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

*Judgment reserved on: 01.11.2025*  
*Judgment pronounced on: 25.02.2026*

+ **O.M.P. (COMM) 312/2020**

UNION OF INDIA

.....Petitioner

Through: Ms. Pratima N Lakra, CGSC, Ms. Kanchan Shakya, Mr. Shailendra Kumar Mishra, Mr. Shivansh Bansal, Advs.

versus

M/S RAMA CONSTRUCTIONS COMPANY

.....Respondent

Through: Mr. Avinash Trivedi, Ms. Ritika Trivedi, Mr. Anurag Kaushik, Mr. Rahul Aggarwal, Advs.

**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 (*"the Act"*) seeking to challenge the Arbitral Award dated 16.07.2014 (*"Award"*) passed by the learned Sole Arbitrator, to the extent of claims awarded in respect of claim Nos. 1, 2, 4, 6, 8, 10, 11 and 12.

### **FACTUAL MATRIX AS PER THE PETITIONER**

2. The petitioner i.e. Union of India, floated a tender dated 22.02.2008



for execution of civil and electrical works with respect to one Hostel/Media accommodation block in Jawaharlal Nehru Stadium Complex, New Delhi. The cost of tender was stated to be Rs. 9,04,12,196/- inclusive of (Civil) Rs. 7,87,88,437/- and (Electrical) Rs. 1,16,23,759/-, respectively, the assigned tender amount being Rs. 10,15,48,230/-.

3. The respondent, namely M/s Rama Constructions Company applied for the said tender and was awarded the same. Pursuant thereto, a letter of acceptance was signed on 05.04.2008. As per the Contract Agreement (“CA”), the respondent was to complete the entire project within a time frame of 9 months with stipulated dates for commencement and completion of the project being 27.04.2008 and 26.01.2009, respectively.
4. For the sake of intelligibility it is clarified that the petitioner herein was the respondent before the Arbitrator and the respondent herein was the claimant before the Arbitrator. The respondent is referred as the “contractor”, hereinafter.
5. The assigned work actually got completed on 26.09.2009 and the requisite completion certificate was issued on 30.06.2010. However, there are disputes with regards to the actual date of completion, which according to the contractor is 12.08.2009.
6. Disputes arose between parties concerning the payment of rates of the items for work executed by the contractor in excess of the work. The petitioner made payment of Rs. 12,90,13,250/- for the composite work done despite several deficiencies in the work but the contractor proceeded to invoke the arbitration agreement contained in Clause No.



25 of the CA to seek claim under 9 distinct heads of compensation in respect of the additional work done on the ground that the petitioner has arbitrarily changed the rates without informing the contractor, amongst others.

### **IMPUGNED AWARD**

7. Shri. Rajeev Kumar was appointed as the Sole Arbitrator but he resigned on 05.12.2011. The chief engineer then appointed Shr. V.K. Malik as the Sole Arbitrator, who has passed the impugned arbitral Award to the extent of claim Nos. 1, 2, 4, 6, 8, 10, 11 and 12.
8. The Arbitrator granted Rs. 80,05,774/- along with interest on 5 claims out of total 9 claims and also rejected the petitioners counter claims. Hence, the present petition is filed.

### **SUBMISSIONS ON BEHALF OF THE PETITIONER**

#### **GENERAL CONTENTIONS**

9. Ms. Lakra, learned CGSC, on behalf of the petitioner submits that the Award is unjust, patently illegal and suffers from perversity, as the Arbitrator has acted beyond his jurisdiction. The Award is contrary to the provision contained in the Clause No. 2 of the CA which is related to the meaning of the expression “work” or “works”.
10. The provision contained in Clause No. 18 of the notice inviting tender has not been considered by the Arbitrator, the said clause clearly states the tender to be a “Composite tender” i.e. inclusive of all civil, electrical and mechanical works. The Arbitrator proceeded to Award bonus to the contractor as per Clause No. 2A of the CA without application of mind as the actual completion date was much beyond the stipulated one. The Arbitrator was unjustified in holding that the



contractor is entitled to bonus under Clause No. 2A as he failed to consider that the petitioner granted extension of time *vide* letter dated 17.01.2011 to the contractor in accordance with his request upto 26.09.2009.

11. The Award is totally perverse and illegal inasmuch as it gave an unfair advantage to the contractor in ignorance of contractual terms and is based on incorrect interpretation of the Clause No. 9, which provided that no further claim shall be made by the contractor after submission of final bill and all such claims will be deemed to have been waived.
12. The Arbitrator has failed to take into consideration the material placed on record and also the admitted facts on part of the contractor *vide* letters dated 18.07.2009 and 28.07.2009, that the finishing work was pending in addition to firefighting and electrical works.
13. It is also submitted that contractor has not tendered any proof or evidence of actual loss suffered during execution of work. The contractor also not issued any notice as contemplated under section 55 of the Indian Contract Act, 1872 (*“the Contract Act”*) specifying that it had suffered any loss.
14. Ms. Lakra, further states that the Arbitrator being a creation of the contract is bound by the four corners of the contract but the Award has been passed in total ignorance of the terms of the CA, material placed on record and submissions made by the petitioner. Thus, the Arbitrator has exceeded his jurisdiction. In this regard reliance is placed on *Steel Authority of India Ltd. v. J.C. Budharaja, Government and Mining*



*Contractor*<sup>1</sup>, *W.B. State Warehousing Corporation and Anr, v. Sushil Kumar Kayan and Ors.*<sup>2</sup>, *Bharat Coking Coal Ltd. v. Annapurna Construction*<sup>3</sup>, *Food Corporation of India v. Chandu Constructions*<sup>4</sup>.

15. She also contends that the Arbitrator has acted in an arbitrary manner in accepting the illegal and unjustified claims of the Contractor on their face value without venturing into the genuineness of such claims in terms of the contract and the material on record.
16. The Award deals with disputes not falling within the terms of submission to arbitration and contains matter beyond its scope. The same is liable to be set aside in accordance with Section 34(2)(a)(iv) of the act and the same is also against public policy under Section 34(2)(b)(ii).

**SPECIFIC CONTENTIONS CONCERNING INDIVIDUAL CLAIMS**

**CLAIM NO. 1**

17. The Claim No. 1 wherein an amount of Rs. 22,51,135/- is awarded to the contractor is contended to be arbitrary, perverse and against the agreement between the parties.
18. With regards to Claim 1.1.1., it is contended by the petitioner that the process of calculation of market rate adopted by the Arbitrator was in contravention of Clause No. 12 of the CA, which stipulated a procedure to be adopted in order to determine the market prevalent rates of extra items at the time of actual execution. The Arbitrator has

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<sup>1</sup>(1999) 8 SCC 122.

<sup>2</sup>(2002) 5 SCC 679.

<sup>3</sup>(2003) 8 SCC 154.

<sup>4</sup>(2007) 4 SCC 697.



overlooked the fact that the department had provided the contractor an opportunity to substantiate and to provide the purchase vouchers to verify the prevailing market rates. In the absence of the contractor providing any supporting documents, the department had verified the market rate and the same was approved and also accepted by the contractor. Pursuant thereto, the final bill on sanctioned market rates of Rs. 11,07,17,918/- has already been paid, and the contractor in his composite final bill signed with a remark that the *“bill and measurement accepted up full and final settlement.”*

- 19.** It is submitted with regards to Claim No. 1.1.3(a) of about Rs. 72,738/- that the Arbitrator has allowed 2% VAT in ignorance of details of the actual liability, as the market rates of materials adopted in preparation of extra items already included VAT. This component should have been settled by the Sales Tax Department. The petitioner has not paid the VAT to the contractor in the extra items as the same was not applicable in the work agreement. The additional VAT became applicable on extra items only after Office memorandum dated 20.08.2009, issued by Director General of Works, Central Public Works Department (*“CPWD”*).
- 20.** It is also submitted that the Award is baseless and perverse in respect of Claim 1.2.1 of Rs. 68,338. The Arbitrator allowed payment for quantities beyond the deviation limit of 30%. The Arbitrator has wrongly calculated the amount.
- 21.** The learned counsel has also challenged the Claim no. 1.1.3(b.2.2)(ix): E.I. 2/18: (a) & (b), on the ground of inconsistency in the reasoning of the Arbitrator, wherein the Arbitrator rightly rejected



the higher rate claimed by the contractor but erroneously accepted the higher labour component.

22. Claim Nos. 1.1.3(b.2.3)(ii), 1.1.3(b.2.3)(iv) and 1.1.3 (b.2.3)(v), are also challenged on two grounds; firstly, that there is no analysis of rates filed for these items and secondly, the items are already paid under separate agreement items.

### **CLAIM NO. 2**

23. At the outset, it is contended by the learned counsel that the withholding of the amounts by the petitioner were justified and were in consonance with the terms of the agreement.
24. As regards the Claim No. 2.1 and 2.2 it is contended that the amount was withheld for non-submission of requisite drawings and plans.
25. The contention raised *qua* the Claim No. 2.2.3 by the petitioner is that the defects arose during the maintenance period leading to withholding of the amount as despite the contractor being informed of the defects, the contractor did not rectify the same.
26. Further, concerning the Claim No. 2.2.4 it is stated that the same was withheld because the contractor failed to comply with the environment management action plans regarding noise and dust pollution to be checked during execution. The Claim No. 2.4 was also withheld on the ground of deficiency in the minor repair and painting work.

### **CLAIM NO. 4**

27. The learned counsel for the petitioner states that the Arbitrator has erroneously awarded the claim for the watch and ward of the premises after the completion of the project i.e. from 27.09.2009 to 29.11.2009. The said project was completed on 26.09.2009 and thereafter, no



watch and ward facility of the building and premises was provided by the contractor and the petitioner never requested for the same.

### **CLAIM NO. 6**

28. The Award of the bonus in Claim No. 6.1 under Clause No. 2A of the CA is contended to be without application of mind by the Arbitrator as the Clause No. 2A contemplated bonus in a situation where the work is completed before the scheduled completion time. In the present factual scenario, the work was completed in the extended period. Additionally the contractor agreed while getting extension of time that it would not claim any extra due to this delay. Further in the Award of Claim No. 6.2, the Arbitrator has failed to appreciate the fact that the contractor has already been paid for contractor profit and overheads and with regards to this claim the contractor has not proved any actual damage or loss suffered, which is required under Section 73 of the Contract Act.

29. The Claim No. 6.4 is also challenged on the ground that it was the responsibility of the contractor to extend the bank guarantee until all contractual commitments are fulfilled by them and the same were not fulfilled before 09.03.2011.

### **CLAIM NO. 8**

30. It is contended by the learned counsel for the petitioner that there has been no delay on their part to pay the requisite bills raised by the contractor after they were duly corrected. The bills dated 26.10.2009 and February 2011 were based on inflated rates for the deviated quantities and extra/substituted items. The said bills were withdrawn and then the corrected running bills were immediately paid.



31. The other interest components awarded by the Arbitrator are also assailed on the ground that the claims are wrongfully awarded and hence, the interest also deserves to be set aside.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

32. Mr. Trivedi, learned counsel for the respondent, challenges the maintainability of the petition and states that the same is barred because a detailed Award has been passed the Arbitrator after appreciation of all the facts put forth before him. The same cannot be challenged under Section 34 of the Act as the scope of interference is very limited and the principles for testing an arbitral Award as laid down in a catena of judgments are not met. Reliance is placed on *Associate Builders v. Delhi Development Authority*<sup>5</sup>, *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India (NHAI)*<sup>6</sup>.
33. He states that, the petition is in the nature of the replacing the interpretation of the Arbitrator with that of the petitioner. It is the exclusive domain of the Arbitrator to interpret the terms and conditions of the Contract and a mere erroneous interpretation of documents/evidence should not be interfered by Courts under Section 34. Reliance is placed on *State Trading Corporation Ltd. v. Toepfer International Asia PTE Ltd.*<sup>7</sup>.
34. The Award is based on cogent reasons and detailed explanation, and the Arbitrator has even referred to Delhi Schedule of Rates (“*DSR*”) to hold that the lesser rate out of the claimed or *DSR* have been

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<sup>5</sup>(2015) 3 SCC 49.

<sup>6</sup>(2019) 15 SCC 131.

<sup>7</sup>2014 SCC Online Del 3426.



allowed to the contractor. Additionally, the rates already paid higher than the DSR have not been disturbed i.e. once the rate of item is allowed in RA bills, the same has not been reduced later on. Since, as per Clause No. 12, the Engineer-in-charge was the approving authority for the purpose of rates of extra/substituted items and once the rate is approved by him, it attained finality. Reliance is placed on *Union of India v. Rama Constructions*<sup>8</sup>, affirmed by *Union of India v. Rama Constructions*<sup>9</sup>.

- 35.** Mr. Trivedi further states that the Arbitrator with regards to Claim No. 1.1.3 has conducted a detailed appreciation of the terms of contract and notification issued by the CPWD to determine the rate of extra items and the substituted items by relying on DSR rates. The Arbitrator has held that the petitioner has failed to decide the extra/substituted items at the execution of work and never informed the contractor about the payable rates. However, at the time of payment the petitioner decided its own rates, which were found to be incorrect.
- 36.** With regards to the Claim No. 2, the learned counsel submits that the Arbitrator on appreciation of evidence placed before him, categorically held that the action of the petitioner deducting and withholding the amount from the bill payable to the contractor is illegal and unjust.
- 37.** It is also submitted that the Arbitrator in respect of Claim No. 4 has clearly held that the contractor provided the requisite security to the

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<sup>8</sup>O.M.P. NO. 175/2015, decided on 15.02.2019.

<sup>9</sup>FAO(OS) No. 72/2019, decided on 09.04.2019.



building and premises and that three watchmen were sufficient to provide the required security for the said period of 27.09.2009 to 29.11.2009.

38. Apropos the Claim No. 6.1, it is reiterated by the counsel for the contractor that the said challenge as raised by the petitioner is seeking reappraisal of a fact based finding, and interference with the same is not amenable to Section 34 jurisdiction. The contention of the petitioner raised before the Arbitrator that the claim is not in accordance with Clause No. 2A of the CA as the work was not completed within stipulated time, the same was declined by the Arbitrator by a reasoned finding. Reliance is placed on *Union of India v. NN Buildcon Pvt. Ltd.*<sup>10</sup>, *Union of India v. Rama Constructions (Supra)*, *Union of India v. Rama Constructions (Supra)*.
39. Further, with regards to Claim Nos. 6.2 and 6.4 the Arbitrator awarded damages and loss of bank charges for renewing the bank guarantees in the extended period on the ground that the delay in completion of work was attributable to the petitioner. This being a finding of fact needs no interference.
40. The counsel further submits that as regards the Claim No. 8, the Arbitrator has exercised his power and awarded interest on the awarded amount at the rate of 10% per annum. There was no negative covenant barring the grant of interest. In this regard the Arbitrator has relied on *M/s Hyder Consulting UK Ltd. v. Governor of Orissa*<sup>11</sup>.

### **ANALYSIS AND FINDINGS**

<sup>10</sup>FAO(OS) No. 438/2015 decided on 01.09.2015.

<sup>11</sup>AIR 2015 SC 856.



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

**SCOPE OF INTERFERENCE UNDER SECTION 34 OF THE ACT**

42. The scope of interference under section 34 of the Act is by now well settled and delineated. The Court is not required to sit in appeal as an appellate court over the Award, it cannot venture an inquiry into the Award by reappraisal of evidence or reinterpretation of the terms of the contractual agreement merely because another view may be possible. Judicial intervention is permitted only on limited and specific grounds, as enumerated under Section 34 of the Act. These instances warranting interference include incapacity of a party, invalidity of the arbitration agreement, procedural irregularities, denial of a fair hearing, and the Award being in conflict with the public policy of India. The Court is not required/empowered to reappraise evidence or substitute its own view for that of the Arbitral Tribunal. As constantly reiterated, Section 34 of the Act, embodies the principle of minimal judicial interference, thereby preserving the foundational precept of the Act, the finality and efficacy of arbitral awards. In this regard, reliance is placed on the judgments of the Hon'ble Supreme Court in *Associate Builders (Supra) and Delhi Airport Metro Express (P) Ltd. v. Delhi Metro Rail Corporation Limited*<sup>12</sup>.
43. One of these grounds enumerated under Section 34(2)(b)(ii) of the Act relates to public policy of India, which is delineated by the Hon'ble Apex Court in the case of *OPG Power Generation (P) Ltd. v. Enxio*

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<sup>12</sup>(2022) 1 SCC 131.



***Power Cooling Solutions (India) (P) Ltd.***<sup>13</sup>, this phrase “public policy of India” is explained with its contours in both the pre-amendment and the post-amendment position. The phrase must be accorded a restricted meaning post the 2015 amendments and a mere contravention of law is not sufficient. The fundamental principles which form the very basis of administration of justice and law fall within the scope of “Fundamental Policy of Indian Law”. The relevant paragraphs read as under:

*“39. Following the expansive view of the concept “contrary to public policy”, in DDA v. R.S. Sharma & Co. [DDA v. R.S. Sharma & Co., (2008) 13 SCC 80], which related to a matter arising from a proceeding under Section 34, as it stood prior to the 2015 Amendment, a two-Judge Bench of this Court, on the scope of the power to set aside an arbitral award, summarised the general principles as follows : (SCC pp. 91-92, para 21)*

*“21. ... (a) An award, which is*

*(i) contrary to substantive provisions of law; or*

*(ii) the provisions of the Arbitration and Conciliation Act, 1996; or*

*(iii) against the terms of the respective contract; or*

*(iv) patently illegal; or*

*(v) prejudicial to the rights of the parties;*

*is open to interference by the court under Section 34(2) of the Act.*

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<sup>13</sup> (2025) 2 SCC 417.



*(b) The award could be set aside if it is contrary to:*

*(a) fundamental policy of Indian law; or*

*(b) the interest of India; or*

*(c) justice or morality.*

*(c) The award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.*

*(d) It is open to the court to consider whether the award is against the specific terms of contract and if so, interfere with it on the ground that it is patently illegal and opposed to public policy of India.”*

...

*55. The legal position which emerges from the aforesaid discussion is that after “the 2015 Amendments” in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase “in conflict with the public policy of India” must be accorded a restricted meaning in terms of Explanation 1. The expression “in contravention with the fundamental policy of Indian law” by use of the word “fundamental” before the phrase “policy of Indian law” makes the expression narrower in its application than the phrase “in contravention with the policy of Indian law”, which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and*



*enforcement of law in this country.*

*56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:*

*(a) violation of the principles of natural justice;*

*(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and*

*(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.*

*However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).*

*63. As we have already noticed, the object of inserting Explanations 1 and 2 in place of earlier explanation to Section 34(2)(b)(ii) was to limit the scope of interference with an arbitral award, therefore the amendment consciously qualified the term “justice” with “most basic notions” of it. In such circumstances, giving a broad dimension to this category [In conflict with most basic notions of morality or justice.] would be deviating from the legislative intent. In our view, therefore, considering that the concept of justice is open-textured, and notions of justice could evolve with changing needs of the society, it would not be prudent to cull out “the most basic*



*notions of justice”. Suffice it to observe, they [ Most basic notions of justice.] ought to be such elementary principles of justice that their violation could be figured out by a prudent member of the public who may, or may not, be judicially trained, which means, that their violation would shock the conscience of a legally trained mind. In other words, this ground would be available to set aside an arbitral award, if the award conflicts with such elementary/fundamental principles of justice that it shocks the conscience of the Court.”*

- 44.** Perversity as a ground for setting aside an Arbitral Award is to be generally examined on the touchstone of the principle of reasonableness. An Award which is founded on reasons and evidence, however limited or compendious they might be, cannot be categorised as perverse. When the view adopted by the Arbitrator is a plausible view, the same must be upheld.
- 45.** Further, Section 34(2)(a)(iv) of the Act provides for setting aside of the arbitral Award, when it is proved that the same is concerning disputes not contemplated under the terms of the submissions to arbitration by the parties to the arbitration agreement. Even when the decisions are beyond the scope of arbitration then also the Award can be set aside. The proviso to the Section 34(2)(a)(iv), also stipulates the concept of “severability of awards”, wherein the Award can also be set aside partially if it is severable from the other part of Award and the other part still survives.
- 46.** At the outset, the learned counsel for the contractor challenges the



maintainability of the present petition on the ground that the instant petition is *sans merit* because the impugned Award is a detailed and reasoned award, passed by the Arbitrator after due appreciation of evidence. The same cannot be challenged under Section 34 of the Act because the scope of interference is very limited and the petitioners are trying to substitute their interpretation with that of the Arbitrator.

47. With the scope of Section 34 of the Act in mind, I shall now deal with the rival contentions.

***CLAIM NO. 1:***

48. The petitioner has challenged the Claim No. 1.1.1 and 1.1.3 to be perverse and contrary to the agreement. The aforesaid claims relate to rates of items paid less than the agreement rates and the rates for the extra and substituted items, respectively.
49. The Claim No. 1.1.1, is related to the issue that the rates of agreement items applicable to quantities executed in excess of deviation limit have been reduced by the petitioner without any prior notice as contemplated under Clause No. 12.3 of the CA. It is the contention of the petitioner that the process of calculation of market rates adopted by the Arbitrator is in contravention of Clause No. 12 of the CA which according to the petitioner provides that the payment of extra items should be based on market rates and the engineer-in-charge should determine the sanctioned market rates after due analysis of rates submitted by the contractor. The contractor was given ample opportunity to substantiate his case by furnishing the purchase vouchers for verification, but the contractor did not avail the same.



The petitioner also relied on Cash Voucher No. 131 dated 10.06.2011 to contend that the verified market rates were also accepted by the contractor.

- 50.** It is pertinent to see Clause No. 12 of the CA at this stage and it reads as under:



**Deviations/  
Variations Extent  
and Pricing**

**CLAUSE 12 :**

The Engineer-in-Charge shall have power (i) to make alteration in, omissions from, additions to, or substitutions for the original specifications, drawings, designs and instructions that may appear to him to be necessary or advisable during the progress of the work, and (ii) to omit a part of the works in case of non-availability of a portion of the site or for any other reasons and the contractor shall be bound to carry out the works in accordance with any instructions given to him in writing signed by the Engineer-in-Charge and such alterations, omissions, additions or substitutions shall form part of the contract as if originally provided therein and any altered, additional or substituted work which the contractor may be directed to do in the manner specified above as part of the works, shall be carried out by the contractor on the same conditions in all respects including price on which he agreed to do the main work except as hereafter provided.

**12.1** The time for completion of the works shall, in the event of any deviations resulting in additional cost over the tendered value sum being ordered, be extended, if requested by the contractor, as follows :

- (i) In the proportion which the additional cost of the altered, additional or substituted work, bears to the original tendered value plus,
- (ii) 25% of the time calculated in (i) above or such further additional time as may be considered reasonable by the Engineer-in-Charge.

**Deviation, Extra  
Items and Pricing**

**12.2** In the case of extra item(s), the contractor may within fifteen days of receipt of order or occurrence of the item(s) claim rates, supported by proper analysis, for the work and the engineer-in-charge shall within one month of the receipt of the claims supported by analysis, after giving consideration to the analysis of the rates submitted by the contractor, determine the rates on the basis of the market rates and the contractor shall be paid in accordance with the rates so determined.

In the case of substituted items, the rate for the agreement item (to be substituted) and substituted item shall also be determined in the manner as mentioned in the aforesaid para.



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## CLAUSES OF CONTRACT

**Deviation,  
Substituted Items,  
Pricing**

- (a) If the market rate for the substituted item so determined is more than the market rate of the agreement item (to be substituted), the rate payable to the contractor for the substituted item shall be the rate for the agreement item (to be substituted) so increased to the extent of the difference between the market rates of substituted item and the agreement item (to be substituted).
- (b) If the market rate for the substituted item so determined is less than the market rate of the agreement item (to be substituted), the rate payable to the contractor for the substituted item shall be the rate for the agreement item (to be substituted) so decreased to the extent of the difference between the market rates of substituted item and the agreement item (to be substituted).

**Deviation,  
Deviated Quantities,  
Pricing**

In the case of contract items, substituted items, contract cum substituted items, which exceed the limits laid down in schedule F, the contractor may within fifteen days of receipt of order or occurrence of the excess, claim revision of the rates, supported by proper analysis for the work in excess of the above mentioned limits, provided that if the rates so claimed are in excess of the rates specified in the schedule of quantities, the Engineer-in-Charge shall within one month of receipt of the claims supported by analysis, after giving consideration to the analysis of the rates submitted by the contractor, determine the rates on the basis of the market rates and the contractor shall be paid in accordance with the rates so determined.

**12.3** The provisions of the preceding paragraph shall also apply to the decrease in the rates of items for the work in excess of the limits laid down in Schedule F, and the Engineer-in-Charge shall after giving notice to the contractor within one month of occurrence of the excess and after taking into consideration any reply received from him within fifteen days of the receipt of the notice, revise the rates for the work in question within one month of the expiry of the said period of fifteen days having regard to the market rates.

**12.4** The contractor shall send to the Engineer-in-Charge once every three months, an upto date account giving complete details of all claims for additional payments to which the contractor may consider himself entitled and of all additional work ordered by the Engineer-in-Charge which he has executed during the preceding quarter failing which the contractor shall be deemed to have waived his right. However, the Superintending Engineer may authorise consideration of such claims on merits.

**12.5** For the purpose of operation of Schedule F, the following works shall be treated as works relating to foundation:

- (i) For buildings, compound walls, plinth level or 1.2 metres (4 feet) above ground level, whichever is lower excluding items of flooring and D.P.C. but including base concrete, below the floors.
- (ii) For abutments, piers, retaining walls of culverts and bridges, walls of water reservoirs, the bed of floor level.
- (iii) For retaining walls where floor level is not determinate, 1.2 metres above the average ground level or bed level.
- (iv) For Roads, all items of excavation and filling including treatment of sub-base.

**12.6** Any operation incidental to or necessarily has to be in contemplation of tenderer while filing tender, or necessary for proper execution of the item included in the Schedule of quantities or in the schedule of rates mentioned above, whether or not, specifically indicated in the description of the item and the relevant specifications, shall be deemed to be included in the rates quoted by the tenderer or the rate given in the said schedule of rates, as the case may be. Nothing extra shall be admissible for such operations.



51. The Arbitrator has undertaken a detailed analysis of the provisions of the Clause No. 12 of the CA and has made a categorical finding that the provisions of Clause Nos. 12.2 and 12.3 contemplates that the contractor and engineer-in-charge are bound and obligated to execute the items upto the deviation limit, but for cases beyond the deviation limit, the contractor is under no obligation to execute the items and it is entitled to claim revision. Further, if the engineer-in-charge wants the contractor to execute works in excess of the deviation limit with lower revised rates then the rates should be prior informed to the contractor, thereby, affording an opportunity to refuse. Summarily, the case is that the contractor is entitled to claim revision of rates, the engineer-in-charge is also entitled to revise the rates to a lower rate but only after informing the contractor first and the contractor can still execute if he agrees with the revised rate. In case, when no party revises the rates applicable, the fixed agreement rate is payable. The relevant portions of the Award read as under:

*“1.1.1 Rates paid less than agreement rates- Rs. 413235/-  
Details of claim have been filed by claimant through Annexure-A attached with letter dated 19.09.2013 (CD-12). It was submitted by claimant that rates of various agreement items applicable to quantities executed in excess of deviation limit have been reduced by respondents without any notice under Clause 12.3 of contract. Respondents could not cite any Exhibit that they have issued any notice under Clause 12.3 indicating their intentions to pay*



*contractor less than agreement rate for the quantities of various items (listed in Annexure-A) to be executed in excess of deviation limit and no revised rate less than agreement rate was offered to contractor.*

*In case of deviation of agreement quantity of an item to be executed in excess of deviation limit both the parties to contract have certain obligation to be fulfilled, if, either party intends to seek revision in agreement rates applicable to quantities to be executed in excess of deviation limit. Under the provisions of clause 12.2, the contractor has to claim revision of rates if he intends to claim increase in the agreement rate and under clause 12.3, it is obligation on part of Engineer-in-Charge to notify the contractor the rate to be paid if he has Intension to pay rates lesser than agreement rates.*

*Provisions of clause 12.2 and 12.3 are very important and cannot be disregarded Up to deviation limit applicable on each item of agreement, contractor is bound to execute quantity of an agreement item at agreement rate and Engineer-in-Charge is also under obligation to pay agreement rate. But after deviation limit contractor is under no obligation to execute an agreement item in excess of deviation limit and, if he wishes to continue execution of such item in excess of deviation limit, he can claim upward revision in agreement rate. Under such situation, it is quite obvious that such increased rate to be claimed by*



*contractor must be known to Engineer-in-Charge so as to take a final view on reasonability of rate claimed. In case rate claimed by contractor is not acceptable, the Engineer-in-Charge is at liberty to get such excess quantity executed through other means. Similarly, if Engineer-in-Charge feels that agreement rate is higher and he wants contractor to continue execution of an item in excess of deviation, limit but at lesser rate than agreement rate, then contractor should know the rate to be paid for such quantities going to be executed in excess of deviation limit. In case downward revision in agreement rate offered by Engineer-in-Charge is not acceptable to him, he is at liberty to refuse further execution of such item.*

*Thus, after deviation limit, either party to contract is at liberty to offer new rate to other party and it is left to other party to accept or reject the rate offered or to settle rate by negotiation. Like every financial transaction, new rate applicable to quantity of an item going to be executed in excess of deviation: limit must be known to either party before exceeding deviation limit.*

*In other words, there can only be three rates applicable to quantities executed in excess of deviation limit i.e. Increased rate as claimed by contractor or decreased rate as offered by department or agreement rate. If either party has not demanded revision of rates then agreement rate is the only option left to both the parties as there cannot be any fourth*



*rate. As such after completion of work, contractor is not entitled to claim higher rate than agreement rate and Engineer-In-Charge has no right to reduce agreement rate, applicable to quantity executed in excess of deviation limit. Thus under such situation agreement rate is the only rate payable to contractor for the quantity of the item executed in excess of deviation limit.*

*It is observed that no such notice has been served on claimant by respondent under clause 12.3 showing their intention to reduce agreement rates. Therefore, claimant is only entitled to be paid at agreement rate and respondent have no right to reduce agreement rate. However, respondent is at liberty to pay higher rates than agreement rates even after completion of work and even not demanded by contractor.*

*As such, I award Rs. 413235/- to the claimant.”*

- 52.** I am in full agreement with the view of the Arbitrator that once no rates have been specified/negotiated for items executed beyond the deviation limit, the agreement rate would have to be paid for the same. The petitioner cannot reduce the agreement rates unilaterally and without notice as contemplated under the terms of the contract. The Arbitrator has awarded the agreement rates in consonance with the calculations filed by the contractor, which reads as:



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## Statement - A

The claimant makes herewith detailed submissions in respect of individual items of this claim as per statement C-47 dated 05.03.2011, as follows:

## 1.1 Deviation items - Rates paid less than agreement rates.

(Refer statement as per C-47 dated 05.03.2011)

Agmt. Item no.	Description	Qty.	Unit	Agmt. Rate	Paid rate	Rate paid less	Amount (Rs)
1	2	3		4	5	6 (4)-(5)	7 (3) x (6)
1.5.	EW in filling	1488.18	Cum	55.00	51.55	3.45	5,134
2.1(b)	CC1:4:8	2.81	Cum	2650.00	2344.55	305.45	858
3.1(d)	Centering shuttering beams	989.27	sqm	190.00	183.7	6.30	6,232
7.15 (f)	5 mm (Japan made) fire glass 120 minutes rating	12.68	sqm	25,000.00	13031	11969.00	151,767
8.6	M S Structure	746.13	kg	80.00	70.15	9.85	7,349
8.7	Stainless steel railing	197.59	m	5,000.00	3909.15	1090.85	215,541
14.12 (C)	Lead Joints 150 mm	286	nos.	250.00	189.75	60.25	17,232
17.2 (C)	CC1:5:10 around RCC pipe 250mm	152.42	m	470.00	410.15	59.85	9,122
					Total		413,236

53. I am of the view, that the contention of the petitioner that the said claim was adjudicated by the Arbitrator in contravention of the CA and is consequently perverse, cuts no ice. The Arbitrator has carefully undertaken a fact grounded appreciation of the entire claim and material placed on record. The view taken by the Arbitrator is not only a plausible view but also is legally defensible in terms of Clause No. 12 of the CA. Be that as it may, in proceedings under Section 34 of the Act, such a fact based and evidence driven determination is entitled to be upheld. The approach adopted by the Arbitrator squarely meets this standard.



54. The Claim No. 1.1.3(a) concerning the issue of VAT on extra items, were also raised before the Arbitrator *vide* letters dated 27.09.2013 and 20.12.2013. The Arbitrator has made a reasoned finding that VAT has been deducted by the petitioner herein at the rate of 3% on gross amount of bill including cost of extra and substituted items. He has given a categorical finding that the submission of the petitioner that the labour cess and VAT became applicable in new contracts entered into after the date of issue of circular dated 20.08.2009, is misconceived. He held that it is not the case that prior to 20.08.2009, VAT and labour cess were not applicable, and it's just that the same was not considered by the "field units". This office order containing necessary direction by the DG, CPWD was only clarificatory in nature and not substantive containing new directions. These findings of the Arbitrator are based on careful analysis and cogent reasons, the same needs no interference. The relevant paragraphs of the Award read as under:



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I do not agree with submissions made by respondents. The VAT has been deducted by respondents @ 3% on gross amount of bill including cost of extra/substituted items and thus needs no further proof of payment. The market rate of an item includes all taxes applicable at that point of time. Respondent referred DG, CPWD OM No.191 dated 20.08.2009 (RD-12) and argued that Labour Cess and VAT became applicable in new contracts drawn after date of issue of circular. It is to be seen that the said circular was issued on representations received from Contractors & Builders Association of India to add effect of VAT and Labour Cess in the justification of tenders and in the rates of extra items and substituted items and deviated quantities in excess of deviation limit. If until 20.08.2009, there were no clarification from DG, CPWD office on applicability of VAT and Labour Cess, it does not imply that no VAT and Labour Cess was applicable but on the other hand it was applicable but not being considered by field units. Necessary directions were issued by DG, CPWD clarifying that VAT and Labour Cess is to be added in the rate of extra items and substituted items to be derived on market rate. Respondents should be aware that VAT on each material to be consumed in the work is different than VAT applicable on gross turnover under any contract. As such, I decide that contractor is entitled for Labour Cess and VAT not added by the

respondents in the rates of extra items and substituted items approved by them.

55. The dispute in Claim No. 1.1.3(b.2.2)(ix) is with regards to the analysis of rates for the installation of 8 x 75mm and 12 x 100mm anchors, and the appropriate labour coefficients. The specific case of the petitioner pertaining to Claim no. 1.1.3(b.2.2) (ix): E.I. 2/18: (a) & (b), is that the Arbitrator has erroneously presumed the higher labour coefficient than contemplated by the CA. The petitioner contends that the calculation based on Item No. 8.8.1.3 of DAR Vol-1, which is their own calculation is the correct standard. Furthermore, the petitioner also asserts an internal inconsistency in the award, arguing



that since the Arbitrator correctly rejected the contractor's inflated material claim of Rs. 175 + VAT, it follows that the contractor's demand for a higher labour component is equally baseless and excessive. The Arbitrator while deciding the question of rates for the material has rationally held that the contractor had sought to accord a flat price for two different types of anchors, i.e. 8 x 75 mm and 12 x 100 mm, which substantially vary in size. Thus, the rate for both of them is bound to be different. This was verified through contemporaneous hilti vouchers and 2014 market quotations. It was for this reason that the flat rate of Rs. 175 was rejected. However, the specific claim concerning labour coefficient of the contractor was accepted by the Arbitrator on the ground that the labour cost should be worked out on the basis of the standard rate of analysis of DSR 2012 item 10.27, as relied upon by the contractor. The Arbitrator has correctly rejected the contention of the petitioner regarding the labour cost worked out by the petitioners using the yardstick that 1 fitter and 1 beldar can fix 120 anchors of both sizes.

- 56.** The claim of the contractor was in consonance with the standard rate of analysis of DSR 2012, whereby the contractor adopted a calculation that 1 fitter and 1 beldar can fix 30 Nos. of 8 x 75 mm anchors and 20 Nos. of 12 x 100 mm anchors respectively. The Arbitrator's view is one based on plausibility, rationality and evidence. The decision to reject the flat material rate while at the same instance awarding the higher labour component is not contradictory, but it rather demonstrates an approach of evidence driven balanced adjudication. By replacing the petitioner's insufficient labour estimates with a



verified industry benchmark, the Arbitrator ensured the Award was technically sound and consistent with standard engineering practices. The Arbitrator correctly noted that different anchor sizes must carry different prices and verified this through contemporaneous hilti vouchers and market quotations. Thus, the Arbitrator has not committed any error in rejecting one part of the claim concerning flat rate and awarding the other part concerning labour coefficient. The relevant paragraphs of the Award read as under:

*“The cause of dispute is on account of lesser rate of material and labour coefficient applied by respondents. Rate of 8X75 mm anchor and 12X100 mm anchor has been adopted by respondents @ Rs.50.46 and Rs.68.25 for 8X7 mm anchor and 12X100 mm anchor respectively and contractor has claimed same rate of Rs.175 for 8X75 mm anchor and 12X100 mm anchor. Second dispute is with regard to less labour cost worked out by respondents. Respondents have adopted same 1.0 No. fitter and 1 No. beldar to fix 120 No. anchors of both sizes whereas claimant has demanded 1.0 No. fitter and 1 No. beldar to fix 30 No. anchors of size 8X75 mm and has demanded 1.0 No. fitter and 1 No. beldar to fix 20 No. anchors of size 12X100 mm.*

*Claimant has relied on standard analysis of rate of DSR 2012, item No. 10.27 pertaining to fixing of 10 no. 8X75 mm anchors and 10 no. 10 mm X 120 mm anchors where labour cost of 10 fasteners has been worked out by adopting labour*



*coefficient of 0.4 no. mason and 0.4 no. beldar and 0.5 no. mason and 0.5 no. beldar respectively. I agree with the submission made by claimant that labour cost should be worked out on the basis of standard rate of analysis of DSR 2012 item No. 10.27. As such, 1 no. fitter and 1 no. beldar should be considered to fix 25 no. 8X75 mm anchors and 20 no. 12X100 mm anchors respectively. The claimant has adopted 1 no. fitter and 1 no. beldar to fix 30 no. 8X75 mm anchors and 20 no. 12X100 mm anchors respectively which is in the line of standard analysis of rate.*

*However, I do not agree with the claimant that rate of 8X75 mm anchor and 12X100 mm anchor should be same because of difference in size the rate is bound to be different. The respondents vide tribunal letter dt.10.07.14 were directed to procure one box each of HAS 8X75, HAS 12X100 and HSD 10X140 Hilti make anchors and to supply copy of purchase voucher. Respondent vide letter dt.11.07.2014 (RD-19) has supplied copy of quotation dt.10.07.14 from Hilti informing rate of HAS 8X70, HAS 12X100 and HSD 10X140 anchors as Rs.39.96, Rs.73.9 and Rs.51.46 each respectively. I find no reason to agree with rate of 175 + VAT claimed by contractor four years before, I, therefore, decide that rate of 8X75 and 12X100 anchors adopted by respondent@ Rs.50.4 and Rs.68.25 respectively in 2009 were not less than market rate prevailing in 2009. The rate claimed by contractor is corrected as below:*



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(a) HAS 8x75 mm anchor:

Size	Rate	Quantity	Unit	Amount
Cost of 30 Anchors	50.4	30	Each	1512
Fitter	190	1	Day	190
Beldar	151	1	Day	151

Sundries			Lump sum	100
			Sub-total:	1953
Add water charges @ 1%				19.53
			Sub-total:	1972.53
Add CP and OH @ 15%				295.9
			Sub-total:	2268.43
Add labour cess & VAT @ 3%				68.05
			Total:	2336.48
Cost of 1 anchor				77.9

(b) HAS 12x100 mm anchor:

Size	Rate	Quantity	Unit	Amount
Cost of 20 Anchors	68.25	20	Each	1365
Fitter	190	1	Day	190
Beldar	151	1	Day	151
Sundries			Lump sum	100
			Sub-total:	1806
Add water charges @ 1%				18.06
			Sub-total:	1824.1
Add CP and OH @ 15%				273.6
			Sub-total:	2097.7
Add labour cess & VAT @ 3%				62.9
			Total:	2160.6
Cost of 1 anchor				108

I, therefore, allow rate of Rs.77.9 and Rs.108 each for 8x75 anchor and 12x100 anchor respectively.

57. The petitioner's contention that the Arbitrator has without recording reasons adopted incorrect rates for aluminium handle (Claim no. 1.1.3(b.2.2)(xii): E.I. 3/15), cement-based waterproofing treatment (Claim no. 1.1.3(b.2.2)(xiii): E.I. 3/23) and deviated quantities of



electric works (Claim No. 1.2.1) is also baseless as from a bare perusal of the relevant portions of the award, it is clear that the Arbitrator has relied upon the DSR to arrive at his respective findings concerning the aforesaid impugned claims. Apropos these claims, no substantial arguments have been addressed by the petitioner as to why the rates for aluminium handle, cement-based waterproofing treatment, and deviated quantities of electric works should be lower than the standard DSR (as adopted by the Arbitrator).

**58.** The petitioner has also objected to the Claim No. 1.1.3 (b.2.3) (i), on the ground that the Arbitrator has committed an error in recording a fact in the contractor's argument that "*the claim referred by the CE is for work done and claimed as per the 15th and Final bill but not paid*". The relevant portion of the Award reads as under:

- (i) Respondents argued that no such claim has been referred by appointing authority and, therefore, such claim should not be adjudicated by this tribunal. Claimant argued that their claim referred by CE is for work done and claimed as per 15<sup>th</sup> and final bill but not paid. They have claimed payment of works executed but no payment has been made by respondents and their claim is covered under reference made by appointing authority. I agree with the submission made by claimant that their claim against item executed but not paid is covered under the reference made by appointing authority.

**59.** The petitioners apropos the Claim No. 1.1.3 (b.2.3) (i), has failed to raise any specific contention to show why the fact recorded by the Arbitrator is incorrect and what is the error committed by the Arbitrator. In absence of any such specific contention the Arbitrator



has correctly exercised his power to interpret the scope of reference. This Court under Section 34 of the Act is not sitting in appeal to reappraise the said fact regarding correctness of the statement.

60. Claim Nos. 1.1.3(b.2.3) (ii), 1.1.3(b.2.3) (iv) and 1.1.3 (b.2.3) (v), are challenged by the petitioner on two grounds that the items under the claims were allowed in absence of any Analysis of Rates filed by the contractor and each of them were already covered and paid by the petitioner under separate agreement items or extra items. A cursory glance of the relevant portions of the impugned Award shows that the Arbitrator adopted average rate as the specific assessment and verification of rate was not possible and the Arbitrator has ensured physical verification of site before affirming the claims and awarding an average rate. The Arbitrator has also specifically relied on his own experience of 30 years in the field of construction to award reasonable rates.
61. To my mind, the said reasoning of the Arbitrator is in consonance with the statutory recognition which is accorded to “trade usages” by virtue of Section 28(3) of the Act, which states that “*While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.*” Henceforth, in absence of any evidence by the petitioners that the items were actually covered and already paid, the finding of the Arbitrator warrants no interference by this Court. The Arbitrator has correctly applied his mind and allowed these claims which were already paid but were again recovered by the petitioner in the final bill. The relevant portions of the Award read as under:



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- (ii) I have inspected the work site on 25.12.2013 in presence of Executive Engineer and claimant. It was found at site that extra item No.52, 76, 78, 80, 85, 86 to 91, 103, 104 and 73 have actually been executed at site. However, item No.109 related to disposal of excavated earth and extra item No.110 pertaining to making connection of GI distribution branch could not be verified.
- (iii) It was also observed that DI 98 pertaining to cutting holes in walls was earlier paid by respondent but has been recovered in final bill without assigning any reason. I, therefore, allow DI No.98 @ Rs.81/- each already paid but recovered in final bill. The amount so payable works out to Rs.15714/-.
- (iv) The rate of E.I No.52, 76, 78, 80 & 85 claimed by contractor appears reasonable and at the same time, it is not possible to ascertain the market rate of these items during execution period. I allow the rates claimed by contractor.
- (v) At site, it was found that different type of clamps have been provided at site to support soil pipes above false ceiling and it was not possible to count the actual numbers and to verify different sizes as claimed by contractor. However, the quantities claimed have not been specifically denied by respondents. Claim has been made for 898 no. clamps covering different sizes of clamps and the rate claimed is varying from Rs.300/- to Rs.400/- each. Based on my construction experience of 30 years, I consider it reasonable to allow average rate of Rs.200/- each for 898 no. clamps. The amount payable comes at Rs.179600/-.

62. In view of the above, the findings of the Arbitrator are based on careful analysis and cogent reasons, the same needs no interference. The contentions raised by the petitioner herein are mere reiteration of the contentions already adjudicated by the Arbitrator. Be that as it may, this court is not required to reappreciate evidence or to venture a detailed fact based inquiry into the findings made by the Arbitrator.

***CLAIM NO. 2: Amount unduly deducted/withheld.***

63. Claim No. 2 pertains to the amounts which were withheld or unduly deducted by the petitioner, the Award of these claims is disputed by



the petitioner on the ground that the award of the said claim is in violation of the terms of the agreement.

64. The contentions raised by the petitioner in the present petition are similar to contentions already adjudicated by the Arbitrator. As regards the Claim No. 2.1, the petitioner states that the contractor failed to submit the requisite drawings and plans (“as built drawings”) for which the amount was recovered in order to make cost adjustment for getting the drawings prepared and for non-submission of the completion plan. The Arbitrator recorded a reasoned evidentiary finding that the contractor was asked *vide* letter dated 01.08.2011 to submit the “as built drawings” for water supply, sanitary works and sewerage works and the contractor *vide* letter dated 05.03.2011, already submitted the relevant built drawings to the AE in Charge.
65. Additionally, the petitioner relied upon Clause No. 21.1 of the particular specifications which provides that in case contractor fails to submit the completion plan for water supply and installations, the security deposit will be withheld and these plans would be prepared at his cost. Contrary to this statement of the petitioner, the contractor relied upon the letter dated 01.05.2010, addressed by the EE to the contractor to prove that the testing was in fact already done. The letter dated 01.05.2010 indicated that the contractor was directed to carry out the repair work and damage which was incurred during testing of water supply lines. Also, the petitioners were not able to furnish any evidence to show that the testing was later carried out at the cost of the contractor. This indicates that either the testing was already done by the contractor or it was not required. Further, with regards to the



requisite drawings they were duly submitted by the contractor to the AE as evident from the aforesaid letter, and even if the same were not submitted the remedy was to get them prepared at the risk and cost of contractor. However, no evidence has been brought out to show that they were actually got prepared by the petitioner at the cost of contractor. The relevant excerpts of the Award reads as under:

*“Claimant submitted that a sum of Rs.200000/- was withheld by respondent from 12th RA bill for want of testing of sanitary and water supply lines. All the required testing was carried out before completion of work and services were put to use and no defect was pointed out by respondents during defect liability period of one year. As such, respondents have no right to withhold amount of Rs.200000/- for no reason.*

*Respondents submitted that a sum of Rs.200000/- was withheld from 12th RA bill on 22.06.2009 for want of testing and commissioning of sanitary and water supply lines. After completion of work, contractor was asked to submit as built drawings of these services through EE letter dated 01.08.2011 (R-12/SoC) and as the contractor failed to submit as built drawings, a sum of Rs.200000/-was recovered for making cost adjustment towards expenditure on preparation of as built drawings of services.*

*Claimant through rejoinder dt.31.10.2012 (CD-1) cited their letter dt.04.01.2011 (C-42/SoC) and letter dt.05.03.2011 (C-47/SoC) and submitted that as built*



*drawings for water supply, sanitary works and sewerage were handed over to AE in Charge.*

*It is observed that C-42 and C-47 have not been replied by Engineer-in-Charge. Respondent cited provision of contract under para 21.1 of Particular Specifications that in case contractor fails to submit completion plan for water supply and Installations, his security deposit shall not be released and these shall be got prepared at his risk and cost. It is also to note that a sum of Rs.200000/- was withheld in 12th RA bill for want of testing of sanitary and water supply lines and has been adjusted for other cause: During arbitration proceedings held on 26.12.2012, respondent confirmed that no testing of water supply and sanitary lines was carried at the cost of contractor. Claimant referred EE letter dated 01.05.2010 (R-13/SoD) where contractor was directed to carry out repair of brick work and glazed tiles, damaged while testing of water supply lines which indicates that they have carried out the required testing of water supply and sanitary works.*

*Testing of water lines, sewer lines and drainage is to be carried out before covering of lines laid. Respondent have confirmed that no such testing has been carried later on at the cost of contractor which only indicates that either such testing was not required or has been carried out by the contractor. Claimant vide letter C-42 has informed that as built drawings were handed over to AE and if same are not*



*available now, they are ready to prepare and resubmit the same and requested EE to supply one set of drawings. Nothing has been brought out by respondents that another set of architectural drawings was provided to contractor. If contractor fails to submit completion plans, remedy has been provided in the contract that these drawing shall be got prepared at the risk and cost of contractor but no evidence has been brought out by respondents that such drawings were got prepared by them at the cost of contractor and has not filed any evidence of incurring expenditure on preparation of as built drawing of services. Thus, the remedy available in the contract had not been exercised by respondents. Respondents have submitted analysis of rates of all extra/substituted items but no document has been submitted by respondents that how such amount of Rs.2 lac was assessed for not submitting as built drawings of services. Therefore, such action of respondents to deduct a sum of Rs.2 lac is arbitrary and illegal.*

*I Award Rs.200000/- to the claimant.”*

- 66.** The reasoning adopted by the Arbitrator is based on substantial evidence, and the mere unsubstantiated assertions made by the petitioner were rejected by the Arbitrator. Even if the requisite drawings and plans were not submitted by the contractor, the petitioner had the remedy to get them prepared at the contractor’s cost which was not so done. On the other hand, the contractor has placed on record cogent proof that he has supplied the requisite drawings to



the AE. In this view of the matter, the findings of the Arbitrator are correct.

67. With respect to the Claim No. 2.2.2, the petitioner has argued that the amount was withheld for non-submission of completion plan in terms of Clause No. 8(B). The Arbitrator has made a finding that as per Clause No. 8(B) on non-submission of the completion certificate, the contractor became liable to pay a sum equivalent to 2.5% of the work value subject to a limit of Rs. 15,000/- as may be imposed by the SE-in-charge. However, in the instant case the Engineer-in-charge himself admitted that no such decision of SE is available on record. The Arbitrator by giving the aforesaid findings has ensured strict compliance with the terms of the agreement, needless to state that when a penalty is a creature of an agreement it can only be imposed by the procedure as contemplated within the terms of the agreement and not otherwise. Thus, the withholding of amount in absence of any order of SE-in-charge imposing the said penalty was wrong and the Arbitrator was correct in awarding the said claim in favour of the contractor. The relevant portions of the Award read as under:

**2.2.2 Withheld for non-submission of completion plan – Rs.15000/-**

Respondent submitted that contractor did not submit completion plan despite repeated requests made by EE vide letter dated 16.11.2010 (R-15) and letter dated 07.03.2011 (R-17) and as per the provisions of Clause 8(B), he became liable to pay a sum equivalent to 2.5% of the value of work subject to ceiling of Rs.15000/- as may be fixed by SE in-charge and in this respect the decision of SE was final and binding on the contractor. During arbitration proceedings held on 26.12.2012, Engineer-in-Charge confirmed that no such decision of SE is available on record. As the money has been withheld or recovered without decision of SE, such action is illegal.

I award Rs.15000/- to the claimant.



68. In relation to the Claim No. 2.2.3, the petitioner has argued that the contractor has ignored their letters seeking rectification of defects within the maintenance period and consequently they withheld the an amount of Rs. 20,000 for the repair works carried out. The Arbitrator has specifically held that there is no clause in the CA allowing the Engineer-in-charge to withhold amount for rectification work and credit it to the revenue, without actually carrying out any rectification at the cost of the contractor. The petitioners were unable to show the details of expenses incurred by them to carry out the rectification work. When any action taken by the parties is outside the bounds of the contractual stipulation the said action cannot be justified especially when it is not even supported by evidence. Henceforth, the Arbitrator has rightly held that the withholding of amount without providing any details of the quantities rectified and the amount spent on it, is in the nature of crediting revenue and not for the sole purpose of rectification. Even in the present petition the petitioner has not placed any evidence before this Court to show that the required rectification was actually carried out. In absence of the same, the contention of the petitioner is a mere assertion having no evidentiary basis and the same cannot be accepted. The relevant portions of the Award read as under:



### 2.2.3 Withheld for defects – Rs.20000/-

It is noticed that a sum of Rs.20000/- was withheld for defective plaster and defective ceiling etc. Respondent could not provide any detail how this amount of Rs.20000/- was spent by them on carrying out rectification work at the cost of the contractor. It appears that the amount withheld has simply been credited to revenue without any action on ground to carry out rectification work. Respondent could not provide details of quantities rectified at the cost of contractor or any reduced rate approved by SE for defective workmanship.

I find no clause in the contract empowering Engineer-in-Charge to withhold money for want of rectification work and credit the same to the revenue without any action carrying out rectification work at the cost of contractor. I, therefore, decide that such action on part of respondents to withhold a sum of Rs.20000/- for want of rectification work was illegal.

**I award Rs.20000/- to the claimant.**

69. As regards the Claim No. 2.2.4, as per the petitioner the penalty was imposed on non-compliance with the environment management action plan under Clause No. 2.11 of the additional conditions of contract. However, the Arbitrator held that in absence of any pre-determined penalty there is no basis or justification for the assessment of the amount of penalty of only Rs. 10,000/- and the same was imposed without following the principles of natural justice. In this view of the matter, in the absence of a contractual term the penalty imposed is out of bounds of the agreement and the same could not have been imposed. The petitioner has failed to show any legal basis substantiating the said penalty even in this petition. Even if we consider the penalty as valid, the basis of such assessment was not provided and the principles of natural justice were also not complied



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with, rendering this penalty bad in law. The relevant portion reads as under:

**2.2.4 Deduct for environmental management action plan – Rs.10000/-**

Respondent submitted that as per provisions provided under Clause 2.11 (page 190) under Additional Conditions of the Contract, contractor failed to carry out instructions for environmental management action plan and accordingly a sum of Rs.10000/- was recovered from contractor.

I find that respondent could not cite any notice issued to the contractor of his failure to carry out instructions of environmental management action plan and it is also not known how such petty sum of Rs.10000/- has been assessed by respondents whereas the obligation provided under management action plan cannot be fulfilled by incurring a petty sum of Rs.10000/-. Any penal action against contractor without prior notice is against natural justice and bad in law.

**I award Rs.10000/- to the claimant.**

- 70.** The petitioner has also challenged the Claim Nos. 2.3, 2.4 and 2.5 to the extent that the balance amount of Rs. 14,539/- awarded by the Arbitrator is already paid *vide* CV No. 208 dated 21.01.2012 and the amount of Rs. 2000/- as awarded by the Arbitrator is also challenged on the ground of violation of Clause No. 3.4 of the agreement, which were withheld to undertake minor repair work not undertaken by the contractor. The relevant portions of the Award read as under:



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2.3 **Withheld in 5<sup>th</sup> and final bill for electrical works for minor repairs – Rs.50000/-**

Respondent informed tribunal that a sum of Rs.57130.8 has been recovered from contractor for not executing four items as per provisions of contract. The details of recoveries provided by Executive Engineer (Electrical) vide letter dated 26.12.2012 (RD-1) are discussed below:

(i) **BOQ No.1.5 and BOQ No. 1.7 (sub-head VIII - Light fitting) – Rs.44415/-**

Respondent submitted that as per agreement item No.1.5 contractor was to provide light fitting with electronic blast but light fitting with copper blast has been provided and accordingly, cost of Rs.44415/- (29396.25 + 15018.75) has been deducted. Claimant argued that it was not possible to provide electronic blast in the said light fittings because in the model of Philips make, size of electronic blast is too large to fit in the model specified in the contract.

I do not agree with the argument advanced by claimant and I hold that respondents are entitled to make cost adjustments for the component of the agreement item not provided and replaced with different specifications. It is also matter of record that contractor has quoted his rate for the light fitting with electronic blast and has provided light fitting with copper blast. If it was not possible to provide electronic blast, then how could he quote his rate. As such, I find no infirmity on part of respondent for making such cost adjustment.

(ii) **Not numbering of controlling locations of MCB – Rs.1192/- and not providing telephone cable as per specifications – Rs.11523.8**

During arbitration hearing held on 02.05.2013, claimant agreed for the deductions made by respondents.

I, therefore, decide that recovery of Rs.57131/- made by respondents is in order.



**2.4 Withheld in 2<sup>nd</sup> and final bill for firefighting system against minor repairs/replacement work – Rs.20000/-**

It was submitted by respondent that a sum of Rs.2000/- for minor repair and painting work not carried out by contractor and a sum of Rs.18000/- has been recovered for not providing 9 no. 63 mm gun metal branch pipes. Claimant submitted that GM branch pipes were provided but were stolen before handing over of works to EE (Electrical) and no new pipes were provided by them.

I find that a sum of Rs.2000/- has been recovered without proper notice and without providing any detail where this much amount was spent. The recovery made for not providing GM branch pipe appears in order as till completion of work, it was responsibility of claimant to provide watch and ward to fittings and fixtures installed by them and to handover these fittings to respondents at the time of completion of work.

**I award Rs.2000/- to the claimant.**

**2.5 Withheld in 3<sup>rd</sup> and final bill for fire alarm system on account of non-submission of original software CD and minor repairs/replacement works – Rs.200000/-**

Out of total sum of Rs.200000/- withheld, a sum of Rs.150000/- has been deducted for not providing original software for programming, re-programming of detector addresses, addition of detector with address change, condition of detectors and event logs for 1000 events complete, a sum of Rs.10000/- has been recovered for providing EPABX 12 pair patch against 24 pair as provided in the contract, a sum of Rs.6000/- has been recovered for providing hooter/strob of single frequency against double frequency and a sum of Rs.2330/- has been deducted for not providing round GI sheet for fixing detector and a sum of Rs.10000/- has been deducted for not providing one printer. During arbitration held on 02.05.2013, claimant agreed for the deductions made.

A sum of Rs.270000/- was withheld by EE (Electrical) on account of various reasons discussed above and out of this, a sum of Rs.255460/- has been recovered on account of not executing various components of works as provided in the contract. Against such deduction, I have decided above that deduction of Rs.253460/- is in order and I have awarded a sum of Rs.2000/- in favour of claimant. Therefore, contractor is entitled for a refund of Rs.14540/-.

**I award Rs.14540/- to claimant against claim No.2.3, 2.4 and 2.5.**



71. The petitioner in this petition has made mere assertions in the present petition without any evidence in its support. In case the said amount of Rs. 14,539/- was already paid, the same should have been contended before the Arbitrator which was not raised. In absence of such contention and evidence, the Arbitrator cannot be presumed to know the status of payment or refund. Thus, the view of the Arbitrator is cogent and there is no need of interference. The same contention has not been pleaded in the written submissions before the Arbitrator and the contentions in the petition were not supported by evidence to substantiate this claim.
72. Apropos the Claim No. 2.4, the Arbitrator has awarded Rs. 2000/- by holding that the same was recovered without any proper notice and without any details regarding the expenditure of this recovered amount. The findings of the Arbitrator are in line with the principles of natural justice and the same needs no interference by this Court.
73. The determination by the Arbitrator is not only based on the plausible view but also is legally defensible, and is also supported by the evidentiary records. The interpretation adopted by the Arbitrator concerning Claim No. 2 warrants no interference by this Court as the view taken is neither perverse nor contrary to the terms of the agreement. The determination of the Arbitrator is not only based on law but also supported by rationality.
- Claim No. 4: Watch and ward of the premises after date of completion on 12.08.2009 to date of handing over i.e. 29.11.2009.***
74. The date of completion asserted by the contractor is 12.08.2009, whereas it is contended by the petitioner to be wrong as the contract



being a composite contract, was completed on 26.09.2009. The petitioner also contends that there was no watch and ward of the building premises after the competition date i.e. 26.09.2009 and the petitioner had never requested the contractor for the same.

- 75.** The Arbitrator has fairly and rightly accepted the petitioner's contention on this point and proceeded on the basis that the contractual works stood completed only on 26.09.2009 and not on 12.08.2009 as contended by the contractor. The relevant excerpts of the Award read as under:



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**Claim No. 4: Watch and ward of building and premises round the clock after date of completion on 12.08.2009 to date of handing over of building on 29.11.2009 - Rs.1,47,000/-**

Claimant submitted that after completion of work on 12.08.2009, they were not responsible for watch and ward of the building but respondents did not take over the building after completion of the work until the user department agreed

to take it over. The buildings were fitted with very expensive fittings and fixtures prone to theft and likely damage to other costly items provided in the building. The building was finally taken over by respondents on 29.11.2009. Claimant referred their letter dated 08.09.2009 (C-28), letter dated 29.12.2009 (C-31), letter dated 16.08.2010 (C-33), letter dated 27.09.2010 (C-37), letter dated 04.01.2011 (C-42), letter dated 05.03.2011 (C-47) and letter dated 02.05.2011 (C-50).

Respondents denied the claim and submitted that the electrical works were completed on 26.09.2009 and, therefore, 12.08.2009 cannot be termed as date of completion of work. Respondents referred para 22, page 116 of contract where it is provided that completion certificate for the main work shall be recorded by SE (Civil) after getting necessary completion certificate from SE (Electrical). I agree with the submission made by respondents that till completion of entire work (civil and electrical) on 26.09.2009, watch and ward was responsibility of contractor alone. But at the same time respondents could not provide any evidence that after completion of work, building was immediately taken over and necessary security was provided by them. Respondents have not referred to any reply to the contractor's letters cited above. I, therefore, decide that contractor has provided security from 27.09.2009 till 29.11.2009 and three watchmen were sufficient to provide required security to the building. The total amount @ Rs.6000/- per month per watchman works out to Rs.36000/-.

**I award Rs.36000/- to the claimant against claim No.4.**

76. However, the Arbitrator on appreciation of evidence recorded categorical findings that there is no evidence placed on record to show that the building was immediately taken over and necessary security



was provided by the petitioner thereafter. In these circumstances, and bearing in mind that the completed building could not reasonably be left unattended and unsecured, the Arbitrator concluded that the contractor was constrained to continue providing watch and ward services from 27.09.2009 until the undisputed date of handing over on 29.11.2009.

77. Accordingly, the finding of the Arbitrator is based on several letters written by the contractor including the one dated 08.09.2009 informing the petitioner that the work has been completed on 12.08.2009. There is no doubt that the nature of contract was composite and it was completed on 26.09.2009, the Arbitrator has rightly affirmed this date in favour of the petitioner. The contention that the petitioner never requested for watch and ward of the building holds no ground as even rationally the completed building cannot be left unattended by the contractor until its possession is taken over by the petitioner. Consequently, in holding that the contractor has provided the requisite security from 27.09.2009 to 29.11.2009 is correct and based on material and evidence placed on record. The finding of the Arbitrator is plausible, based on reasonable basis and needs no interference under Section 34 by this Court.

***Claim No. 6: Losses/Damages sustained by the respondent/contractor during the prolonged period of contract.***

78. Apropos the claim concerning bonus i.e. the Claim No. 6.1, the Award is challenged on the ground that the Clause No. 2A of the agreement contemplates payment of bonus only when the contractor completes the work ahead of the scheduled completion time. However, in the



present case it was completed only in the extended period. Henceforth, the contractor was not eligible for any bonus. The contractor while seeking extension of time had also furnished an undertaking that it will not claim any extra due to this delay. The relevant Clause No. 2A reads as under:

*“Clause 2A*

*Incentive for early completion*

*In case the contractor completes the work ahead of scheduled completion time, a bonus @1%(one per cent) of the tendered value per month computed on per day basis, shall be payable to the contractor, subject to maximum limit of 5%(five per cent) of the tendered value. The amount of bonus, if payable, shall be paid along with final bill after completion of work. Provided always that provision of the Clause 2A shall be applicable only when so provided in ‘Schedule F’.”*

79. The identical arguments were already considered by the Arbitrator, who proceeded to undertake appreciation of each fact of individual hindrances raised by the contractor to justify total hindrance of 452 days and delays caused thereby. The Arbitrator relied on the Clause No. 12 of the CA and the judgment of *M/s Paragon Construction (India) Pvt. Ltd. v. Union of India*<sup>14</sup> to deduct the delay attributable to the petitioner and then made a finding that the contractor would have completed the work by 01.11.2008. The relevant findings of the Arbitrator reads as under:

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<sup>14</sup>OMP. No. 385/2007, judgment pronounced on 17.01.2008.



- (x) I do not agree with argument advanced by respondents that claim is not admissible because as per provisions of clause 2A work has not been completed within stipulated time. If work could not be completed ahead of schedule depriving bonus to contractor then it is not because of fault of the contractor but it is because of failure of respondents not fulfilling their reciprocal obligations to contract. Last structural drawing of platform for overhead water tanks and structural drawing of mumty & machine room has been issued on 13.12.2008, Colour scheme of the building was issued on 14.05.2009 and external development plan has been issued on 03.06.2009 and still respondents claim that work could not be completed by 29.01.2009. Contractor was expected to complete work of Rs.10.15 crore in nine months or would have completed the work in 6 months if he was to earn 3% bonus. I think it will be gross injustice and mockery of bonus clause if it is insisted that contractor would have completed work of Rs.12.9 crore in 6 months so as to earn 3% bonus or to draw inference that contract drawn for value X can be increased to any limit but contractor has still to complete the work ahead of original stipulated time of completion to become eligible for bonus.
- (xi) In view of my findings above, I decide that additional time is to be worked out under clause 12 and all hindrances attributable to respondents should be added and total of these two to be deducted from period of delay attributable to respondents as decided by High Court of Delhi in the matter of M/s Paragon Constructions (India) Pvt. Ltd. I have come to the conclusion that contractor was in all position to complete the work by 01.11.2008 which is 4 days short of 3 months. It is also to note that hindrance due to delay in receipt of DUAC approval on 07.07.2008 after more than 2 months of date of start of work resulting slow progress has not been considered and even 25% effect of such hindrance will add another justified delay of 15 day time. At this stage of time actual delay and possible early completion cannot be worked out correct to each day. As such, I decide that claimant is entitled for 3% bonus of tendered value of the work.



80. The said finding of the Arbitrator apropos the claim No. 6.1 is correct as when the delay in performing reciprocal obligations itself is attributable to the petitioner, the contractor cannot be held responsible for the same and contractual benefits cannot be denied. In view of the findings given by the Arbitrator it is clear that the last structural drawings of platform for overhead water tank and drawings of mumty and machine room were issued on 13.12.2008, and despite the same the petitioner still claimed that the work was not completed within time. The balance of negotiating power in absence of any contractual stipulation cannot be shifted totally in favour of the petitioners to allow them to unilaterally delay the performance of their reciprocal promises and still claim the performance to be delayed by the contractor. In this view of the matter, it is clear that the finding of the Arbitrator awarding 3% bonus is in consonance with the Clause No. 2A of the CA and deserves to be upheld as the same is rooted in the evidence placed on record. Additionally, the reliance on *M/s Paragon Construction (Supra)* is also well placed and is reproduced as under:

*“7...Despite such finding, the learned Arbitrator has not awarded any sum to the petitioner by way of bonus because, according to him, the work was not completed before the stipulated date and, therefore, no bonus was payable. I am unable to agree with this conclusion because the learned Arbitrator had already held that the delay was attributable to the respondent. What the Arbitrator ought to have done was to compute the period of delay that was attributable to the respondent*



and subtract it from the total period. If the result was a period less than 24 months then the petitioner would be entitled to bonus and the exact extent of the bonus could also be easily calculated. Unfortunately, the learned Arbitrator has not done this. Consequently, the award is set aside in respect of the claim No.2 also.”

**(Emphasis Supplied)**

81. As for the Claim No. 6.2 *qua* the loss of overheads, plants and machinery, barricading during the extended period, the petitioner has contended that the claim is allowed by the Arbitrator without any documentary evidence to prove any actual damages suffered by the contractor. The same is contrary to the Section 73 of the Contract Act, which reads as under:

*“73.Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*

*Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*



*Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.*

*Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account...*”

82. This court in its earlier judgment titled as ***Construcciones Y Auxiliar De Ferrocarriles & Anr. v. Delhi Airport Metro Express Private Limited (India)***<sup>15</sup>, has made the following observations:

*“48. A perusal of the aforesaid text indicates that the words ‘loss’ or ‘damage’, would necessarily indicate that the party who complains of breach must have really suffered some loss or damage apart from being faced with the mere act of breach of contract. That is because every breach of every contract need not necessarily result in actual loss or damage. Compensation payable under section 73 and 74 is only for loss or damage caused by*

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<sup>15</sup> O.M.P.(EFA)(COMM.) 15/2019 & O.M.P.(I) (COMM.) 375/2020, judgment pronounced on 28.03.2025.



*the breach and not on account of the mere act of breach.*

*If in any case the breach has not resulted in or caused any loss or damage to a party, it cannot claim compensation.”*

- 83.** The Arbitrator in the present case has made a detailed analysis of the claims of actual loss raised by the contractor in view of Section 73 of the Contract Act and then proceeded to Award reasonable damages considering the quantum of the work, only on account of loss of overheads for 5 months. The relevant portions of the findings of the Arbitrator read as under:

*“iii) I have already decided above that work was delayed because of various breaches on part of respondents and their failure to fulfill reciprocal obligations under the contract. At the time of submission of tender, contractor takes into account overhead expenditure during stipulated period of completion and as the time is enlarged, contractor has to incur further overhead expenditure during extended period and under Section 73 of Contract Act, contractor is entitled for losses suffered by them. Claimant has submitted that all structural work was completed by them on 19.12.2008 which is one month ahead of scheduled date of completion and, therefore, I find no justification of overhead expenditure on RMC plant, mobile crane, concrete pumps and transit mixers after end of December, 2008. Similarly, contractor has claimed overhead expenditure of Rs.98000/-*



*per month on barricading whereas contractor has been paid for Rs.881476/- towards cost of barricading under item No.18.5 of the contract. As such, the only loss suffered is delay in receipt of salvage value of the materials received from dismantling of barricading. As the barricading was provided with galvanized sheets and angle iron posts, at least 50% salvage value would have been recovered: Accordingly, contractor had suffered some loss which can be compensated by paying interest on delayed receipt of salvage value and such interest @ 10% per annum on Rs.440000/-comes at Rs.3667/- say Rs.3700/- per month. During course of hearing, claimant has agreed expenditure of Rs.5000/- per month on office assistants engaged for running site office and also agreed for expenditure of Rs.3000/-per month towards mobile phones provided to department. As such, total expenditure per month works out to Rs.212700/- (865000-550000-98000-10000 6000+ 3700 + 5000+3000). Such overhead expenditure of Rs.1701600/- for 8 months works out to 2.4% on value of work of Rs.71128845/- executed after 07.01.2009 which, in my view, is quite reasonable for such quantum of work. The work was delayed by 8 months and time period of 3 months has been allowed on account of extra work done. No additional work in excess of contract value is possible without overhead expenditure and, therefore, contractor is not entitled for any loss of overhead for 3 months. The amount payable to*



*claimant on account of loss of overheads for 5 months works out to Rs. 1063500/-.*

*I award Rs. 1063500/- to the claimant.”*

- 84.** I am of the view, the overhead expenditure for the extended period could not have been contemplated by the contractor when the time was extended, thus, the Arbitrator correctly proceeded to apply the Section 73 of the Contract act to reject the contractors inflated overhead demands and adjudicated upon the specific claims by systematically deducting expenses for heavy machinery (RMC plants, cranes, etc.) that were no longer necessary after structural completion on 19.12.2008, and by preventing “double recovery” for items like barricading that were already paid for under the contract. The resulting overhead Award of 2.4% is reasonable as it is grounded in verified ongoing costs, such as site staff and interest on delayed salvage values, rather than arbitrary lump sums. The Arbitrator in this instant case has proceeded to calculate each claim for damage in detail with proper application of mind. Therefore, the same lies exclusively within the discretion of the Arbitrator, based on a reasonable view and in a section 34 petition the challenge cannot sustain.
- 85.** With respect to Claim No. 6.4, the petitioner has contended that the Arbitrator has ignored the fact that it was the responsibility of the contractor to extend the bank guarantee until all the contractual commitments are fulfilled and the same were fulfilled by 09.03.2011. It was only because of the request of the contractor regarding rates to be adopted for extra and deviated quantities, the account of work



could not be finalised. These contentions were categorically dealt with by the Arbitrator while holding that the delay in work is attributable to the petitioner only and the contractor cannot be held responsible for the delay in sanction of the last item. The relevant portions of the findings read as under:

**6.4 Loss of Bank charges for renewing Bank Guarantees: Rs.186725/-**

Claimant submitted that they had to incur expenditure of Rs.186725/- for extension of bank guarantees on account of delayed completion of the work because of reasons attributable to respondents. Claimant also filed letter dated 21.02.2013 which has been certified by the bank of paying Rs.186725/- as bank charges for extension of bank guarantees. Respondent through letter dated 22.06.2013 (RD-8) made submission that it was responsibility of the claimant to extend bank guarantees till contractual provisions are complied with.

I do not agree with the submission made by respondent because not only the work has been delayed because of various breaches on their part but on the other hand, final bill was delayed abnormally because extra items, substituted items and deviations have been sanctioned after completion of work and last item was sanctioned in February, 2011 after 17 months of completion of work. Contractor cannot be held responsible for such delay and he is entitled for damages in the form of bank charges paid to their banker towards extension of bank guarantees after stipulated date of completion because of delay in payment of final bill. As decided above, additional time of three months has been allowed for additional work done and, therefore, claimant is not entitled for bank charges of Rs.92248/- paid to bank on 12.01.2009 for renewal of bank guarantee.

**I award Rs.94477/- to the claimant.**



86. In this view of the matter, though it was the contractor's responsibility to keep the bank guarantee valid, but in essence this is in nature of a reciprocal promise. To my mind, the arbitrator has correctly stated that the petitioner is also required to finalize the work and make payment expeditiously and within the stipulated time. The petitioner cannot be permitted to benefit from its own delays for which there is already a categorical finding. Thus to keep the bank guarantee alive (which was due the delays of the petitioner), no fault can be found in the reasoning of the Arbitrator. The delay is already specifically attributed to the petitioners as the last item was sanctioned 17 months after completion. It was only because of the delay in sanctioning deviation, the extra costs were incurred. Thus, the aforementioned findings of the Arbitrator are clear and cogent. The Court is not required to reappraise the facts when the same have already been decided by the Arbitrator.

***Claim No. 8: Interest.***

87. The petitioner has raised certain contentions *qua* the interest imposed by the Arbitrator, by stating that the bills were paid immediately by the petitioner after submission of the running bills. The petitioner seeks to set aside the interest awarded on three specific amounts of about Rs. 5,58,658/-, Rs. 2,09,355/- and Rs.4,47,983/-. The petitioner argues that the contractor initially submitted false and inflated bills with incorrect rates. As soon as the contractor submitted the corrected and legitimate bills, the petitioner paid them immediately. Therefore, the petitioner's claim there was no delay in payment that would justify



an interest penalty. The interest therefore deserves to be set aside as there was no delay in release of payment after submission of the corrected bills.

- 88.** Further, it is also stated that the amount apropos the Claim No. 2, were withheld on justifiable grounds and hence no interest can be payable on this claim. The petitioner is also contesting the interest awarded on a sum of Rs. 67,51,052/- from the date of invocation of arbitration i.e. 22.06.2011 till the date of payment. The petitioner asserts that since they were not responsible for any delays in the process, awarding interest is arbitrary and unjust. The petitioner has also challenged the interest of Rs. 37,726/- awarded on the security deposit on the ground that the security deposit could only be released after the contractor submitted Clearance/NOC from their electrical associates. The petitioner claims the contractor failed to provide these documents despite requests. Therefore, the Petitioner correctly withheld the said amount.
- 89.** It is pertinent to note that Section 31(7)(a) of the Act empowers an Arbitral Tribunal, unless otherwise agreed by the parties, to Award interest at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date of the Award. Section 31(7)(b) then provides that, unless the Award otherwise directs, the sum directed to be paid by the Award shall carry interest from the date of the Award to the date of payment. Relevant portions of Section 37 of the Act read as under:

*“(7) (a) Unless otherwise agreed by the parties, where and*



*in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*

*[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.*

*Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]*”

90. The decision in ***UHL Power Company Ltd. v. State of Himachal Pradesh***<sup>16</sup> reinforces the breadth of arbitral discretion on interest and the limited scope for judicial interference. The Arbitral Tribunal in the aforesaid case had granted pre-claim compound interest at 9% per annum and future interest at 18% per annum on the awarded amount, which the Division Bench of the High Court reduced relying on ***State of Haryana v. S.L. Arora & Co.***<sup>17</sup>, referring to ***Hyder Consulting (Supra)***, the Supreme Court held that the High Court’s approach was erroneous, and restored the Arbitrator’s Award on interest. The Court also emphasised, by relying on cases such as ***MMTC Ltd. v. Vedanta***

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<sup>16</sup>(2022) 4 SCC 116.

<sup>17</sup>(2010) 3 SCC 690.



*Ltd.*<sup>18</sup>, and *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*<sup>19</sup>, that a Court cannot substitute its own view with that of the Arbitrator, so long as the Arbitrator's view is a plausible one, anchored in the contract and consistent with the statute. Also, The Hon'ble Supreme Court in the case of *Ferro Concrete Construction (India) (P) Ltd. v. State of Rajasthan*<sup>20</sup>, traced down the changes in the power of the Arbitrator to Award interest from the 1940 act and went on to summarise the current position of this power in the following words:

*“13. From the above extracted paragraphs, the decision of the 3-judge bench in the First Ambica case (supra) can be stated as follows. The Arbitrator's power to grant interest would depend on the contractual clause in each case, and whether it expressly takes away the Arbitrator's power to grant pendente lite interest. This would have to be determined based on the phraseology of the agreement, clauses conferring powers relating to arbitration, the nature of claim and dispute referred to the Arbitrator, and on what items the power to award interest is contractually barred and for which period. Further, a bar on award of interest for delayed payment would not be readily inferred as an express bar to the award of pendente lite interest by the Arbitrator.*

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<sup>18</sup>(2019) 4 SCC 163.

<sup>19</sup>(2019) 20 SCC 1.

<sup>20</sup>2025 SCC OnLine SC 708.



*14. We find that the position of law laid down in paragraph 24 of Reliance Cellulose (supra) is in line with the position of law laid down in the First Ambica case. Both decisions emphasise the need for an express contractual bar on the payment of pendente lite interest to create a bar on the Arbitrator from awarding interest. They also emphasise that a bar on the Arbitrator's power would depend on the phraseology of the contractual clause in that case....”*

- 91.** The petitioner’s contention that the amount were paid forthwith after the correct claims were filed and that the claim No. 2 was withheld on justifiable grounds is based on wrong assertion. The claims and findings above make it clear that the delay in sanctioning items was attributable to the petitioner only and also the amounts were wrongfully withheld. The petitioner challenged the interest of Rs. 37,726/- on the ground that the requisite NOC was not submitted on time, However the Arbitrator has made a categorical finding that even after the receipt of the requisite NOC from the sub-contractor there has been a delay in refund of the deposit, which has been accordingly worked out by the Arbitrator from the due date to the date of payment to the actual date of payment at the rate of 10%. The operative portion is reproduced as under:



8.0 **Claim No. 8: Pre suit, pendente lite and future interest from the dates when the payments became due to the actual date of payment - Rs.19,66,537/-**

Details of claim has been filed by claimant through letter dt.13.08.2013 (CD-9).

8.1 **Interest for delay in payment of 14<sup>th</sup> RA bill: Rs.1007428/-**

Claimant submitted that 14<sup>th</sup> and final bill was submitted to respondents on 26.10.2009 (C-29). But it was converted into 14<sup>th</sup> RA bill and it was paid on 02.12.2010. If it was to be treated as RA bill then it would have been paid within 15 days and therefore, they are entitled for 18% interest per annum on account of delay of 387 days. Respondents kept the bill pending with them and made some observation in Nov. 2010 which were replied by them in the month of Nov.2010 (C-44). They kept reminding EE for payment through their letters dt.26.10.2009 (C-29), dt.29.12.2009 (C-31), dt.07.04.2010 (C-32), dt.16.08.2010 (C-33), dt.27.09.2010 (C-37) and dt.04.01.2011 (C-42).

8.2(i) **Interest for delay in payment of 15<sup>th</sup> final bill (Civil Work) – Rs.567357/-**

Final bill for civil component was paid on 15.03.2011.

8.2(ii) **Interest for delay in payment of composite final bill – Rs.879782/-**



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Final bill for composite work was paid on 10.06.2011.

Claim 8.1, 8.2(i) and 8.2(ii) are decided together.

The 14<sup>th</sup> and final bill submitted by claimant was converted into 14<sup>th</sup> RA bill by respondents. I agree with submission made by claimant that if final was to be converted into RA bill than it would have been paid within 15 days of its submission. Claimant submitted that the final bill for electrical works was submitted on 01.12.2009. The work was declared completed on 26.09.2011 and, therefore, as per provisions of clause 9 of the contract, the final bill of composite work for undisputed items would have been paid within 6 months of submission of final bill by contractor. I do not find any provision in the contract that separate final bills were to be paid for civil and electrical component of works. But respondents have paid separate final bills for civil component and composite work, as such I apply this limit of six months on civil component and composite work individually. Final bill for civil component was submitted on 26.10.2009 and, therefore, final bill for undisputed items of civil component would have been paid by 25.04.2010. The main reason for delay in payment of final bill was non-sanction of rates of extra items, substituted items and rate of deviated quantities executed in excess of deviation limit. Last substituted item for civil component has been sanctioned on 10.02.2011. I, therefore, hold that respondents were in breach of provisions of clause 9 of the contract and claimant is entitled for damages in the form of interest.

I consider it reasonable to award 10% simple interest per annum on account of delay in payment of 14<sup>th</sup> RA bill final bill for civil component and amount of final bill of composite work. The interest payable is worked out as below:

Bill No.	Amount (Rs.)	Due date of payment	Actual date of payment	Period of delay	Interest (Rs.)
14 <sup>th</sup> RA bill	5278657	10.11.2009	02.12.2010	12.7 m	558658
15 <sup>th</sup> and Final bill for civil work	2347904	25.04.2010	15.03.2011	10.7 m	209355
Final bill for composite work	4757338	30.06.2010	10.06.2011	11.3 m	447983
				Total:	1215996

I award Rs.1215996/- to claimant against claim No. 8.1, 8.2(i) and 8.2(ii). This amount will not qualify for further interest.

8.3 Interest for delay in refund of Security Deposit of Rs.1425503/-



The SD was in the form of FDR and interest accrued has been credited to claimant.

As Such, I award 'Nil' amount to claimant.

8.4 Interest on amount of work done and escalation under clause 10C and clause 10CA.

No award has been made against these claims as such no interest is payable.

8.5(i) Interest on amount of Rs.200000/- withheld under claim No.2.1.

8.5(ii) Interest on amount of Rs.162040/- unduly withheld in 15<sup>th</sup> RA bill under claim 2.2.

8.5(iii) Interest on amount of Rs.50000/- unduly withheld in composite bill under claim No.2.3.

8.5(iv) Interest on amount of Rs.20000/- unduly withheld in composite bill under claim No.2.3.

8.5(v) Interest on amount of Rs.200000/- unduly withheld in composite bill under claim No.2.5.

8.7 Interest on amount of watch and ward under claim No.4.

8.9 Interest on amount of claim under claim No.6.

Claim No.8.3 to 8.5, 8.7 and 8.9 are decided together.

I consider it reasonable to award 10% simple interest on amount of award of Rs.6751052/- (claim No.1: Rs.2251135 + claim No.2: Rs.259540 + claim No.4: 36000 + claim No.6: 4204377) from date of invocation of arbitration on 22.06.2011 till date of payment.

8.6 Interest on amount of claim No.3 –

Nil award made against claim No.3 as such no interest is payable.

8.8 Interest for delay in reimbursement of service tax.

The amount of service tax has been reimbursed to claimant after furnishing of certificate of actual payment from CA not furnished earlier.

I, therefore award 'Nil' amount against claim No.8.8.

8.10 Interest on account of delay in refund of amount of Rs.831977/- of SD for electrical works.



The delay in refund of SD for electrical works was due to non-submission of no objection certificates for electrical sub-contractor. The NOC from sub-contractor for internal electrical works was submitted to EE (Elec) on 26.06.2012 and NOC from sub-contractor of fire fighting and fire alarm system was submitted on 07.02.2014. The SD of Rs.620725/- for internal electric works and SD of Rs.211250/- for fire fighting & fire alarm system was released on 03.01.2013 and 07.06.2014 respectively. I find there has been delay in refund of SD even after receipt of NOC from sub-contractors. I allow 7 days to refund SD after receipt of NOC from sub-contractors and for further delay in refund of SD claimant is entitled for damages in the form of interest.

I consider it reasonable to award 10% simple interest per annum on account of delay in refund of SD. The interest payable is worked out as below:

Security Deposit	Amount (Rs.)	Due date of payment	Actual date of payment	Period of delay	Interest (Rs.)
Internal EI works	620725	03.07.2012	03.01.2013	6 m	31036
Fire fighting and fire alarm works	211250	14.02.2014	07.06.2014	3.8 m	6690
				Total:	37726

I award Rs.37726/- to the claimant against claim No.8.10. This amount will not qualify for further interest.

92. The petitioner cannot be allowed to take benefit of its own delay in refunding the security amount. In this view of the matter, the Arbitrator has applied Section 31(7) of the Act to a commercial construction dispute, has found on the facts that the contractor was kept out of money legitimately due under Claim No. 8, and has awarded interest at a rate of 10% per annum in the absence of any contractual prohibition. Such an exercise of discretion accorded with the statutory framework and the Hon'ble Supreme Court's guidance on arbitral interest, and therefore falls outside the narrow grounds for interference.



93. I am of the view that in the absence of any contractual cap or contrary stipulation, the rate cannot be described as excessive or unconscionable. Under Section 31(7), the rate is a matter of arbitral discretion, and courts will interfere only if it is shockingly high or plainly contrary to an express contractual limitation.
94. To my mind, the Award of interest by the Arbitrator is well reasoned and is within the domain of the power of the Arbitrator. Be that as it may, the interpretation adopted by the Arbitrator cannot be allowed to be replaced by the petitioner under the guise of a Section 34 challenge.

### **CONCLUSION**

95. For all the aforesaid reasons, and having found no ground within the confines of Section 34 of the Act to set aside the reasoned findings of the Arbitrator, this Court holds that the impugned Award does not suffer from perversity, patent illegality or any other recognised vice warranting interference.
96. Therefore, the petition is dismissed in the aforesaid terms.

**JASMEET SINGH, J**

**FEBRUARY 25, 2026/(SS)**