IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

ARBITRATION APPEAL No. 39 of 2011

NORTHERN COAL FIELD LTD.

Versus

M/S SURESH CONSTRUCTION CO.

Appearance:

Shri Greeshm Jain -- Advocate for the Petitioner.

Smt. Amrit Ruprah - Advocate for the Respondent/Caveator.

ORDER

Heard on 02.04.2026

Pronounced on 04.05.2026

The present Appeal has been filed challenging the Order dated 30.08.2011 passed by the District Court thereby rejecting the application under Section 34 of Arbitration and Conciliation Act, 1996 (for short, Act 1996) and confirming the award dated 10.03.2008 passed by the Arbitrator.

2. Learned counsel for the Appellant has argued that the Arbitrator had passed the impugned award thereby allowing claim of the Respondent/Contractor towards remaining amount of final bill of Rs.46,270/- and Rs.38,450/- towards return of Earnest Money/Security deposit with interest @ 9% per annum. Further, the Arbitrator allowed Rs.14,36,434/- towards Overburden charges on account of difference of overburden rates @ Rs.70.07/- on 20499.99 cubic metres. The Arbitrator further awarded Rs.10,71,918/-towards Escalation charges on all items

including overburden. The Arbitrator further awarded interest on 1st R.A. Bill and on 10th R.A. Bill and another amount of payment of interest @ 9% per annum on the amount of overburden charges and Escalation amount @ 9% from the date of award till date of payment and Arbitration fees and expenses.

3. Learned counsel for the Appellant has argued that the challenge is made broadly on four grounds. Firstly that so far as the question of overburden removal cost is concerned, the claim was barred by law of limitation and the Arbitrator has skipped to consider the limitation in proper perspective and if the overburden removal charges are not held to be hit by law of limitation then he is also challenging the overburden removal charges on merits because on merits also the rates of 1985 SOR which have been reckoned to grant overburden removal charges is beyond the terms and conditions of the Contract.

4. It is further stated that challenge is also to the Escalation charges as well as interest. The learned counsel for the Appellant by elaborating his challenge has argued that a contract was awarded for construction of Haul road from maintenance workshop to the mine at Dudhichua Project of Northern Coal Fields Limited and the estimated cost of work was assessed at Rs.19,22,560/- plus escalation charges. However during the course of execution of work under the contract, some disputes arose in the matter of payment of charges towards removal of overburden because it was encountered by the contractor that certain layer of soil and stones, etc. had to

be removed before the actual construction of road could be carried out. Correspondence ensued between the parties and ultimately, letter dated 21.12.1995 was written by the Appellant to the contractor mentioning therein that the competent authority has approved the rates for excess overburden removal @ Rs.44/- per cubic meter for disposal of overburden for a distance of 5.5 kms. Later on, the rates were further reduced to Rs.32.46/- per cubic meter as the distance for which the overburden was to be carried was reduced. It is argued that this letter dated 21.12.1995 finally disposed off the claim of the contractor towards overburden removal charges but the contractor kept on submitting representation after representation demanding enhancement in this overburden removal charges but so far as the NCL is concerned, the overburden removal charges issue has been closed vide letter dated 21.12.1995 and therefore, the dispute as to overburden removal charges had become arbitrable on 21.12.1995 itself but the notice of arbitration in terms of Section 21 of Act of 1986 was served only in the year 2002. It is argued that after this letter dated 21.12.1995, even various running bills were raised by the Contractor demanding overburden removal charges @ Rs.32.46 per cubic meter and mere submission of repeated representations to allow higher overburden removal charges would not keep the limitation alive because the NCL has already disposed off the matter on 21.12.1995 and thereafter the contractor should have demanded arbitration of the said dispute, if he was aggrieved with that.

5. It is argued that on merits also, as per clause 3 of the agreement in question, the overburden removal charges had been assessed at proper rate @

Rs.32.46 per cubic meter and the SOR of 1985 would not be employed on overburden removal charges.

6. Learned counsel for the Appellant further argued that so far as the work is concerned, it was completed on 30.09.1997 though the scheduled date of completion was 25.04.1996. The contractor did not demand arbitration in the matter of overburden removal rates even within three years of the actual work completion date and notice invoking arbitration only vide letter dated 29.07.2002, by which date the claim of the contractor for overburden removal charges had become barred by limitation.

7. On the question of Escalation also, it is argued by learned counsel for the Appellant that as per clause 9 of Special terms and conditions of contract, the completion period was seven months from the tenth day of issue of letter of intent, or handing over of the site, whichever is later and as per clause 13.3 (b), the Escalation charges have to be calculated by freezing the index as on completion date, except for steel. Therefore, it has to be deemed that the indices shall get frozen on the stipulated date of completion i.e, 25.04.1996 and not the actual date of completion which is 30.09.1997 and the Escalation charges therefore, have been wrongly arrived at by the arbitrator.

8. To the question of interest, it is vehemently argued by learned counsel for the Appellant that the interest has been awarded at higher rate and further, the interest rate has been awarded on the security deposit and final bill because all the amounts which are withheld for want of Royalty

Clearance Certificate should not have been awarded at all because the Royalty Clearance Certificate had to be produced by the contractor which he had failed to produce and therefore the amount which was withheld, was withheld in lawful manner by the NCL. The learned counsel for the Appellant further submits that as per clause 5 of Contract Agreement, it is clearly stipulated that no interest is payable on accounts withheld under the items of agreement and therefore, once the contract itself barred award of interest, therefore the arbitrator has misconducted in awarding interest.

9. On the aforesaid assertions, it is argued that the impugned Order passed by the District Court be set aside and the impugned award be also set aside.

10. Per contra, the aforesaid prayer is vehemently countered by the learned counsel for the Contractor by submitting that the award passed by the Arbitrator is fully in accordance with law. The said award has rightly been upheld by the District Judge and the District Judge has rightly held that no grounds have been made out to interfere in the award in terms of Section 34 of Act of 1996. It is argued that the scope of interference even in the appeal under Section 37 is very limited and the grounds of interference in the award and in the order of the District Court under Section 34 do not go beyond the grounds which are available under Section 34. It is argued that the contract clause barring interest payable on amounts withheld under the items of agreement is only in the matter of amounts “withheld” but once the amount is not withheld and it is simply payment of less amount, then it will not amount to an amount which is withheld under the terms of agreement but it

is an item of short payment. Once there is short payment under the terms of agreement, then the jurisdiction of the arbitrator to allow interest is not barred.

11. On the question of limitation, it is argued that the arbitrator has properly held that the notice of arbitration was given in terms of section 21 on 29.07.2022 and the application under Section 11(6) before the High Court was filed within three years and therefore, there is no question of any claim being barred by law of limitation in the matter of overburden removal charges.

12. By defending the award of Rs.102/- per cubic meter towards overburden removal charges as allowed by the Arbitrator, it is contended by learned counsel for the Respondent that the SOR 1985 was applicable on all other clauses of the agreement on which basis the estimate was prepared for the work. Therefore, when the estimate of the work was prepared on the basis of SOR of the year 1985 then, there was no reason that why the overburden removal charges was not to be paid as per SOR of 1985 and therefore, the arbitrator has not misconducted in passing the award and directing payment of overburden removal charges @ Rs.102 per cubic meter. On the aforesaid grounds, it is argued that the impugned award as well as the order of the District Court under Section 34 of the Act of 1996 be confirmed and the appeal be dismissed.

13. This court has heard learned counsel for the rival parties at length and perused the record.

14. The Arbitrator had framed a number of issues which were as many as 12 in number. Issue number one related to overburden removal charges in relation to which the arbitrator held that Rs.102.52/- has to be paid towards overburden renewal charges per cubic meter alongwith its escalation. Issue number two was in relation with labour and machinery which was negated by the Arbitrator. Issue number three is related to claim towards payment received without protest which was decided in favor of contractor. Issue number 4 related to the effect of bill for extra work not submitted in advance which was also decided in favor of the contractor. Issue number 5 related to the legality of Constitution of Tribunal which was decided in terms that the constitution of Arbitrary Tribunal is not illegal Issue number six related to non-joinder of parties which was decided in favor of the contractor holding that there is no non-joinder of parties. Issue number 7 related to claim towards Royalty Clearance and interest towards Royalty Clearance which was decided in favor of contractor. Issue number eight related to interest which was awarded @ 9% per annum. Issue No.2 is related to escalation charges which were decided in favor of the claim and issue No.12 related to relief and costs.

15. In the above manner, the contractor was awarded claims broadly under four heads. First was overburden removal charges, second was escalation, third was amount withheld towards final bill and security deposit for want of quality clearance and fourth was interest.

16. The major dispute arises in claim for overburden removal

charges because as per the NCL, the question of overburden removal charges had been closed on 21.12.1995 and therefore, there was no question of reopening the said issue and repeated letters being given by the contractor demanding higher amount did not warrant any action by the NCL because the NCL had already disposed off the matter and if the contractor was aggrieved with that, he should have initiated arbitration in that matter at that time only. The letter of NCL dated21.12.1995 mentions that NCL has decided overburden removal rate at Rs.44.00 per cubic meter as per assumed distance of 5.5kms. It was categorically mentioned in the said letter as under:-

> *"You may further note that the above referred rate is firm and final and is based on prevalent rate for similar nature of work and will not attract any other escalation".*

17. The aforesaid wordings of the letter dated 21.12.1995 do not leave any doubt that the NCL was firm in its decision and it is communicated to the contractor that its decision is final and will not attract any other claim. If the contractor was not satisfied with this decision of rates by the NCL then his limitation to challenge the decision started at that point of time only,and not on any other date. Merely because the contractor kept on issuing running bills as per the rate decided by the NCL but with each running bill he kept on issuing a letter to reconsider the rates, would not enlarge the period of limitation because the NCL had finally decided the issue on 21.12.1995.

18. The issue of limitation has been decided by the Arbitrator in issue

No.10 and 11 of the questioned award. The Arbitrator has held that dispute arises when there is claim and repudiation of claim. In the absence of denial or repudiation of claim in accordance with a SOR of the Year 1985,therefore, there would be no question of cause of action being accrued on 21.12.1995 and since the notice for arbitration has been issued on 29.07.2002, therefore, the starting point of limitation will be from 29.07.2002.

19. The adjudication made by the learned Arbitrator while holding that the starting point of limitation would be the date of issuing notice under Section 21 is utterly perverse and contrary to law. The starting point of limitation for the purpose of filing application under section 11 would arise from the date of notice under Section 21 and the notice date will be on that date the limitation will cease to run for the claim. The limitation to initiate Section 11 application is different from the limitation of claim. The limitation of claim is to be assessed up to the date of issuing notice under Section 21 and it will not start from the date of issuing notice under Section 21 and to that extent, the award of the Arbitrator is contrary to the law of the land by misconstruing the law of limitation in Arbitration. It is contrary to public policy of India in as much it misconstrues the starting point of limitation. The Arbitrator by holding that limitation will start to run for the purpose of Arbitration from the date of notice under Section 21 is contrary to law of limitation and this Court is unable to uphold the aforesaid logic and reasoning of the Arbitrator. To that extent, the arbitral award comes in conflict with the public policy of India.

20. It has been held by the Hon'ble Supreme Court in ***Major (retd.) Inder Singh Rekhi Vs. Delhi Development Authority, (1988) 2 SCC 338*** that a dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion in denying, not merely inaction to accede to a claim or a request. In the present case, the charges for the overburden removal were demanded and was decided at one particular rate on 21.12.1995 and therefore the cause of action arose on that date and there was no question to wait for 7 years before issuing notice under section 21 of Act of 1996 for the purpose of over burden removal charges. More so, the Contractor started raising running Bills as per the charges already decided by the NCL and it will amount to estoppel also.

21. In ***ONGC Vs. Saw Pipes, (2003) 5 SCC 705***, it has been held by the Hon'ble Apex Court that if award is contrary to the terms of contract or any other substantive law then it is a good ground to set aside the award. The Hon'ble Supreme Court held as under:-

> *"22. The aforesaid submission of the learned Senior Counsel requires to be accepted. From the judgments discussed above, it can be held that the term "public policy of India" is required to be interpreted in the context of the jurisdiction of the court where the validity of award is challenged before it becomes final and executable. The concept of enforcement of the award after it becomes final is different and the jurisdiction of the court at that stage could be limited. Similar is the position with regard to the execution of a decree. It is*

settled law as well as it is provided under the Code of Civil Procedure that once the decree has attained finality, in an execution proceeding, it may be challenged only on limited grounds such as the decree being without jurisdiction or a nullity. But in a case where the judgment and decree is challenged before the appellate court or the court exercising revisional jurisdiction, the jurisdiction of such court would be wider. Therefore, in a case where the validity of award is challenged, there is no necessity of giving a narrower meaning to the term "public policy of India". On the contrary, wider meaning is required to be given so that the "patently illegal award" passed by the Arbitral Tribunal could be set aside. If narrow meaning as contended by the learned Senior Counsel Mr Dave is given, some of the provisions of the Arbitration Act would become nugatory. Take for illustration a case wherein there is a specific provision in the contract that for delayed payment of the amount due and payable, no interest would be payable, still however, if the arbitrator has passed an award granting interest, it would be against the terms of the contract and thereby against the provision of Section 28(3) of the Act which specifically provides that "Arbitral Tribunal shall decide in accordance with the terms of the contract". Further, where there is a specific usage of the trade that if the payment is made beyond a period of one month, then the party would be required to pay the said amount with interest at the rate of 15 per cent. Despite the evidence being produced on record for such usage, if the arbitrator refuses to grant such interest on the ground of equity, such award would also be in violation of sub-sections (2) and (3) of Section 28. Section 28(2) specifically provides that the arbitrator shall decide ex aequoet bono (according to what is just and good) only if the parties have expressly authorised him to do so. Similarly, if the award is patently against the statutory provisions of substantive law which is in force in India or is passed without giving an opportunity of hearing to the parties as provided under Section 24 or without giving any reason in a case where parties have not agreed that no reasons are to be recorded, it would be against the statutory provisions. In all such cases, the award is required to be set aside on the ground of "patent illegality".

xx xx xx

***68.** From the aforesaid discussions, it can be held that:*

(1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same.

(2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act.

(3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not

required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract.

(4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation."

22. ***In Steel Authority of India Ltd. Vs. J.C. Budharaja, (1999)8 SCC 122***, it was held by the Hon'ble Apex Court that a right to refer the dispute to arbitrator arises when the contractor gives a notice demanding amount and in that particular case, there was no response to that notice and the amount was also not paid. It was held by the Hon'ble Supreme Court in the aforesaid case that cause of action would arise from the date of notice and contractor cannot wait indefinitely and is required to take action within the period of limitation. It has been held that the Contractor cannot wait and approach the authority or the Court for referring the dispute with the arbitrator beyond the period of limitation. It was held as under :-

"27. Applying the aforesaid ratio in the present case, the right to refer the dispute to the arbitrator arose in 1979 when the Contractor gave a notice demanding the amount and there was no response from the appellant and the amount was not paid. The cause of action for recovery of the said amount arose from the date of the notice. The Contractor cannot wait indefinitely and is required to take action within the period of limitation. In the present case, there was a supplementary agreement between the parties. The supplementary agreement nowhere provides that the so-called right of the Contractor to recover damages was in any manner saved. On the contrary, it specifically mentions that the Contractor was yet to execute a considerable portion of the work more particularly described in the schedule to the agreement. And that the Contractor has agreed to complete the said balance work on the terms and conditions enumerated in the agreement. Now, in this set of circumstances, the

Contractor cannot wait and approach the authority or the court for referring the dispute to the arbitrator beyond the period of limitation. Section 37 of the Arbitration Act specifically provides that provisions of the Indian Limitation Act shall apply to the arbitrations as they apply to proceedings in the court."

23. Therefore, this Court is of the considered opinion that the arbitrator has erred and acted against the public policy to the extent of holding the claim of overburden removal charges as not being barred by law of limitation and holding it being within the limitation period. Therefore, this Court sets aside the claim towards overburden removal charges, so also the interest thereupon.

24. As the claim of overburden removal charges has been held to be barred by law of limitation, therefore, this Court is not required to deal with the merits of the aforesaid claim.

25. The second issue is claim for Escalation charges. It was argued before this court that Escalation charges have wrongly been awarded by applying the indices as on 30.09.1997 which was the actual work completion date, and not on 25.04.1996 which was the scheduled date of completion.

26. This Court has gone through the relevant clause of Escalation charges which is clause 13.3(b) and is as under:-

"In case the contractor is not completed within the stipulated period, and extension of time without compensation has been granted the escalation will paid in the manner indicated earlier but freezing the indices cannot as on completion date except for steel----------"

27. It was argued before this Court that freezing of indices will mean

that indices will freeze on the scheduled date of completion whereas it was argued by the other side that indices will freeze only on actual date of completion. In the considered opinion of this Court, if the indices will freeze on the scheduled date of completion, then there would be no question of any escalation and more so, because in the present case, extension of time has been granted and therefore, the words "completion date" would mean the completion date as per extension granted and in absence of any specification in the aforesaid clause 13.3(b), the view taken by the Arbitrator in favor of the contractor does not deserve any interference by this Court in its limited jurisdiction under Section 37 of Act of 1996.

28. So far as the claim of interest is concerned, the Arbitrator has awarded interest @ 9% per annum from the date of award till the date of payment i.e, *post lite* interest and on First RA Bill from 26.09.1995 to 26.04.1996 and Tenth R.A. Bill for 30.09.1997 to 30.03.2000 @ 9% per annum.

29. Looking to the prevailing inflation rate at the relevant point of time, this Court does not find any error in the aforesaid rate of interest awarded by the Arbitrator. So far as the Arbitrator's award in awarding *pende lite* or *ante lite* interest being contrary to clause 5 of the contract agreement is concerned, it was argued before this Court that as per the aforesaid clause 5 that no interest is payable on amounts withheld under the items of agreement.

30. However, the aforesaid clause 5 does not merely say so but it is the

clause enabling payments and also enforces defect liability and it postulates that payments shall be made at intervals but if there is defect then unless the defects are cured and the buildings have to be proved to be completely water tight during one full monsoon and defects have been made good, then payment withheld shall be released but no interest would be payable on the amounts withheld under the items of agreement to secure the defect liability. The aforesaid clause 5 is as under:-

> *5.Payment.*
>
> *"On account" payment may be made at intervals. When the completion of the entire work is certified then one half of the total Security Deposit will be refunded to the contractor. The total accounting will be made and the contractor/contractors shall draw final payment of all the money due or payable to them under virtue of the contract, The other half of the Security Deposit will be retained and paid to the contractor/contractors after a period of six months, or as soon as after the expiration of such period of six month provided that in case of building work the above said amount shall be refunded after a period of six month or at the end of one full monsoon whichever is later in point of time. During the period of six months or one full monsoon season mentioned above the contractor shall be responsible to set right any defect or defects that might appear in the work and in case of building work, the above amount shall be paid only after the buildings have proved to be completely water tight during one full monsoon and all defect have been made good. In case anything is found to have been paid in excess, the contractor/contractors shall return the same.*
>
> *No interest is payable on amounts withheld under the item of the agreement.*
>
> *The Company shall be at liberty to deduct from the Security Deposit or from any other sum due or to become due under this contract or under any other contract all sums that become due to the Company. All bills shall be pre-audited before payments/payment, will be made by cheque only.*

31. There is nothing on record to indicate that the amounts were withheld on account of defect liability and it was not a case of construction

of building so as to assess that whether the building is water tight in one monsoon period but it was the case of construction of road and there is no defence of the NCL that the amount was withheld on account of defect liability. Therefore, aforesaid clause 5 will not apply in the present case and the Arbitrator therefore has jurisdiction towards interest. Therefore, the award of interest is also upheld.

32. So far as the award of amount of Rs.46,270/- towards final bill and Rs.3,450/- towards return of Earnest money with interest from 01.04.1998 till date of award and till date of payment is concerned, the aforesaid amounts were withheld on account of non furnishing of Royalty Clearance Certificate.

33. The law regarding furnishing of Royalty Clearance Certificate has already been decided by a larger bench of this Court comprising of five Judges in the case of **Pankaj Kumar Rai Vs. State of M.P. and Others reported in 2017 SCConline MP 1764.**

34. In the aforesaid case, it has been held by the larger bench of this Court as under:-

> *27. Since minor mineral vests in the State and there is absolute prohibition in extraction of mineral other than by a quarry lease or a trade quarry or permit quarry, therefore, contractor who is engaged in construction work is required to prove that such mineral is royalty paid. For such condition, if the State Government insists on 'No Mining Dues' certificate, the same cannot be said to be illegal as it is to ensure that all minor minerals used in the construction activity are royalty paid material.*
>
> *xx xx xx*

> ***31.*** *In view of the above, we find that the judgment in Phaloudi Construction (supra) is not correct enunciation of law and the same is thus, overruled. The contractors who are engaged in construction work are required to obtain 'No Mining Dues' certificate on production of the documents in terms of this order. Such 'No Mining Dues' certificate shall be issued expeditiously in a time frame of two months till such time alternative mechanism is developed for the issuance of online 'No Mining Dues' certificates.*

35. In view of the aforesaid, the action of the respondents in withholding the payments for non-furnishing of Royalty Clearance Certificate cannot be said to be unlawful and therefore, the impugned award of the Arbitrator and the Order of the District Court in upholding the aforesaid order cannot be given stamp of approval to that extent and therefore, the claim as ordered in issue number 7 to the extent of Rs.89,143/- and Rs.38,450/- alongwith interest thereon stand set aside.

36. Consequently in terms of the aforesaid discussion, the Appeal is **partly allowed** in the following terms:-

(i) The claim of overburden removal charges, as well as escalation and interest thereupon is rejected as being barred by law of limitation.

(ii) The claim of Rs.89143/- and Rs.38450/- which are amounts withheld for non furnishing Royalty Clearance are also rejected as the law has been settled by larger bench of this Court in ***Pankaj Kumar Rai (supra).***

(iii) The claim of Escalation charges to the tune of

Rs.10,71,918/- along with interest as awarded by the Arbitration Tribunal on the aforesaid amount is upheld.

(iv) The award of cost and expenses is also upheld.

(VIVEK JAIN)
JUDGE

veni