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

Judgment reserved on: 07.08.2025
Judgment pronounced on: 19 .11.2025

\+ **O.M.P. (COMM) 215/2022**

NATIONAL BUILDING CONSTRUCTION CORPORATION
...Petitioner

Through: Mr. Jay Savla. Sr. Adv. with Ms. Shilpi Chowdhary, Advs.

versus

M/S SHARMA ENTERPRISES ...Respondent

Through: Ms. Anusuya Salwan, Ms. Alka Dwivedi, Mr. Bankim Garg, Mr. Rachit Wadhwa, Advs.

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O.M.P. (ENF) (COMM) 50/2022

M/S SHARMA ENTERPRISES ...Decree Holder

Through: Ms. Anusuya Salwan, Ms. Alka Dwivedi, Mr. Bankim Garg, Mr. Rachit Wadhwa, Advs.

versus

NATIONAL BUILDING CONSTRUCTION CORPORATION
…Judgement Debtor

Through: Mr. Jay Savla. Sr. Adv. with Ms. Shilpi Chowdhary, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

O.M.P. (COMM) 215/2022

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (***"1996 Act"***) seeking to set aside the Arbitral Award dated 28.07.2016 passed by the learned Arbitrator in the matter of "*M/s. Sharma Enterprises v. National Building Construction Corporation."*

FACTUAL BACKGROUND

2. The petitioner, (respondent in the Arbitration Proceedings) was awarded works by the Indian Railway Construction Company Limited (***"IRCON"***).

3. Thereafter the petitioner awarded the contract to the respondent, (Claimant in the Arbitration Proceedings) for carrying out flooring and cladding works (***"work"***) at the Vashi Railway Station cum commercial complex project in Navi Mumbai for a total contractual value of Rs. 9,50,73,603.20.

4. The petitioner acted as the principal contractor on behalf of IRCON, while Sharma Enterprises functioned as the sub-contractor responsible for executing the assigned construction work under the petitioner's supervision.

5. The dispute between parties arises out of a Letter of Award dated 11.01.1991 relating to the above-mentioned work, and the stipulated period for execution was two years, commencing on 11.01.1991 for execution of the work.

6. On 22.09.1992, the petitioner issued a letter terminating the contract. Following the termination, the respondent invoked the arbitration clause being Clause 10 of Special Conditions of the Contract and sought the appointment of an Arbitrator. As no Arbitrator was appointed by the petitioner, the respondent approached the Delhi High Court under Section 20 of the Arbitration Act, 1940, (***"1940 Act"***) by filing CS (OS) No. 3446/1992 for appointment of an Arbitrator.

7. Over the years, the arbitral proceedings went through several changes in the appointment of Arbitrators, and multiple judicial proceedings took place concerning the validity of those appointments. Eventually, the Hon'ble Supreme Court, by order dated 03.08.2011, appointed the learned Arbitrator to decide all claims and counterclaims between the parties.

8. The learned Arbitrator framed the issues for consideration and published his final award on 28.07.2016, and allowed the claim of the respondent for Rs. 53,28,098/- together with 10% interest from 22.09.1992 and cost of Rs. 5,00,000/- The counterclaims filed by the petitioner were rejected.

9. The issues framed read as under:

> *"54. In this matter, the following issues were framed:*
>
> *(i) Whether the claimants have claimed the amounts in their claim statement beyond the terms of reference mentioned in the order dated 2nd December, 1997 passed by the Hon'ble High Court in Suit No. 3446/92.*

(ii) Whether the claimants are entitled to recover the sum of Rs. 1,08,47,848.00 or any less amount from the respondent.

(iii) Whether the respondent is liable to pay interest @ 24% per annum on the amount found due to the claimants from the date of same became due till its realization.

(iv) Whether the claimant is entitled to the amount mentioned in annexure P-1, annexed with the order dated 14.12.2002, passed by Hon'ble Mr. J.D. Kapoor in Suit No. 2858 A/2000."

10. Thereafter, the petitioner filed a petition under Sections 30 and 33 of the 1940 Act challenging the Award the same was dismissed by this Court holding that 1996 Act will apply. Against the said order of the Division Bench an SLP was filed before the Hon'ble Supreme Court and *vide* order dated 15.12.2021, the Hon'ble Supreme Court held that 1996 Act will apply and also requested this Court to hear and dispose of the mater on priority basis.

11. Subsequently, the petitioner challenged the Award by filing the present petition under Section 34 of the 1996 Act.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Mr. Jay Savla, learned Senior Counsel for the petitioner at the outset states that the learned Arbitrator erred in holding that the delay was not attributable to the respondent and has confined his arguments to 4 grounds which are as follows:

13. The first ground that he pleads is Award of Claim No. 3 which is

Refund of Bank Guarantee is erroneous. He states that the learned Arbitrator erred in allowing the respondent's claim for refund of the Bank Guarantee amount of Rs. 19,01,480/-. The Bank Guarantee was furnished as a security deposit under Clause 1.1 of the contract, which stipulated that such deposit is to be released only upon issuance of a completion certificate after expiry of the 36-month defect liability period.

14. As the contract was terminated on 22.09.1992, no completion certificate was issued. The respondent never invoked Clause 30 for extension of time nor raised any claim of hindrance by other agencies prior to termination. Therefore, the preconditions for release of the security deposit were not met, and the direction for refund is contrary to the contract and the record.

15. He also states that the claim for refund of bank guarantee was never part of the reference and therefore is not arbitrable. Reliance is placed on Annexure Q to the Petition filed under Section 20 of the 1940 Act.

16. Second, he contends that the learned Arbitrator erred in allowing Claim No. 1(b) for an extra item valued at Rs. 26,03,465/-, contrary to the express terms of the contract which include Clauses 14, 15(iii), 22, 34 and 39.1. He states that the work in question formed part of the original scope and quantities set out in the contract.

17. Reliance is placed on *Hindustan Zinc Ltd. v. Friends Coal Carbonisation (2006) 4 SCC 445*, *Satyanarayana Construction Co. v. Union of India (2011) 15 SCC 101, Ssangyong Engineering & Construction Co. Ltd. v. NHAI (2019) 15 SCC 131*, *Indian Oil Corporation Ltd v. Shree Ganesh Petroleum Rajvurunagar (2022) SCC*

463, South East Marine Engineering & Construction Ltd. v. Oil India Ltd. (2020) 5 SCC 164.

18. The third ground urged by him is that the learned Arbitrator also erred in granting interest at 10% per annum from 1992, despite the express bar under Clause 26 of the GCC, which prohibits any claim for interest on delayed or withheld payments. Under Section 31(7)(a) of the 1996 Act, if the contract expressly bars payment of interest, the Arbitrator cannot award it.

19. Reliance has been placed on *Chittranjan Maity v. Union of India (2017) 9 SCC 611, Jaiprakash Associates Ltd. v. THDC India Ltd. (2019) 17 SCC 786, Garg Builders v. Bharat Heavy Electricals Ltd. (2021) 11 SCALE 693, Union of India v. Bright Projects (I) Pvt. Ltd. (2015) 9 SCC 695, Union of India v. Manraj Enterprises (2002) 2 SCC 331.*

20. Therefore, the award of interest is contrary to the contract, unsustainable in law, and liable to be set aside.

21. The last ground that has been urged is rejection of Counterclaims of the petitioner. It is stated that the learned Arbitrator erred in rejecting the petitioner's counterclaims on the assumption that the termination of contract was invalid. The record shows that the respondent completed less than 10% of the work despite repeated notices issued under Clause 60.1 of the GCC and multiple opportunities for compliance. The contract was lawfully terminated on 22.09.1992 after persistent non-performance. Therefore, petitioner's counterclaims for damages and related costs were justified and ought to have been allowed.

22. In view of the above, it is prayed that the impugned Award dated 28.07.2016 be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

23. Ms. Anusuya Salwan, learned counsel for the respondent, at the outset submits that the scope of interference under Section 34 of 1996 Act is limited and places reliance on various authorities delineating the scope of interference.

24. The first ground urged is that delay was attributable to Civil Contractor i.e., M/s Mohinder Singh & Co. She submits that the principal dispute concerned whether delay in completing the flooring and cladding works was attributable to the respondent or to the civil contractor, M/s Mohinder Singh & Co., whose failure to execute preliminary works had rendered the site inaccessible.

25. In paragraphs 56 to 62 of the Award, the learned Arbitrator found thatthe civil contractor had executed only about 7% of the work over a period of 22 months, and the respondent was unable to establish a site office until December 1991. Although the Letter of Award had been issued on 11.01.1991, effective work commenced only in February 1992. Despite these constraints, the platform works were completed in time for the inauguration on 09 May 1992, and demobilisation was carried out in accordance with the petitioner's instructions. Accordingly, the learned Arbitrator concluded that the delay was not attributable to the respondent but was a result of the petitioner's own mismanagement and lack of coordination with the civil contractor.

26. With respect to Refund of Encashed Bank Guarantees it is submitted that six bank guarantees totalling Rs. 23.76 lakhs were furnished; one

was released and five were later encashed by the petitioner in 1997 after arbitration had commenced. The learned Arbitrator held that Rs. 19,01,480/- was wrongfully retained and directed its refund, while disallowing refund of Rs. 15 lakhs towards mobilisation advance.

27. With regard to Claim 1(b) – Extra Items of Work, it is argued that the learned Arbitrator found that the respondent had executed additional items such as upgraded granite cladding pursuant to petitioner's express and implied directions. Reference was placed on Exhibit C-73 (letters 30 March/ 2 April 1992), notifying the petitioner of the variation and enclosing rate analyses. The petitioner raised no objection prior to execution, its silence amounting to acquiescence. The works were used for the inauguration, evidencing acceptance. The only alleged denial letter (Exhibit R-19, 25.05.1992) post-dated completion and was never served. The learned Arbitrator, therefore, rightly held that the extra works were not voluntary and hence correctly awarded the claim.

28. On the issue of pendente lite Interest, she submitted that the award of pendente lite interest by the learned Arbitrator is fully justified in law and in fact, is notwithstanding the existence of Clause 26 of the subcontract agreement. The petitioner's contention that Clause 26 constitutes a bar to the grant of interest is misconceived and contrary to settled legal principles.

29. Clause 26 merely stipulates that *"no claim for interest will be entertained by the Corporation in respect of any balance payments or deposits held up due to disputes or delays in making monthly or final payments."* A plain reading of this clause demonstrates that it operates

only as a timing clause, regulating the petitioner's payment obligations, and does not expressly or categorically prohibit the award of pendente lite interest. Crucially, it contains no reference to arbitration proceedings, disputes, or the Arbitrator's power under Section 31(7)(a) of 1996 Act. Reliance is placed on *Ferro Concrete Construction (India) Pvt. Ltd. v. State of Rajasthan 2025:INSC:429 and Union of India v. Ambica Construction (2016) 6 SCC 36.*

30. She further states that a comparative reading of Clause 26 in the present case with the clauses examined in *Ferro Concrete (supra)* and *Ambica Construction (supra)* makes it evident that Clause 26 does not fall within the category of an absolute bar. It merely regulates the petitioner's internal payment obligations and cannot be interpreted as excluding the Arbitrator's statutory discretion under Section 31(7)(a). The consistent judicial view, beginning with *G.C. Roy [(1992) Supp (2) SCC 508]* and reaffirmed in *Union of India (UOI) v. Krafters Engineering and Leasing (P) Ltd. Supreme Court 2011 (7) SCC 279*is that an Arbitrator possesses the discretion to award interest for the period of pendency of the arbitration unless there is an express and unambiguous exclusion of that power.

31. In the present case, the respondent executed substantial works for which payments were long withheld due to disputes and procedural delays. To deny pendente lite interest merely on the strength of Clause 26 would lead to manifest injustice and contravene the equitable principles recognized under 1996 Act.

32. Accordingly, it is respectfully submitted that Clause 26 does not preclude the grant of pendente lite interest, and the learned Arbitrator

rightly exercised his discretion in awarding the same in accordance with Section 31(7)(a) of 1996 Act. The petitioner's objection on this ground is therefore untenable and deserves to be rejected.

33. Lastly, with respect to Counter-Claims it is submitted that paragraphs 107 to 141 of the Award shows that each counter-claim was independently assessed and rejected for want of proof. The Arbitrator held that the respondent could not be blamed for delay when the civil contractor had completed only about 7 per cent of preliminary work and the petitioner failed to establish any loss or quantify damages. The absence of notices or contemporaneous correspondence further justified dismissal of the counter-claims.

ANALYSIS AND FINDINGS

34. I have heard the learned counsel for the parties and perused the material on record.

35. Before delving into the issues of the matter, it is first necessary to set out the scope of interference under Section 34 of 1996 Act.

36. The Hon'ble Supreme Court in ***Consolidated Construction Consortium Limited v. Software Technology Parks of India, 2025 SCC OnLine SC 956*** held as under:

> *"45. Sub-section (1) of Section 34 provides that an application may be made to the competent court for setting aside an arbitral award. This is the only remedy available for setting aside an arbitral award. The conditions for setting aside an arbitral award are mentioned in subsections (2) and (2A). Sub-section (2) provides for situations such as the agreed party was under some*

incapacity or the arbitration agreement is not valid under the law or the aggrieved party did not receive proper notice regarding appointment of Arbitrator or of the arbitral proceedings which prevented it from presenting its case or the arbitral award deals with a dispute not contemplated by or not falling within the terms of arbitration or the composition of the arbitral tribunal or the procedure adopted in arbitration were not in accordance with the agreement of the parties or the subject matter of dispute is not capable of settlement by arbitration or the arbitral award is in conflict within the public policy of India. In terms of sub-section (2A), an arbitral award may also be set aside on the ground of patent illegality appearing on the face of the award. Sub-section (3) provides for the time limit for filing of an application for setting aside arbitral award. Therefore, the grounds on which an arbitral award can be set aside are clearly mentioned in Sections 34(2) and 34(2A) of the 1996 Act. An arbitral award cannot be set aside on a ground which is beyond the grounds mentioned in sub-sections (2) and (2A) of Section 34.

46. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in subsections (2) and (2A) of Section 34. It is the only remedy for setting

aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the Arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

47. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act."

37. With these principles, I shall now proceed to consider the rival contentions of the parties.

38. The preliminary objection raised by Mr. Savla, learned Senior Counsel is that Claim III i.e., refund of bank guarantee amount is beyond the scope of reference and the learned Arbitrator could not have awarded any amount under the said claim. The terms of reference as per Order dated 02.12.1997 read as under:

> *"16. For the foregoing reasons, the petition is allowed. Let the original arbitration agreement be filed in court. Justice G.C.Jain, a retired Judge of this court is appointed as the sole Arbitrator to adjudicate upon the following disputes, spelt out in the petition:*
>
> *1. Whether the respondent is liable to pay the sum of, Rs.1,08,47,848.00 (Rupees One Crore Eight Lakhs Forty Seven Thousand Eight Hundred Forty Eight Only) as per break-up given in letter dated 8.9.92 annexed with the petition as annexure?*
>
> *2. Whether respondent is liable to pay interest @ 24% p.a. on the said amount from the date the same became due till its realisation?"*

39. The argument of learned counsel for the petitioner is misconceived as the subsequent order of 04.12.2002 and more particularly, paragraphs 3 and 7 categorically refer the dispute arising out of encashment of bank guarantees to the learned Arbitrator. Paras 3 and 7 read as under:

> *"3. This order was confirmed by the Division Bench of this court. Pursuant thereto respondent encashed Bank guarantees on 17.12.1997 in the midst of arbitration proceedings. The petitioner immediately approached the*

Arbitrator and preferred an additional claim emanating from the encashment of the Bank guarantees. However, the Arbitrator did not entertain the claim on the premise that the order of his appointment and reference of disputes has been made by the court and the petitioner should also approach the court for adjudication of dispute raised by them in respect of Bank guarantees.

7. In view of the foregoing reasons, petition is allowed to the extent that Arbitrator shall entertain only these disputes which arose out of encashment of Bank guarantees. The Arbitrator will be at liberty to determine which of the disputes mentioned in Annexure P-1 pertain to bank guarantees and are arbitrable."

40. This issue has been correctly appreciated by the learned Arbitrator under paragraph 140 which reads as under:

"140.In view of the foregoing, the issues framed in these proceedings are disposed of as under:–

(i) As already held above, the Claimant has not claimed in their Statement of Claim amounts beyond the terms of reference, mentioned in the Order dated 02.12.1997 passed by the High Court of Delhi. The additional issues framed by the High Court of Delhi on 14.12.2002 in Suit No. 2858A/2000 has also been adjudicated upon. Therefore, the claims raised by the Claimant beyond the terms of the reference have not been allowed."

41. The order of 04.12.1997 seems to have been wrongly typed 14.12.1997 and should read as 04.12.1997.

42. In light of the above it cannot be said that the Claim III – Refund of Bank Guarantee was not covered under the scope of reference as issues which arose out of encashment of bank guarantee were also clearly referred to the learned Arbitrator vide Order dated 04.12.2002.

43. With that being said, in the present case 4 main points arise for determination which are as follows:

A. Whether the learned Arbitrator's finding that the Contract was invalidly terminated suffers from patent illegality, perversity, and is contrary to the public policy of India?

B. Whether the learned Arbitrator has erroneously awarded Claim III relating to refund of bank guarantee amounts, contrary to terms of the Contract?

C. Whether the award of Claim I(B) towards the cost of extra items is contrary to the terms of the Contract, unsupported by evidence, or otherwise unsustainable in law?

D. Whether the award of pre reference and pendente lite interest under the impugned Award is barred by the Contract and therefore liable to be set aside as being contrary to the agreed terms and Section 31(7) of 1996 Act?

A. <u>Termination of Contract</u>

44. It is a settled position of law that an Arbitrator is the master of the evidence and the findings of fact recorded by the learned Arbitrator cannot be reappreciated by a Court exercising jurisdiction under

Section 34 of 1996 Act, unless the same suffers from patent illegality, perversity, or is contrary to the public policy of India.

45. In the present case, it is the case of the petitioner that the respondent had delayed the execution of the work, which led to termination of the contract. However, upon examination of the record, the learned Arbitrator made detailed and reasoned findings rejecting the allegations of delay attributable to the respondent. The learned Arbitrator found that the delays were primarily caused by petitioner's own lapses and by the civil contractor, M/s. Mohinder Singh & Co**.**, who was responsible for executing the main civil works.

46. The relevant findings of the learned Arbitrator read as under:

> "*57. In the Civil Works to be executed by M/s. Mohinder Singh & Co., the work of Flooring and Cladding was to be done by the Claimant. It is therefore, clear that the Claimant could do its work only after the completion of the Civil Work by M/s. Mohinder Singh & Co. or at the most during the execution of the Civil Work by M/s. Mohinder Singh & Co. on the fronts, which were ready and made available to the Claimant for starting its work of flooring and cladding.*
>
> *58. There is enough evidence on record to establish that M/s. Mohinder Singh & Co. miserably failed to execute or complete its work and as such disputes arose between the Respondent and M/s. Mohinder Singh & Co., which were subject matter of a separate arbitration between them.*
>
> …

62. *Accordingly, I have no hesitation in holding that the failure of the Claimant to complete the work within the stipulated period was not on account of any lapse on the part of the Claimant, but for the reason that the Claimant was not provided space for establishing Site Office for about 1 year and thereafter even the pace of Civil Work being executed by M/s. Mohinder Singh & Co. was so slow that in about 22 months out of 24 months period for completion of Civil Work, M/s. Mohinder Singh & Co. could execute only about 7% of the work. Therefore, the Claimant was totally helpless and not at all in a position to execute and complete the work awarded to it in terms of the Award letter dated 11.01.1991.*

63. *It is also established on record that in the first quarter of 1992, when the Claimant was called upon by the Respondent to execute and complete certain works at Vashi Platform as the President of India had to inaugurate it on 09.05.1992, the Claimant left no stone unturned and completed it before the date of inauguration. It withdrew from the site by 07.05.1992 in terms of the directions of the Respondent and had not abandoned the work as alleged by the Respondent. Thereafter, the Respondent started serving false notices upon the Claimant to make out a case in its favour to show that the Claimant was to be blamed for the delay and non-completion of the work. The fact that the remaining work of flooring and cladding was awarded to*

the Claimant only by M/s. IRCON/CIDCO speaks volumes about the hollowness of the allegations of the Respondent against the claimant and shows that the principal employer was fully satisfied with the performance of the claimant and was aware of the fact that the claimant was unable to complete the work because of the hindrances in its way.

64. *It is shown on record that there was delay on the part of the Respondent in supply of drawings also to the Claimant. On 17.01.1992, the Claimant had addressed a letter to the Respondent acknowledging the receipt of certain drawings and requested it to issue drawings for other areas also. The Claimant had also expressed its reservations in regard to change of Granite to be used in the Project, inasmuch as the Agreement had provided for Brown and Grey Colour but subsequently the Respondent had chosen 'Cherry 101' and paradise colour Granite. This change had also created problems for the Claimant. CW-1 has categorically stated that the Granite selected earlier was not available due to delay in the completion of the work and Claimant had to spend a lot for finding out the new colour which was selected by the Respondent.*

…

65…Slow progress or non-execution of the Claimant's work of Flooring and Cladding was directly linked to the Civil Work to be executed by M/s. Mohinder Singh & Co., which was not at all executing the work expeditiously due to which

the entire Project was getting delayed and made it impossible for the Claimant also to complete its work. Vide Letter dated 04.02.1992, the Claimant had complained about the non-availability of the Water and Power Connection. The Drawings were also revised time and again and some revised Drawings were issued even on 14.03.1992 and 24.03.1992.

...

68. After examining the pleadings of the parties and evidence on record, I find that all the aforesaid pleas raised by Learned Counsel for the Respondent are of no help to the Respondent for the reason that it is established on record that the work fronts were not made available to the Claimant for over 1 year of the signing of the LoI dated 11.01.1991. Even space for establishing a Site Office and stationing of the men and machinery was not provided by the Respondent to the Claimant for about 1 year. The main reason for the non-execution of the work within the stipulated. period was that M/s Mohinder Singh & Co., which was to execute the Çivil Work, on which the Claimant was to do the work of Flooring and Cladding, was not being done at the required pace and till the termination of the Contract of M/s Mohinder Singh & Co., only about 7% of the Civil Work had been completed. Therefore, the signing of the Contract, furnishing of the Bank Guarantee, Submission of Power of Attorney, Income Tax Clearance

certificate etc. become Insignificant as even If all these formalities had been completed within the time frame, the Claimant could not have executed and completed the work within the time stipulated between the Parties. The record shows that the Claimant was trying its best to complete all the formalities but the Respondent was dilli-dallying. This work was required to be completed by 04.11.1992, but very little work was executed by the Civil Contractor which resulted in arbitral proceedings between Respondent and M/s Mohinder Singh & Co. In the said arbitral proceedings, Respondent was complaining thạt M/s Mohinder Singh & Co. had not completed its work and did not hand over the area to other subcontractors for executing their part of work with the result that the Respondent was deprived of its legitimate profits. This stand was being taken by the officers of the Respondent also till February 1992.

69. Hence It cannot be held that the Claimant was responsible for delay in the execution and completion of the work of Flooring and Cladding allotted to it by the Respondent. The evidence on record shows that in March/April 1992, when thẹ Claimant was called upon to execute some work at Vashi Railway Station, which was to be Inaugurated by the President of India on 09.05.1992, the Claimant left no stone unturned and completed the work by 07.05.1992, which was appreciated by all concerned, Including IRCON."

47. A perusal of the Award clearly shows that the learned Arbitrator duly addressed the principal controversy between the parties, namely, the delay in completion of the work and the attribution of responsibility for such delay. In paragraph 56, the learned Arbitrator recorded that the work was awarded to the respondent on 11.01.1991 and included civil works that were subcontracted to M/s Mohinder Singh. The stipulated dates of completion for the said works were 04.11.1990 and 09.11.1992. It was also noted that commencement and completion of the respondent's scope of work were contingent upon the completion of the civil works by the said subcontractor. On the basis of evidence on record, the Arbitrator found that the civil contractor had completed only about 7% of the work, making it impossible for the respondent to commence flooring and cladding activities as the requisite sites and work fronts were not made available.

48. It was further observed that the office space was handed over to the respondent only in December 1991. The areas that were eventually made available were duly completed by the respondent, particularly since the platform was scheduled to be inaugurated by the President of India on 09.05.1992. The respondent was also directed by the petitioner to demobilize its staff on 07.05.1992. The statement of the petitioner's witness was disbelieved, as in another arbitration between M/s Mohinder Singh and the petitioner, the petitioner itself had taken the position that the total value of work awarded to the Civil Contractor was ₹6.67 crores, out of which work worth only ₹42 lakhs had been executed.

49. The learned Arbitrator also took note of the fact that IRCON had awarded the flooring work to the respondent and that even as of 17.01.1992, certain drawings were not available. *Vide* letter dated 04.02.1992, the claimant had complained about the non-availability of water and power connections. The drawings were revised repeatedly, with some revised drawings being issued as late as 14.03.1992 and 24.04.1992.

50. The letters relied upon by the petitioner which formed part of the arbitral record, also demonstrate that the respondent had been consistently asserting that the site had not been duly handed over. The same is evident from letters dated 15.04.1991, 03.10.1991, 27.11.1991, 11.12.1991, 02.01.1992.

51. It is a settled proposition of law that while exercising jurisdiction under Section 34 of 1996 Act**,** this Court does not sit as a Court of appeal over the findings of the learned Arbitrator. The scope of interference is limited to the grounds specifically enumerated under the said provision. The Court is not expected to re-appreciate the evidence, reassess the factual matrix, or embark upon a mini-trial as if it were hearing an appeal on facts.

52. It has been repeatedly held that the Arbitrator is the master of the quantity and quality of evidence**,** and the conclusions arrived at by the learned Arbitrator on appreciation of material before him cannot be substituted merely because another view is possible.[1]

[1]Ref. *Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.* [(2019) 20 SCC 1].

53. Accordingly, I am of the view that the learned Arbitrator's finding that the termination of the contract was invalid is valid, well-reasoned, and calls for no interference under Section 34 of 1996 Act.

B. Claim No. III Return of BG Amount

54. The learned counsel for the petitioner has argued that the BG was against the security deposit and by virtue of Clause 1.1 the same is liable to be returned only after completion of work. Further it is stated that clause 30 provides for extension of time but since the sub-contractor failed to complete the work and hence there was no question of returning the bank guarantee.

55. The above argument has been countered by the respondent by stating that the Arbitrator has taken a balanced and equitable approach by disallowing refund relating to mobilisation advance and only amount relating to security deposit was refunded.

56. The relevant findings of the learned Arbitrator read as under:

> *"95. CLAIM NO. 3 FOR RS. 34,01,480/-*
>
> *This claim is in regard to the refund of the Bank Guarantees encashed by the Respondent in December, 1997. The Respondent had encashed 06 Bank Guarantees for a total sum of Rs. 19,80,000/-. The Claimant had submitted 06 Bank Guarantees for a total sum of Rs. 23,76,000/-, out of which, one Bank Guarantee for Rs.3,96,000/- was released to the Claimant on 16.01.1991. The remaining Bank Guarantees of Rs.19,80,000/- were encashed by the Respondent. Under Orders of the High Court, a sum of R$.4,80,000/- was released to the Claimant and the balance*

left was Rs.15,00,000/- only which was against the Mobilization Advance. In view of the fact that Mobilization Advance of Rs.5,00,000/- had been released to the Claimant, the Respondent is not entitled to the refund of Rs. 15,00,000/- out of the Bank Guarantee, which was furnished by it, to the Respondent. However, the Claimant is entitled to the Bank Guarantee amount of Rs.19,01,480/- pertaining to the Security Deposit. Accordingly it is held that the Respondent is liable to refund an amount of Rs.19,01,480/- to the Claimant in regard to encashed Bank Guarantee regarding Security Deposit. It is ordered accordingly.

57. It is also relevant to reproduce the necessary clauses of Contract which read as under:

" SECURITY DEPOSIT:

Security Deposit shall be 5%. You will submit the Bank Guarantee of 2% of the contract value towards Security Deposit within seven days of the acceptance of contract. For the balance 3%, the amount can be recovered from the running account bills. This amount can be released on furnishing the Bank Guarantee of the equivalent amount. Bank Guarantee for Security Deposit will not be linked with Mobilisation Advance Bank Guarantee.

6. RELEASE OF SECURITY DEPOSIT:

Bank Guarantee amount of 5% shall be valid up to the defect liability period i.e. 36 months from the actual date of completion.

…"

58. A perusal of the aforesaid findings, when read in conjunction with the relevant contractual provisions, clearly indicates that the learned Arbitrator has acted strictly within the four corners of the Contract. The Arbitrator has correctly distinguished between the two categories of Bank Guarantees those issued towards mobilisation advance and those issued towards security deposit as also mentioned under Clause 5 of Letter of Award and has confined the refund only to the latter. This approach is consistent with the terms of the Contract.

59. The learned Arbitrator's interpretation that the security deposit component was refundable in the absence of any proven default on the part of the Respondent is both logical and supported by the factual matrix. It is also pertinent to note that the learned Arbitrator, upon examining the material on record found that the delay in completion of work was not attributable to the respondent. The learned Arbitrator has categorically recorded that the site was not handed over in time, there were substantial hindrances in execution, and the main civil contractor had not completed prerequisite works. Consequently, the respondent was prevented from completing its portion of the work within the stipulated period.

60. Once it has been held that the delay was not attributable to the respondent and that the termination of the contract was not validly effected by the petitioner, the question of withholding the security deposit or insisting upon a completion certificate does not arise. Likewise, the argument based on the need for seeking an extension of

time under Clause 30 becomes irrelevant in such circumstances. Therefore, the learned Arbitrator's conclusion that the amount of the security deposit, was liable to be refunded to the respondent warrants no interference.

61. In view of the above, this Court finds no infirmity, perversity, or patent illegality in the findings of the learned Arbitrator on Claim No. 3.

C. Claim IB – Cost of Extra Items

62. With regard to Claim IB which is cost of extra items it is submitted by the learned counsel for the petitioner, that the sample was approved of paradise grey granite and cherry brown granite in February 1991 and if the samples were different the respondent could have raised the issue at that particular point of time, however the claim was made for the first time vide letters dated 30.03.1992 and 02.04.1992 after the work was carried out. This contention was also placed before the learned Arbitrator.

63. He also states that the Arbitrator has ignored express terms of the Contract by ignoring Clause 14, 15, 22 and 34 and 39.1 of the Contract.

64. *Per contra*, the respondent has argued that although the BOQ items formed part of the Letter of Award dated 11.01.1991, the specifications of several BOQ items were subsequently altered by the petitioner. These unilateral changes were repeatedly objected to by the respondent (Contractor) through various letters dated 21.01.1991, 30.01.1992, 30.03.1992, and 30.03.1992, wherein the

respondent categorically informed the petitioner that the sample granite and materials approved and specified in the contract differed substantially from those being executed at site.

65. The respondent further submitted that although it had no role in the selection or finalization of the BOQ specifications, which was solely within the discretion of the petitioner, it had objected to the altered specifications and requested that such items be treated as extra or unforeseen items, since the rates quoted by the respondent were based on the original BOQ specifications contained in the tender agreement.

66. The relevant findings of the Arbitrator on Claim IB read as under:

> *"80. The respondent has raised a plea that vide Letter dated 25.05.1992 (Exhibit R-19), it had made it clear that nothing extra was to be paid but the Claimant has denied this letter. According to the Respondent, it was delivered to one Sheru Pathan at the site but according to the Claimant there was no Sheru Pathan employed at Site Office. There is nothing on record to show that Sheru Pathan was an employee of the Claimant and as such it cannot be held that the said Letter was delivered by Respondent to the Claimant. CWM-1, Shri Ramesh Sharma in his Cross-examination has categorically denied that this letter was received in his office and has detailed the persons who were deputed at the Site Office and were Authorized Officers of the Claimant.*
>
> *81. It is interesting to note that the Claimant's Letter (Exhibit C-73) informing the Respondent about the extra*

work and extra cost with Rate Analysis was not promptly replied by the Respondent. If the Claimant was claiming something beyond the Contract or unreasonably, it was the duty of the Respondent to immediately react and point out that it was not going to pay anything extra for the work stated to be 'extra work' by the Claimant. Exhibit R-19, even if, it is held to have been issued by the Respondent was dated 25.05.1992, by which time the Claimant had already executed the work at the Platform and Booking Office which were to be inaugurated by the President of India on 09.05.1992.

82. The malafides on the part of Respondent are clear that after changing the colour and quality of the Granite to be used and after adding some more work for beautification of the Platform and Booking Office, it took a U-turn, to put the Claimant in a piquant situation, who had used a more costly material and done extra work also as desired by the Respondent. If the Respondent had not been interested in this work, it would not have permitted the Claimant to go ahead with the new material and additional work.

…

85. The plea of the Respondent as raised in Exhibit R-19 was that these items could not be treated as extra items because these were as per the samples produced by the Claimant and approved by the Respondent. The rejection of the Demand by the Deputy Project Manager vide Letter

dated 25.05.1992 (Exb. R-19) Is stated to be covered by Clause 14 of the Agreement and as such thę Claimant could have challenged the decision of the Engineer by filing an appeal within 30 days. In my view, these pleas raised by the Respondent are devoid of merit in as much as the evidence on record shows that the Granite agreed in the Contract was different but in the course of work, the Respondent asked the Claimant to use a different Granite which was more costly. Since the Respondent was denying the execution of extra-work, Clause – 14 did not come into play.

…

86. The rejection of the Claim of the Claimant in regard to the additional cost and extra work by the Deputy Project Manager vide Letter dated 25.05.1992 cannot be upheld firstly for the reason that this letter is a fabrication to cover up the default on the part of the Respondent ask for a different quality of the Granite and also direct the Claimant to go beyond agreed specifications. Moreover, even if it is held that this letter was issued by the Respondent, it is not understandable as to why it was issued belatedly when the Claimant had already intimated the Respondent vide Exhibit C-73 dated 30.03.92, 21.04.1992 that extra charges would be claimed for the different quality of granite and the extra work. The respondent deliberately remained silent and came up with alleged "Letter dated 25.05.1992 (Ex.R-19), which was firstly not issued and secondly, even if issued, it was

issued after the Claimant had already executed the work by using a different quality of Granite and by doing extra work as per the directions of the Officers of the Respondent.

…

88. Accordingly, under Claim No. 1 (b), the Claimantis heldentitled to recover a sumRs.26,03,465/- from the Respondent."

67. One of the principal grounds urged by learned counsel for the petitioner against the award of this claim is that it is contrary to Clause 15(iii) of the Special Conditions of Contract. As per this provision, the respondent was required to obtain approval of samples prior to the procurement of materials. The samples were admittedly approved in February 1991. It is contended that had the approved samples differed from those specified in the contract, the respondent would have immediately raised an objection, and therefore, the work could not constitute an "extra item."

68. Clause 15(iii) of the Special Conditions of Contract reads as under:

"iii) Before procuring the materials, the sub-contractor shall obtain the approval of NBCC's Engineer for the samples of materials proposed to be used in permanent works. Test certificates from approved laboratory institute of various materials shall be produced before use of such materials."

69. While this argument may, at first glance, appear persuasive, it is pertinent to note that the plea based on Clause 15(iii) was never raised by the petitioner in its Statement of Defence before the learned Arbitrator. The record reveals that no such contention was ever urged during the arbitral proceedings. The petitioner now seeks to raise this ground for the first time in proceedings under Section 34 of 1996 Act.

70. It is well settled that the scope of interference under Section 34 is confined to examining the validity of the arbitral award on the limited grounds specifically enumerated therein. A party cannot be permitted to raise new pleas that were never placed before the Arbitrator. Consequently, the plea based on Clause 15(iii) cannot be entertained in a Section 34 petition for the first time.

71. All other submissions now advanced by the petitioner were duly raised before the learned Arbitrator, including the contention relating to the approval of samples in February 1991. The learned Arbitrator considered each of these contentions in detail and rendered reasoned findings thereon. In paragraph 84 of the Award, the Arbitrator specifically noted, on the basis of a letter dated 07.06.1992, that the petitioner itself had requested IRCON to make payment for extra items. It was in light of this correspondence that the Tribunal concluded that the letter dated 25.05.1992 was forged and had never been received by the respondent. Even assuming that such a letter did exist, the learned Arbitrator observed that it had been issued after completion of the work and therefore could not retrospectively nullify the respondent's entitlement to additional costs for extra items already executed at the petitioner's instance.

72. Furthermore, the respondent's letter (Exhibit C–73) was not duly responded to by the petitioner. The plea that the items could not be treated as extra items because the respondent's samples had been approved by the petitioner was also raised before the learned Arbitrator and found to be without merit. The evidence before the learned Arbitrator established that the granite agreed upon under the contract was different and that the respondent had supplied a costlier variety at the petitioner's direction. Even the correspondence relied upon by the petitioner, which was before the learned Arbitrator, shows that the respondent, by its letter dated 21.01.1991, had raised the issue of discrepancy in the material items.

73. The awarded sum of ₹26,03,465/- has been derived on the basis of the documentary material placed on the record, as reflected in paragraph 87 of the Award. The learned Arbitrator has calculated measurements arrived after joint measurement to ascertain the executed quantities and has thereafter applied the rates claimed by the respondent, after comparing those rates with the supporting documents available on record. The learned Arbitrator has also ensured that the amount already released to the respondent by the petitioner was duly accounted for and adjusted. By way of illustration, in respect of Item No. 3, the learned Arbitrator has given the following finding by duly adjusting the amount paid by the petitioner to the respondent.

74. Paragraph 87 of the Award reads as under:

> *"87. The Claimant has claimed a sum of Rs. 4,62,208/- for providing and fixing 'Cherry-101' Granite cladding for*

round column measuring 136.308 Sq. mtrs. This figure was however reduced to Rs.116.308 Sq. mtrs by Learned Counsel for the Claimant in the course of arguments. In the joint measurement of the work carried out on 27.08.1992, the quantity of the work as per the Claimant and the Respondent was mentioned with only marginal difference in the two quantities. Learned Counsel for the Claimant has submitted that keeping in view the small difference between the two quantities, the Claimant accepts the quantity as per the Respondent. Therefore, the quantity of this item (No. 25A of the Bill of Quantity) is taken as 116.23 Sq. mtrs. The Claimant has already charged @ Rs. 1400 per Sq. mtr and as such the difference between the rate of Rs. 3974 per sq. mtr and Rs. 1400 per sq mtr comes to Rs. 2574 per sq. mtr and as such the Claimant is entitled to a sum of Rs. 2,99,304/- in regard to Sr. No. 1 of the table mentioned under Claim No. 1(b). In regard to the item at Sr. No. 2 of the Chart, the Claimant has claimed a sum of Rs. 14,60,955/- for providing and fixing paradise granite cladding to Rectangular column up to the height of 3.4 mtr for a total quantity of 532.03 sq. mtr. @ Rs. 2746 per sq. mtr. At Sr. No. 8, another quantity of 221.096 sq. mtr is claimed at the same rate. The Respondent in Order to deny the claim of the payment of the quantity of 764 Sq. mtrs, has relied upon BOQ rates, which were paid. However, in view of the use of the granite of paradise colour, the Claimant is

held entitled to the rate of Rs. 2746 per sq. mtr and as such for Item No. 2 and Item No. 8, the Claimant is entitled to a sum of Rs. 10,28,344/-.

In respect of Item at Sr. No. 3, the Claimant has claimed a sum of Rs. 7,40,615/- for providing and fixing Paradise Granite Cladding on Wall/RCC column in Dado up to the height of 4.6 mtr for a total quantity with 258.23 Sq. mtrs @ Rs. 2868/- per Sq. mtr. The Claimant has already been paid @ Rs. 1400 per Sq. mtr, and as such the Claimant is entitled to the difference in the rates which comes to Rs. 3,79,081/-.

Item at Sr. No. 4 of the chart is for providing and laying pre-polished paradise 100 mm border around column and RCC Wall at Rs. 3323/- and for 26.619 Sq. mtrs is for Rs. 88,455/-. In view of the amount already paid, the Claimant is held entitled to Rs. 35,529/- for area of 10.692 Sq. mtrs.

Regarding item at Sr. No. 5, of the chart the Claimant has claimed a sum of Rs. 12,90,719/-.for providing and laying combination flooring consisting of pre-polished Granite with cherry colour (25%), polished granite (50%) and Mathai Cherry (25%) for area of 317.364 Sq. mtr @ Rs. 4067 per Sq. mtr. As per the measurement mentioned in Exhibit R-33, this area is 316.97 Sq. mtr. The Claimant had already charged @ Rs. 1350/- per Sq. mtr and as such the

Claimant is entitled to difference between the two rates which comes to Rs. 8,61,207/-. The Claim in regard to Item at Sr. No. 6 for labour is not supported by any evidence on record and as such this Claim cannot be sustained.

Regarding item at Sr. No. 7, the Claimant is not entitled to any further amount as the Claimant has been paid charges as shown in Claim No. 1(a).”

75. Further the learned Arbitrator has based his finding on the evidence as evident from claim of item 6 which was rejected as it was not substantiated by evidence.

76. The law on the limited scope of interference under Section 34 of the 1996 Act is now well settled. In ***Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49***, the Hon’ble Supreme Court observed that the Arbitrator is the sole Judge of Quantity and quality of evidence before him and the courts should generally refrain in interfering with a pure finding of fact.

77. In the present case, the findings of the learned Arbitrator are based on a detailed and reasoned analysis of the contractual clauses, correspondence, and evidence produced by both sides. The award does not disclose any perversity, patent illegality, or contravention of public policy. The learned Arbitrator has exercised jurisdiction vested in him under the contract and rendered a considered finding supported by material on record.

78. Accordingly, the petitioner’s challenge to the award under Section

34, insofar as it pertains to Claim IB – Cost of Extra Items, is without merit and liable to be rejected.

D. Payment of Interest

79. Before going into the controversy regarding payment of interest, it is important to set out the relevant provision. Section 31(7)of 1996 Act reads as follows:

> *"(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*
>
> *[1][(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.*
>
> *Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]"*

80. **In *Union of India v. Bright Power Projects (India) (P) Ltd., (2015) 9 SCC 695*** the Court while dealing with Section 31(7) held as under:

> ***"13.*** *Section 31(7) of the Act, by using the words "unless otherwise agreed by the parties", categorically specifies that the Arbitrator is bound by the terms of the contract so*

far as award of interest from the date of cause of action to date of the award is concerned. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest."

81. In the present case**,** the petitioner has assailed the award of pendente lite interest by stating that the same is barred under Clause 26 of the Contract. *Per Contra*, the respondent has stated that Clause 26 is a general clause and does not oust the statutory discretion vested in the Arbitrator.

82. The Arbitrator's findings read as under:

"101. CLAIM NO.7: INTEREST

The Claimant has claimed interest @ 24% p.q. on the amounts found due to it from the Respondent. It is stated that the Respondent has been charging interest @ 18% p.a. on the Mobilization advance and as such the Claimant should also be awarded at least interest @ 18% on the amounts, which were illegally withheld by the Respondent after terminating its Contract.

102. Upon consideration of the submissions made by Learned Counsel for the Parties, and considering overall facts and circumstances of the case, interest @10% p.a. is awarded to the Claimant on the amounts held payable to the Claimant except on costs of Rs. 5 lacs from 22.09.1992, the date of the termination of the Contract, till payment thereof to the Claimant. It would take. care of pre-litigation, pendente lite as well as future Interest.

83. Clause 26 of the Contract reads as under:

> *"26. The sub-contractor shall be paid monthly running bill for the quantity already executed upto the end of previous month subject to the approval of quantity measured unless otherwise specified. The amount so payable in the estimated value of works shall be paid upto date, less the amount already paid. If the monthly interim payment which become payable is not paid due to any reason, then 75% of the works executed and measured shall be paid to the sub-contractor as advance on written request The payment to the sub-contractor will be released within seven days of NBCC receiving its payment from the clients i.e. CIDCO/ IRCON.*
>
> *No claim for interest will be entertained by the corporation in respect of any balance payments or any deposit which may be held up with the corporation due to any dispute between the Corporation and sub-contractor or in respect of any delay on the part of the corporation in making monthly or final payments or otherwise."*
>
> ***(Emphasis added)***

84. The respondent has placed reliance on ***Oil and Natural Gas Corporation Ltd v. M/S G & T Beckfield Drilling Services Pvt. Ltd.,2025 SCC OnLine SC 1888*** and more particularly in para 25 which reads as under:

> *"25. On a careful analysis of the decisions discussed above, we are of the view that arbitral tribunal can be denuded of*

its power to award pendente lite interest only if the agreement/ contract between the parties is so worded that the award of pendente lite interest is either explicitly or by necessary implication (such as in the case of Sayeed & Co. (supra) and THDC First (supra)) barred. A clause merely barring award of interest on delayed payment by itself will not be readily inferred as a bar to award pendente-lite interest by the arbitral tribunal.

26. Seen in light of the discussion above, Clause 18.1, which appellant relies upon to canvass that the agreement between the parties proscribes grant of pendente-lite interest, when read as a whole, does not expressly or by necessary implication proscribes grant of pendente lite interest by the arbitral tribunal. The clause merely says that there would be no interest payable by the Corporation on any delayed payment / disputed claim. Neither it bars the arbitral tribunal from awarding pendente lite interest nor it says that interest would not be payable in any respect whatsoever as was the phraseology of the interest proscribing clause in Sayeed Ahmed & Co. (supra) and THDC First (supra). In our view, therefore, Clause 18.1 would not limit the statutory power of the arbitral tribunal to award pendente-lite interest. Consequently, we find no such error in the award of pendente lite interest as may warrant interference with the award. Since post-award interest is in line with the statutory provision of clause (b) of

subsection (7) of Section 31 as was in vogue then, we find no merit in the appeal, and the same is, accordingly, dismissed."

85. *However, in* ***Oil and Natural Gas Corporation Ltd (supra)*** the Clause was different, it read as under:

"18…Should corporation question any item or items of an invoice, it may withhold payment of the amount in dispute until such matter is resolved between the parties, but the amount not in dispute is to be paid within above period. No interest shall be payable by ONGC on any delayed payment /disputed claim."

86. The Court held that such a clause only barred interest on delayed or disputed payments and not pendente lite interest. However, the present Clause 26 is materially different. It not only prohibits payment of interest on delayed payments or disputed claims but further extends the bar to: *"or in respect of any delay on the part of the corporation in making monthly or final payments or otherwise*." This phraseology particularly the words "or otherwise" broadens the scope and makes the clause different and akin to the clause considered by the Supreme Court in ***Sayeed Ahmed (Supra)***, wherein the relevant clause (G.1.09) read as under:

"Clause G. I.09. No claim for interest or damages will be entertained by the Government with respect to any money or balance which may be lying with the Government or any becoming due owing to any dispute, difference or

misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand or with respect to any delay on the part of the Engineer-in-Charge in making periodical or final payment or any other respect whatsoever."

87. The Hon'ble Supreme Court in ***Sayeed Ahmed and Company v. State of Uttar Pradesh (2009) 12 SCC 26*** held as under:

"15. Clause G 1.09 makes it clear that no interest or damages will be paid by the government, in regard to:

(i) any money or balance which may be lying with the Government;

(ii) any money which may become due owing to any dispute, difference or misunderstanding between the Engineer-in-Charge on the one hand and the contractor on the other hand;

(iii) any delay on the part of the Engineer-in- Charge in making periodical or final payment; or

(iv) any other respect whatsoever. The clause is comprehensive and bars interest under any head in clear and categorical terms.

16. In view of clause (a) of sub-section (7) of Section 31 of the Act, it is clear that the Arbitrator could not have awarded interest up to the date of the award, as the agreement between the parties barred payment of interest. The bar against award of interest would operate not only

during the pre- reference period, that is, up to 13.3.1997 but also during the pendente lite, that is, from 14.3.1997 to 31.7.2001."

88. A similar view was adopted in ***Tehri Hydro Development Corp. Ltd. v. Jai Prakash Associates Ltd. (2012) 12 SCC 10***. In light of the above authoritative pronouncements, it is clear that Clause 26 of the present contract is couched in equally broad language, barring the award of interest "in any respect whatsoever," including pendente lite interest. Therefore, the learned Arbitrator's finding granting pre reference and pendente lite interest is contrary to the contractual stipulation and the settled legal position.

89. Even reliance on ***Ferro Concrete (Supra)*** does not aid the respondent's case, as first it was in the context of 1940 Act and second the clause barring interest was worded differently. In fact, Ferro Concrete itself states that Arbitrator's power to grant interest would be on a case-to-case basis depending upon the phraseology used etc.

90. Accordingly, the award of interest for pendente lite and pre reference period cannot be sustained and is hereby set aside. The Award of interest is severable and does not affect the other claims. However, the post award interest at the rate of 10% is upheld and cannot be interfered with.

<u>Rejection of Counter Claims</u>

91. The counterclaims raised by the petitioner were premised entirely on the allegation that the delay in execution of the work was

attributable to the respondent. However, since this Court has already upheld the finding of the learned Arbitrator that the delay was not attributable to the respondent but was, in fact, due to factors within the control of the petitioner, the very basis of the petitioner's counterclaims stands negated.

92. Consequently, the learned Arbitrator has rightly rejected the petitioner's counterclaims seeking compensation for delay, loss of profit, and other incidental losses. The remaining counterclaims, relating to alleged recovery towards cost and value of materials, water and electricity charges, and statutory compliance deductions, were also rejected by the Arbitrator on the ground of absence of supporting evidence.

93. It is a settled principle that the Arbitrator is the master of both the quantity and quality of evidence, and once the Arbitrator, upon due appreciation of the record, has reached a reasoned conclusion which does not disclose any perversity or illegality no interference is warranted.

94. Accordingly, the rejection of the petitioner's counterclaims by the learned Arbitrator is found to be just, reasoned, and in accordance with law.

CONCLUSION

95. In view of the above, the petition is partially allowed to the extent of the pre-reference and pendente lite interest component, and is dismissed for the remaining claims.

96. Pending applications if any, stand disposed of.

97. Written Submissions on behalf of the respondent is taken on record.

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98. In view of the judgment passed above, the enforcement petition is allowed. The Judgment Debtor shall make the payment in terms of the Order passed in OMP (COMM) 215/2022 within six weeks. List before the Joint Registrar on 06.01.2026.

JASMEET SINGH, J

NOVEMBER 19th, 2025/DE