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

% Judgment Reserved on: 26.11.2025
Judgment pronounced on: 08.01.2026
Judgment uploaded on: As per digital signature~

\+ **FAO (COMM) 109/2023**

Bharat Heavy Electricals Limited ..... Appellant

Versus

Delkon India Pvt. Ltd.

..... Respondent

Advocates who appeared in this case

For the Appellant : Ms. Mani Gupta, Mr. Pranav Malhotra and Mr. Udwipt Verma, Advocates

For the Respondent : Mr. K.S. Mahadevan and Ms. Swati Bansal, Advocates

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

VINOD KUMAR, J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act', hereinafter) has been filed with the following prayers:

> *"(a) Set aside the Impugned Order dated 09.02.2023 passed by the Ld. District Judge in OMP (COMM) 63/21 between Bharat Heavy Electricals Limited vs. Delkon India Pvt. Ltd. and/or*

(b) Set-aside the Award dated 02.06.2021 passed by the Ld. Sole
Arbitrator and/or
(c) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. For sake of convenience, the appellant would be also referred to as 'BHEL' and the respondent would also be referred to as 'Delkon'.

3. Vide impugned award dated 02.06.2021, the arbitrator rejected all claims of BHEL except claim no.11 which was partly allowed. The Arbitrator however, partly allowed the counter claims of Delkon. Aggrieved by this award, BHEL filed objections under Section 34 of the Act before learned District Judge (Comm-02), South District, Saket Court, New Delhi (in short 'District Judge') who dismissed the same vide impugned judgment dated 09.02.2023.

DISPUTE

4. The appellant-BHEL invited bids for execution of erection, testing, and commissioning of two 210MW boilers at Feroz Gandhi Thermal Power Project, Unchahar, Uttar Pradesh. The respondent's (Delkon) bid was successful and accordingly, a letter of intent (hereafter "LOI") dated 21.06.1996 was issued by the appellant. This was followed by a Contract Agreement No.50/96 dated 12.11.1996, which contained arbitration Clause 33. The total value of works awarded to the respondent was Rs.3,13,20,000/-. The stipulated period for the completion of this work was 29 months, commencing 15 days subsequent to the date of the issuance of the LOI. According to Clause 4 of the

Contract, respondent was to immediately get in touch with the Construction Manager of the appellant at the work site for further instruction regarding the commencement of the work in order to complete the work in time, keeping in view Clause 52 of the contract which refers to the Time Schedule.

5. Dispute arose, when as per appellant-BHEL, the respondent-Delkon failed to deploy agreed manpower as per the schedule and deployment chart. Several letters were issued by the appellant to the respondent regarding inadequate Tools & Plants (in short T&P) alongside poor progress of respondent's work, subsequently, leading to the contract being terminated by the appellant on 15.01.1997, relying on Clause 25.3 of the contract i.e.-

> *"25.3 To terminate the contract after due notice and forfeit the Security Deposit and recover the loss sustained in getting the balance work done through other agencies in addition to liquidated damages in the event of:*
>
> a. *Contractor's continued poor progress.*
> b. *Withdrawal from or abandonment of the work before completion of the work.*
> c. *Corrupt act of the contractor.*
> d. *Insolvency of the contractor.*
> e. *Persistent disregard of the instructions of BHEL.*
> f. *Assignment, transfer, subletting of the contract work without BHEL's written permission.*
> g. *Non-fulfilment of any contractual obligations"*

LOCAL COMMISSIONER

6. A petition OMP No.08/1997 dated 20.01.1997 was filed by respondent-Delkon under Section 9 of the Act before High Court of Delhi praying that appellant-BHEL be restrained from encashing Delkon's Bank Guarantees.

7. Another petition i.e. OMP No.37/1997 dated 01.03.1997 was filed by the respondent to seek the release of its T&P from the work site held under appellant's control. Via interim order dated 04.03.1997, the High Court appointed a Local Commissioner for joint inspection of the work site. Subsequently, the Local Commissioner after inspecting the work site submitted its report on 01.04.1997.

APPOINTMENT OF ARBITRATOR BY BHEL

8. The respondent-Delkon invoked the arbitration clause on 02.04.1997. And an award dated 06.07.2001 was passed accordingly in the favour of the respondent. This award was set aside by this Court in OMP No.317/2001 as it was observed that the arbitrator was highly biased and determined to pass an award against the appellant. Thereafter, upon a request made by the appellant on 12.08.2009, the Sole Arbitrator was appointed by General Manager, BHEL vide its order dated 14.08.2009 as per arbitration clause of the agreement thereby initiating fresh arbitration proceedings to adjudicate upon the claims and counter claims arising out of the dispute. The Arbitrator was acceptable to both the parties. Appellant-BHEL, being the claimant in the arbitration proceedings, put forth Claims no. 1 to 17. Respondent-Delkon (being the counter claimant in the arbitration) put forth 22 claims.

9. Both parties proceeded to file their respective claims and counter claims during the course of the arbitral proceedings.

STATEMENT OF CLAIM

10. Claimant-BHEL raised the following claims:

CLAIM NO.	BRIEF PARTICULARS	AMOUNT CLAIMED (in Rs.)
1.	Loss and damage of plant materials issued to Delkon.	3,05,215
2.	Handling charges of plant materials issued to Delkon and not erected.	59,720
3.	Towards non-vacation of the premises at site by the Delkon (calculated from February 1997 to June 1997).	25,000
4.	Towards dismantling of temporary buildings, structures constructed at site by Delkon.	94,900
5.	Towards loss of manpower deployed in completing formalities of closing the contract.	1,58,500
6.	Towards conducting the re-measurement of work executed at site.	33,200
7.	Towards additional expenses incurred.	23,93,500
8.	Claim towards additional expenditures incurred due to deployment of BHEL manpower and site establishment beyond contractual period.	18,78,000
9.	Towards liquidated damages.	31,32,000
10.	Towards loss on account of using tools and plants for the extended period.	18,34,290
11.	Towards issue of material on chargeable basis.	51,300
12.	Towards expenses for processing of re-award of the contract for balance work.	84,500

13.	Towards interest on deficit turnover of BHEL due to delay in execution of work by M/s Delkon (India) Pvt. Ltd.	3,47,430
14.	Claim towards extension of bank guarantee in favour of M/s NTPC.	3,38,810
15.	Claim towards loss of goodwill.	2,00,000

STATEMENT OF COUNTER CLAIM

11. Counter claimant-Delkon raised the following counter claims:

CLAIM NO	BRIEF PARTICULARS	AMOUNT (in Rs.)
1.	Cost of transportation of erection materials from BHEL Stores yard to Site	30,526
2.	Cost for Pre-assembly Works completed for the Erection Materials	49,384
3.	Being the cost for Pre-assembly works completed & inspected, DPT & Root Welding completed	12,198
4.	Cost of the Erection Work done	1,77,202
5.	Cost for the completion Work done of erected material	2,07,260
6.	Cost for the completion work for the balance tonnages i.e. 65.728 M.T. for which only Welding & Grouting is balance	52,846
7.	Towards illegal withholding of the equipment by the Claimants from 21.01.97 to 31.12.97 pursuant to High Court Order in OMP 37/97 @ Rs. 20,0001- per day for 345 Days	69,00,000
8.	Cost for the construction of the Site Office and Stores Sheds	76,000

9.	Cost for the construction of Staff Quarters	1,12,480
10.	Cost for the construction of Electrical Booth	96,500
11.	Cost towards the registration with Sales Tax Authority	23,225
12.	Cost for the supply of Raw Materials	1,84,725
13.	Mobilisation cost for equipments	6,04,800
14.	Total Cost and Depreciation Value	6,21,062
15.	Demobilisation Cost	4,48,000
16.	Cost for taking Insurance Policy	22,500
17.	Overall Profits @ 10% of the Contract Value of Rs.3,13,20,000/.	31,32,000
18.	P.V.C. Claims Bill No. C-79/PVC/01 dt. 23.09.97	20,270
19.	Release of Security Deposit (Invoked Bank Guarantee)	7,86,750
20.	Loss of Goodwill to the Company due to illegal termination of the Contract	60,00,000
21.	Refund of amount of Earnest Money Deposit deposited in cash with Claimants' Regional Manager (services)	20,000
22.	(i) Interest @ 24% per annum on Rs. 1,26,777,28/- (On all Claims above except Cl No.7) for the period 21.01.97 i.e. date of illegal termination of the Contract till the date of submission of Counter Claim i.e. 31.01.2014 for 6216 days & future interest realisation of payment (ii) Interest @ 24 % on the Claim of Rs. 69,00,000/- on Item No. 7 as above from 01.01.98 to 31.01.2014 for 5871 days & future interest till realisation of payment	5,18,16,410 & 2,66,34,000

	TOTAL CLAIM	**9,80,28,138**

ISSUES

12. The learned arbitrator after considering the submissions of the parties framed the following issues:

S.No.	ISSUES
1	Whether there is a breach of contractual terms of the contract on part of Respondent.
2	Whether Claimant (BHEL) is entitled to receive any amount towards the Claims filed before the Arbitrator.
3	Whether either party is entitled for pendent lite and future interest on the amount awarded and, if so, at what rate.
4	Whether there is a breach of Contract on part of Claimant leading to its termination.
5	Whether there is any malafide on part of the Claimant to terminate the Contract.
6	Whether unilateral and arbitrary adjustment of Rs. *20,000/-* as one-time earnest money deposited by the Respondent (Delkon) with the services section of BHEL Noida not pertaining to this contract in any manner is illegal and unethical.
7	Whether Respondent (Delkon) is entitled to receive amounts from Claimant (BHEL) *as* per Respondents Claim No. 1 to Claim No. 22 filed before the Arbitrator.

Issue no. 1 to 3 is related to the claimant-BHEL's claims while Issue no. 4 to 7 pertained to the counter claimant-Delkon's claims.

FINDINGS OF THE ARBITRATOR

13. Parties led their respective evidences. After hearing, the Arbitrator passed the impugned award. For the sake of brevity,

we shall confine the findings of the Arbitrator to counter claim no. (s) 1, 3, 5, 7, 13, 15, and 22 because these are the specific claims that were challenged by the appellant-BHEL both in the instant Appeal as well as in the petition filed before the learned District Judge under Section 34 of the Act.

14. Under counter claim no. 1, relating to transportation of un-erected material, the Arbitrator held that transportation of un-erected material was an activity incidental to 'work done' and not part of overheads. The Arbitrator in absence of any alternate method available to him to fix the rate for the cost of transportation of un-erected material, accepted the rate adopted by the respondent-Delkon of 10% of the contract rate as per Clause 57(IA)(i) of the contract. The contract rate as per the Letter of Intent was stated to be Rs.2700/- per MT (metric tonne). Therefore, the rate of Rs.270/- per MT was applied to the un-erected material of 113.058 MT. Hence, the Arbitrator awarded Rs.30,526/- for counter claim no.1.

15. In similar manner while dealing with Counter Claim no.3. concerning the cost for pre-assembly and pre welding completed for 12.908 MT, the Arbitrator relied upon Clause 57(1A)(i) and fixed the rate of 12% and awarded Rs.4,182/–, considering that only part welding had been completed.

16. With respect to counter claim no.5, dispute was over extent of erection and alignment as conflicting measurements were argued by parties. In face of no conclusive evidence to determine the quantity, the Arbitrator decided to take the mean of the

parties' respective quantities i.e. 103.379 MT. Since grouting was admittedly not fully completed, only 47% of the contract rate i.e. Rs.1,269/- per MT was held payable and therefore the Arbitrator awarded Rs.1,31,188/- to Delkon.

17. Regarding the counter claim no.7, pertaining to wrongful withholding of T&P, the Arbitrator held that the BHEL's disobedience of the High Court's order contributed to the withholding of the Delkon's T&P. The Arbitrator rejected the respondent's per-day rate of Rs.20,000/- and applied depreciation-based approach. The Arbitrator assessed the value of withheld T&P at Rs. 40,00,000, and annual withholding charges at 25%, which amounts to Rs.10,00,000 per year. As per the findings, for 210 days, the respondent-Delkon's T&P was withheld by BHEL. Therefore, withholding charges were calculated at Rs.5,75,342/-.

18. Under counter claim no(s).13 and 15, relating to mobilisation and demobilisation costs of setting up machinery and manpower at work site, the Arbitrator found that substantial mobilisation and subsequent demobilisation had already been carried out. Arbitrator found that the early termination prevented the respondent-Delkon from recovering such one-time overhead expenditure. He cited Clause 25.5 of the Contract and fixed overheads at 5% of the total contract value of Rs.3,13,20,000/-. The clause 25.5 of the contract is reproduced below:

> *"25.5 To claim compensation for losses sustained including BHEL's supervision charges and overheads in case of termination of contract and to levy liquidated*

damages for delay in completion of work, at the rate of 1/2% of the contract value per week of delay or part thereof subject to a ceiling of 10% of contract value."

19. This amounted to approximately Rs.16 lakhs, and that 65% of the overheads having been consumed, a sum of Rs.10,52,800/- was decided towards mobilization and demobilization.

20. Counter claim no.22 pertained to the respondent's demand for interest at the rate of 24% per annum on all counter claim (except no.7) from 15.01.1997 i.e., date of termination of the contract to the date of actual payment. The Arbitrator discussed the plea of BHEL that Clause 17 of the contract constitutes a binding prohibition against the award of interest on all sums "*due under the contract*" and therefore no interest can be awarded on any of the counter claims. The Arbitrator partly agreed with this submission and drew a distinction between the counter claims which fell under the contract and the counter claims which arise out of the illegal termination of the contract. It was held that in counter claims falling in first category, the interest cannot be awarded, whereas in counter claims falling in second category, the Arbitrator had discretion to award pre reference and *pendete lite* interest.

ARBITRAL AWARD

21. The Arbitrator inter alia found that the termination of the contract dated 15.01.1997 was not as per the terms of the Contract and hence, illegal. He awarded respondent-Delkon a sum of Rs.29,42,065/- along with post-award interest of 14.15%

per annum after 4 weeks from the date of the award. He also awarded pre reference and *pendente lite* interest computed at 14.28% per annum amounting to Rs.66,50,560/-. The Arbitrator summarised the award as under:

Counter Claim No.	***Amount accepted for Award in Rupees***	***Date of cause of action from which interest is payable***	***Period of interest up to date of Award in Days***	***Amount of Interest @ 14.28% per annum in Rupees***	***Remarks***
1 to 6	***221993***	***-***	***-***	***0***	*Awarded amount being as per terms of contract, Interest is not payable*
7	***575342***	***01.01.1998***	***8551***	***1924768***	*Awarded amount not as per terms of contact. Interest period considered from the day next to removal of T&P in December1997*
8 to 10	***284980***	***21.01.1997***	***8895***	***991735***	*Awarded amount not as per terms of contract. Interest period considered from date of stopping work*
11	***200***	***21.01.1997***	***8895***	***696***	*Awarded amount not as per terms of contact. Interest period*

					considered from date of stopping work
12	***0***	***-***	***-***	***0***	*-*
13 & 15	***1052800***	***21.01.1997***	***8895***	***3663761***	*Awarded amount no as per terms of contact. Interest period considered from date of stopping work.*
14	***0***	***-***	***-***	***0***	*-*
16	***0***	***-***	***-***	***0***	*-*
17	***0***	***-***	***-***	***0***	*-*
18	***0***	***-***	***-***	***0***	*-*
19	***786750***	***-***	***-***	***0***	*Awarded amount being as per terms of contract, Interest is not payable*
20	***0***	***-***	***-***	***0***	*-*
21	***20000***	***21.01.1997***	***8895***	***69600***	*Awarded amount not as per terms of contract. Interest period considered from date of stopping work*
TOTAL	***2942065***			***6650560***	*Rounded off to nearest Rupee*

e) ***Post award interest:*** *Section 31 (7)(b) of the Arbitration and Conciliation Act 1996 provides "A sum directed to be paid b y an arbitral*

award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment". Accordingly, the Tribunal awards, along with the awarded amount of Rs.29,42,065/-, payment of simple interest on this amount for the period starting from 01.07.2021 i.e. after 4 weeks from the rate of award to the date of actual payment. Present PLR of SBI being 12.15% per annum, rate of interest applicable shall be 2% higher i.e. 14.15% per annum.

25. Each party shall bear its own costs of litigation.

26. ***Conclusion:***

a) Termination of the subject contract is not as per the terms of the contract and, hence, illegal. However, there is no malafide intention on the part of Claimant.

b) Considering all claims and counter claims, Claimant shall pay the awarded amount of Rs.29,42,065/- to Respondent, after adjustment of all recoveries.

c) Claimant shall pay to Respondent an amount of Rs.66,50,560/- towards interest pendte lite computed at rate of interest as 14.28% per annum.

d) Claimant shall pay simple interest @ 14.15% on the awarded amount of Rs.29,42,065/- for the period starting from 01.07.2021 i.e. after 4 weeks from the ate of award to the date of actual payment.

e) No taxes of any kind shall be paid on the awarded amount. However, income tax rules, as prevailing on date, shall apply.

f) Each party shall bear its own costs of litigation."

APPELLANT-BHEL CHALLENGES ARBITRAL AWARD UNDER SECTION 34 OF THE ACT

22. The appellant-BHEL filed a petition under Section 34 of the Act challenging the arbitral award before the learned District Judge only on following counter claims:

Counter Claim	Particulars	Amount (in Rs.)
Claim No.1	Towards transportation of un-erected material transported	30,526

Claim No.3	Towards cost of pre-assembly and part welding completed	4,182
Claim No.5	Towards costs of erection and alignment work done	1,31,188
Claim No.7	Towards illegal withholding of plant and equipment	5,75,342
Claim No.13&15	Towards cost of mobilization and demobilization of tools and plant, equipment and manpower	10,52,800
Claim No.22	Towards interest	66,50,560

FINDINGS OF LEARNED DISTRICT JUDGE

23. The learned District Judge after hearing both the parties held the amounted awarded against counter claim no. 1, 3, 5, 7, 13 and 15 to be reasonable and justified.

24. On the issue of interest i.e. counter claim no.22, learned District Judge considered the plea of BHEL on Clause 17, which barred interest. The respondent had contended that the bar applied only to moneys due under the contract and not to damages arising from illegal termination of contract. Learned District Judge held that the Arbitrator correctly distinguished between the two. Learned District Judge agreed with the Arbitrator, who granted interest only on counter claims relating to losses from wrongful termination and rejected interest on claims falling strictly under the contract. Learned District Judge upheld the reasoning of the Arbitrator holding that the contractual bar was inapplicable to damages. The challenge to interest was therefore held to be meritless.

25. Accordingly, learned District Judge dismissed the petition under section 34 of the Act.

SUBMISSIONS OF PARTIES IN THE PRESENT APPEAL UNDER SECTION 37 OF THE ACT

26. BHEL has challenged the impugned arbitral award and the impugned judgment on the ground that the award on the counter claim no.1, 3, 5, 7, 13 and 15 was passed without any evidence. It is argued by learned Counsel for the appellant-BHEL that learned District Judge has ignored the fact that the Arbitrator has misapplied clause 57.3 (IA)(i) of the contract as the same does not deal with breakup of the cost but instead pertains to the payment milestone. Regarding counter claim no.5, the plea of the appellant is that learned District Judge ignored the fact that sole Arbitrator, instead of relying on the admitted figure of 53.231 MT, averaged the two figures as given by the parties without any reason and reached to a wrong conclusion. Regarding counter claim no.7, 13 and 15, it is argued by learned counsel for the appellant that learned District Judge ignored the fact that the Arbitrator has passed the award on this counter claim without any evidence. Further it is argued that on counter claim no. 22, learned District Judge has wrongly agreed with the Arbitrator who categorised two types of counter claims, one under the contract and others, due to illegal termination of contract, in awarding the pre reference and *pendente lite* interest on the awarded amounts of various counter claims, which comes out to be Rs.6650560/-. The case of appellant is that this award of interest is in violation of clause 17 of the contract which prohibits

payment of interest to the contract on any amount due to the contractor.

27. It is argued that learned Counsel for the appellant that the Learned District Judge has erred in not considering the case of *Ahluwalia Contract (India) Ltd. V. Union of India* reported in (*2017) SCC OnLine Del 8234,* wherein it has been held that it is incumbent on any party claiming damages to establish the loss with reasonable certainty.

28. It is further argued by learned Counsel for the appellant that the Learned District Judge has not considered the judgments of *National Projects Construction Corporation Ltd. V. Ambika Engineers and consultants* reported in *(2018) SCC OnLine Del 11608* and *India Yamaha Motor Pvt Ltd. V. Divya Ashish Jamwal* reported in *(2019) SCC OnLine Del 6912* wherein it has been held that loss of profits cannot be awarded merely upon a surmise or a conjecture. Learned Counsel for the appellant has further relied upon a judgment of the Supreme Court of India in *Associate Builders v. Delhi Development Authority (2015) 3 SCC 49*, in which it was held that an award would be illegal if it is based on no evidence at all.

29. Learned Counsel for the respondent-Delkon has countered the aforesaid submissions advanced on behalf of the appellant submitting that where there is evidence of loss on account of breach of contract but there is absence of evidence for calculating compensation, the Arbitrator can proceed on guess work as to the quantum of compensation to be allowed in given circumstances.

On counter-claim no.1, it is submitted that the appellant does not dispute that 113.58 MT material was transported from appellant's store to the site and therefore, the Arbitrator has awarded reasonable amount towards this counter claim. So far as the application of clause 57.2 (1A)(i) of the contract is concerned, it is submitted that Arbitrator has rightly adopted it as a standard for determining the amount of counter claim no. 3. Regarding the counter claim no. 5, it is submitted that in case of dispute of the amount of work done towards erection and alignment, the Arbitrator was fully justified in calculating the mean of the figures provided by the Local Commissioner and the appellant. Regarding counter claim no. 7, 13 and 15, it is argued that reasonable compensation has been awarded. As regards the counter claim no. 22, it is argued that the Arbitrator has rightly distinguished between two categories of the counter claims in awarding the pre reference and *pendente lite* interest.

30. We would like to analyse and discuss the submissions of parties on counter claim no.1, 3 and 5 under one head, counter claim no. 7 under second head and counter claim no. 13 and 15 under a third head. Counter claim no. 22 would be discussed under a separate head. But before that, we would like to discuss law on the question of awarding damages and compensation.

LAW ON AWARDING COMPENSATION/DAMAGES WHERE NO EVIDNECE HAS BEEN LED TO PROVE THE SAME

31. At outset, we must acknowledge that the scope of interference of this court hearing appeal under Section 37 is limited. A concurrent finding of Arbitrator and the court dealing with objection under Section 34 of the Act should not be interfered with unless the award is patently illegal and perversity goes to the root of the award. In **Associate Builders Vs. Delhi Development Authority, (2015) 3 SCC 49,** cited by learned Counsel for the appellant, the Supreme Court had held that a decision is perverse and irrational if no reasonable person would have arrived at the same conclusion. It is settled law that where the finding is based on no evidence, or an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

32. The gist of the other judgments cited by learned Counsel for the appellant is also that the party claiming damages should establish the loss with reasonable certainty and that the profit of losses cannot be awarded merely upon a surmise or conjectures.

33. However, it has been a consistent view of the courts that when loss of a party is proved, the arbitrator would be justified in awarding the damages on the basis of honest guess work and with rough and ready method. The Supreme Court in **Construction and Design Services Vs. Delhi Development Authority, (2015) 14 SCC 263** held as under:

> *"**2.** The question raised for our consideration is when and to what extent can the stipulated liquidated damages for breach is when and what to be in the nature of penalty in the absence of evidence of actual loss and to what extent*

the stipulation be taken to be the measure of compensation for the loss suffered even in the absence of specific evidence. The further question is whether burden of proving that the amount stipulated as damages for breach of contract was penalty is on the person committing breach.

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14. *There is no dispute that the appellant failed to execute the work of construction of sewerage pumping station within the stipulated or extended time. The said pumping station certainly was of public utility to maintain and preserve clean environment, absence of which could result in environmental degradation by stagnation of water in low lying areas.... In these circumstances, loss could be assumed, even without proof and burden was on the appellant who committed breach to show that no loss was caused by delay or that the amount stipulated as damages for breach of contract was in the nature of penalty. Even if technically the time was not of essence, it could not be presumed that delay was of no consequence. Thus, even if there is no specific evidence of loss suffered by the respondent-plaintiff, the observations in the order of the Division Bench that the project being a public utility project, the delay itself can be taken to have resulted in loss in the form of environmental degradation and loss of interest on the capital are not without any basis.*

15. *Once it is held that even in the absence of specific evidence, the respondent could be held to have suffered loss on account of breach of contract, and it is entitled to compensation to the extent of loss suffered, it is for the appellant to show that stipulated damages are by way of penalty, In a given case, when the highest limit is stipulated instead of a fixed sum, in the absence of evidence of loss, part of it can be held to be reasonable compensation and the remaining by way of penalty. The party complaining of breach can certainly be allowed reasonable compensation out of the said amount if not the entire amount. If the entire amount stipulated is genuine pre-estimate of loss, the actual loss need not be proved. Burden to prove that no loss was likely to be suffered is on the party committing breach, as already observed.*

XXXXXXXX

17. *Applying the above principle to the present case, it could certainly be presumed that delay in executing the work resulted in loss for which the respondent was entitled to reasonable compensation. Evidence of precise amount*

of loss may not be possible but in the absence of any evidence by the party committing breach that no loss was suffered by the party complaining of breach, the court has to proceed on guesswork as to the quantum of compensation to be allowed in the given circumstances, Since the respondent also could have led evidence to show the extent of higher amount paid for the work got done or produce any other specific material but it did not do so, we are of the view that it will be fair to award half of the amount claimed as reasonable compensation.

***18**. Applying the above principle to the present case, it could certainly be presumed that delay in executing the work resulted in loss for which the Respondent was entitled to reasonable compensation. Evidence of precise amount of loss may not be possible but in absence of any evidence by the party committing breach that no loss was suffered by the party complaining of breach, the Court has to proceed on guess work as to the quantum of compensation to be allowed in the given circumstances. Since the Respondent also could have led evidence to show the extent of higher amount paid for the work got done or produce any other specific material but it did not do so, we are of the view that it will be fair to award half of the amount claimed as reasonable compensation. "*

34. Relying upon the aforesaid judgment, Division Bench of this Court in **Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution Pvt. Ltd. (J.V.) Vs. Haryana Vidyut Prasaran Nigam Ltd., MANU/DE/2796/2024** has reiterated the principle as under:

***"35 .** According to us, although the fact that HVPNL had either not imposed L.D. or imposed minuscule damages in respect of other projects may not have much relevance work qua each project is executed based on the terms and conditions provided in the contract governing such projects, it certainly throws up a scenario where the adjudicator/arbitrator may need to employ a rough and ready method to ascertain reasonable compensation payable to the aggrieved person/entity. Rough and ready method/guesswork is a tool available to an arbitrator, which has received the imprimatur not only of the Supreme*

Court but also of other courts, even before judgment was rendered in the Construction and Design Services case.
35.1 *The underlying rationale appears to be that as long as there is material available with the arbitrator that damages have been suffered, but it does not give him an insight into the granular details, he is permitted the leeway to employ honest guesswork and/or a rough and ready method for quantifying damages [See Mohd. Salamatullah and Others vs Government of Andhra Pradesh, MANU/SC/0020/1977: (1977) 3 SCC 590; Delhi Development Authority vs Anand and Associates, MANU/DE/0197/2008; Good Value Engineers vs M.M.S. Nanda, Sole Arbitrator and Anr., MANU/DE/4668/2009: 2009:DHC:5231; National Highway Authority of India vs ITD Cementation India Ltd., MANU/DE/0264/2010 : 2010:DHC:404; Mahanagar Gas Ltd. vs Babulal Uttamchand and Co., MANU/MH/1550/2012; Bata India Ltd. vs Sagar Roy, MANU/WB/0720/2014].”*

35. In our opinion, there may be three situations. First, there is no evidence of any loss to a party raising a claim. In such situation arbitrator cannot presume any loss and award compensation. Second, where there is evidence of loss as well as evidence on quantum of damages. This would be an ideal situation in awarding damages and compensation. Third is the situation where there is evidence of loss but either there is meager evidence or absence of evidence in support of claim of damages. In such situation the arbitrator can use rough and ready method by using a practical guess work to determine the damages and compensation. But such compensation should be reasonable in the sense that in given situation no man of prudence would call it excessive. The third situation occurs in the present case and therefore, while exercising very limited jurisdiction under Section 37, we have only to see as to whether the damages/ compensation awarded to Delkon is reasonable or not.

COUNTER CLAIM NO.1, 3 AND 5

36. On Counter claim no. 1, Learned Counsel for the appellant has argued that learned District Judge has ignored the fact that no evidence was led by the respondent-Delkon for claiming rate of Rs.270/- per MT of the unerected material and therefore, it is argued that award of Rs.30,526/- is not justified.

37. It is required to the noted here that the appellant has not challenged that respondent had transported 113.058 MT unerected material from the store of appellant to the site, which is also clear from the report of Local Commissioner. The Arbitrator adopted the formula for calculating the amount as per clause 57.3 (IA)(i) of the contract i.e. pro-rata basis. Accordingly, 10% of contract rate of Rs.2700/- i.e. Rs.270/- per MT had been charged and therefore, the Arbitrator held that cost of transportation of 113.058 MT of material works out to Rs.30,526/-.

38. Learned District Judge in the impugned order observed that when the fact of transportation of material by the respondent-Delkon is not in dispute, the respondent is entitled to be compensated for the cost so incurred and therefore, the only questions remain about quantifying the cost. Learned District Judge agreed with the Arbitrator that this cost works out to Rs.30526/-. We are of the opinion that this is bare minimum amount awarded to the claimant and even if it is presumed that some misapplication of the formula given in clause 57.3 (IA)(i), we do not find any unreasonableness in the amount awarded

towards transportation of material from the store of the appellant to the site.

39. The counter claim no. 3 is towards cost of pre assembly and part wielding completed. The Arbitrator had relied upon the report of Local Commissioner and awarded lesser amount of interest at the rate of 12% (against 15% as per clause 57.3 (1) (A) (i) of the contract) of the contract rate as appropriate and reasonable and held that value for 12.908 MT works out to Rs.4182/-. In appeal the appellant submits that clause 57.2 (1A)(i) does not deal with the breakup of the cost but instead pertains to the payment milestone. Again in our considered view, even if the aforesaid clause is misapplied, the awarded amount of Rs.4182/- is so meager that it has to be accepted as the cost of pre assembly and part wielding completed.

40. Counter claim no.5 is towards cost of erection and alignment work done. Grievance of appellant is that respondent-Delkon had preferred a claim for alignment of 153.526 MT whereas appellant-BHEL insisted that the quantity was 53.231 MT. The Local Commissioner had recorded the version of both the parties in his observations and considered a midway or mean approach as appropriate and worked out the weight alignment done to be 103.539 MT. Calculating it as per clause 57.3 (IA)(ii) of the contract he held that percentage payable for alignment work is 47% of the contract rate of Rs.2700/- per MT, which comes out to Rs.1269/- per MT and he worked out the value of cost of work done under this claim to Rs.131188/-.

41. The objection of appellant is on adoption of mean approach. It is argued that the appellant had only admitted figure of 53.231 MT and the sole Arbitrator had without any reason averaged the two figures i.e. 53.231 MT, as admitted by the appellant, and 153.526 MT as claimed by respondent.

42. We have considered this submission and find that the Sole Arbitrator noted the observation of the Local Commissioner that he could not further inspect this dispute of measurement, which means that more work of erection and alignment was done by respondent but it could not be ascertained by Local Commissioner due to paucity of time. Therefore, in absence of any other document, the Sole Arbitrator had no other way to ascertain full quantum of this alignment activity executed by respondent. In this fact situation, the Arbitrator adopted a mean approach and awarded bare minimum amount of Rs.1,31,188/-. In this fact scenario, which prevented the Local Commissioner to take full measurements of the work done under this head, we find no error in this approach.

43. The amounts awarded on counter claims no. 1, 3 and 5 are meager amounts and accordingly, we are not inclined to set aside the bare minimum cost awarded towards these counter claims. Doing so, would actually be highly unreasonable. Accordingly, we find no perversity or patent illegality in the approach of Arbitrator, which is duly upheld by learned District Judge.

COUNTER CLAIM NO.7

44. Counter claim no. 7 is towards illegal withholding of plant and equipments (T&P). The grievance of appellant is that learned District Judge ignored the fact that there was no evidence to show that the appellant had wrongfully denied the respondent to remove its T&P. However, this plea is not acceptable. Had the appellant not withheld T&P, there was no reason for respondent-Delkon to approach High Court. We would like to reproduce the relevant portion of the impugned award as under:

> *"**Decision:** From the High Court order dated 06.08.1997, first para on page 14 of orders in OMP no. 37/97 (volume-XII), it is clear that claimant did object, at one stage, to removal of Respondent's T&P from the plant. Second para on this page states "..... with a direction hat on NTPC issuing a clearance certificate to the petitioner to the effect that the tools, plants or any other material belong to the petitioner, the respondent and CISF shall permit the removal of such goods by the petitioner". It shows that Claimant (respondent in the said order) indeed had a role in withholding of Respondent's T&P. Under these conditions, Respondent could not use the withheld T&P at their other projects as stated by them. Hence, Respondent is entitled to claim withholding charges for their T&P from Claimant".*

45. Nothing has been shown by learned Counsel for the appellant to assail the aforesaid finding of the Arbitrator. Arbitrator, after discussion of all the facts, held that T&P was withheld for 210 days. He calculated this amount, assuming that value of T&P was Rs.40 lakhs and considering its life as 4 years, the withholding charges worked out to Rs.10 lakhs per year, which is 25% of Rs.40 lakhs. Accordingly, he calculated

withholding charges for 210 days @ Rs.10 lakhs per year which worked out to be Rs.5,75,342/-.

46. The argument of learned Counsel for the appellant is that there is no evidence on record to show that value of T&P was Rs.40 lakhs. Further, no evidence has been led to prove respondent's claim on damages. Learned counsel for the appellant assailed the method adopted by the Arbitrator for calculating withholding charges.

47. We have considered these submissions. In order to understand as to whether the withholding charges are reasonable or not, it is to be ascertained as to what T&P was withheld by the respondent. To make this issue more clear, we would like to point out that Local Commissioner in its report dated 01.04.1997 found the following machinery to be withheld by the appellant-BHEL:

> *"**6.** Following construction equipment, tools and plants found at site:-*
>
> | | |
> |---|---|
> | *a) 20 T capacity coles crane* | *1 number* |
> | *b) 8T Capacity Escorts Hydra crane* | *1 number* |
> | *c) Escorts Tugger Tractor* | *1 number* |
> | *d) 20T cap. trailors* | *2 numbers* |
> | *e) 10T capacity winch M/s Electric* | *1 number* |
> | *f) 2T capacity winch M/s. Electric* | *5 number* |
> | *g) Hand winch M/s 5T* | *3 numbers* |
> | *h) Welding rectifier M/s.* | *4 numbers* |
> | *i) Welding transformer M/s* | *19 numbers* |
> | *j) Pulling & Lifting M/s* | *7 numbers* |
> | *k) Chain pully Blocks* | *4 numbers* |

l)	*Hand grinding M/s*	*6 numbers*
m)	*Wire rope pulley of various rangers*	*35 Numbers*
n)	*Screw Jacks and Hydraulic Jacks*	*10 Numbers*
o)	*Gas cutting set with regulators*	*8 numbers*
p)	*Wire ropes, slings, turn buckets*	*Lots*
q)	*Power cable of various capacities*	*Lots*
r)	*Electrical switches of different ranges*	*25 numbers*
s)	*Matador pick up van*	*1 numbers*
t)	*Various small tools*	*lots."*

48. Taking this value of the withheld machinery, the Arbitrator proceeded to consider the damages in awarding Rs.5,75,342/- as under:

> *"Based on the value of withheld T&P as Rs. 40,00,000/- and considering its life as four years, the withholding charges work out to Rs. 10,00,000/- per year which is 25% of Rs. 40,00,000/-.*
> *Further, the High Court order for removal of T&P is dated 06.08.1997. But Respondent has removed T&P in December 1997 and claimed withholding charges for 345 days from 21.01.1997 to 31.12.1997. Respondent has not given any reason as to why they took a long period of about 165 days to remove the T&P from the date of High Court order. The Tribunal considers this long period as absolutely unreasonable and, hence, does not accept it. In fact, Respondent went to the extent of approaching the High Court for removal of T&P. This clearly shows their eagerness to remove the T&P at the earliest. Under these conditions, Tribunal considers a period of 30 days after the High Court order as sufficient and reasonable for removal of T&P, particularly as the Respondent has stated to possess all required and relevant documents of taking the T&P inside the plant premises. Hence, Respondent should have removed all T&P within 30 days of the High Court order i.e., by 05.09.1997. Accordingly, the period for computing withholding charges should be up to 05.09.1997 only i.e., for 210 days. Thus, T&P withholding charges for 210 days @ Rs. 10,00,000/- per year work out to Rs. 5,75,342/-."*

49. The learned District Judge concurred with the findings of the Arbitrator concluding that the counter claim was partly awarded upon a method of computation that is practical, plausible and reasonable in the circumstances of the case.

50. After perusing the material available on record, we are of the opinion that in respect of the heavy machinery, the Arbitrator has reached to a plausible conclusion that the value of the withheld machinery would be about Rs.40,00,000/- and the depreciation value to be Rs.10,00,000/-. We concur with the learned District Judge on Arbitrator's finding on the computation of 210 days and the methodology adopted for awarding Rs.5,75,342/- to the respondent on account of the appellant's illegal withholding of T&P. In other words the Arbitrator had some basis for calculating withholding charges of Rs.5,75,342/-, which is not at all unreasonable if we consider the nature of T&P which included heavy equipments/machinery including two Cranes, one Tractor, two Trailors and one Metador Pickup Van etc. and the duration of 210 days for which the same were withheld. Hence, we agree with the view of Arbitrator and learned District Judge on contract clause no. 7 being reasonable and uphold the same.

COUNTER CLAIM NO. 13 AND 15

51. The respondent-Delkon had raised these counter claims towards cost of mobilization and demobilization of T&P, equipment and manpower. The appellant has drawn our attention to the observation of Arbitrator that Delkon has not submitted

any documents for actual expenses incurred by them in mobilization and demobilization. Therefore, awarding a sum of Rs.10,52,800/- is based upon mere surmises and conjectures.

52. We have considered the submissions. Learned Arbitrator relied upon Local Commissioner's report to say that major T&P available at the site reasonably matches with the T&P deployment plan. Thus, he reached to a conclusion that most T&P had been mobilized and manpower was mobilized up to about 62/65 persons and a considerable portion of overheads had already been consumed for mobilization of resources. Similar was the case with demobilization, which happened early due to termination of the contract. Therefore, the Arbitrator was of the opinion that 65% portion of the overheads would not be considered unreasonable, even though no documents for actual expenses have been submitted by the respondent-Delkon. The Arbitrator held as under:

> *"Respondent has claimed an amount of Rs.6,04,800/- towards mobilization cost and Rs.4,48,000/-- towards demobilization, adding up to a total of Rs.10,52,800/-. This claim amount, being only marginally higher than 65% of the 5% overheads mentioned in analysis of unit rates, is considered reasonable and hence, accepted."*

53. We are of the opinion that even if no documents were furnished by respondent-Delkon before the Arbitrator, the conclusion of the Arbitrator has been arrived at on "the analysis of unit rates", which is Annexure –E to Tender No. BHEL: NR(SCT):RGTTP:BLR:42. This Annexure – E forms the part of the contract No. 50/96 between the parties. This finding of

Arbitrator, about 65% of the overheads having been consumed in mobilization and demobilization, is a finding on fact and therefore we are not inclined to go deeper into it especially when it is based upon Local Commissioner's report. The Arbitrator has calculated these charges on the basis of Annexure – E. Therefore, even if no documents were filed by Delkon to prove expenditure of this overhead, the calculation by learned Arbitrator is reasonable and justified.

54. Learned District Judge observed that the award of amount of Rs.10,52,800/- towards mobilization and demobilization costs cannot be held to be without reasons or material evidence on record and held that as long as there is sufficient material available on record on the basis of which an estimation of loss/expenses/costs incurred can be drawn, an award of that estimate can be granted. We are of the opinion that view of learned District Judge is correct on this issue especially when the Arbitrator had based his estimation on the basis of Local Commissioner's report and "analysis of unit rates" which is part of the contract. The Arbitrator adopted a rough and ready method with reasonable and honest guess work on this issue. Consequently, we find no infirmity in the impugned award and the impugned judgment on this issue.

COUNTER CLAIM NO.22

55. Under this counter claim, the Arbitrator awarded the pre reference and pendente lite interest on various claims, tabulation of which has been reproduced in earlier part of this judgment.

The total interest on the counter claims was calculated at Rs.6650560/-. Learned Counsel for the appellant has relied upon clause 17 of General Instructions to the Tenderers, which forms part of contract between parties. This clause is reproduced as under:

> *"No interest shall be payable by BHEL on Earnest Money Deposit, Security Deposit or on any moneys due to the contractor".*

56. It is argued by learned Counsel for appellant that despite specific bar under Clause 17, the Arbitrator awarded pre reference and pendente lite interest. Therefore, it is prayed that the award on counter claim no. 22 is liable to be set aside.

57. On the other hand, learned Counsel for the respondent-Delkon argued that the bar on awarding interest is applicable to the amounts which are due to the contractor under the contract. It is submitted that the Arbitrator has, therefore, not awarded pre reference and pendente lite interest on any of the counter claims which arose from terms and conditions of the contract. It is submitted that he awarded pre reference and pendente lite interest only on those claims for damages etc. which arise due to illegal termination and breach of contract and therefore, clause 17 was not applicable to such counter claims. Hence, it is argued that learned District Judge was justified in upholding the award on counter claim no. 22.

58. Before discussing the law, it would be appropriate to reproduce the view of the Arbitrator as under:

> *"Seeing the counter claims, it is observed that these claims fall under two categories. First category includes*

counter claims which are strictly as per the terms of the contract. Counter claim nos. 1 to 6 (for the work done), counter claim no. 18 (PVC) and counter claim no.19 (for refund of security deposit) are as per the terms of the contract and fall under this category, as also under first part of the aforesaid Section 28 (3).
Second category of counter claims includes all claims other than those in the first category. These counter claims are not as per any terms of the contract and have arisen entirely due to termination of the contract. In fact, these counter claims would not have come up if the contract had not been terminated by Claimant and the Respondent had been allowed to complete the work. As such, these counter claims fall under the faster part of the said Section 28(3).

For the counter claims falling in the first category as mentioned above, in view of clause 17 of the contract barring interest payment, arbitral tribunal does not have the owner to award interest pendente lite under Section 31(7) of the Act. Hence, no interest pendente lite can be awarded on these counter claims. For other counter claims falling under second category, which are not as per the terms of the contract, Section 31 (7) of the Act empowers the arbitral tribunal to award, along with other money, interest for the period between the date on which the cause of action arose and the date on which award is made. However, it is left to the arbitral tribunal to decide the rate of interest as it deems reasonable, amount on which interest is to be paid and the period for which interest is to be paid. In the instant case, in view of the termination of contract being held illegal, the Tribunal is of the opinion that payment of interest pendente lite must be considered on the amounts being awarded against counter claims of second category.

59. Therefore, the question relating to the award of pre reference and pendente lite interest on the counter claims of second category falls for consideration.

60. In **Bharat Heavy Electricals Limited v. Globe Hi-Fabs Ltd., (2015) 5 SCC 718,** the Supreme Court was dealing with clause 3.3 (ix) of the General Conditions of the Contract governing the parties, which is reproduced as under:

"No interest shall be payable by the employer on earnest money, security deposit or on any money due to the contractor by the employer."

61. This clause is similar to the clause 17 as applicable to our case which has already been reproduced. The Supreme Court in the aforesaid judgment was dealing with the question about the sweep of the words "*any amount due to the contractor by the employer*". The Supreme Court held that meaning of these words cannot be restricted to the dues which are similar to earnest money or security deposits by use of the principle of *ejusdem generis* **and held that the clause barring interest is very widely worded**. In other words, the Supreme Court held that bar on payment of interest is applicable to any kind of money payable by employer to the contractor.

62. In **Garg Builders v. Bharat Heavy Electricals Limited, Civil Appeal No. 6216 of 2021 (arising out of SLP (C) No. 16320 of 2018) decided on October 4, 2021,** the Supreme Court was dealing with Clause 17 of the contract, which is similar to the Clause 17 relevant to the present contract. The Arbitrator in the said case had awarded the pre reference and pendente lite interest. This award of interest was set aside by a Single Judge of this Court under Section 34 of the Act. A Co-ordinate Bench of this Court upheld the view of the Single Judge in appeal under Section 37 of the Act. Accordingly, Garg Builders filed appeal against the said order. The Supreme Court after considering the rival submissions relied upon relied upon **Bharat Heavy Electricals Limited v. Globe Hi-Fabs Ltd. (Supra)** and held

that when there is an express statutory permission for the parties to contract out of receiving interest and they have done so without any vitiation of free consent, it is not open for the Arbitrator to grant pendente lite interest.

63. In **Union of India v. Manraj Enterprises 2021 SCC OnLine SC 1081**, the Supreme Court of India was dealing with Clause 16 (2) of General Conditions of Contract governing the contract between the parties, which prohibited payment of interest. Clause 16 (2) is reproduced as under:

> *"(2) No interest will be payable upon the earnest money or the security deposit or **amounts payable to the Contractor under the Contract**, but Government Securities deposited in terms of Sub-clause (1) of this Clause will be repayable with interest accrued thereon".*

64. This clause is also similar to the Clause 17 relevant to the present case. The short question before the Supreme Court was in view of the specific Clause 16 (2) of GCC, whether the contractor was entitled to any interest pendente lite **on the amounts payable to the contractor other than upon the earnest money or security deposit.**

65. The Supreme Court while relying upon the above cited judgments held as under:

> *"13. Further, heavy reliance is placed on the decision of this Court in Pradeep Vinod Construction Co. by the learned counsel appearing on behalf of the respondent. The same shall not be applicable for the reason that the said decision is by a two-Judge Bench and the contrary view taken by this Court in Bright Power Projects (India) (P) Ltd. Is by a three-Judge Bench. Also, in Pradeep Vinod Construction Co., this Court has not considered the binding decision of this Court in Bright Power Projects (India) (P) Ltd., which is by a Bench of three Judges. Even*

> *otherwise, the same is prior to the decision of this Court in Tehri Hydro Development Corpn. (India) Ltd., and the said subsequent decision of this Court is also a three-Judge Bench decision. Moreover, in Pradeep Vinod Construction Co., though in Clause 16(2), THE EXPRESSION USED IS "OR AMOUNTS PAYABLE TO THE CONTRACTOR UNDER THE CONTRACT", THIS Court has only considered the non-award of interest on earnest money and security deposit. In any case, in view of the subsequent decisions of this Court, referred to hereinabove and in view of Clause 16(2) of the GCC, the arbitrator could not have awarded the interest, pendente lite or future interest on the amount due and payable to the contractor under the contract in the instant case."*

66. Applying the law laid down by the Supreme Court in aforesaid judgments, we conclude that the words "any moneys due to the contractor" as appearing in Clause 17 of General Instructions to Tenderers are very wide worded and encompass not only the money payable by BHEL for any work done as per contract but also are applicable to any compensation or damages or any kind of claim on account of breach of contract and illegal termination of contract as happened in this case.

67. Here we would like to reproduce the relevant portion of arbitration clause 33 of General Instructions to Tenderers as under:

> *"33 ARBITRATION*
> *All disputes between the parties to the contract arising out of or in relation to the contract other than those for which the decision of the Engineer or any other person is by the contract expressed to be final and conclusive, shall after written notice by either party to the contract to the other party, be referred to sole arbitration of the General manager or his nominee….."*

68. This arbitration clause indicates that claim may not only be restricted to the contract but also on account of any issue in

relation to the contract. It means that such claim may also pertain to the claims on account of breach of contract. The Arbitrator has distinguished between the claims which arise out of the contract and the claims of damages which were awarded on account of illegal termination of contract. We are of the opinion that aforesaid arbitration clause envisages both type of disputes and claims and therefore, to make a distinction between two types of claims for awarding or not awarding the pre-reference and pendente lite interest is not acceptable.

69. Accordingly, we set aside the impugned award and the impugned judgment on counter claim no. 22.

CONCLUSION

70. In view of the above discussion, the impugned award and the impugned judgment on counter claims no. 1, 3, 5, 7, 13 and 15 are upheld. However, the impugned award on counter claim no.22 pertaining to pre-reference and pendente lite interest is hereby set aside.

71. Accordingly, we find no infirmity in the award directing the appellant to make payment of Rs.2942065/-. Here we have noticed that the Arbitrator has awarded interest at the rate of 14.15 per cent on this amount with effect from 01.07.2021. It requires some modifications. Section 31 (7) (b) of the Act makes a provision for interest from the date of award to the date of payment. In the present case, the award was announced on 02.06.2021 but the Arbitrator directed the appellant to pay the

interest from 01.07.2021 i.e. after four weeks from the date of award. We deem it appropriate to direct that the appellant shall pay simple interest @ 14.15 per ce nt on the awarded amount of Rs.2942065/- from the period starting from 02.06.2021 till the date of actual payment. This modification brings the interest in line with the mandate of Section 31 (7) (b) of the Act.

72. With these directions, the appeal is partly allowed.

73. Parties to bear their respective costs.

VINOD KUMAR, J

V. KAMESWAR RAO, J

JANUARY 08, 2026
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