



2026:DHC:3221



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 15.04.2026**+ **O.M.P. (COMM) 81/2018, I.A. 2399/2018 & I.A. 19955/2025****NTPC LIMITED**

.....Petitioner

Through: **Mr. Adarsh Tripathi & Mr.  
Vikram Singh Baid, Adv.**

versus

**MUDAJAYA CORPORATION, MALAYSIA  
BERHAD**

.....Respondent

Through: **Mr. Manish Sharma & Mr.  
Ninad Dogra, Adv.****CORAM:****HON'BLE MR. JUSTICE AVNEESH JHINGAN****AVNEESH JHINGAN, J. (ORAL)**

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') aggrieved of award dated 27.10.2017

2. The brief facts are that the petitioner on 17.09.2003 invited bids for the Make-up Water System Package for Kahalgaon Super Thermal Power Project Stage-II (for short 'water system'). The respondent was the successful bidder. Two contracts were awarded *vide* Notice of Award dated 07.05.2004, one for installation and the other for supply of the water system. The total value of the contracts was Rs.22,52,37,818/-. The stipulated date for competition of work was



06.10.2006 but was actually completed on 03.09.2009 i.e. after a delay of about thirty-five months. The time for completion of the work was extended on 03.06.2010 without levy of penalty. Disputes arose between the parties and the contract provided for dispute resolution through arbitration. The proceedings initiated at the instance of the respondent culminated in the impugned award. The claims filed by the respondent are tabulated below:

Claim 1- Extra expenditure incurred due to difficulties faced in excavation of earth	Rs.89,96,657/-
Claim 2- Extra expenditure incurred due to difficulties faced on account of access road	Rs.45,61,821/-
Claim 3- Extra expenditure incurred due to non-disclosure of material information in bid documents	Rs.2,55,94,030/-
Claim 4- Extra expenditure incurred due to delay in delivery of M.S. Pipes	Rs.94,03,419/-
Claim 5- E Extra expenditure incurred due to non-barricading	Rs.21,50,500/-
Claim 6- Extra expenditure incurred due to change in pipeline routing by NTPC	Rs.39,59,842/-
Claim 7- Extra expenditure incurred in shifting the existing pump and splitter cone from one place to another	Rs.22,96,800/-
Claim 8- Loss suffered due to change in scope of transmission tower foundations	Rs.3,53,200/-



Claim 9- Expenses incurred due to undesired and forced extended active stay of workforce, equipment, machine, etc.	Rs.5,84,10,000/-
Claim 10- Illegal deduction of entry tax	Rs.1,00,49,425/-

2.1 The two counter-claims filed by the petitioner were dismissed. Claim nos. 1, 5, 6, 8, 9 and 10 were allowed. Interest at the rate of 12% was awarded along with litigation costs of Rs.51,26,552/-.

3. Learned counsel for the petitioner submits that Clause 26.2 of the General Conditions of Contract (for short 'GCC') provides for liquidated damages (for short 'LD') on account of delay attributable to the contractor and there is no corresponding provision entitling the contractor to LD in case of delay imputed to the employer. It is contended that the tribunal erred in relying upon Clause 26.2 for awarding damages to the respondent.

3.1 The reliance of the tribunal on the decision of the Supreme Court in **Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.**, (2007) 8 SCC 466 is challenged on the ground that the decision was purely dependent on the facts of that case where there was a clause that the contractor was entitled to LD for delay attributable to the owner in completing the work, whereas no such clause is there in the case in hand.

3.2 It is submitted that the claims made by the respondent are not for loss of profit but for extra expenses incurred due to delay in completion of the contract. Further that the LD stipulated for delay on the part of the contractor are for compensating the loss to be sustained



by the petitioner and the respondent stand on a different footing for the loss suffered if any, due to delay in completion of the work. The emphasis is that the clause for LD against the contractor could not have been relied upon for awarding LD to the respondent.

3.3 Contention is that in the absence of proof of actual loss or damage suffered the tribunal erred in awarding damages to the respondent. Reference is placed on the decisions of the Supreme Court in **M/s Unibros v. All India Radio**, 2023 SCC OnLine SC 1366, **Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited & Anr.**, 2023 SCC OnLine SC 1208 and **Bharat Coking Coal Ltd. V. L.K. Ahuja**, (2004) 5 SCC 109.

4. *Per contra*, the scope of interference under Section 34 of the Act is limited and a plausible view taken by the tribunal by passing a reasoned award, in the absence of perversity cannot be interfered with. Reliance is placed upon the decision of the Supreme Court in **Jan De Nul Dredging India Pvt. Ltd. v. Tuticorin Port Trust**, 2026 INSC 34. The decision of the Supreme Court in **Dyna Technologies Private Limited v. Crompton Greaves Limited**, (2019) 20 SCC 1 is pressed into service to contend that the reasons in an award even if implied from a reading of the award as a whole shall be sufficient for compliance with Section 31(3) of the Act.

4.1 The awarding of damages is defended contending that the tribunal dealt with the legal objections as well as the causes for delay and thereafter agreed with the pleaded case of the respondent that it would be difficult to prove actual loss or damage suffered. The



tribunal made an honest guess work by adopting the yardstick under Clause 26.2 of the GCC for awarding LD without actually invoking the clause. Reliance is on the decision of the Division Bench of this court in **M/s Cobra Instalaciones Y Servicios, S.A & Shyam Indus Power Solution Pvt. Ltd. (J.V.) v. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)**, 2024:DHC:2880-DB to fortify the argument that for awarding damages some guess work is to be made.

4.2 The contention that the decision of the Supreme Court in **Numaligarh Refinery Ltd.** (supra) is not applicable in the facts of the case is refuted stating that the reasonable yardstick adopted by the arbitrator in that case was upheld by the Supreme Court and the facts are similar to the present case.

5. Heard learned counsel for the parties at length and perused the relevant record with their able assistance. No submission other than those noted above was pressed.

6. The finding that the delay of thirty-five months in completion of the work is attributable to the petitioner is not under challenge. There is also no challenge to the refund of entry tax, the interest granted and the litigation costs awarded. The challenge is confined to the awarding and quantification of damages to the tune of Rs.1,12,61,890/-.

7. The tribunal before dealing with the claim of damages considered the causes of delay and the legal objections. The contention of the petitioner that the respondent had waived the right to claim damages after having signed the letter of extension stating “without any additional financial implication to NTPC and NTPC reserves the right to levy LD at a later date” was rejected.



8. The tribunal after recording detailed reasons and appreciating the evidence adduced held that the petitioner was in breach of the contract and responsible for delay under the following six heads:

(i) failure to provide full legal and physical possession of the site land and access thereto in terms of Clause 10.2 of the GCC which resulted in delay of about thirty-five months in completion of the project;

(ii) delay of one year and nine months in obtaining statutory permissions from the Railway Authority for pushing the pipeline beneath the railway track;

(iii) delay caused in execution of the contract due to failure of the petitioner to stop fountain leakages of waters from Air Release Valves (ARV) of the existing M.S. Pipeline Stage-I which continued for more than one year;

(iv) delay caused due to failure to provide 'As-built Drawings' resulting in deviation and re-routing of the work of stage-II M.S. pipeline and 33 kv Overhead Transmission (OHT) line;

(v) delay caused in not issuing the permit for shifting the raw water pump no.1 & 4 due to fouling of splitter cone of pump no.1;

(vi) delay caused on account of non-approving of deviation and re-routing of Stage-II MS pipelines and 33 kv OHT transmission tower line.

9. The tribunal observed that the impact of delays under different heads could not be assessed mathematically and an overall view of the matter was required to be taken. The respondent had pleaded that in view of the nature of the work and the causes of delay it was not



possible to prove actual loss or damage suffered. The tribunal accepted the case set up by the respondent and by a reasoned award held that the case in hand would fall under Section 73 and not under Section 74 of the Contract Act.

10. The legal issue as to whether in every case actual loss or damage suffered has to be proved under Section 73 was considered by the tribunal in detail. The decisions of the Supreme Court in **Mcdermott International INC v. Burn Standard Company Limited**, (2006) 11 SCC 181, **MSK Projects vs. State of Rajasthan**, (2011) 10 SCC 573 were considered and the decisions relied upon by the petitioner in **Construction And Design Services v. Delhi Development Authority**, (2015) 14 SCC 263, **ONGC v. SAW Pipes**, (2003) 5 SCC 705, **Kailash Nath Associates v. Delhi Development Authority**, (2015) 4 SCC 136, **Mahanagar Telephone Nigam Ltd. V. Tata Communications Ltd.**, (2019) 5 SCC 341 and **Fateh Chand and Balkishan Das**, 1963 AIR 1405 were discussed and held to be not applicable in the facts of the present case.

11. For quantification of damages the tribunal noted that the contract was in two parts one for supply and the other for installation of the water system. The work commenced on 07.05.2004 and was to be completed by 06.10.2006 but was actually completed on 03.09.2009 with a delay of thirty-five months attributable to the petitioner. Due to the delay the respondent suffered damages by way of escalation of costs of material, labour and other expenses. It was reiterated that in the facts of the case it would be difficult to prove damages under each claim separately and the tribunal proceeded to



award reasonable compensation for the damage suffered.

12. For making a reasonable estimate of damages the tribunal adopted the yardstick of Clause 26.2 of the GCC which provides for LD for late completion of the work by the contractor, capped at 5% of the total contract value. The decision of the Supreme Court in **Numaligarh Refinery Ltd.** (supra) was relied upon to support adoption of such a yardstick for assessing damages in the facts and circumstances of the case in hand.

13. The scope of interference under Section 34 is well defined by the decisions of the Supreme Court in **Prakash Atlanta (JV) v. National Highways Authority of India**, 2026 INSC 76, **Consolidated Construction Consortium Limited Vs. Software Technology Parks of India**, (2025) 7 SCC 757, **Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO)**, 2025 INSC 1457, **Parsa Kente Collieries Limited. v. Rajasthan Rajya Vidyut Utpadan Nigam Limited**, (2019) 7 SCC 236, **Associate Builders v. Delhi Development Authority**, (2015) 3 SCC 49 and **Sepco Electric Power Construction Corporation Vs. GMR Kamalanga Energy Ltd.**, 2025 INSC 1171 wherein it is held that an award under Section 34 cannot be set aside for every factual or legal error. Interference can be made only in cases of patent illegality, perversity or conflict with the fundamental policy of India. The court does not sit in appeal over the findings of the arbitral tribunal and re-appreciation of evidence is not permissible.

14. The contention of learned counsel for the petitioner that damages could not have been awarded in the absence of proof of



actual loss or damage suffered lacks merit. The Supreme Court in **Kailash Nath Associates** (supra) held that where it is not possible to prove actual loss or damage with precision reasonable compensation can be awarded. The relevant extract of the judgement is reproduced below:

“35. ...It is true that in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree, and the Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. But the expression ‘whether or not actual damage or loss is proved to have been caused thereby’ is intended to cover different classes of contracts which come before the courts. In case of breach of some contracts it may be impossible for the court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine pre-estimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of a penalty.....”

14.1 The Division Bench of this court in **Tower Vision India (P) Ltd. v. Procall (P) Ltd.**, 2012 SCC OnLine Del 4396 held:

“16...When it is not possible to calculate accurately or in a reasonable manner, the actual amount of loss incurred or when the plaintiff has not been able to prove the actual loss suffered, he will be, all the same, entitled to recover nominal damages for breach of contract. Where nominal damages only are to be



awarded, the extent of the same should be estimated with reference to the facts and circumstances involved.....”

(emphasis supplied)

15. The argument that the damages were awarded by relying upon Clause 26.2 of the GCC which was not applicable to delay attributable to the petitioner is factually incorrect. The damages were awarded under Section 73 of the Contract Act for the loss suffered due to delay in completion of the work attributable to the petitioner. After holding that actual loss cannot be proved in the facts of the case, the tribunal adopted the yardstick under Clause 26.2 of the GCC for quantifying the damages. There cannot be a quarrel with the proposition that for assessing damages some amount of guess work is involved. The decision relied upon by learned counsel for the respondent of this Court in **M/s Cobra Instalaciones Y Servicios, S.A & Shyam Indus Power Solution Pvt. Ltd. (J.V.)** (supra) and Supreme Court in **McDermott International Inc.** (supra) support this proposition.

16. The contention that the judgement of the Supreme Court in **Numaligarh Refinery Ltd.** (supra) is not applicable in the facts of the present case as there was no clause providing for LD in case of delay on the part of the petitioner is noted to be rejected. The tribunal awarded damages under Section 73 of the Contract Act and not under Section 74. The decision was relied upon by the tribunal to fortify that a reasonable yardstick for assessing damages in the facts of the case can be the amount agreed between the parties for levy of LD upon the contractor in case of delay.



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17. The grievance that the claims made by the respondent were not for loss of profit but for extra expenditure incurred due to prolongation of the contract is of no avail. The nomenclature used shall not determine the nature of the relief claimed, more so in view of the findings recorded by the tribunal that it was not possible to deal with each of the claims separately along with the six causes of delay and their intricate connections. In facts and circumstances of the case in hand the extra expenses incurred were compensated by award of damages. The plausible conclusion arrived at by the tribunal supported by detailed reasons is not perverse.

18. No case is made out for interference under Section 34 of the Act. The petition is dismissed. All pending applications stand dismissed.

**AVNEESH JHINGAN, J**

**APRIL 15, 2026/ 'JK'**

Reportable:- **Yes**