

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 763 of 2012**

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MODERN DENIM LIMITED**Versus****KIRTI BUILDERS ENGINEERS & CONTRACTOR**

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Appearance:**MR YN RAVANI(718) for the Appellant(s) No. 1****MR BS PATEL(602) for the Defendant(s) No. 1****MR CHIRAG B PATEL(3679) for the Defendant(s) No. 1**

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CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE**SUNITA AGARWAL****and****HONOURABLE MR. JUSTICE D.N. RAY****Date : 26/11/2025****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE D.N. RAY)**

1. Heard Mr. Y. N. Ravani, learned Advocate for the Appellant; Mr. B. S. Patel, learned Senior Advocate with Mr. Chirag B. Patel, learned Advocate with Mr. Umang H. Oza, learned Advocate with Mr. Khush K. Patel, learned Advocate for the Respondent.

2. The material facts culminating in the present appeal, in brief, are as under:

2.1 The appellant and the respondent entered into an agreement dated 16.01.1995 for undertaking expansion work

of the appellant's factory premises. Pursuant to the said agreement, the respondent was required to execute the construction and allied works. However, disputes soon emerged between the parties in relation to the alleged delay in execution, the quality and standard of workmanship, and the quantum of payments made. The appellant contended that the work was not completed within the stipulated time and that several deficiencies persisted, whereas the respondent claimed that payments were not released in accordance with the agreed terms. These inter se disputes ultimately led to breakdown of the contractual relationship.

2.2 In view of the aforesaid disputes, the respondent invoked the arbitration clause and approached this Court seeking appointment of an arbitrator. By order dated 28.06.2001, this Court appointed a Sole Arbitrator to adjudicate the disputes between the parties. The appellant raised preliminary objections before the learned Sole Arbitrator, contending *inter alia* that no valid or legally enforceable arbitration clause existed between the parties and further asserting that the proceedings were barred by limitation.

2.3 Subsequently, on 19.01.2002, the respondent lodged its statement of claim before the learned Sole Arbitrator, supported by a list of documents comprising 115 items, and claimed various amounts under 13 distinct heads. The appellant submitted its written statement along with its own documents and also preferred a counter-claim quantified at Rs. 3,38,30,000/- under several heads.

2.4 Upon consideration, the learned Sole Arbitrator, by order dated 22/23.06.2002, rejected the preliminary objections raised by the appellant.

2.5 The learned sole Arbitrator in the award dated 05.01.2005 has directed the Appellant to pay to the claimant Rs. 1,31,21,691/- with interest at the rate of 6% per annum from the date of cause of action i.e. 20.03.2001 till the date of payment to the claimant. Also, it was held that the Appellant is not entitled to claim any amount as counter-claim.

3. Aggrieved by the arbitral award dated 05.01.2005 passed by the learned Arbitrator, which came to be upheld in Civil Misc. Application No.17 of 2005 by order dated

03.02.2012, the appellant has preferred this appeal challenging both the arbitral award and the order of the learned Principal District Judge, by which, the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act, 1996) was dismissed.

4. Mr. Y. N. Ravani, learned Counsel on behalf of the appellant firstly submitted that there is no arbitration clause in the contract between the parties and therefore, both the learned Arbitrator as well as the learned Principal District Judge have erred in firstly entering into the reference and secondly by refusing to set aside the award delivered by the learned Arbitrator. Mr. Ravani further submitted that the respondent-claimant's claims were clearly barred by limitation.

4.1 According to Mr. Ravani, the claimant himself had claimed that on 31st January, 1997, the work was finished. As per the certificate of the Architect dated 06.06.1998, the work was finished in the year 1996 itself, however, the notice invoking arbitration has been issued by the claimant on

20.03.2001, therefore, the entire claim was clearly barred by limitation. Mr. Ravani also submitted that on certain heads, the learned Arbitrator had exceeded his jurisdiction by basing the award on no evidence whatsoever. For example :-

(i) The Hon'ble Sole Arbitrator has mentioned about increasing labour charges due to delay with details is given in Annexure-B referred at page 22 of the claim.

(ii) However, no detail is placed by the claimant as to how many workers were engaged, how many workers are not given work and they are paid higher amount. Merely on ipse dixit only on a schedule produced before the learned Sole Arbitrator such claim is granted. In fact, neither register of engaging of labourer nor any payment or any witness proving this aspect, are examined. Therefore, granting of claim No.3 is only on presumption and surmises.

(iii) So far as claim of idle labour is concerned, the same is also without having any evidence shown at heading No.7. No detail is placed as to how many workers are engaged. Detail is not placed as to how many workers are engaged nor any register of engaging workers, was placed. No detail of their

payments, are brought on record. The learned Sole Arbitrator has believed the schedule of so-called payment to those idle workers placed before the learned Sole Arbitrator, has granted the said claim.

Even the claim of payment of higher charges and idle charges are contradictory.

(iv) The learned tribunal committed error in not appreciating the aspect that the Heading No.8 and payment on interest are overlapping of the claims. The Hon'ble Tribunal has granted interest on different heads @ 12% and later on entire claim which has been granted by the Hon'ble Tribunal, again 6% interest thereon is granted. Therefore, the interest has been awarded on interest as well as twice it has been calculated.

4.2 Mr. Ravani lastly submitted that, on merits, the learned Arbitrator had clearly erred in awarding escalation where escalation was clearly barred under Clause 7 of General Conditions of Contract (for short "the GCC").

5. Mr. B. S. Patel, learned Senior Advocate appearing on behalf of the respondent submitted that it would be clear that

Annexure “III” to the contract comprising the reference to GCC, being an integral part of the contract between the parties categorically contained an Arbitration Clause and specifically excluded reference of disputes to the Court. Therefore, the learned Arbitrator had rightly proceeded to adjudicate the disputes between the parties. Mr. Patel further urged that from the final certificate issued by the appellant’s architect SIJCON Consulting Engineer dated 26.12.2000, the limitation had barely started to run when the Architect appointed by the appellant issued the said final Certificate only after scrutinizing the eleventh and final bill raised by the claimant. Therefore, the invocation dated 20.03.2001 cannot be said to be barred by limitation.

5.1 Taking us through various clauses of the contract between the parties as found in the Articles of Agreement dated 16.01.1995 read with the various annexures thereto. Mr. Patel contended that on merits, it cannot be said that there is any error on the part of either the learned Arbitrator or of the Section 34 Court which can be interfered within the limited jurisdiction exercised by this Court under Section 37 of the Act.

6. Having perused the documents on record and having heard the learned Counsel for the respective parties, this Court comes to the following conclusions :-

1. Presence of Arbitration Clause:

It is true that the Articles of Agreement dated 16.01.1995 contain the only Disputes Resolution Mechanism in Clause 15 thereof which reads as under :-

“(15) All disputes arising out of or in any way connected with this Agreement shall be deemed to have arisen in Ahmedabad & only the Courts in Ahmedabad shall have jurisdiction to determine the same.”

However, the Annexures to the said Agreement are also treated as integral part of the contract as indicated in Clause 13 of the Articles of Agreement. Clause 5 of Annexure III GCC reads as under :

“5. ARBITRATION VENUE JURISDICTION

“The Arbitration Venue shall be Ahmedabad and the Arbitrator at same place shall have jurisdiction with reference to this contract under no circumstances either of the party shall refer the matter to the Court.”

Thus, a bare perusal of the aforesaid Clauses leave no manner of doubt in our mind that the disputes arising between the parties are indeed arbitrable as rightly held by the learned Arbitrator as well as the Section 34

Court.

2. Limitation:

The final Certificate dated 26.12.2000 based on the eleventh and final bill as provided by SIJCON Consulting who were empowered to issue the certifications of final bills as per Clause 8 of the GCC makes it clear that the cause of action in respect of any claim against the appellant could have arisen only after 26.12.2000, therefore, the invocation letter dated 20.03.2001 at page 287 of the paper-book must be held to be within limitation as rightly held by the learned Arbitrator and the learned Commercial Court.

On merits, the main thrust of the Appellant's arguments were based on the Clause 7 of GCC which reads as under :

"7. CONTRACT RATES

The contractor shall not be entitled for any increase in the price of Materials, Labour, etc. No claims shall be admitted. for unavoidable delays in supplying materials by the Employer, working drawing and decisions."

6.1 Mr.Ravani centered his arguments around the above Clause to submit that under no circumstances could any escalation be granted in the working of the contract,

inasmuch as, parties had specifically agreed not to include any escalation charges. Further the escalation clause "Clause IV" of Annexure-I reads as under :

"4. Escalation (Labour & Rates):-

The rates/prices quoted and agreed upon as indicted in priced schedule shall remain firm throughout contract period of 12 months from the date of this agreement. No escalation on any account including variation in basic labour wages, material cost due to revision in taxes/duties/fuel escalation etc. or due to any increase in taxes etc.; shall be paid."

7. After considering the aforesaid Clauses, we are of the opinion that the rates agreed upon by the parties were to remain firm for the contract period of 12 months from the date of the Agreement. In other words, within the period of 12 months from the date of an Agreement, there could be no escalation of any kind. However, the Clauses are completely silent as to what would be the situation if the period of contract extended beyond 12 months.

8. Admittedly, in the present case, the working of the contract spanned more than three years, as is evident from the Certificate of the Architect, therefore, it could not be said that the learned Arbitrator has erred in granting escalation particularly when Mr. Ravani did not challenge the finding

that the appellant had extended the contract beyond the period that was initially stipulated. We are bolstered in our finding by the fact that the final Certificate was issued by the Architect on behalf of the appellant as late as on 26.12.2000. If the appellant was of the opinion that the respondent-Contractor was in default, it could have and ought to have terminated the contract which was well within the appellant's powers. Therefore, no fault could be found with the Arbitrator granting escalation to the claimant contractor.

9. We may conclude with the observations made by the Apex Court about the scope of inquiry under Section 37 of the Act, 1996 in **C & C Constructions Ltd. v. IRCON International Ltd.**, reported in **(2025) 4 SCC 234**, wherein it was stated that :-

"34. As far as scope of interference in an appeal under Section 37 of the Arbitration Act is concerned, the law is well settled. In Larsen Air Conditioning & Refrigeration Co. v. Union of India, (2023) 15 SCC 472, in para 15, this Court held thus :

"15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that 'illegality must go to the root of the matter and cannot be of a trivial nature'; and that the Tribunal 'must decide in accordance with the terms of the contract, but if an

arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground' [Associate Builders v. DDA, (2015) 3 SCC 49]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."

(emphasis in original and supplied)

35. In *Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*, (2023) 9 SCC 85, in para 18, this Court held thus :

*"18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in *MMTC Ltd. v. Vedanta Ltd.*, (2019) 4 SCC, is akin to the jurisdiction of the court under Section 34 of the Act. [*Id*, SCC p. 167, para 14: "14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision."] Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act."*

10. Following the above guidelines laid by the Hon'ble Apex Court, we are not in a position to re-appreciate the evidence on record as if we are the Appellate Court under the Code of Civil Procedure, 1908 and arrive at our own conclusion as to the merits of the claims, inter-partes. For the aforesaid

reason, we do not find any fault either in the approach of the learned Commercial Court under Section 34 or of the learned Arbitrator in coming to the specific conclusions on the various claims of parties.

11. In view of the above, the present appeal stands dismissed being devoid of any merit. No order as to costs.

(SUNITA AGARWAL, CJ)

BINA SHAH

(D.N.RAY,J)

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: BINA A SHAH(HC00353), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 09/12/2025 10:54:13