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

% Reserved on : 30.01.2025
Pronounced on : 06.05.2025

\+ **O.M.P. (COMM) 203/2020**

DELHI DEVELOPMENT AUTHORITY ..... Petitioner
Through: Ms. Kritika Gupta, Advocate

Versus

M/S NARAINDAS R ISRANI ..... Respondent
Through: Mr.Vivekanand and Mr.Abhishek,

**CORAM:**
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. The present petition has been filed raising certain objections under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter, the 'A&C Act') against the award dated 22.01.2009 (hereafter, the 'impugned award') delivered by the Arbitral Tribunal comprising of Sole Arbitrator (hereafter, 'AT') with respect to Claims No. 1&39, 5, 7, 14, 16, 20, 23, 28, 31, 34, 44, 45, 46, 47, 48&49.

2. The impugned award came to be delivered in the context of contract dated 24.12.1987 which came to be executed in consequence of a Public Tender invited by the petitioner for "*Construction of 152 Nos. Houses for Cat-II & Cat-III (76 Cat-II & 76 Cat-III) & 114 Scooter garages i/c water supply etc. in Group-I under SFS Sector-I, Pocket K&Lat Sarita Vihar.*"

The stipulated date of start of work was 03.01.1988 and stipulated date of completion was 02.04.1989. The work actually came to be completed on 31.03.1992.

**DISPUTES BEFORE THE ARBITRAL TRIBUNAL**

3. The respondent/Claimant approached AT and filed forty-nine claims. The AT awarded Claim Nos. 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 15, 17,18, 19, 21, 22, 24, 25, 26, 27, 29, 30, 32, 33, 35, 36, 37, 38**,** 40, 41, 42, 43 in favour of the petitioner and Claim Nos. 1&39, 5, 7, 14, 16, 20, 23, 28, 31, 34,44, 45, 46, 47, 48&49 against the petitioner. At the time of issuance of the notice vide order dated 13.10.2009, the petitioner had restricted the challenge to claim nos. 1, 31, and 39. However, subsequently, the petitioner filed FAO (OS) No.655/2010 assailing the order dated 13.10.2009 before the Division Bench of this Hon'ble Court. The Division Bench of this Hon'ble Court vide judgment dated 09.09.2011 disposed of the FAO stating that limited notice could not have been issued.

4. Out of the said claims, the petitioner in this petition has challenged Claim Nos. 1&39, 5, 7, 14, 16, 20, 23, 28, 31, 34, 44, 45, 46, 47, 48&49. During the course of submissions, the petitioner's counsel, on instructions, states that challenge to awarded Claim Nos. 48&49 are not being pressed. A brief of claims challenged, amounts claimed and awarded by the arbitrator are laid down hereinafter:

| **Claims Challenged** | **Claimed Amount (In Rs.)** | **Awarded Amount (In Rs.)** |
|---|---|---|

| | | |
|---|---|---|
| **Claims No. 1 & 39** – Claimant claimed expenses incurred towards idle labour, establishment and hire charges for tools and plants. | 6,25,456 | 1,88,200 |
| **Claim No. 5** - Claimant claims triple stage shuttering of Balconies, as 30% extra C/S is being done. | 36,000 | 36,000 @ Rs.185.75 sqm |
| **Claim No. 7** – Claimant claims cost of cement concrete blocks of size 10x10x15cms executed in brick work to anchor pressed steel door frames provided as per agreement item No. 6.2. | 20,151 | 6,651 |
| **Claim No. 14** – Claimant claims for plastering walls of height above 10 metres. | 21,260 | 21,260 |
| **Claim No. 16** – Claimant claims for extra brick work in square/rectangular pillars. | 397 | 260 |
| **Claim No. 20** – Claimant claims for reinforcement provided in half brick work which was not paid. | 8,767 | 8,767 |
| **Claim No. 23** – Claimant claims for dewatering of the area due to over flood of tributary/rivulets. | 50,000 | 32,000 |
| **Claim No. 28** – Claimant claims interest on blocked money due to non-timely payment of full rate of extra | 1,21,669 @31% | 15,149 |

| | | |
|---|---|---|
| and substituted items. | | |
| **Claim No. 31** – Claimant claimed for loss of profitability due to prolongation of the contract period. | 45,79,000 | 8,33,335 |
| **Claim No. 34** – Claimant claims on expenditure in maintaining staff and labour after maintenance period to handover possession to allottees. | 5,72,400 | 48,000 |
| **Claim No. 44** - Claimant claims interest on final bill Rs.67,31,755. | 23,67,878 @30% | 7,87,729 @10% |
| **Claim No. 45** - Claimant claims an amount of Rs.3,58,000/- on account of refund of rebate deducted wrongly on monthly running account bills. | 3,58,000 | 2,71,194 |
| **Claim No. 46** - Interest claim on late payment under Clause 10 CC for payment of Rs.27,90,125/-. | 20,18,966 | 1,69,737 |
| **Claim No. 47** - Claimant claims an amount of Rs.70,000/- on account of short measurement of SCI pipes due to adopting wrong methods | 13,438 | 13,438 |
| **Claim No. 48 & 49** - Claimants claims pre-suit, pendente lite and future interest under these claims. | @30% per annum | Simple Interest @10% (pendente lite), 9% (from passing of the award till |

| | | |
|---|---|---|
| | | payment/decree) per annum |
| | Total Claimed Amount – Rs. **1,07,93,382** | Total Awarded Amount – Rs. **24,31,720** |

**IMPUGNED AWARD**

5. **Claims No.1 and 39:** This claim was partially allowed by the AT to the tune of Rs. 1,88,200/-by noting that the delay in completion of the physical work was attributable to the petitioner on account of initial non-availability of site, shortage of materials which was to be supplied by the petitioner. The AT rejected the claim in so far as the establishment like graduate engineer, supervisor, accountant etc were concerned and restricted the award to compensation for idle labour, machinery, centering & shuttering.

6. **Claim No.5:** AT accepted the claim to the tune of Rs. 36,000/- by observing that the respondent did the triple stage centering and shuttering for the RCC projected balconies which has not been denied by the Department. Moreover, it has been noted that Condition 3.15 of the agreement is loosely worded and extension of time was granted without levy of compensation.

7. **Claim No.7:** The claim was partially allowed to the tune of Rs.6,651/- while noting the dimensions and price of the concrete block used for fixing the lugs of the steel door frames.

8. **Claim No.14:** AT allowed the Claim to the extent of Rs.21,260/- in light of insertion of Item No. 9.11 in the schedule of quantities of the Contract. AT observed that the Claim for payment of plastering exterior

walls over 10 meters was justified.

9. **Claim No.16:** The Claim was allowed to the extent of Rs.260/- by observing that the brickwork in square/rectangular pillars was only executed in the boundary wall and accordingly, the aforesaid amount was awarded.

10. **Claim No.20:** AT allowed the Claim to the extent of Rs.8,767/- for reinforcement that was to be paid separately. While awarding the Claim, the AT has relied on CPWD specification 1977, Volume 1 regarding half brick masonry wherein it is stated that the reinforcement had to be provided separately.

11. **Claim No.23:** AT partially allowed the Claim to the extent of Rs.32,000/- for charges towards dewatering of the area due to over flood of tributary/rivulets. The AT relied on Condition 3.15 of the agreement which stipulates that the respondent has to keep all works in good condition at the site and make good the same if there is damage due to rains. AT noted that there was no damage to the work but the claim was awarded for dewatering the site.

12. **Claim No.28:** AT partially allowed the Claim to the extent of Rs.15,149/-, holding that the petitioner was not entitled to deduct conditional rebate while sanctioning rates of extra/substituted items without fulfilling the conditions of rebate.

13. **Claim No.31:**The Claim was allowed to the extent of Rs.8,33,335/- towards loss of profitability. The AT has calculated the loss suffered by the respondent in accordance with the CPWD index.

14. **Claim No.34:** AT allowed the Claim to the extent of Rs.48,000/- towards expenses incurred by the respondent for watch and ward of

constructed premises after construction has been complete but before the allotment of the houses.

15. **Claim No.44:** AT allowed the Claim to the extent of Rs.7,87,729/- towards interest on the final bill. The AT has awarded 10% interest on the following amounts:

a. on Rs.7,64,302.65 for the period from 01.10.1992 to 23.10.2000 amounting to Rs.6,16,258/-.

b. on Rs.4,24,302.65 from 24.10.2000 to 18.09.2004 amounting to Rs.1,65,652/-

c. on Rs.21,696/- from 20.09.2004 to 27.05.2007 amounting to Rs.5,819/-

16. **Claim No.45:** AT allowed the Claim to the extent of Rs.2,71,194/- towards refund of rebate wrongly deducted by the Department. The AT has noted that the Department did not perform reciprocal obligation of clearing running bills of the respondent on time and hence, is not entitled for rebate.

17. **Claim No.46:** The Claim was allowed to the extent of Rs.1,69,737/-, holding that there were certain shortcomings with the formula used by the petitioner for calculating the amount to be paid under clause 10CC of the agreement.

20. **Claim No.47:** AT allowed the Claim to the extent of Rs.13,438/- on account of short measurement of SCI pipes due to adoption of wrong methods. It was observed by the AT that portion of spigot end of the SCI pipe goes into the socket and has not been accounted for while making payments to the respondent.

21. **Claims No.48 and 49:** the Claim of the respondent was allowed to

the effect of awarding 10% simple interest per annum on amounts awarded under Claim Nos. 5,7,14,16,20,23,28,45,46 and 47 with effect from 01.10.1992 and on claim No. 34 from 01.08.1993 to the date of the award. Moreover, the AT also awarded a simple interest at 9% per annum on the awarded amount of all claims from the date of award to the date of payment or decree, whichever is earlier.

**SUBMISSIONS BEFORE THIS COURT**

22. The petitioner submits that the claims awarded in favour of the respondent has been passed without giving due consideration to the evidence and are against the provisions of the Agreement entered into between the parties. With Respect to Claims No. 1&39, the petitioner contends that the AT has failed to provide reasons for non-applicability of Clause 10 of the agreement, which bars any compensation or damages on account of any delay in non-supply of materials by the Department. The petitioner goes on to submit that the respondent has not provided any evidence for salary, wages, hire charges of machinery, PF payments, etc to prove that it incurred extra expenses due to idling of its resources. While challenging Claim No. 5, the petitioner contends that the AT has failed to consider Condition 3.15 of the Specifications and Conditions of the agreement which prescribes that the rates quoted by the respondent shall hold good for all heights and depths. In so far as Claim No. 7 is concerned, petitioner contends that Item 6.2 mentioned in the agreement also provides for press steel door frames to be fixed by M.S. Steel Lugs in CC blocks and nothing extra is payable on this account and that the AT has failed to give any finding on this contention. It

is submitted that the claim amount was reduced without providing reasons. With regards to Claim No. 14, the petitioner contends that AT failed to consider Condition 37 of the Specifications and Conditions of the agreement which states that the scaffolding shall be done from the outside for all heights and nothing extra is payable on this account. While assailing Claim No. 16, the petitioner contends that the claim has been awarded without any evidence and it was the specific case of the respondent that the material was not executed at site of work. While challenging Claim No. 20, the petitioner contends that the AT has wrongly relied on CPWD specifications as it contains numerous items which are not part of the agreement. Moreover, it is contended that the Agreement did not provide for payment of extra item on this account and that is why no claim was raised for the present item during the execution of the work. With Respect to Claim No. 23, the petitioner contends that the AT's reasoning is inherently contradictory and in violation of the Condition 3.15, which states that nothing extra shall be payable to the respondent for maintaining all work in good condition till the completion of the work. With respect to Claim No. 28, the petitioner contends that deductions are on account of conditional rebate of 2.70% offered by the respondent in the Agreement which are recoverable by the petitioner and the AT has wrongly awarded the claim in favour of the respondent. To challenge Claim No. 31, the petitioner submits that the AT has awarded the claim relying solely on the CPWD price index which is not approved of by this Court as in other cases it is not held to be the correct method. Moreover, she submits that no evidence was led by the respondent to buttress its claim for loss of profits. Reliance is placed on State of

Rajasthan &Anr. v Ferro Concrete Construction Pvt. Ltd.[1], Bharat Coking Coal vs LK Ahuja[2] and Satluj Jal Vidyut Nigam Ltd. v. Jaiprakash Hyundai Consortium and Others[3] to contend that documentary evidence is *sine qua non* for claiming loss of profits. It is submitted that once the AT does not agree with the entire amount claimed, it needs to give reasons for reduced claims. To contest the allowance of Claim No. 34, the petitioner contends that there was no obligation on the respondent to pay for watch and ward of the constructed premises. Moreover, it is contended that the respondent did not handover the flats in one go and hence, due to its own shortcoming had to be present on the site for an extended period of time. It is further argued that the respondent has not provided any evidence with respect to payment of expenses towards deployment of watch and ward staff at site. With Respect to Claim No. 44, the petitioner contends that the respondent itself failed to submit the final bill, when it was their responsibility. Moreover, it is contended that the Claim is not supported by any document on record and the alleged letter written by the Department stating that it did not have the inputs to prepare the final bill was never written. Challenging Claim No. 45, the petitioner contends that the respondent failed to submit the bills in terms of the agreement and there was no delay in preparation of running bills by the petitioner and hence, the rebate was rightly deducted. Moreover, petitioner contends that the respondent did not dispute the same at the time of accepting the running account bill, the final bill and payment under clause 10CC, which shows that the claim before the AT is an afterthought.

[1](2009) 12 SCC 1.
[2](2004) 5 SCC 109.
[3]2023 SCC OnLine Del 4039.

Assailing Claim No. 46, the petitioner contends that since the respondent had failed to submit the RA Bills, final bills and 10CC bill, lading the petitioner with the burden of preparation of the bills, the petitioner is not liable to pay any interest on delay. With regard to Claim No. 47, the petitioner contends that it had made panel rate recovery for consumption of excess quantities for SCI pipes at site as per stipulation under Clause 42 of the Agreement. Hence, the measurement is in accordance with the specification and there is no ground made out by the respondent for extra payment. Challenging Claims No. 48&49, learned counsel for the petitioner states, on instructions, that the challenge to award of this claim is not being pressed.

23. *Per contra*, learned counsel for the respondent submits that the award is well reasoned and does not merit any interference. It is submitted that in none of the claims, quantum of claims was disputed but only admissibility. For Claim 1&39, it is submitted that the deployment of staff, labour and machinery as detailed in the SOC has not been specifically denied by any facts or figures by the petitioner before the AT. It is submitted that there is evidence on record such as the hindrance register based on which the AT has returned its finding that the petitioner was responsible for the delay, and the sufficiency or otherwise of the evidence is not to be looked into in a petition under Section 34 of the Act. It is contended that the claim was for just 65 days whereas the hindrance in form of short supply of cement, was noted in the register to be from 03.06.1988 to 12.08.1988, i.e., 71 days and the award notes that the petitioner has admitted shortage of cement from 03.06.1988 to 12.08.1988. It is submitted that in total there were 15 hindrances. It is further

argued that under Clause 19D, the respondent had to submit fortnightly labour reports for skilled and unskilled labour which had to be passed before money was released to respondent and the same was never denied by the petitioner in the SOD, who had full knowledge of the labour employed at site. it is contended that the contract was governed by DSR-1981 which has hire charges for machinery and labour. Insofar as not being provided detailed calculation is concerned, it is submitted that a number of decisions have held that the arbitrator is not required to give detailed calculations, particularly when he is an expert in the field and a technical person. Reliance is placed on Maharashtra State Electricity Distribution Company Ltd. vs. M/s. Datar Switchgear Limited &Ors.[4], M.L. Mahajan, Contractor vs. Delhi Development Authority &Anr.[5], Associate Builders vs. Delhi Development Authority &Anr.[6], D.C. Kapur vs. Delhi Development Authority &Anr.[7], P.C. Sharma (supra). It is submitted that while awarding Claim No.5, AT has rightly interpreted condition 3.15 & 3.19 of the agreement which falls within his exclusive domain. For claim 7, it is submitted that AT has interpreted provisions of para 10.12.1 to 10.12.6 of CPWD Specifications 1997 Volume- 1 applicable to the contract which is a finding of the fact and which falls exclusively within the domain of the AT. The award of claim 14 is defended by submitting that AT rightly holds that agreement item No. 9.11 of Schedule of Quantities would justify the award of this claim. Reliance is placed on the decisions in J.S. Chaudhary vs. Vice-

[4](2018) 3 SCC 133.
[5]2010 SCC OnLine Del 1697.
[6](2015) 3 SCC 49.
[7]2006 SCC OnLine Del 172.

Chairman, DDA &Anr.[8], P.C. Sharma &Anr. vs. Delhi Development Authority.[9] Award of claim 16 is contended to be based on CPWD Specifications 1977 Volume-1 and item No. 6.6.1 of CPWD Delhi Schedule of Rates 1981 and is the correct interpretation of the same which was in his exclusive domain. The awarding of Claims 20, 23, 28 are contended to be findings of facts within the jurisdiction of AT. In so far as claim 31 is concerned, it is submitted that petitioner has not pointed out any specific discrepancy in the amount calculated and awarded by AT and the reliance placed on DDA vs. Narain Das R. Israni[10] to contend that AT could devise its own formula based on cost indices for assessing the damages by way of reduced profitability and claim can be awarded, notwithstanding payment under clause l0CC. The findings of the AT while awarding claim 34 that certain items were to be executed at the time of allotment and that respondent remained at the site for 10 months after expiry of defect liability period are finding of facts. Respondent's counsel has placed reliance on Delhi Development Authority vs. M/s Anant Raj Agencies (2009)[11] and Puran Chand Nangia vs. DDA.[12] Award of Claim 44 is contended to be a reasoned one based on interpretation of Clause 7&8 of the agreement. Moreover, reliance is placed on the decisions in Anant Raj Agencies vs. DDA and Anr.(2005)[13], P.C. Sharma &Anr. vs. Delhi Development Authority[14], Anant Raj Agencies vs. D.D.A. &Anr.[15], M/s Deep Builders vs.

[8]2011 SCC OnLine Del 492
[9]2006 SCC OnLine Del 218.
[10]2007 SCC OnLine Del 1596.
[11]2009 SCC OnLine Del 912.
[12]CS(OS) No. 1033A/1996
[13]2005 SCC OnLine Del 425.
[14]2006 SCC OnLine Del 218.

Delhi Development Authority[16], Union of India vs. Suchita Steels (India)[17], Indian Hume Pipe Co. Ltd. vs. State of Rajasthan[18], Vijay Kumar Goel vs. MTNL and Ors.[19], M/s Jagat Ram Trehan vs. Delhi Development Authority.[20] It is contended that while awarding claim 45, AT has given finding of facts that the petitioner failed to fulfill his reciprocal obligations which was within its exclusive domain while relying on Deep Builders (supra). Similarly, it is contended that award of claim 46 on the basis that the formula adopted by the respondent for calculation of payment under clause 10CC was not correct is a matter of interpretation of contract.

## DISCUSSION AND CONCLUSION

24. While adjudicating upon Claim 1 and 39, The AT analysed the hindrance register to come to the conclusion that there was a perpetual delay in execution of work due to shortage of materials stipulated to be supplied by the petitioner. AT also rightly noted that that the extension of time had been granted by the Competent Authority of the petitioner without levying any compensation. The AT also refused to award the claim with respect to establishment like graduate engineer, supervisor, accountant etc, holding that the same was to be deployed by the respondents during the currency of the contract and therefore, there was no question of their underutilisation. For the assessment of expenditure, The AT relied on stand books data and

[15]2009 SCC OnLine Del 912.
[16]CS(OS) No. 2237/2007.
[17]2005 SCC OnLine Del 1272.
[18](2009) 10 SCC 187.
[19]FAO(OS) No. 659/2010.

practical experience. Thus, AT has looked at the material produced before it, such as the hindrance register, applied its mind and come to the conclusion that the delay was attributable to the petitioner. These are findings of facts which were in exclusive domain of the AT. This Court will not to reassess or re-appreciate evidence or examine the sufficiency of the same. There is no patent illegality or error apparent on the face of it with the award of this claim. In so far as not giving a detailed calculation for the award is concerned, it is seen that the reasons given for the award sufficiently explain the thought process of the AT for partially allowing the claim and the basis on which the sum was arrived at. A reference may be made to the decision of a division bench of this Court in DDA v. Bhagat Construction Co. (P) Ltd.,[21] wherein it was held as under:-

> *4. From the above, it would be clear that the Arbitrator who was well versed in the matter before him as a former Director General of CPWD on the basis of his experience took into consideration the various aspects and that is why instead of awarding a sum of Rs. 16,60,000 as claimed by the claimant restricted the said claim to Rs. 3,50,000. Arbitrator has not to disclose the basis or the mental process for arriving at such figure. Even otherwise Arbitrator when called upon to give a reasoned award is still not required to write a detailed judgment as the Judges do. It is sufficient that he has indicated his trend and given outline to indicate the basis on which he has arrived at such figure. The learned Single Judge has gone through in details those documents which were produced before the Arbitrator which were the basis of arriving at the said figure in the award. We find no infirmity in the impugned order. Dismissed.*

The Arbitrator was a technical person who could take his experience into account and nothing has been shown to prove any *mala fide* in his approach. Another aspect which is pertinent to mention is that the

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[20]2009 SCC OnLine Del 3740.
[21]2004 SCC OnLine Del 566

respondent has not challenged the partial award with respect to this claim, despite being awarded only Rs. 1,88,200 whereas the claim had been made for Rs. 6,25,456. The claim has been partially allowed after providing sufficient reasons, and the challenge to this claim must fall.

25. By way of Claim 5, the respondent had sought payment of 30% extra C/S on account of Triple Stage Shuttering. The AT noted that the petitioner had not denied that the work was undertaken. Condition 3.15 of the agreement, which stated that the rates quoted shall hold for all heights and depths, was found to be sweeping, and AT held that it cannot govern denial of claims in a works contract based on detailed estimates. AT also held that condition No.3.19 of the contract, which states that nothing extra shall be paid for double height slab, beam and column did not preclude payment for RCC projected balconies on floor-4 level after providing triple stage shuttering from ground level. The above interpretations of the terms of contract by the AT are reasonable and do not merit any interference. Interpretation of the contract is the domain of the AT and the same would not be interfered with in proceedings under Section 34, as long as such interpretation is not *ex-facie* perverse. Due reference in this regard may be made to the decision of Supreme Court in Hindustan Construction Co. Ltd. v. NHAI,[22] wherein it was held that:-

> *27. For a long time, it is the settled jurisprudence of the courts in the country that awards which contain reasons, especially when they interpret contractual terms, ought not to be interfered with, lightly. The proposition was placed in State of U.P. v. Allied Constructions [State of U.P. v. Allied Constructions, (2003) 7 SCC 396] : (SCC p. 398, para 4)*
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> > *"4. ... It was within his jurisdiction to interpret Clause 47 of the Agreement having regard to the fact-situation obtaining therein. It is*

[22](2024) 2 SCC 613

*submitted that an award made by an arbitrator may be wrong either on law or on fact and error of law on the face of it could not nullify an award. The award is a speaking one. The arbitrator has assigned sufficient and cogent reasons in support thereof. Interpretation of a contract, it is trite, is a matter for the arbitrator to determine (see Sudarsan Trading Co. v. State of Kerala [Sudarsan Trading Co. v. State of Kerala, (1989) 2 SCC 38] ). Section 30 of the Arbitration Act, 1940 providing for setting aside an award is restrictive in its operation. Unless one or the other condition contained in Section 30 is satisfied, an award cannot be set aside. The arbitrator is a Judge chosen by the parties and his decision is final. The Court is precluded from reappraising the evidence. Even in a case where the award contains reasons, the interference therewith would still be not available within the jurisdiction of the Court unless, of course, the reasons are totally perverse or the judgment is based on a wrong proposition of law."*

*28. This enunciation has been endorsed in several cases (Ref. McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] ). In MSK Projects (I) (JV) Ltd. v. State of Rajasthan [MSK Projects (I) (JV) Ltd. v. State of Rajasthan, (2011) 10 SCC 573 : (2012) 3 SCC (Civ) 818] it was held that an error in interpretation of a contract by an arbitrator is "an error within his jurisdiction". The position was spelt out even more clearly in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , where the Court said that : (Associate Builders case [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42)*

*"42. ... 42.3. ... if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."*

This Court would not substitute the view of AT with its own view. The award for this claim is upheld.

26. Vide claim 7, cost of cement concrete blocks used for anchoring pressed steel door frames provided as per agreement item No. 6.2 was sought. The AT, after going through the specifications for execution of item of pressed steel door frames at paras 10.12.1 and 10.12.6 of C.P.W.D.

Specifications 1977 Volume- 1, held that the cost for cement concrete blocks consisting of 1:3:6 (Icement: 3 coarse sand:6 graded stone aggregate 20mm nominal size) of size 10x 10x 15 centimeters is payable to the claimants for fixing pressed steel door frames. The AT has interpreted the above specifications to partially allow the award for an amount of Rs 6,651 whereas the claim had been made for Rs. 20,151. Notably, respondent has not challenged the awarding of the partial claim. The arbitrator being an expert in the field, has gone through the CPWD specifications to arrive at a finding that the respondent was entitled to the award partially. This being a finding of fact, the same is not amenable to challenge unless it can be shown that the same was patently illegal. Another aspect which is pertinent to mention is that the respondent has not challenged the partial award with respect to this claim, despite being awarded only Rs. 6,651/- whereas the claim had been made for Rs. 20,151/-. The claim has been partially allowed after providing sufficient reasons, and the challenge to this claim must fall. This Court cannot re-assess evidence to see whether the arbitrator committed any error in law. The ground of patent illegality is not made out. The challenge on this account must fall.

27. Claim No.14 for plastering walls of height above 10 metres was fully allowed by the AT, relying on Item No. 9.11 in the schedule of quantities of the Contract which provides for extra payment for plastering exterior walls of height more than 10 metres from ground level for every additional height of 3 metres or part thereof. This is a reasonable interpretation of the contract terms by the AT which does not suffer from any perversity or patent illegality. The challenge to award of this claim is dismissed.

28. Vide Claim No.16, Rs. 397/- had been sought for extra brickwork in pillars, out of which Rs. 260/- has been awarded by the AT, holding that this work was done only in boundary walls. A perusal of the records would show that the respondent had submitted certain photographs to the AT on 29.05.2008. The same had been shared with the respondents as well and they had submitted their comments on 29.09.2008. The impugned award relies on these photographs while awarding the claim. Moreover, the awarded amount is insignificant and arrived at after assessing the evidence. The challenge to award of this claim is dismissed.

29. Claim No. 20 was concerned with payment for reinforcement provided in the half brick work. AT analysed the recovery statement in the final bill which was prepared by the petitioner and took note of the fact that the petitioners had provided mild steel to the respondent, which would not have been done unless the steel was required for the work. AT also was cognizant of the fact that no loss or misuse of the steel had been claimed. AT further relied on CPWD specification 1977, Volume 1 regarding half brick masonry wherein it is stated that the reinforcement had to be separately paid. Thus, the AT after going through the documents pertaining to the contract and the relevant rules, has arrived at a reasoned finding and the same does not merit any interference. The challenge to this claim is, thus, dismissed.

30. By way of claim No.23, costs for dewatering of site on account of floods was sought. AT noted that there was no damage caused to work due to rains and thus Condition 3.15, which states that "*the contractor shall not be paid anything extra for maintaining in good condition all the work executed till completion of the entire work; nor on account of damage to the*

*works caused by rains or other natural phenomena during the execution of works*" would not have any applicability. The claim was for dewatering the site due to overflow of nearby drain and to keep it workable and was partially allowed to the extent of Rs.32,000/-.The interpretation of clause 3.15 given by the AT is one of the plausible views. Interpretation of contract being in exclusive domain of the AT, interference is not warranted unless the said interpretation is *ex-facie* perverse, which is not the case in the present matter.

31. Claim 28 was concerned with alleged loss which was incurred due to non-payment by the petitioner of full rate of extra and substituted items. The AT while noting that the petitioner had admitted to availing the rebate, held that they could not have deducted the same without fulfilling the reciprocal conditions of the rebate. The AT only allowed the claim partially, refusing to award any interest. Out of a total claim of Rs. 1,21,669/-, only Rs.15,149/- has been granted. AT has given a finding of fact that the respondent failed to fulfil the conditions of rebate. This Court would not re-assess evidence in this petition to test the merits of the finding. The challenge to award of this claim is dismissed.

32. Claim 31 pertained to loss of profit due to prolongation of contract. AT took note of the fact that there was a huge delay of three years and the petitioner had sought no compensation from the respondent for the aforesaid delay. AT further took note that there was a sizeable housing construction activity in Delhi in the year 1989-90 and that the respondents would have other work opportunities. The AT did not blindly agree with the calculations put forth by the respondent but rather, chose to independently assess the loss

of profit on the basis of CPWD price index. It was well within the domain of the AT to adopt a different formula for computation of the loss of profit after assessing the facts and circumstances. Reference in this regard may be made to the decision of Supreme Court in McDermott International Inc. v. Burn Standard Co. Ltd.[23] wherein it was held that:-

> *"106. We do not intend to delve deep into the matter as it is an accepted position that different formulae can be applied in different circumstances and the question as to whether damages should be computed by taking recourse to one or the other formula, having regard to the facts and circumstances of a particular case, would eminently fall within the domain of the arbitrator.*
> *109. Sections 55 and 73 of the Indian Contract Act do not lay down the mode and manner as to how and in what manner the computation of damages or compensation has to be made. There is nothing in Indian law to show that any of the formulae adopted in other countries is prohibited in law or the same would be inconsistent with the law prevailing in India.*
> *110. As computation depends on circumstances and methods to compute damages, how the quantum thereof should be determined is a matter which would fall for the decision of the arbitrator.."*

Thus, the award of this claim is reasoned this challenge to the same must fall.

33. Vide Claim 34, the respondent had sought payment for keeping skilled and unskilled labour at site for handing over possession of flats to the allottees. The AT held the non-production of the records pertaining to handing over possession of flats to the allottees by the petitioner against it and in favour of the respondent. The AT further assumed the number of watchmen, skilled labour and *beldar* required and accordingly partially allowed the claim. It is trite law that while assessing damages, certain amount of leeway and guesswork is allowed to the AT. A reference may be

[23](2006) 11 SCC 181

made to the decision of the Divisional Bench of this Court in Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution (P) Ltd. v. Haryana Vidyut Prasaran Nigam Ltd., [24], which, while relying on the decision of Supreme Court in Construction & Design Services v. DDA,[25]held as follows:-

> "32.2 As rightly contended by Mr. Singh on behalf of the J.V. Company, the Supreme Court made no such observation and instead concluded that once an adjudicator (i.e., the arbitrator) found that the L.D. did not represent a genuine pre-estimate of damages and that the aggrieved person/entity may suffer on account of the breach committed by the defaulting party concerning a project conceived in public interest, the aggrieved person/entity was entitled to a reasonable compensation, subject to the maximum amount payable under the L.D. clause. It is when such circumstances are present in a given case, that the court could proceed based on "guesswork" with regard to the quantum of compensation to be allowed to the aggrieved party. The following observations made in the *Construction and Design Services case* being apposite are set forth hereafter:
>
> > *"15. Once it is held that even in 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 highest limit is stipulated instead of a fixed sum, in 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 party committing breach, as already observed.*

[24]2024 SCC OnLine Del 2755
[25](2015) 14 SCC 263

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*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 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."*

xxx

…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* v. *Government of Andhra Pradesh*, (1977) 3 SCC 590; *Delhi Development Authority* v. *Anand and Associates*, 2008 SCC OnLine Del 179; *Good Value Engineers* v. *M.M.S. Nanda, Sole Arbitrator*, 2009 : DHC : 5231; *National Highway Authority of India* v. *ITD Cementation India Ltd.*, 2010 : DHC : 404; *Mahanagar Gas Ltd.* v. *Babulal Uttamchand and Co.*, 2012 SCC OnLine Bom 1254; *Bata India Ltd.* v. *Sagar Roy*, 2014 SCC OnLine Cal 17998]."

In view of the above discussion, the challenge to award of this claim is dismissed.

34. Claim 44 pertains to interest on the final bill. AT perused various letters of the petitioners and analysed clauses 7&8 of the agreement. AT came to the conclusion that the bill could be prepared in two ways, either by

the respondent submitting bills on date fixed by the Engineer-in-Charge or by the Engineer-in-Charge deputising his subordinates. It was noted that all running account bills were prepared by the petitioner and the payment of final bill for undisputed items of work was badly delayed. The AT found the rate of interest claimed by the respondents excessively high, and awarded simple interest of 10%. The finding that the petitioner was responsible for the delay of bills is a factual one and thus, in the exclusive domain of the AT. The challenge to award of this claim falls.

35. In Claim 45, the respondent had alleged that since some running account bills were badly delayed, petitioner were not entitled to recover conditional rebates for these bills without fulfilling the conditions of rebate. These were in respect of monthly payment of running account bills, sanction of extra and substituted items of work, payment of final bill and release of security deposit in stipulated periods. The AT gave specific findings of fact as to how each of these obligations were not fulfilled timely and thereafter, the respondent was found to be entitled to seek refund of these rebates. The claim in so far as the interest was concerned was disallowed. Since this claim was awarded based on certain findings of fact, this Court will not undertake an exercise of re-appreciation of evidence since the same was the exclusive domain of the AT.

36. Claim 46 was concerned with balance payment of 10CC & interest on late payment of 10CC. AT held that amounts of rebate could not be deducted to reduce value of gross work done. Moreover, AT noted that in the formula devised by the petitioner to work out payment under clause 10CC, the sum of advances given and later recovered after consumption of

work did not become zero. The AT was within its right to interpret clause 10CC and test the formula adopted by the petitioner to see whether it was in the spirit of the contract. The reasoning adopted by AT seems to be a plausible one and hence, the challenge to award of this claim must fall.

37. Claim 47 dealt with the discrepancy in the measurements of SCI pipes at the time of issuance of pipes and at the time of payment. AT rightly pointed out that the portion of spigot end of the pipe which goes into the socket was not accounted for while making payment and the petitioner using two different methods of measurement for issue of pipes and payment was wrong. There is no perversity or patent illegality in the above finding, the same being based in facts of the case and interpretation of the contract terms, both in the exclusive domain of the AT.

38. Lastly, vide Claims 48 & 49, the respondent was awarded pre-suit and pendente- lite interest and future interest. During the course of submissions, learned counsel for the petitioner has stated on instructions, that the challenge to award of these claims is not being pressed.

39. In view of the above, considering the facts and circumstances, the law cited and keeping in view the scope of a challenge under Section 34 of the A&C Act, the present petition is dismissed.

**MANOJ KUMAR OHRI**
**(JUDGE)**

**MAY 06, 2025**
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