



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM) 234/2023, I.A. 12401/2023**

Reserved on : 13.07.2023

Pronounced on : 10.08.2023

IN THE MATTER OF:

GANNON DUNKERLEY AND CO LTD. Petitioner
Through: Mrs. Pooja M. Saigal, Mr. Simrat
Singh Pasay and Mr. Nipun Gupta,
Advocates.

Versus

M/S ZILLION INFRAPROJECTS PVT LTD. Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present petition has been preferred under Section 34 of the A&C Act¹ assailing the Arbitral Award dated 23.12.2022 (hereafter, 'the impugned Award') delivered by the Arbitral Tribunal comprising of a Sole Arbitrator.

FACTUAL MATRIX

2. For the ease of reference, petitioner herein shall be referred to as "Contractor" and the respondent/claimant as "Sub-contractor".

¹ The Arbitration & Conciliation Act, 1996



3. The Contractor was awarded BTG Civil and Structural Work in 1350 MW thermal power project at Sinner, Nasik, Maharashtra by M/s India Bulls Infrastructure Company Ltd. (Principal Employer)², vide a letter of award dated 05.05.2011. The contract value of the works awarded was Rs. 201.51 crores.
4. Part of the works-pertaining to steel fabrication and erection- was sub-contracted by the Contractor to the Sub-contractor under an MOU dated 02.07.2011 executed by them. One of the conditions of the MOU was that the terms and conditions of the contract between the PE and the Contractor would be applicable to the Sub-contractor in respect of portion of works sub-contracted to it.
5. Pursuant to the MOU, a letter of award dated 26.07.2011 was issued by the Contractor in favour of the Sub-contractor.
6. The PE, Contractor and the Sub-contractor also entered into a tripartite agreement dated 06.08.2011, defining the scope of work, role of each party and the relationship between them.
7. In accordance with the Clause 13 of the MoU and Clause 1 of the tripartite agreement, the Sub-Contractor, furnished an advance Bank Guarantee in favour of the PE equivalent to 5% of the contract value amounting to Rs.3,81,78,000/- from the State Bank of India, Jawahar Vyapar Bhawan, 1, Tolstoy Marg, New Delhi, in favour of the PE, for and on behalf of the Contractor.

² Principal Employer, i.e., India Bull Infrastructure Company Ltd



8. The Sub-contractor undertook the works of structural steel fabrication and erection for Mill & Bunker Bay at Unit 6-10, Phase-II, Sinner TPP, Nasik between August, 2011 to November, 2011, when it was verbally asked by the Contractor to stop the work.

9. In the meeting held on 17.11.2011 between the Contractor and Sub-contractor, the former officially informed the latter, about the foreclosure of the work at Phase II, and in its place, assigned the work of structural steel fabrication and erection for Mill & Bunker Bay at Unit 4-5, Phase I, Sinner TPP, Nasik.

10. As the Sub-contractor had to mobilise the equipment and manpower from Phase II to Phase I, the parties agreed that the additional cost incurred by the Sub-contractor, which was not part of the earlier cost estimate, would be borne by the PE on actual basis.

11. On 05.12.2011, a fresh work order relating to Phase I work was executed by the Contractor in favour of Sub-contractor. The work at Phase I commenced in December, 2011 and was carried on till June, 2012, when the Contractor again orally informed the Sub-contractor to stop the work.

12. The Sub-contractor complained that even though the Contractor had received the payments from the PE for the work carried out by it at both the sites, however, the Sub-contractor's running bills remained unpaid by the Contractor.

13. Disputes between the parties remaining unresolved, the Sub-contractor invoked the Arbitration clause. Resultantly, vide order dated



27.03.2019 passed in ARB. P. 64/2019, this Court referred the parties to the AT³ comprising of Justice Ajit Bharioke (Retd.) as the Sole Arbitrator.

14. Upon hearing the parties, the AT delivered the impugned Award on 23.12.2022. The Sub-contractor filed an application under Section 33 of the A&C Act seeking correction of errors. The application was opposed by the Contractor and was eventually rejected by the AT vide order dated 15.02.2023.

DISPUTES BEFORE THE AT

15. The Sub-contractor filed its SOC⁴ raising the following claims against the Contractor:-

S. No.	Particulars	Sub Total (INR)	Gross Total (INR)
A	Outstanding Bills Retention		
i	Respondent/Applicant-Bills Outstanding amount		3,42,02,465/-
ii	Extra Bill Material Shifting - Bill being raised Extra Bill - Excavation & Back filing - Bill being raised	7,65,780/- 1,00,406/-	8,66,186/-
iii	Retention receivable		85,06,717/-
	Total A		4,35,75,368/-
B.	CLAIM FOR IDLING OF RESOURCES AND MANPOWER		
i	Idling of T & P Idle Charges of T & P at Site		2,91,20,300/-
ii	Idling of staff labour and staff idle payment of labour and staff		47,01,029/-
iii	ESTABLISHMENT EXPENSES Administrative expenses at site	8,74,500/-	

³ Arbitral Tribunal

⁴ The Statement of Claim



	Head Office allocated Expenses	36,05,928/-	44,80,428/-
iv	INTEREST ON UNPAID DUES		
	Interest on RA-Bill amount	3,05,24,138/-	
	Interest on Retention Money	66,36,638/-	
	Interest charges on B.G.	46,15,364/-	4,17,76,140/-
v	EXPENSES INCURRED-COULD NOT BE UTILIZED Design & Drawing Labour Colony Foundation, toilet, water pipeline, Electrification, storage tank etc. cost of R. T. Room, dark room and others. Mobilization of Tools & plants Staff & Labour mobilization Pre-fabricated structure material for labour colony	20,04,358/- 24,28,486/- 30,28,757/- 7,44,500/- 35,76,246/-	
	Total	1,17,82,347/-	
	Proportionate share (Executed contract value - 8,38,14,379/ Total Contract value - Rs. 76,35,61,600/-)	12,93,321/-	1,04,89,026/-
vi	EXPENSES INCURRED FOR THE PROJECT		
	Damage & Losses of Electrodes & Points etc.	9,08,435/-	
	Demobilization of Tools and Plants	39,66,484/-	
	Demobilization of staff and worker	7,44,500/-	56,19,419/-
	Total B		9,61,86,341/-
	Additional Interest upto 31.07.2018		1,86,16,378/-
	Total Recoverable		15,83,78,088/-

16. All the claims were disputed by the Contractor through its SOD⁵. It was contended by the Contractor that the claim was time barred. The work had been suspended in the year 2012, and the raising of the claims in the year 2018 was time barred. On merits too, the claims were denied.

⁵ Statement of Defence



Following is the substance of the disputes raised by the Contractor in relation to each claim:

(i) Claim No 1: Outstanding bills and retention money. Contractor has denied its liability on the ground that the PE could not process the bills in view of the Sub-contractor's failure to join the process of reconciliation. Contractor has referred to Clause 4 of the MOU, to contend that since the Sub-contract was executed on 'back-to-back' basis with the main contract between the Contractor and PE, until the bills raised by the Sub-contractor are paid by the PE, the same don't become due for payment by the Contractor.

(ii) Claim No 2: Contractor relied on Clause 7 of the MOU to contend that the rates agreed to between the parties were firm and not subject to escalation, and as such, no claim can be made towards alleged idling of resources. In any case, it was denied that there was any idling of resources suffered by the Sub-contractor at all.

(iii) Claim No 3: This claim was denied by the Contractor on the ground that there is no provision in the MOU for such claim, besides denying the fact that any establishment expenses were actually incurred, as alleged.

(iv) Claim No 4: Claim towards interest has been disputed by the Contractor on the ground that there is no agreement between the parties for payment of interest since the same is not provisioned for in the MOU.



(v) Claim No 5: This claim is denied contending that the Bank Guarantee was furnished by the Sub-contractor in favour of the PE and thus, the Contractor was not liable for any claim in relation thereto.

(vi) Claim No 6: Contractor contended that this claim is already covered by the Claim No 2 towards idling loss and therefore can't be claimed twice as an independent claim.

(vii) Claim No 7: This claim is disputed by the Contractor on the ground that sub-contractor has failed to substantiate the alleged additional expense incurred by it, besides being beyond the provisions of the MOU.

17. In the Arbitral proceedings, parties lead oral evidence by examining their respective witnesses. While the Sub-contractor examined two witnesses, the Contractor examined only one witness.

18. The Contractor did not file any counter-claim.

THE IMUGNED AWARD

19. The AT framed the following four issues for determination: -

“i) Whether the claim filed by the claimant for any part thereof is barred by limitation?

ii) Whether the claim filed by the claimant is justified, if so, to what extent?

iii) Whether the claimant is entitled to interest, if so, to what extent?

iv). Relief.”



20. The AT has rejected all the claims of the Sub-contractor, barring Claim No 1 qua outstanding bills- which has been allowed at a reduced sum, though. The AT has found the claim to be within limitation and has rejected the Contractor's contention in this regard.

21. The AT while considering issues Nos. 2 and 3, dealt with the individual claims separately. With respect to claim No.1 relating to outstanding bills and retention receivables amounting to Rs.4,35,75,368/- it noted that a total of 18 R.A. Bills aggregating to Rs.8,77,53,598/- were raised by the Contractor upon the PE. As per the contract between the parties, only 96% of the said billed amount i.e., Rs.8,42,43,454/- was due and payable to the Claimant. Out of the said due amount, the Sub-contractor had received only a sum of Rs.4,02,80,665/- (including TDS) and thus sum of Rs.4,39,62,789/- was payable. The Contractor disputed the said calculations and contended that the Sub-contractor had submitted invoices for a total value of Rs.6,96,10,731/-. The PE made recoveries to the tune of Rs.3,00,54,381/- against the invoices and after taking into consideration the sum of Rs.4,02,80,665/- which was received by the Sub-contractor, an excess payment of Rs.35,08,745/- was made to the Sub-contractor.

22. The AT after referring to the cross-examination of C.S. Saxena, former Chairman of the Sub-contractor company, found evidence lacking relating to certification of work and quality in respect of the running bills and thus, disbelieved the amount claimed in the claim no.1. It further observed that even the Contractor, in his evidence, had failed to file a detailed statement of account, to come to a conclusion as to what amounts were due in favour of the Sub-contractor.



23. At the same time, the AT observed that in respect of RA Bill-05 dated 29.01.2016, the Sub-contractor had proved on record, a quality certificate by FQA for payments issued in a joint inspection carried by representative of PE and Contractor, a forwarding letter of the same date written by the Contractor to the PE and a tax invoice also of the same date in relation to the RA Bill-05. The AT came to the conclusion that the tax invoice mentioned the current payable amount as Rs.83,64,572.25/- and also previous balance of Rs.2,10,09,10.60, totalling to Rs.2,93,73,673.85/-, and after adjusting retention of 5%, the balance receivable by the Sub-contractor was shown as Rs.2,79,04,990.16/-. After perusing Clause 4 of the MOU and Clause 5(iii) of the letter of Award dated 05.05.2011, the AT observed that the said amount ought to have been released to the Sub-contractor after the satisfactory completion of defect liability period of 12 months from the date of completion of the work. The work was suspended in June, 2012 and never re-commenced thereafter, the defect liability period of 12 months was found to be long over. The Contractor placed no evidence on record to show any defect in design, engineering material or workmanship. Resultantly, the AT found no justification in retention of the 5% retention amount. It thus concluded that the Sub-contractor was entitled to 96% of the amount claimed in the RA Bill-05 which amounted to Rs.2,81,98,726.89. The AT rejected Contractor's contention that the Sub-contractor's entitlement to the said amount was dependent on the Contractor receiving the said amount from the PE. In this regard, AT also took note of the fact that the Contractor had nominated one Project Manager and thus took upon itself the responsibility to coordinate



between the Sub-contractor and the PE in terms of Clause 14 of the MOU. The AT further took note of the fact that the Contractor had itself initiated arbitration proceedings against the PE with respect to RA Bill-05, which were later terminated. This, in the opinion of the AT, had foreclosed the Sub-contractor's right to claim its dues from the PE and thus the Contractor was estopped from denying its liability to pay the Sub-contractor.

24. The claim Nos. 2, 3, 4, 5 and 6 were rejected.

25. Consequently, the AT entered an Award for a sum of Rs.2,81,98,726.89 alongwith interest @ 12% per annum from the date of filing of the claim till realisation.

SUBMISSIONS BEFORE THIS COURT

26. In the present proceedings, learned counsel for the Contractor submitted that the impugned Award is challenged only on the ground of perversity. It was contended that the AT did not take into account the detail ledgers of the Contractor as well as the emails including emails dated 12.11.2018 and 01.06.2019, whereby the Contractor had requested the Claimant for re-conciliation of the work executed by it. In the said emails, it was communicated to the Sub-contractor that there was deficit of 88.02 MT structural steel. Learned counsel also assailed the impugned Award by contending that, while on one hand, the AT had disbelieved the Sub-contractor's version for claim nos. 2, 3, 4, 5 & 6, it decided claim no.1, to the aforesaid extent, in favour of the Sub-contractor. On the aspect of Contractor's arbitration proceedings with the PE, it was



stated that the same resulted in a settlement on zero-zero basis and thus the Contractor had no liability to pay the Sub-contractor.

ANALYSIS & CONCLUSION

27. Before delving into the merits of the contentions raised by the Contractor, the Court deems it fit to recapitulate the scope of interference against an Award under Section 34 of the A&C Act. The law is well settled. The Court, while hearing an application under Section 34, is not expected to act as an Appellate Court and re-appreciate the evidence⁶. The conclusion of the Arbitrator which are based on no evidence or having been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality⁷.

28. With the aforesaid restrictive mandate of law, this court has examined the award, and has not found any ground available to it under Section 34 that calls for its intervention.

29. Contractor's criticism of the arbitral award for rejecting its limitation argument is misplaced. Curiously, as per the Contractor's own stand in the SOD, the claim was "pre-mature" on the ground that PE had not released the payments to the Contractor "yet", for it to be, in turn, released to the Sub-contractor. This plea is at odds with the plea of limitation. Pertinently, it is not the pleaded case of the Contractor that the bills had been rejected either by the Contractor itself or by PE, when

⁶ *PSA SICAL Terminal (P) Ltd. vs. Board of Trustee of V.O.CHIDAMBRANAR Port Trust Tuticorin and Ors.*, (2021) SCC OnLine SC 508.

⁷ *Associate Builder v. DDA reported as (2015) 3 SCC 49 and Delhi Airport Metro Express(P) Ltd. v. DMRC*, (2022) 1 SCC 131.



they were raised between December 2011 to June 2012. Furthermore, the Contractor itself has referred to letters dated 09.11.2017 and 12.12.2018 written by the PE, calling upon the Sub-contractor for reconciliation of accounts. This being so, the plea of limitation by the Contractor is not sustainable. The AT's finding on limitation is well reasoned and correct.

30. On merits, the AT has rejected all the claims, except partially admitting Claim No 1 pertaining to the outstanding bills of the Sub-contractor, to the extent competing evidence placed by the parties.

31. Contractor's objection regarding the AT's allowing payments to be made to the outstanding bills of the Sub-contractor, despite alleged lack of evidence is not made out.

32. In the SOC filed by the Sub-contractor, it claimed a sum of Rs.8,77,53,598/- towards 18 outstanding RA Bills raised by it. In response, the Contractor, in its SOD, has not denied the correctness of the amounts claimed in the RA bills, but has denied its liability on the plea that bills were not payable, since the same were pending reconciliation with the PE. There is no plea in the SOD that the bills had been rejected either by the Contractor or by the PE.

33. It is seen that despite lack of serious denial by Contractor of the sums claimed in the RA bills, except to contend that the same were still pending reconciliation with the PE, the AT did not accept the correctness of the RA bills of the Sub-contractor, as it is.

34. A perusal of the impugned Award would show that the AT recorded a finding that the Sub-contractor could not produce any



evidence that the Contractor had received payment from the PE, in relation to the RA bills raised by it. The AT goes on to note that even the Respondent has not produced any statement of account to assess the quantum of work done. The AT has found lack of evidence, in relation to the Contractor's allegation of poor quality of work executed by Sub-contractor. Importantly, there was no denial by the Contractor that the work had not been done by the Sub-contractor. Even the quantum of work claimed by the Sub-contractor has not been disputed by the Contractor, except to say that it was PE that was supposed to verify the bills raised by the Sub-contractor. No doubt, there is an allegation of failure of Sub-contractor to get reconciliation of the material supplied and losses having been suffered by the Contractor due to delays in completion of work. However, it can't be ignored that no counter claim was filed by the Contractor against Sub-contractor on this count.

35. With the aforesaid pleaded facts, the AT had to look into the evidence placed on record, to evaluate the quantum of work done by Sub-contractor. The AT refused to grant the sum of Rs 8,77,53,598/- as claimed by the Sub-contractor towards its RA bills as it is, since there was no certificate or proof of joint measurement of work produced by the Sub-contractor. The AT then relies upon a quality certificate for payments (Ex. CW1/L) that was jointly issued by Sub-contractor and the Contractor, in relation to RA Bill-05 of the Sub-contractor, which was submitted to the PE along with the Contractor's own bill (Tax Invoice) dated 29.01.2016. The certificate records that in the joint inspection, the works billed in RA Bill-05 were found in conformity with the technical specifications etc. Thus, there is no merit in Contractor's contention that



its email issued to Sub-contractor were not looked into by the AT. The certificate reads as under:

RATTANINDIA NASHIK POWER PROJECTS		QUALITY CERTIFICATE BY FQA FOR PAYMENTS	
1	Name of the Main Contractor	1	Gannon Dunkerley & Co. Ltd.
2.	Name of Contract and Period	2	BTG. Fab.& Erc.Phase-II/27 month
3.	Work order No. & Date	3	7008000001, Dt.01.8.2011
4	Area	4	BTG. Phase-II
5.	State/Work	5	Fabrication & Erection
6.	RA Bill No.	6	05
7.	Period of Bill	7	01.6.2012 to 30.6.2012
<p>It is certified that the works billed in RA BI No. 05 DL 2901-2016 has been executed and all relevant checks/inspections associated tests as per approved GP No.GDOL/FQP/IRL/02 Rev-1(Phase-II) Dated 05.09.2011 and contract Technical Specification have been carried out and results are conformity. Surveillance on all category 'C' checks have been carried out and found in conformity. Documentation and records as per approved FQA have been maintained.</p> <p>Note: Since work has been stopped by IRL, this bill consisting of unfinished items of Phase-II. Items are certified as on site condition. 10% of amount held for balance work of the job.</p> <p style="text-align: center;">Sd/- Contractors Execution Name/Sign/Date</p> <p style="text-align: center;">Sd/- RATTANINDIA EXECUTION Name/Sign/Date</p>			
Certificate by FQA			
1	Sr.No. of Certificate	RA-05	
2	Date of issue of Certificate	29/01/2016	
<p>Certified that 'A' class checks identified in FQP No.GDCL/FQP/IRL/02 R-01 (Phase-II) dated 05.9.2011 has been carried out and results are satisfactory. Surveillance on Cat-'B' checks have been carried out and found in conformity.</p> <p style="text-align: center;">Reviewed as basis of</p>			



inspection process.

Sd/-
Contractor's FQA
Name/Sign/Date

Sd/-
RATTANINDIA FQA
Name/Sign/Date

36. The Tax Invoice dated 29.01.2016 relating to RA Bill-05, for the period 01.06.2012 to 30.06.2012 shows that in the said RA Bill, besides the currently payable amount of Rs.83,64,572.25/- a sum of Rs.2,10,09,101.60/- was claimed towards previous balance.

37. AT relied upon the said joint certificate of the parties and the Contractor's own Tax Invoice, which was the best evidence available on record, to evaluate the value of work done by the Sub-contractor and the sums payable to it. The AT committed no legal error in relying upon this piece of evidence to evaluate the claim.

38. It is a settled position of law that the AT is the master of both quality and quantity of evidence that it may rely upon to evaluate claims.⁸ Since Indian Evidence Act does not apply to arbitral proceedings, it can't be insisted that the evidence produced by the parties must be tested on the rigorous rules of evidence laid down in the Indian Evidence Act. The present case is not a case of lack of evidence, as is sought to be contended by the Contractor, for the court to take notice of. The AT has relied upon the evidence placed on record by the parties, and being satisfied with the quality and quantity of evidence produced, has given its findings. There is nothing perverse in the findings. Rather, the

⁸ *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49



AT followed a judicial approach in adjudication of disputes rather than an equitable approach to balance the equities between the parties.

39. Contractor's contention that AT's reliance on quality certificate is contrary to its own finding in the impugned award that without the certification of RA bills, the same cannot be considered as payable, is not correct. There is no contradiction. The AT has refuted the claim made by the Sub-contractor and did not admit the sums claimed by it in the RA Bills, as the same were not certified. In rejecting the claim, the AT only displayed a judicial approach by not admitting a claim based on mere production of RA Bills, thereby rejecting the Sub-contractor's contention. However, while assessing competing evidence, the AT found that, whilst Sub-contractor did not produce any certificate in support of its claim of Rs.8,77,53,598/- under the RA bills, however, from the Contractor's own Tax Invoice, a sum of Rs.2,10,09,101.60 is claimed as previous balance under the previous bills that may have been raised by the Contractor. The AT chose to rely on Contractor's own invoice as evidence for evaluation of claim and awarded a lesser amount of Rs.2,79,04,990.16 after adjustment of 5% towards retention, in favour of the Sub-contractor, rather than its original claim of Rs. 8,77,53,598/-, which it could not substantiate with evidence. Pertinently, during the course of submissions in the present case, learned counsel referred to the Contractor's own notice dated 05.12.2019 issued to the PE invoking arbitration, wherein it had claimed a sum of Rs.4,34,47,586/- towards "Due against Certified Bills", as claim no.1. On query, it was answered that the same included the amount as claimed by the Sub-contractor in its RA Bill-05.



40. Contractor's sole defence in the SOD is the 'back- to-back' nature of the MOU dated 02.07.2011, executed between the Sub-contractor and Contractor with the LOA dated 05.05.2011 between Contractor and PE. It is contended by the Contractor that the bills raised by the Sub-contractor cannot be paid until the same are certified by the PE. There is no such provision in the MOU dated 02.07.2011. However, it is contended that since the MOU is a 'back-to-back' arrangement with the LOA, by virtue of Clause 5 of the LOA dated 05.05.2011, which stands incorporated by reference in the MOU dated 02.07.2011, the RA bills raised by Sub-contractor don't become payable unless certified by the EIC⁹ of the PE.

41. It is seen that the expression 'back-to-back' is freely used by the Contractor to deflect is liability on to the PE. However, 'back-to-back', in the absence of a general legal definition, would have a certain meaning and connotation. Terms of the MOU dated 02.07.2011 must be seen, as to what extent MOU between Contractor and PE has been incorporated by reference. Clause 3 of the MOU dated 02.07.2011 says that all the terms of the Main Contract shall be applicable for the execution of works by the Sub-contractor. Clause 4 uses the expression 'back-to-back' basis, to state that all the terms of the Main Contract shall apply to the MOU between Contractor and Sub-contractor. Clause 6 says that the payments received from PE shall be passed on to the Sub-contractor by the Contractor. In Clause 10, it is stated that since the MOU is executed on 'back-to-back' basis, all labour licences shall be obtained by Sub-

⁹ Engineer Incharge



contractor and all liabilities pertaining to VAT shall be that of the Sub-contractor.

42. 'Back-to-back' obligations would only mean what has been incorporated by reference from the LOA into the MOU, is applicable to the parties to the MOU. No doubt, in terms of Clause 5 of the LOA, the bills raised by the Sub-contractor are subject to the certification of the Contractor's bills by the PE, but the Contractor has not claimed that the bills had been rejected by the PE. The only defence raised was that the bills were pending reconciliation by the PE and that the claims by the Sub-contractor were therefore premature. As noted above, the Contractor itself had claimed the amount under RA Bill-05, in its own notice, invoking arbitration against the PE.

43. Pendency of the bills with the PE for certification could be a ground for Contractor to defer payments to Sub-contractor, until certification is complete. This is a mechanism to be followed in the regular course during the execution of the works. However, once the parties are in a dispute, in relation to the bills claimed by the Sub-contractor, Contractor cannot defer payments in perpetuity on the ground of the pendency of certification, when it has not otherwise disputed the correctness of the bills.

44. It is in these circumstances that the AT found it fit to rely upon the Contractor's own tax invoice, along with a quality inspection certificate submitted to the PE, to evaluate the claim of the Sub-contractor. As stated above, the AT rejected the Sub-contractor's claim in the absence of any proof submitted by it to claim the sum of Rs.8,77,53,598/-



however, the AT allowed a reduced amount relying upon the best evidence placed on record by the parties.

45. Similarly, the AT's finding regarding retention money claim of the Sub-contractor is without any judicial blemish. In terms of Clause 5(iii) of the LOA, retention amount withheld by Contractor would be returned by it, to the Sub-contractor upon the expiration of defect liability period of 12 months, after the completion of work. As per record, the work was stopped in June, 2012. There is neither any allegation nor any claim made by the Contractor that Sub-contractor had failed to rectify the defects found in its work, in the 12 months defect liability period. In the absence of any claim, Contractor cannot justify withholding of retention money that became due and payable to the Sub-contractor upon completion of defect liability period, in terms of Clause of LOA which period expired in June 2013.

46. For the foregoing reasons, there is no patent illegality found in the award in question. Consequently, the Objections raised by the Petitioner under Section 34 are not made out. The petition is dismissed alongwith pending application(s).

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 10, 2023

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