2026:DHC:9027

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

**Judgment reserved on: 21.08.2026**

**Judgment pronounced on: 12.10.2026**

\# **CNR No. DLHC015356862015**

\+ O.M.P. (COMM) 20/2015 & I.A. 25264/2015

UNION OF INDIA .....Petitioner

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kumar Saxena, Mr. Mukesh Kumar Tiwari, Ms. Reba Jena Mishra and Ms. Poonam Shukla, Advs.

versus

M/S. SHIV NARESH SPORTS PVT. LTD .....Respondent

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

**CORAM:**
**HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

**JUDGMENT**

**% 12.10.2026**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996[1] by the Union of India, through Central Public Works Department[2], challenging the arbitral award dated 09.07.2015[3] passed by the learned Sole Arbitrator, Shri V.K. Malik.

2. The dispute between the parties arises out of the composite tender floated by the Petitioner in connection with the Commonwealth Games, 2010[4], held in Delhi, for "*providing and laying IAAF-approved synthetic athletic track surface*" at five venues, namely,

[1] "the Act" hereinafter
[2] "CPWD" hereinafter
[3] "impugned award" hereinafter
[4] "CWG" hereinafter



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Jawaharlal Nehru Stadium, Thyagraj Stadium, Chhattarsal Stadium, Commonwealth Games Village and Delhi University.

3. Although the tender was a composite tender covering the aforesaid venues, the present proceedings relate specifically to the Agreement No. 01/EE/CWGD- 1/2009-2010 awarded for the work at the Jawaharlal Nehru Stadium.

4. The Respondent, M/s Shiv Naresh Sports Pvt. Ltd., submitted its bid on 24.08.2009. In its financial bid, which was opened on 29.08.2009, the Respondent quoted Rs.33.29 crores for the Jawaharlal Nehru Stadium and Rs.72.80 crores as the composite amount for all five venues.

5. The rates quoted by the Respondent were found by the Petitioner to be substantially on the higher side and therefore, the Petitioner took steps for scrutinization of the rates at their own level. Accordingly, it constituted a Committee to examine the rates and determine the justified cost of the work. The Committee initially assessed the justified cost at Rs.67.09 crores. Thereafter, the amount of Rs.7.09 crores towards line marking for seven years was deleted, and the justified cost was reduced to Rs.59.18 crores.

6. Subsequently, the parties entered into negotiations and the work at all five venues was finally awarded for a composite amount of Rs.60.38 crores. An Agreement dated 24.10.2009[5] was thereafter entered into between the Petitioner and the Respondent for the work at

the Jawaharlal Nehru Stadium, for which the value was fixed at Rs.27,61,47,154.

7. The aforesaid rates subsequently assumed considerable significance as in October 2010, a High-Level Committee[6] was formed to look into the agreements and the value of the agreements awarded during and in connection with the CWG, 2010. In its report, the HLC found that the justified cost of Rs.59.18 crores assessed by the earlier Committee was highly inflated and observed that the work had been awarded at approximately 2.5 times the rate at which similar work had earlier been executed by the Respondent at other locations.

8. The aforesaid report of the HLC was communicated to the Respondent, which submitted its reply dated 01.06.2011. Finding the reply inadequate, the Petitioner sought further clarification by letter dated 13.06.2011.

9. Subsequently, in July 2011, the Respondent submitted its final bill claiming approximately Rs.15.97 crores. Notably, prior thereto, six Running Account Bills had already been paid to the Respondent, amounting to approximately Rs.22.08 crores.

10. The final bill was ultimately settled on 21.11.2011 for Rs.5.06 crores, bringing the total value of the work executed to approximately Rs.27.15 crores. After adjustment of the security deposit and statutory recoveries, the bill was passed as a "Zero Bill". A sum of

[5] "Agreement" hereinafter
[6] "HLC" hereinafter

Rs.3,20,55,600/- was withheld pending consideration of the HLC observations.

11. The Respondent thereafter raised disputes regarding the withheld amounts and other deductions made by the Petitioner and, by letter dated 12.03.2012, sought appointment of an Arbitrator in terms of Clause 25.

12. Pursuant to the Respondent's request, the Chief Engineer, CPWD, by letter dated 04.06.2012, appointed Shri V.K. Malik as the Sole Arbitrator, who was also one of the members of the Committee which had initially examined and justified the rates quoted by the Respondent prior to acceptance of the tender.

## PROCEEDINGS BEFORE THE TRIBUNAL

13. The learned Sole Arbitrator entered upon the reference on 16.07.2012, and the Respondent raised the following claims for adjudication:

*LIST OF CLAIMS*

| *S.No* | *Claims* | *Amount* |
|---|---|---|
| *1.* | *Contractor's claim on account of balance payment for the work executed under the contract, including additional work, extra work and extra j involvements etc. but not paid/short paid in quantities/rates as per revised final bill submitted* | *Rs.3,04,63,438/-* |
| *2.* | *Contractor's claim towards refund of security deposit illegally deducted from the alleged final bill* | *Rs.1,38,07,358/-* |
| *3.* | *Contractor's claim towards refund of the amounts illegally deducted from the alleged final bill by way of alleged extra items* | *Rs.2.79,47,352/-* |
| *4.* | *Contractor's claim towards refund of the amounts illegally recovered from the alleged final bill on various accounts, which are against the provision of agreement.* | *Rs. 22,37,304/-* |
| *5.* | *Contractor's claim towards refund of the* | *Rs. 3,20,55,600/-* |

| | | |
|---|---|---|
| | *amounts illegally withheld from the alleged final bill which is against the provision of contract.* | |
| *6.* | *Contractor's claim on account of reimbursement of testing charges but not yet released* | *Rs. 79,582/-* |
| *7.* | *Contractors claim on account of payments due in terms of clause 10-C of the agreement* | *Rs. 2,34,85,000/-* |
| *8.* | *Contractors claim on account of damages/ compensation/losses on account of staff establishment overhead and T&P machineries due breach of contractor committed by the department* | *Rs.77,55,000/-* |
| *9.* | *Contractors claim towards excavation in construction cost due to market inflation for the works executed beyond the stipulated period of Contract on account of prolongation of contractual period caused by the Department and committed breach of contract.* | *Rs. 2,61,61,178/-* |
| *10.* | *Contractor claim on account of incidental expenses/interest/losses for renewal of bank guarantees due to prolongation of the contract caused by the Department* | *Rs. 3,45,184/-* |
| *11.* | *Contractors claim to interest on the amounts due for pre-suit. pendentilite and future* | *@18% p.a.* |
| *12.* | *Contractor claim on account of arbitration proceedings* | *Rs.5,00,000/-* |

14. Thereafter, the Petitioner sought time on several occasions to file its Statement of Defence and ultimately filed the same on 29.04.2014.

15. A significant development took place on 20.06.2014, when the learned Sole Arbitrator disclosed that he had been a member of the Committee initially constituted to examine and justify the rates quoted by the Respondent for the subject work, which had assessed the justified cost at Rs.59.18 crores.

16. Upon the said disclosure, the parties initially expressed no objection to the continuation of the learned Arbitrator. However, the Petitioner withdrew its no-objection by letter dated 10.07.2014, stating that the same had been given by the officer without consulting the

competent authority. Thereafter, by letter dated 30.07.2014, the Petitioner sought deferment of the arbitral proceedings pending a decision of the higher authorities on the disclosure made by the learned Arbitrator.

17. The learned Arbitrator treated the aforesaid objection as a challenge under Section 13 of the Act and by order dated 04.08.2014, held as follows:

i. The learned Arbitrator held that the objection was barred under Section 13(2) of the Act as the challenge was raised beyond the prescribed period of 15 days from the date of disclosure.

ii. The earlier no-objection given by the Petitioner was held to have been validly given by the Executive Engineer, who was competent to represent the Petitioner and had also signed the Statement of Defence on behalf of the Petitioner.

iii. The learned Arbitrator further held that the Committee's examination of the rates was an internal departmental exercise undertaken prior to acceptance of the tender and that the same neither formed part of the Agreement nor had any bearing on the claims before the Tribunal.

## FINDINGS OF THE LEARNED TRIBUNAL

18. Before noting the findings of the learned Tribunal, it is relevant to note that the work could not be completed within the agreed timeframe and therefore, the Respondent sought extension of time by

letter dated 18.11.2010. While seeking such extension, the Respondent undertook not to claim anything extra on account of the delay. Relying on the said undertaking, the Petitioner granted extension of time for completion of the work up to 30.08.2010, without any compensation for the delay.

19. Despite the aforesaid undertaking, the Respondent, in its Statement of Claims, raised Claim No. 8 seeking damages/compensation for losses towards staff establishment, overheads and T&P on account of the alleged breach of terms by the Petitioner. In its Statement of Defence, the Petitioner relied upon the Respondent's undertaking and contended that the claim was not maintainable in view of the same.

20. The learned Sole Arbitrator first considered the Petitioner's preliminary objection and found that there was no reason to believe that the undertaking had been given out of free will when such undertaking was not required under the Agreement. He further held that Clause 9, insofar as it restricted the Respondent from raising such claims, was hit by Sections 23 and 28 of the Indian Contract Act, 1872[7].

21. Thereafter, the learned Arbitrator considered the Respondent's claim arising out of the delay and held that the delay was attributable to the Petitioner and that time was not the essence of the contract. On this basis, he proceeded to consider the Respondent's claim for damages under Section 73 of the ICA and treated the delay as a breach

attributable to the Petitioner and awarded Rs.44,97,900/- under Claim No.8 towards loss of overheads.

22. Coming to the remaining claims, Claim No.1 was raised towards the amounts allegedly wrongly deducted or recovered by the Petitioner under different heads. It was divided into three parts: Mark A towards work done but less measured/short paid, Mark B towards short measurement/short payment in respect of extra items, and Mark C towards the reduced rates applied to quantities executed beyond the deviation limit.

23. The Tribunal considered each of the three components separately. Mark A was rejected on the ground that the measurements had already been jointly reconciled and accepted by the Respondent. Under Mark B, after examining the individual items and the rates claimed, the Tribunal awarded Rs.1,49,924/-. In regard to Mark C, the Tribunal found that the reduced rates could not have been applied without sending the prior notice to the Contractor as per Clauses 12.2 and 12.3. Accordingly, a total amount of Rs.53,53,189/- was awarded under Claim No. 1.

24. Claim No. 3 concerned various deductions made by the Petitioner from the final bill in respect of different work components, including four sand pits, testing charges for the synthetic surface and equipment, FOP consultant visits, trenching and refilling for HDPE pipes, and earth work under Item No. 9.5.

[7] "ICA" hereinafter







25. The Tribunal upheld the deduction towards the four sand pits. However, the deductions towards testing charges, FOP Consultant's charges, trenching and refilling and earth work under Item No. 9.5 were found to be excessive or unsupported by the Agreement. Accordingly, it awarded Rs. 2,60,54,727/- to the Respondent under Claim No. 3.

26. Under Claim No. 4, the deductions towards the discus cage and removal of *malba* were contested. The learned Arbitrator found the deduction towards *malba* justified. As regards the discus cage, the Tribunal noted that the cage had admittedly been provided and installed and no defect was pointed out till its handing over. Therefore, the Tribunal did not find the recovery justified and awarded Rs. 21,56,034 in favour of the Respondent. It also directed the Respondent to provide and install a new cage upon the Petitioner issuing the requisite notice within the stipulated period.

27. Claim No. 5 was related to the amount of Rs.3,20,55,600/- withheld from the final bill. Since the said amount had already been released to the Respondent during the arbitral proceedings, the claim did not survive for final adjudication before the learned Arbitrator but the interest component was still adjudicated under Claim No. 11. Under Claim No. 6, the learned Arbitrator considered the contractual provisions relating to testing charges and awarded Rs.66,346/- to the Respondent after excluding the charges which the Respondent had agreed to bear.

28. For Claim No. 9, which was related to escalation in the cost of



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construction during the extended period, the learned Arbitrator proceeded on the basis of its earlier finding that the delay was attributable to the Petitioner, and an amount of Rs.13,40,343/- was awarded. Under Claim No. 10, the learned Arbitrator treated the expenditure incurred on renewal of the bank guarantees as a consequence of the delayed completion and delayed release of the final bill and awarded Rs.3,54,184/-.

29. The major monetary consequence for the Petitioner arose under Claim No. 11, where the learned Arbitrator awarded interest on the amounts found payable under the various claims. The Tribunal awarded Rs.94,32,360/- as interest on the withheld amount of Rs.3,20,55,600/- and further awarded 11% simple interest on the other amounts, except for claim no. 2.3 and 5, from the date of invocation of arbitration till the date of the impugned Award.

## PROCEEDINGS BEFORE THIS COURT

## SUBMISSIONS ON PRELIMINARY OBJECTION AS TO THE INDEPENDENCE AND IMPARTIALITY OF THE ARBITRATOR

30. At the outset, learned Counsel for the Petitioner raised a preliminary objection to the independence and impartiality of the learned Sole Arbitrator. It was submitted that Section 12 imposed a mandatory and continuing obligation upon the Arbitrator to disclose any circumstances giving rise to justifiable doubts as to his independence or impartiality. According to the Petitioner, despite being aware of his previous involvement in the subject matter, the

learned Arbitrator made no disclosure at the time of his appointment on 04.06.2012 or upon entering the reference, and disclosed the same only on 20.06.2014, after completion of the pleadings. Therefore, the disclosure was contended to be belated and contrary to the mandate of Section 12.

31. Learned Counsel further emphasised that the HLC constituted to review the rates earlier justified by the Committee in which the learned Arbitrator was also a member, found those rates to be substantially higher. According to the Petitioner, this is a circumstance which legitimately gives rise justifiable doubts as to the independence and impartiality of the learned Arbitrator.

32. It was further submitted that the Petitioner had never validly waived its objection, as the no-objection was given by the officer without consulting the appropriate authority. The learned Arbitrator, therefore, wrongly relied upon the said no-objection while rejecting the Petitioner's challenge under Section 13.

33. Accordingly, the Petitioner contended that the continuation of the learned Arbitrator was contrary to Sections 12 and 13 of the Act and that, in these circumstances, the impugned award was liable to be set aside within the limited scope of Section 34 of the Act. Reliance was placed on ***Msa Global Llc Oman V. Engineering Projects India Ltd.***[8] and ***Lancor Rani*** v ***NHAI***[9]**.**

[8] **FAO(OS) 88/2025**
[9] **2017(3) R.A.J. 579(DeI)**







34. Learned Counsel for the Respondent, on the other hand, submitted that the Petitioner had partly accepted the impugned award, including the amount of Rs.94,32,360/- awarded towards interest under Claim No.11 and the findings in respect of Claims No.4 and 5. Therefore, it was contended that the Petitioner could not accept the impugned award in part and thereafter challenge the remaining portion on the ground of bias.

35. Learned Counsel further submitted that the present case is governed by the unamended Sections 12 and 13 of the Act. Under the said provisions, mere non-disclosure did not disqualify the learned Arbitrator, and the Petitioner was required to establish circumstances giving rise to justifiable doubts regarding his independence or impartiality. The burden was on the Petitioner to prove bias, which it failed to do so, and therefore, the impugned award could not be set aside merely on that basis.

36. In rejoinder, as regards the partial acceptance of the impugned award, the Petitioner submitted that Claim No.11.3 was accepted only in respect of interest on Rs.3,20,55,600/-, which had already been released during the arbitral proceedings on the advice of CPWD Counsel. In respect of Claim No.4, it was submitted that the Petitioner merely complied with the direction contained in the impugned award by issuing the notice dated 27.07.2015, while expressly reserving its right to challenge the award. Thus, it was contended that these acts could not be construed as acceptance of the impugned award on merits or as waiver of the objection to the learned Arbitrator's independence and impartiality.

**SUBMISSIONS ON AWARD OF CLAIMS**

37. On merits, during oral submissions before this Court, learned Counsel for the Petitioner restricted their arguments to challenging only, *inter alia*, the findings under Claims No. 1(C), 3, 4, and 8.

38. In respect of Claim No. 3.4, learned Counsel submitted that the deduction of Rs.2,34,57,515/- was justified in view of the specific understanding recorded in the letter dated 01.09.2009, whereby the Respondent had agreed that the FOP Consultant would make atleast 7 visits at different stages of the work. It was submitted that the cost of these visits was taken into account while finalising amount and, admittedly, the stipulated visits were not fully undertaken and therefore, the corresponding deduction was rightly made.

39. Learned Counsel further submitted that the learned Arbitrator erred in holding that a prior notice was necessary before making the deduction, as there was no such requirement under the Contract. It was also contended that the learned Arbitrator wrongly treated the visits as capable of being clubbed together, though each work was covered by a separate agreement and had its own completion period. In view of the above, it was submitted that the learned Arbitrator had disregarded the specific contractual arrangement and proceeded on assumptions which were not borne out from the Agreement or the record.

40. Learned Counsel for the Petitioner further submitted, in regard to Claim No. 8, that the Respondent, while seeking extension of time,

had given an undertaking that it had suffered no loss and would not claim anything extra on account of the delay and there was no challenge to the legality and validity of the said undertaking. However, in allowing the claim, the learned Arbitrator examined the validity of the undertaking, although no such issue was ever referred to arbitration and therefore, he went beyond the scope of the reference. Reliance was placed upon ***K. Ramachandra Rao v. UOI***[10] to contend that the learned Arbitrator could not travel beyond the scope of the reference.

41. Learned Counsel for the Petitioner also submitted that the dispute under Claim No. 1(C) arose from the quantities executed beyond the deviation limit, for which the Petitioner had applied the market rates determined under Clause 12.2. It was contended that the learned Arbitrator erred in directing refund of the deduction on the ground that no notice under Clause 12.3 had been given, as according to the Petitioner, no such notice was required for applying the market rates determined under Clause 12.2. It was also pointed out that the present was a peculiar case where the market rates were lower than the Agreement rates.

42. It was further submitted that the deduction of Rs.21,56,034/- towards the discus cage was justified, as the Respondent had removed the cage for repair/replacement on 06.09.2011 but failed to replace it even till the date of the impugned award, thereby depriving the Petitioner of its use and the learned Arbitrator failed to consider the breach on part of the Respondent. It was further submitted that the

[10] **1994 Supp (2) Supreme Court Cases 545 (2)**

impugned award itself made the payment conditional upon such installation within the stipulated period and, since the Respondent failed to comply with the said condition, the amount was not payable even in terms of the impugned award.

43. *Per contra*, in respect of Claim No. 3.4, learned Counsel for the Respondent submitted that the learned Arbitrator had rightly rejected the deduction of Rs.2,34,57,515/-. It was submitted that no separate payment for each visit of the FOP Consultant was provided in the BOQ, no rate was prescribed for such visits, and no prior notice of any deficiency was given by the Petitioner before making the deduction. The work was completed to the satisfaction of the Petitioner and the requisite IAAF certification was also obtained. Reliance was placed upon the decision in ***Public Works Department v. Shiv Naresh Sports Pvt. Ltd***[11]., arising out of another work under the same tender, where a similar recovery had been rejected by this Court and subsequently, accepted by the department.

44. As regards Claim No. 4 and 5, it was submitted that the impugned award had already been accepted by the Petitioner and the amount had been released to the Respondent. Accordingly, the Respondent contended that no challenge survived in respect of the said claim.

45. In regard to Claim No. 1(C), learned counsel for the Respondent contended that the reduced rates could not be applied to quantities beyond the deviation limit without the notice required under Clause

12.3 and, in the absence of such notice, the Agreement rates were payable and, therefore, the deduction made by the Petitioner was unjustified and the learned Tribunal made no error in awarding the same.

**ANALYSIS**

46. Before dwelling into the merits of the case, it is necessary to deal with the preliminary objection raised by the Petitioner regarding the independence and impartiality of the learned Arbitrator, as the objection goes to the root of the matter and, if sustained, would vitiate the entire impugned award.

47. The objection is based on the fact that the learned Arbitrator had been a member of the first Committee which had examined and justified the rates quoted by the Respondent before acceptance of the tender. However, this fact was not disclosed at the time of his appointment or when he entered upon the reference and was disclosed belatedly on 20.06.2014 during the arbitral proceedings. The Petitioner, therefore, contended that the non-disclosure was in violation of Section 12(1) of the Act, which requires the Arbitrator, at the time of his appointment, to disclose any circumstances which may give rise to justifiable doubts as to his independence or impartiality.

48. The Respondent, however, contended that the Petitioner had partly accepted the impugned award and was, therefore, precluded from challenging it. This Court is unable to accept the said contention.

49. The amount under Claim No. 5 had already been released during the arbitral proceedings pursuant to the legal opinions dated 11.07.2014 and 25.07.2014, and the subsequent acceptance of interest under Claim No.11.3 was only consequential to such release, as is evident from the legal opinion dated 10.09.2015 relied upon by the Petitioner. In respect of Claim No.4, the Petitioner expressly reserved its right to challenge the impugned award in its letter dated 27.07.2015. In view of the above, it cannot be said that there was acceptance of the impugned award on merits so as to constitute partial acceptance or waiver and therefore, the objection raised by the Petitioner deserves to be examined on merits.

50. At this stage, it would be appropriate to first examine the statutory framework applicable to the present case. Admittedly, the arbitration proceedings were commenced and the learned Arbitrator was appointed before the Arbitration and Conciliation (Amendment) Act, 2015[12] came into force. The present case is, therefore, governed by the unamended Section 12 of the Act, which reads as under:

> *"Section 12*
> *"Grounds for challenge"*
> *(1)* ***When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.***
> *(2) An arbitrator, from, the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in subsection (1) unless they have already been informed of them by him.*
> *(3) An arbitrator may be* ***challenged only if-***
> *(a) Circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or*

[12] "2015 Amendment Act" hereinafter

*(b) He does not possess the qualifications agreed to by the parties.*
*(4)* ***A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.****"*
***(emphasis supplied)***

51. From the above, it is clear that under the unamended Section 12(1), when a person was approached in connection with his possible appointment as an Arbitrator, he was required to disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. Section 12(2) further imposed a continuing obligation to disclose such circumstances, without delay, during the arbitral proceedings. Section 12(3), however, made it clear that an Arbitrator could be challenged only where circumstances existed giving rise to justifiable doubts as to his independence or impartiality, or where he did not possess the qualifications agreed to by the parties. Section 12(4) further restricted the right of the parties to challenge only for the reasons which came to the knowledge of the party after the appointment of the Arbitrator.

52. Thus, a conjoint reading of the provisions under Section 12 indicates that the duty of the Court is to examine not merely whether there was a delay or failure in disclosure, but also when the relevant circumstance came to the knowledge of the challenging party and whether that circumstance gives rise to justifiable doubts as to the Arbitrator's independence or impartiality.

53. Recently, this position, although rendered in the context of the amended Section 12, has been explained in detail by this Court

in ***Lalit Modi v. BDR Builders & Developers (P) Ltd.***[13]**,** where it considered the statutory scheme of Sections 12 and 13 and clarified that every instance of non-disclosure, delayed disclosure or incomplete disclosure does not, by itself, invalidate the arbitral proceedings or render the Arbitrator *de jure* incapable of acting.

54. The Court further opined that the legislature does not provide consequence of non-disclosure and therefore, the consequence of non-disclosure has to be gathered from the remaining clauses of Section 12. The Court observed that the determinative enquiry is not merely whether there has been a failure to disclose, but whether the underlying circumstance is of such a nature as to give rise to justifiable doubts regarding the Arbitrator's independence or impartiality. The relevant observations are as follows:

> *"79. A conjoint reading of Sections 12 and 13 of the A&C Act reveals the legislative framework governing the obligation of disclosure cast upon a proposed as well as an appointed arbitrator; the circumstances which may give rise to justifiable doubts regarding an arbitrator's independence or impartiality; the procedure for challenging an arbitrator on such grounds; and the consequences flowing from the acceptance or rejection of such challenge. These provisions must therefore be construed harmoniously to ascertain the true scope of the statutory obligations imposed upon an arbitrator and the corresponding rights and remedies available to a party seeking to question the arbitrator's appointment or continuance.*
>
> *80. Section 12(1) of the A&C Act unequivocally mandates that every person approached in connection with his possible appointment as an arbitrator shall make a written disclosure of all circumstances that may have a bearing upon his independence or impartiality. The obligation extends to the disclosure of any direct or indirect past or present relationship with, or interest in, any of the parties or in relation to the subject matter of the dispute, whether financial, business, professional or of any other nature, which is likely to give rise to justifiable doubts regarding the*

[13] **2026 SCC OnLine Del 6328**

*arbitrator's independence or impartiality. The provision further requires disclosure of any circumstance likely to affect the arbitrator's ability to devote sufficient time to the arbitration and, in particular, to conclude the proceedings within the prescribed statutory period.*

*81. Explanation 1 to Section 12(1) clarifies that the circumstances enumerated in the Fifth Schedule shall serve as a guide for determining whether circumstances exist which give rise to justifiable doubts regarding the independence or impartiality of an arbitrator. Explanation 2 further mandates that such disclosure shall be made in the form prescribed in the Sixth Schedule.*

*82. Section 12(2) extends the obligation of disclosure beyond the stage of appointment by imposing a continuing statutory duty upon the arbitrator to disclose, without delay and in writing, any circumstance referred to in Section 12(1) which may arise or come to his knowledge after his appointment and throughout the arbitral proceedings, unless such circumstance has already been disclosed to the parties. The legislative intent is thus to ensure complete transparency throughout the arbitral process by imposing a continuing obligation of disclosure upon the arbitrator.*

***83. However, although Sections 12(1) and 12(2) of the A&C Act prescribe the obligation of disclosure in mandatory terms, neither provision provides that every instance of non-disclosure, delayed disclosure, incomplete disclosure or inaccurate disclosure would, by itself, invalidate the arbitral proceedings or render the arbitrator de jure incapable of acting. Likewise, the statute does not provide that every omission to disclose a circumstance falling within the Sixth Schedule automatically vitiates the arbitral process.***

***84. The consequences of any alleged non-disclosure must therefore be gathered from the remaining provisions of Section 12 of the A&C Act. In this context, Section 12(3) assumes significance, as it provides that an arbitrator may be challenged only if circumstances exist which give rise to justifiable doubts regarding his independence or impartiality; or he does not possess the qualifications agreed upon by the parties.***

***85.*** *The legislature has consciously employed the restrictive expression "only if", thereby confining the permissible grounds of challenge. Consequently, every instance of non-disclosure does not, ipso facto, constitute a valid ground for challenging an arbitrator. The determinative enquiry is not whether there has merely been a failure to disclose, but whether the underlying circumstance is of such a nature as to give rise to justifiable doubts regarding the arbitrator's independence or impartiality. Thus, the omission to disclose is not an independent ground of challenge;*

*rather, it is the underlying circumstance itself, whether disclosed or undisclosed, that must satisfy the statutory test prescribed under Section 12(3) of the A&C Act."*

***(emphasis supplied)***

55. The aforesaid principle squarely applies to the present case, as the substantive test under Section 12(3) remains unchanged and an appointment of an Arbitrator can be challenged *"only if"* circumstances exist giving rise to justifiable doubts as to the independence or impartiality of an Arbitrator.

56. No doubt, the amendment brought changes to Section 12(1) and enlarged the disclosure regime, but neither the amended nor the unamended Section 12(1) made non-disclosure in itself a ground of disqualification under Section 12(3).

57. It is also material to note that the 2015 Amendment Act subsequently introduced a separate regime of automatic statutory ineligibility under Section 12(5) read with the Seventh Schedule. No such provision existed under the unamended Section 12. Thus, under the statutory regime applicable to the present case, the mere existence or non-disclosure of a circumstance could not render the Arbitrator *de jure* incapable of acting.

58. In other words, the Petitioner cannot contend that the mere non-disclosure or delayed disclosure of the Arbitrator's earlier participation in the Committee automatically rendered him ineligible to continue with the arbitration. The issue remains for this Court is to examine whether the circumstance relied upon by the Petitioner gives

rise to justifiable doubts as to the independence or impartiality of the Arbitrator.

59. The same principle was recognised by this Court in ***Manish Anand v. Fiitjee Ltd.***[14], where it was held that although disclosure is important, every non-disclosure does not automatically result in termination of the Arbitrator's mandate, and the consequence of non-disclosure depend upon the facts of each case.

60. Applying the aforesaid principles to the present case, the submission of the Petitioner that the impugned award is liable to be set aside merely on account of delayed non-disclosure cannot be accepted. The objections raised by the Petitioner has to be tested on the anvil of the unamended Sections 12(3) and 12(4) of the Act.

61. It is not in dispute that the Committee was constituted by the Petitioner itself during the tender process and that the learned Arbitrator was one of its members in his official capacity. The Petitioner had itself conducted the tender process pursuant to which the Respondent was engaged by the Petitioner and the Petitioner itself appointed the learned Arbitrator.

62. In these circumstances, it is difficult to accept that the Petitioner was not aware of his earlier association with the Committee. While adjudicating the challenge under Section 13 of the Act, the learned Arbitrator specifically found that this was not a case where the Petitioner came to know of his earlier association only upon the

disclosure made on 20.06.2014. No material has been placed before this Court to take a different view from the said finding. Therefore, in light of Section 12(4) of the Act, this Court finds that the Petitioner is precluded from raising the objection on account of the reasonable probability of its earlier knowledge regarding the association of the learned Arbitrator.

63. Even otherwise, assuming that the Petitioner became aware of the learned Arbitrator's participation only when the disclosure was made on 20.06.2014, the challenge would still have to satisfy Section 12(3). As the same grounds were raised before the learned arbitrator while he was adjudicating under Section 13, the relevant observation of the learned Arbitrator is as follows:

> *"16. I would like to discuss the impact of justification of rates in the present arbitration case. The justification of rates is prepared in CPWD on the basis of prevailing market rates at the time of receipt of tender so as to ascertain reasonability of quote by lowest bidder. The justification of rates: does not have any significance after acceptance of lowest tender by competent authority as unlike all the documents/letters submitted by contractor after receipt of tender forming part of contract, the justification of rate does not form part of contract. The justification of rates is an internal document of department and is an academic exercise used as a tool to assess reasonability of lowest quote and is used to carry out negotiations with the contractor so as to bring down his rates within specified limits of justification of rates if contractor has quoted higher rates. After acceptance of the tender, even for department, justification of rates has no face value. The lowest tender of claimant was accepted by department after negotiations and usefulness of said justification had come to an end after acceptance of tender submitted by claimant. The contract had been performed to the satisfaction of respondents. In present case, there is no claim brought by contractor related to justification of rates prepared by respondents before acceptance of their tender and neither there is any claim made by respondents related with said justification of rates. As such, in present case, I find no bearing of*

[14] **2018 SCC OnLine Del 7587**

*said justification of rates examined by the committee, notwithstanding, I was one of the member of the justification committee."*

64. The aforesaid reasoning has been considered by this Court along with the impugned award and the material on record. I find no reason to take a different view on the merits of the objection. More importantly, under the unamended Section 12 regime, there was no absolute bar against an employer of either party being appointed as an Arbitrator. Such an appointment was legally permissible, so long as there was no circumstances giving rise to justifiable doubts as to his independence or impartiality. This position was recognised by the Supreme Court in ***Aravali Power Co. (P) Ltd. v. Era Infra Engg. Ltd.***[15]**,** while considering the law as it stood prior to the 2015 Amendment Act. Relying upon its earlier decision in ***Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd.***[16], the Supreme Court explained the circumstances in which the association of a person with either party may give rise to a justifiable apprehension regarding his independence or impartiality, and observed as follows:

*"17. The fact that the named arbitrator happens to be an employee of one of the parties to the arbitration agreement has not by itself, before the Amendment Act came into force, rendered such appointment invalid and unenforceable. The observations of this Court in Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd. [Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd., (2009) 8 SCC 520 : (2009) 3 SCC (Civ) 460] in paras 28, 30, 31 and 32 are quite clear. Said paragraphs were as under: (SCC p. 532)*

> *"28. It is contended by the respondent that in view of the emphasis on the independence and impartiality of an arbitrator in the new Act and having regard to the basic principle of natural justice that no man should be judge in his own cause,*

[15] **(2017) 15 SCC 32**
[16] **(2009) 8 SCC 520**

*any arbitration agreement to the extent it nominates an officer of one of the parties as the arbitrator, would be invalid and unenforceable.*

***

*30. We find no bar under the new Act, for an arbitration agreement providing for an employee of a Government/statutory corporation/public sector undertaking (which is a party to the contract), acting as an arbitrator. Section 11(8) of the Act requires the Chief Justice or his designate, in appointing an arbitrator, to have due regard to:*

*'11. (8)(a) any qualifications required of the arbitrator by the agreement of the parties; and*

*(b) other considerations as are likely to secure the appointment of an independent and impartial arbitrator.'*

*31. Section 12(1) requires an arbitrator, when approached in connection with his possible appointment, to disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. Section 12(3) enables the arbitrator being challenged if*

*(i) the circumstances give rise to justifiable doubts as to his independence or impartiality, or*

*(ii) he does not possess the qualifications agreed to by the parties.*

*32. Section 18 requires the arbitrator to treat the parties with equality (that is to say without bias) and give each party full opportunity to present his case. Nothing in Sections 11, 12, 18 or other provisions of the Act suggests that any provision in an arbitration agreement, naming the arbitrator will be invalid if such named arbitrator is an employee of one of the parties to the arbitration agreement."*

*18. In the same decision, this Court in paras 34 and 35 dealt with "justifiable apprehension about the independence or impartiality" of an employee arbitrator in following terms: (Indian Oil Corpn. Ltd. case[Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd., (2009) 8 SCC 520 : (2009) 3 SCC (Civ) 460] , SCC p. 533)*

***"34. The fact that the named arbitrator is an employee of one of the parties is not ipso facto a ground to raise a presumption of bias or partiality or lack of independence on his part. There can however be a justifiable apprehension about the independence or impartiality of an employee arbitrator, if such person was the controlling or dealing authority in regard to the subject contract or if he is a direct subordinate (as contrasted from an officer of an inferior rank in some other department) to the officer whose decision is the subject-matter of the dispute.***

> ***35. Where however the named arbitrator though a senior officer of the Government/statutory body/government company, had nothing to do with the execution of the subject contract, there can be no justification for anyone doubting his independence or impartiality, in the absence of any specific evidence. Therefore, senior officer(s) (usually Heads of Department or equivalent) of a Government/statutory corporation/public sector undertaking, not associated with the contract, are considered to be independent and impartial and are not barred from functioning as arbitrators merely because their employer is a party to the contract."***

***19.*** *Section 12(1) as it then stood before the Amendment Act came into force, obliged the person approached in connection with possible appointment as an arbitrator, to disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality. In the present case, the arbitrator undoubtedly is an employee of the appellant but so long as there is no justifiable apprehension about his independence or impartiality, the appointment could not be rendered invalid and unenforceable. As held in Indian Oil Corpn. Ltd. [Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd., (2009) 8 SCC 520 : (2009) 3 SCC (Civ) 460]* ***mere fact that the arbitrator is an employee is not ipso facto a ground to raise any presumption of bias or partiality.*** *It is not the case that there had not been any fair and correct disclosure. All that the respondent alleged in its petition seeking termination of the mandate of the arbitrator was, "…he has himself in his official capacity in the respondent Company dealt with contracts of nature similar to the contract works in question…". The respondent, while relying on the provisions of the Amendment Act had also submitted, "…allegedly appointed individual is the Chief Executive Officer of the respondent herein, who on account of such position also has the controlling influence over the respondent Company". At the same time, the High Court observed in para 13 of the judgment under appeal that the arbitrator was not the Engineer In-charge or the day-to-day in-charge of the work and as a matter of fact, the Engineer In-charge was AGM (CCD-Township) who had a team of other Engineers working under him and that AGM (CCD-Township) reported to AGM (ME — CCD) who in turn reported to CEO (Apcpl) i.e. the arbitrator.* ***The facts on record and the hierarchy as mentioned do not show that the arbitrator in the present matter was either the dealing authority in regard to the contract or was directly subordinate to the officer(s) whose decision is the subject-matter of dispute. In fact, the decision, which could be subject-matter of dispute, was that of his subordinates. He may have dealt with contracts of nature similar to the contract works in question but that by itself does not render the appointment invalid. Since there is nothing on record which***

***could raise justifiable doubts about the independence or impartiality of the named arbitrator, in the light of the observations of this Court in Indian Oil Corpn. Ltd. [Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd., (2009) 8 SCC 520 : (2009) 3 SCC (Civ) 460] the appointment of the arbitrator could not in any way be termed to be illegal or unenforceable."***

***(emphasis supplied)***

65. The aforesaid observations make it clear that mere employment or association with the Department is not sufficient to raise a presumption of bias. A justifiable apprehension would arise where the Arbitrator had a controlling or dealing role in relation to the subject Contract or was directly subordinate to the officer whose decision was under challenge. In the absence of such circumstances or any specific material showing otherwise, the independence or impartiality of the Arbitrator cannot be doubted merely on account of his earlier association with the Department.

66. The present case stands on a stronger footing. The learned Arbitrator was not even an employee of the Petitioner, nor was he the controlling or dealing authority in relation to the subject Agreement or subordinate to any officer whose decision was the subject matter of the dispute. His earlier association was limited merely to his membership of the Committee constituted during the tender process to examine the rates quoted by the Respondent. There is nothing on record to show that he had any role in the execution of the Agreement or in the decisions which subsequently became the subject matter of the arbitration.

67. In these circumstances, there is no sufficient material on record

to give rise to such a doubt or reasonably call his independence or impartiality into question. Merely, the fact that the HLC found the rates unjustified does not advance the Petitioner's case. The rate justification exercise was confined to the tender stage, and the learned Arbitrator had no role in the subsequent negotiations or in the finalised contractual amount agreed between the parties.

68. The reliance on ***MSA Global LLC Oman (supra)*** and ***Lancor Rani (supra)*** also does not advance the Petitioner's case. In ***MSA Global (supra)***, the arbitrator had a prior professional engagement with a person closely associated with one of the parties, a relationship found to be falling within the circumstances given under the Fifth Schedule to the Act. It was also found that the arbitrator had failed to disclose the relationship despite becoming aware of it. Similarly, in ***Lancor Rani (supra)***, the arbitrator was simultaneously engaged as a technical expert/advisor for one of the parties during the pendency of the arbitration. No such circumstance exists in the present case. Shri V.K. Malik's role was confined to his membership of the departmental Committee for examining the rates quoted by the Respondent, which had ended before the Agreement was executed and the arbitration commenced. On an objective assessment of the circumstances, such prior role in no manner affects the neutrality of the arbitral process or gives rise to justifiable doubts as to his independence or impartiality.

69. There is another aspect which cannot be lost sight of. Upon disclosure, the Petitioner initially gave its no-objection to the continuation of the learned Arbitrator, which was subsequently withdrawn on the ground that the officer had acted without consulting







the competent authority. In this regard, the learned Arbitrator rightly noted, and this Court concurs, that once the Petitioner itself had authorised the officer to sign and file the Statement of Defence on its behalf, it could not subsequently contend that such officer had no authority to give the said no-objection.

70. It is also not a case that the said officer was under any pressure or faced any circumstance which prevented him from seeking time before the learned Arbitrator to obtain appropriate instructions. In these circumstances, the objection to the impartiality of the learned Arbitrator appears to have been raised as an afterthought. The subsequent withdrawal of the no-objection on this ground is wholly untenable.

71. In view of the aforesaid discussion, this Court finds that the objection raised by the Petitioner does not satisfy the test under Section 12(3) of the Act. The mere fact that the learned Arbitrator had earlier been a member of the Committee does not, in the facts of the present case, give rise to any justifiable doubt as to his independence or impartiality. The objection raised by the Petitioner on this ground is, accordingly, rejected.

## SCOPE OF JURISDICTION UNDER SECTION 34

72. Since the impugned award was rendered on 09.07.2015, prior to the 2015 Amendment Act, the present challenge has to be examined in accordance with the law applicable under the unamended provision, whereby the expression “public policy of India” had been expanded

and given a wider meaning by the Supreme Court so as to bring within its ambit "patent illegality". [17] However, even pre-amendment, the test of patent illegality was a strict one. Such illegality had to go to the root of the matter so as to affect the award. A mere error in applying the law or a possible disagreement with the interpretation adopted by the learned Tribunal could not warrant interference by courts.

73. The learned Tribunal is entrusted with determining the meaning and effect of the contract, and its interpretation cannot be displaced merely because the Court may consider another construction to be preferable. Interference is warranted only where the interpretation adopted is wholly inconsistent with the contractual terms, disregards the bargain between the parties, or is such that it cannot reasonably be sustained on the contract.

74. As far as findings of facts and on evidences relied upon by the parties are concerned, it is well-settled that this Court is not empowered to re-appreciate evidence merely to determine whether another conclusion could have been reached. Where the learned Tribunal has considered the material before it and its conclusion has a reasonable basis in the record, the finding would not ordinarily warrant interference. The position would, however, be different where the finding is based on no evidence, ignores material evidence, or proceeds on a basis contrary to the Contract or the material on record. The following observations of the Supreme Court in ***MMTC Ltd. v. Vedanta Ltd.***[18], are relevant in this regard:

[17] **ONGC v. Saw Pipes Ltd., (2003) 5 SCC 705**
[18] **(2019) 4 SCC 163**

*"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.*

*12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. Also see ONGC Ltd. v. Saw Pipes Ltd. [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705]; Hindustan Zinc Ltd. v. Friends Coal Carbonisation [Hindustan Zinc Ltd. v. Friends Coal Carbonisation, (2006) 4 SCC 445]s; and McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] )*

*13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the*

*law or by reappreciation of evidence."*

75. Recently, this Court in ***UOI v Afcons***[19] summarised the scope after considering ***State of Rajasthan v. Ferro Concrete Construction (P) Ltd***[20], and ***Ramesh Kumar Jain v. Bharat Aluminium Company Ltd.***[21] in the following words:

> *"56. Thus, the following three situations must, be clearly distinguished:*
> *i. First, where the Arbitrator's finding is supported by some evidence and the interpretation placed upon the contract is a reasonably possible one, the Court cannot interfere merely because another view is possible.*
> *ii. Second, a mere error in the appreciation of evidence or an erroneous application of law does not, by itself, warrant interference under Section 34. The Court cannot convert the proceedings under Section 34 into an appeal on the merits reassessing the evidence or substituting its own conclusions for those of the Arbitrator.*
> *iii. Third, where the Arbitrator ignores an express contractual term, acts contrary to a clear prohibition contained in the contract, or reaches at a conclusion that is unsupported by the material before him, or is one that no reasonable person could have reached, the award may suffer from patent illegality."*

76. Keeping the aforesaid principles in mind, this Court will examine the objections raised by the Petitioner to the individual claims.

**Claim No. 3.4: Extra Item No. 8.1: Deduct For The FOP Consultant Charges, Not Performing Visits/Duty At Site As Per Condition Of Agreement For J. N. Stadium - Rs.2,34,57,515/-**

77. This claim relates to the deduction of Rs. 2,34,57,515/- towards the alleged shortfall in the visits of the FOP Consultant. The challenge

[19] **O.M.P. (COMM) 331/2017**
[20] **(2009) 12 SCC 1**

to this claim by the Petitioner is on the same ground as before the learned Tribunal, relying upon the negotiation letter dated 10.09.2009, that there was a specific agreement between the parties for a minimum of seven visits by the FOP Consultant at different stages of the work. Admittedly, seven visits were not made and therefore, the deduction was justified and that the learned Tribunal, in directing refund of the said amount, acted beyond its powers and in contravention of the agreed terms between the parties.

78. Since this contention was also raised before the learned Tribunal, the learned Tribunal considered the aforesaid contention and the following factors can be borne out from the impugned award which weighed with the learned Tribunal while rejecting the defence of the Petitioner:

i. The learned Tribunal analysed the negotiation letter and the purpose of each visit and found that the seven visits counted by the Petitioner could not be treated as seven separate visits.

ii. The learned Tribunal also noticed that the five works under the consolidated tender were executed substantially simultaneously and that nothing in the negotiation letter or the Agreement required the FOP Consultant to make separate visits to each site, or to return to his native country after every visit. Therefore, the learned Tribunal found no basis for construing the letter as requiring 35 separate visits for the five sites or seven separate visits for the present

[21] **2025 INSC 1457**

work.

iii. The learned Tribunal further noted that, admittedly, the requisite IAAF certification was obtained, which was the ultimate purpose of the visits, and there was no evidence of any deficiency in the work on account of the lesser number of visits.

iv. The learned Tribunal also distinguished the FOP Consultant's visits from a BOQ item and observed that the number of visits neither formed part of any BOQ item nor was any rate for such deduction specified or agreed between the parties. Since the visits did not constitute a BOQ item, the learned Tribunal held that any recovery on this account could not be made without prior notice to the Respondent.

79. After perusal of the findings of the learned Tribunal as well as considering the objections of the Petitioner, in the view of this Court, no ground for interference is made out. This Court has independently perused the negotiation letter relied upon by the Petitioner and there is nothing therein to show that a minimum of seven separate visits were required. For reference, the said letter reads as follows:

*"No. ……* *DATED …… 10.09.2009*

*To,*
*The Chief Engineer,*
*Commonwealth Games Project*
*CPWD, MDC National Stadium,*
*New Delhi.*

*Subject:- providing and Laying IAAF approved Synthetic Athletics Track Surface ("FUL PUR" Type) cast-in-*

*situ including base work complete in various stadia of Delhi*
*for CWG 2010 at*

*(i) Jawaharlal Nehru Stadium for CPWD.*
*(ii) Thyag Raj Stadium for GNCTD.*
*(iii) Chhattarsal Stadium for GNCTD.*
*(iv) Commonwealth Games Village for DDA.*
*(v) Delhi University.*

***NEGOTIATION REGARDING***

*Sir,*

*Kindly refer the negotiation meeting held with joint tendering committee on 10.09.09 in the conference hall of CPWD, MDC, National Stadium, New Delhi. As a result of negotiation we submit following;*

*1. Although we had quoted very competitive rates but to get associated with the prestigious project, we offer unconditional rebate of 3.75% (Three point Seven Five Percent) on all our quoted rates.*

*2. We clarify that the provision of Para 1.36 &1.37 of General conditions of financial bid for provision of 2Nos. mobile phones &. 1No. inspection Vehicle shall be applicable in all the work (Five nos.) as detailed below.*

| ***Name of the Stadium*** | ***Mobile Phone*** | ***Vehicle*** |
|---|---|---|
| *i. Jawaharlal Nehru Stadium* | *2Nos.* | *1No.* |
| *ii. Thyag Raj Stadium* | *2Nos.* | *1No.* |
| *iii. Chhattarsal Stadium* | *2Nos.* | *1No.* |
| *iv. Commonwealth Games Village* | *2Nos.* | *1No.* |
| *v.Delhi University* | *2Nos.* | *1No.* |
| *TOTAL* | *10Nos.* | *5Nos.* |

*3. For upkeep and maintenance of track, expert personnel from company will be deployed to train the local staff.*

***4. It is confirmed that FOP consultant***

***i. Will visit for initial survey of all sites.***
***ii. Will visit during the execution of sub-Base.***
***iii. Will be visiting during execution of sub-Base and ancillary work.***
***iv. Will issue the certificate of acceptance of sub-base and will issue permission for laying of synthetic surface.***

***v. Will visit on completion of the track to ensure obtaining of relevant class certification from IAAF.***
***vi. Will conduct necessary visits as & when required at site.***

*5. The proposed design sub-base of the of the consultant as per actual site condition shall have to be. got vetted from IIT/CRRI/Delhi college of Engineering. The cost of vetting from above institute shall be borne by us.*

*6. We confirm to get the line marking done as per an IAAF approved norms and procedure.*

*7. In relation to Para 1.15(a) of General Condition of Financial bid, we clarify that we shall arrange for all tests required under the agreement through the laboratory as approved by the engineer-in-charge. The cost of test shall be borne by us in all the cases of sub-base/base work/ trenching work/synthetic surface. The relevant Para 1.15 (a) of tender gets modified to that extent.*

*8. We clarify that our quoted rate of top bituminous layer (Item No. 8.5) is inclusive of cost of providing sealing of top surface as per the manufacturer's recommendation.*

*9. We assure to deploy reputed agency who has executed road works of Expressway / National Highway/Similar Road work in Metropolitan cities for execution of subbase/ base work/bituminous work.*

*Itis also submitted that we shall not be in a position to reduce our rates further. We assure you best of our services always."*

80. A perusal of the above letter indicates that it mentions the different stages at which the FOP Consultant was required to visit the site. The learned Tribunal analysed the purpose of each visit and found that some of these stages could be covered in the same visit. No other provision of the Agreement has been pointed out which would require seven separate visits or show that the learned Tribunal travelled beyond the terms of the Agreement.

81. There is another circumstance which supports the view taken by

the learned Tribunal. An identical issue arising out of the same consolidated tender, though in respect of the Thyagraj Stadium work, was considered by this Court in ***Shiv Naresh Sports (supra)***. This Court upheld the finding for the same negotiation letter that the visits were primarily intended to ensure the requisite IAAF certification. The relevant reasoning reads as follows:

> *"Claim No.5: Contractors claim Rs.78,19,172/- towards illegal recovery made on account of alleged FOP visits by way of extra items.*
>
> *The case of the respondent before the Arbitrator was that the petitioner recovered a sum of Rs.78,19,172/- from the final bill of the respondent on account of alleged non-compliance of visits by the FOP (Field of Play) consultant. The petitioner had wrongly interpreted para-4 of letter dated 10th September, 2009 that the respondent would require seven visits of FOP consultant. Admittedly, no notice was ever issued by the petitioner during contract period that FOP consultant did not make any visit and the petitioner had wrongly made recovery. The petitioner, at no stage, pointed out any deficiency in service rendered by FOP consultant. It is evident that negotiation letter dated 10th September, 2009 nowhere mandated seven visits of FOP consultant.*
> *18.* ***The main purpose of FOP consultant's visit was to ensure that the work is executed properly so as to qualify for Class-2 certificate by the IAAF and admittedly class-2 Facility Certificate was issued by IAAF.***
> *19. It is the admitted position that there was no separate head of payment in the contract for payment towards FOP consultant and no condition/ provision in the agreement that recovery would be made for deficit visits of the FOP consultant. While working out the recovery, the petitioner sought to recover amounts on the basis of the rates quoted by the "M/s Conica" who had nothing to do with the contract of the respondent. No evidence on behalf of Conica was produced. Even, no notice was ever given either during the currency of the contract or on completion of the contract.*
> *20. It is now the case of the petitioner that when the work was declared completed on 21st May, 2010, there were several defects in the work executed by the respondent. Those defects which were apparent at the time of recording completion were clearly mentioned in the measurement Books which has been annexed as P-4. The Project Manager also found those defects during his*

*inspection on 12th October, 2010 which was recorded in completion certificate issued by him vide letter No.54(1)/PM/CW-13/PWD/GNCTD/ 696-E dated 12th October, 2010 which has been annexed as P-6.*

*The respondent in their negotiation letter dated 10th September, 2009, which is the part of the agreement has been annexed as P-7, had specifically mentioned about the visits of FOP Consultant at different phases of the work. The respondent had submitted that it would bear the cost of those minimum seven visits of FOP consultant. Those visits of the consultant would be at the following stages:*

*…*

*23. It is a matter of fact that at no stage during the contract, did the petitioner point out that the FOP consultant did not visit as was required. Even if the contention of the petitioner that FOP consultant did not visit five out of the seven stages is to be accepted, the obvious conclusion is that the petitioner consciously and repeatedly waived the requirement of the remaining visits of the FOP consultant. Therefore, it appears that the raising of issue of the deficit visits of the FOP consultant is an afterthought and the same was raised at a belated stage. The petitioner has made a general statement that the FOP consultant did not render proper services. The petitioner has not brought out any specific instance on record to establish that the work suffered in any manner due to the alleged deficit visits of the FOP consultant. The game was successfully completed. There was grievance on behalf of the petitioner of any nature or defect which is now pointed out by the petitioner but it did not issue any notice to the respondent in course of execution of the work. This clearly amounts to acquiescence and waiver on the part of the petitioner and according to the doctrine of estoppel, the petitioner, thus, has no legal right to make recovery. There is no provision in the agreement that for each deficit visit of the FOP consultant, a particular sum would be recovered. No rate of recovery has been laid down in the agreement and recovery made is beyond the conditions of the agreement. On the other hand, the work done is completely satisfactory and relevant class certificate has also been issued by IAAF. Thus, the Arbitrator has rightly awarded an amount of Rs.78,19,172/- in favour of the respondent."*

***(emphasis supplied)***

82. The aforesaid reasoning squarely applies to the present case. The purpose of the FOP Consultant's visits was to ensure proper execution of the work and obtain the requisite IAAF certification,

which, admittedly, was obtained in the present case.

83. In fact, the present case stands on a stronger footing. The learned Tribunal also found that there was no evidence of any deficiency in the work on account of the lesser number of visits and that no notice was ever issued to the Respondent during execution of the work regarding the alleged shortfall. The learned Tribunal also gave reasons for holding that such notice was necessary, as the FOP Consultant's visits did not form part of any BOQ item and the Agreement prescribed neither any rate nor any mechanism for recovery on account of shortfall of visits.

84. The findings of the learned Tribunal clearly indicate that it had considered the purpose of the visits, the absence of any deficiency in the work and the fact that no notice had been issued requiring the Respondent to arrange the alleged seven visits before concluding that the subsequent deduction from the final bill could not be sustained merely because only two visits had been made.

85. In these circumstances, this Court finds no reason to take a different view. The interpretation of the negotiation letter dated 10.09.2009 and the question as to whether seven separate visits were required fell within the domain of the learned Arbitrator. The view taken by the learned Arbitrator is a reasonable and plausible one, and the Petitioner has not pointed out any other material which would show that the finding is contrary to the record.

86. The finding of the learned Tribunal that the deduction of

Rs.2,34,57,515/- was not justified, therefore, does not suffer from any infirmity warranting interference under Section 34 of the Act.

87. The challenge to Claim No. 3.4 is, accordingly, rejected.

**Claim No. 1(C): Less Rate Paid Against Agreement Items — Rs.52,03,265/-**

88. This claim concerns the deduction of Rs.52,03,265/- in payment made towards deviated quantities executed in excess of the deviation limit. The Petitioner justified the deduction on the ground that payment for the excess quantities had already been made as per the market rates. It was also contended that the present case was peculiar in the sense that the market rates so determined were lower than the rates under the Agreement, whereas ordinarily, the Agreement rates are lower than the market rates.

89. The learned Tribunal found that where either party sought revision of the Agreement rate on account of deviation, the rates for quantities executed beyond the deviation limit were to be determined in accordance with Clauses 12.2 and 12.3.

90. The learned Tribunal interpreted the above clauses and found only three rates applicable to quantities executed in excess of deviation limit: an increased rate in compliance of Clause 12.2, a reduced rate if previously notified by the Engineer-in-Charge under Clause 12.3, or the Agreement rate where neither party sought revision. As far as reduced rate under Clause 12.3 is concerned, the

learned Tribunal specifically emphasised that such reduction cannot be made without previously notifying the contractor.

91. The above interpretation of the learned Tribunal also finds support from the decision of a co-ordinate Bench of this Court in ***UOI v. M/s Rama Construction Company***[22], where similar clauses were considered and the similar interpretation adopted by the learned Tribunal was upheld by this Court.

92. In view of the above, I find no reason to take a different view. The interpretation of the contractual terms is within the domain of the learned Arbitrator, and his construction of Clauses 12.2 and 12.3 is a reasonable and plausible one and is consonance with the decisions of this Court. Merely because, in the peculiar circumstances of the present case, the market rate was lower than the Agreement rate cannot justify a departure from the contractual terms. Once the parties had agreed upon the manner in which a revised rate was to be applied, the same has to be followed, and the learned Tribunal's decision cannot be alleged to erred for giving effect to the same.

93. Further, the learned Tribunal found that the Petitioner did not issue notice as required under Clause 12.3 to apply a rate other than the Agreement rate. The said finding has not been contested by the Petitioner, and it has not been shown that any such notice was given at the relevant stage. Therefore, when no notice was given in the manner required under Clause 12.3, no fault can be found with the finding of the learned Tribunal that the deduction in rate by the Petitioner was

illegal. Accordingly, the challenge to Claim No. 1(C) is rejected.

**Claim No. 4: Claim Toward Refund Of The Amounts Illegally Deducted From Alleged Final Bill On Various Accounts Which Are Against Provision Of Contract - Rs. 22,37,304/-**

94. In regard to Claim No. 4, it was contended that the same was wrongly allowed as the discus cage was not re-installed by the Respondent and resultingly, the Petitioner was deprived of its use.

95. In regard to the deduction of Rs. 21,56,034/- towards the discus cage, the learned Tribunal noted that the discus cage had admittedly been provided. The learned Tribunal further noted that after the discus cage had been provided and handed over, the liability of the Respondent was to rectify any defect or shortcoming noticed during the maintenance period. It was also observed that the Petitioner had not issued any notice to the Respondent requiring it to return the discus cage or informing it that its cost would be recovered from the final bill in case of non-return.

96. The learned Tribunal also took note of the fact that the Respondent had offered to provide and install a new cage at its own cost. The Petitioner, however, declined the said offer and sought to retain the amount already recovered from the final bill. The learned Tribunal found no justification for such recovery as per the agreed terms.

97. In these circumstances, I again find no fault in the approach of

the learned Tribunal. The direction regarding installation of a new cage was based on the offer made by the Respondent, but that was not the only basis on which the claim was allowed. The learned Tribunal independently examined the deduction and found no contractual basis for recovering the amount when the discus cage had admittedly been provided at the first place. No contractual provision has been shown permitting such recovery or any prior notice to demonstrate any error in the findings of the learned Tribunal.

98. Accordingly, the finding of the learned Tribunal that the deduction by the Petitioner for the discus cage was unjustified does not warrant any interference under Section 34 of the Act. Insofar as the subsequent installation of the cage is concerned, or whether any payment is to be made in that regard, the same does not require any consideration in the present proceedings.

**Claim No. 8: Claim On Account Of Damages/ Compensation/ Losses On Account Of Staff Establishment Overhead And T&P Machineries Due To Breach Of Contract Committed By Department - Rs.77,55,000/-**

99. Claim No. 8 has been challenged by the Petitioner only on the ground that the learned Arbitrator travelled beyond the scope of the reference. The grievance is that the learned Arbitrator adjudicated upon the legality and effect of the undertaking tendered by the Respondent, under which the Respondent agreed not to claim any amount on account of the delay. According to the Petitioner, no such issue was referred to arbitration by either party in its claims or counter-claims. In oral submissions before this Court, the Petitioner

has not challenged the legality of the undertaking on merits or the finding of the learned Tribunal regarding attribution of delay or breach under Claim No. 8. The objection is confined to the jurisdiction of the learned Arbitrator to examine the undertaking.

100. It is well settled that an Arbitrator derives his jurisdiction from the reference and has to confine himself to the disputes referred to him. However, in the facts of the present case, this Court is unable to accept the objection of the Petitioner that the learned Arbitrator travelled beyond the scope of the reference. In this regard, the following averment made by the Petitioner itself in its Statement of Defence assumes significance:

> *"Since the work has been carried out as per the terms and conditions of the agreement, thus no breach of contract is committed by department. The work was to be completed on 23.03.2010 as stipulated in the agreement but the work was physically completed on 30.08.2010.* ***The extension of time was sanctioned by the department without levy of any compensation on agency's undertaking that they will not claim anything extra on account of delay as they have not suffered any loss due to the delay. Hence the claim on this account is not tenable at all****."*
>
> ***(emphasis supplied)***

101. The aforesaid stand of the Petitioner itself shows that the undertaking was specifically relied upon as a defence to the Respondent's claim arising from the delay. In its rejoinder, the Respondent specifically disputed this defence and questioned the validity and effect of the undertaking, contending, *inter alia*, that it had been obtained under duress, coercion and undue influence and that it did not debar the Respondent from raising its legitimate claims. The relevant portion of the rejoinder reads as follows:

*"The contention of the Respondent that the case as put up by the Clamant has no validity and is denied as there is no subsisting disputes, which requires arbitration. The contention as mentioned by the Respondent is simply based on the facts that there was an undertaking given by the claimant on EOT proforma Part-i and referred to an Judgment K.Ram Chandra Rao vs Union of India. The Respondents have denied the claims on the basis of so called undertaking given by the Claimants, in this respect, it is submitted that:-*

***First of all Claimant submits that the said under taking was given under C' duress, coercion, undue influence and exercise of dominant position enjoyed by the Respondents as huge payments of the Claimants were hold by the Respondents, the claimant had no option but offer undertakings as desired by the Respondent as such the under taking as alleged by the Respondents may not be taken into consideration. The Claimant refer the Judgment of Delhi High Court- in the matter of Sayukat Nirmata- 2003(sup)ALR-434 Delhi.***

*Secondly, it is strange enough that when the undertaking was given by the claimant, huge legitimate dues were with the Respondent and still with the Respondent.*

*Thirdly, the said undertaking is no where debars the Claimants from raising the legitimate claims. The undertaking if it is taken on its face value for argument sake, it speaks that no extra CLAIM will be claimed. The Claimants are not claiming any extra claim.*

*Fourthly, the undertaking is a kind of Agreement and ail the Contracts are Agreements. A contract without consideration is not valid as per definition of Contract in view of provision of Section-25 of the Contract Act.*

***Besides above this circumstance is more than sufficient that it was taken under coercion and it will not appeal to a common man that person will forgo his legitimate claims for no sake.***

*The Claimants would like to brought to your kind notice that where no objection certificate was given by a party, the legitimate claims were awarded in favour of the Claimants and no attention was given to the IMOC as held by the Hon'ble Supreme court in the matter of R.L. Kalathla and Co. v/s state of Gujarat- AIR-2011-SC-754".*

***(emphasis supplied)***

102. A perusal of the aforesaid clarifies that the issue regarding the validity and effect of the undertaking arose directly from the defence taken by the Petitioner to Claim No. 8. Once the Petitioner itself relied

upon the undertaking to contend that the Respondent was not entitled to claim damages for the delay, the effect of that undertaking became an issue arising in the adjudication of the claim, and the learned Arbitrator was required to consider it before deciding Claim No. 8.

103. Reliance on ***K. Ramachandra Rao (Dead) by LRs (supra)*** is also misplaced as the present case stands on entirely different footing. In that case, the validity of the no-claim certificate arose at the stage of reference and had to be examined to determine whether any dispute survived for arbitration. In the present case, the arbitration had already been invoked and the undertaking dated 18.11.2010 was relied upon by the Petitioner as a defence to Claim No. 8 and its validity and effect, therefore, formed part of the dispute requiring adjudication.

104. In view of the above, this Court finds that the learned Arbitrator did not travel beyond the reference. He was only examining the defence set up by the Petitioner itself and determining whether the same could defeat the claim. The objection that the learned Arbitrator exceeded the scope of the reference is, accordingly, without merit. No ground for interference under Section 34 of the Act is made out.

## CONCLUSION

105. In view of the above discussion, this Court finds no ground to interfere with the impugned award. The objection to the independence and impartiality of the learned Arbitrator is rejected, as the Petitioner has failed to establish any circumstance giving rise to justifiable doubts as to his independence or impartiality within the meaning of

Section 12 of the Act.

106. As regards the challenge to the merits of the claims, this Court finds that the Tribunal's findings regarding the requirement of notice under Clause 12.3, the number of visits required by the FOP Consultant, and the deduction towards the discus cage are based on its interpretation of the Agreement and the material on record. The Petitioner has not been able to show that these findings are contrary to the terms of the Agreement or that the view taken by the learned Tribunal warrants interference within the limited scope of this Court under Section 34 of the Act.

107. Accordingly, this Court finds no ground to set aside the impugned award dated 09.07.2015.

108. The petition is, accordingly, dismissed. Pending applications, if any, also stand disposed of.

**OM PRAKASH SHUKLA, J**

**OCTOBER 12, 2026**/*gunn*/**pa**