



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 29.04.2025

Judgment pronounced on: 21.05.2025

+ FAO(OS) (COMM) 162/2023 and C.M. Appl. No. 39824/2023

DELHI TRANSCO LTDAppellant

Through: Ms. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh,
Ms.Laavanya Kaushik, Ms. Aliza
Alam, Mr. Mohnish Sehrawat and
Mr.Amitoj Chadha, Advocates.

versus

KEC INTERNATIONAL LTDRespondent

Through: Ms. Payal Chandra, Mr. Rhythm
Buaria and Mr. Yashraj Samant,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present appeal under Section 37 of the **Arbitration & Conciliation Act, 1996**¹, has been preferred by the Appellant challenging the judgment of the learned Single Judge dated 24.05.2023², whereby the Learned Single Judge has upheld the Award dated 29.01.2015 passed by the **learned Arbitral Tribunal**³.

2. The Appellant herein lays challenge to the impugned judgment on the ground that same upholds the “perverse reasoning” given by the Ld. AT while making the Impugned Award. It is further contended by

¹A & C Act

²Impugned Judgment

³Ld. AT



the Appellant that the Impugned Award is also liable to be set aside on the ground that it suffers from patent illegality due to lack of any evidence to substantiate the claims of the Respondent/claimant. To buttress this argument, the Appellant would contend the following:

- a. While the Ld. AT has placed reliance on the **Chartered Accountant's Certificates**⁴ for the claims with respect to the '*Basic Idling Claim*' and '*interest on claim of basic idling of work*', no evidence was led by the Respondent to prove the legal sanctity of the CA Certificates. Additionally, neither the Chartered Accountant was examined, nor were any audited statements of accounts/documents produced before the Ld. AT to corroborate the respective claim of the Respondent. The Appellant would further contend that the claims that have been awarded on the basis of the CA Certificates, are perverse and are liable to be set aside on the sole ground that the same has been awarded based on no evidence at all.
 - b. Secondly, the claim regarding the Interest on Profit-loss on delayed payment awarded by the Ld. AT is also perverse as the same is also based on no evidence at all. The Appellant would further contend that there is nothing on record, either in the Statement of Claim or in the Affidavit of Evidence filed by the Respondent/Claimant to demonstrate as to what is the amount of delayed payment, what is the period and on what amount the interest has been calculated, how and at what rate.
3. In the award dated 29.01.2015, the total amount of the claims allowed by the Ld. AT is as follows:

⁴CA Certificate



Claim	Award (In Rs.)
Basic Idling of work along with interest on the same	3,72,43,618.00/-
Interest on loss of Profits on account of delay of delayed performance of the Contract	1,58,55,051.00/-
Pre-reference interest @12%	65,50,795.00/-
<i>Pendente lite</i> interest for the period, 10 th January, 2005 to 29 th January, 2015	7,15,79,357.00/-
Arbitration Costs	1,35,59,000.00/-
Total Amount- Rs. 14,47,87,821.00	

5. The primary challenge is with respect to the amounts awarded as compensation for the delay caused by the Appellant, relying on the CA Certificates and the Pre-reference Interest @ 12% *per annum* from 24.07.2003 till 10.01.2005 as enumerated in paras 175(i) and 175(iii). The ground for challenge to the same is that the Award was based on no evidence at all. Para 175 of the award reads as under:

“175. The total amount of the claims allowed by us in the foregoing paragraphs, as on the date of award, i.e. 29th January, 2015, works out to:

(i)	<i>Para 168 ‘C’, Page 113</i>	<i>Rs. 3,72,43,618.00</i>
(ii)	<i>Para 169 ‘D’, Page 117</i>	<i>Rs. 1,58,55,051.00</i>
(iii)	<i>Para 171 ‘E’, Page 126</i>	<i>Rs. 65,50,795.00</i>
(iv)	<i>Para 173 ‘F’, Page 128</i>	<i>Rs. 7,15,79,357.00</i>
(v)	<i>Para 174 ‘G’ Page 128</i>	<i>Rs. 1,35,59,000.00</i>

Total:- Rs. 14,47,87,821.00

6. Ms. Ahlawat, learned counsel for the Appellant, would contend that the said amounts were awarded purely on the basis of CA



Certificates which were unauthenticated and with absolutely no supporting documents whatsoever. We propose to deal with this aspect at the very outset.

7. The said CA Certificates are reproduced herein below for ready reference:

S. S. KOTHARI & CO.
CHARTERED ACCOUNTANTS
• New Delhi • Kolkata • Mumbai
• Chennai • Hyderabad

B D, ATMA RAM HOUSE, 1 TOLSTOY MARG
NEW DELHI - 110 001 (INDIA)
PHONES : 23359261-62-63
FAX : 91-11-23716415, 23731631
E-mail : sskmis@nda.vsnl.net.in

TO WHOMSOEVER IT MAY CONCERN

We have verified the audited books of account, contract ledger and related documents in respect of contract no. 1264 (LGA No. XEN/400 KV/TL - 1/424 dated 21.8.91 of DVB) maintained by RPG Transmission Ltd. (formerly SAE India Ltd.) and certify that under the following heads, the Company has incurred a total sum of Rs.32,70,719.00 (Rupees Thirty Two Lacs Seventy Thousand Seven Hundred Nineteen) in or in relation to the above contract during the period from November 2000 to October 2001 (12 months) :

Sl. No.	Expense Head	Amount (Rs.)
1.	Staff Salary and Related Costs	10,24,110.00
2.	Wages and Related Costs	10,92,672.00
3.	Stores Consumed and Storage Charges	1,92,134.00
4.	Bank Guarantee Commission	2,05,324.00
5.	Insurance	3,37,884.00
6.	Office Maintenance	1,73,024.00
7.	Travelling and Conveyance	56,911.00
8.	Repair and Maintenance	71,447.00
9.	Vehicle Running and Maintenance	1,08,053.00
10.	Miscellaneous Expenses Others	9,060.00
	Total	32,70,719.00

Place: New Delhi
Date: 19.07.2003

For S.S. Kothari & Co.
Chartered Accountants
(J. KRISHNAN)
Partner
Membership No. 84551

S. S. KOTHARI & CO.
CHARTERED ACCOUNTANTS
• New Delhi • Kolkata • Mumbai
• Chennai • Hyderabad

B D, ATMA RAM HOUSE, 1 TOLSTOY MARG
NEW DELHI - 110 001 (INDIA)
PHONES : 23359261-62-63
FAX : 91-11-23716415, 23731631
E-mail : sskmis@nda.vsnl.net.in

TO WHOMSOEVER IT MAY CONCERN

We have verified the audited books of account, contract ledger and related documents in respect of contract no. 1264 (LGA No. XEN/400 KV/TL - 1/424 dated 21.8.91 of DVB) maintained by RPG Transmission Ltd. (formerly SAE India Ltd.) and certify that under the following heads, the Company has incurred a total sum of Rs. 1,96,01,545.00 (Rupees One Crore Ninety Six Lacs One Thousand Five Hundred Forty Five) in or in relation to the above contract during the period from August 1993 to December 1999 (77 months) :

Sl. No.	Expense Head	Amount (Rs.)
1.	Staff Salary and Related Costs	46,43,718.00
2.	Wages and Related Costs	58,65,424.00
3.	Stores Consumed and Storage Charges	15,05,565.00
4.	Bank Guarantee Commission	10,17,826.00
5.	Insurance	37,98,590.00
6.	Office Maintenance	2,39,591.00
7.	Travelling and Conveyance	4,62,630.00
8.	Repair and Maintenance	3,89,179.00
9.	Vehicle Running and Maintenance	14,79,779.00
10.	Miscellaneous Expenses Others	1,99,243.00
	Total	1,96,01,545.00

Place: New Delhi
Date: 19.07.2003

For S.S. Kothari & Co.
Chartered Accountants
(J. KRISHNAN)
Partner
Membership No. 84551



8. The Certificates claim to be based on the “Audited Books of Accounts”, “Contract Ledger” and “related documents in respect of the contract” entered into between the parties. The said CA Certificates thereafter tabulate what is under various heads and arrive at a figure. No breakup of details as to the various amounts mentioned as against each expense head has been provided in the certificates and it is these certificate upon which complete reliance has been placed by the Respondent and on which the Ld. AT in its Award has dealt with in the following manner: -

“168. The Claimants, on demand by the Respondents for reasonable and demonstrable compensation for the delays caused by the owner, submitted their Chartered Accountants certificates as per the books of Accounts (for the project) as below, vide their letter TEN/RD/C-1264 dated July 24, 2003 (pages 45-50 of statement of claims)

Break-up of expenditure claimed for the period August, 1993 to December 1999:

<i>Sl. No.</i>	<i>Expense Head</i>	<i>Amount (in Rs.)</i>
1.	<i>Staff salary and related costs</i>	<i>46,43,718.00</i>
2.	<i>Wages and related costs</i>	<i>58,66,424.00</i>
3.	<i>Stores consumed and storage charges</i>	<i>15,05,565.00</i>
4.	<i>Bank guarantee commission</i>	<i>10,17,826.00</i>
5.	<i>Insurance</i>	<i>37,98,590.00</i>
6.	<i>Office maintenance</i>	<i>2,39,591.00</i>
7.	<i>Travelling and conveyance</i>	<i>4,62,630.00</i>
8.	<i>Repair and maintenance</i>	<i>3,89,179.00</i>
9.	<i>Vehicle running and maintenance</i>	<i>14,79,779.00</i>
10.	<i>Miscellaneous expenses</i>	<i>1,99,243.00</i>



	Total:-	1,96,01,545.00
--	---------	----------------

Break-up of expenditure claimed for the period November, 2000 to October, 2001 (12 months):

Sl. No.	Expense Head	Amount (in Rs.)
1.	Staff salary and related costs	10,34,110.00
2.	Wages and related costs	10,92,672.00
3.	Stores consumed and storage charges	01,92,134.00
4.	Bank guarantee commission	02,05,324.00
5.	Insurance	03,37,984.00
6.	Office maintenance	01,73,024.00
7.	Travelling and conveyance	56,911.00
8.	Repair and maintenance	71,447.00
9.	Vehicle running and maintenance	01,08,053.00
10.	Miscellaneous expenses	9,069.00
	Total:-	32,80,728.00

The Respondent's counsel questioned the admissibility of the CA's Certificate and its authenticity. There were a lot of submissions and counter submissions by the learned counsels appearing for both the parties which were heard by us.

In our considered opinion we do not find any cogent reasons to question the figures and certificates given by the Chartered Accountants, M/s S.S. Kothari and Co. dated 19.07.2003 particularly in view of their categorical statement that "they have verified the audited books of accounts, contract ledger and related documents in respect of contract No. 0031 (LOA No. XEN 400 KV/TL-1/424 dated 21.08.1991) maintained by RPG Transmission Ltd. (formerly SAE India Ltd. and now KEC) and certify that under the following heads the company has incurred"

The Chartered Accountant's certificate and the figures contained there-in are accepted and we allow the above said claimed amount of Rs.2,28,72,264.00 (Rs.1,96,01,545 + Rs.32,70,719) under this head as furnished in the two tabular statements.

..... (A)



In their statement of claims, the Claimants have computed interest up to October, 2021 @ 20% per annum on the basis of actual monthly expenses incurred, e.g. for the expenses incurred at the end of 1st month (August, 1993) the interest was calculated from September, 1993 to October, 2001 and likewise for the 2nd month (September, 1993) expenses, interest was computed for October, 1993 to October, 2001 and so on. This interest amount computed @20% by the claimants comes to Rs.2,39,52,256.00 only.

We consider 20% rate of interest as high. It is well settled that work contract between the two parties is a commercial transaction and, therefore, the interest charged by banks on commercial loans and advances could be well deserved, However, in our considered view in the circumstances of this case, 12%per annum simple rate of interest would be a reasonable recompense on the money due to the party of which it was deprived of. The amount of interest at this rate will, therefore, work out to Rs.1,43,71,354.00 only.

..... (B)

The total amount of claim in respect of idling including interest thereon will be Rs.2,28,72,264.00 + Rs.1,43,71,354.00 = Rs.3,72,43,618.00

(Rs. Three crores seventy two lacs forty three thousand six hundred eighteen) only.

..... (C)

The Claimants have not claimed any interest during the period from November, 2001 to 24th July, 2003 (i.e, the date of completion of the Transmission Line). As such we also have not considered the same.”

9. The Ld. AT unquestioningly, without giving any reasoning, accepts the CA certificates. This acceptance is without even the **Chartered Accountant**⁵ having been examined as a witness. The CA Certificates itself had never been proved. In any event, the CA could have only verified the CA Certificates and not the underlying documents.

10. This Court further notes that the person signing the CA Certificates is not the author of any of the documents that have been

⁵CA



set out in the certificates. The said certificates only claim to have “verified” the contents of the “audited books of account”, “contract ledger” and “related documents”.

11. With the greatest of respect, nothing could be vaguer than the said certificates. The CA who has signed the CA Certificates is, at best, someone who has verified or tallied figures that have been made by someone else. The said CA is not even the author of any of the items that he has verified. The Books of accounts have likely been prepared by an accountant and these have been audited by an auditor. The contract ledger has been maintained by someone other than the CA certificates’ signatory and the “related documents” referred to are probably the most ambiguous items verified by the CA.

12. Regrettably, apart from the unquestioned acceptance, there is no attempt made to verify the veracity of the said figures. The Ld. AT accepts a document which is bereft of any details. The entire claim is based on the *ipse dixit* of the Claimant.

13. It is apparent that the Ld. AT has taken into account the alleged certificates which did not have any particulars setting out the details based on which the amounts have been arrived at, and did not also deem it necessary to delve further into the matter.

14. This, despite the fact that the Appellant herein had clearly in their written submissions, filed before the Ld. AT, questioned the veracity of the certificate and clearly stated that the same were bereft of any particulars and consequently could not be taken into account for the purpose of evaluating the claims of the Respondent.

15. The Appellant would, in addition, contend that as per the relevant clauses of the General Clauses for Contract, being Clauses 25.2 and 37, there was a mandate for the Claimant to give the relevant



particulars and the said CA certificates having not fulfilled this mandate, the Ld. AT's unquestioned acceptance of the same also renders the Award unsustainable.

16. The Appellant herein had challenged this finding in their application under Section 34 of the A&C Act in the following terms: -

"I. Because the Ld. Tribunal has allowed the claims on the basis of certificate of the chartered accountant. The said evidence of the chartered accountant could not have been relied upon in view of the fact that neither any books of account, ledger or account were placed. During the cross examination of the respondent's witness, it is clearly evident from the following that no such amounts recoverable from the petitioner was shown in the respondent's record.

"Question No.32: I am putting it to you any amount recoverable by the company is not required to be shown in the IT Return. Is that correct or not?

Answer: It is not correct.

Question No.35: I put to you that your company has not shown any recoveries against the DTL in the IT Return on the basis of idle labour or the claims raised in this arbitration proceedings since 1993 till date.

Answer: This question has already been answered.

Question No.37: I put it to you that the claims raised not mentioned in any of the accounting records of the company w.e.f. 1993 till date.

Answer: As stated, it is not required to be shown."

17. The impugned judgment is completely silent on this challenge. There is no application of mind on the part of the learned Single Judge and what is seen is an exposition of how the High Courts should not interfere with an Award under Section 34 of the A&C Act. This, to say the least, would not suffice.

18. We are of the considered opinion that the Award, as well as the impugned judgment, to the extent that it assumes that the alleged CA Certificates are the gospel truth without even examining the underlying documents upon which the claim is allegedly based, is



completely unsustainable. The said CA certificates would effectively translate into being “no evidence” at all.

19. The Hon’ble Apex Court in a catena of decisions and more recently in *M/s. Unibros v. All India Radio*⁶ has held that if an award is based on no evidence at all, then it is perverse and against public policy. The Relevant Paras are extracted below:

“16. To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.

17. One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the delays, the total number of tendering opportunities that the contractor received and declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim.

18. Hudson's formula, while attained acceptability and is well understood in trade, does not, however, apply in a vacuum. Hudson's formula, as well as other methods used to calculate claims for loss of off-site overheads and profit, do not directly measure the contractor's exact costs. Instead, they provide an estimate of the losses the contractor may have suffered. While these formulae are helpful when needed, they alone cannot prove the contractor's loss of profit. They are useful in assessing losses, but only if the contractor has shown with evidence the loss of profits and opportunities it suffered owing to the prolongation.

19. The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions: first, there was a delay in the completion of the contract; second, such delay is not attributable to

⁶2023 SCC Online SC 1366



the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case.

20. The First Award was interfered with by the High Court for the reasons noted above. The Arbitrator, in view of such previous determination made by the High Court, could have granted damages to the appellant based on the evidence on record. There was, so to say, none which on proof could have translated into an award for damages towards loss of profit. A claim for damages, whether general or special, cannot as a matter of course result in an award without proof of the claimant having suffered injury. The arbitral award in question, in our opinion, is patently illegal in that it is based on no evidence and is, thus, outrightly perverse; therefore, again, it is in conflict with the "public policy of India" as contemplated by section 34(2)(b) of the Act."

(Emphasis supplied)

20. Learned counsel for the Respondent sought to rationalize the Award insofar as it pertains to the reliance placed upon the CA Certificates by the Ld. AT for allowing the claim of the Respondent by relying on the decision of this Court in *M/s. National Highways Authority of India V/s M/s. Hindustan Construction Company*⁷.

21. Upon perusal of the aforementioned judgment, we are of the considered view that the said judgment is not applicable to the facts of the present case. It is noted that in the facts of that case, the CA Certificate was considered as a valid document for the purpose of evaluating the claim and, to that extent, stood covered by the contract between the parties.

22. The learned counsel for the Respondent also sought to rely upon the judgment of this Court in *Intex Technologies (India) Ltd. vs. Union of India*⁸. However, in our considered opinion the said judgment is also not applicable to the present case as it relates to a

⁷2016 SCC OnLine Del 1144

⁸2016 SCC OnLine Del 6620



CENVAT issue in which a CA had, in support of the refund claims, certified/ clarified that the benefits sought had not been passed on to customers, which is quite distinct from an arbitration claim, which has to necessarily be based on relevant documents and specific facts and figures.

23. In any event, admittedly, the authors of the various documents mentioned therein (accounts, contract ledger and, related documents), based on which the said certificates were drawn and which form the foundation of the said certificate have not been examined and the Respondent has, therefore, failed to provide any basis for the claims made by it.

24. The Award of a sum of Rs.65,50,795/-, which is set out in paragraph 175(iii) is the interest awarded on the amount which has been awarded under paragraph 175(i). The said amount is completely based on the alleged CA Certificates and consequently, would also stand disallowed.

25. To wit, any sums awarded, based on the CA certificates, would necessarily have to be disallowed.

26. As regards the remaining challenge to the award, one of which is with respect to the interest on profit and loss on delayed payment, we have gone through both the majority and minority opinions of the Ld. AT and believe that no interference is required in the exercise of our jurisdiction under Section 37 of the A&C Act.

27. This Court is also of the opinion that the arbitration costs, as awarded, do not require any interference by this Court in the exercise of its jurisdiction under Section 37 of the A&C Act.

28. The present appeal, along with the pending application, stands allowed in the above terms.



29. No order as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 21, 2025 AK/va