# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# ORDINARY ORIGINAL CIVIL JURISDICTION

## ARBITRATION PETITION NO.212 OF 2013

**Oil and Natural Gas Corporation Ltd**.
A Public Sector Undertaking as also
Public Limited Company having its
Registered Office at Jeevan Bharati Tower II,
124 Indira Chowk, New Delhi – 110 001
and one of its Mumbai Regional Business
Centre Offices at 15-E, Maker Towers,
Cuffe Parade, Mumbai – 400 005 …. Petitioner

Vs.

**M/s Great Eastern Shipping Co. Ltd**.
(Now M/s Great Offshore Ltd.)
A Company incorporated under the
provisions of the Companies Act, 1956
having its Registered Office
at Ocean House, 134/A,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018 .... Respondent

**WITH**

## ARBITRATION PETITION NO.211 OF 2013

**The Great Eastern Shipping Co. Ltd**.
having its Registered Office
at Ocean House, 134/A,
Dr. Annie Besant Road, Worli,
Mumbai – 400 018 and presently
**GOL Offshore Limited**)
having its Registered Office at
Energy House, 81, D.N. Road,
Mumbai – 400 001. .... Petitioner



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Vs.

**The Oil and Natural Gas Corporation Ltd**.
Having its Registered Office at
Jeevan Bharati Tower II, 124 Indira Chowk,
New Delhi – 110 001
and its Mumbai Regional Business Centre
Offices at 15-E, Maker Towers,
Cuffe Parade, Mumbai – 400 005 …. Respondent

***Senior Advocate, Mr. Pradeep Sancheti***, a/w Adv. Pallavi Bali, Adv. Subhash Bhalwal, Adv. Kundanlal M. Patil and Adv. Pritesh Haridas Bodekar i/b Vyas & Balwal for Petitioner in ARBP 212 of 2013 and for Respondent in ARBP 211 of 2013.

Adv. Akshay Patil a/w Adv. Jatin Pore, Adv. Suddhasattwa Roy and Adv. Vishal Mandal i/b Legal DSK, for Petitioner in ARBP 211 of 2013, and for Respondent in ARBP 212 of 2013.

**CORAM : ARUN R. PEDNEKER, J.**
**RESERVED ON : 26th October 2026**
**PRONOUNCED ON : 2nd November 2026**

**JUDGMENT :**

1. Heard learned Counsel for the parties.

2. By the present Petitions, the Petitioners challenge the Arbitral Award dated 14th October 2012, passed by the Arbitral Tribunal.

3. The brief facts giving rise to the present Petitions are noted as under :

On 23rd July 1999, the Petitioner, Oil and Natural Gas Corporation Limited (hereinafter referred to as "**ONGC**") in Arbitration Petition No.212



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of 2013, invited tenders for the execution of the work relating to the fabrication, transportation and installation of the NG Flare Tripod Structure at an offshore location in the Bombay High Field. The Respondent, **M/s Great Eastern Shipping Co. Ltd.**, emerged as the successful bidder and was accordingly awarded the contract. The scope of work entrusted to the Respondent, *inter alia*, comprised carrying out the Pre-Engineering Survey, Residual Engineering, procurement and supply of all requisite materials and consumables, fabrication, load-out, tie-down, transportation, installation, hook-up, testing and pre-commissioning of the NG Flare Tripod Structure. The contractual scope further included the cutting and removal of the existing NG Flare Tripod superstructure, pipe flare tip, upper portion of the riser, horizontal bracing members, heat shields situated at EL+4.877M, the existing boat landing and other associated components, as part of the revamp of the NG Flare Tripod Structure at the Bombay High offshore facility.

**4**. The work awarded to the Respondent comprised three components:

(i) Fabrication of Tripod Structure- to be carried out at Ratnagiri (Bharati Shipyard Limited;

(ii) Load-out, tie-down at Ratnagiri and transportation of Tripod Structure from Ratnagiri to the installation site at Bombay High.

(iii) The existing Tripod Structure had to be dismantled and removed from the 'NG' Flare Platform at Bombay High and



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it was to be replaced by installation of the new Tripod Structure.

5. The scope of work comprised the removal and replacement of the Tripod Structure, which necessitated the shutdown of the entire platform and, consequently, the suspension of production at Bombay High. Given the significant operational and production implications arising from such shutdown, the Contract prescribed specific timelines for the execution and completion of the work. The relevant contractual provisions mandated the periodic submission of work programmes, sequences, procedures and schedules for approval, besides requiring the issuance of prior notices at various stages of the Contract in relation to the respective activities. According to the Petitioner, the work was required to be completed within the contractually stipulated period.

6. The parties mutually discussed and agreed upon the work programme, bar chart, and fixed construction schedule. The pre-project date was stipulated as 1st November 1999 in Annexure 'D', read in conjunction with Clause 1.1.7. Further, Annexure 'D' expressly stipulated 24th January 2000 as the scheduled date for completion of fabrication at Ratnagiri.

7. The load-out and transportation was scheduled between 25th January 2000 and 28th January 2000. The offshore installation work at the N.G. Flare Tripod Platform was scheduled to commence on 29th January 2000, with the



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overall completion of the work stipulated for 15th February 2000. Accordingly, the completion date, in terms of Clause 2.2.5 of the Contract read with Annexure 'D', was 15th February 2000. However, in the present case, the offshore work commenced only on 11th February 2000 and was thereafter completed within the stipulated extended period. The challenge in the present Petition relates to the charges awarded for the spread for the period between 25th January 2000 and 10th February 2000.

8. The Arbitral Tribunal has held the Petitioner responsible for the delay and has awarded charges of the spread accordingly. The Petitioner's case, however, is that the delay was attributable to the Respondent-Claimant, as the requisite notices contemplated under the Contract were not issued by the Claimant. Consequently, the shutdown could not commence, thereby preventing the Claimant from carrying out the contracted work.

9. Owing to the delay in the commencement and completion of the work, the Respondent-Claimant raised a monetary claim of US$ 1,185,500, which remained unpaid by the Petitioner. The dispute was referred to an Arbitral Tribunal comprising Mr. Justice M.H. Kania (Retired), Mr. Justice P.N. Bhagwati (Retired), and Mr. Justice S.P. Kurdukar (Retired). Upon considering the material placed before it and oral evidence, the Arbitral Tribunal directed the Petitioner to pay a sum of US$ 1,134,500, together



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with interest thereon at the rate of 9% per annum from the date of the award, as well as an amount of Rs. 10,00,000/- towards the costs of the arbitration proceedings.

10. The ONGC has primarily challenged the Award in Arbitration Petition No.212 of 2013. The Claimants have also challenged the Award in Arbitration Petition No. 211 of 2013, but only to the extent that it relates to the grant of pre-award interest. The said challenge will be dealt with separately.

11. The learned ***Senior Counsel, Mr. Sancheti***, appearing for the Petitioner, ONGC, submits that the Arbitral Tribunal has rendered its award by ignoring or bypassing relevant contractual provisions, particularly Clauses 2.2.2.1, 2.2.2.3, 2.3.3.1 and 2.3. He contended that all contractual clauses must be construed harmoniously and that no provision should be rendered nugatory or otiose. He further submitted that Clause 2.3.4, which deals with the construction schedule and its approval, expressly stipulates that such approval does not relieve the Contractor of its contractual obligations. Accordingly, compliance with the requirements of Clauses 2.2.2.1 and 2.2.2.3 could not be dispensed with by placing reliance on Clause 2.3.4.



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12. The learned Counsel for the Petitioner submis that the notice dated 18th January 2000 was not a valid notice under the Contract. The notice dated 21st January 2000, which was received on 22nd January 2000 at 16:06 hours, could, at best, constitute notice for the commencement of transportation work from 30th January 2000, and no claim could, therefore, be entertained for any earlier period. Further, the said notice did not refer to the commencement of load-out or sea-fastening. The subsequent notice dated 24th January 2000 merely informed the Petitioner, ONGC, of the proposed commencement of load-out and requested the deployment of its representative at the site. Consequently, the contractual notice requirements had not been satisfied for the period claimed.

13. The Petitioner's learned Counsel submits that the Respondent had failed to submit a work plan for the installation work along with the relevant notices, notwithstanding the Petitioner's requests made through letters dated 2nd February 2000 and 5th February 2000. In its letter dated 9th February 2000, the Respondent stated that a work plan providing for completion within 23 days had been submitted at the meeting held on 7th February 2000, but had not been accepted by the Petitioner. Thereafter, a revised work plan envisaging completion within 18 days was submitted under cover of the letter dated 9th February 2000, which was received on 10th February 2000.



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The Petitioner's Counsel contended that these circumstances established the Respondent's failure to comply with the requirements of Clause 2.2.2.3.

14. The Petitioner's learned Counsel contends that the arbitral award was vitiated by irrationality and perversity, as standby charges had been awarded even for periods when the work had commenced or the relevant vessel had become available for deployment. In particular, although the Petitioner had approved the commencement of load-out operations on Bhagiratha III from 3rd February 2000, the Tribunal nevertheless awarded standby charges for that date. Likewise, GAL Constructor arrived at approximately 23:30 hours on 9th February 2000 and came alongside the NG Flare Platform on 10th February 2000, on which date the shutdown was also provided. Despite these circumstances, standby charges were awarded for 10th February 2000 as well. The Petitioner therefore argued that compensation under Clauses 2.2.2.2, 5.3.3.5 and 5.1.9 was payable strictly for the actual period of standby and could not be extended to operate as damages for any alleged disruption or delay in the contractual schedule.

15. The learned Counsel for the Petitioner submits that the Respondent's claim was based on the alleged suspension of work under Clause 8.2, read with Clause 2.2.2.1. Since the claim for damages had been expressly rejected, the Respondent could not obtain compensation on any alternative



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contractual, equitable, legal or other basis beyond the period for which standby compensation was contractually permissible. The Petitioner further contended that the question of suspension could arise only after the expiry of the seven-day notice period under Clause 2.2.2.2 and, therefore, no suspension could be considered before 30th January 2000. In any event, the Petitioner had expressly permitted the commencement of work by its letter dated 2nd January 2000, and load-out had actually commenced on 3rd January 2000. Accordingly, there was no suspension of work thereafter.

16. The Petitioner's contention is that the arbitral award suffers from patent inconsistency and irrationality in its assessment of standby charges for the two vessels. Although standby charges were awarded for Bhagiratha III on 3rd February 2000, despite cargo loading having commenced on that day, the Tribunal deducted US$ 12,000 per day from the claim relating to GAL Constructor for 4th and 6th February 2000, reasoning that Bhagiratha III was performing the contractual work on those dates. The Petitioner argued that these conflicting approaches to the same underlying circumstances rendered the award internally contradictory and, therefore, susceptible to challenge.

17. The Petitioner's contention was that GAL Constructor was actively engaged in contractual transportation work between 6th and 9th February 2000 while transporting the Tripod-superstructure. The transfer of cargo



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from Bhagiratha III to GAL Constructor, necessitated by adverse weather conditions and safety considerations, fell within the Respondent's responsibilities under Clauses 2.1 and 2.3.2.2 of the Contract. Accordingly, the Petitioner argued that, since GAL Constructor was performing contractual obligations during the relevant period, the Respondent was not entitled to claim standby charges for those days.

18. The Petitioner further submits that, according to the Respondent's own case, the transportation time from Bhagiratha III to the NG Flare Platform ordinarily took approximately 30 hours. Accordingly, at least 30 hours (equivalent to approximately 1½ days) ought to have been excluded from the standby charges claimed in respect of GAL Constructor, over and above the time attributable to the diversion via Mumbai.

19. The Petitioner argued that the Tribunal had incorrectly reduced the standby charges attributable to Bhagiratha III instead of those attributable to GAL Constructor, the vessel allegedly in actual use. Since the applicable daily standby rates differed significantly US$ 87,500 for GAL Constructor and US$ 12,000 for Bhagiratha III—the Petitioner contended that the Tribunal's approach was inconsistent with the factual circumstances and resulted in an erroneous assessment of the claim.



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20. The Petitioner's Counsel relied on the Respondent's letter dated 31st January 2000, which stated that the vessel was scheduled to arrive at the shipyard on 2nd February 2000 and that load-out would commence on 3rd February 2000, coinciding with the high tide. The Petitioner contended that the Tribunal had improperly disregarded this contemporaneous admission and instead relied on general observations based on its own experience, particularly the observation in paragraph 47 of the award that tide conditions did not necessarily make load-out impossible. It was further argued that the Tribunal failed to distinguish between the water depth required for an empty vessel to enter the shipyard and that required for a vessel carrying cargo, whose increased weight would result in a greater draft and potentially affect the feasibility of load-out.

21. The learned Counsel for the Petitioner submis that neither Bhagiratha III nor GAL Constructor was available at the NG Flare Platform on 7th February 2000. Instead, the Respondent had informed the Petitioner that Malviya V would transport the cargo following clearance and that the vessel reached the site only at 11:30 hours on that date. Since transportation of the cargo to the worksite formed part of the contractual scope of work, the time spent transporting the vessel to the site could not be treated as standby time. The Petitioner contended that, although the Tribunal's observations in



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paragraph 86 supported this position, it had failed to deduct the corresponding standby charges. Accordingly, the award of standby charges for 7th February 2000, when none of the Respondent's vessels were available at the site, was contrary to the terms of the Contract and demonstrated irrationality and perversity in the Tribunal's award.

22. In addition, the award is also challenged on the grounds as noted below :

(a) The Arbitral Tribunal has erred in awarding USD 11,34,500 together with interest thereon @ 9% per annum from the date of present Award and also erred in directing the Petitioner to pay to the Respondent a sum of Rs. 10,00,000 by way of cost of arbitration proceedings.

(b) The Arbitral Tribunal has disregarded the terms of the contract leading to a jurisdictional error which is ultimately required to be decided by this Court U/s 34 of Arbitration and Conciliation Act, 1996.

(c) The Award passed by the Ld Arbitrators is based on the project key dates / construction schedule annexed to the Agreement. However, the Ld Arbitrators have failed to appreciate that firstly, the Respondent themselves had slippages from the project key dates / construction schedule and thus the project key dates / construction schedule as annexed to the Agreement could not be strictly relied on.



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(d) The Agreement Clause 2.3.4.1 dealing with mutual agreement / approval project key dates itself mandated that approval by company's representatives of a programme shall not relieve the contractor of any official duties or responsibilities under the contract. The Respondent have failed and neglected to comply with its duties as regards giving proper / requisite notice, taking proper approval etc as mandated under various clauses of the contract that is Under Clause 2.2.2.1, 2.2.3 and 2.3 and 4.1.

(e) The observations of the Arbitral Tribunal that in view of the approval of the project key dates; other requirements were not mandatory is patently perverse, the learned Arbitrators have clearly out stepped the contractual terms which are creatures of the Contract.

(f) In the absence of due and proper compliance of above requirements, which are duly spelt out in the Contract, any shutdown by ONGC (based merely on Project key dates etc.) is not only unwarranted, but is fraught with huge risk of the country suffering production loss of precious oil and gas as well as monetary loss.

(g) The Arbitral Tribunal ought to have appreciated that neither Bhagiratha III nor Marine Spread nor GAL Constructor was actually on standby and the claim for damages as per the stand by rate is contrary to the settled law for breach of contract and also contrary to the terms of the contract.

(h) That the day rate as defined in the contract clause 1.1.1.6 is applicable for each item actually deployed and that



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compensation per spread is subject to the maximum limit of day rate is compensation is subject to this maximum limit, but not day rate by itself. The Arbitral Tribunal could not have awarded a blanket rate of compensation at the maximum day rate.

(i) That the Mobilisation of Marine Spread is defined in Clause 1.1.26 to mean and include performance by the contractor of all things necessary (a) for the spread fully to be ready to execute work (b) at the site (c) satisfaction of work perquisites stipulated in the contract. The Arbitral Tribunal has failed to consider that in the absence of all the above conditions, the Marine Spread cannot be said to have been mobilized.

(j) Bhagiratha - III was actually deployed for (load out) of the tripod structure from 03.02.2000 onwards. On 06th February, 2000 the Tripod structure was transferred from Bhagiratha-III to GAL Constructor. The said facts are admitted by the Respondent. Thereafter, the work of transportation was carried out by the GAL Constructor and Bhagiratha-III was not at all employed by the Respondent under this Contract. Thus, under no circumstances could any standby rates be granted for Bhagiratha-III for the period from 03-02-2000 to 10-02- 2000. Despite the above, the Arbitral Tribunal has excluded the rental for Bhagiratha III only for period only from 3rd February 2000 to 6th February 2000.

(k) That the learned Tribunal failed to appreciate that the Installation Barge GAL Constructor was actually brought to



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use from 06.02.2000 and the said facts were admitted by the Respondent in statement of claim in para 22 that cargo was loaded on to GAL Constructor on 06.02.2000. Further, the Log Books for GAL Constructor also clearly reflects the cargo was loaded on 06.02.2000. The use of GAL Constructor for transportation purpose was at the Respondent own volition and neither as per the requirement or as per the Contract nor as per the terms of the Petitioner. In fact, for change of transportation of barge, the Respondent were obliged to take the Petitioner; prior approval, which they never sought. However, in any case, since the Respondent themselves used GAL Constructor for the purpose of the Contract actually from 06-02-2000 onwards, there was no way in which the Respondent could claim standby charges for the same. The Arbitral Tribunal have committed an obvious error by ignoring the admitted position and awarding standby for the said period.

(l) The Arbitral Tribunal, however, while accepting final position as mentioned above, have deducted only a sum of US$ 12,000 per day, whereas, the mobilization day rate for Marine Spread for GAL Constructor was US$ 87,500 per day.

(m) The Arbitral Tribunal having observed that the shutdown operations began on 08-02-2000, as it required 48 hours and that the shutdown achieved on 10-02-2000; committed a patent error in coming to the conclusion that the Respondent are entitled to standby charges for the period between 07-02-



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2000 to 10-02-2000 in complete disregard of the fact that the Security Clearance by Indian Navy for purging vessel was obtained only on 07-02-2000 and that the said vessel was arrived at site only on midnight of 07/08-02-2000.

**23**. On the foregoing grounds, learned Counsel for the Petitioner submits that the impugned award was contrary to the express terms of the Contract, disregarded mandatory notice and work-plan requirements, and awarded standby charges for periods during which work was being performed or the vessels were engaged in contractual transportation. It was further contended that the award suffered from material factual inconsistencies and a lack of adequate reasoning. Accordingly, the Petitioner submitted that the impugned award, to the extent challenged, was vitiated by patent illegality, irrationality and perversity and was liable to be set aside.

**24**. *Per contra*, the learned Counsel appearing on behalf of the Respondent, ***Mr. Akshay Patil***, submits that the claim was rightly allowed, as the Tribunal has categorically recorded a finding that the Petitioner herein was responsible for the suspension of work and the consequential delay.

**25**. The complete schedule of work had been planned well in advance. Upon completion of the construction work at the onshore site in Ratnagiri, Bhagiratha III was scheduled to transport the tripod on 25th January 2000. However, the Petitioner, for reasons best known to it, sought to delay the



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commencement of the project and communicated that it wished to commence the project on 10th March 2000. Since the construction activity at the shipyard involving Bhagiratha III had already been completed, it was difficult for the Petitioner to retain the constructed material at the port.

26. The entire activity involving Bhagiratha III had been pre-planned. Bhagiratha III was required to transport the constructed material from Ratnagiri from 25th January 2000 onwards, while GAL Constructor was scheduled to join the operation on 29th January 2000.

27. Accordingly, the claim in respect of Bhagiratha III was made for the period from 25th January to 3rd February 2000, while the claim in respect of GAL Constructor was made for the period from 29th January to 3rd February 2000, after deducting the period attributable to Bhagiratha III. Thereafter, a claim was made in respect of GAL Construction for the period from 4th February to 6th February 2000. However, the claim was allowed after deducting three days attributable to Bhagiratha III. Similarly, the claim in respect of the GAL Constructor was made for the period from 7th February to 10th February 2000, and the same was allowed after deducting 1.25 days attributable to Bhagiratha III.

28. The relevant contractual clause governing Bhagiratha III and GAL Constructor was Clause 8.2 up to 7th February 2000, whereas Clause 8.2.2.2



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applied thereafter. Clause 8.2 dealt with the suspension of load-out and offshore work, whereas Clause 8.2.2.2 related to the lay-out.

29. Having considered the rival submissions, the core questions that arise for consideration are as follows:

(i) The legal issues may be framed more clearly as follows:

(a) Whether the Tribunal erred in holding the Petitioner responsible for the suspension of work, despite the absence of any effective notice, in accordance with the contractual provisions, requiring commencement of load-out with effect from 25th January 2000?

(b) Whether the notice dated 21st January 2000, which was received by the Petitioner only on 22nd January 2000, could, at best, have required commencement of work with effect from 30th January 2000, and therefore could not have been relied upon to hold the Petitioner responsible for suspension of work from 25th January 2000?

(ii) Whether the Claimant failed to furnish the requisite work plan along with the relevant notices, thereby preventing the Petitioner from initiating the shutdown in the absence of such work plan?

(iii) Whether the learned Arbitral Tribunal erred in awarding standby charges despite the fact that the Petitioner had offered to provide a shutdown on 7th February 2000 to facilitate the execution of the work, whereas the Respondent's spread was not available at the site on the said date?

(iv) Whether the Arbitral Tribunal has erroneously awarded charges for the spread for 3rd and 10th February 2000?



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(v) Whether the Arbitral Tribunal erred in awarding charges claimed by GAL Constructor for transporting the Tripod, despite the contractual obligation requiring the Claimant to bear such charges?

30. Having considered the rival submissions, it is necessary to examine the Award. The Award records that the essence of the Claimant's case in the arbitration was that, just as it was about to complete the fabrication of the Tripod at the construction yard in Ratnagiri and commence the loading out and transportation of the Tripod to the platform site, the Petitioner/ONGC directed it to halt and suspend all further work. The Petitioner/ONGC informed the Claimant that it had decided to postpone all further work under the Claimant's Contract by more than six weeks to accommodate another contractor, Mazagon Dock Limited, which had fallen behind schedule in executing work on another project at the BHN Process Platform.

31. The Claimant contended that, as a consequence of the Petitioner/ONGC's suspension order, the schedule of the vessels engaged by it for the project was completely disrupted. Further, even after the Petitioner/ONGC revoked the suspension order approximately one week later and permitted the Claimant to resume work, access to the platform was delayed. Accordingly, the Claimant sought charges for the Spread and compensation from the Petitioner/ONGC for the period during which its



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work remained suspended and for the subsequent period during which it was denied access to the platform. In support of its claim, the Claimant relied upon Clauses 8.2.1 and 8.2.3, which dealt with suspension of work by the Company, and Clauses 2.2.2.1 and 2.2.2.2, which it invoked in relation to the denial of access to the platform.

32. The Award is made up of the following claims :

| No. | Vessel & period | Daily rate (US$) | Claimed (US$) | Less (US$) | Awarded (US$) | Clause |
|---|---|---|---|---|---|---|
| A1 | Bhagiratha III, 25 Jan to 3 Feb 2000 (10 days) | 12,000 | 120,000 | -- | 120,000 | 8.2 |
| A2 | GAL Constructor spread, net of Bhagiratha III, 29 Jan to 3 Feb 2000 (6 days) | 75,500 | 453,000 | -- | 453,000 | 8.2 |
| A3 | GAL Constructor spread, 4 to 6 Feb. 2000 (3 days) | 87,500 | 262,500 | 36,000 (deduction at the rate of Bhagiratha III for load out, fastening and transportation) | 226,500 | 8.2 |
| A4 | GAL Constructor spread 7 to Feb 2000 (4 days) | 87,500 | 350,000 | 15,000 (deduction for Bhagiratha III's rate for the normal 30-hour voyage) | 335,000 | (8.2 for 7 Feb) and (2.2.2.2 (8 to 10 Feb.) |
| | Total | | 1,185,500 | 51,000 | 1,134,500 | |

33. In its Reply, the Petitioner/ONGC raised several defences, some of which involved factual issues premised on its interpretation of the terms of



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the Contract. The Claimant led the evidence of one witness, Mr. R.N. Chaudhury, Senior Manager and Project Coordinator for the NG Flare Project. The Petitioner/ONGC, on the other hand, did not call any witnesses.

34. The Tribunal, upon analysing the evidence on record, observed that, following detailed discussions between the parties, the formal contract was executed on 18th November 1999, and a schedule setting out the key project dates was prepared. A detailed project execution plan was also drawn up, together with an elaborate schedule itemising each component of the projected activities and specifying the respective commencement and completion dates. The tripod construction work was to be carried out at the premises of M/s Bharati Shipyard Ltd., Ratnagiri.

35. On 18th January 2000, the Claimant addressed a letter to the Petitioner/ONGC, notifying it of its readiness to commence the installation work at the offshore site in accordance with the project schedule and Clause 2.2.2.1 of the contract. The notice was appropriately issued in anticipation of the commencement of the work. Subsequently, on 21st January 2000, the Claimant informed the Petitioner/ONGC that the fabrication work would be completed by 24th January 2000, in accordance with the key project dates, and that the subsequent stages, including transportation, pre-construction survey, dismantling and installation, could accordingly commence by 28th



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January 2000. The Claimant called upon the Petitioner/ONGC to take the necessary steps to make the site ready, thereby enabling the Claimant to proceed with the work and undertake the subsequent stages of execution.

36. On 24th January 2000, the Claimant again wrote to the Petitioner/ONGC, informing it that the fabrication work had been completed that day and that the tripod structure was ready for loading. The Claimant stated that the cargo was ready for loading in accordance with the agreed schedule and requested the Petitioner/ONGC to deploy its representative to be present during the loading operations.

37. On 24th January 2000, the Petitioner/ONGC informed the Claimant that the schedule for the installation activities had to be worked out in accordance with the platform shutdown schedule. The Petitioner/ONGC further stated that the installation schedule would be subject to barge interference arising from other works to be carried out under different contracts during the shutdown of the B.H.N. Complex. Accordingly, the Petitioner/ONGC convened a meeting on 27th January 2000 to discuss the rescheduling of the installation work.

38. The Claimant contended that the proposed rescheduling of the installation activities was contrary to the terms of the contract. According to the Claimant, Annexure 'D' to the contract expressly stipulated the dates for



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carrying out the installation activities, and those dates could not subsequently be altered unilaterally by the Petitioner/ONGC.

39. By another letter dated 24th January 2000, the Claimant confirmed that it would attend the meeting scheduled for that date. The Claimant also reaffirmed that it was proceeding with the mobilisation of the tug Sharda M and the cargo barge Bhagiratha III for the loadout at Bharti Shipyard, Ratnagiri, in accordance with the contractual schedule.

40. The Claimant was requested by the Petitioner to hold back the load-out of the fabricated material. **Accordingly, by letter dated 25th January 2000, the Claimant recorded that, as advised, it had stopped the mobilisation of the tug Sharda M and the cargo barge Bhagiratha III for the loadout. The said vessels were kept on standby, awaiting instructions to proceed to Ratnagiri in accordance with the revised schedule to be communicated by the Petitioner**. The Claimant also called upon the Petitioner to provide the site and all other necessary facilities to enable the Claimant to commence its work on time.

41. On 27th January 2000, the parties attended the meeting convened by the Petitioner. At the meeting, the Petitioner postponed the entire project schedule under the contract by approximately one and a half months, as another contract awarded to M/s Mazagon Dock Limited at the BHN location also required the shutdown of the platform. Since Mazagon Dock



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Limited was to decide when the platform shutdown would be required for its work, the Petitioner decided to postpone the platform shutdown required for the Claimant's project until Mazagon Dock Limited finalised its own shutdown schedule.

42. Upon consideration of the documentary material and evidence on record, the Tribunal concluded that the contract remained suspended until approximately 10th March 2000, whereas the Claimant had proceeded on the understanding that the platform would be shut down to facilitate the execution of the contractual works. The Tribunal further found that the Petitioner's order suspending the contractual works, coupled with the fact that the Claimant had substantially fulfilled the requisite conditions, resulted in the cessation of load-out operations. Accordingly, the Tribunal held that the circumstances warranted the invocation of Clause 8.2 of the Contract.

43. On 24th January 2000, it was noted that the Claimant's principal construction vessel, GAL Constructor, had been lying at Bombay Harbour since 23rd January 2000. In view of the postponement of the work on 26th January 2000, the Claimant decided to sail the vessel southwards to Ratnagiri, where it could remain stationed pending the resumption of work by the Petitioner/ONGC. This decision was taken with a view to ensuring that, upon resumption of the work, the GAL Constructor, together with the



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entire floating spread, could proceed directly to the offshore worksite.

**44**. As regards the first submission advanced by the Petitioner, it is contended that the Arbitral Award was rendered by disregarding and/or bypassing the relevant and material provisions of the contract, including Clauses 2.2.2.1, 2.2.2.3, and 2.3.3.1. For the sake of ready reference, the relevant contractual clauses are reproduced hereinbelow.:

> *" 2.2.2.1 The Company's Representative upon receipt of request from the Contractor intimating commencement of installation/construction work at offshore site shall give to the Contractor access to as much of the Site as may be necessary to enable the Contractor to commence and proceed with the construction/installation of the Works in accordance with the programme of Work in terms of Clause 2.3.4. Any reasonable proposal of the Contractor for access to Site to proceed with the construction/ installation of work in accordance with the programme of work in terms of Clause 2.3.4 will be considered and shall not be unreasonably withheld by the Company.* ***Such requests must be made to the Company's Representative in writing at least 7 days prior to start of the Work****.*
>
> ***2.2.2.2*** *If the Company falls to give access to Site in accordance with the terms of this Section, resulting in delay or expenses for the Contractor, the Contractor shall* ***subject to provision of Clause 5.19 (Diversion of Marina spread) be entitled to appropriate extension of time for completion of the Works and compensation in accordance with applicable schedule of rates****, or if no such rates are available then at the rates as may be mutually agreed.*
>
> ***2.3.3.1****.* ***The Contractor is bound to carry out, complete and maintain the works only according to the Contract provisions and Specifications****.*



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*2.3.4.1 Within twenty one days after the award of the work under this Contract or prior to kick-off meeting whichever is earlier, the Contractor shall submit to the Company for its approval a detailed programme showing the sequence, procedure and method in which he proposes to carry out the Works as stipulated in the Contract and shall, whenever reasonably required by the Company's Representative or the Engineer's Representative furnish in writing the arrangement and methods proposed to be made for carrying out the Works. The programme so submitted by the Contractor shall conform to the duties and periods specified in the Contract. The Company and the Contractor shall discuss and agree upon the Work procedures to be followed for effective execution of the Works. The Constructional Plant and Equipment and Temporary Works which the Contractor intends to deploy shall be clearly specified. Approval by the Company's Representative of a programme shall not relieve the Contractor of any of his duties or responsibilities under the Contract.*

The relevant contractual provision relied upon by the Claimant in support of its claim for compensation for the period during which the work remained suspended was Clause 8.2, the relevant portions of which are reproduced below:

*8.2.1 The Company may by notice in writing to the Contractor order the contractor to suspend performance of all Works or part of the Works under the Contract. Such notice shall specify all Works or part of the Works of which performance is to be suspended, its effective date and the reasons therefore. The Contractor shall thereupon suspend performance of such Works or part of the Works until ordered in writing to resume such performance by Company.*

*8.2.3 For the purpose of calculating costs incurred by the Contractor during the suspension of Work as mentioned above, day rate or rental rate schedules specified in the Contract shall be applied and details of the Contractor's spread affected by such suspension pursuant to this clause be recorded and submitted to the Company.".*



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45. Annexure ‘D’ pertains to the construction schedule. It is respectfully submitted on behalf of the Petitioner that Annexure ‘D’ has not been comprehensively considered in conjunction with Clauses 2.2.2.3 and 2.3.4 of the Agreement. Accordingly, Annexure ‘D’ cannot be construed as constituting a waiver, whether express or implied, of the rights and entitlements available to the Petitioner under the aforesaid clauses.

46. The Petitioner's above submission, to the effect that the Award disregards the relevant clauses of the Contract relating to notice, cannot be accepted. In this regard, it is pertinent to note that, upon consideration of the evidence, the Tribunal specifically observed that the load-out of Bhagiratha III was scheduled to commence on 25th January 2000, in terms of Annexure ‘D’; however, the same was put on hold by ONGC.

47. The Tribunal further observed that the Claimant had been awarded the tender and that a kick-off meeting was held between the representatives of both parties on 1st November 1999. At the said meeting, a detailed execution plan was submitted, setting out an elaborate schedule itemising each component and the activities to be undertaken in respect thereof. The Petitioner accepted the said schedule, which was thereafter incorporated into the Project Key Dates forming part of the formal contract executed on 18th November 1999.



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48. The Tribunal also took note of the communications dated 18th January 2000 and 21st January 2000, whereby the Claimant informed the Respondent that the fabrication work would be completed by 24th January 2000 and that the subsequent stage of installation would accordingly commence on 28th January 2000. However, on 24th January 2000 itself, the Petitioner informed the Claimant that the installation schedule would have to be worked out in accordance with the platform shutdown schedule. It was further stipulated that the schedule would be subject to the barge interface requirements arising from other works to be undertaken during the shutdown of the BHN Complex under separate contracts.

49. Upon an assessment of the evidence on record, the Tribunal observed that the meeting convened by the Petitioner on 27th January 2000 was not intended to discuss the schedule as such, but rather to defer the work programme by approximately one and a half months. This postponement arose on account of another contract awarded to M/s Mazagon Dock Limited in respect of works at the BHN location, which also required a shutdown of the platform. Since the timing of the shutdown was to be determined by Mazagon Dock Limited in accordance with its own work requirements, the Petitioner decided to postpone the platform shutdown required for the Project in question.



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50. Thus, the Tribunal's findings indicate that, notwithstanding the agreed execution schedule and the incorporation of the relevant milestones into the formal contract, the commencement of the subsequent stage of work was deferred on account of the platform shutdown requirements arising from other contractual works of the Petitioner. The delay, therefore, was attributable to the postponement of the platform shutdown by the Petitioner, rather than to any failure on the part of the Claimant to adhere to the agreed work programme.

51. The learned Counsel for the Petitioner did not advance any argument before this Court to the effect that the shutdown was not required on account of M/s. Mazagon Dock operating beyond schedule, or that the complete stoppage of work was not required to continue until 10th March 2000. The apparent intention for delay was merely to coordinate the shutdowns of the two works so that they could be undertaken either simultaneously or sequentially.

52. In the facts and circumstances of the case, the Tribunal observed that the Petitioner's order to defer the work amounted to a suspension of work under the Contract. A written communication to this effect was substantially conveyed by the Petitioner to the Claimant by its letter dated 20th January 2000. Consequently, the suspension of work had already been



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communicated, and the position concerning 24th and 25th January 2000 stood confirmed by the Petitioner/ONGC's project records (evidence of witness). Accordingly, Clause 8.2 of the Contract was attracted.

53. The aforesaid findings of the Tribunal are based on the documentary and oral evidence available on record. The Petitioner had not led any evidence on its behalf. In these circumstances, the contention that the other clauses of the contract ought to have been taken into consideration is devoid of merit, particularly when the Petitioners themselves had sought to postpone the entire work until 10th March 2000. It was due to subsequent intervening circumstances, namely, the legal notice issued by Bharati Shipyard requiring the removal of the construction Tripod, that the Petitioner was compelled to grant shut down of the NG Flare Platform to commence its work.

54. The Tribunal, while considering the defence, has arrived at a clear finding that the work was suspended by the Petitioner. Accordingly, under Clause 8.2 of the Contract, being the relevant charging provision, the Claimants were held entitled to the reliefs claimed.

55. The Tribunal's finding, based on the evidence on record, is that the suspension of work was attributable to the Petitioner immediately prior to the scheduled load-out. The Petitioner appears to have attempted to schedule



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the shutdown at a time of its own choosing, with a view to avoiding potential losses. Consequently, the Tribunal held the Claimants entitled to the reliefs arising from the suspension of work, including the applicable standby charges standby charges would be dealt later in this Judgment.

**56.** Similarly, the Petitioner cannot raise any grievance regarding the non-submission of the work plan, since the work plan was already in force in terms of Annexure 'D', and the Claimants were ready to sail out on 25th January 2000. It was the ONGC's letter dated 24th January 2000 that stipulated that the work was required to be carried out in accordance with the shutdown schedule, owing to other works being undertaken pursuant to separate contracts. This aspect is of considerable significance and warrants particular attention. The relevant portion of the letter dated 24th January 2000 is reproduced below:

> "*1) This has reference to GESCO's letter No: GESCO/PRJT/NG/132, dt. 21.01.2000 & our letter No. MRBC/E&C/NG Flare/04/99/55 dt. 20.01.2000.*
>
> *2) Please note that, since the installation activities of the subject project are required to be carried out under platform shutdown, the schedule for the installation activities has to be worked out according to the platform shutdown schedule. Further the Barge interface due to other works to be carried out during the shutdown on BHN Complex under different contracts is also to be considered.*
> *3)* ***As such, offshore installation preceded by load out, transportation etc. for the subject project may be scheduled***



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*keeping in view the platform shutdown schedule and the barge interface amongst different projects to keep the shutdown period to the minimum possible.*

*4) To discuss the above it is proposed to hold a meeting between ONGC/EIL & GESCO on 27.01.2000 at 1500 Hrs. at Maker Towers.*

*5) In the meantime Company has already convened a meeting on 24.01.2000 at 2.30 PM where all the Installation Contractors of the concurrent projects have been invited to discuss barge interface issues.*"

In the meeting held on 27th January 2000, ONGC had deferred the work schedule till 10th March 2000. However, on account of Bharati Ship Yard directions (Shipyard chosen by ONGC), that the Claimant was forced to remove the Tripod and the Petitioner was forced to give shutdown, which it has given on 10th February 2000, resulting in commencing of work on 11th February 2000.

57. It is also submitted that permission to commence the work was granted by the Petitioner's letter dated 2nd January 2000, and the load-out operations actually commenced on 3rd January 2000. Therefore, there was no suspension of work after 3rd January 2000.

58. It is further submitted that the GAL Constructor arrived at 11:30 p.m. on 9th February 2000 and came alongside the NG Flare Platform on 10th February 2000. The shutdown was also provided on 10th February 2000. In



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these circumstances, the award of standby charges for 10th February 2000 is equally unjustified and demonstrates a failure to properly appreciate the relevant facts and circumstances. The Petitioner, therefore, has submitted that the award of standby charges for the aforesaid period is irrational, perverse and unsustainable in law.

59. The reasoning adopted by the Tribunal is that Bhagiratha III could have commenced the load-out operations on 25th anuary 2000. An appropriate deduction has been made by the Tribunal in respect of Bhagiratha III for the load-out operations. The rates applicable to Bhagiratha III were deducted for the period from 4th February 2000 to 6th February 2000, during which Bhagiratha III was engaged in load-out activities. There is evidence no record to establish that Bhagiratha III was working on 3rd February 2000. This finding is purely based on evidence.

60. As regards the Bhagiratha III, payment ought not to have been made for 3rd February 2000. The ONGC's own submissions before the Tribunal were confined to the period from 4 to 6 February 2000, and the Tribunal accepted those submissions. The Tribunal has considered the material on record in detail. In the absence of evidence led by the Petitioner on this aspect, this Court cannot return independent findings or undertake a reassessment of the evidence.



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61. The period from 8th February 2000 to 10th February 2000 requires separate consideration. Although the suspension period ended on 7th February 2000, ONGC denied access to the work site during the period from 8th February 2000 to 10th February 2000 by failing to shut down its operations at the NG Platforms. Consequently, GAL Constructor sailed from Ratnagiri to Bombay, as the shutdown had not yet commenced. The shutdown took place only on 10th February 2000. Accordingly, the work could commence only on 11th February 2000 and was completed on 22nd February 2000. This position is also borne out by the averments contained in paragraph 17 of the Reply to the Statement of Claim filed by the Petitioner, wherein it is acknowledged that the work effectively commenced on 11th February 2000 and was completed on 22nd February 2000.

62. The next submission of the Petitioner is that the findings are contrary to the admitted factual position, as evidenced by the Respondent's own letter dated 31st January 2000, which states that the vessel would arrive at the Shipyard on 2nd February 2000 and that the 'load-out' would commence on 3rd February 2000, coinciding with high tide. However, this contention has been rejected on the ground that there is no evidence to establish that the load-out could not have taken place on the preceding or succeeding days. The Petitioner's contention regarding the tidal conditions for Bhagiratha III



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has also been specifically rejected for want of evidence. Further, the Petitioner has contended that, on 7th February 2000, neither Bhagiratha III nor GAL Constructor was available at the NG Flare Platform. This contention, too, has been rejected on the ground that there was no shutdown of the NG Flare Platform.

63. As regards the NG shutdown on 10th February 2000, the issue is again one of appreciation of evidence. The Tribunal has observed that the work commenced on 11th February 2000, following the shutdown on 10th February 2000.

64. The Tribunal rejected ONGC's contention that entitlement to standby charges was conditional upon the vessel remaining physically present at the work site throughout the relevant period. It held that the contract contained no such requirement and that the relevant factual finding established that the Spread remained available and was deployed for commencement of operations immediately upon completion of the shutdown. Accordingly, physical presence at the work site throughout the standby period was not a contractual prerequisite for payment of standby charges.

65. Clause 8.2.3 provides for payment for the period affected by suspension, while Clause 2.2.2.2 provides for compensation for delays or expenses arising from the failure to provide access to the work site. It is



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material to note that the vessels had been committed to the Project and were not required to remain physically present at the work site at all times. Since ONGC had withheld the work, there was no reason for the Claimant to mobilise the vessels to the site. The fact that the vessels remained at the shore did not alter their status, as they had been reserved for the contractual work, remained available for deployment, and were on standby. Their physical location, in these circumstances, made no material difference to the Claimant's entitlement to standby charges.

66. Both Bhagiratha III and GAL Constructor were available to the Claimant for the performance of the contractual work. It is also relevant that GAL Constructor had left the work site more than a day before the shutdown imposed by ONGC.

67. As regards the period from 6th February 2000 to 10th February 2000, it is pertinent to note that only the transportation component of the work was considered, and the applicable barge contract rates were deducted. Under the contract, the transportation of the tripod formed part of the scope of work assigned to Bhagiratha III. In contrast, GAL Constructor was engaged to remove the existing structure and install the new platform, an activity that could not commence without the requisite shutdown.



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68. During the period from 6th February 2000 to 10th February 2000, it was not possible for GAL Constructor to undertake the removal of the existing structure or the installation of the new platform, as the necessary shutdown had not been provided. The amount attributable to that transportation component of Bhagiratha III was deducted from the claim relating to the GAL Constructor spread, thereby avoiding any duplication of compensation.

69. The entire submission of the Petitioner largely pertains to the re-appreciation of evidence concerning the availability of the spread on different dates. Such re-appreciation of evidence is impermissible before this Court in proceedings under Section 34 of the Arbitration and Conciliation Act, 1996.

70. The Arbitral Tribunal, upon consideration of the documentary material and evidence on record, has recorded its findings in respect of the Petitioner's suspension of work and the closure, which took place only on 10th February 2000, thereby enabling the work to effectively commence on 11th February 2000. The other minor inconsistencies and contradictions raised by the Petitioner pertain to matters of evidence, which have been duly considered and adjudicated upon by the Tribunal against the Petitioner.

71. In view of the above, this Court finds no merit in the submissions advanced on behalf of the Petitioner that would warrant interference under



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Section 34 of the Arbitration and Conciliation Act, 1996.

72. Accordingly, Arbitration Petition No. 212 of 2013 stands dismissed.

73. With regard to Arbitration Petition No. 211 of 2013, the issue is confined to the non-grant of interest for the period prior to the date of the Award. Section 31(7) of the Arbitration and Conciliation Act, 1996, as it stood prior to the 2015 amendment, provided as follows:

> "*Section 31(7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.*
>
> *[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.*
> ***Explanation**.-- The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).]…*"

The interest component for the period prior to the date of the award was discretionary. Since the same has not been awarded, this Court finds no reason to interfere with the same.

74. No case is made out. The Arbitration Petition No. 211 of 2013 is accordingly dismissed.

BHALCHANDRA GOPAL DUSANE

(ARUN R. PEDNEKER, J.)

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