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

% **Date of decision: 04.05.2026**

\+ O.M.P. (COMM) 481/2018

M/S RICHA CONSTRUCTION CO. .....Petitioner

Through: Ms. Madhumita Bhattacharjee & Mr. Keshav Bansal, Advs.

versus

M/S N.B.C.C. (I) LTD. .....Respondent

Through: Ms. Kanika Singh, Adv.

\+ O.M.P. (COMM) 355/2019

NBCC INDIA LTD. .....Petitioner

Through: Ms. Kanika Singh, Adv.

versus

RICHA CONSTRUCTION LTD. .....Respondent

Through: Ms. Madhumita Bhattacharjee & Mr. Keshav Bansal, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE AVNEESH JHINGAN**

**AVNEESH JHINGAN, J. (ORAL)**

1. These two petitions are filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the award dated 28.06.2018.

2. The brief facts are that the Naval Dockyard, Mumbai awarded a contract for construction of technical buildings for central machine shop at Naval Dockyard, Mumbai to the respondent/ National Building Construction Corporation Limited (for short 'NBCC') for an

amount of Rs.5,96,37,170/-. The NBCC invited bids for sub-contracting the work awarded. The bid of the petitioner- M/s Richa Construction Company (for brevity 'RCC') was accepted and on 09.09.1999, the letter of intent awarding the contract at Rs.5,54,60,367/-. was issued. The work was to be completed by 08.07.2001 i.e., within twenty-two months but was actually completed on 22.11.2002. RCC wrote letters dated 06.06.2004 and 20.06.2005 for release of the final payments and amount of Rs.6,27,79,826/- was received on 31.03.2007. *Vide* communication dated 23.07.2007, RCC raised an issue of wrong deduction of the Work Contract Tax (for short 'WC Tax') and by letter dated 13.08.2007 sought payment of Rs.12,00,000/- for extra work done. The clause 14 of the agreement provided for dispute resolution through arbitration. NBCC appointed the sole arbitrator on 26.04.2011, the arbitrators were substituted and the present arbitrator was appointed by the NBCC on 23.12.2016. The proceedings culminated in the impugned award. Two preliminary objections, claim raised was beyond the period of limitation and beyond the jurisdiction of the tribunal were decided against the NBCC. The RCC made twelve claims. The claims and the outcome is tabulated below:

| Claim No. | Amount of revised claim In Rupees | Amount awarded In Rupees |
|---|---|---|
| Claim No. 1: Sum of Rs.5,00,000/- (revised to Rx 38,34,100/-) towards balance payment in the final bill. | 38,34,102/- | 2,00,269/- |
| Claim No. 1-A: Claim towards interest on Security Deposit amount of | 15,71,348/- | 1,35,715/- |

| | | |
|---|---|---|
| Re.14,38,322/-i.e. Rs.15,71,348/- | | |
| Claim No.2: Rebate on deviation-Amount 8,00,000/- | 8,00,000/- | Rejected |
| Claim No.3 Refund of WC Tax-Amount 11,50,000/-. | 11,50,351/- | Rejected |
| Claim No.4: Refund of Withheld amount-Rs. 10,00,000/- revised to Rs.31,06,516/-). | 31,06,516/- | Rejected |
| Claim No.5: Deviation Order-Amount Rs. 11,70,000/- | 11,70,000/- | Rejected |
| Claim No.6: Deposit amount forfeited for order of the Steel Window Amount Rs.1,25,000/-. | 1,25,000/- | Rejected |
| Claim No.7: Underutilization of Labour Force- Amount Rs.78,91,152/- | 74,34,360/- | 8,90,573/- |
| Claim No.8: Underutilization of Machinery-Amount Rs.19,72,784.24 | 18,99,120/- | Rejected |
| Claim No.9: Underutilization of Overheads-Amount Rs.39,45,568/- | 37,98,240/- | 4,00,758/- |
| Claim No.10: Underutilization of Shuttering & Centring-Amount Rs. 15,78,230.48 | 19,45,440/- | Rejected |
| Claim No.11: Interest @ 24% p.a. on the claimed amount from 20.11.2002. | Interest @ 24% p.a. | Interest awarded as explained against discussion on claim No.11 |
| Claim No.12: Cost Rs.5,00,000/- | 8,32,675/- | 3,00,000/- |
| Total | 2,76,67,152/- plus interest | 19,27,315/- plus interest |

3. Learned counsel for the RCC argues that the arbitrator without appreciating the contentions and considering the evidence on record erred in holding that the RCC had agreed to a further rebate of 1.35% on the initial bid. It is contended that the case set up that the tampering is writ large in the document relied upon to prove that the further rebate of 1.35% was agreed is not dealt by the arbitrator.

3.1 The grievance is that the security deposit for the project was not refunded upon completion of the work and was unilaterally adjusted towards another project thereby entitling the RCC to interest on the security deposit.

3.2 The submission is that the arbitrator erred in not considering trade circular dated 14.03.2000 (Document-34) to the effect that WC tax is not to be deducted from the sub-contractor.

3.3 The contention is that claim for refund of Rs. 1,25,000/- paid for procurement of steel windows, which were not supplied due to a subsequent change in decision of getting to aluminium windows instead of iron and steel was wrongly rejected.

3.4 Lastly, it is pleaded that the arbitrator erred in awarding partial amounts awarded towards claims for underutilization of labour, overheads, and centering and shuttering.

4. *Per contra,* the claim nos. 7 & 9 have been illegally allowed in absence of evidence of actual loss suffered or a case being set up that it was not possible to prove the actual loss. The submission is that the arbitrator departed from the settled principles under Section 73 of the Indian Contract Act, 1872 (for short 'the Contract Act') and instead relied upon personal knowledge and experience to compute the amounts.

4.1 The contention is that even delay attributable to the NBCC was not proved but, on sheer guesswork the arbitrator attributed sixty percent of delay to NBCC.

4.2 It is argued that the claim for balance payment of the final bill was wrongly allowed despite the RCC having failed to submit the final bill. The grievance is that the arbitrator instead of relying on the evidence on record to quantify the balance amount payable, if any devised its own method of quantification that to without confronting it to the NBCC and giving a reasonable opportunity to object to it.

4.3 It is canvassed that the claims raised by the RCC were barred by limitation and that this objection was not adjudicated in accordance with law.

4.4 Lastly, the award is defended to the extent the claims of the RCC were rejected and only partially allowed.

5. The claim nos. 1 & 2 before the arbitrator pertaining to payment of the balance amount of the final bill and rebate for deviation respectively, are intrinsically linked. RCC objected that no further rebate of 1.35% was agreed to, rather NBCC relied on forged/tampered letter dated 03.08.1999 by inserting '1' before '0.35' percent. The original document remained in possession of NBCC and was not produced during the arbitral proceedings. RCC relied upon Exhibit C-2, C-6 & C-9 wherein the RCC agitated the issue of rebate of 1.35% whereas NBCC denied receipt of the the exhibits relied upon by RCC stating them to be forged letters.

6. The arbitrator without discussing the issues or appreciating the evidence on record accepted the case set up by NBCC that RCC gave further rebate of 1.35%. The conclusion for claim no. 2 reflects absence of proper reasoning and is reproduced below:

> "The contention of the Respondent is correct as per the record filed before the AT and as such, the claim of the Claimant is unjustified. Accordingly, I reject the same."

7. Section 31(3) of the Act mandates a reasoned award. The law is well settled that the requirement of Section 31(3) of the Act is not a mere formality. The reasoning in an appropriate case can be implied upon a fair reading of the award and the documents referred to therein. Reference is to the decision of the Supreme Court in **Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.** (2019) 20 SCC 1 wherein it was held as under:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute."

8.1 In **Som Datt Builders Ltd. v. State of Kerala (2009) 10 SCC 259** it was held as follows:

> "25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give......"
>
> (emphasis supplied)

8. The issue striking at the root of all the claims made is, what was the bid amount quoted by the RCC but this was dealt with in a shoddy manner. This very issue has a fall out on the claim made by the RCC

for payment of the balance amount due of the final payment. The arbitrator without considering that whether the bid of RCC vis-a-vis NBCC was less by 7% or 5.73% inspite of taking note of the fact that the final bill was not issued by RCC, proceeded to compute the payable amount by reducing 7% from the amount received by the NBCC.

9. The claims of underutilization of labour force, overheads and shuttering, were allowed without adducing proof of actual loss by the RCC and without establishing a case that it was not possible to prove the actual loss suffered. The damages awarded are contrary to the settled principles as per Section 73 of the Contract Act.

10.1 The Supreme Court in ***Unibros v. All India Radio***, 2023 SCC OnLine SC 1366 opined that for claiming damages under Section 73 of the Contract Act actual loss has to be proved. The relevant paragraph of ***Unibros v. All India Radio*** (supra) is as under:

> "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."
>
> (emphasis supplied)

10. Before proceeding further it would be relevant to reproduce the pleadings in the statement of claims vis-a-viz these two claims.

**"Claim No.7 Underutilization of Labourforce**

Claimant mobilized adequate labour force for completion of contracted work within the contracted period of completion. Completion of work prolonged for no any fault on part of Claimant. Claimant suffered financial loss of Rs. 78,91,152.40 on this account. Claimant need not have suffered said financial loss, if Claimant would have been allowed to complete the work unhindered within contracted period of completion. Claimant is entitled to be compensated on this account. Claimant, therefore, claims Rs.78,91,152.40 from respondent on this account and prays the Hon'ble Sole Arbitrator to be pleased to Award Rs. 78,91,152.40 payable to the Claimant by the Respondent.

**Claim No.9 Underutilization of Overheads**

Claimant engaged adequate staff for home supervision of contracted work within the contracted period of completion. Completion of work prolonged for no any fault on part of Claimant. Claimant suffered financial loss Rs. 39,45;568.00 on this account Claimant need not have suffered said financial loss, if he would have been allowed to complete the work unhindered within contracted period of completion. Claimant is entitled to be compensated on this account. Claimant, therefore, claims Rs.39,45,568.00 from Respondent on this account and prays the Hon'ble Sole Arbitrator to be pleased to Award Rs. 39,45,568.00 payable to the Claimant by the Respondent."

11. The RCC had neither adduced evidence to substantiate the actual loss suffered nor pleaded that the actual loss cannot be proved. The arbitrator despite of the settled legal position for awarding damages under Section 73 of the Contract Act and the law laid down by the Supreme Court, awarded damages based on personal

knowledge and experience. The claim awarded is against the provisions of the Contract Act, and is violative of statutory provisions.

12. In view of the above discussion, the award is in the teeth of Section 31(3) and Section 28(3) of the Act and is against public policy, consequently is set aside.

13. The other issues raised to challenge the award need not be gone into.

14. The petitions are allowed. The impugned award is set aside.

15. The parties shall be at liberty to avail fresh arbitration in accordance with law.

**AVNEESH JHINGAN, J**

**MAY 04, 2026/** ***'JK'***

Reportable:- **Yes**