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

% ***Judgment pronounced on:17.10.2025***

\+ **O.M.P. (COMM) 39/2022 and IA Nos.500/2022 &502/2022**

ENGINEERS INDIA LIMITED & ANR. ..... Petitioners

Through: Mr. Sandeep Sethi, Sr. Advocate along with Ms. Divya Bhalla, Mr. Abhishek Chauhan, Mr. Sumer Seth and Ms. Riya Kumar, Advocates.

versus

MS SHIVHARE ROAD LINES ..... Respondents

Through: Mr. Vinay Garg, Sr. Advocate along with Mr. C. S. Chauhan, Ms. Nikita Grover and Mr. Vikas Mehta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

FACTUAL MATRIX

1. The present petition has been filed by the petitioners under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as "*the A&C Act*") assailing an Arbitral Award dated 26.08.2021.

2. The petitioner no.1 (respondent before the Arbitral Tribunal) is a Navratna Public Sector Undertaking of the Ministry of Petroleum and Natural Gas, Government of India, which provides engineering and related technical services for petroleum refineries and other Industrial projects.

3. Respondent (claimant before the Arbitral Tribunal) is a company registered under the Micro, Small and Medium Enterprises Development

Act, 2006, engaged in the business of transporting, material and logistic handling of material.

4. The disputes between the parties have arisen in the backdrop of bid no. A043/T-045/10-11/MCJ/13, issued by the petitioner no.1 for "material handling services for onshore gas terminal at Mallavaram, Andhra Pradesh for the Deen Dayal Field Development Project of M/s Gujarat State Petroleum Corporation Ltd (GSPCL)" at its project site in Kakinada, Andhra Pradesh. The estimated contract value of the said project was to the tune of Rs. 2,49,50,000/- (Rupees Two Crore Forty-Nine Lakh and Fifty Thousand only).

5. The offer to the aforementioned bid, submitted by the respondent/claimant *vide* a letter dated 17.07.2010 was accepted on 02.11.2010 by the petitioners. Consequently, a Detailed Letter of Acceptance (DLOA) dated 11.02.2011 was issued by the petitioners in favor of respondent.

6. In terms of the DLOA, *inter-alia* (i) time stipulated for completion of the total work under the contract was 24 months from the date of commencement i.e., 18.11.2010, subject to further extension of 6 months;(ii) the work was to be performed item-wise and the scope of various items of work and the estimated quantity thereof was set out in Clause 2.0 of DLOA as under: -

> *"The estimated Contract value for the works under this contract works out to Rs. 2,49,50,000/- (Rupees Two Crore Forty Nine Lakhs Fifty Thousands Only), based on unit rates and quantities included in the Schedule of Rates enclosed as Appendix-I to this Detailed Letter of Acceptance (DLOA). The actual Contract value shall be subject to variations depending upon the actual quantities of works executed, measured and accepted for payment at site."*

7. Subsequently, *vide* letter no. EIK/A043/0403D/4707 dated 20.11.2012, the petitioners extended the contract till 31.01.2013.

8. Although, the aforementioned work under the contract continued to be performed, however, certain difficulties were encountered during the execution of the work, particularly, with regard to operation/ implementation of the items set out in Group C (i.e., C-1.1, C-1.2, C-2.1) under the Schedule of Rates (SoR) contained in the DLOA. The aforementioned items read as under: -.

Sl. No	Description of Activity	Unit	QTY.	In Rupees	
		A	B	Unit Price	Amount
C	All inclusive charges for unloading from vehicles arrived at Project site at Mallavaram from outside directly and stacking as required	-	-	-	-
	General Cargo (Weight per Pkg.)	-	-	-	-
C-1.1	Upto 350 Kgs	NOS	200	2300/-	4,60,000
C-1.2	351 to 5000 Kgs	NOS	1000	1700/-	17,00,000/-
C-2.1	Pipes of various diameters and random lengths	NOS	10,000	660/-	66,00,000/-

9. The same led to protracted correspondence between the parties during the course of execution of the works. There were divergent views as to the

operation/ billing and payment of the said items. Apart from the correspondence/s, which sought to bring about novation to the terms of the original agreement, various meetings were also held between the parties and the concerned "Minutes of Meeting" record the decision/ s taken with regard to the aforesaid items.

10. Running Account bills also came to be raised by the respondent/ claimant from time to time. The respondent/claimant raised Running Account Bill No. 18 dated 10.06.2013 for the work done till December, 2012. Thereafter, Final Running Account Bill No. 19 for Rs. 9,97,74,442/- (Rupees Nine Crore Ninety-Seven Lakhs Seventy-Four Thousand Four Hundred Forty-Two Rupees only)was raised on 24.08.2013. The aforementioned final bill dated 24.08.2013 is as under:-

TAX INVOICE

Shivhare Road Lines

TO: ENGINEERS INDIA LIMITED, 1, Bhikaji Cama Place, RK Puram, New Delhi - 110 066	Service Tax Registered From: - Office of the Dy. Commissioner, C&CE 19/1265, Opp. Touchtel Office, City Centre, Gwalior - 474 011 (M.P.)
SITE: ENGINEERS INDIA LIMITED, Onshore Gas Terminal, Deendayal Field Development Project, P.O. Mallavaram, Near Kakinada, Dist. East Godavari, A.P. - 533 463	Project Office: SHIVHARE ROAD LINES Onshore Gas Terminal, Deendayal Field Development Project, P.O. Mallavaram, Near Kakinada, Dist. East Godavari, A.P. - 533 463
Kind Attn: Shri Amitava Pal, RCM Job: Material Handling Services for OGT at Mallavaram	
Final Bill No.: 19	Date: 24/08/2013
Ref.: Our Letter No.SRL/GSPC/207/6652 dated 24.08.2013	

RECORD OF ADV. PAYMENTS Sr.No.	Date	Amount (Rs. In crores)	PARTICULARS	THIS BILL	UPTO PREVIOUS BILL	CUMMULATIVE
SECURED ADVANCE B/F BALANCE			Bill Amount	88798898.00	17900992.00	106699890.00
			Bill Amount	88798898.00	17900992.00	106699890.00
			Service Tax @ 12%	10655868.00	2018889.00	12674757.00
			Education Cess @ 2%	213117.00	40379.00	253496.00
			H. E. Cess 1%	106559.00	20187.00	126746.00
				99774442.00	19980447.00	119754889.00
Total			(Inwords: **Rupees Nine Crore Ninety Seven Lac Seventy Four Thousand Four Hundred Forty Two Only.**)			

PAN : AAJFS3154L — For: SHIVHARE ROAD LINES
VAT TIN: Not Applicable in Material Handling Service
Service Tax Reg. No.: AAJFS3154LST001
Service Tax Category.: Cargo Handling Services
Code: 189
For Shivhare Road Lines
AUTHORISED SIGNATORY

Self Attested
Shivhare Road Lines

Fleet owners, Transport & Material Handling Contractors

875

ENGINEERS INDIA LIMITED

DEENDAYAL ONSHORE GAS TERMINAL AT MALLAVRAM, (A.P.)

MEMORANDUM OF PAYMENT

FINAL BILL NO. 19 DT. 24.08.2013 (Ref.: Our Letter No.SRL/GSPC/207/6652 dated 24.08.2013)

Period of Measurement: From TO

1.	Name of Work:	MATERIAL HANDLING SERVICES FOR ONSHORE GAS TERMINAL AT MALLAVARAM, AP FOR DDFD PROJECT OF M/S. GSPC			
2.	Name of Contractor:	Shivhare Road Lines			
3.	W.O / L.O.A. / F.O.A. No.	A043/T-045/10-11/MCJ/13/FOA-0038 DATED 02/11/2011			
4.	Date of award of Contract:	02.11.2010			
5.	Contractual Completion Date:	17.11.2012			
6.	Actual Completion Date:	17.11.2012			
7.	Extension of Time Period, if Any	NIL			
8.	Contract Value	Rs.2,49,60,000/-			
9	Increased contract Value	NIL			
10	PBG Details	--			
11	% age Progress	427.65%			
	PAN No:- A A J F S 3 1 5 4 L	Service Tax	A A J F S 3 1 5 4 L S T 0 0 1		
			Upto Previous Bill	Since Previous Bill	Total Upto Date
		Supply			
12	Value of Work Done (X)	Exempted turnover towards Labour, Other Charges . Specialised agencies	17900992.00	88798898.00	106699890.00
13	ADVANCES(Y)				
	1. Mobilization Advance:	Supply Service			
	2. Secured Advance	Supply Service			
14	APVAT ON WORKS CONTRACT (AS PER ANNEX.)				
15	Service Tax				
	Service Tax (Tax Invoice enclosed)	@ 12%	2018889.00	10655868.00	12674757.00
	Education Cess	2% on above	40379.00	213117.00	253496.00
	Higher Secondary Cess	1% on above	20187.00	106559.00	126746.00
16	TOTAL PAYMENTS RECOMMENDED (X+Y)		19980447.00	99774442.00	119754889.00
17	RECOVERIES:	Supply Service			
	1. Mobilization :				
	2. Security Service				
	3. Electricity				
	4. VAT Invoice				
	5. Income Tax		399809.00	1996489.00	2396098.00
	6. Intrest on Mob. Advance				
	7. WCT				
	8. Others. First Aid				
	Cleaning				
	Safety		10000.00	0.00	10000.00
	9 Hold for testing:				
	Total Recoveries (Z)		409809.00	1996489.00	2406098.00
18	Net Amount Payable (X+Y-Z)		19570638.00	97778953.00	117349791.00

Rupees Nine Crore Seventy Seven Lac Seventy Eight Thousand Nine Hundred Fifty Three Only.

Signature of the contractor with seal | Signature of Field Engineer | Signature of Area Co-ordinator with seal

Signature of P&A with seal

Self Attested
Shivhare Road Lines
Through Partner

Signature of F&A with seal

Signature of safety officer with seal | Signature of RCM with seal

11. The above bill has been noted since it records/reflects the payment claim/s of the respondent/claimant, as raised contemporaneously.

12. As mentioned, the controversy between the parties arose in regard to the bill/s raised by the respondent/ claimant, primarily in relation to the price quoted for the aforementioned items i.e., C-1.1, C-1.2, C-2.1.Certain letters including letter dated 20.01.2014 were also addressed by the petitioners to the respondent/claimant, raising objections particularly, with regard to the price quoted by the respondent/claimant *viz.* Item Nos. C-1.1 and C-1.2 in the final running account bills sought to be raised.

13. Since disputes between the parties persisted, the respondent/claimant issued a notice dated 18.04.2014, in terms of clause 24.8.1 of the contract for resolving the dispute through mediation. However, since disputes and differences remained unresolved, a notice dated 12.03.2015 was issued by

the respondent invoking arbitration in terms of clause 24.9 of the contract for amicable settlement of the disputes between the parties.

14. However, since, the invocation letter was purportedly not acted upon by the petitioners, respondent/claimant preferred a petition before the Madhya Pradesh High Court for constitution of an Arbitral Tribunal for adjudication of disputes between the parties. The said petition was however dismissed for the want of jurisdiction by the Madhya Pradesh High Court. Consequently, a petition was filed by the respondent/claimant before a coordinate Bench of this Court and ultimately on 11.02.2019 the Arbitral Tribunal was constituted.

15. Pursuant to the constitution of Arbitral Tribunal, the respondent/ claimant filed the Statement of Claim (SoC) on 26.04.2019, pursuant to which a Statement of Defense (SoD) was filed by the petitioners on 07.06.2019.

THE CLAIMS AND THE ARBITRAL AWARD THEREON

16. The claims raised by the respondent/claimant in the arbitral proceedings and the gist of the impugned award in respect thereof is as under:-

a) Under the Claim No.1, an amount to the tune of Rs. 33,87,588/-, was claimed by the respondent/claimant towards minimum monthly charges under Group F of the SOR for a period between 18.11.2010 and 26.03.2011, with interest @ 18% p.a. w.e.f 01.04.2011. The same was decided in favor of the respondent/claimant by the Arbitral Tribunal by recording that (i) the respondent/claimant had mobilized resources on the date of commencement of the work itself, i.e.

18.11.2010 and was therefore entitled to minimum monthly charges from the said date, along with interest from 11.06.2013 (since the bill was submitted on 24/25.04.2013) (ii) the receipt of the petitioner's letter dated 16.03.2011 (as relied upon before the Arbitral Tribunal to contend that no mobilization of resources were undertaken by respondent/claimant prior to the issuance of the said letter) was denied by the respondent/claimant. The Arbitral Tribunal noted that even otherwise, the said letter does not even prove that the respondent/claimant failed to mobilize resources prior to the date of issuance of the said letter (iii) the respondent/claimant has produced material to show that manpower and material were available at site since 18.11.2010 (i.e., date of commencement of the work) onwards (iv) there is absolutely nothing on record to indicate that, at any point in time after 18.11.2010, the petitioner complained to respondent/claimant that the latter has failed to mobilize resources as per the contract, at the site.

b) Claim No.2 was for a sum of Rs. 8,83,913/-, which was claimed towards payment of monthly bill for the period between 01.01.2013 and 31.01.2013, with interest w.e.f. 01.02.2013 @ 18% p.a. The Arbitral Tribunal held that the respondent/claimant was entitled to entire amount, including interest w.e.f. 11.06.2013, inasmuch as the (i) the petitioners have not disputed the respondent's performance during the said period (ii) reliance was placed upon the cross examination of the petitioner's witness (i.e., RW-1 before the Arbitral Tribunal), admitting to RA Bill 19 being issued by the respondent/claimant for the period between 01.01.2013 and

31.01.2013.

c) Under Claim No.3, the respondent/claimant claimed Rs. 30,39,102/- towards item C.2.1 till 30.06.2011. The impugned award notes that in terms of the correspondence/s exchanged during the course of execution of the contract, it was agreed that Item C.2.1 would become non-operative from July, 2011 and the said item would not be charged on a "per item basis" but on the "basis of weight/per Metric Ton (MT) basis". The respondent/ claimant sought to raise claim in respect of work performed under Item C.2.1 on "a per item basis" till 30.06.2011, asserting that the said item came to become non-operative from July, 2011, and it was only thereafter the respondent/claimant would charge on a "per MT basis" instead of "per item basis". The petitioner sought to refute the entitlement (as asserted) on "a per item basis", even till 30.06.2011. The Arbitral Tribunal held in favour of the respondent/ claimant and came to the conclusion that the said item was to be paid for as originally prescribed in the contract in respect of the period till 30.06.2011, since the deletion was only w.e.f. July, 2011. It was held as under:-

> *"207.Thus, in nutshell, the offer given by the claimant for unloading the Item No. C-2-1 @ Rs. 660.00 per unit was accepted by the respondents vide FOA dated 02.11.2010 and DLOA dated 11.02.2011 and the contract was concluded between the parties and in response respondents provided the work which was duly executed by the claimant. Not only this the work done by the claimant for the month of March, April, May and June, 2011 was duly certified by the respondents on joint measurement sheet. For the first time the dispute is raised by the respondents on 20.06.2011. The amended rates given by the claimant @ 385.00 per MT was accepted by the respondents on 21.10.2011. In the meeting held on 11.11.2011, claimant asked for the payment of the work done of C-2-1 upto 30.06.2011 on item basis which was refused by the respondents but thereafter, in the letter*

dated 22.01.2013 (Ex-C/15/J at Page No. 38, Volume-Il of SOC), it is specifically written by the respondents that for the activities carried out under the category of C-2-1 is payable as per the respective SOR rates for the month of May and June, 2011 only. Why this amount was not payable for the month of March and April, 2011 has not been explained by the respondents. Apart from this, after getting the work done, how the respondents can deny the payment on the ground that the same is not operatable is not understandable. This cannot be for the period in which the work has already been done. In view of this, this Tribunal is of the view that the Claimant is entitled for payment of the work of C-2-1 on number basis upto June, 2011. "

d) Under Claim No.4, an amount of Rs. 5,39,613/- was claimed for the extra equipments purportedly deployed by the respondent/claimant to complete the work, despite the lockdown by fishermen, with interest @ 10 % w.e.f. 14.01.2012. The petitioners disputed the said claim on the ground that the claim is covered by the *force majeure* stipulated in clause 11 of the General Condition of the Contract (GCC) and even otherwise, no extra charges could be claimed as the contract mandated the respondent/claimant to handle material within a radius of 100 km from the project site (SOR, Item A). The Arbitral Tribunal held that the respondent/claimant is entitled to the amount claimed, along with interest w.e.f. 11.06.2013 as the lockdown between 25.10.2011 and 13.01.2012 is undisputed and the respondent/claimant did provide additional equipment during the period. Further, it was found that the petitioners reliance on Clause 11 (*force majeure)* of the GCC, to resist the claim was untenable. The Arbitral Tribunal also rejected the contention of the petitioner that Item A of the SOR is applicable in respect of this claim, holding that the said Item A, relates to the collection and loading of small consignments and has nothing to do with the said claim.

e) Claim nos. 5 and 6 pertain to Item C.1.1 and C.1.2 albeit for different periods. Claim No.5 was for Rs. 8,39,18,902/- for the period between 01.07.2011 and 11.11.2011, whereas Claim No.6 was for Rs. 21,88,96,720/- for the period between 12.11.2011 and 02.08.2012. Essentially, it was the case of the petitioners that the said items would not be charged on a "per item basis", but instead on "the basis of weight". It was contended that the same was agreed to between the parties, as specifically recorded in the Minutes of Meeting dated 11.11.2011. The respondent/claimant, however, sought to assert its entitlement for these items on a "per item basis", as originally prescribed in the contract, till the date on which the formal change order dated 03.08.2012 was issued by the petitioners, pursuant to the understanding arrived at between the parties during the meeting held on 11.11.2011.

The Arbitral Tribunal noted that although these claims are for the same items of work they have been split into two parts *viz*. Claim No.5 for the period 01.07.2011 to 11.11.2011 and Claim No.6 for the period 12.11.2011 to 02.08.2012. The rationale for the same is that the parties admittedly took some decisions which were duly minuted in the minutes of meeting drawn on 11.11.2011, as a result of which there is a difference in the rationale for claiming the concerned amounts under the aforesaid distinct period. The Arbitral Tribunal held that the respondent/claimant is entitled to the amount/s claimed under these claims, with interest payable from 01.12.2011 in respect of Claim No.5 and w.e.f 11.06.2013 for Claim No.6. The award in respect of Claim No. 5 is predicated on the finding that till

11.11.2011, the work was to be performed on an "item-wise basis" in terms of the relevant contractual prescription and, therefore, the respondent/claimant was entitled to payment on that basis specially since there was no controversy as regards the extent of work performed.

As regards Claim No.6, which was for the period between 12.11.2011 and 02.08.2012 it was held that the new regime ("per weight" instead of "per item") was agreed upon during the meeting held on 11.11.2011, would come into effect only on the date on which the formal change order (03.08.2012) was issued by the petitioner. The relevant findings are as under:-

> *"261. That, as per the Clause - 13.1 of Instructions to bidder of contract, the validity of a bid is for a minimum period of 4 months. In the present case, the period of validity of the offer given by the Claimant on 12.11.2011 expired on 11.03.2012. The change order was issued by the respondents on 03.08.2012 vide Ex-C/70. The change order is unilateral and cannot washout the terms of a concluded contract which was executed between the parties on 11.02.2011 after duly accepting the offer given by the Claimant by FOA, Ex-C/3 and DLOA, Ex-C/4, that too, retrospectively. The change order issued by respondents dated 03.08.2012 though unilateral but can be implemented w.e.f. the date of issuance and not for the period for which the work was already performed by the Claimant.*

f) Claim No.7 was for Rs.54,13,263/- along with interest w.e.f. 11.11.2011. The claim was raised on account of deductions in RA bill. Interest @ 18% p.a. was claimed w.e.f 11.11.2011. The respondent/claimant had alleged that the petitioners made deductions from the RA bills, without following the principles of natural justice. The petitioners, on the other hand contended that payments were duly made in accordance with the contract. The Arbitral Tribunal held that

the respondent/claimant is entitled under Claim No.7 to a sum of Rs. 49,60,826/- with interest w.e.f. 11.06.2013 since the deductions were found to be unjustified. It was further observed that no opportunity of hearing was granted before the deductions were made, and no speaking order was passed nor any explanation was given for the deductions.

g) Claim No.8, which was towards payment of service tax with interest @ 18 % w.e.f. 11.11.2011, was rejected by the Arbitral Tribunal. The award in respect of this claim is unchallenged.

h) Claim Nos. 9 to 12 which pertain to respondent/claimant's entitlement to interest on account of delay caused by the petitioners in releasing the payment/s (Pendente Lite and Future Interest). The said claim was allowed and the Arbitral Tribunal awarded interest at the rate @12% p.a.

i) Claim No.13 was in respect of the cost of arbitration. The same was also allowed in favor of the respondent/claimant.

17. The petitioners have challenged the award in respect all the claims awarded to the respondent/claimant (except Claim No.8).

SUBMISSION ON BEHALF OF THE PETITIONERS

18. Although the petitioner assails the award in respect of all the claims awarded in favour of the respondent/ claimant, the gravamen of the submissions on behalf of the petitioners are directed against the award in respect of Claim nos. 3, 5 and 6.

19. The award in respect of Claim no.1 is sought to be challenged on the ground that the impugned award completely misconstrued the scope and

purport of letter dated 16.03.2011. It is contended that the said letter was an intimation given to the respondent/claimant for mobilization of resources, as prior to the said communication, no mobilization was undertaken by the respondent/claimant. It is emphasized that as per the relevant conditions of contract, the respondent/claimant was to deploy resources without any additional cost to the petitioners.

20. The award in respect of Claim No.2 has been challenged on the ground that the RA Bill No. 19 (on the basis of which the said claim was raised) is not an admitted document inasmuch as the (i) petitioner's witness before the Arbitral Tribunal only admitted the document being for January, 2013 and did not admit to the claimed amount and (ii) the various versions of the said bill have not been certified by the petitioners and were in fact denied by them.

21. With regard to Claim No.3, it has been submitted that while deciding the same, the Arbitral Tribunal has completely ignored the fact that the contract was amended to non-operate/ delete Item no. C-2.1 from the Schedule of Rates (SOR). It is further submitted as under: -

i) the impugned award fails to take into account the fact that the petitioner has already made payments for the work done in the month of April, May and June 2011 under the Revised RA Bill No. 1, where Rs. 21,80,631/- was claimed by the respondent/claimant and Rs.19,31,312/- was subsequently paid by the petitioners on 05.09.2011 (also paid in terms of clause F of the SOR) and thus, nothing in regards to the said item remained pending. However, the impugned award fails to take into account the aforesaid.

ii) the respondent/claimant *vide* letter dated 24.05.2013, expressly

admitted to the deletion of item no. C.2.1 and its subsequent operation as extra item on MT basis from "zero date of the contract".

iii) the correspondence exchanged by the parties clearly showed that item C.2.1 was agreed to be non-operated/ deleted, as reflected in the petitioner's change order dated 21.10.2011, which was accepted by the respondent's *vide* a letter dated 29.10.2011 and once again confirmed by the petitioners *vide* a letter dated 31.10.2011. Further, the respondent/claimant itself offered a rate of Rs. 385/MT, expressly agreeing to item C.2.1 being replaced by the new rate. As evident from the Minutes of Meeting dated 11.11.2011, the said understanding was further crystallized in the said meeting between the parties.

iv) therefore, once Item no. C.2.1 stood deleted from the contract, and a change order dated 03.08.2012 was issued by the petitioner, considering that the rates for the said item stood revised @ Rs. 385 per MT, there was no question of reverting to the rates stipulated in the SOR for Item C.2.1.

v) in fact, the parties duly acted upon the aforementioned arrangement inasmuch as RA Bill No.2 dated 31.10.2011(which was submitted under cover of the respondent's /claimant's letter dated 02.11.2011, for the period between 26.03.2011 and 31.10.2011 pertaining to item no. C.2.1 @ per MT rate) was duly paid by the petitioners. Therefore, considering that the payments under the said bill was paid and nothing else remained due, a claim raised under the said head ought to have been dismissed by the Arbitral Tribunal.

vi) reference in this regard has also been placed upon

communications which ensued between the petitioners and respondent/claimant *vide* letters dated 20.06.2011, 22.06.2011, 23.06.2011, 20.09.2011.

22. The award in respect of Claim No. 4 is challenged on the ground that the Arbitral Tribunal failed to correctly interpret the scope and purport of clause 11.4 of GCC and Item A of the SOR. It is contended that the impugned award wrongly holds clause 11 of GCC and Item A of the SOR to be inapplicable, considering that (i) the petitioners had categorically submitted that clause 11.2.4 of GCC shall be applicable for the purpose of the aforementioned claim (ii) undisputedly unloading took place within 100 kms of the project site.

23. With regard to Claim No.5, it is submitted as under: -

i) The Arbitral Tribunal's construction of provisions of contract *viz.* item nos. C-1.1 and 1.2 was absurd inasmuch as the arbitral tribunal construed the concerned clause/s in such a manner that it permitted the respondent/claimant to charge a unit rate even for every small pipe, screw or hinge handled by the respondent/claimant, irrespective of its weight. Thus, the Impugned Award is patently illegal.

ii) Since the materials were being received at the project site in loose conditions, the petitioner found it very difficult to operate it on package/ number/ item basis as per the contract. The parties therefore deemed it fit to amend the contract. However, the Arbitral Tribunal has failed to appreciate the fact that the parties agreed to delete items C.1.1 and C.1.2 and therefore, no claims under deleted provisions of the contract could have even been maintained.

iii) The Arbitral Tribunal has incorrectly held in paragraphs 247 and 249 of the impugned award that the petitioner made payments on "an item basis". No payments were ever made on "an item basis", but were instead made on "MT basis".

iv) The Arbitral Tribunal despite acknowledging the correspondences exchanged between the parties, completely misread the said correspondences. The correct import of said correspondences is as under: -

a) *Vide* letter dated 17.10.2011, the petitioner returned RA Bill No. 2, explaining the discrepancy regarding item C.1.1 and C.1.2, to which the respondent/claimant replied on 20.10.2011.

b) the petitioner *vide* letter dated 21.10.2011, reiterated its stand and returned RA Bills 2 and 3 for correction to be made to C.1.1.

c) at the meeting dated 11.11.2011, the parties agreed that the rates of SOR items C.1.1. and C.1.2 are non-operatable as the rates are on number basis and packages of the said items are received in loose condition.

d) pursuant to the aforesaid meeting, the respondent/claimant *vide* letters dated 12.11.2011 and 27.04.2012 itself offered new rates for items C.1.1 and C.1.2. Subsequently on 03.08.2012, the same was accepted by the petitioner.

e) the respondent/claimant *vide* letter dated 24.11.2011 admitted to revising its bills as per the MOM dated 11.11.2011.

f) *vide* letter dated 13.02.2013, the petitioner pointed out

that respondent/claimant has already claimed bills for Item C.1.1 & C.1.2 for May to June, 2011 and July, 2011 to 10.11.2011 as Extra Item 2 in accordance with MOM dated 11.11.2011. Hence, the petitioner could not entertain any duplicate bills for July 2011 to 10.11.2011.

24. With regard to Claim No.6, it has been submitted as under:-

i) The impugned award suffers from patent illegality inasmuch as the Arbitral Tribunal proceeded to consider claim nos. 5 and 6 conjointly, completely ignoring (a) that claim no. 6 is a preposterous and exorbitant claim, which was raised for the very first time before the Arbitral Tribunal in the Statement of Claim; (b) amendment to the contract agreed between the parties and (c) the respondent's/claimant's admissions *vide* various communications/ letters.

ii) Till the invocation of arbitration on 12.03.2015, and even thereafter, in the petitions filed before the High Courts, the respondent/claimant has consistently admitted to item nos. C.1.1 and C.1.2 being payable on "weight basis" after 11.11.2011 and accordingly, restricted its total claims to Rs. 9.97 crores in the said petitions. However, the respondent/claimant before the Arbitral Tribunal arbitrarily inflated the total claim amount to Rs. 31 crores i.e., far exceeding the project value (12 times higher), by adding claim no. 6 for the period between 12.11.2011 and 02.08.2012. Thus, the perversity in the impugned award is apparent from the fact that the Arbitral Tribunal allowed claim no.6 that was in excess (12 times) of the fixed contract value.

iii) The petitioner preferred an application dated 17.06.2019 before the Tribunal to have certain additional frivolous claims including the claim no. 6, dismissed. However, instead the said application was dismissed by the Arbitral Tribunal *vide* an order dated 14.11.2019.

iv) The finding that the petitioner did not accept the revised rates pertaining to item nos. C-1.1 and C-1.2 until 03.08.2012, and that the original rates would therefore apply until the aforementioned date, is perverse, as the Arbitral Tribunal failed to consider the respondent/claimant's explicit admission that Items C.1.1 and C.1.2 stood deleted with effect from 11.11.2011. In this regards reliance has been placed upon:

a) a letter dated 12.11.2011 to contend that the same records the respondent/claimant's express admission that Item nos. C.1.1 and C.1.2 stood deleted from the SOR. Reference in this regard is also made to the respondent's / claimant's categorical admissions in its subsequent letters dated 15.11.2011, 08.12.2011, 15.12.2011, 12.01.2012, and 27.04.2012

b) letter dated 11.01.2013to contend that the respondent/claimant expressly stated that it would raise a claim pertaining to item nos. C.1.1 and C.1.2 as per the SOR only up to the date of meeting between the parties, i.e., till 11.11.2011.

c) it is also contended that *vide* letter dated 19.01.2013, the respondent/claimant has expressly acknowledged that an agreement was made between the parties to withdraw item C.1.1 and C.1.2 from the SOR. The aforesaid acknowledgment is stated to have been again reaffirmed by the

respondent/claimant *vide* letters dated 23.01.2013, 22.02.2013, 06.05.2013, 24.05.2013, 24.08.2013 and 28.10.2013.

v) As such, the parties were *ad idem* that item nos. C.1.1 and C.1.2 stood deleted and replaced by a new extra item 2 in the DLOA and thus, the respondent/claimant cannot be allowed to approbate and reprobate the aforesaid.

vi) The petitioner subsequently issued the change order on 03.08.2012, agreeing to the rate for the extra item @ Rs. 600/-. In any event, there can be no question of reverting to the rates stipulated under the SOR, since they stood deleted from the contract.

25. The award in respect of Claim No.7 has been challenged on the ground that while adjudicating upon the alleged deductions in the RA Bills, the Arbitrators have sought to decide the dispute '*ex aequo et bono*'or as '*amiable compositeur*'. It is submitted that the Arbitral Tribunal ought to have decided the claims in accordance with the terms of the contract and not on the basis of what it felt equitable.

26. The award in respect of Claim Nos. 9 to 13 (interest) have been challenged on the ground that there is no justification for granting an interest at the rate of 12% p.a., especially since the prevalent rate of interest at that time was approximately 9% p.a. It is submitted that the same virtually amounts to imposing a penalty on a government corporation, which is contrary to public policy.

27. The award in respect of costs has been specifically assailed on the ground that the respondent/claimant repeatedly inflated its claims. It is contended that in the arbitration proceedings before the High Courts of Madhya Pradesh and Delhi, the respondents/claimant did limit its claim to

Rs. 9.97 crores (approx.); however, the claim as advanced before the Arbitral Tribunal was arbitrarily inflated to Rs. 31 crores. It is submitted that in this backdrop, it is wholly perverse to award interest since 2013 and to award any cost to the petitioner.

SUBMISSION ON BEHALF OF THE RESPONDENT/CLAIMANT

28. Learned senior counsel for the respondent has strongly refuted the aforesaid contentions. At the outset, it has been emphasised that it is wholly misleading on the part of the petitioners to create prejudice by asserting that the claim awarded to the respondent/ claimant are more than the value of the contract. It is submitted that the contract value of Rs.2,49,50,000/- as mentioned in clause 2.0 of the DLOA was merely indicative. The same is well apparent from a bare perusal of the said clause in its entirety which clearly states that - "*The actual contract value shall be subject to variations depending upon the actual quantities of works executed, measured and accepted for payment at site*." Furthermore, the actual quantities of works executed, measured and accepted by the petitioner through its Engineer-in-Charge pertaining to claim nos. 5&6 are as per the then prevailing SOR (i.e. on number basis, as is evident from the Certificates issued by the petitioner). Further, the DLOA clearly stipulates that the actual payment shall be as per the aforesaid certificates only.

29. It is submitted that the petitioner is trying to mislead this Court by appending its own interpretations to the SOR items i.e., the value of each item was limited to the quantities mentioned against the same. However, on the contrary, as stipulated in clause 2.0 of the DLOA, these quantities were merely indicative.

30. It is conceded that the respondent/claimant in its initial correspondence after the conclusion of the contract did not claim the amount under Claim No.6. However, it is submitted that the same was done in anticipation of settling the matter/ for speedy release of already delayed payments. However, upon the petitioner's consistent default in releasing the payments of even the admitted/ indisputable bills, the respondent/claimant exercised all his rights and entitlements under the contract by raising the Bill dated 24.04.2013.

31. With regard to Claim no.5, it is submitted that the Minutes of Meeting dated 11.11.2011 were confined to SoR item C.2.1 wherein, the said item was agreed to be billed as an Extra Item from July 2011 onwards. With respect to the other SoR items i.e., C.1.1 & C.1.2, only an invitation to offer was made with no finalization of the novation of rates. The aforesaid is evident inasmuch as the said MoM, does not mention any concluded understanding for item nos. C.1.1 and C.1.2. It is further submitted that even assuming that the interpretation given by the petitioner as regards the MoM dated 11.11.2011 to be correct, the same cannot be deemed as having a retrospective effect for items C.1.1 and C.1.2, for which the works were already completed, certified and the bill was raised on 02.11.2011.

32. The respondent/claimant also refutes the contention of the petitioners that since Item nos. C.1.1 and C.1.2 falls under the ambit of Clause 38 of Special Conditions of Contract (SCC), the said items shall be treated as an Abnormally High Rate (AHR) item and that in terms thereof, the petitioner is entitled to convert the same into an Extra item. It is contended that a bare reading of the aforesaid clause shows that even for AHR items, the SoR rate under the same category would apply, and there is no provision for treating

such items as “Extra Items.” In other words, for AHR item C.1.1, only the rate was to be revised, while the basis remained unchanged, meaning it continued to be treated as ‘item-wise’.

33. It is further submitted that the petitioners seek to contend that Clause 38 of SCC is attracted in cases where the quantity of a particular SOR item increases abnormally. However, a plain reading of the said clause makes it evident that it pertains solely to high-rate items and not to quantity variations. Furthermore, for the application of Clause 38 to AHR items, it was incumbent upon EIL to invoke the said clause for the purpose of determining the applicable rates thereunder, which was not done.

34. With respect to Claim No. 6, it is submitted that the respondent/claimant is entitled to the contractual rate under items C.1.1 and C.1.2, which were admittedly item-wise, until the petitioner issued the change order dated 03.08.2012. The respondent/claimant further places reliance on the certificates issued by the petitioner through its Engineer-in-Charge, certifying that the works executed by the contractor were carried out strictly in accordance with SoR for item nos. C.1.1 and C.1.2

35. It is further submitted that a perusal of the change order dated 03.08.2012 reveals that it was issued pursuant to detailed negotiation/s regarding the rates of the concerned items. The said change order expressly states, *“we are pleased to issue the change order deleting the available SoR items...”* Thus, according to the respondent/claimant, the aforesaid clearly establishes that the SOR items stood deleted only with effect from 03.08.2012 and the change order does not, even by implication, suggest that it was intended to operate retrospectively.

36. It is further submitted that the reliance placed upon by the petitioner

on correspondence/ alleged admissions made by the respondent/claimant in various letters as regards deletion of the SoR Items C.1.1 and C.1.2 w.e.f. 11.11.2011, have no bearing inasmuch as such deletion cannot be done without its due replacement with other SoR items or extra items on mutually agreed rates.

37. The arguments advanced by the petitioners in respect of remaining claims have also been strongly refuted on behalf of the respondent/claimant on the ground that the petitioner is seeking a full-fledged, merit-based review of the impugned award. It is contended that the same is completely outside the ambit of the proceedings under Section 34 of the A&C Act, more so, when the findings and conclusion in the award are based on intricate analysis of the material and evidence on record, which as per settled law is not liable to be interfered with in these proceedings.

ANALYSIS AND CONCLUSION

38. At the outset, it is important to take note of the extremely circumscribed scope of the jurisdiction under Section 34 of the A&C Act. The said aspect has been emphasised and reiterated by the Supreme Court in a catena of judgments including ***Consolidated Constructions Consortium Ltd vs. Software Technology Parks of India*** (2025) 7 SCC 757, wherein it has been observed as under: -

> *"**45.** Sub-section (1) of Section 34 provides that an application may be made to the competent court for setting aside an arbitral award. This is the only remedy available for setting aside an arbitral award. The conditions for setting aside an arbitral award are mentioned in sub-sections (2) and (2-A). Sub-section (2) provides for situations such as the agreed party was under some incapacity or the arbitration agreement is not valid under the law or the aggrieved party did not receive proper notice regarding appointment of*

arbitrator or of the arbitral proceedings which prevented it from presenting its case or the arbitral award deals with a dispute not contemplated by or not falling within the terms of arbitration or the composition of the Arbitral Tribunal or the procedure adopted in arbitration were not in accordance with the agreement of the parties or the subject-matter of dispute is not capable of settlement by arbitration or the arbitral award is in conflict within the public policy of India. In terms of sub-section (2-A), an arbitral award may also be set aside on the ground of patent illegality appearing on the face of the award. Sub-section (3) provides for the time-limit for filing of an application for setting aside arbitral award. Therefore, the grounds on which an arbitral award can be set aside are clearly mentioned in Sections 34(2) and 34(2-A) of the 1996 Act. An arbitral award cannot be set aside on a ground which is beyond the grounds mentioned in sub-sections (2) and (2-A) of Section 34.

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 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.*

47. *Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act.*

39. Further, the Supreme Court in ***Dyna Technology Private Limited vs. Crompton Greaves Limited,*** (2019) 20 SCC 1 has observed as under:

"24. There is no dispute that Section 34 of the Arbitration Act limits a

> *challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*
>
> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provide in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."*

40. While emphasising the limited scope of interference with an arbitral award under Section 34, the Supreme Court has also emphasised that in the event of abject disregard of the material/ evidence on record, an arbitral award becomes vulnerable to challenge/ interference. Some of the relevant judgements on this aspect have been taken note of while discussing the award in respect of Claim No. 6 (hereinbelow).

41. In the above conspectus, this Court now proceeds to examine the challenge of the petitioner to the impugned Arbitral Award as under:-

Claim No.1:- Rs. 33,87,588.00 along with interest w.e.f. 01.04.2011 @ 18% p.a.

42. As noticed, hereinabove, the said claim was claimed towards payment of monthly minimum charges as defined under Group F of the Schedule of Rates (SOR) for a period between18.11.2010 (i.e., date of commencement of

the work) and 26.03.2011. The monthly minimum charges are defined under Group F of the SOR as under: -

> *"F. All inclusive charges per month at Mallavaram Site for supply of labour, equipments, tools and tackles required for day to day working and to be charged only when monthly billing of Contractors charges of total of Group-C, Group-D and Group-E fall short of the total of Group-F.*
> *F-1-1 Supply of one 10 MT capacity revolving crane or 12 MT capacity hydra crane with operator.*
> *F-1-2 Supply of one 40 MT capacity Tyre mounted crane with operator.*
> *F-1-3 One 5 MT capacity Forklift with operator.*
> *F-1-4 Supply of one 10 MT capacity Truck with Operator.*
> *F-1-5 Minimum monthly Site establishment charges for:*
> 1. *Three Supervisors with Open Jeep/ Motor Cycle.*
> 2. *One office Staff (Computer Literate).*
> 3. *Five Semi Skilled workers.*
> 4. *Fifteen Unskilled workers.*
>
> *i) It is open to the Engineer-in-charge to call for/ dispense with any of the items in Schedule of Rates Group-F during any particular month depending on requirements.*
> *ii) Monthly rate shall be for a calendar month. Any part of the month shall be on pro-rata basis. Proportionate amount shall be deducted for non-provision of manpower or breakdown of machinery.*
> *iii) No mobilization/ demobilization charges are payable for any of the equipments. However, written notice of clear seven days shall be given by Engineer-in-charge for mobilization and demobilization of any equipments in schedule of rates Group-F. Minimum charges are not applicable for additional equipments and manpower if any that may be required to be mobilized by the contractor additionally to cope up with increase in work load.*
> *iv) The equipments and staff indicated in this Group shall be used only for execution of Material handling jobs covered in the Schedule of Rates."*

43. As per the above, the respondent/claimant claimed a sum of Rs. 33,87,588/- for a period between 18.11.2010 and 26.03.2011 against the stipulated minimum charges i.e., Rs.7,99,000/- per month, payable w.e.f. from the date of commencement of work i.e., 18.11.2010 (as set out in the DLOA).

The primary contention of the petitioners against the aforesaid claim is that

necessary mobilization (for the period against which claim has been advanced) was not done by the respondent/ claimant, and as such, there was no occasion to grant the aforesaid claim to the latter. In this regard reliance was placed by the petitioners upon a letter dated 16.03.2011, purportedly issued by the Resident Construction Manager to respondent/claimant. The said letter dated 16.03.2021 reads as under:-

March 16, 2011

"To
The Manager (Contracts)
Shivhare Road Lines
Roshnighar Road
Lakshar, Gwalior- 474 009,
Madhya Pradesh *Attn: Shri J.S. Rana*
Sub: Material handling Services for GSPC's Onshore Gas Terminal Project, Mallavaram- Deployment at site.
Dear Sir,

This has reference to the FOA No. A043/T-45/10-11/MCJ/13/FOA-0036 dated 02.11.2010 on the above mentioned subject.

Please be informed that the materials already started arriving at the site and hence, you are advised to mobilize your men and equipment to receive the material immediately.
Please treat the matter as most urgent.
Thanking you,
Very truly yours,
(CH.N. RAO)
RESIDENT CONSTRUCTION MANAGER"

44. The above contention has been dealt with by the Arbitral Tribunal in the impugned award in the following terms:-

181. That, even for the sake of arguments it is assumed that the letter (Ex-R/9) was issued by the respondents on 16.03.2011 then too, in the said letter it is nowhere stated that the Claimant has not provided the manpower and the equipments on the site as per contract agreement. Apart from it, as per Clause - 4.1 of the contract respondents were required to intimate for providing sufficient labour and handling equipment for unloading and stacking of materials arriving directly by trailer / truck at site. On the basis

of the letter dated 16.03.2011 (Annexure-R/9) service of which is not proved by the Claimant, it cannot be assumed that the Claimant was not ready with equipment and manpower for handling and transport the materials at site.

182. That, in the statement of defense in answer to Claim No. 1 at Page 18 the respondents have stated that no resource of the Claimant was mobilized at site between 18.11.2010 to 18.04.2011. If no resource of the Claimant was mobilized upto18.04.2011, then how the material was handled on 26.03.2011, has not been clarified by the respondents. Thus, the evidence adduced by the respondents is contrary to its pleadings.

183. Apart from this, there are number of documents on record which goes to show that manpower and equipments were available on site after the date of commencement of contract i.e. 18.11.2010. These documents are letter dated 02.12.2010 (ExC-142, Vol-19) whereby Claimant has informed that Claimant has mobilized crane bearing registration No. NLO2-N-7582 having a capacity of 40 MT and hydra bearing registration No. HR38-N-6951 having a capacity of 12 MT. This letter was duly received by the respondents on 02.12.2010 itself. Apart from this, the Claimant was to provide certain material handling equipments. As per Annexure-A/3 of Group-F, the documents marked as Ex. C-144 at Page No. 132-145 and are dated 20.12.2010, 24.12.2010, 27.12.2010, 31.12.2010, 03.01.2011, 02.01.2011, 11.01.2011, 12.01.2011, 17.01.2011, 19.01.2011, 26.01.2011, 30.01.2011, 02.02.2011 and 11.02.2011 goes to show that the material handling equipments were provided by the Claimant on the site. Claimant has submitted the documents which are Ex C-141 at Page No. 23 to 29 which goes to show that the claimant has deposited the provident fund for the employees who were present on the site for the month December, 2010 to March, 2011. The amount of PF has been duly deposited with the State Bank of India through Challan. In all these documents the list of employees is given who were posted on the site. These employees are the same who were working on the site after March, 2011 also and continued to work till the contract was over. The PF challans and list of those employees are also annexed as C 140-141 in Volume-19 from Page No. 31 to 109. The respondents have also submitted the list of 27 employees employed by the Claimant in the month of April, 2011 to June, 2011 and is dated 27.08.2011. This document is at Page No. 45 as Volume-18.

184. That, since the material received for handling by the respondents for the first time on 26.03.2011, therefore, it cannot be said that no manpower and equipment was provided by the Claimant from the date of commencement of agreement. Apart from this, absolutely there is nothing on record to show that at any point of time from 18.11.2010 onwards any complainant was made by the respondents to the Claimant that the Claimant has failed to provide the manpower and the equipments as per the agreement. Since, the respondents were well aware that the respondents are liable and Claimant is entitled to claim minimum handling charges amounting to Rs. 7,99,000.00 per month, therefore, had there been no

> *manpower / equipments provided by the Claimant as per the agreement, the respondents would have issued the letters to the Claimant in this regard. The defense was taken by the respondents to the effect that it was agreed between the parties that the respondents would inform the Claimant as to when the manpower and machineries had to be mobilized, but in this regard there is no evidence and also no cross examination has been made to the Claimant. From the agreement it is crystal clear that work or no work the respondents were liable and Claimant was entitled for minimum establishment charges. In the backdrop of aforesaid evidence, this tribunal finds that the claimant is entitled and respondents are liable to pay minimum handling charges @ Rs. 7,99,000.00 p.m. w.e.f. 18.11.2010 till 26.03.2011 which comes to Rs. 33,87,588.00 and this Tribunal also finds that only on the basis of letter dated 16.03.2011, it cannot be held that the Claimant failed to provide the manpower and equipments as per the agreement.*

45. A bare perusal of the aforesaid reveals that only after carefully construing and considering the scope and import of the letter dated 16.03.2011; and also, the attendant facts and circumstances, the Arbitral Tribunal in the impugned award rendered a factual finding to the effect that "***it cannot be said that no manpower and equipment was provided by the claimant from the date of commencement of the agreement*".**

46. The conclusion arrived at by the Arbitral Tribunal, being based on a consideration of the evidence on record and the inferences drawn there from, does not brook any interference of this Court under Section 34 of the A&C Act. The law is well settled that in proceedings initiated under Section 34 of the A&C Act, a court can neither reappreciate the evidence nor sit in appeal over the conclusion drawn by an arbitrator. As long as the view taken by the Arbitral Tribunal is a plausible view, the same does not warrant any interference. Accordingly, no merit is found in the petitioners' challenge to the impugned award in respect of Claim No.1.

Claim No.2: -Rs. 8,83,913.00 along with interest w.e.f. 01.02.2013

47. The Claim No.2 was claimed by the respondent/claimant towards the payment of monthly bill for a period between 01.01.2013 and 31.01.2013.

48. The petitioner's primary contention before the Arbitral Tribunal was that the said monthly bill was never raised by the respondent/claimant in any of the running bill and was for the very first time raised in the Statement of Claims (SoC) filed before the Arbitral Tribunal.

49. After considering the respective contentions of the parties and the admission made during the cross examination of the petitioner's witness (i.e., RW-1 before the Arbitral Tribunal), the Arbitral Tribunal came to the conclusion that the respondent/ claimant is entitled to the said claim.

50. A perusal of the impugned award reveals that the view taken by the Arbitrators was predicated on appreciation of the evidence/ material on record. In these proceedings, it would not be apposite for this Court to re-appreciate the same, so as to reach a different conclusion. As such, the impugned award in respect of this claim brooks no interference in the present proceedings.

Claim No.3: -Rs. 30,39, 102/- along with interest w.e.f. 01.07.2013

51. The said claim relates to Item C.2.1 i.e., unloading of pipes of various diameters and random lengths as mentioned in SOR (Schedule of Rates). Although, it is the common case of the parties that the said item came to be treated as non-operable/ deleted, there is a controversy as to whether the respondent/claimant is entitled to a payment as per the original prescription in the contract for the period till 30.06.2011. According to the respondent/ claimant, since the said item became non-operable only w.e.f. July, 2011, for

a period till 30.06.2011, the respondent/claimant was liable to be paid as per the original prescription of the contract.

52. In this regard, it is apposite to make reference to the correspondences exchanged between the parties which ultimately led to the Item C-2.1 becoming non-operable and subsequently being deleted from the SOR. The said correspondences are as follows:-

52.1 On 20.06.2011, a letter was addressed by the petitioners to the respondent/ claimant, communicating as under:-

> *"Ref: EIK/A043/WH/1165* *June 20, 2011*
> *M/s.Shivhare Road Lines*
> *Roshanighar road, Lashkar*
> *Gwalior - 474 009.* *Attn: Shri Deepak Shivhare, Partner*
>
> *Sub: Material Handling Services for OGT-Mallavaram.*
> *Dear Sir,*
> *We refer to the subject contract awarded to M/s.Shivhare Road Lines vide our DLOA No.A043/T- 04/10-11-MCJ/13/DLOA, dated 11.02.2011.*
> *We would like to inform you that Item No.C.2.1 of SOR of above mentioned contract i.e., Unloading of pipes of various diameters on random lengths unloading from vehicles at project site cannot be operated as the Unit of Measurement is in Nos.*
> *We would like to inform you that the piping materials that are to be unloaded under the subject contract shall be to the tune of 6000 to 8000 MTs.*
> *We request you to confirm your acceptance for non-operation of SOR Item No.C.2.1 i.e., All inclusive charges for unloading from vehicles arrived at project site at Mallavaram from outside directly and stacking as required - pipes of various diameter and random lengths.*
> *This is for your information and immediate necessary action.*
> *Thanking you,*
> *Very truly yours,*
> *(CH.N. Rao)*
> *Resident Construction Manager"*

52.2 The said letter was responded to by the respondent/ claimant on 22.06.2011 as under:-

> *To: EIL GSPC (Email Address)*
> *SRL/EIL/GSPC/3889*
> *The Resident Construction Manager,*
> *M/s. Engineers India Limited,*
> *Onshore Gas Terminal Project of M/s. GSPC*
> *Village Mallavram*
> *Near Reliance Onshore Terminal,*
> *Tallarevu Mandal,*
> *East Godavari Distt. (A.P.)*
> *Kind attn: Shri Ch. N. Rao*
> *Ref: DLOA No. AO43/T-04/10-11/MCJ/13/DLOA dated 11.02.11*
>
> *Dear Sir,*
> *We received your above referred letter dated 20.06.11 and gone through the SOR of the contract. In SOR except Group A, F and H, the rates called and offered for all items of SOR of which the unit of measurement number. According to the tender SOR, we submitted out competitive offer, hence, please intimate us. Would you want to non-operate only item no. C-2.1 from July, 2011 onwards*
> *We are waiting for your early response.*
>
> *Thanking you*
> *Yours faithfully*
> *For Shivhare Road Lines*
> *S.C. Shivhare*
> *Partner*

52.3 *Vide* a letter dated 28.06.2011, the respondent/ claimant offered a revised rate (on per weight basis) for the concerned item as under:

> *"SRL/EIL/GSPC/207/3921*
> *June 28, 2011*
> *The Resident Construction Manager,*
> *M/s. Engineers India Limited,*
> *Onshore Gas Terminal Project of M/s. GSPC*
> *Village Mallayaram,*
> *Near Reliance Onshore Terminal,*
> *Tallarevu Mandal,*
> *East Godavari Distt. (A.P.)*

Kind attn: Shri Ch. N. Rao

Sub:- Offer for unloading of pipes at Project site.
Ref:- Your Letter No. EIK/A043/WH/1187 Dated:- 23-06-2011

Dear Sir,

We offer our most competitive rates for "All inclusive charges for unloading from vehicles arrived at project site at Mallavaram from outside directly and stacking as required, pipes of various diameters and random lengths" as given below:
Our rate is Rs. 640/- per M.T.
Thanking you,
Yours faithfully,
For Shivhare Road Lines,
-sd-
Partner"

52.4 Ultimately, pursuant to negotiations, the parties arrived at the rate of Rs.385/- per M.T for the said item.

52.5 In response to the respondent's letter dated 22.06.2011, the petitioner addressed a letter dated 23.06.2011 (as noticed in paragraph 199 of the impugned award) which reads as under:-

"Dear Sir,
We had discussed with Mr. Shivhare only about deletion of item for unloading of pipes in Nos. and other items shall be operates as it is."

53. In some later correspondence, the respondent/ claimant acknowledged that the concerned item stood deleted. In one letter, the claimant even referred to deletion of the item from 'zero date'. However, the moot question that the arbitral tribunal was required to consider was whether the petitioner is liable to make payment as per the original contract provisions, for the period prior to the date on which deletion of the item was proposed/effectuated.

54. The Arbitral Tribunal concluded that for the activities carried out under Item C-2.1, the petitioners were obliged to make payments as per the original contractual methodology/ rates for the period up to the end of June, 2011.

55. It is noticed that the aforesaid conclusion of the Arbitral Tribunal is based on an overall appreciation of the correspondence exchanged between the parties. The Arbitral Tribunal noticed that the non-operability of the contractual methodology/ rates that was brought in about by way of exchange of correspondence initiated towards the end of June, 2011, would not affect the entitlement of the respondent/ claimant for the work already performed by them.

56. The said view taken by the Arbitral Tribunal cannot be said to be an altogether implausible/ impossible view to take. As such, the same calls for no interference in these proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

57. Likewise, the Arbitral Tribunal was well within its jurisdiction to award interest on the unpaid amount under Claim No.3 for the period w.e.f. 15.07.2011.

Claim No.4: - Rs. 5,39,613/- along with interest w.e.f. 14.01.2012

58. The said claim was made by the respondent/claimant against the additional equipments deployed by them for completing the awarded work within the stipulated period, during the lockdown imposed by fishermen. To resist the said claim, the petitioner primarily sought to rely upon the *force majeure* clause incorporated in clause 11 of the General Conditions of Contract (GCC) and Item -A of SOR.

59. The *force majeure* incorporated in clause 11 of GCC reads as under:-

> *"11. FORCE MAJEURE*
> *11.1 Neither GSPC nor the Contractor shall be responsible for any failure to fulfill any term or condition of the Contract if and to the extent that fulfillment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder provided, which has been notified in accordance with this Clause and which is beyond the control and without the fault or negligence of the party notifying force majeure and which, by the exercise of reasonable diligence, the said party is unable to provide against.*
> *11.2 For the purposes of the Contract, Force Majeure events shall mean and include:*
> *11.2.1 Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power.*
> *11.2.2 Ionising radiations or contamination by radio-activity from any nuclear fuel or nuclear waste, or radio-active, toxic, explosive or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof (other than arising out of any radiation source used by the Contractor in relation to the Work).*
> *11.2.3 Earthquake, flood or any other natural physical disaster, but excluding weather conditions as such, regardless of severity.*
> *11.2.4 Strikes at a national level or strikes by labour not employed by the notifying Party or its Subcontractor(s) and which affect a substantial or essential portion of the work.*
> *11.2.5 Maritime disasters.*
> *11.2.6 Fire or explosion (being fire or explosion not caused by the negligence of the Contractor or its Subcontractor(s)).*
> *11.3 In the event of a force majeure occurrence, the party shall promptly notify the other party without delay giving the full particulars thereof and shall promptly use all reasonable endeavours to remedy the situation.*
> *11.4 No payment of whatever nature shall be made in respect of a force majeure occurrence.*
> *11.5 Following notification of a force majeure occurrence in accordance with Clause 11.3, GSPC and the Contractor shall promptly meet with a view to agreeing to a mutually acceptable course of action to minimize the effects of such occurrence."*

60. Item -A of SOR reads as under:-

> *"A. All inclusive charges for the collection and loading of small consignments received at various Transport Companies located in Rajhamundry/ Kakinada or any other place in and around Kakinada within a radius of 100 KMs, transportation to Project site, unloading and stacking. All types of general cargo, loose or packed -including -fabricated equipments, pumps, instruments, fittings,*

electrical items, cable drums, pipes & pipe fittings etc."

61. The Arbitral Tribunal pursuant to noting that the said claim was essentially for reimbursement of the extra expenses incurred by the respondent/ claimant during the lockdown period for deployment of additional equipments and that the quantity of the work was duly acknowledged by the concerned representatives of the petitioner, construed the aforesaid clause 11 of GCC, relied upon by the petitioner to hold as under: -

> *"216.……Upon minute scrutiny of each of the sub-clause of Clause-11 of the contract this tribunal finds that the respondents cannot avoid its liability on account of force majeure."*

62. Further, the Arbitral Tribunal after considering the entire factual conspectus concluded as under: -

> *"221. In view of the aforesaid answers also the respondents cannot avoid the liability of payment of charges of additional equipments for which the claimant was burdened on account of lockdown. Thus, the claim of the claimant is allowed. It is held that claimant is entitled and respondents are liable for payment of Rs. 5,39,613.00 towards payment of additional charges.*
> *222. So far as interest on the aforesaid amount is concerned, the claimant is claiming the interest w.e.f. 14.01.2012 as the additional equipments and manpower were provided during the period between 25.10.2011 to 13.01.2012. Since, the Claimant itself has submitted the bill on 24/25.04.2013, therefore, there is no justification for asking the interest w.e.f. 14.01.2012. As the bill was submitted on 24/25.04.2013 and for clearance of final bill the period prescribed under the contract is 45 days, therefore, the Claimant is entitled for interest on the aforesaid amount w.e.f. 11.06.2013. So far as rate of interest is concerned, that shall be considered, separately."*

63. The above conclusions arrived at by the Arbitral Tribunal turns upon appreciation of the peculiar conspectus and therefore cannot be said to be an altogether implausible or impossible view to take inasmuch as:-

(i) clause 11 of GCC deals with a situation where performance of the contract is temporarily prevented on account of *force majeure* conditions. The same does not preclude reimbursement of the additional expenditure incurred by the respondent/claimant while deploying additional equipment/s;

(ii) the Arbitral Tribunal after taking note of clause 6 of the preamble to SOR[1] and statement of one of the petitioner's witnesses (i.e., RW-1 before the Arbitral Tribunal) took a plausible view that Item-A of SOR deals with collection and loading of small consignment received at various transport companies and has nothing to do with the present claim;

(iii) it is also well settled that interpretation of the contract is within the domain of the Arbitral Tribunal and as such, it would be untenable for this Court to reinterpret the relevant provisions of the contract so as to arrive at a different conclusion.

64. Thus, the impugned award in respect of the said claim cannot be said to be afflicted by any of the circumstances which warrant interference under Section 34 of the A&C Act, 1996.

Claim No.5: - Rs. 8, 39,18,902/- along with interest w.e.f. 11.11.2011 & Claim No.6: -Rs. 21,88,96,720.00 along with interest w.e.f. 03.08.2012

[1]6. Whenever, the Project Site is mentioned in the schedule, it shall mean to imply any storage yards, warehouse or any other place, within a radius of five kilometers even if it is located outside the project compound."

65. Since Claim nos. 5 and 6 were in regard to same items (i.e., Item nos. C-1.1 and C 1.2) for a different period (i.e., between 01.07.2011 and 11.11.2011 for Claim No.5 and between 12.11.2011 and 02.08.2012 for the Claim No.6), the Arbitral Tribunal dealt with the said claims collectively.

66. It was the case of the respondent/claimant that the work undertaken by them for Item No. C-1.1 (which was 36,127 in numbers) and Item No. C-1.2 (which was 1081 in numbers) from 01.07.2011 to 11.11.2011 was duly certified by the Engineer-in-charge of the petitioners.

67. It is notable that with regard to the said items, *vide* Minute of Meeting dated 11.11.2011, it was agreed as under:-

> *Minutes of Meeting between Engineers India Limited and M/s Shivhare at EIL.*
> *Persons Present*
> *EIL* *M/s Shivhare*
> *S/Shri SD Kherdekar, GM(P)*
> *CHN Rao, RCM, EIL-Kakinada* *Mr. Deepak Shivhare*
> *MK Marg, HOD (Const.)* *Mr. Suresh Shivhare*
> *Ratan Lal, DGM (P)*
> *K.K. Gupta, Dy. Manager (Shipping)*
> *Sub:- Material Handling contract, GSPC, Kakinada.*
> *Following points were discussed:*
> *1. M/s Shivhare informed that item no. C.2.1 is deleted from the scope w.e.f. July, 2011. Hence, pipes unloaded prior to July, 2011 may please be considered as per SOR rate.*
> *EIL informed that pipe unloading cannot be considered on number basis and extra item rate of Rs. 385/MT will be applicable. However, same shall be separate from SOR payments.*
> *2. From July 2011 to September 2011 the payment for extra item will be as Rs. 385/MT for pipe unloading after deduction for the resources used for this activity by the contractor, from the minimum monthly payment.*
> *3. The above methodology will be adopted for future pipe unloading also if separate resources for pipe unloading not mobilized by M/s Shivhare.*
> *4. RCM informed that the rates at SoR item nos. C.1.1 and C.1.2 are not operatable as the rates are on number basis and the packages are being received in loose condition.*
> *It was therefore, informed that these items shall not be operated in the SoR and fresh rates for same shall be obtained on MT basis and shall be operated as extra item. M/s Shivhare to furnish their rates on MT basis to*

RCM separately for further needful."

68. It is noted that pursuant to the aforesaid Minutes of Meeting, further correspondence ensued between the parties, which ultimately led to the respondent/claimant submitting an offer for performing the concerned items on a "per weight basis", and the same consequently led to issuance of a change order on 03.08.2012.

69. The Arbitral Tribunal in the impugned award took note of the following chronology of events: -

Date	Event
17.07.2010	Claimant submitted its offer of Item No. C-1-1, C-1-2 and C-2-1 vide Ex-C/2 at Page No. 2, Volume – II of SOC 0 to 350 KGs. – Rs. 2300.00 per unit. 351 to 5000 KGs. – Rs. 1700.00 per unit. Pipes of various diameters and random length – Rs. 660.00 per unit.
02.11.2010	Respondents confirmed the award of contract to the Claimant vide FOA, Ex-C/3 at Page No. 3, Volume – II of SOC as the rates quoted by the claimant were the lowest.
11.02.2011	Respondents issued DLOA, Ex-C/4, at Page No. 4, Volume – II of SOC and the agreement was executed between the parties.
20.06.2011	Respondents informed claimant vide Ex-C/9 at Page No. 23, Volume-II of SOC that the rate of Item No. C-2-1 which is being in numbers is non-operatable and requested to unload pipes and material on MT basis.
22.06.2011	Claimant made a query to the respondents whether the respondents want to non-operate only Item No. C-2-1 from July, 2011 onwards vide letter C/10 at Page No. 24, Volume-II of SOC.
23.06.2011	Respondents informed vide Ex-C/11 at Page No. 25 that respondents want to delete for unloading of pipes (C-2-1) in numbers and other items shall be operated as it is.
21.10.2011	Change order issued for Item No. C-2-1 of SOR attached with DLOA. It was further stated that all other terms and conditions of contract remained the same as per the original DLOA.
11.11.2011	Meeting was conveyed wherein it was observed that respondents also want to change the rates of Item No. C-1-1 and C-1-2 vide Ex-C/46 at Page No. 76 of Volume-II of SOC.
12.11.2011	Claimant quoted rate for Item No. C-1-1 and C-1-2 vide Ex-C/47, Volume-II of SOC at Page No. 77 @ Rs. 700.00.
14.11.2011	Respondents directed not to take SOR rates of C-1-1 and C-1-2 in the bills till further directions vide Ex-C/48 at Page No. 78, Volume-II of SOC.
15.11.2011	The reminder was sent by the claimant for finalizing the rate vide Ex-C/50 at Page No. 80, Volume – II of SOC.
12.01.2012	The reminder was sent by the claimant for finalizing the rate vide Ex-C/52 at Page No. 83, Volume – II of SOC.
27.04.2012	Claimant submitted revised offer @ Rs. 600.00 per MT for C-1-1 and C-1-2, Ex-C/68 at Page No. 100 of Volume-II of SOC. The receipt of this letter is specifically denied by Shri Anil Bhatia authorized representative of respondents on affidavit 01.08.2019 as is evident from Page No. 9 at Sr.No. 80, Volume-XIV.
03.08.2012	Change order was issued for Item No. C-1-1 and C-1-2 prescribing a rate of Rs. 600/- per MT vide Ex-C/70 at Page No. 102 of Volume-II of SOC.

70. Considering the factual conspectus, and taking into account the contractual provisions, it was held by the Arbitral Tribunal that it was only for the first time on 11.11.2011 that the entitlement of the respondent/ claimant under Item Nos. C-1.1 and C-1.2 was discussed and it was decided that the same would no longer be operable. The impugned award finds that, there was no justification on the part of the petitioners in denying the claim for the period up to 11.11.2011. The Arbitral Tribunal also rejected the contention of the petitioners to the effect that the extremely high number of quantities under Item nos. C-1.1 and C-1.2 resulted in the contract value going way beyond the originally envisaged sum of Rs. 2,49,50,000/-. It was concluded as under:-

> *"243. That, the contention of the respondents is that the contract cannot go beyond the principal contract value Rs. 2,49,50,000.00 is concerned, it is estimated value of the work and was based on quantity of work. After taking into consideration the quantity of the work the estimated contract value was Rs. 2,49,50,000.00 but if the work increased and performed, then the claim of the Claimant cannot be denied on the ground that the estimated contract value was of Rs. 2,49,50,000.00."*

71. It was also noted by the Arbitral Tribunal that for the month March to June, 2011 the payment has been duly made by the petitioner for Items C-1.1 and C-1.2 as per the RA bills raised by the respondent/ claimant. The Arbitral Tribunal also rejected the contention that upon the petitioner returning some of the claimant's bills the same were resubmitted on "weight basis". The Arbitral Tribunal reached the conclusion that resubmission/ redrawing of the bills as per the dictate/ requirements of the petitioner would not defeat the entitlement of the respondent/ claimant in the facts and circumstances of this case. Factual findings in this regard have been

rendered by the Arbitral Tribunal from paragraphs 253 to 256 of the impugned award.

In paragraph 257 of the impugned award, it was concluded as under: -

> *"257. That, in view of the aforesaid discussion, this Tribunal is of the view that the Claimant is entitled and the respondents are liable for payment of an amount of Rs. 8,39,18,902.00. Thus, the Claim No. 5 is decided in favour of the Claimant accordingly".*

72. The above conclusion of the Arbitral Tribunal as regards the entitlement of the respondent/ claimant in respect of Items nos. C-1.1 and C-1.2 for the period up to 11.11.2011, is based on an appreciation of intricate factual aspects, and taking into account the fact that prior to 11.11.2011, there was no controversy as regards the manner in which the work done under Item C-1.1 and C-1.2 would be paid for.

73. The petitioner has sought to challenge the award under Claim No.5, contending that (i) the Impugned Award supports an absurd construction of the contract, permitting the respondent/claimant to charge at a unit rate for every small pipe, screw or hinge handled by them, irrespective of the weight. (ii) Since the materials were being received at the project site in loose condition, the petitioner found it very difficult to operate it on package/ number/ item basis as per the contract. The parties therefore deemed it fit to amend the contract. (iii) The Arbitral Tribunal has failed to appreciate the fact that the parties agreed to delete items C.1.1 and C.1.2 and therefore, no claims under deleted provisions of the contract could have even been maintained. (iv) The Arbitral Tribunal has incorrectly held in paragraphs 247 and 249 that the petitioner made payments on an "item basis". No payments were ever made on an "item basis", but were made on "MT basis". (v) The Arbitral Tribunal has misread the correspondences

exchanged between the parties and ignored the fact that the respondent/ claimant had agreed to revise its RA Bills in respect of Items C.1.1 and C.1.2.

74. The above contentions are not persuasive so as to justify interference with the award in respect of Claim No.5. The respondent/ claimant cannot be faulted for the manner in which the contract, as originally framed, prescribed the mechanism for reckoning the payment/entitlement of the respondent/ claimant under Item nos.C-1.1 and C-1.2. If the same results in significantly more payment to the respondent/ claimant (on account of increase in quantities beyond what was initially envisaged), the same cannot by itself be a ground for denying the entitlement of the respondent/ claimant.

75. The Arbitral Tribunal is also well within its jurisdiction in construing the scope, import and inferences to be drawn from the correspondence exchanged. Based thereon, the Arbitral Tribunal reached the conclusion that the respondent/ claimant entitlement would not be obliterated on account of the circumstances which impelled the respondent/claimant to accede to draw/ raise certain bills, *inter alia* for Items C.1.1 and C.1.2, in a particular manner, as per the requirements of the petitioner.

76. The impugned award finds that it was only at the meeting held on 11.11.2011, that the parties agreed that the Items C.1.1 and C.1.2 would no longer operate and the same ought not to affect the entitlement of the respondent/ claimant for the period prior thereto.

The above conclusions/ inferences, being predicated on an appreciation of the factual and evidentiary conspectus, are not amenable to interference under Section 34 of the Arbitration and Conciliation Act. As such, the award in respect of Claim No.5 cannot be faulted.

77. The award in respect of Claim No.6, however, stands on a completely different footing. The impugned award, after discussing the facts and circumstances which impelled the tribunal to allow Claim No.5, proceeded to hold that "all the findings of this tribunal relating to Claim No.5 also applies to Claim No.6". It was further held that in the meeting dated 11.11.2011 "***though the matter was discussed relating to Items C.1.1 and C.1.2, nothing was finalised***. It was also held that till the issuance of the formal change order on 03.08.2012, the terms and conditions as already prescribed in the contract would apply *qua* Items C.1.1 and C.1.2. Thus, the claimant was held entitled to a sum of Rs. 21,88,96,720/- for the period between 12.11.2011 and 02.08.2012.

78. It has been rightly pointed out on behalf of the petitioner that the above conclusion *qua* Claim No.6 is in the face of the understanding arrived at during the meeting held on 11.11.2011 and affirmed by the respondent/ claimant in subsequent correspondence as well.

79. A perusal of relevant correspondence/s, does indeed reveal that the award in respect of Claim No.6 is completely contrary to the unambiguous understanding between the parties, and the express admissions recorded in correspondence/s. The same is also contrary to the respondent/ claimant own conduct, till invocation of arbitration.

80. The factual aspects/ admissions which have been completely overlooked in the impugned award are as under:-

80.1 The minutes of meeting dated 11.11.2011 categorically records with regard to Items C.1.1 and C.1.2, that "*these items shall not be operated in the SOR and fresh rates for the same shall be obtained on MT basis and shall be operated as extra items. M/s. Shivhare Road*

Lines to furnish their rates on empty basis to RCM separately for further needful".

80.2 Thereafter, the respondent/ claimant, *vide* letter dated 12.11.2011, expressly acknowledged that the "*concerned SOR Item has been deleted*". The communication dated 12.11.2011 addressed by the respondent/ claimant reads as under:-

> *"SRL/EIL/GSPC/207/4534*
> *November 12, 2011*
> *The Resident Construction Manager,*
> *M/s. Engineers India Limited,*
> *Onshore Gas Terminal Project of M/s. GSPC*
> *Village Mallayaram,*
> *Near Reliance Onshore Terminal,*
> *Tallarevu Mandal,*
> *East Godavari Distt. (A.P.)*
>
> *Kind attn: Shri Ch. N. Rao* *eilgspcsite@gmail.com*
>
> *Sub:- Offer for unloading of small materials at Mallavaram Project Site.*
>
> *Ref:- 1. DLOA No. AO43/T-04/10-11/MCJ/13/DLOA dated 11.02.11.*
> *2. Minutes of Meeting held at EIL. New Delhi on 11.11.11*
>
> *Dear Sir,*
>
> *As per the discussions the undersigned held at EIL Office, New Delhi during the meeting between Shivhare Road Lines and Engineers India Ltd., th**e** **SOR item against DLOA No. AO43/T-04/10-11/MCJ/13/DLOA dated 11.02.11 has been deleted from SOR**.*
>
> *We, hence, are offering our most competitive rates as follows for unloading of the material from the vehicles arrived at Project site in Group C.1.1 and C.1.2 Item ranging 0 to 5000 Kgs.*
>
> *Our rate is Rs. 700/- (Rupees Seven Hundred Only) per MT all inclusive except the Service Tax which will be charged extra as applicable.*
>
> *This is for your kind consideration and approval.*
> *Thanking you,*
>
> *Yours faithfully*

For Shivhare Road Lines.
-sd-
S.C.Shivhare
Partner"

Thus, the concerned SoR items *viz*. items C.1.1 & C.1.2, stood deleted as of 12.11.2011.

80.3 Again, *vide* letter dated 08.12.2011 addressed by the respondent/claimant to the Resident Construction Manager of petitioner, it was stated as under:-

"SRL/EIL/GSPC/207/4643
December 8, 2011
The Resident Construction Manager,
M/s. Engineers India Limited,
Onshore Gas Terminal Project of M/s. GSPC
Village Mallayaram,
Near Reliance Onshore Terminal,
Tallarevu Mandal,
East Godavari Distt. (A.P.)

Kind attn: Shri Ch. N. Rao *eilgspcsite@gmail.com*

Sub:- Offer for unloading of small materials at Mallavaram Project Site.
Ref:- 1. DLOA No. AO43/T-04/10-11/MCJ/13/DLOA dated 11.02.11.
2. Minutes of Meeting held at EIL. New Delhi on 11.11.11.
3. Our letter no: SRL/EIL/GSPC/207/4534 dated 12.11.11.

Dear Sir,
As per the discussions the undersigned held at EIL Office, New Delhi during the meeting between Shivhare Road Lines and Engineers India Ltd., the SOR item against DLOA No. AO43/T-04/10-11/MCJ/13/DLOA dated 11.02.11 has been deleted from SOR.
Please refer our aforesaid letter dated 12.11.11 vide which we had offered our rate as follows for unloading of materials at the Mallavaram project site from the vehicles arrived at Project site in Group C.1.1 and C.1.2 item ranging 0 to 5000Kgs.
Our rate is Rs. 700/- (Rupees Seven Hundred Only) per MT all inclusive except the Service Tax which will be charged extra as applicable.

We are still awaiting for your response on the subject matter.

This is for your kind consideration and approval.
Thanking you,

Yours faithfully
For Shivhare Road Lines.
-sd-
S.C.Shivhare
Partner"

80.4 *Vide* letter dated 15.12.2011, it was stated by the respondent/claimant as under:-

"The Resident Construction Manager,
M/s. Engineers India Limited,
Onshore Gas Terminal Project of M/s. GSPC
Village Mallavaram
Near Reliance Onshore Terminal,
Tallarevu Mandal
East Godavari Distt. (A.P.)
Kind attn: Shri Ch. N. Rao

Sub:- Bill towards work done under Group C-1.1 and C-1.2 at Mallavaram Project Site.

Ref:- 1. DLOA No. AO43/T-04/10-11/MCJ/13/DLOA dated 11.02.2011.
2. Minutes of Meeting held at EIL, New Delhi on 11.11.2011

Dear Sir,

With reference to the aforesaid MOM for the meeting our partner, Shri S.C. Shivhare held with your goodself in the office of Shri S.D. Kherdekar, GM (Proj.) ***wherein it was agreed to withdraw SOR item No. C-1.1 and C-1.2 from the contract from the date of MOM i.e. 11.11.2011.***

We have already forwarded per MT rate for the said job for your approval. We are hereby submitting our RA Bill No. 06 dated 13.12.2011 amounting to Rs. 9,58,21,801.00 (Rupees Nine Crore Fifty Eight Lac Twenty One Thousand Eight Hundred One only) towards the unloading of the material under these Groups i.e. C-1.1 and C-1.2 from the starting of the contract i.e. 01.07.2011 till 10.11.2011 before meeting. The bill is enclosed with all uploading certified challans and other documents for your ready reference.

We request your goodself to kindly verify the bill and process the same for payment at the earliest.
Thanking you,

Yours faithfully,
For Shivhare Road Lines
-sd-
S.M. Owes
Site In-Charge"

The above letter is crucial. It expressly records that SoR Items C.1.1 and C.1.2 were deleted w.e.f. 11.11.2011. The letter further proceeds to record that the respondent/claimant was submitting its RA Bill in respect of these items, confining the same for the period 01.07.2011 till 10.11.2011.

In view of the deletion of the concerned items w.e.f. 11.11.2011, there was no scope for the respondent/claimant to raise claim on the basis of the original contractual prescription thereafter.

80.5 Again, *vide* letter dated 11.01.2013, addressed by the respondent/claimant, while submitting RA Bill No. 18 to the petitioners, it was *inter-alia* stated as under:-

"Hence, for further operation of this quantity these items are being treated as Extra Item from 11.11.2011 and for that the rate was decided on per MT basis. Hence, up to the date of meeting i.e. 11.11.2011/ date of deletion of these SOR items from the contract, the work which we have done, has not been claimed as per the contract, hence, now is being claimed in our aforesaid RA Bill."

Thus, it can be seen that it was expressly admitted by the respondent/claimant that w.e.f. 11.11.2011, there is no scope whatsoever for applying the original contractual rates (on per item basis). Consequently, in RA Bill No.18 the respondent/ claimant

confined its claim in respect of these items only till 10.11.2011.

80.6 Again, *vide* letter dated 06.05.2013 addressed by the respondent/claimant it was *inter-alia* stated as under:-

> *"(1) The contract SOR Item No. C-1.1 and C-1.2 deleted from the Contract dated 11.11.2011 according to the MOM hence prior to the work under above SOR items to be charged according to the contract agreement.*
> *(2) The contract SOR Item No. C-2.1 has been deleted from the contract according to the MOM dated 11.11.2011 from July 2011 hence the work prior to July 2011 under this contract SOR Item to be charged according to the terms of the contract.*
> *(3) The deduction made by EIL on account of manpower, Hydra and the work prior to 11.11.2011 for the above referred contract SOR and the deduction of amount of the Crane, as per contract, the deduction is not agreeable to us. The deduction of the amount of the Crane, Hydra and Manpower needs restoration.*
> *(4) If EIL is not agreeable from our view as above, why we should not refer our matter according to the Contract Clause 24.9.1 for the early settlement and clarification as well as closing the contract."*

80.7 *Vide* letter dated 19.01.2013, addressed by the respondent/claimant to the Resident Construction Manager of petitioners it was *inter-alia* stated by the respondent/claimant as under:-

> *"We would like to mention that in the said MOM dated 11/11/2011 the agreement was made to withdraw the SOR item C-1.1 & C-1.2 from this contract from the date of the MOM. Hence according to the contract whatever work performed as per the SOR we have claimed in RA Bill No. 18, prior to 11/11/2011."*

80.8 Further, *vide* letter dated 23.01.2013, addressed by the respondent/claimant to the Resident Construction Manager of petitioners' *inter-alia* it was stated as under: -

> *"In the same meeting the then RCM had informed that SOR item nos. C-1.1 and C-1.2 are also not operatable for which it was decided to*

call for separate fresh rates on MT basis and to treat the same as extra items and M/s. SRL was requested to submit the rates to the RCM separately.

Thus only from the date of the said MOM it was discussed and agreed upon not to operate the item no. C-1.1 and C-1.2 further.

Trust our above submission would further clarify the matter, we hence are again submitting our RA Bill No. 18 and request your good self to kindly process our for payment."

80.9 *Vide* letter dated 22.02.2013,addressed to the Resident Construction Manager of the petitioners, it was *inter-alia* stated by the respondent/claimant as under:

"4. Point No. 04 of the MOM:- "RCM informed that the rates at SOR Item nos. C-1.1 and C-1.2 are not operatable as the rates are on number basis and the packages are being received in loose condition."
*"**It was therefore, informed that these items shall not be operated in the SOR and fresh rates for same shall be obtained on MT basis and shall be operated as extra item. M/s. Shivhare to furnish their rates on MT basis to RCM separately for further needful."***
*It may be noted that this issue of SOR item no. C-1.1 and C-1.2 was discussed and raised for the first time in the said meeting and that the withdrawal of this SOR item was done **from the date of the said meeting itself**, calling fresh rates from various parties for further execution of the job on MT basis and when our offered rates were found to be the lowest one (L1) we were given the work order for the same. Thus, the amount Rs. 8,45,06,600/- claimed in our RA bill towards the said items according the agreement & rates in SOR worked upto 10.11.2011 is bona fide claim in the ambit of the contract agreement and as per the provisions of the said MOM.*
We wish to inform you that there is no duplicity in raising the bill as we have already reduced the amount received by us in the said RA bill, we have raised the bill in the ambit of the contract agreement and the provisions of said MOM."

80.10 *Vide* letter dated 24.05.2013, respondent/claimant communicated to the Resident Construction Manager of the petitioner *inter-alia* as under:-

> *"The meeting according to the discussion was held on 17th May 2013 at 1400 Hrs. At 8EIL, New Delhi regarding clarification of the doubts and mis-interpretation on the MOM dated 11.11.2011 prepared at EIL New Delhi. The matter was discussed with Shri Ratan Lal, DGM(P) alongwith Shri K.K. Gupta, Dy. Manager (Shipping) and the doubts on the MOM dated 11.11.2011 already discussed and cleared.....*
>
> ***Item C-1.1 and C-1.2 to be operated upto 10.11.2011 SOR Item on number basis and from 11.11.2011 to be operated as an extra item on metric ton basis.***
>
> *We hope that the direction from the Headquarter has already been received by your goodself to clear our running bill. Hence, we request your goodself to please clear our Proforma Invoice of RA Bills so we may submit our Tax Invoice alongwith the final bill. "*

80.11 *Vide* letter dated 28.10.2013, addressed by the respondent/claimant to the Chairman and Managing Director of the petitioners, it was *inter-alia* stated as under:-

> *"(10) In reply to our letter Resident Construction Manager vide his letter no. EIK/A043 dated 03.10.2013, copy attached as* ***Annexure-L/14****- referred to previous letter issued by him- reference EIK/A043/0403D/5091 dt. 22.01.2013, copy attached as* ***Annexure L/15*** *and requested to rectify the bill. Thus, from MOM dated 11.11.2011 and the Changed Order No. 1871 dated 21.10.2011 issued by RCM, it is not in dispute that for the work done under item C-2-1, we are entitled for the payment as per the Changed Order whereas for the work relating to item C-1-1 andC-1-2 executed prior to 11.11.2011, we are entitled for payment as per SOR item and after 11.11.2011, for the said work, we are entitled to get the payment as per the rates quoted by us on MT basis as informed in the meeting held on 11.11.2011 by RCM, the relating goods were received in loose condition instead of packages. Accordingly, the instructions issued by RCM to rectify the final bill as per his letter dated 22.01.2013 and 03.10.2013 are not acceptable being erroneous and not in accordance with the contract agreement. The same is also in contravention of the Changed order dated 21.10.2011 and MOM dated 11.11.2011."*

80.12 Even, in the letter dated 24.08.2013 sent by the respondent/claimant at the time of submission of the Final RA Bill No. 19, it was clearly stated as under:-

> *"4.1)In respect of Item C-1.1 and C-1.2, we wish to state that we had quoted our unit rate for these items based on the description of these item in schedule of price, which unambiguously and explicitly stated that the unit rate shall be for General Cargo- weight per package and with a variation in package weight from 0-350 Kgs. under item C-1.1 to 1,00,000 Kgs to 3,50,000 Kgs. under item C-1.8 respectively. There is no discrepancy or ambiguity in the description of the items nor there was any operational difficulty in the operation of these items- particularly bearing in mind the contractual requirements. Work was accordingly progressed as per above items* ***until on 11.11.2011*** *in the meeting held at EIL Office when EIL informed that the SOR item no. C-1.1 and C-1.2 are not operatable as the rates are on number basis and the packages are now being received in "loose conditions". Since the type and nature of General package had changed, which was not foreseen in the original contract nor contemplated in the original contract we had accepted rate per M.T. as suggested by EIL. Beyond 11.11.2011 for the packages (loose) handled thereafter under item C-1.1 and C-1.2 respectively. Accordingly in the Final Bill, till completion of work for work done beyond 11.11.2011, we have framed our Final Bill at these rates in respect of item C-1.1 and item C-1.2 respectively."*

It is noted that the final RA Bill No. 19 was also drawn on the basis that the respondent/claimant entitlement as per the original prescription in the contract in respect of Items C-1.1 and C-1.2 was confined only up to 11.11.2011.

80.13 Even in the arbitration petition that came to be filed before this Court under Section 11 of the A&C Act by the petitioner for constitution of the Arbitral Tribunal, it was averred as under: -

> *"6. That, similarly respondents denied the payment of SOR item no. C.1 and C.1.2 w.e.f. date of meeting i.e. 11.11.2011, a copy of minutes of meeting dated 11.11.2011 is at* ***ANNEXURE P-3****.*
> *7. That, therefore petitioner is claiming, without prejudice, that*

> *the Petitioner, at the least, is entitled for payment of its bills prior to minutes of meeting dated 11.11.2011. In other words, as per minute of meeting dated 11.11.2011, petitioner is entitled for payment of SOR Item No. C.1, C.1.2 and C.2.1 from the date of commencement of work to till 11.11.2011 which has been denied by the respondents.*
> *8. That, after completion of work in the month of January, 2013, the petitioner submitted its final bill as per terms of contract amounting to Rs. 11,97,54,889/-. However, only a meagre amount of Rs. 1,99,80,447/- was paid to the petitioner and remaining amount of Rs. 9,97,74,442/- remained outstanding."*

81. Thus, there is no matter of doubt that the parties were *ad idem* that SoR Items C-1.1 and C-1.2 stood deleted and replaced by a new extra item in the DLOA. It was in pursuance to this understanding that the formal change order came to be subsequently issued. However, the aforesaid correspondences evince a clear and unambiguous understanding between the parties, and also records the categorical and repeated admissions on behalf of the respondents, that there was no question of applying the originally prescribed rates/ methodology (*viz*. "per item basis") for the period after 11.11.2011. Contrary to the aforesaid understanding, the respondent/claimant arbitrarily raised a gigantic claim of Rs. 21,88,96,720/-.

82. The above correspondence and the inevitable inference/s flowing therefrom have been completely overlooked in the impugned award, while arriving at a decision *qua* Claim no.6. Instead, the impugned Award seeks to apply the reasoning in respect of Claim No.5 which pertains to an altogether different period to Claim No.6 as well.

83. Moreover, after completely glossing over the unambiguous understanding between the parties as reflected in correspondence, the impugned award reaches the conclusion that till the date of issuance of the

change order i.e., 03.08.2012, the original SOR rates shall continue to apply. The said finding is completely perverse and utterly contradictory to the material and evidence on record.

84. The Supreme Court in ***PSA Sical Terminals Pvt. Ltd vs. Board of Trustees of V.O Chidambranar Port Trust Tuticorin and Others***, (2023) 15 SCC 781has observed that an award is stated to be perverse and suffers from patent illegality when *inter-alia* the arbitral award ignores "vital evidence/s" while arriving at a decision. The relevant portion of the said judgment reads as under: -

> ***"41.*** *A decision which is perverse, though would not be a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. However, 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.*
>
> ***42.*** *To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus :*
>
> > *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
> > *(i) a finding is based on no evidence, or*
> > *(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
> > *(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*
> > *32. A good working test of perversity is contained in two judgments. In Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons [Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312],it was held : (SCC p. 317, para 7)*
> > > *7. … It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so*

> *outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.'*
>
> *In Kuldeep Singh v. Commr. of Police [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)*
>
> > *'10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.' "*

85. Further, a coordinate Bench of this Court in ***M/s Divyam Real Estate Pvt. Ltd vs. M/s M2K Entertainment Pvt. Ltd*** 2024 SCC OnLine Del 3786 while placing reliance on the law laid down by the Supreme Court in ***I-Pay Clearing Service (P) Ltd vs ICIC Bank Ltd*** (2022) 3 SCC 121 has observed as under: -

> *"21.6. It is settled law that where an arbitrator has rendered no clear findings on a contentious issue and the conclusions drawn by an arbitrator are in disregard of the evidence on record, the award is liable to be set-aside, as being perverse and patently illegal. In this regard, in I-Pay Clearing Services (P) Ltd. vs. ICICI Bank Ltd. the Supreme Court has held :*
>
> > *"41. Under the guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the arbitrator, where there are no findings on the contentious issues in the award. If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. Under the guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the arbitrator. In absence of any finding on*

contentious issue, no amount of reasons can cure the defect in the award."

(emphasis supplied)

86. Thus, the findings arrived at by the Arbitral Tribunal *qua* Claim no.6 suffers from patent illegality inasmuch as it completely ignores the understanding arrived at between the parties, as reflected in aforementioned correspondences. In the aforesaid conspectus, the impugned award in respect of Claim No.6 liable to be set aside by this Court under Section 34 of the Arbitration and Conciliation Act, 1996.

Claim No. 7: -Rs. 54, 13,263.00 along with interest w.e.f. 11.11.2011

87. The respondent/claimant advanced the said claim against the amount deducted by the petitioners from the RA bills raised by them. The said claim has been adjudicated by the Arbitral Tribunal, taking into account various provisions including clause 2 and 3 of Minutes of Meeting dated 11.11.2011. It is noticed that the Arbitral Tribunal analysed each and every deduction thoroughly before concluding as under: -

"*293.That, upon minute scrutiny of the RA bills, RA No.1 to RA No.18, following discrepancies are arising:-*

a) In RA Bill No. 1, the deduction is for the month of April, 2011 to June, 2011 while in RA Bill No. 2, which is for the month of March, 2011 to October, 2011 in which again deduction is made for the month of April, 2011 to June, 2011.

b) In RA BillNo.2, the deduction is made for the month of March, 2011 to October, 2011 and in RA Bill No. 3, again the deduction is made for the month of July, 2011 to October, 2011. Thus, the repeated deduction in RA Bill No. 1 to 3 is for April, May, June, 2011 and thereafter, again from March, 2011 to October, 2011.

c) In number of bills, there are two different figures shown which has been deducted from the bill. The different figures are shown in the chart

hereinbelow:-

RA Bill	*Bill Amount*	*Deduction*	*Shown at Page No. of Affidavit*	*Deduction*	*Shown at Page No. of affidavit*	*Difference*
3	*26,82,839*	*1,54,999*	*12*	*1,08,161*	*70,71*	*46,838*
5	*9,45,133*	*1,69,103*	*13*	*45,738.31*	*83, 84*	*1,23,364.69*
6	*9,20,447*	*1,80, 776*	*13*	*20172.99*	*91*	*1,60,603.01*
8	*6,57,134*	*NIL*	*15*	*16,879.26*	*106, 107*	*16,879.26*
9	*6,34,387*	*NIL*	*15*	*61,855.96*	*113, 114*	*61,855.96*
10	*18,32,017*	*9,55,787*	*16*	*Deduction sheet not supplied*	*NIL*	*9,55,787*
11	*7,87,695*	*1,42,293*	*16*	*Deduction sheet not supplied*	*NIL*	*1,42,293*
12 &13	*51,98,906*	*16,29,336*	*17*	*46,904.59*	*133, 134*	*15,82,431.41*
14	*13,26,551*	*3,44,482*	*18*	*1,81,458.88*	*143,144*	*1,63,023.12*
15	*9,62,793*	*2,91,332*	*19*	*50,401.80*	*149, 150*	*2,40,930.20*
16	*8,82,461*	*2,27,782*	*19*	*49,941.76*	*155,156*	*1,77,840.24*
17	*92,22,532*	*2,32,627*	*20*	*1,11,229.32*	*163, 164*	*1,21,397.68*
18	*8,36,58,244*	*1,06,905*	*21*	*1,04,104.82*	*170, 171 and 172*	*2800.18*
	10,97,11,139	***44,35,422***		***7,96,848.69***	***Total=***	***37,96,043.75***

294. That from the aforesaid chart, it is evident that at one place of the affidavit the deduction amount deducted is shown as Rs. 44,35,422.00 and at other place of the same affidavit the amount deducted is shown as Rs. 7,96,848.69. Thus, in both the figures of deduction from Bill No. 3 to 18 the difference is of Rs. 37,96,043.75. Apart from this, in Bill No. 1, 2, 4 and 7 also the deduction is made by the respondents which are as under: -

Bill No.	Amount of Bill	Amount deducted
1	19,77,000.00	2,26,036.00
2	8,29,287.00	1,93,787.00
4	8,04,345.00	55,467.00
7	7,08,146.00	50,114.00
Total	**43,18,778.00**	**5,25,404.00**

295. Thus, from RA Bill No. 1 to 18 which were of Rs. 11,40,29,917.00 the amount deducted 1s of Rs. 49,60,826.00. Apart from this, there is a significant difference of figure of the amount deducted. Apart from this, in none of the bills any opportunity of hearing was given before deducting the amount to the claimant nor any speaking order was passed explaining the reasons of deduction.

296. That, in answer to Question No. 52, Mr. Anil Bhatia has stated that no deduction has been made from the Bill No. 2 for the month of March, 2011 which is shown at Page No.54. In the deduction sheet at Page No. 54, the deduction is made for the month of March, 2011. Thus, the answer given on oath is not correct. It is pertinent to note that the statement of defence was signed by Shri A. Bhowmik, Chief General Manager of respondents who did not appear in witness box and Mr. Anil Bhatia, RW-1, who is only an authorized representative, and was project coordinator stationed at head office of respondents and have stated in answer to Question No. 1 and 2 of cross examination that statement of defense was prepared under his instructions and was also signed by him (which is against the record), further states in answer to Question No. 36 that he was not involved in bill relatedtransaction between the parties.

297. That, in answer to Question No. 53, though the witness has admitted that deductions were made from July, 2011 to October, 2011 in RA Bill No. 3 but has stated that no deduction has been made on 15.11.2011. From perusal of the deduction sheet at Page No. 70, it appears that the date mentioned on this sheet is dated 15.11.2011. Thus, this answer is also not in accordance with record.

298. That, in answer to Question No. 55, the witness states that no deduction for the month of November, 2011 is made twice. From perusal of Page No. 78 and 84 of the affidavit it is evident that the deduction was made twice for the month of November, 2011 in the Bill No. 4, dated 10.11.2011 and in the Bill No. 5, dated 04.01.2012. Thus, this answer is also not correct.

299. That, in answer to Question No. 58, the witness states the deductions · were made as per the terms of the contract. The contract is on record and this Tribunal does not find any clause which permit the respondents to make deductions without informing or without giving any opportunity of hearing to the Claimant. Even the respondents itself have placed reliance to Clause 24.10 of the GCC which empowers the respondents to withhold the payment and not to reject without giving any opportunity of hearing. In the facts and circumstances of the case, this Tribunal is of the view that the claimant is not entitled for an amount of Rs. 54,13,263.00 as claimed on account of deductions. However, the claimant is entitled for sum of Rs. 49,60,826.00 which has wrongly been deducted by the respondents.

300. So far as interest on the aforesaid amount is concerned, the period of work is between 18.11.2010 to 31.01.2013 for which the bills were given from time to time and the deductions were also made by the respondents from timeto time. Through, the claimant has claimed the interest w.e.f. 11.11.2011, but this Tribunal is of the view that on the amount of deduction

also the interest should be awarded w.e.f. 11.06.2013 i.e. after lapse of 45 days ofsubmission of final bill which was submitted on 24/25.04.2013. So far as the rate is concerned, the same shall be considered, separately."

88. No fault can be found with the above conclusion reached in the impugned award, much less of a nature which qualifies for interference under Section 34 of the A&C.

Claim Nos. 9 to 12:-relating to the interest on delay caused in releasing the payment, Pendente Lite and Future Interest.

89. Since claim nos. 9 to 12 pertained to payment of interest (Pendente Lite and future) against delay caused by the petitioners in release of payments, the Arbitral Tribunal adjudicated the said claims collectively. The Arbitral Tribunal by placing reliance upon various precedents/position of law laid down by the Supreme Court in a catena of judgments; and the attendant facts and circumstances including the fact that the petitioner itself had claimed interest @ 18% on its counter claims, held that interest @ 12 % p.a. (for the concerned period/s) was reasonable and shall be awarded for the pre reference period, pendent lite and also from the date of the impugned award till realisation.

90. A bare perusal of the impugned award reveals that the awarded interest was clearly within the jurisdiction of the Arbitral Tribunal and there is no irregularity/ illegality in the same, which calls for interference under Section 34 of the A& C Act.

Claim no. 13:- Cost of Arbitration

91. Even with regard to the award in respect of cost/s, which is the subject matter of Claim No.13, the same is clearly within the jurisdiction of the Arbitral Tribunal. It is contended on behalf of the petitioners that the (a)

total claim amount was arbitrarily inflated by the respondent/ claimant and (b) that the delay in constitution of an arbitral tribunal is attributable to the respondent/claimant inasmuch significant time was consumed in litigation as the respondent/claimant pursued proceedings under Section 11(6) of the A& C Act before a wrong forum *viz.*, Madhya Pradesh High Court.

92. The impugned award, based on an overall consideration of the matter including the fact that the respondent/ claimant also paid some component of the arbitral fees payable by the petitioners, awarded costs to the respondent/claimant.

93. The award of costs clearly falls within the realm/ jurisdiction of the Arbitral Tribunal. In the totality of facts and circumstances, the same brooks no interference in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

CONCLUSION:-

94. In the circumstances, the impugned award in respect of Claim No.6 is set aside; the award in respect of other claims is upheld.

95. The petition is disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

OCTOBER 17, 2025/*uk,sl*