



2026:DHC:1105



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

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*Reserved on: 08th August, 2025
Pronounced on: 09th February, 2026*

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O.M.P. (COMM) 348/2019

AIRPORTS AUTHORITY OF INDIA

Through its Joint General Manager (Engg-Civil)

Mangalore International Airport

Mangalore- 574 142

e-mail: rajivkgupta@aai.aero

.....Petitioner

Through: Mr. Digvijay Rai, Standing Counsel
with Mr. Archit Mishra, Advocate
with Mr. Gagan Kochar, Sr. Managar
(Law) and Ms. Kashish Singhal.

versus

URC CONSTRUCTION (P) LTD.

At: H-102, Periyar Nagar

Erode

Tamilnadu- 638 001.

e-mail: urcgroup@rediffmail.com

.....Respondent

Through: Mr. Vikas Mehta, Mr. Nishant
Anshul, Mr. Bhaskar Nayak and
Mr. V. Ganesan, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Petition under Section 34 Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "the Act"*), has been filed by the



Petitioner/Airports Authority of India, for setting aside the **Award dated 26.03.2019** whereby a total sum of Rs. 2,57,86,532/- along with interest @ 10% w.e.f. 04.09.2017 till the date of the Award and further 10% from 27.03.2019 up to the date of actual payment along with Rs. 7,00,000/- as costs, has been awarded to the Respondent.

2. The Petitioner has also sought setting aside of the Order dated 07.05.2019 on the *Application under Section 33(1) and Section 33(1)(B) Arbitration and Conciliation Act, 1996*, whereby certain corrections have been carried out in the Award, by the learned Arbitrator.

3. **Facts in brief**, are that the Petitioner/Airports Authority of India (AAI) floated a tender for the construction of New Control Tower-cum-Technical work, at Mangalore. As per the NIT, the last date for submission of the bid was 12.12.2011 and the final date scheduled for opening of the financial bid was 20.12.2011. The Respondent made a bid, which was accepted *vide* Letter dated 12.04.2012 for the work at the cost of Rs. 18,90,88,243/-.

4. As per the terms of the Letter of Acceptance, the work was to be completed within 13 months reckoned from the 10th day of issuance of the Letter dated 12.04.2012, i.e., from 22.04.2012, and the stipulated date of completion was 31.05.2013. An Agreement dated 19.04.2012 was entered into between the parties.

5. During the currency of the contract, the Respondent on various occasions, sought an extension of time for completion of work, and the Petitioner gave a provisional extension of time. The Petitioner has asserted that the work could not be completed in time and there was a delay of 477 days in the completion of the work.



6. After the work was completed, the Competent Authority, i.e., the Member (Planning) of the Petitioner, approved that the delay of 142 days which was found to be justified, while the balance of 335 days was found to be unjustified, and an amount of Rs. 58,55,625/- was imposed upon the Respondent as liquidated damages.

7. The Respondent invoked Clause 25 of the Agreement and requested the appointment of a Dispute Resolution Committee ('DRC') for the determination of the claims of the Respondent. Various meetings were held, after which the DRC submitted its Report vide Letter dated 28.08.2017. The Respondent did not accept the recommendations of the DRC and invoked Arbitration vide Letter dated 04.09.2017.

8. The learned Arbitrator was appointed. The Respondent submitted the Claims, to which a Reply was given by the learned Arbitrator. After the completion of pleadings and arguments, the learned Arbitrator concluded the proceedings on 05.06.2018. However, vide e-mail dated 11.02.2019, the learned Arbitrator observed that certain records were required for checking Claim Nos. 3 and 5 and requested that the same be forwarded to him. He further engaged an Engineer, Sh. Ram Niwas Rohilla, to check the same and submit the Report.

9. The Impugned Award was passed on 26.03.2019 and was received by the Petitioner by hand, on the same day.

10. The Petitioner filed an Application under Section 33(1)(A) and 33(1)(B) of the Arbitration and Conciliation Act, 1996 on 18.04.2019, which was disposed of by the learned Arbitrator on 07.05.2019, and the copy of the same was received by the Petitioner on 13.05.2019.



11. The *Respondent had filed a Statement of Claim* dated 03.11.2017 before the Arbitrator, wherein Claim No. 1 was *for approval of full extension of time for the total extended period of completion*, i.e., up to 10.09.2014, and sought the release of the withheld amount of Rs. 58,55,625/-. The Respondent based his claim on Section 73 of the Indian Contract Act and also placed reliance on *Muralidhar Chiranjilal vs. M/s Harishchandra Dwarka Das*, AIR 1962 SC 366.

12. The *liquidated damages imposed by the Petitioner*, were challenged on the ground that the Letter dated 12.03.2016 imposing the liquidated damages was not passed by the Member (Planning) of the Petitioner, who was the Competent Authority as stipulated in Schedule-F in the Agreement. Furthermore, it was asserted that the Letter dated 10.10.2014, written by the Respondent, was not considered by the Competent Authority while levying compensation.

13. The Respondent further asserted that *vide* Letter dated 12.03.2015, a delay of 335 days was attributed to the Respondent as being without any justification. Furthermore, the Letter dated 12.03.2015 granting the final extension of time was claimed to be suffering from inherent defects, i.e., the Order was passed without considering the Letter dated 10.10.2014 of the Respondent and without following principles of law.

14. Furthermore, the three months' time stipulated in Clause 5.4 of the Contract, had expired and the Letter had lost its validity. Reliance was placed on *Vishal Engineers & Builders vs. Indian Oil Corporation Ltd.*, (2012) 1 Arb. L.R. 253 (DB). The Respondent also relied upon its Letter dated 10.10.2014 to state that the hindrances mentioned in the Letter were not considered by the Petitioner. Reliance was placed on the case of *Hydel*



Construction Ltd. vs. H.P. State Electricity Board, AIR 2000 H.P. 19 and Hind Construction, AIR 1979 SC 720; State of Orissa vs. Binapani Dei, AIR 1967 SC 1269.

15. The Petitioner, however, in his Statement of Defense, took the plea that Clauses 10C and 10CC were not applicable to the Contract Agreement.

16. The Respondent also claimed Rs. 1,05,95,546/- as **compensation for the loss incurred on account of the increase in material costs in the open market**. The Respondent asserted that as per Schedule F, Clauses 10C and 10CC were not applicable to the Contract and were deleted from the Contract. The Respondent asserted that the Petitioner herein, had owned the responsibility for 132 days, thereby extending the period of the Contract from 13 months to 18 months. Consequently, the Claimant was entitled to be paid escalation under Clause 10CC, for the entire 18 months.

17. The Claimant further made a Claim for Rs. 1,71,69,116/- for compensation towards expenses incurred for **the prolongation period**. It was contended that if the delay was not attributable to the Claimant, it should be compensated under Section 73 of the Indian Contract Act for the cost overrun met by it during the extended period and the calculation of the amount be made by adopting CPWD Circular dated 14.12.2007.

18. **The Petitioner had contested the Claim of the Respondent and filed his Statement of Defense dated 04.12.2017** wherein he asserted that the imposition of compensation was in terms of Schedule F of the Agreement and had been imposed by the Member (Planning).

19. Furthermore, **the extension of time** was scrutinized at several levels i.e. Assistant Manager, Assistant General Manager, Deputy General Manager, General Manager, Executive Director, and finally by the Member



(Planning). An opportunity was also given by the Member (Planning) to the Respondent, to give its inputs. The final extension of time was approved by the Member (Planning) and the Engineer-in-Charge, which was communicated *vide* Letter dated 12.03.2015.

20. The Petitioner *in his Statement of Defence*, denied the Letter dated 10.10.2014 in which the Respondent had sought to justify the delay. The Petitioner submitted that Clauses 2 and 5 along with Schedule-F of the Agreement, which gave the compensation payable for delay in completion of work and time for extension of delay, provided that on the happening of the events stated therein, the Contractor shall immediately give Notice in writing to the Engineer-in-Charge, but would nevertheless, make best endeavor to prevent or to make good the delay and shall do all that may be reasonably required, to the satisfaction of the Engineer-in-Chief, to proceed with the works.

21. In regard to the claim of compensation in the sum of Rs.1,05,95,546/-, the Petitioner has asserted that the original Contract period for 13 months was extended in addition to 476 days up to 10.09.2014, by the Engineer-in-Charge. The Letter dated 12.03.2015 also indicated 335 days of delay attributable to the Respondent.

22. In respect of *escalation in material under Clause 10CA of the GCC*, the same was measured and an amount of Rs.18,20,613/- was paid to the Claimant. The Petitioner, however, took the plea that Clauses 10C and 10CC were not applicable to the Contract Agreement.

23. The Petitioner in his Statement of Defense, also claimed that the *Claim for the prolongation period*, was not contractually tenable and the



prolongation of Contract had occurred due to wrongful delays attributable to the Claimant.

24. The **learned Arbitrator by way of the Impugned Order**, awarded **Rs. 58,55,625/- against Claim No. 1** by observing that the perusal of the Cement Register, Calculation Sheet of justified delay, and issue of drawings versus progress at site reflected continued hindrance on account of rains, issue of drawings, revision in drawings, change in scope of work, and substitution of original items leading to the requirement of additional time right up to the date of completion, i.e. 10.09.2014. The Learned Arbitrator further observed that *non-justification of delay* is also due to incorrect interpretation of Clause 12.1 of the Contract and while granting final EOT, weightage has not been given to all the hindrances cited by the Claimant as is clear from the list of hindrances in EOT Part II, and *had concluded that there was no unjustified delay attributable to the Claimant.*

25. The Learned Arbitrator further awarded *an amount of Rs. 89,18,765/-* to the Claimant, in regard to **Claim No. 4, i.e., compensation towards expenses incurred during the extended period**, on the basis of CPWD Circular dated 14.12.2007 and on the basis that the Claimant was entitled to overhead costs as per the CPWD Circular, on account of delay.

26. In respect of *Claim No. 5*, the learned Arbitrator granted **Rs. 1,03,12,142/-, i.e., compensation for loss incurred by means of the increase in material costs in the open market.** Though it was observed that Clauses 10C and 10CC were deleted from the Contract, it was held that Clause 10CC had been wrongly deleted and either Clause 10CC or 10C, would be applicable in the Contract. It was further held by the learned Arbitrator that Clause 10CC would become applicable in terms of the



Judgment of this Court in the case of *Narain Das R. Israni vs. DDA*, which was upheld by this Court in the case of *M/s Mohan Lal Harbans Lal Bhayana & Co. vs. Union of India and Ors* (2012) 2 Arb LR 91 (DB).

27. The learned Arbitrator held that the Respondent was entitled to escalation as per Clause 10CC as claimed under Section 5. The learned Arbitrator has further held that in order to check the computation of Claim No. 5 raised by the Respondent/Claimant, an Engineer was appointed on 11.02.2019 as an Expert under Section 26 of the Arbitration and Conciliation Act, 1996, with the consent of both the parties. The expert submitted his report based on Clause 10CC, and as per the report, the total compensation worked out to Rs. 1,03,12,142/-.

28. The learned Arbitrator further ***awarded pendente lite and future interest @ 10% to the Claimant and also a cost of Rs. 7,00,000/-***.

29. The ***Impugned Award has been challenged by the Petitioner on the grounds*** that the Impugned Award is in *conflict with the Public Policy of India, the fundamental policy of Indian Law, and the most basic notions of morality or justice*.

30. It has been wrongly concluded that the delay of 477 days was justified, without appreciating that the cement was last issued to the Claimant on 09.05.2014. It has not been appreciated that as per the calculation sheet, the Respondent had sought an extension of time of 998 days, whereas the actual delay in completion of work was only 477 days, out of which a period of 142 days, was found to be justified. It has not been considered that the last drawing was issued by the Petitioner to the Respondent on 06.08.2013. Moreover, the important drawings were issued between May 2012 to March 2013. Only a few drawings could not be issued



prior to the Claimant reaching a particular stage of work, which got issued between March 2013 to 06.08.2013.

31. It has further not been considered by the learned Arbitrator that as per the documents of the Claimant itself, i.e., a Certificate issued by the India Meteorological Department, Government of India, there was bare minimal rain in May 2012, i.e., only for three days, whereas there was minimal or no rain in December to May 2013 and further December to May 2014.

32. It has not been appreciated that the change in scope of work and substitution of original terms could not be considered for calculating the delay, inasmuch as the work was awarded for Rs. 18,90,88,553/- while the completion cost was only Rs. 17,96,21,826/-. As per Clause 12, as the completion cost including extra items/substituted items/deviation executed is less than the contract value, the Claimant was not eligible for getting any extra time on this account.

33. Moreover, the deviation limit for individual items above ground level is 30% and 100% for items below ground level, at an agreed rate and beyond 30% at market rates, subject to the condition that overall deviation of the Contract should not exceed 30% of the Contract value. In the present case, the work was completed well within the Contract value and hence, there was no question of any extra time on account of deviation, in terms of Clause 12 of the Agreement.

34. It is claimed that the learned Arbitrator misconducted himself by stating that the Claimant had incorrectly interpreted Clause 12.1 of the Contract, without giving any plausible interpretation of the Clause himself. The plain reading of Clause 12.1 would reflect that it was only in the event of any deviations resulting in additional cost over the tendered value being



ordered, that the time would be extended. In the instant case, the work was completed within the tendered value. There was no occasion for extension of time to the Respondent.

35. The learned Arbitrator, while giving a finding in regard to final extension of time, has not given weightage to all the hindrances cited by the Respondent, as is evident from the list submitted by him. It has not been appreciated that the entire list of hindrances had been duly considered by the Competent Authority and a delay of 142 days, was found to be justified against the said serial numbers. Moreover, the entire list of hindrances had been duly considered by the Competent Authority and 142 days' delay was held to be justified.

36. The learned Arbitrator misdirected himself by recording that Clause 10C and 10CC of the Contract have been deleted and rejected the Claim of the Claimant under Clause 10CC, but on the other hand, gave a finding that Clause 10CC has been wrongly deleted from the Contract. The jurisdiction of the learned Arbitrator was to confine himself to the four corners of the Agreement and not to travel beyond the same, by rewriting the terms of the Contract between the parties.

37. Reliance has been erroneously placed on the case of Mohan Lal Harbans Lal Bhayana & Co. vs. Union of India (supra), which was based on totally different facts. The delay of 1.5 to 2 months has been wrongly attributed to the Petitioner, without appreciating that as per the Contract, it was the duty of the Petitioner to get the statutory approval from the Karnataka State Fire Services, which had been delayed.

38. The learned Arbitrator *vide* his Order dated 11.02.2019, informed the Petitioner that while finalizing the Award in the subject matter, the copies of



all paid bills (extract only) and MAS A/C, Registers for cement, reinforcement steel, and structural steel were required for checking Claim Nos. 3 and 5. For this purpose, an Engineer Shri Ram Niwas Rohilla was engaged as an expert to check the Report.

39. The Order of the learned Arbitrator dated 11.02.2019 is challenged as immoral in seeking the documents, which were provided by the Petitioner, on the assumption that these documents are only required for calculation of the Claim for cement, reinforcement steel, and structural steel, which falls under Clause 10CA. The learned Arbitrator totally misconducted himself by not providing the Report of the expert to the Petitioner, prior to passing of the Award, which is a total non-compliance of the principles of natural justice and Section 26 of the Arbitration & Conciliation Act, 1996; hence, the Petitioner was denied an opportunity to confront the Expert on his report wherein he had calculated escalation from the date of Award of the Contract, whereas the Claimant was fully aware that prices were firm as Clause 10CC was deleted and allowing of the claim would create a situation where other unsuccessful bidders could have been successful, in case they were aware that Clause 10CC was in vogue.

40. The learned Arbitrator has further misconducted himself by disallowing the request of the Petitioner in its Application under Section 33(1)(A) and 33(1)(B) of the Arbitration and Conciliation Act, 1996, on the ground that it was not mandatory for him to provide the report of the Expert prior to passing of the Award.

41. The learned Arbitrator, while *granting an amount of Rs. 89,18,765/- towards overhead costs to the Claimant*, had relied upon CPWD Circular dated 14.12.2007, without appreciating that the Claimant had not placed any



document or evidence on record to show that he had suffered losses because of overrun cost/overheads for the extended period. The learned Arbitrator further misconducted himself inasmuch as assuming that the Claimant would be entitled to overhead costs based on the CPWD Circular; the calculation applied by the Arbitrator is erroneous inasmuch as the overhead per month @ 7.50% could only be taken for the amount of work done by the Respondent beyond the stipulated date of completion and up to the actual date of completion.

42. The learned Arbitrator misconducted himself while relying upon the Report of DGM (Engg.-Civil), in calculating the unjustified delay while overlooking the Report of the Competent Authority. *The interest and costs have been wrongly awarded to the Claimant.*

43. Hence, the prayer was made that the amount awarded on 26.03.2019 and 07.05.2019 be quashed.

44. No formal Reply has been filed on behalf of the Respondent.

45. The Respondent, in the Written Submissions has submitted that the present Petition is not maintainable either in facts or in law, as it does not disclose any cause of action and does not warrant any interference in the Impugned Arbitration Award.

46. Reference is made to National Highway Authority of India vs. Progressive-MVR (JV), (2018) 14 SCC 688 whereby the Supreme Court held that even when the view taken by the Arbitrator is a plausible view, where two views are possible, the particular view taken by the Arbitrator should not be interfered with.

47. The Arbitral process conducted between both the Petitioner and the Respondent was fair, neutral, and in conformity with the principles of



natural justice. A fair hearing was given to the Petitioner by the Arbitrator. All the submissions have been made and the documents filed by the Petitioner before the learned Arbitrator. The Impugned Award recorded that the Petitioner had testified to his satisfaction with the fairness of the proceedings.

48. The Petitioner has not placed any document to show as to how the public policy or established principles of law have been violated by the learned Arbitrator. It is merely an attempt to avoid payment of the amounts to the Respondent.

49. The Respondent has submitted that the learned Arbitrator has passed the Impugned Award after considering the documents and the evidence on record. Though the Member (Planning) of the Petitioner had approved the delay of 142 days out of 477 days and the liquidated damages in the sum of Rs. 58,55,625/- had been imposed on the Claimant, the learned Arbitrator after considering the record, opined that there was continuous hindrance on account of rains, issue of drawings, revision in drawings, change in scope of work, and substitution of original items leading to the requirement of additional time right up to the actual date of completion. The learned Arbitrator, after perusing the calculation sheet of justified delay, had found that many hindrances had cropped up even after the stipulated date of completion.

50. The Respondent/Claimant has further explained that the Compensation towards expenses incurred during the extended period in Claim No. 4 has been rightly granted after considering the CPWD Circular and after coming to the conclusion that no delay was attributable to the Claimant. The Petitioner, though, has claimed that there was no evidence in



respect of *Claim No. 4 of Rs. 1,71,69,116/- towards expenses incurred during the prolongation period by the Respondent*, but it is an admitted fact that the Claimant was carrying out the construction work during the extended period.

51. The entire site setup had to be maintained for the execution of work till 14.09.2014, as per Clause 33 of the SCC and Clauses 18 & 36 (i) of GCC. Since the delay was not attributable to the Respondent, he was bound to be compensated under Section 73 of the Indian Contract Act for the cost overrun met by it during the extended period. The calculation has been made by adopting CPWD Circular No. DG (W) MAN/150 dated 14/12/2007 (C-) indicating 7.5% for overheads and 7.5% for profit. The CPWD Circular formed part of the Contract. The learned Arbitrator, in fact, has awarded a lesser percentage @ 4.5% i.e. Rs. 89,18,765/-, towards overhead costs. The learned Arbitrator has thus, taken 4.5% instead of 7.5%, as provided in the CPWD Circular.

52. The Respondent/Claimant has further contended that the Petitioner had improperly placed reliance on the Report of the Meteorological Department, to say that there was bare minimum rain in the month of May 2012 and December 2012. A bare perusal of the Report would reveal that there was heavy downpour from June 2012 till November 2012. The Petitioner has been picking out individual strands of data, to suit his narrative. In 2013, the month of May recorded 79.4 mm rainfall while the month of June recorded 1404.4 mm rainfall. The rain in the month of July was recorded at 1097.1 mm. In May 2014, it was 114.9 mm and July recorded 1069.7 mm of rain.



53. The entire data for 2012, 2013, and 2014 taken together would show that heavy rain was experienced in Mangalore, which heavily impacted the work of the Claimant. The attempt of the Petitioner to create a prejudice against the Claimant, evidences the *mala fide* nature of the Petition.

54. The Respondent has further asserted that the Petitioner has incorrectly interpreted Clauses contained in the Contract. As per the stipulation contained in Schedule F, Clause 10CC and Clause 10C were originally not applicable to the Contract, as the Contract period was only 13 months. However, since there was an overrun of time and no part of the delay of 477 days was attributable to the Respondent, thus the stipulation contained in Schedule F was rendered otiose. The Contract stood extended from 13 months to 28 months. As a consequence, the Petitioner was bound to pay escalation under Clause 10CC for the entire period, i.e., till 10.09.2014. The learned Arbitrator had rightly relied upon M/s Narain Das R. Israni vs. DDA, 1996 1 Arb LR 602, wherein it was held that even though Clause 10CC was deleted from the Contract, it would be permissible for the Arbitrator to take aid of Clause 10CC to work out the damages amount under Section 73 of the Contract Act.

55. Reliance has also been placed on M/s Mohan Lal Harbans Lal Bhayana and Company vs. UOI, (supra) and MMTC Ltd vs. Vedanta Ltd, (2019) 4 SCC 163.

56. It is further submitted that the interpretation of *Clause 12* has been made by the Petitioner, in a self-serving manner. This Clause does not prevent the Contractor from claiming any amount for the extended period of the Contract, i.e., whether the amount is above or below the total Contract value. The interpretation given by the Petitioner to Clause 12, is contrary to



public policy and such a construction must be eschewed. The conjoint reading of Schedule F along with Clause 12, makes it clear that the deviation limits are applicable to each item of work. Hence, the additional cost would be in proportion to the tendered value of each item and not the overall value.

57. In the end, it is submitted that the Arbitrator conducted the proceedings in a fair manner and there was no violation of the principles of natural merely because the report of the expert was not supplied to the Petitioner. It is submitted that the Report was annexed with the Award as Annexure A, B, and C. The Petitioner has not pointed out any fault or error in the Report either in the Application under Section 33 or in the present Petition under Section 34 of the Arbitration and Conciliation Act.

58. The Arbitrator records that it is only for the purpose of checking the computation of the Claimant that he had appointed an Expert under Section 26 of the Act, with the consent of both the parties. The Expert had sought details of rates from the parties, which were supplied to him, who thereafter gave his computation, which was in accordance with the formula given in Clause 10 CA (for materials) and Clause 10 CC (for labour). In fact, as against the claim sum of Rs. 1.69 Crores, a lesser figure of Rs. 1.02 Crores has been awarded. There is no prejudice caused to the Petitioner. It was important for the Petitioner to establish some prejudice having been caused to him, which he has not been able to show as the awarded amount is lesser than the claimed amount.

59. It is, therefore, submitted that the Petition under Section 34 of the Arbitration and Conciliation Act, is liable to be dismissed.

60. Detailed arguments were addressed by both the parties along with their contentions raised in their pleadings.



- 61.** *The Petitioner has relied upon a catena of judgments* to substantiate its challenge against the Impugned Award, primarily focusing on the grounds of patent illegality and violation of public policy.
- 62.** Reliance has been placed on the decision of the Apex Court in *Ssangyong Engineering & Construction Co. Ltd. vs. NHAI*, (2019) 15 SCC 131, to contend that a breach of the principles of natural justice constitutes a valid ground for setting aside an award under Section 34(2)(a)(iii) of the Act. Specifically, the Petitioner argued that the Arbitrator's reliance on an Expert report without affording them an opportunity to confront the expert or the report was a violation of the *audi alteram partem* principle.
- 63.** To bolster the argument that the Arbitrator cannot rewrite the terms of the contract, the Petitioner relied on *PSA SICAL Terminals (P) Ltd. vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin*, 2021 SCC OnLine SC 508. This was cited to argue that an Award ignoring vital evidence or rewriting the contract, is liable to be set aside on the ground of patent illegality.
- 64.** Further reliance was placed on *M/s. MSK Project Ltd. vs. State of Rajasthan*, (2011) 10 SCC 753, to assert that an Arbitrator cannot widen his jurisdiction by deciding a question not referred to him, and *Union of India vs. Jindal Rail Infrastructure Limited*, 2022 SCC OnLine Del 1540, which followed the principle that an arbitrator, is not empowered to rewrite the Agreement between the parties.
- 65.** Specifically, regarding the Arbitrator's invocation of the deleted Clause 10CC, the Petitioner relied on *NDMC vs. Ravi Builders*, 2018 SCC OnLine Del 12055. It was argued that where Clause 10CC is expressly deleted, the arbitrator mis-conducts himself by applying said clause, as the



intention of the parties is paramount. The Petitioner also cited Indian Oil Corporation vs. Shree Ganesh Petroleum, 2022 SCC OnLine SC 131, to submit that failing to appreciate the binding clauses of the contract, renders the Award patently illegal.

66. Regarding **Claim No. 4 pertaining to Overheads**, the Petitioner relied on Delhi State Industrial & Infrastructure Development Corporation Ltd. vs. M/s. Raunaq Construction, 2017 SCC OnLine Del 6495, to argue that when no evidence is furnished by a party seeking damages for overheads, no amount can be awarded solely on the basis of standard Formulae or Circulars.

67. The Petitioner referred to Ved Prakash Mithal & Sons vs. Union of India, 2018 SCC OnLine SC 3181, to establish that the present petition was filed within the prescribed period of limitation.

68. **The Respondent relied upon various judgments** in support its case.

69. The Respondent relied on Muralidhar Chiranjilal vs. M/s Harishchandra Dwarka Das, AIR 1962 SC 366, to support its claim under Section 73 of the Indian Contract Act, attributing the breach to the Petitioner.

70. Reliance has been placed on Vishal Engineers & Builders vs. Indian Oil Corporation Ltd., (2012) 1 Arb.L.R. 253 (DB), to argue that in the absence of any loss sustained by the Petitioner, the imposition of liquidated damages, was not tenable.

71. The Respondent further relied on Hydel Construction Ltd. vs. H.P. State Electricity Board, AIR 2000 H.P. 19, and State of Orissa vs. Binapani Dei, AIR 1967 SC 1269, in the context of hindrances not being considered



and the principles of natural justice regarding the administrative decision-making process.

Submissions Heard and Record Perused.

72. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996, challenges the Arbitral Award dated 26.03.2019. The dispute arises from the construction of the New Control Tower-cum-Technical Work at Mangalore Airport, which suffered a delay of 477 days beyond the stipulated completion date.

73. Before delving into the merits of the case at hand, it is imperative to take note of the scope of interference the Court has in a Petition under Section 34 of the Act.

74. The scope of a challenge under Section 34 of the Act is limited to the grounds stipulated in Section 34 as held in *MMTC Limited*, (supra). Comprehensive judicial literature on the scope of interference on the ground of Public Policy under Section 34 was postulated in *Associate Builders vs. DDA*, (2015) 3 SCC 49. The Apex Court placed reliance on the judgment of *ONGC vs. Saw Pipes*, 2003 (5) SCC 705 to determine the contours of Public Policy wherein an award can be set aside if it is violative of 'The fundamental policy of Indian law', 'The interest of India', 'Justice or morality' or leads to a 'Patent Illegality'.

75. For an award to be in line with the 'The fundamental policy of Indian law', the Tribunal should have adopted a judicial approach which implies that the award must be fair reasonable and objective. This ground requires an Arbitral Tribunal to deliver a reasoned Award, which is substantiated on evidence.



76. The Apex Court found it incontrovertible that an interference with an Order made under Section 34, cannot go beyond the boundaries established by Section 34, in the case of MMTC Limited, (supra). In other words, the Court is not permitted to independently evaluate the merits of the award; instead, it must just confirm that the Court's use of its authority under Section 34 of the Act has not gone beyond what is allowed under the statute.

77. The Apex Court's three-judge bench noted that the current position of the law is encapsulated in National Highway Authority of India vs. M. Hakeem, (2021) 9 SCC 1. In general, interference with the conclusions of fact and law made by the arbitrator/arbitral tribunal, is not permissible under either Section 34 or Section 37 of the Act. Only when the Tribunal's determination *is ex facie perverse or in conflict with the provisions of the parties' contract, does this Court's action become absolutely required*. The arbitrator or tribunal is the last arbiter of the facts and the law, and even mistakes, whether factual or legal, that are not perverse, do not deserve interference under the Sections 34 or 37 of the Act.

78. From the aforesaid discussion, it is evident that not only the scope of interference under Section 34 very limited, but also that in a challenge to an award under Section 34, the Court cannot re-appreciate the evidence.

79. *Now, coming to the case at hand*, it is pertinent to note that the scope of the original dispute was broader than what is currently before this Court. The Respondent/Claimant had raised multiple claims, including claims for work done but not paid, refund of security deposit, and various other heads. However, a perusal of the Impugned Award reveals that the Learned Arbitrator has either rejected or significantly modified the Claims regarding



interest on delayed payments (Claim No. 2), profit (Claim No. 6), and costs for arbitration (Claim No. 7 - partially allowed).

80. The Petitioner's challenge in the present proceedings is essentially distilled into one core controversy: that the delay was attributable to the Petitioner (Claim No. 1), and the consequential financial reliefs granted for this prolongation, namely:

- I. Claim No. 1: Refund of Liquidated Damages: Since the Petitioner was found responsible for the delay.*
- II. Claim No. 4: Overheads Compensation for maintaining the site and resources during the extended period.*
- III. Claim No. 5: Escalation Compensation for the increase in material costs during the extended timeline.*

81. The Petitioner contends that the Arbitrator erred in appreciating the evidence regarding hindrances, incorrectly applied the principles of deleted Clause 10CC for escalation, and awarded overheads without sufficient proof.

82. The central question for this Court, therefore, is whether the Arbitrator's findings on the attribution of delay and the subsequent quantification of damages, suffer from patent illegality or perverse appreciation of evidence that it shocks the conscience of the Court, warranting interference under the limited jurisdiction of Section 34.

Analysis And Findings:

Claim No. 1:

A. Attribution of Delay:



83. *The first and foremost* ground of challenge raised by the Petitioner pertains to the Arbitrator's finding that the delay of 477 days in the completion of the work, was not attributable to the Respondent.

84. The Petitioner contends that the Arbitrator failed to appreciate the *unjustified* delay of 335 days assessed by the Competent Authority and ignored vital evidence regarding weather conditions.

85. To appreciate this contention, it is necessary to examine the scope of interference with findings of fact under Section 34 of the Act. The Supreme Court in *Associate Builders*, (supra), has categorically held that the Arbitral Tribunal is the sole judge of the quality and quantity of evidence. A court sitting in jurisdiction under Section 34, does not act as a court of appeal and cannot re-appreciate the evidence to arrive at a different conclusion, provided the view taken by the Arbitrator is a plausible one.

86. A perusal of the Impugned Award reveals that the Learned Arbitrator has not proceeded in a vacuum, but has painstakingly analyzed the *Hindrance Register* and the correspondence between the parties.

87. The Arbitrator identified specific periods of delay caused by factors beyond the control of the Contractor, which included:

- (a) *Delay in the issuance of structural drawings;*
- (b) *Changes in the scope of work (additional works);*
- (c) *Site constraints and lack of clear frontage; and*
- (d) *Hindrances due to adverse weather conditions (rains).*

88. The Petitioner has vehemently argued that the Arbitrator ignored the IMD reports which allegedly showed 'scanty or no rain' during certain periods. However, the Arbitrator noted that the construction site (Mangalore Airport) is situated in a high-rainfall coastal zone. The Arbitrator relied on



the site records and the *Hindrance Register* maintained by the parties, which recorded the actual ground realities.

89. It is a settled principle that site records i.e. Hindrance Registers often hold greater evidentiary value regarding the actual impact of weather on *specific* construction activities like concreting or earthwork than general meteorological data.

90. The Arbitrator's decision to value the site records over the general IMD data, is a matter of evidentiary weight, which falls exclusively within his domain. *This finding cannot be termed as "perverse" or "based on no evidence."*

91. The Petitioner further contended that the Arbitrator erred in granting an extension of time for deviations, because the final completion cost did not exceed the tendered value, as required by Clause 12.1.

92. The Arbitrator, however, looked beyond the mere financial value of the deviations. He reasoned that the *timing* of the instructions for additional works and the *nature* of the changes disrupted the critical path of the project, regardless of whether the final bill amount exceeded the tender value. An Arbitral Tribunal has the authority to interpret contractual clauses, in light of the practical realities of construction.

93. The interpretation that Clause 12.1 does not act as an absolute bar to EOT where the Employer's own conduct such as late instructions, prevents timely completion is a 'possible view.' As held in *Rashtriya Ispat Nigam Ltd. vs. Dewan Chand Ram Saran*, (2012) 5 SCC 306, if the Arbitrator construes a term of the contract in a reasonable manner, it will not be open to the court to set aside the award.



94. The Petitioner contends that the Arbitrator should have shown deference to the decision of the Member (Planning), who assessed only 142 days as justified delay.

95. It must be noted that in arbitration, the decision of a Departmental Authority like the Engineer-in-Charge or Member Planning, is not binding on the Tribunal.

96. The Arbitrator is required to adjudicate the dispute *de novo* based on evidence. The Arbitrator found that the Department's calculation of "unjustified delay" failed to account for the cumulative effect of the Petitioner's own breaches, like late drawings and decisions.

97. Once the Arbitrator determined that the delay was attributable to the Employer/Petitioner, the imposition of Liquidated Damages became untenable. The effect of this finding is that the Ld. Arbitrator has rightly held that the Respondent is entitled to a full refund of the withheld amount of **Rs. 58,55,625/-**.

98. In view of the above, this Court finds that the Arbitrator's conclusion on Claim No. 1 is based on a reasonable appreciation of the documentary evidence, including the Hindrance Register and correspondence. It does not suffer from any patent illegality or perversity.

99. **Consequently, the challenge to Claim No.1, is rejected.**

Claim No. 5:

A. Procedural Challenge regarding Expert Evidence:

100. The Petitioner has raised a significant procedural objection regarding Claim No. 5. It was contended that the Learned Arbitrator violated Section



26 of the Arbitration and Conciliation Act, 1996 and the principles of natural justice by appointing an Expert, Shri Ram Niwas Rohilla, post the conclusion of arguments, and relying on his Report without affording the Petitioner an opportunity to controvert the same.

101. While the strict rigors of the Code of Civil Procedure and the Indian Evidence Act do not apply to arbitral proceedings, the principles of natural justice are indeed sacrosanct. However, the application of these principles must be contextual.

102. To determine if the Impugned Award is liable to be set aside on this ground, this Court must examine two aspects:

(i) whether the objection was raised at the appropriate stage (Waiver), and

(ii) whether the alleged breach caused actual prejudice to the Petitioner.

- **Section 4 of the Act: Waiver**

103. The record indicates that the Arbitrator informed the parties *vide* e-mail dated **11.02.2019** regarding the appointment of the expert to “check the calculations” and fixed the Expert’s fee to be shared by the parties.

104. Section 4 of the Act stipulates that if a party knows that a requirement under the Arbitration Agreement or the Act has not been complied with and yet proceeds with the arbitration without stating his objection without undue delay, he shall be deemed to have waived his right to object.



105. The Petitioner, having been intimated of the appointment and the purpose i.e. verification of calculations in February 2019, did not raise a formal protest or demand a hearing at that stage. The Petitioner cannot now, after the Award has been passed against it, retrospectively challenge the procedure. This amounts to *lying in wait*, a practice criticized by the Courts all across.

- **Nature of Expert Intervention: Ministerial vs. Adjudicatory:**

106. A crucial distinction must be drawn between an Expert appointed to give an opinion on a complex technical issue, which forms the basis of liability and an Expert appointed merely to perform a mathematical verification - *a ministerial act*.

107. In the present case, the Arbitrator had already arrived at the judicial finding that the Respondent was entitled to escalation based on the principles of Clause 10CC. The Expert, Shri Rohilla, was not tasked with determining *entitlement* or *liability*; his role was limited to the *computational* task of applying the formula to the available data. The delegation of mathematical calculations to a qualified engineer, after the principle has been settled by the Arbitrator, does not amount to a delegation of the adjudicatory function.

108. Therefore, the strict requirements of Section 26(2) regarding cross-examination are not automatically triggered in the same manner as they would be for a testimonial Expert.

- **Absence of Prejudice:**



109. Under Section 34, a procedural irregularity vitiates an award only if it *shocks the conscience of the Court* or renders the Award patently illegal.

110. The Petitioner has not demonstrated that the calculation performed by the Expert is factually erroneous or that the figure of Rs. 1,03,12,142/-, is incorrect based on the available record.

111. The Petitioner's grievance is entirely procedural, that they were not give the opportunity to see the Report. In the absence of demonstrable prejudice or a showing that the calculation itself is perverse, a mere not formally circulating the computation sheet before the final Award, does not warrant the invalidation of the entire claim.

112. Consequently, this Court holds that the procedure adopted by the Arbitrator, while perhaps not ideal, does not rise to the level of a patent illegality that goes to the root of the matter.

113. The challenge on this ground is, therefore, rejected.

B. Escalation and the Deleted Clause 10CC:

114. The Petitioner has mounted a vigorous challenge against the Award of **Rs. 1,03,12,142/-** towards escalation charges.

115. The central prong of this challenge is that the Learned Arbitrator committed a patent illegality by resurrecting **Clause 10CC** of the General Conditions of Contract (GCC), which had been expressly deleted by the parties in the Agreement. The Petitioner argues that by ignoring the deletion and awarding claims based on this clause, the Arbitrator has effectively rewritten the contract, which is impermissible under the law laid down in PSA SICAL Terminals (P) Ltd. (supra).



116. While the Petitioner's argument appears attractive at first blush, a deeper scrutiny of the Award and the underlying legal principles regarding damages, reveals that the challenge is misconceived.

- ***Distinction between Contractual Price Variation and Damages for Breach:***

117. It is essential to distinguish between a claim for **Price Variation simpliciter** during the pendency of a contract and a claim for **Damages** due to prolongation caused by breach.

118. If the work proceeds within the stipulated time, or if the delay is neutral, a contractor can only claim escalation if the contract specifically provides for it (e.g., Clause 10CC). If the clause is deleted, no escalation is payable for the contract period.

119. However, where the contract is prolonged due to the fault/breach of the Employer (as established in Issue A dealt above), the claim shifts from a contractual entitlement to a compensatory one under **Section 73 of the Indian Contract Act, 1872.**

120. In the present case, the Arbitrator has established that the delay of 477 days was attributable to the Petitioner. Once breach is established, the Respondent is entitled to be placed in the same financial position as if the contract had been performed on time. It is a commercial reality that the cost of labor and materials rises over time, due to inflation.

121. Forcing the Contractor to execute work in 2014 at 2012 prices, solely due to the delays caused by the Petitioner, would result in unjust enrichment of the Employer.



- **Clause 10CC as a Measure of Quantum, not a Source of Right**

122. The Petitioner contends that the Arbitrator applied a deleted clause. However, this Court finds that the Arbitrator utilized the *formula* prescribed in Clause 10CC, merely as a reasonable yardstick to *quantify* the damages.

123. When a contractor proves loss due to escalation, the Arbitral Tribunal faces the difficulty of quantification. Instead of relying on abstract estimates or requiring bills for every bag of cement purchased over two years, Tribunals often adopt standard formulae like Clause 10CC, as a transparent method to calculate the quantum of inflation.

124. This approach finds support in the judgment of the Supreme Court in *P.M. Paul vs. Union of India* (1989) 1 SCC 368, where it was held that even in the absence of an escalation clause, if the contract is prolonged due to the fault of the Department, the contractor is entitled to compensation for the rise in prices.

125. Similarly, a Co-ordinate Bench of this Court in *Mohan Lal Harbans* (supra) has held that even where Clause 10CC is not applicable or deleted, its formula can be adopted as a reasonable basis for computing damages under Section 73.

126. The Arbitrator's observation that the clause was *wrongly deleted* may be not the most appropriate phrasing, but the substance of the decision stands on a sound footing. The Respondent suffered a loss due to the Petitioner's breach, and the measure of that loss is best calculated using the



standard CPWD escalation formula. *This is a plausible view that balances equity with the terms of the contract.*

127. The interpretation of the contract and the choice of the method for computing damages, falls within the domain of the Arbitrator. Unless the method adopted is arbitrary or whimsical, the Court cannot substitute its own method of calculation. The use of the Clause 10CC formula, being a standard provision in CPWD contracts, cannot be termed as arbitrary or patently illegal.

128. The Award, in essence, grants damages for breach of contract, which is permissible under the fundamental policy of Indian law. Therefore, the contention that the Arbitrator exceeded his jurisdiction by awarding escalation is rejected.

Claim No. 4: Compensation for Overheads:

129. The Petitioner has challenged the award of **Rs. 89,18,765/-** towards **Overhead expenses**, on the ground that the Respondent failed to lead specific evidence, such as salary registers, vouchers, or books of account, to prove that it incurred actual expenditure during the extended period. The Petitioner relies on the principle that *damages must be proved* and contends that the Arbitrator's reliance on the **CPWD Circular dated 14.12.2007** acts as a substitute for evidence, which is impermissible.

130. To adjudicate this challenge, it is necessary to appreciate the commercial nature of construction contracts.

131. **Overheads** refer to the indirect costs incurred by a contractor which cannot be directly allocated to a specific physical item of work, but are



necessary for the sustenance of the business and the project. These include Head Office administrative costs and Site Office expenses like staff salaries, rent, electricity, stationary, etc.

132. It is a judicially recognized fact that when a Project is delayed due to the fault of the Employer, the Contractor is forced to keep its resources and establishment deployed for a period longer than anticipated. This inevitably results in the consumption of overheads without corresponding revenue generation from the project. As observed by the Supreme Court in McDermott International Inc. (supra), in the absence of direct proof of every minute expenditure, the *use of standard formulae is a permissible method* to compute these damages.

133. In the present case, the Arbitrator was faced with the task of quantifying the loss after having already established the *factum* of delay attributable to the Petitioner. Instead of applying a complex international formula, the Arbitrator adopted the CPWD Circular, which specifically quantifies overheads at **7.5%**.

134. This Court finds that the approach of the Arbitrator is neither arbitrary nor perverse as the CPWD Manual and Circulars are standard reference documents, in government infrastructure contracts. Adopting a percentage fixed by the CPWD as a *reasonable estimate* of overheads, is a plausible method of quantification.

135. As held in M/s. A.T. Brij Paul Singh vs. State of Gujarat, (1984) 4 SCC 59, it is not always possible for a contractor to produce minute proof of every rupee lost due to the prolongation of the contract. In such cases, a broad evaluation based on industry norms, is legally sustainable.



136. The award of 7.5% towards overheads is not an exaggerated figure that would shock the conscience of the Court. It is a conservative estimate of the administrative costs required to maintain a construction setup for an additional 477 days.

137. The Petitioner's argument that there was no evidence is, therefore, misconceived. The *evidence was the prolongation of the contract itself* and the industry standard evident from the CPWD Circular establishing the norm for such costs. The Arbitrator applied the law of damages by using a reasonable yardstick for quantification. This falls squarely within the domain of the Arbitral Tribunal, as the master of facts.

138. Consequently, this Court finds no patent illegality in the Arbitrator's order to award overhead charges based on the CPWD Circular.

139. *The challenge to Claim No. 4 is, therefore, rejected.*

Conclusion:

140. The scope of judicial scrutiny under Section 34 of the Arbitration and Conciliation Act, 1996, is strictly circumscribed. This Court does not sit in appeal over the Arbitral Award, nor can it re-assess or re-appreciate the evidence to come to a different conclusion. The jurisdiction is limited to examining whether the Award suffers from patent illegality or is in conflict with the fundamental policy of Indian law.

141. In the present case, the Learned Arbitrator has traversed the pleadings and evidence on record to arrive at specific findings of fact. The conclusion that the delay of 477 days was attributable to the Petitioner is based on a detailed analysis of the hindrance register, site constraints, and the conduct of the parties. This finding is neither perverse nor illegal.



142. Once the breach on the part of the Petitioner was established, the Arbitrator was within his jurisdiction to award compensation for the consequences of such breach, namely the refund of Liquidated Damages, escalation costs (Claim No. 5), and overhead expenses (Claim No. 4).

143. The procedural grievance regarding the expert witness does not rise to the level of a violation of public policy, as no actual prejudice or error in calculation has been demonstrated by the Petitioner.

144. The reliance on the *principles* of the deleted Clause 10CC, was a permissible method adopted by the Arbitrator to quantify damages under Section 73 of the Contract Act, rather than an impermissible rewriting of the contract.

145. The use of the CPWD Circular to quantify overheads is a reasonable and standard practice in construction Arbitrations and does not amount to a finding based on “no evidence.”

146. The Petitioner has failed to make out a case that the Impugned Award is patently illegal or shocks the conscience of the Court. The views taken by the Learned Arbitrator are plausible views, based on the terms of the contract and the evidence on record. As held by the Supreme Court in *Ssangyong Engineering*, (supra) where an Arbitral Tribunal has rendered a decision which is a possible view, the Court should not interfere.

Relief:

147. In view of the foregoing discussion and analysis, the Petition is devoid of merit and is arguably an attempt to re-agitate factual disputes settled by the Arbitral Tribunal.

148. Accordingly, the Petition under Section 34 of the Arbitration and Conciliation Act, 1996, is **dismissed**.



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149. The Impugned Award dated **26.03.2019** and the subsequent Order dated **07.05.2019** passed by the Sole Arbitrator are hereby, upheld.

150. The Petition is accordingly disposed of in the above terms, along with pending IAs, if any.

151. There shall be no order as to costs.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 09, 2026