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

Judgment reserved on: 16.12.2025
Judgment pronounced on: 09.04.2026

+ O.M.P. (COMM) 337/2017

MINISTRY OF HEALTH & FAMILY WELFARE ...Petitioner

Through: Ms. Pratima N Lakra(CGSC), Ms. Kanchan Shakya, Mr. Shailendra kumar Mishra, Mr. Chanakya Kene, Ms. Mansi, Advs.

versus

NAGARJUNA CONSTRUCTION LTD. ...Respondent

Through: Dr. Amit George, Ms. Rupam Jha, Mr. Adhishwar Suri, Ms. Ibansara Syiemlieh, Mr. Dushyant Kishan Kaul, Mr. Vaibhav Gandhi, Ms. Medhavi Bhatia, Mr. Kartikay Puneesh, Mr. Bhrighu Pamidighantam, 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 08.05.2017 ***("Award")*** passed by the learned Sole Arbitrator in the matter of *"M/s Nagarjuna Construction Ltd. v. Ministry Of Health & Family Welfare"*.

FACTUAL BACKGROUND

2. The petitioner, namely Ministry of Health & Family Welfare (respondent in the Arbitral Proceedings) invited bids for the execution of the works of construction of medical college and hostel complex at AIIMS, Bhopal.

3. The contract was awarded *vide* a letter of notification dated 13.04.2010, to the respondent company namely NCC Limited, formerly known as M/s Nagarjuna Construction Co. Ltd. (Claimant in the Arbitral Proceedings) for the works including preparing designs and construction of Medical College & Hostel Complex at AIIMS, Bhopal, Package-I.

4. Pursuant thereto, a contract with value of Rs. 147,89,73,233/- was executed between the parties on 21.05.2010 ***("Contract"),*** with scheduled completion period of project being 15 months i.e., from 27.05.2010 to 26.08.2011.

5. During the execution of works under the Contract, some disputes arose between the parties and the respondent company *vide* its letters dated 07.11.2014 and 13.12.2014 requested for appointment of Arbitrator by invoking arbitration Clause and also filed a petition under Section 11 of the Act on 07.04.2015 before this Court. However, during the pendency of the proceedings, the Director (PMSSY), Ministry of Health and Family Welfare PMSSY Division vide its order dated 29.05.2015 appointed Dr. Y.P.C. Dangay as the Sole Arbitrator to adjudicate disputes between the parties.

6. The respondent filed its Statement of Claim ***("SOC")*** before the Arbitrator on 06.07.2015, to which the petitioner filed its written statement along with counter claim on 18.02.2016. Thereafter, on 04.04.2016, the respondent filed rejoinder to the written statement and counter claim.

7. During the Arbitral proceedings, the Arbitrator also visited the site for assessment of the status of work on 27.08.2016, 28.08.2016, 26.11.2016, 27.11.2016 and 16.04.2017.

8. The Arbitrator passed an interim award dated 30.12.2016, directing the release of amount of Rs. 2,95,79,465/- for the Claim No. 1 in favour of the respondent and also, directing the respondent to complete the remaining works by the end of the year.

9. Thereafter, the Arbitrator passed a final Award dated 08.05.2017, allowing most of the claims as raised by the respondent except Claim No. 11, and rejecting all the counter claims filed by the petitioner. The petitioner being aggrieved by the Award has filed the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

General Contentions

10. Ms. Lakra, learned CGSC for the petitioner, submits that the Award is in violation of the public policy of India and is patently illegal for reasons apparent on the face of record. The scope of public policy is wide in nature and cannot be restricted in its interpretation. Reliance is placed on *DDA v. Manohar Lal*[1] and *Oil & Natural Gas Corporation Ltd. v. SAW pipes Ltd.*[2]

11. It is submitted by the learned counsel that the Arbitrator has failed to take into consideration, the deficiency/delays on part of the respondent by failing to comply with the directions issued by the Arbitrator during hearings. Despite this non-compliance by the respondent, the Arbitrator failed to observe this fact in his Award that there existed wilful delays on part of the respondent. These kinds of awards are not only perverse but also against the public policy of India, and against the interest of

[1] 2006 SCC OnLine Del 46.
[2] AIR 2003 SC 2629.

Government of India as they will encourage contractors to raise fake claims by quoting extremely low rates for getting government projects and then attempt to get unfair advantage by placing reliance on such awards.

12. The Arbitrator has exceeded the jurisdiction conferred to it, has acted in violation of the terms of the Contract, and has not taken into consideration vital evidence and contentions. Thus, it is liable to be set aside under Section 34(2)(a)(iv) and Section 34(2)(b)(ii).

Attribution of Delays and associated claims for prolongation.

13. The Arbitrator has failed to correctly appreciate the issue of delay attribution as it has not taken into consideration a vital report dated 21.04.2017 prepared by the superintending engineer, wherein the incomplete status of work was clearly stated. The respondent was bound by Section 37 of the Indian Contract Act, 1872 ***("Contract Act")***, to perform its promise or to offer to perform the same, however in the view of this report it is clear that the respondent violated section 37 of the Contract act and the Arbitrator has failed to take into consideration this material evidence. Reliance is placed on *Aboobker Latif v. Reception Committee of the 48th INC*[3].

14. It is also submitted that the Arbitrator failed to read the contract as a whole, leading to an erroneous interpretation of the relationship between the parties to the contract and the non-application of principle laid down in *Ramnath International Construction Pvt. Ltd. v. Union of India*[4] concerning employer-contractor agreements, wherein it was held that if the contractor sought and obtained extensions for delay attributable to either party, he would not be entitled to claim any compensation for such

[3] AIR 1937 BOM 410.
[4] (2007) 2 SCC 453.

delay. Reliance is also placed on *Unity Realty and Developers Ltd. v. BW Highway Star Pvt. Ltd.*[5]

15. The Arbitrator had awarded the claim Nos. 6, 7, 8, and 9 by exceeding his jurisdiction and in ignorance of the terms of the Contract, which clearly stipulated that compensation is not payable on account of delay. Reliance is placed on *Ramnath International Construction Pvt. Ltd.(Supra).* It is also submitted that the respondent filed inflated claims as the respondent claimed Rs. 35.09 crores under this head, but only Rs. 3.2 crores were held admissible by the Arbitrator. Additionally, the delay in project was attributable to the respondent only.

16. The Arbitrator awarded compensation under Claim Nos. 5, 6, 7, 8, 9, and 12 in ignorance of the terms of the Contract, i.e. Clause No. 6(a), 6(b), 40(h), 40(p)(ix) of the special conditions of the contract. Thus, the Award is in clear violation of the statutory mandate as encapsulated under Section 28(3) of the Act, whereby the Arbitrator is required to take into consideration the terms of the contract and trade usages as well. The Arbitrator has clearly acted beyond its jurisdiction conferred by the terms of the Contract. Reliance is placed on *Associated Engineering Co. vs. Govt. of Andhra Pradesh*[6].

Claim No. 1: Release of wrongfully withheld amount from RA Bill-33 & 34.

17. Ms. Lakra, further states that the Arbitrator did not properly distinguish between regular extension of time ***("EOT")*** and provisional EOT. In construction contracts, as a regular trade practice provisional extensions are given to keep the contract running and avoid major disruptions. However these provisional EOT's do not imply that the delay is

[5] 2009 SCC Online Bom 1509.
[6] (1991) 4 SCC 93.

condoned/admitted. In the instant case, even after regular extensions up to 12.10.2012, the petitioner issued provisional extensions to keep the contract alive and explicitly reserved the petitioner's right to claim compensation under Clause No. 2 of the GCC for the respondent's delays. The Arbitrator while awarding this Claim No. 1 in the interim Award ignored this standard practice of granting provisional EOT's and acted in non-compliance of Section 28(3) of the Act.

18. Additionally, the rescheduling of milestones were not required as rescheduling is only required up to the regular extension period i.e. ending on 12.10.2012. However, the recovery of withheld amount was made in March 2013 because the respondent defaulted in achieving milestone Nos. 4 and 5. The Arbitrator substantiated his Award on the ground that milestones were not rescheduled in accordance with the new timeline after grating of EOT's, and overlooked the fact that delays beyond 12.10.2012 were attributable to the respondent only.

Claim No. 2: Reimbursement of increase in taxes and duties under Clause 38 of GCC of contract (VAT, Entry Tax and Central Excise).

19. With respect to Claim No. 2, it is submitted that the finding of the Arbitrator is based on wrong interpretation of Clause No. 38 of the General Conditions of Contract ***("GCC")***. The reasoning of the Arbitrator is patently illegal as the Arbitrator held that non-compliance with the provision for notice does not mean that the statutory increase in taxes duly paid by the petitioner will not be reimbursed. When a contractual term stipulated that a claim needed to be lodged within a specific time, non-compliance should lead to an adverse inference. Thus, the Arbitrator by allowing this claim despite non-compliance by the respondent has favoured the respondent in an unjust manner.

Claim No. 3: Reimbursement of increase in taxes and duties under

Clause 20 and 19B iv (b) of GCC of contract (Minimum Wages Act).

20. It is submitted that the Arbitrator erred in applying the provision contained in Clause No. 38 of the GCC while adjudicating the Claim No. 3, as the respondent itself has not substantiated this claim under Clause No. 38 of the GCC.

21. Further, the Arbitrator has erred in holding that the present contract is similar to the CPWD contracts and that the respondent has rightly quantified its claim as per Clause No. 10 CC of the CPWD contract in which labour component for escalation is fixed at 25%. However, in the present case Clause No. 10CC of the CPWD was inapplicable as the stipulated completion period for the project was 15 months only, and Schedule F provided that Clause No. 10CC is only applicable when the stipulated period extends beyond 24 months.

Claim No. 4: Extra items of work claimed under Clause 12 of GCC and Clause 22, 23 of SCC.

22. Learned Counsel, apropos the Claim No. 4 submits, that the Arbitrator has not considered the contention of the petitioner that the dispute *qua* Claim No. 4 i.e. extra items, survives only for ready mix concrete (RMC) item, as the issue concerning grit plaster was already discussed during the site visit on 26.11.2016 and was duly approved by the petitioner. Thus, the Arbitrator has erred in again awarding the claimed amount without discussing the detailed breakup and the basis of the rates claimed by the petitioner.

23. She further submits that the Arbitrator has wrongly interpreted agreement item No. 3.8 and DSR Item No. 5.33, wherein it was clear that the cost of making and placing concrete were included in the quoted rates. The extra claim raised by the respondent was false because in this project, the concrete was made directly at the site and this fact was admitted by the respondent during arbitral proceedings. The Arbitrator still compared and relied upon DSR Item No. 5.37 on the ground that the respondent also executed the work having scope similar to DSR Item No. 5.37, which is item for ready-mix concrete made in fully automatic plant somewhere else and then transported to the site in transit mixture for a lead of about 10 kms. This "upto 10 km lead" is a substantial cost factor, it assumes extra cost for making and transportation to the site. The same was not applicable in the present case, as the concrete was made on site. Thus, the finding of the Arbitrator had allowed undue benefits to the respondent on the basis of this misinterpretation and has disregarded the scope of agreement item No. 3.8 and DSR item No. 5.33.

24. Additionally, the Arbitrator has ignored the contention of the petitioner that these specific claims for extra items were not raised in terms and compliance of Clause No. 12 of the GCC during the execution of those items.

<u>Claim No. 5: Revised rates for individual items of work the quantities of which had exceeded beyond limit.</u>

25. She further contends that with respect to the Claim No. 5, the Arbitrator has misinterpreted the terms of the contract and in an unjustified manner awarded market rates for items deviating more than 30% of the BOQ quantity because the respondent was well aware of the fact that Clause Nos. 12.2 and 12.3 applies only after deviation exceeds the threshold of 30% of trade work or 100% of foundation work as the case may be, and still the respondent did not claim this amount under Clause No. 12.4. Thus, directly raising this claim before the Arbitrator is unjustified. Also, there are inherent inconsistencies in findings of the Arbitrator as at one specific section of the Award, the Arbitrator used the word "Trade" to mean "building trade" and while allowing claim No. 5 he stated the same word to be vague and proceeded to award rates applicable to individual BOQ items instead of BOQ subheads as contended by the petitioner during the arbitral proceedings.

26. Schedule F (Package-I), provides for deviation limit of 30% of the trade upto which the BOQ rates were payable and were already paid with respect to several deviated items, yet the Arbitrator failed to consider these contractual provisions and the petitioner's specific submissions. The petitioner further submits that the respondent's quantification was erroneous and unsupported by proper justification and did not even take into consideration the Bhopal cost index. For the sake of argument, even if any claim was maintainable, the Arbitrator did not scrutinise itemwise rates or the petitioner's objections, thereby vitiating the entire quantification process. In these circumstances, by effectively disregarding and rewriting the terms of the contract beyond the scope of reference, the Award is liable to be set aside in the interest of justice.

Claim No. 10: Loss on locked up deposits Bank Guarantees due to Prolongation of Contract.

27. Ms. Lakra, submits that with respect to Claim No. 10, the Arbitrator has acted in violation of Clause No. 1(ii) of the GCC which provides that the petitioner is not liable to pay any interest/charge on account of the performance guarantee.

Claim No. 12: Escalation Amount on material payable due to prolongation ofcontract.

28. The Arbitrator with respect to Claim No. 12 has acted in violation of the terms of the Contract as the respondent has preferred the claim because of escalation of materials, being fully aware of the fact that contract does not allow such escalation claims.

29. It is also submitted that the Arbitrator in the Claim Nos. 13 and 14 awarded loss of interest on the amounts claimed under Claim Nos. 2, 3, 4, 5, 10 & 12 at the rate of 10% per annum, the same is in violation of law as settled by the Supreme Court in the case of *Union of India v. M/s Krafters Engineering & Leasing Pvt Ltd.*[7], and the terms of the contract as the contract does not provide for grant of interest.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

30. Dr. George, learned counsel for the respondent, submits that the delays in execution of the Contract are not attributable to the respondent as the Arbitrator has returned categorical findings by placing reliance on the records i.e. hindrance register maintained and signed by the petitioner itself. Reliance is placed on *Delhi Agricultural Marketing Board v. HR Builders.*[8]

31. It is also submitted that the contents of the hindrance register were neither challenged by the petitioner in the present petition nor in the defence before the Arbitrator. It was only at the stage of oral arguments that this objection was raised by the petitioner.

32. He further submits that the Claim No. 2 concerning the reimbursement of Rs. 38,10,057/- towards increase in taxes and duties under Clause No. 38 of the GCC was rightly adjudicated by the Arbitrator. The petitioner raised the identical contention of absence of notice in terms of Clause No. 38 (iii) of the GCC before the Arbitrator as well and the same was rejected by the Arbitrator on the ground that the clause provided for the notice to be given but default of such notice is not in itself a ground to attract adverse consequences so as to reject a claim otherwise due.

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[7](2011) 7 SCC 279.

[8] 2019 SCC Online Del 8538.

Reliance is placed on *Mahesh Bansal v. Executive Engineer*[9] and *Union of India v. Associated Construction Co.*[10] to state that the decision of the Arbitrator is in consonance with the settled position of law.

33. With respect to Claim No. 3, it is submitted that the challenge of the petitioner is baseless as the Arbitrator had adjudicated the claim in consonance with Clause Nos. 20 and 38 of the GCC. Clause No. 20 of the GCC provided that the respondent was bound to comply with the Minimum Wages Act, 1948 and Clause No. 38 states that any further tax or levy imposed by the statute and duly paid by the respondent shall be reimbursed to it. The Arbitrator rightly allowed this claim of the respondent with respect to the additional expenditure towards payment of minimum wages as amended from time to time. Reliance is placed on *Union of India v. Saraswat Trading Agency and Ors.*[11] and *Associated Construction Co. (Supra)* to submit that the stand of the Arbitrator is in consonance with the settled position of law.

34. Apropos the Claim Nos. 6, 7, 8, and 9, it is submitted that the Arbitrator has awarded these claims with detailed reasoning on fact and law. The petitioner has challenged these claims on the ground that the terms of the contract does not provide for compensation, in fact the special conditions of contract specifically preclude grant of compensation. However, as per the provisions of the Contract Act more particularly Section 53, 54, 55 and 73, in case of failure of performance, promises, and breach, the party at fault is liable for compensation for the losses suffered by the other party. In a judgment of this Court titled *Union of India v. Vishva Shanti Builders (India) Pvt. Ltd.*[12], it was held that despite a clear condition

[9] 1995 SCC Online Del 333.
[10] 2016 SCC Online Del 4679.
[11] (2009) 16 SCC 504.
[12] (2024) SCC Online Del 5018.

under the contract barring compensation, the compensation cannot be said to be barred when the extensions were granted due to fault of the other party. Reliance is also placed on *K.N. Sathyapalan v. State Of Kerala & Anr.*[13]

ANALYSIS AND FINDINGS

35. 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

36. The scope of interference under Section 34 of the Act is now clearly established. The Court is not required to sit in appeal as an Appellate Court over the Award, and it can neither reappreciate the evidence nor reinterpret the terms of the contract, when the view already taken by the Arbitrator is a probable and possible one. Judicial intervention with the Award is permissible only on limited and specific grounds, as encapsulated under Section 34 of the Act. The Court is not required/empowered to reappreciate evidence or substitute its own view with that of the Arbitral Tribunal. It is a settled position of law that 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. The Hon'ble Supreme Court has recently observed this scope of interference in the judgment of ***Consolidated Construction Consortium Ltd. v. Software Technology Parks of India***[14], the relevant paragraphs of which reads as under:

> *"46. Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It*

[13](2007) 13 SCC 43.
[14](2025) 7 SCC 757.

provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the Arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement."

37. At the outset, Dr. George, learned counsel for the respondent, states that the present petition is *sans merit* as the petitioner has failed to plead or establish any specific permissible ground under Section 34 of the Act. The Award is a detailed Award substantiated by the evidence available on record and the same does not suffer from any vices as enumerated under Section 34 of the Act warranting interference by this Court. The findings of the Arbitrator are plausible and therefore cannot be interfered with under the Section 34 jurisdiction. Reliance is placed on ***Associate Builders v. DDA***[15]*and* **Delhi Airport Metro Express (P) Ltd. v. DMRC**[16].

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

Attribution of Delays

39. The petitioner's challenge to the Award with regards to several claims can be distilled into one core controversy i.e. the findings on attribution of delays and prolongation of contract, which are pertinent for the entire Award and especially for decisions on Claim Nos. 6, 7, 8, and 9.

40. It is the case of the petitioner that the Arbitrator has erred in attributing the delays in execution of works under the contract to the petitioner. The Arbitrator has failed to take into consideration the pertinent facts and evidence which show that in fact the delays were attributable to the respondent.

41. It is contended by the petitioner that despite recording the objection of the petitioner in page No. 13 of the Award that the respondent had not completed the work by December 2016 as directed by the interim Award, the Arbitrator has ignored this contention and also a vital report dated 21.04.2017 of the superintending engineer, wherein the status of work was shown as incomplete. The Arbitrator also visited the site on many instances and directed the respondent to complete certain works before 31.12.2016. Despite, all these contentions and evidence pertaining to the attribution of the delay on part of the respondent, the Arbitrator did not give any findings on these arguments in the Award. It is also stated that the Award is passed without taking terms of the contract into consideration and these kind of awards confer undue benefits on

[15](2015) 3 SCC 49.
[16](2022) 1 SCC 131.

contractors from government department and consequently the Award is against public policy and the interest of the Country.

42. *Per contra*, the respondent contends that the Arbitrator has correctly relied on hindrance registers in giving his findings on the issue of delay. The specific delays mentioned in the hindrance register are attributable to the petitioner for several reasons as stated therein including the delays duly noted at Serial Nos. 20 and 21 of the Hindrance register on the ground of delay in receipt of drawing for stone flooring over terrace and works being carried out by other agencies engaged by the petitioner. The respondent has also drawn my attention to the paragraph Nos. 17 and 18 of the judgment of the Hon'ble Division Bench of this court in the case of ***Delhi Agricultural Marketing Board (Supra)***, which read as under:

> *"17. The Hindrance Register is a document which is maintained at the work site and is signed by the officers of the employer and the contractor. <u>It records the events which occur contemporaneously in relation to the hindrances that may be faced by the contractor from time to time in the execution of the work. It is a document which is a log of the communications which take place between the employer and the contractor in relation to the events leading to hindrance in the execution of the work.</u>*
>
> *18. The extension of time that may be considered by the Engineer-in-Charge necessarily would have to rely upon records, such as the hindrance register: In the present case, the Arbitrator has found that the Hindrance Register recorded hindrances for as many as 563 days, whereas the actual delay in completion of the work was only 502 days. That being the position, the finding returned by the learned*

Arbitrator fixing the responsibility for delay in completion of work, in our view, is completely justified."

(Emphasis Supplied)

43. The Arbitrator apropos this issue has critically examined the multiple EOT's duly approved by the petitioner and also noted that many extra items pending since 2013 were only settled after directions from the Arbitrator, and because of many pending issues the time for contract was delayed by almost three times of the scheduled completion time. The Arbitrator duly considered the submissions of the petitioner and observed that the petitioner was directed to produce the hindrance register despite which the petitioner never disputed the entries in this register. The Arbitrator went on to observe that the hindrance register is maintained at site by the petitioner, duly signed by the engineers of the petitioner and by the consultants engaged by the petitioner only. The relevant portions of the Award reads as under:

> *"14.3.2 Many pending extra items were pending since 2013 which were settled and paid on the directions of this Tribunal during the proceedings. As is ascertained barring two extra items for rest of the items the rates were settled during the Arbitration proceedings. Because of many pending issues, the project execution, as it appears had lost the track for long. Though the time stipulation of 15 months was made, with the prolongation of the Contract by more than three times of the stipulated period, the time has been set at large by various defaults of the Respondent.*
>
> *14.3.3 The written submissions made by the Respondent latest on 10-4-2017 were carefully examined. The Charts produced do not have any material significance to the issue on delays since both*

the parties have argued and admitted that there are delays and when the work is incomplete the value executed on comparison with the original period will be less.

14.3.4 The Tribunal has asked the Respondent to produce the hindrance register maintained at the site by the Respondent which has been relied by the parties. The Respondent has not made any allegation either in arguments or written submissions of possibility of forging of the register which itself is produced by Respondent during the proceedings.

14.3.5 The Respondent pointed out few discrepancies in the written submissions made dt: 21.4.2017 in the hindrance register. As can be seen the hindrance register is the record maintained by the Respondent signed by the Respondent Engineers and the Consultants engaged by the Respondent. Neither during the pleadings nor during the arguments, the discrepancies alleged are pointed out which appear an afterthought. Moreover, the hindrance register is Respondent's document which is admitted by them.

14.3.6 The Claimant had in fact pointed out few factual discrepancies in actual dates of removal of hindrances as recorded in the Hindrance register produced by the Respondent during the proceedings. This was by way of filing a written statement submitted by the Claimant which was not challenged by the Respondent.

14.3.7 Considering the material evidence on record, the Tribunal is of the opinion that the delays are not attributable to the Claimant and the reasons mentioned in various EOT applications are legitimate as found from records."

(Emphasis Supplied)

44. I am of the view that the reliance placed by the Arbitrator on hindrance register is well founded, and reasoned, as the petitioner has never disputed the contents of the hindrance register before the Arbitrator or even before this court until the stage of oral arguments. The petitioner only pointed out few discrepancies before the Arbitrator which were categorically dismissed by the Arbitrator by terming them as an afterthought. Again raising such crucial objection at such a belated stage of oral arguments of Section 34 proceedings is nothing but an afterthought. A perusal of the hindrance register shows that it is a contemporaneous record maintained at site and duly signed by the representatives of the petitioner and the consultant engaged by them, thus it can be said that the petitioner had knowledge of the delays, and its causes and the same cannot be attributed to the respondent for no reason/fault on its part. The relevant portions of the hindrance register (Typed Copy) showing signature of consultant and engineers are reproduced as under:-

S. No.	Nature of hindrance	Item of work which could not be executed due to this hindrance	Date of start of hindrance	Date of removal of hindrance	Overlapping if any	Net hindrance in days	Sign of A.E.	Weightage of this hindrance	Net affected days	Sign of PM/EE	Remarks of residing officer
18	Details of cold rooms and kitchens in hostels	Due to non-availability of the details of provisions to be left in the dining halls and kitchens for the services and equipments, these portions cannot be finished and so the completion of hostels is affected Affected areas – all hostels	07.12.2011	31.03.2012 and cont.	114 days	114 days			Nil		
19	Extended development	Due to existence of sewer pond	07.12.2011	31.03.2012 and cont.	114 days	114 days			Nil		

	and work of services around the building	and non channelization of nallas passing around the building, the work of sewer/water supply and other services were in the limits and scope of package-1 cannot be completed and so the progress is affected. Affected areas – Medical college and college of Nursing									
20	Delay in receipt of drawing for kota stone	Delay in water proofing work.	23.11.2011	04.05.2012	163 days	163 days			Nil		

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	flooring and terrace water proofing	Affected area Medical College, College of Nursing Ayush block and Library Building								
21	Delay of civil work due to work of other agencies in main service building & library.	Delay in complete work of block 'A' of service building as well as Ground floor and terrace of library Affected area : Service building and library building	27.01.2012	30.09.2011 and cont.		613 days			613 days		
22	Delay of civil work due to work of other agencies near hostels and	Delay in civil work and finishing work near hostel and other buildings.	14.03.2012	30.09.2013 and cont.	565 days	565 days			Nil		

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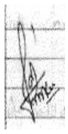
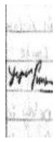
	other buildings	Affected area: - Hostel and other building									
23	Details of cold rooms and kitchen in hostels	Due to non availability of the details of provisions to be left in the dining halls and kitchens for the services and equipments, these portions cannot be finished and so the completion of hostels is affected. Affected area: all hostels	24.05.2012	30.09.2013 and cont.	494 days	494 days			Nil		
24	Heavy rains	Delay in civil	06.06.2012	24.09.12	88 days	88 days			Nil		

	during 2012	work and finishing was due to the heavy rains Affected area: hostels and other buildings				(Rain effected days only)					
25	Modifications desired by the Director in O.T room Autoclave room and flooring in Ayush building.	Delay in final finishing work in Ayush block Affected area: Ayush block.	01.07.2012	30.09.2013 and cont.	456 days	456 days			Nil		
26	Delay in receipt GFC drawings for work of atrium and mumty in nursing college	Finishing work of first floor elevation on atrium side Affected area: Nursing college.	01.07.2012	30.09.2013 and cont.	456 days	456 days			Nil		

45. The objections of the petitioner *qua* the non-consideration of report of superintending engineer dated 21.04.2017, site visits and status of incomplete work, were considered by the Arbitrator and were found irrelevant in view of better evidence in the form of hindrance register. The same is evident from the paragraph Nos. 14.3.2, 14.3.3 and 14.3.4 as reproduced above.

46. The respondent has correctly relied on ***Delhi Agricultural Marketing Board (Supra)*** highlighting the significance of hindrance registers. Also, a Coordinate Bench of this Court in a recent judgment titled as ***Airport Authority of India v. URC Construction***[17]**,** reiterated the position that hindrance registers hold substantial evidentiary value in construction contract disputes. The relevant paragraph No. 89 of the aforesaid judgment reads as under:

> *"89. It is a settled principle that site records i.e. Hindrance Registers often hold greater evidentiary value regarding the actual impact of weather on specific construction activities like concreting or earthwork than general meteorological data."*
>
> ***(Emphasis Supplied)***

47. Additionally, the Arbitrator is the master of quality and quantity of evidence and his reasoning when substantiated by the material evidence cannot be said to be perverse, patently illegal or against public policy, just because another view is plausible.

48. Therefore, on the issue of attribution of delays, the reasoning and findings of the Arbitrator rests on legitimate contemporaneous evidence

[17] 2026 SCC OnLine Del 534.

and the said Award cannot be said to be vitiated on the grounds under Section 34 of the act merely because a report or some contentions of the petitioner are not discussed in detail in the Award. This court under Section 34 of the act cannot weigh evidence or reappreciate the same.

Claim Nos. 6, 7, 8, AND 9: Additional expenses due to prolongation of contract for various reasons.

49. Claim Nos. 6, 7, 8, and 9 pertain to the claims raised by the respondent before the Arbitrator for compensation arising from prolongation of the Contract period, covering idling of resources such as plant, machinery, labour, etc. These claims collectively forms a substantial portion of the relief sought by the respondent i.e. an amount of about Rs. 35.08 crore, out of which an amount of about Rs. 3.2 crores was awarded *vide* the Award. These claims are predicated on the arbitral finding that the delays are primarily attributable to the petitioner, justifying damages.

50. The primary contention raised by the petitioner, apropos these claims is that the Arbitrator exceeded its jurisdiction by granting compensation despite clear bar contained in the terms and conditions of the Contract. It is contended by the petitioner that the respondent in terms and conditions of the Contract is only entitled to extensions and not compensation. The petitioner has relied on ***Ramnath International Construction Pvt. Ltd. (Supra)*** to support its contention that when there is a contractual stipulation prohibiting compensation in case of extension of time, the same cannot be awarded by the Arbitrator.

51. The Award of these claims is contended by the petitioner to be in violation of Clause Nos. 6(a), (b) and 40(h), (p)(ix) of the Special Conditions of the Contract, as they bar any claims for delays and only allows remedy of extension of time. The relevant clauses read as under:

"Clause 6: Disruption of Progress

(a) The Contractor shall give adequate but not less than 4 weeks written notice to the PC whenever planning or progress of the works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is required to be issued by the PC. The notice shall include details of the drawing or order required explaining why and by when it is required and of any delay or disruption likely to be suffered if it is late .

(b) If by any reason of any failure or inability of the PC to issue within 4 weeks any drawing or instruction for which notice has been given by the Contractor in accordance with Sub-clause 1 and the Contractor suffers delay when the PC shall after due consultation with the Contractor recommend to the Client any extension of time under respective clause. Notwithstanding anything stated above, the Contractor shall not be eligible for any financial compensation arising out of the above.

Clause 40 Miscellaneous

(h) Delay in starting the work

No compensation shall be allowed for any delay caused in the starting of the work on account of acquisition of land, encroachment or in the case of clearance of works, on account of any delay in according sanction to estimates in issue of drawings, decisions etc. however, the extension of time shall be granted as per relevant conditions of Contract.

….

(p) Miscellaneous

(ix) No idling charges or compensation shall be paid for idling of the Contractor's labour, staff or P&M etc. on any ground or due to any reason whatsoever."

52. The respondent contends that these claims awarded under several heads for additional expenses during the period of prolongation, are based on detailed reasoning and despite presence of the aforesaid clauses, where the delays are attributable to one party i.e. the petitioner, the respondent is entitled to compensation/damages under Section 53, 54, 55 and 73 of the Contract Act. The respondent to support his contention has placed reliance on ***Vishwa Shanti Builders (India) Pvt. Ltd. (Supra)*** and ***K.N. Sathyapalan (Supra).***

53. The Arbitrator in the Award has categorically observed that the principles of compensation apply in case of prolongation of Contract arising due to breach as the delays were attributable to the petitioner only. The relevant portions of the Award read as under:

"6.1.6 The Claimant submitted that, as per section 53,54,55 and 73 of the Indian Contract Act, 1872, under circumstances of failure in performance, promises and breach on part of the Respondent, the Respondent is liable for compensation for the losses suffered by Claimant as a consequence of the said lapses of the Respondent. The Claimant argued that as per sections of Indian Contract Act, 1872 which clearly provides that when one party who has been compelled to incur loss due to the failure of the other party, such party is entitled for compensation.

6.1.7 The Claimant cited following case laws in support of this claim:

i. The Hon'ble Supreme Court in the case of K.N. Sathyapalan (Dead) by LRs. Vs. State of Kerala and Anr. (2007) 13 SCC 43

ii. The Hon'ble High Court of Delhi in National Highways Authority of India Vs. Hindustan Construction Company Ltd. 2016 (2) Arb. LR 1 (Delhi) (DB).

6.1.8 The Claimant submitted that ordinarily parties would be bound by the terms agreed upon in the Contract but in the event of one of the parties is unable to fulfill its obligations under the Contract which has direct bearing, the Arbitrator is vested with the authority to compensate the injured party for the extra cost incurred by him as a result of failure of the other party. The Claimant has also submitted that in the light of various Court Judgments, the aggrieved party needs to be compensated on account of delay in completion of work due to breaches committed by the other party.

….

6.2.1 The Respondent referred Contract Clauses 6 of SCC, Clause 40(a),(b),(h),(p) of SCC and submitted that various reasons like delays due to rainfall, cold weather etc. for which holding Respondent liable is beyond any logical sense. The Respondent had argued that despite clearance of the said hindrances, the Claimant has miserably failed to complete the works within the justified extension granted to it. This irresponsible act of the Claimant has resulted in delay in creation of required infrastructure for this *prestigious institute, as argued by Respondent. It is clarified also that after considering all hindrances the competent authority has decided to grant interim regular extension of time for completion of work up to 18th July 2012 only. The Respondent argued that as the rest of the delay up to point of consideration lies on part of the Claimant, the burden of delay should also be borne by the Claimant only.*

....

6.3.2 The Claimant has worked out the expenses on actual audited account basis for showing the costs incurred as per their books of accounts on machinery, manpower and various overheads. These costs were claimed in the prolonged period extending from contractual completion from August 2011 to till May 2015 for nearly 60 months.

6.3.3 In Construction Contracts, the Courts have also upheld the principles of compensation in case of prolongation of contracts arising due to breach. For quantification of overheads application of formula is also recognized by Indian courts and Hudson's formula is more popular having judicial acceptability. This formula is based on the practice that contractors do add the overheads as percentage loaded to the direct costs to arrive at bid costs. As per CPWD standard practice, 15% is allowed towards Contractor's profit & overheads on the analysis of rates for the items. In building trade, the site, general office & other overheads may be to the tune of at least 5 to 8% even as per the CPWD practice. Generally the contractor recovers the *costs incurred on resources deployed including overhead costs from the turn over achieved.*

Award:

Towards Claims No. 6, 7, 8 and 9, the claimant has totally claimed of Rs. 35,08,71,374/- under various heads of machinery hire charges, manpower costs, site overheads & establishment costs and head office, regional office expenses in the prolongation period.

The average monthly turnover which is lost due to prolongation of work is assessed as Rs. 7.5 Cr. in above. An under recovery of 1% expenses per month on lost turnover summing up all types of overheads and expenses claimed under Claims number 6,7,8 and 9 is judged genuine and reasonable. Thus for 43 months prolongation from Sept.2011 to up to March2015, a compensation of Rs. 7.5 Lakhs per month that is 1% of Rs. 7.5 Crores is awarded. Thus a total of Rs. 3,22,50,000/-, is awarded towards claim numbers 6, 7, 8 and 9."

(Emphasis Supplied)

54. A perusal of the arbitral Award and written statement dated 18.02.2016 filed by the petitioner before the Arbitrator, makes it clear that the petitioner raised this identical contention even before the Arbitrator as well. Raising this contention again in a Section 34 jurisdiction is nothing but reiteration of the same pleadings before this Court. The Award is well reasoned, based on correct application of principle of law, and passed after taking into consideration all the material evidence placed on record. Thus, the Arbitrator has rightly adopted a plausible view by making a categorical finding that in construction contracts the courts have applied principles of compensation in cases of breach of contract. The Arbitrator has not awarded these claims in lump sum rather the Arbitrator has also made categorical formula based technical finding.

55. The reliance placed by the petitioner on ***Ramnath International Construction Pvt. Ltd. (Supra)*** is misconceived and unfounded, as that decision was based on a very widely worded condition of the contract, namely Clause No. 11, which reads as under:

> *"11. Clause 11 of the General Conditions of Contract relates to time, delay and extension. We extract below the portions of clause 11 relevant for our purpose:*
>
> *11. Time, delay and extension.—(A) Time is of the essence of the contract and is specified in the contract documents or in each individual works order.*
>
> *As soon as possible, after contract is let or any substantial work order is placed and before work under it is begun, the GE and the contractor shall agree upon the time and progress chart. The chart shall be prepared in direct relation to the time stated in the contract documents or the works order for completion of the individual items thereof and/or the contract or works order as a whole. It shall include the forecast of the dates for commencement and completion of the various trades, processes or sections of the work, and shall be amended as may be required by agreement between the GE and the contractor within the limitation of time imposed in the contract documents or works order. If the work be delayed:*
>
> *(i) by force majeure, or*

(ii) by reason of abnormally bad weather, or

(iii) by reason of serious loss or damage by fire, or

(iv) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the tradesmen employed on the work, or

(v) by reason of delay on part of nominated sub-contractors, or nominated suppliers which the contractor has, in the opinion of GE, taken all practicable steps to avoid, or reduce, or

(vi) by reason of delay on the part of contractors or tradesmen engaged by the Government in executing work not forming part of the contract, or

***

(viii) by reason of any other cause, which in the absolute discretion of the accepting officer is beyond the contractor's control;

then in any such case the officer hereinafter mentioned may make fair and reasonable extension in the completion dates of individual items or groups of items of works for which separate periods of completion are mentioned in the contract documents or works order, as applicable.

***

(B) If the works be delayed:

(a) by reason of non-availability of government stores in Schedule B or

(b) by reason of non-availability or breakdown of government tools and plant listed in Schedule C;

then, in any such event, notwithstanding the provisions hereinbefore contained, the accepting officer may in his discretion, grant such extension of time as may appear reasonable to him and the same shall be communicated to the contractor by the GE in writing. The decision so communicated shall be final and binding and the contractor shall be bound to complete the works within such extended time.

(C) No claim in respect of compensation or otherwise, howsoever arising, as a result of extensions granted under Conditions (A) and (B) above shall be admitted."

(Emphasis Supplied)

56. The Hon'ble Supreme Court treated the above stated Clause as a specific consent by the contractor to accept only extension of time in full satisfaction of any delay claims. The relevant paragraph of the judgment reads as under:

"18. In spite of having held that both were responsible for the delay and having noticed the arguments based on clause 11(C) of the General Conditions of Contract, the Arbitrator proceeded to award damages on the ground of delay on the reasoning that the contractor is entitled to compensation, unless the employer establishes that the contractor has consented to accept the extension of time alone in satisfaction of his claim for delay. As rightly held by the

High Court, which decision we have affirmed while considering Question (i), clause 11(C) of the General Conditions of Contract is a clear bar to any claim for compensation for delays, in respect of which extensions have been sought and obtained. Clause 11(C) amounts to a specific consent by the contractor to accept extension of time alone in satisfaction of his claims for delay and not claim any compensation. In view of the clear bar against award of damages on account of delay, the Arbitrator clearly exceeded his jurisdiction, in awarding damages, ignoring clause 11(C).”

(Emphasis Supplied)

57. However, in the present case, the Clause Nos. 6(a), (b), 40(h) and 40(p)(ix) are narrow in nature and are not structured as comprehensive clauses covering all prolongations caused by breach of the either party i.e. the petitioner or respondent, the Arbitrator here has found the delays to be attributable to the petitioner alone on the basis of hindrance registers, and has not disregarded the contractual clauses but has consciously reconciled them with Sections 53, 55 and 73 of the Contract Act while awarding damages.

58. Additionally, the judgment of ***Ramnath International Construction Pvt. Ltd. (Supra)*** is distinguishable from the factual backdrop of the present case as from a perusal of the paragraph No. 18 of the judgment as reproduced above, the delays were attributable to both the parties, which was not the case in the instant petition. A Coordinate Bench of this Court in ***Simplex Concrete Piles (India) Ltd. v. Union of India*[18], ** also made the following observations:

> *"19. In my opinion, if I look at the issue from both the micro and macro positions, keeping in focus the intendment of legislation called the Contract Act, then, the judgment in the case of Asian Techs Ltd. can be said to laying down a law which would further the object and purpose of the Contract Act. I must hasten to add that I am still doubtful whether I am entitled to decide the aspect that out of two decisions of Supreme Court, which one is to prevail, therefore, my observations are strictly in terms of the limited parameters of the facts of the present case required to decide the aspect of the entitlement or the disentitlement to damages in view of the provisions of Section 55 and 73 of the Contract Act. I would with all due respect to the learned senior counsel for the petitioner, would not venture further and would leave it finally for a larger Bench of this court or the Supreme Court itself to consider whether at all there is any conflict between the judgments of Ram Nath International and Asian Techs Ltd and if there is a conflict, the ratio of which of the two judgments ought to prevail. I am therefore, deciding this case, to make things very clear, only on the basis of the decision that contractual clauses which prohibit the entitlement to rightful damages of a person is clearly hit and are void by virtue of Section 23 of the Contract Act."*

[18] 2010 SCC OnLine Del 821.

59. For the said reasons, the findings of the Arbitrator are sound, reasonable and based on a plausible view. Hence, no interference with the same is warranted under Section 34 of the Act.

Claim No. 1: Release of wrongfully withheld amount from RA Bill-33 & 34.

60. The Arbitrator *vide* interim award dated 30.12.2016 has awarded Rs. 2,95,79,465/- apropos the Claim No. 1 towards the amount withheld from the respondent's running account bills, without interest which was decided later by the Arbitrator at the time of final Award. The Award is based on the finding that the withholding of amount for non-achievement of milestone Nos. 4 and 5, was wrong as pursuant to the EOT'S milestone Nos. 4 and 5 also needed to be rescheduled. It was further held by the Arbitrator that milestone Nos. 1, 2, and 3 were rescheduled pursuant to the EOT's and hence there was no reason for not rescheduling milestone Nos. 4 and 5.

61. Notably, the findings of the Arbitrator in award of Claim No. 1 in the final Award is a reproduction of the findings made in the interim award dated 30.12.2016 wherein the claim was adjudicated except the interest component which was adjudicated to be paid in the final Award.

62. The petitioner raises two fold contentions with respect to Claim No. 1, firstly that the Arbitrator failed to distinguish between a regular extension and a provisional extension. In construction contracts, provisional extensions, are granted merely to keep the contract alive and does not mean that the delay of the contractor is condoned or admitted. In the present case despite regular extensions, provisional extensions were granted while explicitly reserving the right to levy compensation for delays under Clause No. 2 of the GCC. Secondly, rescheduling of milestone applied only upto regular EOT i.e. granted upto 12.10.2012 and recovery in March 2013 for persistent non-achievement of milestone Nos. 4 and 5 was valid, rendering this claim of the Award violative of Section 28(3) of the Act.

63. The Arbitrator apropos this Claim observed that as per Clause No. 5 of the GCC, Schedule F, the original milestones in the Contract were meant to be mutually decided between the parties and as per Clause No. 5.4 of the GCC, the milestones were required to be adjusted by the Engineer in Charge when extensions of time were granted. However, in the instant factual matrix, the petitioner granted several EOT's but never rescheduled milestone Nos. 4 and 5 in accordance with the new timelines. The Arbitrator categorically went on to hold that the amount was withheld by the petitioner based on the originally agreed milestones, which are irrelevant in light of the several EOT's granted by the petitioner without rescheduling the said milestones. Additionally, the Arbitrator held that the delays were attributable to the petitioner even beyond the period of regular EOT. The relevant portions of the Award read as under:

"Finding of the Tribunal:

1.6 I have carefully considered the above arguments of both the parties, the documents and evidence produced before me.

1.7 In clause 5 of GCC, Schedule 'F' Page 107 of the Contract, (Page 85 of CV -1) it is stipulated that Mile stone(s) will be mutually decided on award of work. Also as per clause 5.4 of GCC Engineer-in-charge has to determine the EOT and reschedule the Milestones for completion of work. In the instant case though the Engineer-in-charge *granted EOT but had not rescheduled the milestones. From the records placed before me it is seen that the Respondents had withheld sum of amount Rs.2,95,79,465/- from the RA Bills of 33 & 34 of the Claimants. Also it is evident from the hindrance register filed by the Respondents that some of the hindrances which were persisting beyond the period of regular EOT i.e. 18.07.2012. Such hindrances were continuing all along.*

1.8 As can be seen from the records, withholding of above referred amount was initiated based on originally agreed mile stones stipulated in the agreement well before the determination of EOT. It was imperative upon the parties to agree on rescheduling the milestones on granting of EOT. Because of this the original agreed schedule for milestones have lost their relevance. Furthermore the dispute between the parties is only regarding non achievement of 4^{th}, 5^{th} milestones. Since milestones 1^{st} , 2^{nd}, 3^{rd} were achieved within the extended period, which is not denied by the Respondents. Hence, there is no dispute between the parties on achieving the first three milestones.

AWARD:-

After deliberating in detail and considering all the submissions of parties, documents and evidence filed, the Tribunal awards that the withheld amount of Rs. 2,95,79,465/- on account of non achievement of milestones from the Claimants bill shall be refunded to the Claimants.

The Claimants have claimed interest @ 15 % P A for the above claim amount separately under Claim no.13. From the records placed before me I find that the amount was withheld while releasing payments for 33,34th RA bills on 18-2-2014.

The Tribunal Awards the simple interest at a rate 12% per annum on the above amount to be refunded from the date of recovery i.e.l8.2.2014 to the date of the award."

64. The relevant Clause No. 5 of the GCC reads as under:

"Clause No. 5.1 of GCC

As soon as possible after the contract is concluded, the contractor shall submit a Time and Progress Chart for each mile stone and get it approved by the Department. The Chart shall be prepared in direct relation to the time stated in the contract documents for completion of items of the works. It shall indicate the forecast of the dates of commencement and completion of agreement between the Engineer-in-Charge and the Contractor within the limitations of time imposed in the Contract documents, and further to ensure good progress during the execution of the work, the contract shall in all cases in which the time allowed for any work, exceeds one month (Save for special jobs for which a separate programme has been agreed upon) complete the work as per mile stones given in Schedule 'F'.

Sl. No. 13 amendment no 1 to tender document:

Five (5) Mile Stone(s) will be mutually decided on award of work based on the work programme submitted by contractor. The amount to be withheld for non-achievement of each mile stone· will be 1% of the tendered value.

Clause No. 5.4 of GCC

In any such case the Engineer-In-charge may give a fair and reasonable extension of time and reschedule the milestones for completion of work. Such extension shall be communicated to the Contractor by the Engineer-in-charge in writing within 3 months of the date of receipt of such request. Non application by the Contractor for Extension of time shall not be a bar for giving a fair and reasonable extension by the Engineer-in-charge and this shall be binding on the contractor."

65. I am in full agreement with the view of the Arbitrator that once extension is granted in view of Clause No. 5, the originally fixed milestone becomes irrelevant and any withholding cannot be allowed on the basis of not achieving the earlier fixed milestones. The reasoning adopted by the Arbitrator is cogent, correct and based on interpretation of Clause No. 5 of the GCC, which mandates rescheduling of the milestones in cases of grant of EOT. The view taken by the Arbitrator is not only a plausible view but also a reasonable one which is substantiated by contractual terms and evidence available on record.

66. The findings of the Arbitrator are based on plausible interpretation of

Clause No. 5 of the GCC, which cannot be reinterpreted/reappreciated by this Court under Section 34 of the Act. Thus, no ground warranting interference by this Court is established.

<u>Claim No. 2: Reimbursement of increase in taxes and duties under Clause 38 of GCC of contract (VAT, Entry Tax and Central Excise).</u>

67. Claim No. 2 pertains to reimbursement of a sum of Rs. 38,10,057/- towards increase in taxes and duties during the currency of the Contract, claimed by the respondent under Clause No. 38 of the GCC. The Arbitrator has allowed this claim, holding that once the statutory levies were in fact increased and duly paid by the respondent (contractor) in relation to the works, the petitioner (employer) was bound, under the Contract, to reimburse the same.

68. The petitioner has challenged the findings of the Arbitrator apropos the Claim No. 2 only on the ground that the respondent failed to lodge the claim within 30 days time period as stipulated under Clause No. 38 of the GCC. The same contention was also raised by the petitioner before the Arbitrator. The findings of the Arbitrator in favour of the respondent on this contention are stated to be patently illegal, perverse and unjust. Clause No. 38 of the GCC reads as under:

> *"Clause 38: <u>Conditions for reimbursement of levy/taxes if levied after receipt of tenders</u>*
>
> *i. All tendered rate shall be inclusive of all taxes and levies payable under respective statutes. However, pursuant to the constitution (46th amendment Act, 1982), if any further tax or levy is imposed by statute, after the last stipulated date for the receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such taxes/levies, the contractor shall be reimbursed the amount*

so paid, provided such payments, if any, is not, in the opinion of the superintending engineer (whose decision shall be final and binding on the contractor) attributable to delay in execution of work within the control of the contractor.

ii. The contractor shall keep necessary books of accounts and other documents for the purpose of this condition as may be necessary and shall allow inspection of the same by a duly authorized representative of the Government and/or the Engineer-in-charge and further shall furnish such other information/document as the Engineer-in-charge may require from time to time.

iii. The contractor shall, within a period of 30 days of the imposition of any such further tax or levy, pursuant to the constitution (Forty Sixth Amendment) Act 1982, give a written notice thereof to the Engineer-in-charge that the same is given pursuant to this condition, together with all necessary information relating thereto."

(Emphasis Supplied)

69. *Per contra*, the respondent argues that the petitioner has only reiterated the same contentions as raised before the Arbitrator, and the Arbitrator has already in a detailed and reasoned manner adjudicated these contentions of the petitioner. The respondent to substantiate the decision of the Arbitrator has placed reliance on ***Mahesh Bansal (Supra)*** and ***Associated Construction Co. (Supra),*** where courts have upheld reimbursement of statutory levies despite procedural lapse of furnishing notice, so long as the substantive liability under the contract stood established.

70. The Arbitrator with regards to the Claim No. 2 has noted that the petitioner has neither disputed the admissibility of the claim nor the quantification of it, but has only raised a defence limited to the ground that the claim was not lodged within 30 days. The Arbitrator referred to the Clause No. 38 of the GCC to hold that the said Clause provides for the notice to be given, but it does not stipulate that if notice is not given, the otherwise legitimate dues will not be reimbursed. Thus, in absence of any specific bar, the amounts paid in accordance with revised taxes are bound to be reimbursed. The relevant operative portions of the Award read as under:

> *"2.3.1 In Clause 38 of GCC it is stipulated that pursuant to the Constitution (46th Amendment Act, 1982), if any further tax or levy is imposed by Statute, after the last stipulated date of receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such taxes/levies, the contractor shall be reimbursed the amount so paid. Further the contractor is required to keep the necessary records for the purpose of seeking reimbursement.*
>
> *....*
>
> *2.3.3 From the records placed before me it is seen that the Claimant had paid such increase in taxes time to time during execution of work and requested the Respondent for reimbursement of the same as per the provisions of the Contract and based on the supporting documents provided to it.*
>
> *2.3.4 As can be seen from the record, the Respondent neither disputed the admissibility of claim under this clause*

> *nor the quantification of the reimbursement of the taxes filed by the Claimant. But only submitted and argued in their submissions that the claim was not lodged within 30 days. Furthermore, the dispute between the parties is only regarding limitation of claim and the only objection taken by the Respondent is that notice as required under Clause 38 of GCC had not been served on the Respondent before making this claim. As can be seen the above Clause provides that notice had to be given but that by itself is no ground to reject the claim if otherwise found due. Clause 38 of GCC does not stipulate that if notice is not given then statutory increase in taxes paid by the contractor would not be reimbursed. However, the work is in progress and the Claim is of progressive in nature. In the absence of any bar that the Claimant having paid the revised taxes which is calculated based on the actual paid challans, this claim appears justified.*
>
> *Award: An amount of Rs. 38,10,057/- is awarded to the Claimant against this Claim towards reimbursement of taxes and duties paid."*

(Emphasis Supplied)

71. In this view of the matter, the line of reasoning followed by the Arbitrator cannot be characterised as perverse or patently illegal. Clause No. 38 (iii) of the GCC as reproduced undoubtedly embodies a stipulation regarding notice within a certain period, but the same Clause does not in any possible way provide that failure to comply with the provision concerning notice within 30 days shall result in nullifying that right of reimbursement or the same will render the claim for otherwise legitimate dues as non-maintainable. Treating such a stipulation of notice as directory rather than mandatory and in the absence of an express stipulation, the interpretation of the Arbitrator is a plausible construction of the Contract. It cannot, therefore, be said that the Arbitrator has ignored the terms of the Contract or exceeded the jurisdiction. The Arbitrator has interpreted Clause No. 38 and has made a finding which is also in consonance of the judgments of this Court.

72. The respondent to substantiate the decision of the Arbitrator has correctly placed reliance on ***Associated Construction Co. (Supra),*** wherein a Coordinate Bench of this Court relied on ***Mahesh Bansal (Supra),*** to hold that mere non-compliance with provision for notice is not in itself a ground to invalidate a claim otherwise valid and when the Arbitrator bases his decision on evidence based formula/methodology/admitted amount, the same should not be interfered under Section 34 jurisdiction. The relevant paragraphs of ***Associated Construction Co. (Supra)*** read as under:

> *"31. It is not disputed by the petitioner that almost a similar controversy has already been adjudicated upon by this Court in the case titled as Mahesh Bansal v. Executive Engineer (FCD. 1) (1995) 34 DRJ 249. Single Judge of this Court in the said case was concerned with a similar claim for labour escalation under a similar clause as in the present case, and proceeded to deal with the objections to the arbitral award in the said case as under:*
>
> *"8. So far as Claim No. 3 is concerned, the claimant had claimed increase in the cost of labor due to increase in labor wages on account of Delhi Administration*

Notification. Minimum labor rates were quoted at the time the lenders were submitted. These rates were revised w.e.f. 1st June, 1984 by Delhi Administration. Hence the petitioner was duly bound to pay the revised wages to his labor. The only objection taken by the respondent is that notice as required under Clause 10(c) had not been served on the respondent before making this claim. Secondly record had not been produced to substantiate the same. Both these objections have been turned down by the Arbitrator primarily on the ground that the respondent submitted a statement showing the amount of work done after 1st June 1984 i.e. exhibit 'R-11'. He also look into consideration the labor component from exhibit 'R11' which worked out to be 23.5% as per the norms of C.P.W.D. Therefore, he concluded that the petitioner would be justified to claim escalation as worked out on the basis of exhibit 'R-11' while absorbing 10% and, therefore, concluded that award of Rs. 3,620.00 would be just as against the claim of Rs. 20,700.00. <u>So far as serving of notice is concerned, admittedly Clause 10(c) provides that notice had to be given but that by itself is no ground to reject the claim if otherwise found due. Clause 10(c) does not stipulate that if notice is not given than statutory increase in labor wages paid by the contractor would not be given. In the absence of any bar, the Arbitrator was within his right to conclude that the contractor having paid the revised wages which he calculated on the assumed labor component of 23.5%;</u> as per the norms of the C.P.W.D. and therefore, relying on the *document filed by the respondent exhibit 'R-11" he calculated the escalation of the labor component and awarded the amount. I see no reason to interfere in the same."*

32. A reading of the aforesaid judgment would show that similar objections to the award have been raised by the petitioner in the present case have been repelled. The approach taken by the Arbitrator in the present case is similar to the approach that has been upheld by this Court in the aforesaid case.

33. It appears from the record that the Arbitrator has gone strictly by the admitted amount of work done in the present contract by the petitioner and extracted the labor component from the same. As already noted hereinabove, the Arbitrator has thus based his formula/methodology only on the relevant statutory notifications evidencing the increase in minimum wages and RAR bills, to evidence the work actually executed, which have admittedly been certified by the petitioner itself at different stages of the work.

34. It is not the case of the petitioner that the subject contract provide for a different formula to be applied in order to arrive at the quantification of the escalation due. It is the petitioner who had appointed the Arbitrator, who is not only a technical person but is also incidentally a serving officer of the petitioner. The very purpose behind the appointment of technical persons as Arbitrators is that they

may use their expertise and experience in the field to be able to resolve technical and trade-specific disputes between the parties. Once such a technical and factual determination has been carried out, it is not open to the petitioner to make a grievance about the same merely because the said determination was not to its liking. Single Judge of this Court in the case of P.C. Sharma and Co. v. Delhi Development Authority in CS(OS) No. 2057A/1996 decided on 2nd July, 2010 in this regard has opined as under:

"...The respondent DDA had the choice to appoint an Arbitrator and appointed a technical person rather than a legal person. The sole purpose of appointment of a technical rather than a legal person as an Arbitrator is to take benefit of the special knowledge of the Arbitrator relating to the matters in dispute."

35. In light of the above, the challenge by the petitioner to the findings of the Arbitrator under Claim No. 5 has no force and this Court is not inclined to interfere with the said findings."

(Emphasis Supplied)

73. The Arbitrator's view is both possible and reasonable and interference is unwarranted. Accordingly, the award on Claim No. 2, granting reimbursement of increased taxes and duties under Clause No. 38 of the GCC, rests on a tenable interpretation of the Contract.

Claim No. 3: Reimbursement of increase in taxes and duties under Clause 20 and 19B iv (b) of GCC of Contract (Minimum Wages Act).

74. The Claim No. 3 pertains to reimbursement of additional expenditure incurred by the respondent on account of increases in statutory payments of minimum wages and other statutory obligations. The respondent has substantiated this claim by relying on Clause No. 20 of the GCC, which obliges the respondent to comply with the Minimum Wages Act, 1948, and other labour laws, read with Clause No. 19B(iv)(b) of the GCC. The Arbitrator accepted the contentions of the respondent and allowed the claim.

75. Apropos this Claim, the petitioner has raised two-fold contentions. Firstly, the Arbitrator has committed grave error by basing his decision on Clause No. 38 of the GCC, despite the fact that the respondent itself has not claimed the amount under Clause No. 38 of the GCC. Secondly, the respondent relied on Clause 10CC of CPWD contracts for quantification and the same was treated as correct by the Arbitrator.

76. Additionally, the petitioner also relies upon paragraph No. 3, Volume IV of "Preamble to Bill of Quantities" to contend that the rates quoted are not amenable to change for any reason, the paragraph No. 3 reads as under:

> *"3. Rates quoted shall be firm and shall not be subject to any price variation due to increase in labour wages, cost of material etc., or any other price variations due to any reason whatsoever whether during the stipulated period of execution or during the extended period of completion if any."*

77. At this stage, it is pertinent to see Clause No. 20 and 19B(iv)(b) of the GCC and the same read as under:

> *" Clause 19B Payment of wages:*
>
> *Payment of wages:*
>
> ...

(iv.)...

(b). Under the provision of Minimum Wages (Central) Rules, 1950, the contractor is bound to allow to the labours directly or indirectly employed in the works one day rest for 6 days continuous work and pay wages at the same rate as for duty. In the event of default, the Engineer-in-Charge shall have the right to deduct the sum or sums not paid on account of wages for weekly holidays to any labours and pay the same to the persons entitled thereto from any money due to the contractor by the Engineer-in-Charge Concerned.

In the case of Union Territory of Delhi, however, as the all inclusive minimum daily wages fixed under Notification of the Delhi Administration No. F. 12(162) MWO/ DAB/43884-91, dated 31.12.1979 as amended from time to time are inclusive of wages for the weekly day of rest, the question of extra payment for weekly holiday would not arise.

....

CLAUSE 20 Minimum Wages Act to be complied with

<u>The Contractor Shall comply with all the provisions of the Minimum Wages Act, 1948 and Contract Labour (Regulation and Abolition) Act, 1970, amended from time to time and rules framed thereunder and other labour laws affecting contract labour that may be brought into force from time to time</u>."

(Emphasis Supplied)

78. From a perusal of the Clause Nos. 19B(iv)(b) and 20 of the GCC, it is clear that together both of these clauses cast a mandatory and a continuing obligation on the respondent to comply with the payment of statutory wages as revised from time to time.

79. The Arbitrator while dealing with this claim has relied on the Clause No. 38 of the GCC, which provides that if any tax or levy is imposed after the last stipulated date of receipt of tenders, and the respondent has duly paid the same, the respondent shall be reimbursed the amount so paid.

80. The Arbitrator in this regard made a factual observation that the claimant had in fact paid minimum wages increased from time to time to the labour engaged, and had claimed reimbursement from the petitioner. The respondent had produced supporting documents evidencing such payments. He further noted that the claimant had quantified its claim by adopting the labour component and formula analogous to Clause No. 10CC of the CPWD contract, treating the present Contract as similar in structure. The Arbitrator granted actual expenditure incurred/actual payments made to labour in this Claim. The relevant portions of the Award read as under:

> *"3.3.1 In Clause 38 of GCC it is stipulated that pursuant to the Constitution (46th amendment Act, 1982), if any further tax or levy is imposed by Statute, after the last stipulated date of receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such tax/levies, the contractor shall be reimbursed the amount so paid. <u>From the records placed before me it is seen that the Claimant had paid properly such increase in Minimum Wages to labour engaged from time to time during execution of work and requested the Respondent for</u>*

reimbursement of the same as per the provisions of the Contract and based on the supporting documents provided to it.

3.3.2 As can be seen from the record, the Claimant had quantified its claim as per Clause 10 CC of the CPWD contract as the present contract is also similar to CPWD contracts in which the labour component for escalation is adopted as 25%. The Claimant has submitted the actual expenditure incurred/ actual payments made to labours in support of above claim. These are the records maintained during execution and certified. Further the subject contract was also prolonged for reasons not attributable to the Claimant and grant of extension of time by the Respondent to this effect was also in place. In the light of above judgments cited the court held that when the state has agreed to reimburse the increased wages than those prescribed or notified at the time of inviting tenders, it is obligatory to reimburse such costs.

Award:

In view of the above findings, an amount of Rs. 1,44,71,999/- as against the claim of Rs. 6,98,63,141/- is awarded on this Claim towards reimbursement of minimum wages of labour, based on records produced ."

(Emphasis Supplied)

81. The first objection of the petitioner that the Arbitrator has substantiated the Award on Clause No. 38 without jurisdiction is misconceived and unfounded. The fact that the respondent, in its SOC, stressed on Clause Nos. 20 and 19B(iv)(b) rather than Clause No. 38 does not mean that the

Arbitrator was barred from referring to Clause No. 38 as the more specific reimbursement provision while giving its findings. The Arbitrator has not granted the claim by relying on something alien to the Contract, it has merely located the correct clause that gives effect to the same substantive right as the respondent claimed. Moreover, the Arbitrator while noting the submissions of the respondent has also noted a reference to Clause No. 38 of the GCC, the relevant portion of the Award reads as under:

> *"3.1 Claimant's Submissions:*
>
> *3.1.1 The Claimant submitted that as per Clause 20 of GCC, the Claimant should comply with all the provisions of the Minimum Wages Act, 1948 and the Contract Labour Act, 1970 during execution of contract.*
>
> *3.1.2 The Claimant submitted that as per Clause 38 (iii) of GCC if any further tax or levy is imposed by statute after the last stipulated date of receipt of tender including extensions if any, and the Contractor thereupon necessarily and properly pays such taxes/levies, the Contractor shall be reimbursed the amount so paid."*
>
> ***(Emphasis Supplied)***

82. Be that as it may, the Arbitrator being the master of the quality and quantity of the evidence, the appreciation of the terms of the contract is the sole prerogative of the Arbitrator.

83. The second objection raised by the petitioner *qua* this claim is the quantification of claim as per Clause No. 10CC of CPWD despite the subject Contract not being same as CPWD contract. This objection is a mere reiteration of the objection already raised before the Arbitrator and duly adjudicated by him. The Arbitrator in the present case has only made a reference to the Clause 10CC of CPWD but has not relied on it, the Arbitrator relied on the actual records for the purpose of allowing and awarding the claim.

84. Third objection as regards to amenability of quoted rates to change in view of paragraph 3 of the Preamble to BOQ, this particular objection was also raised before the Arbitrator. I am of the view that this Clause cannot be read in isolation and the same requires a comprehensive reading along with other provisions of the Contract. Merely because Arbitrator did not refer this particular Clause of the Contract in his Award, the same cannot be used as a ground to assail the Award, when the view taken by the Arbitrator is plausible view and based on cogent reasons and evidence.

85. Moreover, the reliance placed by the respondent on the judgment of ***Associated Construction Co. (Supra)*** is also well founded, as the dispute adjudicated in that matter squarely substantiates the decision of the Arbitrator in the present matter. The findings of the Arbitrator with respect to quantum of the Claim are based on actual expenditure incurred. Thus, the same does not warrant any interference by this Court. The relevant paragraphs of the aforesaid judgment are already reproduced in the paragraph No. 72 of this judgment.

86. To my mind, the view taken by the Arbitrator is a correct view based on appreciation facts, which cannot be reappreciated by this Court under Section 34 of the Act. Thus, there is no ground established by the petitioner for warranting interference with the Award.

Claim No. 4: Extra items of work claimed under Clause 12 of GCC and Clause 22, 23 of SCC.

87. The Claim No. 4 pertains to the additional items/substituted items executed during the execution of works by the respondent, in accordance with the instructions of the petitioner. These extra items of work were claimed under Clause No. 12 of the GCC and Clause Nos. 22 and 23 of the Special Conditions of the Contract.

88. The Claim No. 4 majorly relates to the payment for two extra executed items, the first one being washed stone grit plaster with marble chips and the second one being laying in position the ready-mix concrete (RMC), and the petitioner has assailed the Award on three broad grounds:

i. That the extra items must be claimed in strict compliance of Clause 12, more specifically Clause No. 12.2 of the GCC.

ii. That the dispute survived only with respect to the RMC as the grit plaster issue had already been approved during the site visit on 26.11.2016 and paid. The same fact had already been conveyed to the Arbitrator *vide* petitioner's written arguments submitted during the arbitral proceedings.

iii. That the RMC was already covered by agreement item No. 3.8/DSR item No. 5.33, and the Arbitrator has erred in relying upon item No. 5.37 of the DSR.

89. From a bare perusal of the submissions and findings recorded by the Arbitrator, it is clear that the petitioner has only reiterated its arguments which were contended before the Arbitrator. The relevant portions of the Award read as under:

> *"4.1 Claimant's Submissions:*
>
> *4.1.1 The Claimant submitted that during the execution of works there were additional items/ substituted items which were executed as per the directions/Instructions of the Respondent<u>. The Claimant submitted that for these extra items of works it had submitted its rates along with detailed rate analysis in accordance to contract clause 12 of GCC.</u>*

The list of extra item for which the rates are not finalized by the Respondent are listed at page 93 of SOC.

4.1.2 The Claimant submitted that during the proceedings as per the directions of AT, the Respondent finalized the rates for almost all aforesaid extra items except for only two items pending/disputed. One such item is Washed stone grit plaster at sl.no.6 of the list of extra items at page 93 of SOC and the other is Providing and laying in position Ready Mix Concrete (RMC) at Sl.no.7 of the list of extra items at same page.

4.1.3 The Claimant submitted that the external plaster is to be washed stone grit plaster with ordinary stone chips of 10 mm nominal size. But the Claimant has executed the work as per the drawings/ details for finishing works issued by the Respondent at a later date during execution of work, which envisages that the grit plaster with marble chips instead of ordinary stone chips. As the marble chips are much costlier in comparison to ordinary stone chips the Claimant has submitted the extra item along with rate analysis for extra costs towards costlier marble chips, which is a substituted item.

4.1.4 The Claimant pleaded that the difference in market rates for ordinary-stone and marble is huge. The Claimant also argued that the rate quoted at the time of submission of bid was based on stone chips only as per item nomenclature intender. The Claimant argued that during execution the claimant was asked to execute the item with marble chips *and hence it is legitimately entitled for above claim of extra item of grit plastering using marble chips.*

<u>*4.1.5 The Claimant during arguments on 21.11.2016 submitted a revised rate analysis as per then prevailing market rate for the above extra item along with copy of invoices to support the actual procurement rate of marble chips and other materials for finalization of rates. The Claimant submitted that the revised rate is Rs. 398.81 per sqm. whereas it is being paid a rate of Rs. 266.66 per sqm. And it is entitled for difference of rate of Rs.l32.15.*</u>

4.1.6 The Claimant submitted that another extra item beyond the scope of work executed was of Ready Mixed Concrete (RMC) which was not covered under BOQ item provided in the contract. The Claimant argued that the Respondent had wrongly incorporated the item from DSR (Delhi Schedule of Rates) which does not cover the scope of RMC. The DSR item under which the scope of work executed for RMC is covered under DSR item no. 5.37.

4.1.7 The Claimant submitted that the Claimant has used Ready Mixed Concrete manufactured in fully automatic Batching plant and transported the same to job site by transit mixers in accordance to contract clause 40, para P(ii) of Special conditions of contract (SCC). For such an item the rate is catered against item no.5.37 of DSR. The Claimant argued that the item in BOQ under which this was being paid which does not cover the scope of RMC.

4.1.8 The Claimant submitted that the scope of work for RMC also includes transit mixer for transporting RMC to *site of work, having continuous agitated mixer which was not covered under the scope of BOQ item 3.8. The Claimant submitted that as the work was executed by the Claimant in accordance to contract clause 40(P)(ii) of SCC and with similar description of work as per DSR item 5.37, the Claimant has claimed the RMC as substituted item. Hence the Claimant as rightly claimed the aforesaid substituted item as per the terms of the agreement as pleaded by Claimant. The Claimant has submitted the photographs as evidence of deploying RMC plant and Transit mixers for executing concrete by RMC against the Respondent's arguments that no RMC plant was deployed. The Claimant submitted that it submitted a rate analysis for substituted item of RMC for Rs. 4932.69 per Cu.m. and the payment with BOQ rate of Rs. 4695.94 per Cu.m is being paid by the Respondent. The Claimant argued that it is entitled for the difference of these rates.*

4.2 Respondent's submissions:

<u>4.2.1 The Respondent submitted that as per Clause 12 of GCC the Contractor may seek extra rate within fifteen days of receipt of order or occurrence of items claim rates, supported by proper analysis for the work.</u> But the Claimant was neither serious in raising the claims or submitting the required details within 15 days of occurrence as per contract clause and taken his own arbitrary time in submitting the claims in the arbitrary format.

4.2.2 The Respondent submitted that the valid claims are being scrutinized and processed soon after receiving the *desired supporting details from the Claimants and valid claims are approved by the competent authority. But the Claimant has unnecessarily pressurizing the Respondents by claiming arbitrary claims in terms of extra items like using RMC plants instead of BMC plants and extra payments of sand stone cladding on DSR items against BOQ rates etc.*

4.2.3 The Respondent submitted that the major part of the claimed extra item consists of use of marble chips in Grit plaster amounting to Rs.62.17 lac and use of RMC plants in RCC work amounting to Rs. 84.17 lac. It is mentioned that these claims were raised much after the occurrence of these items at site and also without any supporting base.

<u>4.2.4 The Respondent submitted that the item of grit plaster is always done in a particular combination using various type and colour of stone chippings in particular grading</u>. The work is being executed based on approved design and colour combination of stone chippings which includes marble chips also. The Claimants claim for additional amount for using marble chips is denied as the same is also covered under broad category of stone chips as per agreement item no 11.13 which states "top layer 15mm cement plaster 1:0.5:2 (1 cement : 0.5 coarse sand : 2 stone chipping 10 mm nominal size)".

4.2.5 On the extra rate for RMC, the Respondent submitted that the concrete was actually prepared using automatic Batch Mix Concrete Plants and shifted to various location of work sites using transit mixers in lieu of direct pumping as specified in agreement item. The Respondent argued that *the Claimant used the transit mixer for his own convenience and that was neither forced by the Respondents nor beneficial for the progress of work. Also the Respondent argued that the Claimant executed the RCC work using this system and the Respondent allowed this to avoid any hindrance in work. The extra claim is based on another DSR item in which concrete is brought from fully automatic RMC plants being owned by third party and approved for construction by the Client.*

4.2.6 The Respondent vide its written submissions of arguments dt: 10-4-2017 sent few invoice copies of which are already submitted by Claimant and on record.

4.2.7 The Respondent submitted that as there is no deviation from agreement items there should not be any extra claim permitted and hence the claim of the claimant is denied.

4.3 Findings of the AT:

4.3.1 This Arbitral Tribunal observes that the BOQ item no.13. 72 for "washed stone grit plaster" consist of ordinary stone chips of 10 mm nominal size and not with marble stone chips. On being questioned it is ascertained that nowhere in the tender documents usage of marble chips in the grit plaster was mentioned. Obviously the bidders do quote for this BOQ item is considering stone chips only. The Respondent's instruction to use marble chips in place of stone chips on the later date of execution of work is a deviation to this BOQ item and hence a new rate to be decided as per the terms of the contract. The Claimant is entitled for above claim of extra item of grit plastering using *marble chips. The Claimant on 21.11.2016 submitted a revised rate analysis based on the actual procurement of marble chips and other materials. The copy of the same has been received by the Respondent. The quantity is not disputed as it is being paid under BOQ item.*

4.3.2 With regards to other item of Ready Mix Concrete, the Tribunal observers that in the given BOQ item of contract the nomenclature of BOQ does not includes transit mixer for transporting concrete to site of work, having continuous agitated mixer. The Contract BOQ item stipulates as follows:

"Providing and laying in position machine hatched, machine mixed and machine vibrated design mix cement concrete of specified grade for reinforced cement concrete work including pumping of concrete to site of laying but excluding the cost of centering...... as per IS: 9103 .... as per direction of Engineer-in-charge".

4.3.3 The DSR item under which the scope of work executed for RMC is covered under DSR item no. 5.37 which stipulates as follows:

"DSR item no. 5.37 Providing and laying in position ready mixed M-25 grade concrete for reinforced cement concrete work, using cement content as per approved design mix, manufactured in fully automatic hatching plant and transported to site of work in transit mixer for all leads, having continuous agitated mixer, manufactured as per mix design of specified grade for reinforced cement concrete work including pumping of R.MC. from transit mixer to site

of laying, excluding the cost of centering........ as per IS: 9103 .... as per direction of Engineer-in-charge. "

4.3.4 <u>Since the Claimant executed the work of scope similar to DSR item no. 5.37 using automatic batching plant and transit mixer having continuous agitated mixer for transporting the RMC to site , the Claimant is entitled for the rate as per DSR item no. 5.37 as claimed</u> . The quantity is not disputed as it is being paid under BOQ item.

4.3.5 The quantification based on the revised rates is presented in pages 9109 and 9110 of Claimant's submissions. This is amounting to total of Rs.1,18,89,226/-.

Award:

In the light of above findings the Claimant is entitled to payment for these extra items. In the considered opinion of Tribunal the Claim of the Claimant for payment ofthese extra items is justified. Accordingly I award Rs.1,18,89,226/- on this claim."

(Emphasis Supplied)

90. The petitioner's challenge on the ground of non-compliance of Clause No. 12.2 of the GCC stating the claims as "afterthought" is misplaced. Most of the extra items were finalised during the proceedings, and that only these two items were pending. For approval of grit plaster, the respondent submitted revised analysis with invoices dated 21.11.2016. For RMC, a detailed rate analysis for the substituted item was submitted and considered but the same was disputed. Clause No. 12.2 of the GCC prescribes that, for substituted/extra items exceeding the specified limits, the contractor "may within fifteen days" claim revision of rates supported

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by proper analysis, whereafter the Engineer-in-Charge is to fix rates on the basis of market rates. Clause No. 12.2 of the GCC reads as under:

> *"12.2 Deviation, Extra Items and Pricing*
>
> *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…"*

91. The Arbitrator has considered similar Clause of the Contract namely Clause No. 38 of the GCC and held that these kind of Clauses are directory as no consequences for non-compliance are prescribed. Additionally, the invoices, were duly submitted by the respondent and there were no dispute to their authenticity. Thus, such non-compliance of a procedural requirement cannot render a valid claim wrong.

92. Apropos the second ground i.e. the issue with regards to the grit plaster component already being approved and paid, is misconceived and cannot be used to assail the Award.

93. The Arbitrator's reasoning *qua* the issue of grit plaster is that the Contract rate for "washed stone grit plaster" covered plaster using ordinary stone chips, and everyone bid on that basis, but later the department asked the respondent to use much costlier marble chips instead, which changed the item into a different, higher specification job. Since this was a deviation ordered by the petitioner, the Contract required a fresh rate to be fixed, and the respondent did submit a revised rate analysis on 21.11.2016 with invoices for marble chips, which the department received, while the quantity of work itself was never disputed, so the Arbitrator treated the marble chip work as an extra item and granted the claim accordingly.

94. Therefore, the challenge of the petitioner does not shake the reasoning of the Arbitrator, because what the Award has approved is the existence and quantum of a substituted item (marble chips) with a documented rate analysis, and not a second payment for work already compensated at BOQ. Moreover, the petitioner failed to place on record any evidence that the payment for the said item has been made twice. Hence, this Court cannot reappreciate the cogent quantification and analysis which is undertaken by the Arbitrator.

95. The petitioner's challenge with respect to the RMC is also unfounded, misconceived and a mere reiteration of the contentions as raised before the Arbitrator, the Arbitrator followed a clear, stepwise analysis for adjudication, he first looked at the BOQ concrete item, which only covers normal machine mixed concrete pumped to the site and says nothing about using transit mixers. He then compared this with DSR 5.37, which specifically covers ready mix concrete made in an automatic plant and brought to site in transit mixers. Based on evidence such as photos and the respondent's explanation, he held that the respondent had actually used an RMC plant and transit mixers, so the work matched DSR 5.37 rather than the simpler BOQ item. On that basis, he applied the DSR 5.37 rate as a substituted rate but kept the quantity the same, as it was not in dispute. Thus, the Arbitrator has relied on evidence placed on record to conclude that the scope of work executed by the respondent is that which is covered by DSR 5.37. The view of the Arbitrator is plausible and based on reasons.

96. In these circumstances, the Award on Claim No. 4 is reasoned and evidence based. It does not disclose any perversity, patent illegality or disregard of the contractual terms, and accordingly, no interference is warranted under Section 34 of the Act.

Claim No. 5: Revised rates for individual items of work the quantities of which had exceeded beyond limit.

97. The Claim No. 5 pertains to the payment at revised rates for certain items where the executed quantities exceeded the contractual deviation limits prescribed under Clause No. 12 of GCC, which is 30% of the trade, and beyond this limit the respondent is entitled to seek revision of rates for particular trade/items i.e. the prevailing market rates. Under this mechanism, the original BOQ rate ceases to apply and the respondent can seek revision of the rates (market rates) for that particular item/trade.

98. In this backdrop, the petitioner has challenged the Award of the Arbitrator apropos this claim on the ground that revised rates apply only for deviation of quantities beyond the deviation limit and the same needs to be claimed strictly as per the Clause No. 12.4, which was not claimed by the respondent despite being fully aware of the scheme of clause 12. Further, the Award apropos this claim is also assailed on the ground that the Arbitrator has inconsistently first used the word "trade" to mean "building trade" and then stated the word to be vague, to proceed to award the claim on flawed quantification without scrutinizing each item or applying the Bhopal Cost Index. The petitioner has relied upon a similar arbitral proceeding *qua* Package-1 of AIIMS Rishikesh to buttress its submission that the term "trade" refers to the subhead for allowing the market rate under clause 12 of the agreement. The relevant Clause No. 12.4 reads as under:

"12.4 GCC: The Contractor shall send to the Engineer-in-Charge once in 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 authorize consideration of such claims on merits. "

99. At this stage it is important to peruse the relevant portions of the Award and findings, which read as under:

"5.3 Findings of the AT:

5.3.1 In the contract the Clause-12 is on "Deviations/Variations Extent and Pricing ".Under this sub Clause 12.2 is on "Deviation, Extra items and Pricing ". In this the terms and conditions are stipulated in subhead clause "Deviation, Deviated Quantities, Pricing". <u>This clause stipulates that in case the contract items exceed the limits laid down in Schedule - F, the contractor can claim revision of rates supported by the proper analysis of rates for the work in excess of the above mentioned limits. 5.3.2 The Arbitral Tribunal observers that the provisions in the contract agreement for deviation limit under Clause -12 of Schedule F which reads as below: Clause 12:</u>

12.2 & 12.3

Deviation Limit beyond which clauses

12.2 & 12.3 shall apply for building work. 30% of trade

5.3.3 The word trade has a meaning based on the context of usage. The Dictionary meaning of trade refers to commercial activity. In general practice it relates to the business. For instance, when a phrase like "trade practice" is used, it refers to the practice prevailing in a particular kind of industry or trade.

5.3.4 Looking from the said angle, the reference to "Trade" can only be construed as a reference to the construction work as a whole that is involved in the subject contract. What it matters most is how the parties understood and meant by the word "Trade" while entering in to contract with respect to deviation limits specified in schedule-F for operation of Clause -12. There is no definition of the word 'Trade' in the contract agreement or how it is structured for deviation in quantities. The Claimant's arguments are that the deviation limit is on individual item quantities while the Respondent during arguments stated that the limit is applicable for group of subhead items in BOQ. It is clear that the issue is of interpretation. When any word/phrase built in any clause gives scope for multiple interpretations there seems to be an ambiguity which needs to be interpreted.

Award:

After carefully considering the facts, contractual provisions, evidence on record and the legal principles, the Arbitral Tribunal is of the view that deviation limit needs to be applied on item quantities individually. Hence this Claim is awarded in favour of the Claimant.

The abstract quantification of claim presented is for Rs. 4,23,76,331/-in pages 863 to 875 of Claimant's submissions CV-6 . The item quantities are not disputed. As can be seen from quantification details presented, for most of the deviated items beyond the limits, the rates are claimed based on DSR schedule rates pertaining to 2012, the period of execution of work. For some items of deviated quantities, market rates claimed for deviated quantities. Since there is no evidence submitted for market rates (MR), the revised rates cannot be considered for such items. Deleting such MR items, the quantification works out to Rs.4,10,11,761 /-. Hence an amount ofRs.4,10,11,761/- is awarded on this Claim."

(Emphasis Supplied)

100. The first ground to assail this claim of the Award i.e. non-compliance of the Clause No. 12.4 of the GCC, is misconceived as the Arbitrator has already held similar Clause No. 38 of the GCC to be directory, the Clause No. 12.4 being similar in nature is also directory. Hence, the same cannot be used as a ground to defeat an otherwise substantive and legitimate claim.

101. In the second ground regarding the interpretation of the term "trade", the respondent argued that the term should be interpreted to mean individual BOQ items, while the petitioner wanted it to be interpreted as broader BOQ sub-heads. The Arbitrator categorically observed that the term is not defined in the contract and is ambiguous and both interpretations are tenable. However, the Arbitrator proceeded to apply it to individual item quantities by relying on facts, contractual provisions, evidence on record and the legal principles. The Arbitrator deduced this interpretation by relying on evidence and making a finding as to how the parties understood the term before and during the execution of the Contract.

102. To my mind, this reasoning of the Arbitrator strongly rooted in appreciation of evidence by the Arbitrator himself. The view of the Arbitrator is a plausible one supported by evidence and the same cannot be reappreciated by this court under Section 34 of the Act.

103. The findings of the Arbitrator *qua* the quantification of the Claim are also cogent and reasonable. The respondent's computation was of Rs. 4,23,76,331/-, supported by detailed tables, and importantly the item quantities themselves were not disputed by the petitioner. For most of the excess quantities beyond the 30% limit, the respondent had based its revised rates on the DSR schedule for 2012. For some items it had claimed market rates without submitting corroborating evidence. The Arbitrator expressly refused to accept these unsupported market rates, and removed those items from the computation and arrived at Rs. 4,10,11,761/-, which it awarded.

104. In this view of the matter, the quantification of claim by the Arbitrator by applying DSR 2012, is not merely approval of the claim as filed by the petitioner but there is proper application of mind on part of the Arbitrator thereby, rejecting the unsubstantiated market rates. The Arbitrator has made categorical cogent findings and the petitioner by way of raising this challenge to the Award more particularly this claim is trying to persuade this court for reappreciation of its evidence, which is not permissible under Section 34 of the Act.

Claim No. 10: Loss on locked up deposits Bank Guarantees due to Prolongation of Contract.

105. Claim No. 10 pertains to the loss caused due to locked up performance bank guarantee due to the prolongation of the Contract. The respondent claimed that since the delay in execution is not attributable to it, the loss sustained by it like loss of interest, cost incurred on extension, etc. was payable.

106. The petitioner's objection is that the Clause No. 1, specifically Clause No. 1(ii) of the GCC provides that the performance bank guarantee needed to be kept valid up to the stipulated date of completion plus 60 days and thereafter the same needed to be returned without any interest. Thus, the petitioner is not liable to pay any interest/charges. The Clause No. 1(ii) of the GCC reads as under:

> *"The Performance Guarantee shall be initially valid up to the stipulated date of completion plus 60 days beyond that. In case the time for completion of work gets enlarged the contractor shall get the validity of Performance Guarantee extended to cover such enlarged time for completion of work. After recording of the completion certificate for the work by the client, the Performance guarantee shall be returned to the contractor, without any interest."*

107. The operative portions of the Award with respect to Claim No. 10 reads as under:

> *"10.3 Findings of the AT*
>
> *10.3.1 ....*
>
> *10.3.2 As per the above provision in the contract the Claimant has to keep the Performance Guarantee valid till the completion of work plus 60days beyond that.*
>
> *I0.3.3 <u>Since the contract period got prolonged due to reasons not attributable to Claimant against stipulated period of 15months,the Claimant is to be compensated for</u>*

<u>the additional expenditure incurred on account of extension of BG in the extended period of contract as claimed.</u>

Award:

After deliberating in detail and considering all the submissions of the parties, I am of the view that the Claimant is entitled for reimbursement of additional expenditure incurred on account of commission charges for extension of Performance BG in the extended period of contract."

108. The Award, notes that the bank guarantee was in fact kept alive beyond the contractually contemplated period solely because of prolongation not attributable to the respondent. In treating those additional charges as a compensable component for the delay in execution, the Arbitrator has only made a logical/reasonable/lawful conclusion. The same is supported by the observations made in the above sections of this judgment that compensation is not barred unless clearly prohibited by the contractual term. Therefore, the reasoning of the Arbitrator is well founded and does not disclose any patent illegality or any other ground warranting interference under Section 34 of the Act.

<u>Claim No. 12: Escalation Amount on material payable due to prolongation of Contract.</u>

109. This claim pertains to price escalation due to the prolonged period of the Contract. The respondent claimed that it is entitled to such price escalation because there is substantial increase in burden due to the increased cost of construction material.

110. The petitioner assails the Award of this claim on the ground that the claim is in violation of the terms of the Contract. Paragraph No. 3 of "preamble to the bill of quantities" stipulates that the quoted rates shall not be subject to any variation whatsoever including the extended period, the relevant paragraph reads as under:

> *"Rates quoted shall be firm and shall not be subject to any price variation due to increase in labour wages, cost of materials, etc., or any other price variations due to any reason whatsoever whether during the stipulated period of execution or during the extended period of completion if any."*

111. The relevant portions of the Award with respect to Claim No. 12, read as under:

> *"12.3 Findings of the AT :*
>
> *12.3.1 I have carefully considered the above arguments of both the parties, the documents and evidence produced before me.*
>
> *12.3.2 The date of commencement of the work was on 27.05.2010. The time for completion was 15months and the schedule date of completion was 26.08.2011. In the Award against Claim no. 1, it has been held that the delay causes are not attributable to Claimant.*
>
> *12.3.3 This claim is for escalation amount on material due to prolongation of contract worked out in the prolonged period up to 42nd RA bill submitted (March 2015). The detail of claim has been given by the Claimant in CV -27 of the Statement of Claims.*
>
> *12.3.4 As can be seen from the records, as per terms of the contract Schedule F Clause 10CC is not applicable since the contract stipulated duration is 15 months. The Hon'ble Supreme Court in the case of Union of India Vs. Saraswat*

Trading Agency and Ors. (2009) 16 SCC 504 has categorically held that escalation is a normal incidence in a prolonged contract and even in the absence of an escalation clause, such escalation is payable. The Claimant has worked out price escalation for materials following the formulae based methodology as per Clause 10(CC) of CPWD with base price and current indices of whole sale price indices published.

12.3.5 It is a general industry practice that formula based price escalation provisions are commonly adopted in construction contracts to compensate for increase for rise in prices in materials. Generally for building contracts CPWD and such public departments provide formulae based price adjustment provisions popularly referred as escalation clauses. The formula based methodology do consist of component wise weightage for materials, labour based on the type of construction. For building works for the cement , steel the escalation is considered separately and for rest of the construction materials under the head 'other materials' a component of 30% to 40% provided for and around 25% considered as labour component.

But the Claimant has claimed 75% component stating that for cement, steel he did not claim such escalation separately and included in this weightage component. Considering the facts on record 40% component for all materials portion put together is found genuine and justified. The quantification of formulae based escalation with 75% component weightage is not disputed. Thus the amount payable with

40% component weightage for materials can be calculated proportionately.

Award:

After deliberating in detail and considering all the submissions of the parties, I am of the view that the Claimant is entitled for price escalation on materials due to prolongation of contract. The Claim on escalation of materials is awarded with a component of 40% weightage in the formula exhibited. Thus the amount payable to Claimant towards price escalation on materials works out to Rs.6,21,69,860/-."

112. The Arbitrator recorded that the causes of delay were not attributable to the respondent, and that Claim No. 12 is confined to escalation in material costs during the prolonged period up to the 42nd RA bill i.e. March 2015. Thereafter, relying on the Hon'ble Supreme Court's decision in ***Saraswat Trading Agency (Supra)***, the Arbitrator noted that escalation is a normal incident of a prolonged contract and that, even in the absence of a formal escalation Clause, a respondent can in principle be compensated where the contract period stands substantially extended for reasons not attributable to it.

113. The petitioner's challenge to the quantification of claim by application of 10CC of CPWD, is also misconceived. Despite, the scheduled timeline for execution of the Contract i.e. 15 months rendering Clause 10CC of CPWD inapplicable, the Arbitrator used this relevant formula based methodology as a fair quantification method for escalation for materials during the prolonged period, wherein delays were not attributable to the respondent. Additionally, the reduction of claimed 75% component to 40% reflects reasoned approach which is based on industry practice.

Thus, no interference is warranted with this cogent reasoning of the Arbitrator.

114. The reasoning of the Arbitrator is not in violation of the terms of the Contract and is supported by law. The Award of this claim is not suffering from any vice enumerated under Section 34 of the Act, thereby warranting interference.

Claim No. 13 and 14: Interest on delay in payment of RA bills and Claim Nos. 2 to 12.

115. The Claim No. 13 pertains to the interest on delayed payments of RA bills and the same was adjudicated by the Arbitrator with Claim No. 1 in the final Award. The relevant findings of the Arbitrator read as under:

> *"AWARD:-*
>
> *After deliberating in detail and considering all the submissions of parties, documents and evidence filed, the Tribunal awards that the withheld amount of Rs. 2,95,79,465/- on account of non achievement of milestones from the Claimants bill shall be refunded to the Claimants. The Claimants have claimed interest @ 15 % P A for the above claim amount separately under Claim no.13. From the records placed before me I find that the amount was withheld while releasing payments for 33,34 th RA bills on 18-2-2014. The Tribunal Awards the simple interest at a rate 12% per annum on the above amount to be refunded from the date of recovery i.e.l8.2.20 14 to the date of the award."*

116. The Claim No. 14 pertains to the payment of *pendente lite* interest on the claims raised by the claimant and adjudicated in the final Award i.e., from Claim Nos. 2 to 12 at the rate of 10% per annum. In this regard the relevant portions of the Award read as under:

> *"Claim No. 14:*
>
> *Loss of Interest on the Claimed amounts for Claims no.2 to 12@ 10% per annum:*
>
> *14.1 Claimant's Submissions: The Claimant submitted that it had been deprived of legitimate entitlements which were due to it at appropriate time. According to the law, any party which is deprived of the use of money has a right to be compensated for deprivation. The Claimant submitted that the Section 31 (7) of the Arbitration act empowers the Arbitrator to award past , pendent-lite and future interest also. The Claimant cited the case law of Indian Hume Pipe Co. Ltd Vs State of Rajasthan (2009), 10 SCC 187 on the issue. The Claimant submitted that it claimed 10% interest on Claims no. 2 to I2 @ 10% PA from cause of action and future interest 18% P A.*
>
> *14.2 Respondent's Submissions:*
>
> *The Respondent submitted that this claim is not admissible in view of the specific reference to the terms and conditions of the contract which have been referred by Respondent in refuting the Claims in SOD. Further the Respondent submitted that the interest claim is not justified and not agreed to.*
>
> *Award:*
>
> *I. A simple interest of 10% per annum, pendent-lite i.e. from date of invocation of arbitration, 13.I2.20I4 to the*

<u>*date of the Award is awarded on the awarded amounts for Claims no. 2, 3,4,5, 10 and I2.*</u>*"*

(Emphasis Supplied)

117. The petitioner assails the award of *pendente lite* interest for Claim No. 2, 3, 4, 5, 10, and 12 under Claim No. 14 and interest awarded on delay in payments of RA bills adjudicated under Claim No. 13, on the ground that the same is in violation of the judgment delivered by the Hon'ble Supreme Court in the case of ***M/S Krafters Engineering & Leasing Pvt. Ltd. (Supra)***, and also in violation of the conditions of the Contract. The Contract does not contemplate award of interest and the same is liable to be set aside.

118. 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 amounts due, 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. The relevant portions of Section 31(7) 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)."

119. The decision of the Hon'ble Supreme Court in ***UHL Power Company Ltd. v. State of Himachal Pradesh***[19] reinforces the scope of arbitral discretion on interest and the limited scope for judicial interference. The arbitral tribunal there had granted pre-claim compound interest and future interest on the awarded amount, which the Division Bench of the High Court modified relying on ***State of Haryana v. S.L. Arora & Co***[20]**.**, the Hon'ble Supreme Court relied on ***Hyder Consulting (UK) Ltd. v. State of Orissa***[21]**,** to hold that the High Court's approach was erroneous and then restored the Arbitrator's award on interest expressly recognising that, unless prohibited by contract, an arbitral tribunal may grant compound interest. It is a settled position of law that a court cannot substitute its own view for that of the Arbitrator, so long as the Arbitrator's view is a plausible one. Also, the Hon'ble Supreme Court in the case of ***Ferro Concrete Construction (India) (P) Ltd. v. State of Rajasthan***[22], 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:

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[19](2022) 4 SCC 116.
[20](2010) 3 SCC 690.
[21] (2015) 2 SCC 189.
[22]2025 SCC OnLine SC 708.

"13. From the above extracted paragraphs, the decision of the 3-judge bench in the First Ambica case (supra) can be stated as follows. T<u>he 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,</u> 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.

14. W<u>e 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.</u> They also emphasise that a bar on the Arbitrator's power would depend on the phraseology of the contractual clause in that case…."

120. It is a settled position of law that the Arbitrator being a creation of an agreement cannot exceed the limits of the agreement. Thus, if there is any provision contained in the contract which prohibits the award of interest then the Arbitrator cannot exceed its jurisdiction and go beyond the terms of the contract to award interest.

121. The petitioner however in the present case has challenged the Award of this claim without specifying any contractual Clause which specifically prohibits the award of interest by the Arbitrator.

122. Therefore, the award of interest by the Arbitrator under this claim is well founded and in exercise of the statutory powers conferred upon the Arbitrator by the Act itself.

Counter Claim Nos. 1 to 4

123. The petitioner's challenge to the adjudication of its counter claims by the Arbitrator is bereft of reasoning and unsubstantiated by cogent evidence. The petitioner has not made any submissions before this Court so as to warrant interference on the limited grounds enumerated under Section 34 of the Act and has merely made a fleeting contention that the counter claims were erroneously rejected by the Arbitrator. At this stage, it is pertinent to note that the counter claims raised by the petitioner are of the following description:

Counter Claim No. 1	Establishment cost for prolonged execution of works: Rs. 19.32 Cr.
Counter Claim No. 2	Cost due to Alternate accommodation for Nursing students due to non-completion of Nursing Hostel: Rs. 0.32 Cr.
Counter Claim No. 3	Establishment cost for HVAC commissioning due to delay in Package-I works: Rs. 1.40 Cr.
Counter Claim No. 4	Escalation being paid to other agencies due to delay in completion of Buildings Rs. 2.47 Cr.

124. Since, the delays leading to the prolongation of Contract were clearly held attributable to the petitioner, these co-related counter claims flowing from the same cause were rejected by the Arbitrator. This Court finds no reason to interfere with the findings of the Arbitrator regarding attribution of delays in execution of works under the Contract and consequently, the findings of the Arbitrator *qua* the aforesaid counterclaims also deserves to be upheld. Moreover, the Arbitrator in its Award has recorded the submissions of both the parties with respect to counter claims and then made relevant findings. Additionally the Arbitrator also held that none of the counter claims were supported by any documentary evidence. Thus, no interference by this court is warranted.

CONCLUSION

125. 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 Learned Sole Arbitrator, I hold that the impugned Award does not suffer from perversity, patent illegality or any other recognised vice warranting interference.

126. The petition is dismissed in the aforesaid terms, along with pending applications, if any.

JASMEET SINGH, J

APRIL 09th, 2026/SS