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

% Judgment reserved on: 25.09.2026
Judgment delivered on: 12.10.2026

CNR No. DLHC011071832025

\+ O.M.P. (COMM) 563/2025 & I.A. 32786-32787/2025

UNION OF INDIA .....Petitioner

Versus

SWADESHI CIVIL INFRASTRUCTURE PVT. LTD.
.....Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Siddhartha Shankar Ray, CGSC with Ms. Sonali Modi, Advocates.

For the Respondent: Mr. Dinkar Singh and Mr. Rohit Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

1. The present petition has been filed by *Union of India* under Section 34 of Arbitration & Conciliation Act, 1996 (hereinafter referred to as '*said Act'*).

2. The impugned Award is dated 12.06.2025.

3. The challenge is, however, restricted to claim Nos.1, 4 and 7.

4. A dispute arose between the parties in relation to agreement dated 30.07.2018. The work in question related to construction of 76 multi-storied flats at Dr. B.D. Marg, New Delhi. These were being constructed for Hon'ble Members of Parliament of Lok Sabha.

5. Before learned Arbitral Tribunal, both the parties agreed that the

claims and counter-claims could be adjudicated on the basis of the respective pleadings and documents, without leading any oral evidence. Therefore, the adjudication is based on the pleadings and documents only.

6. As noted above, the subject matter of the present petition relates to claim Nos.1, 4 & 7. These are as under: -

Claim No.1: *Non-payment of Bonus under clause 2A of the agreement.*
Claim No.4: *Interest from the date of cause of action till the date of Award.*
Claim No.7: *18% GST or as applicable (on the date of payment on the amount to be released on which GST is to be paid*

7. Let me examine these, one by one.

8. The learned Arbitral Tribunal has awarded a sum of Rs. 7,46,53,850/- under Claim No. 1.

9. As per the agreement, the contractor (respondent herein) becomes entitled to bonus if he is able to complete the work, ahead of scheduled completion date. The completion date may also get stretched for any justified extension, as agreed and determined by the parties. The aspect of entitlement of bonus emanates from clause 2A of the agreement which reads as under: -

> *"In case, the contractor completes the work ahead of stipulated date of completion or justified extended date of completion as determined under clauses 5.3, 12 & 15, a bonus @ 1% (one per cent) 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 per cent) of the tendered value. Provided that justified time for extra work shall be calculated on pro-rata basis as cost of extra work X stipulated period/tendered value. The amount of bonus, if payable, shall be paid along with final bill after completion of work. Provided always that provision of the Clause 2A shall be applicable only when so provided in 'Schedule F'."*

10. Thus, contractor would be entitled to bonus if the work is completed

ahead of stipulated date of completion or justified extended date of completion as determined under clauses 5.3, 12 & 15.

11. Learned counsel for the petitioner contends that the contractor was entitled to bonus when it was able to complete the work prior to the stipulated date or within any justifiable extension granted and determined under the abovesaid relevant clauses only i.e. clause 5.3, 12 and 15. He submits that clause 2A is conspicuously absent about extension given under a different clause i.e. clause 5.2 and, therefore, if the time is extended under clause 5.2, the contractor does not become entitled to bonus. It is argued that since learned Arbitral Tribunal has considered extension under clause 5.2 also for the purposes of grant of bonus, the award is in teeth of stipulated terms of the contract and, therefore, not sustainable. It is submitted that the parties were bound by the terms of the contract and since there was no ambiguity therein, it was not permissible for the learned Arbitral Tribunal to have, virtually, rewritten the contractual terms, by giving a fanciful interpretation. Learned counsel for the petitioner relies upon *Navayuga Engineering Co. P. Ltd. vs. Public Works Department & Anr.*: 2016 SCC OnLine Del 1546, *Indian Oil Corporation Ltd. vs. Tapas Kumar Das*: 2025 SCC OnLine Cal 10174, *Union of India Vs. Jindal Rail Infrastructure Ltd*: 2022 SCC Online Del 1540, *PSA Sical Terminals Pvt. Ltd. Vs The Board of Trustees of V.O. Chidambranar Port Trust Tuticorin & Ors.:* (2023) 15 SCC 781 and *SEPCO Electric Power Construction Corpn. Vs. GMR Kamalnga Energy Ltd*.: (2026) 2 SCC 542.

12. Such contentions have been refuted by learned counsel for the contractor.

13. It is submitted that there is no rewriting of the contractual terms or

conditions and that clause 2A, clearly, contemplates bonus when the work is completed before the stipulated date of completion and since the stipulated date of completion got extended by virtue of grant of time under clause 5.2, in any case, the contractor was rightly held entitled to bonus. He submits that, moreover, there is no prohibition postulated anywhere in the agreement that bonus would not be granted if time was to be extended under clause 5.2. It is, thus, argued that the learned Arbitral Tribunal has, rightly, considered the contractual obligations and awarded bonus. Learned counsel for the respondent has placed reliance upon *Paragon Constructions (India) Pvt Ltd v. Union of India & Anr*. 2008 SCC OnLine Del 51; *Union of India v. M/s. N.N. Buildcon Pvt. Ltd*. 2015 SCC OnLine Del 11647 and *Roshan Real Estate Pvt. Ltd. v. Union of India* 2023 SCC OnLine Del 2515.

14. I have given anxious consideration to the rival contentions and perused the material on record.

15. Admittedly, there was dispute between the parties with respect to number of hindrance days. According to contractor, though there was hindrance on 769 days, the petitioner herein allowed hindrance for 236 days only. Learned Tribunal, after careful perusal of the record and after examining the various hindrances in great detail, justified hindrance for 144 days under clause 5.3; extension of 114 days towards additional work; and hindrance for 138 days under clause 5.2. It also observed that there was no hindrance in context of clause 15.

16. The dispute, at the moment, is regarding hindrance for 138 days under clause 5.2 only.

17. The petitioner does not challenge the calculation regarding hindrance days. Its contention is merely to the effect that for said 138 days, the

contractor is not entitled to bonus.

18. Let me see the relevant clauses.

19. Clause 5.2 and 5.3 read as under: -

> *"5.2 if the work(s) be delayed by: -*
> *(i) force majeure, or*
> *(ii) abnormally bad weather, or*
> *(iii) serious loss or damage by fire, or*
> *(iv) civil commotion, local commotion of workmen, strike or lockout, affecting any of the trades employed on the work, or*
> *(v) delay on the part of other contractors or tradesmen engaged by Engineer-in-Charge in executing work not forming part of the Contract, or*
> *(vi) non-availability of stores, which are the responsibility of Government to supply or*
> *(vii) non-availability or break down of tools and Plant to be supplied or supplied by Government or*
> *(viii) any other cause like above which, in the reasoned opinion of the Engineer-in-Charge is beyond the Contractor's control."*
>
> *then upon the happening of any such event causing delay, the Contractor shall immediately give notice thereof in writing to the Engineer-in-Charge for entry in the hindrance register (physical or we-based as prescribed in schedule F) but shall nevertheless use constantly his best endeavours to prevent or make good the delay and shall do all that may be reasonably required to the satisfaction of the Engineer-in-Charge to proceed with the work.*
> *The contractor shall have no claim of damages for extension of time granted or rescheduling of milestone/s for events listed in sub clause 5.2.*
>
> *5.3 In case the work is hindered by any reasons, in the opinion of the contractor, by the Department or for someone for whose action the Department is responsible, the contractor may immediately give notice thereof in writing to the Engineer-in-Charge in the same manner as prescribed under sub Clause 5.2 seeking extension of time or rescheduling of milestone/s. The authority as indicated in Schedule 'F' shall, if justified, give a fair and reasonable extension of time and reschedule the mile stones for completion of work after due consideration of the same within 30 days of receipt of such request. In event of non application by the contractor for extension of time E-in-C after affording opportunity to the contractor may give, supported with a*

> *programme, a fair and reasonable extension within a reasonable period of occurrence of the event.*
> *Such extension of time or rescheduling of milestone/s shall be without prejudice to any other right or remedy of the parties in contract or in law; provided further that for concurrent delays under this sub clause and sub clause 5.2 to the extent the delay is covered under sub Clause 5.2 the contractor shall be entitled to only extension of time and no damages."*
>
> *(emphasis supplied)*

20. There is a subtle difference between clause 5.2 and 5.3.

21. While clause 5.2 talks about the delay attributable to *force majeure*, abnormal weather conditions, loss or damage by fire, local commotion of workmen, strike etc., clause 5.3 stands attracted when the work is hindered for act and conduct attributable to Department only. As would be evident, certain exigencies mentioned in clause 5.2 viz *non-availability of stores, which are the responsibility of Government to supply* or *non-availability or break down of tools and Plant to be supplied or supplied by Government* are also of the nature specified in clause 5.3.

22. Indubitably, clause 2A, as extracted above, is very clear and specific. It provides that bonus would accrue if the contractor completes the work ahead of stipulated date or justified extended date of completion as determined under clause 5.3, 12 and 15. Thus, the bonus would become allowable where the work is completed ahead of stipulated date. Of course, though the justifiable extension under three clauses have been specifically mentioned in Clause 2A, there is no denying the fact that if there are hindrance days attributable to *force majeure conditions*, such days also need to be taken into account, which, in turn, would impact the dead-line of completion. *Force majeure* clause, generally, acts as an "eclipse" provision. When a catastrophic, unpredictable event like natural disasters, pandemics,

government shutdowns etc. occur, the clause suspends contractual timelines and results in automatic extension of time without penalty. Though, the contractor is not permitted to seek any damages or penalty on account of such delay, but if despite such hindrance, the contractor is able to deliver the project ahead of the scheduled deadline, it, quite clearly, becomes entitled to grant of bonus. Mere fact that because clause 5.2 is not mentioned under clause 2A, would not carry any significance. *All in all, if work is completed in advance, the bonus is a natural consequence.*

23. Learned Arbitral Tribunal observed, and rightly so, that clause 5.2 merely bars contractor to seek any damages. It held that as per clause 5.2, the contractor was precluded from seeking any claim of any damages for extension of time or rescheduling of milestone and since there was no embargo in claiming any bonus, learned Arbitral Tribunal included the hindrance days, under clause 5.2 also, for the purposes of grant of bonus. In *N.N. Buildcon (supra*), learned Division Bench of this Court observed that the Arbitral Tribunal had correctly interpreted the bonus provision and applied the principles of calculation of the bonus. It observed that if there are hindrances in the completion of the work, which lead to delay, then the period during which the hindrances occurred have to be excluded from the period stipulated for completion of the work. It held that if after exclusion of the delay period so computed the work is completed by the contractor in a period lesser than the stipulated period for completion, the contractor would be entitled to bonus. Thus, the hindrance which has been, eventually, acknowledged and approved by the Department would not be an impediment in seeking bonus.

24. Admittedly, Arbitral Tribunal is not empowered to re-write the

contract and cannot ignore determinative clauses or supplant contractual stipulations. Petitioner, to the above extent, is justified in relying upon the precedents cited at the Bar. In *Navayuga (supra),* though it was observed that the "scheduled completion time" was a defined term and could not be altered by the parties but therein the issue was altogether different i.e. *whether in the absence of a covenant prohibiting compensation, the Arbitrator could have granted market rate beyond the stipulated period of contract.* Therefore, no advantage can be extracted therefrom. Moreover, undeniably, interpretation and construction of contractual terms is well within the domain of Arbitral Tribunal and the Courts would be slow and reluctant to interfere with the same, unless the interpretation given by Arbitral Tribunal is completely absurd and contrary to agreement or is not even a remote possibility. Reference be also made to *Ssangyong Engineering & Construction Company Limited* v. *NHAI*: (2019) 15 SCC 131.

25. Moreover, Award can be set aside only if there is any patent illegality or when it is against public policy of India or based on 'no evidence' or delineates 'no reason' for passing the Award. The Court seized with any such petition is not required to act as a *Court of appeal*. There is nothing to indicate that learned Arbitral Tribunal has given any illogical or illegal interpretation to the abovesaid clause 2A. The extension provided under clause 5.2 is also liable to be counted for the purposes of grant of bonus and, as already noted above, it only debars any such contractor to seek damages for the resultant delay. There is nothing to indicate that it would disentitle any contractor to seek bonus.

26. Evidently, the interpretation and reasons given by the Tribunal are

not only justifiable but also equitable.

27. The delay consequent upon *force majeure events*, which found favour by the Department even, cannot be, therefore, permitted to be knocked out and asphyxiated in the manner contemplated by the petitioner herein, when the contractor is not seeking any damages at all. *Since the work has been completed ahead of schedule, the claimant becomes entitled for bonus of early completion of work and, therefore, this Court does not find any reason to interfere with the Award, respecting claim No.1*.

28. Claim No.4 pertains to grant of interest *qua* claim No.1 only.

29. Admittedly, the claimant had not sought interest with respect to claim No.2. This is evident from his petition. However, while awarding interest under claim No.4, learned Arbitral Tribunal has granted interest not only for claim No.1 but also for claim No.2. *Since the claimant had never prayed for any interest with respect to claim No.2, grant of interest respecting claim No.2 was beyond the scope of arbitration proceedings and was, therefore, per se illegal and unjustifiable.*

30. As per the majority view in *Gayatri Balasamy vs. ISG Novasoft Technologies Ltd.:* 2025 SCC OnLine SC 986, the Court has limited powers under Sections 34 and 37 of Arbitration and Conciliation Act to modify the arbitral Award, which power can be exercised (i) when the award is severable, by severing the "invalid" portion from the "valid" portion of the award, (ii) by correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, (iii) post award interest may be modified in some circumstances; and/or (iv) by invoking Article 142 of the Constitution within the prescribed limits of the constitution and with great care and caution.

31. Coming to claim No.7, while answering the same in favour of the claimant, learned Tribunal has, merely, held that the actual amount of GST *payable or paid* by claimant against the amount of Award shall be reimbursed within three months, else on proof of payment, the petitioner herein shall pay 12% future interest from the date of submission of proof of payment of GST. It is argued by petitioner that no GST is payable on a claim awarded under Sections 73 and 74 of Indian Contract Act, 1872. It is also supplemented that while awarding 18% GST, no reason has either been assigned by learned Arbitral Tribunal.

32. Arbitration Awards, particularly those concerning construction and infrastructure, need to be analysed *component-wise* for GST purposes.

33. This is for the reason that different claims, within the same Award, may invite different tax consequences. Amount awarded for additional work, price escalation, or upward revision of contract value retain the character of consideration for supply and might be liable to GST, whereas amount awarded as compensation for breach of contract, liquidated damages, loss, delay, or reimbursement of damage may not imply '*supply'* and may fall outside GST.

34. *Since learned Tribunal has merely directed for reimbursement wherever GST is payable, this Court does not find any requirement of interfering with claim No.7.*

35. The grant of interest, in relation to claim No.2, is *both invalid and severable from rest of the Award*, and, therefore, the present petition stands allowed in part and the Award insofar as it grants interest with respect to claim No.2 is, hereby, set aside.

36. The petition stands disposed of in aforesaid terms.

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37. Pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

OCTOBER 12, 2026
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