*	IN THE HIGH COURT OF DELHI AT NEW DELHI

%	Judgment reserved on: 06.08.2026
Judgment pronounced on: 25.08.2026

#	CNR No. DLHC012457252018

+	O.M.P. (COMM) 416/2018 &I.A. 13436/2018

IGNOU .....Petitioner

Through: Mr. Amit Gupta, Sr. Adv with Mr. Aly Mirza and Mr. Kshitij Vaibhav, Advs.

versus

ROSHAN REAL ESTATES PVT LTD .....Respondent

Through: Ms. Anusuya Salwan, Ms. Nikita Salwan, Mr. Bankim Garg and Mr. Rachit Wadhwa, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

JUDGMENT

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 30.04.2018 (for brevity 'the award').

Brief Facts

2. The facts shorn of unnecessary details are that the petitioner/Indira Gandhi National Open University (hereinafter referred to as 'the university') on 30.03.2009 invited bids for the

construction of office of Vice-Chancellor and VIP Guest House at university campus. The respondent was the successful bidder. The letter of acceptance and award were issued on 24.08.2009 and 09.09.2009 respectively, for a value of Rs.10,67,38,025/-. The work was to commence on 19.09.2009 and was to be completed by 18.09.2010. The respondent claims to have completed the work on 30.11.2011.

2.1 Disputes arose between the parties regarding completion of the work, execution of extra work, deviated items, payment for the work executed, escalation on account of prolongation of the contract and other claims.

2.2 Clause 25 of the contract provided for resolution of disputes through arbitration. It provides that the adjudication shall be only of the disputes referred by the appointing authority and a separate award is to be given on each dispute or claim referred. The clause further provided that if the total amount of the claims exceeded rupees one lakh the arbitrator shall give reasons for the award. The relevant portion of clause 25 is quoted below:

> **"Clause 25 Settlement of Disputes and Arbitration.**
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> Except where otherwise provided in the contract, all questions and disputes relating to the meaning of the specifications, design, drawings and instructions here-in before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise

concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:

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It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and in all cases where the total amount of the claims by any party exceeds Rs. 1,00,000/-, the arbitrator shall give reasons for the award.

It is also a term of the contract that if any fees are payable to the arbitrator, these shall be paid equally by both the parties."

2.3 The arbitration was invoked at the instance of the respondent and seventeen claims were raised. The claims raised and the amounts awarded are tabulated below:

Claim No.	**Brief Description of claim**	**Claim Amount(Rs.)**	**Award (Rs.)**
1	Amount payable in respect of work executed	4,03,65,912/-	2,62,36,935/-
2	Payment of 12th RA Bill	50,55,912/-	50,55,912/-
3	Interest on claim no.2 16/03/2013 to 31/08/2013	3,28,634/-	NIL
4	Escalation due to prolongation of contract period	1,69,21,713/-	1,27,27,431/-
5	Refund of testing charges	7,18,365/-	NIL
6	Losses by way of idling of staff, engineers, watch and	98,084/- (**98,84,000/- Modified**	

	ward etc.	**amount**)	
7	Losses by way of idling of tools, plants, machineries, shuttering materials etc.	1,03,95,000/-	62,00,000/- against claims 6 and 7
8	Release withheld amounts from bills	1,12,93,267/- (**1,22,03,333/- Modified amount**)	1,21,53,333/-
9	Amount deducted from final bill for damage caused to LT Cable	1,00,200/-	NIL (Already covered in claim No.8)
10	Watch and ward for 4 months by incurring the amount	2,24,000/-	NIL
11	Technical staff for operating AC Chiller, Genset, Generator, and Sub- Station.	7,50,000/-	NIL
12	Refund of additional VAT	9,38,384/-	NIL
13	Cost of material at site which IGNOU did not allow the claimant to remove despite completion of work	26,84,425/-	NIL
14	Cost of steel of balance quantity of 40924.60 legs as IGNOU failed to return	17,18,833/-	NIL
15	Release of performance bank guarantee dated 3/9/2009	53,36,901/-	NIL (Amount Already covered in claims 1 and 2)
16	Interest @18% p.a. on the aforesaid amounts from due dates till the date of payment.		Rs.4,09,06,029
17	Cost of arbitration proceedings	5,00,000/-	15,00,000/-

Post award interest: No interest is payable post award, if the awarded amount including interest is paid to the claimant within 60 days from the date of award. Thereafter, it will carry simple interest at the rate of 9.5% PA from date of award till date of payment.

Submissions of the Parties

3. Learned senior counsel for the petitioner argues that the arbitrator proceeded to decide the claims on the basis that the work was completed by the respondent on 30.11.2011. The grievance is that the letters of the petitioner placed on record dated 21.12.2011, 26.12.2011, 02.01.2012, 12.01.2012, 17.01.2012, 05.02.2012, 13.03.2012, 15.03.2012 and 11.04.2012 wherein the pending works were pointed out to the respondent were not considered. It is contended that the respondent *vide* letters dated 15.06.2012, 19.06.2012 and 27.06.2012 was in the process of submitting the completion drawings under clause 15 of the Special Conditions of Contract (for short 'SCC') and no statutory approvals under clause 8.1 of the SCC were obtained. Submission is that partial use of the building by the petitioner was in consonance with clause 17 of the SCC and could not have been construed as completion of the project. The argument is that the finding that the work was completed on 30.11.2011 is perverse.

3.1 The claim no.1 whereby an amount of Rs.2,62,36,935/- was awarded was dealt with under following heads:

(i) Difference between the market rates of deviated items/extra items;
(ii) Extra items at serial nos. 37 to 78 for civil work and 79 to 103 for electrical items.

The submission is that the respondent failed to prove the prevailing market rate. The rate analysis of the petitioner was rejected by the arbitrator stating that these were neither approved, sanctioned nor signed by the competent authority yet the calculations of the petitioner were relied upon wherever the rates specified there in were higher than those claimed by the respondent. The argument is that the arbitrator made own enquiries for determining the market rate and relied upon it without confronting the material to the petitioner.

3.2 The award of claim no. 2 of Rs.50,55,912/- towards the 12th RA bill is challenged stating that despite holding that deductions towards income tax, VAT and labour cess could be made yet the arbitrator awarded the entire claimed amount without taking into account deductions for taxes and cess. The grievance is that the arbitrator ignored clause 1 (ii) of the contract where under the performance bank guarantee (for short 'PBG') was to be extended for the enlarged period and only on issuance of the completion certificate by the competent authority the PBG was to be returned. It was not considered that under clause 1A of the contract five percent of the gross amount from each running bill was to be deducted towards the security deposit.

3.3 The submission is that claim no.4 towards escalation costs on account of prolongation of the contract was allowed contrary to Clause 10CC of the contract. The grievance is that the arbitrator failed to decide the applicability of clause 10CC of the contract.

3.4 The argument is that the damages under Sections 55 and 73 of the Contract Act, 1872 (for short 'Contract Act') were awarded by travelling beyond the submissions made before the arbitrator. Reliance is on the decision of this court in ***Budhiraja Electricals vs. Public Work Department (Gov. of NCT of Delhi),*** 2026 SCC OnLine Del

4076 to submit that where the contract expressly excludes escalation beyond the stipulated period the arbitrator cannot award a claim for escalation. It is argued that no evidence was adduced by the respondent of breach of contract and actual loss suffered. The arbitrator also recorded the finding that the calculations were not supported by the paid bills. The decision of the Supreme Court in ***Batliboi Environmental Engineers Ltd. vs. HPCL,*** (2024) 2 SCC 375 is relied upon in support of the contention that the Hudson Formula is not a substitute for proof of damages and can be applied where actual loss, loss of opportunity and nexus with the breach are established.

3.5 The grievance is that the arbitrator without confronting to the petitioner relied upon the cost indices and labour wages issued by DG, CPWD.

3.6 The contention is that under clause 25 of the contract, claim nos. 6 & 7 were to be decided separately and not together.

3.7 The grant of VAT and labour cess is challenged stating that the CPWD circular dated 20.08.2009 relied upon was not applicable to tenders issued prior thereto.

3.8 Learned senior counsel for the petitioner relied on the decisions of the Supreme Court in ***PSA SICAL Terminals (P) Ltd. v. Board of Trustees of V.O. Chidambaranar Port Trust Tuticorin,*** 2021 SCC OnLine SC 508, ***Ssangyong Engineering and Construction Co. Ltd. v. NHAI,*** (2019) 15 SCC 131 and ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar,*** (2022) 4 SCC 463 to buttress the argument that an arbitral award is to be set aside under

Section 34 of the Act where the arbitrator travels beyond the terms of the contract or commits a jurisdictional error.

4. *Per contra*, the scope of interference under Section 34 of the Act is limited. The submission is that there cannot be any re-appreciation of evidence, a possible view cannot be interfered with and no case is made out to bring the matter within the ambit of Section 34 of the Act. Reliance is on the decisions of the Supreme Court in ***Reliance Infrastructure Ltd. v. State of Goa*** (2023) SCC OnLine SC 604 and ***Associated Builders v. DDA*** (2015) 3 SCC 49.

4.1 The impugned award is defended by stating that the arbitrator being a former DG, CPWD, an expert in the field of construction has passed a detailed and reasoned award after due consideration of the terms agreed between the parties and the material available on record. Reliance is on ***National Research Development Corporation and Anr. v. Mak Controls and Systems Pvt. Ltd.*** (2026) SCC OnLine Del 870 to contend that the interpretation of the clauses of the contract falls within the domain of the arbitrator and unless the interpretation is perverse, no interference is to be made for a possible another view.

4.2 The submission is that the arbitrator rightly held that the work was completed on 30.11.2011. The petitioner took over and continued to use the sites without invoking the contractual provisions for getting the balance work completed or defects rectified at the risk and cost of the respondent. It is argued that though the agreement empowered the petitioner to levy compensation under clause 2 of the contract or take action in case of delay yet no action was taken. Further that under clause 8.1 of the SCC and as per the letter dated 29.11.2010 the completion drawings and statutory approvals were to be obtained by the architect and not by the respondent. The contention is that there was no occasion to withhold the security deposit after the finding of the arbitrator that there was no serious shortcoming in the work.

4.3 With regard to claim no.1, the submission is that the arbitrator awarded the amount after considering the agreement, measurements, rate analysis and the final bill. It is argued that the respondent submitted the rate analysis in terms of clause 12 of the contract but no objection was raised by the petitioner within one month. The arbitrator considered the claim separately with regard to the deviated items, extra items and the items not covered under Delhi Schedule Rates, 2007 (for short 'DSR-2007') and recorded reasons for the rates awarded under each head. The contention is that wherever the items were not covered under DSR-2007, the rates were determined on the basis of the applicable CPWD rates.

4.4 *Qua* claim no.2, the submission is that the 12th RA Bill was passed by the petitioner on 17.10.2013 but the payment was withheld. It is argued that no action was taken under clauses 2, 3, 5, 16 or 17 of the contract but the payment was withheld and the petitioner neither decided the request for extension of time nor released payment of the bill.

4.5 As regards claim no.4, the submission is that the escalation was claimed for the delay in completion of the work and delay was attributable to the petitioner. It is argued that clause 10CC provides escalation during the stipulated period of the contract and does not bar the respondent from claiming compensation for the period beyond the terms of the contract. The arbitrator quantified the escalation on the basis of the construction cost indices issued by DG, CPWD and after considering the material on record. The contention is that the arbitrator was competent to adopt the recognised method for determining the reasonable amount for escalation. Reliance is on the decisions of the Supreme Court in ***P.M. Paul v. Union of India*** 1989 INSC 10, ***Food Corporation of India v. A.M. Ahmed & Ors.,*** (2006) 13 SCC 779, ***Assam State Electricity Board & Ors. v. Buildworth Pvt. Ltd.*** (2017) 8 SCC 146, ***K.N. Sathyapalan (dead) by LRs. v. State of Kerala*** (2007) 13 SCC 43, ***NTPC Ltd. v. Deconar Services Pvt. Ltd***. 2021 INSC 148.

4.6 The decisions of this court in ***Prem Chand Sharma & Co. v. DDA & Ors.*** MANU/DE/2018/2005 and ***Union of India v. Multi Tech Construction Co.,*** 2023 SCC OnLine Del 2665 are relied upon to fortify that CPWD cost indices can be adopted while determining escalation. Further that where the delay is attributable to the employer, the contractor is entitled to compensation and escalation for the extended period.

4.7 With regard to the quantum of damages, the submission is that the arbitrator awarded a reasonable amount by recording reasons and the entire amount claimed was not allowed. It is argued that the petitioner failed to make out a ground for interference. Reliance is on ***McDermott International Inc. v. Burn Standard Co. Ltd. & Ors.***

(2006) 11 SCC 181 to contend that the mode of quantification is not prescribed by Sections 55 and 73 of the Contract Act and an appropriate formulae or method can be adopted for determining reasonable compensation having regard to the facts and circumstances of the case. The decisions in ***Airports Authority of India v. URC Construction (P) Ltd***. 2026 SCC OnLine Del 534 and ***Chief Administrator, HUDA & Anr v. Shakuntla Devi*** (2017) 2 SCC 301 are relied upon to fortify that where loss on account of escalation is established, the difficulty in exact quantification cannot defeat the claim of the contractor and a reasonable formula may be adopted to assess the compensation.

4.8 For claims no.6 & 7, the contention is that both the claims arose out of prolongation of the contract. It is argued that the respondent incurred expenditure on account of idling of staff, engineers, machinery and other resources during the extended period. The award of VAT and labour cess is defended in view of the contractual provisions and the CPWD circular.

5. Heard learned counsel for the parties at length and perused the record with their able assistance. No submissions other than those noted above were pressed.

Analysis

6. Before proceedings further, it would be relevant to quote the following clauses of the contract and the SCC:

CLAUSES OF THE CONTRACT

"Clause 1 Performance Guarantee

(ii) The Performance Guarantee shall be initially valid upto the stipulated date of completion plus 60 days beyond that. In case the time for completion of work gets enlarged, the contractor shall get the validity of Performance Guarantee extended to cover such enlarged time for completion of work. After recording of the completion certificate for the work by the competent authority, the performance guarantee shall be returned to the contractor, without any interest.

Clause 1A Recovery of Security Deposit

The person/persons whose tender(s) may be accepted (hereinafter called the contractor) shall permit Government at the time of making any payment to him for work done under the contract to deduct a sum at the rate of 5% of the gross amount of each running bill till the sum alongwith the sum already deposited as earnest money, will amount to security deposit of 5% of the tendered value of the work. Such deductions will be made and held by Government by way of Security Deposit unless he/they has/have deposited the amount of Security at the rate mentioned above in cash or in, the form of Government Securities or fixed deposit receipts. In case a fixed deposit receipt of any Bank is furnished by the contractor to the Government as part of the security deposit and the Bank is unable to make payment against the said 'fixed deposit receipt, the loss caused thereby shall fall on the contractor and the contractor shall forthwith on demand furnish additional security to the Government to make good the deficit.

All compensations or the other sums of money payable by the contractor under the terms of this contract may be deducted from, or paid by the sale of a sufficient part of his security deposit or from the interest arising therefrom, or from any sums which may be due to or may become due to the contractor by Government on any account whatsoever and in the event of his Security Deposit being reduced by reason of any such deductions or sale as aforesaid, the contractor shall within 10 days make good in cash or fixed deposit receipt tendered by the State Bank of India or by Scheduled Banks or Government Securities. (if deposited for more than 12 months) endorsed in favour of the Engineer-in-Charge, any sum or sums which may have been deducted from, or raised by sale of his security deposit or any part thereof. The security deposit shall be collected from the running bills of the contractor at the rates mentioned above and the Earnest money deposited at the time of tenders will be treated as part of the Security Deposit.

The security deposit as deducted above can be released against bank guarantee issued by a scheduled bank, on its accumulations to a minimum of Rs. 5 lakh subject to the condition that amount of such bank guarantee, except last one, shall not be less than Rs. 5 lakh..

Note-1: Government papers tendered as security will be taken at 5% (five per cent) below its market price or at its face value, whichever is less. The market price of Government paper would be ascertained by the Divisional Officer at the time of collection of interest and the amount of interest to the extent of deficiency in value of the Government paper will be withheld if necessary.

Note-2: Government Securities will include all forms of Securities mentioned in Rule No. 274 of the GF. Rules except fidelity bond. This will be subject to the observance of the condition mentioned under the rule against each form of security.

Clause 8 Completion Certificate and Completion Plans

Within ten days of the completion of the work, the contactor shall give notice of suck completion to the

Engineer-in-Charge and within thirty days of the receipt of such notice the Engineer-In-Charge shall inspect the work and if there is no defect in the work, shall furnish the contractor with a final certificate of completion, otherwise a provisional certificate of physical completion indicating defects (a) to be rectified by the contractor and/or (b) for which payment will be made at reduced rates, shall be issued. But no final certificate of completion shall be issued, nor shall the work be considered to be complete until the contractor shall have removed from the premises on which the work shall be executed all scaffolding surplus materials, rubbish and all huts and sanitary arrangements required for his/their work people on the site in connection with the execution of the works as shall have been erected or constructed by the contractor(s) and cleaned off the dirt from all wood work, doors, windows, walls, floor or other parts of the building, in, upon, or about which the work is to be executed or of which he may have had possession for the purpose of the execution; thereof, and not until the work shall have been measured by the Engineer-in-Charge. If the contractor shall fail to comply with the requirements of this Clause as to removal of scaffolding, surplus materials and rubbish and all huts and sanitary arrangements as aforesaid and cleaning off dirt on or before the date fixed for the completion of work, the Engineer-in-Charge may at the expense of the contractor remove such scaffolding, surplus materials and rubbish etc., and dispose of the same as he thinks fit and clean off such dirt as aforesaid, and the contractor shall have no claim in respect of scaffolding or surplus materials as aforesaid except for any sum actually realised by the sale thereof.

Clause 8B Completion Plans to be submitted by the Contractor

The contractor shall submit completion plan as required vide General Specifications for Electrical works (Part-I internal) 2005 and (Part-Il External) 1994 as applicable within thirty days of the completion of the work.

In case, the contractor fails to submit the completion plan as aforesaid, he shall be liable to pay a sum equivalent to 2.5% of the value of the work subject to a ceiling of Rs. 15,000 (Rs Fifteen thousand only) as may be fixed by the Superintending Engineer concerned and in this respect the decision of the Superintending Engineer shall be final and binding on the contractor."

CLAUSES OF THE SCC

"8. Statutory approvals for Work

8.1 All associated activities required for obtaining necessary clearances, permissions, approvals, all licenses etc. as required from all concerned authorities in respect of Civil, Plumbing and Sanitary works, electrical works and fire fighting works shall be the responsibility of the contractor, the cost for which shall be deemed to be included in the rates for various items of work of Schedule of Quantities. However, actual statutory fee paid to the concerned authorities for obtaining approvals if any, shall be reimbursed by the Owner on production of proof of payment made by the contractor.

Note: The agencies will follow the desired norms for skilled and unskilled workers for electrical, plumbing, fire fighting, HVAC, Lift etc. and they will obtain necessary clearances from the requisite authorities for the above work."

15. Completion Drawings

The contractor after completion of work shall submit completion plans/drawings showing therein the modifications and corrections made during the course of execution along with the letter intimating that the work have been completed. Detailed as-built drawings for the works in respect of civil, Electrical, sanitary, plumbing, HVAC, Electrical, Plumbing, Architectural, Structural and external services or any other works carried out by the contractor, in the form of booklet in four sets i.e. two on A4 size and two in A3 size. Certificates of the tests performed for the various works shall also be submitted in the book binding form. Guarantee/Operation and maintenance Manual supplied by the vendor shall be also in binding form. In case contractor fails to submit the completion documents/ drawings as aforesaid, he shall be liable to pay sum of Rs. 50,000/- or actual expenses whichever is more. The decision of Engineer-in-Charge shall be final and binding on the contractor.

17. Defect Liability Period

Defect liability period shall be 12 (TWELVE) MONTHS from the date of completion as per completion certificate issued to Contractor by Engineer-in- charge.

However, the contractor shall guarantee the water proofing and Anti-termite treatment work for a period of 10 (ten) years from the date of issue of Completion Certificate on the format approved by the Owner.

Also during the progress of the work, completed portions of the work may be put to use by the Engineer-in-charge and the contractor shall remain fully responsible for maintenance of the work till the entire work covered by the said contract is satisfactorily completed and accepted by and handed over to the Owner by the Engineer-in-charge.

Maintenance of the work during the defect liability period shall be governed by the relevant clauses of conditions of contract."

7. The arbitrator before deciding claim no.1 first considered whether respondent completed the work. It was observed that the respondent intimated the petitioner on 30.11.2011 that the work was complete and requested for issuance of the completion certificate. The respondent submitted EOT case on 08.12.2011 seeking extension up to 30.11.2011, without levy of compensation and contending that the delay was attributable to the petitioner. Neither the application for extension of time was decided nor the petitioner issued the completion certificate.

8. The arbitrator held that the work was complete and one of the factors relied upon was the use of the building by the petitioner. It was taken note of that:- (i) No specific defects and the work to be completed were mentioned by the petitioner and yet the completion certificate was not issued; (ii) the list of defects as mandated under clause 8 of the contract was not furnished to the respondent; (iii) no action was initiated under clause 17 of the contract to get the defects rectified at the cost and risk of the respondent; (iv) no action was taken to make time the essence for completion of the work; (v) no damages were claimed under clause 2 of the contract; (vi) no loss was incurred by the petitioner due to delay in completion; and (vii) the certificate of physical completion was not issued within thirty days as provided under clause 8 of the contract and concluded that there was no shortcoming in the work and the building was being occupied by high-ranking officials of the institution. The defects pointed out were merely an excuse for not recording completion.

9. The arbitrator while deciding the issue of completion of work failed to consider the pleadings in the Statement of Claim (for short 'SOC'). The respondent pleaded that after applying for issuance of the completion certificate on 30.11.2011, the petitioner *vide* letter dated 01.12.2011 enclosed the list of defects to be removed. The letter of the petitioner dated 21.12.2011 recorded that the respondent was required to install the fire-fighting system as per the requirements of Delhi Fire norms at the new Vice-Chancellor office and VIP Guest House and that there was non-compliance despite repeated requests. The letter of the petitioner dated 26.12.2011 recorded non-compliance with the directions given in the letter dated 17.10.2011 and that the defects mentioned under sub-heads A, B, C, D and E were not removed. A reminder dated 02.01.2012 recorded that except for repair of an overhead tank of the VIP Guest House and the auto-opening door, the defects remained pending despite written directions and the details of the pending defects were enclosed. The letter dated 12.01.2012 was to similar effect.

10. The communication dated 15.02.2012 addressed to the respondent stated that the contract cannot be finalized until the pending works were completed and the completion drawings, test certificates and approvals of the statutory bodies were submitted. It was further stated that the 12th RA bill was pending due to non-availability of the engineer of the respondent to check the measurements. The letter dated 13.03.2012 pointed out non-compliance of clause 15 of the SCC read with clause 8.1 of the SCC,

for failure of the respondent to submit the completion drawings.

11. Clause 8 of the contract provides that within ten days of completion of the work, the contractor shall give notice to the Engineer-in-Charge regarding completion of the work. On receipt of the notice the Engineer-in-Charge is to inspect the work within thirty days and where no defects are found the completion certificate is to be issued, otherwise a provisional certificate indicating the defects to be rectified is to be issued.

11.1 Clause 8B of the contract deals with submission of completion plans of the electrical work. The contractor is obligated to submit the completion plan as required under the general specifications for electrical works within thirty days of completion of the work.

11.2 Clause 15 of the SCC mandates submission by the contractor of completion plans/drawings including as-built drawings for the works with regard to civil, electrical, sanitary and plumbing indicating modifications and corrections made during the execution. These are to be submitted along with the letter intimating completion of the work. On failure to do so, the contractor is liable to pay a sum of Rs.50,000/- or the actual expenses, whichever is more.

11.3 Clause 17 of the SCC permits the completed portion of the work to be put to use by the Engineer-in-Charge during the progress of the work.

11.4 The contention of counsel for the respondent that the work was completed on 30.11.2011 and the completion drawings were to be submitted by the architect deserves rejection, in view of clauses 8, 8B of the contract and clause 15 of the SCC.

12. The arbitrator while holding that the work was completed on 30.11.2011 had not considered the letters and the list of defects communicated to the respondent. The defects were recorded and communicated to the respondent from time to time and remained pending on 30.11.2011 and thereafter. The pendency of the application for issuance of the completion certificate cannot be treated as evidence of completion of the work. The language of clause 8 of the contract is unambiguous that the work is not considered complete till the completion certificate is issued. The finding that the work stood completed on 30.11.2011 is contrary to clause 8 of the contract and the relevant evidence on record was ignored.

13. The reliance on the fact that the petitioner had not initiated action for damages or for completion of the work at the risk and cost of the respondent will not discharge the onus of the respondent to establish that the work awarded was completed as per the clauses agreed between the parties.

14. Under clause 17 of the SCC, the petitioner was entitled to use the completed portion of the work during the progress of the work. The usage of completed portion of the work does not prove that the entire work was completed in terms of the contract.

15. The letter dated 15.06.2012 shows that compliance of clause 15 of the SCC was being undertaken till June 2012. The respondent continued to submit completion drawings thereafter indicating that the requirements under clause 15 of the SCC were not complete on

30.11.2011.

16. The petitioner not claiming damages for delay in completion of work was not relevant, as the issue to be decided was whether the work was completed on 30.11.2011. The finding that the work was completed on 30.11.2011 and there were no shortcomings is contrary to the evidence on record and ignores the clauses agreed between the parties. The finding is perverse and liable to be set aside.

17. Claim no.1 of Rs.4,03,65,912/- was for the payment due for work executed. The respondent submitted statements of extra/substituted and deviated items along with the rate analysis and the dispute was due to a rate difference between the parties. Clause 12.2 of the contract provided the procedure to be adopted in case of extra items. The contractor within fifteen days of the receipt of the order had to submit the rates supported by proper analysis. The Engineer-in-Charge within one month of the receipt of the analysis was to determine the rates on the basis of the market rate. The analysis of rates submitted by the petitioner before the arbitrator was rejected for being without attestation, seal and signatures and approval of the competent authority.

18. The arbitrator dealt with the claims under various heads of items and awarded a payment of Rs.2,62,36,935/-. Having rejected the analysis of the petitioner, the arbitrator in the absence of evidence adduced by the respondent regarding the prevailing market rates proceeded to decide the matter relying upon DSR-2007 in respect of items mentioned in the Schedule. The rates mentioned in DSR-2007

were moderated for determining rates during the relevant period. The claim was allowed without confronting the petitioner with the material relied upon and the formula adopted for moderation.

19. Item no.41 related to G.I. Plain Sheets, the respondent claimed a rate of Rs.94.40/- per kg, whereas for the petitioner had proposed the rate of Rs.86.62/- per kg. The rate claimed by the respondent was allowed for failure of the petitioner to convey the lesser rate within the stipulated time. There is no discussion that the rate claimed by the respondent was the prevailing market rate.

20. In respect of Item no.46 related to G.I. pipe 80 mm, the respondent claimed a rate of Rs.802.63/- per metre. The rate quoted by the petitioner of Rs.563.21/- was rejected for failure to convey it to the respondent. The arbitrator without any basis or reason allowed the rate of Rs.686.70/- per metre. On similar analogy, item nos.51 and 52 were allowed.

21. While allowing the extra items at serial no.9 the arbitrator recorded that the claims made by the respondent were not supported by proof of the actual difference in rate. The arbitrator made enquiries from the market for allowing the claim. The details of the enquiries made were neither brought on record nor confronted to the petitioner.

21.1 Reliance of the arbitrator on the rates mentioned in DSR 2007 and moderation of those rates without confronting it to the petitioner is in violation of Section 18 and 24(3) of the Act and the principles of natural justice and so is the reliance on the enquiry made from the market. The Supreme Court in ***Ssangyong Engineering and***

Construction Company Ltd (supra) held that reliance upon material obtained behind the back of a party without affording an opportunity to rebut it, is a ground available under Section 34(2)*(a)(iii)* of the Act to challenge the award. The relevant para is reproduced below:

> "**41.** What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204], while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. <u>Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.</u>
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> **51.** <u>Sections 18, 24(3) and 26 are important pointers to what is contained in the ground of challenge mentioned in Section 34(2)(a)(iii). Under Section 18, each party is to be given a full opportunity to present its case. Under Section 24(3), all statements, documents, or other information supplied by one party to the Arbitral Tribunal shall be communicated to the other party, and any expert report or document on which the Arbitral Tribunal relies in making its decision shall be communicated to the parties.</u> Section 26 is an important pointer to the fact that when an expert's report is relied upon by an Arbitral Tribunal, the said report, and all documents, goods, or other property in the possession of the expert, with which he was provided in order to prepare his report, must first be made available to any party who requests for these

> things. Secondly, once the report is arrived at, if requested, parties have to be given an opportunity to put questions to him and to present their own expert witnesses in order to testify on the points at issue.
>
> **52.** Under the rubric of a party being otherwise unable to present its case, the standard textbooks on the subject have stated that where materials are taken behind the back of the parties by the Tribunal, on which the parties have had no opportunity to comment, the ground under Section 34(2)(*a*)(*iii*) would be made out."

21.2 Section 31(3) of the Act mandates a reasoned award. The law is well settled that the requirement of Section 31(3) of the Act is not a mere formality. Reference is to the decision of the Supreme Court in **Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.** (2019) 20 SCC 1 wherein it was held as under:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute."
>
> (emphasis supplied)

The rates for G.I. Plain Sheets, G.I. pipes and items at serial nos.51 and 52 were arrived at without any basis and no reasons were recorded. The awarding of the rates for these items falls within the teeth of Section 31(3) of the Act.

22. The contention of the learned senior counsel for the petitioner that the arbitrator allowed two percent VAT and one percent labour

cess contrary to the circular of the DG, CPWD dated 20.08.2009 is noted to be rejected. As rightly held by the arbitrator, the circular clarifies that the VAT is to be added and the same analogy was adopted for the labour cess. Another aspect to be considered is that the circular was issued by CPWD whereas the liability to pay tax and cess is to be decided by the tax authorities and not by CPWD. Moreover, from reading of the circular, it is not forthcoming that the circular was not applicable to the contracts issued prior to the date of the circular. Even otherwise, the tax liability is not dependent upon the applicability of the circular issued by CPWD.

23. In claim no.2 the respondent sought payment of ₹50,55,912/- towards the 12th RA Bill. The defence of the petitioner was that deductions were made towards five per cent security deposit, income tax, VAT and labour cess, besides withholding of an amount for non-extension of the PBG. Relying upon the conclusion that the work was completed on 30.11.2011 and that there was no notice or pending action against the respondent under the clauses of the contract, the arbitrator held that the security deposit and PBG could not be withheld indefinitely without valid reasons. The arbitrator after holding that income tax, VAT and cess could be deducted from the dues at the time of payment, erred in awarding the entire amount claimed.

23.1 Clause 1A of the contract provides that five per cent of the gross amount of each running bill was to be deducted till the amount deducted along with the earnest money deposited was equivalent to five per cent of the tender value of the work. The deduction was towards the security deposit unless the security was deposited in cash, government security or in fixed deposits by the contractor. It was not the case of the respondent that a security deposit equivalent to five per cent of the tender value was already with the petitioner and no further amount was required to be deducted. The claim was towards the running bill and clause 1A provided for deduction of five per cent and this clause was not considered by the arbitrator.

23.2 As per clause 1(ii) of the contract, the PBG was initially to be valid up to the date of completion and for sixty days thereafter and in case the period of completion was extended, the PBG was required to be extended to cover the enlarged period. The PBG was to be returned after recording of the completion certificate by the competent authority. Contrary to clause 1(ii) of the contract, the PBG was directed to be released although no completion certificate was issued by the competent authority. The claim awarded is patently illegal, travels beyond the clauses of the contract and is liable to be set aside.

23.3 The decisions of the Supreme Court in ***PSA SICAL Terminals (P) Ltd.*** (supra), ***Ssangyong Engineering and Construction Co. Ltd.*** (supra) and ***Indian Oil Corporation Ltd.*** (supra) are to the effect that the arbitrator cannot travel beyond the terms of the contract and in doing so commits a jurisdictional error. The relevant paragraphs are reproduced below:

23.3.1 In ***PSA SICAL Terminals (P) Ltd.*** (supra), it was held:

> "89. It has been held that an Arbitral Tribunal is not a court of law. Its orders are not judicial orders. Its

functions are not judicial functions. It cannot exercise its powers ex debito justitiae. It has been held that the jurisdiction of the arbitrator being confined to the four corners of the agreement, he can only pass such an order which may be the subject-matter of reference."

23.3.2 In ***Ssangyong Engineering and Construction Co. Ltd.*** (supra), it was held:

> "40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders, namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A).

23.3.3 In ***Indian Oil Corporation Ltd.*** (supra), it was held:

> "43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract."
>
> (emphasis supplied)

24. Claim no. 4 is in respect of payment of escalation due to prolongation of the contract period. In the SOC the claim was pleaded to be made under clause 10CC of the contract. The stand of the petitioner relying upon Schedule 'F' of the contract that clause 10CC

was not applicable to the contract, was accepted but the arbitrator proceeded to award damages under Sections 55 and 73 of the Contract Act. It would be apposite to note that the respondent has not challenged the finding that clause 10CC of the contract was not applicable.

24.1 The decisions of the Supreme Court dealing with the principles governing award of damages under section 73 of the Contract Act are as follows:

24.1.1 In ***Kailash Nath Associates v. DDA,*** (2015) 4 SCC 136 it was 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.
>
> 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.
>
> 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.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

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."

24.1.2 In ***State of Rajasthan v. Ferro Concrete Construction (P) Ltd.***, (2009) 12 SCC 1 it was 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."

24.2 The law is well settled that for awarding damages under Section 73 of 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 proof that it is not possible to prove the actual damage suffered. In the present case, the actual loss suffered by the respondent was neither pleaded nor proved. It is also not the case that it was difficult or impossible to prove the actual loss suffered. The arbitrator after holding that the delay was attributable to the petitioner, awarded damages without the respondent having established the loss suffered on account of the delay.

24.3 The reliance of learned counsel for the respondent on the judgments of the Supreme Court in ***P.M. Paul*** (supra), ***A.M. Ahmed & Ors.,*** (supra), ***Assam State Electricity Board & Ors.*** (supra), ***K.N. Sathyapalan (dead) by LRs.*** (supra), ***NTPC Ltd. v. Deconar Services Pvt. Ltd***. (supra) and of this court in ***Prem Chand Sharma*** (supra) and ***Multi Tech Construction Co.*** (supra) to fortify that compensation for escalation on account of prolongation of the contract attributable to the employer can be awarded under Section 73 of the Contract Act despite non-applicability of clause 10CC of the contract does not come to the rescue of the respondent. Firstly, the pleaded case was for claiming escalation prices under clause 10CC of the contract and the non-applicability of clause 10CC is not challenged. Secondly, the actual loss suffered was neither pleaded nor proved.

24.4 The reliance on the decision of Supreme Court in ***McDermott International Inc.*** (supra) by learned counsel for the respondent to justify the method of quantification adopted by the arbitrator is of no avail, it was held that the proof of loss or injury is a *sine qua non* for awarding compensation. The apex court in ***Chief Administrator, HUDA*** (supra) and this court in ***URC Construction (P) Ltd***. (supra) held that a reasonable formula can be relied upon for quantifying compensation where the loss is established. There is no quarrel on the proposition for which the judgments are cited. The issue is that the respondent having failed to fulfil the two fundamental pre-requisites for claiming damages under Section 73 of the Contract Act there was no occasion to quantify the damages.

24.5 The dispute referred in claim no.4 was for escalation under clause 10CC of the contract due to prolongation of the contract and the arbitrator having held that clause 10CC was not applicable, proceeded to award damages under the provisions of the Contract Act. The respondent neither pleaded nor raised an independent claim for damages under Sections 55 and 73 of the Contract Act. The arbitrator travelled beyond the submissions made and the scope of reference, in violation of Section 34(2)*(a)(iv)* of the Act which reads as under:

> "**Section 34(2)*(a)(iv)*** —the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
>
> Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or"

25. The contention of the learned senior counsel for the petitioner that the arbitrator by deciding together claim nos.6 and 7 acted in violation of clause 25 of the contract, lacks merit. Clause 25 of the contract provides for a 'separate award against each dispute and claim referred'. From a perusal of the claims, it is evident that both the

claims related to damages due to prolongation of the contract period. Claim no.6 was for losses on account of idling staff, engineers, watch and ward whereas claim no.7 was regarding losses towards idling tools, plant and machinery and shuttering material. Both the claims were based on breach of the time stipulated for completion of work and the evidence relied upon was common. The claims were therefore rightly considered together by the arbitrator. Moreover, the law is well settled that interference under Section 34 of the Act cannot be made for every legal or factual error. Reliance is on the decision of Supreme Court in ***Sepco Electric Power Construction Corporation Vs. GMR Kamalanga Energy Ltd.*** 2025 INSC 1171 held as under:

> "97……..Therefore, it appears that even if the arbitrator's legal or factual reasoning is faulty, the courts ought to ideally refrain from interfering with an award until an error of law is evident from the award itself or in a document that forms an integral component thereof."
>
> (emphasis supplied)

26. The decisions in ***National Research Development Corporation and Anr.*** (supra), ***Reliance Infrastructure Ltd.*** (supra) and ***Associated Builders v. DDA*** (supra) relied upon by the learned counsel for the respondent to support the contention that the scope of interference under Section 34 of the Act is limited, need not be dilated upon. Suffice it to say that interference under Section 34 of the Act can only be made on the grounds mentioned therein, namely, patent illegality, perversity and against public policy.

27. In the case in hand, the arbitrator has ignored the relevant

evidence, the terms of the contract and has travelled beyond the contract. The claims awarded are in violation of the contractual and statutory provisions. The award falls within the mischief of Section 34 of the Act.

28. In view of the above discussion the petition is allowed. The impugned award is set aside. All pending applications are disposed of.

AVNEESH JHINGAN, J

AUGUST 25, 2026
'ha'

Reportable:- Yes