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

% ***Date of decision: 24.02.2026***

\+ O.M.P. (COMM) 204/2016

AIRPORTS AUTHORITY OF INDIA .....Petitioner

Through: Mr. Digvijay Rai, Mr. Archit Mishra, Advocates with Mr. Yatinder Choudhary, Law Officer.

versus

M/S RAJDEEP INDUSTRIES .....Respondent

Through: Mr. Vikas Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition, being O.M.P. (COMM) 204/2016, has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996**[1], assailing the findings of the learned Arbitrator in respect of certain limited claims adjudicated under the **Arbitral Award dated 26.04.2013, read with the corrigendum dated 28.05.2013**[2].

2. The limited contention advanced by learned counsel for the Petitioner, **Airports Authority of India**[3], in the present petition is that the grant of Claim Nos. 3, 7, 8, 10, 12 and 17 under the Impugned Award is legally unsustainable, as the said claims are *ex facie* barred

[1] A&C Act
[2] Impugned Award
[3] AAI

by limitation. It is further submitted that some of these claims pertain to periods substantially prior to the relevant reference date, and in certain instances relate to events alleged to have occurred as far back as the year 1996.

3. Learned counsel for the AAI further submits that the final bill was raised on 16.04.1999 and was accepted under protest by the Respondent on 28.04.1999. He relies upon the **Acceptance Letter dated 16.07.1999**[4] of the Respondent, which reads as follows:

> "RDI-ARC
> The Chief· Engineer,
> AAI, ARC Project,
> IGI Airport, Palam,
> New Delhi-110037
>
> Subject:- Construction of Composite Structure for 60 mts. Span Hanger in Structural Steel and Abutting Two Storyed Building on RCC Frame Work at IGI Airport, New Delhi.
> Dear Sir,
> The bill prepared by the Executive Engineer (C-11) has been accepted by us under protest. We will be shortly appealing to the competent authority to set aside your order vide your letter no. Engg/CE/ARC/1997/878 dated 21.06.99 wherein you have imposed a penalty of Rs.93,916 under clause 2 of the agreement. As till date we have not received various payments including 10 CC payments due to us, we therefore are reserving our right to invoke arbitration and raise claims after the out come of our appeal and receipt of the final payment i.e. last payment. The penalty imposed by you and the appeal against your order has been discussed with the Executive Engineer and he has assured us that he will look into our various payments after the outcome of the appeal.
> Thanking You
>
> Yours Faithfully,
> For RAJDEEP INDUSTRIES,
>
> Er. DEEPAK SEHGAL
> (Partner)"

[4] Acceptance Letter

4. A perusal of the aforestated letter demonstrates that the protest was expressly raised only in respect of two issues, namely, (i) imposition of penalty of Rs. 93,916/- under Clause 2 of the Agreement, and (ii) escalation under Clause 10CC of the Agreement.

5. Learned counsel for the AAI further submits that no other claims were articulated in the said letter, save for vague averments reserving the right to invoke arbitration and raise claims after the outcome of the appeal.

6. Learned counsel further submits that the grant of the claims which were never subject matter of the final bill is clearly time-barred in view of the judgment of the Hon'ble Supreme Court in ***J.C. Budhraja vs. Chairman, Orissa Mining Corporation Ltd.***[5], specifically Paragraph Nos. 21 and 24 thereof, which read as follows:

> "**21.** It is now well settled that a writing to be an acknowledgment of liability must involve an admission of a subsisting jural relationship between the parties and a conscious affirmation of an intention of continuing such relationship in regard to an existing liability. The admission need not be in regard to any precise amount nor by expressed words. If a defendant writes to the plaintiff requesting him to send his claim for verification and payment, it amounts to an acknowledgment. But if the defendant merely says, without admitting liability, it would like to examine the claim or the accounts, it may not amount to acknowledgment. In other words, a writing, to be treated as an acknowledgment of liability should consciously admit his liability to pay or admit his intention to pay the debt. Let us illustrate. If a creditor sends a demand notice demanding payment of Rs 1 lakh due under a promissory note executed by the debtor and the debtor sends a reply stating that he would pay the amount due, without mentioning the amount, it will still be an acknowledgment of liability. If a writing is relied on as an acknowledgment for extending the period of limitation in respect of the amount or right claimed in the suit, the acknowledgment should necessarily be in respect of the subject-matter of the suit. If a person executes a work and issues a demand letter making a claim for the amount due as per the final bill and the defendant agrees to verify the bill and pay

[5] (2008) 2 SCC 444

> the amount, the acknowledgment will save limitation for a suit for recovery of only such bill amount, but will not extend the limitation in regard to any fresh or additional claim for damages made in the suit, which was not a part of the bill or the demand letter. Again we may illustrate. If a house is constructed under the item rate contract and the amount due in regard to work executed is Rs two lakhs and certain part-payments say aggregating to Rs 1,25,000 have been made and the contractor demands payment of the balance of Rs 75,000 due towards the bill and the employer acknowledges liability, that acknowledgment will be only in regard to the sum of Rs 75,000, which is due. If the contractor files a suit for recovery of the said Rs 75,000 due in regard to work done and also for recovery of Rs 50,000 as damages for breach by the employer and the said suit is filed beyond three years from completion of work and submission of the bill but within three years from the date of acknowledgment, the suit will be saved from bar of limitation only in regard to the liability that was acknowledged, namely, Rs 75,000 and not in regard to the fresh or additional claim of Rs 50,000 which was not the subject-matter of acknowledgment. What can be acknowledged is a present subsisting liability. An acknowledgment made with reference to a liability, cannot extend limitation for a time-barred liability or a claim that was not made at the time of acknowledgment or some other liability relating to other transactions. Any admission of jural relationship in regard to the ascertained sum due or a pending claim, cannot be an acknowledgment for a new additional claim for damages.
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> ***
>
> **24.** In regard to the claims aggregating to Rs 95,96,616 made in the claim statement filed before the arbitrator, only claims aggregating to Rs 28,32,128 related to and formed part of the said pending claim of Rs 50,15,820. The appellant did not make a claim in regard to the remaining Rs 21,83,692. Therefore, out of the claim of Rs 95,96,616 made by the appellant before the arbitrator, the claim for only Rs 28,32,128 was not barred by limitation. The remaining claims of the appellant aggregating to Rs 67,64,488 out of the total of Rs 95,96,616 being fresh claims, were not "pending claims" in respect of which the acknowledgment was made. Therefore the said fresh claims aggregating to Rs 67,64,488 made for the first time in the claim statement filed on 27-6-1986 were clearly barred by limitation."

7. Learned counsel for the Petitioner-AAI further submits that, in view of the findings of the said judgment in paragraph No.21, the Claim Nos. 3,7,8,10,12 and 17, which never formed the subject matter

of any prior communication as between the parties or any action, could not have been raised for the first time before the learned Arbitrator and would clearly fall foul of the period of limitation. The grant of the said claims is, therefore, unsustainable.

8. ***Per Contra***, Mr. Vikas Sharma, learned counsel for the Respondent, submits that a perusal of the Acceptance Letter, as reproduced herein above, would reveal that although only two issues were expressly raised therein, however, the Claim Nos. 3, 7, 8, 10, 12, and 17 must be read as having been included within the omnibus reservation contained in the following sentence:

> "…..We therefore are reserving our right to invoke arbitration and raise claims after the outcome of our appeal and receipt of the final payment i.e. last payment."

9. Admittedly, it is not in dispute that no further communication after the said Acceptance letter was raised until the year 2005, when the Petitioner-AAI, by communications dated 18.01.2005 and 20.01.2005, waived the liquidated damages and released the escalation payments payment of the escalation charges, respectively.

10. Learned counsel for the Respondent therefore submits that since the issues raised in the Acceptance Letter were resolved only in the year 2005, the limitation would commence from the said date and not from the date of the acceptance of the final bill.

11. Heard learned counsel for the parties at length and, with their able assistance, perused the material available on record.

12. The relevant portion of the Impugned Award dealing with the aforesaid issue is Paragraph Nos. 44 and 45. The same are reproduced herein under for ready reference:

> "**44.** To support his arguments Mr. Vivek Chib drew my attention

to the decision of the Supreme Court in the case of Panchu Gopal Bose v. Board of Trustees for Port of Calcutta, (1993) 4 SCC 338, wherein their Lordships observed that "period of limitation for the commencement of an arbitration runs from the date on which, had there been no arbitration clause, the cause of action would have accrued … " In view of the observation made by the Supreme Court in the said case question arises when did the claimant acquired the right to arbitration. According to Mr. Chib right accrued to the claimant when his appeal was finally decided in January 2005 and payment under clause 10 CC was made in August 2007.

Similarly in the case of Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority (1988) 2 SCC 338, apex court observed " the question for consideration is when did the dispute arise " It further observed "in order to be entitled to ask for a reference under Section 20 of the Act there must not only be an entitlement of money but there must be a difference or dispute that must arise". Admittedly, on completion of work a right to get payment normally arise but where the final bill is prepared and when the assertion of claim is made there is non-payment, the cause of action would arise on that date. Same reasoning was applied by the Delhi High Court in Prem Power Construction (Pvt.) Ltd. v. National Hydroelectric Power Corp. Ltd., Manu/DE/1887/2008, wherein it is held that " even though the construction work was completed on 10.06.2001 and the final bill was prepared only in August 2001, therefore, the date on which the cause of arbitration accrued to the petitioner, that is the date from which the limitation period would start running ".

In the present case the alleged final bill was signed by the claimant on 28.04.1999 under protest but that would not be the date from which period of limitation has to be counted. Relying on the observation of Supreme Court in the case of Hari Shankar Singhania v. Gaur Hari Singhania, (2006) 4 SCC 658 and Union of India v. Simplex Concrete Piles India(P) Ltd., 108 (2003) DLT 732, he contended that even though claimant signed the alleged final bill under protest, he did not raise all the claims as he awaited decision on his appeal against imposition of penalty and non payment of the 10 CC escalation, therefore, till such time appeal was decided the alleged bill could not have been treated as final bill. Moreover vide letter dated 16.07.1999 claimant had made it absolutely clear by using the word " as till date we have not received various payments including 10 CC payments due to us, we therefore, are reserving our right to invoke arbitration and raise claims after the out come of our appeal and receipt of the final payment i.e. last payment ". This shows claimant had reserved the right to make other claims after appeal was decided because much depended on the decision of waiver of penalty. To support his

arguments he relied on the decision of Delhi High Court in the case of Ram Nath Mehra & Sons v. Union of India, AIR 1982 Delhi 164, where it is observed that when the Govt. withheld the payment of a certain amount from the final bill due to a delay in the completion of the work, the period of limitation would commence only from the date of the last payment. Last payment in this case was made in August 2007. Therefore, invocation of arbitration in October 2007 is well within time.

45. From the arguments of counsel for the parties and facts which have come on record, it is clear that escalation of the undisputed period was also not made in the alleged final bill. Escalation was worked out only in January 2005 and paid in August 2007 whereas undisputed period for the purpose of calculation of escalation was from 01.04.1998 to 19.04.1998. Payment of escalation for undisputed and extended period was made in August 2007 which is reflected in Ex. R-19. Therefore, I am of the considered view that there was no finalization of the final bill till January 2005 because after the penalty imposed by the respondent was waived or set aside till then it cannot be said that the bill had been finalized on 28th April 1999. It is only when the escalation was paid and penalty waived that the bill became final. To my mind, bill become final in January 2005. Hence claims made by the claimant in October 2007 cannot be said to be time barred. Even otherwise claimant vide letter dated 16.07.1999 had made it clear that some payments had not been reflected/paid, therefore acceptance of the 43rd bill alleged to be final bill under protest would not deprive the claimant to raise other claims as 43rd bill has not attain finality."

13. A careful perusal of the extracted portion of the Impugned Award demonstrates that the learned Arbitrator, upon examination, has arrived at, *inter alia*, the following factual conclusions, which reflect the core findings on the aspect of limitation:

(a). Although the claimant signed the alleged final bill on 28.04.1999 under protest, such signing did not mark the commencement of limitation because, according to the learned Arbitrator, all claims had not yet crystallized.

(b). The claimant was awaiting the outcome of his appeal concerning the imposition of penalty and the non-payment of

escalation under Clause 10CC, and until the appeal was decided, the bill could not be treated as final.

(c). By letter dated 16.07.1999, the claimant expressly reserved his right to invoke arbitration after the decision on the appeal and upon receipt of the final payment, thereby indicating that, in the view of the learned Arbitrator, the bill had not attained finality.

(d). The waiver of penalty and payment of escalation were considered material components of final settlement, and until these aspects were resolved, the final bill could not be said to have been finalized in April 1999.

(e). In the present case, escalation was worked out only in January 2005 and was paid in August 2007, including for the undisputed and extended period.

(f). Consequently, the bill effectively attained finality only after the waiver of penalty and payment of escalation, and at the earliest in January 2005.

(g). Since arbitration was invoked in October 2007, the claims were held not to be barred by limitation.

(h). Acceptance of the 43rd bill under protest did not, according to the learned Arbitrator, deprive the claimant of the right to raise further claims, as the bill had not attained finality and material disputes remained pending.

14. As is evident from the above, the learned Arbitrator concluded that since the appeal had not been finalized and the penalty and escalation were waived only in January 2005, the final bill attained finality only at that stage, and consequently, the period of limitation would run from such date.

15. This Court, however, in its considered view, finds the aforesaid finding to be erroneous and is unable to agree with the conclusion so reached. The final bill was raised on 16.04.1999 and was accepted under protest on 20.04.1999. The subsequent letter dated 16.07.1999, being the Acceptance Letter, clearly delineated the Respondent's reservations, which were expressly confined to the two issues referred to above, *namely*, the penalty and escalation under Clause 10CC.

16. The claims, *namely*, Claim Nos. 3, 7, 8, 10, 12 and 17, were never articulated in the letter dated 16.07.1999 or at any time thereafter until payments were eventually released on 18.01.2005 and 20.01.2005. In the opinion of this Court, the final bill is necessarily the bill raised in 1999. Merely because certain objections in respect of penalty and escalation were subsequently resolved in the year 2005, it cannot be held that the limitation stood extended in respect of claims which were never raised, reserved, or acknowledged.

17. While limitations may stand extended in respect of claims expressly reserved, the same cannot apply to claims which were never articulated at all, at least from 1999 till 2005. Such claims are wholly time-barred, being far beyond the limitation period of three years from the date of accrual of the cause of action under the Limitation Act, 1963.

18. The learned Arbitrator's conclusion that these claims were within limitation is not supported by any evidence demonstrating acknowledgment, reservation, or extension of limitation in respect thereof. The finding, therefore, proceeds on no evidence on the aspect of limitation and yet the claims have been allowed on merits. Such a finding is perverse in law.

19. Consequently, the Award, insofar as it relates to Claim Nos. 3, 7, 8, 10, 12 and 17, falls foul of Section 34(2)(b)(ii) of the A&C Act, as it stood prior to 23.10.2015, being in conflict with the public policy of India, as elucidated by the Hon'ble Supreme Court in ***Associate Builders v. DDA***[6]. In the said decision, the Apex Court held, *inter alia*, as under:

> **"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:
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> (*i*) a finding is based on no evidence, or
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> (*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,
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> such decision would necessarily be perverse.
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> **32.** A good working test of perversity is contained in two judgments. In *Excise and Taxation Officer-cum-Assessing Authority* v. *Gopi Nath & Sons* [1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)
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> "*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."
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> In 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."
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> **33.** It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass

[6] (2015) 3 SCC 49

muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:"General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong".It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In *P.R. Shah, Shares & Stock Brokers (P) Ltd.* v. *B.H.H. Securities (P) Ltd.* [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held : (SCC pp. 601-02, para 21)

> "*21*. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.""
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> ***(emphasis supplied)***

20. Now, turning to the question of severability of the Arbitral Award insofar as the present challenge pertains to Claim Nos. 3, 7, 8, 10, 12 and 17, leaving the remaining claims undisturbed, it becomes necessary to advert to the principles governing partial setting aside of

arbitral awards. In this regard, reliance is placed on paragraphs 33, 34 and 35 of the decision of the Hon'ble Supreme Court in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Limited***[7], which elucidates the doctrine of severability. The said paragraphs are reproduced hereinunder for ready reference:

> "**33.** We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the court's jurisdiction when setting aside an award.
> **34.** To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.
> **35.** However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside may not be feasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be inter-dependent or intrinsically intertwined. If they are, the award cannot be set aside in part."

21. In view of the foregoing discussion, it is evident that Claim Nos. 3, 7, 8, 10, 12 and 17 are barred by limitation. There exists no legal impediment in severing the findings in respect of these claims from the remainder of the Award, as they are distinct and independent. Accordingly, the present Petition is allowed to the aforesaid extent, and the findings concerning Claim Nos. 3, 7, 8, 10, 12 and 17 as recorded in the Impugned Award are set aside.

22. The present Petition, along with pending Application(s), if any,

[7] 2025 SCC OnLine SC 986

stands disposed of.

23. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 24, 2026/rk/va/her/dj