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O.P.Nos.810 of 2019 & 110 of 2021

In the High Court of Judicature at Madras

Reserved on 16.12.2025	Delivered on: 02.1.2026
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Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

O.P.Nos.810 of 2019 & 110 of 2021
& A.No.399 of 2021

O.P.No.810 of 2019 :M/s.NRP Projects Pvt. Ltd.,
Chennai-14.

...Petitioner

Vs

M/s.Chennai Petroleum Corporation
Ltd., Chennai-18.

...Respondent

O.P.No.110 of 2021 :Chennai Petroleum Corporation
Ltd., Chennai-18 rep.by its Chief
General Manager (HR & Legal)
Mr.M.Sankaranarayanan

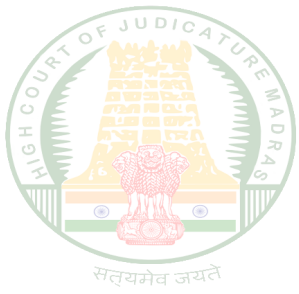
...Petitioner

Vs

M/s.NRP Projects Pvt.Ltd.
(formerly known as M/s.NR Patel
& Co.), Chennai-14

...Respondent

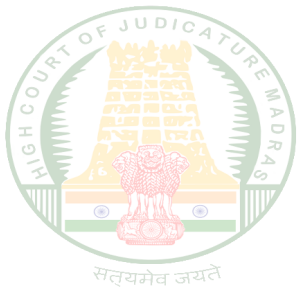
PETITIONS under Section 34 of the Arbitration and Conciliation
Act, 1996 praying



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(i) to set aside the award dated 01.7.2019 in respect of Claim Nos.A, C, D, F and G and rejection of liquidated damages of Rs.3,06,14,810/- (part of Claim E) as set out in paragraph 65(2) (i), (iii), (iv), (vi) and (vii) and part of paragraph 65(2)(v) and paragraph 65(3) and (4) of the award dated 01.7.2019 and to award costs of the proceedings to the petitioner (O.P.No.810 of 2019); and

(ii) to partially set aside the award dated 01.7.2019 viz., the impugned award dated 01.7.2019, insofar as it directs the petitioner to pay the first respondent a sum of Rs.35,90,147/-(i.e Claim No.2) towards refund of withheld amounts under the contract with regard to Employee Provident Fund and Employees State Insurance along with simple interest thereon on principal amount at the rate of 12.35% p.a., from 14.6.2013 till date of award and part of Claim No.5 to an extent of Rs.4,43,073/- towards the amount deducted by the petitioner towards the liquidated damages on change order No.1 of the contract along with simple interest thereon on principal amount at the rate of 12.35% p.a., from 13.12.2013 till date of award and future interest on both awarded claims at the rate of 14.35% p.a., from the date of award and allow this petition with costs. (O.P.No.110 of 2021); and



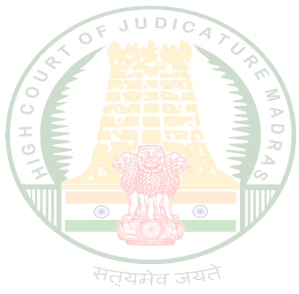
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Application No.399 of 2021 filed praying to pass an interim stay of part of the impugned award dated 01.7.2019 insofar as it directs the applicant/petitioner to pay the respondent a sum of Rs.35,90,147/- (i.e claim No.2) towards refund of withheld amounts under the contract with regard to Employees Provident Fund and Employees State Insurance along with simple interest thereon at 12.35% p.a. from 14.6.2013 till date of award and part of Claim No.5 to an extent of Rs.4,43,073/- towards the amount deducted by the petitioner towards liquidated damages on change order No.1 of the contract along with simple interest thereon at 12.35% p.a., from 13.12.2013 till date of award and future interest on both claims at 14.35% p.a., from date of award passed by the Sole Arbitral Tribunal pending disposal of O.P.No.110 of 2021.

For Petitioner in
O.P.No.810 of 2019 &
Respondent in
O.P.No.110 of 2021 : Mr.Manoj Menon

For Respondent in
O.P.No.810 of 2019 &
Petitioner in
O.P.No.110 of 2021 : Mr.S.Arjun Suresh
& Mr.B.Gautham



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COMMON ORDER

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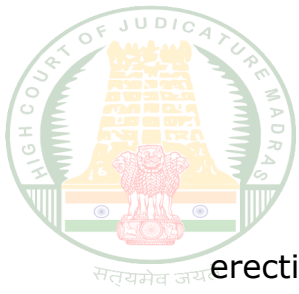
These petitions have been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, the Act), challenging the award dated 01.7.2019 passed by the sole Arbitrator.

2. In O.P.No.810 of 2019, M/s.NRP Projects Private Limited - the claimant before the Arbitral proceedings is the petitioner whereas in O.P.No.110 of 2021, M/s.Chennai Petroleum Corporation Limited (CPCL) - the respondent before the arbitral proceedings is the petitioner. Both petitions have been filed by the claimant as well as the CPCL partly challenging the very same arbitral award.

3. Heard both.

4. The facts leading to the filing of these petitions are as follows:

(1) The CPCL, through its Consultant - one M/s.Tata Consulting Engineers Limited, invited bids for the design, procurement and

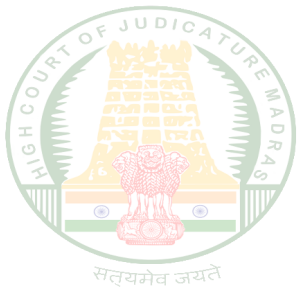


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erection of tankages for its Euro IV Project at Manali, Chennai, in which, the claimant was the successful bidder.

(2) The CPCL awarded the work vide Fax of Acceptance (FoA) dated 21.4.2009 and a subsequent Letter of Acceptance (LoA) of W.O.No.1035/W/051 dated 12.5.2009 was issued to the claimant, on a lump sum contract value of Rs.38,95,01,400/- excluding Service Tax. The stipulated period for completion of work was 15 months commencing from 21.4.2009 and the work was required to be completed on or before 20.7.2010.

(3) On the other hand, the work was completed only on 23.9.2011 and the final completion certificate was issued by the CPCL on 06.11.2013. Notwithstanding the same, the CPCL recovered liquidated damages (LDs) amounting to Rs.3,10,57,883/- from the claimant. In the course of execution of the contract, the claimant was required to carry out certain additional/extra works. In the meantime after prolonged exchange of correspondences, the CPCL issued change order No.1 on 31.10.2013 for a reduced sum of Rs.56,37,067/-. As a consequence, disputes arose between the parties with respect to various payments and recoveries effected by the CPCL.



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(4) The claimant issued a notice dated 30.5.2016 to the respondent invoking the arbitration clause under Clause 58 of the Special Conditions of Contract (SCC). A sole Arbitrator was appointed and the arbitration proceedings were conducted under the Standing Conference of Public Enterprises Forum of Conciliation and Arbitration Rules.

(5) Pursuant thereto, the claimant filed its statement of claim by making the following claims:

(A) Reimbursement of TDS amounting to Rs.3,51,945/- deducted on interest recovered towards Mobilization Advance;

(B) Refund of a sum of Rs.35,90,147/- withheld towards ESI/PF dues;

(C) Payment of Rs.2,21,30,105/- being the balance amount for extra/additional works executed;

(D) Reimbursement of Rs.9,93,061/- incurred towards additional bank guarantee extension charges;

(E) Refund of Rs.3,10,57,883/- recovered towards the LDs;(F) Payment of Rs.5,45,30,196/- towards prolongation costs/ overheads



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for the extended contract period;

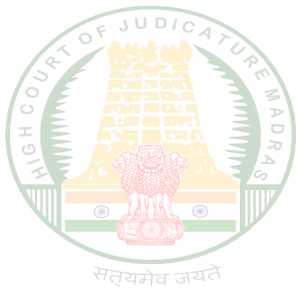
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(G) Payment of Rs.50,80,073/- towards interest on delayed payments of various bills;

(H) Interest on the aggregate claims from the date of cause of action till realization; and

(I) Costs of arbitration.

(6) The CPCL filed its statement of defence and took a stand that the claims were not arbitrable due to the final determination of bills by the Engineer-In-Charge/Consultant and that the claims were barred by limitation, as they were raised for the first time in 2016. The CPCL further contended that there was a full and final settlement after the claimant submitted "no-claim" and "no-due" certificates and received payment towards the 21st and final bill. It was asserted that extensions of time were granted provisionally and without prejudice to the CPCL's right to levy the LDs for the delay attributable to the claimant. The claim for extra works was stated to have been settled under a mutually agreed change order. All the other claims were denied as being contrary to the terms of contract.



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(7) The sole Arbitrator, based on the pleadings, framed the following issues:

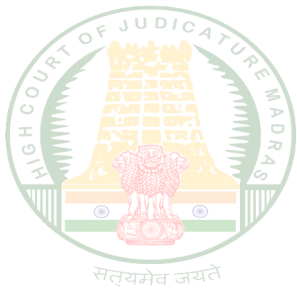
"(i) Whether all or any of the claims made by the claimant are maintainable under the Law (including Laws of Limitation) and/or contract?

(ii) Whether the claimant is entitled for a total claim of Rs. 22,80,48,002/- (Rupees twenty-two crores eighty lakhs forty-eight thousand and two only) as set out in paragraph 'X' of statement of claim, comprising of the following claims:

A. A sum of Rs.3,51,945/- (Rupees Three lakhs fifty-one thousand nine hundred and forty-five only) towards reimbursement of TDS deduced on interest payment?

B. A sum of Rs.35,90,147/- (Rupees thirty-five lakhs ninety thousand and one hundred and forty-seven only) towards refund of ESI/PF?

C. A sum of Rs.2,21,30,105/- (Rupees two crores twenty-one lakhs thirty thousand one hundred and five only) towards change order No.1 pertaining to technical extra works and whether the claimant has carried out additional work to the extent claimed as above?



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D. A sum of Rs.9,93,061/- (Rupees nine lakhs ninety-three thousand sixty-one only) towards additional bank guarantee charges paid for extension of bank guarantees?

E. A sum of Rs.3,10,57,883/- (Rupees three crores ten lakhs fifty-seven thousand eight hundred and eighty-three only) towards refund of liquidated damages?

F. A sum of Rs.5,45,30,196/- (Rupees five crores forty-five lakhs thirty thousand one hundred and ninety-six only) towards cost of overheads?

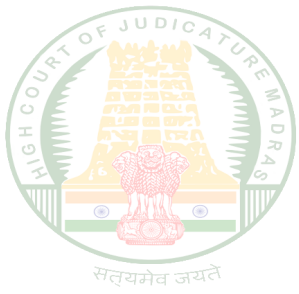
G. Whether the claimant is entitled to claim interest towards the alleged delayed payments, and if so to what extent (Claim No. G)?

(iii) Whether there has been an accord and satisfaction in respect of the claim for additional works made by the claimant (Claim No.C)?

(iv) Whether there has been full and final settlement of the claims made by the claimant?

(v) Whether the claimant is entitled to interest on any of the claims and if so, at what rate (Claim No.H)?

(vi) Whether either of the parties is entitled to cost and if so, to what extent?"



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(8) Before the sole Arbitrator, the claimant examined CW.1 and marked Ex.C.1 to Ex.C.168 and the respondent (CPCL) examined RW.1 and marked Ex.R.1 to Ex.R.21.

(9) The sole Arbitrator, upon consideration of the facts and circumstances of the case and upon appreciation of the evidence on record, passed the following Award:

"1. Whether all or any of the claims made by the claimant are maintainable under the law including laws of limitation) and/or contract?

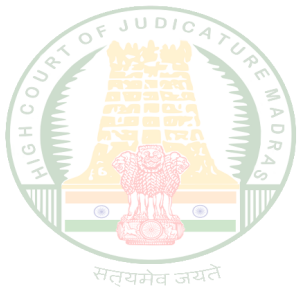
And

2. Whether the Claimant is entitled to a total claim Rs.22,80,48,002/- as set out in paragraph 'X' of statement of claim?

i. Claim 'A' of the claimant for Rs.3,51,945/- towards reimbursement of TDS deducted on interest payment is rejected, both on the ground of limitation and on merits.

ii. Claim 'B' of the claimant for refund of withheld amount towards ESI/PF for Rs.35,90,147/- is allowed and the respondent (CPCL) is directed to pay Rs.35,90,147 to the claimant (NRP).

iii. Claim 'C' of the claimant for a sum of Rs.2,21,30,105/- towards change order No.1



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pertaining to technical extra works, though within the limitation period, the claim is rejected on merit.

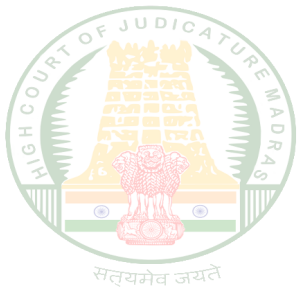
iv. Claim 'D' of the claimant for a sum of Rs.9,93,061/- towards additional bank guarantee charges for extension of bank guarantee is rejected both on the ground of limitation and on merit.

v. Claim 'E' of the claimant for an amount Rs.3,10,57,883/- towards refund of liquidated damages though within the limitation period is rejected on merit. However, an amount of Rs.4,43,073/- deducted towards liquidated damages on change order No.1 is allowed in favour of the claimant. The respondent (CPCL) is directed to pay an amount of Rs.4,43,073/- to the claimant (NRP).

vi. Claim 'F' of the claimant for an amount of Rs.5,45,30,196/- towards cost of overheads is rejected both on the ground of limitation and on merit.

vii. Claim 'G' of the claimant for interest towards alleged delayed payment is rejected on merit.

3. Whether there has been an accord and satisfaction in respect of the claim for additional works made by the claimant (Claim No.C)?



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My finding is that in this contract there is an accord and satisfaction in respect of the claim for additional works made by the claimant.

4. Whether there has been full and final settlement of the claims made by the claimant?

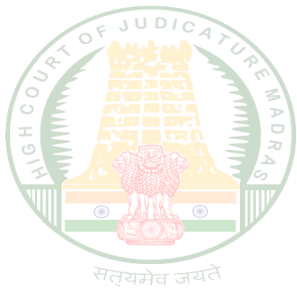
My finding is that there has been full and final settlement of the claims made by the claimant in terms of the contract except the claim for refund of withhold amount towards ESI/PF by the respondent.

5. Whether the claimant is entitled to interest on any of the claims and if so, at what rate (Claim No.4)?

The Claimant is entitled for interest on the following claims:

(i) Claim for Rs.35,90,147/- towards refund of ESI/PF amount, the claimant is entitled for simple interest on the principal amount at the rate of 12.35% from 14.6.2013 till the date of this award.

(ii) An amount of Rs.4,43,073/-, the amount deducted by the respondent towards liquidated damages on change order No.1 the claimant is entitled for simple interest on the principal amount at the rate of 12.35% from 13.12.2013 till date of this award.



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(iii) In case there is default on the respondent to make the above payment within 30 days of the award, the claimant is also entitled for a future interest at the rate of 14.35% simple interest on the principal amount from the date of award to the actual date of payment.

6. Whether either of the parties is entitled to cost and if so, to what extent?

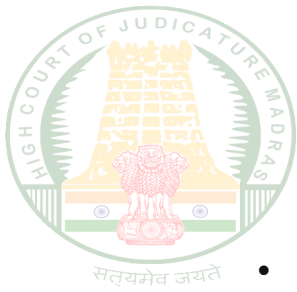
Both parties to bear their respective costs."

(10) Aggrieved by the same, the present petitions have been filed before this court by both the claimant as well as the CPCL.

5. The learned counsel appearing on behalf of the claimant made the following submissions:

CLAIM A- Reimbursement of TDS – Rs.3,51,945/-:

- The sole Arbitrator failed to appreciate that the CPCL did not dispute the quantum of Rs.3,51,945/- remitted as TDS and the CPCL raised the defence of non-receipt of Form 16A - TDS certificate for the first time only in its statement of defence filed on 31.3.2017.



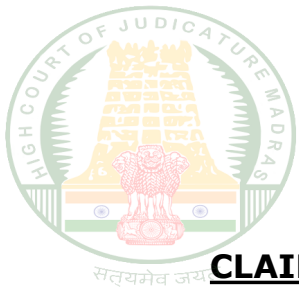
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- The finding that the claim is time barred, by calculating limitation from the date of tax remittance on 16.7.2010, is erroneous. In the construction contracts, limitation commences only from the date of payment of the final bill, i.e., December 2013, as all earlier payments are interim in nature.

CLAIM C - Claims for Extra/Additional Works - Rs.2,21,30,105/-

- The sole Arbitrator erred in rejecting the claims in respect of 14 out of 16 items of extra works by recording only the summary observations, which were devoid of any independent analysis or reasoning. This was done despite the categorical admission of R.W.1 in the cross-examination that all the 16 items were executed by the claimant. The said works were beyond the original scope of the contract and were carried out pursuant to the instructions of the owner.
- The CPCL coerced the claimant into accepting a reduced "change order" for Rs.56,37,067/- on 31.10.2013 by withholding all contractual payments for over two years when the initial bill was submitted on 04.11.2011.



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CLAIM D – Additional Bank Guarantee Charges for extension of Bank Guarantees - Rs.9,93,061/-

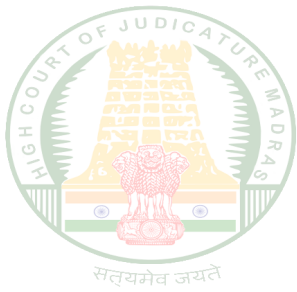
- The sole Arbitrator erred in rejecting the claim of Rs.9,93,061/- towards additional bank guarantee charges as time-barred without considering the fact that the bank guarantees were kept valid up to 30.10.2012 and were cancelled by the claimant only on 30.10.2013.

CLAIM E – Refund of the LDS - Rs.3,10,57,883/-:

- The levy of LDs amounting to Rs.3,10,57,883/- is untenable as R.W.1 admitted that the delay was assessed only for road works and not for the overall project delay of 14 months.
- The CPCL failed to establish any actual loss, which is a sine qua non for the imposition of the LDs and more particularly in view of the fact that the storage tanks were put to use prior to the completion of the road works on 23.9.2011.

CLAIM F – Prolongation costs/Overheads for extended contract period – Rs.5,45,30,196/-:

- The claimant is entitled to prolongation costs of Rs.5,45,30,196/- for the 14-month extended period, as the delays were not



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attributable to the claimant and the CPCL itself had confirmed the continuous deployment of men and machinery at the site. Therefore, the rejection of the claim by the sole Arbitrator is erroneous.

CLAIM G – Interest on delayed payments – Rs.50,80,073/-:

- The CPCL made illegal deductions and withheld payments contrary to the terms of contract, thereby entitling the claimant to interest of Rs.50,80,073/- calculated at the rate of 12.35% per annum.

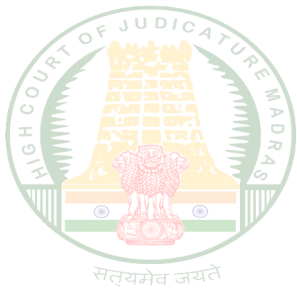
CLAIM I – Cost of Arbitration – Rs. 16,84,153/-:

The claimant is entitled to costs of arbitration as the arbitral proceedings were necessitated solely due to the illegal withholding of payments by the CPCL.

6. Per contra, the learned counsel appearing on behalf of the CPCL made the following submissions:

Preliminary Objections:

- **Accord & Satisfaction:** The "Accord and Satisfaction" arises from the no due certificates dated 26.8.2013 and 12.9.2013



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issued by the claimant, which would establish that the payment of the 21st and final bill constituted full and final settlement. The claimant neither pleaded nor substantiated any coercion at the time of issuing these two no due certificates and instead, accepted the final payments without any demur or protest, thereby confirming the finality of the settlement.

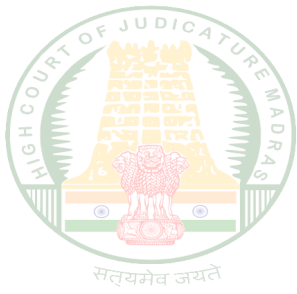
- **Limitation:** Claims A, D, and F are ex-facie barred by limitation, as the cause of action arose upon completion of works on 23.9.2011 whereas the arbitration clause was invoked only on 30.5.2016, which was well beyond the three-year statutory period.

**Claim A - TDS on Interest on Return of Mobilisation Advance-
Rs.3,51,945/-:**

- The sole Arbitrator rightly rejected this claim, as the claimant failed to furnish Form 16A for 2009-2010 within one-month period prescribed under Rule 31(2) of the Income Tax Rules, which prevented the CPCL from obtaining timely tax credit.

Claim B – Provident Fund (Rs.35,90,147/-):

- The award of Rs.35,90,147/- is patently illegal, as it is based on an arbitrary and incomplete Provident Fund Authority's report



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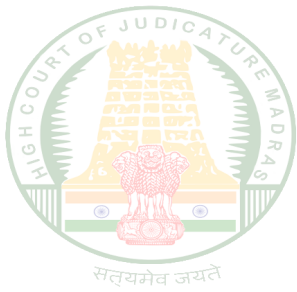
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dated 28.3.2014, which disregards the absence of any evidence of discharge and relies on an inspection period from April 2012 to February 2014 that bears no relation to the contract period from 21.4.2009 to 23.9.2011.

- The sole Arbitrator failed to consider the no-objection certificates and the waiver of the claim under Clause 9.7.4 of the General Conditions of Contract (GCC) due to the claimant's omission in the final bill dated 01.11.2013. The finding contradicts Clauses 15.2 and 15.6.3 of the SCC, which would expressly empower the CPCL to withhold the funds until RPFC Challan/receipts were furnished.

Claim C - Change Orders- Rs. 2,21,30,105/-:

- The sole Arbitrator rightly rendered a finding that the valuation of extra works was mutually settled at Rs.56,37,067/- pursuant to meetings held on 19.3.2013 and 12.7.2013. The claimant's subsequent attempt to claim an inflated sum of Rs.2,21,30,105/- was impermissible, given their prior written acceptance of the rates.
- The sole Arbitrator rightly found that the items now claimed as "extra" were either within the scope of the original contract or



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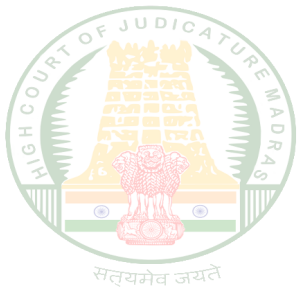
pertained to re-work necessitated by the claimant's poor workmanship, such as internal roof welding due to cracks discovered during testing.

Claim D - Bank Guarantee Charges- Rs.9,93,061/-:

- The sole Arbitrator rightly found that the extension of bank guarantees was a mandatory requirement under Clause 8.5.1 of the GCC and the claimant complied with it without raising any contemporaneous objection nor included any charges in the Running Account (RA) Bill.
- Furthermore, the claim is independently barred by limitation as the liability for these charges arose as early as 10.9.2011 while the arbitration clause was invoked only on 30.5.2016.

Claim E - LDs – Rs.4,43,072/-:

- The refund claimed by the claimant amounting to Rs.4,43,072/- is contrary to the contract. A conjoint reading of Clause 7.4.1 of the GCC and Clause 51.2.1 of the SCC establishes that the change order works squarely fall under the definition of the word "**work**". As per Clause 51.2.3 of the SCC, the original



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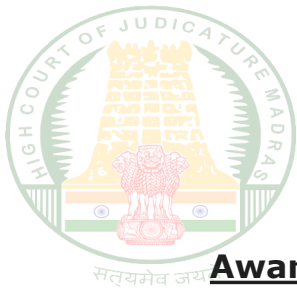
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construction schedule remains binding unless specifically amended.

- Therefore, the finding of the sole Arbitrator that the LDs could not be levied due to the lack of a separate schedule for change order No.1 is patently illegal.
- The sole Arbitrator rightly sustained the recovery of Rs.3,10,57,883/- as the claimant completed the works with a 14-months' delay attributable to its failure to adhere to the original timelines, causing a financial loss of Rs.4 Crores to the CPCL, as the Diesel Hydro Treating Plant could not function optimally.

Claim F – Overheads - Rs.5,45,30,196/-:

- This claim was rightly rejected as the contract contains no provision for the Hudson Formula and time extensions were granted on the express condition that the claimant would not be entitled to compensation for extended stay or escalation.
- The sole Arbitrator rightly found that the inordinate delay was entirely attributable to the claimant thereby denied prolongation charges.



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Award of Interest:

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- The grant of interest violates Section 31(7)(a) of the Act and the express terms of the contract and more specifically Clause 9.3.5 of the GCC, which prohibits interest on disputed claims.
- The sole Arbitrator erroneously awarded pre-award interest at 12.35% from 14.6.2013 and 13.12.2013 and future interest at the rate of 14.35% without providing reasons, exceeding the "cash credit rate" cap.

7. This Court has carefully considered the submissions made on either side and perused the materials available on record and the award passed by the Sole Arbitrator.

8. The main issues that were focussed on the side of the claimant are as follows:

(a) the deductions made towards the LDs to the tune of Rs.3,10,57,883/- and the findings rendered by the sole Arbitrator in this regard;

(b) the rejection of the claim made towards the charges paid for extension of bank guarantee to the tune of Rs.9,93,061/- and the



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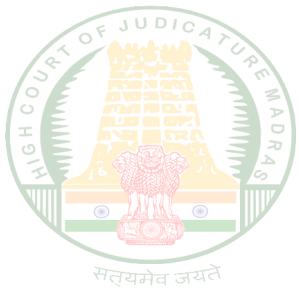
findings rendered by the sole Arbitrator in this regard;

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(c) the claim made towards return of the TDS amount to the tune of Rs.3,51,945/- and the findings rendered by the sole Arbitrator in this regard; and

(d) the claim for extra/additional works to the tune of Rs.2,76,69,908.30 Ps and the rejection of the same on the ground of accord and satisfaction and the findings rendered by the sole Arbitrator in this regard.

9. On the contrary, on the side of the CPCL, the main focus of the arguments was towards the refund of the provident fund to the tune of Rs.35,90,147/- and the claim for interest made by the claimant that was entertained and granted by the sole Arbitrator at the rate of 12.35% from 14.6.2013 and 13.12.2013 respectively till the date of the award and a further interest at 14.35% from the date of award till the date of payment for all those claims granted in favour of the claimant.



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10. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

11. At the outset, this Court has to necessarily deal with the issue of accord and satisfaction and full and final settlement since the finding that is going to be rendered under this head will determine as to whether this Court can go into the merits of the other claims made by the claimant.

12. In order to properly understand these issues, the sequence of events right from the beginning have to be carefully taken note of.

13. The tender was floated by the CPCL and on 21.4.2009, the FoA was issued in favour of the claimant for the purpose of design, procurement, fabrication, installation, testing and commissioning of six intermediate storage tanks and other works connected therewith to be executed by the claimant. The FoA was issued for a lump sum value of Rs.38,95,01,400/- and the timeline for the completion of the works mentioned thereunder was 15 months from the date of the FoA.



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Therefore, the work was supposed to be completed before 20.7.2010.

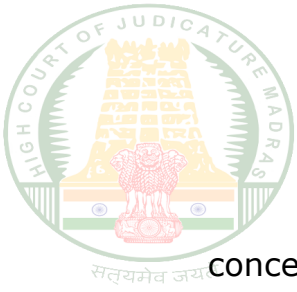
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The works inter alia included installation and commissioning of two diesel and four naphtha storage tanks. The CPCL was in the process of setting up a diesel hydro treatment plant to comply with Bharat Stage IV Norms. The LoA dated 12.5.2009 was issued, which stipulated the LDs at 0.5% per week or part thereof towards the delay subject to a maximum of 10%.

14. Six extensions were granted by the CPCL on 20.7.2010, 29.10.2010, 01.2.2011, 05.4.2011, 28.7.2011 and 08.9.2011 and the work was completed by the claimant only on 23.9.2011 after nearly 14 months from the original time schedule.

15. It is the case of the claimant that on 14.10.2011 and 14.5.2012, the final bill was raised for Rs.4,33,52,136/- namely R.A.Bill No.20 and final bill after completion of the works.

16. For some reason, this alleged final bill was not filed either before the sole Arbitrator or before this Court and what is available is only the covering letter dated 14.5.2012. In so far as this final bill is

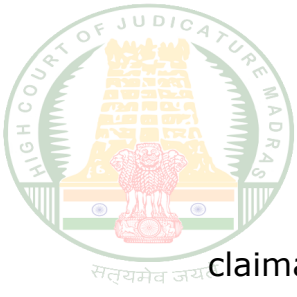


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concerned, the specific case of the CPCL is that the differential amount between what was claimed by the claimant and what was paid by the CPCL after deducting the LDs was settled subsequently.

17. On 04.11.2011, the claimant submitted the bill pertaining to the extra works or the change order works that were carried out by them in addition to the original scope of works. The claimant raised a bill for a sum of Rs.2,76,69,908.30 Ps towards extra works. Initially, the CPCL rejected this bill in toto on 13.6.2012. Thereafter, a meeting was held between the representatives of both the claimant as well as the CPCL and also the CPCL's Project Consultant (PMC) on 19.3.2013 wherein it was agreed that some of the items contained in the extra works bill dated 04.11.2011 would be deleted and that the amounts charged as against some of the items in the extra works bill would be reduced.

18. On 03.4.2013, the claimant revised their claim towards the extra works and reduced their claim to Rs.1,00,83,149/- as against the earlier claim of Rs.2,76,69,908.30 Ps. On receipt of the same, the CPCL found that some of the claims were inflated and therefore, the



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claimant was called upon to reduce their claim towards the extra works.

19. Once again, a meeting was held on 12.7.2013, in which, it was agreed between the parties that the value of extra works or the change order works would amount to Rs.56,37,067/-. On 26.8.2013, the claimant issued a no due certificate stating that apart from payment of bill No.21 and final bill and towards the extra works amounting to Rs.63,33,808/- as per part B, no further monies would be due and payable under the contract. Since the no due certificate was not in the proper format, the CPCL asked the claimant to give it in a proper format and accordingly, on 12.9.2013, a fresh no due certificate was issued, which stated that the claimant certified that the payment against the 21st bill and final bill and the bill for extra works should be the full and final settlement of the work executed against the subject contract.

20. The CPCL issued a change order towards the extra works or the change order works for Rs.56,37,067/- and the claimant endorsed the value of the change order works as "**accepted.**" The claimant had

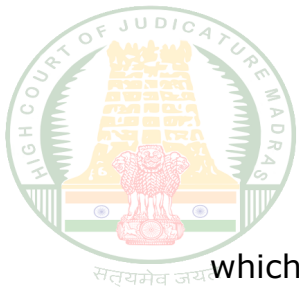


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also raised RA bill No.21 and final bill for a sum of Rs.74,69,993.29 Ps towards the original scope and the extra works or change order works claim, on 01.11.2013. On 13.12.2013, the CPCL paid an amount of Rs.61,73,322/- after deducting the TDS of Rs.4,56,180/- and the LDs on the extra works or the change order works amounting to Rs.4,43,073/-. This was received by the claimant purportedly without any protest.

21. After receipt of the said amount, on 17.12.2013, the claimant questioned the payment of Rs.70,72,575/- as against the total demand made by the claimant to the tune of Rs.2,76,69,908/-. Once again, a letter dated 11.3.2014 was issued by the claimant to the CPCL by referring to the earlier letter dated 17.12.2013 with the very same demand. Yet another letter dated 30.5.2016, which was the letter invoking Section 21 of the Act, was issued, in which, a similar claim was made.

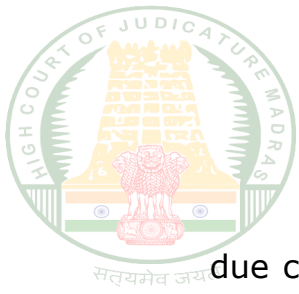
22. The learned counsel appearing for the claimant submitted that the final bill was raised on 14.10.2011 whereas the CPCL did not choose to make any payment to the claimant, as a consequence of



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which, the claimant was pushed to desperation. Ultimately, a much reduced amount was paid only on 13.12.2013. Immediately thereafter, the claimant questioned the CPCL regarding the reduced amount paid by the CPCL by virtue of three letters, which were mentioned supra and which were marked as Ex.C.147, Ex.C.149 and Ex.C.160. It was further contended that even if it could not be construed, in stricto sensu, as coercion, it was abundantly made clear that the claimant was pushed to desperation and that the ground of accord and satisfaction and full and final settlement could not be put against the claimant.

23. Per contra, the learned counsel appearing for the CPCL submitted that the claimant issued the no due certificate on 12.9.2013 stating that except for the final bill and R.A.Bill No.21, no further claims would be raised against the CPCL. Ultimately, a final bill for a sum of Rs.74,69,993.29 Ps was raised by the claimant, out of which, Rs.61.73 lakhs was paid, that prior to the issuance of the no due certificate dated 12.9.2013 by the claimant, another no due certificate had already been issued earlier on 26.8.2013 to the very same effect, that but, it was not given in the prescribed format and that these no

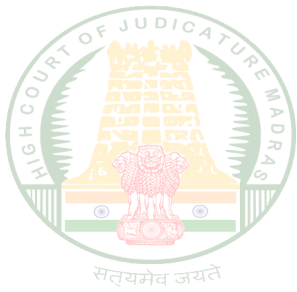


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due certificates were neither withdrawn nor questioned on the ground of coercion until the invocation of the arbitration clause by letter dated 30.5.2016 (Ex.C.160).

24. The only claim that was made by the claimant prior to the invocation of the arbitration clause was towards the claim pertaining to ESI/ PF and the TDS. The so-called RA Bill No.20 never saw the light of the day as it was not filed either before the sole Arbitrator or before this Court. Hence, what is relevant is only RA.Bill No.21 and final bill, which was settled by the CPCL.

25. The sole Arbitrator went into this issue and rendered a factual finding that the claimant, at no point of time, raised the ground of coercion and duress and that the so-called communications namely Ex.C.147 and Ex.C.149 were routine correspondences between the parties. The sole Arbitrator also rendered a finding that the claimant had received the amount from the CPCL without any demur and therefore, the sole Arbitrator did not find any merits in the claim made by the claimant towards the extra/additional works and accordingly, it was rejected.

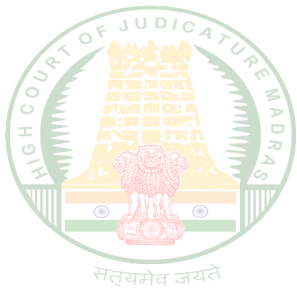


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26. At this juncture, it will be relevant to take note of the judgments that were relied upon by the learned counsel on either side and the scope and ambit of the term "**accord and satisfaction**".

27. The learned counsel for the claimant relied upon the decision of the Hon'ble Apex Court in **NTPC Vs. Reshmi Constructions, Builders & Contractors [reported in 2004 (2) SCC 663]**, in which, a specific reliance was placed on paragraphs 27 and 28, which are extracted as hereunder:

"27. Even when rights and obligations of the parties are worked out, the contract does not come to an end inter alia for the purpose of determination of the disputes arising thereunder, and, thus, the arbitration agreement can be invoked. Although it may not be strictly in place but we cannot shut our eyes to the ground reality that in a case where a contractor has made huge investment, he cannot afford not to take from the employer the amount under the bills, for various reasons which may include discharge of his liability towards the banks, financial institutions and other persons. In such a situation, the public sector undertakings would have an upper hand. They would not ordinarily release the money unless a



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"No-Demand Certificate" is signed. Each case, therefore, is required to be considered on its own facts.

28. Further, necessitas non habet legem is an age-old maxim which means necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the bargain who is in a stronger position."

28. Reliance was also placed by the learned counsel for the claimant on the judgments of the Hon'ble Apex Court in ***National Insurance Co. Ltd. Vs. Boghara Polyfab (P) Ltd. [reported in 2009 (1) SCC 267]*** and ***R.L.Kalathia & Co. Vs. State of Gujarat [reported in 2011 (2) SCC 400]*** for the very same proposition of law.

29. The judgments that were relied upon by the learned counsel for the claimant make it clear that each case must be considered on its own facts and that the Court must take into consideration the ground realities. Broadly, two categories of cases were considered. The first category is where the Court finds that there are bilateral negotiated



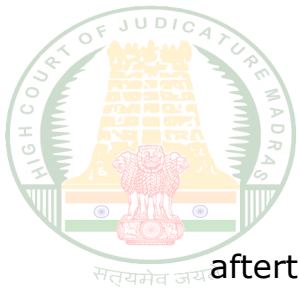
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settlement of pending disputes, which were agreed to by both parties and payments were made regarding full and final settlement. The other category is where such no due certificates or full and final settlement certificates were insisted as a condition precedent for the release of the admitted dues. In such cases, the Hon'ble Apex Court held that the paying party had an upper hand and in those cases, one party is forced to succumb to the pressure of the other party, who is in a stronger position, to the bargain. In that event, such full and final settlement and final satisfaction cannot take away the rights of the claimant.

30. The learned counsel appearing for the CPCL relied upon the judgments of the Hon'ble Apex Court in ***Boghara Polyfab (P) Ltd.*** and ***ONGC Mangalore Petrochemicals Ltd. Vs. ANS Constructions Ltd. [reported in 2018 (3) SCC 373]***.

31. In the judgment in ***ONGC Mangalore Petrochemicals Ltd.***, the Hon'ble Apex Court had put against the claimant a delay of 12 days and it was held that the story about duress was an



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afterthought. It was also held that the no claim certificate was given voluntarily; that the amount was accepted voluntarily; and that the contract was also discharged voluntarily.

32. In the case in hand, the claimant, at no point of time, raised any objection or withdrew the no due certificates. The claimant accepted the payment without any protest in the year 2013 and almost after 3 years, the claimant raised a protest on the ground of coercion and duress as an afterthought. As rightly found by the sole Arbitrator, the subsequent communications marked as Ex.C.147 and Ex.C.149 did not even mention that such no due certificate was received under duress or compulsion nor that immediately after the receipt of the amount, the claimant withdrew the no due certificate as being vitiated due to coercion.

33. The sequence of events would clearly show that by the time R.A.Bill No.21 was settled in favour of the claimant, at least two meetings were held between the parties for finalisation of the amount due and payable to the claimant and two no due certificates were



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issued by the claimant. In the given circumstances, it will be too far-fetched to hold that the claimant received the amount from the CPCL under duress or coercion or desperation and came up with this ground nearly after three years. The findings of the sole Arbitrator on the issue of accord and satisfaction, which was dealt with as issue (iii) and the issue of full and final settlement, which was dealt with as issue (iv) are definitely possible views on appreciation of evidence available on record and this Court cannot sit on appeal against such a view taken by the sole Arbitrator under Section 34 of the Act just because an alternative view may also be possible on the given facts and circumstances and the materials placed before this Court. Thus, this Court holds that the findings of the sole Arbitrator on the issue of accord and satisfaction and full and final settlement are upheld.

34. In the light of the above finding, the other issues to be considered pertain to the withheld amounts towards ESI/PF; the reimbursement of TDS amount; the additional charges incurred by the claimant towards extension of the bank guarantees; and the LDs to the tune of Rs.4,43,073/-, which was directed to be paid by the CPCL

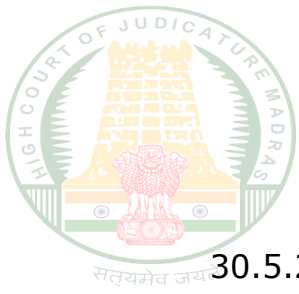


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to the claimant and which was deducted from change order No.1 apart from the interest component awarded in favour of the claimant towards those claims that were allowed by the sole Arbitrator.

35. In so far as the refund of the TDS charges is concerned, on 18.3.2013, the claimant wrote to the CPCL enclosing Form 16A seeking for an amount of Rs.3,51,945/- that is set to have been remitted on 16.7.2010. The very remittance of the TDS amount was disputed by the CPCL. Apart from that, as per the relevant Income Tax Rules, Form 16A must be provided within one month from remittance. Admittedly, for the first time, Form 16A was sent to the CPCL only in the year 2013. Unfortunately, the claimant had not filed even a shred of evidence to establish the remittance of TDS. In view of the same, even on merits, the claim made was not supported by any evidence, by which, it could have been easily proved by the claimant.

36. Apart from that, the sole Arbitrator found that the claimant had remitted the tax amounting to Rs.3,51,945/- for the period 2009-10. Admittedly, the invocation of arbitration clause took place only on



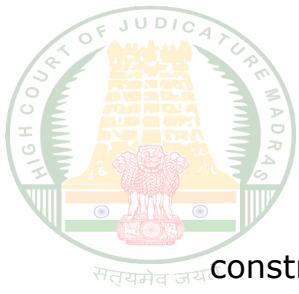
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30.5.2016, which was beyond the period of three years if the period is reckoned from 16.7.2010, on which date, the claimant asserts to have remitted the TDS.

37. The sole Arbitrator took into consideration these factual aspects and rendered a finding that both on merits as well as on the issue of limitation, the claim is liable to be rejected. In the considered view of this Court, the said finding of the sole Arbitrator does not suffer from any perversity or patent illegality warranting the interference of this Court.

38. The next issue pertains to the refund of the LDs deducted from change order No.1 to the tune of Rs.4,43,073/-.

39. The stand taken by the CPCL is that a conjoint reading of Clause 7.4.1 of the GCC and Clause 51.2.1 of the SCC makes it clear that the additional works would also fall within the definition of the word '**works**' under the contract. That apart, Clause 51.2.3 of the SCC states that any amendment to the contract would only result in the amendment to the construction schedule. In the present case, the

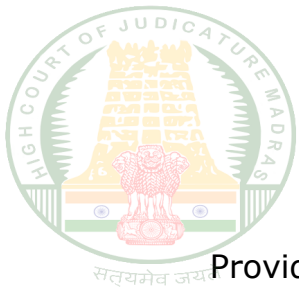


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construction schedule has not been amended pursuant to change order No.1 and therefore, the same schedule would continue to apply to change order No.1 as well.

40. The sole Arbitrator came to the conclusion that in so far as the extra works were concerned, there was no time schedule for completion of the same and hence, there was no justification for recovery of the LDs. Under such circumstances, the sole Arbitrator concluded that the amount of Rs.4.43,073/-, which was deducted towards the LDs on change order No.1, must be refunded. It is also seen from the records that while the parties held meetings to finalise RA.Bill No.21 and final bill, there was no indication of any deduction towards the LDs on change order No.1. All of a sudden, this amount was deducted when the final payment was made to the claimant. In view of the same, this Court does not find any perversity or manifest illegality in the findings rendered by the sole Arbitrator warranting the interference of this Court.

41. In so far as the claim pertaining to provident fund is concerned, the sole Arbitrator took into consideration the report of the



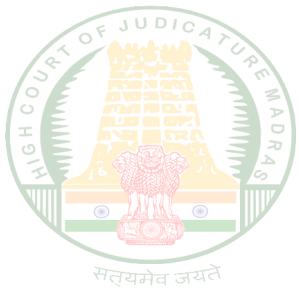
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Provident Fund Authority dated 28.3.2014, the challan submitted by the claimant and also the two no objection certificates dated 26.8.2013 and 12.9.2013. The sole Arbitrator also took into consideration Clauses 15.2 and 15.6.3 of the SCC. The sole Arbitrator found that the action of the CPCL in withholding the amount of Rs.35,90,147/- from the claim towards EPF contribution on the contract employees was not tenable. This finding rendered by the sole Arbitrator is a possible view and it does not warrant the interference of this Court.

42. The next issue pertains to the additional charges towards extension of the bank guarantees.

43. The sole Arbitrator came to the conclusion that the said claim made by the claimant was barred by limitation.

44. According to the claimant, they incurred an expenditure to the tune of Rs.9,93,061/- towards extended bank guarantee on 10.9.2011 when the validity of the bank guarantee was extended upto 30.10.2012.



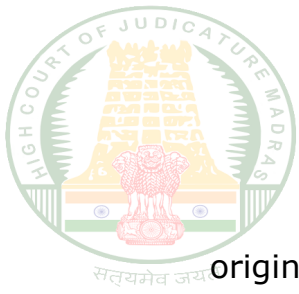
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45. However, this claim was made for the first time when the claim statement was filed on 10.12.2016 before the sole Arbitrator. Hence, the sole Arbitrator came to the conclusion that such claim was barred by limitation.

46. Apart from the above, as per Clause 8.5.1 of the GCC, the defect liability period is 12 months from the date of issuance of the completion certificate. Six extensions were granted to the claimant and hence, the bank guarantees were provided with validity until 30.10.2012. The claimant, at no point of time, objected to the extension of the bank guarantees nor raised any claims in any of the RA bills. Such bank guarantees were extended as per the contract terms. Hence, there is no question of making a claim towards additional charges incurred by the claimant towards extension of the bank guarantees. In view of the same, the finding rendered by the sole Arbitrator certainly does not suffer from any perversity or manifest illegality warranting the interference of this Court.

47. The learned counsel on either side made detailed submissions on the issue of LDs, which were deducted from the



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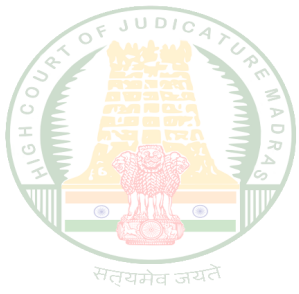
original bills.

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48. But, the claim towards refund of the LDs in so far as the original scope of work was concerned need not be gone into since this Court has already upheld the finding rendered by the sole Arbitrator on the issue of accord and satisfaction and full and final settlement.

49. The last issue pertains to the interest that was granted in favour of the claimant for those claims that were allowed in favour of the claimant.

50. According to the CPCL, as per Clause 9.3.5 of the GCC, no interest should be payable on the disputed claims. That apart, as per Clause 58 of the SCC, the interest, if awarded, should be at the rate not exceeding the cash credit rates prevailing as on the date of the award. However, the sole Arbitrator awarded interest at the rate of 12.35% from 14.6.2013 and 13.12.2013 respectively till the date of the award and further interest at the rate of 14.35% from the date of the award till the date of payment.

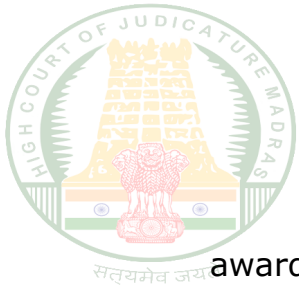


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51. According to the claimant, the CPCL had withheld the payments against the terms of the contract and that therefore, the claimant would be entitled to interest on payments that were delayed by the CPCL.

52. The sole Arbitrator, while dealing with the issue of payment of interest, which was dealt with as issue (v), took into consideration the relevant clauses both in the GCC as well as in the SCC and also the relevant rate of interest that was charged by the banks based on the letter dated 04.5.2019 issued by the Union Bank of India. The sole Arbitrator also took into consideration the scope of Section 31(7) of the Act. Thereafter, the sole Arbitrator fixed the interest payable by the CPCL to the claimant for those claims that were awarded in favour of the claimant. In the considered view of this Court, the sole Arbitrator provided sufficient reasons, which do not suffer from any perversity or manifest illegality warranting the interference of this Court under Section 34 of the Act.

53. In the light of the above discussions, this Court does not find any grounds made out under Section 34 of the Act to interfere with the



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award passed by the sole Arbitrator on 01.7.2019.

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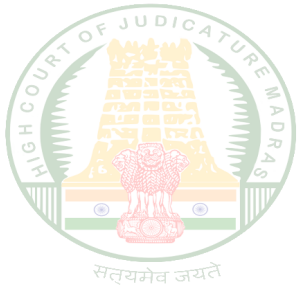
54. Accordingly, both the original petitions stand dismissed.

Consequently, the connected application is also dismissed. No costs.

02.1.2026

Index : Yes
Neutral Citation : Yes

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