* **IN THE HIGH COURTOF DELHI AT NEW DELHI**

% **Judgment reserved on: 19.03.2026**
Judgment pronounced on: 28.03.2026

\+ O.M.P. (COMM) 393/2018, I.A. 12438/2018, I.A. 9666/2020 & I.A. 2738/2022

UEM INDIA PVT. LTD. .....Petitioner

Through: Mr. Gaurav Pachnanda, Sr. Adv. with Mr. Samir Malik, Ms. Snehal Kaila, Ms. Yachana Gupta, Mr. Udbhav Gady & Mr. Krishan Kumar, Advs.

versus

ONGC LIMITED .....Respondent

Through: Mr. Abhishek Puri, Ms. Surbhi Gupta & Mr. Sahil Grewal, 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') for setting aside of the award dated 14.12.2017.

2. The brief facts are that the petitioner M/s UEM India Private Limited, a registered company was the successful bidder in a tender invited by Oil and Natural Gas Corporation ('ONGC') for installation of one Effluent Treatment Plant (for short 'ETP') and three ETP-cum Water Injection Plants at four sites in Assam along with maintenance for seven years. The parties entered into contract on lump sum turnkey

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basis. The work was awarded on 30.03.2011 for a lump sum amount of Rs.119,34,58,347/-. The project was to be completed within thirty four months from the date of issuance of the Notification of Award (for short 'NOA') i.e. by 29.01.2014.

2.1 Clause 27 of the General Conditions of Contract (for short 'GCC') provided for dispute resolution through arbitration and the petitioner invoked arbitration. The petitioner claimed prolongation costs aggregating to Rs.10,30,00,000/-; losses to the tune of Rs.7,23,55,402/- due to breach of contract; losses amounting to Rs.105,60,00,000/- on account of being placed on a holiday list and amounts towards resources committed/consumed, damages, interest on capital cost and illegal invocation of the advance bank guarantee (for short 'ABG') and performance bank guarantee (for short 'PBG').

2.2 The respondent filed counter claims claiming:

(i) Compensation amount of Rs.86,54,26,860.44/- towards restitution of loss and damages on account of payments made to third party vendors;

(ii) Rs.15,19,72,222.33/- for production and revenue loss due to non-performance of various acts by the petitioner;

(iii) Rs.5,70,84,812/- incurred towards establishment costs for various acts of omission by the petitioner;

(iv) Cost of re-tendering to the tune of Rs.130,65,41,652/-;

(v) Rs.7,35,82,647/- as Liquidated damages (for short 'LD');

(vi) Refund of Rs.2,95,00,483.61/- for provisional progressive payments;

(vii) Rs.11,93,45,835/- towards PBG;

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(viii) Rs.53,93,047/- for interest on non-utilization of advances given by the respondent to the petitioner; and

(ix) Lastly Rs.23,86,91,669/- towards compensation of the loss and damages suffered due to wilful non-performance of the contract by the petitioner.

2.3 The claim of the petitioner of Rs.13,56,376/- for services rendered for soil investigation was accepted, the invocation of ABG of Rs.2,95,00,484/- was held to be illegal and the respondent was directed to refund it along with interest @ 12%, from the date of encashment till filing of the statement of claim. Interest *pendente lite* was awarded @ 9% per annum.

2.4 The counter claim for LD of Rs.7,35,82,647/- was accepted, interest @12% was granted from the date of termination of the contract till filing of the counter claim and *pendente lite* interest @ 9% per annum. The amount of PBG was determined as the quantum of damages over and above the LD. Both parties filed applications under Section 33 of the Act for correction of the errors. The application of the respondent was accepted and the typographical error in mentioning the LD in paragraph 474 of the award as Rs.73,58,264/- instead of Rs.7,35,82,647/- was corrected. Consequently, the interest awarded on the amount was modified. The application filed by the petitioner was rejected by the majority decision, being time-barred but the minority held that once the rectification application of one of the party was entertained, the errors pointed out by the other party should also be corrected.

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2.5 The only dispute pressed in the present petition is with regard to damages awarded over and above the LD, quantified equivalent to the PBG and the grant of interest thereon.

2.6 During the pendency of the petition vide order dated 30.04.2019, this court while exercising power under Section 34(4) of the Act considered the argument of the petitioner that the tribunal had not awarded damages to the tune of Rs.11,93,45,835/- as was evident from paragraph 474 of the award. The submission on behalf of the petitioner was that there was no grievance with regard to the other findings in the award. The respondent relied upon paragraphs 460 and 461 of the award to contend that the damages were awarded. This Court vide order dated 08.02.2019 exercised the power under Section 34(4) of the Act and the operative portion of the order is reproduced below:

> "8. The above quoted findings of the Arbitral Tribunal leave a doubt as to whether the Arbitral Tribunal has allowed the amount of Performance Bank Guarantee in favour of the respondent over and above the liquidated damages allowed under Counter Claim No.5. This is more so because in the Award the Arbitral Tribunal has observed that no damages over and above as prescribed in Clause 6.6 of the Agreement can be allowed in favour of the respondent, however, at the same time in paragraph 460 the Arbitral Tribunal has held that amount of the Performance Bank Guarantee furnished by the claimant cannot be said to be wholly unreasonable and in paragraph 461 it has held that the amount of the Performance Bank Guarantee furnished by the claimant is also treated as quantum of reasonable damages. In paragraph 457 the Tribunal has further

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> held that the respondent is entitled to damages in addition to the liquidated damages.
> 9. In view of the above, the present proceedings deserve to be adjourned, enabling the Arbitral Tribunal to consider the observations made hereinabove and act in terms of Section 34(4) of the Act, if so advised."

2.7 During the pendency of the proceedings pursuant to Section 34(4) of the Act, one of the members of the tribunal Justice (Retd.) S.B. Sinha expired and with the consent of the parties Justice (Retd.) Rameshwar Singh Malik was appointed as an arbitrator. The majority of the tribunal decided that damages to the extent of the PBG were awarded over and above the LD. The minority view was that the counter claim no. 7 claiming the amount of PBG was rejected and the direction for the refund of the PBG amount was inadvertently not given by the tribunal.

3. Learned counsel for the petitioner argued that from a reading of the award dated 14.12.2017 it is evident that no amount in excess of LD was awarded. *Albeit*, the PBG was held to be validly invoked but there was no quantification of damages. It was contended that the tribunal rejected the counter claim nos. 1 to 3 for failure of the respondent to prove damages and yet illegally awarded damages under Section 73 of the Indian Contract Act, 1872 (for short 'CA'). Reliance is placed on the decisions of the Supreme Court in **Kailash Nath Associates v. DDA**, (2015) 4 SCC 136 and **Fateh Chand v. Balkishan Dass**, 1963 SCC OnLine SC 49.

3.1 It is emphasised that the award is contradictory as on the one hand counter claim no. 7 claiming the amount towards PBG was

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rejected and on the other hand by the order passed pursuant to Section 34(4) the majority held that damages equivalent to the PBG were awarded. It is argued that while rejecting counter claim nos. 6 and 9, it was stated that the respondent was entitled only to LD. The decision in **Union of India & Anr. v. Sanghu Chakra Hotels (P) Ltd.**, 2008 SCC OnLine Del 912 is relied upon to fortify the contention that a contradictary award deserves to be set aside. The decision in **Vishnu Aggarwal v. Hindustan Petroleum Corpn. Ltd.**, 2019 SCC OnLine Del 9300 is relied upon to submit that a vague award is liable to be set aside being violative of Section 31(3) of the Act.

4. *Per contra*, the PBG was furnished as per clause 3.3 of the GCC and could be invoked upon failure of the petitioner to honour the contractual obligations. The LD under clause 6.3.2 pertains to delay in completion of work. Both the clauses operate in distinct fields. It is argued that the upholding of invocation of the PBG by the tribunal is not under challenge and there were no pleadings for refund of the PBG amount. The impugned award and the order passed under Section 34(4) is defended by stating that a reasoned decision was rendered holding respondent to be entitled to damages of Rs.11,93,45,835/- over and above the LD. Reliance is on the decision of the Supreme Court in **SAIL v. Gupta Brother Steel Tubes Ltd.**, (2009) 10 SCC 63 and the decision of the Calcutta High Court in **MBL Infrastructures Ltd. v. Ircon International Ltd.**, 2017 SCC OnLine Cal 21457 to buttress the argument that damages under heads not covered by the LD can be awarded.

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5. Heard learned counsel for the parties at length. Even though written submissions have been filed, learned counsel for the parties while arguing the matter at length have pressed only the contentions noted above.

6. The bone of controversy is limited to awarding of damages of Rs.11,93,45,835/-. The issue arises in two parts: first, as to whether damages were awarded in the original award despite not being reflected in the concluding paragraph and second, whether the damages if awarded are legally sustainable?

7. In paragraph 454 of award, the tribunal considered that the petitioner had performed only 5.86% of the contract and held that the respondent was entitled to encash the PBG. Referring to the decision of the Supreme Court in **Kailash Nath Associates** (supra) the tribunal in paragraph 461 held that in view of the miniscule fraction of the total work done by the petitioner, the economic viability of the project and the abandonment of the contract by the petitioner, the amount of PBG furnished is to be treated as the quantum of reasonable damages. The decision of the Calcutta High Court in **MBL Infrastructures Ltd.** (supra) was relied upon for upholding the invocation of the PBG and awarding damages. In paragraph 466 it was observed that 10% of the contract value cannot be said to be unreasonable as damages. Paragraphs 454, 460, 461,465 and 466 of the award are reproduced below:

> "454. The materials brought on record by the parties so far as breaches of contract on the part of the Claimant is concerned show that the Claimant has performed only 5.86% of the total Contract, in that view of the matter the

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> Claimant was entitled to encash the Performance Bank Guarantee to the extent of Rs.11,93,45,835/-.
>
> 460. Even if the Respondent has not been able to quantify the actual direct losses suffered by it, in the opinion of the Tribunal the amount of Performance Bank Guarantee furnished by the Claimant cannot be said to be wholly unreasonable.
>
> 461. The Tribunal is therefore of the opinion that taking into consideration the peculiar facts and circumstances of the case, interest of justice will be served if the amount of Performance Bank Guarantee furnished by the Claimant is also treated to be the quantum of reasonable damages.
>
> 465. In view of the aforementioned authoritative pronouncement the Tribunal is of the opinion that the counter Claimant cannot be said to have acted illegally in invoking the Performance Bank Guarantee.
>
> 466. In the aforementioned fact situation the Tribunal is of the opinion that 10% of the contract value cannot be said to be unreasonable and in that view of the matter the Counter Claimant is entitled thereto."

8. While the matter was being considered pursuant to Section 34(4) of the Act, one of the members of the tribunal expired and a new member was substituted. The proceedings were decided by majority and one of the original members dissented and recorded that damages over and above the LD were not awarded but the majority held that the damages were awarded. Without entering into the validity of the decision pursuant to Section 34(4) of the Act and in view of the settled position that an award has to be read as a whole, it is evident that 10% of the contract value was awarded as damages *albeit*, the figure was not mentioned in the concluding portion of the award. From the

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extracted paragraphs of the award, it is clear that the tribunal not only upheld the invocation of the PBG but also recorded a finding that the respondent was entitled to reasonable damages over and above the LD, quantified damages equivalent to the PBG amount.

9. Before dealing with the second limb that as to whether the damages awarded over and above the LD are legally sustainable, it would be relevant to quote the following decisions:

9.1 The Supreme Court in **Unibros vs. All India Radio,** 2023 SCC OnLine SC 1366 while dealing with a claim for redressal of loss of profit made under Section 73 of the CA arising from prolongation of the contract held:

> "19. The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions : first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case."

9.2 The Supreme Court in **Kailash Nath Associates** (supra) held:

> "43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded."

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9.3 The Supreme Court in **State of Rajasthan v. Ferro Concrete Construction (P) Ltd., (2009) 12 SCC 1** held:

> "55.While the quantum of evidence required to accept a claim may be a matter within the exclusive jurisdiction of the arbitrator to decide, if there was no evidence at all and if the arbitrator makes an award of the amount claimed in the claim statement, merely on the basis of the claim statement without anything more, it has to be held that the award on that account would be invalid. Suffice it to say that the entire award under this head is wholly illegal and beyond the jurisdiction of the arbitrator, and wholly unsustainable."

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

> "16. Consequence for breach of the contract are provided in Chapter VI of the Indian Contract Act, 1872, which contains three sections, namely, section 73 to section 75. As per section 73 of the Indian Contract Act, the party who suffers by the breach of contract is entitled to receive from the defaulting party, compensation for any loss or damage caused to him by such breach, which naturally arose in usual course of things from such breach, or which the two parties knew when they make the contract to be likely the result of the breach of contract. This provision makes it clear that such compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach. The underlying principle enshrined in this section is that a mere breach of contract by a defaulting party would not entitle the other side to claim damages unless the said party has in fact suffered damages because of such breach. Loss or damage which is actually suffered as a

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result of breach has to be proved and the plaintiff is to be compensated to the extent of actual loss or damage suffered. When there is a breach of contract, the party who commits the breach does not eo instanti, i.e., at the instant incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages. No pecuniary liability thus arises till the court has determined that the party complaining of the breach is entitled to damages. The court in the first place must decide that the defendant is liable and then it should proceed to assess what the liability is. But, till that determination, there is no liability at all upon the defendant. The courts will give damages for breach of contract only by way of compensation for loss suffered and not by way of punishment. The rule applicable for determining the amount of damages for the breach of contract to perform a specified work is that the damages are to be assessed at the pecuniary amount of difference between the state of the plaintiff upon the breach of the contract and what it would have been if the contract had been performed and not the sum which it would cost to perform the contract, though in particular cases the result of either mode of calculation may be the same. The measure of compensation depends upon the circumstances of the case. The complained loss or claimed damage must be fairly attributed to the breach as a natural result or consequence of the same. The loss must be a real loss or actual damage and not merely a probable or a possible one. 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. The

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> general principle to be borne in mind is that the injured party may be put in the same position as that he would have been if he had not sustained the wrong."
>
> (emphasis supplied)

10. Clause 3.3 of the GCC deals with the PBG. Under clause 3.3.1 the contractor within two weeks from the date of issue of the NOA had to furnish an unconditional and irrecoverable bank guarantee equivalent to 10% of the contract price for due performance of the contract. As per clause 3.3.3 the respondent was entitled to invoke the PBG on failure of the petitioner to honour the contractual obligations. Clause 3.3.5 provides that in case of a delay in completion of the project beyond the scheduled date of completion, the respondent without prejudice to other rights and remedies could operate the PBG for recovery of LD. Clause 6.3.2 deals with LD for non-completion of work within scheduled time and provides that the respondent may recover LD at the rate of 0.5% per week subject to maximum of 10% of the total contract price. The clause provides that upon partial completion and acceptance of part of the work the LD shall apply only to the balance work. A conjoint reading of clause 3.3 and clause 6.3.2 indicates that they operate in different fields. Clause 3.3 pertains to securing due performance of the contract and enabling invocation of the PBG in case of breach whereas clause 6.3.2 governs the levy of LD for delay in completion of the work.

11. There is no challenge to the LD awarded for delay in completion of the project. It is undisputed that only 5.86% of the project was completed by the petitioner and consequently the PBG

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was invoked. The challenge is to the quantification of damages inspite of the failure of the respondent to prove actual loss. Clause 3.3 provides for furnishing and invocation of the PBG but does not stipulate the quantification of damages. In counter claim nos. 1 to 3, the respondent claimed damages under various heads including payments to third-party vendor, production and revenue losses on account of non-performance, compensation towards establishment costs and for re-tendering of the project however, the claims were rejected for lack of proof. For claiming damages under Section 73 of the CA the claimant has to prove the loss suffered and in case it is not possible to prove the actual damages, a reasonable amount of damages is to be assessed. It was neither the case set up before the tribunal nor it was held that in the facts of present case the actual damages cannot be proved. Rather the respondent failed to prove the counter claims nos. 1 to 3 claiming damages under various heads. In absence of a proof of actual damages and without recording a finding that actual damages could not be proved the tribunal proceeded to conclude that 10% of the contract value shall be a reasonable damages to be awarded over and above the LD. The basis for quantification is missing and the awarding of damages is vitiated for violating Section 31(3) of the Act whereby a reasoned award is to be passed.

12. The Supreme Court in **Dyna Technologies Private Limited v. Crompton Greaves Limited**, (2019) 20 SCC 1:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to

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thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute. 35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy ofreasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards."

(emphasis supplied)

13. Another aspect is that for want of evidence three different heads in counter claim nos. 1 to 3 were rejected by the tribunal but damages were quantified without discussing the heads under which the damages were being awarded. This renders the award self-

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contradictory, on one hand the tribunal rejects the counter claims under specific heads for want of proof and on the other hand awards damages over and above the LD without identifying the heads of loss suffered. Further while deciding the counter claims for compensation and damages arising from wilful abandonment of the contract it was held that the respondent was only entitled to the LD and no other claims. The award of damages is contrary to public policy being against the law laid down by the Supreme Court and is in violation of Section 73 of the CA.

14. The contention that there were no pleadings for refund of the PBG is rejected. Suffice it to say that the petitioner is not aggrieved by the invocation of the PBG but by the appropriation of the PBG amount. From a perusal of the pleadings, it is evident that the reliefs claimed included the amount of the PBG.

15. There is no quarrel with the proposition that damages for breaches not covered by a clause of LD can be awarded over and above the cap provided for which **SAIL** (supra) is relied upon.

16. The decision of the Calcutta High Court in **MBL Infrastructures Ltd.** (supra) is not applicable to the facts of the present case. In that case, the court held that damages for lack of performance of the contract cannot be denied for the reason that the claim for additional expenses was disallowed and there was no nexus between the two claims.

17. The Supreme Court in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**, (2025) 7 SCC 1 held that while an arbitral award

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cannot be modified under Section 34 of the Act, a severable part of the award may be set aside. The relevant paragraphs are quoted below:

> "32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones. [The "validity" and "invalidity", as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.
>
> 33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.
>
> 34. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

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(emphasis supplied)

18. In the case in hand, the claims of the petitioner for rendering services, refund of ABG and the counter claim of LD are separable and not inter-connected and shall not be affected by the setting aside of damages of Rs. Rs.11,93,45,835/- awarded to the respondent over and above the LD.

19. The award to the extent of allowing the counter claim of the respondent awarding damages to the tune of PBG over and above the LD is set aside. The petition is allowed. All pending applications are also disposed of.

AVNEESH JHINGAN, J.

MARCH 28, 2026/Pa

Reportable:-Yes

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