2026:DHC:6174

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

\+ O.M.P. (COMM) 494/2016

M/S GEO MILLER & CO PVT LTD .....Petitioner

Through: Mr. S.D. Singh, Senior Advocate with Mr. Kamla Prasad, Mr. Siddartha Singh, Mr. Manan Saini, Mr. Meenu Singh, Mr. Navneet, Advs.

versus

INDIAN OIL CORPORATION LIMITED .....Respondent

Through: Mr. Alka Dahar, Mr. Shiv Verma, Mr. Ankit Bharadwaj and Ms. Pankhudi Tripathi, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% **27.07.2026**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996[1] challenging the arbitral award dated 30.11.2011.

2. The dispute arises out of an EPC Tender concerning the construction of a wastewater treatment plant at Panipat Market Terminal awarded by the Respondent to the Petitioner *vide* Letter of Intent dated 06.12.1996 for a total contract value of Rs.4,90,00,000/-.

3. Under the terms of the Letter of Intent dated 06.12.1996, the

[1] "the Act", hereinafter

stipulated period for completion was nine months. However, dispute erupted as the work was not completed within the initial time line.

4. Consequently, the Respondent withheld 10% of the total contract value by invoking contractual provisions governing liquidated damages for delay.

5. Aggrieved by the deduction, the Petitioner invoked arbitration, challenging the 10% penalty and preferring additional monetary claims towards overheads and prolonged site, stay attributable to alleged delays by the Respondents.

Adjudicating Issue Nos. 5 & 6

6. Pertaining to whether the Respondent had unlawfully withheld 10% of the contract value, the learned Sole Arbitrator ruled in favour of the Respondent. The learned Arbitrator concluded that:-

(i) The Petitioner was responsible for the delay in project execution.

(ii) Time was the essence of the contract.

(iii) The Petitioner failed to adhere to the prescribed procedure for seeking an extension of time under Clause 4.3.6.0.

7. In arriving at this conclusion, the Arbitrator has placed reliance on the stipulated execution period of nine months and the repeated notices issued by the Respondent highlighting the delay in execution of the works.

8. Furthermore, referring to Clause 4.3.5.0, 4.3.6.0 & 4.3.6.0, the Arbitrator held that the Petitioner failed to submit any document proving compliance with the mandatory contractual procedure for seeking time extension.

9. The learned Arbitrator negated the Petitioner's plea regarding adverse weather, observing that the rainfall was not the permissible ground for an extension under the contract and, in any event, the rainfall occurred on 07.11.1997 well after the scheduled completion date. The Arbitrator rejected the Petitioner's objection that only Respondent itself could grant time extensions on levy price reductions, holding that Engineers India Ltd, acting as Respondent's power of Attorney Holder was fully competent to act on its behalf.

10. Consequently, the learned Sole Arbitrator held that the Respondent was lawfully entitled under Clause 4.4.0.0 to reduce the contract price by 10% of the total contract price.

11. Mr. S.D. Singh, Learned Senior Counsel for the Petitioner submits that the Arbitrator erred in attributing delay to the Petitioner and upholding the 10% deduction.

12. It is contended that the Arbitrator failed to properly appreciate correspondence which established that the delay was attributable to the Respondent.

13. Learned Senior Counsel for the Petitioner further contends that

time could no longer be treated as the essence of the contract once the Respondent was permitted to continue the work beyond the stipulated completion date, irrespective of whether the contractual owner had formally decided the issue of extension of time or levy of liquidated damages.

14. Learned Senior Counsel for the Petitioner placed reliance on ***Kailash Nath Associates v. Delhi Development Authority and Anr.***[2] to contend that Respondent could not justify an automatic deduction of the maximum 10% merely upon proof of delay and the amount recoverable had to constitute reasonable compensation for a breach attributable to the petitioner.

15. Further, reliance was placed on ***J.G. Engineers Private Limited v. Union Of India and Anr.***[3] to contend that Respondent could not unilaterally decide that the contractor was responsible for the delay and then impose liquidated damages.

16. Lastly, learned Senior Counsel for the Petitioner contended that the learned Sole Arbitrator failed to evaluate whether the stipulated deduction constituted reasonable compensation under Section 74 of the Indian Contract Act, 1872.

17. On these grounds, the Petitioner prays for setting aside the impugned order.

18. Upon reviewing the material on record, the controversy narrows down to two principal issues:-

[2] **2015 (4) SCC 136**
[3] **2011 (5) SCC 758**

(i) Whether the Respondent was justified in withholding 10% of the Contract value as liquidated damages for delayed compensation.

(ii) Whether the Petitioner was entitled to additional compensation for extended stay at the project side.

19. There is no challenge pertaining to the clause of the contract which permits 10% liquidated damages. The case of the Petitioner is that since delay is attributable to Respondent, he cannot deduct 10% liquidated damages as per contract. In essence, the Petitioner invites this Court to reexamine factual questions regarding causation of delay and whether extension letters operated as unconditional waivers.

20. Adjudicating the submission as to who really caused the delay, would require a fresh appraisal of evidence and contractual correspondence, and exercise power well beyond the limited supervisory scope under Section 34 of the Act.

21. However, according to this Court, after analysing the evidentiary record, the learned Arbitrator led the plausible finding that the Respondent delayed the project by 270 days.

22. The impugned Award expressly considers the delay attributable to the Petitioner in mobilising resources at the project site, as well as the delays relating to the issuance and availability of Approved for Construction drawings.

23. It further records the Petitioner's failure to expedite the execution

of the works and to deploy adequate manpower, machinery, and other resources, despite repeated notices, reminders, by respondents.

24. The learned Arbitral Tribunal has thus examined the relevant correspondence, and the conduct of the parties, and the contemporaneous project records before determining responsibility for the delay.

25. The relevant findings from the arbitral award in this regard are reproduced as below:

> *"I have carefully considered the facts and circumstances of the matter and the arguments of both sides. A perusal of the facts of the matter substantiated by the plethora of communication exchanged between the parties show that the Claimant was slow and negligent in fulfilling his obligations as specified under the contract. The slow pace of work can be ascertained from the fact that the Claimant deputed his authorized representative only on 2nd Feb 1997 after a delay of 2 months. Letter dated 17th January 1997 sent by EIL, Power of Attorney holders of the Respondent also show the delay on part of the Claimant. Provision of Clause 4.4.0.0 of the Contract provides that if there has been any delay in the final completion of the work at any job site or specific works in respect of which a separate progress schedule has been established, beyond the date for the final completion of the work or works aforesaid at job site as stipulated in the progress scheduled, the owner shall (without prejudice to any other right of owner in this behalf) be entitled to reduction in price % (one half percent of the total contract value for each week of delay or part thereof limited to a max. of 10% (ten percent) of the total contract value.*
>
> *Further provisions of Cl. 4.3.5.0 provides for procedure for obtaining extension of time which was not complied with by the Claimant.*
>
> > *Contract Clause 4.3.5.0 provides as follows:*
> > *"Within 7 (seven) days of the occurrence of any act, event or omission which, in the opinion of the Contractor, is likely to lead to delay in the commencement or completion of any particular work(s) or operation(s) or the entire work at any job site(s) and as such it would entitle the Contractor for an*

extension of the time specified in this behalf in the Progress Schedule (s), the contractor shall inform the site engineer and the engineer-in-charge in writing of the occurrence of the act, event or omission and the date of commencement of such occurrence. Thereafter, if even upon the cessation of such act or event of the fulfillment of the omission, the contractor is of opinion that an extension of the time specified in the Progress Schedule relative to any particular operation(s) or item(s) of work of the entire work at any job site is necessary, the contractor shall within 7 (seven) days after the cessation or fulfillment as aforesaid make a written request to the Engineer-in-charge for extension of the relative time specified in the progress schedule, and the Engineer-in-charge may at may time prior to completion of the work extend the relative time of completion in the progress schedule for such period(s) as he considers necessary, if he is of the opinion that such act/event/omission constitutes a ground for extension of time in terms of the Contract and that such act/event/omission has in fact resulted in insurmountable delay to the contractor. The opinion/decision of the Engineer-in-charge in this behalf and as to the extension necessary shall, subject to the provisions of Clause 4.3.6.0 hereof be final and binding upon the contractor."

The Claimants have argued that Owner doesn't include representative or agents and that only IOCL as an owner was empowered to terminate the agreement however IOCL did not choose to terminate the contract. The Claimant has further argued that till date there is no complaint about the quality of the work executed by the Claimant and the same is being fully used by the Respondent. The Claimants have further stated that the Respondent does not have any right to withhold the amount by permitting the Claimant to execute the work and without terminating the contract and suspending the work and that there was De-facto extension of the contract which is evidenced by the communication between the parties evidently showing that the contract has been extended mutually between the parties.

The Counsel for the Claimant has also stated that if there is extension clause in the contract, time cannot be said to be the essence. The Claimant has relied on Section 55 of the Contract Act and states in the present case, the conduct of the parties clearly shows that the Respondent never treated time as an essence and permitted the claimant to continue the execution of the work. The Counsel has relayed on Arosan Enterprises Ltd V. UOI & Ano. (1999) 9 SCC 449 *(para 14) and states that when the contract itself provides for extension of time, the same i.e. time cannot be termed to be essence of contract. The counsel also argues that due to the delay caused in the completion of the project no damages or loss was caused to the Respondents.*

I have also considered the arguments of counsel for the Respondent that the payment for the execution of work has already been made to the satisfaction of the Claimant and subsequent to which it has issued the 'NOC' on 03.11.99 without any undue pressure. The Respondent states the present claim of the Claimant is therefore, liable to be dismissed on this ground alone. The counsel has further argued that the time was the essence of the contract and the entire work was to be completed Arbitral within 9 months from the date of fax of intent. This Arbitral tribunal attention has also been drawn to Clause 2.3.1.0 of GCC wherein the Claimant had to submit all the drawings within 15 days from the date of acceptance of the Tender or 15 days before the proposed date of commencement of the relative work, whichever shall be earlier. Clause 4.3.7.0 of the Contract has also been mentioned which defines the circumstances under which the contractor is eligible for extension of time for completion of work and for such extension rain is not covered including Clause 4.3.5.0 which provides if any extension had to be obtained for any hindrances then the contractor had right to apply for time extension under this provision failing which it is assumed that all the works would be executed as per the contract which in this case the Claimant did not do. It is also pointed out by the Respondent that scheduled date of completion of work was September 5, 1997 whereas the date of rain is November 7, 1997.

Thus after hearing both the sides and after examination of the plethora of communication exchanges between the parties it is clear that the Respondent repeatedly communicated to the Claimant regarding the delay of the project. From the facts and circumstances of the matter, it is clear that there has been a delay in executing the work and it cannot be said that time was not the essence of the contract. There is also no document to show that the Claimant complied with the provisions of cl. 4.3.6.0 as was required under the contract. The arguments of the Claimant that only the owner could have taken the decision and the Engineer Incharge was not competent to take the decision of not allowing the extension of time does not hold water as Engineers India Limited (EIL) are clearly the power of attorney holders for Indian Oil Corporation Limited (IOCL)

> *and therefore, this argument of the Claimant also fails. Hence I hold the Respondent are well within their legal rights to price reduction as envisaged under the provisions of cl. 4.4.0.0 of the contract up-to maximum of 10% of the total contract value as there was a delay in completing the work."*

26. It is evident from the record that the view taken by the learned Sole Arbitrator is entirely plausible. This Court in exercising its constraint jurisdiction under Section 34 cannot interfere merely because another view is possible, unless the findings are shown to be by no evidence, ignored vital evidence and adopt an interpretation so irrational as to be impermissible.

27. The Hon'ble Supreme Court in ***Associate Builders v. DDA*[4]*,*** reiterated that the Court exercising jurisdiction under Section 34 does not seek as a Court of appeal and cannot re-appreciate evidence. Interference is limited strictly to cases where findings are perverse based on no evidence or fundamentally irrational. Paragraph 33 reads as under:

> *"33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score [Very often an arbitrator is a lay person not necessarily trained in law. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:"General, you have a sound head, and a good heart; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to make your*

[4] **(2015) 3 SCC 49**

decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may be substantially right, although your reasons may be very bad, or essentially wrong".It is very important to bear this in mind when awards of lay arbitrators are challenged.] . Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. [(2012) 1 SCC 594 : (2012) 1 SCC (Civ) 342] , this Court held : (SCC pp. 601-02, para 21)

> *"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at."*

28. The Apex Court had emphasized that plausible construction of contractual terms by Arbitrator must be respected.

29. It is also held time and again by Hon'ble Apex Court that Courts cannot re-evaluate evidence under Section 34 simply to determine whether an ultimate factual conclusion could have been reached unless the award is based on no evidence or a vital evidence is ignored.

30. Further, it is also borne out from the contract itself that the clause permits a damage of 10%, which does not seem to this Court to be

unreasonable or in access.

31. The contention of learned Senior Counsel for the Petitioner relying ***on J.G. Engineers (P) Ltd. v. Union of India*** *(supra)* that the disputed question as to which party caused the delay must be adjudicated independently is not convincing. In the present case, that requirement was satisfied because the Arbitrator himself examined the correspondence and contractual provisions and recorded a finding that the Claimant was responsible for the delay, therefore, ***J.G. Engineers*** *(supra)* does not by itself invalidate the award.

32. With regards to reliance placed on ***Kailash Nath*** *(supra)*, in the present case, the Arbitrator has expressly found that the contractor committed breach by failing to complete the work by 05.09.1997 and did not establish compliance with the contractual procedure for extension of time and was repeatedly informed about the delay.

33. Further, Clause 4.4.0.0 of the subject agreement does not provide for forfeiture of a fixed deposit, but prescribes a graded price reduction of 0.5% for each week of delay, capped at 10%, thereby linking compensation to the duration of the breach.. Thus, unlike ***Kailash Nath*** *(supra)*, the present case involves an adjudicated breach and a delay based compensation clause.

34. The remaining objections raised by the Petitioner are consequential to the primary findings on responsibility for delay, once the Arbitrator determine that the delay was attributable to the Petitioner, thereby entitling Respondent to invoke Clause 4.4.0.0 is sustained under reasonable and plausible view, the foundation of the challenge to

the liquidated damages collapsed.

35. In view of the above, the Petitioner's objection to the impugned arbitral award dated 30.11.2011 is devoid of merit and stands rejected.

36. Accordingly, the present petition is dismissed along with all pending applications with no orders as to costs.

OM PRAKASH SHUKLA, J.

JULY 27, 2026/at/gunn