



2026:DHC:1585



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

% **Judgment reserved on: 12.02.2026**
Judgment pronounced on: 23.02.2026

+ O.M.P. (COMM) 297/2024

**PRIMETALS TECHNOLOGIES INDIA PRIVATE
LIMITED**

Through: Mr. Rajesh Markanda, Mr.
Keshri Kumar & Mr. Saurav
Markanda, Advs.

versus

**STEEL AUTHORITY OF INDIA LIMITED
& ORS.**

.....Respondents

Through: Mr. Siddharth Yadav, Sr. Adv
with Mr. Ashish Tiwari, Mr.
Anurag Tiwari and Mr. Sahib
Patel, Advs.

**CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') challenging the arbitral award dated 24.05.2024.

FACTS

2. A conspectus of the facts necessary for disposal of the case is that the parties to the *lis* executed a contract on 12.10.2007 (for brevity 'the contract') for installation of the 'Power Supply Facility (package-II) for 700 TPD ASU-4 in Oxygen Plant no. II' at Bhilai Steel Plant (for short 'BSP'). The work was to be completed by the petitioner within fifteen months and was for a price of



Rs.18,45,54,310/-. The contract was executed, the commission certificate and the final acceptance certificate were issued on 20.06.2012 and 12.12.2013 respectively. The petitioner submitted final invoices on 12.02.2019 and Rs.1,07,61,378/- was deducted for shortfall in minimum guaranteed CENVAT credit (for short 'MGCC'). Upon failure of conciliation attempts, arbitration proceedings under clause 6 of the General Conditions of the Contract (for short 'GCC') were invoked on 07.02.2022.

3. The only dispute involved in the present petition is vis-a-vis claim nos.3 and 4 framed by the arbitrator, which read as under:

- “3. Whether the Claimant is entitled to the declaration from this Hon'ble Tribunal that the amount of Rs.1,07,61,378 deducted by the Respondent on account of shortfall of guaranteed CENVAT is bad in law ?
4. Whether the Claimant is entitled to reimbursement of Rs.1,07,61,378 deducted by the Respondent on account of shortfall of guaranteed CENVAT ?”

4. The issues were decided against the petitioner/claimant. Hence, the present petition.

SUBMISSION OF THE PETITIONER

5. Learned counsel for the petitioner contends that the arbitrator travelled beyond the terms of the contract. In the absence of clause permitting deduction for shortfall in MGCC the arbitrator erred in upholding the deduction. The contention is that clause 14.5.2 of the contract provides only for non-reimbursement of excise duty. It is submitted that the award was passed without application of mind and that the arbitrator relied upon a non-existent clause providing that in



case of excess CENVAT, the petitioner would be entitled to 50% thereof.

SUBMISSION OF THE RESPONDENTS

6. *Per contra*, the petitioner violated the terms of the contract. Upon failure of the petitioner to pass on the MGCC as provided under Article 2.1 of the contract, the respondents were entitled to deduct the amount of shortfall in MGCC. It is argued that Article 2.1 of the contract overrides the GCC. Further that, as per the petitioner, the shortfall in MGCC was due to variation in the rate of taxes but neither clause 14.6.2 was complied with by submitting proof of variation in the rate of taxes within the stipulated time nor such evidence was adduced before the arbitrator. It is canvassed that under clauses 14.6.1, 14.6.2 and 14.6.3, the contract price can be adjusted only in case of variation in the rate of taxes leviable on finished equipments and not on raw materials, parts, component, intermediate components, assemblies, sub-assemblies etc.

6.1 It is emphasized that the scope of interference is limited to the grounds available under Section 34 of the Act. The view taken by the arbitrator is plausible and no case is made out for interference by this court.

RELEVANT CLAUSES OF THE CONTRACT

7. Before proceeding further, it would be relevant to reproduce Article 2.1 of the Contract and clauses 11.1, 11.2, 11.2.1, 14.5.2, 14.6.1, 14.6.2 and 14.6.3 of the GCC.

“2.1 Contract Price (Reference GCC Clause 11 & Appendix-1)



The Employer hereby agrees to pay to the Contractor the Contract Price in consideration of the performance by the Contractor of its obligations hereunder. The Contract Price shall be Rs.18,45,54,310/- (Rupees eighteen crore forty five lakh fifty four thousand and three hundred ten only), or such other sums as may be determined in accordance with the terms and conditions of the Contract. A minimum amount of Rs.2,16,42,894/- (Rupees two crore sixteen lakh forty two thousand and eight hundred ninety four only) is to be passed on to BSP as CENVAT credit.

11. Contract Price

11.1 The Contract Price shall be as specified in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement. The break-up of the Contract Price is given in the Appendix-1 to the Contract Agreement.

11.2. Price Basis

11.2.1 The Contract Price shall be for the entire scope of the Facilities including spares, oils, grease, lubricants, flushing liquor, chemicals for pickling etc. required till commissioning of the Facilities, imported surplus material and scrap in any form generated in side the plant premises. The contract price shall be inclusive of all taxes and duties and comprise inter-alia of Basic price, excise duty, sales tax, VAT including sales tax/VAT on works contract / Works Contract Tax), octroi, Turn Over Tax (TOT), Entry Tax, Service Tax, Education Cess and any other duties, taxes and levies, as may be applicable and prevailing on the base date of the contract and insurance. The payment of duties, taxes, levies, etc. will be reimbursed (on actual) against documentary evidence to be produced by the contractor, subject to a ceiling indicated in the price schedule of the contract.

In no case the reimbursement towards duties and taxes,



etc., shall exceed the amount indicated in Appendix-1 towards duties, taxes, levies, etc. except as indicated in Sub-Clause 14.6.1, hereof.

14.5 CENVAT Credit

14.5.2 The Contractor shall submit the necessary documents required by the Employer to avail the CENVAT Credit. In case the Contractor fails to submit the required document for claiming the CENVAT Credit by the Employer in respect of certain plant & equipment, the amount of Excise Duty on such indigenous plant & equipment and Counter Veiling Duty on such imported plant & equipment, shall not be paid by the Employer to the Contractor.

14.6 Variations in Taxes & Duties

14.6.1 For the purpose of the Contract, it is agreed that the 'Contract Price' specified in Article 2 ("Contract Price" & "Terms of Payment") of the Contract Agreement is based on the taxes, duties, levies and charges prevailing on Base date (hereinafter called "Tax" in this Sub-Clause 14.6 hereof). If any rate of tax is increased or decreased, a new tax is introduced, an existing tax is abolished, or any change in interpretation or application of any tax occurs in the course of the performance of Contract, which was or will be assessed on the Contractor, Sub-Contractors or their employees in connection with performance of the Contract, an adjustment of the Contract Price shall be made as per Sub-Clauses 14.6.2 & 14.6.3, hereof, by addition to the Contract Price or deduction therefrom, as the case may be.

14.6.2 The adjustment in the Contract Price towards variation in the taxes shall be made by the Employer on production of the documentary evidences by the Contractor.

14.6.3 The Contract Price shall be adjusted towards variations in taxes in respect of only finished



equipment supplied by the Contractor to the Employer. No adjustment in the Contract price shall be made for variations in the taxes on raw materials, parts, component / intermediate components, assemblies / sub-assemblies, etc.”

8. The ‘contract price’ as defined in Article 2.1 of the contract is Rs.18,45,54,310/-, a minimum CENVAT amount of Rs.2,16,42,894/- was to be passed on by the petitioner to BSP.

8.1 As per Clause 11 of the GCC, the basis of the contract price was the scope of facilities including the consumables required for commissioning of the facilities, imported surplus material and scrap generated inside the plant. The contract price was inclusive of taxes, duties, cess, entry tax applicable and prevailing on the base date of the contract as well as insurance. The payments of the taxes, duties and levies were to be reimbursed on actual basis subject to production of documentary evidence by the petitioner. The reimbursement was subject to the ceiling indicated in the price schedule except for service tax.

8.2 Clause 14 deals with taxes and duties. Clause 14.5.2 obligated the petitioner to submit necessary documents to BSP for availing the CENVAT credit. Duty was not to be reimbursed on failure of the petitioner to furnish documents for availing the CENVAT credit.

8.3 Clause 14.6 relates to variation in taxes and duties. Clause 14.6.1 provides that on increase or decrease in the tax rate, introduction of a new tax, abolition of an existing tax, change in interpretation or application of tax during the course of performance of the contract, the contract price shall be adjusted as per clauses



14.6.2 and 14.6.3 by making the required addition or reduction in the contract price. Under clause 14.6.2, adjustment of the contract price for variation in taxes was to be made by the respondents on production of the documentary evidence by the petitioner. Under clause 14.6.3, the contract price was to be adjusted on variation in taxes in respect of finished equipments supplied and not for variation in taxes on raw materials, parts, components, intermediary components, assemblies or sub-assemblies.

ISSUE

9. Issue is whether the shortfall in MGCC which was not reimbursed could be deducted from the invoices?

ANALYSIS

10. The execution of the work and commissioning of the facilities are not in dispute. The admitted position is that there was a shortfall of Rs.1,07,61,378/- in MGCC, which was not reimbursed to the petitioner and deduction was made from the invoices raised.

11. It would be relevant to note that the gross contract price consisted of the following items:

S. No.	Description	Siemens Indian Rupees
1.	Supply of Plant & Equipment (a) Imported (FOB) (Refer Table-3) (b) Indigenous (At site) (Refer Table-4)	17,07,83,162/-
2.	Civil Engineering Work including Supplies (Refer Table-9)	74,25,665/-
3.	Storage, Handling, Erection,	63,45,483/-



	Commissioning, and P.G. Tests of Plant & Equipment (Refer Table-11)	
4.	Total contract Price (1 to 13)	18,45,54,310/-
5.	CENVAT Credit	2,16,42,894
6.	Contract Price (Net of CENVAT)	16,29,11,416/-

12. Article 2.1 provides that the petitioner shall ensure passing on the MGCC of Rs.2,16,42,894/-. The effect is that the gross contract price was Rs.18,45,54,310/- but after availing the benefit of MGCC the cost of the work for the respondents would be Rs.16,29,11,416/- which is the net contract price after credit of CENVAT and VAT. Clause 14.5.2 provides that upon failure of the petitioner to submit the required documents for claiming CENVAT there shall be no reimbursement of excise duty. *Albeit* in the case in hand, less excise duty paid resulted in a shortfall in MGCC but for this eventuality there is no clause in the contract providing for deduction of the amount for such shortfall. There cannot be quarrel with the proposition that no clause can be read into the contract entered between the parties.

13. The contention of the learned counsel for the respondents that Article 2.1 of the contract shall override the terms of the GCC is of no avail. Article 2.1 provides for MGCC to be passed on but it does not deal with the consequences in case of a shortfall.

14. The contract value is an amount payable to the petitioner for the work executed and is inclusive of taxes and duties. The MGCC is not a sum due for the work done but is a reimbursement of the duty paid



which may vary consequent to several factors including variation in the rate of taxes and change in the price of items.

15. The matter needs to be considered from another angle. The gross contract value was Rs.18,45,54,310/-. After giving credit of Rs.2,16,42,894/- towards MGCC, the work would cost the respondents Rs.16,29,11,416 /- (Net Contract Value). The position remained unchanged despite the shortfall in MGCC. The reimbursement of duty paid was Rs.1,08,81,516/- for which the respondents shall get CENVAT credit. By not reimbursing the shortfall in MGCC the respondents retained the balance amount of Rs.1,07,61,378/- and the net cost of the contract remained Rs.16,29,11,4161/-. In other words, for getting an MGCC of Rs.2,16,47,894/- the respondents had to pay Rs.18,45,54,310/- but upon reimbursement of excise duty of Rs.1,08,81,516/-, the respondents paid a sum of Rs.17,37,92,932/- i.e., Rs.1,07,61,378/- less than the gross contract value. Consequently, the net contract price payable for the work done remained unaffected by the shortfall in MGCC as it was not reimbursed and the amount remained with the respondents.

16. Whether variation in the rate of tax resulted in shortfall in MGCC and if contract price could be adjusted as per clause 14.6.1 for variation in rate of taxes on raw materials, components etc., need not be dilated upon. The arbitrator rightly held that the shortfall in MGCC shall not be reimbursed but there cannot be deduction for such shortfall thereby rendering the reasons for shortfall to be



inconsequential. For this very reason, non compliance of clause 14.6.2 shall not be fatal to the claim of the petitioner.

17. The arbitrator rightly took into account that the MGCC formed the basis of the tender valuation but failed to consider that despite the shortfall in MGCC, the net value of the contract remained unchanged.

18. The arbitrator travelled beyond the terms of the contract to reject the claim. To justify the conclusion arrived at, reference was made to a non-existing clause in the contract that 50% benefit of CENVAT would go to the petitioner. At the cost of repetition there is no clause for deducting the shortfall in MGCC from the invoices. It is a trite law that an arbitrator has to decide the dispute within the four corners of the terms and conditions of the contract. The venture of the arbitrator beyond the terms and conditions vitiates the award by patent illegality. Reference in this regard be made to the following decisions of the Supreme Court:

18.1 In **Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum, (2022) 4 SCC 463** held as under:

“43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.”

18.2 In **State of Chhattisgarh v. SAL Udyog (P) Ltd., (2022) 2 SCC 275** held as under:

“26. We are, therefore, of the view that failure on the part of the learned sole arbitrator to decide in



accordance with the terms of the contract governing the parties, would certainly attract the “patent illegality ground”, as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an award. The said “patent illegality” is not only apparent on the face of the award, it goes to the very root of the matter and deserves interference.....”

18.3 In Bharat Coking Coal Ltd. v. Annapurna Construction, (2003) 8 SCC 154 held as under:

“22. There lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record.”

(emphasis supplied)

19. The law is well settled that the parties are bound by the terms of the contract and the arbitrator cannot go into the fairness of the terms and conditions. In the case in hand in absence of a clause providing for deduction on account of shortfall in MGCC, the arbitrator proceeded on the basis that the petitioner had to make good the shortfall in MGCC but failed to point out the clause for providing such deduction.



20. The arbitrator erred in holding that the tax component formed part of the contract price and not the MGCC, whereas MGCC was the credit of excise duty paid which was part of the contract price.

21. The arbitrator relying upon clauses 11.2.1 and 14.5.2 of GCC and Article 2.1 of the contract rightly concluded that the petitioner had to ensure MGCC. However, while referring to clause 14.6.2 the arbitrator overlooked that no clause in the contract provides for deduction of shortfall in MGCC. On the contrary, under clause 14.5.2 in case of failure of the petitioner to submit documents enabling the respondents to avail CENVAT credit, the duty paid to that extent was not to be reimbursed. Moreover, clause 14.6.2 cannot be pressed into service in isolation and is to be read along with clauses 14.6.1 and 14.6.3. Clause 14.6.3 states that the adjustment in contract price would be made only for variation in taxes in respect of finished equipment supplied by the petitioner and not for variation in taxes on raw material, parts, component, intermediate components, assemblies, sub-assemblies etc., and is not applicable in facts of the present case.

22. The arbitrator while holding that the net outgoing would be the contract price reduced by MGCC, failed to consider that the net outflow of the respondents was not affected by any shortfall in MGCC. There was no basis to hold that the shortfall in MGCC could be deducted from the invoices and this tantamounts to adding terms to the contract between the parties which is not permissible in law.

CONCLUSION

23. In view of the above discussion, there is no clause in the contract for deducting the shortfall in MGCC; clause 14.5.2 only

