
(2012) 12 DEL CK 0335
In the Delhi High Court
Case No : O.M.P. No. 432 of 2011

Union of India

APPELLANT

Vs

Pt. Munshi Ram and Associates Pvt. Ltd.

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 12, 13, 18, 31(3), 34
Contract Act, 1872 — Section 28, 28(b)

Citation : (2013) 1 AD 801 : (2013) 4 RCR(Civil) 297

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Ajay Verma and Ms. Ananya Mitra, for the Appellant; Anusuya Salwan, Ms. Renuka Arora, Vikas Sood and Mr. Kunal Kohli, for the Respondent

Final Decision : Disposed Off

Judgement

Justice S. Muralidhar

1. The challenge in this petition u/s 34 of the Arbitration and Conciliation Act, 1996 ("Act") by the Petitioner Union of India through its Executive Engineer, Construction Division-III, Central Public Works Department ("CPWD") is to an Award dated 24th February 2011 passed by the learned sole Arbitrator in the disputes between the Petitioner and the Respondent, Pt. Munshi Ram & Associates Pvt. Ltd. arising out of the work of construction of certain Type-V quarters at R.K. Puram, New Delhi, for which an agreement was entered into. In terms of the agreement, the work was to commence on 22nd December 1995 and was to be completed within 21 months, i.e., by 21st September 1997. According to the Petitioner, as per the provisional completion certificate recorded by it, the date of completion was 30th January 2001. It is stated that since there were outstanding defects and unfinished items, the Superintending Engineer ("SE") granted extension of time ("EoT") upto 30th June 2002 for the final completion. It is stated that no separate completion certificate was issued.

2. As a result of the disputes between the parties, the Respondent invoked the

arbitration clause on 3rd January 2009. Thereafter, by an order dated 27th October 2009, in Arb. P. No. 59 of 2009, this Court appointed the learned Arbitrator. The Respondent filed 14 claims before the learned Arbitrator, out of which four, namely, Claim Nos. 3, 4, 6 and 11 were rejected.

Clause prescribing limitation for preferring claims

3. As noted in the impugned Award, the Petitioner herein raised three preliminary objection on 30th March and 7th April 2010. One of the preliminary objections was that the claims were barred by limitation under Clause 25 of the agreement. It is contended that the work was provisionally completed on 30th January 2001 and the bill for the undisputed items was finalized on 2nd March 2007 and the balance towards escalation was paid on 30th March 2007. It was submitted that since the Respondent had invoked Clause 25 of the agreement only on 3rd January 2009, i.e., 7 years and 11 months after recording of the provisional completion and 1 year and 10 months after finalisation of the bill, the invocation of the arbitration clause was well beyond 90 days as prescribed in Clause 25.

4. In rejecting the above preliminary objection by order dated 1st May 2010, the learned Arbitrator observed that in view of Section 28(b) of the Indian Contract Act, 1872 ("CA") an amendment agreement in restraint of legal proceedings contrary to the mandate of Article 137 of the Limitation Act, 1963 ("LA") would be void and any clause extinguishing the right of a party or discharging any party from its liability in respect of the contract on expiry of a specific period, so as to restrict the time period would be void. It was further observed that the arbitration clause was invoked by the Respondent on 3rd January 2009 within the statutory limitation period of three years from the alleged date of 30th March 2007. Further, it was noted that the copy of the final bill, as submitted by the Petitioner herein and disputed by the Respondent, showed that Rs. 40,000 was withheld for pending extra items and substituted items; Rs. 10,000 was withheld for pending quality control; Rs. 20,000 was withheld for pending sanction for deviation statement ALR and AHR items and Rs. 20,000 was withheld pending sanction of non-ALR and non-AHR items. Also, the final bill did not bear the signature of the Respondent. Accordingly, it was held that this could not be said to be the final bill. In fact, the Respondent had not received the final bill till 10th May 2008. Consequently, it was held that the claim was not barred by limitation. As noted in the impugned Award, the Petitioner then filed an application under Sections 12, 13 and 18 of the Act against the above order and this application was rejected by the learned Arbitrator by an order dated 23rd June 2010.

5. Mr. Ajay Verma, learned counsel for the Petitioner, submitted that the learned Arbitrator erred in observing that the time period of 90 days under Clause 25 of the CPWD Conditions of Contract was hit by Section 28 of the CA. He placed reliance on the decisions in *The Vulcan Insurance Co. Ltd. Vs. Maharaj Singh and Another*, *P. Manohar Reddy and Bros. Vs. Maharashtra Krishna Valley Dev. Corp. and Others*, *H.P. State Forest Company Ltd. Vs. United India Insurance Co. Ltd.*, and *Wild Life Institute of India, Dehradun v. Vijay Kumar Garg*, (1997) 10 SCC

6. Countering the above submissions, it is pointed out by Ms. Anusuya Salwan, learned counsel for the Respondent that the decisions in *Wild Life Institute of India, Dehradun v. Vijay Kumar Garg* and *The Vulcan Insurance Co. Ltd. v. Maharaj Singh* were rendered at the time when Section 28 of the CA had not been amended. She relied on the decisions of the learned Single Judges of this Court in *Explore Computers Pvt. Ltd. Vs. Cals Ltd. and Another*, , *Pandit Construction Company Vs. Delhi Development Authority and Another*, , *M/s Manohar Singh & Sons v. M/s. Raksha Karamchari Coop. Gr. H. Soc.* [decision dated 22nd December 2009 in CS(OS) No. 2684-A of 1998). She has also placed reliance on the decision of the Division Bench ("DB") of this Court in *M/s. Chander Kant & Co. v. The Vice Chairman, DDA* (decision dated 26th May 2009 in Arb. P. No. 246 of 2005).

7. At the outset, it requires to be noted that the legal position that existed prior to the amendment of Section 28 of the CA in 1997 was governed by the decision in *The Vulcan Insurance Co. Ltd. v. Maharaj Singh*. It was held that a clause in a contract providing for limitation for a party to lodge its claim was not invalid. A distinction was drawn between the agreements that limited the period of limitation and those that did not limit the period within which a party might enforce its rights but provided for the forfeiture or the waiver of the right if no suit was brought within the period stipulated in the agreement. It was held that the latter type of agreements was outside the scope of Section 28 of the CA and was binding between the parties. This was reiterated in *National Insurance Co. Ltd. Vs. Sujir Ganesh Nayak and Co. and another*, . It is only where an agreement curtailed the period of limitation that it was held as offending Section 28 of CA. It was this legal position that was reiterated in *Wild Life Institute of India, Dehradun v. Vijay Kumar Garg*.

8. Section 28 CA, which has been amended with effect from 8th January 1997, reads as under:

28. Agreements in restraint of legal proceedings void.- 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.

9. The change brought about by the above amendment is that it also treats as

void clauses of a contract which seek to extinguish right of any party or discharge any party from liability on the expiry of specified period so as to prevent an aggrieved party from enforcing its rights. After the enactment of the above amendment, a series of judgments were passed by the learned Single Judges of this Court holding that the distinction sought to be carved out by the earlier decisions in *The Vulcan Insurance Co. Ltd. v. Maharaj Singh*, *National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co.* and *Wild Life Institute of India, Dehradun v. Vijay Kumar Garg* did not survive. These decisions included *Hindustan Construction Company Limited v. Delhi Development Authority* 1999 (1) ArbLR 272, *Kalyan Chand Goyal Vs. Delhi Development Authority*, *Explore Computers Pvt. Ltd. v. Cals Ltd.* and *Pandit Construction Company v. Delhi Development Authority*

10. It may be noted that the decision of the learned Single Judge of this Court in *Pandit Construction Company v. Delhi Development Authority* (supra) also dealt with the issue whether the amendment would apply even where the contract was entered into prior to the date of the amendment. This was answered by holding that "though the contract may have been entered into before the amendment to the provision, starting from the preparation of the final bill everything has happened after the amended provision came into play and the amendment changing the substantive law, it would certainly apply to the contract at hand." The decision of the learned Single Judge has been upheld by the DB of this Court in *D.D.A. v. Pandit Construction Co.* [decision dated 19th April 2012 in FAO(OS) No. 382 of 2007]. It has been held that "the position post January 08, 1997 would be that Clause 25 of the General Conditions of Contract would be void." On the facts of that case, it was noted that even though the agreement was dated 30th November 1990, i.e., prior to the amendment to Section 28 of the CA, "the work lingered on till April 28, 1998. The final bill was prepared on July 05, 1999 and intimation of it be finalized sent to the respondent on March 20, 2001." Reference was made to the decision of the DB of this Court in *M/s. Chander Kant and Co. v. The Vice Chairman, DDA* (supra), which held that the law as in force when a dispute arises has to be considered and not that in force when a contract is entered into.

11. In view of the above settled position in law, as far as the present case is concerned, although the date of start of the work was 22nd December 1995, the work was actually completed on 30th January 2001. The decision in *P. Manohar Reddy & Bros. v. Maharashtra Krishna Valley Development Corporation* (supra) was dealing with the case that arose under the Arbitration Act, 1940 and did not actually discuss tissue whether the amendment to Section 28 of CA brought about the change to the legal position existing prior to the amendment. The execution of the contract in that case also appears to have been completed prior to the amendment. The decision in *Himachal Pradesh State Forest Company Limited v. United India Insurance Company Limited* (supra) appears to have proceeded on the basis that the amendment had been repealed. This is clear from para 11 of the said judgment which records that "During the resumed

hearing, the learned counsel for the appellant candidly admitted that the amendment had been made but had thereafter been repealed and the matter would, thus, have to be examined u/s 28 of the Contract Act, as originally placed." In fact, there has been no repeal of the amendment. It was wrongly informed by learned counsel for the Appellant in that case that the amendment to Section 28 of the CA stood repealed. Consequently, the law, as explained by the DBs of this Court in M/s. Chander Kant & Co. v. The Vice Chairman, DDA and D.D.A. v. Pandit Construction Company would hold good.

12. For the aforementioned reasons, this Court upholds the view taken by the learned Arbitrator in the order dated 1st May 2010 that Clause 25 to the extent that it extinguishes the rights of the Respondent to make any claims whatsoever if not made in the prescribed period would be hit by Section 28 CA and, therefore, the claims were not barred by limitation.

13. Even otherwise, this Court finds that the reliance placed by the Petitioner on the purported date of completion to be the starting point of limitation is impermissible. The final bill was, in fact, paid only on 12th March 2007 and as has been pointed out by the learned Arbitrator, there were many deductions made which gave rise to the disputes. Consequently, the invocation of the arbitration clause by the Respondent on 3rd January 2009 cannot be said to be time-barred.

Malafides

14. It is next submitted that the impugned Award was an example of "blatant profiteering by the contractor from the arbitration" and that the claims have been "decided by the arbitrator in a wholly mala fide manner." The above submission is countered by the Respondent by pointing out that the Petitioner, in fact, accepted the impugned Award in part in respect of Claim 1 Part 1(B) for a sum of Rs. 11,049.57, Claim 1 Part 1(e) for Rs. 2,30,210 and Claim No. 8 for Rs. 2,44,181 and has even made payment for Rs. 4,85,441 on 30th September 2011.

15. As far as the submission that the impugned Award is passed mala fide is concerned, this Court finds that this is a bald allegation which is vague and unsubstantiated. If indeed a part of the impugned Award has been accepted by the Petitioner, it is not understood how it can assail the impugned Award as being an incident of profiteering by the Contractor. Also, out of the sum of Rs. 2,53,41,400 that has been granted to the Respondent by the impugned Award, a sum of Rs. 1,34,74,942, in fact, pertained to the final bill. The material supplied was, in fact, paid for by the Respondent. Therefore, merely because the amount awarded in the impugned Award is higher than the tendered amount cannot, by itself, make the impugned Award opposed to the public policy of India warranting interference u/s 34 of the Act. What requires to be examined is whether on the basis of the evidence on record, the impugned Award of the learned Arbitrator suffers from any patent illegality on any of the grounds u/s 34 of the Act.

Delay in completion of the work

16. It is next contended by Mr. Verma that the finding of the learned Arbitrator that the entire delay in completion of the work was attributable to the Petitioner was without reasons and, therefore, hit by Section 31(3) of the Act. Ms. Salwan contends in reply that the above criticism is not justified as the learned Arbitrator has, in fact, referred to the reasons given by the Respondent in its application for EoT and thereafter, set out his conclusion in para 5.4 of the impugned Award.

17. A perusal of the impugned Award shows that the learned Arbitrator has set out in para 5.2 the version of the Respondent (the Claimant in the arbitral proceedings) as to the reasons for the delay in the completion of the work. Thereafter, in para 5.3, he has set out the reasons given by the Petitioner (the Respondent in the arbitral proceedings) for the delay in the completion of the work. Thereafter, in para 5.4, the learned Arbitrator has held as under:

5.4 After study of all documents on record, reasons given in application for extension of time etc., I find that the work was delayed due to obstructions at site, change of design of foundation, failure to issue drawings and decisions in time for planning & execution and due to various other reasons as stated by claimant. The entire delay has been fully due to failure on part of respondent to perform contractual obligations on their part. This has resulted in extra expenditure on equipments, plants & machinery, staff, overhead expenses etc. Claimant are entitled to compensation for expenditures.

18. Although at first blush it appears that the above para only sets out the conclusion of the learned Arbitrator and not the reasons, on a careful perusal it shows that the learned Arbitrator adverted to the reasons "given in application of extension of time."

19. On 13th June 2002 the Respondent wrote a letter to the Petitioner requesting for EoT. This letter, along with the photocopy of the hindrance register, has been placed on the arbitral record and is marked as Exhibit C-244. There has been no denial of the fact that EoT was granted without levy of compensation upto 30th June 2002. The hindrance register entries show that the delays were clearly attributable to the Petitioner. It was sought to be contended by the learned counsel for the Petitioner that the above hindrance register or the letter granting EoT was not traceable in the records of the Petitioner. However, this Court is unable to accept this plea at the present stage. With Exhibit C-244, being the application by the Respondent for EoT enclosing the copies of the hindrance register, forming part of the arbitral record the Petitioner ought to have raised such an objection before the learned Arbitrator. No such protest appears to have been made by the Petitioner. It is too late in the day for the Petitioner to deny the above exhibit and what it constitutes. The reasons given in the above letter were what weighed with the learned Arbitrator in coming to the conclusion in para 5.4 of the impugned Award that the delay had been entirely due to the failure on the part of the Petitioner to perform its contractual obligations. It cannot be, therefore, said that the said conclusion was not based on any reasons as contemplated by Section 31(3) of the Act.

Claim No. 1

20. Claim No. 1 was for a sum of Rs. 7,50,54,582 for balance payment for the work done as per the final bill. Mr. Verma confined his submissions to Part C relating to "market rate for deviated quantity" and Part D being "extra items less paid in final bill."

21. The case of the Respondent was that the quantities of various items in the agreement had increased far beyond the deviation limit of 25% due to inflation. It was submitted that the depth of the foundation had increased from 1.5 mtrs. to 8.5 mtrs. and, therefore, the market rates were payable under Clause 12 A of the agreement. It is submitted by the Respondent that it wrote several letters to the Petitioner stating that it would be able to carry out the extra work only at the market rates and that no reply was received to those letters. Consequently, the Respondent proceeded on the footing that its demand for market rates for the extra work was accepted by the Petitioner. The case of the Petitioner, on the other hand, was that in terms of Clause 12 of the agreement, the market rates were not payable for the extra work and Clause 12 A did not have any application at all.

22. The learned Arbitrator noted the above submissions and also discussed the clauses of the agreement. The learned Arbitrator then awarded a sum of Rs. 94,34,995 for the dues payable between the market rates and the agreement rates, both for the foundation work as well as the superstructure work.

23. The relevant Clause 12 of the agreement in this regard reads as under:

CLAUSE 12. The Engineer-in-Charge shall have power to make any alterations in omissions from additions to or substitutions for the original specifications, drawings, designs and instructions, that may appear to him to be necessary during the progress of the work and the contractor shall carry out the work in accordance with any instructions which may be given to him in writing signed by the Engineer-in-Charge, and such alterations, omission, additions or substitutions shall not invalidate the contract and any altered, additional or substituted work which the contractor may be directed to do in the manner above specified as part of the work shall be carried out by the contractor on the same conditions in all respects on which he agreed to do the main work. The time for the completion of the work shall be extended in the proportion that the altered, additional or substituted work bears to the original contract work, and the certificate of the engineer-in-charge shall be conclusive as to such proportion. Over and above this a further period to the extent of 25 per cent or such extensions shall be allowed to the contractor. The rates for such additional altered or substituted work under this clause shall be worked out in accordance with the following provisions in their respective order:

(i) If the rates for the additional, altered or substituted work are specified in the contract for the work, the contractor is bound to carry out the additional, altered or substituted work at the same rates as are specified in the contract for the

work.

(ii) If the rates for the additional, altered or substituted work are not specifically provided in the contract for the work, the such rates will be derived from the rates for a similar class of work as are specified in the contract for the work.

(iii) If the altered, additional or substituted work includes any work for which no rate is specified in the contract for the work and cannot be derived from the similar class of work in the contract, then such work shall be carried out at the rates entered in C.P.W.D. Delhi schedule of rates 1993. with correct slip no. one.. minus/plus percentage which the total tendered amount bears to the estimated cost of the entire component work put to tender.

(iv) If the rates for the altered, additional or substituted work cannot be determined in the manner specified in the sub-clauses (i) to (iii) above, then the rates for such work shall be worked out on the basis of the concerned Schedule of Rates of the District specified above minus/plus the percentage which the total tendered amount bears to the estimated cost of the entire component work put to tender. Provided always that if the rate for a particular part or parts of the item is not in the Schedule of Rates, the rates for such part or parts will be determined by the Engineer-in-Charge on the basis of the prevailing market rates when the work was done.

(v) If the rates for the altered, additional or substituted work cannot be determined in the manner specified in sub-clauses (i) to (iv) above, then the contractor shall within 7 days of the date of receipt of order to carry out the work, inform the engineer-in-Charge of the rate which it is his intension to charge for such class of work supported by analysis of the rate or rates claimed and the Engineer-in-Charge shall determine the rate or rates on the basis of prevailing market rates, and pay the contractor accordingly. However, the Engineer-in-Charge, by notice in writing, will be at liberty to cancel his order to carry out such class of work and arrange to carry it out in such manner as he may consider advisable. But under no circumstances, the contractor shall suspend the work on the plea of non-settlement of rates of items, falling under this clause.

(vi) Except in case of items relating to foundations, provision contained in sub-clauses (i) to (v) above shall not apply to contract or substituted items as individually exceed the percentage set out in the tender documents (referred to herein below as deviation limit), subject to the following restrictions.

a) The deviation limit referred to above is the net effect (algebraical sum) of all additions and deductions ordered on all items.

b) Extra items and foundation work shall not exceed the Deviation limits.

....

For the purpose of operation of clause 12 (vi) the following works shall be treated

as work relating to foundations:

(a) For buildings, compound wall plinth level or 1.2 metres (4 ft.) above ground level whichever is lower, excluding items of flooring and D.P.C. but including base concrete below the floors.

??.

(f) For open storm water drains, all items of work except lining of drains.

The rate of any such work except the items relating to foundations which is in excess of the deviation limit shall be determined in excess of the deviation limit shall be determined in accordance with the provisions contained in Clause 12 A.

24. The work of foundation is, therefore, not governed by Clause 12 A. The reference to the said clause in the impugned Award, while discussing this claim, does not affect the validity as such of the impugned Award.

25. The learned Arbitrator has calculated the sub-items of foundation where the deviation was more than 25%. There were 6 such sub-items and by working out the difference between the market rate and the agreement rate, the total amount payable in respect of the extra work for foundation was calculated as Rs. 21,08,789.45. Mr. Verma sought to rely on Annexure P-10 to the petition to show the basis on which the payment was made in the final bill. What the Petitioner has sought to do is to total up all the items constituting the foundation work and by aggregating all such items, both as regards the quantity as well as the rate, has determined the deviation percentage as 7.47%. This was sought to be explained to the Court by referring to Clause 12(vi)(a) which states that the deviation limit is the net effect "of all additions and deductions ordered on all items." However, the Petitioner overlooks the main Clause 12(vi) which starts with the words "except in case of items relating to foundations". Clearly, therefore, Clause 12(vi)(a) cannot apply to the foundation work and, therefore, the deviation is not to be determined by totaling the additions and deductions on all items.

26. There is no dispute on the actual quantity executed in respect of the 6 sub-items of the deviation where the deviation took place. These are Sub-Items 1.1 relating to earth work in excavation over areas, 1.3 (filling available earth), 1.4 (extra for additional lift), 2.1.1 (providing/fixing c.c 1:5:10 in footings), 3.1.1 and 3.1.2 (RCC in rafts, footings etc.). The learned Arbitrator has actually not granted the market rate but has correctly observed that the deviation percentage was well above 25%. It was, in fact, 549%. Accordingly, in the impugned Award he accepted the increase in the cost of foundation to Rs. 35,63,685. This Court has been shown the basis on which the learned Arbitrator arrived at the above figure. In the impugned Award, the learned Arbitrator has given the methodology for arriving at the rate. He has explained that they were "mainly based on Labour coefficient as per Delhi Analysis of Rates for CPWD, rates for Labour as per Muster Rolls paid by claimant, cement & steel at issue rates stipulated in the

agreement, other material at market rates assesses as reasonable and profit at 15% on the basis of Clause 10 (cc)." The learned Arbitrator has then proceeded to allow Part C of Claim No. 1 to an extent of Rs. 94,34,995 as against the claim of Rs. 1,53,53,413.

27. This Court is not persuaded to hold that the learned Arbitrator has committed any patent illegality in coming to the above conclusion. It is based on a correct appreciation of both the facts as well as the relevant clauses of the agreement. Even as regards the differential rates for the superstructure, the reasoning contained in the impugned Award cannot be

28. Mr. Verma next submitted that under Part D, the learned Arbitrator erred in allowing a sum of Rs. 17,18,159 for extra items less paid in final bill. The differential rate given in the column, as explained by the charts produced by the Respondent, is marked as Exhibit C-218. The learned Arbitrator allowed the payment of extra items applying Delhi Schedule of Rates, 1993 ("DSR") in respect of 5 sub-items. He adopted the rates indicated by the Department itself in the running bills in respect of 5 others. There is sufficient explanation available on record which has been referred to by the learned Arbitrator. For the above reasons, the objection as regards the impugned Award in respect of Parts C and D of Claim No. 1 is hereby rejected.

Rebate

29. The next issue concerns the grant of rebate. It was found that the Petitioner had deducted a total of 4 rebates of 3.80% in the interim and the final bills despite repeated protest by the Respondent. The unconditional rebate of 1.80% was held limited to the tender amount before rebate (Rs. 6,41,59,006 which worked out to Rs. 11,54,862). It was observed by the learned Arbitrator that the following 3 rebates could be availed of by the Petitioner only upon fulfilling the conditions indicated in the agreement:

(ii) 1% (one percent) on the tendered amount for monthly payment which shall be made if the net value of work done since previous bill is not less than Rs. 8.00 lacs (eight lacs only).

(iii) 0.50% (zero point five zero) on the tendered amount if the final bill for undisputed items is paid within six months from date of completion of work as recorded by Engineer in charge.

(iv) 0.50% (zero point five zero percent) on the tendered amount for releasing of security deposit after six months of expiry of completion dates but before seven months.

30. The learned Arbitrator has categorically found that as a matter of fact the Petitioner herein failed to fulfill the conditions for availing the above rebates. It was held that only the recovery of the unconditional rebate of 1.80% in the sum of Rs. 11,54,862 was justified. Accordingly, the balance amount was asked to be paid.

31. Mr. Verma submitted that the calculation of the rebate was erroneous as it ought not to have been on the tendered amount but on the gross amount. He referred to the letter dated 12th December 1995 written by the CPWD to the Contractor which stated, inter alia, that "all the four rebates as above totaling to 3.80 (three point eight zero percent) offered by you shall be applicable on the gross amount of the bill excluding the additional altered and substituted items payable under clause 12 of the agreement and shall be recovered individually from each running account bill and final bill."

32. It is seen that the above letter dated 12th December 1995 was in response to a letter dated 24th November 1995 written by the Respondent by which it accepted all the conditions of that letter. The said letter clearly stated that the Respondent was offering the unconditional rebate of 1.80% and the further rebates of 1%, 0.50% and 0.50% on "our tendered rates." The expression that the rebate in the rates "shall be applicable on the gross value of the work done" did not mean that they had to be calculated with reference to the gross value. It only meant that the rebates, as calculated on the tendered amount, would be deducted from the gross value of the work as indicated in the bills. It is also seen that it is only at the stage of the final bill that the deductions were said to be made by hand on the rebate amounts. There is no basis for such deductions. The learned Arbitrator, therefore, rightly decided the issue of rebate in favour of the Respondent.

33. As regards the machinery and T&P, the learned Arbitrator has given cogent reasons for assessing the rental value for a period of 22.3 months at Rs. 1,40,000 per month which was actually far less than the DSR. For the remaining period up to 30th January 2001, i.e., 18 months, it was assessed at Rs. 80,000 per month. The above determination can hardly be said to be suffering from any patent illegality. Likewise, as far as staff is concerned, he assessed it for 40 months at Rs. 43,000 per month.

34. This was a satisfactory method of disposing of Claims 2 and 5 and cannot be faulted.

Loss of Profit

35. It is sought to be contended that the loss of profit at best could be 10% of the total value of the work and not 15%. The learned Arbitrator has, in fact, not adopted a uniform rate of 15%. For instance, the overhead expenditure was assessed at 3%. No amount was awarded towards idle labour. Significantly, Claim No. 4 for loss due to abnormal increase in prices of materials and Claim No. 6 for loss of profitability/turnover has not been awarded. Even as regards Claim No. 8 on account of balance amount towards escalation, the learned Arbitrator has only awarded Rs. 7,13,344.

Costs

36. Under Claim No. 13, the learned Arbitrator has awarded Rs. 4,00,000

towards the cost of arbitration and further Rs. 10,000 as costs imposed on the Petitioner. Mr. Verma is right in his submission that even at the stage of seeking arbitration the Respondent had undertaken to bear the cost of arbitration. This is unable to be disputed by the Respondent. If, indeed, the Respondent undertook to bear the cost of arbitration then the impugned Award in respect of Claim No. 13 cannot be sustained. Accordingly, the impugned Award as regards Claim No. 13 is hereby set aside.

Interest

37. Finally, it was submitted that the learned Arbitrator erred in awarding the Respondent interest on interest.

38. It is seen that under para 19.0 of the impugned Award, Claim Nos. 10 and 14 have been considered together. The learned Arbitrator has calculated the total interest at Rs. 7,16,428. He has awarded simple interest @ 12% per annum on the sums awarded against Claim Nos. 1, 2, 5, 7 and 8 from 31st July 2001 to 24th February 2011 and thereafter @ 12% per annum from 1st April 2007 to 24th February 2011 against Claim No. 9. Likewise, he has computed the interest under Claim No. 12 and, therefore, the total interest amount was Rs. 2,91,07,610. However, in paras 19.5 and 20.0, while giving a summary of the Award in respect of the different claims, the learned Arbitrator has also included the interest component under Claim Nos. 10 and 14 and determined the total figure at Rs. 5,44,49,010. Post-Award interest has been asked to be paid on the interest component also. In light of the decision of the Supreme Court in State of Haryana and Others Vs. S.L. Arora and Company, the above direction of the learned Arbitrator is legally unsustainable. Although the correctness of the said decision has been referred to a larger Bench of the Supreme Court, it still holds the field. Consequently, the impugned Award to the extent it grants post-Award simple interest on the interest component already covering Claim Nos. 10 and 14 is hereby set aside.

Conclusion

Consequently, the impugned Award in respect of costs under Claim No. 13 is set aside and the Award as regards post-Award interest is clarified as being payable only on the principal awarded amount and not on the interest amount under Claim Nos. 10 and 14. The rest of the impugned Award is upheld as it is. The petition is disposed of in the above terms.