex DW1/3, DW1/4, DW1/5 and DW1/6 respectively.

8. I say that the Plaintiff is not entitled to claim anything more than what has been paid under clause 10CC of the agreement.

…

11. I say that the amount claimed by the Plaintiff is not payable to the Plaintiff by the Defendant. The Final bill according to the contract was payable within 6 months from the date of completion. Defendant had never submitted Final Bill. The sum as claimed in suit is not payable. Since the work was awarded to another agency at the risk and cost of the Plaintiff. Under Clause 49 of the agreement, since the case is pending for adjudication before this Hon'ble Court, bank guarantee can be retained."

120. The mere denial of liability on part of the defendant to pay the demand raised by the plaintiff only on the ground that the rectification work had to be awarded to some other agency for completion at risk and cost of the plaintiff, cannot absolve the defendant from its liability to pay the same. The defence witness DW1 has in his affidavit failed to even name the alternate agency through which the rectification work was undertaken.

121. The defence witness DW1 on the other hand has admitted the issuance of completion certificate after grant of EOT.

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122. At this juncture, it is important to refer to the completion certificate dated 22.02.1997 (Exhibit as Ex. P2), which reads as under (True typed copy):

"COMPLETION CERTIFICATE

Name of Work – C/o 1174 M.I.G. / 210 L.I.G. / 623 E.W.S houses at Kondli Gharoli Phase II
(S.H. – C/o 176 M.I.G. houses I/C internal development at Kondli Gharoli Phase II, Gr. IX)

Agency – M/s J. S. CONSTRUCTION

Agreement No – 47/EE/E.D.3/D.D.A/92-93

&

7/EE/E.D.7/D.D.A/93-94

Estimated Cost – Rs. 2,02,25,140/-

Percentage above – 63.30% above D.S.R

Tendered Cost – Rs. 3,30,27,654/-

Date of start (as per agmt)– 25.12.92

Date of completion (as per agmt)-24.6.94

Time allowed for completion – 18 months

Date of completion (actual)- 22.2.97

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Certified that the work has been physically completed on 22/2/97 and no defects are apparent and the contractor has removed from the premises on which the work was being executed all scaffoldings, wood work, surplus materials and the rubbish and has cleaned the dirt from all doors, windows, walls, floors other.....

in upon or about which the work has to be executed or of which he had possession for the purpose of execution thereof. This is however to measurements being recorded and the quality being checked by the competent authority.

The completion certificate is being recorded subject to the following conditions :-

(1.) Final coat of white wash /painting of doors and windows, shutters in the flat and final coat of paint over the railings, grills of staircase and balconies and paintings of S.C.I./G.I. pipe etc.

(2.) Cleaning and repairing of all manholes (circular & rectangular) and gully gratings and S.W. drains and fixing of M.S. foot rests

(3.) Testing of all sewers /water lines, internal and external

(4.) Fixing of windows, fasteners and stays

(5.) Cleaning of windows/glazing and fixing of glass panes and repairs of M.S. .... and steel glazing wherever required.

(6.) Fixing of covers over road gully chambers… manholes and water meter chambers etc.

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(7.) Fixing of covers for fire hydrant and sluice valves and ferrule chambers and brass spindle.

(8.) Fixing of M.S. covers and frame of RCC tanks over terrace

(9.) Fixing of low level cistern, high level cistern, washbasins and Brass and C.P. fittings etc in the flats

(10.) Fixing of towel rails, looking mirror, fixing of ferrule in waterlines and fitting of R.C.C. circular tanks

(11.) Repairs of plasters/C.C. flooring /mosaic dado/glazed tiles/C.C. path/grit wash/kota stone/ mosaic flooring and skirting and mud phuska in terrace and mumty etc. wherever necessary.

(12.) Replacement of broken A.C. pipe /S.C.I. rainwater pipe in stacks and its fittings etc.

(13.) Fixing/repairing of door shutters fittings

(14.) Final rubbing and polishing of marble flooring and skirting in flats.

(15.) Cleaning and testing of mud phuska and khurra.

(16.) All defects painted out by Q.C. cell and other inspecting authority such as C.E., S.E., E.E. and as per defect register should be rectified by the contractor."

123. The Completion Certificate as reproduced hereinabove itself records physical completion of the work on 22.02.1997 and that no defects were found. The items listed as outstanding include whitewash and painting, cleaning of manholes and drains, fixing of fittings and fasteners, repair of plaster and flooring, and similar items.

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124. Once there is a completion certificate in favour of the plaintiff and the defendant has failed to establish precise grounds for non-payment of the final bill raised by the plaintiff, the defendant cannot be allowed to deny the plaintiff's legitimate dues indefinitely by merely stating that another agency had to undertake the rectification work not done by the plaintiff.

125. The defendant has categorically in the paragraph No. 10(1) of its written statement (reproduced above in paragraph No. 112 of the judgment) has stated that the bill is to be finalized after completion of rectification work by the outside agency and the same could not be worked out. However, except for the award of work and for the statement that the defendant has to outsource the rectification work, no evidence has been led by the defendant to show:

A. Proof of actual payment of Rs. 7,14,003/-, made to the outside agency for getting the rectification work done, which was allegedly to be done by the plaintiff.

B. Additionally, the defendant has neither filed a counterclaim nor pleaded a set off.

126. The settlement of the bill could have awaited the finalization of the rectification work but the same cannot be left in the lurch indefinitely on this ground. The defendant ought to have produced cogent evidence in support of its contentions to oppose the payment of final bills, which it has failed to do so.

127. An award of work, in itself, is insufficient to prove, if any actual expense has been incurred by the defendant in getting the rectification work done. Thus, in the absence of complete records, bills, and proof of

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payment *qua* the rectification work by the outside agency, this argument cannot be allowed to defeat the genuine claim of the plaintiff.

128. In this view of the matter, the unsubstantiated argument of the defendant that nothing was payable cannot be countenanced.

129. The defendant has also pointed out inconsistencies in the Claim of the plaintiff raised by way of final bill dated 10.03.1999 and the present suit i.e., the plaintiff is seeking Rs. 31,90,124/- (amount payable for undisputed work) and Rs. 9,87,680/- (for actual work done) as against Rs. 6,04,825.75/- stated in the bill dated 10.03.1999 (Ex. PW1/85) for actual work done.

130. The plaintiff in the suit (as per the final bill) besides claiming 31, 90,124/- (amount payable for undisputed work) and Rs. 6,04,825.75/- (for actual work done but not paid) has claimed an additional sum of Rs. 3,82,854/- being 63.3% of Rs. 6,04,825.75/- (the actual work done but not paid) towards contractor's percentage, hence, there is no inconsistency in the final bill and the amount sought to be recovered by way of the present suit. The same can be clearly inferred from a perusal of the bill reproduced in the paragraph No. 116 of the present judgment.

131. From a perusal of the aforesaid, it is clear that the total amount due as per the final bill is Rs. 41,77,809/-. Thus, the argument of the defendant that there is an apparent contradiction between the final bill and the amount claimed by way of this suit deserves to be rejected.

132. The defendant has also fleetingly raised an argument that the payment under Clause 10CC has been released till completion date and the same has been accepted by the plaintiff.

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133. From a bare perusal of Clause 10CC it is clear that the same provides for price escalation and moreover, the aforesaid stand of the defendant is contrary to the stand taken by the defendant in paragraph No. 10(1) of its written statement wherein it is categorically stated that the bill is to be finalised on completion of work by the outside agency and till that time the exact figures cannot be worked upon. The relevant portion of the paragraph is already reproduced in the paragraph No. 112 of this judgment.

134. Thus, the defendant cannot be allowed to make contrary submissions that the bill is to be finalized on completion of rectification works and at the same time also stating that the bill was already paid under 10 CC compensation which was released in 1997. Accordingly, this argument of the defendant also fails to shake the case of the plaintiff.

135. The standard of proof by which the present Claim needs to be adjudicated is that of preponderance of probability, which for all of the reasons as stated above leans in favour of the plaintiff and accordingly, the Claim No. 1 is decided in favour of the plaintiff.

136. Accordingly, the plaintiff is entitled to a decree of Rs. 41,77,809/- along with interest.

Claim No. 2: Release of bank guarantee of Rs. 3 lakhs, and incidental expenses of Rs. 40,000/. (the onus to prove this claim is on the plaintiff.)

137. At the outset, it is noteworthy that this Court in its Order Sheet for I.A. No. 2084/2001 dated 03.08.2001 categorically recorded the fact that the bank guarantee as well as its invocation period has already expired and the only question which was kept open for adjudication was the

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entitlement of the defendant to insist upon keeping the said bank guarantee alive under Clause 30 of the Agreement. The Order Sheet dated 03.08.2001 reads as under (True typed copy):

"03.8.2001

Present: Ms. Anjali Sharma for the plaintiff.

Mr. V.K.Sharma for the defendant

I.A.2084/2001 in S.No.457/2000

Since the application was for interim injunction restraining the defendant from encashing the bank guarantee, same has become infructuous as the bank guarantee has expired and the period of its invocation has also expired. I.A. is dismissed.

However, the question whether the defendant is entitled to have bank guarantee alive under clause 30 of the agreement shall remain open for consideration.

I.A.2083/2001

In spite of several opportunities, plaintiff has not filed reply to the application. Application is allowed.

Plaintiff is directed to supply better particulars within four weeks.

S.No.457/2000

Renotify on 11th December, 2001 for further proceedings.

03rd. August, 2001 *J.D. KAPOOR*

JUDGE"

138. Subsequently, the plaintiff filed an I.A. bearing No. 11438/2001 seeking deletion of the observation recorded by the Court in the

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aforesaid Order on the ground that the bank guarantee has already expired and the question which is left open is just academic in nature, and is causing great prejudice to the plaintiff because the bank is refusing to return the margin money and is continuing to deduct charges towards this bank guarantee.

139. Pursuant thereto, *vide* Order dated 11.12.2001 passed in another I.A. 11438/2001, the aforesaid question was deleted by this Court observing that it had become redundant. The Order Sheet dated 11.12.2001 reads as under (True typed copy):

"11.12.2001

Present: Ms. Anjali Sharma for the plaintiff.

Ms .Shobana Takiar for the defendant.

I.A.No.11438/2001

In view of the fact that the bank guarantee has expired and the time for extending the same has also expired, the observations made in the order dated 3rd August, 2001 to the effect that the question whether the defendant is entitled to have bank guarantee alive under Clause 30 of the agreement shall remain open for consideration have become redundant and stand deleted.

IA stands disposed of.

Dasti.

S.No.457/2000

Counsel for defendant states that she has received file from the department only yesterday. Let written statement be filed

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within six weeks. Replication be filed within four weeks thereafter.

Renotify on 14th May, 2002.

11th December, 2001 *J.D. KAPOOR*

JUDGE"

140. The Plaintiff in his written arguments dated 06.08.2025 placed on record, has made the following argument with respect to this Claim:

*"The plaintiff having established Breach of Obligations on the part of the defendant beyond reasonable doubt**, the encashment of Bank Guarantee is obviously unreasonable and deserves to be compensated for**. In fact, there is no counter claim of DDA against the plaintiff thereby establishing the fact that DDA has no claim whatsoever against the plaintiff. **It would only be fair if the judgment and decree to hold that the defendant is liable for compensating the plaintiff against illegal encashment of BG**."*

141. The abovesaid argument of the plaintiff seems to be contrary to the observations recorded in the Orders dated 03.08.2001 and 11.12.2001, wherein it has clearly been recorded that the bank guarantee has expired, time for extending the same has expired and the bank guarantee need not be kept alive.

142. No other Order has been brought to my notice, wherein it has been indicated that the bank guarantee was encashed.

143. Additionally, the onus of proof for this issue lies on the plaintiff and he has failed to lead any evidence to show that the bank guarantee bearing

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No. 39/94-95 issued by the State Bank of Indore, Green Park Extension, New Delhi, was encashed by the defendant.

144. Even though in the written arguments as reproduced hereinabove the plaintiff has stated that the bank guarantee has been encashed, no cogent evidence has been produced before me to prove the same. Additionally, no material has been filed to show the expenses incurred in keeping the bank guarantee alive.

145. In the absence of the plaintiff having led cogent evidence and having failed to discharge his onus of proof, the relief as claimed by him cannot be granted.

Claim No. 3: Cost of work done beyond the stipulated date of completion @ 20 percent extra over the tendered rates. Rs. 48,98,553/.

146. By way of this Claim, the plaintiff is essentially seeking compensation for the work executed beyond the stipulated date of completion, calculated at 20% over the tendered rates to account for inflation and idling costs arising out of the 32 months delay caused by the failure of defendant to fulfil its obligations. The same resulted in idling of the centering and shuttering material and costing of RC, etc. Plaintiff has placed reliance on letter dated 31.03.1993 (Exhibited as Ex. PW1/4) to point out breaches on part of the defendant.

147. It is stated that the plaintiff mobilised all his resources for timely completion of the project but the defendant failed to arrange supply of stipulated materials, drawings on time and to ensure timely payments for work done. Also, the Claim of the plaintiff is not covered by any escalation clause including Clause 10CC and is in addition to the same.

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148. *Per Contra,* the defendant has argued that payment made under Clause 10CC is a comprehensive payment and nothing more is payable. It is also argued that this Claim was raised by the plaintiff on 21.10.1996, which was rejected on 16.11.1996 by the defendant reiterating Clause 10CC.

149. It is also important that the plaintiff applied for EOT stating that he would not claim anything extra amount due to the delay which was sought to be extended. Thus, in view of this undertaking by the plaintiff and clause 10CC compensation, this Claim deserves to be rejected.

150. Plaintiff has placed reliance on letter dated 20.06.1994 (Exhibited as Ex.PW1/86) to state that the plaintiff informed the defendant in advance that the delays are attributable to the defendant and the work could only be completed beyond time on payment of 20% over and above the quoted rates. The letter dated 20.06.1994 (Ex.PW1/86) reads as under (True typed copy):

"J.S. Constructions

Govt. Contractor & Engineer

Ref. No. ..... *Dated: 20th Jun 94*

To,

The Executive Engineer,
Eastern Division-VII, DDA
Seed Bed Park, School Block,
Shakarpur, Delhi-110092.

Sub : Construction of 176 MIG Houses at Kondli Gharoli Phase-II, Group-9.

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Dear Sir,

This has reference to the award of aforesaid work to us. As you are aware, the work was awarded to us on 16.12.1992 and the completion date was 18 months after the tenth days period from the start of the work. Accordingly the date of completion will be 26th June, 1994. As you have been notified in the correspondences exchanged on account of various breaches which are outlined below once again on your part, the work could not be completed and has to be executed beyond the stipulated date of completion. The work has been delayed because of numerous causes some of which are :

1. *Non-availability of complete site.*
2. *Non-issue of drawings for both structural and architectural.*
3. *Delayed decisions.*
4. *Non-sanction of extra items/substituted items.*
5. *Erratic payments of running bills.*
6. *Deviation in the quantities beyond agreement quantities.*
7. *Non-payment of bill under Clause 10cc of the Agreement.*

We hereby notify you that for the work to be done after the stipulated date of completion, we shall be claiming 20 per cent over and above ~~the estimated cost~~ our quoted rates (63.30% above the DSR 1989). The rate being claimed (63.30%) is in accordance with the current market rate at which the works

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are being awarded. This is without prejudice to our other claims under various clauses of the Agreement and in particular Clause 12-A and other claims under the contract.

Thanking you.

Yours faithfully,
For M/s J.S. Constructions

151. In response to the aforesaid request raised by Ex.PW1/86, the same was not declined by the defendant but was posted for consideration after completion of formalities of EOT. Letter dated 25.06.1994 exhibited as Ex. PW1/87 (also marked as Ex. P7) is reproduced hereunder (True typed copy):

"OFFICE OF THE EXECUTIVE ENGINEER
EASTERN DIVISION-7, DDA, DELHI-92

No. F.54(65)93-94/ED-7/A/DDA/3007-3008 Dt. : 25.6.94

To

M/s J.S. Constructions
J-171, Saket, New Delhi-16

Sub: C/o 176 M.I.G. Houses at Kondli Gharoli, Ph.II, Gr.-IX.

.....

Dear Sir,

Kindly refer your letter dated 20th June 1994 regarding above mentioned work. In this regard it is intimated that

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Time Extension Case of the above work is being reviewed under this division as well as in the Circle Office. As and when final outcome of the same is received from the Circle office the same will be intimated to you.

In light of above mentioned fact I am not in a position to give any extra rate beyond 63.30% above. However payment under Clause - 10CC of the Agreement will be released in due course after getting outcome of the E.O.T. Case from the Competent Authority.

Thanking you,

Yours faithfully

(H.S. DHARAMSATTU)
EXECUTIVE ENGINEER
EASTERN DIVISION-7
D.D.A., DELHI – 92"

152. PW1 in his evidence by way of an affidavit reiterated the aforesaid contentions of the plaintiff and also stated that the defendant in issuing the aforesaid reply (Ex. PW1/87) has admitted his claim.

153. Defendant in its written statement has stated that the plaintiff in his application form seeking EOT in the prescribed proforma part-I has declared that he will not claim any extra amount due to the aforementioned delay. The defendant has relied on application for EOT

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Part-I dated 12.05.1997, which is exhibited as Ex. P3 and the same reads as under (True Typed Copy):

"Application for Extension of Time-Part I

1. *Name of Contractor: J.S. Constructions*
2. *Name of work as given in the agreement: C/o 176 M.I.G. Houses at Kondli*
3. *Agreement No.: 07/E.E./E.D.-7/93-94*

   47/E.E./E.D.-3/92-93

4. *estimated amount put to tender: Rs. 2,02,25,140-00*
5. *Date of commencement of work as per agreement: 25-12-92*
6. *Period allowed for completion of work as per Agreement: 18(Eighteen) months.*
7. *Date of completion as per agreement: 24-06-94.*
8. *Period for which extension of time has been given previously –*

   1st extension vide E.E.'s No. Date

   2nd extension vide E.E.'s No.

   3rd extension vide E.E.'s No.

   4th extension vide E.E.'s No.

Total extension previously given

9. *Reasons for which have been previously given (Copies of the previous applications should be attached)*
10. *Period for which extension is applied for Date of completion 22.02.97.*

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11. Hinderances on account of which extension is applied for with dates on which hinderance occurred and the period for which these are likely to last

S. No.	Nature of Hindrance	Date of Occurrence	Period of which it is likely to last	Period for which extension required	Overlapping Period if any with reference to item	Net Period for which extension is recommended	Remarks as to why the hinderances occurred and ... for extension recommended
i.	...availability of...	1.4.95 to 22.6.95	22.6.95	83 days	-	25 days	30%
ii.	Due to earth filling	1.4.95	30.9.96	549 days	-	522 days	95%
iii.	Due to extra work...	-	-	-	-	102 days 649 days	
iv.	Days Requested	-	-	438 days	-	-	

Total period for which extension is now applied for hinderances mentioned above.

Extension of time required for extra work

Details of extra work and amount involved-

Total value of extra work 50 Lacs 3,30,27,654/- 18 months x50,000,00/-

---

3,30,27,654-00 = 2.72 x 1.25= 3 ....

=102 days

Proportionate period of time put to tender on account of based

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... amount put to tender on account of extra work.

Total extension of merequired for 11 &12-

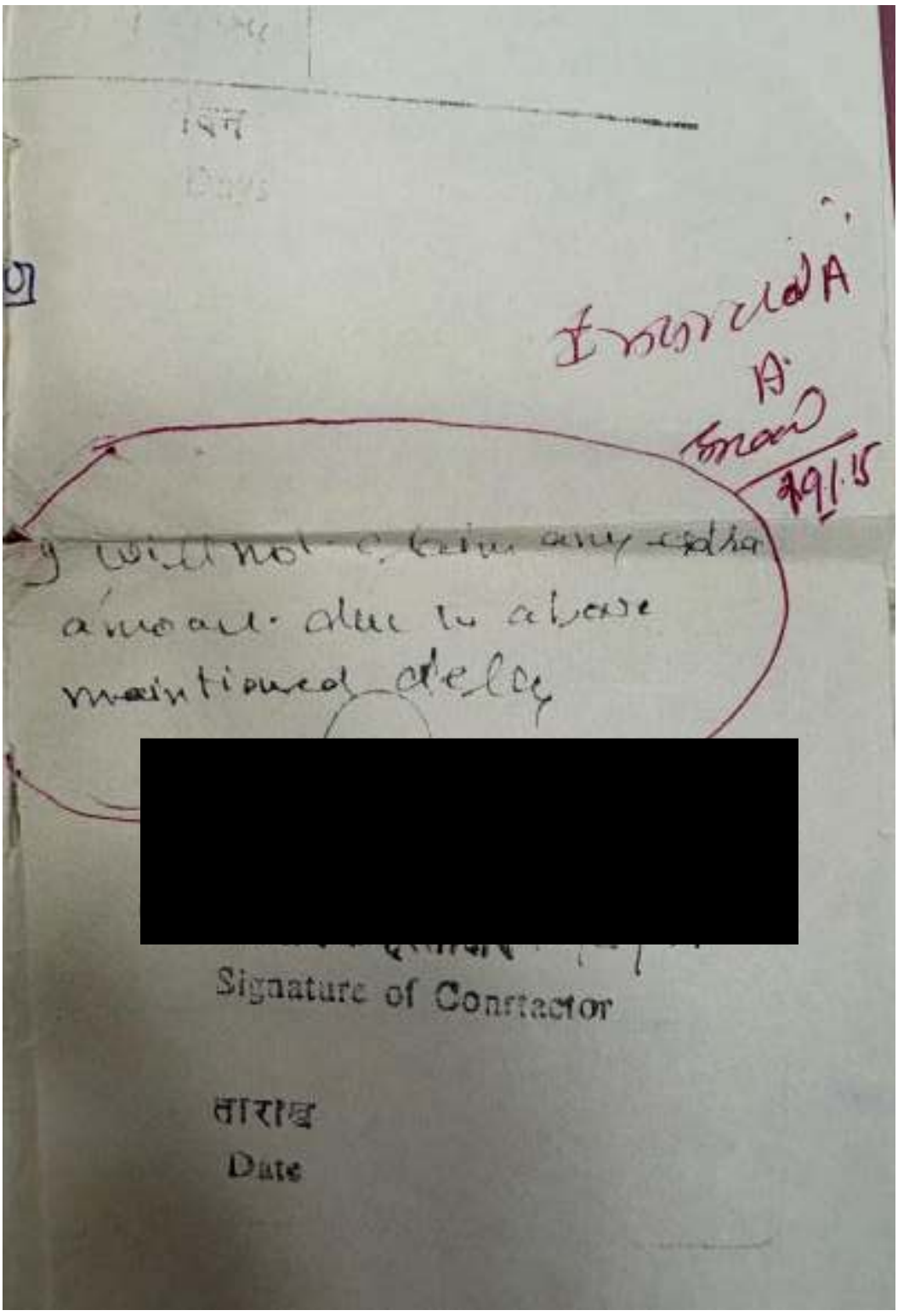
I will not claim any extra amount due to above mentioned delay

Signature of Contractor

Date

Submitted to the sub-divisional officer."

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154. When PW1 was put to cross examination with respect to the undertaking recorded in the application dated 12.05.1997 (Ex. P3) seeking EOT, he admitted that the undertaking was duly written and signed by him but at the same time, he also stated that it was a one-sided agreement and EOT would not have been granted if he would have not made that undertaking. The relevant excerpts from the cross-examination of PW1 recorded on 19.01.2015 read as under:

> *"At this stage encircled portion A of Ex.p3 is shown to the witness where the words "I will not claim any extra amount due to above mentioned delay" is confronted to the witness by stating that he himself has written such words and witness has admitted that he has written such words and he volunteers that since it was one sided agreement and If these words would not have been written by him his time would not have been extended and he has written the same under completion.*
>
> *It is incorrect to suggest that there was no completion or pressure upon me by DDA to write such words on encircled portion A of Ex.P3. It is incorrect to suggest that Ex.P4 & Ex.P6 does not bear my signature however it is correct that Ex.P5 does not bear my signature. It is incorrect to suggest that the DDA has given me the material of steel or cement in time or the same was always available in the store of DDA in abundance. I have not completed the remaining defected work or un-rectified work in terms of Ex.P2 (Ex.PW1/3) (Vol. there was no such averment in Ex.P2 (Ex.PW1/3). …"*

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155. In the present case, as per the concluded contract between the parties clause 10CC contemplated payment on account of escalation. Clause 10CC of the Agreement is reproduced as under:

> *"CLAUSE 10CC. If the prices of materials at stores (not being materials supplied or services rendered at fixed prices by the department in accordance with Clauses 10 & 34 hereof) and/or wages of labour required for execution of the work increases, the contractor shall be compensated for such increase as per provisions detailed below and the amount of the contract shall accordingly be varied, subject to the condition that such compensation for escalation in prices shall be available only for the work done during the stipulated period of the contract including such period for which the contract is validity extended under the provisions of clause 5 of the contract without any action under clause 2 and also subject to the condition that no such compensation shall be payable for a work for which the stipulated period of completion is 6 months or less. Such compensation for escalation in the prices of materials and labour, when due, shall be worked out based on the following provisions:*
>
> *1. The base date for working out such escalation shall be the last date on which tenders were stipulated to be received.*
>
> *2. The cost of work on which with escalation will be payable shall be recokoned as 85% of the cost of work as*

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per the bills, running or final, and from this amount the value of materials supplied under clause 10 of this contract or services rendered at fixed charges as per clause 34 of this contract, and proposed to be recovered in the particular bill, shall be deducted before the amount of compensation for escalation is worked out. In the case of materials brought to site, for which any secured advance is included in the bill the full value of such materials as assessed by the Engineer-in-Charge (and not the reduced amount for which secured advance has been paid) shall be included in the cost of work done for operation of this clause. Similarly, when such materials are incorporated in the work and the secured advance is deducted from the bill,

Cost of the work shown in the bill, running or final. Further the cost of work shall not include any work for which payment is made under clause 12 or 12(A) at prevailing market rates.

3. Components of materials, labour, P.O.L., etc., shall be pre-determined for every work and incorporated in the conditions of contract attached to the tender papers and the decision of the Engineer-in-Charge in working out such percentages shall be binding on the contractor.

4. The Components for escalation for materials, labour and P.O.L. shall be worked out as per the formula given below:-

i) $VM = W \times (X / 100) \times ((MI - MI_0) / MI_0)$

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VM = Variation in material cost i.e. increase or decrease in the amount in rupees to be paid or recovered.

W = Cost of work done worked out as indicated in sub-para 2 above.

X = Component of materials expressed as percent of the total value of work.

MI & MI_0 = All India whole sale index for all commodities for the period under reckoning as published by the Economic Advisor to Government of India, Ministry of Industry and Commerce, for the period under consideration and that valid at the time of receipt of tenders, respectively.

(ii) $VF = W \times (Z / 100) \times ((FI - FI_0) / FI_0)$

VF = Variation in cost of fuel, oil and lubricant, increase or decrease in rupees to be paid or recovered.

W = Value of work done, worked out indicated in sub-para 2 above.

Z = Component of P.O.L. expressed as percent of total value of work as indicated under the special conditions of contract.

FI & FI_0 = Average index number of wholesale price for group (fuel, power light and lubricants) as published weekly by the Economic Adviser to Govt of

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India Ministry of Industry for the period under reckoning and that valid at the time of receipt of tenders respectively.

5. The following principles shall be followed while working out indices mentioned in sub-para 4 above.

(a) The compensation for escalation shall be worked out at quarterly intervals and shall be with respect to the cost work done during the three calender months of the saidwork. The first such payment shall be made at the end of three month after the month excluding) in which the tender was accepted and thereafter at three months interval. At the time of completion of the work, the last period for payment might become less than 3 months, depending on the actual date of completion.

(b) The index (MI/FI etc.) relevant to any quarter for which such compensation is paid shall be the arthmetical average of the indices relevant to the three calender months. If the period up to date of completion after the quarter covered by the last such instalment of payment, is less than three months, the index MI and FI shall be the average of the indices for th month falling within that period.

(c) The base index, MI_0 FI_0 etc. shall be the one relating the month in which the tender was stipulated to be received.

6. The compensation for escalation for labour shall be work

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out as per the formula given below :

(iii) $VL = W \times (Y / 100) \times ((LI - LI_0) / LI_0)$ ...

VL = Variation in labour cost i.e. increase or decrease in the amount in rupees to be paid or recovered.

W = Value of work done, worked out as indicated in sub para 2 above.

Y = Component of labour expressed as percnet of the total value of work.

LI_0 = Minimum daily wage in Rupees of unskilled adult male mazdoor, as fixed under any law, statutory rule or order as on the last date on which tenders for the work were to be received.

LI = Minimum wage in rupees of an unskilled adult male mazdoor, as fixed under any law statutory rule or order as applicable on the last day of the quarter previous to one during which the esscalatin is being paid.

7. The following principles will be followed while working out the compensation as per sub-para 6 above.

(a) The minimum wage of an unskilled male mazdoor mentioned in sub-para 6 above shall be the higher of the following two figures, namely those notified by Government of India, Ministry of Labour and those notified by the local

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administration, but relevant to the place of work and the period of reckoning.

(b) The escalation for labour also shall be paid at the same quarterly intervals when escalation due to increase in cost of materials and/or P.O.L. is paid under this clause. If such revision of minimum wages takes place during any such quarterly intervals, the escalation compensation shall be payable for work done in all quarters subsequent to the quarter in which the revision of minimum wages takes place.

(c) Irrespetive of variations in minimum wages of a category of labour, for the purpose of this clause, the vary in the rates for an unskilled adult male mazdoor alone shall form the basis for working out the escalation compensation payable of the labour component.

8. In the event the price of materials and/or wages of labour required for execution of the work decrease/s, there shall be downward adjustment of the cost of work so that such price of materials and/or wages of labour shall be deductable from the cost of work under this contract and in this regard the formula herein before stated under this clause 10 (CC) shall mutatis mutandis apply provided that:-

i) no such adjustment for the decrease in the price of materials and/or wages of labour aforementioned would be made in case of contracts in which the stipulated period of

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completion of the work is less than six months;

ii) the Engineer-in-Charge shall otherwise be entitled to laydown the principles on which the provision of this sub-clause shall be implemented from time to time and the decision of the Engineer-in-Charge in this behalf shall be final and binding.

Provided always that the provisions of the preceding clause (10C) shall not be applicable for contracts where provisions, of this clause 10 (CC) are applicable. However, in contracts where provisions in clause 10(CC) are not applicable, then provisions in clause 10(C) will become applicable".

The component of material, labour and P.O.L. as indicated in para 3 of sub clause 10(CC) have been pre-determined as below :

(a)	*Material*	*Seventy five*	*Percent*	*75*
(b)	*Labour*	*Twenty five*	*Percent*	*25*
(c)	*P.O.L.*	*NIL*	*Percent*	*X*
TOTAL ;		*Hundred*		*100”*

156. The plaintiff *vide* letter dated 20.06.1994 exhibited as Ex. PW1/86 , sought to alter the terms of the contract by offering to do the work after the stipulated date of completion by charging 20% over and above the

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initially quoted rate of 63.30%. The same was not accepted by the defendant.

157. The defendant *vide* letter dated 25.06.1994 (Ex. PW1/87 also marked as Ex. P7) informed the plaintiff that the matter concerning EOT is pending consideration and the defendant is not in a position to allow anything beyond the already fixed 63.30%.

158. Thereafter, the plaintiff made an application seeking EOT dated 12.05.1997 (Ex. P3). The said offer (EOT application) contained a specific undertaking *"I will not claim any extra amount due to above mentioned delay"*. It was this offer which was accepted by the defendant and the defendant accordingly granted EOT, leading to a concluded contract between the plaintiff and the defendant.

159. The stand of the plaintiff seeking to claim sums after specifically agreeing not to claim, would result in breach of this contractual term. It is only on this basis that the EOT was granted to the plaintiff. As regards the argument that EOT was obtained under duress or coercion, there is no document from 12.05.1997 to show any protest/objection raised by the plaintiff in this regard.

160. Hence in view of the undertaking recorded in the EOT Application (Ex.P3) and the fact that no evidence has been led with respect to the argument of duress to satisfactorily impeach the said undertaking, this Claim of the plaintiff stands rejected.

Claim No. 4: Compensation for continued employment of staff, machinery beyond the stipulated date of completion. Rs. 25,27,000/-.

161. In this Claim, the plaintiff is seeking compensation for deployment of employees and machinery at the rate of Rs. 41,500/- per month which

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is 2.2% of the quantum of work required to be executed every month in order to complete the amount of Rs. 3,30,27,654/- for 18 months.

162. On the other hand, defendant has argued that the present Claim is a mere reiteration of the Claim No. 3 and in absence of any contractual stipulation to allow compensation for continued employment of staff and machinery, the same cannot be allowed. Additionally, the plaintiff has not led any evidence in support of this Claim of extra expense.

163. PW1 in his affidavit by way of evidence has provided a detailed calculation of the said Claim wherein amount spent in maintenance of employees, staff and material are set out. The relevant paragraphs of the affidavit of PW1 read as under:

> *"4. COMPENSATION FOR CONTINUED EMPLOYMENT OF STAFF AND MACHINERY BEYOND THE STIPULATED DATE OF COMPLETION RS. 25,27,000.00.*
>
> *The completion of the work was delayed by 32 months for defaults and breaches under the contract attributable solely to the defendant. Even beyond the period of delay of 32 months, my staff and machinery had to be deployed for another six months from the actual date of completion, i.e. 22 February, 1997. Therefore, I am entitled to be compensated for a period of 38 months.*
>
> *In terms of Clause 36 of the contract document, it was specified as to what staff had to be deployed by me on site. It was specified therein that I was bound to deploy at least one Graduate Engineer, Two qualified diploma holders. I*

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state that I deployed my staff and machinery soon after the receipt of acceptance of my tender offer to ensure completion of the work on time. As a consequence of the delay on the part of the defendant, the staff and machinery remained under utilised for the original period stipulated in the contract and I had to continue the employment of staff and machinery for a future indefinite period of 32 months beyond the stipulated date of completion.

The staff employed by me, and the wages paid per month is detailed as under:-

Graduate Engineer	*1 Nos.*	*@Rs. 5000/-*
Diploma Engineer	*1 Nos.*	*@Rs. 3,500/-*
Head Mistry	*1 Nos.*	*@Rs. 4,000/-*
Supervisors	*4 Nos.*	*@ Rs. 2,500 amounting to Rs. 10,000/-*
Accountant	*1 Nos.*	*@ Rs. 3000/-*
Clerk	*2 Nos.*	*@ Rs. 2000/- amounting to Rs. 4000/-*
Chowkidars	*6 Nos.*	*@ Rs. 2000/- amounting to Rs. 12,000/-*
Total monthly remuneration :		*Rs. 41,500/-*

The above staff is in addition to my head office establishment and at a minimum of Rs. 10,000/- a month, for 38 months, comes to Rs. 3,80,000/-.

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Likewise, machinery and other equipment deployed for execution of the work was to the order of Rs. 10 Lakhs detailed as under:-

1) Centering and shuttering material

2) Ballies and planks and scaffolding material

3) Concrete mixers

4) Vibrators

5) Pumps

6) Small T & P.

Since the staff and machinery had to be deployed for an additional 38 months, beyond and the expenditure as detailed above is of the order of Rs. 41500/- Plus Rs. 15,000/- making it a total of Rs. 56,500/-. The total loss can be computed as 38 times Rs. 56,500 /-. In view of the quantum of work getting reduced with every passing day I am claiming compensation to the extent of Rs. 21,47,000/-, on this account. Therefore, the total amount claimed under this head comes to Rs. 25,27,000/- .

I state that the compensation claimed for deploying construction material is based on amounts actually payable as per market rates for taking such items on hire. I state that no contractor owns such a large stock of such goods as Ballies, planks, shuttering and scaffolding material, as is required for a work of this magnitude. It is customary for

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such material to be taken on hire, and the I had to pay huge amounts towards the hire charges for this material. Ordinarily, the work of such material such as scaffolding, shuttering, ballies and planks, is for about six months. However, in the present case, the said materials were required to be kept on site for an extra period of 38 months, and I am entitled to be compensated for the cost incurred by me for the said extra 38 months."

164. The defendant witness (DW1) in his affidavit by way of evidence has stated that whatever amount was due, it was paid to the plaintiff under Clause 10CC and the same also included the overheads for Staff and Machinery. Thus, the plaintiff cannot raise any further claims. The relevant paragraphs of the affidavit of DW1 read as under:

"12.The quoted rates as per the tender submitted and the additional payment under clause 10CC completely takes care of the extra expenditure that may have to be incurred by the contractor and this includes the overheads in the form of staff and machinery also. Once the payment under clause 10CC has been paid, nothing more can be claimed by the Plaintiff. The Plaintiff was well aware of the facts when quotation was given in response to the NIT. There is no clause in the agreement to provide for any extra claim as is being put forth by the Plaintiff. The entire payment under clause 10CC has been paid to the Plaintiff hence no further claims can be raised. No work has been got done beyond the

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scope of the agreement hence the Plaintiff cannot raise any claims regarding the same.

13.Plaintiff had accepted all the measurements, running bills and payments."

165. When PW1 was subjected to cross-examination on 13.01.2016, he clearly admitted that he has not filed any document before the Court to show any actual expense incurred/detailed description of the particulars which are demanded by way of this Claim. The relevant paragraph of the cross-examination reads as under:

"I have not brought nor can I produce the clearance certificate in this regard from the Labour Office. (Vol. Since it is an old matter now). It is correct that i have not placed any document on record w.r.t. number of employees/ workers / labour/ staff, I had employed. It is correct that I have not filed any document on record w.r.t. the period for which machinery was kept on the site."

166. The onus of proving this issue lay on the plaintiff, however, except for making a bald averment and a calculation of his own, the plaintiff has failed to produce any cogent evidence to show the number of staff employed or the machinery deployed at the site by the plaintiff.

167. In absence of any such evidence of this nature, this statement of the plaintiff *qua* compensation for continued employment of staff, machinery without any proof *qua* the actual expenses incurred in maintaining the employees, staff and machinery cannot be accepted.

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168. The law in this regard is well settled that in the absence of any evidentiary proof and merely on the basis of unsupported calculations, such claims cannot be granted in favour of the Plaintiff.

169. A Coordinate Bench of this Court in the judgment of ***Union of India v. Om Construction Co.***[14], has held:

> *40. The Division Bench, even in this case holds that a Contractor would be legally entitled to these claims only if the same is duly established and work is prolonged due to only default of the employer and not because of the contractor's delay.*
>
> *....*
>
> *42. Though, these three heads of idle machinery/labour, escalation and loss of profits are distinct and separate heads,* ***the award of damages under these three heads requires evidence and has to be established by the Contractor****.* ***The arbitrator/Court has to consider as to whether damages are liable to be awarded under all the three heads and whether there is evidence on record to support such an award. There cannot merely be an ipse dixit of calculations without any foundational events and documents.*** *..."*

170. A coordinate bench of this Court in its recent judgment of ***ECO Green Buildtech (P) Ltd. v. Vikartan Infrastructure (P) Ltd.***[15], also held as under:

[14] 2019 SCC OnLine Del 9037.

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"11. For claim No. 4 the case set up by the respondent was that the resources arranged on rent remained idle for failure of the petitioner to supply the requisite material in terms of the contract. The Tribunal under Sections 55 and 73 of the Indian Contract Act, 1872 (for short "the Contract Act") proceeded to deal with the claim. It was held that the petitioner was in breach of the terms of the contract. ***The contention of the petitioner that the idling of resources constituted a part of the overhead was rejected. In absence of evidence of actual loss or damage suffered by the respondent or the actual rent paid, the Tribunal erred in quantifying and awarding the damages. It would be apposite to note that the Tribunal recorded that the claim for payment of rent of Rs 2.5 lakhs per month towards machinery was unsupported by vouchers demonstrating rent had actually been paid.*** *The Tribunal relying upon personal experience in the filed of construction, quantified the expenses to be two percent of the contract value and awarded Rs 1,04,29,203 along with interest.* ***The expertise of the Tribunal cannot substitute the onus to be discharged by the respondent to prove the actual loss or damage suffered****. For awarding of damages under Section 73 of the Contract Act the twin conditions of the breach of terms of the contract and consequential actual loss or damage suffered are mandatory to be established. Reference*

[15] 2026 SCC OnLine Del 7062.

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in this regard be made to Kailash Nath Associates v. DDA, (2015) 4 SCC 136 : (2015) 2 SCC (Civ) 502 and Fateh Chand v. Balkishan Dass, 1963 SCC OnLine SC 49. The award of claim No. 4 is contrary to the provisions of the Contract Act and the law laid down by the Supreme Court. The award of claim No. 4 is patently illegal and liable to be set aside.

*12. Claim No. 6 concerns damages towards additional overheads occasioned due to the breach of contract by the petitioner**. The Tribunal held that the claim made was based on the bare minimum requirement of staff for execution of contract and is not unreasonable. The staff deployment was found to be consistent with trade practise and the site requirements. It is held that had the petitioner not committed the breach, the respondent would have completed the work within the stipulated period thereby not incurring the additional cost. There was no evidence led by the respondent of additional overhead expenditure incurred due to breach of contract.** The Tribunal relied upon personal experience in the field and CPWD circular MAN-150 and 169 for quantifying the overhead expenses at 7.5% of the contract value**. At the cost of repetition, the expertise of the Tribunal cannot form the basis for quantification of damages more so, when no evidence of the expenses incurred was produced.** Equally, the reliance placed by the Tribunal upon the trade practice of*

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deployment of staff is unsupported by evidence on record to establish the prevalence of the trade practice. It would be relevant to note here that the CPWD circulars relied upon by the Tribunal were not confronted to the petitioner and is in violation of Section 24(3) of the Act.

171. Even though the aforesaid judgments were rendered in cases of challenge against arbitral awards, a combined reading of the aforesaid judgments along with ***Kailash Nath Associates v. DDA***[16]*,* and ***Fateh Chand v. Balkishan Dass***[17], clearly highlights that the plaintiff is required to place cogent evidence on record to show continued employment of staff, deployment of machinery and the amounts spent thereupon and in absence of the same, vague and unsupported calculations cannot be accepted to award this Claim in plaintiff's favour.

172. Additionally, the plaintiff himself in his application for EOT-Part-I (Exhibited as Ex. P3) dated 12.05.1997 made an undertaking that he will not claim anything extra due to the said delay. Hence, this Claim of the plaintiff is not only an unsubstantiated claim but also contrary to his own undertaking recorded in the said document.

173. In this view of the matter, this Claim of plaintiff is wholly untenable and devoid of merit, accordingly, the same is rejected.

Claim No. 5: Loss of profit due to prolongation of the contract.

174. The plaintiff in this Claim is seeking of Rs. 4,56,802/- as interest calculated on loss of profit due to the prolongation of the Contract

[16] (2015) 4 SCC 136.
[17] 1963 SCC OnLine SC 49.

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caused by the delay in its completion owing to breach of its obligations by the defendant.

175. As per the plaintiff, all the defaults and breaches resulting in delayed performance of contract for 32 months were attributable to the defendant only.

176. On this premise, the plaintiff has calculated the cost of work done after the stipulated (initially decided) date of completion as Rs. 1,90,33,415/- and has calculated the loss of profit at rate of 10% of the said amount i.e., Rs. 19,03,341 for loss of profit.

177. The plaintiff by way of this Claim seeks interest on Rs. 19,03,341/- (alleged loss of profit) at the rate of 18% p.a. The plaintiff has calculated the interest on a staggered basis by reducing the period of 32 months to 16 months and has accordingly Claimed amount of Rs. 4,56,802/- as interest.

178. *Per Contra,* the defendant in its written statement has stated that no loss of profit was suffered by the plaintiff and the plaintiff should be put to strict proof of the same. The said loss as claimed by the plaintiff should have been shown in the ITR of the plaintiff and in absence of the same, this Claim of the plaintiff remains unsubstantiated.

179. The defendant has also contended that this Claim of the plaintiff is vague in its nature as the plaintiff seems to be confused regarding what he wishes to claim because the heading of the Claim in the plaint is different from what he actually appears to be claiming from the description of the Claim. The plaintiff appears to be Claiming interest on loss of profit but has not indicated the basis on which the said amount of Rs. 4,56,802/- towards interest is calculated. In any case

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even if a loss is alleged, the same must be directly attributable to the conduct of the defendant to hold it accountable.

180. At the outset, I find merit in the contention of the defendant that the Claim along with its calculation is very poorly described in the plaint making it difficult to discern for the purpose of adjudication. The plaintiff has phrased the heading of the Claim in such a manner to indicate that the plaintiff is Claiming loss of profit itself. Even the calculation of the interest remains unexplained in the Plaint and affidavit by way of evidence furnished by the plaintiff (PW1).

181. It was only in the written arguments dated 06.08.2025 filed by the plaintiff that the plaintiff clarified its stand *qua* this Claim and stated that the plaintiff is seeking recovery of interest on loss of profit at the rate of 18% calculated for a period of 16 months on staggered basis.

182. In view of the aforesaid, for the purpose of Claiming interest on loss of profit, the plaintiff is required to prove the loss of profit by cogent evidence and then the basis of calculation of interest adopted by him.

183. Mr. Jai Singh (PW1) in his evidence by way of an affidavit only reiterated the submissions already set out in the plaint and was put to cross-examination on 13.01.2016, wherein he admitted that he has not filed any separate details in his ITR *qua* the loss of profit suffered by the plaintiff. The relevant paragraph of the record of cross-examination reads as under:

> *"... It is wrong to suggest that the plaintiff never suffered any loss on profit for the assignment in dispute. I have not reflected any separate detail wrt loss of profit suffered by me, in my ITR. (vol. The ITR reflects total detail of my profit*

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and loss account). It is wrong to suggest that the Claims mentioned in the present suit were not demanded by me during the contract period. It is wrong to suggest that I am deposing falsely."

184. The Hon'ble Supreme Court in the judgment of ***Unibros v. All India Radio***[18]**,** laid down four conditions only upon satisfaction of which loss of profit can be decreed in favour of the plaintiff. The relevant paragraphs of the judgment read as under:

"16. To support a Claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the Claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.

17. One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the

[18] 2023 SCC OnLine SC 1366.

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delays, the total number of tendering opportunities that the contractor received and declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a Claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such Claim.

...

19. The law, as it should stand thus, is that for Claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions : first, there was a delay in the completion of the contract; second, such delay is not attributable to the Claimant; third, the Claimant's status as an established contractor, handling substantial projects; and ***fourth, credible evidence to substantiate the Claim of loss of profitability.*** *On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the Claim of loss of profitability remains unfulfilled in the present case."*

185. In view of ***Unibros (Supra)*** and a catena of judicial authorities including those discussed for adjudication of the Claim No. 4, it is

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settled law that for Claiming loss of profit, the Claimant/plaintiff is required to prove both breach of Contract and actual resultant loss by leading cogent and credible evidence, to substantiate his aforesaid Claim. However, the demand raised by the plaintiff by way of this Claim is merely in the form of assertion without any cogent evidence to prove the same.

186. It is settled law that estimation formulas also cannot be applied by Court of Law/ Arbitrator in vacuum to award Claims of this nature when they are not substantiated by any evidence for proving actual loss of profit.

187. In the present case, the plaintiff in his cross-examination has accepted that he has not reflected any separate details in his ITR records with respect to the loss of profit over which interest is Claimed and he has also not led any documentary evidence, let alone any credible evidence to prove the actual loss and to support his Claim for interest on loss of profits.

188. In view of the conditions laid down in the judgment of ***Unibros (Supra)*** especially the fourth condition i.e., the presence of credible evidence to substantiate the Claim of loss of profit, the same is not fulfilled by the plaintiff in the present case. He has failed to lead any evidence at all in order to prove loss of profit, thus, making his Claim *sans* evidence.

189. Additionally, the plaintiff has not led any evidence at all to show:

A. The reason for calculating interest at the rate of 18% p.a.

B. The duration of 16 months which he has adopted for the purpose of calculating interest on staggered basis.

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190. Thus, in absence of any evidence to show loss of profit or prove calculation of interest on it, the Claim of the plaintiff seeking interest on such loss of profit is rejected.

Claim No. 6: Payment of compensation under clause 10CC of the agreement. (Rs. 26,68,300/-)

191. By way of this Claim, the plaintiff is not contending that no payment was made to him under Clause 10CC rather the plaintiff is disputing the methodology of calculation made by the defendant.

192. The plaintiff contends that the defendant has prepared and paid escalation in terms of Clause 10CC but with certain fallacies:

A. Quantum of work taken for each quarter was not correctly reflected.

B. Certain bills were allocated to earlier quarters, even though the work/index position would have entitled him to a higher rate in later quarters when cost indices were higher, thereby placing the plaintiff in a disadvantageous position.

193. Additionally, the escalation should be payable not only on the final bill amount but also on claims relating to work done but not paid. The plaintiff on this premise has worked out an additional sum of Rs. 26,68,300/- as payable to him under Clause 10CC.

194. Defendant on the other hand has reiterated its stand that the entire amount due and payable under Clause 10CC was paid to the plaintiff and there is nothing more payable on its part. The plaintiff has also not supported his Claim by proper calculation or basis on which its Claim is based.

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195. In any case, Clause 10CC is a price variation clause for compensating any increase or decrease in the cost of material and labour, and does not cover the compensation for delay or overheads, loss of opportunity, etc.

196. Mr. Jai Singh (PW1) in his affidavit by way of evidence has reiterated the averments already made in the plaint and the relevant portions of the affidavit read as under:

> *"6. PAYMENT OF COMPENSATION UNDER CLAUSE 10 CC OF THE AGREEMENT*
>
> *Clause 10 CC of the agreement provides for compensation to the parties for rise and fall in the prices and wage rate of labour incorporated in the execution of the work. A proper procedure has been laid out therein. The defendant prepared bills for compensation payable to the plaintiff in view of the rise in prices of material and wage rate of labour with reference to the same prevailing on the date of submission of tender offer for each quarter for the currency of contract agreement and also for the extended period in view of the extension of time having been granted by the defendant without any levy of compensation under clause 2 of the agreement. However, the defendant did not include the correct amount of work as per proposed paid bill during each of the quarter while working out the compensation.*
>
> *Furthermore, the defendant included amounts of certain bills in earlier quarters and in view of the rise in subsequent quarters of the cost indices which form the basis of payment of compensation, I have been placed in a disadvantageous*

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position and have consequently, suffered damages. It is further stated in terms of the contract that I am also entitled to be paid on the amount of the final bill and also compensation under clause 10CC on the amount of claims relating to the work done but not paid for by the defendant. The total amount payable to me on this count comes to Rs. 26, 68, 300/-."

197. Mr. M.K. Gupta (DW1) maintained his consistent stand that the entire amount payable under Clause 10CC is already paid to the plaintiff and the same was duly accepted by the plaintiff. Hence, nothing more is payable to the plaintiff. Relevant paragraphs of the affidavit read as under:

"7. The delay in the completion of work was not in any manner attributable to the Defendant- DDA or its officers or anv agency related to the Defendant. The Completion certificate was issued after grant of extension of time uptil 22.02.1997 without levy of compensation under clause 2 of the agreement at the request of the Plaintiff. The payment under clause 1OCC was released till the completion of work and duly accepted by the Plaintiff vide 13th RA.Bill (10CC), 14th RA Bill (10CC), 15th RA Bill (10CC) and 16th RA Bill (10CC) which are marked as Ex DW1/3, DW1/4, DW1/5 and DW1/6 respectively.

8. I say that the Plaintiff is not entitled to claim anything more than what has been paid under clause 10CC of the agreement.

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…

12.The quoted rates as per the tender submitted and the additional payment under clause 10CC completely takes care of the extra expenditure that may have to be incurred by the contractor and this includes the overheads in the form of staff and machinery also. Once the payment under clause 10CC has been paid, nothing more can be claimed by the Plaintiff. The Plaintiff was well aware of the facts when quotation was given in response to the NIT. There is no clause in the agreement to provide for any extra claim as is being put forth by the Plaintiff. The entire payment under clause 10CC has been paid to the Plaintiff hence no further claims can be raised. No work has been got done beyond the scope of the agreement hence the Plaintiff cannot raise any claims regarding the same.

…

14.All payments have been paid as per the terms and conditions of the Agreement. All payments have been duly accepted by the Plaintiff and no objection was raised while accepting payments."

198. When PW1 was put to cross examination on 11.09.2015, it was admitted by him that he has received certain payments under Clause 10CC for the bills that he raised. The relevant portion of the cross-examination reads as under:

"After completion of the contract, I had taken the Clearance Certificate from the Labour Office. (Vol. same has not been

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filed on court record). I cannot say with certainty as to whether I can produce that Clearance Certificate now in this court. (Vol. as I would have to check my records as such certificates are quite older i.e. 20-22 years back). <u>It is correct that I had received certain payments under Clause 10CC. (Vol. for the bills I had raised in that regard).</u>"

199. Further, PW1 on 14.09.2015 was again put to cross-examination wherein he stated that the defendant did not pay the entire amount under Clause 10CC for the period which was extended in order to complete the Contract. The relevant portions of the cross-examination recorded on 14.09.2015 read as under:

"...

It is incorrect to suggest that I was paid the entire amount for the period that was extended for concluding the contract under the Clause 10 CC. ...

It is correct that the DDA gave me compensation with respect to extension of time under Clause 10 CC. (Vol. it was not paid in full). ..."

200. From a conspectus of the averments made in the plaint along with the evidence placed on record and arguments made before this Court in support of this Claim, it is clear that the plaintiff has denied the sufficiency/ disputed the calculation of compensation paid under Clause 10CC but at the same time has not furnished any basis or calculations or breakdown of the amount claimed (i.e., Rs. 26,68,300/-) to show that the same is due and payable to the plaintiff in addition to the amount already paid under Clause 10CC by the defendant.

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201. The onus of proof for this Claim lay on the plaintiff.

202. The defendant has produced specific RA Bills evidencing payments made under Clause 10CC, which are exhibited as Ex DW1/3, DW1/4, DW1/5 and DW1/6 respectively. On the other hand, the plaintiff except for making bald averment and disputing the stand of the defendant has not led any evidence much less cogent evidence to show:

A. Any further amount due and payable to the plaintiff.

B. Payments made to the plaintiff by the defendant under clause 10CC were wrong/insufficient.

203. In this view of the matter, this Claim of the plaintiff is bereft of any proof, evidence and particulars, so as to entitle the plaintiff to this Claim.

Claim No. 7: Cost of work done beyond the scope of agreement but not paid for.

204. In this Claim, the plaintiff is seeking to recover the cost of items of work which were executed as per the directions of the defendant but are beyond the scope of the Agreement and remain unpaid.

205. These Claims *qua* different items were argued by the defendant to be raised as an afterthought because bills were frequently submitted for a period of 18 months yet the plaintiff omitted to include these items.

206. The onus of proof with respect to each sub-claim is on the plaintiff.

Cost of Extra Thickness of Plaster

207. As per the plaintiff, this part of the Claim No. 7 is *qua* the thickness of plaster in respect of item No. 7.4 wherein the base plaster was 15 MM instead of 12 MM, which was contemplated in the items of work. The

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same was done as per directions of the defendant. Hence, plaintiff seeks recovery of Rs. 20,980/- for 4196.36 sq. mtrs.

208. The defendant on the other hand has denied the fact that 15 MM plaster was provided and as per Clause 42(ii) of the Agreement no extra payment is payable. Also, the plaintiff was required to maintain a cement register in terms of Clause 3.1.5 of the Agreement. Clause 3.1.5 reads as under:

> *"3.1.5 The ~~contractor~~ (J.B. C-1) should maintain the Register for cement, paint and other Registers as required by the Engineer-in-Charge and these should be signed by the contractor or his authorised agent and the Junior Engineer-in-Charge of the work."*

209. PW1 in his affidavit by way of evidence has reiterated the averment made in the plaint verbatim.

210. My attention has been drawn to Clause 3.1.5 by the defendant from a perusal of which it seems that the plaintiff was required to maintain registers for cement, paint, etc. which could have been produced by the plaintiff for the purpose of proving this Claim but the same has not been done. Plaintiff has not placed reliance on any documentary evidence in support of his Claim for proof of actual cost of extra thickness of the plaster.

211. The onus of proof with respect to this Claim lay on the plaintiff. Once, the defendant has denied that 15 MM plaster was provided, the plaintiff had to lead cogent evidence:

A. To show laying of 15 MM of plaster, and

B. The costs incurred therein.

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212. The plaintiff has not led any evidence to show either of the two things. In the absence of any evidence, this sub-claim stands rejected.

Centering and shuttering for DPC (Item No. 2.4)

213. The plaintiff is claiming an amount of Rs. 2123/- towards the centering and shuttering provided for laying of DPC, which is beyond the scope of Agreement, hence, claimed as an extra item.

214. The defendant with respect to this Claim has contended that the work was carried out as per the item of Agreement and CPWD specifications wherein rates included the cost of materials and labour involved in all operations. Thus, nothing extra is payable for centering and shuttering.

215. PW1 in his affidavit by way of evidence only stated that he had to provide centering and shuttering for laying of DPC which was beyond the scope of Agreement and no questions were put to PW1 with respect to this Claim.

216. I am of the view that the plaintiff has fleetingly raised this Claim without explaining the particulars and without leading any evidence to show as to how the work of centering and shuttering on which this Claim is based, falls outside the scope of Agreement. The plaintiff has also failed to provide cogent evidence for calculation and expense of Rs. 2123/- as claimed in the present claim.

217. Since, the onus to prove this Claim was on the plaintiff and the plaintiff has failed to discharge the said onus, the present Claim cannot be allowed.

Cost of Yamuna Sand (Item No. 1.3)

218. The plaintiff claims Rs. 26,000/- (for 325 c.m. at Rs. 80/per c.m.) towards the Yamuna Sand provided for the work, which was not

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contemplated under the Agreement and was required for being filled in the plinth, etc.

219. The defendant in its written statement has denied the said Claim on the ground of falling outside the terms of the Agreement and CPWD specifications.

220. PW1 in his affidavit by way of evidence only reiterated the contents of the plaint to state that the description of item takes precedence over the specific provision which does not provide for supply of Yamuna Sand. Since plaintiff has provided the said item, he is entitled to award of this Claim. The relevant paragraph reads as under:

> *"I have provided Yamuna Sand for the work. The description of item of the work which takes precedence as per specific provisions in the agreement does not provide for supply of the same required to be filled in plinth etc. and since this was supplied by me, I am entitled to be paid for the same, and the cost thereof is payable as under:-*
>
> *325 c.m @ Rs. 80/- per c.m, = = 26,000/-."*

221. No questions with respect to this Claim were put to PW1 during the cross-examination.

222. The defendant in its written statement with respect to this sub-claim for use of Yamuna sand has stated as under:

> *"iii). Cost of Yamuna Sand (Item No. 1.3).*
>
> *The claim is denied as per terms and conditions of the agreement and CPWD specification because the item in question does not cover in the clauses of the agreement executed inter se the parties."*

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223. This Claim with respect to use of Yamuna Sand is only fleetingly raised and is an unsubstantiated claim as the plaintiff has not led any evidence to prove that Yamuna Sand was actually supplied and used. Once the defendant has denied the claim, it was upon the plaintiff to prove the same by leading cogent evidence, except for an averment in the plaint and affidavit, there is nothing to support his claim. Hence, the said Claim is rejected.

Cost of providing SCI Collars

224. The plaintiff also claims Rs. 47,020/- (Rs. 28,793/- + 63.3%) towards the SCI Collars of 100 MM and 75 MM provided for proper functioning of drainage system and the same is stated to be payable under Clause 12 of the Agreement.

225. Defendant in its written statement has denied this Claim and stated that:

A. The defendant has already paid the amount payable towards this work under item No. 11.5 to 11.12 of the Agreement and the amount as claimed is over and above the sum already paid.

B. Nothing more is due and payable because as per Special Condition No. 3.14 of the Agreement, the plaintiff was required to fix SCI collars required for fixing SCI pipes for free.

226. PW1 in his affidavit by way of evidence reiterated the averments of the plaint and provided the calculation of the claimed amount. No questions were put to PW1 in his cross examination with respect to this Claim.

227. The plaintiff has placed reliance on Clause 12 of the Agreement which provides for "alteration in specification and designs", without

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explaining how the Claim falls/is payable under the relevant Clause of the Agreement.

228. The plaintiff *qua* this sub-claim was required to lead evidence as to the costing of the SCI collars, in the absence of any evidence with respect to the same, this Claim cannot be allowed.

Claim No. 8: Overweight Steel

229. This Claim is premised on the basis that the steel of 6 mm to 12 mm size was supplied by the defendant and the same was payable on the basis of its actual weight. As per the plaintiff, the same was overweight and the payment for excess weight of steel so supplied is due and payable to the plaintiff.

230. On the other hand, the defendant has contended that the plaintiff has duly accepted bills from 1st bill to 30th bill without raising any protest regarding the issue of overweight steel, thereby implying that he had no grievance and the present Claim is only an afterthought.

231. Also, the defendant has contended that there is no record available at the site which could prove the fact of steel being overweight. Moreover, the payment of steel is covered within the permissible variations in terms of Clause 42-III of the Agreement.

232. PW1 in his affidavit by way of evidence reaffirmed the averments of the plaint and relied upon Steel Weighment Register (purportedly signed by officials of DDA) exhibited as Ex. PW1/88 (also marked as exhibit Ex. P10) to substantiate his submissions.

233. DW1 also in his affidavit by way of evidence reiterated the contents of written statement and maintained his consistent stand that all payments have been made as per the Agreement and the same has not been

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objected, hence, nothing more is payable. No questions were to him with respect to this Claim in cross-examination.

234. Plaintiff in this Claim has not explained or worked out the calculation of Rs. 1,50,000/- claimed towards the overweight steel supplied to it. He has arrived at the said amount without substantiating it with any supporting evidence, calculation sheet or explanation as to how the alleged excess weight translates into the claimed amount of Rs. 1,50,000/-.

235. Even if I were to agree with the contention of plaintiff regarding supply of overweight steel, the amount claimed to the tune of Rs. 1,50,000/- by the plaintiff cannot be accepted in absence of any evidence/explanation showing its computation.

236. Additionally, the computation of the amount claimed cannot be comprehended from a perusal of Steel weighment register (Ex. PW1/88, Ex. P10).

237. In my view, a mere assertion that certain overweight quantities were supplied, without properly quantifying the Claim either in the plaint or in affidavit by evidence, and without providing a calculation for the same supported by credible evidence, is insufficient to entitle the plaintiff to the claimed amount.

238. The plaintiff was required to establish with clarity:

A. The excess quantity supplied.

B. The rate on the basis of which the said Claim is calculated aggregating to Rs. 1,50,000/-.

239. Additionally, I find merit in the contention of the defendant that the plaintiff ought to have been objected/protested with respect to this issue

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of overweight steel to the duly paid bills which was not so done, thus, this argument of the plaintiff is nothing but an afterthought.

240. In absence of any precise quantification of this Claim, it also cannot be decided whether the variation was covered in terms of Clause 42 of the Agreement i.e., 3% or 2% plus/minus variation allowed in terms of the Agreement. Clause 42 of the Agreement reads as under:

> *"CLAUSE 42*
>
> *(i) The contractor shall see that only the required quantities of materials are got issued. Any such material remaining unused and in perfectly good condition at the time of completion or determination of the contract shall be returned to the Engineer-in-Charge at a place where directed by him, by a notice in writing under his hand, if he shall so require. Credit for such materials will begiven at the prevailing market rate not exceeding the amount charged from him excluding the element of storage charges @ ...% levied at the time of issue of materials to him. The contractor shall also not be entitled to cartage and incidental charges for returning the surplus materials from and to the above said stores.*
>
> *(ii) After completion of the work the theoratical quantity of cement to be used in work shall be calculated on the basis of statement showing quantity of cement to be used in different items of work, provided in Delhi Schedule of Rate, ... printed by the CPWD. In case any item is executed for which the standard constants for the consumption of cement*

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are not available in the above mentioned statement or cannot be derived from this statement, the same shall be calculated on the basis of standard formula to be laid down by the Superintending Engineer of the circle concerned. Over this theoretical quantity of cement, shall be allowed a variation upto 3% plus/minus for works estimated cost of which as put to tender is not more than Rs. 5 lacs and upto 2% plus minus for works the estimated cost of which put to tender is more than Rs. 5 lacs. The difference in the quantity of cement actually issued to the contractor and the theoretical quantity including authorised variation, if not returned by the contractor, shall be recovered at twice the issue rate, without prejudice to the provision of the relevant conditions regarding return of materials governing the contract. In the event of it being discovered that the quantity of cement used is less than the quantity ascertained as herein before provided (allowing variation) on the minus side as stipulated above), the cost of quantity of cement not so used, shall be recovered from the contractor on the basis of stipulated issue rates and cartage to site.

(iii) The provision of foregoing sub-clause shall apply mutatis-mutandis in the case of steel reinforcement of structural steel sections (each diameters/section or category shall be considered seperately) except that the theoretical quantity of the steel shall be taken as the quantity required as per design or as authorised by Engineer-in-Charge

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including authorised lampages plus 3% wastage due to cutting into pieces. Over this theoretical quantity 2% plus/minus shall be allowed as variation due to wastage being more or less."

241. The onus to prove this Claim lay on the plaintiff. In absence of any computation of the claimed amount substantiated with credible evidence, plaintiff has failed to discharge this onus. Accordingly, the Claim of the plaintiff cannot be adjudicated in his favour and is accordingly rejected.

Claim No. 9: Illegal Deductions for alleged deficiencies, Rs. 1,26,876/-

242. This Claim is based on the illegal deduction made by the Executive Engineer of the defendant. This deduction is illegal as there were no deficiencies and the entire work was executed as per specifications and under supervision of defendant.

243. It is the case of the defendant that the said deduction was made as per reduction item statement approved by the Superintending Engineer (SE) of the defendant in terms of Clause 25B of the Agreement. Clause 25B reads as under:

"CLAUSE 25B. The decision of superintending Engineer regarding the quantum of reduction as well as justification there of in respect of rates for sub standard work which may be decided to be accepted will be final and would not be open to arbitration"

244. PW1 in his affidavit by way of evidence only reiterated the averments of the plaint in verbatim and when he was put to cross examination he

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denied the allegation of deposing falsely and stated that the explanation of illegal deduction is a matter of record. The relevant paragraph of the cross-examination recorded on 13.01.2016 reads as under:

> *"It is wrong to suggest that I have deposed falsely to the effect that DDA has made illegal deductions wrt Claim no.9, as mentioned by me in the plaint. It is a matter of record if I have nor have not explained such illegal deductions in my claim or not. (Vol. If it is not written, it may be taken accordingly)."*

245. DW1 in addition to reiterating the submissions of written statement, maintained its stand that the entire amount is paid and accepted and nothing more is payable.

246. From a perusal of Clause 25B, it is clear that the Agreement contemplated to confer Superintending Engineer of the defendant with power to adjudge not only the quantum of reduction but also justification for the same with respect to sub-standard work. The decision of SE is also stated to be final and non-arbitrable.

247. Notably, plaintiff with respect to present Claim has failed to draw my attention to any specific document whereby this illegal deduction for alleged deficiency is explained. The amount claimed is also not substantiated by way of evidence.

248. The plaintiff has failed to show as to how the deductions made by SE of the defendant were incorrect/wrong and additionally, Clause 25B raises a presumption of finality attached with the decision of the SE. Even though the finality in terms of Clause 25B operates only for the purpose of arbitration, the same, to my mind, is also operational for the

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purpose of the present suit because there is no credible evidence placed on record by the plaintiff except for a mere assertion that there were no deficiencies, in order to dislodge the said presumption.

249. Accordingly, the present Claim with respect to illegal deductions for alleged deficiencies is rejected.

Claim No. 10: Refund of illegal withholding, Rs. 3,29,693/-.

250. By way of this Claim, the plaintiff is seeking refund of amount which is illegally withheld from payment of R.A. Bills for work done along with interest at the rate of 18% p.a. from the date of work being notified as complete.

251. It is the case of the plaintiff that certain amounts were withheld from the bills which were prepared and paid during the execution of the work. Such withholding after completion of work is illegal as the work was executed in terms of the Agreement and certificate to this effect is also recorded on the R.A. Bills.

252. On the other hand, defendant has raised this contention that all the R.A. Bills were duly accepted by the plaintiff without protest and all amounts are withheld in accordance with the provisions of the Agreement most of them being withheld on account of quality control and excess use of cement. The relevant portion of the written statement providing bill-wise remarks read as under:

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RA Bill No. withheld	Date	Amount (Rs.)	Remarks
4	27.11.93	36,412/	Released vide cheque no.337332 dated 4.12.93
20	2.5.95	60,000/-	Released vide Cheque No.2825586 dated 3.6.95
33	7.7.95	1,988.80	Panel recovery of cement consumption variation
24	29.9.95	10,000/-	Deduction against QC paras
25	2.11.95	25,000/-	On account of variation of cement consumption
26.	14.12.95	10,000/-	QC observations
27.	27.2.96	10,000/-	On A/c of excess consumption of cement
28.	30.3.96	95,899/-	Excess consumption of cement
30.	.2.97	79,738/-	Released

253. PW1 in his affidavit by way of evidence deposed exactly in a similar manner to the averments mentioned in the plaint. The bill-wise distribution of withheld amount reads as under:

"R.A. Bill No. withheld | *Date* | *Amount*

4 | *27.11.93* | *Rs. 36,412.00*

20 | *2.5.95* | *Rs. 60,000.00*

Rs. 1.988.00

22 | *7.7.95* | *Rs. 1.988.80*

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23	*19.8.95*	*Rs. 133.76*
24	*29.9.95*	*Rs. 10,000.00*
25	*2.11.95*	*Rs. 25,000.00*
26	*14.12.95*	*Rs. 10,000.00*
27.	*2.96*	*Rs. 10,000.00*
28.	*30.3.96*	*Rs. 95,899.00*
30	*2.97*	*Rs. 79,738.00*

		Rs. 3,29,693.00
		---

254. When PW1 was put to cross-examination on 13.01.2016, he stated that he cannot recollect if the defendant has paid the entire amount under Claim No. 10. PW1 also admitted that he accepted all the R.A. Bills and payments without any protest to the same. The relevant paragraph of the cross-examination reads as under:

> *"The constitution of JS Construction Company is sole proprietorship concern. It is wrong to suggest that no amount has been withheld by the DDA. I cannot recollect, but it is a matter of record that if the defendant has paid entire amount concerning claim no. 10, as mentioned by me in the plaint. It is correct that I have accepted all the running account bills / payments without any protest, as far as claim no. 10 is concerned. (Vol. It is practice that running account bills are given from time and nothing is final)."*

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255. DW1 only reiterated the averments of the written statement and stated that as the entire money payable is paid and duly accepted without any objections, nothing more is payable. No questions were put to him with respect to this Claim.

256. Notably, plaintiff has not addressed any arguments in the written arguments with respect to this Claim.

257. From a conspectus of the aforesaid, it is clear that amounts withheld *qua* 3 bills i.e., R.A. Bills bearing Nos. 4, 20, and 30 were released by the defendant to the plaintiff, rendering this Claim partly infructuous. The other bills are withheld on account of either excess use of cement or quality control.

258. The Plaintiff (PW1) in his cross examination duly admitted that he has not objected/protested to any of the R.A. Bills at the time of payment. In absence of any protest, this Claim for withholding of amounts is an afterthought. The plaintiff cannot argue the interim nature of R.A. Bills to protect this Claim as in any case nothing stopped the plaintiff from objecting/protesting to the withholding of the said amount.

259. At the cost of repetition from other portions of this judgment, the plaintiff *qua* this Claim also has only made a mere bald assertion that there were no deficiencies in the work executed by him. The plaintiff has also failed to specifically address the grounds on which the amounts are stated to be withheld by the defendant.

260. The onus of proof for this Claim lay on plaintiff not only to prove that an amount had been deducted but also that the deduction was unauthorised. In absence of any credible and cogent evidence, a mere assertion of the plaintiff cannot be accepted to award/decree this Claim

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in his favour. Plaintiff has not led any evidence to show that there were no deficiencies in the work executed by him. The present Claim is devoid of any credibility except assertions on part of the plaintiff, which cannot satisfy the standard of preponderance of probability in his favour.

261. The plaintiff ought to have challenged the bill-wise deductions with relevant measurements and evidences to specifically demonstrate that the deductions were unauthorised or extraneous to the scope of Agreement.

262. Accordingly, the Claim No. 10 with respect to refund of withheld amount of bills is rejected.

ISSUE NO. 3: Whether the plaintiff is entitled for the amount claimed in the suit or any other amounts? OPP

263. In view of the above, Claim No. 1 of the plaintiff is decided in his favour and the plaintiff is entitled to recovery of Rs. 41,77,809/- along with interest at the rate of 9 % per annum from the date of raising of the corrected final bill, i.e., 10.03.1999 till the date of actual payment.

264. All other Claims are decided against the plaintiff for the reasons as stated above.

RELIEF

265. For all the aforesaid reasons, the suit is partly decreed in favour of the plaintiff and he is entitled to recovery of an amount of Rs. 41,77,809/- towards Claim No. 1 for Payment of final bill, along with interest at the rate of 9% per annum to be calculated from 10.03.1999 till the date of actual payment.

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266. Accordingly, the suit is decided in the terms set out above. The parties shall bear their own costs of these proceedings. Pending applications, if any, stand disposed of.

267. Let a decree be drawn in terms of this judgment.

JASMEET SINGH, J

OCTOBER 28th, 2026/SS

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ANNEXURE

FORM 'A'

LIST OF WITNESSES

S. No.	Name of Witness	Whether witness of plaintiff or defendant
1.	Mr. Jai Singh (PW1)	Plaintiff
2.	Mr. Gaurav Dagar (PW2)	Plaintiff
3.	Mr. M.K. Gupta (DW1)	Defendant

LIST OF DOCUMENTS ON BEHALF OF THE PLAINTIFF

S. No.	Exhibit/Mark	Date of Exhibit	Description of Exhibit
1.	Ex. PW1/A	23.03.2012	Affidavit by way of evidence on behalf of PW1.
2.	Ex. PW2/A	23.03.2012	Affidavit by way of evidence of PW2.
3.	Ex. PW1/1 also exhibited as Ex. P1	11.03.2003	Contract Agreement dated 23.12.1992 bearing No. 47/EE/ED- IV pertaining to construction of 176, MIG House at Kondli, Group No. 9, Delhi, including abstract of cost in (bill of quantities)
4.	Ex. PW1/2	23.03.2012	Letter of acceptance dated 15.02.1992
5.	Ex. PW1/3, Ex. P2, Ex.	11.03.2003	Copy of measurement

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	1/84		book and completion certificate
6.	Ex. P3	11.03.2003	Application for Extension of time Part 1
7.	Ex. P4, P5 & P6	11.03.2003	Application for Extension of time Part 2
8.	Ex. PW1/87, Ex. P7, Ex. P8, Ex. P9.	11.03.2003	Reply of the Executive Engineer dated 25.06.1994 to letter of the plaintiff dated 20.06.1994.
9.	Ex. PW1/88, Ex. P10, Ex. P11	11.03.2003	Copy of steel weighment register
10.	Ex. P12	11.03.2003	Defendant's letter dated 09.08.1993.
11.	Ex. P13	11.03.2003	Defendant's letter dated 24.01.1994.
12.	Ex. PW1/85 (colly)	23.03.2012	Final bill dated 10.03.1999 issued by Plaintiff to Executive Engineer, ED-IV, DDA.
13.	Ex. PW1/86	23.03.2012	Letter dated 20.06.1994 issued by plaintiff to Executive Engineer, DDA.
14.	Ex. PW1/4	23.03.2012	Letter of the plaintiff dated 31.03.1993

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15.	Ex. PW1/5	23.03.2012	Letter of the plaintiff dated 05.04.1993
16.	Ex. PW1/6	23.03.2012	Letter of the plaintiff dated 23.04.1993
17.	Ex. PW1/6 (should have been exhibited as Ex. PW1/7)	23.03.2012	Letter of the plaintiff dated 15.06.1993
18.	Ex. PW1/8	23.03.2012	Letter of the plaintiff dated 28.07.1993
19.	Ex. PW1/9	23.03.2012	Letter of the plaintiff dated 27.09.1993
20.	Ex. PW1/10	23.03.2012	Letter of the plaintiff dated 07.12.1993
21.	Ex. PW1/11	23.03.2012	Letter of the plaintiff dated 17.01.1994
22.	Ex PW1/12	23.03.2012	Letter of the plaintiff dated 20.02.1994
23.	Ex. PW1/13	23.03.2012	Letter of the plaintiff dated 23.02.1994
24.	Ex. PW1/14	23.03.2012	Letter of the plaintiff dated 24.02.1994
25.	Ex. PW1/15	23.03.2012	Letter of the plaintiff dated 11.03.1994
26.	Ex. PW1/16	23.03.2012	Letter of the plaintiff dated 11.04.1994
27.	Ex. PW1/17	23.03.2012	Letter of the plaintiff

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			dated 06.05.1994
28.	Ex. PW1/18	23.03.2012	Letter of the plaintiff dated 19.05.1994
29.	Ex. PW1/19	23.03.2012	Letter of the plaintiff dated 28.05.1994
30.	Ex. PW1/20	23.03.2012	Letter of the plaintiff dated 01.06.1994
31.	Ex. PW1/21	23.03.2012	Letter of the plaintiff dated 19.06.1994
32.	Ex. PW1/22	23.03.2012	Letter of the plaintiff dated 20.06.1994
33.	Ex. PW1/23	23.03.2012	Letter of the plaintiff dated 11.07.1994
34.	Ex. PW1/24	23.03.2012	Letter of the plaintiff dated 14.07.1994
35.	Ex. PW1/25	23.03.2012	Letter of the plaintiff dated 09.08.1994
36.	Ex. PW1/26	23.03.2012	Letter of the plaintiff dated 21.10.1994
37.	Ex. PW1/27	23.03.2012	Letter of the plaintiff dated 29.11.1994
38.	Ex. PW1/28	23.03.2012	Letter of the plaintiff dated 17.06.1994
39.	Ex. PW1/29	23.03.2012	Letter of the plaintiff dated 18.06.1994

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40.	Ex. PW1/30	23.03.2012	Letter of the plaintiff dated 21.06.1994
41.	Ex. PW1/31	23.03.2012	Letter of the plaintiff dated 08.08.1994
42.	Ex. PW1/32	23.03.2012	Letter of the plaintiff dated 11.10.1994
43.	Ex. PW1/33	23.03.2012	Letter of the plaintiff dated 12.07.1994
44.	Ex. PW1/34	23.03.2012	Letter of the plaintiff dated 19.10.1994
45.	Ex. PW1/35	23.03.2012	Letter of the plaintiff dated 21.01.1995
46.	Ex. PW1/36	23.03.2012	Letter of the plaintiff dated 28.01.1995
47.	Ex. PW1/37	23.03.2012	Letter of the plaintiff dated 09.02.1995
48.	Ex. PW1/38	23.03.2012	Letter of the plaintiff dated 13.02.1995
49.	Ex. PW1/39	23.03.2012	Letter of the plaintiff dated 05.05.1995
50.	Ex. PW1/40	23.03.2012	Letter of the plaintiff dated 11.08.1995
51.	Ex. PW1/41	23.03.2012	Letter of the plaintiff dated 04.11.1995
52.	Ex. PW1/42	23.03.2012	Letter of the plaintiff dated 05.11.1995

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53.	Ex. PW1/43	23.03.2012	Letter of the plaintiff dated 26.04.1995
54.	Ex. PW1/44	23.03.2012	Letter of the plaintiff dated 20.02.1996
55.	Ex. PW1/45	23.03.2012	Letter of the plaintiff dated 26.02.1996
56.	Ex. PW1/46	23.03.2012	Letter of the plaintiff dated 17.05.1996
57.	Ex. PW1/47	23.03.2012	Letter of the plaintiff dated 13.07.1994
58.	Ex. PW1/48	23.03.2012	Letter of the plaintiff dated 14.07.1994
59.	Ex. PW1/49	23.03.2012	Letter of the plaintiff dated 10.08.1994
60.	Ex. PW1/50	23.03.2012	Letter of the plaintiff dated 05.09.1994
61.	Ex. PW1/51	23.03.2012	Letter of the plaintiff dated 20.10.1994
62.	Ex. PW1/52	23.03.2012	Letter of the plaintiff dated 26.12.1995
63.	Ex. PW1/53	23.03.2012	Letter of the plaintiff dated 15.05.1996
64.	Ex. PW1/54	23.03.2012	Letter of the plaintiff dated 16.05.1996
65.	Ex. PW1/55	23.03.2012	Letter of the plaintiff dated 20.05.1996

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66.	Ex. PW1/56	23.03.2012	Letter of the plaintiff dated 21.06.1996
67.	Ex. PW1/57	23.03.2012	Letter of the plaintiff dated 16.09.1996
68.	Ex. PW1/58	23.03.2012	Letter of the plaintiff dated 20.08.1997
69.	Ex. PW1/59	23.03.2012	Letter of the plaintiff dated 27.08.1997
70.	Ex. PW1/60	23.03.2012	Letter of the plaintiff dated 23.09.1997
71.	Ex. PW1/61	23.03.2012	Letter of the plaintiff dated 19.12.1997
72.	Ex. PW1/62	23.03.2012	Letter of the defendant dated 09.08.1993
73.	Ex. PW1/63	23.03.2012	Letter of the defendant dated 24.01.1994
74.	Ex. PW1/64	23.03.2012	Letter of the defendant dated 21.03.1994
75.	Ex. PW1/65	23.03.2012	Letter of the defendant dated 18.04.1994
76.	Ex. PW1/66	23.03.2012	Letter of the defendant dated 02.05.1994
77.	Ex. PW1/67	23.03.2012	Letter of the defendant dated 02.05.1994
78.	Ex. PW1/68	23.03.2012	Letter of the defendant dated 23.05.1994

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79.	Ex. PW1/69	23.03.2012	Letter of the defendant dated 06.06.1994
80.	Ex. PW1/70	23.03.2012	Letter of the defendant dated 15.06.1994
81.	Ex. PW1/71	23.03.2012	Letter of the defendant dated 29.09.1994
82.	Ex. PW1/72	23.03.2012	Letter of the defendant dated 02.11.1994
83.	Ex. PW1/73	23.03.2012	Letter of the defendant dated 23.05.1994
84.	Ex. PW1/74	23.03.2012	Letter of the defendant dated 08.02.1994
85.	Ex. PW1/75	23.03.2012	Letter of the defendant dated 10.03.1995
86.	Ex. PW1/76	23.03.2012	Letter of the defendant dated 01.03.1994
87.	Ex. PW1/77	23.03.2012	Letter of the defendant dated 02.07.1994
88.	Ex. PW1/78	23.03.2012	Letter of the defendant dated 17.01.1997
89.	Ex. PW1/79	23.03.2012	Letter of the defendant dated 17.01.1997
90.	Ex. PW1/80	23.03.2012	Letter of the defendant dated 15.12.1997
91.	Ex. PW1/81 (also exhibited as Ex.	23.03.2012	Letter of the defendant dated 02.12.1995

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	PW1/83)		
92.	Ex. PW1/89	11.09.2015	Notice dated 28.08.1999 issued by the plaintiff to the defendant.

LIST OF DOCUMENTS ON BEHALF OF THE DEFENDANT

1.	Ex. DW1/1	08.07.2016	Written Statement
2.	Ex. DW1/A	08.07.2016	Affidavit by way of evidence on behalf of DW1.
3.	Ex. DW1/2	08.07.2016	Letter of the defendant dated 02.12.1994.
4.	Ex. DW1/3	08.07.2016	13th R.A. Bill (10CC)
5.	Ex. DW1/4	08.07.2016	14th R.A. Bill (10CC)
6.	Ex. DW1/5	08.07.2016	15th R.A. Bill (10CC)
7.	Ex. DW1/6	08.07.2016	16th R.A. Bill (10CC)

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8.	Ex. DW1/7	08.07.2016	Notice Inviting Tender No. 23/F.O./EZ/99-2000.
9.	Ex. DW1/8	08.07.2016	Award Letter No. F.11.(226) ED-4/DDA/ 2000-2001/749 dated 12.05.2000.

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