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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC011790402016**+ **O.M.P. (COMM) 328/2016****M/S Y.D BUILDERS & HOTELS PVT LTD** Petitioner

Through: Mr. Sanjeev Anmol, Sr. Advocate
with Mr. Bipin Kr. Prabhat, Mr.
Kislaya Prabhat, Mr. Ashok Verma
and Ms. Rinku Kumari, Advocates.

versus

UOI & ANR

.....Respondents

Through: Mr. Ranjeev Khatana, SPC.

CORAM:**HON'BLE MR. JUSTICE OM PRAKASH SHUKLA****JUDGEMENT (ORAL)**% **22.09.2026**

1. The present petition has been filed by the Petitioner, M/s Y.D. Builders & Hotels Pvt. Ltd., under Section 34 of the Arbitration and Conciliation Act, 1996¹, challenging the Arbitral Award dated 21.03.2014² passed by the learned Sole Arbitrator, Shri O.P. Bhatia, in respect of disputes arising out of Contract Agreement No. 02/EE/CW-122/PWD/2009-10.

2. In the present challenge to the impugned Award, the Petitioner has confined its challenge to Claim No. 1, which relates to the difference between the amount claimed in its final bill and the amount actually paid, including the rates applied to quantities beyond the deviated limit and extra items.

¹ "the Act" hereinafter

² "impugned Award" hereinafter



2026:DHC:8642



3. The relevant facts, to the extent necessary for deciding the challenge now pressed, are set out below.

4. Under the Contract Agreement No. 02/EE/CW-122/PWD/2009-10³, the Petitioner was entrusted with the work of developing the Park and Ride Facilities for buses near Rajghat Power Plant and carrying out other miscellaneous works connected with the Commonwealth Games, 2010. The tendered amount was Rs.9,02,93,202/-.

5. The work commenced on 07.11.2009 and was stipulated to be completed by 06.05.2010. The work was ultimately completed on 04.12.2010, and the extension of time was granted up to that date without levy of compensation.

6. After completion of the work, the Petitioner submitted its final bill for Rs.17,72,81,500/-. Against the said bill, the Respondent made only payment of Rs.12,08,09,532/- as per the Petitioner. The balance amount gave rise to disputes between the parties, which were not merely as to the amount remaining unpaid, but also as to the rates at which the quantities beyond the deviated limit and extra items executed by the Petitioner were to be paid.

7. During execution of the work, the Executive Engineer, by letter dated 25.06.2010, informed the Petitioner that the quantities of certain agreement items were exceeding the permissible deviation limits and called upon it to submit rates. The Petitioner, thereafter, submitted its rate through various communications.



2026:DHC:8642



8. In respect of the quantities beyond the deviated limit, after some correspondences, the Petitioner by letters dated agreed to the rates proposed by the Respondent for Items 62.62, 63.63 and 68.68 and to the Agreement rates for the remaining deviated quantities. These letters are of considerable importance, as the Petitioner subsequently disputed the effect of these letters, whereas the Respondent relied upon them as constituting an agreement between the parties.

9. In respect of the extra items, the Petitioner disputed the rates applied by the Respondent and claimed payment in terms of market rates. It also disputed the recovery of amounts earlier paid against certain extra items in the final bill. When the disputes remained unresolved despite the conciliation proceedings, the dispute were ultimately referred to Arbitration.

10. By way of the impugned Award, the learned Arbitrator adjudicated 12 claims raised by the Petitioner arising out of disputes concerning, *inter alia*, payment for deviated and extra items, escalation, delayed payments and interest.

11. For the purpose of the present petition, the relevant part of the impugned Award is the adjudication of Claim No.1. The learned Arbitrator divided that claim into (A) deviated items and (B) extra items, and further considered the dispute relating to the extra items under four separate heads.

Signature Not Verified³ "Contract" hereinafter

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O.M.P. (COMM) 328/2016

Page 3 of 19



2026:DHC:8642



12. Under Claim No.1, the learned Arbitrator finally awarded Rs.11,13,256/- in respect of twelve extra items and Rs.25,73,190/- towards amounts earlier paid for four extra items but subsequently recovered in the final bill, making a total award of Rs.36,86,446/- under Claim No.1.

13. At the outset, learned Senior Counsel for the Petitioner submits that, in terms of Section 28(3) of the Act, the learned Arbitrator was bound to give effect to the terms of the Contract, but failed to do so while adjudicating Claim No.1.

14. It is submitted that the quantities beyond the permissible deviation limits were admittedly executed and, in terms of Clauses 12.2 and 12.3 of the Contract, the Petitioner had submitted its rate for such quantities. However, the Engineer-in-Charge failed to finalise the rates within the stipulated period of one month. Therefore, it is contended that such failure on the part of the Engineer-in-Charge could not operate to the prejudice of the Petitioner, particularly when the contractual procedure had been duly followed.

15. Learned Senior Counsel further submits that the letters dated 15.12.2011, on which reliance was placed by the learned Arbitrator, were issued more than a year after completion of the work, when the Petitioner's dues were still outstanding. It is contended that the said letters were issued under economic pressure to secure the release of the withheld payments and, therefore, could not have been treated as a voluntary settlement of the rates.



2026:DHC:8642



16. Learned Senior Counsel also points out that the Respondent's own case in the Statement of Defence was that the rates had been finalised by the Respondent and accepted by the Petitioner, and not that they had been mutually negotiated. On that basis, the Petitioner contends that the learned Arbitrator's finding of a negotiated settlement travels beyond the Respondent's pleaded case.

17. Insofar as extra items are concerned, learned Senior Counsel for the Petitioner submits that they were required to be paid at market rates in terms of Clause 12.2, and that the Petitioner had accordingly submitted its rate analysis, which were neither refuted by the Respondent nor acted upon by the learned Tribunal. It is contended that, in these circumstances, the learned Tribunal erred in adopting an average enhancement of 38.90% for the twelve extra items. It is further submitted that the additional quantities of Items 3/2 and 3/3 had been executed and recorded in the measurement books and that the learned Tribunal, therefore, erred in denying payment for the same.

18. *Per contra*, learned Counsel appearing for the Respondent submits that the impugned award is well-reasoned and that none of the objection discloses a ground for interference by this Court within the limited scope of jurisdiction vested under Section 34 of the Act.

19. On the deviated items, learned Counsel submits that the learned Arbitrator rightly relied upon the two letters dated 15.12.2011, which expressly recorded the Petitioner's unconditional acceptance of the relevant rates. The plea of coercion, it is argued, was unsupported by



2026:DHC:8642



cogent material and would require this Court to re-appreciate a factual issue already considered by the learned Arbitrator.

20. As regards the extra items, learned Counsel submits that the Petitioner claimed rates which, for the twelve disputed items, were 154.45% above the DSR rates without sufficient material to substantiate the same. The learned Arbitrator, therefore, adopted the average enhancement of 38.90% already reflected in six other extra items paid at market rates. As to the additional quantities of Extra Items 3/2 and 3/3, the Respondent relies upon the absence of those quantities from the R.A. bills. Hence, it is submitted that the impugned Award does not warrant interference under Section 34 of the Act.

21. I have heard the learned Counsel for both the parties and perused the material on record.

22. At the outset, I find it relevant to note that the impugned arbitral award was passed on 21.03.2014 and the present proceedings were initiated prior to the coming into force of the Arbitration and Conciliation (Amendment) Act, 2015⁴ on 23.10.2015. The challenge is, therefore, governed by Section 34 of the Act as it stood prior to the 2015 Amendment Act.

23. Keeping the aforesaid position in view, the scope of intervention of this Court under the head of public policy has been the subject matter of a catena of decisions. In **ONGC v. Saw Pipes Ltd.**,



2026:DHC:8642



(2003) 5 SCC 705, the Supreme Court, while examining the scope of public policy, also recognised patent illegality as a ground for interference with an arbitral award in the following words:

“31. Therefore, in our view, the phrase “public policy of India” used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term “public policy” in *Renusagar case* [1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could be set aside if it is contrary to:

- (a) fundamental policy of Indian law; or
- (b) the interest of India; or
- (c) justice or morality, or
- (d) in addition, if it is patently illegal.**

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.”

24. There is no quarrel with the proposition that, under the pre-amendment regime, an arbitral tribunal was required to decide in accordance with the terms and conditions agreed between the parties and that an award which disregards a binding contractual stipulation may, in an appropriate case, be vulnerable under Section 34. At the



2026:DHC:8642



same time, interpretation of the contract and appreciation of the material bearing upon that interpretation lie primarily within the domain of the learned Arbitrator. Interference is not warranted merely because another view is possible, the view adopted must be shown to be one that the contract cannot reasonably bear or the award must otherwise disclose patent illegality going to the root of the matter.

25. The Hon'ble Supreme Court has also time and again cautioned against interference with an arbitral award in a casual manner, as such an approach would defeat the scheme of arbitration and the principle of minimum judicial interference.

26. It is against this settled legal position that the challenge in the present petition has to be examined by this Court.

27. The grievance in the present petition pertains to Claim No. 1, which concerns the unpaid amount claimed in the final bill and, in substance, raises two principal issues: (i) the rates payable for quantities beyond the permissible deviation limits and (ii) the rates or quantities payable in respect of extra items.

28. The case of the Petitioner is that despite having submitted its rate analysis in terms of Clause 12, the Engineer-in-Charge failed to determine the market rates within the stipulated period and, instead of addressing this failure, the learned Tribunal rejected the claim on the basis of the subsequent letters dated 15.12.2011, which, according to the Petitioner, were issued under economic duress.



2026:DHC:8642



29. In order to examine the aforesaid challenge against the impugned Award, it would be apposite to first notice the relevant findings returned by the learned Tribunal on the deviated items, which read as follows:

“Para 1.5 Award

(A) Deviation items (Amount claimed Rs 1,69,55,500/-)

As per clause 12.2 of the agreement, if quantities of the contract items exceed the limits laid down in schedule F, the contractor may within 15 days of receipt of order or occurrence of the excess, claim revision of rates supported by proper analysis for the excess quantities. The engineer-in-charge shall within one month of receipt of the claim, after giving due consideration to the A/R submitted by the contractor, determine the rates on the basis of the market rates.

As explained under the foregoing para 1.2(b), the claimant has claimed higher rates (i.e. more than agreement rates) even for the quantities up to the deviation limit in respect of item numbers 1.1, 3.3, 4.4, and 62.62 which is not covered under any provisions of the agreement. Under remarks column of the statement 'A' submitted with Claimant's letter dtd 22.5.2013, it has been explained that these rates have been claimed as per DSR-2007 + 1.85% enhancement. The Claimant entered into this agreement with some specific rates for these items which are binding upon both the parties and take precedence over another rates available in the DSR. The Claimant cannot be paid more than agreement rates for the quantities up to the deviation limits.

For the quantities beyond deviation limit, the EE had written a letter no 572 dtd 25.6.2010 (Exh C8/6) to the claimant informing him that quantities of certain items are exceeding the deviation limits for which the claimant had not submitted the A/R (for market rates). The claimant was asked to submit his rates for these items. The claimant had submitted his rates through various letters viz C8/1 dtd 15.6.2010, C8/2 dtd 30.11.2010, C8/3 dtd 24.6.2010 & C8/4 dtd 2.7.2010 etc. The Respondent in his letter no 698 dtd 11.11.2013 has stated that the claimant had not submitted these rates within the specified time. The EE vide his letter no 417 dtd 7.5.2010 & no 260 dtd 13.5.2010 had intimated the agency about the rates offered by the department for few items and requested the agency to give their acceptance of the rates. Subsequently, the rates were decided with mutual consent of the claimant as evident from his letters at R9 (dtd 15.12.2011) & R10 (dtd 15.12.2011). In Exh R9, the claimant had stated as under:-



2026:DHC:8642



“we hereby agree unconditionally for the agreement rates offered by us for all the quantities including the quantities beyond permissible variation for all the agreement items except three items (62.62, 63.63 & 68.68) for which we have given a separate letter no YDB/CW/Nil dtd 15-12-2011(which is available at Exh R10). The Exh R10 states as under:-

We hereby unconditionally agree for the rate as mentioned below for the following three items for the quantities deviated beyond permissible variation:-

- | | |
|---|--------------------|
| (i) 62.62 (P/L RCC 1:1:2
in all works upto plinth) | Rs 6000/- per cum |
| (ii) 63.63 (RCC in walls
1:1.5:3) | Rs 4758.98 per cum |
| (iii) 68.68 (Reinf in RCC) | Rs 63.70 per Kg. |

(The agreement rates for these items are Rs 3801.04, Rs 4168.06, and Rs 43.49 respectively). From the statement 'A' submitted by the claimant with his letter dtd 22.5.2013, it is seen that there are six items in total which have been deviated beyond deviation limit i.e. item numbers 1(1), 3.3, 62.62, 63.63, 68.68 and 70.70. Rates for the deviated quantities for all the six items have been paid by the Respondent as per the claimant's letters as cited above i.e. Exh R9 & R10. Rates for item numbers 62.62, 63.63 & 68.68 have been paid as agreed upon by the claimant under R10 and for remaining three items at agreement rates as per R9. The claimant has stated that the Respondent has paid these items at his own rates, which is not correct in view of the position explained above. It has further been stated by the claimant that the Respondent forced the claimant to accept these agreement and negotiated rates. This also does not seem to be correct. If there was a coercion, how the claimant could claim market rates for the three items (as listed under R10) which are much higher than the agreement rates. Evidently, rates for all these items were settled through negotiations, and the same have already been accepted/agreed upon by both the parties. Till the pre-final bill i.e. 13th RA bill paid on 30.3.2011, the claimant had been paid agreement rates only for all these deviated quantities. Settling of rates for the deviated quantities through negotiations is quite a common and accepted procedure also.

In view of the reasons explained above and with due consideration to all facts of the case, and the submissions made, I hereby give NIL award against this part of the claim.

30. A perusal of the aforesaid findings shows that the learned Tribunal was conscious of the mechanism prescribed under the said

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O.M.P. (COMM) 328/2016

Page 10 of 19



2026:DHC:8642



clause. It specifically noticed that, by letter dated 25.06.2010, the Engineer-in-Charge had called upon the Petitioner to submit rate for the quantities exceeding the permissible deviation limits and that the Petitioner had thereafter submitted its rate through various letters. Thus, this is not a case where the learned Tribunal ignored Clause 12.2 or proceeded on an interpretation which is not borne out by its terms.

31. In the view of this Court, Clause 12.2 required the Engineer-in-Charge, after considering the contractor's analysis, to determine the rate on the basis of market rates within the period prescribed. The Respondent's failure to complete that exercise within time is a relevant circumstance. The clause, however, does not state that the rate unilaterally submitted by the contractor becomes automatically binding upon such failure, nor does it prohibit the parties from subsequently settling the rates for the quantities actually executed.

32. The issue before the learned Arbitrator, therefore, was not merely whether the rates were determined within the stipulated period, but also what effect was to be given to the subsequent correspondence between the parties and whether the same resulted in a mutual agreement on the rates.

33. Admittedly, six items were found to have exceeded the permissible deviation limits, namely Items 1(1), 3.3, 62.62, 63.63, 68.68 and 70.70. On the basis of the two letters dated 15.12.2011, the learned Tribunal found that the Petitioner had accepted the Agreement rates for Items 1(1), 3.3 and 70.70, and rates of Rs.6,000/-,



2026:DHC:8642



Rs.4,758.98/- and Rs.63.70/- for Items 62.62, 63.63 and 68.68, respectively, as against the Agreement rates of Rs.3,801.04/-, Rs.4,168.06/- and Rs.43.49/- for those three items. The letters, marked R-9 and R-10, read as follows:

R9

Sir,

We hereby agree unconditionally for the agreement rate offered by us for all the quantities including deviated quantities beyond permissible variation for all the agreement items except three items (Item No. 62.62, 63.63 & 68.68) for which we have given a separate letter No. YDB/CW/Nil dated 15-12-2011.

R10

Sir,

We hereby unconditionally agree for the rate as mentioned for the following three items for the quantities deviating beyond permissible variation:-

- (i) 62.62 : P&L RCC in all work - Rs. 6000/- per cum
Upto plinth level
In 1:1:2
- (ii) 63.63 : RCC in walls in 1:1.5:3 - Rs. 4758.98 per cum
- (iii) 68.68 : Reinforcement in RCC - Rs. 63.70 per Kg”
work

34. The Petitioner does not dispute the authorship or contents of these letters. Its case is that the words of unconditional acceptance do not reflect free consent because the letters were furnished under economic pressure while substantial payments remained outstanding at the end of the Respondent.

35. However, this Court is unable to accept the aforesaid submission, and the learned Tribunal had also rightly rejected the said plea. The plea of coercion or economic duress is essentially a plea of fact and cannot rest on a bald assertion without supporting material.



2026:DHC:8642



Recently, in **DDA v. Swastik**⁵, this Court emphasized that an undertaking cannot be disregarded merely on a bare assertion of financial pressure and that the circumstances said to vitiate consent must have a proper factual foundation and be supported by identifiable material. The relevant observations are as follows:

“On that basis, the undertaking was treated as having no legal effect. It is true that the mere existence of a no-claim certificate or undertaking is not always conclusive and if it is established that such a document was obtained by coercion, undue influence or economic duress, the underlying dispute may still survive.

At the same time, the document cannot be discarded merely on a bare assertion of financial pressure. In Union of India v. Master Construction Co. (2011) 12 SCC 349, the Supreme Court held that an allegation that a no-claim document was obtained by coercion or duress must have a credible factual foundation and cannot rest on a bald plea

The fact that the agreement did not require such an undertaking is undoubtedly relevant, but it does not follow that an undertaking voluntarily given would be without effect. Likewise, a later withdrawal may have some evidentiary value, but it does not by itself establish the circumstances in which the earlier undertaking was executed. What was required was a finding, based on identifiable material, that DDA had made processing of the extension or release of payment conditional upon furnishing the undertaking, or had otherwise exercised pressure of such a nature as to vitiate consent.

The sequence of events relied upon by the respondent could certainly raise a suspicion of commercial pressure, particularly because the undertaking preceded the final processing of the extension of time case. The difficulty is that the



2026:DHC:8642



award does not identify any demand, instruction, correspondence or other material by which that suspicion is converted into a finding of coercion. The conclusion is drawn substantially from the pendency of payments and the later withdrawal of the undertaking. In my view, that reasoning is not sufficient to deprive the undertaking of its legal effect.”

36. On the present record, the plea of duress does not furnish a ground for interference under Section 34. The letters are facially unconditional. The Petitioner relies principally on the pendency of substantial dues and the fact that the final bill payment followed the letters, but no related communication has been identified in the material considered by the learned arbitrator showing that the Respondent expressly made release of payment conditional upon execution of those letters or otherwise threatened non-payment unless they were furnished.

37. There is a further circumstance which the learned Arbitrator was entitled to consider and rightly relied upon. For three items, the Petitioner accepted the Agreement rates, whereas for Items 62.62, 63.63 and 68.68, it secured rates materially higher than the Agreement rates. On that material, the learned Arbitrator returned a finding that the six rates had been settled through negotiations rather than simply imposed by the Respondent. Whether that inference is the only possible one is not the test, it is a plausible inference from the record.

38. The Petitioner's explanation for issuing the letters may be commercially understandable, but accepting it as establishing duress would require this Court to re-appreciate the circumstances in which



2026:DHC:8642



the correspondence was issued and to substitute a different factual inference for that drawn by the learned Tribunal. That exercise is outside the permissible scope of Section 34 in the absence of perversity or a finding unsupported by the record.

39. The finding also cannot be faulted merely because the Respondent used the expression “accepted” instead of “negotiated” in its Statement of Defence as the Respondent had relied upon the very letters R-9 and R-10 as the basis for the rate paid. The learned Tribunal was entitled to ascertain the legal effect of those letters and to describe the process confirmed by them as a settlement through negotiations.

40. Once the learned Tribunal returned a sustainable finding that the parties had subsequently agreed upon the rates for the six deviated items, the challenge found solely on the earlier non-determination of rates under Clause 12.2 loses force. The clause prescribed the mechanism for determination of rates, but did not prevent the parties from subsequently agreeing upon the rates or reaching a later consensual settlement. In these circumstances, the rejection of this part (A) of Claim No.1 does not disclose any error or patent illegality warranting interference under Section 34 of the Act.

41. As regards the challenge to the rates allowed for the extra items component of Claim No.1, the learned Arbitrator considered the claim under four heads: (B)(i) the claim for market rates for twelve extra items; (B)(ii) the claim for four extra items for which amounts earlier paid in R.A. bills were recovered in the final bill; (B)(iii) the claim



2026:DHC:8642



relating to payment of additional quantities claimed for Extra Items 3/2 and 3/3; and (B)(iv) the claim for extra items relating to brickwork in the superstructure.

42. In respect of (B)(i), the impugned Award records that the Respondent had determined and paid market rates for six extra items but had paid only DSR-2007 rates plus the contractual enhancement of 1.85% for twelve other extra items. The learned Tribunal also recorded that the Respondent had followed the mechanism under Clause 12 in respect of six items, but not for the remaining twelve items. However, at the same time, it noted that the Petitioner's rates claimed for the twelve extra items were "exorbitant" and higher than the applicable rates. The learned Tribunal, therefore, did not find the rates claimed by the Petitioner to be reliable.

43. The principal grievance of the Petitioner is that, once the Respondent failed to determine the rates of the twelve extra items in terms of Clause 12.2, the rates submitted by the Petitioner ought to have been accepted or should have been paid on the market rate. This submission, however, assumes that the Petitioner's rate would become binding merely because it was not rebutted by the Respondent. Clause 12.2 does not create such a default rule. It requires determination of market rates having regard to the relevant cost material, it does not convert an unaccepted contractor's rate analysis into the contractual rate merely by lapse of time.

44. The learned Tribunal was, therefore, justified in examining the reliability of the rates put forward by the Petitioner. The finding that



2026:DHC:8642



those rates were excessive was based on the material on the record. This Court finds no error in the approach adopted by the Tribunal, nor can this Court re-appreciate the same material merely to arrive at a different conclusion as it would amount to a review on merits which Section 34 does not permit.

45. Having rejected both the Respondent's DSR plus 1.85% approach for the twelve items and the Petitioner's claimed rates and in absence of any market rate analysis by the Engineer-in-Charge for 12 extra items, the learned Tribunal used the six extra items already paid at market rates under the same Contract as a benchmark. The average enhancement over DSR for those six items was 38.90%, and applying that enhancement yielded an additional amount of Rs.11,13,256/-. The methodology is discernible from the impugned Award and is anchored in the material on record. Whether some other method could have been adopted is not a ground for setting aside the Award.

46. Head B(ii) was dealt with separately. The learned Arbitrator found that amounts aggregating to Rs. 25,73,190/- had earlier been paid against Extra Items 3/1, 2/1, 3/2 and 3/3 but were subsequently recovered in the final bill. The impugned Award noted that their execution was supported by the prior R.A. bills, rejected the absence of departmental sanction as a sufficient reason to deny payment, and restored the recovered amount. The claim for still higher rates was, however, rejected for the same reason as under Head (B)(i), namely that the Petitioner's claimed rates were found to be excessive and unrealistic. That distinction in the impugned Award is reasoned and internally consistent.

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O.M.P. (COMM) 328/2016

Page 17 of 19



2026:DHC:8642



47. As regards B(iii), the Petitioner claimed an additional quantity of 27,912.46 cubic metres for each of Extra Items 3/2 and 3/3, stating that the work was executed between July and October 2010. The learned Tribunal examined the R.A. Bills for that period and found that these quantities had not been claimed in the 7th to 12th R.A. bills, were not shown in the copies of the 12th and 13th R.A. bills relied upon by the Petitioner, and were raised in the final bill only four days after submission of the 13th R.A. Bill. The impugned Award also notices that the 13th R.A. bill had been accepted without protest. On this material, the learned Tribunal did not find sufficient basis to award any amount under this head.

48. The Petitioner's challenge to head (B)(iii) substantially invites this Court to draw a different inference from the measurement books and the sequence of billing. Those are matters of evidentiary appreciation within the domain of the learned Tribunal. The reasons given in the impugned Award are neither absurd nor irrational, and therefore do not permit interference under Section 34.

49. For the reasons set out above, the findings of the learned Tribunal on the deviated items and the extra item heads disclose a reasoned assessment of the contractual provisions and the material placed on record. No perversity, patent illegality, or disregard of a binding contractual stipulation going to the root of Claim No.1 is established. The challenge to Claim No.1 in entirety is, accordingly, rejected.



2026:DHC:8642



50. For all the aforesaid reasons, the present petition is dismissed.
Pending application(s), if any, also stand disposed of.

OM PRAKASH SHUKLA, J

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O.M.P. (COMM) 328/2016

Page 19 of 19