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

Judgment pronounced on: 16.09.2025

\+ **O.M.P. 913/2011**

GOVT OF NCT OF DELHI .....Petitioner

Through: Mr. Rajeev Aggarwal, ASC.

versus

M/S PRAKASH REFELECTIVE DEVICES PVT LTD. .....Respondent

Through: Mr. A.K. Jain and Mr. Akshat Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition assails an Arbitral Award dated 10.08.2011 (hereinafter "*the impugned award*"). The said arbitral award was rendered in the context of a contract between the parties for providing and fixing a Retro-reflective Signage on the Inner and Outer Ring Road on NH-10 (Delhi-Rohtak).

2. Tenders for the said work were invited by Public Works Department. Pursuant to the submission of bids by the claimant / respondent, an acceptance letter dated 14.12.2004 was issued in favour of the claimant/respondent. In terms of the said acceptance letter, the value of the contract was Rs. 2,88,15,483/-, and the time allowed for carrying out the works was six months, to be reckoned either after 22 days from the date of issuance of the letter of acceptance or from the first day of handing over of the site, whichever was later.

3. The date of commencement of the work was 05.01.2005, and the scheduled date of completion was 04.07.2005. However, the work was completed only on 05.04.2006. The case of the respondent/claimant in the arbitral proceedings was that it was not responsible for the delay in execution of the work, which was occasioned on account of changes in the site from time to time and delays in furnishing approved drawings etc.

4. The following claims were raised in the arbitral proceedings:

1) Claim No. 1: Claim on account of dilution of profit due to extended period of work for Rs, 68,41,515/- later revised to 22,96,697/-.
2) Claim No.2: Claim on account of increase in the cost of cement and steel and other ingredients for Rs.27,83,212/- later revised to Rs. 18,77,635/-.
3) Claim No.3: Claim on account of increase in cost of imported components of the signage for Rs.7,03,632/- later revised as Rs.12,17,140/-.
4) Claim No.4: Claim of Rs.53,10,000/- on account of idle machinery and labour and a sum of Rs.37,58,540/- (Revised to Rs.22,96,697/-) towards overhead charges on account of delay in supplying of drawings and making decision for installation of signages.
5) Claim No.5: Claim on account of keeping bank guarantee alive and insurance alive beyond the due date of completion.
6) Claim No.6: Claim on account of refund or non-payment of interest on mobilization advance beyond the due date of completion.

IMPUGNED AWARD.

5. The impugned award examined the respective contentions of the parties in considerable detail. The arbitrator dealt with the entire

correspondence relied upon by the respective parties for the purpose of assessing the attribution of delay and for assessing/adjudicating the claims raised by the respondent/claimant.

6. On perusal of the contractual provisions and the correspondence exchanged between the parties during the course of execution of work, the arbitrator found that the time was not of the essence of the contract. The relevant conclusion as drawn in the award in this regard, is reproduced as under:

> *"20. From the provisions of the agreement, reproduced herein-above, it is clear that the agreement provides for penalty of forfeiture of earnest money and other penalties provided in clause 2 of the agreement. It is further evident that there is a provision in the agreement for extension of time in the facts and circumstances mentioned in the clause 5.2 of the agreement. In view of these facts, I am of the considered opinion that time was not of the essence of the contract. The view I have taken finds full support from a judgment of the Hon'ble Apex Court in the case Hind Construction Contractors Vs State of Maharshtra (1979) 2SCC 70. It may also be relevant to note here that in the present case, in fact, the respondent had granted the extension in completion of the work up till 15.04.2006 vide letters dated 30.01.2006 (Exh.R-69), 28.02.2006 (Exh.R-68) & 31.03.2006 (Exh.R-72)."*

7. The arbitrator also found that both parties were jointly responsible for the delay in execution of the work. The relevant findings in this regard, as recorded in the impugned award, are reproduced as under:

> *"32. In view of the above discussion in paras no.22 to 31, I am of the considered opinion that both the parties were jointly responsible for the delay in execution of the work. Accordingly, it is held that partly the claimant and partly the respondents were responsible for the delay in completion of the work within the stipulated period."*

8. The award noted the contentions of the respondent/claimant that it was required to give an undertaking as a pre-condition for the grant of extension of time without levy of compensation. The Award further notes

that since the delay was attributable to both parties, it was not necessary to consider the undertaking given by the respondent/claimant.

9. The award proceeded to reject Claim Nos.1, 3 and 4 as raised by the respondent/claimant. The Award also notes that the claimant did not press Claim No.5 (relating to keeping the bank guarantee and insurance alive beyond the due date of completion) and Claim No.6 (relating to refund or non-payment of interest on mobilization advance beyond the due date of completion). However, Claim no.2 was partly allowed, and consequently, interest on the said amount was also awarded.

10. Costs of Rs.3,00,000/- were also granted to the respondent/claimant, to be recoverable from the petitioner. The counter-claim raised by the petitioner (towards cost of arbitral proceedings) was rejected.

11. In the above conspectus, the challenge in the present petition is confined only to the award insofar as it relates to Claim No.2 (increase in cost of cement and steel), award on account of interest and award in respect of 'costs'.

12. The findings rendered in the impugned award with respect to the above claims are as under:

> *"**Claim No.02***
> *48. Under this claim the claimant initially raised claim of Rs.27,83,212/- along with interest @18% p.a on account of increase in the cost of cement and steel. With regard to cement, the claimant has claimed increase in Cement cost @18% on the total cost of 12,222 bags of cement as per the contract and the said amount of increase comes to Rs.3,33,514/-. With regard to Steel, the increase has been claimed @18% on the total cost of Steel as per the contract which comes to Rs.24,83,949/-. The said claim was, however, reduced by the claimant to an extent of Rs 18,77,635/- vide application dated 01.08.2009 by way of an amendment. The said amendment was allowed by this tribunal vide order dated 14.09.2009 though, according to the respondents even the reduced amount of this claim was not payable by the respondents. With*

regard to increase in cost of Steel, the claimant has relied upon letter dated 17.02.2005, Exh.CW-36, which was addressed by the claimant to the respondent no.02. In para 03 of this letter it has been stated that an increase of 12 % in Steel prices and increase of 18% to 23% in the prices of Cement. Again in the letter dated 08.04.2005, Exh.CW-39, addressed to the respondent no.02, it was stated that the cost of Aluminum Sheeting had gone up by 12% to 13% and cost of Cement, Steel and TMT bars had gone up by 15% to 18%. Again in the letter dated 29.04.2005, Exh.CW-40, addressed by the claimant to the respondent no.02, the claimant referred to the discussion held in the meeting on 11.04.2005 in the chamber of the Chief Engineer, PWD, Zone III, Delhi, in which the claimant was assured that the case of the payment of the escalation for structural steel, duly recommended would be sent to the competent authority for consideration. The claimant had also filed a copy of the notification dated 02.11.2004, Exh.CW-35 (also .Exh.R-45), alongwith his affidavit dated 30.05.2008, by way of evidence and the said copy of notification contains amended clause 10CA with regard to the payment due to change in prices.

49. The respondents in their reply to the statement of claim at page 109, have admitted that the claimant is entitled to some relief on this account under Clause 10CA, which was amended vide circular dated 02.11.2004, copy of which is Exh.R-45 and also ,Exh.CW-35 of the statement of claim. It is further stated at page 113 of the reply to the statement of claim that the respondent no.02 in his letter dated 23.04.2005, Exh.CW-13, which is in reply to the claimant's letter dated 08.04.2005, copy Exh.R-22,had clearly informed the claimant that only Cement and Steel (TMT Bar) were covered under clause 10 CA and admissible escalation in the prices for the same may be paid but it was further stated that the payment of escalation in respect of other items was not admissible.

50. I have given my thoughtful consideration to the submissions made on behalf of the parties and have perused the records on this point. From the facts stated herein-above, admittedly, the claimant is entitled to increase in the cost of Cement and Steel under clause 10CA, copy of which is Exh.R-45 as well as Exh.CW-35. The said clause 10CA reads as under:

> *"Clause 10 CA : If after submission of the tender, the price of cement and / or steel reinforcement bars incorporated in the works (not being a material supplied from the Engineer-in-Charge's stores in accordance with clause 10 thereof increase beyond the price prevailing at the time of the last stipulated date of receipt of tenders (including extension if any) for the work, then the amount of the contract accordingly, be varied and provided, further that*

such increase shall not be payable if such increase becomes operative after the stipulated date of completion of work in question. "

From the Clause 10 CA the contractor (Claimant herein) is entitled to increase in the cost of Cement and / or Steel reinforcement bars only and further the said increase is admissible provided such increase is within the stipulated date of completion of work. In the present case the stipulated date of completion of work was 04.07.2005 and the increase had come into operation on 17.02.2005 and 06.04.2005 as is evident from the letters dated 17.02.2005, Exh.CW-36, and dated 06.04.2005, Exh.CW-39. From these letters it is also clear that the increase in Cement was 23% on 17.02.2005 and on 06.04.2005 it was between 15% to 18%. As stated herein-above, the claimant has claimed 18% increase on the total contractual cost of the Cement which is quite justified in view of the above mentioned letters dated 17.02.2005 and 06.04.2005 which comes to Rs.3,33,514/-. However, the claimant filed an application dated 01.08.2009 seeking amendment of this claim. In this application it has been stated that as per the final bill the total Cement consumed in the work comes to 4,674 bags only. Accordingly, the total cost of 4,764 bags @ Rs. 151.60 per bag comes to Rs.7,08,578/-. Thus, increase @ 18% on this amount of Rs.7,08,578/- comes to Rs.1,27,544/-. Accordingly, I allow the said claim of Rs.1,27,544/- in favour of the claimant on account of increase in the prices of Cement.

51. With regard to the increase in cost of Steel, the claimant has claimed @18% over the total contractual cost of Steel. As stated earlier, the increase with respect of Steel was 12% as per letter dated 17.02.2005, Exh.CW-36 and as per the letter dated 08.04.2005, when the contract was still in operation, the price of steel tubes has been mentioned as Rs.41 per kg, though at the same time, the increase in Steel and TMT Bars has been mentioned at 15% to 18%. Keeping in view the said two letters I am of the opinion that it would meet the ends of justice if the claimant is awarded 18% over the total contractual cost of the Steel. The total cost of Steel as per the contractual rates comes to Rs. 1,37,99,770/-. However, the claimant filed an application dated 01.08.2009 seeking amendment of this claim. In this application it has been stated that as per the final bill the total Steel Reinforcement consumed in the work comes to 31,204.86 kg. The contractual cost of Steel Reinforcement is Rs.19.20 per kg. Accordingly, the total cost of Steel Reinforcement comes to Rs.5,99,136/-.

52. Similarly, the total structural steel consumed is 2,42,447.64 kg and the contractual cost is Rs.19.02 per kg. Thus, the total cost as per the contractual rate comes to Rs 46,11,361/-. Thus, the total cost of both

Reinforcement Steel and Structural Steel comes to Rs.52,10,497/- (Rs.5,99,136 + 46,11,361). The increase of 18% on this amount of Rs.52,10,497/- comes to Rs.9,37,889/-. Accordingly, I award a sum of Rs.9,37,889/- towards the increase in the cost of steel. As stated herein-above, while preparing the original claim no.02, the claimant itself has claimed increase in respect of the steel @18% which has been allowed. However, in the application seeking amendment dated 01.08.2008, it was stated by the claimant that the contractual rate prevalent at the time of the contract was Rs.19.20 per kg Steel Reinforcement and the claimant has claimed the increase of Rs.6.27 per kg on this amount which comes to about 32.65 %. Similarly, with regard to Structural Steel, the contractual rate of which has been stated as Rs.19.02 per kg and on this the increase has been claimed@Rs.6.01 per kg which comes to 31.6%. Since, the claimant itself in the original claim petition has claimed increase of 18% in respect of both the Steel items, the claimant cannot be allowed any increase beyond the said 18% towards the increase in respect of the Steel.

53. In view of the above discussion, the claimant is allowed a sum of Rs.10,65,433/- on account of increase in the prices of Cement and Steel against claim no.02. As regards the interest on this amount, it is being dealt with under a separate head 'Interest'."

xxx *xxx* *xxx*

Interest

63. The claimant has claimed interest @18% p.a on all the claims from the date of their becoming due till the actual payment. As stated here-in-above, I have held that the claimant is entitled to recover a sum of Rs.10,65,433/- from the respondents against all the claims. The question now to be examined is as to whether this tribunal has jurisdiction to award the interest on the amount allowed in favour of the claimant. Admittedly, in the present case, the agreement is silent with regard to award of interest. So far as the pendente lite interest is concerned, the matter came up for consideration before a constitution bench of the Hon ble Supreme Court in the case Secretary, Irrigation Deptt, Government of Orissa & Ors Vs G.C.Roy AIR 1992 SC 732. In this case the Apex Court enumerated 5 principles. Under principle no.1 it was held that "a person deprived of the use of money to which he is legitimately entitled has a right to be compensated for the deprivation, call it by any name. It may be called interest, compensation or damages". The basic consideration is as valid for the period the dispute is pending before the arbitrator as it is for the period prior to the Arbitrator entering upon the reference. In a subsequent decision in the case of T.P.George Vs State of Kerela (2001) 2 SCC 758, the Hon'ble Apex Court held that the

Arbitrator can grant interest from the stage of accrual of the cause of action till the filing of the arbitration proceedings, during the pendency of the proceedings and further, between the date of the award till the realization of the amount awarded.

64. The quest now to be examined is as to what rate of interest should be awarded to the claimant and for what period the interest should be awarded. As stated here-in-above, the agreement does not provide for any rate of interest on the amounts claimed. However, it is now settled that the purpose of interest is to compensate the successful party deprived of the use of money to which he is legitimately entitled and has the right to be compensated for the period of deprivation. As stated in para hereinabove, the work was completed on 05.04.2006. Thus, the amount awarded become due after completion of the work. Accordingly, the claimant shall be entitled to interest for the period 01.05.2006 till the date of this award.

65. As regards the rate of interest, reference may be made to a judgement of the Hon'ble Supreme Court in the case of Maheshlal Seals and Ors Vs Union of India VII (2006) SLT 1, wherein the Hon'ble Apex Court held that "We are of the view, that the interest awarded by the arbitrator @15% per annum from the date of acquisition till the time of payment is on the higher side and accordingly, we direct payment of interest @9% per annum instead of 15% per annum. In another case Food Corporation of India Vs A.M.Ahmed & Co., VIII (2006) SLT 133, the Hon'ble Supreme Court held that "....it would be just and proper to award interest @9% per annum throughout instead of 12%) as awarded by the arbitrator for the period in question. "In another case Krishna Bhagya Jala Nigam Limited Vs G.Harishchandra Reddy & Anr., MR 2007 SC 817, the Hon'ble Supreme Court held that 'we do not wish to interfere with the Award except to say that after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the Arbitrator at 18% for the pre-arbitration period, for the pendent lite period and future interest be reduced to 9%".

66. From the law laid down by the Hon'ble Apex Court in the above mentioned cases it is clear that interest is to be granted keeping in view the overall facts and circumstances of the case. Keeping in view, the facts and circumstances of the present case, I am of the opinion that it would meet the ends of justice if the claimant is awarded simple interest @9% per annum on the amount of Rs.10,65,433/-. The amount of interest for the period 01.05.2006 to 31.07.2011 comes to Rs.5,03,417/-.

Cost

> *67. The claimant has claimed a total sum of Rs.5,00,000/- towards the cost of arbitration. The claimant is entitled to the cost of these proceedings from the respondent since the claimant has been awarded a sum of Rs. 15,36,887/- including interest towards his claims. In terms of the proceedings dated 21.02.2008, the fees of the arbitrator was fixed at Rs.15,000/- for each date of hearing to be shared equally between the parties. From the records I find that 28 hearings have been held in this case and the claimant has paid a sum of Rs.2,10,000/- as his share of fees of the arbitrator besides the amount of secretarial and misc expenses. In view of this, I hold that the claimant is entitled to recover the cost of these proceedings from the respondent which I fix at Rs.3,00,000/-."*

13. Learned counsel for the petitioner submits that the impugned award travels beyond the provisions of the contract in awarding the said claims. It is contended that Clause 10CA of the applicable terms and conditions did not permit escalation in respect of "structural steel". Accordingly, the award is erroneous in allowing escalation for an item not permissible under the agreement.

14. Thus, the award is assailed on the ground of alleged disregard of the plain and unambiguous terms and conditions of the contract. It is submitted that the market price of any item was immaterial if the same was not covered under the scope of the agreement, and that there was no acceptance by the petitioner to the respondent's claim for escalation of any item outside the scope of the agreement *viz*. "structural steel".

15. On the other hand, learned counsel for the respondent submits that the grant of escalation in both respects was a matter completely within the domain of the learned arbitrator. Reliance is placed on a recommendation dated 11.05.2005 sent by the Executive Engineer of the petitioner to the Superintendent Engineer, wherein it was stated as under:

> *"M/s Prakash Reflective Devices Pvt. Ltd. vide their letter dt.29.04.05 (copy enclosed) has requested to send the case for payment of escalation*

in respect of structural steel.

In this connection, it is submitted that as per Clause 10 CA circulated by DG(W) vide No. 199 dt.02.09.04 (copy enclosed) and amended vide No.204 dt.02.11.04 (copy enclosed) in case of works for which stipulated period of completion is 18 months or less, the escalation in such cases be made payable in respect of reinforcement steel bars and/or cement only.

While deciding the issue of Clause 10CA for payment of escalation only for steel reinforced bars and/or cement has been considered and other steel work such as structural steel etc. have not been considered. ***It appears that Clause 10C A was incorporated in the tender document by the competent authority keeping in view the building work only wherein the cement and/or steel reinforcement constitute the major component of the materials and the structural steel constitutes for very minor component only. In the instant case which is entirely different from building work, the component of structural steel (other than steel reinforcement bars and cement) is structured steel i.e. steel tubes, plates etc, have also increased corresponding to the steel reinforcement bars.*** *It is, therefore, recommended that the case of payment of escalation for structural steel (ie. steel tubes, plates etc.) may be referred to competent authority for consideration please."*

16. It is further submitted that the award was rendered on an appreciation of the facts and circumstances, particularly the fact that the prices of structural steel had sky-rocketed during the currency of the contract. It is pointed out that the price of structural steel, as per the Delhi Schedule of Rates, 2002, was Rs.16.10 per kg, whereas in the Delhi Schedule of Rates, 2007, the same had increased to Rs.31.00 per kg. It is submitted that the Delhi Schedule of Rate is issued by the CPWD and was applicable to the present contract. The claimant, *vide* application dated 01.08.2009, had submitted these details before the learned arbitrator.

REASONING AND CONCLUSION

17. A perusal of the Award reveals no manner of doubt that the arbitrator thoroughly examined the relevant facts and circumstances in minute detail,

and rendered a specific finding that the delay in completion of the work was attributable to both the petitioner and the respondent. The arbitrator also took note of the drastic increase in the prices of cement and structural steel during the currency of the contract.

18. On an overall appreciation of the relevant facts and circumstances, the impugned award, while rejecting all other claims (Claim Nos. 1, 3 and 4), held that the respondent/claimant was entitled to compensation on account of the increase in the price of cement and structural steel.

19. The Supreme Court in the case of ***K.N. Sathyapalan v. State of Kerala***, (2007) 13 SCC 43, has held that even where a contract does not provide/precludes a price escalation clause beyond the contractual period, or contains limitation with regard to its applicability, it is permissible for the arbitral tribunal to award damages/compensation on account of delay, where such delay is not attributable to the respondent/claimant. The relevant observation in the said judgment is as under:

> *"32. Ordinarily, the parties would be bound by the terms agreed upon in the contract, but in the event one of the parties to the contract is unable to fulfil its obligations under the contract which has a direct bearing on the work to be executed by the other party, the arbitrator is vested with the authority to compensate the second party for the extra costs incurred by him as a result of the failure of the first party to live up to its obligations. That is the distinguishing feature of cases of this nature and Alopi Parshad case [(1960) 2 SCR 793 : AIR 1960 SC 588] and also Patel Engg. case [(2004) 10 SCC 566] . As was pointed out by Mr Dave, the said principle was recognised by this Court in P.M. Paul [1989 Supp (1) SCC 368] where a reference was made to a retired Judge of this Court to fix responsibility for the delay in construction of the building and the repercussions of such delay. Based on the findings of the learned Judge, this Court gave its approval to the excess amount awarded by the arbitrator on account of increase in price of materials and costs of labour and transport during the extended period of the contract, even in the absence of any escalation clause. The said principle was reiterated by this Court in T.P. George case [(2001) 2 SCC 758] ."*

20. In the present case, the learned arbitrator carefully considered the escalation in the price of cement and the correspondence exchanged with regard thereto and allowed only an amount of Rs.1,27,544/- to the respondent/claimant on account thereof.

21. With regard to the increase in the cost of steel, after considering the relevant facts and circumstances, including the actual escalation in the price of steel, it was held that "it would meet the ends of justice if the claimant is awarded 18% over the total contractual cost of the steel". Accordingly, an amount of Rs. 9,37,889/- was awarded to the respondent/claimant. While doing so, the learned arbitrator rejected the respondent/claimant's assertion that the actual increase in the rate of steel enforcement/structural steel was more than 30 percent. This contention was canvassed by the respondent/claimant in its application dated 01.08.2008 seeking amendment of claims (as referred to in paragraph 52 of the award).

22. The learned arbitrator also took note of the detailed correspondence between the parties regarding the respondent/claimant's claim for escalation, particularly the respondent/claimant's assertion that certain assurance/s and/or recommendations had been made regarding the payment of escalation for structural steel.

23. On an overall conspectus, this Court does not find any patent illegality in the impugned award so as to warrant interference in exercise of jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996. Even with regard to the interest awarded *vide* paragraph 66 and 69, the same is quite reasonable and does not warrant any interference under Section 34 of the A&C Act.

24. The award of costs, is within the discretion of the arbitrator. While awarding a cost of Rs.3,00,000/- to the respondent/claimant, it has been noted in the award that the respondent/claimant paid a sum of Rs. 2,10,000/- as its share of the arbitration fee, besides bearing the secretarial and miscellaneous expenses.

25. In these circumstances, the award of Rs.3,00,000/- as costs to the respondent cannot be said to be disproportionate or excessive.

26. The scope of interference with an arbitral award in exercise of jurisdiction under Section 34 of the A&C Act is quite circumscribed. The parameters of interference with an arbitral award have been laid down by the Supreme Court in innumerable cases, including ***Dyna Technology Private Limited vs. Crompton Greaves Limited***, (2019) 20 SCC 1, wherein, the Court observed as under:

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.*
>
> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provide in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."*

27. In the circumstances, this Court finds no merit in the present petition and the same is, accordingly, dismissed.

SACHIN DATTA, J

SEPTEMBER 16, 2025/sv