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

% **Judgment reserved on: 06.07.2026**
Judgment pronounced on: 23.07.2026

\+ O.M.P. (COMM) 398/2018

S & S TECHNOCRAT PVT. LTD. .....Petitioner

Through: Mr. Vivekanand & Mr. Abhishek Semwal, Advs.

versus

HINDUSTAN LETEX LTD. .....Respondent

Through: Mr. Nikhilesh Krishnan, Mr. Siddharth Singh, Mr. Karna Mehra & Ms. Ritika Priya, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

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

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking setting aside of arbitral award dated 05.05.2018.

<u>Brief Facts</u>

2. The brief facts are that on 10.02.2006, the respondent, Hindustan Letex Ltd (for short, 'HLL') invited a tender for construction of an Office Complex. The petitioner, M/s S&S Technocrats Pvt. Ltd. (for short, 'SSTPL') was the successful bidder and Letter of Acceptance (LOA) dated 17.03.2006 was issued for a total value of Rs.3,48,85,500/-. The parties to the *lis* entered into a

contract dated 31.05.2006 and the work was to be completed within fifteen months from the date of commencement i.e., 27.03.2006.

2.1 The scope of contract was enhanced by including an additional floor and the period for completion was extended till 26.08.2007. The work could not be completed within the stipulated period and time was extended till 16.05.2009.

2.2 Dispute arose between the parties and on 20.05.2009 the petitioner invoked arbitration under clause 31 of the General Conditions of Contract (for short 'GCC'). The work was not completed within the extended period and the respondent terminated the contract on 15.02.2010.

2.3 The decision on claims and counter-claims in the award are tabulated below:

CLAIM	DECISION
CLAIM NO. 1 Claim towards release of payment due under the Final Bill after deducting the payments received against the running bills	Partly Allowed (Gross final bill to be paid and to be calculated as per Annexure 'F' after contractual deductions. 12% p.a. interest granted on awarded amount subject to adjustments of HLL awarded dues).
CLAIM NO. 2 Claim towards payment of increase in rates other than the deviated/ extra items executed beyond the permissible deviation limit i.e., 10% of the contract amount	Rejected
CLAIM NO. 3 Claim towards escalation on electrical works	Rejected
CLAIM NO. 4 Claim towards release of security deposit	Allowed Conditionally (Security Deposit to be computed on gross amount of final bill and released after

	adjustment of awarded dues of respondent. Interest @12% p.a. awarded after expiry of one year defect liability period from 15.02.2010).
CLAIM NO. 5 Claim towards release of Performance Bank Guarantee	Allowed (Performance Bank Guarantee released subject to recovery of awarded dues of the respondent).
CLAIM NO. 6 Claim towards losses suffered for engaging additional staff and machinery during the extended period	Rejected
CLAIM NO. 7 Claim towards reimbursement of Bank Guarantee commission paid after the completion date	Rejected
CLAIM NO. 8 Claim towards pre-suit and *pendente lite* interest at 18% per annum on Claims Nos. 1, 2, 3 and 4	Partly Allowed (Pre-suit and *pendente lite* interest @ 12% p.a. awarded on claim nos. 1 & 4).
CLAIM NO. 9 Claim towards declaration that termination of the contract is illegal	Rejected
CLAIM NO. 10 Litigation / Arbitration Costs	Rejected
ADDITIONAL CLAIM Claim towards reimbursement of renewal charges of Contractors All Risk and Workmen Compensation Policy (for short 'CAR Policy')	Rejected

COUNTER-CLAIM NO. 1(a) Claim towards recovery of liquidated damages @ 7.5% on the gross work done	Liquidated damages @ 7.5% on gross value of XVIth & final bill awarded with 12% p.a. interest.
COUNTER-CLAIM NO. 2	Rejected

Claim towards reimbursement of office rent for the extended period	
COUNTER-CLAIM NO. 3 Claim towards payment of minimum electricity charges for new office building	Rejected
COUNTER-CLAIM NO. 4 Claim towards reimbursement of insurance paid and the interest on premium amount	Partly Allowed (Rs.3,85,516/- towards CAR policy premium awarded with 12% p.a. interest subject to a maximum of Rs.40,479/-).
COUNTER-CLAIM NO. 5 Claim towards extra expenditure incurred for engaging professionals during the extended period beyond 10.01.2009	Rejected
COUNTER-CLAIM NO. 6 Claim towards additional amount claimed by Architects due to prolongation of contract (claims after10.01.2009 only included).	Rejected
COUNTER-CLAIM NO. 7 Claim towards expenditure incurred for making the building habitable	Partly Allowed (Claim of Rs.2,93,980/- allowed to the extent of Rs.1,04,977/- with 12% p.a. interest).
COUNTER-CLAIM NO. 8 Claim towards expenditure likely to be incurred on rectification of defects	Rejected
COUNTER-CLAIM NO. 9 Claim towards inadequate deployment of qualified engineers	Partly Allowed (Claim of Rs. 31,40,000/- allowed to the extent of Rs.6,90,000/-).
COUNTER-CLAIM NO. 10 Litigation Costs	Rejected
COUNTER-CLAIM NO. 11 Claim towards loss of interest on Counter Claims Nos. 1-8	Rejected

The challenge to the impugned award by petitioner while arguing the matter was confined to claim nos. 1,2,3,6 & 9 and counter-claim no. 1(a).

Submissions of the Parties

3. Learned counsel for the petitioner submits that claim no. 1 was partly allowed without considering that the procedure prescribed under clause 15(d) of the Special Conditions of Contract (for short 'SCC') was not followed. The submission is that the rates proposed by the internal committee and approved by the respondent were not binding on the petitioner. Reliance is on the Minutes of Meeting (for short 'MoM') dated 19.01.2007 wherein the consultant agreed to recommend the rates for approval but instead the rates were subsequently determined by a committee constituted by the respondent. The contention is that the arbitrator failed to adjudicate the issue by not deciding the prevailing market rates in accordance with clause 15(d).

3.1 The contention is that the arbitrator erred in relying on clause 19 of the SCC in rejecting claim no.2 for payment of increased rates for deviated and extra items beyond variable limit under clause 15(a) of the SCC. The argument is that the claim was not on account of prolongation of the contract but for revised rates of deviated and extra items for additional works beyond the permissible deviation provided under clause 15(a) of the SCC. It is contended that the rates were to be determined in terms of clause 15(d) of the SCC and clause 19 of the SCC was not applicable.

3.2 The rejection of claim nos. 3 & 6 relating to payment of escalation in electrical work and loss suffered on account of maintaining additional staff and machinery during the extended period of execution of the contract is challenged on the ground that Sections 55 and 73 of the Indian Contract Act, 1872 (for short, 'Contract Act') were not considered.

3.3 The grievance is that no reasons were assigned while deciding the claims and the award is in violation of Section 31(3) of the Act.

3.4 It is submitted that claim no. 9 challenging the termination of the contract was wrongly rejected without considering that the Virtual Completion Certificate (for short 'VCC') was issued certifying that the building was fit for occupation. The arbitrator ignored that the incomplete works enumerated by the respondent were recorded on 23.11.2009 whereas the contract was terminated on 15.02.2010 and work done in between was not considered. The building was taken over by the respondent, inaugurated and put to use yet the contract was terminated. It is canvassed that extension was granted up to 16.05.2009 and no further period for completion was fixed thereby rendering the time for completion of the work open-ended. Reliance is placed upon the decision of the Supreme Court in **Hind Constructions v. State of Maharashtra** (1979) 2 SCC 70 to fortify the contention that the contract could be terminated only after fixing a final time for completion and making time the essence of the contract.

3.5 Lastly, the grievance is that counter-claim no. 1(a) was allowed awarding liquidated damages (for short 'LD') for the delay in completion of the work not attributable to the petitioner and in the absence of evidence of actual loss suffered or a genuine pre-estimate of loss. The contention is that an adverse inference should be drawn against the respondent for failure to produce the hindrance register. Further that the arbitrator failed to consider the material evidence while concluding that the delay was attributable to the petitioner. The argument is that the respondent granted extension up to 16.05.2009 without levy of damages indicating that the delay was not attributable to the petitioner. It is emphasized that the loss suffered was neither quantified nor proved yet the maximum amount provided under clause 19 of the GCC was awarded as LD.

4. *Per contra*, the arbitrator passed a detailed award. The scope of interference under Section 34 of the Act is limited and the Court cannot sit in appeal over the award. The view taken by the arbitrator is a plausible one and cannot be interfered with, for another possible view. Reliance is placed upon **Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.**, 2009 SCC OnLine SC 1656 and **Hindustan Construction Company Ltd. v. Union of India** 2019 SCC OnLine SC 1520.

4.1 The rejection of claim no. 1 is defended and the submission is that clause 15(d) nowhere provides that the rates recommended by the consultant shall be binding on the respondent. It is submitted that an internal committee was constituted to determine the prevailing market rates and the rates approved by the respondent were binding on the petitioner.

4.2 The rejection of claim no. 2 is defended by stating that the permissible variation limits are provided under clause 15(a) whereas the mechanism for fixation of rates is given under clause 15(d) and clause 15 is to be read as a whole. It is argued that reliance upon the MoM dated 19.01.2007 is misplaced.

4.3 Claim nos. 3 and 6 are asserted to have been rightly rejected in view of clauses 17 & 19. Clause 17 of the SCC provides that time was the essence of the contract and the work was to be completed within the stipulated period. Clause 19 of the SCC debars claim of compensation by the petitioner for loss suffered on account of delay in commencement or execution of the work irrespective of the cause of delay. Further that the work was not completed within the extended period and the petitioner was not entitled to claim compensation contrary to the contractual provisions. Reliance is placed upon the decision of the Supreme Court in **Nabha Power Ltd. v. Punjab State Power Corporation Ltd. & Anr.** (2018) 11 SCC 508.

4.4 It is argued that the respondent could terminate the contract under clause 29(i) of the GCC for failure of the petitioner to maintain the progress and to execute the work within prescribed period. The emphasis is that despite extension of time and issuance of notices the work was not completed in time. The issue raised is that issuance of the VCC and taking over of the building was not the proof of completion of work as per the contract. The respondent got the balance work executed at the risk and cost of the petitioner.

4.5 It is contended that the LD was worked out at the time of preparation of the final bill after assessing the total cost and recording the balance measurements. The LD determined is a factual finding and calls for no interference under Section 34 of the Act. The emphasis is that a number of letters were written to the petitioner stating that the respondent was incurring huge expenditure in running the offices which were to be shifted upon completion of the project and the LD was awarded considering the loss suffered and is not liable to be tinkered with.

5. Heard learned counsel for the parties at length. Though written submissions and factual notes were filed by the parties but during the course of arguments only the contentions and issues mentioned above were raised and pressed.

6. Before proceeding further it would be relevant to reproduce the relevant clauses of the GCC and SCC:

> "**Clause 15 of SCC**
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> **Variations, Extra/ Substituted items**
>
> 15(a) Existing BOQ rates shall apply if the variation is ± 25% in quantity of individual items and ± 10% of the total contract price. For items existing in the bill of quantities but where quantities have increased beyond the variation limits, the rate payable for quantity in excess of the quantity in the Bill of Quantity plus the permissible variation should be market rates of materials and labour.
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> (b) Within 7 days of date of instruction for executing varied work, extra work or substituted works and before the commencement of such work, notice shall be given either (i) by the Contractor to the Employer/Consultant of his

intention to claim extra payment or a varied rate or price or (ii) by the Employer/Consultant to the Contractor of his intention to vary a rate or price".

(d) In the case of extra items, whether additional, altered or substituted for which rates cannot be derived either from similar items of work in the contract or from CPWD-schedule, the Contractor shall submit to the Employer the rates which he proposes to claim supported by rate analysis of the item based on the prevailing rates of material and labour and allowing contractor's profit of 10%. The rates of such items shall be recommended by the Consultant and approved by the Employer and shall be binding to the Contractor.

Clause 17 of SCC

Time shall be considered as the essence of the Contract. The entire work must be completed in 15 Calendar months. It is intended that the general works should be so completed as to leave the last two months for installations and finishing items. The attention of the tenderer is drawn to Clause 19 of the general conditions contract referring to damages for non-completion. The tenderer shall before commencing work prepare a detailed work programme which shall be approved by the Employer/Consultant.

Clause 19 of SCC

The contractor shall not be entitled to any compensation of any loss suffered by him on account of delays in commencing or executing the work whatever the cause of delays may be including delays arising out of modification to the work entrusted to him or any sub contracts (refer clause 10) connected there with or delays in awarding contracts for other trades of the project or in commencement or completion of such works or in procuring government controlled or other building materials or obtaining water and power connection for construction purposes or for any other reason whatsoever and the Employer shall not be liable for claim in respect thereof. The Employer does not accept liability for any sum besides the tender amount subject only to such variations as may be provided for herein.

Clause 19 of GCC

Damages for non-completion

If the contractor fails to complete the work and clear the site on or before the dates fixed for completion, he shall without prejudice be liable to pay liquidation damage (LD) ie. 0.5% the contract value for every week that the whole or the part of work remains Incomplete. The contract value shall be the total value of quantities of items in the contract at the contract rate plus algebraic sum of the subsequent work ordered. However the total amount of LD to be paid under this condition shall not exceed 7.5% of the contract value. Such amounts may be deducted by the employer from any money due or that may become due to the contractor.

Clause 23(i) of GCC

When the contractor successfully completes the works as per the contract, he shall be eligible to apply for provisional completion certificate in respect of the works. The Employer shall issue to the Contractor the provisional completion certificate after verifying from the completion documents submitted by the Consultant and satisfying himself that the work has been completed in accordance with the construction drawings and the contract documents. The contractor, after obtaining the provisional completion certificate, is eligible to present the final bill for the wok executed by him under the terms of the contract.

Clause 29(i) of GCC

Default of Contractor

If the contractor fails to maintain progress and quality of work proportionate to time period allotted for the work in spite of notices or complete the work within the stipulated time period or extended time period, then the consultant/owner shall have the right:-

> (i)**To determine the contract**: In this event, the contract shall be terminated by giving written notice to the contractor and the unfinished works shall be got completed by labours engaged by the owner or through other agency at the cost of the contractor."

Analysis

7. Claim no.1 is against the deductions made from the final bill. The dispute comprised of three parts: (a) dispute regarding rates of items; (b) admissibility of extra items; and (c) short measurement of items. During the arbitral proceedings, disputes under (b) & (c) were resolved between the parties and only the dispute regarding rates of items survived and was adjudicated.

8. As per clause 15(a) of the SCC, in case of variation of ±25% in individual items and ±10% in the contract price, payment for the excess quantity is to be made at the prevailing market rates of material and labour. Under clause 15(b) variation beyond the prescribed limits under clause 15(a) could be brought to the notice of the other party by either party. Clause 15(d) provides the mechanism for determining the rates of extra, additional, altered or substituted items where the rates cannot be derived from similar items in the contract or the CPWD Schedule. For such items the contractor had to submit a rate analysis based on the prevailing market rates, whereafter the consultant was to recommend the rates and on approval by the employer, these would be binding on the contractor. The grievance is that the rates were not recommended by the consultant but were recommended by an internal committee for which there was no clause under the contract. The issue

whether the rates determined contrary to the procedure under clause 15(d) would be binding on the petitioner was not considered by the arbitrator. The submissions of the parties were recorded in the award but there is no discussion or reasoning as to why the procedure adopted by the respondent for determination of rates can be accepted. The arbitrator decided the claims as per Annexure 'F' which contains calculations of quantities and rates but there are no reasons as to how the conclusion was arrived at.

9. Under Section 31(3) of the Act, the arbitrator is obligated to pass a reasoned award. The award is bereft of reasons and after reading the award as a whole along with the annexures no reasons are forthcoming. The award falls within the teeth of Section 31(3) of the Act. Reference in this regard be made to the following decision of the apex court:-

10. The Supreme Court in **Dyna Technologies Pvt. Ltd.** (supra) has held as under:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute."

11. The petitioner in claim no. 2 sought for increase in the rates of deviated/extra items utilised beyond the prescribed limit under clause

15(a) of the SCC. The arbitrator relying upon clause 19 of the SCC proceeded on the basis that the petitioner was claiming revised rates on account of prolongation of the contract. The claim was for fixation of rates in terms of clause 15(d) and not on account of contract continuing beyond the agreed period. Clause 19 of the SCC deals with compensation for loss suffered on account of delay whereas clause 15 provides the mechanism for determining the rates of extra items. The claim could not have been rejected by relying upon clause 19, without considering the applicability of clause 15. The arbitrator proceeded on a wrong foundation, the relevant clauses of the contract were not considered and the award suffers from patent illegality.

12. The judgement in **Nabha Power Ltd.** (supra) pressed into service to buttress the argument that the contractual terms are to be given effect to, is of no help. Present is a case of non-consideration of the relevant clauses and their applicability to the claims raised thereby rendering the award liable to be set aside being patently illegal.

13. The Supreme Court in **Delhi Metro Rail Corporation Ltd. V. Delhi Airport Metro Express Pvt. Ltd.** 2024 INSC 292 and **Bharat Coking Coal Ltd. v. Annapurna Construction** (2003) 8 SCC 154 held that non-consideration of a relevant clause of the contract is a patent illegality and renders the award liable to be set aside. The relevant paras are:

13.1 In **Delhi Metro Rail Corporation Ltd**. (supra) held as under:

> "38. In Associate Builders vs. Delhi Development Authority[22], a two-judge Bench of this Court held that

although the interpretation of a contract is exclusively within the domain of the arbitrator, construction of a contract in a manner that no fair-minded or reasonable person would take, is impermissible. A patent illegality arises where the arbitrator adopts a view which is not a possible view. A view can be regarded as not even a possible view where no reasonable body of persons could possibly have taken it. This Court held with reference to Sections 28(1)(a) and 28(3), that the arbitrator must take into account the terms of the contract and the usages of trade applicable to the transaction. The decision or award should not be perverse or irrational. An award is rendered perverse or irrational where the findings are (i) based on no evidence; (ii) based on irrelevant material; or (iii) ignores vital evidence. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as when for instance the award contains no reasons at all, so as to be described as unreasoned. A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party. In the above decision, this Court observed:

> "31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:
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> (i) a finding is based on no evidence, or
>
> (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
>
> (iii) **ignores vital evidence in arriving at its decision,**
>
> such decision would necessarily be perverse.
>
> …
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> 42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent

> illegality — for example **if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.”**
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> 40. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view.[24] 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 under the head of ‘patent illegality’. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice.”

13.2 **In Bharat Coking Coal Ltd. v. Annapurna Construction**, **(2003) 8 SCC 154** held as under:

> “22. There lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record.”
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> (emphasis supplied)

14. Claim nos. 3 & 6 relates to escalation in the rates of electrical items and expenses incurred on maintaining staff and machinery during the extended period of execution of the contract. The claims

were rejected by relying upon clause 19 of the SCC. The petitioner made claims under Sections 55 and 73 of the Contract Act and contended that the delay was attributable to the respondent. The arbitrator rejected the claims in the light of clause 19 of the SCC without dealing with the applicability of the provisions of the Contract Act. No reasons are recorded for concluding that the provisions of the Contract Act were not required to be considered in view of clause 19 of the SCC. The award is non-speaking and is in violation of Section 31(3) of the Act.

15. There is no quarrel with the proposition propounded by learned counsel for the respondent that a plausible view taken by the arbitrator should not be interfered with under Section 34 of the Act and the court cannot re-appreciate the evidence. The judgment in **Dyna Technologies Pvt. Ltd** (supra) relied upon by the learned counsel for the respondent to contend that the award has to be read as a whole does not advance the case of the respondent. It was held that the reasons for arriving at a conclusion should be discernible from the award. In the present case, the conclusions recorded by the arbitrator are unsupported by reasons and the material contractual clauses governing claims were not considered.

16. It is trite law that this court while exercising jurisdiction under Section 34 of the Act does not sit in appeal. A possible view taken by the arbitrator on appreciation of evidence or interpretation of the terms of the contract in the normal course does not warrant interference. Reliance placed by the respondent on **Hindustan Construction**

Company Ltd. (supra) on the proposition that the scope of interference under Section 34 is limited is of no avail. It is settled law that interference can be made on the grounds mentioned under Section 34 of the Act including patent illegality. In **Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO) 2025 INSC 1457** held:-

> "28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. <u>It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited[14], this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal</u>."

16.1 In **Parsa Kente Collieries Limited. v. Rajasthan Rajya Vidyut Utpadan Nigam Limited (2019) 7 SCC 236** held as under:-

> "9.1. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court had

> an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, this Court has considered the limits of power of the Court to interfere with the arbitral award. It is observed and held that only when the award is in conflict with the public policy in India, the Court would be justified in interfering with the arbitral award. In the aforesaid decision, this Court considered different heads of "public policy in India" which, inter alia, includes patent illegality........."

(emphasis supplied)

17. The claim no. 9 pertains to termination of the contract. Under clause 29(i) of the GCC the respondent could terminate the contract for failure of the petitioner to complete the work within the stipulated or extended period. A written notice to the petitioner was a pre-requisite for termination. The work remained incomplete despite extension of time and issuance of notices. The petitioner responded to the notices and thereafter the contract was terminated. The arbitrator analysed the definition of 'Virtual completion' and clause 23(i) of the GCC regarding the completion certificate and held that the Provision Completion certificate (for brevity 'PCC') is the relevant document and not the VCC. Under clause 23(i), upon completion of the work the contractor was eligible to apply for the PCC and the petitioner never applied for the PCC, this was factored in to conclude that the work was not completed. The arbitrator also took into consideration the fact that the unfinished works subsequently were executed by the respondent at the risk and cost of the petitioner. The eight letters

written by the respondent that the work was not complete and the letter of petitioner dated 04.02.2010 stating that five items under the head 'Extinguisher' were pending, demonstrated that the work was incomplete till 04.02.2010. The petitioner despite the specific query of the arbitrator with regard to the work done between 25.11.2009 and 15.02.2010 produced no details. The reliance of the petitioner on applications made to statutory authorities for issuance of the completion certificate and NOC was held to be of no avail as the work to be completed under the contract and the requirement under the statute were different.

18. The contention that after 16.05.2009 there was no extension of time and the contract was open-ended is ill-founded. The petitioner failed to complete the work within the extended time. By writing eight letters the petitioner was put to notice of inordinate delay in completion of the work and was reminded that the work had to be completed in a timely manner. Reliance on **Hind Constructions** (supra) does not advance the case of the petitioner. It was held that where time is not the essence of the contract, termination of the contract for failure to complete the work within the stipulated period cannot be sustained. Whereas in the present case, clause 17 expressly provides that time was the essence of the contract and clause 29(i) permitted termination of the contract for failure to maintain progress or to complete the work within the extended period. Moreover, the petitioner was put to notice to complete the work within the extended time and after receiving response to the notices, the contract was

terminated as per clause 29(i) of the GCC. The upholding of termination of the contract is a plausible view and suffers from no factual or legal error much less perversity.

19. Before proceeding further, it would be relevant to quote the following decisions of the Supreme Court dealing with the principles governing award of LD or penalty:-

19.1 The Supreme Court in **Kailash Nath Associates v. DDA** (2015) 4 SCC 136 held:

> "43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.
>
> 43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.
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> 43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.
>
> 43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

> 43.5. The sum spoken of may already be paid or be payable in future.
>
> 43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded."

19.2 The Supreme Court in **State of Rajasthan v. Ferro Concrete Construction (P) Ltd.**, (2009) 12 SCC 1 held:

> "55.While the quantum of evidence required to accept a claim may be a matter within the exclusive jurisdiction of the arbitrator to decide, if there was no evidence at all and if the arbitrator makes an award of the amount claimed in the claim statement, merely on the basis of the claim statement without anything more, it has to be held that the award on that account would be invalid. Suffice it to say that the entire award under this head is wholly illegal and beyond the jurisdiction of the arbitrator, and wholly unsustainable."

20. The position of law that emerges is that for claiming LD the actual loss suffered is to be proved, except in cases where it is difficult or impossible to prove the actual loss. The arbitrator awarded LD in the absence of evidence adduced of actual loss suffered by the respondent or concluding that it was impossible or difficult to prove actual loss. The only material relied upon were the letters written by the respondent to the petitioner stating that huge expenditure was being incurred due to delay in shifting the offices to the building in question and continuing the offices in rented accommodation. The claim for LD in the statement of claim was not substantiated. It is not

the case set that there were genuine pre-estimated damages fixed by the parties. The 7.5% of the gross value fixed in the contract was the upper limit for awarding damages and not a pre-estimate of damages. There was no material on record to quantify the loss suffered yet contrary to the settled position of law the maximum amount prescribed under clause 19 of the GCC was awarded as LD.

21. In view of the above discussion the petition is allowed and the impugned award is set aside.

AVNEESH JHINGAN, J.

JULY 23, 2026
'ha'

Reportable:- **Yes**