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

% ***Judgment Reserved on: 20th February, 2026***
Judgment pronounced on: 11th March, 2026

\+ **O.M.P. (COMM) 191/2019**

MAN INDUSTRIES (INDIA) LIMITED .....Petitioner
Through: Mr. Jayant Mehta, Sr. Advocate with Ms. Amrita Singh, Mr. Sanket Khandelwal, Mr. Prasang Sharma and Mr. Vinod Mehta, Advocates.

versus

GAIL (INDIA) LIMITED .....Respondent
Through: Mr. K.M. Natraj, ASG with Mr. Lalit Chauhan, Ms. Laxmi Chauhan, Mr. Manish Yadav and Ms. Nikita Chauhan, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '***the Act***') on behalf of the claimant in the arbitration proceedings challenging the Award dated 7th January 2019 (hereinafter '***Impugned Award***') passed by the Arbitral Tribunal.

2. The petitioner (claimant in the arbitration proceedings) shall hereinafter be referred to as 'Man Industries' and the respondent (respondent in the arbitration proceedings) shall hereinafter be referred to as 'GAIL'.

FACTUAL BACKGROUND

3. Brief facts leading to the present petition are as under:

3.1. Man Industries is engaged in the business of manufacture of carbon steel coated line pipes which are used in the transportation of petroleum/ natural gas and other related products.

3.2. GAIL (India) Limited is a public sector undertaking optimising use of natural gas and its fractions.

3.3. GAIL planned to lay onshore a Regassified Liquid Natural Gas (RLNG) pipeline, from its despatch terminal at Dabhol, Maharashtra to receipt terminal at Bibadi near Bangalore, Karnataka (hereinafter the '***Dabhol-Bangalore project***').

3.4. GAIL, through its agent M/s Engineers India Ltd. (EIL) invited offers against its bid document for procurement of API 5L Grade X-70 PSL 2 carbon steel line pipes in respect of its Dabhol-Bangalore project.

3.5. The bid of Man Industries was accepted *vide* Fax of Acceptance dated 26th August 2010 (hereinafter '***FOA***'). Thereafter, a formal purchase order was issued by GAIL in favour of Man Industries *vide* Purchase Order dated 19th October 2010 (hereinafter the '***Purchase Order***'). The Purchase Order specifies that all other provisions covered under the bid document, General Conditions of Contract-Goods (hereinafter 'GCC-Goods') and Special Conditions of Contract-Goods (hereinafter 'SCC-Goods') would be applicable to supply of bare line pipes.

3.6. In terms of the Purchase Order, Man Industries was required to supply the bare line pipes to GAIL as per a progressive delivery schedule. The delivery was to be done in a staggered manner, with the first lot to be

delivered by the 5th month from the date of FOA, i.e. 25th January 2011 and the last delivery by the 10th month from the date of FOA, i.e. 25th June 2011. The dates of delivery as per the delivery schedule at Annexure-3 of the Purchase Order were 25th January 2011, 25th February 2011, 25th March 2011, 25th April 2011, 25th May 2011 and 25th June 2011.

3.7. Man Industries was also required to maintain dump yards at designated sites for a period of 2 months beyond the last date of delivery of the coated pipes at those dumpsites, without being entitled to any payment from GAIL for the said period of 2 months.

3.8. On 3rd August 2012, a 'No Claim Certificate' was issued by Man Industries to GAIL which stated that a total sum of Rs.64,13,790.57/- was due and all other claims under the contract stand fully and finally settled except the Price Reduction Schedule (hereinafter '***PRS***') amount.

3.9. The total price for supply of the aforesaid coated pipes was Rs.125,39,40,190/-. As stipulated in the Purchase Order, 90% of the payment was to be made progressively against the receipt of the coated pipes at the dumpsites. The balance 10% of the total value was to be paid to Man Industries within 30 days from handing over of coated pipes to the laying contractor of GAIL.

3.10. Disputes arose between the parties and Man Industries invoked the arbitration clause *vide* letter dated 18th February 2015. The Arbitral Tribunal comprising a Sole Arbitrator was constituted.

4. Man Industries filed a statement of claim dated 20th May 2016 before the Arbitral Tribunal with the following claims:

(i) Claim No.1: Wrongful withholding of Rs. 3,82,95,630/- towards

Price Reduction Schedule (PRS)

(ii) Claim No.2: Wrongful Withholding of Rs. 43,69,038/- towards Central Sales Tax (hereinafter '***CST***')

(iii) Claim No.3: Interest for the delayed payment of 10% of the total value of the Contract

(iv) Claim No.4 : Interest pre-suit, *pendente lite* and future

(v) Claim No.5: Cost of Proceedings

4.1. On 21st July 2016, GAIL filed its statement of defence before the Arbitral Tribunal. An additional statement of defence dated 23rd September 2017 was also filed on behalf of GAIL.

4.2. Pleadings were completed in the arbitral proceedings on 8th November 2017, when rejoinder to the additional statement of defence was filed by Man Industries.

4.3. Both parties led their respective evidence before the Arbitral Tribunal.

5. *Via* the Impugned Award, the Sole Arbitrator dismissed all the claims of Man Industries.

6. Aggrieved by the Impugned Award, the present petition has been filed on behalf of Man Industries challenging the Impugned Award under Section 34 of the Arbitration and Conciliation Act, 1996.

SUBMISSIONS ON BEHALF OF THE PETITIONER

7. Mr. Jayant Mehta, Senior Counsel appearing on behalf of Man Industries, has made the following submissions claim-wise:

7.1. **Claim No.1 - Wrongful withholding of Rs. 3,82,95,630/- towards Price Reduction Schedule (PRS)**

7.1.1. The Arbitral Tribunal has wrongly held that GAIL was prejudiced by

the delay in delivery. GAIL accepted the deliveries without any objections.

7.1.2. The last delivery was made by Man Industries on 2nd June 2011, much before the scheduled final date of delivery i.e. 25th June 2011, however, the pipes were lifted from the designated dumpsites by GAIL only on 9th April 2012. Even though the contract stipulated that time would be of essence, GAIL waived this condition through its conduct. Reliance has been placed on ***Swaran Ramachandran* v. *Aravacode Chakungal Jayapalan***, (2004) 8 SCC 689.

7.1.3. In a mechanical manner, GAIL withheld a sum of Rs.3,82,95,630/- from the amount payable to Man Industries, towards liquidated damages termed under the contract as 'Price Reduction Schedule'/ 'PRS'. GAIL did not produce any evidence to show loss suffered on account of delay in supply of the pipes. In this regard, Man Industries has placed reliance on ***Kailash Nath Associates* v. *DDA***, (2015) 4 SCC 136, ***Bharat Heavy Electricals Limited* v. *Kanohar,*** 2024 SCC Online Del 1453 and ***Indian Oil Corporation* v. *Standard Casting***, 2025 SCC OnLine Del 8393.

7.2. **Claim No.2 - Wrongful refusal to reimburse the increase in Central Sales Tax (CST) from 4% to 5% amounting to Rs. 43,69,038/-**

7.2.1. It an admitted position that the CST increased from 4% to 5% on 11th April 2011 during the contractual period i.e. 25th January 2011 to 25th June 2011. Hence, Man Industries was not required to produce any evidence in this regard and the Arbitral Tribunal grossly erred in rejecting the claim of Man Industries for reimbursement of the differential rate of tax.

7.3. **Claim No.3 - Interest for the delayed payment of 10% of the total value of the Contract**

7.3.1. The Arbitral Tribunal failed to appreciate that Man Industries was under economic duress due to more than a year's delay on the part of GAIL in making balance payment and in these circumstances, a 'No Claim Certificate' was issued in favour of GAIL. A 'No Claim Certificate' does not bar a party from raising a claim if there is an acceptable claim.

7.4. **Claim No.4 - Interest pre-suit, *pendente lite* and future**

7.4.1. Since the Award pertaining to first three claims is patently illegal, the finding in this claim also deserves to be set aside.

7.5. **Claim No.5 - Cost of Proceedings**

7.6. Man Industries has already paid cost of Rs.1,80,000/- for adjournments sought during arbitral proceedings, which has been recorded in the Impugned Award. Yet, the Arbitral Tribunal imposed a cost of Rs.10,00,000/- on the basis of these adjournments and for the expenses incurred by GAIL towards Arbitrator's fee and secretarial expenses.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

8. Mr. K.M. Natraj, ASG appearing on behalf of GAIL, has made the following submissions claim-wise:

8.1. **Claim No.1 - Wrongful withholding of Rs. 3,82,95,630/- towards Price Reduction Schedule (PRS)**

8.1.1. The Arbitral Tribunal has correctly held that the amount to be deducted on account of PRS is not penalty or liquidated damages. The PRS clause cannot be disregarded as the parties are bound by the terms of the Contract. Man Industries, on its own volition, deducted the PRS amount from its Running Account Bills dated 5th April 2011, 25th April 2011, 10th May 2011 and 4th June 2011.

8.1.2. In the alternative, if PRS clause was considered to be a liquidated damages clause, it gives a genuine pre-estimate of the loss which may be suffered by GAIL due to delayed deliveries of the pipes.

8.1.3. Considering that the Dabhol-Bangalore pipeline project was a project of national importance involving multiple players, any delay in monthly deliveries would have affected the timelines drawn up by GAIL for completion of different stages of the project. Taking into account the nature of the project, GAIL was not required to prove any actual loss. In this regard, GAIL has placed reliance on ***Fateh Chand* v. *Balkishan Dass***, (1964) 1 SCR 515, ***ONGC* v. *Saw Pipes***, (2003) 5 SCC 705, ***Gail* v. *Punj Lloyd***, 2017 SCC OnLine Del 8301 and ***Tamilnadu Telecommunications Ltd.* v. *Bharat Sanchar Nigam Ltd.***, 2016 SCC OnLine Del 5939.

8.2. **Claim No.2 - Wrongful refusal to reimburse the increase in Central Sales Tax (CST) from 4% to 5% amounting to Rs. 43,69,038/-**

8.2.1. The lack of evidence adduced by Man Industries demonstrates that Man Industries is not entitled to reimbursement for the differential rate of tax. By way of the present petition, Man Industries is attempting to invite the Court to re-appreciate the evidence.

8.3. **Claim No.3 - Interest for the delayed payment of 10% of the total value of the Contract**

8.3.1. Even the own witness of Man Industries admitted in front of the Arbitral Tribunal that this claim was in the nature of an afterthought. Once Man Industries has discharged all claims against GAIL at the time of issuance of full and final settlement, it cannot revive such a claim. The plea of economic duress raised by Man Industries was not proved by way of

evidence before the Arbitral Tribunal.

8.4. **Claim No.4 - Interest pre-suit, *pendente lite* and future**

8.4.1. Since all the claims have been rejected, the Arbitral Tribunal has correctly rejected the claim of interest.

8.5. **Claim No.5 - Cost of Proceedings**

8.5.1. The Arbitral Tribunal has correctly assessed the costs in favour of Man Industries.

ANALYSIS AND FINDINGS

9. I have heard counsel for the parties and perused the material on record.

10. The Supreme Court has defined the scope of interference by courts in a petition challenging an Award passed by the Arbitrator under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '***the Act***') in a plethora of judgments.

11. In ***Ssangyong Engineering and Construction Company Limited* v. *National Highways Authority of India (NHAI)***, (2019) 15 SCC 131, the Supreme Court made the following observations with regard to scope of interference under Section 34 of the Act:

> "*37. Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34.* ***Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law.*** *In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.*
>
> ***38. Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted***

under the ground of patent illegality appearing on the face of the award.

39. To elucidate, para 42.1 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], namely, a mere contravention of the substantive law of India, by itself, is no longer a ground available to set aside an arbitral award. Para 42.2 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], however, would remain, for if an arbitrator gives no reasons for an award and contravenes Section 31(3) of the 1996 Act, that would certainly amount to a patent illegality on the face of the award.

40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], namely, that ***the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).***

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. ***Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.*** *Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.*"

[emphasis supplied]

12. In paragraph 40 of ***Ssangyong*** (supra) set out above, the Supreme Court has categorically stated that construction of the terms of the contract falls within the exclusive domain of the arbitrator. The court cannot interfere unless the interpretation of the arbitrator is such that no reasonable or fair-minded person could have adopted. If the view taken by the Arbitral

Tribunal is a plausible view, no interference is called for.

13. The Supreme Court has reiterated the same principles in ***Delhi Metro Rail Corporation Limited*** **v.** ***Delhi Airport Metro Express Private Limited***, (2024) 6 SCC 357 and ***OPG Power Generation Private Limited*** **v.** ***Enexio Power Cooling Solutions India Private Limited***, (2025) 2 SCC 417. The position of law with regard to scope of interference with an Arbitral Award under Section 34 of the Act has been summarized by the Supreme Court in ***OPG Power Generation*** (supra), the relevant paragraph of which is set out below:

> "***Scope of interference with an arbitral award***
> *74.* ***The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorized as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.***"
>
> [emphasis supplied]

14. With this background, I shall now proceed to apply the aforesaid principles in the facts and circumstances of the present case in relation to objections raised by Man Industries.

Claim No. 1 – Wrongful withholding of Rs. 3,82,95,630/- towards Price Reduction Schedule (PRS)

15. At the outset, it may be relevant to refer to Clause 25.2 of the GCC-Goods which provides for options available with the purchaser in case of delay in delivery. For ease of reference, Clause 25.2 of the GCC-Goods is

set out below:

> *"**25. Delays In The Seller's Performance***
> *25.1 ... ...*
> *25.1 **Any unexcusable delay by the SELLER** or his subcontractor shall render the SELLER liable, without prejudice to any other terms of the Contract, to any or all of the following sanctions: forfeiture of Contract performance guarantee, **imposition of price reduction for delay in delivery** and termination of the contract for default."*
>
> [Emphasis supplied]

16. Clause 26 of the GCC-Goods provides for Price Reduction Schedule for delay of delivery, the same is set out below:

> *"**26. Price Reduction Schedule For Delayed Delivery***
> *26.1 Subject to Article -29, if the SELLER fails to deliver any or all of the GOODS or performance the services within the time period (s) specified in the CONTRACT, the PURCHASER shall, without prejudice to his other remedies under the CONTRACT, deduct from the CONTRACT PRICE, a sum calculated on the basis of the CONTRACT PRICE, including subsequent modifications.*
> *26.1.1 **Deductions shall apply as per following formula: In case of delay in delivery of equipment/materials or delay in completion, total contract price shall be reduced by ½ % (half percent) of the total contract price per complete week of delay or part thereof subject to a maximum of 5% (five percent) of the total contract price.***
> *26.2 In case of delay in delivery on the part of Seller, the invoice/document value shall be reduced proportionately for the delay and payment shall be released accordingly.*
> *26.3 In the event the invoice value is not reduced proportionately for the delay, the PURCHASER may deduct the amount so payable by SELLER, from any amount falling due to the SELLER or by recovery against the Performance Guarantee.*
> ***Both seller and PURCHASER agree that the above percentages of price reduction are genuine pre estimates of the loss/damage which the PURCHASER would have suffered on account of delay/breach on the part of the SELLER and the said amount will be payable on demand without there being any proof of the actual loss/or damage caused by such breach/delay. A decision of the PURCHASER in the matter of***

***applicability of price reduction shall be final and binding**."*

[Emphasis supplied]

17. Price reduction on account of delay also finds a reference in Clause 17 of the Special Conditions of Contract-Goods, which is set out below:

> *"**17. PRICE REDUCTION SCHEDULE (PRS)***
>
> *17.1. **In partial modification of provisions of GCC-Goods 26.0 and pursuant to clause 4 of SCC-Goods, in case of delay in delivery of specified item wise monthly quantity of line pipes as given in delivery schedule for respective item as specified in Clause 4 of SCC-Goods, the contract price shall be reduced by 1/2 % (half percent) of the total price of the undelivered quantity of line pipes covered in monthly quantity for which delivery is delayed, per week of delay or part thereof subject to a maximum of 5%(five percent) of total Contract Price.***
>
> *17.2. Item wise monthly quantity specified in delivery schedule shall be considered separately for applying PRS in case of delay as described above. However, the total amount of PRS shall be limited to 5% of the total Contract Price."*
>
> [Emphasis supplied]

18. Clause 6 of the Purchase Order also makes a reference to Clause 17 of SCC-Goods. For ease of reference, the same is reproduced below:

> *"**6.0 PRICE REDUCTION SCHEDULE FOR DELAY IN DELIVERY (PRS):***
>
> *6.1 Price reduction schedule (PRS) shall be as per clause no. 17.0 of Special Conditions of Contract (Goods) SCC (Goods)."*

19. In terms of Clause 26 of GCC-Goods read with Clause 17 of SCC-Goods, in case there is a delay in delivery of the monthly quantity of pipes as given in the delivery schedule, the purchaser shall be entitled to price reduction in terms of the Price Reduction Schedule, which shall be considered a genuine pre-estimate of loss/damages that may be suffered by

the purchaser.

20. It is an admitted position that there was a delay in supply of the monthly quantity of pipes as provided in the delivery schedule by Man Industries. Man Industries gave certain justifications for the said delay. However, the Arbitral Tribunal held that the delay was not excusable.

21. The case set up by Man Industries before the Arbitral Tribunal was that the entire material had been delivered to GAIL on 2nd June 2011, way ahead of the due date of 25th June 2011, as per the delivery schedule.

22. The Arbitral Tribunal has rejected this contention holding that as per the delivery schedule, specific quantities had to delivered on a monthly basis. It was further held that Man Industries was only one of the players in the entire project and delay by one of the players would result in a chain reaction causing delay in schedules of the remaining players, thus causing overall delay in the competition of the project.

23. Clause 17 of SCC-Goods specifically provided that the delivery has to be made on a monthly basis. In the opinion of this Court, there is no infirmity in the finding of the Arbitral Tribunal rejecting the aforesaid contention of Man Industries. As noted above, the Arbitral Tribunal has given cogent reasons for the same.

24. As regards the contention of Man Industries that the time was not the essence of the contract, reference may be made to Clause 24.1 of the GCC-Goods, which provides as under:

> *"**24. Time As Essence of Contract***
> *24.1 The time and date of delivery/completion of the GOODS/SERVICES as stipulated in the Contract shall be deemed to be the essence of the Contract."*

25. It has been reiterated in Clause 3 of the Purchase Order that time was of essence in the contract. Clause 3 of the Purchase Order is set out below:

> *"**3.0 <u>DELIVERY PERIOD</u>***
> *3.1 Delivery is the essence of this Purchase Order and the Seller shall try to improve upon the same.*
> *3.2 The contractual delivery schedule of bare line pipes for each item shall be as per progressive Delivery Schedule specified in Annexure – 3 enclosed herewith. This shall be governed by the conditions specified under Special Conditions of Contract for Goods (SCC-Goods) i.e. Section-IIIB of Bidding Document and Commercial Corrigendum No. 1 & 2 to the Bidding Document."*

26. A reference may also be made to the Clause 25 of the GCC-Goods, which provides for consequences in case of breach of delivery schedule and Clause 26 of the GCC-Goods which provides for Price Reduction Schedule ('PRS') for delayed delivery.

27. Relying on the aforesaid clauses, the Arbitral Tribunal rejected the contention of Man Industries that time was not of essence in the contract. The Arbitral Tribunal further noted that Man Industries itself has admitted that the project was "*a time bound, prestigious gas project of national importance*".

28. On the aforesaid aspect, Man Industries has relied upon a judgment of the Supreme Court in ***Swaran Ramachandran*** (supra). In the facts of the said case, the Supreme Court had held that time was not an essence of the contract in the said case. The said finding was based on the provisions of the contract in the said case and the evidence led by the parties. The contract in the said case was with regard to the sale and purchase of property and therefore, would have no relevance in the present case.

29. Therefore, no fault can be found with the finding of the Arbitral

Tribunal that time was of essence in the contract.

30. On the aspect of deduction in terms of PRS, the Arbitral Tribunal held that GAIL was justified in imposing PRS on account of delay. The relevant observations of the Arbitral Tribunal in this regard are set out below:

> *"**In my opinion it is not necessary to minutely examine whether the above clause is a penalty clause or not. For the present purpose, it would be necessary to only examine whether the Respondent could invoke the said Clause to effect a price reduction.** Since both the parties are bound by the terms of the Contract, and since the delay in the delivery of the pipes was "unexcusable", as already held by me, the Respondent was justified in imposing PRS for the delay in accordance with the said clause. **I am inclined to think that it is unnecessary in the present case to examine the question whether the Respondent is under a duty to prove that it actually suffered loss on account of the delay.** The Clause 25.2 does not profess to import any notions of liquidated damages so that it can give rise to the controversy whether it is for the Respondent to prove actual loss or not. **All that the Respondent has to show is that there was a delay in supplying the pipes and the delay was unexcusable. If these two conditions are satisfied, the Respondent would be entitled to impose price reduction. In my opinion, these two conditions are present and therefore, the Respondent was clearly in the right in effecting PRS**."*
>
> [Emphasis supplied]

31. The Arbitral Tribunal has duly interpreted the various clauses of the Contract to come to a conclusion that Clause 26 of the GCC-Goods is neither a penal clause nor does it provide for levy of liquidated damages. It is no longer *res integra* that interpretation of the Contract is the sole domain of the Arbitral Tribunal unless the Contract is interpreted by the Arbitrator in a completely irrational or arbitrary manner.

32. In the alternative, the Arbitral Tribunal held that, even if it is presumed that the aforesaid clause provides for liquidated damages, the clause provides for a pre-estimate of loss that GAIL may suffer on account

of delay and therefore, GAIL was not bound to prove the loss. In this regard, the Arbitral Tribunal placed reliance on the judgment of the Supreme Court in ***Fateh Chand* v. *Balkishan Dass*** (supra), which was followed by this Court in ***Gail* v. *Punj Lloyd*** (supra).

33. The Arbitral Tribunal held that the parties knew at the time of making the Contract that some loss is likely to result in the delivery of pipes and therefore, provided for an estimate of that loss in the Contract itself.

34. In this regard, a reference may be made to the following observations of the Supreme Court in ***ONGC* v. *Saw Pipes*** (supra):

> *"64. It is apparent from the aforesaid reasoning recorded by the Arbitral Tribunal that it failed to consider Sections 73 and 74 of the Indian Contract Act and the ratio laid down in Fateh Chand case [Fateh Chand v. Balkishan Dass, AIR 1963 SC 1405 : (1964) 1 SCR 515] wherein it is specifically held that jurisdiction of the court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; and compensation has to be reasonable. Under Section 73, when a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss caused to him which the parties knew when they made the contract to be likely to result from the breach of it. This section is to be read with Section 74, which deals with penalty stipulated in the contract, inter alia (relevant for the present case) provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, whether or not actual loss is proved to have been caused, thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named. Section 74 emphasises that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not actual loss is proved to have been caused by such breach. Therefore, the emphasis is on reasonable compensation. If the compensation named in the contract is by way of penalty, consideration would be different and the party is only entitled to reasonable compensation for the loss suffered.* ***But if the compensation named in the contract for such breach is genuine pre-estimate of loss which the***

> ***parties knew when they made the contract to be likely to result from the breach of it, there is no question of proving such loss or such party is not required to lead evidence to prove actual loss suffered by him. Burden is on the other party to lead evidence for proving that no loss is likely to occur by such breach.*** *...*
>
> ***
>
> *67. ... In our view, in such a contract, it would be difficult to prove exact loss or damage which the parties suffer because of the breach thereof. In such a situation, if the parties have pre-estimated such loss after clear understanding, it would be totally unjustified to arrive at the conclusion that the party who has committed breach of the contract is not liable to pay compensation. It would be against the specific provisions of Sections 73 and 74 of the Contract Act, 1872.* ***There was nothing on record that compensation contemplated by the parties was in any way unreasonable. It has been specifically mentioned that it was an agreed genuine pre-estimate of damages duly agreed by the parties. It was also mentioned that the liquidated damages are not by way of penalty. It was also provided in the contract that such damages are to be recovered by the purchaser from the bills for payment of the cost of material submitted by the contractor. No evidence is led by the claimant to establish that the stipulated condition was by way of penalty or the compensation contemplated was, in any way, unreasonable. There was no reason for the Tribunal not to rely upon the clear and unambiguous terms of agreement stipulating pre-estimate damages because of delay in supply of goods. Further, while extending the time for delivery of the goods, the respondent was informed that it would be required to pay stipulated damages****."*
>
> [Emphasis supplied]

35. The judgment in ***ONGC* v. *Saw Pipes*** (supra) has been followed by the Supreme Court in ***Construction and Design Services* v. *Delhi Development Authority***, (2015) 14 SCC 263, where the Court was dealing with the question whether the stipulated liquidated damages for breach of contract are in the nature of penalty or are a measure of compensation for loss. The relevant paragraph from the said judgment is set out below:

> *"15.* ***Once it is held that even in the absence of specific evidence, the respondent could be held to have suffered loss on account of breach of contract, and it is entitled to compensation to the extent of loss suffered, it is for the appellant to show that stipulated damages are by way of penalty.*** *In a given case, when the highest limit is stipulated instead of a fixed sum, in the absence of evidence of loss, part of it can be held to be reasonable compensation and the remaining by way of penalty. The party complaining of breach can certainly be allowed reasonable compensation out of the said amount if not the entire amount.* ***If the entire amount stipulated is genuine pre-estimate of loss, the actual loss need not be proved. Burden to prove that no loss was likely to be suffered is on the party committing breach, as already observed****."*
>
> [Emphasis supplied]

36. In ***GAIL* v. *Punj Lloyd*** (supra), the appellant-GAIL had deducted liquidated damages on account of failure of the respondent-Punj Lloyd to complete the works at intermediate dates fixed under the contract for laying pipelines for the Dahej-Vijaipur Pipeline Project. The relevant clause in the contract provided for price reduction/ liquidated damages for delay in delivery.

37. Relying upon the judgments of the Supreme Court in ***Fateh Chand* v. *Balkishan Dass*** (supra), ***ONGC* v. *Saw Pipes*** (supra) and ***Kailash Nath Associates* v. *DDA*** (supra), the Division Bench rejected the contention of Punj Lloyd that GAIL had to prove actual damages to recover the amounts agreed under the contract. The Division Bench also rejected the submission of Punj Lloyd that intermediate delays, which did not impact the final commissioning schedule, were condonable. The observations of the Division Bench are set out below:

> *"34. The commissioning of the three spreads was over a period of 7 to 7½ months each. The performance of these contracts, treated as one whole meant that Punj Lloyd had to ensure that equipment was in place,*

the requisite material and men were on site and all necessary work (welding, joining etc) was done according to a pre-arranged schedule. Now, there is no dispute that there were intermediate delays - to the extent of about 65 days. If one sees from the perspective of the contractor (Punj Lloyd) that this did not impact the final commissioning schedule, undoubtedly the imposition of the liquidated damages clause would seem unjustified. However, two aspects are to be kept in mind here : first, that when bidding was done, there was every likelihood of different contractors being declared successful in respect of different spreads, which would have meant that as far as they were concerned this condition was essential to ensure compliance with timelines. ***That one party (Punj Lloyd) secured three spreads was providential, perhaps a coincidence. Secondly, the objective of this condition was to ensure that timelines were adhered to. For instance, if one spread were completed in time and the other not completed in time, there could potentially be an adverse impact on the commissioning/overall pipeline laying schedule. Furthermore, at the time when the delays occurred, the final picture was unknown. The nuanced nature of the condition, introduced as an amendment meant that the parties were alive to these details and voluntarily agreed that such compensation was recoverable. The court finds insubstantial the argument of Punj Lloyd that omission to the reference to the liquidated damages from the later condition, agreed to by the parties, meant that necessarily GAIL had to prove actual damage, to recover the amounts agreed.*** *It is well settled that the nature of a condition does not depend on its nomenclature, but on its effect having regard to the overall circumstances of the case.*

*** *** ***

37. This court is of the opinion that considering all these materials on record, the stipulation in clause 57.2.1 and the amounts deducted were by way of liquidated damages and a genuine pre-estimate of the loss calculated in monetary terms. They were not merely precautionary conditions not meant to be enforced, but conditions that could be insisted upon, as is evident from clause 57.2.2, which clarifies that "compensation for Delay/Liquidated Damages stated in sub-clause 57.2.1 above shall be in addition to compensation for Delay/Liquidated Damages stated in sub-clause 57.1.1 of SCC." Furthermore, the overall cap on damages at 20% (Clause 57.3) includes intermediate liquidated damages contemplated under clause 57.1.1. ***These intermediate delay liquidated damages were of the kind contemplated in Maula Bux***

> ***(supra) and Bharat Sanchar Nigam (supra), which the parties agreed, would be payable by one of them (Punj Lloyd) without proof of actual loss.****"*
>
> [Emphasis supplied]

38. The Arbitral Tribunal has correctly placed reliance on the aforesaid judgment as the said case also involved levy of liquidated damages on account of failure of the contractor to complete the work in a timely manner in a contract with GAIL for laying pipelines.

39. In ***Tamilnadu Telecommunications Ltd.*** **v.** ***Bharat Sanchar Nigam Ltd.*** (supra), the Co-ordinate Bench of this court, was dealing with the case where there was a delay of supply of the contracted quantities by the supplier/appellant and the Clause in the contract provided for liquidated damages. The court observed that since the supplier/appellant did not lead any evidence to indicate that the damages are unreasonable and not a genuine pre-estimate of damages, the supplier would be bound to pay the same. The court also observed that it is difficult to prove in public utility projects, the actual loss that may be suffered on account of delay. In the said case, it had been specifically pleaded by BSNL that it had suffered loss on account of delay in the projects. The relevant paragraph nos. 18 and 19 of the said judgment is set out below:

> *"18. In the present case, TTL had agreed that the liquidated damages would be payable for delay in supply of contracted quantities.* ***TTL has not led any evidence to indicate that the measure of damages was unreasonable and not a genuine pre-estimate of damages. It is also relevant to bear in mind that BSNL is a public utility and it would not be easy for BSNL to articulate the loss suffered by it for delays in execution of various projects. Undoubtedly, the failure on the part of the TTL to supply OFC would have caused a corresponding delay in BSNL providing services to its customers. It is difficult to prove with***

> ***any exactitude actual loss suffered by BSNL. However, that does not mean that TTL is absolved from its liability to compensate the BSNL.*** *....."*
>
> *19.* ***In the present case, BSNL had expressly pleaded that it had suffered loss on account of delay in its projects and had also suffered loss of goodwill.*** *As noticed above, it is difficult to reasonably estimate the damages suffered on the aforesaid account; this coupled with the fact that TTL has not led any evidence to indicate that the liquidated damages are unreasonable and, therefore, the finding of the Arbitrator that BSNL is entitled to recover liquidated damages cannot be held to be perverse or contrary to the fundamental policy of the Indian Law."*
>
> [Emphasis supplied]

40. Applying the ratio of the aforesaid judgments to the facts of the present case, it has specifically been pleaded by GAIL that it has suffered a loss on account of delay in suppling the pipes by Man Industries. It was also pleaded on behalf of GAIL that the formula for PRS was a genuine pre-estimate of the loss to be suffered on account of delay and that it was difficult to prove or assess the actual loss. Reference may be made to paragraph 4 of Statement of Defence dated 21st July 2016 with respect to the loss suffered on account of delay, which is set out below:

> *"4. There is an admitted delay by the Claimant, as per the Delivery Schedule in delivering the first Pipe to the Varul- Kolhapur-Maharashtra dumpsite (the '**DS-1**') as also to the Chitradurga-Karnataka dumpsite (the '**DS-2**').* ***The delay caused by the Claimant led to further cascading delays in the timely completion of the Project. The Respondent suffered loss as a result of the delay by the Claimant in delivering the Pipes, as a result of which the Respondent was unable to supply gas which led to a consequent reduction in the revenue and profits of the Respondent. Due to the nature of the loss caused to the Respondent, it is difficult for the Respondent to prove the loss caused to it as a result of the admitted delays by the Respondent in delivery of the Pipes. It is, however, reiterated that the formula for the PRS, as contained in clause 17 of the SCC (Goods) and clause 26 of the GCC***

> ***(Goods), is by way of reasonable compensation and is a genuine pre-estimate of the loss the parties knew when they made the contract to be likely from delay by the Claimant in delivery of the Pipes. The imposition of the PRS Amount is valid and legal and as per the contract between the parties.*** *Furthermore, it does not lie in the mouth of the Claimant to, after admittedly breaching its contractual obligations, allege that Respondent is not liable to receive payment of any money towards the admitted damages caused to it as a result of the said delay. Such an allegation is arbitrary and contrary to principles of natural justice and would have the effect of rendering as redundant the various provisions of the contract between the parties. Reliance is placed on paragraph 1 of the preliminary submissions."*
>
> [Emphasis supplied]

41. Man Industries relied upon the judgment of the Supreme Court in ***Kailash Nath Associates* v. *DDA*** (supra) in support of its submission that the party claiming damages on account of breach of contract must show the actual loss suffered. In ***Kailash Nath Associates* v. *DDA*** (supra), the Supreme Court observed that to avail the benefit of Section 74 of the Indian Contract Act, 1872, damage or loss is a *sine qua non*. In the said case, it was held that there was no breach of contract by the appellant-Kailash Nath. Further, the respondent-DDA had profited from re-auction of the subject land. Therefore, the basic requirement under Section 74 of the Indian Contract Act with respect to loss or damage suffered by a party, was not fulfilled. The relevant paragraph of ***Kailash Nath Associates* v. *DDA*** (supra) is set out below:

> *"44. The Division Bench has gone wrong in principle. As has been pointed out above, there has been* ***no breach of contract by the appellant****. Further, we cannot accept the view of the Division Bench that the fact that* ***DDA made a profit from re-auction*** *is irrelevant, as that would fly in the face of the most basic principle on the award of damages-namely, that compensation can only be given for damage or loss suffered. If damage or loss is not suffered, the law does not provide*

for a windfall."

[Emphasis supplied]

Hence, the ratio of the aforesaid judgment would not apply in the facts of the present case.

42. In ***Bharat Heavy Electricals Limited*** **v.** ***Kanohar*** (supra) relied by Man Industries, the Division Bench upheld the findings of the Arbitrator as well as the Single Judge, that there was no legal justification for levy of liquidated damages upon the respondent. However, the aforesaid finding was premised on the fact that the appellant had failed to plead and demonstrate the legal injury. In the present case as noted above, there are clear pleadings by the respondent with regard to the loss caused on account of delay.

43. Next, Man Industries has placed reliance on ***Indian Oil Corporation*** **v.** ***Standard Casting*** (supra), where the claim for damages was rejected by the Division Bench. However, the said conclusion was based on the fact that IOCL, the appellant in the case, had neither pleaded nor produced any material to demonstrate its entitlement to damages.

44. In view of the discussion above, I do not find any perversity in the findings of the Arbitral Tribunal in respect of Claim No.1, which would require interference under Section 34 of the Act. The view taken by the Arbitral Tribunal in the Impugned Award is clearly a plausible view.

Claim No. 2 – Wrongful refusal to reimburse the increase in Central Sales Tax (CST) from 4% to 5% amounting to Rs. 43,69,038/-

45. The aforesaid claim was on account of failure of GAIL to reimburse Man Industries, upon an increase in Central Sales Tax ('CST') rate from 4%

to 5%. The Arbitral Tribunal has held that the petitioner has not produced any evidence to show that it has paid CST @ 5%. The aforesaid finding was returned on the basis of evidence on record.

46. In this regard, reference may be made to Clause 33.2 of the GCC-Goods, which is set out below:

> *"**33. Taxes & Duties***
>
> *33.1 ... ...*
>
> *33.2 A domestic Seller shall be entirely responsible for all taxes, duties, licence fees etc. incurred until the delivery of the contracted goods to the PURCHASER. However, Sales Tax and Excise duty on finished products shall be **reimbursed by PURCHASER**."*
>
> [Emphasis supplied]

47. The Arbitral Tribunal has also observed that in terms of Clause 33.2 of the GCC-Goods, GAIL is liable to reimburse the sales tax to Man Industries and reimbursement necessarily implies that the tax would have been paid by Man Industries. However, Man Industries did not adduce any evidence to show that the differential rate of tax of 1% was paid to the government.

48. The Arbitral Tribunal has specifically noted that Man Industries' witness during cross examination had admitted that the claim of the CST was not made in the final bill, but was for the first time made in arbitration proceedings. Hence, GAIL was not liable to reimburse Man Industries.

49. The aforesaid finding has been arrived at by the Arbitral Tribunal, while interpreting the relevant clause of the Contract and based on the evidence produced on behalf of the parties. It is a settled position of law that in proceedings under Section 34 of the Act, the Court cannot re-appreciate

the evidence that was placed before the Arbitral Tribunal.

50. Hence, no fault can be found with the aforesaid finding of the Arbitral Tribunal in respect of Claim No.2.

Claim No. 3 - Interest for the delayed payment of 10% of the total value of the Contract

51. The Arbitral Tribunal has observed that Man Industries did not make this claim in the "No Claim Certificate" dated 3rd August 2012, wherein it was confirmed by Man Industries that other than a sum of Rs. 64,13,790/- and the PRS amount, no further amount is due. The Arbitral Tribunal also gave a finding that the final settlement was arrived at between the parties after mutual negotiations.

52. As regards the contentions of Man Industries that the 'No Claim Certificate' was signed under economic duress, the Arbitral Tribunal has held that no evidence has been led by Man Industries in this regard and only an oral submission was made.

53. In view thereof, I do not find any infirmity in the finding of the Arbitral Tribunal denying the Claim No.3 made by Man Industries.

Claim No. 4 – Interest pre-suit, *pendente lite* and future

54. Since this Court has upheld the Impugned Award in respect of Claim Nos.1 to 3, consequently, the finding of the Arbitral Tribunal in respect of Claim No.4 is also affirmed.

Claim No.5 - Cost of Proceedings

55. Taking into consideration the respondent's share of Arbitrator's fees, secretarial expenses, expenses for the venue, lawyers' fees etc., the Arbitral

Tribunal came to the finding that Man Industries was liable to pay costs of Rs.10,00,000/- to GAIL.

56. No cogent ground for interference has been made out on behalf of Man Industries.

CONCLUSION

57. In light of the discussion above, I am of the view that the petitioner has failed to make out any ground for interference with the Impugned Award under Section 34 of the Act.

58. Accordingly, the petition is dismissed.

59. All pending applications stand disposed of.

AMIT BANSAL
(JUDGE)

MARCH 11, 2026
at