2026:DHC:5661-DB

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

% ***Judgment reserved on: 22.04.2026***
Judgment pronounced on: 16.07.2026
Judgment uploaded on:16.07.2026

\+ FAO (COMM) 190/2024 & CM APPL. 55443/2024

MAHANAGAR TELEPHONE NIGAM LTD .....Appellant
Through: Mr. Chandan Kumar & Mr. Vikram Sharma, Advs.

versus

M/S RUKMA DECOR AND CONSTRUCTION CO .....Respondent
Through: Mr. O.P. Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.:

INTRODUCTION:

1. The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has been preferred by the Appellant - Mahanagar Telephone Nigam Limited (MTNL), assailing the judgment dated 06.08.2024 passed by the learned District Judge (Commercial Court-06), Central District, Tis Hazari Courts, Delhi in ARB. A. (Comm.) No. 20/2019, whereby the petition filed by the Appellant under Section 34 of the Arbitration and Conciliation Act seeking setting aside of the arbitral award dated 27.11.2018 came to be dismissed. By the said arbitral award, the learned Sole Arbitrator partly allowed the claims raised by the Respondent–M/s Rukma Decor & Construction Co. arising out of Agreement No. EE(P)C-

I/MTNL/2010-11 pertaining to balance and left-out construction work relating to 240 Type-III quarters at GH-17, Paschim Vihar, New Delhi.

2. The principal controversy raised in the present Appeal pertains to the validity and enforceability of Clause 53 of the agreement, which prescribed a period of 90 days for invocation of arbitration from the date of intimation regarding readiness of the final bill and stipulated extinguishment of claims upon expiry of the said period. The appellant contends that the claims of the Respondent stood contractually barred and extinguished owing to delayed invocation of arbitration, whereas the Respondent asserts that such a stipulation is void and unenforceable in view of Section 28 of the Indian Contract Act, 1872 as amended with effect from 08.01.1997. The dispute also involves examination of the findings rendered by the learned Arbitrator on attribution of delay, levy of compensation under Clause 15 of the contract, and award of various monetary claims in favour of the Respondent.

3. Before adverting to the rival submissions and the issues arising for determination, it would be apposite to briefly notice the factual background giving rise to the present proceedings.

FACTUAL MATRIX:

4. The Petitioner, Mahanagar Telephone Nigam Ltd., through its Executive Engineer, invited a tender for the balance and left out work in relation to the construction of 240 numbers of Type III Quarters at GH-17, Paschim Vihar, New Delhi in the year 2010 for an amount of Rs. 19,82,392. It is to be noted that this was not a fresh construction

project but was balance work left out from a rescinded earlier contract bearing Agreement No. 02/EE(P)C-I/MTNL/05-06.

5. The Respondent, M/s Rukma Decor and Construction Company through its proprietor Shanti Prakash Goenka, participated in the bid and was awarded the tender vide letter dated 15.11.2010 for a value of Rs. 40,55,046. The stipulated date of start of work was 25.11.2010 and the time allowed for completion was four months, making the stipulated date of completion 24.03.2011.

6. The work could not be completed within the stipulated period. The Petitioner granted provisional extensions of time from time to time, with the last provisional extension granted up to 15.05.2012. The work was actually completed on 03.05.2012, resulting in a delay of 406 days from the original stipulated date of completion.

7. The Petitioner's case was that this delay was entirely attributable to the Respondent on account of its casual approach, slow progress, failure to mobilise sufficient men, material, T&P and machinery, and failure to submit a bar chart or work program despite being directed vide letter dated 13.12.2010.

8. The Respondent's case, on the other hand, was that the delay was caused entirely due to hindrances and breaches on the part of the Petitioner, including non-taking of measurements of work executed by the earlier agency, non-decision on removal of malba and building rubbish left by the earlier agency, non-decision on the existing G.L./C.I. pipe work which was choked and incomplete, delay in sanction of deviated quantities of concerned items, delay in decision on substitute items of stainless steel cramps, and most significantly,

the failure of the electrical agency deployed by the Petitioner to complete the alignment of lift opening gates till 31.10.2011, which held up the cladding, grinding and fitting work at the lift lobby area.

9. After completion of the work, the Petitioner called upon the Respondent to submit the Extension of Time proforma in July 2012, November 2012 and finally in January 2013, informing the Respondent that in case the Extension of Time proforma was not submitted, the final bill would be sent for payment and the Extension of Time case would be settled ex-parte.

10. The Respondent submitted the Extension of Time format only on 05.03.2013. The Respondent signed the final bill on 15.03.2013 without any protest. The final bill was intimated as ready on 21.11.2012. Payment as per the final bill was made to the Respondent on 30.05.2013, which was accepted by the respondent without any protest as to there being any arbitrary deductions, short or part payments.

11. In June 2013, the Petitioner issued a show cause notice under Clause 15 of the General Conditions of Contract for delay in completion of the work beyond the stipulated time. Since the same was not replied to, second show cause notice was issued on 11.03.2015. Even in reply thereto, the Respondent did not raise any issue of arbitrary deduction or short payments. It was only on 04.04.2015 that the Respondent raised certain claims with the Executive Engineer, which were denied by the Petitioner.

12. The Respondent thereupon invoked the arbitration clause vide its letter dated 26.09.2015, requesting the Chief Engineer, MTNL,

New Delhi to appoint an arbitrator in terms of Clause 53 of the agreement. The Petitioner denied appointment by means of its communication dated 29.10.2015, treating the claims as barred by Clause 53. On 05.11.2015, the Petitioner imposed a compensation amount of Rs. 92,942 towards delay in terms of Clause 15 of the GCC, which the Respondent protested vide letter dated 13.11.2015.

PROCEEDINGS BEFORE ARBITRAL TRIBUNAL:

13. The Petitioner, MTNL, refused to appoint an arbitrator due to which the Respondent preferred a petition under Section 11 of the Arbitration and Conciliation Act, 1996 before the Delhi High Court for appointment of an arbitrator. The Delhi High Court appointed S.R. Pandey, Retired Additional Director General (CPWD) as Sole Arbitrator *vide* its order dated 20.09.2016, to conduct proceedings under the rules of the Delhi International Arbitration Centre, and the case was registered as DAC Case No.1306/09-16.

14. The claimant filed 13 claims. There was no counter-claim by the Petitioner. However, the Petitioner raised a preliminary objection before the arbitrator that all the claims are time barred under Clause 53 of the agreement, which provided that if the contractor does not make any demand for arbitration in respect of any claim in writing within 90 days of receiving the intimation from MTNL that the final bill is ready for payment, the claim of the contractor will be deemed to have been waived and absolutely barred and MTNL shall be discharged and released of all liabilities under the contract in respect of these claims.

15. The Petitioner contended that the claimant did not invoke arbitration within 90 days of receiving intimation regarding the final bill on 21.11.2012, not even within 90 days of payment of the final bill on 30.05.2013, and that the claimant invoked arbitration only on 26.09.2015 after an unexplained delay of more than two years.

16. The claimant rebutted this contention and stated that the stipulation of 90 days in Clause 53 is void in terms of Section 28 of the Indian Contract Act 1872 as amended on 08.01.1997, and that even reckoning limitation from 30.05.2013, the arbitration was invoked on 26.09.2015 which was within the three-year limitation period.

17. The arbitrator held the 90-day stipulation in Clause 53 as void under the amended Section 28, held the arbitration to be within the three-year limitation period under Article 137 of the Limitation Act reckoned from 21.11.2012, and rejected all preliminary objections, admitting all claims for adjudication on merits.

18. On the question of delay, the arbitrator found from the Hindrance Register maintained by MTNL itself that from the very beginning the claimant suffered numerous hindrances solely attributable to the Respondent which continued up to 27.09.2011, nearly seven months beyond the stipulated date of completion. The most significant hindrance recorded was that the work of granite tile veneering and stone work in lift lobby and lift jamb remained held up from 01.12.2010 to 07.09.2011, for more than nine months due to non-completion of alignment and level of lift doors by the electrical wing, as against a stipulated completion period of just four months.

19. The arbitrator held that the Respondent fell far short of performing its reciprocal promise as obligated under Section 46 of the Contract Act, and that the delay in performance of the fundamental reciprocal promise by the Respondent was the governing delay in terms of Sections 51 and 52 of the Contract Act. The Respondent was accordingly held in breach and responsible for the entire delay in completion of the work. As a direct consequence, the levy of compensation of Rs. 92,942/- under Clause 15 was held wrongful and illegal both on merits and on the ground of limitation, since the cause of action for levy of compensation arose on 03.05.2012 and the levy was communicated only on 05.11.2015, beyond three years.

20. The arbitrator proceeded to adjudicate the individual claims. On Claim No. 1 for balance payment, a sum of Rs. 3,88,484/- was awarded based on the Local Commissioner's verified measurements. On Claim No. 2 for refund of the withheld amount of Rs. 4,05,505/-, the full amount was awarded since the levy of compensation was held wrongful and the set-off of Rs. 3,12,563/- under Clause 52.2 against another contract was held wrongful as that claim had not been adjudicated.

21. On Claims No. 4 and 6 for insurance charges, Rs. 41,537 was awarded since no show cause notice was issued before making the recovery and the basis of quantification was not on record. Claims No. 5 and 7 on service tax were rejected as the deduction under the Reverse Charge Mechanism was contractually justified. Claim No. 3 resulted in a declaratory award.

22. Claim No. 8 on minus extra items was rejected since the contractor had accepted the deductions without protest. On Claim No. 9 for overheads during the extended period, Rs. 3,86,767/- was awarded computed using CPWD guidelines on 3.75% overhead factor applied to an effective prolongation of 13 months with 10% deduction for mitigation.

23. On Claim No. 10 for price escalation, Rs. 4,25,445/- was awarded computed using the CPWD Clause 10 CC formula. On Claim No. 11 for delayed release of security deposit, Rs. 12,831/- was awarded. Pre-award interest at 10% per annum simple interest amounting to Rs. 7,22,656/- was awarded under Claim No. 12 under Section 31(7)(a) of the Act. Rs. 90,000/- was awarded as arbitration costs under Claim No. 13 and Rs. 50,000/- was awarded under Section 38(2) towards MTNL's share of the Local Commissioner's fee paid by the claimant.

24. The total award was Rs. 25,23,225/- with future interest at 12% per annum from 28.11.2018 till the date of payment, with no future interest payable if the award amount was paid within three months of the date of award.

PROCEEDINGS BEFORE THE DISTRICT COURT:

25. The Petitioner filed the petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Commercial Court-06, Central District, Tis Hazari, Delhi on 27.02.2019, challenging the award dated 27.11.2018. The Petitioner initially challenged all claims so allowed by the arbitrator but, during the arguments, restricted the scope of its challenge to the grounds and

contentions recorded in the written submissions dated 31.10.2023. Final arguments were heard on 03.08.2024 and the order was pronounced on 06.08.2024.

26. The petitioner further contended that Section 43(3) of the Arbitration and Conciliation Act itself carves out an exception to the general law of limitation and validates contractual time limit clauses for initiation of arbitration, and hence the arbitrator's interpretation nullifying Clause 53 runs foul of Section 43(3).

27. The Petitioner relied upon the Supreme Court judgments in ***Wildlife Institute of India v. Vijay Kumar Garg***[1] and ***P. Manohar Reddy v. Maharashtra Krishna Valley Dev. Corp***[2]**.** in support of its contention that clauses providing limitation so as to enable a party to lodge a claim are not invalid. The Respondent contended that the view taken by the arbitrator is a plausible legal view which cannot be interfered with under Section 34, and that Clause 53 is void under the amended Section 28 of the Contract Act.

28. The District Court held that after the 1997 amendment to Section 28 of the Indian Contract Act, the distinction previously carved out by the Supreme Court between clauses merely limiting the period to sue and clauses providing for forfeiture or waiver of rights no longer survives. The court held that the 1997 amendment introduced Clause (b) to Section 28 which additionally renders void any agreement that extinguishes the rights of any party or discharges any party from liability on the expiry of a specified period.

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[1] (1997) 10 SCC 528
[2] (2009) 2 SCC 494

29. The court relied upon the consistent line of Delhi High Court judgments in ***Punj Lloyd v. NHAI***[3], ***Chander Kant v. DDA***[4], ***Union of India v. Pt. Munshi Ram & Associates Pvt. Ltd.***[5], ***Silicon Graphics Systems (India) Pvt. Ltd. v. Sterling and Wilson Electricals Pvt. Ltd***[6], and ***B.L. Kashyap AP & Sons Ltd. v. Airport Authority of India***[7], all of which had held identical 90-day clauses void after the 1997 amendment, and noted that the Supreme Court judgments in ***Wildlife Institute*** (supra) and ***P. Manohar Reddy*** (supra) were distinguished by the Delhi High Court on the ground that those judgments were rendered in the context of the unamended Section 28 and the cause of action in those cases had arisen before the amendment.

30. On the Section 43(3) argument, the court held that this had already been addressed by the Delhi High Court in ***Punj Lloyd's*** case (supra) and the amended Section 28 of the Contract Act prevails notwithstanding Section 43(3). The court accordingly held that the arbitrator committed no error of jurisdiction in holding Clause 53 void and no patent illegality was made out. The petition under Section 34 was dismissed and parties were directed to bear their own costs.

APPELLANT'S CONTENTIONS:

31. The principal contentions advanced by the Appellant are summarised as follows:

i. The Arbitral Tribunal committed a jurisdictional error in excess of jurisdiction by entertaining and deciding upon claims of the

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[3] MANU/DE/1321/2009
[4] 2025:DHC:7654-DB
[5] (2006) 4 SCC 538
[6] 2015 SCC OnLine Del 9741
[7] 2016 SCC OnLine Del 5258

Respondent-Contractor which had stood barred and were deemed to have been waived, consequent to the Contractor having failed to invoke arbitration within 90 days of receiving intimation from MTNL that the final bill was ready for payment, in terms of Clause 53 of the GCC. Since the claims were waived and extinguished by operation of the contractual clause, the Arbitrator had no jurisdiction to entertain the same.

ii. Clause 53 of the GCC, being a material condition of the contract, was binding and decisive as to limitation and remedy. The Arbitrator, being a creature of the Agreement and deriving authority solely therefrom, could neither traverse beyond its terms nor re-write the Agreement. By ignoring Clause 53, the Arbitrator exceeded his jurisdiction and committed a patent illegality.

iii. The cut-off date of 90 days constituted a material condition which went to the very right to arbitrate, and the Respondent's failure to invoke arbitration within the said period had the direct consequence of waiving the claims, as unambiguously stated in the clause itself. Clause 53 should therefore be construed not merely as a limitation clause, but as an antecedent condition precedent to invoking arbitration.

iv. The Arbitrator proceeded erroneously to calculate the limitation period of 90 days from the date of actual payment (30.05.2013) rather than from the date of intimation that the final bill was ready (21.11.2012). This constituted a patent illegality and an error of jurisdiction.

v. Exception 1 to Section 28 of the Indian Contract Act, 1872 ('the Contract Act'), as it stood before the 1997 amendment, expressly saved clauses restricting parties to pursuing remedies within a contracted time. Even after the 1997 amendment, Exception 1 continues to survive, and therefore clauses providing for limitation for the purposes of lodging a claim remain valid. The Appellant relied upon the Supreme Court's judgments in ***M/s P. Manohar Reddy*** (supra) and ***Wildlife Institute of India, Dehradun*** (supra).

vi. Section 43(3) of the Act itself carves out a specific exception which expressly recognises and validates contractual time limit provisions for initiating arbitration proceedings. It empowers courts to extend time only in cases of undue hardship, thereby presupposing the validity of such clauses. On this basis, it was contended that the Arbitrator's interpretation nullifying Clause 53 runs foul of the express mandate of Section 43(3) and cannot be sustained.

vii. The Appellant further relied upon the judgment of the Supreme Court in the matter of Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, In re, [(2024) 6 SCC 1], wherein the Seven-Judge Bench affirmed that the Arbitration Act, being a special legislation, enjoys primacy over the Contract Act which is a general law, in accordance with the principle of *generaliaspecialibus non derogant*. On this basis, the Appellant urged that Section 43(3) of the Act, as a provision of the special law, should prevail over Section 28 of the Contract Act.

viii. The levy of compensation amounting to Rs. 92,942/- under Clause 15 of the GCC was a matter exclusively within the competence of the competent authority under the contract, namely the Chief

Engineer (CEBW), MTNL, whose decision in writing was final and binding in terms of the contract. The Arbitrator, by proceeding to examine and set aside this levy, exceeded his jurisdiction and acted in excess of the terms of the reference.

RESPONDENT'S CONTENTIONS:

32. The Respondent has opposed the appeal and sought dismissal thereof on the following grounds:

i. The view taken by the learned Arbitrator on the validity of Clause 53 is a plausible legal view based on a well-reasoned analysis of the applicable legal provisions. Under the limited scope of Section 34 of the Act, the Court cannot sit in appeal over the Arbitrator's findings on merits or on questions of legal interpretation. So long as the interpretation adopted is a possible view, the Award cannot be interfered with.

ii. The Award contains adequate reasoning for all decisions taken by the learned Arbitrator, including on the threshold question of limitation. The Arbitrator has independently and correctly applied Section 28 of the Indian Contract Act as amended by the Amendment Act 1 of 1997, and has reached a well-founded conclusion that the 90-day stipulation in Clause 53 is void.

iii. The learned Arbitrator was correct in holding that the claims are within limitation, being within three years from the date of cause of action, i.e., the date of payment of the final bill on 30.05.2013, having regard to the established position that the period of limitation under Article 137 of the Limitation Act, 1963 is three years. The Respondent also contended that the so-called final bill dated 30.05.2013 could not be treated as the final bill since certain amounts were withheld and deductions were made unilaterally; thus, the cause of action was continuing.

iv. Clause 53 is void under the law as has been clearly discussed by the learned Arbitrator. The 1997 amendment to Section 28 of the Contract Act is sweeping in its effect. Post-amendment, not only are clauses merely curtailing the time to bring a suit void, but also clauses which extinguish the rights of any party or discharge any party from liability on the expiry of a specified period are void. Clause 53, in providing that upon non-invocation within 90 days the claims 'will be deemed to have been waived and absolutely barred and the MTNL shall be discharged and released of all liabilities under the contract', is squarely hit by the amended Section 28(b) of the Contract Act.

v. The Respondent relied upon the judgment of the Supreme Court in Bharat Sanchar Nigam Limited v. M/s Nortel Networks India Limited (Civil Appeal Nos. 843 and 844 of 2021 decided on 10.03.2021) to contend that the limitation for initiating arbitration must be in accordance with Article 137 of the Schedule to the Limitation Act, 1963 and the request for appointment of an arbitrator made within three years cannot be treated as barred.

vi. The consistent line of judgments of the Delhi High Court-in ***Punj Lloyd Ltd.*** (supra), ***Chander Kant & Co.*** (supra), ***Union of India*** (supra), ***Silicon Graphics Systems (India) P. Ltd.*** (supra), and ***B.L. Kashyap AP & Sons Ltd.*** (supra)-have uniformly held that contractual clauses identical to Clause 53 are void after the 1997 amendment to Section 28 of the Contract Act, and have also distinguished the Supreme Court judgments in ***Wildlife Institute of***

India (supra) and ***P. Manohar Reddy*** (supra) on the ground that those were rendered in the context of the unamended Section 28.

II. ANALYSIS:

SCOPE AND AMBIT OF APPELLATE REVIEW:

33. Before entering into the merits of the contest, it is necessary to briefly delineate the parameters within which this Court exercises jurisdiction under Section 37(1)(b) of the Act. Section 37 confers a right of appeal only against orders under Section 34 allowing or refusing to set aside an arbitral award. The jurisdiction of the Court under Section 34 is itself tightly circumscribed by the grounds enumerated in sub-sections (2) and (2A). The legislature's design reflects a conscious policy choice in favour of minimal curial interference with arbitral awards, so as to preserve the efficacy of arbitration as an alternative dispute resolution mechanism.

34. The Supreme Court has, through an unbroken line of authorities, repeatedly affirmed that courts exercising jurisdiction under Section 34 and Section 37 do not sit as courts of appeal on the merits of the award and cannot re-appreciate evidence or substitute their own view for that of the Arbitrator. The permissible grounds of challenge-public policy of India including the sub-ground of patent illegality under Section 34(2A), and jurisdictional excess-must be examined with this framework firmly in view. The test is whether the Arbitrator has acted within jurisdiction and within the four corners of the agreement, and not whether the court would have reached a different conclusion.

35. The challenge pressed before this Court by the Appellant is not a re-appreciation of factual findings but raises a pure and important question of law regarding the interplay of Clause 53 of the GCC, Section 28 of the Indian Contract Act as amended in 1997, and Section 43(3) of the Act. This question goes to the root of the Arbitrator's jurisdiction and is therefore amenable to examination.

NATURE AND EFFECT OF CLAUSE 53 OF GCC:

36. Clause 53 of the General Conditions of Contract executed between the parties stipulates, in relevant part, that if the contractor does not make any demand for arbitration in respect of any claim in writing within 90 days of receiving the intimation from MTNL that the bill is ready for payment, the claim of the contractor will be deemed to have been waived and absolutely barred, and MTNL shall be discharged and released of all liabilities under the contract in respect of those claims.

37. The central question is whether this clause constitutes a valid and enforceable contractual term that was binding upon the learned Arbitrator, or whether it is rendered void by the operation of Section 28 of the Indian Contract Act, 1872. The proper characterisation of the clause is therefore essential.

38. The clause operates in two distinct ways: first, it circumscribes the period within which a demand for arbitration must be made; second, and more significantly, it attaches a draconian consequence to non-compliance-the contractor's claims are deemed to have been 'waived and absolutely barred' and MTNL is 'discharged and released of all liabilities under the contract'. It is this second limb-the

extinguishment of the Respondent's contractual rights and the discharge of the Appellant from all liability-that is legally decisive. The clause does not merely restrict the time to approach a forum; it extinguishes the very right of the contractor to claim. It is squarely a clause of the kind contemplated by Section 28(b) of the Contract Act as amended.

<u>1997 AMENDMENT AND ITS EFFECT:</u>

39. Section 28 of the Indian Contract Act, 1872 was substantially amended by Act 1 of 1997 with effect from 08.01.1997. The pre-amendment Section 28 rendered void every agreement by which any party was restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals. Exception 1 to the unamended Section 28 saved from this prohibition clauses which merely limited the time within which a party could enforce his rights (as opposed to absolute restrictions on enforcement).

40. The 1997 amendment significantly expanded the scope of Section 28 by adding clause (b), which additionally renders void every agreement by which any party thereto is restricted from enforcing his rights under or in respect of any contract, whether by extinguishing the rights of any party thereto or by discharging any party from any liability under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights. The section before and after the amendment has been reproduced as under:-

<u>Section 28 of the Indian Contract Act, 1872</u>

1. Pre-1997 (Original, Unamended) Text

"Every agreement, by which any party thereto is restricted absolutely

from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception 1. *This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred."*

*2**. Post-1997 (As Amended by the Indian Contract (Amendment) Act, 1996 / Act 1 of 1997, in force from 8 January 1997)***

"Every agreement

(a) *by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or*

(b) *which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.*

Exception 1. Saving of contract to refer to arbitration dispute that may arise*. This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.*

Exception 2. Saving of contract to refer questions that have already arisen*. Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration."*

41. The post-amendment position of law, as authoritatively and consistently stated by the High Court of Delhi in a series of judgments, may be thus summarised: whereas the pre-1997 Section 28 merely rendered void agreements that were absolute restrictions on the right to sue, the post-1997 amendment additionally renders void clauses which, upon the expiry of a specified period, extinguish the contractual rights of any party or discharge any party from liability.

This is the precise function performed by the offending limb of Clause 53. By deeming the claims 'waived and absolutely barred' and by discharging MTNL from 'all liabilities under the contract', Clause 53 goes well beyond a mere procedural time-bar; it extinguishes substantive contractual rights and is therefore clearly and unambiguously struck down by the amended Section 28(b).

42. The consistent judicial consensus on this question - expressed in ***Hindustan Construction Company v. DDA***[8], ***Kalyan Chand Goyal v. DDA***[9], ***Explore Computers Pvt. Ltd. v. Cals Ltd***[10], ***Punj Lloyd Ltd.*** (supra), ***M/s Chander Kant & Co.*** (supra), ***Union of India*** (supra), S***ilicon Graphics Systems (India) P. Ltd.*** (supra), and ***B.L. Kashyap & Sons Ltd.*** (supra) - is that clauses identical or analogous to Clause 53 are void by reason of the amended Section 28(b) of the Contract Act.

43. The Appellant has placed reliance upon the judgments of the Supreme Court in ***Wildlife Institute of India, Dehradun*** (supra) and ***P. Manohar Reddy & Bros.*** (supra), wherein contractual limitation clauses were upheld. This reliance is misplaced. Both judgments have been authoritatively distinguished by the Delhi High Court on the ground that the cause of action in those cases arose before the 1997 amendment to Section 28 came into force, and the courts accordingly considered the question in the light of the pre-amendment provision. As the High Court observed in ***M/s Chander Kant & Co.*** (supra), in ***P. Manohar Reddy's*** case, the Supreme Court had no occasion to consider the effect of the insertion of Clause (b) in Section 28 by the

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[8] 77 (1999) DLT 165
[9] 1998 47 DRJ 772
[10] 131 (2006) DLT 477

Amending Act of 1997. The distinction is not a matter of mere technicality; it is legally substantive. The law in force at the relevant time governs, and since all material events in the present case-the final bill, the payment, the claims and the invocation of arbitration-occurred after 08.01.1997, the amended provision of Section 28 is fully applicable.

ARGUMENT ON CLAUSE 43(3) ARBITRATION ACT:

44. The Appellant's more adventurous submission is that Section 43(3) of the Act itself provides an independent source of validity for contractual time-bar clauses like Clause 53, and that the Arbitrator's nullification of Clause 53 therefore violates the statutory mandate of Section 43(3). This argument, though ingeniously framed, does not withstand scrutiny. Section 43(3) provides that where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

45. The Appellant urges that this provision presupposes the validity of contractual time-bar clauses for initiation of arbitration, and that the legislature, by enacting Section 43(3), has expressly recognised their enforceability. On this basis, it is contended that the Arbitration Act, being a special law, must prevail over the general law of the Contract

Act by virtue of the doctrine of *generaliaspecialibus non derogant*, as recognised by the Seven-Judge Bench of the Supreme Court in the ***Interplay case***[11].

46. This argument proceeds on a fundamental misreading of Section 43(3). The provision does not validate or positively enact the enforceability of contractual time-bar clauses. It addresses only the limited question of whether a court may grant an extension of time in cases of undue hardship where the contractual time limit has expired. The precondition for the exercise of this power is that there exists a valid time-bar clause; Section 43(3) does not, by its own force, render otherwise void clauses valid. Whether a particular clause is void under Section 28 of the Contract Act-a question antecedent to and independent of Section 43(3) - falls to be determined by the Contract Act itself.

47. As the learned District Court has correctly noted, relying upon the reasoning in ***Punj Lloyd*** (supra), Section 43(3) of the Act and the amended Section 28 of the Contract Act operate in different fields and are not in genuine conflict. Section 43(3) addresses the power of the court to extend time in cases of undue hardship. It does not address-and cannot override-the statutory mandate of Section 28(b) of the Contract Act which renders void certain classes of clauses as a matter of substantive contract law.

48. The ***Interplay*** judgment (supra) lends no assistance to the Appellant's case on this point. The Seven-Judge Bench was concerned with the relationship between the Arbitration Act and the Stamp Act

[11] [(2024) 6 SCC 1]

in the specific context of arbitration agreements and not with the relationship between the Arbitration Act and the Contract Act in the context of limitation clauses within contracts. The principle of *generaliaspecialibus non derogant* operates to resolve conflicts between a special law and a general law in the specific domain in which the special law operates. The question of the validity of a contractual provision that extinguishes a party's substantive rights is governed by the Contract Act as the primary legislation on the law of contract. This is a different domain from the procedural or institutional law of arbitration. To the extent there is any conflict between Section 43(3) of the Arbitration Act and Section 28(b) of the Contract Act, it is resolved not by giving blanket primacy to the Arbitration Act over the Contract Act but by recognising that Section 28(b) of the Contract Act addresses the anterior question of contractual validity, which must be answered first, before Section 43(3) can even be invoked.

ARBITRATOR'S JURISDICTION AND VALIDITY OF CLAUSE 53:

49. The Appellant's submission that the Arbitrator exceeded his jurisdiction by entertaining claims barred by Clause 53 is founded on the proposition that Clause 53 was valid and binding. This premise has been shown above to be legally unsustainable. Once Clause 53-to the extent it purports to extinguish the Respondent's claims-is void by operation of Section 28(b) of the Contract Act, the Arbitrator was not only entitled but bound to proceed with the claims on their merits.

50. The principle that an Arbitrator is a creature of the contract and cannot traverse beyond its terms is well-established-see ***M/s Alopi***

***Parshad v. Union of India*[12]; *Associate Engineering Company v. Govt. of Andhra Pradesh*[13]; *PSA Sical Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others*[14]**. However, this principle operates within the domain of valid contractual terms. The Arbitrator's jurisdiction does not require him to give effect to a contractual clause which is void ab initio under statutory law. A void clause is no clause at all in the eyes of the law. To hold otherwise would be to give effect to a provision which the legislature has expressly declared to be of no force or effect - a result that neither the law of contract nor the law of arbitration can sanction.

51. In the present case, the Arbitrator's conclusion that the 90-day stipulation in Clause 53 was void under the amended Section 28 reflects precisely the legal position as it has been consistently and repeatedly affirmed by the Delhi High Court over a period of more than two decades. The Arbitrator, in reaching this conclusion, not only exercised his jurisdiction correctly but also applied a coherent and well-grounded line of legal authority. There is no error of jurisdiction, no excess of jurisdiction, and no patent illegality in this conclusion.

<u>LIMITATION: RECKONING OF THE PERIOD</u>

52. Even assuming, for the sake of argument, that Clause 53 was not void-which this Court has found not to be the case-the Appellant's submission that the 90-day period commenced from the date of intimation that the final bill was ready (21.11.2012) rather than from the date of payment (30.05.2013) deserves examination.

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[12] (1960) 2 SCR 793
[13] (1991) 4 SCC 93
[14] (Civil Appeal No. 3699-3700 of 2018)

53. The Arbitrator found, on the facts, that the so-called 'final bill' paid on 30.05.2013 could not be treated as the final bill in the true sense since certain amounts were withheld in the running bills and remained withheld even at the time of payment of the final bill. The Arbitrator also found that the Respondent did not sign an unqualified certificate of acceptance of the final bill as full and final settlement. On this basis, the Arbitrator concluded that the cause of action had not crystallised in the manner assumed by the Appellant.

54. This is a factual finding supported by evidence. Even on the question of limitation independent of the void nature of Clause 53, the Respondent's invocation of arbitration on 26.09.2015 falls within three years of both the date of intimation of the final bill (21.11.2012) and the date of payment of the final bill (30.05.2013), calculated under Article 137 of the Limitation Act, 1963. The claims were therefore within limitation in any event.

CHALLENGE TO INDIVIDUAL CLAIMS AND FINDING ON MERITS:

55. It is necessary to note that during the course of arguments before the District Court, the Appellant restricted the scope of its challenge to the grounds and contentions set out in its written submissions dated 31.10.2023, which primarily addressed the threshold question of limitation and jurisdiction. The Appellant did not, before the District Court, press challenges to each individual claim on its merits with the specificity that would be required to make out a case of patent illegality, perversity or jurisdictional excess in relation to the individual heads of award.

56. The learned Arbitrator made detailed and reasoned findings on each claim, supported by the Hindrance Register maintained by MTNL itself, the report of the Local Commissioner appointed to verify measurements, and the contractual provisions governing each claim. The finding that the entire delay was attributable to MTNL on account of, most significantly, the failure of its electrical wing to complete the alignment of lift opening gates-which held up the cladding and finishing work in the lift lobby area for over nine months, well beyond even the original stipulated period of four months-is a factual finding on evidence. It cannot be disturbed under Section 34 or Section 37 of the Act unless it rises to the level of perversity amounting to no evidence at all, or unless there is a patent illegality apparent on the face of the award.

57. Similarly, the levy of compensation under Clause 15 of the GCC was held wrongful on two independent grounds: on merits, because the delay was attributable to MTNL, not the Contractor; and on limitation, because the cause of action for levy arose on 03.05.2012 but the levy was communicated only on 05.11.2015, beyond three years. These are well-reasoned conclusions supported by the evidence on record. The Appellant's submission that the levy of compensation was a matter exclusively within the competence of the Chief Engineer (CEBW) and was not amenable to arbitral review does not hold, for it is well-settled that the scope of the arbitration clause extends to all disputes arising out of or in relation to the contract, including disputes about the levy of liquidated damages and compensation.

58. On the question of the individual claims including overheads during the extended period (Claim No. 9), price escalation (Claim No.

10), delayed release of security deposit (Claim No. 11), pre-award interest (Claim No. 12) and arbitration costs (Claim No. 13), the Arbitrator has applied the applicable legal and contractual provisions and CPWD guidelines in a detailed and structured manner. No patent illegality or perversity is discernible from the face of the award in respect of any of these heads.

APPLICATION OF THE PRINCIPLE OF MINIMAL INTERFERENCE:

59. The scheme of the Arbitration and Conciliation Act, 1996 embodies the principle of minimal curial interference with arbitral awards, which is foundational to the pro-arbitration policy of Indian law. This legislative intent has been consistently recognised and affirmed by the Supreme Court in a series of judgments including ***Associate Builders v. DDA***[15] and ***Ssangyong Engineering and Construction Co. Ltd. v. NHAI***[16]. Under this scheme, an award can be set aside only if it falls within the limited categories of challenge specified in Section 34, and even within those categories, the power to set aside is not a power to correct errors of law or fact which do not rise to the specified threshold.

60. The challenge in the present case, when examined against this standard, falls substantially short of the threshold required to set aside an award. The core question of law-whether Clause 53 of the GCC is void under Section 28(b) of the Contract Act as amended in 1997-has been answered by the Arbitrator in a manner which is consistent with a long, unbroken and authoritative line of judicial decisions. The conclusion is not merely plausible; it is correct. The Arbitrator has

[15] (2015) 3 SCC 49
[16] (2019) 15 SCC 131

exercised jurisdiction properly, has remained within the four corners of the legal framework applicable to the dispute, and has rendered an award that is grounded in a sound appreciation of the law and of the evidence.

61. The Appellant's invocation of the ***Interplay*** judgment (supra) as a new ground of challenge at the appellate stage does not advance its case for the reasons set out above. The Interplay judgment, which was rendered on 17.12.2023 and is therefore subsequent to the Award dated 27.11.2018, was cited before the District Court as forming the basis of a new legal argument. The District Court, while taking note of the submission, correctly concluded that the amended Section 28 of the Contract Act prevails in the present context. This Court affirms that conclusion.

CONCLUSION:

62. For the foregoing reasons, this Court is of the opinion that:

i. Clause 53 of the GCC, to the extent it provides for the extinguishment of the Respondent-Contractor's claims upon non-invocation of arbitration within 90 days and discharges MTNL from all liability thereunder, is void under Section 28(b) of the Indian Contract Act, 1872 as amended by Act 1 of 1997 with effect from 08.01.1997.

ii. The learned Arbitrator committed no error of jurisdiction in holding Clause 53 void and in proceeding to adjudicate the claims of the Respondent on their merits. The Arbitrator correctly applied the settled post-amendment legal position as affirmed by a consistent line of Delhi High Court judgments.

iii. The argument based on Section 43(3) of the Arbitration and Conciliation Act, 1996 is legally untenable. Section 43(3) does not override the statutory mandate of Section 28(b) of the Contract Act and does not lend independent validity to a clause that is otherwise void under the Contract Act.

iv. The reliance placed upon the judgments in ***Wildlife Institute of India*** (supra) and ***P. Manohar Reddy*** (supra) is misplaced, as those judgments were rendered in the context of the pre-amendment Section 28 of the Contract Act and are not applicable to the facts of the present case where all material events occurred post-amendment.

v. The invocation of the principle of *lex specialison* the basis of the Interplay judgment does not assist the Appellant. The Arbitration Act's primacy over the Stamp Act in respect of arbitration agreements, as affirmed in Interplay, has no bearing on the validity of a contractual term under the Contract Act.

vi. No patent illegality, perversity, or jurisdictional excess is made out in relation to the individual claims adjudicated by the Arbitrator. The factual findings are supported by evidence and are insulated from challenge under Section 34 and Section 37 of the Act.

vii. The learned District Court was correct in dismissing the petition under Section 34 of the Act. The impugned order dated 06.08.2024 calls for no interference.

63. Accordingly, the present Appeal is dismissed. The award dated 27.11.2018 is affirmed in full. The order of the learned District Judge (Commercial Court-06) dated 06.08.2024 is upheld.

64. The pending application stand closed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

JULY16, 2026
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