MHPU01-015875-2017

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<u>IN THE COURT OF DISTRICT JUDGE – 2, PUNE</u>

(<u>PRESIDED OVER BY P. Y. LADEKAR</u>)

<u>CIVIL MISCELLANEOUS APPLICATION NO.1199 OF 2017</u>

UNION OF INDIA
Represented by Chief Engineer,
Pune Zone Military Engineer Services,
Dakhsin Kaman Marg, Pune 411 001. **... <u>APPLICANT</u>**

Vs.

1. **M/S Arun Kumar Deedwania Engineers & Builders**
   Arunodaya, 21 Balaji Park,
   Behind Anand Park, Baner,
   Pune – 411007.

2. **Sudesh Kumar Gupta**
   ADG (QS&C), Sole Arbitrator
   Panel of Arbitrators (Chandigarh)
   Madhumati Marg,
   Chandimandir – 134107
   State - Haryana. **... <u>RESPONDENTS</u>**

Shri. K. D. Ratnaparkhi, Counsel for the Applicant.
Shri. S. R. Firodiya, Counsel for the Respondents.

<u>J U D G M E N T</u>

(Delivered on 06th Day of August, 2026)

Aggrieved by the arbitral award dated 18/09/2017, the applicant Union of India (Original Respondent) preferred instant application partly challenging the award in favour of the respondent (Original Claimant) on the grounds under Section 34(2)a(iv) r-w Section 34(b)(ii) r/w Section 31(3), 31(7) r-w Section 31(8) of the Arbitration and Conciliation Act, 1996 (for short the Act).

2. Briefly stated facts leading to the dispute before the Arbitral TribuNal are that the respondent No.1 is enlisted contractor and for Provision of Central Library at AFMC, Pune as per the terms and conditions of the contract between the parties, a work order was given to the respondent No.1 on 01/07/2005 for completing the project within eighteen months by 08/01/2007 as commencement date was 09/07/2005. However, there was delay and the work was finally completed on 31/03/2010. The contract was concluded between the parties for an amount of Rs.2,22,99,990.68.

3. The respondent was granted extension as per condition No.11(A)(vii) of the General Conditions of the Contract. The respondent No.1 has raised the final bill and undisputed portion of the final bill was passed on 21/04/2017.

4. Then the respondent No.1 raised the dispute and the Sole Arbitrator was appointed. The respondent has put forth four claims before the Arbitral Tribunal. The Arbitrator has framed following issues and passed the impugned award :

1. *Whether or not the Claimant is stopped from raising material escalation claim without freezing indices, when he had claimed payment in RAR's in respect of material escalation with freezing indices ?*

2. *Whether or not the Claimant is entitled for material escalation without freezing indices, when period of completion of the work was extended and in view of definition of W1 given in the CA ?*

<u>GROUNDS OF CHALLENGE</u>

5. As against the claim No.1, the Arbitral Tribunal has directed to pay an amount of Rs.14,89,663/- on account of balance payments for the works done including deviations and escalations. By ignoring the provision in clause 11(c) of the General Conditions of the Contract which stipulated that the price index as applicable on the date of commencement of the last period of reckoning before the original completion date only be applicable during the extended period. So there was no question of escalation for delay in the contract for whatsoever reason.

6. The Arbitral Tribunal has also wrongly interpreted the issue of non-applicability of freezed price index for extended date of completion beyond the contract period and travelled beyond his jurisdiction by interpreting the contract condition as per his own perception when there is no ambiguity in the said condition and against the terms of the contract allowed the claim of material escalation up to the actual date of completion by non freezing the price index. As per special condition No.18.2 of the contract agreement, the freeze price index as on prior to original last date of completion was applicable for the escalation and the award granting escalation beyond the expressly agreed provision is contrary to the provision under Section 28(3) of the Act. The claim awarded by the Arbitral Tribunal to the extent Rs.31,74,015/- in lieu of

Rs.19,63,325.74 i.e. Rs.12,10,689.26 is factually incorrect and contrary to the provision of law and the contract.

7. The Arbitral Tribunal has granted an amount of Rs.6,29,515/- towards consequences of contractual breaches including delay in handing over of site and keeping the contract on hold which the respondent No.1 was not at all entitled for remote and indirect losses and though no evidence was adduced to prove it. The award is also challenged on the grant of interest @ 12% per annum against the provisions of Section 31 of the Act and therefore, the applicant has prayed for setting aside the awared to the extent of the claims under challenge.

8. Ld. Counsels for both the parties have filed a praecipe that all the relevant record of the arbitral proceeding has been filed in the Court though entire set of arbitral proceeding is not filed.

DISCUSSION

9. As per the applicant, the Arbitral Tribunal has wrongly interpreted the issue of non-applicability of freeze price index for the extended period of completion beyond contract provisions. In the contract there was specific provision that as per special condition 18.2, the freeze price index for the material for the extended period of completion beyond the original date of completion of contract was not allowed and therefore, the Arbitral Tribunal has not considererd the contractual provision which is against the privision under Section 28(3) of the Act. Further, the Arbitral Tribunal has also not considered that as per the general condition 11-A(vii) and the

extension granted there was nil financial effect and those extensions were signed by the respondent without any reservations and therefore, the Arbitral Tribunal again committed violation of the terms of the contract between the parties which is a patent illegality. The Arbitral Tribunal has granted amount of Rs.5,74,515/- for delayed and under payments but as per the provisions of law, the respondent was not entitled for remote and indirect loss which is contrary to the provisions of law and the contract. Further the Arbitral Tribunal has granted rate of interest of 12% much higher than RBI fixed deposit current rate of interest @ 6% per annum plus 2% above it which can be awarded as per the provision under Section 31 of the Act and therefore, the interest rate ought to be reduced to 8%. Accordingly, the applicant prayed for setting aside the award to the extent of claims under challenge.

10. In reply, the respondent has opposed the application and fully supported the award and the reasons given by the Arbitral Tribunal. It is submitted by the respondent that the application is misconceived and not tenable in law. The applicant is trying to file an appeal against the arbitral proceeding which is not permissible as per provisions of Section 34 of the Act. The award is passed after taking into account facts brought before it and those facts cannot be reopened by this Court. The views taken by the Arbitrator are plausible views and the jurisdiction of the Court to interfere with an award is limited to the extent of the provisions under Section 34(2) of the Act. In absence of any ground under Section 34(2) of the Act, the Court cannot re-examine the facts to find out whether any different decision could have been arrived at. It is also submitted

that this Court cannot re-appreciate the evidence and facts or sufficiency or insufficiency of the evidence. It cannot be said that the Arbitral Tribunal has ignored the provision of clause 11(c) of the General Conditions of Contract or wrongfully interpreted the issue of freeze price index for the extended date of completion beyond the contract provision. The Arbitral Tribunal has rightly used its discretion while awarding the interest. As per the respondent, the applicant has not made out any of the grounds for interference in the impugned award and therefore, the application be dismissed with costs.

11. The Arbitral Tribunal has formulated four claims as under :

Claim No.1 : Balance payment for the work done including deviation and escalation and claimed amount 22,09,350/-.

The Arbitral Tribunal awarded Rs.14,89,633/- by including consequences of market escalation after the date of initial completion of the contract.

Claim No.2 : Consequences of contractual breaches includind delays in not handing over of site and keeping the contract on hold. Amount claimed of Rs.63,10,066/-.

The Arbitral Tribunal sub-divided this claim in the following categories :

(a) Delay in handing over buildings for demolition/handing over of site : Rejected.

(b) Commitment of Claimant for additional 38 months beyond what was contemplated at the time of making the contract : Rejected.

(c) Delayed and underpayment of RAR : Award amount of Rs.5,74,515/-.

(d) Consequences of market escalations : Considered under Claim No.1.

(e) Losses on account of Respondent not appointing the arbitrator and forcing the Claimant to legal recours : Rs.55,000/-. Total awarded sum Rs.5,74,515/- + Rs.55,000/- = Rs.6,29,515/-.

Claim No.3 : Interest on delays from the dates due to date of payment @ 20% p.a. :

Awarded interest @ 12% p.a. w.e.f. 01/01/2011 till the date of award and simple interest @ 12% p.a. after three months of the date of award if amount is not paid within that time.

Claim No.4 : Cost of Arbitration. Claimed Rs.2,30,000/- by the claimant.

The Arbitral Tribunal awarded Rs.1,45,000/-. (Award on Claim No.4 is not challenged.)

So, the Arbitral Tribunal has awarded an amount Rs.34,64,723.40 along with interest @ 12% per annum, if the amount is not paid within three months of the award.

12. The above challenge is in respect of two issues framed by the Arbitral Tribunal as mentioned hereinabove.

13. It is matter of record that the respondent was enlisted contractor and the work order was given on 01/07/2005, the commencement date was 09/07/2005 and eighteen months period

for completion of work was up to 08/01/2007 however, the work was completed on 31/10/2010 and in the meantime there were various extensions granted for the delay caused in the project.

14. The applicant in the final bill has granted escalation of the statutory wages beyond the period of initial completion date of the contract and the amount was Rs.19,63,325.74.

15. The dispute before the Arbitral Tribunal was as regards the damages and also the amount in respect of the material escalation in the meantime and the Arbitral Tribunal has granted the amount of escalation claimed by the respondent over and above the escalation amount granted by the applicant.

16. As per Ld. Counsel for the applicant, the Arbitral Tribunal has committed patent illegality by totally disregarding the terms and conditions of the contract in particular the condition that in this type of contract, in case of delay in completion, the contractor cannot claim escalation beyond the freezing date i.e. initial date of completion of the contract as regards the material escalation. For this purpose, Ld. Counsel has referred to condition No.11(c) of the General Condition of contract, the order-sheets dated 31/08/2007, 12/09/2007, 11/02/2008, 30/01/2009, 10/09/2009 (Five Orders) whereby time to time extension was granted for the completion of the contract. So according to Ld. Counsel for the applicant when the respondent has accepted the extensions without any reservation and those extensions were without any financial implications, the Arbitral Tribunal has committed patent illegality by disregarding the terms and conditions of the contract and also various orders and made the

applicant solely responsible for delay which was not the case during the continuation of the contract between the parties from the side of the respondent.

17. In support of the argument Ld. Counsel relied on the Judgment in **M/s. MSK Projects (I) (JV) Ltd. v. State of Rajasthan and Anr. – AIR 2011 SUPREME COURT 2979**, wherein the Hon'ble Supreme Court has held that, "*Award against terms and conditions of the contract is liable to be set aside*." Further it is submitted that when there was a special condition in the contract i.e. Condition 18.2 of the General Conditions of Contract whereby the indices have to be defreezed on the date of initial completion of date of contract there was no question of considering the escalation for extended period by the Arbitral Tribunal as held by the Hon'ble Supreme Court in **Ramnath International Construction Pvt. v. Union of India & Anr. – 2006 DGLS(SC) 1145**. Similarly, Ld. Counsel relied on the Judgment in **Oil & Natural Gas Corporation v. M/s. Wig Brothers Builders & Engineers Pvt. Ltd. – Civil Appeal No.8817 of 2010 – Arising out of SLP (C) No.12188/2009** in which as per para Nos.6 and 7 of the Judgment reliance has been placed by the Hon'ble Supreme Court in the Judgment of **Ramnath International Construction Pvt.** (Supra) and it was held that, "*The award against the bar contending condition 11(C) of the General Conditions of Contract is liable to be rejected*." Then on the same point Judgment of the Hon'ble Bombay High Court in **Union of India v. M/s. KR. Traders & Ors. – Arbitration Appeal No.8 of 2009 IN Appeal No.798 of 2005 IN Award Dated 19th June, 2005** in para No.32 it was observed that in view of **Ramnath International Construction Pvt.** Judgment (Supra), the respondent

cannot take assistance of **Union of India v. Moti Enterprises and Another – 2003(1) Mh.L.J. 930**.

18. Ld. Counsel while pressing the point that the award being against the terms and conditions of the contract and it amounts to patent illegality relied on the Judgment in **PSA Sical Terminals Pvt. Ltd. v. The Board of Trustees of V.O. Chidambranar Port Trust Tutikorin and Others – Civil Appeal Nos.3699-3700 of 2018** wherein it is held by the Hon'ble Supreme Court that, "*An award against the contract terms or rewriting the contract terms is patently illegal*." Similar was the view of the Hon'ble Supreme Court in **SEPCO Electric Power Construction Corporation v. GMR Kamalanga Energy Limited – 2025 DGLS(SC) 1272**.

19. Per contra, Ld. Counsel for the respondent while fully supporting the award would say that the scope of the interference in the award under Section 34 of the Act is very limited. This Court cannot re-appreciate the evidence, this Court will have to consider that the Arbitral Tribunal is the master of question of fact and the decision of the Arbitral Tribunal about the escalation and also damages having been granted is based on the appreciation of the facts and this Court cannot interfere in the said findings on the grounds that some less or more facts have been considered by the Arbitral Tribunal and if the view of the Arbitral Tribunal is plausible then also this Court cannot interfere by re-appreciating the facts and circumstances. According to Ld. Counsel for the respondent there was no patent illegality or over looking the terms and conditions of the contract.

20. The Arbitral Tribunal has specifically arrived at conclusion from the evidence brought on record that most of the reasons for delay were attributable to the applicant and therefore, the Arbitral Tribunal was right in holding the escalation cannot be freezed as on the initial date of completion of the contract and the respondent was entitled to get the escalation in respect of the material also. Therefore, as per Ld. Counsel for the respondent this Court cannot interfere in the award.

21. Ld. Counsel for the respondent also submitted that the Judgment in **Ramnath International Construction Pvt.** (Supra) is not at all applicable because the Hon'ble Supreme Court in the subsequent Judgment in **Asian Techs Limited v. Union of India and Others – (2009) 10 Supreme Court Cases 354** has held that clause 11 of the General Conditions of Contract only prohibits the department from entitlement of the claim but it did not prohibit the Arbitrator from considering entitlement and therefore, according to Ld. Counsel for the respondent Judgment in **Ramnath International Construction Pvt.** (Supra) which was based on the earlier Judgment of the Hon'ble Supreme Court in **Associated Engineering Company v. Government of A.P. - (1991) 4 SCC 43** but in the case of K.R. Raveendranathan v. State of Kerala and Another – (1996) 10 Supreme Court Cases 35 by observing that the Judgment in **Associated Engineering Company** (Supra) and **Sudarshan Trading Co. v. Govt. of Kerala (1989) 2 SCC 38** were conflicting Judgments and the matter was referred to the Three Judges Bench and the Hon'ble Supreme Court in **Collector of Central Excise v. Malleable Iron & Steel Castings Co. (P) Ltd. - (1998) 9 Supreme Court Cases 410 (II)** has followed the Judgment of

Sudarshan Trading Co. (Supra) and therefore, according to Ld. Counsel for the respondent, Judgment in **Ramnath International Construction Pvt.** (Supra) was *per incuriam*.

22. Similarly about the claim of escalation granted because of delay on the part of the applicant, reliance is placed on **Ravindra Kumar Gupta and Company v. Union of India – (2010) 1 Supreme Court Cases 409** wherein it is held that, "*When the delay is attributable to Union of India, the claim for losses made by the contractor is sustainable*." On the prolongation of the contract period, Ld. Counsel also relied on the Judgment in **Union of India and Others v. Puran Chand Diwan and Another – 2011 SCC OnLine P&H 3646**, **M/s. Shyama Charan Agarwala & Sons v. Union of India – 1997 SCC OnLine Bom 579**. As regards condition No.11(C) of General Conditions of Contract, the reliance is placed on the Judgment in **Union of India v. Moti Enterprises and Another** (Supra) wherein the payment of the balance escalation due on account of material and fuel and for additional overhead and supervision and headquarters expenses for the prolonged period of the contract was considered.

23. Ld. Counsel for the respondent also argued that the clauses which disentitle the contractor to claim its just claims or damages cannot be held against the contractor by virtue of provisions under Sections 73 and 55 of the Contract Act as such conditions are void under Section 23 of the Contract Act and for this purpose, he relied on the Judgment in **Simplex Concrete Piles (India) Ltd. v. Union of India – ILR (2010) II Delhi**.

24. Then on the freezing price index, Ld. Counsel submitted that as the delay was mostly on the part of the Union of India, the Arbitral Tribunal has rightly considered it and to support this argument, he has relied on the Judgment in **Union of India v. Ktech Engineers Builders Pvt. Ltd. & Anr. - O.M.P. 333/2014**, in the said Judgment the Hon'ble Delhi High Court while considering the clause 11(A) and 11(C) of the General Conditions of Contract has discussed the Judgments in **Ramnath International Construction Pvt.** (Supra) and **Asian Techs Limited** (Supra) and in para No.19 it is observed that, "*It is for the Hon'ble Supreme Court itself to consider whether at all these two Judgments are in conflict with each other and then decided the application only on the basis of the decision that contractual clauses which prohibit the entitlement to rightful damages of a person is clearly hit and are void by virtue of Sectionn 23 of the Contract Act.*"

25. It appears from para No.21 of the Judgment in **Asian Techs Limited** (Supra) that the clause 11 prohibits the department from entertaining the claim but does not prohibit the Arbitrator from entertaining such claim. Para No.21 reads thus :

"*21. Apart from the above, it has been held by this Court in Port of Calcutta v. Engineers-De-Space-Age that a clause like clause 11 only prohibits the Department from entertaining the claim, but it did not prohibit the arbitrator from entertaining it. This view has been followed by another Bench of this Court in Bharat Drilling & Treatment (P) Ltd. vs. State of Jharkhand.*" Whereas the Judgment in **Ramnath International Construction Pvt.** (Supra) in para No.11, General Conditions of Contract under clause 11 has been reproduced and then in para No.12 the following observations were made :

"*12. We are fortified in this view by several decision of this Court. We may refer to two of them. In Associated Engineering Co. vs. Government of Andhra Pradesh [1991 (4) SCC 93] this Court was concerned with an appeal which related to similar claims based on delays in execution. The High Court had held (reported in AIR 1990 AP 294) thus :*

Applying the principle of the above decision to the facts of the case before us, it must be held that clause 59 bars a claim for compensation on account of any delays or hindrances caused by the department. In such a case, the contractor is entitled only to extension of the period of contract. Indeed, such an extension was asked for, and granted on more than one occasion. (The penalty levied for completing the work beyond the extended period of contract has been waived in this case). The contract was not avoided by the contractor, but he chose to complete the work within the extended time. In such a case, the claim for compensation is clearly barred by clause 59 -of the APDSS which is admittedly, a term of the agreement between the parties." and in para No.13 of the Judgment on the facts of that case it was observed that, "*There were partial breaches committed by the department and also held that both were responsible for the delay but still granting compensation by overlooking clause 11(C) of General Conditions of Contract was clear exceeding of his jurisdiction in awarding damages by ignoring the said clause.*"

26. In my humble view, the Judgments in **Ramnath International Construction Pvt.** (Supra) and **Asian Techs Limited** (Supra) are slightly distinguishable and not in conflict. In **Asian Techs Limited** (Supra) the Hon'ble Supreme Court has held that the clause 11(C) for entertaining compensation would operate against the department but the Arbitrator can consider the claims. In **Asian Techs Limited** (Supra) it appears that the Hon'ble Supreme Court has considered that whether the Arbitral Tribunal can consider such claim or not and in **Ramnath International Construction Pvt.** (Supra) case, the Hon'ble Supreme Court on the basis of the facts and circumstances has held that, "*When the Arbitral Tribunal has attributed reasons for delay on both the parties and then condition was that no damages, compensation otherwise be claimed but still putting blame on one party and granting damages was against conditions of the General Conditions of Contract.*"

27. Having considered the arguments of Ld. Counsels for both the parties and also keeping in mind the limitation on the powers of this Court under Section 34 of the Act, it would be apposite to refer to the aribtral award.

28. Perusal of the arbitral award indicates that the Arbitral Tribunal has referred to the submissions of both the parties and decided the issue No.1 on page No.29 para No.48 by giving following three reasons :

"*(i) I have noticed that the Claimant has claimed material escalation by freezing indices in RAR's. I have also noticed that the Claimant has claimed material escalation payment in the arbitration* *without freezing indices. As per Condition 64 of GCC, RAR payment is an advance payment, therefore, it cannot be said that payment claimed in RAR is a final payment and therefore, binding upon the Claimant.*

(ii) The Contractor always tries to avoid dispute during currency of contract and paramount consideration is to complete the work, if the Contractor raises the dispute, there is always a possibility that employer would not release the RAR payment or delay the payment, which would affect the progress of work.

(iii) I have noticed that the Claimant has not given any written undertaking that whatever amount claimed in RAR is a final payment and that subsequently, he would not claim payment beyond that amount. Since, RAR payment is an interim payment in my view, principle of estopple is not attracted. Therefore, in my considered opinion, the Claimant is not stopped from raising the clairn of material escalation without freezing indices."

29. These three reasons do not indicate what were the grounds on which the extension was granted, whether the applicant had accepted its faults while granting those extensions and even condition No.11(C) of General Conditions of Contract is also not referred. Apparently while deciding issue No.1, the Arbitral Tribunal has not at all referred or even discussed the five approvals of extensions granted when they were produced before the Arbitral Tribunal and perusal of these extensions show that as per the item No.5, it was specifically agreed as under :

"*5. In agreeing to this extension of time granted under condition of IAFW-2249, it is an express condition agreed to by both* *the parties, that other conditions of contract shall still hold good. The contractor shall have no claim of compensation what SO ever on account of this extension of time.*"

30. All these extensions indicate there would be nil financial effect. The extension was granted under clause 11(A) and the said clause as reproduced hereinbelow, nowhere indicates that they were in respect of the reasons which are solely attributable to the applicant and the clause 11(A) is distinguishable from clause 11(B) which is in respect of the delay due to non-availability of Government Stores etc. Clause No.11(A) reads thus :

"*11. Time, Delay and Extension -*

(A) Time is of the essence of the Contract and is specified in the contract documents or in each individual Works Order.

As soon as possible after Contract is let or any substantial Works Order is placed and before Work under it is begun, the G. E. and the Contractor shall agree upon a ***Time and Progress Chart****. The Chart shall be prepared in direct relation to the time stated in the contract documents or the Works Order for completion of the individual items thereof and/or the Contract or Works Order as a whole. It shall indicate the forecast of the dates for commencement and completion of the various trade processes or sections of the work, and shall be amended as may be required by agreement between the G. E. and the Contractor within the limitation of time imposed in the contract documents or Works Order. If the Works be delayed : -*

(i) by force majeure, or

(ii) by reason of abnormally bad weather, or

(iii) by reason of serious loss or damage by fire, or

(iv) by reason of civil commotion, local combinationof workmen, strike or lockout, affecting any of the trades employed on the work, or

(v) by reason of delay on part of nominated sub-contractors, or nominated suppliers which the Contractor has, in the opinion of G.E., taken all practicable steps to avoid, or reduce, or

(vi) by reason of delay on the part of Contractors or tradesmen engaged by Government in executing works not forming part of the contract, or

(vii) by reason of any other cause, which in the absolute discretion of the Accepting Officer is beyond the Contractor's control;

then, in any such case the Officer hereinafter mentioned may make fair and reasonable extension in the completion dates of individual items or groups of items of Works for which separate periods of completion are mentioned in the contract documents or Works Order, as applicable.

Upon the happening of any such event causing delay, the Contractor shall immediately, but not later than 30 days of the happening of the event, give notice thereof in writing to the G.E. but shall nevertheless use constantly his best endeavour to prevent or make good the delay and shall do all that may reasonably be required to the satisfaction of G.E. to proceed with the works. Extension of time shall be granted as under: -

(a) by G.E. for all Term Contracts;
(b) by Accepting Officer of the contract for all other Contracts.

In case the Contractor fails to notify the G.E. of happening of an event(s) causing delay within the period of 30 days stipulated in sub-para 3 above, he shall forfeit his right to claim extension of time for the delay caused due to such event(s).

Extension of time, as granted above, shall be communicated to the Contractor by G.E. in writing and shall be final and binding.

PROVIDED THAT in the case of contracts (other than Term Contracts) accepted by the G.E., in the event of the Contractor not agreeing to the extension granted by the G. E., the matter shall be referred to the C.W.E. whose decision shall be final and binding.

Judgments relied by both the parties on this point are based on factual matrix and contemporaneous conduct of the parties. So in this case also what was the conduct of parties is relevant. In the instant case reasons below issue No.1 discussed by the Arbitral Tribunal show that they are based on 'possibility' and 'opinion' and not the documentary evidence read with above conditions of contract.

31. It was not the case of the respondent that when the delay on account of the reasons attributable to the applicant occurred, he has accepted the extension under protest or he has made any claim for material escalation till completion of the contract. The general terms and conditions of the contract and collective reading of the Judgments indicate, in case the contractor cannot complete the work and it is financially not viable but then if the department still insist then the contractor can claim material escalation or even damages and in such case grant of escalation is justified. But the record shows that the respondent never raised any objection or desire to leave contract due to delay or material escalations and extensions were granted for reasons beyond control of the contractor with Nil financial burden then certainly the Arbitral Tribunal has committed patent illegality in granting material escalations. Further there was clear fact that extensions were not under clause 11(B) i.e. due to fault of respondent. Arbitral Tribunal has violated this condition in

granting the amount which Arbitral Tribunal being creation of contract cannot do.

32. The other question is freezing of escalation on the date of initial completion of the contract. It is not in dispute that there was express stipulation in terms and conditions of the contract which are to be completed within eighteen months that except statutory escalation like wages no other material escalation be granted without freezing indices.

33. From the reasons on this count given by the Arbitral Tribunal while discussing issue Nos.1 and 2, it appears that the Arbitral Tribunal has given its own reason that the contractor always tries to avoid dispute during currency of contract and paramount consideration is to complete the work and it was one amongst the other reasons [(Para No.48 (i)(ii)(iii)] for granting material escalation without freezing indices and even the damages of Rs.63,10,066/- as per claim No.2 of the respondent, the Arbitral Tribunal after considering the submissions apparently considered the delayed payments of RAR's whereas RAR's are considered as advance payment in **Union of India v. Richa Constructions – Arbitration Petition No.534 of 2017 ALONGWITH Notice of Motion No.590 of 2018 IN Arbitration Petition No.534 of 2017** as held in the Judgment of **P. Radhakrishna Murthy v. National Buildings Construction Corporation Ltd. - 2013(4) Mh.L.J. 11** "*The Arbitrator cannot act irrationally, arbitrarily, capriciously and independently of the contract conditions*" and as per para No.85 of the award, the Arbitral Tribunal in the last sentence has observed that he has assessed the

claim himself and it works out to Rs.5,74,515/-. Nowhere in the reasons any calculation or justification based on evidence used to arrive at that particular figure is given by the Arbitral Tribunal. It appears that in penultimate sentence of the same paragraph, the Arbitrator has observed that he considered 12% as a reasonable compensation. But then the award is totally silent as to what would be the calculation on which 12% amount would be reasonable. It may indicate that the Arbitral Tribunal has just considered amount claimed by the contractor. So the damages of Rs.5,74,515/- are apparently on the basis of the claim assessed by the Arbitrator himself without giving any reason whatsoever or calculation. Certainly such type of finding is hit by provision under Section 34 of the Act.

INTEREST

34. The next challenge was grant of 12% interest by the Arbitral Tribunal. As per the Ld. Counsel for the applicant when the award was passed in the year 2017, the interest payable on bank deposit was around 6% and therefore, the Arbitral Tribunal ought to have awarded the interest of 6% or at the most 8% i.e. more by 2% on prevailing rate of interest, but award of 12% interest is illegal and arbitrary which is against the provision of Section 31 of the Act.

In support of his submission about the excessive rate of interest, Ld. Counsel relied on the Judgment in **Vedanta Ltd. v. Shenzen Shandong Nuclear Power Construction Co. Ltd. - AIR 2018 SUPREME COURT 4773**, wherein it is observed that, "*The interest granted pendente lite and post award should be granted keeping in* *view of the economic reforms and changing economic conditions*." In this case, the Hon'ble Supreme Court reduced the rate of interest.

35. Then in **Union of India and Others v. Larsen and Tubro Limited (L&T) – 2026 DGLS(SC) 217**, it is observed that, "*The post award interest should be awarded keeping in view the statutory benchmark of award of interest @ 2% over the current rate of interest on bank deposits*." Similar was the view in **Gayatri Balasamy v. M/S. ISG Novasoft Technologies Limited – 2025 0 Supreme(SC) 751** . In **Gayatri Balasamy** (Supra), the Hon'ble Supreme Court has also discussed the Doctrine of Severability and it was held that, "*The part of the award which is severable can be set aside by the Court*."

36. On the other hand, Ld. Counsel for the respondent while supporting the rate of interest awarded by the Arbitral Tribunal, relied upon the Judgment in **State of Maharashtra v. Khare and Tarkunde Infrastructure Pvt. Ltd., Nagpur and Another – (2021 SCC OnLine Bom 220)**, wherein the interest of 25% awarded by the Arbitral Tribunal was reduced to 18% per annum.

37. So far as the award of interest and powers of the Arbitral Tribunal are concerned provision of Section 31(7) are relevant and they are reproduced as follows :

> *"Section 31(7)(a) : Unless otherwise agreed by the parties, where and insofar as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date*

> *on which the cause of action arose and the date on which the award is made.*
>
> *(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.*
>
> *Explanation.—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).].*"

38. Bare reading of these provisions indicate that the interest awarded by the Arbitral Tribunal should be reasonable and the word reasonable requires application of mind by the Arbitral Tribunal and justification for granting particular rate of interest.

39. Perusal of the award indicates that as per claim No.3, the interest @ 20% per annum was claimed. The Arbitral Tribunal has referred to the provisions of the Interest Act, 1978, Section 34 of C.P.C. and Section 31(7) of the Act and also referred to the Judgments relied upon by the claimant, **I T Expressway Limited v. M/s. Ascent Engineers & Ors. O. P. No.383 of 2012** wherein 12% interest was granted and in **M/s. Hyder Consulting (UK) Ltd. v. Governor, State of Orissa Through Chief Engineer – AIR 2015 Supreme Court 856**, wherein also 12% interest was granted and accordingly, 12% interest per annum was granted by the Arbitral Tribunal.

40. It is to be noted that the contractual period was from the year 2005 to 2007, the contract was completed in the year 2010, certainly during that period, rate of interest was not 6% per annum on bank deposit. Ld. Counsel for the applicant has relied on the rate of interest in the year 2017. But when the Arbitral Tribunal has placed reliance on the Judgments of the Hon'ble Supreme Court in the year 2013 and 2015 which were more closure to the period of dispute between the parties, it cannot be said that the applicant has succeeded in bringing out that the rate of interest awarded by the Arbitral Tribunal is unreasonable and without any justification. Therefore, the applicant cannot succeed in challenging the rate of interest awarded by the Arbitral Tribunal.

41. Having decided hereinabove that the Arbitral Tribunal committed patent illegality as well as gone beyond the terms and conditions of the contract while awarding the material escalation beyond the freezing indices as on the date of initial completion of the contract and also granting damages of Rs.5,74,515/- without any calculation or justification for arriving at such figure on the basis of any evidence, the applicant succeed partially and as per the Doctrine of Severability as held applicable in **Gayatri Balasamy** case (Supra), the award to the extent of these two amounts is severable and accordingly, I pass following order :

O R D E R

1. The application is partly allowed.
2. The Arbitral Award granting material escalation of Rs.14,89,633/- and damages of Rs.5,74,515/- is set aside being severable from rest of the Award.

3. In light of the facts and circumstances discussed hereinabove easy on costs.

(Dictated and pronounced in open Court.)

PRADIP YESHWANT LADEKAR
Digitally signed by PRADIP YESHWANT LADEKAR
Date: 2026.08.17 18:23:50 +0530

(P. Y. Ladekar)
District Judge – 2 and
Commercial Court, Pune.

Pune.
Date : 06/08/2026

CERTIFICATE

I affirms that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Court Name	:	P. Y. Ladekar District Judge – 2 and Commercial Court, Pune.
Name of Steno	:	Abhishek Arun Gite (Stenographer Grade - I)
Date of Judgment	:	06/08/2026
Judgment signed by Presiding Officer on	:	17/08/2026
Judgment PDF and Uploaded on	:	17/08/2026