



2026:DHC:3194



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

Date of decision: 06th APRIL, 2026

IN THE MATTER OF:

+ **O.M.P. (COMM) 167/2026 & I.A. 8944/2026, I.A. 8945/2026**

PASHCHIMANCHAL VIDYUT VITRAN NIGAM LIMITED

.....Petitioner

Through: Mr. Vivek Narayan Sharma, Mr. Adhiraj Wadhera, Mrs. Mahima Bhardwaj, Mr. Akash Singh, Ms. Palak Kaushik, Ms. Annika, Advocates.

versus

IL AND FS ENGINEERING AND CONSTRUCTION COMPANY LTD

.....Respondent

Through: Mr. Kaushik Laik, Mr. Ashay Kaushik, Mr. Shashank Tiwari and Mr. H.N. Thangal, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "the Act"*) has been filed by the Petitioner challenging an Award dated 11.10.2025 passed by the learned Arbitral Tribunal (*hereinafter referred to as "Tribunal"*) while adjudicating the disputes that arose between the parties herein.
2. Shorn of unnecessary details, facts of the case as discernable from the material on record are as follows:

(i) The Petitioner, a Government-owned company incorporated under the



Companies Act, 1956, is a subsidiary of the Uttar Pradesh Power Corporation Limited and is engaged in the business of maintaining and operating a distribution system for supplying electricity to the consumers in various districts of the State of Uttar Pradesh. It also implements various schemes sponsored by the State Government and Ministry of Power, Government of India related with system strengthening of electrical network across 14 districts from time to time. The Respondent covers 6 distribution zones based at Meerut, Ghaziabad, Amroha, Noida, Saharnpur and Muradabad and each is headed by an officer of the rank of Chief Engineer.

- (ii) On the other hand, the Respondent is a company duly incorporated under the Companies Act, 1956 having its registered office at Door No. 8-2-120/113, Block B, 1st Sanali Info Park, Road No. 2, Banjara Hills, Hyderabad, Telengana.
- (iii) The Ministry of Power, Government of India, *vide* an Office Memorandum dated 02.09.2013 sanctioned the Rajiv Gandhi Gramin Vidyutikaran Yogna [“**RGVY**”] 12th Plan and declared that the Rural Electrification Corporation [“**REC**”] would be the nodal agency for the scheme. Subsequently, REC *vide* its Office Letter dated 06.01.2014 sanctioned the project for rural electricity infrastructure and rural household’s electrification under the 12th Plan in partially electrified/unelectrified villages and habitations of district Amroha (UP) under the ‘RGVY’ scheme by PVVNL through Principal Secretary (Energy), Government of Uttar Pradesh.
- (iv) The parties entered into two contracts in March 2015 qua the supply and erection/installation of rural electrification works in



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Village Majre of Amroha District, Uttar Pradesh. Two Agreements dated 03.03.2015 amounting to Rs. 94.5 Crores were executed between the parties which contains the General Conditions of Contract and the same were provided to the Respondent on turnkey basis are as mentioned hereinbelow:

- (a) Ex-works Supply Contract Agreement: The present contract was for ex-works supply of all equipment's and materials including type testing (including supply of materials and equipment as per technical specifications, loading, unloading, transportation, delivery, storage at work sites, erection and commissioning) of augmentation and renovation of 33/11 KV Sub-Station including associated civil works, new 11 KV line works, new LT line on AB Cable and releasing of service connections to BPL households in village Majre of Amroha. The Contract Price under this Agreement was INR 75,18,19,481.25/- [**“Contract for Supply”**].
- (b) Service Contract Agreement: The present agreement agreement dated 03.03.2015 was for erection of all equipment and materials including type-testing etc. The contract also included performance of all activities such as in-land transportation to final destination at site and insurance, taking delivery, unloading, handling and storing of all equipment and material, installation of equipment, providing service connections to Below Poverty Line consumers including associated civil works, testing and commissioning of all equipment and materials. Further, the



material procured by the Respondent had to be routed through the nearest store center of Petitioner under the supervision of the concerned Executive Engineer. The Contract Price was INR 18,86,89,724.71/- [**“Contract for Installation”**]

For the sake of brevity, wherever required, the above two contracts shall be collectively referred to as **“the Contracts,”** and the works to be carried out under the Contracts shall be referred to as **“the Project”**.

- (v) The work under the said contracts was to be completed within two years (twenty-four months) from the date of the Letter of Award dated 01.11.2014 (*hereinafter referred to as “LOA”*), that is, on or before 31.10.2016.
- (vi) A Performance Bank Guarantee was furnished by the Respondent to the Petitioner in accordance with the Contracts, *albeit* with some delay, according to the Petitioner.
- (vii) Material on record reveals that under the Contract for Supply, it was the Respondent’s obligation to ensure that the equipment as supplied were new, unused and in accordance with specifications of Contract. Further, the Respondent’s obligation to replace the equipment was limited to (a) if equipment failed to pass the test and/or inspections prior to actual commercial utilization of those equipment; (b) any damage, loss, theft, pilferage, or fire occurred in the equipment during the execution of the Contract; or (c) in particular, during the Defects Liability Period which was for a period of twelve (12) months from the Taking Over/Completion of Facilities, the Respondent was obligated to replace and repair the



equipment, if defects were so found in the design, engineering, materials and the workmanship of the Plant and equipment supplied or of the work executed by the Contractor i.e., the Respondent herein.

- (viii) Undisputedly, the Respondent was specifically absolved from any obligation to replace equipment in case of improper operation or maintenance of facilities of the employer i.e., the Petitioner herein, operation of facilities outside specifications provided in the Contract and normal wear & tear.
- (ix) As noted by the Arbitral Tribunal, though the work was to be completed within a period of twenty-four (24) months, the Project stood finally commissioned on 20.02.2019.
- (x) The Respondent was further obligated to supply and install distribution transformers [“DTRs”] that had specific load bearing capacities and once these DTRs were installed by the Respondent, they were to be used by the Petitioner in a manner that the load on these transformers did not exceed their maximum load bearing capacities. In addition, the Petitioner had to ensure that the network of connections to households had to be maintained to such limits that the aggregate load on the transformers did not exceed their bearing capacities.
- (xi) The Respondent/Claimant’s case before the Arbitral Tribunal was that though the DTRs installed by the Respondent at the Project Site were designed with a safe margin to handle increased loads and were also equipped with cooling systems to dissipate the heat generated by the increased load, there was a limit to which this in-built system could sustain the continued overloading on the



system. It was further averred that the Petitioner miserably failed in ensuring that after taking over the DTRs from the Respondent, they were not to be overloaded beyond the load limit.

- (xii) According to the Respondent, due to the Petitioner's massive overloading coupled with the several illegal attempts by the locals over the years to by-pass the protection systems of the DTRs, caused the DTRs to witness repeated breakdowns and faults. In this situation, the Respondent is stated to have informed the Petitioner that it was not responsible to replace the DTRs in case of overloading, yet the Respondent was asked to carry out the replacement at its own cost.
- (xiii) It is the case of the Respondent/Claimant that it did replace some DTRs, however, the same was done under protest. However, when the Respondent/Claimant denied further requests of the Petitioner to replace the DTRs, the Petitioner started making illegal deductions from the Respondent/Claimant's bills towards replacement of the damaged DTRs. As per the Respondent/Claimant, an aggregate amount of INR 6,23,99,190/- was deducted by the Petitioner.
- (xiv) The Respondent/Claimant further averred that when it was undertaking erection works, the Petitioner herein had started demanding replacement of the transformers from time to time, which were being not acceded to by the Claimant/Respondent herein who also issued several communications to the Plaintiff highlighting that under the Contract, it was not liable to replace the burnt/damaged transformers. It is the case of the Claimant/Respondent herein that even during the Defects Liability



Period, the obligation of the Claimant/Respondent herein was restricted to replace only those transformers affected due to normal wear and tear, manufacturing defects, and poor workmanship, however, none of the transformers have been damaged due to the above said reasons and since the Claimant/Respondent herein was not replacing the transformers, the Petitioner herein started deducting money from his bills.

- (xv) Further, the Petitioner issued the competition certificate to the Respondent/Claimant only after the expiry of Defects Liability Period i.e., on 05.04.2022 indicating to the Respondent/Claimant that the REC had already permitted the closure of the Project way back on 15.12.2020.

3. It is further the case of the Respondent/Claimant herein that there was inordinate delay in release of the certified dues under the Running Account Bills (“**RA Bill**”). It is the case of the Respondent/Claimant herein that once the RA Bills were certified, the same were to be paid in a timely manner so that the contractual works could be performed in a smooth and efficient manner. It is the case of the Respondent/Claimant herein that there is a delay of over a period of 1.5 years in releasing the Respondent/Claimant’s dues and therefore, they are entitled to the compensation for the loss towards delay in releasing the amount. It is also the case of the Respondent/Claimant herein that the Project was delayed for the reasons not attributable to the Respondent/Claimant herein. It is the case of the Claimant/Respondent herein that despite the fact that the delay cannot be attributable to the Claimant/Respondent herein, the Petitioner herein sought to penalize by recovering money towards the liquidated damages on account of delay in the competition of work.



4. Due to the above-stated disputes arose between the Parties, the Respondent/Claimant herein invoked arbitration on 20.09.2022 under Clause 21.2 of the Contracts and subsequently the Arbitral Tribunal was constituted.

5. The Respondent/Claimant raised various claims, *inter alia*, three claims that were raised by the Respondent/Claimant before the Arbitral Tribunal are reads as under: -

- i. **Claim No. 1:** A sum of Rs.6,23,99,190/- towards monies wrongly deducted by the Petitioner/Respondent from the Respondent/Claimant's bills towards damage caused to Respondent/Claimant's equipment for reasons attributable to the Petitioner/Respondent;
- ii. **Claim No. 2:** A sum of Rs.2,29,92,066/- towards the Respondent/Claimant loss of interest on account of delayed release of the Respondent/Claimant's contractual dues;
- iii. **Claim No. 3:** A sum of Rs.4,50,68,820/- was sought towards liquidated damages which the Petitioner/Respondent had wrongly and illegally deducted from the Respondent/Claimant's bills.

6. Claims Nos.1 & 2 were rejected by the Arbitral Tribunal. In so far as Claim No. 3 is concerned, the Respondent/Claimant herein sought a sum of Rs. 4,50,68,820/- which was deducted from the bills towards the liquidated damages. It was the case of the Respondent/Claimant herein before the Arbitral Tribunal that these deductions were arbitrary, unjustified and in violation of the terms and conditions of the contract. According to the Respondent/Claimant herein, the delay was entirely attributable to the Petitioner herein and despite numerous letters being issued by the Respondent/Claimant herein highlighting the hindrances being faced by the



Respondent/Claimant in execution of the project, no remedial steps were taken by the Petitioner herein to remove the hindrances and in fact not even a single attempt was made to correspond with the Respondent/Claimant herein in this regard. It is the also the case of the Respondent/Claimant that the Petitioner herein had failed to provide adequate Right of Way to the Respondent/Claimant. According to the Respondent/Claimant herein that despite fulfilling their obligation under the contract and since the Respondent/Claimant herein were not responsible for the delay in performing the contract, the Petitioner herein could not have made any deductions on the ground of liquidated damages.

7. *Per contra*, it is the case of the Petitioner herein that the deductions towards liquidated damages were in terms of the Clause 21.2 of the GCC and the Contracts. It was the responsibility of the Respondent/Claimant herein to complete the project within the period of 24 months and repeated extensions were sought by the Respondent/Claimant on the various grounds for completing the work within the prescribed time. It is the case of the Petitioner herein before the Arbitral Tribunal that the payments as per the conditions of the contract were released from time to time as per availability of funds released by the Nodal Agency M/s REC. Furthermore, it was stated by the Petitioner herein that Right of Way cannot be treated as a ground to seek time extensions as the same are common during the performance of the contract. Therefore, the Petitioners were justified in deductions towards liquidated damages.

8. The Arbitral Tribunal after carefully perusing the contentions of the parties and examining the material on record held as under: -

- i. The Petitioner herein i.e., the Respondent before the Arbitral Tribunal has failed to establish satisfactorily the delay was entirely attributable



to the Claimant/Respondent herein and ,therefore, deductions from the RA bills raised by the Respondent/Claimant towards liquidated damages were justified.

- ii. It has come on record that several Letters dated 30.09.2016, 04.03.2017, 29.08.2017, 09.10.2017, 23.01.2018 and 30.03.2019 were addressed by the Claimant/Respondent herein during the currency of the contract seeking extension of time for particular duration citing various hindrances being faced by the site, however, no response to the said Letters was issued by the Petitioner. The applications filed by the Claimant/Respondent herein for extension were neither accepted nor rejected by any formal order and despite the expiry of stipulated period, the Claimant/Respondent herein continued to carry out its activities under the agreement without any restraint by the Petitioner herein and the project was finally completed on 20.02.2019. There is no extension by the Petitioner herein i.e., the Respondent before the Arbitral Tribunal as to why no action whatsoever was taken under the contract qua delay in completion of the project and the Claimant/Respondent herein was permitted to continue the work without any extension of time.
- iii. There was no deduction towards the liquidated damages by the Petitioner herein due to the delay and the amount of Rs.4,50,68,820/- was recovered towards the liquidated damages only in June 2022 and that to without issuing any prior notice to the Petitioner herein.
- iv. No specific order of any Competent Authority imposing liquidated damages and making deductions thereof and the bill was placed on record by the Petitioner herein.
- v. The work was completed on 20.02.2019 and the Completion



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Certificate was issued on 05.04.2022 and no grievance has been raised by the Petitioner herein about the delay in the completion of the project, rather it was recorded that the Claimant/Respondent herein had completed all the works in the Project satisfactorily. The various letters had been issued by the Claimant/Respondent herein for non-release of the mobilization advance and the request for the same was kept pending. The Petitioner herein had not raised any grievance that the mobilization advance was not been released due to the deficiencies in compliance of the conditions to avail mobilization advance.

vi. The grievance of the Claimant/Respondent herein that the execution of the work was hampered due to obstructions created by the villagers and despite several communications to the Petitioner herein, no attempt was made to resolve the issues, rather only a reply was given that such hindrances are common.

vii. There has been an inordinate delay in release of the dues of RA bills.

9. Considering all these aspects and complete inaction on the part of the Petitioner herein in removing the hindrances, the Arbitral Tribunal came to a conclusion that the Respondent/Claimant herein was not responsible alone for delay in the completion of the project which will only enable the Petitioner herein from making the deduction towards the liquidated damages.

10. There is nothing on record to show that the Petitioner herein suffered any proof of actual loss which would entitle them to recover the liquidated damages.

11. The Arbitral Tribunal after examining the material on record came to a conclusion as overserved under: -



“51. The material hindrances pointed out by the claimant in various letters in detail have not been specifically disputed or denied by the respondent. Considering the various hindrances and impediments referred above, it can be inferred that the claimant alone was not responsible for delay in completion of the project entitling the respondent to make deductions amounting to Rs.45,68,820/ towards Liquidated damages. Pertinent to note is that despite the claimant specifically pleading that no 'actual loss' was caused to the respondent, the respondent in the Statement of Defence did not controvert it. There is no plea either in the Statement of Defence or in the written submissions by the respondent if it had suffered 'actual loss' entitling it to make deductions towards liquidated damages. The law on this aspect is very clear. In the case of Kailash Nath Associates (supra), the Hon'ble Supreme Court categorically observed in para no. 43 .1:

"Where a sum is named in a contract as liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amounts only if it's a genuine pre-estimate of damages fixed by both the parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation."

52.In para 43.2, the court held that reasonable



compensation will be fixed on well known principles that are applicable to the law of contract, which are to be found inter alia, in Section 73 of the Contract Act. In para 43.4, it was held that since Section 74 awards compensation for damages or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

53. The Hon'ble Delhi High Court, in Jammu & Kashmir Economic Reconstruction ... Agency vs. M/s Simplex Projects Ltd., 2925:DHC:4076 held that the law mandates proof of actual loss despite the presence of liquidated damages (LD) clause and does not allow automatic recovery of the entire LD amount upon breach. Therefore, the petitioner's unilateral adjustment without adjudication was unlawful. The AT rightly held that such unilateral recovery does not obviate the need for proper adjudication of the LD claim. In the instant case, no evidence worth the name has been filed by the respondent to establish if due to delay in the execution of the project, the respondent suffered actual loss of Rs.4,50,68,820/-. The unilateral recovery at one go in June, 2022 after the expiry of around 3 years of the completion of the project, without establishing actual loss to the respondent is untenable and impermissible.

54. It is a matter of record that similar 'dispute' had arisen in the project of district. Bulandshahr. The project which was to be completed by 08.04.2015 suffered delay of around 4 years and was finished on 19.03.2019; huge quantity of DTRs of 10KVA and 25KVA had burnt/damaged. Strange enough, despite delay of 4 years, attributed to the claimant therein, no deduction whatsoever was made towards liquidated damages. The respondent has failed to explain or justify as to what had prompted it to impose liquidated damages in the instant case while exonerating the same claimant therein from imposing any liquidated damages. There must be some basis for imposing liquidated damages in the instant case. The deduction of Rs.4,50,68,820/- being a sum



equivalent to 0.5% of the contract price simplicitor without any basis/foundation and without any evidence of actual loss by the respondent can't be sustained; it is untenable and arbitrary. The claimant is entitled for its refund/return. The Tribunal is further of the view that Rs.4,50,68,820/- shall be returned to the claimant along with interest@ 8% per annum with effect from 01.07.2022 as the claimant was deprived of its legitimate dues by deducting the liquidated damages in one go in June, 2022. This issue is decided in favour of the claimant against the respondent.”

12. The Arbitral Tribunal has, therefore, held that a sum of Rs.4,50,68,220/- which has been deducted as liquidated damages is unsustainable. It is this portion of the Award i.e., Claim No.3 which is a subject matter of challenge in the present petition filed under Section 34 of the Arbitration and Conciliation Act, 1986.

13. Learned Counsel for the Petitioner contends that the Clause 21.2 of the GCC contemplates that if the contractor failed to comply with the time in accordance with the Clause 21.2 of the GCC, the contractor shall pay to the employer a sum equivalent of half percent i.e., (0.5%) of the contract price as liquidated damages for such default and not as a penalty without prejudice to the employer's other remedies under the contract for each week or a part thereof. He also states that the upper limit permissible was 5% and therefore, the Petitioner was well within its jurisdiction to deduct the liquidated damages within the range of 0.5% to 05%. It is, therefore, the case of the Petitioner herein that the Award is, therefore, contrary to Clause 21.2 of the GCC. He also states that it is now well settled that if an Award is contrary to the terms of the contract the Award automatically becomes contrary to the policy of the country.

14. The scope of Section 34 of the Act is now well crystallized by the



Apex Court in a catena of judgments. The Apex Court in Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited, (2022) 1 SCC 131, has observed as under:-

“16. DMRC filed an appeal under Section 37 of the 1996 Act read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (the title since amended to “the Commercial Courts Act, 2015”), challenging the correctness of the judgment passed by the learned Single Judge on 6-3-2018 [DMRC v. Delhi Airport Metro Express (P) Ltd., 2018 SCC OnLine Del 7549] dismissing the objections filed by DMRC under Section 34 of the 1996 Act. The Division Bench reversed [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] the judgment of the learned Single Judge and allowed the appeal filed by DMRC. The award passed by the Arbitral Tribunal was partly set aside. The parties were left to invoke the arbitration clause for adjudication of the issues that were not decided by the Division Bench. The judgment of the Division Bench dated 15-1-2019 [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] is assailed in these appeals.

17. DMRC has also filed SLP (C) No. 8311 of 2019 challenging the correctness of the aforesaid judgment [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] of the Division Bench in relation to the issues of grant of interest, waiver of the termination notice due to Damepl's conduct of operating the project for more than five months from 22-1-2013, refusal by the Division Bench to grant relief of specific performance of the Concession Agreement and non-consideration of the issue pertaining to the real reason for the termination of the Concession Agreement by Damepl.



Reasons given by the Division Bench for setting aside the award

18. The Division Bench of the High Court held [DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562] that the award of the Arbitral Tribunal had recorded two different termination dates. As the Tribunal had based its reasoning on the validity of the termination notice on two different dates leading to confusion and ambivalence as to the termination notice and the date of termination, the award was found to be suffering from the vices of perversity, irrationality and patent illegality. The High Court observed that in deciding the question on defects in the civil structure and whether effective steps were taken to cure the defects, the Arbitral Tribunal had committed serious error by holding, without “reason”, that the vital evidence of the sanction granted by the CMRS for resumption of commercial operations of AMEL and the fact that DMRC had successfully operated AMEL from 30-6-2013 till the date of the award without any adverse incident were inconsequential. The High Court found fault with the Arbitral Tribunal in virtually negating the certificate issued by the CMRS under the Delhi Metro Railway (Operation and Maintenance) Act, 2002 (hereinafter “the Delhi Metro Act”) and held that the cumulative effect of the findings of the award on this issue “shocked the conscience of the court”.

15. The short question which now arise for consideration is as to whether the Petitioner was justified in making deductions by way of liquidated damages for delay in performance of the contract or not.

16. It is well settled that the Arbitral Tribunal is the master of evidence produced before it. It is also now well settled that the Court while exercising power under Section 34 of the Act cannot go into details and facts, re-appreciate evidence and come to a conclusion different from the one arrived at by the Arbitral Tribunal. Material on record and the findings of the



Arbitral Tribunal is that the Claimant/Respondent herein is not alone responsible for the delay. The delay was attributable to the Petitioner herein as well.

17. The Arbitral Tribunal has categorically come to a conclusion that the material hindrances pointed out by the Claimant/Respondent herein in various letters in detail have not been specifically disputed or denied by the Petitioner herein. There is no deduction on the ground of liquidated damages under the various RA bills. The only deduction which has been made was for not replacing the transformers and there was no imposition of the liquidated damages for the delay prior to June 2022, RA Bills when first deduction was made on the ground of liquidated damages and that to without prior notice.

18. The conclusion of the Arbitral Tribunal that the delay is attributable on both sides, the unilateral recovery by the Petitioner herein relying on the Clause 21.2 of the GCC at that to without adjudication is not justified and in the opinion of this Court would not come within the parameters of Section 34 of the Act either on the ground of patent illegality or on the ground against the notions of morality or against the public policy of India/country.

19. The Apex Court in Delhi Airport Metro Express Private Limited (supra) has observed as under:-

“30. Section 34(2)(b) refers to the other grounds on which a court can set aside an arbitral award. If a dispute which is not capable of settlement by arbitration is the subject-matter of the award or if the award is in conflict with public policy of India, the award is liable to be set aside. Explanation (1), amended by the 2015 Amendment Act, clarified the expression “public policy of India” and its connotations for the purposes of reviewing arbitral awards. It has been made clear that an award would



be in conflict with public policy of India only when it is induced or affected by fraud or corruption or is in violation of Section 75 or Section 81 of the 1996 Act, if it is in contravention with the fundamental policy of Indian law or if it is in conflict with the most basic notions of morality or justice.”

20. The finding of the Arbitral Tribunal that law mandates factual loss despite the presence of the liquidated damages and does not allow automatic recovery of the entire liquidated damages upon breach, also cannot be found fault with as it is supported by the judgment of this Court in Jammu & Kashmir Economic Reconstruction Agency v. M/s Simplex Projects Ltd., 2025 SCC OnLine Del 3515, has observed as under:-

“27. In Fateh Chand (Supra); Kailash Nath (Supra); Sudershan Kumar Bhayana (Deceased) Thr LRs v. Vinod Seth (Deceased) Thr LRs (Supra), it has been held that a clause in a contract enabling a party to claim LD only entitles it to claim the sum up to the LD amount mentioned in the contract subject to proving the actual loss suffered. The LD clause does not entitle a party to claim the whole LD sum automatically upon the occurrence of breach. In view of this settled position of law, the Petitioner's failure to raise its LD claim as a counter claim and seeking a declaration that pre-arbitration adjustment carried out by it to unilaterally recover the LD amount, was illegal.”

21. The conclusion drawn by the Arbitral Tribunal based on the said judgment which has not been set aside by the Apex Court again, therefore, said to such which shocks the conscience of this Court.

22. The conclusion of the Arbitral Tribunal that in absence of any evidence, both the name filed by the Petitioner to establish is due to the delay in the execution of the project, the Petitioner herein suffered actual



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loss, deduction of an amount of Rs. 4,50,68,820/- is impermissible also does not require any interference.

23. In the opinion of this Court, even notice is not to be issued in this case.

24. Accordingly, the Petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

APRIL 6, 2026

Prateek/AP