$~J

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

% ***Judgment pronounced on: 26.11.2025***

\+ **O.M.P (COMM) 255/2020**

BHARAT HEAVY ELECTRICAL LIMITED & ANR .....Petitioners

Through: Mr. Sanjeev Anand, Sr. Advocate along with Mr. Pallav Kumar, Mr. Dibya Nishant, Ms. Khushbu Dwivedi and Ms. Farheen Pensale, Advocates.

versus

M/S KONERU CONSTRUCTIONS .....Respondent

Through: Ms. Monika Arora (CGSC) along with Mr. Subrodeep Saha and Ms. Radhika Kurduka, Advocates.
Mr. Dharmesh Misra, Sr. Advocate along with Mr. Raghav Tiwari and Mr. Prateek Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

FACTUAL BACKGROUND

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') assails an arbitral award dated 21.01.2014 (hereinafter '*the impugned arbitral award*') to the limited extent that the respondent has been held entitled to damages for loss suffered due to escalation of rates amounting to Rs. 72,90,719/- along with interest at the rate of 18 % per annum from the date of the award, if the award amount is not paid within a period of 8 weeks from the date of the award.

2. The arbitral proceedings took place in the backdrop of a tender issued by the petitioner in connection with the execution of the civil works for the Power Grid Corporation of India Ltd., 400/220KV substation at Arasur in Tamil Nadu as per approved specification, drawings and quality plan.

3. The petitioner accepted the offer of the respondent and awarded the work to the respondent *vide* letter of intent bearing No. TBSM/ARASUR/CIVIL/017/06 dated 17.10.2006. Thereafter, a detailed Work Order bearing No. TBSM/ARASUR/CIVIL/WO/06-07, dated 21.12.2006 came to be issued by the petitioner in favour of the respondent, in terms of which, the work was scheduled to be completed by 16.12.2007.

4. However, it is submitted that the work was eventually completed by the respondent on 30.06.2010, i.e. after a delay of more than 30 months from the scheduled date of completion. Even thereafter, no liquidated damages for delay in completion of the works were imposed by the petitioner on the respondent.

5. Upon the completion of the work, the respondent prepared and raised the final bill on 30.06.2010 for a sum of Rs. 58,93,917/- payable by the petitioner.

6. Thereafter the petitioner *vide* its letter dated 23.05.2011 informed the respondent that the final bill submitted by the respondent had been checked; and that certain compliances, namely, submission of the performance bank guarantee, sales tax assessment documents, and, upon freezing the net payable amount, a clear no dues certificate in full and final settlement of the work order, were required before the final payment could be released.

7. Following the petitioner's letter dated 23.05.2011, the respondent, *vide* letters dated 12.08.2011 and 02.09.2011, informed the petitioner that

the performance period of the contract had expired on 30.06.2011 and, therefore, the requirement of submitting a performance bank guarantee thereafter did not arise. The respondent further stated that the requisite Sales Tax Assessment documents had already been furnished. It is submitted that in both communications, the respondent asserted that its contractual obligations stood fully discharged and sought release of payment under the contract.

8. *Vide* letter dated 19.09.2011, the petitioner informed the respondent that the net amount payable under the contract came to Rs. 53,76,147/-. The respondent was further requested to submit a no dues certificate, in full and final settlement of the work order, mentioning the net amount payable.

9. Pursuant thereto, on 21.09.2011, a no dues certificate was prepared by the respondent and furnished to the petitioner, the same reads as under:-

"SPEED POST WITH A/D

To

Shri. B. RAMESH,
Manager (Finance),
M/s, BHEL,
Transmission Business Southern Sector,
Corporate Research & Development Complex,
Vikasnagar, Hyderabad – 500 093,
India.

Respected Sir,

Sub: Execution and handling over of Civil works for 400/220 KV Station at Arasur in Tamil Nadu State – Reg.

Ref: 1. Contract Agreement No.TBSM/ARASUR/CIVIL/CA/06-07 Dated 22.12.2006.

2. Your letter No.TBG-SS/BHEL/ARASUR Dt: 19.09.2011.

****

With reference to your letter under reference (2) cited above, wherein you have directed us to submit a clear "NO DUE CERTIFICATE" for the amount mentioned in your letter, to settle the

amount and you have further directed to depute authorized representative for signing the final entered amounts in Measurment Books. Accordingly, we submit hereunder a "NO DUE CERTIFICATE".

NO DUE CERTIFICATE

We have agreed for the payment of Rs.53,76,147/- as the net amount payable by you in full and final settlement of the above work order and we have "NO DUE" against the above work order.

Thanking You, Sir,

Yours faithfuly
For KONERU CONSTRUCTIONS
Sd/-
(K.V. PRASAD)
Proprietor"

10. On 29.09.2011, the amount of Rs. 53,76,147/- was released to the respondent. Immediately, thereafter, the respondent *vide* letter dated 30.09.2011 and 14.10.2011 raised an objection that the no dues certificate submitted by the respondent was not voluntary and was submitted due to financial hardship and economic duress.

11. In response to the aforesaid letter, the petitioner, on 15.10.2011, informed the respondent that the final payment had been processed and released as per the terms and conditions of the contract, and therefore the respondent's stand with respect to the no-dues certificate was not tenable.

12. Thereafter, the respondent on 27.12.2012 sent a notice for invocation of arbitration to the petitioner purporting to raise certain claims. Subsequently, the respondent approached this Court by way of a petition under Section 11 of the A&C Act. This Court *vide* order dated 10.09.2012 appointed a learned sole Arbitrator to adjudicate the disputes between the parties in accordance with the rules of the Delhi High Court Arbitration Centre.

13. In the arbitral proceedings, the respondent sought the following reliefs:-

> *"1. Rs. 32,100/- towards damages for loss incurred in closed sore yard in blasting hard rock and chiseling and removing manually including jungle clearance to be compensated.*
> *2. Rs. 1,15,000/- towards damages for loss incurred in open store yard in blasting rock, chiseling and removing manually including jungle clearance to be compensated.*
> *3. Rs. 17,84,600/- towards damages for loss incurred due to idling in control room.*
> *4. Rs. 1,12,000/- towards damages for loss incurred in soak & pit & septic tank blasting, chiseling and removing manually with JCB.*
> *5. Rs. 26,889/- towards damages for loss incurred in cement wash, 2 coats in water tank area and fire wall entire area, to be compensated.*
> *6. Rs. 11,60,250/- towards damages for loss incurred in water tank due to idling, reinforcement steel supply delay and bar bending schedule approve delay.*
> *7. Rs. 17,82,000/- towards damages for loss incurred due to idling in orientation problem, wrong marking by BHEL and civil drawing delay.*
> *8. Rs. 3,16,500/- towards damages for loss incurred due to idling in foundation bolts.*
> *9. Rs. 4,27,077/- towards damages for loss incurred in supply of gratings (transformer area).*
> *10. Rs. 35,61,820/- towards damages for loss incurred in rock (control blasting) in all works such as foundations, drains, cable trenches, roads, pipe electrode pits, rod electrode pits and earth rod areas etc, the work was done by using blasting, chiseling and removing manually and by JCB.*
> *11. Rs. 3,24,717/- towards damages for loss incurred in fencing due to idling, the work was done by controlled blasting, chiseling and removing manually and with JCB.*
> *12. Rs. 8,49,000/- towards damages for loss incurred in fencing due to idling, the work was done by controlled blasting, chiseling and removing manually and with JCB.*
> *13. Rs. 4,50,000/- towards damages for loss incurred in drains.*
> *14: Rs. 7,71,000/- towards damages for loss incurred due to idling in drains.*
> *15. Rs. 24,84,000/- towards damages for loss incurred due to idling in micro leveling.*
> *16. Rs. 15,44,600/- towards damages for loss incurred in tower foundations.*
> *17. Rs. 6,49,300/- towards damages for loss incurred due to tower foundations.*

18. Rs. 14,87,750/- towards damages for loss incurred in earth road (material supply delay).
19. Rs. 2,13,750/- towards damages for loss incurred due to idling in earth road (material supply delay).
20. Rs. 6,64,587/- towards damages for loss incurred in back filling,
21. Rs. 3,28,616/- towards damages for loss incurred in cable trenches.
22. Rs. 2,65,000/- towards damages for loss incurred due to idling in cable trenches.
23. Rs. 6,75,000/- towards, damages for loss incurred due to idling in roads (approvals delay & proctor density test letter delay).
24. Rs. 1,65,240/- towards damages for loss incurred in labour insurance.
25. Rs. 6,43,088/- towards damages for loss incurred in power supply.
26. Rs. 5,45,548/- towards damages for loss incurred in carriage of surplus rock.
27. Rs. 3,75,656/- towards damages for illegal recovery on customer's (PGCIL) site advice to be refunded.
28. Rs. 36,45,360/- towards damages for head office overheads and wasteful expenditure suffered by the contractor due to prolongation of contract @ 5% of the executed value.
29. Rs. 72,90,719 /- towards damages for loss in escalation of rates due to abnormal prolongation of contract @ 10% of the executed value.
30. Rs. 36,45,360/- towards damages for loss of anticipated profits suffered by the contractor because of prolongation of contract @ 5%.
31. Damages towards unlawful retention and non payment of the above claim amounts, interest @ 18% p.a. from the date the cause of action arose and upto the date of the award in favour of the Claimant.
32. Damages towards unlawful retention and non payment of the above claim amounts, interest @ 18% p.a. from the date of the award and upto the date of payment in favour of the Claimant.
33. Costs for securing appointment of Arbitrator and for legal and technical counsel and the cost of Arbitration in favour of the Claimant."

14. The learned sole Arbitrator, while relying upon the judgments of the Supreme Court in ***National Insurance Co. Ltd. v. M/s. Boghara Polyfab Pvt. Ltd*** (2009) 1 SCC 267, ***Chairman and MD, NTPC Ltd. v. Reshmi Constructions Builders*** (2004) 2 SCC 663 and ***R.L. Kalathia & Co. v. State of Gujarat*** (2011) 2 SCC 400, *inter-alia*, held as under:-

"The final bill dated 19.09.2011 has been signed by the Claimants without even a whiff of protest. However, for the purpose of this Arbitration this Tribunal is proceeding on the basis of the view taken in

the aforementioned Supreme Court judgments i.e. National Insurance Co. Ltd. Vs. M/s. Boghara Polyfab Pvt. Ltd 2009 1 SCC 267, Chairman and MD, NTPC Ltd. Vs. Reshmi Constructions, Builders & amp 2004 2 SCC 663 and R.L. Kalathia & Co. Vs. State of Gujarat 2011 2 SCC 400, that signing a final bill is not a bar to the Claimant raising a genuine dispute."

15. Thereafter, the learned sole Arbitrator proceeded to reject all the claims raised by the respondent/claimant, except the claim relating to loss in escalation of rates due to abnormal prolongation of contract @ 10% of the executed value. As far as the said claim is concerned, it was held as under:-

"As far as the claim for Escalation is concerned, it is abundantly clear that since the contract could not be completed in the stipulated period of 14 months owing to the Respondent's lack of fulfilling its obligations in supplying the drawings to the Claimant on time and the consequent delay, the Claimant is entitled to the loss incurred by them due to escalation. Further, it is important to mention that as the contract was finally completed in 44 months instead of the stipulated 14 months and obviously the market conditions and the rates changed over the said period of months.

The Clause 2.0 in the conditions of the Contract reads as under:

"Drawings: Standard drawings have been developed by the Owner, as mentioned below, and enclosed with the tender documents. The drawings enclosed with the tender are good for construction. However, within two weeks of award, 4 sets of these drawings, with a released for construction stamp, shall be issued by the Owner to the Contractor. The Contractor shall execute the work at site as per these drawings only."

The above condition stipulated that the good working drawings should be released to the Claimants within two weeks of award of the contract i.e. 22.12.2006 and work should be executed only as per the drawings. The Respondents did not issue drawings as per the terms stipulated in the contract. The drawings were issued of different dates and continued to be issued upto 11.11.2009. The project start date was 17.10.2006 and completion date was 16.12.2007 (14 months): The drawings were issued on various dates and last drawing was issued in the 38th month well beyond the terms of the contract which clearly stipulated that all good drawings should be issued within two weeks of the award of the contract. Thus on this issue timely issuance of drawings was of the essence of the contract. Hence, the work was being held up due to various reasons attributable to the Respondent including non-issue of drawings in time.

Further Clause 9.0 qua Over run charges reads as under:

"In case due to reasons not attributable to the contractor, the work gets

delayed, the Contractor shall not be entitled for any overrun compensation for a period of 3 months beyond original contract period. In case of scheduled completion period gets extended beyond this grace period of 3 months as stated above, fixed overrun compensation shall be suitably paid based on mutual agreement between Bhel and vendor. However, decision of Bhel will be final and binding on the vendor."
Here admittedly the time overrun was 30 months (approximately 900 days), well beyond the period of 3 months grace period in clause 9.0 which provided for overrun charges.

The various letters indicating the reasons for the delay are summarized as follows:

The letter of the claimant dated 28.01.2008 and 08.03.2008 are to the same effect and read as under:
"Bhel had only issued a general layout of the drawing, which also included general layout for electrical also, for switchyard works, which was only of a general indicative nature. However, detailed drawings of civil were not given.
Even the drawings issued were defective, which resulted orientation, identified by Bhel only after execution, which resulted in redoing of the work. It may be kindly noted that the execution under defective orientation was done under the supervision of BHEL/PGCIL. The first site marking by Bhel itself was erroneous, leading to subsequent revised marking."
Hence, the Claimant is entitled to get the Damages for the loss suffered in escalation of rates due to abnormal prolongation of contract @ 10% of the value executed amounting to Rs.72,90,719/-. In our view the rate of 10% as escalation charges claimed by the claimant are reasonable in view of the delay caused by the Respondent. The Claimant has claimed damages for head office overheads and wasteful expenditure suffered by the contractor due to prolongation of contract @ 5% of the executed value and damages for loss of anticipated profits suffered by the contractor because of the prolongation of contract @ 5%. However, the same cannot be awarded as the same amount has already been covered under and awarded under the claim of Escalation."

SUBMISSION OF RESPECTIVE COUNSEL

16. Learned counsel for the petitioner submits that the impugned arbitral award is beyond the terms of the contract inasmuch as any claim for price escalation or price variation during the period of the contract as well as

during the extended period of the contract is specifically barred thereunder [Clause 6(a)].

17. It is submitted that in view of the free issue of steel by the petitioner to the respondent for carrying out the contract work, the clause regarding escalation or price variation is not applicable. It is submitted that despite the learned Sole Arbitrator taking note of the petitioner's objection as regards the claim for price escalation being beyond the terms of the contract, the learned sole Arbitrator fails to consider or adjudicate the said objection.

18. It is submitted that it is a settled position that an Arbitrator cannot go beyond the terms of the contract and award claims which are contrary to the terms of the contract. Where the term of the contract is clear and unambiguous, the Arbitrator cannot ignore the same and rewrite the contract. Having accepted the terms of the contract, the parties are bound by the terms and the parties cannot put forth claims that are expressly barred by the terms of the contract.

19. It is submitted that even if a claim is put forth which is beyond or contrary to the terms of the contract, it is not open to the Arbitrator to exceed the scope of the agreement and grant a claim that has not been stipulated nor intended by the parties to the agreement.

20. It is submitted that the learned sole Arbitrator has committed an error of jurisdiction by awarding a claim contrary to the unambiguous terms of the contract and the impugned arbitral award is liable to be set aside on the ground of patent illegality under Section 34(2A) of the A&C Act.

21. Reliance in this regard is placed on the judgments in ***Associated Builders Vs. DDA*** (2015) 3 SCC 49, ***Ssangyong Engineering & Construction Co. Ltd. Vs. National Highways Authority of India (NHAI)***

(2019) 15 SCC 131 and ***Patel Engineering Ltd. vs. North Eastern Electric Power Corporation Ltd. (NEEPCO)*** 2020 SCC Online SC 466.

22. Learned counsel for the petitioner submits that the impugned arbitral award is also contrary to the basic notions of justice and morality. It is submitted that the "No Dues Certificate" had been voluntarily issued by the respondent / claimant and the same has been established on the basis of various letters exchanged between the parties. It is further submitted that the final bill had been prepared by the respondent and finalized by the petitioner after mutual reconciliation of accounts and measurement of work. The final bill was prepared after due deliberation between the parties and it is only thereafter that the "No Dues Certificate" had been issued by the respondent and the balance amount due was released by the petitioner along with the performance guarantee and security deposit.

23. It is submitted that prior to the final bill payment, the respondent had only been raising a claim for a sum of Rs. 58 lakhs under various heads and that the claim for escalation was not raised at any point prior to the full and final settlement of the bill. It is submitted that admittedly, the respondent / claimant did not raise any objection/s as regards the claim for escalation of rates till the final bill was prepared on 30.06.2010 and the "No Dues Certificate" was submitted on 21.09.2011.

24. It is submitted that the objection regarding the alleged dispute and the "No Dues Certificate" had been raised for the first time only on 30.09.2011 and the notice of arbitration dated 27.02.2012 had been issued after around 2 years from the final bill being submitted.

25. It is submitted that upon issuance of the "No Dues Certificate", the respondent had waived its right to raise any further claims. Furthermore, it is

submitted that even the learned Sole Arbitrator has recorded in the impugned arbitral award that the "No Dues Certificate" was issued without any protest. It is further submitted that the respondent having been unable to establish that the said "No Dues Certificate" had been obtained under duress, coercion or undue influence or financial stress, the contract stood discharged and as such, no arbitrable dispute subsists between the parties and even a genuine claim cannot be raised thereafter.

26. It is urged that the disputes raised by the respondent in the arbitral proceedings were not *bona fide* in nature and the impugned arbitral award fails to show how the claims raised by the respondent were *bona fide* in nature. It is submitted that the learned Sole Arbitrator was first required to determine if the no dues certificate was issued under fraud, coercion or undue influence and only after determining the same could the learned sole arbitrator have gone on to decide if the dispute raised was genuine / *bona fide*. An arbitrable dispute does not subsist between the parties inasmuch as there was accord and satisfaction of the agreement on account of the "No Dues Certificate" having been issued in full and final settlement of the dues of the respondent.

27. Learned counsel for the petitioner submits that the impugned arbitral award is patently illegal and perverse on account of the findings as regards the claim for price escalation being without any evidence. It is submitted that the learned Sole Arbitrator has failed to consider that there was no basis for claiming price escalation at the rate of 10% in the Statement of Claim or for awarding the claim for price escalation at the rate of 10% in the impugned arbitral award.

28. It is submitted that the learned Sole Arbitrator failed to appreciate that

no demand for escalation was made by the respondent prior to the invocation of arbitration by the respondent. Furthermore, no claim for price escalation was made by the respondent even during the execution of the contract. Also, the requests for grant of extension of time for completing the contract work did not contain any notice of the respondent seeking to claim damages for delayed execution of the contract and the communications pursuant to which the respondent was granted time extensions, also did not bear any mention of a claim for price escalation being granted in favour of the respondent.

29. It is pointed out that the time extensions granted to the respondent for completing the contract work were without any financial implications for the petitioner. It is further submitted that the respondent did not terminate / abandon the contract or invoke arbitration and claim damages during the execution of the contract work. Reliance in this regard is placed on ***New India Civil Erectors (P) Ltd. Vs. ONGC*** (1997) 11 SCC 75, ***General Manager, Northern Railway Vs. Sarvesh Chopra*** (2002) 4 SCC 45, ***State of Madhya Pradesh vs. Sew Construction Ltd. & Ors***. (2022) SCC Online SC 1606, ***Continental Construction Co. Ltd. Vs. State of Madhya Pradesh***, (1988) 3 SCC 82, ***Ch. Ramalinga Reddy Vs. Superintending Engineer & Anr.***, (1999) 9 SCC 610 and ***State of A.P. Vs. M/s. Associated Engineering Enterprises, Hyderabad***, 1989 SCC Online AP 59.

30. It is submitted that a contractor cannot invoke arbitration wherein a "No Dues Certificate" has been voluntarily issued by the contractor. Reliance in this regard is placed on ***P.K. Ramaiah & Co. v. National Thermal Power Corporation***, 1994 Supp (3) SCC 126, ***Nathani Steels Ltd. v. Associated Constructions***, 1995 Supp (3) SCC 324, ***Union of India and***

Ors. v. M/s. Onkar Nath Bhalla and Sons, (2009) 7 SCC 350, ***Union of India & Ors. v. Master Construction Company***, (2011) 12 SCC 349, ***ONGC Mangalore Petrochemicals Ltd. Vs. ANS Constructions Ltd. & Anr.*** (2018) 3 SCC 373, ***Union of India Vs. Parmar Construction Co***. (2019) 15 SCC 682 and ***Hari Vansh Chawla v. M/s. Prem Kutir Co-operative Group Housing Society Ltd.***, ILR (2008) II DELHI 1295.

31. It is submitted that the learned Sole Arbitrator has erroneously applied the decisions in ***National Insurance Co. Ltd. v. M/s. Boghara Polyfab Pvt. Ltd*** (2009) 1 SCC 267, ***Chairman and MD, NTPC Ltd. v. Reshmi Constructions Builders*** (2004) 2 SCC 663 and ***R.L. Kalathia & Co. v. State of Gujarat*** (2011) 2 SCC 400 inasmuch as the said decisions are placed in a different factual matrix as compared to the facts in the present case.

32. It is submitted that the learned Sole Arbitrator failed to take into consideration Clause 5.7 and Clause A.18 of the Contract, pursuant to which, the petitioner / BHEL is not be liable to pay interest on the earnest money deposit, security deposit or any amount due to the contractor / respondent.

33. Reliance is also placed on a judgment of the Supreme Court in ***Union of India vs Manraj Enterprises*** (2022) 2 SCC 331 to contend that the contractor is not entitled to interest pendente lite or any future interest on the amounts due and payable under the agreement in cases involving a specific bar contained in the contract agreement itself.

34. On the other hand, learned counsel for the respondent submits that the learned Sole Arbitrator has returned a clear finding that the security deposit and final bill payable to the respondent would not have been released in the absence of an unconditional “No Dues Certificate” being furnished by the

respondent. As such, the "No Dues Certificate" has been issued by the respondent under duress, coercion and undue influence.

35. It is further submitted that there was no negotiated or voluntary agreement entered into between the parties and that the "No Dues Certificate" has been issued at the instance of, and as per the format of the petitioner. The plea of economic duress, coercion and undue influence is stated to be well founded, and not an 'afterthought'.

36. Learned counsel for the respondent submits that a "No Dues Certificate" which has been issued under duress and coercion by withholding payment of final bill cannot be construed as resulting in 'accord and satisfaction' of the contract between the parties, so as to bar and extinguish the arbitrable claims.

37. It is submitted that as a matter of practise, the payment of bills is generally delayed and unless a "No Dues Certificate" is issued in advance by the contractor, the clauses of the contract providing for issuance of the "No Dues Certificate" would not be an absolute bar to the contractor raising claims which are genuine at a date after the issuance of the "No Dues Certificate".

38. Reliance in this regard is placed on the judgments in ***Chairman NTPC v. Reshmi Construction*** (2004) 2 SCC 663, ***Ambica Construction v. UOI*** (2006) 13 SCC 475, ***National Insurance Co Ltd v. Boghara Polyfab Pvt Ltd***. (2009) 1 SCC 267 and ***R.L. Kalathia & Co v. State of Gujarat*** (2011) 2 SCC 400.

39. Learned counsel for the respondent submits that the learned Sole Arbitrator has proceeded to grant damages after appreciating the relevant clauses and the material on record, and returning with a clear finding that the

petitioner was responsible for the inordinate delay in completion of the contract and the claim for escalation is payable in terms of Clause 9 of the agreement thereby entitling the respondent / claimant to payment of damages.

40. It is further submitted that the grant of damages to the respondent / contractor is not barred in terms of the contract between the parties and that the Clause 10 which provides that the clause for escalation is not applicable in light of the free issue of steel by the petitioner for the contract works is diluted by Clause 9 of the contract between the parties.

41. Learned counsel for the respondent submits that the mere fact that the extension of time was granted to the respondent for completion of the contract, would not impact the respondent's claim for damages in the arbitral proceedings. Reliance in this regard is placed on ***K.N.Sathyapalan v. State of Kerala*** (2007) 13 SCC 43, ***Associate Construction v. Pawan Hans Helicopter Limited*** (2008) 16 SCC 128 and ***Pt Munshi Ram v. DDA*** 2012 (4) Arb L R 268 (Delhi).

42. Learned counsel for the respondent submits that the impugned arbitral award is not liable to be interfered with inasmuch as the same is based on appreciation of material on record and construction of the contract between the parties. Reliance in this regard is placed on ***Associated Builders vs. DDA*** (2015) 3 SCC 49, ***Ssangyong Engineering & Construction Co. Ltd. vs. National Highways Authority of India (NHAI)*** (2019) 15 SCC 131 and ***Delhi Airport Metro Express Pvt Ltd vs. Delhi Metro Rail Corporation Limited*** (2022) 1 SCC 131.

REASONING & FINDING

43. In the present case, the issue as to whether the furnishing of a "No Dues Certificate" precluded the respondent/claimant from raising claim/s in derogation thereof, was one of the central issues that arose for consideration before the learned Sole Arbitrator. No doubt, the said issue is a mixed question of law and fact. The Arbitrator was necessarily required to consider the relevant factual aspects, particularly the divergent stand taken by the parties in their respective pleadings on this aspect.

44. It was pleaded on behalf of the claimant as under:

> *"47. The Claimants respectfully submit that the BHEL Administration had by their letter dated 19.09.2011 informed the Claimants by indicating the net payable amount as Rs.53,76,147/- after effecting some illegal recoveries and further directed the Claimants to submit a clear ' No Due Certificate' in full and final settlement of the above work order mentioning the net amount payable for further process for the payments. The Claimants had no other alternative except to submit a 'No Due Certificate' as demanded by BHEL in their letter dated 19.09.2011 as an amount of Rs.53,76,147/- would be released. The Claimants would submit that immediately after release of above amount, they had registered their protest in their letter dated 30.09.2011 with the BHEL Administration for having submitted 'No Due Certificate' as demanded by the BHEL. They had also indicated that the circumstances under which they were compelled to submit 'No Due Certificate'.*
>
> *48. The Claimants respectfully submit that the BHEL Administration had in their letter dated 15.10.2011 had stated that the final bill payment had been processed and released as per the terms and conditions of the contract agreement which was binding on both the parties and hence, the stand of the Claimants that the 'No Due Certificate' could not be treated as a record is not tenable. The Claimants in their letter dated 11.11.2011 had replied to BHEL about submission of 'No Due Certificate' **as it was submitted under coercion** and further they had indicated the Clauses in the contract which demanded 'No Due Certificate' and were as follows: Clause A. 17.7 under the sub-head of "RETURN OF SECURITY DEPOSIT" in the conditions of contract, it was stipulated as follows: A.17.7 **RETURN OF SECURITY DEPOSIT:***
>
> *If the contractor duly performs and completes the work in all respects to the entire satisfaction of BHEL and presents an absolute "No demand*

certificate", returns properties belonging to BHEL, taken, borrowed or hired by him for carrying out the said works, and furnishes performance bond BG in the prescribed proforma as per ANNEXURE-1, Security Deposit will be released to the contractor after deducting all costs, expenses and other amounts that are to be paid to BHEL under this contract or other contracts entered into with the contractor. It may be noted that in no case the Security Deposit shall be refunded/released prior to passing of final bill.

Also, another Clause B.6.10 under the sub-head of "MEASUREMENT OF WORK AND MODE OF PAYMENT" in the Conditions of Contract, it was stipulated as follows:

B.6.10 Final measurement bill shall be prepared in the proforma prescribed for the purpose, based on the certificate issued by the Engineer that the entire work as stipulated in the tender specification has been completed in all respects to the entire satisfaction of BHEL. The contractor shall give unqualified "No Claim" and "No Demand" certificates. All the tools and tackles loaned to him should be returned in condition satisfactory to BHEL. The abstract of final quantities and financial values shall also be entered in the Measurement Book and signed by both the parties. The final bill shall be paid after completion of all the defects/deficiencies etc. pointed out by BHEL. The Contractor should submit all the original documents such as material consumption, site order hook etc. maintained at site. After payment of final bill, only guarantee obligation percentage value shall remain unpaid, which shall be released in accordance with Clause A. 17.7.

Further, your letter dated 19.09.2011 directed us to furnish a clear 'No Due Certificate' which reads as follows:

"It is requested that a clear NO DUES CERTIFICATE in full and final settlement of the above work order mentioning the net payable amount may please be given. It is also requested that your authorized representative be sent to our office for the signing of the final entered amounts in Measurement Books".

49. The Claimants respectfully submit that in view of the above circumstances, Claimants had to furnish 'No Due Certificate' to receive an amount of Rs.53,76,147/- which amount was unilaterally decided by BHEL without our consent. Therefore, the 'No Due Certificate' submitted by the Claimants cannot be treated as a valid document before any forum."

45. On the contrary, the petitioner in its Statement of Defence averred as under:–

"47-49. That the contents of para 47-49 of the Statement of Claim are wrong and hence denied and disputed. It is denied that the Respondent

made any illegal recoveries from the Claimant or has coerced or forced by any means the Claimant to give a clear "No Dues Certificate" as alleged in the paragraphs under reply. It is respectfully submitted that the net balance amount payable by the Respondent to the Claimant was arrived at after mutual reconciliation of accounts, measurement of work and after mutual agreement and due deliberation between the parties. It is respectfully submitted that the allegations made by the Claimant in the paragraph under reply are malicious and an afterthought and this approach has been cleverly adopted by the Claimant after receiving full and final payment from the Respondent and after return of Security Deposit, Performance Bank. Guarantee, etc., so as the Respondent would not be in a position to retain the aforesaid for their claims if any dispute or differences arises between the parties inter-se. It is further submitted that the claim between the parties were fully and finally settled and the same cannot be re-agitated by the Claimant by any means. It is further submitted that the various letters of the Respondent would show that the Respondent had reserved their right for claiming Liquidated Damages against the delay caused by the Claimant in completion of the work. However, after the mutual agreement between the parties with respect to their respective claims, the accounts between the parties were mutually settled and the claimant issued "No Dues Certificate" to the Respondent and the Respondent released the balance amount due and payable to the Claimant as well as their Performance Guarantee, Security Deposit, etc. It is further submitted that the protest letter dated 30.09.2011 is an afterthought and the same cannot be accepted in view of the aforesaid reasons. It is once again reiterated that the full and final figure was arrived from the measurement of the final executed work recorded in measurement book and the same was agreed, verified and signed by the Claimant. It is vehemently denied that the "No Due Certificate" submitted by the claimant cannot be treated as a valid document before any forum. It is submitted that this certificate was given by the claimant as per the terms of the contract and on their own accord."

46. Clearly, if the No Dues Certificate was given by the respondent/claimant of its own free will and volition, the same would have a bearing on whether the respondent/claimant was entitled to raise claims in contravention / derogation of the same. This aspect has been recognized in the judgments referred to in the impugned award itself [***National Insurance Co Ltd. v. Boghara Polyfab Pvt. Ltd***. (supra) and ***Chairman and MD, NTPC Ltd. v. Reshmi Construction*** (supra).

47. In ***National Insurance Co Ltd. v. Boghara Polyfab Pvt. Ltd***. (supra), the Court has made the following observation –

> ***21.*** *It is thus clear that when a contract contains an arbitration clause and any dispute in respect of the said contract is referred to arbitration without the intervention of the court, the Arbitral Tribunal can decide the following questions affecting its jurisdiction: (a) whether there is an arbitration agreement; (b) whether the arbitration agreement is valid; (c) whether the contract In which the arbitration clause is found is null and void, and if so, whether the invalidity extends to the arbitration clause also. It follows, therefore, that if the respondent before the Arbitral Tribunal contends that the contract has been discharged by reason of the claimant accepting payment made by the respondent in full and final settlement, and if the claimant counters it by contending that the discharge voucher was extracted from him by practising fraud, undue influence, or coercion, the Arbitral Tribunal will have to decide whether the discharge of contract was vitiated by any circumstance which rendered the discharge voidable at the instance of the claimant. If the Arbitral Tribunal comes to the conclusion that there was a valid discharge by voluntary execution of a discharge voucher, it will refuse to examine the claim on merits, and reject the claim as not maintainable. On the other hand, if the Arbitral Tribunal comes to the conclusion that such discharge of contract was vitiated by any circumstance which rendered it void, it will ignore the same and proceed to decide the claim on merits.*
>
> *xxx xxx xxx*
>
> *25. We may next examine some related and incidental issues. Firstly, we may refer to the consequences of discharge of a contract. When a contract has been fully performed, there is a discharge of the contract by performance, and the contract comes to an end. In regard to such a discharged contract, nothing remains — neither any right to seek performance nor any obligation to perform. In short, there cannot be any dispute. Consequently, there cannot obviously be reference to arbitration of any dispute arising from a discharged contract. Whether the contract has been discharged by performance or not is a mixed question of fact and law, and if there is a dispute in regard to that question, that is arbitrable. But there is an exception. Where both the parties to a contract confirm in writing that the contract has been fully and finally discharged by performance of all obligations and there are no outstanding claims or disputes, courts will not refer any subsequent claim or dispute to arbitration. Similarly, where one of the parties to the contract issues a full and final discharge voucher (or no-dues certificate, as the case may be) confirming that he has received the payment in full and final satisfaction of all claims, and he has no outstanding claim, that amounts*

> *to discharge of the contract by acceptance of performance and the party issuing the discharge voucher/certificate cannot thereafter make any fresh claim or revive any settled claim nor can it seek reference to arbitration in respect of any claim.*
>
> *26. When we refer to a discharge of contract by an agreement signed by both the parties or by execution of a full and final discharge voucher/receipt by one of the parties, we refer to an agreement or discharge voucher which is validly and voluntarily executed. If the party which has executed the discharge agreement or discharge voucher, alleges that the execution of such discharge agreement or voucher was on account of fraud/coercion/undue influence practised by the other party and is able to establish the same, then obviously the discharge of the contract by such agreement/voucher is rendered void and cannot be acted upon. Consequently, any dispute raised by such party would be arbitrable.*

48. In ***Chairman and MD, NTPC Ltd. v. Reshmi Construction*** (supra), the Apex Court has observed as under –

> ***27.*** *Even when rights and obligations of the parties are worked out, the contract does not come to an end inter alia for the purpose of determination of the disputes arising thereunder, and, thus, the arbitration agreement can be invoked. Although it may not be strictly in place but we cannot shut our eyes to the ground reality that in a case where a contractor has made huge investment, he cannot afford not to take from the employer the amount under the bills, for various reasons which may include discharge of his liability towards the banks, financial institutions and other persons. In such a situation, the public sector undertakings would have an upper hand. They would not ordinarily release the money unless a "No-Demand Certificate" is signed. Each case, therefore, is required to be considered on its own facts.*
>
> *xxx xxx xxx*
>
> ***36.*** *The appellant has in its letter dated 20-12-1990 used the term "without prejudice". It has explained the situation under which the amount under the "No-Demand Certificate" had to be signed. The question may have to be considered from that angle. Furthermore, the question as to whether the respondent has waived its contractual right to receive the amount or is otherwise estopped from pleading otherwise, will itself be a fact which has to be determined by the Arbitral Tribunal."*

49. Further in ***Union of India v. Master Construction Co.,*** (2011) 12 SCC 349**,** while relying upon the judgment in ***National Insurance Co Ltd.***

v. Boghara Polyfab Pvt. Ltd. (supra) the Supreme Court has observed as under–

> ***23.*** *The present, in our opinion, appears to be a case falling in the category of exception noted in Boghara Polyfab (P) Ltd. (p. 284, para 25). As to financial duress or coercion, nothing of this kind is established prima facie. Mere allegation that no-claim certificates have been obtained under financial duress and coercion, without there being anything more to suggest that, does not lead to an arbitrable dispute. The conduct of the contractor clearly shows that "no-claim certificates" were given by it voluntarily; the contractor accepted the amount voluntarily and the contract was discharged voluntarily.*

50. In ***Union of India and Others v. Bharat Enterprise***, 2023 SCC OnLine SC 369, the Court has held as under -

> ***27.*** *It is no doubt true that the salutary principle which has been enunciated by this Court in Central Inland Water Transport Corporation being in accord with constitutional principles must receive due consideration. However, it cannot be torn out of context.* ***More importantly, as we have already noticed when a contractor seeks to wriggle out of a final bill or a 'no claims due certificate' which he has submitted, as in a civil Court so before the Arbitrator, he must establish a case that a final bill or a certificate of no further claims was the result of any of the vitiating factors under the law. Sans such finding, the final bill would stand. If the final bill cannot be overridden by any factors known to law then the clauses relied upon by the appellants in this case would operate. There is no finding by the Arbitrator that the final bill and the no claims certificate were vitiated****. The clauses in the contract were binding on the respondent. It cannot be departed from invoking the principle in Central Inland Water Transport Corporation*[5]*. It is not the case of the contractor that when the contract was entered into, it was in circumstances which attracted the principles laid down therein.*

51. Thus, it was incumbent on the learned sole Arbitrator to give a finding on the issue as to whether the No Dues Certificate was given voluntarily or whether it was a product of duress/coercion.

52. There are observations in the award which impliedly negate the contention/s of the respondent/claimant. The award makes a telling

observation to the effect that "the final bill dated 19.09.2011 has been signed by the claimant without even a whiff of protest". However, despite making the said observation, the impugned award does not dilate further on this aspect of the matter. In fact, apart from citing the judgments in ***National Insurance Co Ltd. v. Boghara Polyfab Pvt. Ltd***. (supra), ***Chairman and MD, NTPC Ltd. v. Reshmi Construction*** (supra) and ***R.L. Kalathia & Co v. State of Gujarat*** (supra), no specific factual finding has been rendered taking into account the divergent position canvassed by the parties in their pleadings (extracted hereinabove). To this extent, the award is clearly unreasoned.

53. Quite apart from the above aspect, the award is unsustainable in granting damages on account of "loss suffered due to escalation of rates arising from abnormal prolongation of the contract @ of 10% of the value of work executed, amounting to Rs.72,90,719". With regard to this claim, it is pertinent to note that the following averments were made in the Statement of Defense filed on behalf of the petitioner:

> *"84.* ***CLAIM NO. 29****:-*
>
> ***Damages for the Loss in escalation of rates due to abnormal prolongation of contract @ 10% of the value executed- Rs.72,90,719/-.***
>
> *This claim is factually incorrect and thus denied and disputed. The said claim has no contractual or legal basis and therefore the contents of the Claim No. 29 are denied in entirety. It is denied that an amount of Rs. 72,90,719/- is payable by the Respondent to the Claimant as alleged in the claim under reply.*
>
> *It is respectfully submitted that the Claimant is not entitled to make such a claim against BHEL, which in any event would be beyond the contract. It is submitted that the present contract was a fixed price contract between the parties. No price escalation is therefore tenable. The Claimant had requested the Respondent for time extensions and the respondent had granted the same without any financial implication to the*

Respondent and the same had been accepted by the Claimant. The claim being contrary to the express terms of the Contract is liable to be rejected. The Respondent seeks to rely on the submissions and replies made in the prior paragraphs in the statement of defence in reply to the present paragraph.

It is respectfully submitted that the quotation of "Building and Engineering Contracts- Law and Practice by P.C. Markanda is not applicable in the present case and the same can be distinguished on the facts and circumstances of the present case.

It is further submitted that the plea raised in the claim under reply is mere afterthought and has been taken by the Claimant only to extort money from the Respondent. The respondent is therefore not obliged to make any such payment.

Without prejudice to the aforesaid submissions, it is respectfully submitted that the present claim is not sustainable in view of the fact that the accounts between the parties are already fully and finally settled with mutual consent and accordingly the Claimant had issued a "No Due Certificate" and full and final payment had already been made to the Claimant.

In view of the foregoing submissions, this claim of the claimant is not admissible and needs to be rejected."

54. It is also noticed that the contract between the parties contains a specific embargo on the payment of price escalation during the contract period and also during the extended period "whatever the reason may be". In this regard, reference is apposite to the following contractual provision:

"*6. Now, therefore it is hereby mutually agreed to by and between the parties hereto as under:*

a) The SECOND PARTY shall execute the works mentioned at Sl. No. 2 above the conditions specified in Tender Enquiry of FIRST PARTY and Work Order referred to herein before at a total contract price of Rs.6,83,11,385/-. Prices will be firm and no price escalation / price variation will be paid for contractual period / extended period whatsoever the reason may be."

55. While it is true that the Supreme Court has held in ***K. N. Sathyapalan v. State of Kerala***, (2007) 13 SCC 43, that in certain situations, an Arbitrator

is not precluded from granting escalation even in the absence of a price escalation clause in the original agreement and/or despite a specific prohibition with regard thereto, it was nevertheless incumbent upon the learned Arbitrator to take note of / deal with the relevant contractual provisions. A perusal of the award reveals that the aforesaid Clause 6(a) of the Contract has not even been taken note of.

56. Also, importantly, although price escalation has been sought to be awarded on account of loss suffered due to "escalation of rates", the said claim was not predicated on any averment / material as regards (i) the relevant items of which the rates have increased; (ii) the extent to which there was price escalation; and (iii) the impact thereof on the cost of the execution of works.

57. The claim is not supported by any data or calculation whatsoever and is premised only on a sweeping statement that the claimant is entitled to loss suffered due to escalation of rates at 10% of the value of the work executed.

58. The award on this count is also lacking in any evidentiary basis whatsoever; the claim has been allowed with a cryptic statement that "10% as escalation charges claimed by the claimant are reasonable".

59. In ***National Highways Authority Of India v. Larsen And Tourbo Limited***, 2025:DHC:9342, while setting aside an arbitral award whereby an ad-hoc amount was granted as damages, this Court observed as under –

> *"47. …….Be that as it may, the award does not disclose how its assumption/s have applied to calculate/ arrive at the figure of INR 15 crores. Also, although the award purports to take into account that work worth at least INR 35 crores had been sub-contracted, and also finds that the claimant failed to prove that any extra sum was paid to the sub-contractor, yet, the award does not disclose any detail/s whatsoever as to how the extent of sub contracting has affected the working/calculation of the Arbitral Tribunal. In fact, the award does not disclose at all as to*

how the amount of INR 15 crores has been deduced. The award simply makes a sweeping observation that "for Claim Nos. 3 and 6(a), INR 15 crores would be a fair and reasonable compensation under all heads of loss suffered".

48. It is thus evident that the amount of INR 15 crores is a random/ ad-hoc figure having no nexus with the pleadings, the evidence or even the notional methodology sought to be employed by the Arbitral Tribunal……"

60. In ***National Highway Authority of India v. Shree Jagannath Expressways Pvt. Ltd***., 2022 SCC OnLine Del 706, a Co-ordinate Bench of this Court has observed as under –

"84. The last contention to be examined is whether the impugned award to the extent it accepts SJE's quantification of the claim is vitiated by patent illegality. NHAI claims that the claim as quantified was accepted without any material or evidence to prove the same.

91……..As stated above, there is no evidence or material on record to indicate how these figures were computed. There is no material to establish that Rs. 33,63,300 would be collected on 08.04.2014 if collection of additional user fee for the Mahanadi Bridge was allowed on 08.04.2014. Similar tabular statements were claimed to have been forwarded by SJE on a monthly basis (C-44 to C-61).

92. NHAI, in its Statement of Defence, had denied the said claim. It had stated that the said claim is "false, frivolous, baseless, contrary to the terms and conditions of the Concession Agreement and is contrary to the said Fee Notification dated 19.10.2011".

93. Notwithstanding the fact that there was no material to substantiate the aforesaid calculation, the Arbitral Tribunal (by majority) accepted SJE's claims by referring to Section 19(1) of the A&C Act, which expressly provides that the Arbitral Tribunal would not be bound by the Civil Procedure Code, 1908 or the Indian Evidence Act, 1872.

95. According to SJE, NHAI had neither responded to any of its letters raising the claims (Annexure C-44 to Annexure C-61) nor denied the said claims and therefore, there was no dispute as to quantification of the amounts due. However, NHAI has specifically denied the claims made by SJE including quantification in its Statement of Defence. It was thus necessary for SJE to produce some material to establish the same. The burden to prove quantification of loss rested entirely on SJE. However, SJE did not produce any evidence to substantiate the quantum of its claim except the letters sent by it raising its claims on a periodical basis.

Plainly, a letter raising a claim is not a proof thereof. It does not establish anything more than the fact that a claim was made.

97. The Statement of Claims do not indicate any computation except the computation of the difference in two figures for each day, which according to SJE was the loss suffered by it. The Arbitral Tribunal thus had no material to verify or satisfy itself that the quantification of the claim made was a true estimate of the additional toll that would have been collected by SJE.

100. It is well settled that this Court cannot re-appreciate/re-examine the evidence in proceedings under Section 34 of the A&C Act. However, in cases where it is found that there is no evidence to substantiate the claim, as in the present case, interference with the Arbitral Award is warranted.

101. The decision of the Arbitral Tribunal to accept SJE's claims of quantification clearly amounts to accepting the claim without any evidence to establish the amount of loss as claimed."

61. In ***Aneja Constructions (India) Limited V. Grim-Tech Projects (I) Private Limited***, 2022 SCC OnLine Del 452, the Court has made the following observation –

"37. It is clear from the above that there is no real basis for quantifying the damages at Rs 2,15,00,000. The Arbitral Tribunal had noted that receipt of Exts. CW 1/43 to CW 1/47 was disputed by ACIL. The Arbitral Tribunal had also held that there was "no cogent and convincing evidence for calculating compensation for the loss suffered by complainant to demobilise their machinery due to non-issue of exit gate pass".

38. In view of the finding of lack of cogent and convincing evidence regarding quantification of the damages, the award of Rs 2,15,00,000 on an ad-hoc basis cannot be sustained. There is no basis for computing the said amount of damages. There is merit in the contention that there was material before the Arbitral Tribunal for quantification of the claims and, the Arbitral Tribunal had also noted that GTPL had proved additional running account bills aggregating approximately Rs 1,24,07,942.54. However, the basis on which the Arbitral Tribunal had ascertained the amount of Rs 2,15,00,000 as the loss suffered by GTPL being average of the invoices and the amount claimed, is patently erroneous.

39. It is not permissible for this Court to reappreciate the evidence to calculate the damages as established by GTPL and modify the award of damages. It is not open for this Court in this proceeding to modify the

arbitral award. In view of the above, the impugned award to the extent that it awards damages in the sum of Rs 2,15,00,000 is liable to be set aside."

62. In the above circumstances, the impugned award, inasmuch as it awards 10% of the value executed, amounting to Rs.72,90,719/-, is clearly unsustainable; the same is, therefore, set aside.

63. The petition is allowed in the above terms. There shall be no order as to cost/s.

SACHIN DATTA, J

NOVEMBER 26, 2025
uk, dn, r & sv