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

% ***Judgment reserved on: 11.12.2025***
Judgment pronounced on: 16.01.2026

\+ FAO(OS) 223/2010

JAY GEE CONSTRUCTION PVT LTD .....Appellant

Through: Mr. Anil Mittal, Mr. Shaurya Mittal and Mr. Atul Chauhan, Advocates.

versus

INDERPRASTHA POWER GENERATION CO LTD .....Respondent

Through: Mr. Syed Wasim Ahmed Qadri, Senior Advocate with Mrs. Preeti Thakur, Mr. Saahil Gupta, Mr. Saeed Qadri, Mr. Umesh and Mr. Ranjan, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, instituted under Section 37(1)(c) of the **Arbitration and Conciliation Act, 1996**[1], read with Order XLIII, Rule 1 of the **Code for Civil Procedure, 1908,**[2] and Section 10 of the Delhi High Court Act, 1966, challenges the **Judgement dated**

[1] A&C Act
[2] CPC

22.12.2009[3], passed by the learned Single Judge of this court in O.M.P. No. 5/1999.

2. By the Impugned Judgment, the learned Single Judge partly allowed the Respondent's petition under Section 34 of the A&C Act, and modified the **Arbitral Award dated 01.06.1998**[4] by setting aside (a) the claim relating to additional distance/lead for disposal of ash removed from I.P. Station along Ring Road near Nizamuddin Bridge (*Claim No. 5*); and (b) the claim towards idling costs of machinery, staff, and labour (*Claim No. 3*). The learned Single Judge further modified the award by reducing the rate of interest from 18% per annum, as awarded by the learned Arbitrator, to 9% per annum.

3. It is clarified that the Arbitral Award dated 01.06.1998 was subsequently modified on 24.10.1998 by way of an Additional Award, whereby only the grant of pre-suit and *pendente lite* interest was altered. The learned Arbitrator awarded interest at the rate of 18% per annum in favour of the Appellant/claimants for the period commencing from 06.11.1996, being the date of appointment of the learned Arbitrator, till 31.05.1998, i.e., the date of the original Award. Future interest was directed to be governed by the original Award dated 01.06.1998.

4. At the outset, it is noted that another Appeal, being **FAO(OS) 88/2010 titled '*Subhash Infraengineers Private Limited v. Indraprastha Power Generation Co. Ltd.*'**[5], was heard along with the present Appeal and is being disposed of by a separate judgment pronounced simultaneously.

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[3] Impugned Judgement
[4] Arbitral Award
[5] Connected appeal

5. The issues arising in the present appeal are substantially analogous to those considered in the connected appeal, as they relate to: (a) additional distance/lead for disposal of ash, (b) idling charges, and (c) the rate of interest. However, two material distinctions warrant notice.

6. First, unlike the connected appeal, no claim for loss of profit on account of premature termination of the contract arises herein. Second, whereas in the connected appeal the learned Single Judge had modified the award in respect of idling charges, in the present case, Claim No. 3 was entirely set aside. This distinction arose as the Appellant herein asserted a different period of idling and advanced nuanced submissions in respect of Claim Nos. 3 and 5, which were ultimately rejected by the learned Single Judge.

7. While adjudicating the disputes in the Impugned Judgment, the learned Single Judge placed reliance on the decision in ***O.M.P. No. 279/1998*** titled ***Delhi Vidyut Board v. Subhash Chander & Co***., from which the connected appeal has arisen, as the issues and contractual clauses involved therein were almost identical. For clarity and completeness, the relevant portions of the Impugned Judgment are reproduced below:

> "….
> **1.** This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 1.6.1998 passed by the sole Arbitrator and as modified on 24.10.1998. The counsel for the objector at the outset had confined his objections to only two aspects, besides the rate of interest issue, of the impugned Award. The first aspect pertains to Claim No.5 for excess lead/distance for transportation and whereunder the Arbitrator has awarded a sum of Rs. 12,18,104/- on account of a higher "lead" than as stated in the subject contract. The second aspect pertains to Claim No.3 as per which idling charges have been granted to the present respondent by the impugned Award for a period of 58 days.

2. I may state that almost on similar issues so far as the first aspect is concerned, I have on 12.11.09 passed a judgment titled as ***Delhi Vidyut Board Vs. Subhash Chander & Co. in OMP No. 279/1998*** between the same petitioner and another contractor pertaining to a similar contract. While dealing with the aspect of grant under the Award for a higher distance/lead, I have held as under:

> "3. The issue which has to be addressed by the Court is with respect to the aspect as to whether for disposal of the fly ash is there is a specified site or an approximate distance to such site, as per the contract. If a specified site or an approximate distance is found in the contract, then, the Award with respect to claim No.2 of charges towards additional distance travelled for disposal of the fly ash, would be correct. However, if the contract does not provide for any specific site or any approximate distance qua the specific site, there will not arise any claim for additional distance for carriage of the fly ash.
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> 4. Mr. Gourav Banerjee, ASG, appearing on behalf of the petitioner has in support of his arguments with respect to the issue that there is no fixed site or even a fixed approximate distance for disposal of the fly ash has taken me through the various contractual conditions in the agreement and more particularly the terms and conditions in the S.C.C. At this stage. I may refer to clause Nos. 4 and 5 of the Special Conditions of Contract. Before I do that I may note that the special conditions of the contract specifically state that whenever there is a conflict between the general conditions of contract and the special conditions, the special conditions shall prevail. Therefore, it is clear that special conditions will prevail over general conditions. Also, it would be relevant for a decision of the subsequent issue that the terms and conditions as found in the final letter of the Award, which was acted upon by the respondent, would become the final contract document between the parties. Clauses 4 and 5 of the special conditions of contract are as under:
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> > "4. The tentative list of sites identified by the Department for disposal of ash shall generally be indicated in the tender/letter of intent. The Department may also identify other sites for disposal of ash, during the course of execution of work. The contractor is required to dispose off the ash at the identified sites as per direction of Engineer-in-charge. However, the contractor shall have option to identify additional sites for dumping at his own end and shall get these locations approved from the

Department before commencement of work. Department reserves the right to reject any/all sites so identified by the contractor without assigning any reason. Thus, rate quoted by contractor shall be valid for all leads and lifts. The sites identified by Department shall be filled first as per priorities indicated by the Engineer-in-charge and the site identified by the contractor shall be filled afterwards. In the sites thus identified by the Department, contractors shall normally fill ash upto optimum capacity of the available dumping ground unless directed otherwise. In the event of one particular site getting full, the contractor shall commence on the next dumping ground as directed by the Engineer-in-Charge. Thus, the contractor has to dispose off/dump ash at number of locations as per exigencies of work/availability of the sites and no claim whatsoever shall be entertained for change in disposal point involving different leads."

5. The rate quoted by the contractor shall cover for all leads and lifts involved for disposing off the ash in the locations as specified in para (4) above. The rate shall also cover for all operations, such as excavating fly ash from the ash disposal area, loading/unloading and transporting the same to the point of disposal, disposing the top surface of the area after disposal. As the fly ash after excavation is to be disposed off in the low lying areas, any approach required to be made for disposal shall be the contractor liability, and no financial claim whatsoever on this account shall be entertained."

(Emphasis added)

5. A reference to the conditions 4 and 5 make it more than clear that there is no specific site on which the dumping is to take place. Not only is the list of site tentative, but, it is quite clear from the clauses that the Department may also identify other sites for disposal of ash during the course of execution of the work. There is no reference to any distance with respect to these other sites at which disposal of ash would take place during the execution of the contract. I may, at this stage, mention that the contract between the parties is for disposal of the ash within the

entire Union Territory of Delhi as per clause 1. This clause is reproduced hereunder:

> "1. The scope of work covers excavating fly ash from any of three or more chambers of ash ponds along Ring Road between 'Y' shape Rly. Bridge near Bhairon Road crossing and Nizamuddin bridge on river Yamuma and disposing off the ash by closed steel body trucks/dumpers approved by the Department at low lying pockets/dumping ground within Union Territory of Delhi as may be directed by Engineer-in-charge from time to time. The scope of work also includes levelling and dressing of fly ash at the dumping grounds."

A reading of the clause 1 shows that the scope of the work covers excavating the fly ash from one or more chambers of the ash ponds and disposing of such ash at low lying pockets/dumping ground in the Union Territory of Delhi as may be directed by the Engineer -in- charge from time to time. Therefore, a conjoint reading of clause 1, clause 4 and clause 5 makes it more than clear that not only the contract is for disposal of ash within the Union Territory of Delhi, there is no fixed site which is specified for disposal of such ash, and nor is there specified any fixed or even an approximate distance specified as the lead for the disposal of fly ash. To cap the issue, clauses 4 and 5 in so many words very clearly state that the rates quoted by the contractor shall be valid for all leads that is with respect to all distances and no claims will be entertained for change in the disposal point involving different leads.

6. Mr. Ashok Bhasin, learned senior counsel for the respondent has per contra referred to the Schedule of Quantities (SOQ) to contend that the disposal has to be at a specific site. The relevant portion of this SOQ which is relied upon by Mr. Bhasin is as under:-

"Note:- Tentative sites of disposal:- Vasant Kunj, Dhirpur/Shalimar Bagh or any other site." (Emphasis added)

Mr. Bhasin has argued that these sites as stated in the SOQ would therefore confine the petitioner to direct disposal of ash by the respondent to such sites only or within leads of such sites only and not for any other leads from the place where fly ash is picked up for disposal.

7. A contract document ordinarily would have provided for the priority of the contractual documents inter se being the notice inviting tender, general conditions of contract, special conditions of contract, the letter of Award and an agreement document which is entered into between the

parties. Unfortunately, in this case, the contract is silent as to priority of the documents. I hope, the petitioner will be wiser in future, however in the present, I have to interpret the different terms and conditions as appearing in the contract in a harmonious manner so that the intention of the parties becomes clear from such clauses. I note that in the relevant portion of the schedule of quantities relied upon by Mr. Bhasin that the sites which have been mentioned ends with the expression "or any other site". This itself, therefore makes it more than abundantly clear assuming any clarification was required even after clauses-1, 4 and 5 of the special conditions of contract, that, there is no fixed site or any fixed distance for disposal of the fly ash under the contract. The disposal as already stated by me is in terms of clause 1 of the SCC was to be at any place in the Union Territory of Delhi and for any lead/distance. Accordingly, I am not agreeable to the contention which has been very strenuously contended on behalf of Mr. Bhasin on behalf of the respondent.

8. The law with respect to interference with an Award under Section 34 of the Arbitration and Conciliation Act, 1996 is very clear. Ordinarily the courts will not interfere with the Award unless the Award is against the contractual provisions or the award is illegal i.e. against the provisions of the law of the land or is so perverse that it shocks the judicial conscience. This interpretation is now well settled with respect to objections which have been filed under Section 34. Accordingly, in accordance with these parameters of law, I note that the award clearly therefore flies and is totally contradictory to the direct contractual provisions namely clauses 1,4 and 5 of the special conditions. I am of the firm opinion that the clauses in the special conditions of contract in the facts of the present case will prevail over the schedule of quantities/SOQ because the language in the schedule of quantities itself refers to "or any other site". The same result will also flow from the harmonious construction of all the relevant clauses. Therefore, without doing any violence to the language in schedule of quantities one can safely interpret clauses 1,4 and 5 of the special conditions of contract that as regards the disposal of fly ash there was no fixed place of disposal or any fixed distance. That being the position there cannot lie any claim on behalf of the contractor for disposal of ash beyond any assumed limit which is taken as the fixed contractual distance/lead. This Award of the Arbitrator therefore being clearly violative of the contractual provisions is liable to be set aside under Section 34. I, therefore, set aside this part of the Award."

3. The counsel for the respondent, however, contended that the judgment in the case of O.M.P. No.279/98 would not apply in the facts of the present case because according to the counsel for the respondent in the present contract, the respondent had written its letter dated 28.7.1993 and in which it was clearly stated that the rates as given by the respondent/contractor were valid only for three sites as stated in para 2 of the said letter and which is reproduced as under:

> "2 Our Rates are valid for the leads upto 1 of 3 disposal sites mentioned in the Schedule of Quantities i.e. Vasant Kunj, Dheerpur, and Shalimar Bagh. If at any stage the lead exceeds these sites due to change in disposal area, the extra lead will be charged at the rate mutually decided by us and the department."

The counsel for the respondent also relied upon two judgments. First judgment is of ***Union of India Vs. Suchita Steels 2006(1)Arb.LR.83(Delhi)*** and which is relied upon to contend that a commercial contract must be read as commercial people understand the same. The second decision relied upon is that of ***M.K. Abraham and Company Vs. State of Kerala and Another 2009(7)SCC 636*** to urge the contention that a letter supersedes the printed form and since in the present case the Special Conditions of the Contract (SCC) only contain the printed form, therefore, as per the counsel for the respondent the contents of the letter dated 28.7.1993 ought to prevail.

4. So far as the ratio of ***Suchita Steels case (supra)*** is concerned there is no dispute as to the proposition of law laid down therein but how this judgment applies I have failed to understand. So far as the argument based on the judgment in the case of ***M.K.Abraham (supra)***, I am of the opinion that the contention of the counsel for the respondent is not correct and the argument as raised by him of a later document prevailing in fact goes against him. This is for the reason that the counsel for the petitioner has drawn my attention to the Letter of Intent dated 25.7.1994 (subsequent in point of time to be letter dated 28.7.1993) in the present case and the para 5 of the said letter reads as under:

> "The location where the ash is to be disposed off initially has already been identified to you at Sector-24, Rohini Phase-III at the land earmarked for DESU 66 Kv S/Stn. Other locations for disposal of ash shall be indicated whenever required during the course of execution."

The aforesaid para 5 of the Letter of Intent and admittedly which has been acted upon by the respondent/contractor, and which is chronologically the last of the contractual documents, and thereby the same gets priority in terms of the earlier documents more so because the Letter of Intent is the final document which has been acted upon. Consequently this Letter of Intent clearly supersedes the earlier letter dated 28.7.1993 which talks of three sites of

Vasant Kunj, Dheerpur and the Shalimarbagh. Para 5 of the Letter of Intent does not refer to any of the three sites stated in the letter dated 28.7.1993 and in fact refers to a different and only one site at Sector-24, Rohini and at which site in fact the entire dumping during the performance of the contract was done by the contractor/respondent. Further, this paragraph makes it clear that other locations for disposal of ash shall be indicated whenever required during the course of the execution and which last line of para 5 has no limitation with regard to any distance.

I am therefore of the opinion that Claim No.5 as awarded by the Arbitrator for higher lead/distance is clearly against the contractual provisions and is bound to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 and the reasons given by me while deciding OMP 279/1998 also additionally apply to the facts of the present case in addition to the reasoning given in the paras 4 and 5 just above.

The next objection which was raised, was, with respect to Claim No.3. For this claim the Arbitrator awarded idling charges/damages for a period of 58 days from 1.11.1994 to 27.12.1994. This claim was awarded on the ground that the contract, though stood expired on 31.10.1994 i.e. after the stipulated period of 90 days, but, since the respondent/contractor had requested for an extension of 27 days before the expiry and extension was granted only later on, viz on 23.12.1994 and whereby the contract was extended from 28.12.1994 to 7.2.1995, consequently, for the period between 1.11.1994 to 27.12.1994 the contractor/respondent could not demobilise his men and material and therefore had to incur expenses for which the contractor has been held entitled to be compensated.

7. The counsel for the objector has drawn my attention to a letter dated 16.11.1994 (Ex.P40/1) and in which the objector has clearly stated that the mobilisation would not be at the risk of the contractor and not of the Objector. The relevant portion of this aforesaid letter is as under:

> "Letter dated 7.11.94:
>
> You have stated that in pursuance of this office letter dt. 31.10.94 you are keeping your vehicles, machinery and staff/labour idle w.e.f. 1.11.94 at DESU's risk & cost. In the referred letter we have already clarified that the matter regarding further renewal of the contract is under consideration on merit by the deptt., which is true as on the basis of your letter dt. 4.10.94 this office has forwarded your request for consideration of the competent authority for extension of the existing contract. However decision of the same is awaited. It is therefore in your own interest that you are keeping the mobilization ready and **it can not be at DESU's risk and cost.**"

8. To buttress his argument of the wrong awarding of Claim No.3 the counsel for the objector has also drawn my attention to the Award with respect to the Claim No.2 and under which claim the Arbitrator has ordered for refund of the security deposit exactly on the totally opposite basis that there is no extension of the contract but in fact it was a new contract. This finding of the Arbitrator with respect to claim No.2 is as under:

> "It is amply clear from the documents filed by the Respondents that their counter claim is based on the quantum of work increased independent of the original allocation of 1.5 lac Cum. Thus, in so far as the quantity of 1.5 lac Cum is concerned the Respondents have no grouse and they did not undertake execution of this part of the work on risk and cost basis. It can thus be inferred that the matter with regard to transportation of 1.5 lac Cum of ash is finally closed by the Respondents and the award of additional quantum of work was for all purposes a new Contract. I have also not come across any clause in the Agreement which authorises the Respondents to grant extension of time to the Claimants. However, since the claimants had applied for extension of time vide their letter dt. 4.10.1994 (P-24) and the Respondents had agreed to grant the extension clause. The 'extension', however, as the word implies, has to be in continuity of the original period and there can not be any time gap between the stipulation date of completion and the date from which extension has to run. In the instant case, not only there is a big gap of 58 days between the stipulated date of completion (31.10.94) and the date from which extension was to run (28.12.94) but the intention if clear from the fact that while granting extension vide letter dt. 23.12.94 (P-43) fresh dates of commencement (28.12.94) and completion (7.295) were stipulated which implied that a new contract was sought to be created between the parties. Technically speaking, in all Engineering Organisations the extension of time invariably and without exception granted from the stipulated date of completion without leaving any time gap in between. By leaving a time gap of 58 days in between, the Respondents have clearly expressed their new contract. In view of these facts, the termination of the original contract and forfeiture of security deposit and earnest money for any alleged lapse in respect of the new contract was not justified. I, therefore, award a sum of Rs.81,277/- in favour of the claimants on this account."

The counsel for the objector therefore contended that once as per the above reasoning it is held that there is a new contract therefore there is no question holding subsequently under Claim No.3 an

opposite finding of extension of an existing contract being that therefore there was a gap of 58 days from 1.11.1994 to 28.12.1994 on the basis that an existing contract was extended. The counsel for the objector has also drawn my attention to the extension letter dated 23.12.1994 (Ex.P43/1) and para 2 of the said letter reads as under:

> "2. The work shall have to be start-----within six days of issue of this letter. Accordingly, the date of start and completion shall be 28.12.94 and 7.2.95 respectively."

According to the counsel for the Objector the fact the word 'start' is used clearly shows that a new contract had come into existence and there was no extension of any existing contract.

9. I agree with the contention of the counsel for the objector because having held, while dealing with claim No.2, that there is no extension of the contract and that there was a new contract for transportation of the balance amount of fly ash which was not lifted and remained the balance quantity under the first contract, and for which subsequent transportation work, there was a specific date of start of work and also a specific date of completion and thus clearly there is a new contract w.e.f. 28.12.1994 and the Arbitrator so has wrongly held otherwise. Therefore, the Arbitrator has committed an illegality and an apparent perversity while dealing to the contrary as regards the Claim No.3 by holding that there is only an extension and not a fresh contract. The two inconsistent findings are therefore clearly a perversity and the Award in this regard is accordingly illegal and therefore set aside. I may only add that it has never been the case of the respondent/contractor that the balance amount of unlifted fly ash viz. 63 thousand cubic meters out of the original contracted quantity of 1.5 lacs cubic meters (only 87 thousand cubic meters was lifted leaving the balance of 63 thousand cubic meters) was on account of any default on the part of the objector. In this view of the matter, this objection to claim No.3 is also accepted and Award allowing claim no.3 is accordingly set aside.

10. Finally, that leaves me with regard to the issue of the rate of interest. The Arbitrator has awarded interest at the rate of 18% per annum. I may note that the Supreme Court in the line of recent judgments reported as ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700 & Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra, 2007 (2) SCC 720 and State of Rajasthan Vs. Ferro Concrete Pvt. Ltd. (2009) 3 Arb.LR 140 (SC)*** has held that in view of the changed economic scenario and the consistent fall in the rates of interest, the courts ought to take note of the same and must necessarily reduce the interest which is granted under the Award. Accordingly,

being bound by the mandate of the said Supreme Court judgments, I feel in the present facts and circumstances, interest at the rate of 9% per annum simple will serve the ends of justice. Thus wherever the interest of 18% appears in the Award the same shall be read as 9% p.a simple. I am not changing the period for which interest has been granted by the Award.

11. With the aforesaid observations, this petition under Section 34 is disposed of by setting aside the Award with respect to Claim Nos. 3 and 5 and sustaining the remaining claims as awarded. Rate of interest also shall be @ 9% per annum simple as already held by me above. Parties are left to bear their own costs."

8. Upon a careful consideration of the reasoning adopted by the learned Single Judge in the Impugned Judgment, insofar as it relates to the two principal claims, *namely*, the claim for additional distance/lead for disposal of fly ash (Claim No. 5) and the claim for idling charges for a period of 58 days (Claim No. 3), which were challenged before the learned Single Judge and are presently under consideration before us, the conclusions may be summarised as follows:

(i). Claim No. 5: Additional Distance of Disposal Site

(a) The contract did not stipulate any fixed disposal site, nor did it prescribe any fixed or approximate lead or distance for disposal of fly ash. The Appellant's contractual obligation was not confined to any predetermined location or distance.

(b) Clauses 1, 4, and 5 of the **Special Conditions of Contract**[6] unequivocally provided that the disposal sites identified by the Respondent were tentative and could be altered during the course of execution. The Appellant was required to dispose of fly ash at multiple locations as directed by the Engineer-in-Charge, depending upon

[6] SCC

operational exigencies and site availability. These clauses further made it explicit that the rates quoted were inclusive of all leads and lifts, irrespective of distance, and that no claim whatsoever would be entertained for any change in the disposal point involving different leads.

(c) The contract expressly provided that, in the event of any inconsistency, the SCC would prevail over the **General Conditions of Contract**[7] and the **Schedule of Quantities**[8]. Even otherwise, the SOQ itself referred to tentative disposal sites followed by the expression "or any other site", which clearly negated the existence of any fixed site or fixed distance for disposal under the contract.

(d) The scope of work extended to the disposal of fly ash at low-lying areas or dumping grounds anywhere within the Union Territory of Delhi, as directed by the Engineer-in-Charge from time to time. This contractual stipulation further ruled out any assumed limitation on lead or distance.

(e) The Appellant's reliance on its earlier letter dated 28.07.1993 was rejected, as the subsequent **Letter of Intent**[9] dated 25.07.1994, being the final contractual document acted upon by the parties, superseded all prior correspondence. The LOI expressly contemplated disposal of fly ash at different locations as and when required

[7] GCC
[8] SOQ
[9] LOI

during execution, without imposing any restriction on distance or lead.

(f) In these circumstances, the learned Arbitrator's award granting compensation towards excess lead or distance was found to be directly contrary to the express terms of the contract and, therefore, liable to be set aside under Section 34 of the A&C Act.

(ii). Claim No. 3: Idling Charges for 58 Days

(a) The original contract expired on 31.10.1994, and there was an undisputed gap of 58 days before fresh work commenced on 28.12.1994. During this *interregnum* period, no contractual relationship subsisted between the parties.

(b) The Appellant claimed idling charges for this period on the ground that the extension of the contract was granted belatedly, allegedly compelling it to keep its men and machinery idle. However, contemporaneous documentary evidence, particularly the letter dated 16.11.1994, clearly established that the Appellant had been expressly informed that any mobilisation of men, machinery, or vehicles during this period would be entirely at its own risk and cost and not at the risk or cost of the employer.

(c) Significantly, while adjudicating Claim No. 2, the learned Arbitrator had himself recorded a categorical finding that the work awarded after 31.10.1994 constituted a new contract and not an extension of the original contract. The learned Arbitrator further held that a valid extension must

necessarily be continuous and that no time gap could exist between the stipulated date of completion and the commencement of the extended period. The extension letter dated 23.12.1994 used the expression "*start*" and stipulated fresh dates of commencement and completion, namely 28.12.1994 and 07.02.1995, thereby clearly indicating that a new contractual arrangement had come into existence.

(d) Despite these findings, the learned Arbitrator adopted a contradictory approach while deciding Claim No. 3 by treating the very same period as an extension of the original contract. Such mutually inconsistent findings were rightly held to be perverse and legally untenable, amounting to an error apparent on the face of the Award.

(e) It was also noted that there was no finding that the balance quantity of fly ash remained unlifted due to any default on the part of the objector, which further undermined the basis of the claim for idling charges.

(f) Accordingly, the award granting idling charges for the 58-day period was held to be illegal and perverse, and was therefore set aside.

SUBMISSIONS OF THE PARTIES:

9. On the aforesaid findings, learned counsel for the Appellant would reiterate the submissions advanced before the learned Single Judge. In relation to Claim No. 5, it would be contended that reliance placed on the Judgment in ***O.M.P. No. 279/1998*** was misplaced and erroneous, as the contractual matrix in the present case was materially

distinguishable.

10. It would be submitted that, under the present contract, a specific letter dated 28.07.1993 expressly stipulated that the quoted rates were applicable only up to the three disposal sites mentioned in the Schedule of Quantities, *namely*, Vasant Kunj, Dhirpur, and Shalimar Bagh, and that disposal beyond these sites would attract additional lead charges at rates to be mutually agreed between the parties.

11. Learned counsel for the Appellant would further argue that the said letter formed an integral part of the contractual understanding and effectively restricted the permissible lead to the identified sites. It would be submitted that the reference to "tentative sites" in the SOQ could not be construed as permitting unlimited or indeterminate leads beyond the specified locations, nor could it override the express stipulation contained in the letter dated 28.07.1993.

12. With respect to Claim No. 3, learned counsel for the Appellant would submit that although the original contract expired on 31.10.1994, the Appellant had sought an extension of 27 days prior to such expiry, thereby clearly manifesting its intention to continue performance. It would be contended that since the extension was granted belatedly on 23.12.1994, the Appellant was constrained to keep its men, machinery, and vehicles mobilised during the intervening period from 01.11.1994 to 27.12.1994, resulting in avoidable expenditure.

13. It would be argued that the Appellant could not reasonably demobilise its resources in anticipation of the extension and was, therefore, entitled to idling charges, and that the learned Arbitrator rightly attributed the delay in granting the extension to the

Respondent.

14. The learned counsel for the Appellant would emphasize the narrow and well-settled scope of judicial interference while adjudicating petitions under Section 34 of the A&C Act. It would be submitted that, given these statutory limitations, interference with the reasoned award, including on the aspect of the interest, rendered by the learned Arbitrator was wholly unwarranted.

15. ***Per contra***, learned counsel for the Respondent would oppose the present appeal and submit that the award rendered by the learned sole Arbitrator was contrary to the clear and unambiguous contractual terms agreed between the parties, and that the learned Single Judge had correctly exercised jurisdiction under Section 34 of the A& C Act, in modifying the award.

16. It would be submitted on behalf of the Respondent that Clauses 1, 4, and 5 of the SCC unequivocally demonstrate that the contract did not envisage any limitation on the distance of the disposal site. Consequently, no additional compensation on account of increased lead or distance for disposal of fly ash was payable to the Appellant.

17. Learned counsel for the Respondent would further submit that, notwithstanding the clarification issued by the Appellant *vide* letter dated 28.07.1993, the acceptance letter dated 21.07.1994 issued by the Respondent expressly contemplated disposal of fly ash anywhere within the Union Territory of Delhi, which was unequivocally accepted by the Appellant on 24.07.1994. This position was further clarified in the LOI dated 25.07.1994, which specifically provided Rohini as a site of disposal.

18. It would be urged that the LOI dated 25.07.1994, being the last

document in the chronological sequence, constitutes the final and binding agreement between the parties and, applying the settled principle of contractual hierarchy, supersedes all prior correspondence and communications. It would thus be contended that since the interpretation adopted by the learned Arbitrator ran contrary to the clear and unambiguous contractual framework, the award to that extent was liable to be set aside or suitably modified, which the learned Single Judge rightly did.

19. With regard to the claims relating to idling of machinery and labour, learned counsel for the Respondent would submit that the Appellant had been expressly informed that any extension or renewal of the contract was under consideration and that any men, machinery, vehicles, or labour retained during this period would be entirely at the Appellant's own risk and cost. It would therefore be submitted that the decision to keep resources idle was a purely commercial decision taken by the Appellant during the pendency of its request for extension, for which the Respondent cannot be fastened with any liability.

ANALYSIS:

20. We have heard the learned counsel appearing for the parties at considerable length and have also undertaken a detailed, careful, and comprehensive examination of the entire record of the appeal, including the Impugned Judgment passed by the learned Single Judge and the Arbitral Award rendered by the learned Arbitrator.

21. While examining the grounds urged in the present appeal under Section 37 of the A&C Act, it is imperative to bear in mind the well-settled jurisprudence that the scope of judicial interference with

arbitral proceedings is narrowly confined and strictly circumscribed. The Court does not sit as an appellate authority to re-appreciate evidence or reassess factual determinations but exercises only a limited supervisory jurisdiction. The Hon'ble Supreme Court, in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[10], has succinctly summarized this legal position as follows:

> "**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.
>
> **12.** It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.
>
> **13.** In paragraph 11 of ***Bharat Coking Coal Ltd. v. L.K. Ahuja***, it has been observed as under:
>
> > "11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."
>
> **14.** It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

[10] 2024 SCC OnLine SC 2632.

15. In ***Dyna Technology Private Limited v. Crompton Greaves Limited***, the court 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 provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of ***MMTC Limited v. Vedanta Limited***, it has been held as under:

> "14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in ***Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking*** referring to ***MMTC Limited (supra)*** held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

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CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

(emphasis supplied)

22. From the foregoing precedent, it emerges with clarity that the jurisdiction of the appellate court under Section 37 of the A&C Act is

narrowly circumscribed and warrants exercise with great circumspection. The appellate court is not expected to reassess the merits of the dispute or to sit in appeal in a broad sense. Interference is permissible only in limited and exceptional circumstances, strictly within the contours delineated by the statute and settled judicial precedent.

23. We now turn to the principal contention advanced by the Appellant, *namely*, that the reliance placed by the learned Single Judge on the judgment in O.M.P. No. 279/1998 was misplaced and erroneous on the ground that the contractual matrix in the present case was materially distinguishable. We find no merit whatsoever in this submission. A careful examination of the record reveals that the contractual framework, governing clauses, and issues arising for consideration in both matters are substantially identical.

24. The purported distinctions sought to be drawn by the Appellant are confined only to two limited aspects, *first*, in relation to Claim No. 5, the Appellant places reliance on a letter dated 28.07.1993 to assert a restriction on disposal distance/lead; and second, in relation to Claim No. 3, the Appellant relies upon the *interregnum* period between the expiry of the original contract on 31.10.1994 and the grant of extension on 27.12.1994.

25. Save and except these two facets, all substantive arguments raised before us stand squarely covered by, and have been comprehensively examined in, the connected appeal arising out of O.M.P. No. 279/1998. The relevant excerpt from the connected appeal, being *FAO(OS) 88/2010*, reads as under:

> "**36.** The learned Arbitrator failed to meaningfully engage with or apply the binding provisions of the SCC and the LOI dated

25.07.1994, which constituted the operative contractual framework. Instead, while adjudicating Claim No. 2, the learned Arbitrator confined his analysis almost exclusively to Clause 12 of the GCC, divorced from the overall contractual scheme.

37. The approach adopted by the learned Arbitrator is fundamentally flawed. The SCC expressly and unequivocally stipulates that in the event of any inconsistency between the GCC and the SCC, the provisions of the SCC shall prevail. The SCC more specifically provided the rights and obligations of the parties, including the manner of execution, scope, and operational modalities of the contract. Further, Clauses 3 and 4 of the SCC clearly emphasise the role of the LOI as the document that crystallises and defines the contractual relationship between the parties at the subsequent stage. The failure of the learned Arbitrator to accord due primacy to the SCC and to the determinative role of the LOI, despite their express superiority, strikes at the very root of the arbitral reasoning and renders the approach legally unsustainable.

38. While the learned Arbitrator, at the inception of the Arbitral Award, reproduced certain portions of the LOI, he inexplicably disregarded its binding mandate and unambiguous terms while adjudicating the substantive claims.

39. The LOI unequivocally records that the negotiated rate of Rs. 31.70 per cubic meter was agreed upon for excavation and disposal of 1,50,000 cubic meters of ash, to be executed over a defined period of three months. The LOI further clearly identified Rohini as the initial disposal site, while reserving the Respondent's right to indicate other disposal locations as exigencies of work demanded. The relevant portion of the LOI reads as follows:

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40. The learned Single Judge, while examining the challenge to the Arbitral Award in respect of Claim Nos. 2, 5, and 6, meticulously took into account all relevant contractual provisions, and more importantly, accorded due primacy to the clauses of the SCC, which expressly superseded the GCC, including Clause 12 thereof, upon which the learned Arbitrator had singularly placed reliance. This contextual and hierarchical reading of the contract is fully in consonance with settled principles of contractual interpretation.

41. The learned Single Judge further correctly appreciated that, in the absence of any contractual stipulation prescribing a fixed disposal site or a defined or approximate lead distance, no claim for additional payment could be sustained merely on the basis of assumptions or perceived equities. The contractual terms, read as a whole, consciously vested operational flexibility in the Respondent, and such discretion could not be curtailed through arbitral interpretation unsupported by contractual text.

42. The learned Single Judge also rightly noted that even the Schedule of Quantities described the disposal sites as tentative and

explicitly included the expression "*or any other site*". The SCC further clarified that disposal could be directed at any location within the Union Territory of Delhi. In the face of these express provisions, the learned Arbitrator, without identifying any contractual mandate to the contrary, adopted a self-devised methodology to allow Claim No. 2, and by extension Claims Nos. 5 and 6. Such an approach amounts to a clear transgression into the impermissible domain of rewriting the contract.

43. Insofar as Claim No. 5 is concerned, the learned Arbitrator granted idleness charges for the period from 19.01.1995 to 20.03.1995, despite the undisputed fact that the contract, even after extension, subsisted only up to 07.02.1995. We are in complete agreement with the learned Single Judge that once the contractual relationship stood concluded on 07.02.1995, no legally cognisable idleness could arise thereafter. Any decision by the Appellant to keep its resources idle beyond the express work order/ LOI or in the absence of any further work order/ LOI was a matter of its own volition, for which the Respondent cannot be held liable.

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47. A holistic and conjoint reading of the GCC, the SCC and the LOI clearly demonstrates that the Respondent acted in accordance with the contractual framework governing the parties. Significantly, the Arbitral Award fails to identify any substantial or final contractual term that was either disregarded or breached by the Respondent, save for a selective reliance on one or two isolated clauses of the GCC. Such an approach, divorced from the overall contractual scheme and the governing provisions of the SCC, renders the conclusions drawn in the Award unsustainable in law.

48. The learned Arbitrator further fell into manifest error by importing considerations arising from a subsequent tender floated by the Respondent and, on that basis, effectively rewriting and modifying the contractual terms governing the Appellant and the Respondent. Such an approach is legally impermissible, as the rights and liabilities of the parties are required to be determined strictly within the four corners of the governing contract, including the LOI dated 25.07.1994 and the documents forming part thereof. Reliance on an unrelated and subsequent tender, which had no applicability to the contract between the parties, amounts to a clear misdirection in law and vitiates the arbitral reasoning.

49. Compounding the error, the learned Arbitrator erroneously treated the letter dated 21.07.1994, which was merely a pre-work order communication, as equivalent to an LOI. While there are numerous additional infirmities arising from the misapplication of clauses of the GCC and SCC, having regard to the limited jurisdiction exercised by this Court under Section 37 of the A&C Act, we refrain from embarking upon a deeper contractual reappraisal. Suffice it to state that upon examining the Impugned Judgment, which squarely falls within the scope of our appellate

> scrutiny, we find ourselves in unequivocal agreement with the reasoning and conclusions recorded therein and endorse the same in their entirety."

26. We first address the nuanced argument advanced by the Appellant in respect of Claim No. 5, namely that the letter dated 28.07.1993 altered or restricted the contractual terms governing disposal distance and therefore entitled the Appellant to compensation for additional lead.

27. In our considered view, the learned Single Judge rightly rejected this contention. The Appellant's reliance on the letter dated 28.07.1993 is wholly misconceived, as the said letter stood superseded by subsequent and binding contractual documents, most notably the LOI dated 25.07.1994, which was admittedly acted upon by both parties. The LOI, being the final document in the contractual sequence, expressly contemplated disposal of fly ash at different locations as and when required during the execution of the work, without imposing any limitation whatsoever on distance or lead. Once the parties consciously proceeded on the basis of the LOI, all prior correspondence stood eclipsed and ceased to have any contractual force.

28. This conclusion is further fortified when viewed in the broader contractual context, which is identical to that considered in the connected appeal. Clauses 1, 4, and 5 of the SCC unequivocally provided that the disposal sites indicated by the Respondent were merely tentative in nature and liable to change during the course of execution. The Appellant was contractually obliged to dispose of fly ash at multiple locations, as directed by the Engineer-in-Charge, depending upon operational exigencies and availability of sites.

Significantly, these clauses made it explicit that the rates quoted by the Appellant were inclusive of all leads and lifts, irrespective of distance, and that no claim would be admissible on account of any change in the disposal point involving different or additional leads.

29. The SCC further stipulated that in the event of any inconsistency, the provisions of the SCC would prevail over the GCC and the SOQ. Even otherwise, the SOQ itself referred to the listed disposal sites as "tentative" and followed the same with the expression "or any other site", thereby clearly negating the existence of any fixed disposal site or predetermined distance. In the face of such unambiguous contractual stipulations, the claim for additional lead was plainly contrary to the express terms of the agreement, and the learned Arbitrator's award in this regard was rightly set aside under Section 34 of the A&C Act.

30. Turning now to Claim No. 3, relating to idling charges for a period of 58 days, we likewise find no infirmity in the conclusions arrived at by the learned Single Judge. The contemporaneous documentary record, particularly the letter dated 16.11.1994, leaves no manner of doubt that the Appellant was categorically informed that any mobilisation or retention of men, machinery, vehicles, or labour during the intervening period would be entirely at its own risk and cost, and not at the risk or cost of the employer.

31. We also concur with the learned Single Judge's finding that the original contract, as per the LOI dated 25.07.1994, admittedly came to an end on 31.10.1994, and that there was an undisputed hiatus of 58 days before any fresh work commenced on 28.12.1994. During this *interregnum*, no contractual relationship subsisted between the parties.

32. It is well settled that a valid extension of time must necessarily be continuous, and there can be no temporal gap between the stipulated date of completion and the commencement of the extended period. The extension letter dated 23.12.1994 itself employed the expression "start" and fixed fresh dates of commencement and completion, *namely*, 28.12.1994 and 07.02.1995, which unequivocally demonstrates that a new contractual arrangement came into existence. In these circumstances, the claim for idling charges during a period when no contract subsisted was wholly untenable.

33. Moreover, the idling of the Appellant's resources cannot be attributed to any fault or omission on the part of the Respondent. From the issuance of the LOI dated 25.07.1994, the Appellant was fully aware that the contractual period was to come to an end on 31.10.1994, and there was no contractual or statutory obligation upon the Respondent to grant any extension of time for that particular work. Significantly, the Appellant failed to place on record any material to demonstrate that an extension was assured or contractually mandated.

34. In these circumstances, if the Appellant chose, as a matter of commercial expediency, to keep its men, machinery, and other resources idle in the hope or expectation of an extension, such a decision was entirely at its own risk. The Respondent cannot be fastened with liability for the *interregnum* period when no subsisting contractual relationship for a particular work existed between the parties.

35. Insofar as the modification of the rate of interest by the learned Single Judge is concerned, we find no infirmity or error warranting interference. The reduction in the rate of interest was carried out

strictly in consonance with the settled legal position and binding judicial precedents governing the award and calibration of interest prevailing at the relevant time. The discretion exercised by the learned Single Judge is judicious, reasoned, and firmly anchored in law. The determination is neither arbitrary nor contrary to the record and, therefore, calls for no interference by this Court.

***CONCLUSION*:**

36. For the reasons set out above, no ground is made out by the Appellant to warrant interference with the Impugned Judgement dated 22.12.2009 passed by the learned Single Judge, which deserves affirmation.

37. The present Appeal, along with the pending application(s), if any, is disposed of in the above terms.

38. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 16, 2026/sm/kr