



2026:DHC:72



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment reserved on: 23.09.2025**Judgment pronounced on: 06.01.2026*+ **O.M.P. (COMM) 9/2017**

SJVN LTD

.....Petitioner

Through: Mr. Uttam Datt Sr. Advocate with
Ms. Sonakshi Singh Adv., Mr. Kumar
Bhaskar Adv.

versus

PATEL GAMMON JOINT VENTURE

.....Respondent

Through: Mr. SK Chandwani, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH**J U D G M E N T**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking to partially set aside the Arbitral Award dated 01.09.2016 passed in the arbitration proceedings titled as "*Patel Gammon Joint Venture (PGJV) vs. SJVN Limited (SJVN)*", only to the extent of Claim No. 4, which was allowed in favour of the respondent.



FACTUAL BACKGROUND

2. The petitioner i.e., M/s SJVN Ltd., a Central Public Sector Enterprise, is a joint venture of Government of India and Government of Himachal Pradesh. It is engaged in the business of electricity generation and owns and operates hydroelectric power stations in the country.
3. The respondent i.e., M/s Patel Gammon Joint Venture, is a joint venture consortium of Patel Engineering Ltd. and Gammon India Ltd.
4. The petitioner awarded the respondent a Contract dated 15.03.2007 (“**Contract**”), wherein the respondent had to undertake civil construction works at petitioner’s 412 MW hydroelectric power project at Rampur, Himachal Pradesh, on river Satluj (“**project**”).
5. The General Conditions of Contract (“**GCC**”) forms part of the Contract and contains an arbitration clause being Clause No. 20.6, which reads as under:-

“20.6 Arbitration

Unless settled amicably, any dispute in respect of which the DB's decision/ recommendations (if any) has not been accepted by either party and notice giving intention to commence Arbitration has been served under sub-clause 20.4, shall be finally settled (subject to further rights conferred upon under the law) by Arbitration as per Indian Arbitration and Conciliation Act 1996 in case of disputes between the Employer and a domestic Contractor, and



under the rules of arbitration of the International Chamber of Commerce in case of disputes between the Employer and a foreign Contractor, subject to following :

(a) Dispute shall be settled by three arbitrators, one each to nominated by the parties and third one to be appointed by the Secretary (Power), Ministry of Power, Government of India in case of disputes between the Employer and a domestic Contractor, whereas, in case of dispute between the employer and a foreign contractor, the third arbitrator shall be appointed by the International Chamber of Commerce. The definition of domestic bidders and foreign bidders shall be as defined in the World Bank guidelines (latest addition)

(b) The venue of arbitration shall be either Shimla or Delhi or Project site only.”

6. The work was an item rate contract and was awarded at BOQ rates. Technical Specifications formed part of the Contract, and laid down all the technical details of the works i.e., how and what work is to be executed and how work done will be measured and paid.
7. The work under the Contract was divided into two components i.e., package 1.0 and package 2.0. The present petition is only pertaining to package 1.0 work, which pertains to “construction of civil works Head Race Tunnel (“**HRT**”) Sta 50.61 m to Sta 12900 m, including cut and cover section, river diversion works, adits, vehicular gates etc” and involved works of construction of HRT, through which the river is



diverted. This involved extensive excavation works.

8. On 25.03.2007, the respondent began with the excavation work. In RA Bill No. 22, in April 2008, the respondent claimed haulage beyond 1 km for overbreak material for the first time, but the petitioner refused to pay the same. Consequently, the parties discussed the said issue in the half yearly contract review meeting on 31.07.2009 and the petitioner agreed and paid the haulage for overbreak from RA Bill No. 23 to RA Bill No. 44 purely on adhoc basis. However, from RA Bill No. 45 the petitioner stopped such payment and informed the respondent that the same was not payable under the Contract and also recovered the haulage paid to the respondent in the previous RA Bills. The petitioner *vide* letter dated 17.11.2011 rejected the claim of the respondent for haulage.
9. Subsequently, the respondent, filed its claim before the Dispute Board and the Dispute Board *vide* its decision dated 31.10.2012, recommended the claim in favour of the respondent. However, the petitioner rejected Dispute Board's recommendations.
10. The respondent initiated arbitration, and the Arbitral Tribunal was duly constituted and two claims were raised before the Arbitral Tribunal, namely Claim No. 3 and Claim No. 4. Under Claim No. 4 followings issues were framed by the Arbitral Tribunal:-

“7.0 Framing of Issues

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Claim No.4



5. *Whether the Claimant is entitled to Claim No.4 towards haulage of excavated materials for every km beyond 1 km from the portal, as per BOQ rate based on in-situ volume of excavated material beyond pay line except approved over break?*
6. *Whether the Claimant is entitled to payment of hydro allowance and escalation on the claim amount in respect of Claim No.4?*
7. *Whether the Claimant is entitled to payment of interest on claim amount in respect of Claim No. 4, if so, at what rate and for which period?"*
11. The Arbitral Tribunal passed the Arbitral Award, wherein the Arbitral Tribunal has unanimously rejected Claim No. 3 of the respondent and majority view allowed Claim No. 4 in favour of the respondent and third member of the Tribunal has passed a dissenting award rejecting the Claim No. 4 of the respondent.
12. Hence, the petitioner has filed the present petition, partially challenging the Arbitral Award, to the extent of only Claim No. 4 allowed in favour of the respondent.

SUBMISSIONS ON BEHALF OF THE PETITIONER

13. Mr. Datt, learned senior counsel for the petitioner submits that this Court has the territorial jurisdiction to adjudicate the present petition. It is stated that as per Clause No. 20.6 of the GCC (as amended), the venue of arbitration is Shimla or Delhi or project site (Rampur, Himachal Pradesh) and there is no specific reference to seat.



Admittedly, the entire arbitral proceedings took place and was concluded in Delhi, including the passing of the Award. Hence, the seat of the arbitration will be Delhi.

14. It is further submitted that although in sub-clause No. 1.4 of the Particular Conditions of the Contract states that the Courts at Himachal Pradesh shall have exclusive jurisdiction over the matters arising out of this contract, however, it is distinct from and external to the arbitration clause and cannot govern arbitral disputes. It applies only to non-arbitral disputes, if any, thereby conferring jurisdiction upon the Courts in Himachal Pradesh. In respect of arbitral disputes, jurisdiction shall vest in the Courts at the seat of arbitration, i.e., Delhi.
15. The learned senior counsel for the petitioner has heavily relied upon ***BGS SGS SOMA JV v. NHPC***¹, to assert that where there is no contractually fixed seat of arbitration, the venue may be treated as the seat and such Courts shall have territorial jurisdiction in relation to the arbitration. Further while referring to ***Precitech Enclosures Systems (P) Ltd. v. Rudrapur Precision Industries***² and ***Viva Infraventure (P) Ltd. v. New Okhla Industrial Development Authority***³ it has been stated that in these cases the Court was dealing with peculiar clause wherein the exclusive jurisdiction was built in the arbitration clause, and was not as a separate clause outside of the arbitration clause in the contract, as is in the present case.

¹ (2020) 4 SCC 234.

² 2025 SCC OnLine Del 1609.

³ 2025 SCC OnLine Del 4684.



16. On merits, he submits that the majority view exceeded its jurisdiction, by awarding Claim No. 4 in favour of the respondent, contrary to specific provisions of the Contract and provisions of the Technical Specifications and decided the claim based on its own “logical and reasonable” view, instead of the contract provisions. Hence, it is submitted that the impugned portion of the Award i.e., Claim No. 4 is contrary to Section 28(3) of the 1996 Act, as the contract provisions have been deliberately ignored and is therefore patently illegal and liable to be set aside.
17. It is submitted that Clause No. 6.4(vii) of the Technical Specification prohibits measurement of overbreak for payment and as per Clause No. 6.5(ii)(e) of the Technical Specification, contractor is obliged to remove the excavated material from overbreak at no extra cost to the petitioner. It is further stated that in terms of Clause No. 6.5(ii)(a) of Technical Specification overbreak is neither measured nor paid for, except defined cavities. Hence, the respondent was obliged to remove the debris from such over break at its own cost.
18. It is further submitted that as far as the overbreak is concerned the Contract provided no distinction between haulage beyond 1 km and within 1 km. The overbreak was to be neither measured nor paid for, therefore haulage for such overbreak debris is not payable. In view of the same, the respondent’s reliance on BOQ to claim that BOQ permits haulage beyond 1 km even for overbreak is untenable, as there is no such prescription in the BOQ.
19. It is submitted that the measurement and payment work is provided in



the Technical Specification, and not in BOQ. The BOQ only provided rate at which haulage beyond 1 km was to be measured and paid and does not say that haulage for overbreak will be paid. Technical Specification strictly prohibits payment for overbreak.

20. It is submitted that the majority view erred in observing that restricting haulage to payline was unfair, it had no jurisdiction to comment that any provision of the Contract was unfair, especially when the same was not challenged by the respondent.
21. It is submitted that the BOQ items 1.4 and 2.1.4 provides for quantities of debris for which payment was supposed to be made and the quantities mentioned in the BOQ did not include overbreak. Hence, the reference to additional distance beyond 1 km in the said description of work in the BOQ item does not include overbreak quantities and hence, these BOQ items cannot be invoked for claiming haulage for overbreak excavations.
22. It is submitted that the majority view by introducing a term for payment of haulage beyond 1 km for overbreak, despite there being no such provision, has re-written the terms of the Contract. By reading BOQ in isolation from the provisions of the Technical Specifications, BOQ has been applied in a non-judicious manner and such an approach is impermissible in law. Reliance is placed on ***OPG Power Generation Pvt. Ltd. v. Enxio Power Cooling Solutions India Pvt. Ltd.***⁴.
23. Further, the respondent being conscious that no payment for

⁴ (2025) 2 SCC 417.



excavation or haulage could be claimed for overbreak at all, did not make a claim for overbreak haulage for a distance up to 1 km, which admittedly was neither measured nor paid to the respondent. It is further submitted that the fact that the petitioner paid the claim raised by the respondent in RA Bills 23 to 44 does not justify respondent's claim, which otherwise is not payable as per the Contract. Further, in terms of Clause No. 14.6 of the GCC, the petitioner rectified the payments errors in previous RA Bills, and recovered same.

24. Lastly, it is submitted that after the conclusion of the hearings, the Arbitral Tribunal reserved its Award. However, before the Award was delivered, the respondent filed an application seeking to file additional documents, to quantify its claim on haulage and sought to produce cross section drawings of the excavation, which it claimed was verified by the petitioner. The Arbitral Tribunal allowed the application and directed the petitioner to reconcile the cross sections provided by the respondent, without seeking a written reply from the petitioner and recorded that no oral submissions will be allowed to be made by either party. Petitioner filed its objection and showed its inability to reconcile the cross-sections as it had no data from which it could do the reconciliation. However, the Arbitral Tribunal, *vide* its order dated 16.05.2016 rejected the objection of the petitioner and reiterated its direction for reconciliation of the cross sections. In deference to the direction of the Arbitral Tribunal, the petitioner filed its reconciliation report, wherein it stated that no quantification of overbreak quantity was available with the petitioner. It is submitted



that the Arbitral tribunal not only allowed the claim of the respondent, but also relied upon the unverified cross sections submitted by the respondent as evidence of quantification of its claim.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

25. At the outset, Mr. Chandwani, learned counsel for the respondent submits that the present petition is not maintainable due to lack of jurisdiction, as the Contract provides exclusive jurisdiction to the Courts in Himachal Pradesh.
26. It is submitted that the Particular Conditions of the Contract (Section VIII) supplements the GCC and provides that, in case of conflict or inconsistency, Particular Conditions of the Contract shall prevail. Sub-Clause 1.4 of the Particular Conditions of the Contract i.e., ‘Governing Law’ clearly states “*Indian Law (Appropriate Courts in the State of Himachal Pradesh only shall have exclusive jurisdiction over matters arising out of this Contract)*”.
27. It is further submitted that neither party has an office in Delhi, nor did any cause of action arise in Delhi. Further, the Contract was executed in Shimla, and the project site is in Himachal Pradesh. Even the Arbitral Award was communicated to the parties at Shimla and Noida. Hence, it the parties have contractually chosen Himachal Pradesh as the appropriate the Court, since the work was to be executed in the State of Himachal Pradesh. Thus, the petitioner cannot bypass this stipulation by filing the present petition before this Court merely because arbitral hearings were conducted in Delhi. The learned counsel for the respondent to buttress his contention has placed



reliance on *Hakam Singh v. Gammon (India) Ltd.*⁵, and *Swastik Gases v. Indian Oil Corp.*⁶.

28. It is submitted that Clause No. 20.6 of the GCC (as reproduced above) and more particularly in sub-clause (b) provides for three possible venues for hearings i.e., Shimla, Delhi, or the Project Site (Rampur), but these relate solely to convenience and logistics. The Contract does not define Delhi as the seat of arbitration or alter the exclusive jurisdiction clause. Reliance is placed on *M/s Ravi Rajan Developers Pvt. Ltd. v. Aditya Kumar Chatterjee*⁷ and *Precitech Enclosure Systems (supra)*, to assert that a specified venue for arbitral sittings does not confer jurisdiction upon the Courts of that place nor does it determine the seat of arbitration.
29. On merits, Mr. Chandwani, learned counsel for the respondent submits that under Section 34 of the 1996 Act there is limited scope of challenge to an Arbitral Award and once the Arbitral Tribunal has applied their mind to the pleadings of the parties and the evidence adduced before them, the Court is not to sit as a Court of Appeal over the decision of the Arbitral Tribunal and examine merits of the Award. Thereby, it is stated that whether the Claim No.4 of the respondent was valid and justified under the Contract, was a decision within the domain of the Arbitral Tribunal, which was rightly decided by the majority view after careful consideration of the pleadings, provisions of the Contract and evidence.

⁵ (1971) 1 SCC 286.

⁶ (2013) 9 SCC 32.

⁷ 2022 SCC Online SC 568.



- 30.** It is submitted that during execution of work, the parties themselves construed the provisions of the Contract, including the provisions contained in Technical Specifications and came to a conclusion that the payment in respect for haulage of excavated materials for every additional Km beyond 1 Km based on in-situ volume of actually excavated material as per certified sections is payable by the petitioner to the respondent. Accordingly, from 23rd RA Bill till 44th RA Bill, the amount for such work was paid to the respondent. However, since the 45th RA Bill, the petitioner unilaterally and arbitrarily recovered the entire amount paid for such work. Thus, the respondent referred the disputes to the Dispute Board and the Dispute Board, after hearing the parties and construing the provisions of the Contract, came to a finding that the respondent is entitled to get payment for haulage of excavated materials based on in-situ volume of excavated material from the tunnel excavation beyond pay line.
- 31.** It is submitted that the Arbitral Tribunal permitted the respondent to place cross-section records on record for quantification, through specific Orders and also examined the petitioner's reconciliation reports on record and thereafter, rejected petitioner's objection that reconciliation was not possible. Such procedural decisions fall within the discretion of the Arbitral Tribunal and it is a settled principle that mere dissatisfaction with the procedural discretion of Arbitral Tribunal does not amount to a denial of natural justice.
- 32.** Similarly, the majority view after constructing the relevant provisions of the Contract came to the conclusion that the respondent is entitled



for payment in respect of its Claim No.4. Hence, it is submitted that the decision of majority view is just and valid in terms of the Contract and in law. It is submitted that the contentions raised by the petitioner in the petition were also raised before the Arbitral Tribunal and the same have been effectually and properly discussed and dealt with in the majority Award. The findings of the majority view on Claim No. 4 is well reasoned and are supported by sufficient and cogent reasons.

33. It is submitted that it is within the jurisdiction of the Arbitral Tribunal to interpret the Contract and once there is no dispute as to the Contract, the interpretation of that contract is for the Arbitral Tribunal to do, on which the Court would not substitute its own interpretation. Hence, it is contended that the Award under Claim No. 4 by the majority view is based upon interpretation of the Contract, which has rightly been interpreted and hence, needs no interference.

ANALYSIS AND FINDINGS

34. I have heard learned counsels for the parties and perused the material available on record including the judgments cited.
35. Since the present petition is pending since the year 2017, I am proceedings to decide the petition on merits first.
36. The Court under Section 34 of the 1996 Act has very limited and narrow scope of interference in a challenge to an Arbitral Award. Most recently, the Hon'ble Supreme Court in ***Ramesh Kumar Jain v. Bharat Aluminium Co. Ltd.***⁸, while laying down the scope of interference under Section 34 and 37 of the 1996 Act observed as

⁸ 2025 SCC OnLine SC 2857.



under:-

“28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited, this court held that an award can be set aside under Section 34 on the following grounds: “(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal.”

29. Hence, it is very well settled that arbitral awards are not liable to be set aside merely on the ground of erroneous



in law or alleged misappreciation of evidence and there is a threshold that the party seeking for the award to be set aside has to satisfy, before the judicial body could enter into the realm of exercising its power under section(s) 34 & 37. It is also apt and appropriate to note that re-assessment or re-appreciation of evidence lies outside the contours of judicial review under section(s) 34 and 37. This court in Punjab State Civil Supplies Corporation Limited v. Sanman Rice Mills, at Paragraph 12 observed that even when the arbitral awards may appear to be unreasonable and non-speaking that by itself would not warrant the courts to interfere with the award unless that unreasonableness has harmed the public policy or fundamental policy of Indian law. It might be a possibility that on re-appreciation of evidence, the courts may take another view which may be even more plausible but that also does not leave scope for the courts to reappraise the evidence and arrive at a different view. This court in Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited held that the arbitrator is generally considered as ultimate master of quality and quantity of evidence. Even an award which is based on little or no evidence would not be held to be invalid on this score. At times, the decisions are taken by the arbitrator acting on equity and such decisions can be just and fair therefore award should not be overridden



under section 34 and 37 of the A&C Act on the ground that the approach of the arbitrator was arbitrary or capricious.”

(Emphasis added)

37. A bare perusal of the paragraphs reproduced above show that under the 1996 Act the Court does not sit in appeal over an Arbitral Award or re-appreciates the evidence. The Court is not to reassess the factual findings or substitute its own views with those arrived at by the Arbitral Tribunal and can only set aside an Arbitral Award under the limited grounds expressly provided in Section 34 of the 1996 Act or when the Arbitral Award is contrary to terms of the contract or provisions of the law.
38. Furthermore, in ***Ramesh Kumar Jain (supra)***, the Hon’ble Supreme Court also expounded what amounts to “patent illegality”, which is one of the primary ground taken by the petitioner to set aside the impugned Award, and observed as under:-

“34. Thereafter, this court elucidated the meaning of the expression ‘patent illegality’ in Ssangyong Engg. & Construction Co. Ltd. v. NHAI while taking into consideration the amendment act of 2015 and held it as a glaring, evident illegality that goes to the root of the award. This includes : (a) an award deciding matters outside the scope of the arbitration (beyond the contract or submission); (b) an award contradicting the substantive law of India or the Arbitration Act itself; (c) an award against



the terms of the contract; and (d) an award so unreasoned or irrational that it manifests an error on its face.

35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts.....

36.It is a fundamental principle that the arbitrator cannot award anything that is contrary to the contract. The arbitrator is bound by clear stipulations inter se the parties, and an award ignoring such stipulations would violate public policy by undermining freedom of contract. However, that does not mean that not every award which gives a benefit not expressly mentioned in the contract is in violation. The arbitral tribunal in exercise of their power can very well interpret the implied terms or fill gaps where the contract is silent, so long as doing so does not contradict any express term. Similarly, if a contract does not say either way about compensating extra work done at request, the arbitrator can imply a term or use principles of restitution to award a reasonable sum, without



violating the terms of contract. The thin line is whether an express prohibition or restrictions in the contract is breached by the award? If the answer is in affirmative, the award is liable to struck down. However, where the contract is simply silent on a legitimate claim which is inherently linked to the natural corollary of contractual obligation of the parties the arbitrator will be well within his powers to interpret the contract in the light of principles of the contractual jurisprudence and apply the equity to that situation. A contrary interpretation would lead to opening a floodgate whereby a party who may have dominant position would intentionally not ink down the natural obligation flowing from the contract and subsequently; after obtaining the benefit the party would agitate absence of express terms to sway away from even discharging his alternative obligation of compensating the party at loss. Hence the question which arises in such situations is, can the party who bears the brunt and suffers the loss due to silence under the contract regarding the natural contractual obligation which arises in usual course of business be left in limbo? In our view, that is the very purpose why section 70 of the Contract Act, 1872, has been an intrinsic part of our Contract Act. The said provision creates a statutory right independent of contract, often



termed quantum meruit or unjust enrichment remedy.....”

39. With said principles in mind, I shall now proceed to consider the rival contentions raised by both the parties.
40. Before proceeding further, it is pertinent to refer to the relevant clauses from the Technical Specifications of the Contract. The same are extracted below:-

“6.4 Excavation Lines and Tolerances

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ii) The pay line as shown on the drawings, is the line beyond minimum excavation line, at which the payment for excavation will be made, even if the actual excavation is between the minimum excavation line and the pay line. Unless specifically mentioned otherwise, the pay line for tunnel shall be taken as 150 mm beyond the minimum excavation line.

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vii) The Contractor is required to perform the excavation works in such a way that the final excavation surface is located between the pay line and the minimum excavation line. No over-break or concrete beyond the pay line will be measured for payment.

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6.5 Overbreak/Cavities

i) Excavation beyond the pay line is defined as over break.



ii) Cavity in underground excavation is defined as a locally (not uniformly distributed along the section) originated over break of large magnitude which is caused by occurrence of adverse geological feature beyond control of Contractor while each of the following four conditions are simultaneously fulfilled:

(a) Cavity extends 2m beyond the pay line measured from the deepest point of the cavity and its volume exceeds 5 cum.

(b) The cavity occurs above the invert of the tunnel or other underground structures

(c) The Engineer is immediately informed and given an opportunity for inspection while both the cause and the extent of the cavity are clearly visible.

(d) It did not occur while, in the opinion of the Engineer, the Contractor was using improper working methods or was otherwise negligent, and could not have been prevented by prompt and appropriate installation of supports.

(e) If for any reason excavation is carried out beyond the payline the contractor shall remove the excess material at no cost liability to SJVN.

(iii) The voids created by overbreak extending beyond the minimum excavation line shall be filled-up alongwith final concrete lining.



(v) *If for any reason except at the location of cavity excavation is carried out beyond the pay line the Contractor shall remove the excess material and backfill the voids as described above with M-10 concrete or alongwith final concrete lining, at his own cost.*

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6.19 Measurements and Payments

6.19.1 General

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ii) The Lump Sum and Unit Rates, if not specifically stipulated otherwise, shall be deemed to include the entire cost of, but not be limited to, the following:

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b) Provisions for and operation of the train traffic loading, hauling and dumping the excavated material on stockpiles, dumping areas or points of incorporation into Permanent Works upto 1 km road distance from portal shaping and trimming of the excavated materials in the dumping areas as specified which Contractor shall have prepared including providing of retaining/brest walls and wire crates, clearing of the stockpile areas formation and maintenance of stock piles, rehandling of suitable materials including segregating, grading, draining and drying of materials suitable for use in embankment construction or as backfill



(measurements and payments for providing retaining/breast walls and wire crates shall be made separately).

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iii) Extra payment will be made for hauling the excavated material beyond 1 km from the Portal. Measurement for payment will be based on the in situ volume multiplied by the actual distance in excess of 1 km. Payment for such volume will be made at the Unit Rate entered in the Bill of Quantities multiplied by actual distance in excess of 1 Km from the portal.

6.19.2 Conventional Excavation of Tunnels

i) Measurement for payment for excavation will be of the in-situ volume up to the pay line.

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6.19.3. Overbreak and Backfilling

(i) No payment will be made for removal of the material or for backfilling with concrete or shotcrete or grout, for excavation beyond the pay line except for cavities as defined in these specifications.

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6.19.6 Measurement for payment or payment shall not be made for the following

(a) Over-excavation/over-break (excluding cavity), removal of material or backfilling with concrete, shotcrete or grout beyond the pay line. This applies also to any



rectification Works resulting from incorrect surveys and/or blasting.”

41. The Arbitral Tribunal have quantified the claim with reference to BOQ items and clauses from Technical Specifications as under:-

“Preamble TO BOQ/ SCHEDULE OF QUANTITIES

Relevant items of BOQ

Item No.	Reference to Technical Specifications contained in Part II, Vol-I Sec.VI-B	Description of Work
Section-A Item no.1: Underground excavation		
1.4	6.19.1 (iv)	Hauling of excavated materials for every additional km beyond 1 km.
Section-B Item no.2: Underground excavation (additional excavation)		
2.4	6.19.5, 6.19.1 (iv)	Hauling of excavated materials for every additional km beyond 1 km.
Section-C Item no.2: Underground excavation		
2.1.4	6.19.1 (iv)	Hauling of excavated materials for every additional km beyond 1 km.

42. The petitioner has challenged the Award granted in favour of the respondent under Claim No. 4, more particularly Issue No. 5, by the Tribunal. The primary dispute between the parties under the said issue is whether the respondent is entitled to haulage of excavated materials for every km beyond 1 km from the portal beyond the pay line?
43. The petitioner has challenged the Award under Claim No. 4, more particularly Issue No. 5, on the ground that it is contrary terms of the Technical Specifications of the Contract and the majority view have misinterpreted the terms of the Technical Specifications of the Contract. The petitioner has relied upon Clauses No. 6.4(vii), 6.5(ii)(e),



6.5(ii)(a) and 6.5(iii) of the Technical Specification (reproduced above) to contend that the measurement of overbreak for payment is prohibited and the contractor i.e., the respondent was obliged to remove the excavated material from overbreak at no extra cost. The majority Tribunal after quoting and interpreting all the said clauses from the Technical Specification, have dealt in depth with the said contention of the petitioner and observed as under:-

“(8) The clause 6.4 (vii) stipulates that the Contractor is required to perform excavation between the pay-line and the minimum excavation line. Such condition can be adhered to by the Contractor theoretically only in a favourable geological set up. In case of weak rock strata (particularly in Class-IV & V) over-breaks invariably take place due to geological reasons on which contractor does not have any control. The excess quantity of muck generated by such over breaks are to be removed from face of the tunnel, hauled up to the final disposal point and voids created by such over break are to be back filled with concrete/ shotcrete. Significant expenditure has to be incurred by the Contractor on handling the excess muck generated by over-breaks and on back filling of voids. On careful reading of all clauses of Technical Specification and BOQ, it is observed that the risk of excavation beyond pay-line i.e. over-breaks, removal up to 1km lead from the portal and filling of such voids with concrete is clearly put on the contractor. Accordingly, the



bidders were required to estimate the quantity of over-break likely to occur and cover the same in their quoted rate for excavation of tunnel. The question that is to be determined under the present situation is whether the risk of hauling of over-break material beyond 1km is also put on the contractor or it is otherwise.

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(11) After careful consideration, we have come to the conclusion that the specific clause of haulage beyond 1km point should be interpreted not in isolation but taking care of the following:

- *it should not result in double payment*
- *It should not be in conflict with other provisions*
- *It should fit into overall context*
- *It should not result in unfair advantage or harm to either party*

(12) All general clauses pointed out by SJVNL pertain to excavation of tunnel. The BOQ items for excavation of tunnel by conventional means cover a range of works including drilling, blasting with explosives, concreting, and removal of excavated material etc. The payment criterion is normative up to a predefined pay line and doesn't depend on actual measurement except for cavity extending 2 m beyond the pay line measured from the deepest point and its volume exceeding 5 cum, which may be encountered during



excavation. The concept of normative payment based on pay line incentivises due diligence by the contractor and economizing by avoiding excessive excavation because the same would have to be filled back with concrete and without any additional payment. Removal of all excavated material up to the specified point is embedded in the composite BOQ items for excavation of tunnel.

(13) As regards clause 6.19.1 (iv) pertaining to haulage beyond 1km point, it is exclusively for haulage and the unit rate is to be quoted in Rs Cum/km.

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(15) We feel the concept of normative basis of payment up to pay line cannot be extended to transportation of excavated material beyond 1 km. It has to be as per the specific provision in this regard. The specific provision doesn't stipulate that the payment for transportation beyond 1 km from the portal would be restricted to the pay line concept for excavation works of tunnel. On the other hand, it clearly provides that measurement for payment will be based on the in-situ volume multiplied by the actual distance in excess of 1 km.

(16) The terms of contract are very clear and there is no ambiguity. Even if, there was to be any interpretation issue, the rule of contra proferentum will apply.”

44. I find no infirmity with the findings of the majority Tribunal. A bare



perusal of Clauses No. 6.4(vii), No. 6.5(ii)(e) and 6.5(ii)(a) of the Technical Specification (reproduced above) show that overbreak beyond payline is not be measured and the contractor i.e., the respondent was responsible to remove the excavated material from overbreak at no extra cost. However, the Technical Specification also provides Clause No. 6.19.1(iii) (though as per the Arbitral Award it is Clause No. 6.19.1(iv)) which in clear terms states that “extra payment will be made for hauling the excavated material beyond 1 km from the Portal” and the same cannot be ignored. The majority view is correct to rely on Clause No. 6.19.1(iii) of the Technical Specification to hold that the petitioner is liable to pay haulage beyond 1km. If the interpretation sought to be given by the petitioner it to be accepted the Clause No. 6.19.1(iii) of the Technical Specification will become redundant.

45. The majority view observed that the contractor before bidding could only estimate the quantity of over break that could occur in performance of the contract, so as to cover the same in the quoted rate. The same is within the terms of the Technical Specification and BOQ, as the responsibility of excavation beyond payline i.e., removal up to 1km from the portal and filling of such voids with concrete is on the contractor.
46. The majority view after considering the terms of the Contract relied upon Clause No. 6.19.1(iii) of the Technical Specification (though as per the Arbitral Award it is Clause No. 6.19.1(iv)) to hold that the petitioner was liable to pay for haulage beyond 1 km. The view of the



majority was similar of that of the Dispute Board.

47. The said findings of the majority are both reasonable and plausible and show due application of mind to the facts of matter, terms of the Contract, and pleadings of the parties. As observed above, the Arbitral Tribunal is the master on the construction of the terms of the contract and unless, the same are found to be so perverse as to shock the conscience of the Court, the Court under Section 34 of the 1996 Act must refrain itself from interfering with the view of the Arbitral Tribunal.
48. Further, the learned senior counsel for the petitioner has contended that the fact that the petitioner paid the haulage in RA Bills 23 to 44 does not justify respondent's claim, and was an error, which was rectified later by the petitioner. The said contention was also raised before the Arbitral Tribunal and the majority Tribunal while dealing with the same observed as under:-

“(17) The SJVNL by their own admission had been making payment for haulage or transportation of excavated material beyond 1KM based on actual quantity of excavated material. When the matter was discussed in the half yearly Contract review meeting held on 31.07.2009 SJVNL came to the conclusion that the provisions of the contract are clear and started making payment as per actual quantity. This went on up to RA bill no 44 of June 2011 It was subsequently stopped and the amount already paid, was recovered from 45th RA bill paid in September, 2011



without providing any explanation to the contractor. The conduct of the parties from July 2009 to September 2011 in this particular case is important as the cross sections of the tunnel were jointly observed and payment towards haulage beyond 1 km was released to the contractor.

(18) The SJVNL has argued that it was a mistaken payment which was later corrected. We don't think it was a mistake. It was a correct interpretation. Payment of haulage beyond 1 km based on actual quantity is reasonable, not in conflict with any other BOQ items, does not result in extra payment and does not provide undue gain to the contractor. On the other hand if transportation of actual excavated quantity is sought to be restricted by applying the pay line concept applied elsewhere, it would be unfair because-

- Such a scheme was not specified*
- The contractor wasn't aware of such intent at the time of quoting his rates*
- Such intent was not indicated or clarified during the tendering process”*

- 49.** Clearly, it is an admitted fact that the payment was made by the petitioner for haulage from RA Bills 23 to 44. This further lends credibility to the interpretation of the majority view that the terms of the Contract mandated payment towards haulage beyond 1 km. The majority view came to the conclusion that payment of haulage beyond 1 km based on actual quantity was reasonable and was neither



resulting in extra payment nor was in conflict with any other BOQ items. Additionally, if the cost for transportation of actual excavated quantity was not given the same would be unjust because the contractor was unaware of the same at the time of bidding.

50. It is also the petitioner's contention that the majority Tribunal, after reserving the Award, allowed the respondent to file additional documents, to quantify its claim on haulage and produce cross section drawings of the excavation and rejected the petitioner objection to the same and instead directed the petitioner to reconcile the cross sections provided by the respondent. The petitioner filed its reconciliation report, wherein it stated that no quantification of overbreak quantity was available with it. Hence, it is submitted by the learned senior counsel for the petitioner that the majority Tribunal while allowing the claim of the respondent wrongly relied upon the unverified cross sections submitted by the respondent.

51. In this regard paragraphs No. 21 and 22 of the Issue No. 5 of the Claim No. 4 of the Award are relevant and the same read as under:-

“(21) The Respondent in its written brief of oral submissions (Document R-3) had stated that the excavated cross sections of the tunnel are the Claimant own submissions and the same are not the jointly measured section and not verified by the site Engineers. The Respondent further stated that the Claimant has not submitted such cross-section during the excavation of the work and at this stage, these sections were not verifiable.



However, subsequently (on 09.03.2016) the Claimant has submitted jointly signed cross sections of the tunnels (showing lines of excavation beyond the pay line), which have not been contested by the respondents although they have been adamant in refusing to reconcile the joint records of actually excavated quantity on the ground that it would tantamount to accepting the same as basis for payment for haulage of in situ excavated material.

(22) However, the respondents have submitted jointly signed papers indicating the actual quantity of excavated material up to RA bill 30. In view of above it is clear that jointly verified records of actual excavated cross sections are available in original with the Respondent. Therefore, we don't see any practical difficulties in agreeing to over break quantities submitted by the Claimant for the purpose of working out payment under cause 6.19.1 (iv) for haulage of over break material as per the quoted BOQ rates.”

- 52.** There is no infirmity in the said finding of the majority view. The majority view has held that the petitioner has submitted jointly signed papers indicating the actual quantity of excavated material up to RA Bill 30, thereby, making it clear that jointly verified records of actual excavated cross sections were available in original with the petitioner.
- 53.** The findings of the majority is purely based on interpretation of the terms and conditions of the Contract and evidences. As observed above, the Arbitral Tribunal is the master of the quantity and quality



of evidence and the only exception to the said rule is when such interpretation is so bizarre that it shocks the conscience of the Court or is based on no evidence or beyond the scope of the contract, which is not the case here in my considered opinion.

- 54.** Additionally, I am also of the view that this Court lacks territorial jurisdiction to entertain the present petition, however, the petition has been pending in this Court for more than 8 years and it would be unfair to relegate the parties to Court in the State of Himachal Pradesh for adjudication on the merits of the case. The objective of arbitration is speedy disposal and relegating the parties to the Court in the State of Himachal Pradesh to re-agitate the issues on merits would be antithesis to the objectives of the 1996 Act. Since, both the parties had addressed arguments on the merits of the matter, *dehors*, the territorial jurisdiction I first decided on the merits of the case.
- 55.** The learned counsel for the respondent has challenged the jurisdiction of this Court to adjudicate the present petition on the ground that the Sub-Clause 1.4 of the Particular Conditions of the Contract provides the Court in the State of Himachal Pradesh exclusive jurisdiction over the matters arising out of the Contract and though the arbitration clause being Clause No. 20.6 of the GCC provides three possible “venue” i.e., Shimla, Delhi, or the Project Site (Rampur), however these are solely for convenience and logistics and does not define Delhi as the seat of arbitration. It is further submitted that the Particular Conditions of the Contract supplements the General Conditions and provides that, in case of conflict or inconsistency,



Particular Conditions of the Contract shall prevail.

56. The question that arises before me is whether this Court has the jurisdiction to entertain the present petition. To determine this issue, it is necessary to examine the legal position pertaining to the concepts of “seat” and “venue” of arbitration, particularly in matters where “seat” has not been specified, and the circumstances in which “venue” becomes the “seat” of arbitration. The Hon’ble Supreme Court in **BGS SGS SOMA (supra)** has settled the law pertaining to “seat” and “venue” of arbitration, more particularly in paragraph No. 82, which reads as under:-

“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of



meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.”

57. A perusal of the paragraph reproduced above shows that the “venue” of the arbitration is to be considered the “seat” of the arbitration in absence of any “contrary indicia”. This ratio is rooted in the principle of party autonomy i.e., when the parties chooses a place to conduct the arbitration proceedings it shows parties’ choice to provide the Courts of that place with exclusive jurisdiction pertaining to anything developing from the arbitration. However, the Hon’ble Supreme Court also provided an exception to the said rule i.e., any “contrary indicia” which states that any other place is the seat of arbitration.



58. The Hon'ble Supreme Court in *Arif Azim Co. Ltd. v. Micromax Informatics FZE*⁹, has clarified the threefold test provided in *BGS SGS SOMA (supra)* as to when “venue” becomes “seat” of the arbitration as under:-

“58. Thus, this Court in BGS SGS SOMA [BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234 : (2020) 2 SCC (Civ) 606] laid down a three-condition test as to when “venue” can be construed as “seat” of arbitration. The conditions that are required to be fulfilled are as under:

- (i) The arbitration agreement or clause in question should designate or mention only one place;*
- (ii) Such place must have anchored the arbitral proceedings i.e. the arbitral proceedings must have been fixed to that place alone without any scope of change; and*
- (iii) There must be no other significant contrary indicia to show that the place designated is merely the venue and not the seat.”*

59. At this stage, it will be pertinent to examine the two clauses in the Contract i.e., Sub-Clause 1.4 of Particular Conditions of the Contract (reproduced above in paragraph No. 26), which is the exclusive jurisdiction clause and other being the arbitration clause i.e., Clause No. 20.6 of the GCC (reproduced above in paragraph No. 5). A bare perusal of Clause No. 20.6 of the GCC shows that it is arbitration

⁹ (2025) 9 SCC 750.



clause of the Contract and its sub-clause (b) provides three possible “venues” for arbitration namely, Delhi, Shimla or project site. Clearly, the arbitration clause itself provides three choices of “venue” of the arbitration and does not mention anything about the “seat” of the arbitration. Whereas, Sub-Clause 1.4 of Particular Conditions of the Contract provides exclusive jurisdiction to deal with matters arising out of the Contract to the Court in the State of Himachal Pradesh.

60. The question that arises is whether applying principles of **BGS SGS SOMA (*supra*)**, as observed above, the three options of “venue” of arbitration as provided in the arbitration clause can be considered as “seat” of arbitration or does the Sub-Clause 1.4 of Particular Conditions of the Contract works as the “*contrary indicia*”, as per which the Court in the State of Himachal Pradesh will have exclusive jurisdiction.
61. Clause No. 20.6 of the GCC is an agreement in itself between the parties pertaining to arbitration and affirms parties’ intention that arbitration proceedings shall be held either in Delhi, Shimla or project site. The parties by participating in the arbitration proceedings, which were conducted and concluded in Delhi used their autonomy and chose Delhi among the three options as the “venue” of the arbitration.
62. However, to my mind, in the present case it cannot be said that “venue” of the arbitration is the “seat” of the arbitration. The parties have not expressly specified one place to be the “venue” of the arbitration, but instead, have provided for three different places as “venue” of the arbitration for conducting the arbitral proceedings.



Hence, applying the first part of the threefold test as laid down in *Arif Azim (supra)*, the arbitration clause in question does not designate only one place as the “venue”. The parties’ decision to conduct the arbitral proceedings in Delhi, as per Clause No 20.6(b) of the GCC, is a mere choice of geographical location in view of the two other venues and does not in any way confer supervisory jurisdiction upon the Courts of either of the three locations. Rather, the stipulation of multiple venues appears to have been made only for reasons of convenience and logistics.

63. While, time and again, this Court and the Hon’ble Supreme Court have held that where an agreement contains two separate clauses for jurisdiction, one being a general clause and the other specific to arbitration, in such case, the specific arbitration clause shall prevail. Most recently, in the judgment of *Moonwalk Infra Projects (P) Ltd. v. S.R. Constructions*¹⁰, while relying upon *Reliance Infrastructure v. Madhyanchal Vidyut Vitran Nigam Limited*¹¹ and *Ravi Ranjan Developers Pvt. Ltd. (supra)*, I observed as under:-

“9. In the present case, the arbitration clause contained in the Techno-Commercial Offer explicitly stipulates that the venue of arbitration shall be Delhi. Hence, the seat of the arbitration will also be Delhi. On the other hand, the Purchase Order merely states in general terms that “all subject to Begusarai jurisdiction” without any specific

¹⁰ 2025 SCC OnLine Del 2797.

¹¹ 2023 SCC OnLine Del 4894.



reference to arbitration proceedings. In this regard, a co-ordinate Bench of this Court in Reliance Infrastructure v. Madhyanchal Vidyut Vitran Nigam Limited, 2023 SCC OnLine Del 4894 while dealing with Ravi Ranjan Developers (supra) has held that the contract containing an arbitration clause specifying a clear venue would confer that court with the supervisory jurisdiction over the arbitral process. The same would supersede a generic clause conferring jurisdiction on another Court.

10. The operative portion reads as under:

“31. In *Ravi Ranjan Developers (P) Ltd. v. Aditya Kumar Chatterjee*, the “arbitration clause” specified that the sitting of the arbitral tribunal shall be held in Kolkata. In the said decision the respondent himself approached the District Court at Muzaffarpur, and not a Court in Kolkata for interim protection under Section 9 of the Act. The Supreme Court held that the respondent having himself invoked the jurisdiction of the District Court at Muzaffarpur, is estopped from contending that the parties had agreed to confer exclusive jurisdiction to the Calcutta High Court to the exclusion of other Courts. It was further held that neither of the parties to the agreement construed the arbitration clause to designate Kolkata as the seat of arbitration. Therefore the petition



under Section 11 of Act, was held to be not maintainable before the Calcutta High Court. The said decision is completely distinguishable from the facts of the present case.

32. On a conspectus of the aforesaid judgments, the position of law that emerges is that when the contract contains an arbitration clause that specifies a “venue”, thereby anchoring the arbitral proceedings thereto, then the said “venue” is really the “seat” of arbitration. In such a situation the courts having supervisory jurisdiction over the said “seat” shall exercise supervisory jurisdiction over the arbitral process, notwithstanding that the contract contains a clause seeking to confer “exclusive jurisdiction” on a different court.

33. In the present case, the relevant clause in the LOA purporting to confer “exclusive jurisdiction” is a generic clause, and does not specifically refer to arbitration proceedings. For this reason, the same also does not serve as a “contrary indicia” to suggest that that Delhi is merely the “venue” and not the “seat” of Arbitration. As such, the same cannot be construed or applied so as to denude the jurisdiction of the Courts having jurisdiction over the “seat” of Arbitration.””

(Emphasis added)



64. However, the present case stands on a different footing. The Clause No. 20.6(b) of the GCC provides for multiple venues, which shows that they were merely provided for the convenience of the parties and not to designate the seat of arbitration, hence, cannot be construed as conferring supervisory jurisdiction on the Courts at those places.
65. On the other hand, Sub-Clause 1.4 of Particular Conditions of the Contract provides exclusive jurisdiction to the Court in the State of Himachal Pradesh and hence, works as “*contrary indicia*” to the arbitration clause. Additionally, the exclusive jurisdiction clause is contained in the Particular Conditions, and the Application of the Particular Conditions provides as under:-

“APPLICATION: The following Particular Conditions shall supplement the General Conditions i.e., Section -VII of Part-III of the bidding document. Whenever there is a conflict or inconsistency, the provisions here-in-shall prevail over those in the General Conditions.”

66. It cannot be ignored that the parties categorically agreed to give overriding effect to the Particular Conditions of the Contract, which contains the exclusive jurisdiction clause. Therefore, the Contract clearly reflects *contrary indicia*, and the three “venues” cannot be treated as the “seat” of arbitration thereof. Additionally, sub-clause 1.4 of Particular Conditions of the Contract also grants jurisdiction to the Court in the State of Himachal Pradesh over matter arising out of the Contract and hence the disputes under the Contract would be covered under sub-clause 1.4 of Particular Conditions of the Contract.



67. Therefore, applying the ratio of *BGS SGS SOMA (supra)*, the “venue” of the arbitration as provided in the arbitration clause, will not be the juridical seat of arbitration. Hence, this Courts does not jurisdiction over the arbitral process and thereby, lacks the jurisdiction to entertain the present petition.
68. Further, the judgment of *Precitech Enclosure Systems (supra)* and *Viva Infraventure Pvt. Ltd (supra)* were based on particular facts of their respective cases and their own arbitration clause. In the judgment of *Precitech Enclosure Systems (supra)*, the exclusive jurisdiction clause specifically vested jurisdiction with the Courts at Rudrapur in respect of “any question issue dispute or claim between the parties including but not limited to any application to be made under the Arbitration and Conciliation Act, 1996”. Similarly, in the judgment of *Viva Infraventure Pvt. Ltd (supra)*, the arbitration clause conferred exclusive jurisdiction on the Courts at Gautam Budh Nagar, with no reference to the seat of arbitration. In both the cases, the arbitration clause itself provided clear seat of arbitration, at Courts at Rudrapur and Courts at Gautam Budh Nagar, respectively. In these cases, the arbitration clause did not provide for more than one option for venue/seat of arbitration, as in the present case. Hence, these said judgments are not applicable to the facts of the present case.

CONCLUSION

69. In view of the aforesaid discussion, I find no merit in the submissions made by the learned senior counsel for the petitioner to set aside the Award granted under Claim No. 4. The impugned portion of the



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Award does not seems contrary to the terms of Contract or so unreasonable that no prudent man could have arrived at. It is not in contravention with the public policy of India or patently illegal.

- 70.** Additionally, this Court does not have the territorial jurisdiction to entertain the present petition. Consequently, the petition is dismissed, along with pending applications, if any.

JASMEET SINGH, J

JANUARY 06th, 2026 / (HG)