



2026:CHC-OS:172

IN THE HIGH COURT AT CALCUTTA  
COMMERCIAL DIVISION  
ORIGINAL SIDE

RESERVED ON: 10.03.2026  
DELIVERED ON: 08.05.2026

PRESENT:  
THE HON'BLE MR. JUSTICE GAURANG KANTH

AP-COM 181 OF 2024  
[OLD CASE NO. AP 74 OF 2020]

ITD-ITD CEM JOINT VENTURE  
VERSUS  
KOLKATA METRO RAIL CORPORATION LTD.

**Appearance:**

**Mr. Jishnu Saha, Sr. Adv.**

**Mr. Anal Kumar Ghosh, Adv.**

**Ms. Hashnuhana Chakraborty, Adv.**

**Ms. Neelina Chatterjee, Adv.**

**Ms. Ahana Bhattacharyya, Adv.**

*..... for the petitioner*

**Mr. Sakya Sen, Sr. Adv.**

**Mr. Sunil Gupta, Adv.**

**Mr. Ankit Dey, Adv.**

**Mr. A. Mandal, Adv.**

*..... for the respondent*

**JUDGMENT**

**Gaurang Kanth, J.:-**

1. The Petitioner in the present Arbitration Petition is challenging the Arbitral Award dated 21.11.2019 passed by the Arbitral Tribunal comprising of Sh. Arbind Kumar, (presiding Arbitrator), Sh. A.K Mittal and Sh. B. Narasimha Rao in connection with the contract dated 10.03.2010. The Petitioner is challenging the findings of the Arbitral Tribunal only on account of Claim No. 1 and Claim No. 3.
2. The brief facts leading to the present Petition are as follows:
3. The Respondent, by Letter of Acceptance dated 09.02.2010, awarded the contract for execution of Project UG-2 relating to the "Design and Construction of the Underground Section from Central Station to Subhas



*Sarobar for the Kolkata East-West Metro Railway Project.*” to the Petitioner.

The contract value was fixed at Rs. 8,156,663,700/- (Rupees Eight Billion One Hundred Fifty-Six Million Six Hundred Sixty-Three Thousand and Seven Hundred only) together with Euro 13,530,000/- (Euros Thirteen Million Five Hundred Thirty Thousand only). The stipulated completion period was 217 weeks, commencing from 09.02.2010 and ending on 08.04.2014. A formal Contract Agreement was thereafter executed between the parties on 10.03.2010 at Kolkata.

4. M/s MYCEL was appointed by the Respondent as the General Consultant/Engineer for the said project.
5. During the course of execution, the project suffered considerable delay due to various factors such as late handing over of land, diversion and removal of uncharted utilities and obstructions, variations ordered by the Employer and local restrictions. On account of these reasons, the Petitioner sought extension of time on four occasions, all of which were granted by the Respondent as *unqualified extensions*.
6. Owing to subsequent alteration in the alignment of the UG-2 tunnel, the contract price was revised with the consent of both parties through Amendment Order No. KMRC/CEC/758/2016 dated 08.11.2016.
7. The Petitioner contends that due to the unqualified extensions granted by the Respondent for Phase-I of the work covering the period from April 2014 to February 2019, it incurred substantial additional costs towards idle infrastructure, establishment expenses, and other related overheads, resulting in cost overrun.
8. In consequence, the Petitioner invoked the dispute resolution mechanism under the contract. It issued *Notices of Dispute* in terms of Clause 17.4 of



the General Conditions of Contract (GCC) vide letters dated 25.06.2018 and 10.07.2018. Since no response was received from the Respondent, the Petitioner thereafter issued *Notices for Reference to Conciliation* under Clauses 17.5 and 17.6 of the GCC read with Clause 36 of the Special Conditions of Contract, vide letter dated 16.07.2018. Upon receiving no reply even thereafter, the Petitioner invoked arbitration by issuing *Notices of Arbitration* dated 20.08.2018 and 29.09.2018.

9. Pursuant to the aforesaid, both parties appointed their respective nominee arbitrators, who in turn appointed the Presiding Arbitrator. The Arbitral Tribunal was thus constituted on 07.01.2019.
10. Before the Tribunal, the Petitioner filed a Statement of Claim raising four claims, whereas the Respondent filed one counter-claim. The Tribunal held six sittings; the hearings concluded at the fourth sitting, the fifth sitting was held for clarification, and the sixth for finalisation of the award.
11. The Arbitral Tribunal made and published its award on 21.11.2019. By the said award, Claim Nos. 2 and 4 of the Petitioner were allowed, while Claim Nos. 1 and 3 were rejected. The counter-claim of the Respondent was also rejected.
12. Aggrieved by the rejection of Claim Nos. 1 and 3, the Petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside the award to that extent.

### **Submissions on behalf of the Petitioner**

13. Mr. Jishnu Saha, Learned Senior Counsel for the Petitioner submits that the Arbitral Tribunal has erred in disallowing Claim Nos. 1 and 3. It is contended that while rejecting the said claims, the Tribunal failed to



properly appreciate the factual matrix, including the continuing and successive breaches and defaults on the part of the Respondent. The Petitioner further asserts that the Tribunal has misinterpreted Clauses 8.3 and 2.2 of the General Conditions of Contract (GCC) and has failed to give effect to their true scope and intent.

14. Learned Senior Counsel for the Petitioner submits that Claim No. 1 pertains to cost overrun for a period of 69 months. It is contended that the reasons for such overstay were duly set out in the Statement of Claim and were not attributable to the Petitioner. The Respondent had, in fact, granted extensions of time without imposition of any penalty. However, the claim was rejected solely on the basis of Clauses 8.3 and 8.4 of the GCC, which, according to the Petitioner, are vague, uncertain, and ambiguous within the meaning of Section 29 of the Indian Contract Act, 1872.
15. It is further contended that where delay is not attributable to the contractor, the Respondent cannot rely upon restrictive contractual clauses such as Clause 8.3 to defeat a legitimate claim for actual losses. In support of this submission, reliance is placed upon ***K.N. Sathyapalan v. State of Kerala, (2007) 13 SCC 43; Assam SEB v. Buildworth Pvt. Ltd., (2017) 8 SCC 146; and Union of India v. Suraj Infrastructure, 2012 SCC OnLine Bom 1373.***
16. Learned Senior Counsel further submits that the Tribunal has erred in holding that Claim No. 1 is barred by limitation, without assigning any cogent or discernible reasons. It is contended that the contractual work is still ongoing and no Performance Certificate has been issued; consequently, the period of limitation has not yet commenced. The Petitioner further submits that the Tribunal has erred in disregarding the



Chartered Accountant's Certificate furnished in support of Claim No. 1. It is contended that, despite having recorded findings that delays in completion of the work were attributable to the Respondent, inter alia, on account of delay in handing over of sites, imposition of traffic restrictions, and execution of additional works arising from employer's variations, the Tribunal nevertheless proceeded to disallow the claim. It is further submitted that the Tribunal failed to appoint an independent expert for verification of the computations and erroneously disregarded well-recognised methods, including the Hudson, Emden, and Eichleay formulae, which are widely accepted in the construction industry for quantification of time and cost overrun claims.

17. Insofar as Claim No. 3 is concerned, Learned Counsel for the Petitioner submits that the original contract value was Rs. 908.63 crores, out of which a sum of Rs. 45,46,15,500/- was recovered as retention money (being 5% of the contract value). Subsequently, the contract value was reduced to Rs. 657.95 crores, thereby reducing the retention amount payable to Rs. 32.90 crores. Since the Petitioner had already paid Rs. 45.46 crores, the Respondent was liable to refund a sum of Rs. 12.53 crores. However, only Rs. 10 crores was refunded, leaving an outstanding balance of Rs. 2.53 crores. It is contended that the Tribunal has rejected the said claim, as well as the claim for interest thereon, without furnishing any cogent reasons, thereby failing to discharge its adjudicatory function. It is further submitted that the Respondent was entitled to retain the retention amount only until issuance of the Taking Over Certificate, which has not been issued till date, despite the contractual completion date of



April 2013 for Phase-I of the project. The delay in issuance of such certificate is stated to be solely attributable to the Respondent.

18. In support of the aforesaid submissions, reliance is placed upon ***Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd., (2024) 6 SCC 357***, to contend that contractual interpretation must be holistic and clause-wise. Further reliance is placed on ***OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd., (2025) 2 SCC 417***, and ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI, (2019) 16 SCC 131***, to submit that the Tribunal has ignored material contractual provisions, including Clause 8.4, thereby rendering the Award unsustainable in law.

#### **Submissions on behalf of the Respondent**

19. Mr. Sakya Sen, Learned Senior Counsel for the Respondent, at the outset, raises a preliminary objection as to the maintainability of the present petition before this Court. It is contended that the Petition is devoid of specific pleadings establishing that the subject matter of the dispute falls within the territorial jurisdiction of this Court in terms of Section 2(1)(e) of the Arbitration and Conciliation Act, 1996, or that the Petition satisfies the pecuniary jurisdictional requirements under the said Act. It is further submitted that in the absence of foundational averments with respect to jurisdiction, the present Petition is liable to be dismissed as not maintainable. In support of the aforesaid objection, Learned Counsel places reliance upon ***Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP, (2020) 15 SCC 585***, and ***Laxmi Polyfab Pvt. Ltd. v. Eden Realty Ventures Pvt. Ltd., 2021 SCC OnLine Cal 1457***.



20. Learned Senior Counsel for the Respondent supports the findings of the Arbitral Tribunal and submits that the Award is well-reasoned, founded upon a proper appreciation of evidence, and in accordance with the contractual provisions governing the parties. It is contended that no perversity, patent illegality, or violation of public policy is made out so as to warrant interference under Section 34 of the Arbitration and Conciliation Act, 1996.
21. It is further submitted on behalf of the Respondent that the various grounds relied upon by the Petitioner for claiming additional establishment costs are squarely covered by Clause 8.3 of the General Conditions of Contract (GCC). The extensions of time were granted strictly in terms of Clause 8.4 of the GCC, which were accepted by the Petitioner without any reservation of its alleged right to claim damages. In such circumstances, the Petitioner is estopped from assailing the applicability of the said clauses, in view of the law laid down by the Hon'ble Supreme Court in **Larsen & Toubro Ltd. v. Rail Vikas Nigam Ltd. (OMP (Comm.) 278/2017)**.
22. With respect to Claim No. 1, Learned Senior Counsel submits that the Arbitral Tribunal has rightly rejected the same. Clauses 8.3 and 8.4 of the GCC expressly exclude any entitlement to variation, compensation, or damages on account of delay in execution of the works. The impugned Award is, therefore, in consonance with the principles laid down by the Hon'ble Supreme Court in **K. Marappan v. Tamil Nadu Board for Prevention and Control of Water Pollution, (2020) 15 SCC 401**, and **Ramnath International Pvt. Ltd. v. Union of India, (2007) 2 SCC 453**. Reliance is also placed on **Ssangyong Engineering & Construction Co.**



**Ltd. v. NHAI, (2019) 16 SCC 131**, to contend that interpretation of contractual clauses falls squarely within the domain of the Arbitral Tribunal and does not warrant judicial interference unless the view taken is patently unreasonable.

23. Learned Senior Counsel for the Respondent further submits that the original contract was awarded for execution of the entire stretch from Subhas Sarobar to Central Station at a contract value of approximately Rs. 908.61 crores, and the establishment costs were contemplated for the project as a whole. Subsequently, pursuant to a policy decision of the Government of West Bengal, the alignment was revised from Sealdah–Central to Sealdah–Esplanade. The Petitioner thereafter submitted a techno-commercial offer taking into account all financial and technical implications, including establishment costs. The said offer was accepted, and an Employer’s Variation dated 08.11.2016 was issued, revising the contract price from Rs. 908.61 crores to Rs. 1279.81 crores. It is submitted that the Petitioner unconditionally accepted the said variation, which was not unilaterally imposed but was based on the Petitioner’s own proposal duly approved by the Respondent. The additional costs now sought to be claimed were, therefore, already subsumed within the scope of the said variation.

24. The Respondent further submits that during periods of reduced progress in the main works, the Petitioner’s establishment and resources were concurrently deployed in the execution of variation works, and therefore, no independent or additional establishment cost can be said to have been incurred without corresponding productive output. It is also contended that the Petitioner had, of its own volition, submitted a techno-commercial



offer amounting to Rs. 695 crores for completion of the UG-2 contract, which inherently included establishment and overhead costs now sought to be claimed separately. Additionally, the claim for cost overrun commencing from April 2012 is ex facie barred by limitation, inasmuch as the notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 was issued only on 20.08.2018, thereby rendering all claims beyond the preceding three-year period as time-barred.

25. Insofar as Claim No. 3 is concerned, Learned Counsel submits that the Tribunal has rightly rejected the same, as the retention amount was deducted strictly in terms of the contractual provisions. The refund of Rs. 10 crores was made upon reconciliation on a without-prejudice basis, and the balance amount pertains to incomplete or defective works. It is further contended that the Taking Over Certificate could not be issued on account of delays attributable to the Petitioner, and no fault can be ascribed to the Respondent in this regard. In support of the aforesaid submissions, reliance is placed upon ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.***, reported as **(2019) 20 SCC 1**, and ***OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd.***, reported as **(2025) 2 SCC 417**.

#### **Legal Analysis**

26. This Court has heard the arguments advance by both the parties and has examined the materials placed on record.



**Findings of the Court on the Preliminary Objection as to Jurisdiction and Maintainability**

27. The Respondent has raised a preliminary objection assailing the maintainability of the present petition on the ground of absence of specific pleadings with respect to territorial and pecuniary jurisdiction.
28. This Court is unable to accept the said objection. At the outset, it is an admitted position that the present petition has been instituted under Section 34 of the Arbitration and Conciliation Act, 1996, challenging an arbitral award arising out of a commercial contract executed between the parties. The nature of the dispute, therefore, unmistakably brings the matter within the ambit of a “commercial dispute” as contemplated under the governing statutory framework.
29. The record further reveals that the petition was, in fact, presented before the Commercial Division of this Court. The incorrect numbering of the matter as a non-commercial case is demonstrably an administrative or clerical lapse, which stands conclusively clarified by the report of the learned Registrar (Original) dated 31.07.2023. This Court finds no reason whatsoever to disbelieve or disregard the said report, which carries due official sanctity. A procedural irregularity of this nature, attributable to the registry, cannot be permitted to defeat substantive rights or render the proceedings non-maintainable.
30. Insofar as the objection regarding the absence of specific jurisdictional pleadings is concerned, the same is hyper-technical and devoid of merit. It is well settled that jurisdiction is to be ascertained from the substance of the pleadings and the nature of the proceedings, and not on the basis of any purported deficiency in form. The present petition, on a plain reading,



unequivocally discloses that it arises out of an arbitral award rendered in the context of a commercial contract. The necessary jurisdictional facts are, therefore, implicit and evident from the record. The absence of a specific or formal recital, in such circumstances, cannot be elevated to a ground for non-suiting the Petitioner.

31. The reliance placed by the Respondent on **Ambalal Sarabhai Enterprises Ltd.** (*supra*) and **Laxmi Polyfab Pvt. Ltd.** (*supra*) is wholly misplaced. The said decisions arise in the context of civil suits and the requirement of pleadings therein. The present proceedings, however, arise under Section 34 of the Arbitration and Conciliation Act, 1996, which operate in a distinct statutory domain with a limited and well-defined scope of judicial interference. Significantly, neither of the aforesaid decisions pertains to a challenge to an arbitral award. The ratio of the said judgments, therefore, has no application to the facts of the present case.
32. This Court is of the considered view that the objection raised by the Respondent is not only untenable in law but also appears to be an attempt to thwart adjudication on merits by resorting to technicalities. Such an objection, in the facts of the present case, cannot be countenanced. Accordingly, the preliminary objection as to maintainability and jurisdiction is rejected.

### **Legal Analysis on Merits**

33. At the outset, this Court deems it appropriate to reiterate that the scope of judicial interference under Section 34 of the Arbitration and Conciliation Act, 1996 is extremely limited. The Court does not sit in appeal over the findings of the Arbitral Tribunal nor is it permitted to reassess or reappreciate the evidence as if in a regular appeal. Interference is



warranted only when the award suffers from the vices enumerated under the statute, such as patent illegality on the face of the award, perversity in findings, violation of the principles of natural justice, or conflict with the fundamental policy of Indian law. Mere errors in interpretation of contract or appreciation of evidence by the Tribunal, even if another view is possible, do not constitute grounds for setting aside an arbitral award. Unless the conclusions reached are so irrational or unreasonable as to shock the conscience of the Court, the arbitral award must be sustained in deference to the legislative intent of minimal judicial intervention in arbitral proceedings.

34. In the above legal backdrop, and bearing in mind the limited scope of judicial review under Section 34 of the Arbitration and Conciliation Act, 1996, this Court now proceeds to examine the impugned Arbitral Award dated 21.11.2019.
35. The present petition confines its challenge to the findings of the Arbitral Tribunal in respect of Claim No. 1 pertaining to unrecovered establishment costs and Claim No. 3 relating to interest on alleged excess recovery and prolonged withholding of retention money.

**Claim No.1**

36. Claim No. 1 relates to the Petitioner's claim for unrecovered additional establishment costs allegedly incurred on account of the prolongation of the Phase-I works. The Petitioner contended before the Arbitral Tribunal that there was substantial delay in handing over work fronts and in execution, attributable to the Respondent, which led to extension of time on four occasions. It was urged that such prolongation resulted in financial loss by way of cost overrun. In support, the Petitioner relied upon



a Chartered Accountant certified statement reflecting the average monthly establishment cost, comprising manpower, machinery, site transportation, travel, depreciation, and allied overheads, quantified at Rs. 266.29 lakhs for the period from April 2010 to December 2017 (95 months), and submitted that compensation for the extended period ought to be computed on that basis.

37. The Respondent opposed the claim, contending that Clauses 8.3 and 8.4 of the General Conditions of Contract do not permit any variation or compensation on account of delay. It was further submitted that the Petitioner's establishment was concurrently engaged in the execution of variation works during periods of reduced activity in the main contract. The Respondent also pointed out that the Petitioner's techno-commercial offer of Rs. 695 crores had already factored in establishment costs. Additionally, it was urged that the claim, having been raised prior to the notice dated 20.08.2018 under Section 21 of the Arbitration and Conciliation Act, 1996, was barred by limitation to the extent it pertained to a period beyond three years therefrom.
38. Upon consideration of the rival submissions, the Arbitral Tribunal rejected Claim No. 1, inter alia, on the grounds that: (i) the extensions of time were granted under Clause 8.3 of the GCC, and Clauses 2.2 and 2.3 expressly excluded any claim for damages or compensation arising from delay; and (ii) the claim was, in part, barred by limitation. The Tribunal also found the methodology adopted by the Petitioner for quantification to be unsustainable. It observed that the computation of Rs. 266.29 lakhs per month, derived as an average over 95 months, was disproportionately high in relation to the total contract value of Rs. 657.95 crores. The baseline



programme did not specify resource deployment, and the Petitioner retained discretion to mobilise and demobilise resources in accordance with site availability. The Tribunal further noted that the bidders were aware of the site conditions at the time of tender and had factored attendant risks in their pricing.

39. In law, a claim for unrecovered additional establishment costs falls to be considered under Section 73 of the Indian Contract Act, 1872, which permits compensation for loss or damage that naturally arises in the usual course of things from a breach of contract. Where delay is attributable to the Employer, prolongation of the contract is a foreseeable consequence, and, in principle, the contractor may recover additional establishment or overhead expenses incurred during such extended period. However, such entitlement is confined to actual loss proved and remaining unrecovered, and cannot result in duplication of recovery or confer an unwarranted gain. The claimant must, therefore, establish through cogent and contemporaneous material that the establishment was maintained during the period of delay, that identifiable expenditure was actually incurred on account of such prolongation, and that such costs were not otherwise absorbed or compensated under the contract, including through escalation, variation works, or redeployment of resources. Proof ordinarily requires primary records such as wage registers, muster rolls, site accounts, invoices, and audited financial statements, evidencing a clear nexus between the delay and the expenditure incurred. A notional or averaged computation, even if certified, cannot, in the absence of supporting material, constitute sufficient proof of actual and unrecovered loss.



40. In the present case, while delay in completion is not disputed and is not attributable to the Petitioner, the evidentiary basis for the claim remains deficient. The Petitioner relied primarily on a Chartered Accountant certified average monthly establishment cost. The Tribunal noted that this figure represented an average over a prolonged period encompassing both low and peak activity phases, without any supporting material demonstrating actual deployment of manpower or machinery during the extended period. The claim was not one of idling but of unrecovered establishment cost; however, no material was produced to establish that such expenditure was in fact incurred and remained uncompensated.
41. The Tribunal further took note of the Respondent's case that there was no idle establishment at any stage and that resources were deployed in a phased manner in accordance with site requirements. It was asserted that manpower and machinery were utilised across Phase-I and the realigned portions of the project, and that equipment, including TBMs, was redeployed upon completion of certain segments. No separate or exclusive deployment for the prolonged Phase-I works was demonstrated. In the absence of proof of continued and exclusive establishment for the delayed works, the claim for additional overheads could not be sustained.
42. The Tribunal thus concluded that the Petitioner failed to substantiate its claim through reliable and contemporaneous records evidencing actual additional expenditure. No material was placed to show that the costs claimed were incurred exclusively for the extended period of Phase-I or that they were not absorbed in other ongoing works. In the absence of verifiable data, reliance on averaged figures or theoretical formulations cannot substitute proof of loss.



43. The reliance placed by the Petitioner on ***K.N. Sathyapalan (supra)***, ***Assam SEB (Supra)***, and ***Union of India v. Suraj Infrastructure (supra)*** does not advance its case beyond the settled proposition that delay attributable to the Employer may, in principle, entitle a contractor to compensation. Such entitlement, however, remains subject to proof of actual loss. In the absence of such proof, no award can be made on this count.
44. This Court finds no infirmity in the findings of the Arbitral Tribunal on Claim No. 1. The conclusions are based on a proper construction of the contractual provisions and a reasoned appreciation of the evidence on record. The view taken is a plausible one and does not suffer from perversity, patent illegality, or contravention of public policy so as to warrant interference under Section 34 of the Arbitration and Conciliation Act, 1996.

**Claim No. 3**

45. Claim No. 3 pertains to the alleged loss of interest arising out of the excess recovery and prolonged withholding of the retention sum in respect of the Phase-I portion of the work. The case of the Petitioner before the Arbitral Tribunal was that retention money at the rate of 5% of the original contract value of Rs. 908.63 crores, amounting to Rs. 45,43,15,500/-, had been recovered by the Respondent by 13.07.2013. However, the actual retention amount payable at 5% of the modified contract value of Rs. 657.95 crores ought to have been Rs. 32.90 crores only. The Respondent refunded Rs. 10 crores on 28.08.2015. It was contended that the Respondent ought to have refunded the said retention amount as on the stipulated date of issuance of the Taking Over Certificate for the Phase-I portion, i.e., 09.04.2013, and that the delay in issuing the certificate was



attributable to the Respondent. The Petitioner, therefore, claimed entitlement to interest on the excess amount withheld by the Respondent. It was further submitted that, after repeated requests, the Respondent refunded Rs. 35 crores on 11.02.2018 against submission of a Bank Guarantee of equivalent value, subject to recovery of simple interest at the rate of 4% per annum.

46. The Respondent, on the other hand, contended that under Clause 27 of the Special Conditions of Contract (SCC), the refund of retention money is conditional upon the actual issuance of the Taking Over Certificate. It was further submitted that the Petitioner had voluntarily agreed, vide letters dated 17.07.2017 and 01.09.2017, to pay interest at the rate of 4.5% per annum and to furnish a Bank Guarantee for refund of the retained amount. The Respondent thus argued that the retention and subsequent refund were strictly in accordance with the contractual provisions and the mutual agreement between the parties.
47. Upon consideration of the rival submissions, the Arbitral Tribunal rejected Claim No. 3 on the following grounds:
- (i) Both parties had agreed that retention money up to 5% of the contract value was to be retained in accordance with Clause 25 of the GCC.
  - (ii) The contract value of Rs. 908.63 crores remained in force until approval of the variation order dated 08.11.2016, and even thereafter, the contract continued as a revised contract and was not concluded.
  - (iii) The Petitioner had admitted that the Respondent initially refunded Rs. 10 crores on account of reduction in contract value and subsequently converted the entire cash retention amount into a Bank Guarantee on mutual consent.



48. This Court finds no ground to interfere with the findings of the Arbitral Tribunal on Claim No. 3. The Tribunal has rightly concluded that the Petitioner is not entitled to any compensation or interest on the alleged excess recovery or withholding of retention money. The relevant contractual provisions, particularly Clauses 25 and 27 of the GCC and SCC, clearly stipulate that retention money is to be retained up to 5% of the contract value and is refundable only upon issuance of the Taking Over Certificate. The issuance of such certificate is a condition precedent to refund, and until such event occurs, the Respondent is contractually justified in retaining the amount. The record further demonstrates that the Petitioner itself had acknowledged and agreed to the terms governing refund of retention, including the furnishing of a Bank Guarantee and payment of simple interest at 4.5% per annum, as evidenced from its letters dated 17.07.2017 and 01.09.2017. The refund of Rs. 10 crores and subsequent conversion of the remaining retention amount into a Bank Guarantee were actions taken on mutual consent and in conformity with the contractual framework. The Petitioner, having voluntarily accepted these conditions, cannot now resile from its own agreement or claim additional compensation or interest. Moreover, the Tribunal has correctly noted that the contract value of Rs. 908.63 crores continued to govern the retention computation until the variation order was approved on 08.11.2016, and even thereafter, the revised contract value was not formally concluded. The Petitioner has also failed to demonstrate, through evidence or contemporaneous records, any actual financial loss or prejudice suffered on account of the timing of the refund. In such circumstances, the Tribunal's finding that the claim is devoid of merit and



unsupported by proof is both reasonable and in accordance with law. Accordingly, this Court is of the considered view that the findings of the Arbitral Tribunal on Claim No. 3 are sound, reasoned, and consistent with the contractual terms as well as the principles governing arbitral interference. No ground of perversity, patent illegality, or violation of public policy is made out to warrant interference under Section 34 of the Arbitration and Conciliation Act, 1996.

49. The Petitioner has relied upon **Delhi Metro Rail Corporation Ltd.** (*supra*), **OPG Power Generation Pvt. Ltd.** (*supra*), and **Ssangyong Engineering & Construction Co. Ltd.** (*supra*) to contend that an arbitral award is liable to be interfered with where the interpretation of the contract is not holistic or where the findings suffer from patent illegality. There is no dispute with the settled principles emerging from the aforesaid decisions, namely, that contractual provisions must be construed harmoniously, and that an arbitral award which is *ex facie* contrary to the terms of the contract or suffers from perversity or irrationality would warrant interference under Section 34 of the Arbitration and Conciliation Act, 1996. However, in the context of Claim Nos. 1 and 3, the said decisions do not advance the Petitioner's case. The Arbitral Tribunal has interpreted the relevant provisions of the contract, including the General and Special Conditions, in a conjoint and consistent manner, and has arrived at findings which are borne out from the record. Insofar as Claim No. 1 is concerned, the rejection is founded not merely on contractual stipulations but also on the Petitioner's failure to establish actual and unrecovered loss through cogent evidence. With respect to Claim No. 3, the Tribunal has applied the express contractual mechanism governing retention and its



refund, and has taken into account the admitted conduct of the parties, including the Petitioner's consent to the terms of release.

50. The decisions relied upon by the Petitioner pertain to cases where the arbitral award was found to be in disregard of the contractual framework or vitiated by manifest illegality. In the present case, the findings of the Tribunal neither ignore the contract nor traverse beyond its terms; rather, they represent a plausible and reasoned view based on interpretation of the contract and appreciation of evidence. In the absence of any demonstrable perversity, patent illegality, or violation of public policy, the scope of interference under Section 34 remains limited, and the reliance placed on the aforesaid judgments is, therefore, misplaced.

### **Conclusion**

51. Having considered the entire material on record and the submissions advanced on behalf of the parties, this Court is of the view that the impugned award does not suffer from any patent illegality, perversity, or error apparent on the face of the record so as to warrant interference under Section 34 of the Arbitration and Conciliation Act, 1996. It is well settled that the jurisdiction of the Court under Section 34 is supervisory and not appellate. As reiterated in ***Ssangyong Engineering & Construction Co. Ltd. (Supra)*** and ***Dyna Technologies Pvt. Ltd. (Supra)***, the Court cannot re-appreciate evidence or substitute its own view for that of the Arbitral Tribunal merely because an alternative interpretation is possible. Interference is warranted only where the award is vitiated by patent illegality, is in conflict with the fundamental policy of Indian law, or is so unreasonable as to shock the conscience of the Court.



52. The award in the present case is a reasoned one, founded upon a coherent interpretation of the contractual provisions and a careful evaluation of the evidentiary record. The findings returned by the Tribunal on Claim Nos. 1 and 3 are plausible and consistent with the contractual framework agreed between the parties. The Tribunal has neither disregarded the terms of the contract nor adopted an impermissible approach in law. On the contrary, the conclusions are in consonance with the principles governing arbitral adjudication as recognised in **Ramnath International Pvt. Ltd.** (*supra*) and **K. Marappan** (*supra*), which emphasise judicial restraint and deference to the findings of fact recorded by the Tribunal. Similarly, the limited scope of interference and the need to uphold a plausible view taken by the arbitrator has been consistently reiterated in **OPG Power Generation Pvt. Ltd.** (*supra*).
53. The reliance placed on **Larsen & Toubro Ltd.** (*supra*) does not advance the Petitioner's case, as the said decision, too, reiterates that where the arbitrator's view is a possible and reasonable one based on the contract and evidence, the Court ought not to interfere. In the present case, no ground is made out to demonstrate that the findings of the Tribunal are arbitrary, perverse, or in violation of public policy. The conclusions do not shock the conscience of this Court and are firmly rooted in the material available on record.
54. Accordingly, this Court finds no merit in the challenge to the impugned arbitral award. The petition is, therefore, dismissed. There shall be no order as to costs.

**(GAURANG KANTH, J.)**