

Union of India vs.inderjit Mehta Construction Pvt. Ltd.

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SooperKanoon Citation : sooperkanoon.com/1214911

Court : Delhi

Decided On : May-10-2018

Appellant : Union of India

Respondent : Inderjit Mehta Construction Pvt. Ltd.

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment delivered on:

10. 05.2018 + O.M.P. (COMM) 244/2017 & IA No.6283/2017 UNION OF INDIA
versus INDERJIT MEHTA CONSTRUCTION PVT. LTD. Advocates who appeared
in this case: For the

... Petitioner

For the Respondent : Mr Bhagwan Swarup Shukla and Mr Shekhar Gehlot. : Mr
Praveen Chauhan and Ms Jhanvi.

... Petitioner

..... Respondent AND + O.M.P. (COMM) 242/2017 & IA No.6272/2017 UNION OF
INDIA

... Petitioner

versus Respondent INDERJIT MEHTA CONSTRUCTION PVT. LTD.
Advocates who appeared in this case: For the

... Petitioner

For the Respondent CORAM HONBLE MR JUSTICE VIBHU BAKHRU : Mr Bhagwan Swarup Shukla and Mr Shekhar Gehlot. : Mr Praveen Chauhan and Ms Jhanvi. JUDGMENT VIBHU BAKHRU, J1 The petitioner has filed the present petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter the Act) O.M.P.(COMM.) 162/2018 Page 1 of 25 impugning an arbitral award dated 28.12.2016 (hereafter the impugned award) passed by an arbitral tribunal comprising of a sole arbitrator (hereafter the Arbitral Tribunal). The impugned award was rendered in the context of disputes that have arisen between the parties in relation to the contracts entered into between the parties, namely, for completion of balance works of construction of dwelling units including allied external services for Lulla Nagar area, Pune, Maharashtra for a contract value of 17,52,30,500.92/-, and completion of balance works of construction of dwelling units including allied external services at Pune (camp area) for a consideration of 31,44,74,077.84/-.

2. The controversy involved in both the petitions herein is common. It is seen that the pleadings in these petitions are almost similar. In order to address the controversy involved, this Court would refer only to the facts as relevant to OMP (Comm) 244/2017. The counsel appearing for the parties also agree that the decision in the said matter would be determinative of the controversy involved in other petition as well.

3. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as under:-

"3.1 The respondent is, inter alia, engaged in the business of acting as a contractor for civil and engineering works. On 03.06.2009, the petitioner invited tenders for the completion of balance works of construction of dwelling units including allied external services for Lulla Nagar area, O.M.P.(COMM.) 162/2018 Page 2 of 25 Pune, Maharashtra (hereafter the Project). Apparently, the contract awarded in respect of the construction of dwelling units had been awarded to another contractor but had been terminated prior to completion of the works. In these circumstances, the petitioner had invited tenders for execution of the remaining work. The respondent submitted its bid and it was accepted on

17.09.2009. The parties also entered into a Contract Agreement (Although some of the relevant clauses have been filed, but the Contract Agreement has not been filed and the petition is also silent as to when it was executed). 3.2 The Project was required to be completed in two phases; Phase I was to be completed by 16.12.2009 and Phase II was to be completed by 16.06.2010. 3.3 Admittedly, the execution of the work was delayed due to various reasons, including the stay order granted by this Court at the instance of the original contractor. The works relating to Phase-I were completed on 22.07.2010 and Phase-II were completed on 15.06.2011. 3.4 Thereafter, the respondent raised a final bill with certain claims, but the same was rejected by the petitioner on 12.03.2013. This led the respondent to invoke the arbitration clause. And, the Sole Arbitrator was appointed on 27.06.2013 to adjudicate the claims made by the respondent.

4. The respondent filed its Statement of Claims raising eight claims: (i) Claim No.1 for non-payment of Neeru/Sagol coating on internal walls of all DUs amounting to 40,69,358/-; (ii) Claim No.2 on account O.M.P.(COMM.) 162/2018 Page 3 of 25 of extra expenditure incurred for procuring sand from outside Maharashtra due to ban on mining amounting to 13,48,82/-; (iii) Claim No.3 on account of less material received under schedule of credit amounting to 17,94,400/-; (iv) Claim No.4 on account of delay in payment of final bill and release of retention money amounting to 3,10,000/-; (v) Claim No.5 on account of recovering extra interest for towards mobilization advance amounting to 1,73,500/-; (vi) Claim No.6 for damages on account of breach of contract amounting to 7,48,58,000/-; (vii) Claim No.7 for past, pendente lite and future interest at the rate of 18% on aforesaid claims; and (viii) Claim No.8 on account of costs of arbitration amounting to 3,00,000/-. The petitioner also raised a counter claim on account cost of reference amounting to 50,000/

The Arbitral Tribunal passed the impugned award on 28.12.2016 and awarded (i) 40,69,358/- against Claim no.1; (ii) 1,98,000/- against claim No.4 with interest at the rate of 12% per annum and reimbursement of the expenditure involved towards renewal of bank guarantee; (iii) 1,00,89,972/- against claim No.6; (iv) Interest at the rate of 11% against claim No.1 from 19.07.2012 and also 12% future interest; and (iv) 1,00,000/- as costs against claim No.8. The Tribunal also

rejected the counter claim raised by the petitioner for cost of reference. Submissions O.M.P.(COMM.) 162/2018 Page 4 of 25 6. Mr Gehlot, learned counsel appearing for the petitioner has restricted the challenge in the present petition only to the award against two claims: award of 40,69,396/- against Claim No.1 and award of 1,00,89,972/- against Claim No.6.

7. He submitted that the Arbitral Tribunal had grossly erred in awarding an amount against Neeru/Sagol coat on the plaster surface on the internal walls since that was not part of the contractual specifications of the work awarded to the respondent. He submitted that by a letter dated 04.01.2010, the respondent had requested the petitioner to place an order for Neeru/Sagol coating on the internal walls of the dwelling units in order to obtain an even and smooth finish. He emphasized that as per the Contract Agreement, the respondent was to provide fair and even wall finish and not smooth and even finish and, therefore, there was no requirement for the respondent to provide the Neeru/Sagol coat. He submitted that the Project Manager (PM) had demanded a better finish within the scope of contractual specifications and the same did not imply that the respondent was permitted to use Neeru/Sagol coat to provide a smooth and even finish. He submitted that the letter sent by the respondent for placing an order of Neeru/Sagol coat was rejected by the petitioner and the respondent was asked to provide even and fair finish as per the contractual provisions but with better workmanship. However, the respondent had purchased and applied Neeru/Sagol coat without any authorisation and had informed the petitioner almost a year after the Neeru/Sagol coat was applied. He further contended that the petitioner O.M.P.(COMM.) 162/2018 Page 5 of 25 had accepting the said work could not be a ground to award any amount for extra costs incurred by the respondent. He also stated that the principle of quantum meruit could not be applied, as the petitioner had not acquiesced to the respondent providing additional item of Neeru/Sagol coat.

8. Insofar as award against Claim No.6 is concerned, Mr Gehlot submitted that the same was contrary to the expressed terms of the contract. He submitted that in terms of Clause 13(B) of the General Conditions of the Contract (GCC), no claim for compensation or otherwise arising as a result of extension of time granted for

completion of the works, was admissible. He submitted that in terms of Clause 13(A) of the GCC, the contractor was permitted to seek extension of time in case the works were delayed for various reasons beyond the control of the contractor including for the default on the part of the employer. However, the grant of extension of time does not entitle the contractor to make any claim for compensation. He referred to the decision of the Supreme Court in Ramanath International Constructions Pvt. Ltd v. Union of India:

2007. (2) SCC453 and contended that the impugned award was contrary to the ratio of the said decision. He also relied on Public Works Department v. Navayuga Engineering Co. Ltd.: OMP No.420 of 2012, decided on 31.03.2014 in support of the aforesaid contention.

9. The learned counsel appearing for the respondent countered the aforesaid submissions. She submitted that the respondent was compelled to apply the Neeru/Sagol coat, as the petitioner had refused O.M.P.(COMM.) 162/2018 Page 6 of 25 to accept the wall finish as could possibly be achieved by the materials as specified under the Contract Agreement between the parties. She submitted that the Arbitrator had considered the same and his decision to award compensation for the same could not be faulted. Next, she submitted that the petitioner had erred in applying Clause 13 of the GCC in case of delays which were mainly on account of an interim order passed by the court and on account of several changes in the works that the respondent was called upon to implement at a belated stage. She stated that in the facts of the present case, the petitioner ought to have suspended the works under Clause 11 of the GCC which could also entitle the contractor for extension of time for completion of the works as well as compensation for the extended period including costs incurred on the salaries and wages of employees and labour remaining idle during the period of suspension. She contended that the petitioner could not take benefit under Clause 13(B) of the GCC on account of its own failure to take steps under Clause 11 of the GCC. Reasons and Conclusion 10. The first and foremost question to be addressed is whether the Arbitral Tribunal had erred in awarding the cost for Neeru/Sagol coat in favour of respondent. At the outset, it is necessary to observe that the learned counsel for the petitioner did not advance any contention to dispute that Neeru/Sagol coat had

been applied by the respondent on the plastered surface of the internal walls; on the contrary, it was contended that even though the said item of work was executed, an award on the basis quantum meruit could not be made as, according to O.M.P.(COMM.) 162/2018 Page 7 of 25 the petitioner, it had not acquiesced to performance of such item of work. The learned counsel appearing for the petitioner has challenged the award only on the limited ground that the contractual specification did not provide for Neeru/Sagol coat and, therefore, the petitioner would not be liable to pay for the same.

11. The relevant clauses of the Contract Agreement, which were relied upon by the petitioner, are set out below:-

"(a) PS Clause 11.1.3 P-201 of CA: All plastered surface shall be trowled to fair & even surface with steel trowel without using extra cement. (b) PS Clause 11.1.4 P-201 of CA: Sand for plastering shall be natural river sand in accordance with IS :

1542. If available, coarse sand does not confirm to this requirement, it shall be screened at site by using suitable wire mesh/ screens to get suitable sand for plaster. To avoid cracks at junction of RCC and PCC blocks masonry walls, 150 mm wide GI chicken wire mesh of 24 gauges, 20 mm mesh shall be nailed on the joints before plastering. Grooves at junction of RCC & masonry shall be formed wherever directed by the PM. Nothing extra shall be paid on this account. Cement Mortar cube of size 75 x75 x75 mm shall be tested for strength for masonry and plaster. (c) App. B P-287 of CA (Sources of material): Sand - Ghodnadi (Nagar Road), Mungi Paithan. 12. In terms of Clause 11.1.3 of the Contract Agreement, the respondent was required to provide fair & even surface. The O.M.P.(COMM.) 162/2018 Page 8 of 25 Contract Agreement had also specified the source of the material and the sand was to be sourced from Ghodnadi (Nagar Road), Mungi Paithan. It was the respondents case that it had provided the finish on the basis of the material specified in the Contract Agreement. However, the same was not acceptable to the Project Manager. The Arbitral Tribunal had taken note of correspondence between the parties, which also indicated that the Project Manager had not accepted the plaster finish as offered by respondent and was insisting on a smooth finish. It was the respondents case that it was not possible to

provide a smoother finish using sand from the specified source and the respondent had also intimated the Project Manager either to accept the finish, as is practically possible using the material as specified in the contract, or demonstrate that the desired finish is possible by following the contractual provisions; and, if the aforesaid options were not acceptable, then to pass an order for Neeru/Sagol coat. The Project Manager had reacted by demanding better finish.

13. The Arbitral Tribunal, after examining the correspondence and material on record, accepted the respondents contention that a smooth finish could not be achieved on the basis of the materials as specified in the contract. The Arbitral Tribunal held that the respondent had provided the plaster with the best possible workmanship but could not achieve the smooth finish as was being demanded by the Project Manager and, therefore, work done by the respondent was rejected. The Arbitral Tribunal accepted the respondents claim that the petitioner was insisting on a smooth plaster finish. O.M.P.(COMM.) 162/2018 Page 9 of 25 14. The Arbitral Tribunal also observed that the petitioner was well aware that with the materials specified, only a fair finish could be obtained and the petitioners insistence for a smooth finish was against logic as well as the contract. In the circumstances, the petitioner could have either accepted the plaster finish as provided by the respondent or could have ordered for a Neeru/Sagol coat if a smoother finish was desired. The Arbitral Tribunal was persuaded to accept that the petitioner was obliged to pay for the sagol coat, since the Project manager had insisted on a smooth finish.

15. As noticed above, there is no dispute that the respondent had, in fact, provided Neeru/Sagol finish to the internal walls; at any rate, no contention as to the use of Neeru/Sagol coat has been raised before this Court, and the finding of the Arbitral Tribunal in this regard has not been challenged by the learned counsel for the petitioner.

16. In view of the above, the Arbitral Tribunal cannot be faulted in directing the petitioner to pay the cost for the same. Although the said work was not part of the contractual specifications, there is ample material to indicate that the petitioner

had insisted on a plaster finish that could not have been provided on the basis of the specified material and, thus, the additional coating over the plaster surface, as was performed by the respondent, was required. The finding of the Arbitral Tribunal that the petitioner (Project Manager) was insisting on a smooth finish that could not be provided by the material specified in the Contract Agreement, is a question of fact. And, unless this finding is established to be perverse or based on no material, it cannot O.M.P.(COMM.) 162/2018 Page 10 of 25 be interfered with in proceedings under Section 34 of the Act. (See: Associated Builders v. Delhi Development Authority: (2015) 3 SCC49 17. The learned counsel appearing for the petitioner had earnestly contended that the principles of quantum meruit are not applicable as the petitioner does not acquiesced the respondent providing the Neeru/Sagol coat. This contention is unpersuasive, as the Arbitral Tribunal has found that the Neeru/Sagol coat had been provided only on the Project Managers insistence for a smooth finish, which was beyond the contractual provisions, as the contract only provided for the plastered surface to be fair & even.

18. The learned counsel for the petitioner had earnestly contended that the Arbitral Tribunal had erred in presuming that a smooth plastered finish was required as the contractual provisions only provided for the surface to be fair & even. This contention is unmerited, as the Arbitral Tribunal had noted that even though the contractual provisions specified fair & even finish, the petitioner (the Project Manager) had been insisting on a smooth finish and had not accepted the plastered finish as provided by the respondent. This is also borne out by the letter dated 26.03.2010 empathically asserting that the finish to plaster has to be smooth and even, the measures adopted to achieve the same is to be met by you. 19. In view of the above, this Court finds no reasons to interfere with the impugned award made by the Arbitral Tribunal in this regard. O.M.P.(COMM.) 162/2018 Page 11 of 25 20. The next question to be addressed is whether the Arbitral Tribunal had erred in entertaining the claim for damages on account of extension of time for the work. The Arbitral Tribunal had found that the contract had been extended for a period of twelve months, out of which about eleven and a half months could be attributed for delay in stoppage of works due to an order passed by this Court and delay occasioned by the petitioner making several changes in the work to be executed. The Arbitral Tribunal awarded (i) a sum of 77,88,022/- on

account of overhead charges for the extended period of eight months (the petitioner had restricted its claim to nine months) as against 262,84,575/- claimed by the respondent; (ii) 6,14,250/- for idling/under utilization of workmen against the respondents claim of 77,00,000/-; (iii) 4,07,000/- as idling/under utilization of machinery against the respondents claim of 40,78,250/-; and (iv) 12,80,700/- on account of escalation in cost of material and labour during the extended period (8,79,400/- on account of material and 4,01,300/- on account of labour) as against 2,80,33,598/- claimed by the respondent.

21. In this regard, it is also necessary to observe that the learned counsel for the petitioner has not questioned the measure/quantification of damages. He has not assailed the award on any other ground except that it is contrary to the provisions of Clause 13(B) of the GCC and, therefore, the Arbitral Tribunal did not have the jurisdiction to award any amount due to prolongation of work. Thus, this Court is not called upon to examine the measure of damages O.M.P.(COMM.) 162/2018 Page 12 of 25 but only to examine whether the impugned award is contrary to the express terms of the contract.

22. One of the principal reasons for prolongation of the works was on account of the order passed by this Court at the instance of the contractor, who was previously employed by the petitioner for executing the project in question. The contract had been terminated and this had resulted in certain disputes and the previously engaged contractor had approached this Court. Admittedly, in view of the orders passed by this Court, the petitioner had directed the respondent to not carry out any work on the site where the previously employed contractor had carried out the work. The respondent claimed that due to the aforesaid events, barely 5% of the site was left available for carrying on any work and the work was effectively stopped from 17.09.2009. The Project Manager gave a clearance for continuance of the work on 11.12.2009 and the respondent resumed execution of the works involved. Thereafter, on 11.03.2010, the Project Manager once again issued directions for stoppage of work at the site and the same could be resumed only on 02.06.2010.

23. The Project was to be completed in nine months. However, the work had been stopped for various reasons for almost 170 days. The Arbitral Tribunal also accepted that the delay was on account of several changes that were ordered at a belated stage by the petitioner.

24. The Arbitral Tribunal noted that the work had stopped for almost five and a half months and the petitioner had granted the O.M.P.(COMM.) 162/2018 Page 13 of 25 extension of time on three occasions. These extensions were granted under Clause 13 of the GCC. The respondent had protested to such extension of time under Clause 13 of the GCC which had the effect of precluding the respondent from raising any claims in respect of the said extension. It was the respondents case that the petitioner ought to have resorted to Clause 11 of the GCC and suspended the work. However, this request was not acceded to by the petitioner. The respondent had contended that the petitioner was not entitled to invoke Clause 13 of the GCC for extension of time but was required to resort to Clause 11 of the GCC, and that would not preclude the respondent for claiming damages on account of the extension of the term of the contract.

25. Clause 11 and 13 of the GCC are set out below: 11. Suspension of Works: (a) The Contractor shall, on receipt of the order in writing of the P.M., suspend the progress of the Works or any part thereof for such time and in such manner as the P.M. may consider necessary for any of the following reasons: (i) on account of any default on the part of the Contractor; or (ii) for proper execution of the Works or part thereof for reasons other than the default of the Contractor; or (iii) for safety of the Works or part thereof. O.M.P.(COMM.) 162/2018 Page 14 of 25 The Contractor shall, during such suspension, properly protect and secure the works to the extent necessary and carry out the instructions given in that behalf by the P.M. (b) If the suspension is ordered for reasons (ii) and (iii) in sub-para (a) above:-

"(i) the contractor shall be entitled to an extension of time equal to the period of every such suspension plus 25% for completion of the item or group of items of work for which a separate period of completion is specified in the Contract and of which the suspended work forms a part, and (ii) if the total period of all suspensions in respect of an item or group of items of work for which a separate

period of completion is specified in the Contract exceeds 60 days the Contractor shall, in addition, be entitled to compensation, as the P.M. may on the basis of facts consider respect of salaries and/or wages paid by the Contractor to his employees and labour at Site actually remaining idle during the period of suspension. reasonable, in xxxx xxxx xxxx xxxx 13. Time, Delay and Extension: (A) Time is of the essence of the contract the contract is specified in and documents. As soon as possible after Contract is let or any substantial Works order is placed and before Work under it is O.M.P.(COMM.) 162/2018 Page 15 of 25 in to the time stated begun, the P.M and the Contractor shall agree upon a Time and Progress Chart. The Chart shall be prepared in direct relation the contract documents or the Works Order for completion of the individual items thereof and /or the Contract or Works Order as whole. It shall indicate the forecast of the dates for commencement and completion of the various trade processes or sections of the work, and shall be amended as may be required by agreement between the P.M and the Contractor within the limitation of time imposed in the contract document or Works Order. If the Works be delayed:-

"(i) by force majeure, or (ii) by reason of abnormally bad weather, or (iii) by reason of serious loss or damage by fire, or (iv) by reason of civil commotion, local combination of workmen, strike or lockout, affecting any of the trades employed on the work, or (v) By reason of delay on part of nominated sub-contractors, or nominated suppliers which the Contractor has, in the opinion of P.M taken all practicable steps to avoid, or reduce, or (vi) By reason of delay on the part of Contractors or tradesmen engaged by Government in executing O.M.P.(COMM.) 162/2018 Page 16 of 25 works not forming part of the contract, of transporters (vii) By the reason of any other cause local like strike, shortage of local material and which absolute discretion of the Accepting Officer is beyond the Contractors control; strike, in the xxxx xxxx xxxx xxxx (B) No claim is respect of compensation or otherwise, howsoever arising, as a result of extensions granted under Condition mentioned above shall be admitted. 26. Before the Arbitral Tribunal, the petitioner claimed that Clause 13A (vii) of the GCC was applicable and covered all the grounds for extension of time. The petitioner claimed that in terms of Clause 13(B) of the GCC, the respondent was precluded from raising any claims in this regard.

27. The Arbitral Tribunal considered the above rival contentions and concluded that applying Clause 13 of the GCC was not apposite, as the main reasons for the delay - the order passed by this Court and the changes in the work done by the petitioner - did not fall under any of the sub-clauses of Clause 13(A) of the GCC. The Arbitral Tribunal also accepted the respondents contention that the petitioner ought to have invoked Clause 11 of the GCC. O.M.P.(COMM.) 162/2018 Page 17 of 25 28. Clause 9 of the GCC provided for deviations and entitled the accepting officer to vary either by way of addition or deduction from the works within the deviation limits.

29. The respondent had only sought extension of time principally on the ground of stoppage of work and the changes directed by the petitioner at a belated stage. The respondent had also claimed that there was delay in execution of the works for reasons such as ban on mining of sand, delay in supply of drawings and other clarifications. The Arbitral Tribunal found that the extension of time for other reasons was only about 15 days but the balance extension of time of eleven and a half months would be applicable to the stoppage of work on account of the interim orders passed by this Court and on account of changes insisted upon by the petitioner at a belated stage. The Arbitral Tribunal concluded that these grounds were not covered under any of the sub clauses of Clause 13 of the GCC.

30. As noticed above, the only question that falls for consideration is whether the decision of the Arbitral Tribunal is contrary to Clause 13(B) of the GCC. Clause 13(A) of the GCC lists out seven sub- clauses. The Arbitral Tribunal found that the reasons for the delay did not fall any of the said seven clauses. The petitioner claimed that the delay would fall within clause 13(A)(vii) of the GCC, which provided for delay by reasons of any other case like transporters strike, local strike, shortage of local material which is beyond the control of the contractor. The Arbitral Tribunal did not accept the said contention. This Court finds no infirmity with the said decision. Plainly, the O.M.P.(COMM.) 162/2018 Page 18 of 25 conclusion that delay caused due to stoppage of work by reason of an order passed by this Court would not fall within clause 13(A)(vii) of the GCC, is a plausible interpretation and does not call for any interference by this Court.

31. Similarly, the Arbitral Tribunal held that the delays caused by the changes in the works insisted upon by the petitioner would also not fall within the scope of Clause 13A of the Contract Agreement.

32. The learned counsel for the petitioner had relied on the decision of the Supreme Court in Ramnath International Construction Pvt. Ltd. (supra) in support of his contention that the decision of the Arbitral Tribunal was contrary to the terms of the Contract Agreement. He submitted that, in that case, the Supreme Court had considered Clause 11 of the General Conditions of the Contract (in that case), which is almost identical to Clause 13 of the GCC in the present case. This Court is of the view that the said decision would not be applicable as to the controversy involved in the present case. In that case, the Court held that Clause 11(A)(vii) of the GCC was comprehensive and encompassed all delays over which the contractor has no control. As noticed by the Arbitral Tribunal, there is material difference between Clause 13(A)(vii) of the GCC in the present case and Clause 11(A)(vii) of the General Conditions of Contract in that case. Clause 11(A)(vii) of the General Conditions of Contract, which was considered by the Supreme Court in Ramnath International Construction Pvt. Ltd.(supra), covered all reasons which, in the O.M.P.(COMM.) 162/2018 Page 19 of 25 absolute discretion of the accepting officer, was beyond the contractors control. The said clause is set out below:-

"Section

Time, Delay and Extension (A) Time is of the essence of the contract and is specified in the contract documents or in each individual works order. As soon as possible after contract is let or any substantial work order is placed and before work under it is begun, the G.E. and the contractor shall agree upon the time and progress chart. The chart shall be prepared in direct relation to the time stated in the contract documents or the works order for completion of the individual items thereof and/or the contract or works order as a whole. It shall include the forecast of the dates for commencement and completion of the various trades processes or sections of the work, and shall be amended as may be required by agreement between the G.E. and the contractor within the limitation of time imposed in the

contract documents or works order. If the work be delayed: xxxx xxxx xxxx (viii) by reason of any other cause, which in the absolute discretion of the accepting officer is beyond the contractors control; then in any such case the officer herein after mentioned may make fair and reasonable extension in the completion dates of individual items or groups of items of works for which separate periods of completion are mentioned in the contract documents or works order, as applicable. O.M.P.(COMM.) 162/2018 Page 20 of 25 33. Clause 13(A)(vii) of the GCC in the present case is materially different from the aforesaid clause, as it applies to delay caused due to any cause such as transporters strike, local strike, shortage of local material, which is beyond the contractors control. The use of the words such as limits explains the expression any cause.

34. The Arbitral Tribunal considered the above and observed as under: 20.6.37. This condition 13A(vii) is very much different from Condition 11A(vii) of the MES contract and hence the decision of the Supreme Court given on the basis of Condition 11A(vii), just cannot be made applicable to the present case. As held by the Supreme Court reason of any other cause beyond contractors control, would cover even Departments fault. However, in the subject contract condition, three specific grounds have been mentioned and it has also been mentioned that other grounds have to be like these grounds. This is therefore a case where the rule of Eiusdem Generis would squarely apply. 35. The Arbitral Tribunal had further held as under: case is (d) Even otherwise, Ramnaths distinguishable from the present case in view of the difference between the factual positions of the two cases. In the present case, the claim is based on the plea that the appropriate conditions for grant of extension were number 9 and 11 and not condition 13, because the contract itself lays down specific grounds for grant of extension under these conditions viz for belated changes under condition 9 and for suspension (or deemed suspension) under O.M.P.(COMM.) 162/2018 Page 21 of 25 condition 11. Condition 13 lays down different grounds for grant of extension quite different from belated changes or suspension which grounds are covered under condition 9 and 11 respectively. There is no bar for claiming compensation under these two conditions unlike condition 13. Therefore even if the extension order shows that extension was granted under condition 13, this was not only against the contract but also against Law because in terms of established legal position, when a

procedure is laid down in a document for doing a particular thing in particular manner, that thing has to be done in that manner only and in no other manner. In the case of Ramnath, the contractor did not at all protest the Departments action to grant extension under condition 11 (of the MES Contracts), therefore, the Court had no occasion to discuss the other conditions in which extension is to be granted for changes and suspension. In the present case however, the Claimant all along was contending that extension was due to him under condition 9 and 11 and when the extension, was granted to him under condition 13, he registered his protest also. There are some other important differences also in the two cases as brought out herein above. (e) Notwithstanding the aforesaid as mentioned earlier in paras 20.6.31(s) and 20.6.31(t) the most important difference between the cases of Ramnath and the present case is the wordings of condition 13A(vii) of the present contract compared to that of condition 11A(vii) of the MES Contract based on which the Supreme Court decided the case of Ramnath. In the present case, the other grounds for extension have to be like the specific grounds laid down therein viz strikes and shortage of local materials. Stoppage of work or belated charges or O.M.P.(COMM.) 162/2018 Page 22 of 25 clarifications on drawings, just cannot come within the ambit of grounds like strikes and shortage of local materials. As such, by no means, the Respondent was correct to grant extension under condition 13A(vii). It is therefore quite clear that extension was not due to the Claimant under condition 13 and hence question of any bar on claiming compensation as laid down in condition 13B just does not arise except that the most for about 15 days on the ground of shortage of local sand due to ban on mining placed by the Court. 36. This Court finds the aforesaid interpretation to be plausible.

37. It is also well settled that the question as to the interpretation of a contract falls squarely within the jurisdiction of the Arbitral Tribunal and notwithstanding that such interpretation is erroneous, the same would be binding on the parties.

38. The Supreme Court, in the case of Mcdermott International Inc. v. Burn Standard Co. Ltd. & Ors.: (2006) 11 SCC181 had held as under:-

"the construction the is within of jurisdiction of contract 112.....The agreement, the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See Pure construction of of a O.M.P.(COMM.) 162/2018 Page 23 of 25 Helium India (P) Ltd. v. ONGC and D.D. Sharma v. Union of India).

113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award. 39. In addition, the Arbitral Tribunal also held that there are other judgments where award of damages for prolongation of works was upheld; and Clause 11(C) of the GCC of MES contracts was void under Section 23 of the Indian Contract Act, 1872 as being violative of Section 55 and 73 of the said Act. Since this Court is of the view that the Arbitral Tribunals decision - that the reasons for delay did not fall within the scope of Clause 13(A) of the GCC and consequently the action of the petitioner in applying that clause despite the respondents protest was wrongful - cannot be interfered with; it is not necessary to examine the above additional reasons that persuaded the Arbitral Tribunal to make an award in favour of the respondent.

40. The other decision relied upon on behalf of the petitioner also supports the view that an arbitral tribunal cannot make an award contrary to the terms of the contract. There can be no dispute as to the said proposition. However, in the present case, the Arbitral Tribunal has interpreted the contract and found that the clause, which prohibits the award of damages - Clause 13(C) of the GCC - was restricted only to the damages resulting from extension of time for the reasons as provided under Clause 13(A) of the GCC. And, the reasons for which O.M.P.(COMM.) 162/2018 Page 24 of 25 the contract was extended did not fall within the scope of Clause 13(A) of the GCC. This view regarding the interpretation of the contract is plausible and, being within the jurisdiction of the Arbitral Tribunal, cannot be interfered with under Section 34 of the Act.

41. The petition (OMP (Comm) 244/2017) is, accordingly, dismissed. For the reasons stated above, OMP (Comm) 242/2017 is also dismissed. The pending applications are also disposed of. The parties are left to bear their own costs. VIBHU BAKHRU, J MAY10 2018/RK O.M.P.(COMM.) 162/2018 Page 25 of 25

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