IN THE COURT OF SH. PULASTYA PRAMACHALA
DISTRICT JUDGE, (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI

PULASTYA PRAMACHALA

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OMP (COMM) No. 126/2023

<u>In the matter of</u>: -

Union of India
Through Chief Engineer, Delhi Zone,
C/O 56 APO, Delhi Cantt., Delhi-110010.

…**Petitioner**

Versus

M/s. Associated Construction Co.
Through its Sole Proprietor
Sh. Sunil Kumar Gupta, 51/23,
Rajinder Nagar, New Delhi.

...**Respondent**

Date of Institution before Hon'ble High Court of Delhi	**:**	**17.10.2016**
Date of assignment before this court	**:**	**19.09.2023**
Arguments heard on	**:**	**16.05.2026**
Decided on	**:**	**04.06.2026**
Decision	**:**	**Petition is dismissed.**

JUDGMENT

DESCRIPTION OF THE CASE

1. Petitioner has filed present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act"), assailing the arbitral award dated 31.10.2015, as passed by ld. Sole Arbitrator Brig. S.K. Grover. The impugned Award was received by petitioner on 09.01.2016 and same was filed before ld. District Judge, New Delhi District, Patiala House Courts, New Delhi, on 04.02.2016.

BRIEF FACTS OF THE CASE

2. Briefly stated, petitioner had invited tender on 20.10.2008 with subsequent amendments issued on 20.11.2008 and 05.12.2008. Petitioner had received tender from the respondent on 13.02.2009. Said tender was accepted by petitioner on 27.02.2009 for the amended lump sum of Rs. 3,07,83,004.47 and same was communicated to contractor/respondent herein vide letter dated 27.02.2009.

3. Petitioner averred that site for the subject work was handed over to respondent on 17.03.2009. Date of commencement of work as per work order no.1 was 17.03.2009 and date of completion was 16.09.2010. But work was physically completed on 08.11.2011 during extended period. Thereafter, respondent submitted his final bill under his letter no. ACC/CEDZ-07/2008-09 dated 08.08.2012, claiming an amount of Rs.19,42,785/- on account of reimbursement of labour wages due to increase in the minimum rates of labour, without any calculation details and supporting documents. Petitioner further averred that progress of the work was slow from the very beginning itself due to inadequacy of employment of labour and procurement of material.

4. Petitioner further averred that final bill was returned by petitioner asking respondent to submit the final bill in terms of condition 65, along with the supporting documents. Thereafter, final bill was resubmitted by respondent, but no supportive documents were

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

attached to it.

5. Petitioner herein appointed ld. Sole Arbitrator vide letter dated 07.03.2013 and accordingly, ld. Arbitrator entered into the reference and called upon both the parties to submit their document with supporting details. Respondent herein filed statement of case, while petitioner herein filed pleadings in defence with counter claim. After conducting arbitration proceedings, final Award was passed on 31.10.2015.

GROUNDS OF CHALLENGE

6. Aggrieved by the arbitral award dated 31.10.2015, petitioner has preferred the present objections under Section 34 of the Act, inter alia, on the following relevant grounds: -

i. That impugned Award passed by ld. Arbitrator, suffers from several infirmities and is liable to be set aside. That impugned award has been passed in contravention of fundamental policy of Indian law and suffers from patent illegality.

ii. That ld. Arbitrator was bound by the contractual terms and he could not have replaced his own reasoning for the same, to override the effect of contractual terms. That ld. Arbitrator has erred in awarding interest to respondent and that too at the exorbitant rate of interest since 08.08.2012 to the date of award till actual payment is made.

iii. That ld. Arbitrator has erred in awarding a sum of Rs. 1,35,600/- against Claim No.1 (e) of contractor, without disclosing the method of calculation of the cost of differential, ignoring the contention of the petitioner that difference in cost of toughened glass and sheet glass was around Rs. 60/- per sq. ft. as per market enquiry. That amendment no. 49 specifies that ‘Fixed Structural Glazing' shall be provided and total quantity executed at the site was 51.62 sqm, hence, the maximum amount due to contractor could not exceed Rs. 33,325/-.

iv. That ld. Arbitrator erred in awarding a sum of Rs. 1,16,720/-, Rs.23,384/- and Rs.20,234/- against Claim No.1(f), 1(g) and 1(j) of respondent without giving details of calculations.

v. That ld. Arbitrator erred in awarding Rs. 28,500/- against Claim No. 1(k) of the respondent without bringing on record any proof of payment made by him in respect of Acrylic Sheet. His claim was highly inflated and could not exceed Rs. 3,768/- as per prevalent market value.

vi. That ld. Arbitrator has erred in awarding Rs. 44,874/- against Claim No.1 (l) of the respondent without asking respondent to even bring on record the documentary evidence (purchase voucher and payment receipt etc.), whereas, it was submitted by the petitioner that on site visit, it found colour wash on the boundary wall, which proves that paint was not cement base.

vii. That ld Arbitrator has erred in awarding Rs. 1,91,953/- against Claim No.2 of the contractor (for alleged delay in payment of final bill) and ignored the contention of petitioner (supported with

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

documentary proofs) that finalization of final bill was delayed owing to non-submission of certain documents, particularly, purchase vouchers for finalization of star rates by the respondent and not turning up by him for joint measurements. That there is no question of delay in making payment by petitioner and as such the contractor is not entitled to any interest for delay in payment of final bill as the delay was attributable to the contractor as he had submitted the final bill on 08.08.2012 and resubmitted the same on 30.08.2012, that too without required documents.

viii. That as per Condition 66 of IAFW-2249, the final bill was to be paid to contractor within 6 months from submission of the bill (i.e. 30.08.2012); so, he was entitled to receive the interest on payment w.e.f. 01.03.2013 only. That the final bill was actually paid on 06.07.2013; so, the delay, if any, works out to 127 days only, and the amount so awarded could not exceed Rs. 78,638/-. But ld. Arbitrator has awarded the amount of Rs. 1,91,953/- in favour of contractor alongwith an interest @ 10% for 310 days.

ix. That ld. Arbitrator has further erred in awarding Rs. 28,62,916/- against Claim No.4 of contractor on account of increase in material, labour and fuel, because details of Claim No.4 were not worked out as required under condition 63 of IAFW-2249. But ld. Arbitrator has awarded this claim on the basis of an empirical formula not forming part of CA, whereby travelling beyond his jurisdiction by entertaining a claim in contravention of express provisions of the

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

contract, and has not even recorded the necessity to adopt an empirical formula, when an explicit provision for reimbursement existed in the CA i.e condition no. 63 as provided for methodology for preferring the claim. That respondent/contractor being aware of any alteration in the wages of labour, did not give any notice to the GE within reasonable time as required under Clause 63, nor the contractor raised any claim for reimbursement on account of increase in labour wages prior to submission of final bill.

x. That respondent/contractor had claimed an amount of Rs. 31.81.018.37 (without reducing it by 10%) against his claim for reimbursement on account of increase in labour wages, by considering LO as Rs.151/- (as per Govt of NCT of Delhi, Notification Department Labour No. F-12(142)/02/MW/Lab/7283 dated 19.02.2009, which revised the minimum wages in respect of unskilled labour as Rs.151/- w.e.f. 01.02.2009) in the empirical formula used by him. But ld. Sole Arbitrator has wrongly taken the value of LO as Rs. 142/- while working out the amount in respect of claim no.4 of contractor under para 79.4.23 of award and arrived at an amount of Rs. 32,12,885.55 (without reducing it by 10%) as against Rs. 31.81.018.37 claimed by contractor. That even if the methodology adopted by ld. Arbitrator for working out the amount against this claim is used, the claim amount would work out to Rs. 24,12,155.70 as against Rs. 28,62,916.00 awarded by him against this claim. Thus, Award gets vitiated on this account as well.

xi. That ld. Arbitrator has erred in awarding past and pendent lite interest @ 10% p.a. on contractor's claim no. 1 (various sub parts as awarded), 4 & 6 amongst others while adjudicating claim no.7. That ld. Arbitrator did not consider the fact that claim no. 4 had been preferred by contractor at final bill stage and that too without any supporting documents and hence, it was not admitted as it was a claim based on an empirical formula not forming part of CA and was in contravention of condition 63 of IAFW-2249. Besides that, in the absence of supporting documents, claim could not have technically checked. Thus, past and pendent lite interest awarded on contractor's claim no.4. is liable to be set aside.

xii. That claim no.6 of contractor relating to refund of unauthorized recoveries made in the final bill by MES and claim no.1 of petitioner/objector relating to cost of rectification of defects observed while issuing completion certificate and during defects liability period were linked to each other. This fact is recorded by ld. Arbitrator in para 79.6.16 of the award. That against Rs. 2 lacs withheld by petitioner/objector provisionally in the final bill towards cost of rectification of defects, ld. Arbitrator has awarded Rs 1.52 lakh as reasonable cost of rectification of defects against claim no. 1 of petitioner/objector. That interest rate awarded viz. 12% p.a. is also considered to be a bit high.

xiii. That ld. Arbitrator has failed to consider the provision of Section 34(2)(a)(iv) of the Act and that he has erroneously awarded claim of respondent regarding bills, which were not part of reference and were for the first time raised during arbitral proceedings. That ld. Sole Arbitrator has surpassed and traveled beyond its jurisdiction in passing the impugned award.

xiv. That ink signed copy of arbitration award dated 31.10.2015, vide letter no. PAC/2428/SKG/55/ARB dated 06.01.2016, was received by petitioner on 09.01.2016. Thereafter, an objection petition u/s. 34 of the Act being Suit No.31 of 2016 was filed before District Court on 04.02.2016. Ld. District Court being of the view that the petition is a commercial dispute of value more than Rs. 1 crore and beyond the pecuniary jurisdiction of District Court, returned the Objection Petition vide order dated 10.08.2016 with permission to file the same in the Court of proper jurisdiction. Based on the said order, objection petition was filed before High Court on 17.09.2016.

REPLY OF THE RESPONDENT

7. Denying all the grounds pleaded by petitioner in the present petition, respondent filed the reply contesting the petition and contended that objections to the Award, are misconceived, untenable in law and may be dismissed. It has been pleaded that petitioner has not placed any material facts that are relevant under clause 34(2) of the Act, for setting aside the impugned Award. It has been further pleaded that the subject Award resulted from the resolution of a dispute/claim in terms of the conditions of contract agreed between the parties. It has been further pleaded that when

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

petitioner has no such case that ld. Arbitral Tribunal had no jurisdiction to adjudicate the disputes referred to it, it could not challenge the merit of decision of ld. Arbitral Tribunal merely because interpretation given by ld. Arbitrator to Contract terms, is not to its liking. It has been further pleaded that the interpretation of contract terms is within the jurisdiction of ld. Arbitrator. It has been further pleaded that the award is not open to challenge on the ground that the Tribunal has reached a wrong conclusion or that interpretation given by the Tribunal on the provisions of contract is not correct. The parties by themselves had agreed in the contract to accept the award as final and conclusive. That award cannot be set aside on the ground that either in facts or in law it is erroneous.

8. It has been further pleaded that jurisdiction of court to interfere with an Award of the Tribunal is always statutory. It has been further pleaded that it is not open to the court to attempt to probe the mental process by which the Tribunal has reached its conclusion or to explore the reasonableness of reasons given by it. It has been further pleaded that the petitioner has not placed on record any such incident or fact, which makes the Award unsustainable. The courts are not to sit in appeal over an award given by an Arbitral Tribunal. Award is not to be set aside unless one or more of grounds mentioned in Section 34 of the Act is proved by petitioner (Ref. **ONGC v. Saw Pipes Ltd., AIR 2003 SC 2629**).

9. Respondent denied that the site was handed over to the

respondent/contractor on 17.03.2009. Respondent strongly denied that the progress of work was slow due to inadequacy of employment of labour or the procurement of material. It has been pleaded that there was a long delay in the handing over of the site and the same has been recorded by ld. Arbitrator in paragraph 79.4.24 of the Award. Ld. Arbitrator has come to a finding of fact after perusing all the relevant documents and has recorded that the site was not available even till the original date of completion and the same had pushed the contract approximately 13-14 months beyond those completion date. It has been further pleaded that ld. Arbitrator had unequivocally and explicitly recorded that the root cause of delays was beyond the respondent's control and for the reasons arising out of the commission of contractual breaches at the hands of the Union of India. It has been further pleaded that petitioner cannot now seek to overrule a finding of fact by ld. Arbitrator in a petition under Section 34 of the Arbitration Act, 1996.

10. Respondent denied that ld. Arbitrator pass the award in conflict with Public Policy or in contravention of the letter or spirit of the contract. It has been further denied that ld. Arbitrator has failed to appreciate the application of Clause 63 of IAFW 2249 (General Conditions of Contract). It has been pleaded that petitioner had brought the attention of ld. Arbitrator to the said clause and ld. Arbitrator after consideration, had correctly interpreted the contract.

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

11. It has been further pleaded that interest has only been awarded at the rate of 10% with respect to past and pendente lite interest and at the rate of 12% as future interest. The award rates of interest are reasonable and are well within the power of ld. Arbitrator to award. It has been further pleaded that as per market rates the difference was much more and which is correctly reflected in the pleadings of the respondent and the Award made by ld. Arbitrator. It has been further pleaded that the quantification has been done by a technical expert and, as such, does not deserve to be disturbed. The petitioner had completely failed to place on record any evidence so as to prove an alternate rate.

12. It has been further pleaded that ld. Arbitrator has made the award after going through relevant documents and considering the submissions of the parties as also his vast technical expertise. It has been further pleaded that ld. Arbitrator was right in holding that total delay works was out to 331 days.

13. Respondent denied that the details of Claim No.4 were not worked out as required under condition 63 of IAFW- 2249 and this this was brought to notice by the petitioner/objector during arbitration hearing. It has been further pleaded that ld. Arbitrator has awarded this claim, on the basis of a rational, cogent and correct formula. It has been pleaded that calculation was as per the formula approved by the Government of India and part of MES Contracts. It has been further denied that ld. Arbitrator has travelled beyond his

jurisdiction or that the claim is in contravention of the provisions of the contract. It has been further pleaded that the respondent had submitted all the relevant proofs.

14. It has been further pleaded that all relevant records had been submitted by respondent to ld. Arbitrator during the arbitration proceedings. The statutory notifications increasing the minimum wages had also been submitted. After examining the evidence, ld. Arbitrator came to a finding of fact that there had been an increase in the wages to be paid. Even at the time of bidding for the contract, respondent had quoted on assumption that minimum wages would not increase.

WRITTEN SUBMISSIONS OF PETITIONER

15. In the written submissions also, petitioner reiterated and repeated the same contentions against the claim of respondent as made before ld. Arbitrator. Vide order dated 24.01.2026, this court had given direction to the petitioner to point out the relevant factual aspect from the Award and record, in support of grounds raised in the petition. Accordingly, fresh note of submissions was filed on behalf of petitioner raising following arguments: -

i. That impugned Award is bad in law and is in contravention of Clause 63 of IAFW 2249 (General Condition of Contract) providing for Reimbursement/refund on variation in Price.

ii. That impugned Award is contrary to the well established principles of law as ld. Arbitrator has acted in excess of jurisdiction in violation of provisions of Sec. 28(3) of the Act, while making Award without adhering to the terms and conditions between the parties. Award is vitiated by patent illegality.

iii. That ld. Arbitrator by ignoring the admitted contractual terms, which is in conflict with the public policy of India, has overridden the terms of contract between the parties.

iv. That ld. Arbitrator has erred in awarding interest to the respondent and that too at the exorbitant rate of 10% p.a. since 08.08.2012 and future interest @ 12% p.a. since the date of publication of award, which is totally in contradiction of Clause 11 (c) of the General Conditions of Contract.

v. That the contractor was entitled to Rs.48,000/- only as against claim no.6 of Rs.2 lacs towards refund of unauthorized recoveries.

vi. That ld. Arbitrator has wrongly awarded the claim of Rs.1,52,000/- against claim no.1 of petitioner in total ignorance of the list of defects submitted by the petitioner alongwith the completion certificate and the fact that defects were observed during defect liability period and not rectified by contractor, and also in rejecting claims no.2 and 3 without any reason.

vii. Reliance has been placed upon the case of **Ramnath International Construction v. Union of India, Appeal (Civil) 3167-3168 of 2005**, decided on 11.12.2006 by Hon'ble Supreme Court, to submit that impugned order of Hon’ble High Court of Madras, was upheld, as ld. Arbitrator had clearly misconducted himself in awarding the compensation to the appellant.

viii. Reliance has been further placed upon the case of **ONGC v. Saw Pipes Ltd., Appeal (Civil) 7419 of 2001,** decided on 17.04.2003 by Hon’ble Supreme Court, to submit that the Award was set aside being contrary to the provisions of Section 28(3) of the Act.

WRITTEN SUBMISSION OF RESPONDENT

16. Respondent had also filed written submissions, wherein respondent supported the Award, referring to the findings given by ld. Arbitrator in respect of each claim.

17. In support of the contentions, respondent placed reliance upon certain case laws, which are as follows: -

i. **Union of India v. Associated Construction, MANU/DE/2169/2016.**

ii. **Union of India v. Associated Construction, OMP 302/2015, decided on 20.05.2015 by Hon’ble High Court of Delhi.**

iii. **Union of India v. M/s. City Promoter & Buildwell Pvt. Ltd., MANU/DE/0944/2018.**

iv. **Venkatesh Construction Company v. Karnataka Vidyut Karkhane Limited, MANU/SC/0060/2016.**

v. **Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited, MANU/SC/0623/2021.**

vi. **Associate Builders v. Delhi Development Authority, MANU/SC/1076/2014.**

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

vii. **Bharat Heavy Electricals Limited v. Delkon India Pvt. Ltd., MANU/DE/0127/2026.**

viii. **Delhi Transport Infrastructure Development Corporation Ltd. & Ors. v. Well Protect Manpower Services (P) Ltd. MANU/DE/9004/2025.**

18. I heard ld. counsels for the parties and have perused the record carefully.

APPRECIATION OF ARGUMENTS, LAW & FACTS, AND FINDINGS

19. The crux of the legal principles explained by superior courts in respect of ambit of Section 34 of the Act, is that Arbitrator is a Judge of the choice of the parties and his decision, unless there is an error apparent on the face of the Award which makes it unsustainable, is not to be set aside by the court, even if the court of law could come to a different conclusion on the same facts. The court cannot reappraise the evidence and it is not open to the court to sit in appeal over the conclusion of the Arbitrator. It is not open to the court to set aside a finding of fact arrived at by the Arbitrator and only grounds on which the award can be set aside are mentioned in the Arbitration Act. Where the Arbitrator assigns cogent grounds and sufficient reasons and no error of law or misconduct is cited, the award will not call for interference by the court in exercise of the power vested in it.

20. In **Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49**, Court held that an award could be said to be against the

public policy of India, inter alia, in the following circumstances: -

> *"1. When an award is, on its face, in patent violation of a statutory provision.*
>
> *2. When the arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.*
>
> *3. When an award is in violation of the principles of natural justice.*
>
> *4. When an award is unreasonable or perverse.*
>
> *5. When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.*
>
> *6. When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court."*

21. Hon'ble Supreme Court in case of ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, 2019 SCC OnLine SC 677***, held that under Section 34 (2A) of the Act, a decision which is perverse while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. A finding based on the documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties and therefore, would also have to be characterized as perverse. It was held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision, would be perverse and liable to be set aside on the ground of patent

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

illegality.

22. In the case of **OPG Power Generation Private Limited v. ENEXIO Power Cooling Solutions India Private Limited and Anr., (2025) 2 SCC 417,** while dealing with scope to interfere on the basis of reasoning and interpretation of terms of contract, Hon'ble Supreme Court observed as under: -

> *"**80**. We find ourselves in agreement with the view taken in **Dyna Technologes**, as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:*
>
> *(1) where no reasons are recorded, or the reasons recorded are unintelligible;*
>
> *(2) where reasons are improper, that is, they reveal a flaw in the decision-making process; and*
>
> *(3) where reasons appear inadequate.*
>
> ***81**. Awards falling in Category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless:*
>
> *(a) the parties have agreed that no reasons are to be given, or*
>
> *(b) the award is an arbitral award on agreed terms under Section 30.*
>
> ***82**. Awards falling in Category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.*
>
> ***83**. Awards falling in Category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the*

parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award.

Scope of interference with the interpretation/construction of a contract accorded in an arbitral award

84. *An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not intefere. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference.*

Whether unexpressed term can be read into a contract as an implied condition

85. *Ordinarily, terms of the contract are to be understood in the way the parties wanted and intended them to be. In agreements of arbitration, where party autonomy is the grund norm, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions used.*

86. *However, reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously* *intended by the parties thereto. An unexpressed term can be implied if, and only if, the court finds that the parties must have intended that term to form part of their contract. It is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them. Rather, it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, forms part of the contract.*

87. *But before an implied condition, not expressly found in the contract, is read into a contract, by invoking the business efficacy doctrine, it must satisfy the following five conditions:*

(a) it must be reasonable and equitable;

(b) it must be necessary to give business efficacy to the contract, that is, a term will not be implied if the contract is effective without it;

(c) it must be obvious that "it goes without saying";

(d) it must be capable of clear expression;

(e) it must not contradict any terms of the contract."

23. In the present case, in respect of Claim 1(b) (RCC columns/slab on open platform-single living accommodation), ld. Arbitrator partly allowed claim of respondent for Rs. 1,33,615/-, holding that drawings/specifications missed major structural details and such omissions were not "minor missing details". Ld. Arbitrator held that contractor's interpretation was correct, but he reworked a "reasonable cost" excluding minor works expected as normal practice.

24. Similarly, in respect of Claim 1(c) (mumty in Officers Mess), ld. Arbitrator again partly allowed the claim of contractor/respondent

for Rs. 1,10,000/-, holding that details were missed/unclear in drawings and petitioner initially tacitly accepted during the execution, and later denial of petitioner was not accepted. In respect of Claim 1(d) (sunken floors in toilets), ld. Arbitrator rejected the claim of respondent on the grounds that Schedule 'A' Note 1.16 clearly included sunken floors in lump sum and contractor, as an experienced MES contractor, should have understood the standard requirement.

25. Regarding Claim 1(e) (toughened synergy green glass vs sheet glass), ld. Arbitrator again partly allowed the claim for Rs. 1,35,600/-, holding that only the differential cost between toughened glass and sheet glass was payable. Ld. Arbitrator computed and awarded differential amount. Similarly, in respect of Claim 1(f) (vitrified tiles in lieu of specified flooring), ld. Arbitrator partly allowed the claim for Rs. 1,16,720/- over and above the paid amounts, after reviewing trade practice and accepted rates. Ld. Arbitrator took note of excessive quotes of price, and fixed amount for additional payment after making his calculations. Regarding Claim 1(g) (wall-hung EWC vs floor-mounted EWC), ld. Arbitrator allowed the claim to the extent of unpaid difference of Rs. 23,384/-, since change was payable and part payment had already been made. Ld. Arbitrator found balance due, based on evidence/price list discussion.

26. In respect of Claim 1(j) (designer glass panels/SS cleats, welding,

buffing/polishing in staircase), ld. Arbitrator partly allowed the claim for Rs. 20,234/-, holding that it was a petty/specialized job with limited market interest. Ld. Arbitrator awarded balance after considering that only a small amount had been paid via star rate. Regarding Claim 1(k) (acrylic sheet covering over pergola), ld. Arbitrator partly allowed the claim for Rs. 28,000/-, observing that petitioner had confirmed that pergola was covered with acrylic sheet (area 9.42 sqm) and accordingly, he held that contractor should be paid for acrylic plus supporting structure.

27. In respect of Claim 1(l) (cement base paint vs colour wash on boundary wall), ld. Arbitrator allowed the claim for Rs. 44,874/-, because ld. Arbitrator concluded that cement base paint had been provided by contractor and contractor was entitled for compensation at claimed rate differential. For Claim 1(n) (MS flat edging to drain covers-area drainage), ld. Arbitrator allowed the claim for Rs. 43,573/-, holding that petitioner had approved/used the covers and enjoyed the benefit. Ld. Arbitrator applied "non-gratuitous act" principle requiring compensation where benefit is taken.

28. In respect of Claim 1(o) (rough cast plaster and related quantity/payment on boundary wall), ld. Arbitrator partly allowed the claim for Rs. 66,381/-, because rough cast plaster was existing and petitioner was benefited. Ld. Arbitrator again relied on the non-gratuitous benefit rationale though reduced the claimed amount.

29. Claim 2 (interest/damages for delay in RAR/final bill payments)

was also partly allowed for Rs. 1,91,953/-, holding that DOs/AlPs were delayed and this delayed final bill. Ld. Arbitrator allowed interest @10% for 310 days. Claim 4 (escalation-material/labour/fuel; ultimately labour wages) was partly allowed for Rs. 28,62,916/-, holding that delays were largely attributable to petitioner and contractor should be compensated for labour-wage escalation under Condition 63 principles (only beyond 10%). Ld. Arbitrator computed labour escalation across 11 quarters and restricted compensation accordingly.

30. Claim 6 (refund of unauthorized recoveries in final bill, plus 18% damages; revised) was partly allowed for Rs. 2,00,000/- as refund, holding that this sum had been withheld as reserve for defect rectification. The defect cost was dealt by him separately under petitioner's counterclaim. Claim 7 (interest on blocked amounts-past, pendent lite, future) was also partly allowed. Past and pendente lite interest @10% was granted on awarded amounts for Claim 1 parts, 4, and 6 from 08.08.2012 to award date, and future interest @12% was granted on awarded amount w.e.f. lapse of 90-day from the date of award.

31. Counter Claim 1 (cost of rectification of defects) as made by petitioner was partly allowed for Rs. 1,52,000/-, holding that some defects persisted and contractor failed to prove full rectification. However, petitioner's assessed cost appeared high and tender cost was not confirmed, so Arbitrator reassessed to a lower reasonable

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

figure. Petitioner's Counter Claim 2 (damages for "distorting image" due to delay/defects) was rejected, holding that petitioner did not substantiate loss and delay was not solely contractor's fault. Ld. Arbitrator found that this claim was remote/indirect.

32. Petitioner has made contentions in general terms that ld. Arbitrator went beyond the contractual terms, but except for once clause 63, no other contractual term has been referred by petitioner. Petitioner has also alleged that amounts were fixed by ld. Arbitrator without mentioning the calculations. This contention overlooks the detailed discussion made by ld. Arbitrator, while dealing with each claim. In the operative part, ld. Arbitrator did not show the calculation, but that in itself cannot be a ground to interfere with the award. Some relevant part of observations given by ld. Arbitrator are as follows: -

> *"79.1 (b).7. Yet further, the Respondent had also admitted before the Arbitrator in the hearings held on 05.09.2014 & 06.09.2014 that the work executed by the Claimant was indeed an additional/extra work. However, the Respondent has sought to restrict its liability to pay for the extra work only towards the provisioning of reinforcement steel. Such a restriction is however illegal in as much as it is clear from the record that there was extra work of excavation, lean concrete, RCC, steel reinforcement, shuttering of foundation, column, pergola roof and finishing etc. and hence the complete expenditure on this account is liable to be recompensed to the Claimant. The detailed working out of the claim has already been submitted in Exhibit C-6 dated 13.8.2010 and Exhibit C-14 dated 8.3.2011 addressed to the Respondent. In view of the aforesaid facts and circumstances and the applicable law and contractual clauses, the Claimant most respectfully submits that the claim no. 1(b) of the Claimant is due to him and*

that the same may be awarded by the Arbitrator.

79.1 (b).8. It needs to be noted that the drafter of the contract has been so precise that he has specified items which are very minor in nature, then how could he omit the major items. The structural team missed out on the details. If the Drafter of the contract himself was not clear about the structures that he has sought how could he expect the contractor to find out the same. As such, the UOI had issued 4-5 amendments, how they could miss out such important ones. If the intention of the drafter was to seek this in the Lump sum contract, than he should have been precise and clearly mentioned the same. In the absence of any such listing of items in drgs / schedule A notes, which precisely define the details included in the lump sum cost, the defence of the Respondent UOI cannot be sustained. Therefore, I conclude that the interpretation of the contractor is correct. Therefore, additional work done extra by contractor are payable & these cannot be considered as minor details. As regards the financial effect worked out by claimant, I have re-worked out the reasonable cost as Rs 1, 33,615/leaving the other minor works that in any case the contractor would have done as good civil engineering practice.

79.1 (e).13. After having gone through the evidence, deliberations and the contract provisions; the difference in cost of the toughened glass and sheet glass is due to the contractor. Balance of the items provided by the contractor are as per the contract provisions and both the parties agreed to the contention during the hearing. I have worked out the cost differential between toughened glass and sheet glass and it works out to Rs. 1,55,600/-and is due to the contractor.

79.4.23. I have analyzed the documents, pleadings and considered all the submissions including case laws and the arguments of both the parties. Though the escalation perse was omitted but the condition 63 of GCC IAFW-2249 as forming part of the contract has been admitted by both the parties. The details are elaborated in the GCC however essence of which is that if the increase in the said prices/ wages is more than 10%, than the re-imbursement shall be *made only on the excess over 10%. I have worked out the escalation for all eleven quarters due to increase in labour wages which is as follows:*

(a) First Qr. : Qr from 13 Feb 09 to 12 May 09

KL = 20, Lo=142, L1=142 Vgl =0

EL = 20/100 x Vgl x L1 LO /LO

EI = 20/100 x 0 x 142-142/142 = 0 —————(a)

(b) Second Qr. : Qr from 13 May 09 to 12 Aug 09

KL = 20, Lo=142, L1=151 Vgl = 16,19,000

EL= 20/100 x 16,19,000 x 151-142/142 = 3,23,800 x 9/142 = 20,522.35 —————(b)

(c) Third Qr. : Qr from 13 Aug 09to 12 Nov 09

KL = 20, Lo=142, L1=180 Vgl = (21,65,000 -16,19,000) = 5,46,000

EL = 20/100 x 5,46,000 x 180 -142/142 = 1,09,200 x 38/142 = 29,222.53 —————(c)

(d) Fourth Qr. : Qr from 13 Nov 09 to 12 Feb 10

KL = 20, Lo=142, L1=203 Vgl = (57,59,000 - 21,65,000) = 35,94,000 EL = 35,94,000 x 20/100 x 203 142/142 =

7,18,800 x 61/142 = 3,08,780.28 —————(d)

(e) Vth Qr. : Qr from 13 Feb10 to 12 May

10 KL = 20, Lo=142, L1=203

Vgl = (90,17,900 57,90,000) = 32,58,900

EL = 20/100 x 32,58,900 x 203 142/142 =6,51,780 x 61/142 = 2,79,990.00 —————(e)

(f) Sixth Qr.: Qr from 13 May 10 to 12 Aug 10

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

KL = 20, Lo=142, L1=224 Vgl = (96,96,000-90,17,000) = 6,78,100

EL = 20/100 x 6,78,100 x 224 -142/142 = 1,35,620 x 82/141 =

78,315.77 ——————(f)

(g) Seventh Qr. : Qr from 13Aug 10to 12 Nov 10

KL = 20, Lo=142, L1=224 Vgl = (1,34,00,000 96,96,000) = 37,04,000

EL = 20/100 x 37,04,000 x 224 -142/142 = 7,40,800 x 82/142 = 4,27,785.91 ——————(g)

(h) Eighth Qr.: Qr from 13 Nov 10 to 12 Feb 11

KL = 20, Lo=142, L1=234 Vgl = (1,78,02,718 1,34,00,000) = 44,02,718.00

EL = 20/100 x 44,02,718 x 234 142/142 =8,80,543.60 x 92 /142 = 5,70,493.03 ----————(h)

(j) Ninth Qr.: Qr from 13 Feb11 to 12 May 11

KL = 20, Lo=142, L1=234 Vgl = (2,34,04,700 -1,78,02,718) = 56,01,982

EL = 20/100 x 56,01 ,982 x 234 -142/142 = 11,20,396.40 x 92 /142 = 7,25,890.62 ——————(j)

(k) Tenth Qr. : Qr from 13 May 11 to 12 Aug 11

KL = 20, Lo=142, L1=247

Vgl = (2,64,10,1000 2,34,04,700) = 30,05,300

EL = 20/100 x 30,05,300 X 247 142/142 = 6,01,060 X 105/142 = 4,44,445.77 ——————(k)

(l) Eleventh Qr. : Qr from 13 Aug 11 to 08 Nov 11

KL = 20, Lo=142, L1=247

Vgl = (2,86,24,113 2,64,10,000) = 22,14,113 EL = 20/100 X 22,14,113 x 247 -142/142 = 4,42,822.60 x 105/142 = 3,27,439.24 ——————(l)

SUMMARY (Lab Escalation)

(a) = 0

(b) = 20,522.35

(c) = 29,222.53

(d) = 3,08,780.28

(e) = 2,27,990.00

(f) = 78,315.77

(g) = 4,27,785.91

(h) = 5,70,493.03

(j) = 7,25,890.62

(k) = 4,44,445.77

(l) = 3,27,439.24

TOTAL = 32,12,885.55

79.4.24. In this contract, though the UOI has denied for paying anything to the contractor due to the condition 11 of GCC. In the instant case, the contractor has already deliberated on the delays in handing over site, changes, breaches, indecisions & delayed decisions, non finalization of AIPs & DOs, works on provisional schedules were held up due to number of changes/non finalization etc. Many of the changes were done even after the original date of completion and contractor was saddled to bear the impact of increase in prices of materials, fuel and labour wages. Since the root cause of delays were beyond the contractor's control and for the reasons arising out of the commission of contractual breaches at the hands of the UOI, which led to delays and consequent price rise due to market variations. The case laws mentioned at para 79.4.20 also supported the contactors contention. Non availability of site even till the original date of completion had clearly pushed the contract approx 13-14 months beyond the original completion date. The UOI is liable for the consequences of delay namely *increase in prices and wages in this inflationary age and the losses cannot be borne by the contractor and is very reasonable to award compensation against increase in prices/wages.*

79.4.25. I, as Arbitrator also contend that the contractor needs to be compensated for increase in labour wages only. As such it has been admitted by the UOI in their pleadings in defence that condition 63 of GCC (IAFW-2249) is forming part of the contract & the said condition was deliberated during the course of hearing. Despite the increase in wages is more than 10%, the contractor needs to be compensated only for the increase more than 10% of labour wages. For labour wages, the escalation works out to Rs. 32, 12,885/- as given herein above. The calculation is as per the empirical formula approved by the G of I and part of MES contracts (as calculated in Annexure).

79.4.26. As such, the calculations at Annexure XIII have not been adversely commented upon by the UOI. As per condition 58 of GCC (IAFW-2249), the contractor cannot pay to the labour less than the wage given by the Govt. and GE being the prime employer would have insured the same."

33. The above-mentioned observations are just sample of the kind of analysis done by ld. Arbitrator, before giving his findings. It is very much evident from the Award and the reasoning given by ld. Arbitrator, that certain deliberations had taken place in respect of particular calculation and claim before ld. Arbitrator and ld. Arbitrator was well guided by such deliberations also. All the findings given by him, are thus, based on factual analysis and the deliberations taken place before him. These factual findings are sought to be revisited by the petitioner, which is beyond the scope of ambit of Section 34 of the Act. Therefore, I do not find any

substance in the contentions of petitioner. Herein it is relevant to quote from the judgment relied upon by respondent as passed in the case of **UOI v. Associated Construction (supra)**, which said that *"**34.** It is not the case of the petitioner that the subject contract provide for a different formula to be applied in order to arrive at the quantification of the escalation due. It is the petitioner who had appointed the Arbitrator, who is not only a technical person but is also incidentally a serving officer of the petitioner. The very purpose behind the appointment of technical persons as Arbitrators is that they may use their expertise and experience in the field to be able to resolve technical and trade-specific disputes between the parties. Once such a technical and factual determination has been carried out, it is not open to the petitioner to make a grievance about the same merely because the said determination was not to its liking."* It is worth to mention that above-mentioned case was also based on similar contractual terms and Hon'ble High Court of Delhi dealt with the arguments based on Clause 63, to contest the claim for escalated cost. Hon'ble High Court had rejected such contentions.

34. As regards interest, in the case of ***Irrigation Deptt., Govt. of Orissa v. G.C. Roy,* (1992) 1 SCC 508**, Hon'ble Supreme Court held as under: -

> ***"43.*** *The question still remains whether arbitrator has the power to award interest pendente lite, and if so on what principle. We must reiterate that we are dealing with the situation where the agreement*

does not provide for grant of such interest nor does it prohibit such grant. In other words, we are dealing with a case where the agreement is silent as to award of interest. On a conspectus of aforementioned decisions, the following principles emerge:

(i) A person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages. This basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the arbitrator entering upon the reference. This is the principle of Section 34, Civil Procedure Code and there is no reason or principle to hold otherwise in the case of arbitrator.

(ii) An arbitrator is an alternative form (sic forum) for resolution of disputes arising between the parties. If so, he must have the power to decide all the disputes or differences arising between the parties. If the arbitrator has no power to award interest pendente lite, the party claiming it would have to approach the court for that purpose, even though he may have obtained satisfaction in respect of other claims from the arbitrator. This would lead to multiplicity of proceedings.

(iii) An arbitrator is the creature of an agreement. It is open to the parties to confer upon him such powers and prescribe such procedure for him to follow, as they think fit, so long as they are not opposed to law. (The proviso to Section 41 and Section 3 of Arbitration Act illustrate this point). All the same, the agreement must be in conformity with law. The arbitrator must also act and make his award in accordance with the general law of the land and the agreement.

(iv) Over the years, the English and Indian courts have acted on the assumption that where the agreement does not prohibit and a party to the reference makes a claim for interest, the arbitrator must have the power to award interest pendente lite. Thawardas [Seth Thawardas Pherumal v. Union of India, (1955) 2 SCR 48 : AIR 1955 SC 468] has not been followed in the later decisions of this Court. It has been

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

explained and distinguished on the basis that in that case there was no claim for interest but only a claim for unliquidated damages. It has been said repeatedly that observations in the said judgment were not intended to lay down any such absolute or universal rule as they appear to, on first impression. Until Jena case [(1988) 1 SCC 418 : (1988) 1 SCR 253] almost all the courts in the country had upheld the power of the arbitrator to award interest pendente lite. Continuity and certainty is a highly desirable feature of law.

(v) Interest pendente lite is not a matter of substantive law, like interest for the period anterior to reference (pre-reference period). For doing complete justice between the parties, such power has always been inferred."

DECISION

35. In view of my foregoing discussions, observations and findings, I find that objections raised by petitioner do not satisfy the requirement of S.34 of the Act, so as to interfere with the award in question. Hence, petition is dismissed.

File be consigned to record room after due compliance.

PULASTYA PRAMACHALA

Digitally signed by PULASTYA PRAMACHALA
Date: 2026.06.04 15:11:38 +0530

Pronounced in the Open Court on this 04th Day of June, 2026

(PULASTYA PRAMACHALA)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi