



2026:DHC:3251



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

% **Judgment reserved on: 02.04.2026**

**Judgment pronounced on: 20.04.2026**

+ O.M.P. (COMM) 277/2025 & I.A. 17526/2025

DELHI JAL BOARD

.....Petitioner

Through: Mr. Jayant Mehta, Sr. Adv.  
with Mr. Tushar Sannu, Mr.  
Malvi Balyan, Mr. Fajallu  
Rehman & Mr. Pallav Arora,  
Adv.

versus

M/S METRRO WASTE HANDLING PRIVATE  
LIMITED

.....Respondent

Through: Mr. Akshay Makhija, Sr. Adv.  
with Mr. Tarang Gupta & Ms.  
Shreya Sharma, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE AVNEESH JHINGAN**

### **J U D G M E N T**

1. The petition under section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') is filed challenging the arbitral award dated 08.04.2025.

#### **Brief Facts**

2. The brief facts are that on 26.04.2012, the petitioner/Delhi Jal Board (for short 'DJB') issued a Notice Inviting Tender (for short 'NIT') for hiring and O&M of jetting-cum-suction-cum-recycling sewer cleaning machines. The respondent, M/S Metro Waste Handling Private Limited (for short 'MWHPL') along with M/s City



Lifeline Travels Private Limited entered into a Joint Venture Agreement dated 30.10.2012 and bid as a consortium. DJB on 11.04.2013 issued a Letter of Intent (for short 'LOI'). On 27.05.2013, the project was awarded for five machines as per the terms and conditions of the Work Order dated 06.05.2013, at the rate of Rs.7101/- per hour plus taxes and for a period of seven years with additional six months for supply of machines. The cost of the work was Rs.59,64,84,000/-.

2.1 On 24.08.2017, MWHPL proposed deployment of five additional machines. DJB issued a LOI dated 09.10.2017 and MWHPL on 12.10.2017 gave a Letter of Acceptance (for short 'LOA'). Work Order dated 30.10.2017 was issued and a contract dated 17.11.2017 was executed, adopting the earlier contractual terms.

2.2 MWHPL on 11.05.2022 requested the DJB for enhancement of the budget as the amount stipulated was likely to be exhausted by August-September, 2022. Vide communication dated 01.11.2022, DJB advised MWHPL that the agreed contract price was fully utilized and work be carried out only within the cap. MWHPL suspended operations on 02.11.2022 and requested that the pending dues be cleared.

2.3 On 23.01.2023, MWHPL aggrieved of delay in revision of the allocated budget filed writ petition (W.P. (C) No. 985 of 2023). On 20.02.2023, DJB closed the contract stating that the scope of work was completed and requested for bill. The writ petition was dismissed as withdrawn and the parties were relegated to the Dispute Adjudication Board for amicable resolution. MWHPL issued a notice



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dated 24.02.2023 invoking arbitration. Petition filed by MWHPL under Section 9 of the Act was disposed of on 29.03.2023. The conciliation proceedings failed and were closed on 20.04.2023. On reference, the main issue before the arbitrator was whether the contract was an item rate contract operative for a period of seven years or it was till the exhaustion of the contract price of Rs.59,64,84,000. In view of fact that the tenure of contract had expired during pendency of arbitration proceedings, the declaratory reliefs (Claims No. I – VI (ii)) seeking declaration against DJB were not pressed by MWHPL. DJB aggrieved of the award dated 08.04.2025 allowing the following claims of MWHPL filed the present petition:

<b><u>Claim</u></b>	<b><u>Amount Awarded</u></b>
<b>Alternative Claim VI</b> Claim towards Damages calculated as per minimum assurance from Feb, 2022 to April, 2025	Rs. 18,46,26,000/- (with interest at 10% per annum from 01.05.2025 till payment)
<b>Claim VII</b> Claim towards interest applicable for delayed payments.	Rs.2,83,79,759/-
<b>Claim VIII</b> Claim towards escalation/ price variation	Rs.3,49,37,191/- (with interest at 10% per annum from 28.07.2023 till payment.)
<b>Claim IX</b>	Rs.2,36,70,000/- (with interest



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Claim towards minimum assured payment for the months of Nov,2022 to Feb,2023	at 10% per annum from 20.02.2023 till payment)
<b>Claim X</b> Claim towards additional labour deployed	Rs.1,74,47,808/- (with interest at 10% per annum from April 2018 till payment)
<b>Claim XII</b> Litigation Cost	Arbitral fee paid to DIAC along with legal fee of Rs.10,00,000/-

### **Submissions of the Petitioner**

3. Learned senior counsel for DJB contended that the contract documents, work order, LOI and related records reflect the total contract value of Rs.59,64,84,000/- which was to be paid over seven years and the expression 'minimum' was not in relation to the contract value in the documents. The contention is that clause II of the Special Conditions of the Contract (for short 'SCC') stipulates that the vehicles shall be available for at least twenty five days a month and will be hired for a minimum two hundred hours per month but the condition was not absolute and in case of deployment of the machines for less than eight hours a day the payment on pro-rata basis has to be made. MWHPL received the assured amount in four years and seven months instead of seven years. MWHPL suspended the work on being informed on 01.11.2022 that the total contract value stood exhausted and the work was to be done within the upper cap. The work was closed vide order dated 20.02.2023. The contention is that the tribunal



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erred in concluding that the contract was an item rate and not a lump sum contract. It is emphasised that internal departmental communications have no sanctity. Reliance is placed upon **Konkan Railway Corporation Ltd. v. SRC Company Infra Pvt. Ltd.**, 2025 SCC OnLine Bombay 4438.

3.1 Clause 11.3 of the General Conditions of Contract (for short 'GCC') is relied upon to contend that DJB had the power to cancel the contract wholly or in part.

3.2 The damages awarded of Rs.18,46,26,000/- are challenged being contrary to Sections 73 and 74 of the Indian Contract Act, 1872 (for short 'Contract Act') having been awarded solely on the basis of calculations furnished by MWHPL and not substantiated by evidence of actual loss or injury. Reliance is placed upon the decisions of the Supreme Court in **Kailash Nath Associates v. Delhi Development Authority & Anr.**, (2015) 4 SCC 136, **Unibros v. All India Radio**, 2023 SCC OnLine SC 1366 and **Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited & Anr.**, 2023 SCC OnLine SC 1208. It is canvassed that there is no discussion of nature and quantum of loss. Moreover, the turnover was awarded as damages without deducting operating costs. The findings that the machines used were tailor made are refuted relying upon the cross-examination of CW-1 wherein it was stated that the machines were deployed elsewhere post-termination. The grievance is that the evidence of GPS tracking charts to support the plea that the machines were being used elsewhere was brushed aside by the tribunal. It is submitted that MWHPL had changed the password of GPS and DJB



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was curtailed from having access to the subsequent movement. MWHPL continued to submit monthly bills after February, 2023 but withheld the GPS data or proof of zero movement of the vehicles.

3.3 The submission is that the damages awarded for the period of suspension i.e. November, 2022 to February, 2023 along with interest at the rate of ten percent per annum are on the same pedestal as the damages awarded for the post-termination period.

3.4 The amount awarded for deployment of additional labour along with interest at the rate of ten percent per annum is stated to be contrary to Section 73 of the Contract Act. MWHPL failed to prove actual expenditure and the tribunal relied upon self-serving extracts of ledger produced by MWHPL. Clause III of the SCC is relied upon to contend that labour in abnormal circumstances was to be provided by DJB. It is argued that grant of interest on the delayed payments from ninety-first day of issuance of invoice is contrary to the clause 12.2.2 of the GCC wherein it is provided for interest after ninety days from the date of pay order. Reliance is placed upon the decision of the Supreme Court in **Union of India & Ors. v. Larsen & Tubro Ltd.**, 2026 SCC OnLine SC 327 to contend that awards contrary to the terms of the contract are patently illegal.

3.5 It is submitted that the escalation charges were ordered to be released without MWHPL proving the escalation of prices and interest awarded thereon is beyond the terms of the contract. Lastly, the litigation costs awarded are unsupported by evidence and contrary to the contract.



### **Submissions of the Respondent**

4. *Per contra* the arbitrator rightly held the contract to be an item rate and not a lump sum contract. The tender notice invited item rate bids; the additional terms of the contract provided that the contract was for seven years and could be extended; there was a provision for increasing deployment of machines and the rate quoted was on per hour basis; the SCC stipulated that the contract period was for seven years from the deployment of machines; the nature of the work was such that there could not be prior calculation of the lump sum contract price; DJB assured in contract that machines would be hired for two hundred hours per month and the amount calculated on that basis was a mutually agreed genuine pre-estimated loss and damage; the contract mandated pro-rata payments based on the total number of actual working hours each month; the invoices were to be raised on an hourly basis; there was a clause providing for payment towards escalation charges of fuel, labour and material as per fluctuations in cost; and clause 12.6 of the GCC declared that the contract was not a lump sum contract.

4.1 The conduct of the petitioner in enhancing the budgetary allocation of the initial contract and forwarding proposals to higher authorities for enhancement of the budget of the contract in hand is relied upon to emphasise that contract was an item rate and not a lump sum contract. The decisions of this court dated 29.03.2023 disposing of application under Section 9 of the Act is relied upon to substantiate that the contract was an item rate contract. The decision of the



Supreme Court in **Godhra Electricity Co. Ltd. & Anr. v. State of Gujarat & Anr.**, (1975) 1 SCC 199 and **Transmission Corporation of Andhra Pradesh Ltd. & Ors. v. GMR Vemagiri Power Generation Ltd. & Anr.**, (2018) 3 SCC 716 are relied to submit that assistance in interpreting the contract can be taken from the conduct of the parties and their understanding of the terms. The decision of the Supreme Court in **Haris Marine Products v. Export Credit Guarantee Corporation (ECGC) Limited**, (2022) 20 SCC 776 is relied upon to buttress the argument that ambiguity in the terms of the contract is to be construed against the drafter.

4.2 The decision of the Supreme Court in **Prakash Atlanta (JV) v. National Highways Authority of India**, 2026 SCC OnLine SC 98 is relied upon to argue that interpretation of the clauses of contract lies within the domain of the arbitrator and no interference is warranted unless the conclusion arrived at is perverse.

4.3 The reliance on clause 11.3 of the GCC to contend that there was a power to wholly or partly terminate the contract is refuted stating that termination could have been effected only for the reasons mentioned in clause 11.1 of the GCC which are not applicable to the facts of this case.

4.4 It is submitted that damages of Rs.18,46,26,000/- were based on a genuine pre-estimate of loss agreed between the parties based upon assurance of hiring each machine for two hundred hours per month and considering that machines were tailor made. Submission is that the vehicles compliant with BS-IV norms were procured after obtaining special permission from the National Green tribunal but



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w.e.f. 01.04.2020 the emission norms were revised to BS-VI rendering the vehicles unfit for use. DJB failed to prove that the machines could be deployed elsewhere in Delhi. The argument is damages were rightly awarded by tribunal. Reliance is placed upon the decisions in **Desh Raj & Ors. v. Rohtash Singh**, 2023 (3) SCC 714, **M/s Pawan Hans Helicopters Ltd. v. M/s Maritime Energy Heli Air Services Pvt. Ltd.**, 2017 (164) DRJ 703 and **XL Energy Limited v. Mahanagar Telephone Nigam Limited**, 2018 SCC Online Del 9109 in support of the proposition that in case of an agreed pre-estimate loss the actual damages need not be proved. The award of the damages for the suspension period is defended by similar arguments.

4.5 Clause III of the SCC is pressed into service to contend that MWHPL was to deploy a driver, helper and supervisor and DJB had to provide staff for other activities such as removing the manholes, desilting of the manholes (in abnormal circumstances). The submission is that conclusion of the tribunal allowing claim for additional deployment of labour is reasonable and calls for no interference. It is canvassed that the deployment of additional labour was supported by log sheets counter-signed by the parties though the tribunal inadvertently recorded them as undisputed invoices. The contention is that the ledger along with the certificate dated 30.07.2024 issued by the Chartered Accountant (for short 'CA') proved payment of salaries yet the tribunal allowed the claim relying on minimum wages and not on the amount claimed.





### Analysis

6. MWHPL after termination of the contract invoked the arbitration. Apart from the issues now raised declaratory reliefs were sought however, at the time of final arguments considering that the tenure of the contract had expired the declaratory reliefs were not pressed and only alternative reliefs were prayed for. The tribunal decided that the contract was an item rate contract and not a lump sum contract. The termination of the contract was held to be illegal.

7. Before proceeding further, it would be relevant to note the clauses and relevant portions of the documents relied upon by both sides.

7.1 Work orders dated 06.05.2013 and 30.10.2017 are reproduced below:

“The earlier work order dated 06.05.2013 reads as under:

M/s Metro Waste Handling Pvt. Ltd. & M/S City Life Line Travels Pvt. Ltd. (JV) 8551/2, Roshanara Road, Delhi- 110007

Sub: Hiring and O & M of 5 Nos. jetting cum suction recycling sewer cleaning machines to operate in the streets including narrow lanes of Delhi

Amount put the tender	
O/o Age Above/below/item rate	<u>Item Rate</u>
Total Cost	Rs. 59,64,84,000/-
<u>Completion Period</u>	6 months for supply of machines plus <u>7 Yrs. For hiring of machine</u>
Head f Account	Trunk Peripheral Sewer & Gravity duct.



With reference to your letter dated 30.10.12 and negotiation held on 20.03.13 for the above said work. Your rates has been accepted by the Competent Authority. You are therefore requested to start the work under the instructions of Assistant Engineer (E&M)- III incharge of this work and complete the same as per completion period stated above. The date of start of work shall be reckoned from 7 day of issue of work order.

It should be noted that as and when orders are given for the execution of extra items, such orders be got confirmed in writing subsequently, so that extra items and rates be got settled & approved by the Competent Authority.”

xxx

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xxx

“The work order of the instant case is dated 30.10.2017. The relevant extract of this document reads as under:

“NO: /DJB/2017-18//EE (West)-1/680 to 93  
Dated 30.10.2017

Ms. Metro Waste Handling Pvt. Ltd.  
& M/S City Life Line Travels Pvt. Ltd. (JV) 8551/2,  
Roshanara Road, Delhi-110007

Name of work: Hiring and O&M of 5 Nos. jetting cum suction recycling sewer cleaning machines to operate in the streets including narrow lanes of Delhi

Amount put together: Item rate

Awarded Rate: Item rate

Total contractual cost: Rs. 59,64,84,000/- plus GST as applicable



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Completion period: 06 Month for supply of machine  
Plus 7 years for hiring of  
machine

Budget Head: Trunk Peripheral Sewer &  
Gravity Duct

Performance Bank

Guarantee @ 5%: Bearing B.G. 0301-BG-0017-17  
amounting to Rs. 85,21,200/-  
Dated 12.10.2017 validity Dt.  
30.09.2018

Punjab & Sind Bank Roshanara  
Road, Delhi 110007.

Sir

With reference to your letter dated 24.08.2017 for the above said work. Your rate has been accepted by the Competent Authority. You are therefore requested to start the work under the instructions of Zonal Engineer VIII West in charge of this work and complete the same as per completion period stated above The date of start of work shall be reckoned from 30.04.2018 or date of actual supply of machine, whichever earlier.

It should be noted that and when orders are given for the execution of extra items, such orders be got confirmed in writing subsequently, so that extra item and rates be got settled & approved by the competent Authority”

XXX

XXX

XXX

7.2 Clauses 12.2.1, 12.2.2, 12.6 and 14.1 of the GCC are reproduced as follows:-



“12.2.1 The payment of the monthly running bill for the Works shall be released in 90 days from the date of recording of pay order. No excuse for delay in completion of work/prolongation of the Contract shall however be entertained on account of the reason of delay in payment. The bidder therefore, must take into consideration of its financial capability to carry out and to continue the work without any hindrances.”

“12.2.2 In the event of the failure of Employer to release payment as per clause 12.2.1, the Employer shall be liable to pay interest @ 10% per annum computed for period beyond 90 days. Provided always, that no interest shall be payable on any amount disallowed or disputed by the Engineer-in- Charge or the Employer, even if such amount is later on determined to be payable to the Contractor, as a result of any process resorted to for the settlement of the dispute as per Contract.”

“12.6 Lump sum provisions in a composite tender  
This Clause is not Applicable.”

“14.0 Changes in Contract Price

14.1 Payments due to variation in prices of material, POL and labour after receipt of tender

If during the operative period of the Contract, there shall be any variation in the prices of material (not being the material supplied by Employer as under clause 9.1 and/or services rendered at fixed prices as under clause 9.5 and the material for which the price variation is being calculated for actual quantities used as under clause 14.1.3) and/or in the wages of labour required for execution of.

Works and/or in POL (fuel); the Contract Price shall be adjusted as per the provisions detailed below”

7.3 Clauses II, III and VI of the SCC are reproduced below:-

“II. Functional Duties:



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- The vehicle shall be available and fit for work for minimum 25 days in a month. Delhi Jal Board will hire each machine for minimum total 200 hours per month (and minimum total 8 hours per day normally) for the duration of the contract. 200 hours includes time towards transportation & setting up and actual operation. Lunch hours (1-2 PM) will not be included in 200 hours. The time of operation will be decided by the Engineer-in-charge. However if due to any extraordinary requirement of Delhi Jal Board, a machine is deployed for less than 8 hours, the payment will still be done on pro-rata basis.”

“III. Staff:

- The firm will engage the required staff for operation and maintenance of each machine. The vehicle Driver operator should be well trained, well behaved, free from intoxication and have proper driving licence (as per RTA requirement).
- DJB will provide the labour/staff for other activities e.g. removal of the manhole, de-silting of manhole (for abnormal circumstances e.g. if filled-up with heavy construction material which can't be removed by the machine) if required. The location of the site will be decided by the DJB staff. The tenderer shall depute the machines at various zones as per the directions of the Engineer-in-charge.
- Minimum Manpower deployment are as follows:

Operation Crew:

Trained Driver	1 Nos./Machine
Operator	1 Nos./Machine
1 Supervisor for entire fleet”	

“VI. Payment:



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- The payment will be made as per actual hours (transport hours + operation hours) obtained from log sheets. The working hours will also be confirmed by the GPS system/ tele-metering record (hour meter) / log-sheet etc. The decision of the concerned EE (Civil) will be final.

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- The payment will be made on pro-rata basis based on the total no. or working hours (or fraction of hour upto minutes) of machine @ per hour rate quoted/accepted by the contractor/department.”

### **Nature Of Contract**

8. The tribunal noted that the contract was executed on 17.11.2017 but the LOI and the work order were integral parts of it. The ‘completion date’ mentioned in the Work Order stipulated a period of seven years. The terms and conditions of the present contract were verbatim with the earlier Work Order dated 06.05.2013 and that contract was an ‘item rate’. The work detailed in the NIT indicated the contract period to be seven years after actual deployment of machines. Clause 12.6 of the GCC states that lump sum provisions were not applicable. Clause 14 of the GCC provides for payment of escalation in prices. The definitions of ‘stipulated date of completion’ and ‘contract price’ were relied upon to conclude that the contract was an item rate contract for a period of seven years.

9. The minutes of meetings dated 29.09.2012, 19.03.2012, 20.03.2013, 01.04.2013 and 11.04.2013 and communications exchanged *inter se* the officials of DJB were relied upon that as per the understanding of the petitioner the contract was an item rate. It



was further considered that in the earlier contract of 2013, the budget allocation was revised and in the present contract proposals were submitted to higher authorities for revision of the budget. The prima facie findings recorded by this court while deciding application under Section 9 of the Act that the contract was an item rate and not a lump sum contract were noted though rightly considered not to be conclusive. It was held that the contract was for a fixed period of seven years and it was an item rate and not a lump sum contract.

10. It is an undisputed fact that the tender was invited on an item rate basis. The completion period was stated to be of seven years which could have been extended. The bid was quoted on per working hour basis. There was an assurance of minimum hiring of the machines for two hundred hours per month. The payments were to be made on actual working hours and SCC provided for payment on a pro-rata basis in case the deployment are less than eight hours a day.

11. The mentioning of total contract value and usage of the expression 'minimum' for assuring deployment of the machines for two hundred hours per month and availability for at least twenty five days a month shall not be the only factors to determine the nature of the contract. There cannot be quarrel with the proposition that contract is to be read as whole and moreover, in case in hand the work order and LOI are integral part of the contract.

12. The internal communications of the petitioner are not binding but supports that the view taken by the tribunal to be plausible one. The possibility of another view is not a ground under Section 34 of the Act for setting aside the impugned award. The NIT, LOI, GCC and



SCC were considered for holding that the work awarded was an item rate. The interpretation of clauses of contract by the arbitrator cannot be interfered with under Section 34 of the Act unless the relevant clauses have been ignored, the contractual terms are rewritten or the conclusion arrived at is perverse and it is not so in case in hand making no case for interference under Section 34 of the Act.

### **Termination of Contract**

13. The tribunal rightly concluded that the eventualities mentioned in clause 11.1 of the GCC for termination of the contract never existed and the termination of the contract was illegal. The contention of the learned senior counsel for the petitioner that under clause 11.3 of the GCC there was a power to terminate the contract is ill-founded. Clauses 11.1 and 11.3 of the GCC are to be read in conjunction and clause 11.3 of the GCC empowers DJB to wholly or in part terminate the contract applies only if the circumstances mentioned in clause 11.1 of the GCC occur.

### **Scope under Section 34 of the Act**

14. The scope of interference under Section 34 of the Act is well settled that interpretation of the clauses of the contract falls within the domain of the arbitrator and no interference is to be made if the conclusion arrived at is plausible and interference is to be made only in case of perversity. Reference is made to the following decisions of the Supreme Court.

14.1 In **Prakash Atlanta (JV)** (Supra) it was held as under:

“52. ....Having considered the arbitral awards passed by the arbitral tribunals in the five appeals filed by NHAI, we



find that the interpretation and construction of those terms and clauses by the arbitral tribunals cannot be said to be arbitrary, perverse or patently illegal. Given the situation obtaining in relation to the two Acts at the relevant time, the arbitral awards cannot be said to have violated the public policy of India or be in breach of Section 28(1)(a) of the Arbitration Act. Once the view taken by the arbitral tribunal is found to be a plausible and possible one on facts and not an unreasonable one, it is not for the Courts, under Sections 34 or 37 of the Arbitration Act, or for this Court to sit in appeal or substitute its view for that of the arbitral tribunal.”

14.2 The Supreme Court in **Ramesh Kumar Jain vs. Bharat Aluminium Company Limited**, 2025 SCC OnLine SC 2857 held as under:

“28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In *ONGC Limited. v. Saw Pipes Limited*<sup>14</sup>, this court held that an award can be set aside under Section 34 on the following grounds: “(a) contravention of fundamental policy of Indian law; or (b)



the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal.”

14.3 In **Consolidated Construction Consortium Limited vs. Software Technology Parks of India**, (2025) 7 SCC 757 it was held as under:

“46. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in Sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged Under Section 34 of the Act. The court exercising powers Under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings Under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.”

### **Damages for Period of Suspension and Balance Period of Contract**

15. The contract having been held to be an item rate contract and the termination to be illegal, the question surviving is as to whether MWHPL was entitled to damages for the remaining period of the term



of the contract i.e. approximately twenty six months and the quantification of damages.

16. From the reading of the terms of the contract dated 17.11.2017, SCC, LOI and work order it is evident that the contract was for the total cost of Rs.59,64,84,000/-. Clause II of the SCC stipulates that the vehicles shall remain available for a minimum of twenty-five days a month and DJB will hire each machine for a minimum of two hundred hours per month for the duration of the contract. The calculation of the total cost of the contract which was extendable by DJB has been made taking into account the minimum two hundred hiring hours per month for seven years and for five machines. In mathematical terms: 7101 (minimum rate per hour per machine) x 25 (minimum days per month) x 8 (minimum hours per day) x 84 (duration of the contract in month) x 5 (number of vehicles).

17. The contract was an item rate contract yet from reading of contract in entirety, an assurance to MWHPL emerges that by hiring of the five machines for seven years there would be a minimum turnover of Rs.59,64,84,000/-. It is an undisputed fact that this amount was paid to MWHPL prior to termination i.e. on completion of four years and seven months. Clause II of the SCC provided that in case of hiring of the machines for less than eight hour a day the payment would be made on pro-rata basis. Further clause VI of the SCC provided that the payment was to be made on actual usage. The conclusion of the arbitrator that in spite of the additional working hours in the four years seven months period, MWHPL was entitled to a minimum of two hundred hiring hours per month per machine for



seven years renders the clause of pro-rata payment and payment on actual usage otiose.

18. Another angle to be considered is that in the absence of proof of actual loss suffered MWHPL cannot claim damages due to premature termination of the contract by DJB, more so, when the minimum assured turnover to MWHPL upon completion of the contract was paid prior to termination.

19. There is a dispute raised with regard to whether the machines were tailor-made; the machines could have been put to use for cleaning other sewers; and one of the machines was actually put to usage after the termination of the contract but for claiming damages under Sections 73 and 74 of the Contract Act, actual loss or damage suffered has to be proved. The contention of the learned senior counsel for the respondent that damages have been calculated on the basis of a formula of genuine pre-estimate of loss provided in the contract lacks merit. There is neither pre-determination of liquidated damages nor a formula has been provided for doing so. The clause for minimum hiring hours was only to ensure the bidder that minimum business that would accrue on making an investment. At this stage, it must be added albeit, the total contract value could have been extended by the petitioner but that the respondent had no right to claim enhancement of the contract amount.

20. The law is well settled that for claiming damages under Sections 73 and 74 of the Contract Act the claimant has to prove actual loss suffered and in case it is not possible to prove loss, a



reasonable amount of damages is to be assessed. Reference in this regard be made to the following judgments:

20.1 The Supreme Court in **Unibros** (supra) while dealing with a claim for redressal of loss of profit made under Section 73 of the Contract Act arising from prolongation of the contract held:

“19. The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions : first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case.”

20.2. The Supreme Court in **Kailash Nath Associates** (supra) held:

“43.6. The expression “whether or not actual damage or loss is proved to have been caused thereby” means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.”

20.3 The Supreme Court in **State of Rajasthan v. Ferro Concrete Construction (P) Ltd.**, (2009) 12 SCC 1 held:

“55. While the quantum of evidence required to accept a claim may be a matter within the exclusive jurisdiction of the arbitrator to decide, if there was no evidence at all and if the arbitrator makes an award of the amount claimed in the claim statement, merely on



the basis of the claim statement without anything more, it has to be held that the award on that account would be invalid. Suffice it to say that the entire award under this head is wholly illegal and beyond the jurisdiction of the arbitrator, and wholly unsustainable.”

20.4 The Division Bench of this court in **Tower Vision India (P) Ltd. v. Procall (P) Ltd.**, 2012 SCC OnLine Del 4396 held:

“16. Consequence for breach of the contract are provided in Chapter VI of the Indian Contract Act, 1872, which contains three sections, namely, section 73 to section 75. As per section 73 of the Indian Contract Act, the party who suffers by the breach of contract is entitled to receive from the defaulting party, compensation for any loss or damage caused to him by such breach, which naturally arose in usual course of things from such breach, or which the two parties knew when they make the contract to be likely the result of the breach of contract. This provision makes it clear that such compensation is not to be given for any remote or indirect loss or damage sustained by reason of the breach. The underlying principle enshrined in this section is that a mere breach of contract by a defaulting party would not entitle the other side to claim damages unless the said party has in fact suffered damages because of such breach. Loss or damage which is actually suffered as a result of breach has to be proved and the plaintiff is to be compensated to the extent of actual loss or damage suffered. When there is a breach of contract, the party who commits the breach does not eo instanti, i.e., at the instant incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages. No pecuniary liability thus arises till the court has determined that the party complaining of the breach is entitled to damages. The court in the first



place must decide that the defendant is liable and then it should proceed to assess what the liability is. But, till that determination, there is no liability at all upon the defendant. The courts will give damages for breach of contract only by way of compensation for loss suffered and not by way of punishment. The rule applicable for determining the amount of damages for the breach of contract to perform a specified work is that the damages are to be assessed at the pecuniary amount of difference between the state of the plaintiff upon the breach of the contract and what it would have been if the contract had been performed and not the sum which it would cost to perform the contract, though in particular cases the result of either mode of calculation may be the same. The measure of compensation depends upon the circumstances of the case. The complained loss or claimed damage must be fairly attributed to the breach as a natural result or consequence of the same. The loss must be a real loss or actual damage and not merely a probable or a possible one. When it is not possible to calculate accurately or in a reasonable manner, the actual amount of loss incurred or when the plaintiff has not been able to prove the actual loss suffered, he will be, all the same, entitled to recover nominal damages for breach of contract. Where nominal damages only are to be awarded, the extent of the same should be estimated with reference to the facts and circumstances involved. The general principle to be borne in mind is that the injured party may be put in the same position as that he would have been if he had not sustained the wrong.”

(emphasis supplied)

21. The arbitrator erred in awarding damages of the entire turnover for remaining period of contract, calculating it by minimum assured hiring of the machines. The amount to be received by MWHPL was the gross turnover and would include operational expenses,



consumables and other overheads and does not denote the loss suffered.

22. Another aspect is that making of a payment on actual usage basis and on pro-rata basis in case of hiring of the machine for less than eight hours a day makes the contract flexible enough to adjust according to the situations arising at ground level, with the only condition that MWHPL shall get minimum Rs.59,64,84,000/- during the tenure of the contract. The award of damages in absence of evidence on record of actual loss suffered or a finding recorded that the loss suffered cannot be proved is in violation of Sections 73 and 74 of the Contract Act and against public policy. The tribunal awarded damages without considering the value of the machines, the usage these were put to, loss of business and other factors. The gross amount to be received by MWHPL for remaining period of the contract, calculated with minimum hiring guarantee of two hundred working hours per month per machine in itself is not actual loss suffered by the respondent as only a percentage of turnover can be regarded as profit.

23. It is trite law that, in case of termination of contract the aggrieved party is to be awarded damages to put it in the same position that it would have been in if the contract had been executed. However, the damages must be reasonable and the parties should not be allowed to make a windfall profit. The Supreme Court in **Batliboi Environmental Engineers Ltd.** (supra) held:

“16. This is without doubt, a sound legal and correct proposition. However, the computation of damages should not be whimsical and absurd resulting in a windfall and bounty for one party at the expense of the



other. The computation of damages should not be disingenuous. The damages should commensurate with the loss sustained. In a claim for loss on account of delay in work attributable to the employer, the contractor is entitled to the loss sustained by the breach of contract to the extent and so far as money can compensate. The party should to be placed in the same situation, with the damages, as if the contract had been performed. The principle is that the sum of money awarded to the party who has suffered the injury, should be the same quantum as s/he would have earned or made, if s/he had not sustained the wrong for which s/he is getting compensated. [Robinson v. Harman, (1848) 1 Ex 850, at p. 855 and Livingstone v. Rawyards Coal Co., (1880) LR 5 AC 25 (HL)]”

[emphasis supplied]

23.1 Contrary to the settled principles governing the award of damages, the gross turnover for the remaining period of the contract was taken to be loss suffered by MWHPL. The awarding of damages without deducting expenses puts MWHPL in position of having a windfall gain rather than reimbursing the loss suffered. At cost of repetition MWHPL has already achieved the assured minimum business.

24. The damages for the period the contract was suspended were awarded on the same basis and hence meet the same fate. The awarding of the damages is set aside.

#### **Grant of Interest on Delayed Payment**

25. Clauses 12.2.1 and 12.2.2 of the GCC provide that payment of interest at the rate of ten percent per annum is to be computed after ninety days of the pay order. The petitioner though set up a case that



the ninety days is to be counted from the date of the issuance of the pay order but the information exclusively in the possession of the petitioner i.e. the date of pay order was not disclosed. Moreover, it was not substantiated that for payments made to MWHPL, pay orders were being issued. The emails exchanged between the parties were also relied upon by tribunal wherein the amounts calculated were inclusive of interest at the rate of ten percent per annum. The tribunal rightly granted interest at the rate of ten percent per annum from the ninety-first day of submission of the bills. The grant of interest is in consonance with clause 12.2.2 of the GCC and calls for no interference.

### **Deployment of Additional Labour and Interest Thereon**

26. Clause III of the SCC provides for deployment of one trained driver, operator and supervisor. DJB had to provide labour for other activities such as removal of manhole and desilting of manhole (only in abnormal circumstances). The contention of learned senior counsel of the petitioner that the staff was to be deployed only in abnormal circumstances as evident from clause III of the SCC, is ill-founded. The arbitrator rightly held that the abnormal circumstances applied only to de-silting of the manholes and not for other activities to be done for example removal of manholes. The contention that the deployment of additional labour itself shall not entitle the respondent for payment unless actual wages paid are proved, is of no avail. SCC provides for the log sheets were to be maintained for deployment of labour and these were to be counter-signed by the parties. The respondent produced the counter signed log sheets, extracts of the



ledger and a certificate of the CA to prove deployment of additional labour and wages paid. The counter-signatures on the log sheets for deployment of additional labour were not disputed by the petitioner. The extracts of ledger produced by the respondent were backed by certificate issued by the CA and the entries in the log sheets. The quality of evidence to be considered is in the domain of the tribunal. Supreme Court in **Parsa Kente Collieries Limited v. Rajasthan Rajya Vidyut Utpadan Nigam Limited**, (2019) 7 SCC 236 held that quality of evidence to be relied upon is a matter for consideration of arbitrator only. Relevant part is quoted below:

“9.1 ..... it is observed and held that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.”

(emphasis supplied)



27. It would be relevant to note that the tribunal has not awarded the entire claim made for additional deployment of labour but considered the undisputed number of additional labour deployed and the minimum wages statutorily prescribed. Conclusion arrived at by the tribunal suffers from no legal error much less perversity. The claim awarded is upheld.

28. The challenge to the grant of interest on the amount awarded for deployment of additional labour on the ground that there is no clause for grant of interest is noted to be rejected. The tribunal has given the basis of awarding interest at the rate of ten percent per annum which is equivalent to the rate agreed between the parties under clause 12.2.2 of the GCC in case of delay in payment of bills. Moreover, there is no clause in the contract barring the grant of interest.

### **Escalation Charges**

29. Clause 14.1 of the GCC read with Clause VII of the SCC provides for payment of escalation charges in case of price fluctuation in labour component, material and fuel. The claim for escalation of prices and the fact that fifty-six bills on account of price variation were submitted by the respondent from April 2018 to December 2022 were not disputed before the tribunal. The only defence pressed was that there was deficiency in the documents submitted. The tribunal in the facts and circumstances of the case rightly held the respondent to be entitled to payment for the escalation bills submitted. For the grant of interest at the rate of ten percent per annum on the delayed payment of the escalation bills the tribunal relied upon clause 12.2.2 of the GCC wherein the parties agreed for grant of interest at the rate of ten



percent per annum on delayed payment of bills. It would be apposite to mention that there is no clause in the contract that no interest would be awarded for delay in payment due to escalation of prices. A plausible conclusion arrived at by the tribunal backed by the reasons cannot be tinkered with under Section 34 of the Act.

30. The tribunal under Section 31A(2) of the Act has the discretion to award costs. The discretion was exercised by the tribunal considering the expenditure incurred by the respondent in litigation, the certificate of costs submitted and the fact and circumstance of the case. The discretion exercised having a sound basis needs no interference.

31. The Supreme Court in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**, (2025) 7 SCC 1 held that while an arbitral award cannot be modified under Section 34 of the Act, a severable part of the award may be set aside. The relevant paragraphs are quoted below:

“32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenzkompetenz, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the “valid” part(s) of the award while setting aside the “invalid” ones. [The “validity” and “invalidity”, as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to



Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the “invalid” portion of an arbitral award from the “valid” portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

(emphasis supplied)

32. The quashing of awarding of damages for the period of suspension and for the balance period of the contract along with the interest thereon are separable, not dependant on other claims awarded and are not intricately connected with each other.

### **Conclusion**

33. In view of the above, it is concluded:-

- i. The conclusion of the tribunal holding the contract to be an item rate contract and the termination of the contract to be illegal is upheld.
- ii. The award of damages for the period of suspension and for the



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remaining tenure of the contract alongwith the interest thereon is set aside.

iii. The award of escalation charges, amount towards deployment of additional labour, grant of interest and costs awarded does not call for interference and are upheld.

34. The petition is partly allowed. Pending application stands disposed of.

**AVNEESH JHINGAN, J.**

**APRIL 20, 2026**

**Ch**

**Reportable:-Yes**