2026:DHC:8698-DB

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

Date of decision: 1st October, 2026.
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\# **CNR No. DLHC010249512022**

\+ **FAO(OS) (COMM) 163/2022 and CM APPL. 29483/2022**

M/S CONTINENTAL ENGINEERING CORPORATION LTD. .....Appellant

Through: Dr. Amit George, Mr. Aditya Swarup & Mr. Rupam, Advs.

versus

UNION OF INDIA .....Respondent

Through: Mr. Vedansh Anand&Mr. Kush Garg, Advs. for UOI. Ms. Urvi Mohan, Adv. for GNCTD.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE DINESH BHATT

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed under Section 37(1) of the Arbitration and Conciliation Act, 1996 (hereinafter "*ACA, 1996*") challenging the judgment dated 22nd March, 2022 as also the review order dated 2nd May, 2022 passed by the ld. Single Judge in ***OMP (Comm.) 432/2020*** and ***Review Petition 123/2022***, respectively.

3. The background of this matter is that the Appellant Continental

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Engineering Corporation, a Taiwanese company, was awarded a contract for "*Comprehensive Development of Corridor (Outer Ring Road) between Mukarba Chowk to Wazirabad Chowk. SH: C/o Flyovers, Loops, Bridges across supplementary drain, FOBs, Footpath, Cycle Tracks, Widening of Road on embankment, Rain Water Harvesting Scheme, Electrical works and other allied works"* (hereinafter "*the Project*"). In respect of the same, an agreement dated 14th May, 2013 was entered into between the Appellant and Public Works Department (NCTD), Government of India. The stipulated date of start was 21st May 2013 and of completion was 20th May 2015. The total value of the contract was Rs. 442,95,68,517/-.

4. Disputes had arisen between the parties in respect of certain claims under this contract. Accordingly, the Appellant invoked the arbitration clause contained in Clause 25 of the General Conditions of Contract, in terms of which the ld. Sole Arbitrator was appointed. The ld. Sole Arbitrator was a retired Judge of this Court.

5. Further to the arbitration proceedings, Award dated 10th December, 2019 was rendered by the ld. Sole Arbitrator.

6. Before the ld. Sole Arbitrator, the Appellant had, *inter alia*, claimed for reimbursement of service tax and environmental compensation cess. In the claim for service tax, the Appellant sought reimbursement of a total sum of Rs.5,02,47,953/-. The ld. Sole Arbitrator analysed the entire evidence which was brought on record by the parties. As per the Award, out of the total claim of service tax, a sum Rs.1,38,58,095/- was deposited directly by the Appellant, under the reverse charge mechanism, with the service tax

department in respect of input services which it had received from various sub-contractors. The relevant portion of the Award noting the relevant facts is as under:

> *"It is also not in dispute between the parties that out of the total amount of Rs.5,02,47,953/- (Rupees Five Crores Two Lacs Forty Seven Thousands Nine Hundred Fifty Three Only), the claimant has deposited an amount of Rs.1,38,58,095/- (Rupees One Crore Thirty Eight Lacs Fifty Eight Thousands Ninety Five Only) directly with the Service Tax Department for receiving input services from various sub-contractors appointed by it. On these input services, the service tax has been paid by the Claimant under the reverse charge mechanism and these input services compromise of the following:*
>
> (a) *Legal consultancy services*
> (b) *Manpower recruitment/supply agency service*
> (c) *Rent a cab scheme operator service*
> (d) *Works Contract service*
> (e) *Transport of goods by road/GTA service*
> (f) *Security detective agency service"*

7. Insofar as the remaining amount of Rs. 3,63,89,858/- is concerned, the same were in respect of input services which are not covered under reverse charge and thus the service tax is stated to have been deposited by the vendors and not by the Appellant. This service tax component was part of the invoices raised upon the Appellant by the respective service providers for which the Appellant had made payments to them.

8. After analysing both aspects of the said claim, the ld. Sole Arbitrator partly allowed the claim in terms of paragraphs 60 and 61 of the Award which

reads as under:

> *"60. Under the said two clauses, the Claimant was to satisfy three conditions to claim reimbursement from the Respondent; firstly that it has paid the service tax to the concerned department; secondly, the demand has been raised by the Department for the payment of the service tax from the Claimant, and thirdly, such a payment made by the Claimant is to the complete satisfaction of the Engineer-In-Charge. The Respondent has not raised any dispute with regard to actual payment of the service tax of an amount of Rs.5,02,47,953/- (Rupees Five Crores Two Lacs Forty Seven Thousand Nine Hundred Fifty Three only) by the Claimant out of which an amount of Rs.1,38,58,095/- (Rupees One Crore Thirty Eight Lacs Fifty Eight Thousand Ninety Five only) has been directly deposited by the Claimant with the Department of Service Tax and Rs.3,63,89,858/- (Rupees Three Crores Sixty Three Lacs Eighty Nine Thousand Eight Hundred Fifty Eight only) deposited with the Department on payment of the same through its various vendors/sub-contractors. Manifestly, the Rs.1,38,58,095/- (Rupees One Crore Thirty Eight Lacs Fifty Eight payment of Rs. Thousand Ninety Five only) has been deposited by the Claimant, on the demand of the same raised by the Department and for which the Claimant had furnished sufficient proof in the form of Challans so as to satisfy the Engineer-In-Charge about the genuineness and actual payment of the same by the Claimant. As regards the payment of Rs. Rs.3,63,89,858/- (Rupees Three Crores Sixty Three Lacs Eighty Nine Thousand Eight Hundred Fifty Eight only) by the claimant for the input services received by it from its sub-contractors/vendors, I have already discussed above that this payment was not directly deposited by the Claimant with the Department, nor had Department*

> *raised any demand for the same from the Claimant and therefore, the Claimant does not satisfy the conditions laid down under the said clauses to claim reimbursement of this amount.*
>
> *61. In the light of the above discussion, I am of the view that the Claimant is legally entitled to claim reimbursement of an amount of Rs. Rs. 1,38,58,095/- (Rupees One Crore ThirtyEight Lacs FiftyEight Thousand Ninety Five only) out of Rs.5,02,47,953/- (Rupees Five Crores Two Lacs Forty Seven Thousand Nine Hundred Fifty Three only), from the Respondent. Claim No. 1 is partly allowed in favour of the Claimant and against the Respondent."*

9. Further, the claim for reimbursement of environmental compensation cess was accepted by the ld. Sole Arbitrator and a sum of Rs. 3,14,06,709/- was awarded to the Appellant.

10. The above Award was challenged by the Union of India/PWD before the ld. Single Judge by way of petition under Section 34 of the ACA, 1996. It is noted that the PWD did not challenge the finding of the ld. Sole Arbitrator in respect of the claim for reimbursement of environmental compensation cess. Thus, there is no dispute in respect of the said claim and findings of the ld. Sole Arbitrator have now attained finality.

11. Ld. Single Judge *vide* the impugned judgement considered various clauses of the contract between the parties and held that the Award, to the extent it allows the service tax refund to the tune of Rs.1,38,58,095/-, is not sustainable. The reasoning given by the ld. Single Judge is as under:

> *"42. Concededly, CEC was exempted from payment of any tax in respect of any service rendered by it for*

execution of the Agreement in question. As mentioned above, the Agreement was essentially an Item Rate Contract and CEC was not assessed to Service Tax in respect of any of the items executed by it for performance of its obligations under the Agreement.

43. ***Undisputedly, CEC's claim is for reimbursement of Service Tax included in the services availed by it and not the services rendered by it.*** *The Arbitral Tribunal had proceeded on the basis that since CEC was assessed to Service Tax, albeit, on a Reverse Charge Mechanism, in respect of certain services, it was entitled to reimbursement in terms of Clause 37(i) of GCC read with Clause 14 of the Instructions to Bidders.*

44. The said conclusion is, ex facie, erroneous. Clause 37(i) of the GCC expressly provided that Sales Tax / VAT (except Service Tax), Building and other Construction Workers Welfare Cess or any other tax or cess "in respect of this contract" shall be payable by the Contractor. However, in respect of Service Tax, the same would be paid by the Contractor to the concerned department on demand and would be reimbursed to it by the Engineer-in-Charge. ***There is no ambiguity that Clause 37(i) of the GCC refers to the Service Tax levied "in respect of this Contract"; that is, the Agreement entered into by CEC on item rate basis. As noticed above, there is no dispute that execution of the Agreement was exempt from levy of any Service Tax. Accordingly, there is no question of CEC claiming reimbursement of any Service Tax****.*

45. ***CEC is not claiming reimbursement of Service Tax in respect of the Agreement executed by it or the works performed by it; CEC claims the Service Tax levied in respect of the services availed by it from third party***

> ***service providers. This is, obviously, the Service Tax chargeable in respect of contracts between the third-party service providers and CEC. Clearly, this is outside the scope of Clause 37(i) of GCC****.*
>
> *46. The Arbitral Tribunal has ignored the nature of the Agreement between the petitioner and CEC. As noticed above, the Agreement was on item rate basis and not a back to back service procurement contract. There was no stipulation in the Agreement in question that CEC would avail services on behalf of the petitioner.*
>
> *47. In view of the above, there is merit in the petitioner's contention that the award of reimbursement of Service Tax is contrary to the express terms of Clause 37(i) of the GCC.*
>
> *48. Although, it is well settled that matter regarding interpretation of a contract falls within the jurisdiction of Arbitral Tribunal and the Courts would not normally interfere with such interpretation. However, in the present case, this Court is of the view that Arbitral Tribunal's interpretation of Clause 37(i) of the GCC to the extent it includes reimbursement of Service Tax levied in connection with contracts / arrangements between CEC and third parties, is fundamentally flawed and vitiates the impugned award by patent illegality."*

12. As can be seen from the above, the ld. Single Judge had proceeded to set aside the Award on two grounds. First, that the claim for reimbursement of service tax was based on services availed by the Appellant herein from third parties, which were not in respect of the agreement *qua* the Project. Second, that the ld. Sole Arbitrator's interpretation of relevant clauses of the

agreement *qua* the Project is patently illegal.

13. The Appellant preferred a review of the impugned judgement on the ground that the finding that the Award is vitiated by patent illegality is not sustainable as the Appellant is a foreign entity and the dispute was an international commercial arbitration. It was further argued that to the extent that the amount was paid directly by the Appellant to the service tax department, the Award ought to be upheld.

14. The ld. Single Judge dismissed the review *vide* the impugned order dated 2nd May, 2022 with the following observation:

> *"4. There is merit in the respondent's contention that Section 34(2A) of the A&C Act is not applicable to an arbitral award in an international commercial arbitration. However, this Court had also set aside the award on the ground that it was in conflict with the public policy of India and therefore, was liable to be set aside under Section 34(2)(b)(ii) of the A&C Act. This Court had observed that the award is vitiated by patent illegality on the face of the award, however, in paragraph 47 of the judgement dated 22.03.2022, this Court had held that the award of reimbursement of service tax is contrary to the express terms of Clause 37(i) of the GCC. It is settled law that an award which runs contrary to the express terms of the contract is also liable to be impeached as being in conflict with the public policy of India.*
>
> *5. The second contention that an amount of ₹1,38,58,095/- had been paid directly to the Service Tax Department and therefore, was liable to be reimbursed, is unmerited. This Court had considered the aforesaid contention and found that the respondent was not*

> *entitled to seek reimbursement of service tax paid in respect of services availed by it. In terms of the contract between the parties, the respondent was entitled to service tax that was payable in respect of the contract in question. The service tax levied on the works executed by the respondent/applicant may be reimbursable in terms of the contract, however, the amounts paid by the respondent to avail input services in respect of any contract with the third parties was plainly outside the scope of the contract and no such reimbursement is contemplated."*

15. The submission of Dr. Amit George, ld. Counsel for the Appellant is that the objection of patent illegality does not apply to international commercial arbitration and the grounds available for challenging an award are very limited *i.e.*, the award could be set aside only on the ground of being in conflict with public policy.

16. Further, it is also argued that both the clauses *i.e.*, Clause 37(i) of GCC and Clause 14 of Instructions to Bidders for submission of tenders, are so clear to the effect that reimbursement of service tax was agreed in terms of the contract itself. Therefore, the same was liable to be allowed. Reliance is also placed upon the decision of the Co-ordinate Bench in ***Municipal Corporation of Delhi v. IJM Corporation Berhad, 2024 SCC Online Del 3597***.

17. On the other hand, Ms. Mohan, ld. Counsel for the Respondent submits that the reimbursement of service tax was only in respect of tax which was deposited in respect of the contract in question and not in respect of other contracts which the Appellant may have with its own service providers. Thus,

the ld. Sole Arbitrator had completely erred in granting even partial reimbursement.

18. It is her submission that the ld. Single Judge's view is liable to be upheld as the Court has actually analysed both the relevant clauses and has come to the correct conclusion. It is submitted that by any interpretation of these two clauses, the partial refund of service tax deposited by the Appellant in respect of services which it had availed was not allowable.

19. In support of the said submission, it is also argued by Ms. Mohan, ld. Counsel that the nature of the services itself would show that these were services unconnected with the contract *qua* the Project and the ld. Sole Arbitrator completely erred in granting the same. The contract being an item rate contract, the Respondent could not have been saddled with additional service tax liability when the Appellant had obtained the contract on the basis of a floating tender.

20. The Court has heard the parties and considered the matter.

21. The relevant clauses of the GCC and Instructions to Bidders read as under:

> *"Clause 15 of the General Rules and Directions.*
>
> *Sales-tax and VAT **(except service tax)**, purchase tax, turnover tax or any other tax applicable in respect of the Contract be payable by the Contractor and Government will not entertain any claim whatsoever in respect of the same. However, in respect of service tax, same shall be paid by - the contractor to the concerned department on demand and it will be reimbursed to him by the Engineer in Charge after satisfying that it has been actually and*

genuinely paid by the contractor.

Clause 37(i) of GCC:

Sales Tax/ VAT ***(except Service Tax)****, Building and other Construction Workers Welfare Cess or any other tax or Cess in respect of this contract shall be payable by the contractor and Government shall not entertain any claim whatsoever in this respect. However, in respect of service tax, same shall be paid by the contractor to the concerned department on demand and it will be reimbursed to him by the Engineer-in-Charge after satisfying that it has been actually and genuinely paid by the contractor.*

Clause 14 of the Instructions to Bidders:

Sales Tax, Excise-Duty as applicable shall be paid by the contractor himself Whereas Contract Tax, DVAT, Labour Cess and Income Tax etc. as applicable shall be deducted by the department from the WA bills. The contractor shall quote his rates considering all such Taxes. ***However regarding the Service Tax, the same shall be reimbursed by the department on production of proof of actual payment of Service Tax in the concerned department made on demand****."*

22. A perusal of the above clauses would show that the contractor was liable to bear the liability in respect of sales tax, VAT, purchase tax, turnover tax or any other tax. However, a specific exclusion was provided in respect of service tax. This being the clear intention as reflected in the various clauses of the contract, it cannot be said that service tax reimbursement is not liable to be made.

23. In the present case, though the Appellant had submitted its bid and was awarded the contract for the Project, as part of implementation and carrying out of the works under this contract it was natural for the Appellant to engage various service providers including providers of manpower, agency services, transportation services, security services, etc. These services form an integral part of the contract itself and the mere fact that the Appellant had availed of sub-contractors for executing some parts of these services would not mean that it can be deprived of the service tax reimbursement.

24. In fact, as part of this Project, any and all expenses incurred either by the Appellant directly or indirectly through sub-contractors, service tax reimbursement was to be made as per the clauses in the contract itself. To the said extent, the ld. Sole Arbitrator has also taken a view that the service tax deposited directly by the Appellant is liable to be reimbursed. However, the service tax component to the extent it was included in bills with subcontractors and where there was no evidence as to whether the subcontractors actually deposited the service tax or not, the ld. Sole Arbitrator has rejected the claim.

25. In the opinion of this Court, the view taken by the ld. Sole Arbitrator was completely reasonable and considering the nature of the contract, the mere fact that the Appellant had engaged subcontractors would not mean that the reimbursement of service tax can be withheld.

26. The submission of the Respondent that the service tax reimbursement would apply only to services in respect of ***this contract*** is also correct. However the said expression would merely mean that the service tax

reimbursement can be claimed in respect of services which are rendered or availed *qua* this Project by the Appellant. The phrase '*in respect of this contract*' means the contract relating to the Project *i.e.*, development of the corridor between Mukarba Chowk to Wazirabad Chowk which was awarded to the Appellant. Obviously, the Appellant could not have claimed reimbursement of any other service tax payment which it may have made *qua* other projects. This fact having been verified by the ld. Arbitrator and accordingly the claim having been awarded to the Appellant was not liable to be interfered with under Section 34 by the ld. Single Judge.

27. Needless to add that this being an international commercial arbitration as one of the parties is a foreign company, the settled legal position is that the ground of patent illegality does not apply. This is clear from a reading of Section 34(2A) of the ACA, 1996 which reads as under:

> *"34. Application for setting aside arbitral award.*
> *[…]*
> *(2-A) An arbitral award arising out of arbitrations* ***other than international commercial arbitrations****, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award: Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence."*

28. This provision has also been considered by the Supreme Court in ***Urban Infrastructure Real Estate Fund v. Neelkanth Realty (P) Ltd., (2026) 4 SCC 166,*** where after considering several judgements on this point, it was held as under:

> *"153. The learned Senior Counsel appearing for the petitioner is right insofar as two things are concerned.* ***First, that the ground of patent illegality which was earlier subsumed within the expression public policy of India, has now been removed and has instead, been granted as a separate ground through which awards rendered in domestic arbitrations can be assailed. The same is evident from a bare reading of Section 34(2-A) of the 1996 Act. Therefore, the ground of "patent illegality" would not be available for setting aside awards rendered in international commercial arbitrations****. Secondly, that the ground relating to the adoption of a "judicial approach" or the lack thereof, was understood to be a part of the phrase "fundamental policy of Indian law" prior to the 2015 Amendment Act only as a result of the decision in Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] . It was the decision in Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] that added three other distinct juristic principles which was to be understood as a part and parcel of fundamental policy of Indian law, which included the aspect of judicial approach. This expansion has now been done away with since it was considered as amounting to an intervention in the merits of the matter."*

29. Further, this has also been settled in several decisions by this Court recently in ***Steel Authority of India Limited v. British Marine, 2026:DHC:7593-DB***.

30. The ld. Single Judge in the review order has also observed to this effect. The issue of service tax reimbursement cannot be held to be contrary to public policy – hence the said ground is unavailable for setting aside the Award of the ld. Arbitrator.

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31. Accordingly, the impugned judgment dated 22nd March, 2022 and review order dated 2nd May, 2022 are set aside.

32. The Award is restored and it is held that the Appellant is entitled to reimbursement of service tax as awarded by the ld. Arbitrator.

33. The appeal is allowed and disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

DINESH BHATT
JUDGE

OCTOBER 1, 2026/ss/msh