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

Judgment reserved on: 26.09.2025

Judgment pronounced on: 05.01.2026

+ **O.M.P. (COMM) 15/2021& I.A. 335/2021, I.A. 336/2021, I.A. 5882/2024**

M/S. SUPREME INFRASTRUCTURE INDIA LTD

...Petitioner

Through: Mr. Ashish Mohan, Senior
Advocate with Mr Subhro Prokas
Mukherjee, Mr. Md Adil Khan,
Advs.

versus

ENGINEER-IN-CHIEF, ARMY HEADQUARTER

...Respondent

Through: Mr. Vikram Jetly, CGSC.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*“the Act”*) has been filed by the petitioner, assailing the arbitral award dated 13.08.2020 passed by the Sole Arbitrator in the matter of *“Supreme Infrastructure v. Engineer-in-chief, Army Headquarter”*.

FACTUAL BACKGROUND



2. On 02.06.2010 the respondent (respondent in the Arbitral Proceedings) issued a tender for construction of dwelling units including allied services for Officers, JCOs and ORs at Babina. The petitioner (claimant in the arbitral proceedings) participated in the tender process and was awarded the contract for a total value of approximately Rs. 50.7 crores. Pursuant thereto, a Contract Agreement was executed between the parties on 01.11.2010, incorporating the General Conditions of Contract governing military engineering works.
3. As per the contractual stipulations, the work was to be executed in three phases, with completion schedules extending between the years 2011 and 2013. The petitioner commenced execution of the work after mobilisation of men, machinery, tools, plant and materials at site.
4. According to the petitioner, from the inception of the project, execution of the work was impeded on account of factors attributable to the respondent, including delayed handing over of clear and obstruction-free site, frequent changes in drawings and specifications, additional and extra items of work, delayed approvals, and interruptions in execution owing to administrative reasons. Further running account bills were not processed and released in a timely manner, resulting in financial constraints and disruption of work.
5. On 19.12.2014, the respondent cancelled the Contract, citing slow progress and failure to adhere to milestones.
6. Since there were disputes between the parties in relation to termination of the Contract and financial claims, the petitioner invoked the arbitration clause. Upon the respondent's failure to appoint an arbitrator, the petitioner approached this Court under Section 11 of the Act and the Sole Arbitrator was appointed.



7. The arbitral proceedings continued over several years. Pleadings were completed, evidence was led, and detailed oral arguments were addressed by both sides. Upon conclusion of arguments, the matter was reserved for award in January 2019.
8. After a lapse of more than one year from reserving of the award, the Sole Arbitrator reopened the proceedings and permitted the respondent to amend its counter-claims. The amendment resulted in enhancement of the quantum of counter-claims, which was stated to be on account of correction of calculations. The petitioner objected to the amendment on the ground that it caused serious prejudice and was permitted at an advanced stage of the proceedings.
9. The Sole Arbitrator thereafter passed the impugned arbitral Award dated 13.08.2020. By the said Award, the Sole Arbitrator held that the petitioner had abandoned the project, rejected the majority of the petitioner's claims including claims for prolongation costs, and allowed substantial portions of the respondent's counter-claims.
10. Aggrieved by the impugned Award, the petitioner has approached this Court by way of the present petition under Section 34 of the Act.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Mr. Ashish Mohan, learned senior counsel for the petitioner submits that the impugned arbitral award dated 13.08.2020 merits interference and is liable to be set aside under Section 34 of the Act and has limited its challenge on the sole ground that the petitioner did not have an opportunity to contest the amended counter claims made by the respondent.
12. It is submitted that the Sole Arbitrator has pronounced the impugned Award based on amendment applications dated 31.10.2018 and



13.02.2020 filed by the respondent, without affording the petitioner a fair, effective, and meaningful opportunity to contest the same. The amendment application dated 31.10.2018 was never served upon the petitioner, nor was any notice issued by the Sole Arbitrator. The petitioner remained completely unaware of the existence of the said application throughout the arbitral proceedings and came to know of it only when the respondent filed its reply before this Hon'ble Court. There is no material on record to show that the said amendment application was ever argued or allowed by the Sole Arbitrator prior to reservation of the matter for award.

13. Even with respect to the amendment application dated 13.02.2020, the petitioner was heard only on a limited objection relating to delay and was never granted an opportunity to contest the proposed amendment on merits. Despite this, the Sole Arbitrator proceeded to allow the amendment, as is evident from the impugned Award, without granting the petitioner a full and effective hearing.
14. The impugned Award is further liable to be set aside as it is a non-speaking and unreasoned award and does not fulfil the mandate of Section 31(3) of the Act. Further, the Sole Arbitrator has failed to give independent findings in individual items under the dispute as required under Clause 60 of GCC.
15. It is submitted that the total contract value, after issuance of seven deviation orders, stood at Rs. 54.83 crores. As on termination, work worth Rs. 27.51 crores had already been executed, leaving a balance work of approximately Rs. 27.31 crores. After accounting for escalation, the respondent floated a risk and cost tender, pursuant to which the balance work was awarded to a third party for Rs. 33.35 crores. However, while adjudicating Claim No. 1, the Sole Arbitrator



erroneously assumed the risk and cost contract value to be Rs. 35.30 crores, which is unsupported by the record and has resulted in an inflated award in favour of the respondent.

16. Learned counsel further submits that the issue of mobilization advance has been completely misconstrued. It is contended that the petitioner had completed nearly 50% of the work and that the entire mobilization advance had already been recovered by the respondent through deductions from running bills, strictly in accordance with the contract. Despite this, the respondent, by way of a belated amendment application dated 13.02.2020, altered the nature and quantum of its claim under the guise of correcting a clerical error. The Sole Arbitrator allowed the said amendment only in the final award, without granting the petitioner any opportunity to contest the same on merits, thereby causing serious prejudice.
17. It is also submitted that the Sole Arbitrator has wrongly allowed recovery towards yardstick, even though no such counter-claim was raised in the original statement of claim. The said claim was introduced only through an amendment application dated 31.10.2018, which was never served upon the petitioner. As a result, the petitioner was denied any opportunity to contest the claim, and the same was allowed without any evidence or reasons.
18. On the aforesaid grounds, learned counsel submits that the impugned Award suffers from non-application of mind, violation of the principles of natural justice, and patent illegality on the face of the record, and is therefore liable to be set aside under Section 34 of the Act.

SUBMISSIONS ON BEHALF OF THE RESPONDENT



19. *Per contra*, Mr. Vikram Jetly, learned CGSC appearing for the respondent submits that the present petition is devoid of merit and is an attempt to convert proceedings under Section 34 of the Act 1996 into an appeal on facts. It is submitted that the scope of interference under Section 34 is extremely limited and does not permit re-appreciation of evidence or substitution of the arbitral tribunal's view with that of the Court. It is stated that the impugned Award is a detailed and reasoned award passed after considering the pleadings, evidence and submissions of both parties.
20. Learned Counsel has denied the petitioner's contention that it was denied an opportunity to contest the counter-claims and submits that the said allegation is contrary to the arbitral record. It is stated that the respondent had initially preferred its counter claims in September 2018, clearly indicating that the work executed by the petitioner was approximately Rs. 23.30 crores and that the balance work was about Rs. 27.43 crores, while expressly stating that the counter claim amounts were tentative and subject to audit and verification.
21. It is submitted that, from time to time, the respondent sought permission from the Sole Arbitrator to amend Counter Claim No. 1, which liberty was duly granted. The respondent explained that a clerical and arithmetical error had occurred in the computation of Counter Claim No. 1, wherein the amount towards recovery of mobilisation advance and interest had been deducted twice, resulting in an inadvertent reduction of the counter claim. Applications under Section 23(3) of the Act were moved to correct this error, and the petitioner was afforded full opportunity to object to the same. The objections of the petitioner were taken on record and considered by the Sole Arbitrator.



22. It is submitted that the Sole Arbitrator, after considering the objections, allowed the amendment on the ground that the error was a simple and obvious arithmetical mistake capable of correction at any stage, and consequently determined Counter Claim No. 1 at Rs. 11,14,37,508.70. It is contended that the petitioner never disputed the existence of the arithmetical mistake, but only opposed the amendment on the ground of delay.
23. The respondent further submits that, except for the first amended claim, the value of work executed by the petitioner was consistently recorded as approximately Rs. 27.51 crores, leaving a balance work of about Rs. 23.21 crores. On this basis, the respondent submits that the petitioner's allegation of inconsistency or patent error in computation is unfounded.
24. With respect to the challenge to the risk-and-cost tender, it is submitted that the petitioner never raised this issue before the Sole Arbitrator and is therefore barred from raising it for the first time in proceedings under Section 34 of the Act. Without prejudice, it is contended that the estimated cost of the balance work was correctly assessed on the basis of prevailing rates, inflation, and the fact that the petitioner's original bid was substantially below market rates.
25. In view of the above contentions it is prayed that the petition is liable to be dismissed.

ANALYSIS AND FINDINGS

26. I have heard the counsel for the parties and perused the material on record.
27. In ***Consolidated Construction Consortium Ltd. v. Software Technology Parks of India***, (2025) 7 SCC 757, the Hon'ble Supreme Court explained the scope of Section 34 of the Act as under:



46. Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

28. Similarly, the Hon'ble Supreme Court in **Ramesh Kumar Jain v. Bharat Aluminium Co. Ltd.**, 2025 SCC OnLine SC 2857 has observed as under:

42. The errors pointed out in the impugned judgement, i.e., lack of evidence, percentage-based guess allowances, etc. do not, singly or cumulatively, amount to patent illegality warranting



annulment. There were at least some evidence and logical rationale for each award element. The arbitrator's approach was certainly a possible view a reasonable man might take. The High Court, unfortunately, re-appreciated the evidence and came to a different view, which is impermissible. The High Court's scrutinized the award from a stricter standard of proof than arbitration law demands. Arbitrators are not bound by the strict rules of evidence as per Section 19 of the A&C Act and may draw on their knowledge and experience. It is settled that a court should not interfere simply because the arbitrator's reasoning is brief or because the arbitrator did not cite chapter and verse of the contract as long as the path can be discerned by which the arbitrator arrived at his conclusions. Here, the path is discernible and not absurd.

29. In view of the above, it is well settled that while exercising jurisdiction under Section 34 of the Act, this Court does not sit as an appellate authority and cannot re-appreciate the evidence or substitute its own view merely because another interpretation is possible. Interference with the findings of the Arbitral Tribunal is permissible only on the grounds expressly provided under the said provision, and unless the impugned Award is shown to suffer from patent illegality, perversity, or contravention of the fundamental policy of law, no interference is warranted.
30. As recorded in the order dated 28.07.2021, the petitioner has confined its challenge to the impugned Award on the limited ground that no opportunity was afforded to the petitioner to contest the amended counter claims of the respondent, thereby alleging breach of the principles of natural justice. The said order reads as under:



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

+ **O.M.P. (COMM) 15/2021 & I.A. Nos. 335/2021 & 336/2021**

M/S. SUPREME INFRASTRUCTURE INDIA LTD. Petitioner

Through Mr Sudhir Nandrajog, Senior Advocate
with Mr C.S. Chauhan, Mr Ajay Kumar,
Advocates.

versus

ENGINEER-IN-CHIEF, ARMY HEADQUARTER Respondent
Through Mr Vikram Jetly, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

28.07.2021

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[Hearing Held Through Videoconferencing]

1. Arguments substantially heard.
2. Mr Nandrajog, learned Senior Counsel appearing for the petitioner has assailed the impugned award on the sole ground that the petitioner did not have an opportunity to contest the counter claims made by the respondent. He submits that the respondent had furnished certain documents along with its application for amendment for counter claims on 13.02.2020. The said documents included a document confirming that the work done by the petitioner was over ₹27 crores and the balance work remaining was only ₹23 crores. The said documents also indicated that the estimate for the risk and cost tender for balance work was determined on the basis that the work done by the petitioner was approximately ₹23 crores and the balance work remaining was ₹27 crores. He submits that because of this patent error, the

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Digitally Signed
By: DUSHYANT
RAWAL



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estimated costs of the work for which the risk and cost tender was floated was incorrect. It was quantified that it had ₹35 crores on the basis that approximately ₹27 crores of the work remained pending, which was then enhanced on account of the inflation.

3. Mr Jetly, learned counsel appearing for the respondent seeks time to examine the records to counter the aforesaid submission.

4. It is seen that the reply filed by the respondent and the documents filed along with the same are not on record. The respondent shall take steps to ensure that the same are placed on record before the next date of hearing.

5. List on 06.08.2021.

VIBHU BAKHRU, J

JULY 28, 2021

pkv

Signature Not Verified
Digitally Signed
By: DUSHYANT
RAWAL



31. The main contention of the petitioner is that the impugned Award is vitiated as it is based upon amendment applications dated 31.10.2018 and 13.02.2020, which, according to the petitioner, were never served, never argued, and were allowed without any notice. It is further argued that the petitioner became aware of the amendment application dated 31.10.2018 only when the respondent filed its reply in the present proceedings under Section 34 of the Act.
32. *Per contra*, the respondent has categorically denied the allegation of non-service and lack of opportunity. It is submitted that the amendment application dated 31.10.2018, filed under Section 23 of the Act, was duly served upon the petitioner during the arbitral proceedings and was within the knowledge of the petitioner at all relevant stages.
33. At this stage it becomes pertinent to reproduce the applications dated 31.10.2018 and 13.02.2020.



Received
1/11/2018

E-mail:- dgmapcontracta@gmail.com
Tele: 23018459

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SPEED POST
Dte Gen Md Accn Project
E-in-C's Brach,
Integrated HQ of Mod (Army)
Kashmir House, Rajaji Marg,
New Delhi -110011

81975/MAP/PH-II/PKG-27/B/Arb/80 /E8

3/ Oct 2018

Justice (Retd) Aftab Alam,
Sole Arbitrator
H.No 15, Sector-105
Allahabad High Court Judges Colony
Noida- 201301

IN THE MATTER OF DISPUTE BETWEEN :

M/s. Supreme Infrastructure
903-905, 9th Floor, tower 'B',
Millennium Plaza, Sector 27,
Haryana-122002.

...claimant

VERSUS

Union of India
Through DG. M.A.P.
Engineer in Chief Branch,
Integrated HQ of Ministry of
Defense (Army),
Kashmir House, New Delhi-110011.

...Respondent

ARBITRATION DISPUTES PERTAINING TO CA NO. DGMAP/PH-II/PKG-27/B/08 OF 2010: 2011 CONSTRUCTION OF DWELLING UNITS INCLUDING ALLIED SERVICES FOR OFFRS, JCOs/OR AT BABINA.

MOST RESPECTFULLY SHOWETH:

1. That the Respondent had submitted their Counter Claims with the Hon'ble Arbitral Tribunal wherein Claim No.1 was made on account of extra expenditure amounting to Rs. 2,84,63,305.18.



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2. It is submitted that the aforementioned amount of Rs.2,84,63,305.18 was a tentative amount which was made subject to the amount arrived at after due scrutiny by way of Technical Check and audit of the final bill.

3. It is submitted that the Ld. Arbitrator during the hearing held on 24/10/2018 had granted the Respondent the liberty to amend their Claim No.1 in terms of the amount mentioned in the final bill on or before 01 Nov 2018.

4. That the amount of Claim No. 1 after due technical check with the department works out to Rs 5,63,16,339.70 and a copy of the said Claim alongwith final bill has been given to claimant as well as submitted to the Hon'ble Arbitral Tribunal.

PRAYER

5. In light of the aforementioned submissions, it is most respectfully prayed that:

i) The amount of Rs 5,63,16,339.70 be taken on record as value of Claim No.1 allowing the present application under Section 23(3) of the Arbitration and Conciliation Act, 1996;

ii) Pass any other such orders as this Hon'ble Arbitral Tribunal may deem fit.



3 Oct 2018

(Sanjeev Jain)
Maj Gen
DG MAP



Respondent's revised claim no. 1

Received on 13.02.2020

Strongly objected to
on behalf of the Claimant

E-mail ID :- dgmapcontracta@gmail.com
Tel: 23018459

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SPEED POST

Dte Gen Mid Accn Project
E-in-C's Branch
Integrated HQ of MoD (Army)
Kashmir House, Rajaji Marg,
New Delhi - 110011

13 Feb 2020

81975/MAP/PH-II/PKG-27/B/ARB/107/E8

BEFORE

Hon'ble Shri. Aftab Alam,
Former Judge (Supreme Court Of India)
Sole Arbitrator
H.No.15, Sector 105
Allahabad High Court Judges Colony
Noida- 201301
E-mail :- secretarytojusticeaa@gmail.com

IN THE MATTER OF ARBITRATION AND CONCILIATION ACT, 1996 AND IN THE
MATTER OF DISPUTES

BETWEEN

M/s Supreme Infrastructure India Ltd.....Claimant
903-905, 9th Floor, Tower 'B' Millennium Plaza
Sector 27, Haryana - 122003

AND

Union of India, represented byRespondent
Director General MAP
Engineer-in-Chief's Branch
Integrated HQ of MoD (Army)
Kashmir House, Rajaji Marg,
DHQ Post Office, New Delhi-110011

APPLICATION UNDER SECTION 23 (3) OF ARBITRATION AND CONCILIATION ACT,
1996 IN THE MATTER OF DISPUTES PERTAINING TO CA NO. DGMAP/PH-II/PKG-
27/B/08 OF 2010: 2011 CONSTRUCTION OF DWELLING UNITS INCLUDING ALLIED
SERVICES FOR OFFERS, JCOs/OR AT BABINA.

MOST RESPECTFULLY SHOWETH :-

1. Reference this office letter No. 81975/MAP/PH-II/PKG-27/B/ARB/102/E8 dated 26 Feb 2019.
2. Please refer to this office letter under reference and Arbitral hearing held on 24 Jan 2019, wherein it was intimated by the Respondent that there had been a clerical/arithmetical mistake in working of Counter Claim no 1 of the Respondent. In the

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working details for Counter Claim No 1 already on record, it can be seen that an amount of Rs 5,51,21,169.00 on account of recovery of Mobilization Advance and Interest has been made twice. As a result, Counter Claim amount of Respondent has been inadvertently and incorrectly been reduced to Rs. 5,63,16,339.70 in lieu of Rs 11,14,37,508.70 . Revised detail duly amended as Rs 11,14,37,508.70 is enclosed herewith at Appendix "A". Copy of final bill (top sheets) is also enclosed at Appendix 'B'. A request is made to take on record amended amount of Counter Claim no 1 of Respondent.

PRAYER

3. In view of above, a request is made to pass an order allowing amendment to Counter Claim of Respondent as above.

Thanking you,

Yours faithfully,

(Anand Srivastya)
CE
Jt DG
For DG MAP

Encls As above

Copy to :-
(Speed Post & E-mail)

1. M/s Supreme Infrastructure India Ltd
903-905, 9th Floor, Tower 'B' Millennium Plaza
Sector 27, Haryana – 122003
2. Project Manager (MAP) ,
C/o Station Headquarter
Babina, PIN – 900226
3. Ms Monika Arora, Advocate
B-100, Basement, Shivalik, Malviya Nagar
New Delhi- 110017
E-mail :- officeadvmonika@gmail.com

Along with documents as above



34. The objection filed by the petitioner to the application dated 13.02.2020 reads as under:

“Ref: Respondents application dated 07 February ‘20 under section 23(3) of the Act for amending amount of their claim number 1

Honourable sir,

1. *It is requested that the above application/amendment may not please be allowed in view of the following:*

2. a). *Section 23 (3) of the Act reads as under:*

“Unless otherwise agreed by the parties, either party may amend or supplement his claim or supplement his claim or defence during the course of the arbitral proceedings unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it”

b). As brought out in your order dated 10 Feb ‘20, the hearing in the proceedings was concluded on 24 January ‘19 and thereafter the award was reserved and even a draft award was prepared but it was not finalised and pronounced as there was no clarity on payment of the fee. Therefore for all the practical purposes the arbitral proceedings were over. Hence the amendment cannot be allowed after more than one, year of the closure of the proceedings,

c). Bombay High Court in the case of “Board of trustees of Jawaharlal vs Three circles contractors” a judgement delivered on 01 April 15, (Arbitration Petition no 648 of 2009) in para 89 of the report had remarked as under

“89. A perusal of the entire record clearly indicates that the procedure in this matter followed by the learned arbitrator as



setout aforesaid is a procedure unknown to law. The entire procedure followed by the learned arbitrator is in breach of principles of natural justice and shows total non-application of mind and patent illegality on the face of the award. Amendments are allowed after closure of the arguments. Additional issues are framed after declaring the proceedings as closed for declaring the award. No hearing is rendered to any party on the additional issues framed by the learned arbitrator after the proceedings were closed for declaring the award. In my view by adopting such procedure by the learned arbitrator in this manner, the interest of both the parties and in particular of the petitioner was seriously prejudiced. The entire award is thus in breach of principles of natural justice and shocks the judicial conscience.”

2. In view of the aforesaid, it is requested that the application and the amendment submitted by the Respondent may not pl be admitted.”

35. A perusal of the arbitral record shows that on 24.01.2019 the Sole Arbitrator took up the issue pertaining to the respondent's counter-claims and sought specific clarifications from the respondent. This position is borne out from the record and is further corroborated by the subsequent email dated 20.02.2019, whereby the Sole Arbitrator called upon the respondent to furnish detailed clarifications. Notably, the said email was also marked to the petitioner. The email dated 20.02.2019 reads as under:



Office of Justice Alam <secretarytojusticeaa@gmail.com>

Wed, Feb 20, 2019 at 3:51 AM

To: Dg Map <dgmappointments@gmail.com>

Cc: Ravinder <ravinder@supremeinfra.com>, babinamap27@gmail.com, monika arora <officeadvmonika@gmail.com>, badalsharma74@gmail.com, jtdgmap@gmail.com, rahat_mirza@yahoo.com

Sirs/Mesdames,

I am instructed to convey that, the respondents are directed to file only those documents which have been asked by the Hon'ble Tribunal to file before it during the sitting held on 24 January 2019, namely:

- (a) Clarification regarding "LO" constant for labour escalation calculations.
- (b) Clarification regarding omission of %>51 Cr. (Mobilization advance+ Interest) by the claimant/respondent in Counter Claim No 1 of the respondent.
- (c) Comparative statement showing rates quoted by L-1, L-2 (2nd lowest and 3rd lowest bid)
- (d) Details of payments, contractor's amount claimed, date of submission, amount deducted and date of payment etc.
- (e) written rebuttal on case laws submitted by the claimant.

Kindly file the above mentioned documents within a week i.e. on or before 27.02.2019.

Regards,

I.K. Purushotam.
Secretary to HMJ (Retd.) Aftab Alam

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36. The clarifications sought by the Sole Arbitrator were not mechanical in nature but went to the root of Counter Claim No. 1, including (i) labour escalation calculations, (ii) omission relating to mobilization advance and interest, (iii) comparative bid statements, and (iv) details of payments and deductions. This itself shows that the issue of revision of counter claims was actively under consideration of the Sole Arbitrator and could not have escaped the notice of the petitioner.
37. Pursuant thereto, the respondent filed its detailed response dated 26.02.2019, along with supporting documents, with a copy duly served upon the petitioner. In the said response, the respondent expressly sought revision of Counter Claim No. 1 from Rs. 5,63,16,339.70/- to Rs. 11,14,37,508.70/-, explaining the basis for such revision. The petitioner has not been able to show that this reply was not served upon it.



- 38.** Thereafter, the respondent again moved an application dated 13.02.2020 under Section 23(3) of the Act seeking to place the amended counterclaims on record. It is an admitted position that the petitioner filed its reply to the said application on 12.03.2020. Once the petitioner has filed a reply to the application dated 13.02.2020, the contention that the petitioner was unaware of the revision of the counterclaims cannot be accepted, as the filing of the reply itself demonstrates that the petitioner had full knowledge of the amended counterclaims.
- 39.** A perusal of the two applications shows that Counter Claim No. 1 of the respondent was corrected from 2.84 crores to 5.63 crores in the first application dated 31.10.2018 and thereafter corrected from 5.63 crores to approximately Rs. 11.14 crores in the second application dated 13.02.2020.
- 40.** If the Petitioner had no knowledge of the application dated 31.10.2018, the first question which the petitioner should have posed in its objections to the respondent should have been the basis on which the figure of Rs. 5.63 crores came to be reflected in the application filed in the year 2020; further, the fact that the petitioner objected to the second amendment application only on the ground of delay clearly indicates that it was aware of the respondent's counter-claim to the extent of approximately Rs. 5.63 crores. In view of the above the contention of the petitioner that it had no knowledge of the amendment of the counter claim from 2.84 crores to 5.63 crores (as per the amendment application dated 31.10.2018) cannot be accepted.
- 41.** The argument that the amendment application dated 31.10.2018 was never argued is also not borne out from the record. The Procedural Order reflects that show that the issue of counter claims and their clarificatory submissions were discussed on 24.01.2019, clarifications were sought



thereafter, replies were filed, and the Sole Arbitrator had duly applied its mind to the same before proceeding further.

42. The petitioner has further argued that the Sole Arbitrator had already reserved the award and thereafter conducted a special sitting, during which the amendment application dated 13.02.2020 was entertained. Even assuming that the application was filed at a belated stage, the record reflects that the petitioner was granted an opportunity to respond, which the petitioner in fact availed. Merely because the decision on the application did not find a separate procedural order does not ipso facto establish violation of natural justice.
43. It is well settled that principles of natural justice require knowledge and opportunity to respond, not a particular format of orders. In the present case, the petitioner had notice of the revised counter claims, participated in the proceedings, filed replies, and addressed submissions.
44. The Sole Arbitrator has also dealt with these aspects in paragraphs 11 to 16, especially para 14 which explicitly covers the amended counter claims, of the award, explaining the manner in which the counter claims were revised and considered. The relevant paragraphs read as under:
- “11. The respondent too submitted an application on 25.10.2018 stating that following submission of the Final Bill, the amount mentioned in the Final Bill (Rs 5,63,16,339.70) may be substituted in place of Rs.2,84,63,305.18 which was the tentative figure mentioned as claim no.1 in its Counter Claim.*
- 12. The respondent also submitted another application seeking to raise the amount relating to cost of arbitration from Rs.5,00,000/- as claimed earlier, to Rs.30,00,000/-*
- 13. The claimant's claims, as amended by its application dated 04.10.2018, are under several heads as under:*



i) Claim no. 1: Rs. 8,18,72,870/- towards payment of work done, material lying at site and escalation in respect of works executed till date of cancellation.

[In the application dated 04.10.2018 the claim was also computed in a different way arriving at the figure of Rs. 18,45,54,176.00 and sought to substitute it in place of Rs.18,44,85,250 as claimed under claim no.1 in the SoC. But this figure (Rs. 18,45,54,176.00) is arrived at by adopting a yardstick deemed reasonable by the claimant but admittedly and manifestly quite different from the one stipulated in the Contract Agreement]

ii) Claim no.2: Rs. 4,36,05,321/- towards refund of the amount collected by the respondent by encashing claimant's Bank Guarantee.

iii) Claim no.3: Rs. 23,00,635/- towards payments of claimant's plant and machineries and other assets at site at the time of cancellation of the contract, idling of these plant and machineries.

iv) Claim no. 4: Rs, 1,63,74,640/- as loss of profit due to wrongful cancellation of the contract.

v) Claim no. 5: Rs. 29,55,053/- as interest for delay in payment of escalation as well as of the changes.

vi) Claim no. 6: Rs 3,65,30,112/-as damages due to prolongation of the contract period on account of breaches by the respondent.

vii) Claim no.7: Rs. 8,55,615/- -towards increase of prices of material due to prolongation of contract beyond those reimbursed through the escalation formulae.



viii) Claim no.8: Past, pendentalite and future interest @ 12% per annum.

ix) Claim no. 9; Rs. 50,00,000/- as cost of arbitration and litigation.

14. The respondent's counterclaims, as amended, areas under:

i) Claim no. 1: Rs. 5,63,16,339.70/- towards extra expenditure incurred by Union of India for completing the balance work at the risk & cost through Ramji Das Dhal Construction Put Ltd.

ii) Claim no. 2: Rs. 5,07,36,247.10/- towards compensation for delay in completion of work.

iii) Claim no. 3: Rs: 5,37,18,000/- towards loss of revenue to Govt. on account of not handing over the accommodation to the service personnel.

iv) Claim no: 4: Rs. 3,33.580:12/- towards payment to consultant (DEPMC)

v) Claim no. 5: Pendentalite and future interest @18% per annum.

vi) Claim no. 6: Rs: 30,00,000/- for cost of reference.

At this point it is important to note that towards the very end of the proceedings, on 23.02 2020 the respondent filed an application under section 23 (3) of the Act once again seeking to amend the amount claimed under claim no.1. It was pleaded that the correct amount of claim no. 1 would be Rs. 11,14,37,508.70 and not Rs. 5,63,16,339.70 which was the result of an arithmetical mistake in that in making the computation a certain sum was deducted twice over. The relevant extract from the application is as under:



In the working details of Counter Claim No 1 already on record, it can be seen that an amount of Rs. 5,51,21,169.00 on account of recovery of Mobilization Advanced and interest has been made twice. As a result, Counter Claim amount of Respondent has been inadvertently and incorrectly been reduced to Rs. 5,63,16,339.70 in lieu of Rs.11,14,37,508.70. Revised detail duly amended as Rs 11,44,37,508.70 is enclosed herewith Appendix "A".

The application was very strongly opposed on behalf of the claimant but the opposition was mainly on the ground of extraordinary delay in seeking the amendment. It was not denied or disputed that the amount earlier mentioned was due to a simple-arithmetical mistake. The tribunal is of the view that the respondent has indeed been negligent in making the application but a simple and obvious mistake in calculation can be corrected at any stage. The amendment application is accordingly allowed and the amount of claim no. 1 is taken as Rs. 11,14.37.508.

15. It needs to be noted that in course of the proceeding the respondent's representative freely gave to the claimant all the documents asked for on its behalf from the records of the Project and the" claimant had no difficulty in accessing the records on which it might have relied in support of its case.

16. Since all the relevant records were not only produced before the tribunal but also made available to the claimant's representative both sides agreed that there was no need to adduce any oral evidences and the matter could be heard and finally disposed of on the basis of the documents filed by the parties."



45. In view of the above discussion, I find that the petitioner was afforded ample opportunity to contest the amendment of counter claims, that the proceedings do not suffer from any procedural unfairness, and that the principles of natural justice were duly complied with by the Sole Arbitrator.

46. Accordingly, the petition is devoid of merit and is liable to be dismissed.

CONCLUSION

47. In view of the aforesaid discussion, I find no merit in the submissions made by the learned counsel for the petitioner to set aside the impugned Award.

48. Thereby, the present petition is dismissed.

49. All pending applications are consequently disposed of.

JASMEET SINGH, J

JANUARY 05th, 2026/DE