2026:DHC:6217

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Judgment reserved on: 24.07.2026**
Judgment pronounced on: 03.08.2026

\+ O.M.P. (COMM) 153/2025 & I.A. 8609/2025
UNION OF INDIA THROUGH DY CHIEF ENGINEER CONSTRUCTION MORADABAD ....Petitioner

Through: Ms. Rashmi Malhotra & Mr. Arnab Chanda, Advs.

Versus

MS PRAGATI CONSTRUCTION CONSULTANTS .....Respondent

Through: Mr. Utsav Garg, Mr. Pushkar Khanna, Ms. Samvartika Pathak & Mr. Tulha Rampal, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking setting aside of arbitral award dated 04.12.2024.

2. The brief facts are that the petitioner/Northern Railway invited tenders on 25.07.2019 for the work of earth filling, cutting of embankment, supply and spreading of blanketing material, mechanical compaction, construction of minor bridges, duty huts, trolley refuges, service and residential buildings including electrical works at various stations between Roza to Jahanikhera stations (Km 0.00 to 40.00 Km) in connection with the doubling of Roza-Sitapur section of Moradabad

Division. On 28.11.2019 the Award Letter was issued in favour of the respondent at a value of Rs.42,46,24,036.66/-. The contract was executed between the parties on 14.02.2020.

2.1 As per the contract, the respondent was required to complete the work within eight months from the date of the letter of acceptance i.e. by 27.07.2020. The work was not completed within the stipulated time, the petitioner granted extensions on six occasions and the work was ultimately completed on 15.12.2021. During the course of execution of work, the 2nd Amendment and Correction (A&C) was approved on 06.07.2021 for Rs.2,00,63,632.21/- and the cost of work of was enhanced to Rs.4,81,19,255.36/-.

2.2 On 01.07.2023 as per Clause 64 of the General Conditions of Contract (GCC) the respondent invoked arbitration claiming a total amount of Rs.1,95,54,587/- under various heads along with interest at 14% p.a. On 12.09.2023 the arbitral tribunal (for short 'the tribunal') was constituted and the proceeding culminated in the impugned award dated 04.12.2024. The claims were held to be arbitrable and not falling under the category of 'excepted matters'. The respondent was awarded Rs. 65,73,261/- with interest at 10.5% p.a. from the date of receipt of the award, if the award is not satisfied within forty five days of receipt. Aggrieved of the award, the petitioner has filed the present petition.

2.3 The decision on claims and counter-claims in the award are tabulated below:

C. No.	Claim title in brief	Claim Amount Rs.	AWARD Rs.
1.	Amount less paid due to wrong application of clause 4.8 of tender condition for USSOR 2010 items. (Rs.13,00,000/- as per TOR)	12,31,922	12,31,922
2	Reimbursement of GST difference increase after submission of tender for PVC. (Rs.9,32,273/- as per TOR)	36, 01,662 **(Claim not subsisting)**	0
3	Amount less paid due to wrong calculation of PVC	6,52,551	6,52,551
4	Losses suffered and expenses incurred on staff, labour, machinery, retention, overhead, reduced profitability for prolongation of the contract period, etc.	1,40,00,000	**36,88,921 As Damages**
5	Arbitration cost	10,00,000	0
6	In case of non-payment (future) interest on above amount @14% from the date of completion of work i.e. 15.12.2021 till the date of filing of the present claim petition.	55,53,404	**9,99,867 as Damages**
	Total Claims	2,60,39,539	**65,73,261**
	Counter claims of Respondent Nil	0	0

Final Award in favour of the Claimant is **Rupees Sixty five lakh seventy three thousand two hundred and sixty one** only in full settlement of all the claims. The award is subject to tax compliance.

3. Learned counsel for the petitioner contends that the tribunal erred in directing refund of the amount deducted consequent to variation in quantities of items pertaining to Schedule 'A'. The submission is that under Clause 63 of the GCC 'excepted matters' are not arbitrable. The tribunal held that claim for refund of deductions made of items in Schedule 'B' category was not arbitrable being an 'excepted matter' but proceeded to adjudicate the deductions made under Schedule 'A'. It is emphasized that the respondent accepted the

payments without raising objection and the matter falls within the ambit of clause 63 of the GCC.

3.1 Vis-à-vis claim no.4, the submission is that the tribunal erred in awarding damages for prolongation of work in absence of evidence of actual loss suffered. The argument is that price variation compensation (PVC) was paid to the respondent and the contract clauses barring awarding of damages on account of prolongation of work were not considered.

3.2 Lastly, it is argued that the tribunal after calculating the interest held that the respondent was not entitled to *pendente lite* interest, yet awarded the same amount as damages. The relief granted is beyond the prayer and is contrary to the terms of the contract.

4. *Per contra*, the scope of interference under Section 34 of the Act is limited. The view taken by the tribunal is a plausible one and warrants no interference.

4.1 The direction to refund the amount deducted from the third and final corrigendum is defended. It is stated that as per clause 42.2(i) and 42.4(6) of the GCC the variation limit of 25 percent for Schedule of Rates (SOR) items would apply to the value of SOR as a whole and not to individual items. The argument is that the tribunal rightly held that chapter-wise deductions made were contrary to the terms and conditions agreed between the parties.

4.2 In respect of claim no. 4, the stand is that the tribunal did not award damages but consequent to prolongation of the work allowed the fixed cost component. Reliance is on clause 29.4 of the contract, to fortify the submissions that fifteen per cent out of the total contract value was the fixed cost and on that basis claim no. 4 was quantified. Reliance is upon the decision of this Court in ***NTPC Limited Vs. Mudajaya Corporation, Malaysia Berhad*** 2026:DHC:3221 to content that a reasonable yardstick can be applied by the tribunal for quantifying the damages.

4.3 Lastly, learned counsel for the respondent fairly submits that the damages awarded under claim no. 6 in lieu of *pendent lite* interest are contrary to the contract and cannot be granted.

5. Heard the learned counsel for the parties at length. The relevant record was perused with their able assistance. No other issue than those noted above was pressed.

6. Before proceeding further it would be relevant to quote the following clauses of the GCC:-

> "**42.(2)** (i) Unless otherwise specified in the special conditions of the contract, the accepted variation in quantity of each individual item of the contract would be upto 25% of the quantity originally contracted, except in case of foundation work. The contractor shall be bound to carry out the work at the agreed rates and shall not be entitled to any claim or any compensation whatsoever upto the limit of 25% variation in quantity of individual item of works.
> **42.(4)** (6) As far as SOR items are concerned, the limit of 25% would apply to the value of SOR schedule as a whole and not on individual SOR items. However, in case of NS items, the limit of 25% would apply on the individual items irrespective of the manner of quoting the rate (single percentage rate or individual item rate)."

7. The relevant clauses of the contract are reproduced below:-

"**2.2** ***COMPLETION OF TENDER DOCUMENTS***

2.2.1 The tenderers shall quote the rates of one single % age "Above/Below/At par" on the total amount comprising basic value of entire Schedule-A of Chapters of USSOR-2010 plus escalation and Scheduled of Chapters of SOR of electrical one single age "Above / Below / At par" over entire schedule of Non schedule Items (Schedule B and Schedule-D) in the Schedule of Items, Rates and Quantities. Every possible fluctuation in the rate of labour, material and general commodities, and other possibilities of each and every kind which may affect the rates, should be considered and kept in view before, quoting the rates and no claim on this account shall be entertained by the Railway under any circumstances except the price escalation payable, as per price variation clause, if any, provided 'separately in the tender documents.

2.2.2 The quantities shown, in the attached Schedule are given as a guide and are approximate only and are subject to variation according to the needs of the Railway. The Railway does not guarantee work under each item of the. Schedule. The tenderer(s) shall quote rates/ rebates only at specified place in. Tender Form supplied by Railway. Any revision of rates / rebates submitted (quoted) through a separate letter whether enclosed with the bid (Tender Form) or submitted separately or mentioned elsewhere in the document other than specified place shall be summarily ignored and will not be considered. In case of tender other than e tender, mode, Multiple Rates- in case tenderer/s quote selective rebate on any individual item(s) of a USOR Chapter of Schedule-A individual NS. Item of Schedule-B, the same will be treated as multiple rate and their offer will be summarily rejected.

29. Price Variation Clause-(applicable for contract value Rs. 5 Cr and more)

> **29.1** Price Variation Clause shall be applicable only for tenders, of value (Contract Agreement value) Rs. 5 crore. and more, irrespective of the contract completion period. Variation in quantities shall not be taken into account for applicability of PVC in the contract. Material supplied free of cost by Railway to the contractors and any extra item(s) included in subsequent variation, falling outside the purview of the Schedule of items of tender shall fall outside the purview of. Price Variation Clause, if in any case, accepted offer includes some specific payment to be made to consultants or some material Supplied by Railway free or at fixed rate; such payments shall be excluded from the gross value of the work for the purpose of payment/recovery of price variation.
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> ***** *** *****
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> **29.4** Adjustment for variation in prices of material, labour, fuel, explosives, detonators, steel, concreting, ferrous, non-ferrous, insulators, zinc and cement shall be determined in the manner prescribed."

8. In claim no. 1, the grievance raised before the tribunal pertained to deductions made on account of variation in quantities of items mentioned in Schedule 'A' and 'B'. The claim relating to Schedule 'B' was rejected, held to be an 'excepted matter' covered by clause 63 of the GCC and non-arbitrable. The grievance of the petitioner is confined to the refund ordered qua the deductions made for items falling under Schedule 'A'. The tribunal considered clause 2.2.1 and 2.2.2 of the contract and clause 42.2(i) and 42.4(6) of the GCC and held that for SOR items the variation limit of 25 percent is to be considered taking the whole value for SOR schedule whereas the

petitioner contrary to the clause 42.4(6) of the GCC made deductions of the items chapter-wise.

9. The plea raised by the petitioner that the deductions were made chapter-wise as per the past practice was rightly held to be contrary to the terms of the contract. The procedure adopted by the petitioner was against the terms and conditions agreed between the parties and for this reason, the contention that the disputes relates to 'excepted matter' was rejected. In other words the petitioner having violated the terms and conditions of the contract cannot raise shield of clause 63 of the GCC that violation of terms is an 'excepted matter'.

10. The contention of the learned counsel for the petitioner that the tribunal has blown hot and cold in the same breath, having held issue of deductions under Schedule 'B' to be 'excepted matter', yet adjudicated deductions under Schedule 'A', is ill-founded. The deductions of Schedule 'B' category items were made as per the agreed procedure and the deductions under Schedule 'A' were in violation of the terms of the contract. Both the scenarios stand on a different footing. The view of the tribunal is plausible and it is trite law that under Section 34 of the Act Court does not sit in appeal and possibility of another view is not a ground for interference.

11. The respondent under claim no. 4 sought a sum of Rs.1,40,00,000/- (rupees one crore and forty lakhs) towards losses suffered and expenses incurred due to prolongation of the contract, on failure of the petitioner to make the work sites available in time.

12. It would be relevant to quote the following decisions of the Supreme Court dealing with the principles governing award of liquidated damages (for short 'LD'):-

12.1 The Supreme Court in **Kailash Nath Associatesv. DDA** (2015) 4 SCC 136 held:

> "43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.
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> 43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.
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> 43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.
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> 43.4. The section applies whether a person is a plaintiff or a defendant in a suit.
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> 43.5. The sum spoken of may already be paid or be payable in future.
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> 43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not

> dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded."

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

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

13. The tribunal held that the delay in completion of the work was attributable to the petitioner. It was factored that the extension of time without levy of penalty proved that the delay was not attributable to the respondent. The law is well-settled that for awarding LD under Section 73 of the Indian Contract Act, 1872 (for short 'the Contract Act') the twin conditions are required to be fulfilled. First, breach of the contractual conditions and second, the actual loss or damage suffered or the proof that it is not possible to prove the actual damage suffered. In the present case, the second limb is missing. No evidence was adduced by the respondent of actual loss suffered. It was not the case set up that it was impossible or difficult to prove the actual loss. The damages awarded are in violation of Section 73 of the Contract Act and the settled position of law.

14. The contention of the learned counsel for the respondent that the tribunal awarded only the fixed cost component and not damages, lacks merit. The claim made by the respondent was for the losses incurred. The tribunal has specifically recorded that the respondent was entitled to the compensation over and above the PVC.

15. Equally unpersuasive is the reliance of the respondent on clause 29.4 of the contract to support quantification of the damages. Clause 29 deals with price variation and has no application to a claim made by the respondent for damages on account of prolongation of work.

16. The decision in **NTPC Limited (supra)** relied upon by the learned counsel for the respondent is not applicable in the facts of the present case. In that case, the arbitrator recorded a factual finding that it would be difficult to assess the damage under each claim separately and thereafter proceeded to award a reasonable compensation. Whereas there is no finding by the tribunal in the case in hand that it was difficult or impossible to prove the actual loss.

17. Under claim no. 6, the respondent prayed for grant of interest from the date of completion of work. The tribunal quantifies the interest, rejects the claim of the interest in view of the clauses of the contract but proceeds to award the same amount as damages. The relief granted is beyond the prayer and is vitiated by patent illegality and is liable to be interfered with under Section 34(2)(a)(iv) of the Act. The arbitral award cannot deal with matters beyond the scope of the submission to arbitration.

18. Learned counsel for the respondent in all fairness conceded that the damages could not have been granted.

19. The impugned award attracts interference under Section 34 of the Act being contrary to the public policy and vitiated by patent illegality. The damages awarded under claim no. 4 were in contravention to the Contract Act. Claim no.6 for interest was rejected but the tribunal, beyond the prayer awarded the same amount as damages rendering the award patently illegal.

20. The Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***,**(2025) 7 SCC 1** held that while an arbitral award cannot be modified under Section 34 of the Act, a severable part of the award may be set aside. The relevant paragraphs are quoted below:

> "32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of *kompetenz- kompetenz*, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones.[27] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.
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> 33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.

> 34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic.It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified."
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> *(emphasis supplied)*

21. In view of the above discussions, challenge to the claim no. 1 of the petitioner fails and the award is upheld. The claims nos. 4 and 6 awarded suffer from patent illegality and are set aside.

22. The claims nos. 4 and 6 are severable not intricately connected to the other claims by the tribunal. Consequently, the award to the extent of claims nos. 4 and 6 is set aside.

23. The petition is accordingly partly allowed. Pending application stands disposed of.

AVNEESH JHINGAN, J

AUGUST 3, 2026
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Reportable:- **Yes**