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

\# **CNR No. DLHC011441382016**

\+ O.M.P. (COMM) 253/2016

UNION OF INDIA .....Petitioner

Through: Mr. Jasvinder Singh and Ms. Shipra Shukla, Advs.

versus

M/S B.L MEHTA CONSTRUCTION PVT. LTD. .....Respondent

Through: Mr. Jeevesh Nagrath, Sr. Adv. with Ms. Kirti Mewar, Mr. Arjun Gaur, Ms. Kriti Sharma, Ms. Bhumi Jain and Mr. Ayushmann Chouksey, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 17.08.2026

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996[1] is being preferred by the Petitioner/Union of India assailing the arbitral award dated 30.10.2014 as corrected/amended by the consequential additional award dated 11.11.2014[2] rendered by the learned Sole Arbitrator Shri Satish Chander, Chief-Engineer (Contracts).

2. By way of the impugned award, the learned Sole Arbitrator substantially allowed various monetary claims preferred by the Respondent/Contractors and rejected the recoveries/counter claims raised by the Petitioner.

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1 "the Act" hereinafter

2 the impugned award

3. Briefly put, the Petitioner had invited tenders for the work described as "construction of dwelling unit including allied external services for officers and PBOR at Sector – 31, Chandigarh. The tender submitted by the Respondent was accepted on 06.03.2007 for a total contract value of Rs.28,23,81,272.50/-.

4. Pursuant thereto, the parties entered into contract for the aforesaid work. The stipulated date of commencement of the work was 16.03.2007 and the stipulated date of completion was 15.03.2008. The contract period was subsequently extended and the Respondent was granted an extension up to 15.05.2008

5. Upon completion of the physical works, dispute arose between the parties in relation to, *inter alia*, payment and pre-audit clearance of the final bill, reimbursement of additional sales tax/VAT liability, ward charges incurred in respect of the dwelling units which had not been handed over, composition fees paid to the local authorities, and interest on running account bills.

6. In view of the disputes, the Engineer-in-Chief being the appointing authority under the contract referred the disputes to arbitration *vide* letter dated 21.11.2012.

7. The Respondent raised 25 claims before the learned Arbitrator while the Petitioner raised recoveries/counter claims, principally

towards alleged unadjusted sales tax liability amounting to Rs.64.84 lakhs.

8. The learned Arbitral Tribunal rejected the Petitioner's Section 16 objection that Claims Nos. 1 to 20, 22 and 23 stood waived under Condition No. 55 after submission of the final bill and No-Demand Certificate.

9. The Tribunal relied on the contractor's letter dated 22.12.2011, whereby the contractor stated that, since the final bill had remained unpaid for about 3.5 years, the No-Demand Certificate stood revoked and the final bill was to be treated as signed under protest, and held that the contractor was entitled to withdraw the No-Demand Certificate.

10. The Tribunal therefore treated the said claims as arbitrable and proceeded to adjudicate them on merits, including Claim No. 8 for reimbursement of ₹6.12 lakh paid to the UT Administration.

11. On merits, the learned Arbitral Tribunal examined the individual claims on the basis of the contract, and substantially allowed the Respondent's claims.

12. Learned Counsel appearing for the Petitioner assailed the impugned award principally on the following grounds: -

(i) It is contended that the Respondent had submitted the final bill on 10.12.2009 along with an unconditional "no demand certificate". According to the learned Counsel for the Petitioner, in view of the Condition 55 of the General Conditions of Contract[3], submission of the final bill accompanied by the no demand certificate brought the contractual claims to an end and no further arbitral dispute survived.

(ii) It is submitted that the Petitioner had raised an objection to the jurisdiction of the learned Arbitrator under Section 16 of the Act *vide* application dated 25.07.2013. however, the objection was kept pending and decided only with the final award, which the petitioner contends was contrary to Section 16(5) and amounted to a serious procedural irregularity.

(iii) It was contended that the Respondent had failed to produce the necessary documents proving actual payment of tax, which was a contractual prerequisite for reimbursement. Further, the Respondent's tax assessments for relevant years were under challenge and the liability for FY 2008–09 had not been finally determined. Therefore, in the absence of proof of actual tax payment, the petitioner's recovery claim of ₹64.84 lakh ought not to have been allowed.

(iv) The Petitioner also challenged the award of Rs.33 lakhs towards watch and ward expenses calculated at Rs.1.50 lakhs per month for a period of 22 months. It is submitted

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3 "GCC" hereinafter

that the Respondent had not produced primary evidence, vouchers or other contemporaneous material to substantiate the alleged expenditure.

13. Learned Counsel appearing for the Respondent on the contrary supports the impugned award and submitted that none of the grounds contemplated under Section 34 of the Act is made out.

14. He submits that the final bill submitted in 2009 remained unpaid for more than three and a half years, despite condition 56 requiring settlement within six months. It is contended that owing to the prolonged withholding of payments on account of audit objection, the Respondent revoked the no demand certificate *vide* letter dated 22.12.2011 and treated the final bill as being under protest. Reliance was place upon ***R.L. Kalathia & Co. vs State of Gujarat***[4], to contend that issuance of a no demand certificate does not in every case constitute an absolute bar to subsequent genuine claims.

15. It is further submitted that the objections under Section 16 had, were duly adjudicated by the learned Arbitrator *vide* order dated 12.12.2013, whereby the plea of accord and satisfaction was rejected on the ground that the final bill itself had remained unpaid. According to the Respondent, there is no statutory mandate requiring every objection under Section 16 to be determined as isolated preliminary issue before the Tribunal proceeds consider the merits. Reliance is placed upon ***Maharshi Dayanand University & Anr. v. Anand Coop.***

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[4] **(2011) 2 SCC 400**

L/C Society Ltd. & Anr.[5]

16. On Counter Claim No. 6, it is submitted that it is squarely covered by Special Condition 25.3 of the contract, which contemplated adjustment on account of statutory increases in tax liability after submission of the tender.

17. The Respondent relied upon the relevant provisions regarding tax concession upon audit certificates and account evidencing the additional tax lability incurred by him

18. Lastly on Claim No. 8, it is submitted that the watch and ward expenditure became necessary because despite completion of the dwelling unit, the Petitioner failed to take over possession for a period of approximately 22 months, thereby requiring the Respondent to continue to maintain and safeguard the completed units.

19. I have heard learned Counsel for the parties and perused the impugned award, the arbitral record and the written arguments placed on record.

20. Before considering the individual grounds of challenge, it is opposite to reiterate the limited scope of the judicial scrutiny under Section 34 of the Act. The Court exercising jurisdiction under Section 34 does not sit as a Court of appeal over an arbitral award. Re-appreciation of evidence, re-assessment of factual findings, substitution of Court's own interpretation of contractual provisions at

[5] **(2007) 5 SCC 295**

that of the Arbitral Tribunal is impermissible merely because another view may be possible.

21. The Section 34 Court is required to examine whether the award suffers any of the statutory infirmities contemplated under Section 34 of the Act. On the other hand, where the Tribunal has adopted plausible interpretation of the contractual terms and have arrived at findings on the basis of the material placed before it, the Court would not ordinarily interfere with such findings.

22. The first contention of the Petitioner is that the learned Arbitrator committed a material procedural irregularity by failing to decide the objection under Section 16 of the Act as a preliminary issue.

23. The submission is without merit. Section 16 embodies a principal of *kompetenz-kompetenz* and empowers the Arbitral Tribunal to rule on its own jurisdiction including objections with respect to the existence or validity of the arbitration agreement.

24. According to this court, the provisions does not mandate that every jurisdictional objection must necessarily be adjudicated as a separate preliminary issue before the Tribunal proceed to consider the merits.

25. In the present case, the objection was not left undecided. The learned Arbitrator considered the Petitioner’s application under Section 16 and *vide* order dated 12.12.2013, rejected the plea founded

upon accord and satisfaction.

26. The Tribunal held *inter alia,* that since the final bill itself had remained unpaid, the Petitioner could not contend that the parties had arrived at a full and final settlement of the disputes.

27. Thus, the grievance of the Petitioner is not that the jurisdictional objection was never adjudicated but essentially that it was not adjudicated at the particular stage desired by the Petitioner. Such an objection, in the facts of the present case, does not constitute a sufficient ground for setting aside the subsequent award.

28. The substantive plea of accord and satisfaction also fails to commend acceptance. The mere execution or submission of the no demand certificate cannot in all circumstances operate as an absolute bar against the raising of genuine claims.

29. The surrounding circumstances, including the circumstances in which the certificate was furnished and whether the contractual dues had actually discharged being relevant consideration.

30. The learned Arbitrator has found that the final bill has remained unpaid for a substantial period and that the Respondent subsequently revoked the no demand certificate vide its letter dated 22.12.2011. The Tribunal, upon consideration of the contractual provisions and the surroundings circumstances, concluded that there were no concluded accord and satisfaction between the parties.

31. The principal laid down by Hon'ble Supreme Court in ***Arabian Exports (P) Ltd. v. National Insurance Co. Ltd.***[6] supports the proposition that a no demand certificate by itself irrespective of the circumstances in which it came to be issued, does not necessarily extinguish an otherwise subsisting claim.

32. In view of this court, the finding recorded by the learned Arbitrator is a finding of fact based upon the contractual document and the circumstances placed before him.

33. The Petitioner could not satisfy that such finding is perverse and supported by no evidence or otherwise contrary to the fundamental terms of the contract.

34. Consequently, the challenge found upon condition 55 of the GCC and the alleged accord and satisfaction is rejected.

35. The Petitioner has challenged the award of Rs.69,84,000/- towards the reimbursement of additional sales tax liability and the rejection of its corresponding counter-claim and recovery.

36. The learned Arbitrator examined special condition 25.3 of the Contract, which provided for appropriate contractual adjustment in the event of statutory variation in the tax burden subsequent to submission of the tender.

37. The Tribunal found, upon consideration of the material placed

[6] **(2025) 10 SCC 388**

before it that the tax concession available at the time of tender have subsequently been withdrawn by the Union Territory administration *vide* notification dated 21.05.2007, resulting in an increased tax liability.

38. The Respondent has also placed on record audited accounts, certificates and material relating payments under the registered TIN.

39. Upon appreciation of the contractual provisions and the evidence, the learned Arbitration awarded Rs.69,84,000/- towards the additional tax liability, at the same time the learned Tribunal directed the Respondent to furnish the bank guarantee so as to safeguards the interest of the Petitioner pending finalisation of the assessment for the relevant financial year.

40. This direction demonstrates the that the learned Arbitrator did not mechanically accept the Respondent's claim. The Tribunal assessed the contractual entitlement as well as the potential consequence of subsequent tax assessment and incorporated an appropriate safeguard.

41. The challenge raised by the Petitioner essentially seeks reappreciation of the tax records and the evidentiary material considered by the Tribunal.

42. Such an exercise is beyond the permissible scope of Section 34 jurisdiction.

43. Unless, the finding of the Arbitral Tribunal is shown to be perverse based on no evidence, contrary to the express terms of the contract, this Court cannot substitute its own assessment of the evidence for that of the learned Tribunal.

44. No such infirmity has been demonstrated or pleaded in the present case. The challenge to claim no. 6 and the corresponding counter-claim is accordingly rejected.

45. The Petitioner has also challenged the award of Rs.33 lacs towards watch and ward charges assessed at Rs.1.50/- lacs per month for 22 months.

46. The learned Arbitrator recorded a specific finding that although the physical works had been completed, the dwelling units could not be handed over immediately and remained under the Respondent's care for a considerable period on account of delay and taking over possession by the Petitioner.

47. The Tribunal considered the nature and magnitude of the project. The number of dwelling units involved and the expenditure necessarily incurred in maintaining and safeguarding the completed works during the period for which possession remain with the Respondent.

48. On that basis, the Tribunal assess the reasonable monthly expenditure at Rs.1.50 lacs and awarded Rs.33,00,000/- for the period of 22 months.

49. The Petitioner's objection that the award was not supported by individual vouchers or primary expenditure records cannot, by itself justify interference under Section 34. The assessment of the quantum of damages or expenditures were based on the material available before the Tribunal and is within its domain.

50. The Petitioner could not satisfy that the aforesaid finding is such that no reasonable person could have arrived at nor it has been shown that the Tribunal ignored any material contractual stipulation or proceeded on a wholly extraneous consideration. In these circumstances, the challenge to claim no. 8 is also therefore rejected.

51. The Petitioner also questioned the award of interest on delayed running accounts bill and the grant of pre-suit and *pendente lite* interest.

52. Section 31 (7) of the Act confers upon the Arbitral Tribunal, the statutory power to award interest in accordance with the parameters prescribed therein. The exercise of such discretion, particularly where the Tribunal has recorded reasons for the award of interest does not warrant interference unless the award is shown contrary to the contract or to the provision of the Act.

53. No such infirmity has been established before this Court. The challenge to the award of interest is accordingly rejected.

54. The jurisdiction exercised by this Court under Section 34 of the

Act is supervisory and not the appellate.

55. The Court is not required to sit in appeal qua the findings of an Arbitral Tribunal or to undertake a fresh evaluation of the evidence merely because the Petitioner seeks to persuade the Court to arrive at a different conclusion.

56. The learned Sole Arbitrator has considered the contractual provisions, the rival contention and the evidence placed before him and has rendered a well-reasoned award.

57. The findings relating to accord and satisfaction, reimbursement of additional sales tax, watch and ward charges and interest are based on the material available on arbitral record and falls within the permissible domain of arbitral adjudication.

58. The Petitioner could not establish that the impugned award suffers for patent illegality, perversity, violation of the fundamental policy of India law or any other good ground contemplated in the Section 34 of the Act.

59. This Court, therefore, finds no good ground, warranting interference with the impugned award dated 30.10.2014, as amended by the consequential additional award dated 11.11.2015.

60. Accordingly, the present petition is dismissed with no orders as to cost.

61. Pending applications, if any, stand disposed of.

OM PRAKASH SHUKLA, J

AUGUST 17, 2026/*ss/at*