2026:DHC:6870-DB

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on*: 30.07.2026*
Judgment delivered on*: 17.08.2026*
Judgment uploaded on*: As per Digital Signature~*

 # CNR No. DLHC014172602018

+ FAO(OS)(COMM) 277/2018

RAMA CONSTRUCTION CO .....APPELLANT

versus

DELHI STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD .....RESPONDENT

 # CNR No. DLHC010003732018

+ FAO(OS)(COMM) 6/2019

DELHI STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD .....APPELLANT

versus

M/S RAMA CONSTRUCTION COMPANY .....RESPONDENT

Advocates who appeared in this case

For the Appellant : Mr. Avinash Trivedi and Mr. Rahul Aggarwal, Advs. for Rama Construction Company.

For the Respondents : Ms. Tajinder Virdi, Adv. for DSIIDC.
Mr. Vikrant Narayan Vasudeva, Adv. for DSIIDC.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. These two appeals under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act') arise from the same impugned order of the learned Single Judge dated 10.09.2018 in OMP (COMM.) 250/2016, and as such, are being decided together by this common order. For the sake of convenience, the appellant and the respondent in FAO(OS)(COMM) 277/2018 (who are inversely the respondent and the appellant in FAO(OS)(COMM) 6/2019) shall be referred to hereinafter as '*Rama Construction Company*' and '*DSIIDC*' respectively

2. At the outset, we may narrate a brief factual background of the present controversy. DSIIDC had awarded Rama Construction Company the tender for *"construction of pakka school building for Government school at Gazipur*" for an amount of Rs. 4,93,84,902/- *vide* letter dated 10.01.2005. Pursuant thereto, an agreement dated 24.03.2005 was executed between the parties.

3. Disputes arose between the parties and a Sole Arbitrator was appointed by DSIIDC. Though various claims made by Rama Construction Company were allowed by the Arbitrator, and some were challenged before the learned Single Judge, this appeal is limited to the decision of the learned Single Judge with respect to claims no. 17, 18 and 20.4. The petition under Section 34 of the Act was disposed of, rejecting the challenge made by DSIIDC to claim no. 18 and holding that claim no. 17 shall be restricted to

Rs.4,07,218/- as against an amount of Rs. 19,52,087/- granted by the learned Arbitrator, and also reducing the interest granted under claim no. 20.4 from 10% to 8% on the remaining claims.

4. The conclusion of the learned Single Judge on claim no. 17, which is reproduced below, has been challenged by Rama Construction Company in FAO(OS)(COMM) 277/2018.

> *"The Arbitrator hence considered final bill no.-2 in order to award Claim No.-17. The claimed amount under Claim No.-17 was only Rs.22,98,591/-. This is also as per the rejoinder submissions, CD-17. Since, the amount claimed is only Rs22,98,591/- and the amount already paid was Rs.18,91,373/-, the balance amount would have only been Rs. 4,07,218. The Arbitrator, therefore,_ erred in taking the claimed amount as per CD-24 without considering the documentation and the proceeding sheet of 3rd November, 2012. CD-24 was admittedly submitted pursuant to order dated 3rd June, 2013 which was just before the passing of the award. The objection raised by the Respondent in respect of the final bill having been considered by the Arbitrator, CD~24 could not have been taken into consideration. Thus, Claim No.-17 is .restricted to Rs. 4,07,218/-. The absence of any documentation in the impugned award as to the calculations recorded on 3rd November, 2012 and sudden increase in Claim no.-17 just before passing of the award lends credence to the case of the Petitioner that an inflated calculation has been wrongly considered by the Arbitrator."*

5. On the issue of interest, the learned Single Judge has held on the remaining claims, the interest shall be 8%, as against the 10% granted by the Arbitrator. This modification has been challenged in this appeal.

6. Similarly, the finding of the learned Single Judge in claim no. 18, reproduced below, has been challenged by DSIIDC in FAO(OS)(COMM) 6/2019.

> *"14. Further, no details whatsoever were given to substantiate the argument that the increase in the value of the work was not because of increase in quantum of work but on account of increase in cost of materials. In the absence of the same, the challenge to this is untenable."*

CLAIM NO. 17

7. On claim no. 17, the submission of Mr. Avinash Trivedi, the learned counsel for Rama Construction Company is primarily that the learned Single Judge could not have modified the award rendered by the Arbitrator and reduced the same from Rs. 19,52,087/- to Rs.4,07,218/-. The claim is relatable to price escalation as governed by Clause 10CC of the Agreement. The Arbitrator held that the delay in the work was attributable to DSIIDC and hence, Rama Construction Company is entitled to escalation of the entire period of execution of work.

8. The claim initially made by Rama Construction Company was for an amount of Rs. 11,05,080/-. It is a conceded position that an amount of Rs. 18,91,373/- (Rs. 13,94,312/- + Rs. 4,97,061/-) was paid by DSIIDC to Rama Construction Company. For determining the escalation, Rama Construction Company relied on the Base Price Index of September 2004, as the Index of August 2004 was not available at the time. When the Index for August 2004 became available, the claim was revised and increased to Rs. 22,98,591/- by a way of a subsequent amendment application, which was allowed. This increase is primarily based on the index of August 2004.

9. The Arbitrator instead of the claimed amount of Rs. 22,98,591/-, granted an amount of Rs. 19,52,087/-, by relying upon CD-24, which is the revised calculation statement filed by Rama Construction Company. The conclusion of the Arbitrator on claim no. 17 is as under:-

> *"(viii). In view of my discussion as above I hold that Claimant are entitled to the escalation payment for the whole work and that too with base Price Index of August 2006. The work as measured quarter wise, 8th and 9th in particular, and as also verified by the Respondent during the hearings from the MBs, has been considered by the Claimant in their revised calculations in statement CD-24. The total admissible amount works out to Rs.38,43,460/- out of which a sum of Rs.18,91,373/-is already paid against Bills No.1 and 2. The balance amount still due is Rs.19,52.0872 and the same is awarded in favour of the Claimant."*

10. The aforesaid would reveal that the conclusion drawn by the Arbitrator is that the total admissible amount under the said claim works out to Rs. 38,46,460/- out of which, Rs. 18,91,373/- having already been paid, Rama Construction Company shall be entitled to balance amount of Rs.19,52,087/-.

11. The submission of Ms. Tajinder Virdi, the learned counsel for DSIIDC is that the Arbitrator had failed to consider the proceeding sheets dated 03.11.2012, calculations were submitted in respect of escalation payable, and Rama Construction Company itself had agreed that only an amount of Rs. 7,65,301/- was due. According to her, therefore, the Arbitrator could not have granted any amount in excess of Rs. 7,65,301/-. She has also submitted that the learned Single Judge has rightly held that the

Arbitrator erred in relying upon CD-24 without considering the objections raised by DSIIDC on its applicability.

12. The learned Single Judge, while setting aside the conclusion of the Arbitrator, held that the revised claim being for Rs. 22,98,591/-, and Rs. 18,91,373/- having been paid, Rama Construction Company is only entitled to balance amount of Rs. 4,07,218/-. It was held that the Arbitrator erred in taking the claim amount as per CD-24 without considering the documentation and the proceeding sheet dated 03.11.2012. CD-24 is the revised calculations given by Rama Construction Company to contend that the total admissible amount works out to Rs. 38,43,460/-, out of which Rs. 18,91,373/- has already been paid against final bill nos. 1 and 2.

13. Relevant part of the proceeding sheet dated 03.11.2012, reads as under:

> *"3. Claim No.17. (10CC):*
> *(i). Rt submitted a statement, which was submitted earlier by the Ct under his letter Dt 16.7.07 to the Rt, Pg. 10/RD-9, after checking its calculations, and the same was marked as RD-10. The amount claimed by the Ct in his SOC was Rs 11,05,080/- However, due to calculation mistakes, the same works out to Rs 7,65,301/- as detailed below and this change is agreed to by both Parties. Pg 10/RD-9 refers*
> *Total gross amount of 2nd Escalation Bill inclusive of 1st Escalation Bill = Rs.26,56,674/-*
> *Less already paid (i) against 1st Bill Rs. 13,94,312/- (Net was Rs. 13,21,194/-)-*
> *(ii) against 2nd Bill Rs. 4,97,061/-*
> *Total Rs 18,91,373/- (-) Rs. 18,91,373/-*
> *Hence balance amount as per Claim = Rs. 7,65,301/-*
>
> *(ii). Rr stated that the above statement as prepared by Ct has following deficiencies*

a. The Labour rate as per Clause 10CC, Pg.99/Agmt, the Li is minimum wages in Rupees of an unskilled adult male mazdoor fixed under rules as applicable on the last date of the quarter previous to the one under consideration. The Ct has, however, taken the average of the wages of the three months of the quarter under consideration

b. The figures of gross value of work done for the 3rd and 4th quarters of the year 2005, are not as per the RA Bills, though the sum of the two figures comes out to be unchanged.

c. The value of work done considered by the Ct for the 8th quarter ie Nov. 06 to Jan 07, is Rs. 1,11,69874/- whereas it should be Rs. 52,08,147/-.

d. After above corrections Rt has worked the Balance amount as per Claim as Rs.2,08,551/-against the figure of Rs.7,65,301/-.

(iii) Rt further stated that they had already paid escalation under 10CC for the work done upto the stipulated Date of Completion, which according to them is 30.11.2006, ie for the work paid upto 16th RA Bill, list of RA Bills at Pg. No.3/RD-7 refers.

(iv). Rt may offer his comments on quantification given by the Ct in CD-17. The calculations of the amount claimed may be shown separately for the period beyond the stipulated date of completion already decided by the AT, i.e.22.1.2007 and for the period beyond that, by the Ct and commented upon by the Rt there after. I

(v). Ct filed an amendment application Dt.3.11.2012 for this Claim and the same was marked as CD-20. Rt may furnish his comments on it by 30.11.2012.

(vi). Hearing was adjourned at this stage and as decided in consultation with both the Parties the next hearing will be held on 15.12.2012 at 11.00 hrs at 87, Ankur Aptts, 7, L.P. Extension Delhi-110092."

14. The aforesaid proceedings also refer to the fact that Rama Construction Company had filed an application to amend the claim on 03.11.2012, marked as CD-20. The DSIIDC in paragraph 8 of its reply took the following stand:

> *"8. That the contents of Para 8 are denied as incorrect. It is denied that the revised amount of escalation under Clause 10CC, based on the initial base cost index for August 2004 and for civil components of construction materials worked out as per CD-17 dated 01.10.2012 is Rs.22,98,591/-. It is submitted that there is no due amount under Clause 10CC payable by the Respondent to the Claimant."*

15. Even in paragraph 11 of the reply, DSIIDC opposed the attempt of Rama Construction Company to revise the amount to Rs. 22,98,591/-.

16. In the proceedings held on 16.02.2013, the Arbitrator allowed the application for amendment, stating the following:

> *"1.1. On 1.10.2012 before commencement of their presentation on this Claim, Ct had filed their Rejoinder for this Claim vide document Dt.1.10.2012, CD-17. In this Rejoinder they had prayed that under the circumstances they may be allowed to revise the amount of this claim from Rs.11,05,080/- to Rs.22,98,591/- under Section 23(3) of the Arbitration and Conciliation Act, 1996 and that will be in the interest of justice. The same prayer was reiterated by them in their document Dt.3.11.2012, CD-20. This amendment in the claim has been objected to by the Rt on account of (i). Issue of claim towards cost index of August 2004 was not taken in SOC nor prior to filing of the present claim petition and the issue is time barred (ii). Escalation is not payable for extended contract period. (iii). Ct had agreed not to claim extra for delay in work. (iv). Ct is trying to change the subject matter of the dispute as well as is trying to refer to a complete new cause of action which was never referred to present Arbitral proceedings and (v). Ct is barred from raising such a dispute when the matter has*

reached the final arguments. Rt's documents RD-9 and RD-11 refer.

1.2. I have perused the documents submitted by the Parties and submissions made by them. The reference of this Claim made by the competent authority i.e. Chief Engineer, reads "Payment for escalation under clause 10CC paid less than due". Below this subject matter is given the break up of the amount claimed. The amendment sought by the Ct does not in any way change the subject matter of the claim as it remains the same i.e. the "Payment for escalation under clause 10CC paid less than due". It is only the details of the amount claimed which are sought to be modified by the Ct. No specific cause of action is mentioned in the claim referred. Whether the claim or part of it is barred by limitation, or not admissible as per terms and conditions of the contract etc, are matters to be deliberated upon later after the issue of allowing proposed amendment is decided. It is also not correct to say that the issue is being raised at the final arguments stage when the fact is that the amendment issue has been raised before commencement of the arguments. The Arbitration and Conciliation Act, 1996, is a specific Act which applies to Arbitration. Its Clause 23(3) reads as follows.

> *"23(3) Unless otherwise agreed by the parties, wither party may amend or supplement his claim or defence during the course of the arbitral proceedings. unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it."*

Under the circumstances as explained above, I do not consider it inappropriate to allow the amendment sought by the Ct and as such the same is allowed."

17. The learned Single Judge in paragraph 9 of the impugned judgment has held as under:

> *"9. A perusal of Clause 10CC makes it clear that the All India Wholesale Price Index as on the date of tender is the applicable index. It is a fact that the initial claim was filed on the basis of the September, 2004 index. This is clear from a reading of the proceeding sheet dated 3rd June, 2013. The initial Claim No.-*

17 was to the tune of Rs.11,05,080/-, which was revised by filing a subsequent amendment due to which the claim was increased to Rs.22,98,591/-, in the rejoinder submissions. The specific averment by the Respondent in para 17.9 of the rejoinder submission is as under:

> *"17.9 The claimant submits herewith a statement with detailed calculations of escalation under clause 10CC showing net payable amount of Rs.22,98,591/- to the claimant. In this respect it is submitted as follows:*
>
> *(i) The claimant submitted tender for this work on 16.08.2004. The index for civil components of construction materials during August 2004 was applicable as initial index. Initial index for August 2004 was not available when payment of escalation bill under clause 10CC was pending for payment. In these circumstances, the claimant had requested vide C-23 dated 11.12.2006 (page 42) to pay the escalation bill by adopting the index for September 2004 on provisional basis and the bill will be revised when the index for August 2004 would be available. The index for escalation under clause 10CC adopted as initial cost index for August 2004 (203.94) is submitted herewith."*

This amendment was allowed on 16th February, 2013 in terms of Section 23 (3) of the Arbitration Act. The use of the All India Wholesale Price Index for construction material was substituted as per the Correction Slip for General Conditions of Contract for CPWD Works 2003 (hereinafter „Correction Slip"), which incorporated corrections up to 4 th April 2003. Thus, no fault can be found with the fact that the Index for August, 2004 was considered by the Arbitrator. The objection, however, raised by Mrs. Salwan is in respect of the fact that the proceeding sheet dated 3rd November, 2012, specifically recorded that the balance amount as per the claim i.e. Claim No.-17 would only be Rs.7,65,301/- based on RD-2 i.e. final bill no.-2. The relevant portion of the said order reads as under:

"3. Claim No.17: (10CC) (i). Rt submitted a statement, which was submitted earlier by the Ct under his letter Dt16.7.07 to the Rt, Pg.10/RD-9, after checking its calculations, and the same was marked as RD-10. The amount claimed by the Ct in his SOC was Rs.11,05,080/-

However, due to calculation mistakes, the same works out to Rs.7,65,301/- as detailed below and this change is agreed to by both Parties. Pg.10/RD-9 refers.

Total gross amount of Ct's 2nd Escalation Bill inclusive of 1st Escalation Bill =Rs.26,56,674/-

Less already paid (i)against 1st Bill Rs.13,94,312/- (Net was Rs.13,21,194/-)-

(ii)against 2nd Bill Rs. 4,97,061/-

Total Rs.18,91,373/- (-) Rs.18,91,373/-

Hence, balance amount as per Claim = Rs.7,65,301/"

The Learned Arbitrator has, while dealing with Claim No.-17 clearly held that though by the time the final award was passed, the third bill i.e. final bill no.-3 was submitted, the difference between the final bill no.-2 and final bill no.-3 was not much. The Arbitrator observed as under:

"(a). Two escalation bills No.1, Dt. 17.7.2006 and No.2, Dt. 16.7.2007 submitted by the Claimant were paid by the Respondent after some adjustments in the amounts. As per Claimant the Escalation Bill No.2 was for the whole work as the work was completed by Jan.'2007, though the Respondent had recorded the date of completion as 5.3.2007. In support of the same Claimant relied upon the final bill as submitted by them on 28.5.2007 as per which value of work done, for agreement items only on which 10CC is payable, is Rs.5,28,74,627/- and the Escalation bill No.2 is also for almost the same value of the work done of Rs. 5,28,51,262/-. The difference is negligible

and is inconsequential. The 3rd bill had to be submitted by the Claimant as 2nd bill was not paid in full. But for the claim under consideration I do not intend to look into this Bill No.3 as the same is of no relevance. Based on the above facts I, however, hold that the escalation bill No.2 was for the whole work which as per the Claimant was completed by January, 2007 and accordingly the escalation bill No.2 also showed the last quarter for which 10CC was claimed as Nov. & Dec.2006 and Jan 2007 i.e 8th Qr. In the amended claim also the Claimant has claimed for the whole work only."

The Arbitrator hence considered final bill no.-2 in order to award Claim No.-17. The claimed amount under Claim No.-17 was only Rs.22,98,591/-. This is also as per the rejoinder submissions, CD-17. Since, the amount claimed is only Rs.22,98,591/- and the amount already paid was Rs.18,91,373/, the balance amount would have only been Rs. 4,07,218. The Arbitrator, therefore, erred in taking the claimed amount as per CD-24 without considering the documentation and the proceeding sheet of 3rd November, 2012. CD-24 was admittedly submitted pursuant to order dated 3rd June, 2013 which was just before the passing of the award. The objection raised by the Respondent in respect of the final bill having been considered by the Arbitrator, CD-24 could not have been taken into consideration. Thus, Claim No.-17 is restricted to Rs. 4,07,218/-. The absence of any documentation in the impugned award as to the calculations recorded on 3rd November, 2012 and sudden increase in Claim no.-17 just before passing of the award lends credence to the case of the Petitioner that an inflated calculation has been wrongly considered by the Arbitrator."

18. On a conspectus of the above, it is clear that the claim was decided by the Arbitrator based on final bill no. 2. The conclusion of the Arbitrator that an amount of Rs. 38,43,460/- was the total admissible amount was based on CD-24, which was given by Rama Construction Company pursuant to the

order dated 03.06.2013, which was merely three days prior to the passing of the award dated 03.06.2013. The learned Single Judge held that since the Arbitrator had based his calculation on final bill no.2, he could not have alternatively relied upon CD-24, the applicability of which was contested by DSIIDC. Further, the learned Single Judge held that the calculations recorded in the proceedings sheet of 03.12.2012 were not dealt with by the Arbitrator, and as such, accepted the case of DSIIDC that an inflated calculation was wrongly considered by the Arbitrator.

19. We are in agreement with the conclusion of the learned Single Judge. The award dated 06.06.2013, despite recording that claim no. 17 is being decided based on the final escalation bill no.2, is conspicuously silent on the recording in the proceeding sheet/ order dated 03.12.2012, that the balance amount for the claim, after considering final bill no. 2, is only Rs. 7,65,301/. The said order specifically records that the amount is agreed to by both the parties. The Arbitrator overlooked this crucial factor, and relied upon a revised calculation statement unilaterally submitted by a party merely days before passing the order, the applicability of which was contested by the other party. This is an issue that goes to the root of the matter and constitutes patent illegality under Section 34 of the Act. The learned Single Judge was justified in holding that the Arbitrator had erred in considering an inflated calculation to arrive at the figure of Rs. 19,52,087/-. The proceeding sheet/order dated 03.11.2012 having clearly recorded that Rs. 13,94,312/- and Rs. 4,97,061/- were already paid by DSIIDC to Rama Construction Company against final escalation bills no. 1 and 2 respectively (the cumulative amount being 18,91,373/-), the learned Single Judge had rightly deducted the amount from the amended claim amount of Rs. 22,98,591/- to

arrive at the figure of Rs. 4,07,218/-, as the amount payable by DSIIDC under claim no. 17.

CLAIM NO. 18

20. Insofar as the challenge made by DSIIDC to the judgment of the learned Single Judge on claim no. 18 is concerned, the said issue primarily relates to the grant of incentive to Rama Construction Company on the ground that they have completed the project before the extended stipulated date of completion. The Arbitrator allowed the claim in favour of Rama Construction Company, and considering the tendered value of Rs. 4,93,84,907/- and the value of work done on the basis of stipulated date of completion, which was extended by 226 days, awarded a bonus of 1% per month as incentive, subject to a maximum of 5%, which works to Rs. 26,69,145/-. The case of DSIIDC is that the Arbitrator has wrongly held that the additional work was awarded to Rama Construction Company when, in fact, the value of the work changed only because of increase in the price of material, and not the quantum of work. It is their case that incentive would be payable as per Clause 2A of the GCC only if the work is completed before the extended date of contract by reason of increase in the quantum of work and not otherwise. The case of Rama Construction Company is that the calculation by the Arbitrator is justified as DSIIDC itself had submitted that 15% additional work was awarded to the respondent.

21. Clause 2A of the GCC reads as under:

> *"2A. In case, the contractor completes the work ahead of scheduled completion time, a bonus ® 1 % (one percent) of the tendered value per month computed on per day basis, shall be payable to the contractor, subject to a maximum limit of 5% (five percent) of the tendered value. The amount of bonus, if*

payable shall be paid along with final bill after completion of work."

22. The conclusion of the Arbitrator is as under:

> *"(iv). I have carefully examined and analyzed the submissions made by both the Parties. It is an undisputed fact that incentive (bonus) Clause 2A on Pg. 222 of the Agmt, is part and parcel of the Agmt entered into between the Parties. This Clause 2A is at para 10 of the 'Corrections Slip for General Conditions Of Contract for CPWD Works 2003 starting from Pg. 219 of the Agmt. Paras 27 to 29 of these corrections, deal with modifications in Escalation Clause 10CC of the Agmt which has been followed by both the Parties and Contractor's Claim No. 17 for balance escalation is also based on these modifications in Clause 10CC only. Applicability of these corrections under that Claim has never been objected to or disputed by the Respondent. Inconsistent approach of the Respondent in respect of these two Clauses by arguing that Clause 2A is not applicable whereas Clause 10CC which has already been implemented based on which payment also made, and both of which are forming part of the same Document of the Agmt, cannot be appreciated. Therefore the Respondent's stand that Clause 2A is not applicable in the instant case is totally devoid of any merit. Entry at Sl No. 4 in EOT Proforma Pt II, Pg 132/CD-2, filled by the Respondent themselves, reveals that a percentage of 80% has been considered for that hindrance and not 100% to work out the period of extension, and as such it is wrong on the part of the Respondent to say now that the hindrances were not calculated by them on a proportionate basis. The stipulated date of completion as already decided earlier, is 22.1.2007 and not 30.11.2006 as stated by Respondent EE. Clause 12.1.1 of the Agmt provides that time for completion in the event of deviations resulting in additional cost, be extended in the proportion which the additional cost bears to the original tendered value plus 25% of the time so calculated or such further additional time as may be reasonable. Hence minimum 25% extra has to be considered and not 15% as considered by the Respondent. The scheduled*

completion time as per the contract was 22 months. On account of hindrances which are attributable to Respondent such as delay in issue of revised drawing for FF slab, delay in providing of electrical conduits, stoppage of work of 3rd and 4th floors by DD and extra time required on account of additional work, the scheduled completion time gets contractually extended by 226 days. Against this the additional time taken by the Claimant Contractor was only (5.3.2007-22.1.2007)=42 days. Thus the work was completed (226-42) = 184 days before the deemed extended scheduled completion time."

23. The learned Single Judge has in paragraph 13 of the impugned order, observing that the above findings are on a complete appreciation of the facts, held that the conclusion drawn by the Arbitrator is justified. Further, by referring to the judgment of this Court in ***Union of India v. N.N. Buildcon Pvt. Ltd., FAO (OS) 438/2015***, the learned Single Judge rejected the contentions on behalf of DSIIDC. We find no reason to interfere with the conclusion of the learned Single Judge.

24. With regard to the submission that the Arbitrator failed to consider that the value of the work increased due to the higher cost of material and not due to additional work being allocated, the learned Single Judge held as under:

> *"13...*
> *These findings being on a complete appreciation of facts, the only submission of Mrs. Salwan is that the Arbitrator did not consider that the quantum of work was not increased, but the value of the work was increased due to higher cost of the material used. This fact ought to be established by independent evidence. The DSIIDC had pleaded as under:*
>
> > *"That it is humbly submitted that the contents of Claim No.18 being false and misleading are denied as untenable. That it is humbly submitted that the actual date of*

completion is beyond the stipulated date of completion. Hence, incentive is not admissible."

14. Further, no details whatsoever were given to substantiate the argument that the increase in the value of the work was not because of increase in quantum of work but on account of increase in cost of materials. In the absence of the same, the challenge to this is untenable."

25. The Arbitrator has given a finding of fact that the scheduled completion of time got contractually extended by 226 days due to the delay on part of DSIIDC and also on account of additional work. In the impugned order, the learned Single Judge held that since DSIIDC has failed to provide any evidence to substantiate its claim that the increase in value of work is not attributable to additional work, but to increase in cost of material, such a finding cannot be faulted. We are in agreement with the views taken by the Arbitrator and the learned Single Judge.

26. Much reliance has been placed by Ms. Virdi for DSIIDC on the judgment in the case of ***Navyuga Engineering Co. P. Ltd. V. Public Works Department and Anr., FAO (OS) 264/2014,*** to contend that the original scheduled time cannot be extended by the Arbitrator in the absence of any specific agreement between the parties, and as such Clause 2A is not applicable in the present case. However, such a contention flies in the face of Clause 12.1 of the Agreement, which, as held by the Arbitrator, provides that in the event of deviations resulting in additional cost, time for completion shall be extended in the proportion which the additional cost bears to the original tendered value, plus 25% of the time so calculated or such further additional time as may be reasonable.

27. Further, as canvassed by Mr. Trivedi for Rama Construction Company, in ***Navyuga Engineering (supra)*** there was no contention to any additional work being carried out, contributing to the extension or increase in value of work. *Per contra*, in ***N.N. Buildcon (supra)***, this Court observed that the time for completion was extended by four months due to extra work awarded to the contractor. We reproduce the relevant part of ***N.N. Buildcon (supra)*** as under.

> *"8. In the present case, the period of completion available to the contractor was 14 months. Because of additional work awarded to the contractor, the contractor would be entitled to additional time of four months i.e. the total time available to the contractor to complete the originally stipulated work and the additional work was 18 months. In addition, the contractor would be entitled to the benefit of the time during which delay occurred on account hindrances caused by the employer. In the present case, the delay in completion of the work as held by the Arbitrator is 5.3 months only. While computing the period taken by the Arbitrator to complete the work, the period of hindrances and delay have to be excluded from the time taken by the contractor. The Arbitrator has accordingly worked out the period of delay comprising of hindrances as 9.7 months from which 5.3 months have been excluded and the balance left was 4.4 months. This period of 4.4 months will enure to the credit of the contractor and clearly, the contractor has completed the work in a period less than the period available to the contractor. The originally stipulated period available to the contractor was 14 months and the period of hindrances (including time for extra work) as worked out was 9.7 months thereby totaling to 23.7 months. The work has been completed with a delay of 5.3 months. This added to the stipulated period of 14 months would make it 19.3 months. If this is excluded from the total period as available to the contractor (i.e. 23.7 month), the balance left is 4.4 months.*

9. As per Clause 2A, the contractor would be entitled to bonus if the work is completed ahead of the stipulated date. Clearly, the Arbitral Tribunal has correctly computed the period and has rightly held that the claimant was entitled to bonus. We find no infirmity in the impugned judgment whereby the learned Single Judge has affirmed the findings of the Arbitral Tribunal and dismissed the objections raised by the appellant."

28. Going by the above, we are of the view that the judgment in ***Navyuga Engineering (supra)*** is distinguishable on facts and that the learned Single Judge was justified in relying upon the judgment in the case of ***N.N. Buildcon (supra),*** which is more in consonance with the facts of the present case.

29. As such, we are in complete agreement with the conclusion of the learned Single Judge with regard to this issue as well.

CLAIM NO. 20.4

30. Insofar as the challenge to claim No. 20.4 in FAO(OS)(COMM.) 277/2018 is concerned, we note that the learned Single Judge has reduced the interest granted by the Arbitrator on claims other than escalation from 10% to 8%. The reduction was made by the learned Single Judge considering the fact that the matter has remained pending in arbitration for years, though the award of the contract was in the year 2005 and the date of completion was 2007, and no major delay was caused by the respondent, Further, it was also noted that the respondent was duly represented in the arbitration proceedings and had also paid a substantial part of the bills. The law with regard to power of the Court under Section 34 of the Act to modify the interest granted by the Arbitral Tribunal has been conclusively settled by the Constitution Bench of the Supreme Court in ***Gayatri Balasamy v. M/s***

ISG Novasoft Technologies Limited, (2015) 7 SCC 1, wherein, the majority opinion held as under:-

> *"72. The next question that arises is: do courts possess the power to declare or modify interest, especially post award interest? In respect of pendente lite interest, Section 31(7)(a) (Annexure A), states that unless otherwise agreed by the parties, the arbitral tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (Annexure A) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till the date of payment. The explanation defines the expression 'current rate of interest'.*
>
> ***73. There can be instances of violation of Section 31(7)(a), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).***
>
> *74. For the post award interest in terms of Section 31(7)(b), the courts will retain the power to modify the interest where the facts justify such modification. This is why the standard rate stipulated in clause (b) applies when the award itself does not specify the applicable post award interest. There can be a situation where the party to be paid money is at fault and is guilty of delay which may require a modification in the rate of interest. In the absence of grant of post award interest in the award, the court also possesses the power to grant post award interest. Clearly, as per the legislative mandate, it is not the sole prerogative of the arbitrator.*

75. Compare Section 31 of the 1996 Act with Section 31 of the Model Law. While both sections are titled similarly – "Form and Contents of Award" – only the 1996 Act addresses interest in Section 31(7). The Model Law does not provide standards governing the determination of interest rates. Thus, Section 31(7) is a unique creation of the Indian legislature. It was not borrowed from the Model Law. Specifically, under Section 31(7)(b), the legislature has established a standard rate of interest to guide the arbitrator's discretion when it comes to determining the post-award interest rate. While the arbitrator retains his flexibility based on facts and circumstances of the case, the standard set by the legislature must weigh in on their consideration. Further, as there is a standard prescribed by the legislature, the post-award interest awarded can be scrutinized by courts against the standards prescribed.

76. Our reasoning is bolstered when considering the practical aspects. Arbitral tribunals, when determining post-award interest, cannot foresee future issues that may arise. Post award interest is inherently future-oriented and depends on facts and circumstances that unfold after the award is issued. Since the future is unpredictable and unknown to the arbitrator at the time of the award, it would be unreasonable to suggest that the arbitrator, as a soothsayer, could have anticipated or predicted future events with certainty. Therefore, it is appropriate for the Section 34 court to have the authority to intervene and modify the post-award interest if the facts and circumstances justify such a change.

77. Inherent in the discussion above, is the court's power to both increase or decrease the post-award interest rate. It would be incorrect to state that the court's power to interfere with this interest rate is limited solely to decreasing the interest rate. Situations may arise where the rate should be increased due to delays or obstructions in the execution of the award. Interest rates may also fluctuate over time.

> *78. However, the court, while exercising this power, must be cautious and mindful not to overstep its role by altering the interest rate unless there are compelling and well-founded reasons to do so. In exercising this power, the court is not acting in an appellate capacity, but rather under limited authority. For instance, the 1996 Act stipulates a standard post-award interest rate. When the statute itself benchmarks a standard, unless there are special and specific reasons, the rate of interest stipulated by the statute should be applied.*
>
> *79. Nevertheless, this limited power is significant, as it can help avoid further rounds of litigation. Without it, the court may be forced to set aside the entire award or order a fresh round of arbitration because of an erroneous interest rate rather than simply adjusting this rate."*
>
> (emphasis supplied)

31. As can be seen from the above, in case the Court finds any illegality in the *pendente lite* interest granted by the Arbitral Tribunal, it only has two options:-

(i) To set aside the rate of interest granted; or

(ii) To remand the matter under Section 34(4) of the Act.

32. The power of the Court to modify the rate of interest is only available when the interest granted is post-award interest. In the present case, as the 10% interest granted by the Arbitrator was *pendente lite*, the learned Single Judge could not have modified the same. If there was any illegality in the grant of interest, the learned Single Judge could only have either set aside the same, or remanded the matter back to the Arbitrator. We note that the learned Single Judge did not find any illegality in the interest granted, but modified it for the reason that the matter has been pending in arbitration for a long time. We are of the view that in light of law laid down in ***Gayatri***

Balasami (supra), the learned Single Judge erred in modifying the rate of *pendente lite* interest granted by the Arbitrator. We set aside the conclusion of the learned Single Judge in claim no. 20.4, and uphold the decision of the Arbitrator granting 10% interest *pendente lite*.

CONCLUSION

33. In view of the foregoing, the challenges made to the impugned judgment with regard to the findings of the learned Single Judge on claim nos. 17 and 18 are devoid of merit and are rejected. The challenge to the finding of the learned Single Judge on claim no. 20.4 is sustained, and the impugned judgment is set aside to this extent. The appeals are disposed of.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 17, 2026/sr