IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM. ARBITRATION PETITION NO. 6 OF 2015
WITH
NOTICE OF MOTION NO. 2153 OF 2018
IN
COMM. ARBITRATION PETITION NO. 6 OF 2015

The Navi Mumbai Municipal Corporation
through its Commissioner ...Petitioner

Versus

Antony Waste Handling Cell Pvt. Ltd. ...Respondent

Mr. Tejesh Dande *a/w. Bharat Gadhavi and Vishal Navale, for Petitioner.*

Mr. Navroz Seervai, Senior Advocate *a/w. Ms. Gulnar Mistry, Ms. Shrey Shah i/b Vidhii Partners, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

Reserved on : March 4, 2025

Pronounced on: March 18, 2025

JUDGEMENT :

Context and Factual Background:

1. This challenge to an arbitral award dated September 30, 2014 ("***Impugned Award***") under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") relates to a dispute over collection and transportation of waste in Navi Mumbai by the Respondent, Antony Waste Handling Cell Private Limited ("***Antony***") for the Petitioner, Navi Mumbai Municipal Corporation ("***NMMC***").

2. Pursuant to four near-identical tenders, NMMC and Antony were party to four agreements (essentially four work orders and the tender documents including Conditions of Contract) of a five-year term (collectively, the "***Contract***") relating to specific segments of NMMC's territory, for collection and transportation of residential garbage. The territories covered by the four agreements were: (i) Group I (Parimandal-I); (ii) Group II (Parimandal II); (iii) MIDC-I; and (iv) MIDC-II. This was for the period between August 8, 2007 and August 7, 2012.

3. Additional area falling in Sector 1 to Sector 9 of the Ghansoli node ("***Ghansoli Area***") was added to the municipal territory of NMMC with effect from October 1, 2009. The Ghansoli Area was earlier under the jurisdiction of the City and Industrial Development Corporation of Maharashtra Ltd. ("***CIDCO***") and was merged into the territory falling in Parimandal II. The rates payable were Rs. 770 per ton for wet garbage; Rs. 805 per ton for dry garbage; and Rs. 200 per ton for debris. These rates were negotiated rates arrived at, lowering the rates quoted by Antony in its bid responding to NMMC's tender.

4. The garbage collection and transportation work for the entire area continued for an extended period beyond the first five years – until August

13, 2013, with monthly extensions. The Contract entailed price escalation linked to inflation i.e. the Wholesale Price Index ("***WPI***"), which, at the time of executing the Contract, was pegged to the prices in 1993-94 as the base year. Price escalation for the years 2008-09 and 2009-10 was computed and paid. However, on September 14, 2010, the WPI was reset with the base year being shifted to 2004-05. NMMC recomputed the price escalation for these years and treated the difference in price escalation on the basis of the new WPI as of 2010, as excess payment, and demanded it back. So also, no price escalation was computed for the extended period of work that continued until August 13, 2013.

5. Disputes and differences arose between the parties. The disputes ranged from the rate payable for garbage collection and transportation in the Ghansoli Area and whether the terms of the Contract would cover such work. Disputes also related to computation of price escalation and interpretation of the agreed terms, and whether the agreed terms would cover the extended period too. NMMC withheld amounts claimed by Antony and the parties went into arbitration, which led to the eventual Impugned Award.

Impugned Award:

6. The core findings in the Impugned Award are as follows:-

A) Garbage collection in the Ghansoli Area would be governed by the terms agreed in the Contract;

B) The same terms of the Contract would apply to the period after the initial period of five years;

C) Price escalation was to be effected every year, linked to the WPI, on August 8 every year starting with 2008. The base year for the computation of the WPI for the escalations until 2009-10 was 1993-94 while the base year for escalation thereafter was 2004-05. There would be price escalation for the period after the fifth year;

D) The price escalation was meant to be capped at an annual 20% and not an overall 20% for all five years put together;

E) Withholding of amounts by NMMC was illegal and such amounts ought to be returned with interest;

F) Interest for the pre-award and post-award period shall be 15% per annum; and

G) In view of the foregoing, NMMC was held liable to pay costs to Antony.

Analysis and Findings:

7. Mr. Tejesh Dande, Learned Counsel on behalf of NMMC and Mr. Navroz Seervai, Learned Senior Counsel on behalf of Antony, have made structured and detailed submissions in line with their commitments made in a Case Management Hearing. Each has tendered written notes as an aid to their presentation of issues. With their assistance, I have had the benefit of considering the material on record before the Learned Arbitral Tribunal to examine if the Impugned Award is susceptible to challenge within the contours of the jurisdiction under Section 34 of the Act.

8. For the reasons spelt out in this Judgement, I find no reason to interfere with the Impugned Award, which is a detailed, rational and eminently plausible judgement of the issues presented to the Learned Arbitral Tribunal. In my opinion, no case is made out for a finding of perversity as pressed into service to assail the Impugned Award. On the contrary, the Impugned Award is a painstaking assessment of the evidence, bringing to bear sound judgement in analysing the material on record to back up the findings rendered in the Impugned Award. I have no hesitation in finding that the case sought to be made out by the Petitioner does not at all persuade me to set it aside.

9. In the interest of clarity, this judgement is structured to deal with the objections raised before me under Section 34 of the Act, and in terms of the same sequence in which Mr. Dande has pressed the challenge to the Impugned Award.

10. Essentially, the challenge to the Impugned Award is based on the following premises:

A) The Impugned Award is without jurisdiction insofar as it relates to garbage collection in the Ghansoli Area that merged into Parimandal II area, since such activity is purportedly not covered by any arbitration agreement;

B) Awarding payment at the rate applicable to wet garbage when segregation of waste was not followed, is purportedly perverse, and the Learned Arbitral Tribunal ought not to have given credence to resolutions of NMMC's Standing Committee when interpreting the Contract;

C) The reference to the WPI as applicable at the time of computing price escalation in the initial two years ought to have been revisited since the base year for computing WPI changed during

the life of the Contract from 1993-94 to 2004-05. Besides the cap of 20% on price escalation was meant to be for the overall period of five years and not annual;

D) The terms of the Contract could not have been applied to the period of extension after the contracted five years;

E) The dismissal of the arguments made on limitation, although not taken up in the pleadings, was perverse; and

F) The award of interest at the rate of 15%, is perverse.

Arbitral Jurisdiction over Ghansoli Area:

11. At the heart of this contention by Mr. Dande is the fact that when the Contract was executed, the Ghansoli Area was not a part of the territory falling within the jurisdiction of NMMC. The four agreements comprising the Contract are covered by the arbitration clause contained in the tender conditions. The additional Ghansoli Area was handed over to NMMC on October 1, 2009. Indeed, the Ghansoli Area merged into Parimandal II, but Mr. Dande would point out that Antony was providing services to CIDCO in the Ghansoli Area, before such vesting and merging into Parimandal II.

NMMC indeed wrote to Antony on October 16, 2009 asking it to continue such work on a temporary basis. Later, on March 26, 2010, an undated agreement ("***Ad Hoc Agreement***") was executed on an *ad hoc* basis for the Ghansoli Area, but Mr. Dande would submit that the Ad Hoc Agreement did not have an arbitration clause.

12. Clause 2 of the Ad Hoc Agreement refers to terms and conditions contained in the tender conditions, tender notice and letter of acceptance as being a part of the Ad Hoc Agreement, Mr. Dande would submit. However, he would submit that since there was no tender for the Ghansoli Area, such reference is meaningless. Mr. Dande would submit that merely because the Ghansoli Area was added to Parimandal II, it would not follow that the arbitration agreement covering Parimandal II would cover the work done in the Ghansoli Area. While the rates covered in the Contract may be made applicable, Mr. Dande would submit, by no stretch could the arbitration agreement automatically become applicable to the work done in the Ghansoli Area.

13. Towards this end, Mr. Dande would rely on ***MR Engineering***[1] to submit that to bring an agreement under coverage of another arbitration agreement

[1] *MR Engineering & Contractors Pvt. Ltd. Vs. Somdutt Builders Ltd. – (2009) 7 SCC 696*

by reference, it would not suffice to have a mere general reference, but one would need to have a specific reference to the arbitration clause.

14. Having examined the record in this regard, I am afraid the submissions do not lend themselves to acceptance. To begin with, it is not correct to state that the Ad Hoc Agreement is devoid of an arbitration clause. Clause 6 of Ad Hoc Agreement provides that decisions rendered by way of "*lavaad*" (Marathi, for arbitration) shall bind the parties. Clause 6 provides for arbitration by the Municipal Commissioner (Page 401 in Volume II of the Compilation of Documents filed in these proceedings). This is near-precisely similar to what was provided for in the arbitration agreement contained in the Contract too (Clause 34) i.e. arbitration by the Municipal Commissioner or by an arbitrator appointed by the Municipal Commissioner. In these circumstances, it cannot be said that the parties did not have an intent to arbitrate in relation to the work carried out in the Ghansoli Area.

15. That apart, the element of introduction of the Ghansoli Area ought not to detain judicial attention at all. As a matter of fact, the Ghansoli Area (Sector 1 to 9) came to be merged into the territory of Parimandal II. Garbage collection in the area of Parimandal II was covered by the Contract, which had an arbitration clause. Once the Ghansoli Area came to be merged

into the very territory of garbage collection (Parimandal II), there was no need, in my opinion, for a fresh arbitration agreement to be executed to cover it. Therefore, the reliance upon the ratio in ***MR Engineering*** to submit that a mere reference to another contract covering a new contract would not be adequate, is irrelevant. What happened in this case was that the scope of the very Contract got expanded to bring within its fold, the Ghansoli Area, upon its merger into Parimandal II. That apart, it would be a quite appropriate to treat the reference to tender conditions referred to in the Ad Hoc Agreement, as a reference to the tender conditions that formed an integral part of the Contract. Since the parties referred to the tender conditions, the only tender that they were privy to was the the tender documents that they intended to be bound by even for the Ghansoli Area. Therefore, in my opinion, this ground of attack to the Impugned Award is untenable and without merit.

Mixed Waste as Wet Waste and Standing Committee's Role:

16. There has been considerable controversy over this subject in the arbitral proceedings. The Learned Arbitral Tribunal has meticulously examined the applicable regulatory framework governing the devolution of responsibility among stakeholders in this regard – ranging from NMMC, to Antony, and to the occupants of premises in the municipal territory of NMMC. There is a dispute about whether the NMMC played the role meant

for it, by promoting appropriate awareness campaigns and adopting advocacy measures to promote waste segregation by occupants of premises located in the territory of NMMC. There is also a dispute about whether Antony had played its role in the micro-level campaigning in this regard.

17. On perusal of the material on record, I find that the bid made by Antony indeed provided for payment at the rate of 90% of the "average cost of transportation of dry and wet garbage". The bid also contained the metric by which waste would be considered "mixed waste" – where dry waste constitutes more than 10% of the total volume of wet waste. I also find that the Contract indeed provided, in Clause 21, for Liquidated Damages and Penalties. The computation of penalties would have to be based on inspections conducted every day at 1000 hours and 1700 hours. Liquidated damages and penalties are payable under 14 heads of failures on the part of Antony. The penalties are in absolute values in rupees per fault. There is nothing in the penalty table that provides for a penalty of 10% of the invoice value. Even a plain reading of the foregoing would show that for penalty to be imposed, one of the 14 heads of penalty has to be attracted. There is no specific penalty provided for the subject matter of segregation of waste by Antony. However, two items come close to the subject – they are "Not doing public awareness campaign as per plan" (Item 11) and "Not maintaining the

bins / containers / vehicle as per the schedule (to be submitted in the micro level plan)" (Item 13).

18. At the bottom of the table of penalties in Clause 21.2, the following is provided:

> ***A penalty on monthly bill, shall be levied*** *on default to Contractor.* ***If the Contractor is charged 10% penalty for more than four months in an operational year****, then the then* ***the Contractor is liable for a termination/forfeiting the Security Deposit*** *or any other amount shall be forfeited as per the wish of the Competent Authority.*
>
> *[**Emphasis Supplied**]*

19. It would follow that if the penalties as per the table amounted to more than 10% of the invoice value, the right to terminate the contractor would also be triggered.

20. The Learned Arbitral Tribunal has examined the material on record in acute detail, examining the cross-examination of the witnesses and the stance adopted by NMMC about Antony in its correspondence with the State Government. Needless to say, on appreciation of evidence, the Learned Arbitral Tribunal has come to a considered and reasoned view that there was no agreement between the parties about applying a special rate for mixed waste, and that there were no penalty provisions for visiting Antony with financial consequences for purported failure in achieving segregation of

waste between dry waste and wet waste. The Learned Arbitral Tribunal could have discussed and analysed the implications of the table in Clause 21 and the consequences of the same. However, such an exercise was actually rendered unnecessary since the parties had a dispute over this issue and it was referred for resolution to an expert committee by the NMMC. That led to the NMMC, at three levels i.e. the Municipal Commissioner, the expert committee and the Standing Committee, resolving the dispute by adopting the view that when wet garbage and dry garbage was not segregated, the mixed garbage would be treated as wet garbage.

21. The Learned Arbitral Tribunal has examined the provisions of law contained in the Bombay Provincial Municipal Corporations Act, 1949 to examine the scope of power of the Standing Committee vis-à-vis the powers of the Municipal Commissioner. The Municipal Commissioner took a view that payment of Rs. 770 per ton may be paid for mixed garbage. This approach was presented to the Standing Committee, which accorded its approval for such rate (Resolution No. 567, passed on February 10, 2010). In fact, when Antony raised issues relating to various heads of dispute between the parties three years later by a letter dated March 8, 2013, the NMMC in its reply dated March 25, 2013 did not protest this component. Instead, it stated that it was waiting for input from the State Government. The Learned

Arbitral Tribunal has found, on appreciation of the evidence on record, that there is nothing to show that the State Government has raised any objection. The changed rate being a rate proposed by the Municipal Commissioner and approved by the Standing Committee, the view that the amended rate would apply to mixed garbage is a plausible view, that cannot be termed perverse.

22. It is also noteworthy that the resolution of this stand-off was reached by the Standing Committee early in the relationship – on February 10, 2010 (the first half of the life of the Contract, which commenced on August 8, 2007). The Ghansoli Area came to be added to the territory of Parimandal II on October 1, 2009, and the Ad Hoc Agreement was executed on March 26, 2010, which is after the Standing Committee passed Resolution No. 567.

23. It is seen from the terms of the Contract and the material on record, that collection and transportation of dry garbage was to be paid for at a higher price (Rs. 805 per ton) while the rate payable for wet garbage was lower (Rs. 770 per ton). The Standing Committee resolution approved the plan of NMMC's Municipal Commissioner to pay the lower of the two i.e. Rs. 770 per ton, treating non-segregated waste as wet waste. Payment at a rate that is the average of the rates applicable to wet waste and dry waste would actually be higher (Rs. 787.50 per ton) than the rate payable for wet garbage

(Rs. 770 per ton). Of course, a 10% reduction from this average rate would take the rate per ton to even lower (Rs. 708.75 per ton) but indeed it is debatable about whether the Contract allowed for such contractual penal intervention of discounting the rate. It stands to reason that the Standing Committee (indeed not on its own but on the proposal by the Municipal Commissioner) took a view that when wet garbage and dry garbage were mixed, such non-segregated waste would be treated as wet garbage, to enable application of the lower rate. Without this approach, one would need to consider evidence to examine whether the dry waste component was more than 10% of the volume of the wet waste. There is nothing to show that such empirical measurement was adopted.

24. The view of NMMC that mixed waste would be treated as wet waste was contemporaneous with the time when the issue went back and forth between the parties – way back in 2010. Even when Antony raised the issue that despite the approval of the Standing Committee, NMMC was still deducting 10% from its bills, NMMC's response was that it was waiting for the State Government's inputs. It was not a negation of Antony's claim that any deduction was illegal. In these circumstances, the finding of the Learned Arbitral Tribunal that the 10% deduction was not correct, is unexceptionable. It is consistent with the intent of the parties. The Learned Arbitral Tribunal

has indeed stated that the contract was not formally amended but the Learned Arbitral Tribunal took the view that NMMC, with the final backing of the Standing Committee dealt with the problem at hand by agreeing to adopt the new rate. In fact, the bills were indeed raised at the rate of Rs. 770 per ton for the mixed waste and the 10% deduction was effected on such rate. NMMC did not effect a 10% cut on the average between the rates payable for dry waste and wet waste. This would show that the NMMC too had adopted the rate of Rs. 770 per ton. The sole issue that remained for consideration as a dispute between the parties was whether a 10% deduction over and above that lower rate was appropriate. Based on the view of NMMC at that time (the doctrine of *ante-litam motam* entails giving credence to a party's position before the litigation began) would lead me to the conclusion that no perversity can be inferred in the Learned Arbitral Tribunal adopting the very rate applied by NMMC, and ruling that the 10% penal cut was illegal. The NMMC did not stop deducting 10% only because it awaited inputs from the State Government. Neither any approval nor disapproval from the State Government is on record. As a matter of interpretation of contract based on evidence contained in the material on record, the Learned Arbitral Tribunal did not make any mistake in rendering its finding in this regard.

25. The adoption of the lower rate payable on wet garbage is a rational and reasonable view, which is also not a view adopted by the Learned Arbitral Tribunal on its own, but a view that the Standing Committee of the NMMC took, and that too on a reference being made by the Municipal Commissioner. In these circumstances, in my opinion, no fault can be found with the Learned Arbitral Tribunal's conclusion in relation to the findings connected with collection and transportation of non-segregated waste i.e. mixed garbage. The application of the rates applicable to wet garbage is eminently logical and reasonable and does not commend itself to interference on the ground of perversity. Therefore, the challenge to the Impugned Award on this score too must fail.

Price Escalation, WPI and its Base Year, and Overall Cap:

26. This is a head of challenge that has, in my opinion, led to an inordinately wasteful expenditure of arbitration resources, on a non-point. First, it would be necessary to record what the parties agreed to. Second, it would be necessary to examine how WPI is computed. That would show that this dispute ought not to have arisen at all.

27. Schedule B to the bid document contains the rates quoted by Antony. After such table of rates, Item 2 provides that the "*Tariff Escalation shall be*

subjected to a ***yearly escalation*** *equal to change in the wholesale price index*". Clause 12.1 and Clause 12.2 of the Contract provide that the price terms would hold good for the entire period of the Contract with price revisions on every anniversary, without any revision mid-year. Clause 12.3 of the Contract provided an actual formula whereby the new price for the new year would be the old price multiplied by the ratio between the WPI two months before the reset date (June 8 of each year) and the WPI as of the date of the Agreement (August 8, 2007). The Contract leaves no room for any reference to the base year on which the WPI is structured.

28. There is no quarrel that this is a term that was agreed between the parties. Therefore, it is explicitly clear that there was to be an ***annual*** price escalation. Such price escalation was linked in direct proportion to inflation. The measure of inflation adopted by the parties was the WPI. The Learned Arbitral Tribunal has taken pains to explain in the Impugned Award how the WPI is computed.

29. It is a matter of public record, of which judicial notice ought to be taken, that inflation is measured by the WPI and also by the retail price index or consumer price index. The WPI is a measure of inflation relevant to business and industry, which tracks inflation before goods and services reach

the consumer. The consumer price index is a benchmark of inflation felt by the common man in relation to the price paid by the retail and end-consumers of goods and services.

30. Such price index numbers necessarily have to use a base price. The value of the index of prices of the base year is treated as "100" or "1000" (it can even be 100,000 for that matter – it is a base number with which prices are compared in future). The index number for subsequent years would show the movement from that base value, which would show the percentage of variation. From time to time, the base year may be changed for computation of the index. It is not necessary to change the base year either. For instance, the index numbers that show the movement of prices in the stock market have varying base values and varying base dates, but in India, these have remained unchanged since inception for the two most popularly and well regarded indices. The Bombay Stock Exchange's BSE SENSEX has the base date as April 1, 1979, treating the base value as 100, while the National Stock Exchange's NIFTY-50 has the base date as November 3, 1995, with the base value as 1000. The movement of the stocks constituting the index every day is benchmarked against such base value of 100 and 1000 respectively.

31. Regretfully, the dispute between the parties on this count, is much ado about nothing. As seen above, the parties agreed that they would make the price in the Contract inflation-proof. They agreed that there shall be an annual price escalation equivalent to the WPI. This means that the percentage change in the WPI would be applied to the price under the Contract. This is what the parties did in the first two escalation anniversaries – effective August 8, 2009 and August 8, 2010 (the price between August 2007 and August 2008 was to be at the contracted price).

32. It so happened, fortuitously, that the Office of the Economic Advisor, in the Government of India's Ministry of Commerce and Industry (which computes WPI and keeps track of wholesale price movement)[2] changed the base year from 1993-94 to 2004-05. This change was effected during the life of the Contract. The parties got distracted by this change. Such distraction appears to have been driven by an audit comment that criticised NMMC for not accepting a standard fixed 5% price escalation proposed by Antony on April 4, 2007 (when negotiating the Contract), which was rejected by NMMC's Standing Committee. The Contract reflected inflation-linked price escalation rather than a blanket 5% annual price escalation. That objection would not mean that the parties were unclear about what they had agreed to.

[2] *The Consumer Price Index is computed by the National Statistical Office, under the aegis of the Ministry of Statistics and Programme Implementation*

33. As a matter of fact, the current WPI at the time of writing this judgement has the base year 2011-12, which is also a year falling within the five-year period of the Contract. This change was done on May 12, 2017. I shall explain the relevance of taking judicial notice of these changes later in this judgement.

34. Strictly, the price adjustment linked to WPI is meant to make it easy for contracting parties to compute inflation-linked escalations. That is the very basis of index numbers. What base year is used is irrelevant because it is left to the "index engineers" (those engaged in computing and adjusting index numbers) to pick an appropriate base year and readjust the index values for convenience and relevance. Parties resort to index-linked price escalation contracts to adopt the wisdom of the index computation, without having to be deflected by index computation.

35. The price applicable under the Contract was adjusted for the years 2008-09 and 2009-10. However, when the base year for the WPI was changed from 1993-94 to 2004-05, NMMC took the position that the new WPI computed and disclosed in 2010 should be the base. This is evidently untenable. When the parties executed the Contract, the parameters that they adopted for price escalation was the WPI as computed at the time of

executing the Contract. The parties did not agree that if the base year for computing the WPI were to change, they would effect changes to the base WPI that would be used to compute the price escalation. To change that base WPI subsequently, would amount to a unilateral amendment to the Contract and that too with retrospective effect. In fact, as stated above, on May 12, 2017, the base year was changed to 2011-12. By NMMC's logic, this would entitle NMMC to once again retrospectively modify the agreed Clause 12.3 by adopting the WPI of May 12, 2017 as the base WPI for the escalation due in August 2011. The Learned Arbitral Tribunal has rightly concluded that such an approach is untenable, after considerable expenditure of judicial time due to the fallacious stance adopted by NMMC. The refusal of the Learned Arbitral Tribunal to replace the WPI as of the date of the Contract with the new WPI computed during the life of the Contract is unexceptionable and can never be assailed as perverse. The Learned Arbitral Tribunal has painstakingly and rightly incorporated from the booklet on inflation index computation produced by Claimant's Witness to explain the first principles of index number computation to hold in favour of Antony and against NMMC on this count. It would not at all be possible to fault the Learned Arbitral Tribunal on the findings in this regard.

36. The other facet of the dispute over price escalation is whether the 20% cap on escalation is an annual cap or a five-year cap. Towards this end, the provisions of the Contract are noteworthy. Clause 12 leaves no manner of doubt that the price escalation is an annual increase. Item 2 in Schedule B to the Contract too leaves no manner of doubt in this regard. Item 2(a) of Schedule B goes a step further – it provides that the first 5% increase due to inflation would be disregarded, meaning thereby that if the price escalation were more than 5%, the component of the escalation above 5% would be factored in for price escalation. Item 2(c) of Schedule B once again provides that the Contract is valid for five years, subject to the annual variation provided for. Item 2(b) of Schedule B provides that the total reimbursement or escalation due to price variation shall be limited to 20% of the price finally payable.

37. Evidently, the variation is an annual one, and the question that arises is whether Item 2(b) is to be regarded as an annual cap of 20% or a full-term five-year cap of 20%. Item 2(a) requires the parties to ignore the first 5% escalation as *de minimis* escalation that would have to be ignored. This is why the audit objection is not even logical or rational. Antony provided for a simple year on year escalation of 5% per annum. NMMC negotiated well and provided for linking price escalation to actual inflation and also for ignoring

the first 5% variation, thereby restricting the escalation to whatever is above 5%. The parties have no disagreement on ignoring such *de minimis* escalation. They have serious disputes about the unilateral deduction of Rs. 7 per ton effected by NMMC on the basis of recomputing the escalation using a new WPI rather than the WPI prevailing at the time of executing the Contract.

38. I note that the price escalation provisions uniformly envisage an annual escalation. The 20% cap on escalation is a cap after factoring in the exclusion of the first 5% *de minimis* price escalation. It would well be that the 20% escalation annually would be irrelevant for both annual escalations as well as for a five-year escalation. However, having regard to the nature of the provisions contracted by the parties, and in the absence of an explicit change in approach in Item 2(b) to provide for the 20% variation to be reckoned across five years, the view of the Learned Arbitral Tribunal that the 20% escalation too is an annual limit on escalation, cannot, in my opinion, be regarded as a perverse finding. It is an eminently plausible finding, and I am not persuaded to hold it as being implausible. Such a clause would indeed protect against runaway inflation, and that too after ignoring the first 5% of the escalation.

39. There is one more reason, indeed not adopted by the Learned Arbitral Tribunal, that would support the conclusion of the Learned Arbitral Tribunal. If the 20% escalation were to be a cap for all five years, it would follow that the average escalation per year would be 4%. When the first 5% in the annual inflation is itself to be ignored, it would be illogical to hold that the average annual cap would be 4%. It is for the inflation above 5% that the cap would apply, and if the cap itself were to be 4%, then it would not be commonsensical to provide for a *de minimis* threshold of 5% inflation to be ignored. On the other hand, if the average cap per annum were to be 4% after factoring in the first 5%, the parties would have taken care to provide for such a nuanced framework in explicit words. If the intent is to be inferred from the existing language of the Contract, the conclusions of the Learned Arbitral Tribunal are logical, commonsensical, reasonable and plausible, calling for no interference in exercise of powers under Section 34 of the Act.

40. Therefore, the Learned Arbitral Tribunal has rightly directed that the precise price escalation ought to be computed by NMMC in terms of the declarations made in the Impugned Award. The declaration made in the Impugned Award cannot be faulted. It is not just a plausible conclusion but also, in my opinion, the only accurate conclusion that could have been reached on the price escalation clause.

41. As regards the inclusion of the Ghansoli Area within the ambit of the price escalation, it is a corollary to my conclusions above. The Ghansoli Area was added to Parimandal II, and the Contract applied to garbage collection and transportation from areas including in Parimandal II. Therefore, the terms of the Contract as applicable to Parimandal II would subsume in their coverage the activity carried in Ghansoli Area, which became an integral part of Parimandal II from the date on which it became part of Parimandal II.

42. With the aforesaid analysis and findings, this element of the challenge to the Impugned Award too, in my opinion, deserves to be rejected.

Coverage of Extended Period of Contract:

43. Mr. Dande's objection in this regard is quite similar to his first objection. Indeed, it is common ground that Antony was asked to continue doing the work on the same terms as prevailing until a new contract was concluded with a new contractor was identified. With the disputes between the parties not being resolved, the work continued but ended in August 2013. There is no plausible reason to treat this period of the contract as continuing on the same terms as the Contract but only excluding the arbitration agreement. Such a stance is not commercially reasonable or commonsensical.

44. One can understand if there were a material deviation from the terms in the provision of services, to consider if any other provision of the Contract was also meant to be deviated from. The Learned Arbitral Tribunal has ruled that the Contract itself envisaged an extension of two years and the extended period for which Antony worked was well within such two-year period. Therefore, it has been held that the arbitration agreement indeed covered the extended period as well. This is sound logic and I see no reason to interfere with this conclusion – on the same principles that are underlying the coverage of the arbitration agreement to the additional territory of the Ghansoli Area being introduced into Parimandal II.

Findings on Limitation:

45. The question of limitation is always a mixed question of fact and law. The Learned Arbitral Tribunal was indeed right in stating that limitation was not even pleaded by NMMC in the arbitral proceedings. However, it was argued in the course of verbal submissions and the Learned Arbitral Tribunal dealt with it. This element of the challenge would not need me to expend much attention and word length in this judgement. Evidently, the core dispute is about price escalation. The word "reimbursement" is used in Schedule B in relation to price escalation, which indicates that the claim for price escalation could well follow the completion of the contract.

46. It is also seen from the correspondence between the parties in March 2013 that NMMC too stated to Antony that it was awaiting the State Government's response to the Standing Committee's approval of changed rate of Rs. 770 to mixed garbage (treating mixed garbage as wet garbage). This would show that even in 2013, the parties were engaged in seeking to resolve the dispute. The invocation of arbitration took place on March 25, 2013. The Learned Arbitral Tribunal entered reference on April 3, 2013. The Statement of Claim is dated April 30, 2013. All of this is well within three years of conclusion of the Contract. There is no case at all in this regard in favour of the objection of NMMC.

Award of interest at 15% per annum:

47. The contention on behalf of the Petitioner is that the interest rate is unreasonable. The argument is that as a public body, it should not be directed to pay this rate, and a rate of 6% would have been appropriate. Such submission is made by Mr. Dande, without prejudice to the argument that nothing is payable by NMMC. It is reiterated that the claim was raised six years after 2007.

48. None of the aforesaid submissions is tenable. First, the claim was not suddenly raised six years after the Contract was executed but within a year of

the conclusion of the Contract. Through the life of the Contract, these issues were being battled back and forth. The NMMC, through multiple organs of decision-making was engaging internally to deal with the issues. In fact, the Municipal Commissioner, an evaluation committee, followed by the Standing Committee found favour with the interpretation of Antony, in particular about the rate applicable to mixed garbage. I have already discussed above how the usage of the WPI was totally flawed and this too led to NMMC enjoying funds which ought to have been paid to Antony in time.

49. Antony had claimed interest at the rate of 18% – the maximum then allowed under the Act. The Learned Arbitral Tribunal has awarded interest at the rate of 15%. Whether it was inappropriate to the point of being perverse is the limited scope of my review. As a Section 34 Court, the interest rate cannot be changed since there is no power to modify the Impugned Award. The limited question is to see whether the interest rate awarded is perverse.

50. Therefore, it would be imperative to examine the statutory position on the subject. Section 31 of the Act would need to be considered. Section 31(7) empowers the Learned Arbitral Tribunal to award interest at such rate as it considers reasonable. The rate is clearly in the domain of the Learned

Arbitral Tribunal. Merely because a rate of 6% is considered right by NMMC, it would not render unreasonable, the interest rate awarded by the Learned Arbitral Tribunal. On the contrary, the matter at hand is a case to which the Act in its form before the amendments of 2015 would apply. In that version of the law, the statutory default position for post-award interest was at the rate of 18% per annum. The Learned Arbitral Tribunal took a view that a rate of 15% would be fair for the period before and after the award.

51. Antony has indeed been deprived of the money rightfully belonging to it for a long time. The position of the NMMC as discerned from the conduct of its own decision-making bodies ranging from the Municipal Commissioner to the evaluating committee to the Standing Committee were consistent with what is set out in the Impugned Award. NMMC simply did not follow the decisions it took. The Impugned Award has found in favour of Antony. The deprivation of funds ought to necessarily be compensated.

52. The parties had also agreed consciously to de-risk the price from inflation. Despite that agreed position, even this was being frustrated. Since time value of money *de hors* the inflation rate would have to be factored in, it would follow that Antony ought to be reasonably compensated for the amounts due to it. Therefore, also taking into account the fact that this Court

cannot substitute its wisdom with the wisdom of the Arbitral Tribunal, necessarily the interest rate does not call for any interference. It is not unreasonable to pick an interest rate of 15% when the law at the relevant time had a default benchmark rate of 18%.

Summary of Conclusions:

53. In these circumstances, the Petitioner has not made out a case for setting aside the Impugned Award. To summarise, in my view:-

A) The Impugned Award is well within jurisdiction insofar as it relates to garbage collection in the Ghansoli Area that merged into Parimandal II area. The Ghansoli Area got absorbed into Parimandal II and thereby attracted the provisions of the Contract including the arbitration agreement. Even when letters were issued to Antony, the reference to the terms applicable were the terms contained in the tender and bid documents submitted by Antony. This position cannot be lightly wished away by stating that there had been no tender for Ghansoli Area. Instead, it is reasonable to conclude that the reference to the tender documents was a reference to the tender documents and Conditions of Contract that Antony had actually been privy to for

Parimandal II. Therefore, it cannot be said that the activity in the Ghansoli Area was outside the scope of arbitration;

B) There is nothing perverse in holding that the rate applicable to wet garbage would be applied to waste that is not segregated. This was NMMC's own proposition at multiple levels during the life of the Contract – ranging from the Municipal Commissioner to the evaluating committee and to the Standing Committee. Even as late as in March 2013, NMMC did not deviate from this position and only held back on the premise that it was waiting for inputs from the State Government. In my opinion, the decision of the Learned Arbitral Tribunal in this regard is unexceptionable. There is nothing wrong in taking note of the conduct of the parties during the life of the Contract (and even after) to discern the contracting intent of the parties to the contract. In fact, the deduction of 10% had been effected on the rate of Rs. 770 per ton as applicable to wet waste and not on the average of the rates applicable to dry waste and wet waste. There is no basis to impose a 10% penalty in the Contract, and the Impugned Award merely reverses the illegally withheld amount.

No fault can be found with this finding of the Learned Arbitral Tribunal;

C) The very understanding of index numbers and how to compute price escalation of the WPI as adopted by NMMC was flawed. An index number in fact obviates the need to effect such adjustments as sought to be made by the NMMC. The Contract did not provide for going behind the WPI and further making reference to the base year adopted for the WPI. If the parties had such an intent, they would have stated so in the Contract. The price escalation provisions provide no basis to go into the base year on which the WPI was based. It was fortuitous that the base year for the WPI was reset during the life of the Contract. In fact, judicial notice can be taken of the base year having undergone a change in 2017 to 2011-12, which also fell within the period of the Contract. The parties could never venture into re-adjusting the price escalation on the basis of a change in the base year, without any provision for re-adjustment in the terms of the contract. The reference to the WPI as applicable at the time of executing the Contract and the comparison with the WPI as prevailing two months before the scheduled computation of the

price escalation, is what the parties had agreed on. Therefore, no fault can be found with the conclusions drawn by the Learned Arbitral Tribunal in relation to dismissing the distraction by the base year;

D) That apart, the Learned Arbitral Tribunal was quite right in its conclusion that the cap of 20% on price escalation was meant to an annual cap and not a five-year cap. In any case, price escalation to the extent of 5% was meant to be ignored and the discussion on this point could well be moot. In any case, as a point of principle, the finding of the Learned Arbitral Tribunal cannot be faulted, for the reasons and on the basis of the analysis I have made under this head of challenge above;

E) The conduct of the parties as analysed by the Learned Arbitral Tribunal would point to the parties having decided to apply the existing terms to the extended period. The Contract itself provided for a two-year extension and the extended time for which the parties continued to work was well within such two-year period. Therefore, since the parties were extending the work from time to time all within such extendable period, it would be commonsensical and commercially logical to discern

that the terms on which they continued to work was also within the scope of the terms agreed in the Contract;

F) There were indeed no pleadings on limitation in the arbitral proceedings. Despite this being a purportedly novel afterthought, the Learned Arbitral Tribunal has rejected it for sound reasons. Indeed, it is wrong to state that the claim made in 2013 was six years after the Contract – on the contrary, since sustained efforts to resolve the difference failed, work on the extended Contract ceased and arbitration was initiated well within time. This is the good reason because of which no pleadings on limitation were found in NMMC's Statement of Defence; and

G) The award of interest at the rate of 15% is reasonable and fair – well below the then-applicable statutory benchmark of interest at 18% under the Act. This calls for no interference.

54. Therefore, this Petition deserves to be dismissed as being devoid of merit. Needless to say, the Learned Arbitral Tribunal had directed NMMC to compute the amounts payable in line with the Impugned Award. During the course of the hearing of this Petition, NMMC had made such computation

and deposited the same with the Registry of this Court. Such amount, along with all accruals thereon shall be paid over to Antony within a period of four weeks of this Judgement. This is a very old matter filed way back in 2016 and no useful purpose would be served in holding up the release of money rightfully due to Antony any further. Since the Impugned Award also awards costs, and such amount too ought to have been deposited, the accruals on the costs too would belong to Antony. In these circumstances, since the monies have been deposited, I am refraining from imposing costs attributable to this round of litigation under Section 34 of the Act. The ends of justice would be met by releasing all amounts deposited in the Registry of this Court along with all accruals thereon.

55. Needless to say, the Impugned Award itself did not make computations on various counts and directed NMMC to make computations in line with the Impugned Award. Therefore, this Judgement too is not a pronouncement on the accuracy of the computations made. Antony too has had ample opportunity – for nearly a decade – to test and question the computation of the amount deposited in Court. In these circumstances, without the need for this Court to pronounce upon or endorse the computation, the Petition is simply dismissed as being devoid of merit, without an order as to costs.

56. In view of the dismissal of this Petition, nothing survives in the attendant Notice of Motion, and the same is also disposed of.

57. After the judgment was pronounced, Learned Counsel on behalf of the NMMC requests for stay for the period of six weeks from today. Considering the articulation already made above, and taking into account the fact that the release of deposit is directed to be made in four weeks from today, no further extension of time is felt appropriate.

58. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN J.]

Shraddha