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

Date of Decision: 24.07.2025

\+ **O.M.P. (COMM) 77/2021**

UNION OF INDIA .....Petitioner

Through: Mr. Mukul Singh, CGSC with Ms. Ira Singh, Mr. Aryan Dhaka, Mr. Adhiraj Singh, Advs.

versus

M/S. RAIL TRACK CONCRETE PRODUCTS PRIVATE LIMITED .....Respondent

Through: Mr. Sauvik Nandy, Sr. Adv. with Mr. Sarad Singhania, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: JASMEET SINGH, J (*ORAL*)

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to challenge the majority Award dated 07.05.2019, which was corrected/modified on 25.12.2019.

2. The facts are that the respondent/claimant participated in the open tender called by the Railway Board for manufacture and supply of Pre-stressed Mono-Block concrete sleepers to RDSO drawing No. T/2496.*Vide* letter dated 19.11.2009, the Railway Board issued a counter offer which was unconditionally accepted by the respondent/claimant, whereafter the Railway Board issued a Letter of Acceptance dated 08.01.2010.

3. As per the Letter of Acceptance, the ordered quantity of sleepers was 1

lakh numbers (1,00,000 numbers) with a delivery period of 2 years, 37 days, i.e. upto 25.12.2011 and the average rate of production required was @ 4,000 numbers of sleeper per month or at least 139 numbers per day.In terms of the aforesaid letter of acceptance, a ContractAgreement being CA No. CE/CS-19/2010 dated 16.03.2010 was executed between the parties and the date of delivery as per Contract was 25.12.2011.

4. However, the respondent/claimant produced only 38,913 numbers of sleepers against the total order supply of 1,00,000 numbers of sleepers and 61,087 numbers of sleepers remained as balance.

5. Disputes arose when the petitioner sought to levy Liquidated Damages (***"LD"***) as per clause 12 of the Contract without formally terminating the Contract or issuing notice, and proceeded to make recoveries from other dues payable to the respondent. The respondent/claimantvide letter dated 28.01.2013 invoked arbitration as per Clause 2900 of Indian Railway Standard Conditions of Contract. The said Clause 2900 reads as under:

> *"2900 Arbitration*
>
> *(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions), the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts*

entered into by the Railway Board; and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator, however, will not be one of those who had an opportunity to deal with the matters to which the contract relates or who, in the course of their duties as Railway Servant, have expressed views on all or any of the matters under dispute or difference. The Award of the arbitrator shall be final and binding on the parties to this contract."

6. The majority Award found the imposition of LD to be invalid and directed a refund if any amount was deducted.

7. Feeling aggrieved by the said majority Award, the present petition has been filed.

8. Mr. Singh, learned CGSC appearing on behalf of the petitioner has drawn my attention to the Clause Nos. 4.1, 10.3, 12 and 17 of the Contract Agreement which read as under:

*"**4.1** Cement shall be procured by the contractor from the nominated primary/ secondary source as per the rate, terms and conditions fixed by the purchaser with cement suppliers. The contractor should always maintain a reserve buffer stock of cement adequate for at-least 2 months sleeper production.*
***10.3.** If the contractor fails to deliver the store within the delivery period as per contract or as extended or at any time repudiates the contract before the expiry of such period due to any circumstances whatsoever, save as provided in Clause*

10.4 and force majeure Clause 17, the purchaser reserves the right to cancel the contract for the balance quantity in whole or in part and recover from him the liquidated damages as per Clause 12. If, however, the stores are accepted after the expiry of the period fixed for delivery, the purchaser may grant an extension of the delivery period at it's sole discretion, subject to the following conditions:

(a) That the purchaser has the right to recover from the contractor the liquidated damages in terms of clause 0702 of IRS Conditions of Contract on the stores, which the contractor has failed to deliver within the period fixed for delivery;

(b) That no increase in price on account of any statutory increase in or fresh imposition ofCustoms Duty, Excise Duty, Sales Tax, Freight Charges or on any account of any other tax orduty leviable in respect of the stores specified in the contract, which takes place after the date of delivery period stipulated in the said Acceptance of Tender shall be admissible on such of the said stores as are delivered after said date;

(c) That not withstanding any stipulation in the contract for increase in price on any other grounds no such increase which takes place after the delivery date stipulated in the contract shall be admissible on such of the said as are delivered after the said date;

d) But nevertheless the purchaser shall be entitled to the

benefit of any decrease in price account of reduction in or remission of Customs Duty, Excise Duty, Sales Tax or on account of any other ground which takes place after the expiry of the above-mentioned date namely the delivery date stipulated in the contract. The contractor shall allow the said benefit in his bills or in the absence thereof shall certify that no decrease in price on account of any of these factors has taken place.

12. Liquidated Damages for Failure to Complete Supplies Within Delivery Period or Termination of Contract:

The Liquidated damages in pursuance of clause 0702 of IRS Conditions of Contract will be limited to a maximum of 5% of the cost of stores which the contractor fails to deliver within the period fixed for delivery in the contract or as extended, where delivery of the store is accepted after expiry of the aforesaid period. In case, the delivery of the store is not accepted by the purchaser after expiry of the period fixed for delivery in the contract or as extended or the contract is terminated before expiry of the contract due to failure of the contractor to execute the contract as per the agreed terms and conditions of the contract during it's currency, the liquidated damages equivalent to 5% of the cost of sleepers undelivered/cancelled would be recovered from the contractor.

17. Force Majeure:

In the event of any unforeseen event directly interfering with

the supply of stores arising during the currency of the contract, such as war, insurrection, restraint imposed by the Government, act of legislature or other authority, explosion, accident, acts of public enemy, acts of God, the contractor shall within a week from the commencement thereof notify the same in writing to the purchaser with reasonable evidence thereof.

If the force majeure condition(s) mentioned above be in force for a period of 90 days or more at any time, the purchaser shall have the option to terminate the contract on expiry of 90 days of commencement of such force majeure by giving 14 days notice to the contractor in writing. In case of such termination, no damages shall be claimed by either party against the other save and except those which had accrued under any other clause of this agreement prior to such termination."

9. It is stated by the learned counsel for the petitioner that since LD were an integral part of the Contract, no prior show-cause notice was needed and it was within their rights to impose LD.Further, relying on Clause No. 0700 of Indian Railway Standard Conditions of Contract, he states that time is the essence of the Contract.Clause No. 0700 of Indian Railway Standard Conditions of Contract reads as under:-

"0700 Time for and Date of Delivery:- the Essence of the Contract - ; Essence of the Contract - The time for and the date specified in the contract or as extended for the delivery of the stores shall be deemed to be of the essence of the

contract and delivery must be completed not later than the date(s) so specified or extended."

10. It is also stated that since the majority Award held that the labour strikes were not covered under the *force majeure*Clause and the respondent was liable for the delays, the LD should have been awarded to the petitioner.

11. *Per Contra*, Mr. Nandy, learned senior counsel for the respondent/claimant, supports the Award and states no interference is required. He submits that the petitioner failed to fulfil reciprocal obligations, including timely supply of cement through its nominated supplier and timely arrangement of wagons.

12. Further, it is stated that since the Award rendered by the learned Arbitral Tribunal held that no LD could be imposed, the direction to refund the amount deducted is justified and reasonable. The Award rendered by the minority Arbitrator that the petitioner is entitled to LD in respect of their counter claim No.1 for undelivered balance quantity of slippers of Rs. 49,16,251/-, as per clause No. 12 of the Contract Agreement and as vetted by the finance department,was not based on any reasonable ground and also suffers from perverse finding, which cannot stand in the eye of law. Moreover, no reasoning or interpretation has been given by the learned minority Arbitrator while passing an Award in favour of the petitioner.

13. I have heard learned counsel for the parties.

14. The scope of interference under Section 34 has been dealt with in a catena of cases. In ***Consolidated Construction Consortium Limited v. Software Technology Parks of India 2025 INSC 574***,the Hon'ble

Supreme Court explained the scope of section 34 and held as under:

"23. *Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral Award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2A) of Section 34. It is the only remedy for setting aside an arbitral Award. An arbitral Award is not liable to be interfered with only on the ground that the Award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral Arbitrator. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral Arbitrator is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The Award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.",*

Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and

has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act."

15. In the present case, the Arbitral Tribunal framed issues in paragraph 5 which read as under:-

"5. Issues: During the hearing, the following issues for determination have been framed with mutual consultation of the parties to the dispute.

5.1. Whether or not the Respondent were right in recovering the LD non-supply of material under the contract, after the contract ceased to exist/expired?

5.2. The Respondent submitted that they had suffered due to non-supply of material and whether or not they should be compensated."

16. Upon considering the material on record, the majority members of the Arbitral Tribunal came to the conclusionthat the imposition of LD by the petitioner was done unilaterally and without affording the respondent an opportunity of being heard. The Arbitral Tribunal found that the petitioner failed to issue any prior notice or provide any explanation as to the breach, thereby violating the principles of natural justice. This was one of the grounds, amongst others, for the Arbitral Tribunal in allowing the respondent's/claimant's claims. The relevant portion of the Award reads as under:

"6.2 ……The AT, after going through the records, is convinced that the Respondent, even after deciding to impose

LD in consultation with their finance wing as a part of their internal working, never intimated to the Claimant that LD has been imposed. The Claimant was never given an option to defend their failure in contrast to principle of 'natural justice' which is the key for any proposed action. While the Respondent has argued that according to the terms of the contract, he was not obliged to inform any action initiated against the Claimant to the Claimant, The AT feels that the terms of contract is silent on the issue and the Respondent was bound to inform any pecuniary action proposed against the Claimant following the rule of the land which gives due importance to 'natural justice'. The Claimant deserves an opportunity to defend his case.....”

17. I am in agreement with the reasoning adopted by the majority members of the Arbitral Tribunal. While it is true that the imposition of LD was provided in the contract, the enforcement of such a provision must be in consonance with the principles of natural justice. The mere existence of a contractual clause providing for LD does not empower a party to act unilaterally, especially where the imposition entails civil consequences, such as pecuniary deductions from payments otherwise due. The Tribunal rightly held that the petitioner failed to adhere to the minimum requirements of fair procedure. The respondent/claimant was neither issued a prior notice nor given an opportunity to offer any explanation or justification for the alleged breach.

18. No show cause notice or communication was placed on record to suggest that the respondent/claimant was ever made aware of the

petitioner's intent to impose LD or that deductions would be made from future Running Account (R.A.) Bills on that account.The failure to communicate such critical information effectively deprived the respondent/claimantof procedural fairness.

19. A reading of the award further reveals that the petitioner did not extend the delivery period, which ultimately led to the automatic termination of the contract. The Arbitral Tribunal also took note of the reasons for delay in performance, which included an early onset of rains, landslides, and a labour strike all of which were found to be genuine grounds for seeking an extension. Despite this, the petitioner failed to issue any notice to the respondent/claimant regarding its intention to impose LD for non-execution of the contractual quantity at any point during the validity of the contract. The Arbitral Tribunal, after perusing the records, was convinced that even after the petitioner internally decided to impose LD in consultation with its finance department, no intimation of the same was ever given to the respondent/claimant. Therefore, the imposition of LD without such notice was rightly held to be in breach of the principles of natural justice.

20. Further, I find no merit in the petitioner’s contention that the Arbitral Tribunal erred in holding that time was not of the essence of the contract. A perusal of the Award indicates that the Arbitral Tribunal rightly questioned the petitioner’s conduct that if time was truly regarded as the essence of the contract, it is unclear why the petitioner sought a request for an extension letter from the respondent/claimant. The very inclusion of a clause for extension of the contract period suggests that time could not have been the essence of the Contract. This

view is supported by settled legal principles and judicial precedents, which hold that when a contract permits extension of time, it cannot be strictly said to be governed by the principle of time being of the essence.Further, the Arbitral Tribunal took into consideration various factors, including delays attributable to both parties.The relevant portion of the Award reads as under:

> *"6.2 .....If they considered the 'time as an essence' of the contract, why did they ask for a request of extension letter from the Claimant? The very fact that there was provision for extension of validity period in the contract, it follows from the legal position on the issue by court rulings that such contract cannot be said to be guided by time being the essence of contract even though the Respondent has referred to a provision in the contract. It is a fact that the contract was not in existence when the action for imposition of LD was processed by the Respondent and more over by not giving an opportunity to the Claimant to defend, the imposition of LD was technically and legally incorrect and was not in the spirit of making a contract successful which is the onerous responsibility of both the parties. The contract did not proceed with the required speed so as to be completed in time. In contrast, there has been mismatch between expectation from both the parties…."*

21. The learned Arbitral Tribunal has rightly taken into account the existence of an extension clause within the contract, which indicated that time was not intended to be of the essence. This contractual

provision, coupled with the petitioner's own conduct in seeking a request for extension from the respondent/claimant, supported the Arbitral Tribunal's conclusion that the time was not of the essence and imposition of LD could not have been automatic or unilateral. The findings of the Arbitral Tribunal are a plausible interpretation of the terms of the contract based on facts and evidence placed on record.There is nothing to suggest that the Tribunal misappreciated the evidence or gave a perverse finding. In view of this, the Arbitral Tribunal's findings warrant no interference.

22. It is well-settled that under Section 34 of the Arbitration and Conciliation Act, 1996, the Court does not sit in appeal over an Award and cannot substitute its own view merely because another view is possible. Since the above findings are neither contrary to the terms of the Contract, nor irrational, perverse, opposed to public policy, or vitiated by patent illegality, no interference is warranted.

23. For the said reasons, there is no merit in the present petition and the same is dismissed.

JASMEET SINGH, J

JULY 24, 2025/sp
(Corrected and released on 02.08.2025)