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

% **Judgment reserved on: 11.08.2026**
Judgment pronounced on: 25.08.2026

\# **CNR No. DLHC010458632023**

\+ O.M.P. (COMM) 464/2023 & I.A. 22700/2023

NCC LTD. .....Petitioner

Through: Ms. Priya Kumar, Sr. Adv. with Mr. Jai Sahai Endlaw, Mr. Ishaan Saraswat, Ms. Aulinee Sen, Ms. Ekaa Sharma & Ms. Rukmini Rajgopal, Advs.

versus

MANISHA KULKARNI .....Respondent

Through: Mr. Jay Savla, Sr. Adv. with Mr. Rajpal Singh & Mr. Aditya Bajaj, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

JUDGMENT

1. The present petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') challenging the arbitral award dated 26.07.2023 (for brevity 'the impugned award').

BRIEF FACTS

2. The petitioner/NCC Ltd. (hereinafter referred to as 'NCC') is a registered company and was awarded part of redevelopment work undertaken by the National Building Construction Corporation (for short 'NBCC') at Kidwai Nagar. The NCC floated a tender on behalf

of the NBCC. The respondent/claimant, sole proprietor of M/s Mani Engineers, Pune was the successful bidder and three Letters of Intent (LOIs) were issued. For the LOIs dated 15.10.2015 (LOI-1) and 08.09.2015 (LOI-2) Work Orders dated 16.11.2015 (Work-1) and 01.04.2016 (Work-2) were issued respectively. Work-1 was for Plumbing works of the Social Infra Complex having school building, shopping complex, banquet hall and five nos. Lal quarters at the Kidwai Nagar Project for a value of Rs.3,22,50,000/- (Rupees Three Crore Twenty-Two Lakh Fifty Thousand Only). Work-2 was awarded for fire fighting works for type VI and VII towers, totalling eight towers and their common basement at the Kidwai Nagar Project for a value of Rs.2,90,00,000/- (Rupees Two Crore Ninety Lakh Only). No work order was issued in respect of the LOI dated 14.04.2016 (LOI-3) for plumbing work for towers VI and VII and it did not form part of the subject matter of the impugned award.

2.1 During execution of the work dispute arose between the parties *inter alia*, the slow progress and scope of work. The arbitration was invoked at the instance of the respondent. This Court appointed the sole arbitrator on 15.09.2021 and the proceedings culminated in the impugned award.

2.2 The respondent pressed for the total claim of Rs.4,36,16,555/-. The claim included Rs.1,77,60,424/- towards payment due for Work-1 and Work-2, Rs.2,48,56,131/- towards interest and costs of Rs.10,00,000/- along with simple interest @ 18% per annum *pendente lite* and post-award.

2.3 The case set up was that the work was completed but the NCC deliberately did not certify the Running Account Bills (for short 'RA bills'). Charts of the due amounts for Work-1 and Work-2 were produced which included certified and uncertified bills. The uncertified bills were not accepted by the arbitrator. It was held that the work in relation to Work-1 and Work-2 to the tune of Rs.3,89,46,103/- was completed. The respondent had received Rs.3,17,92,510/- and this included the amount towards LOI-3. The claim of the respondent that Rs.87,20,218/- be adjusted for payment received towards LOI-3 was rejected and Rs.38,81,575/- was accepted to be gross amount attributable to LOI-3. Rs.38,81,575/- (amount towards LOI-3) was deducted from Rs.3,17,92,510/- (net amount received) and Rs.2,79,10,935/- was quantified to be the amount received towards Work-1 and Work-2. The amount payable was determined at Rs.1,10,35,168/- after deducting Rs.2,79,10,935/- (amount received towards Work-1 and Work-2) from Rs.3,89,46,103/- (value of the completed work under Work-1 and Work-2).

2.4 The counter-claims of the NCC for Rs.48,53,904/- towards materials supplied and Rs.3,79,695/- for miscellaneous debits were allowed to the extent of Rs.43,63,407/- and Rs.2,50,000/- respectively. The counter-claim of Rs.27,60,266/- towards work got done at the risk and cost of the respondent was rejected. Counter-Claims to the tune of Rs.59,17,085/- were awarded. This amount comprised of Rs.43,63,407/- towards materials supplied, Rs.2,50,000/- for miscellaneous debits, Rs.11,53,615/- towards statutory deduction of

TDS & WCT and Rs.1,50,063/- towards mismatch of VAT. Principal amount of Rs.51,18,083/- was awarded to the respondent. For the sake of clarity, the calculations are set out below:

Rs.3,89,46,103/-
Value of completed work under Work-1 and Work-2
↓
Less: Rs.2,79,10,935/-
Amount received towards Work-1 and Work-2 after deducting Rs.38,81,575/- (amount attributable to LOI-3) from Rs.3,17,92,510/- (total amount received including amount attributable to LOI-3)
↓
Rs.1,10,35,168/-
Balance amount payable
↓
Less: Rs.59,17,085/-
Comprising of Rs.43,63,407/- (materials supplied) + Rs.2,50,000/- (miscellaneous debits) + Rs.11,53,615/- (statutory deduction of TDS/WCT) + Rs.1,50,063/- (VAT mismatch)
↓
Rs.51,18,083/-
Principal amount awarded to the respondent

2.5 Interest @ 13.85% per annum was awarded from 01.04.2017 till the date of award and @ 14.85% per annum from the date of the award till the realisation of the awarded amount. Litigation costs of Rs.20,40,400/- were awarded to the respondent. Hence, the present petition.

SUBMISSIONS OF THE PARTIES

3. Learned senior counsel for the NCC contends that the arbitrator erred in deducting Rs.38,81,575/-, the gross value of the work done for LOI-3 from Rs.3,17,92,510/- i.e. the net payment made to the

respondent. The challenge to the impugned award is on the ground that it is self-contradictory. The submission is that after holding the certified value of the work done for LOI-1 and LOI-2 to be Rs.3,89,46,103/-, the statutory deductions towards TDS and WCT were not computed on this figure.

3.1 The pre-reference interest and *pendente lite* interest awarded @13.85% per annum and post-award interest @ 14.85% per annum are contended to be contrary to Section 31(7) of the Act read with Section 2(b) of the Interest Act, 1978 (for short 'the Interest Act'). The argument is that the arbitrator erred in relying upon the State Bank of India Benchmark Prime Lending Rate (for short 'lending rate') and not the interest rate on deposits. Reliance is on the decision of the Supreme Court in ***Megh Varan Sharma v. State of U.P. & Ors.***, MANU/SC/1260/2014.

3.2 The submission is that the material relied upon for awarding interest was not confronted to the petitioner and could not have been relied upon. Reliance is placed on the decision of the Supreme Court in ***Ssangyong Engineering and Construction Company Ltd. v. NHAI***, (2019) 15 SCC 131.

3.3 It is submitted that the impugned award is non-speaking. There is no discussion for not awarding the deductions qua the work got done by the NCC at the risk and cost of the respondent and accepted by the respondent. Further, no reasons have been recorded for awarding interest @ 13.85% and 14.85% per annum.

3.4 The grievance is that the arbitrator erred in ignoring the admission made by the respondent vide email dated 23.05.2017 of the amounts debited to the tune of Rs.13,71,195/- for the work carried out at the risk and cost of the respondent. Further that the admission of the NCC qua the amount payable was accepted and relied upon whereas the admission of the respondent of work got done by the NCC at the risk and cost of the respondent was neither considered nor discussed. Reliance is placed on the decisions in ***Hindustan Lever Ltd. v. Shiv Khullar and Anr.***, 2008 SCC OnLine Del 424.

3.5 The litigation costs awarded are contended to be excessive.

4. *Per contra* the scope of interference under Section 34 of the Act is limited, a plausible view taken is not to be interfered with. The proceedings are not akin to an appellate remedy.

4.1 The submission is that the view taken by the arbitrator for deducting a sum of Rs.38,81,575/- is a plausible view. It is contended that the arbitrator considered the evidence on record and as per the statement of claim deducted Rs.11,53,615/- towards the TDS and WCT. The submission is that NCC failed to prove that the amount of TDS and WCT on the amount due was deposited.

4.2 The submission is that the grant of pre-reference and *pendente lite* interest is the discretion of the arbitrator under Section 31(7)(a) of the Act. Further, that the post-award interest was awarded considering the prevailing interest rates.

4.3 Lastly, it is submitted that the debits accepted vide email dated 23.05.2017 included the debits qua LOI-3 and the counter-claim filed by the NCC claiming an amount of Rs.27,60,266/- on account of debits made for the work done at the risk and cost of the respondent was rightly rejected.

5. Heard learned counsel for the parties at length and perused the relevant record with their able assistance. No issue other than those noted above was pressed.

ANALYSIS

6. The undisputed facts are that the value of the Work-1 and Work-2 completed by the respondent and certified by the NCC was Rs.3,89,46,103/-. The net amount paid by the NCC to the respondent was Rs.3,17,92,510/-. The gross amount of Rs.38,81,575/- was towards the work done under LOI-3. These factual findings and the figures quantified by the arbitrator are not in dispute before this Court.

7. The net payment of Rs.3,17,92,510/- made by the NCC to the respondent is not the total consideration paid and the gross payment would include the TDS, WCT, etc. The amount of Rs.38,81,575/- towards the work done under LOI-3 was inclusive of TDS, WCT, etc. For arriving at the figure of the work done under LOI-1 and LOI-2, the gross amount of LOI-3 could not have been deducted from the net amount paid. The deduction ought to have been made from the gross payment. In other words, the net payment of Rs.3,17,92,510/- to the respondent included the net payment towards LOI-3 and not the gross amount of Rs.38,81,575/-. The deduction of the gross amount for LOI-3 from the net amount paid would result in giving a double benefit to the respondent.

7.1 The proposition of double benefit can be put in mathematical terms. The following figures are assumed without prejudice to the actual figures involved in the present case:

Chart 1

Particulars	Amount (Rs.)
LOI-1 + LOI-2 (net)	100
LOI-3 (gross)	100
TDS/WCT deducted from LOI-3	20
LOI-3 (net)	80
Total net payment made for LOI-1, LOI-2 and LOI-3	180

The calculation adopted by the arbitrator is illustrated below:

Chart 2

Calculation made by the Arbitrator	Amount (Rs.)	Effect
Total net payment made for LOI-1, LOI-2 and LOI-3	180	
Less: Gross amount of LOI-3	100	
Amount left for LOI-1 + LOI-2 after deducting gross amount of LOI-3	80	The net amount attributable to LOI-1 + LOI-2 is Rs.100/- (please see Chart 1). Rs.20/- becomes due as result of deducting gross amount of LOI-3 from net amount paid.

7.2 The effect is that the respondent is entitled to claim a credit of Rs.20/- under the fiscal law while a further amount of Rs.20/- becomes payable to the respondent on account of the amount due towards LOI-1 and LOI-2.

8. The contention of the learned senior counsel for the NCC that there is a contradiction in the award deserves acceptance. The undisputed finding recorded is that the respondent completed work under Work-1 and Work-2 worth Rs.3,89,46,103/- but the counter-claim of the NCC for deduction on account of WCT and TDS was partially allowed relying upon a figure of Rs.11,53,615/- pleaded by the respondent. The TDS and WCT were to be deducted on the value of the work completed. It was proved that a deduction of five per cent i.e. 1% for TDS and 4% for WCT was to be made. The counter-claim allowed for Rs.11,53,615/- would be a deduction of TDS and WCT on a total work value of Rs.2,30,72,280/-, whereas work completed quantified was Rs.3,89,46,103/-. Moreover, there are no reasons recorded for accepting the figure of Rs.11,53,615/-.

9. The contention of the learned senior counsel for the respondent that the NCC failed to prove that the amount of TDS and WCT was deposited does not advance the case of the respondent. The deductions made are statutory obligations. Once the amount of work completed was quantified, the NCC was under a statutory obligation to deduct TDS and WCT and failure to deposit the amounts so deducted would be dealt with under the appropriate statutes by the tax authorities. Another aspect is that RW-1 deposed that WCT and TDS were deposited, offered to produce the certificates and also verification of the payment from the VAT portal.

10. The arbitrator awarded pre-reference and *pendente lite* interest

@ 13.85% per annum and post-award interest @ 14.85% per annum. It would be relevant to reproduce Section 31(7) of the Act and Section 2(b) of the Interest Act as follows:

> "**THE ARBITRATION AND CONCILIATION ACT, 1996**
>
> **31. Form and contents of arbitral award**.—...
>
> (7) *(a)* Unless otherwise agreed by the parties, where and in so far 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)."
>
> "**THE INTEREST ACT, 1978**
>
> **Section 2. Definitions.**
>
> *(b)* "current rate of interest" means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949 (10 of 1949).

> Explanation.--In this clause, "scheduled bank" means a bank, not being a co-operative bank, transacting any business authorised by the Banking Regulation Act, 1949 (10 of 1949);"

11. Under Section 31(7)(*b*) of the Act, the amount awarded by the arbitrator shall carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of the award except where the award otherwise directs. The interest is to be granted from the date of the award to the date of payment. The explanation to Section 31(7) of the Act provides that the current rate of interest shall have the same meaning as assigned under Section 2(*b*) of the Interest Act. The current rate is defined under Section 2(*b*) of the Interest Act to mean the highest of the maximum rates of interest paid on different classes of deposits by different scheduled banks.

12. The arbitrator while awarding post-award interest @ 14.85% per annum relied upon the lending rate of interest as on 01.04.2017 and effective on 15.06.2023. From reading of Section 31(7)(*b*) of the Act and Section 2(b) of the Interest Act, it is unambiguous that the highest rate of interest on deposits is to be considered and not the lending rate. The award of interest is contrary to the provisions of Section 31(7)(*b*) of the Act read with Section 2(*b*) of the Interest Act and is liable to be set aside. The Supreme Court in ***Megh Varan Sharma*** (supra) held:

> "**11**…. <u>On a cumulative interpretation of Section 3 read with Section 2(b) of the Interest Act, 1978, leaves us with a clear understanding, that interest would be payable at the highest of maximum rate at which interest is payable</u>

on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions).

12. In the above view of the matter, we are satisfied that while assessing the penalty payable by the Respondent-Corporation on account of delayed payment of retiral benefits, the Appellant would be entitled to the highest of the maximum rate, at which Scheduled Banks are currently paying interest on fixed deposits….”

(Emphasis supplied)

13. For pre-reference and *pendente lite* interest the arbitrator awarded interest @13.85% per annum. Under Section 31(7)(*a*) of the Act, the arbitrator has the discretion to award interest at reasonable rate for the whole or any part of the money awarded. The interest is to be awarded for the period from the date of cause of action till the passing of the award. There is no discussion in the award for accepting the prevailing lending rate as on 01.04.2017 to be a reasonable rate. Section 31(3) of the Act obligates the arbitrator to state reasons unless the parties have agreed otherwise. The issue is not whether interest @13.85% per annum could be awarded but whether any basis has been given for the rate awarded. Mere awarding of interest at the lending rate as on 01.04.2017 cannot be considered to be a reason for determining the reasonable rate. The fixation of the rate of interest is bereft of reasons.

14. The reliance placed by the learned senior counsel for the NCC on ***Ssangyong Engineering and Construction Company Ltd.*** (supra) lends support to the contentions raised that material collected at back of the parties i.e. the lending rate cannot be relied upon. The Supreme

Court held that reliance upon material without confronting it to the affected party violates Sections 18 and 24(3) of the Act and constitutes a ground under Section 34(2)(*a*)(*iii*) of the Act. The relevant paragraphs are reproduced below:

> "**41.** What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204], 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. Thus, 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 illegality. <u>Additionally, a finding based on 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 characterised as perverse.</u>
>
> *** *** *** ***
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> **51.** <u>Sections 18, 24(3) and 26 are important pointers to what is contained in the ground of challenge mentioned in Section 34(2)(a)(iii). Under Section 18, each party is to be given a full opportunity to present its case. Under Section 24(3), all statements, documents, or other information supplied by one party to the Arbitral Tribunal shall be communicated to the other party, and any expert report or document on which the Arbitral Tribunal relies in making its decision shall be communicated to the parties.</u> Section 26 is an important pointer to the fact that when an expert's report is relied upon by an Arbitral Tribunal, the said report, and all documents, goods, or other property in the possession of the expert, with which he was provided in order to prepare his report, must first be made available to any party who requests for these

things. Secondly, once the report is arrived at, if requested, parties have to be given an opportunity to put questions to him and to present their own expert witnesses in order to testify on the points at issue.

52. Under the rubric of a party being otherwise unable to present its case, the standard textbooks on the subject have stated that where materials are taken behind the back of the parties by the Tribunal, on which the parties have had no opportunity to comment, the ground under Section 34(2)(*a*)(*iii*) would be made out."

(Emphasis supplied)

15. The award of pre-reference, *pendente lite* and post-award interest is vitiated for violation of the principles of natural justice, Sections 31(3), 31(7), 24(3) and 18 of the Act. The arbitrator relied upon the lending rate and not rate of interest on deposits and that to without confronting the material to the NCC.

16. Work Completion Clause of the Work Orders provided that on failure of the respondent to complete the work, the NCC could get the work completed at the risk and cost of the respondent. The clause is reproduced below:

"**SUPPLY/WORK COMPLETION**:

The entire work shall be carried out to the satisfaction of our site in charge and clients as per the schedule to be given by our Site Authorities. In case of failure in meeting construction schedule/targets, the work will be executed by us OR by engaging other agency, at your risk and cost. Tentative work completion time is 31.10.2016 or actual completion, whichever is earlier, but you are responsible to supply and work as per our project In-charge requirement and schedule."

(Emphasis supplied)

17. The counter claim of Rs.27,60,266/- was made for the work got done by the NCC at the risk and cost of the respondent. The email dated 23.05.2017 sent by the respondent was relied upon by the NCC to contend that in the annexure to the email the respondent accepted the deductions for the work done at the risk and cost of the respondent. The only defence taken by the respondent is that the debits accepted included the works pertaining to LOI-3. The effect of these admissions was neither considered nor discussed by the arbitrator. In violation of Section 31(3) of the Act, no reasons have been recorded for not accepting the admissions made by the respondent.

18. The arbitrator relied upon Section 34 of the Evidence Act, 1872 to hold that the journal entries relied upon by the NCC for the deductions made were not supported by invoices, vouchers and work orders involving third parties while at the same time failed to address the relevant evidence on record i.e. the admission of the respondent of the deductions made and the effect thereof. The award falls within the teeth of Section 31(3) of the Act.

19. The challenge to the litigation costs awarded is noted to be rejected. Under Section 31A(3) of the Act, the arbitrator after considering the circumstances mentioned therein has the discretion to award costs. The arbitrator after considering the arbitration fee, counsel fee, legal expenses and administrative expenses awarded litigation costs of Rs.20,40,400/- and out of this the payment of Rs.12,40,000/- towards counsel fee was subject to proof of payment.

No case is made out for interference with the award of costs.

CONCLUSIONS

20. The conclusions are as under:

i. The gross value of LOI-3 i.e. Rs.38,81,575/- was wrongly deducted from the net payment of Rs.3,17,92,510/- made to the respondent.

ii. There are contradictions in the award so far as in quantifying the deduction of Rs.11,53,615/- towards WCT and TDS on a work value of Rs.2,30,72,280/- that to after quantifying the completed work at Rs.3,89,46,103/-.

iii. The award of post-award interest @ 14.85% per annum is contrary to Section 31(7)(b) of the Act read with Section 2(*b*) of the Interest Act.

iv. Reliance on the lending rate without confronting it to the NCC is violative of the principles of natural justice and Sections 24(3) and 18 of the Act.

v. The award of interest @ 13.85% per annum is bereft of reasons.

vi. The arbitrator failed to record reasons for rejecting the admissions made by the respondent vide email dated 23.05.2017 regarding the deductions towards work executed at risk and cost of the respondent.

vii. No ground for interference with the award of litigation costs of Rs.20,40,400/- is made out.

DECISION

21. The impugned award suffers from patent illegality, contradictions and is vitiated by violation of the principles of natural justice and Sections 18, 24(3), 31(3), 31(7) of the Act read with Section 2(*b*) of the Interest Act and is set aside.

22. The petition is allowed.

23. The pending application stands disposed of.

AVNEESH JHINGAN, J

AUGUST 25, 2026
'ha'

Reportable:- YES