2026:DHC:6885-DB

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

% Judgment reserved on: *09.07.2026*

Judgment delivered on: *19.08.2026*

Judgment uploaded on: *As per Digital Signature~*

\# **CNR No. DLHC010075102024**

\+ **FAO(OS) (COMM) 26/2024**

TMB ELECTRONICS .....Appellant

versus

SHANTI DEVELOPERS & ANR. .....Respondents

Advocates who appeared in this case

For the Appellant : Mr. Arvind Nigam and Mr. Gautam Narayan, Sr. Advocates with Mr. Jai Sahai Endlaw, Mr. Ashish Kumar and Mr. Abhinav Gupta, Advocates.

For the Respondents : Mr. Sunil Kumar Mittal, Mr. Anshul Mittal, Mr. Sameer Dawar, Mr. Vishwam Mishra and Mr. Vaibhav Garg, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

V. KAMESWAR RAO, J.

1. This appeal has been filed by the appellant challenging the judgment dated 15.12.2013 passed by the learned Single Judge in a petition under Section 34 of the Arbitration & Conciliation Act, 1996 (the Act, thereafter),

wherein the petition was dismissed. The appellant vide this appeal seeks the following prayers:

> *"I. Allow the present appeal and set aside the Judgment dated 15.12.2023 in OMP Comm. 513/2023 passed by this Hon'ble Court;*
> *II. Set aside the Impugned Arbitral award dated 29.08.2023 passed by the Ld. Sole Arbitrator in the arbitral proceedings between the Appellant and Respondents"*

2. The facts as noted from the appeal are that the appellant/petitioner engaged respondent no.1 for construction of a proposed factory building in Kundli district, Sonipat, Haryana. The agreement dated 13.03.2018, (the agreement) was executed between the parties & the respondent no.2 was engaged as an Architect of the Project. In terms of Clause 30 of the agreement, the work was to be completed within 12 months from the date of signing of the Agreement i.e., March 2018. Disputes arose between the appellant and the respondent no.1 and the respondent no.1 invoked Clause 36 of the agreement *vide* notice dated 21.08.2021. This Court appointed a sole Arbitrator *vide* order dated 03.03.2022. The respondent no.2 was made proforma respondent in the proceedings.

3. It was the case of the respondent no.1 before the learned Arbitrator that, despite having completed the work in a timely manner, the bills which were presented to the appellant remained outstanding.

4. According to the respondent no.1/claimant, it had completed the original/stipulated work as well as the additional work in August/September 2020 and handed over the site to the appellant, no objections were raised when the site was handed over. Even though the periodical bills were

verified in terms of the work done. The final bill dated 07.08.2021 amounting to Rs.13,37,98,982/- was the cumulative sum for the original work and the additional work. It is their admitted case that they had received payment of Rs.5,16,00,000/- which leaves the balance amount as Rs.8,21,98,982/-. It was this said amount which formed a part of the claims before the learned Arbitrator. The claims which were presented before the learned Arbitrator, are as follows:

> *"(i) Rs.8,21,98,982/- towards work done and not paid for;*
> *(ii) Rs.2,00,69,847/- towards loss of profits calculated at 15% of the amount of the total bill;*
> *(iii) Interest at the rate of 18% per annum; and*
> *(iv) Costs."*

5. The appellant contested the claims raised by the respondent no.1 on the ground that the respondent no.1 had been unprofessional and did not finish the entire work. It acted against the terms of the agreement. It was the case of the appellant that:-

(i) bill of Rs.25,00,000/- was not raised on completion of the work.

(ii) The rates for additional work done in terms of Clause 7 of the agreement was not submitted.

(iii) The quality check for the material procured was never submitted in terms of Clause 39 of the agreement.

(iv) Even the timeline under Clause 30 of the agreement for the work was not followed and the prior reasons for delay were not given as per Clause 31.

(v) The labour norms were not complied with contrary to Clause 11.

(vi) Issues related to deposit of GST for four invoices by the respondent no.1 also cropped up i.e., the GST against the said invoices was not deposited.

(vii) There were also issues regarding the submissions of the GST submission on the final bill i.e., the GST amount was not reported which brought the veracity of the final bill in question.

6. The case of the appellant before the learned Arbitrator was that, the appellant upon inspection of the site, discovered that the foundation of the building was not properly laid and there were issues of water damage in the basement of the building.

7. After completion of pleadings, the learned Arbitrator framed the following issues:

Point of determination

"(1) Whether the claimant is entitled to the reliefs claimed in the statement of claim?
(2) Whether the claimant in entitled to interest, if yes, at what rate?
(3) Cost?
(4) Relief?"

8. Before the learned Arbitrator, the parties agreed not to lead any oral evidence and the appellant did not raise any counter claims. The learned Arbitrator deemed it fit to split the reliefs claimed under the heading of the amount due in terms of the final bill in paragraph 26 of the Arbitral awards

in the following manner:

> *"26. A perusal of the final bill would show that it has five separate components being (1) towards work under the original Agreement; (2) price escalation for steel and cement, (3) excess steel consumed, (4) extra work done, and (5) Other miscellaneous items and purchases. These are taken to be separate sub-points of determination."*

9. The learned Arbitrator came to the conclusion that the respondent no.1/claimant was entitled to a sum of Rs. 6,14,97,594/-. The other claims of the respondent no.1 were rejected. The appellant/petitioner challenged the award before the learned Single Judge vide a petition under Section 34 of the Act, which was dismissed.

SUBMISSIONS ON BEHALF OF APPELLANT

10. Mr. Arvind Nigam and Mr. Gautam Narayan learned Senior Counsel with Mr. Jai Sahai Endlaw, Advocate appearing on behalf of the appellant would submit that, as per Clause 23 of the agreement, upon completion of the work, a notice was to be issued by respondent no.2. The said work was to be completed within a period of 12 months from the date of the signing of the agreement. They have also drawn our attention to the payment terms to state that the liability for the payment of GST would be borne by the respondent no.1.

11. Mr. Nigam stated that, on 09.07.2021, the respondent no.1 issued a notice to the appellant claiming that the works under the agreement were completed by August/September 2020 and the amount of Rs.12,17,45,400/- was to be paid by the appellant. On 07.08.2021, the respondent no.1 issued a final bill wherein it had claimed an amount of Rs.13,37,98,982/- from the

appellant. Thereafter, the appellant as per letter dated 20.08.2021 denied that no amount was left due and payable to the respondent no.1.

12. The case of the appellant is that the claim has been partially allowed in contravention to Clause 23 of the agreement. According to Mr. Nigam, the respondent no. 1 has neither pleaded nor proved that it ever issued a notice of completion nor that it received a completion certificate.

13. He argued that, since the respondent no. 1 has admitted non-compliance of Clause 23 of the agreement and also that no completion certificate was issued by respondent no. 2, it shows that there was no occasion for the learned Arbitrator to hold that the works under the agreement were completed by respondent no.1 to the satisfactions of the appellant and the respondent no.2. He also has stated that this ground was also urged by the appellant before the learned Single Judge but did not consider this aspect.

14. According to him, the learned Arbitrator has awarded GST to the tune of Rs.1,72,70,328/- in favour of the respondent no.1. The impugned award is expressly contrary to the payment terms under the agreement, which provides that, all statutory liabilities including the GST would be the responsibility of respondent no.1.

15. Mr. Nigam has submitted that, to establish the completion of the works, the respondent no.1 only relied on the final bill dated 07.08.2021 and Whatsapp messages showing the status of work at the construction site. It is his case that the learned Arbitrator has awarded the amount under this claim only on the basis of the final bill dated 07.08.2021.

16. According to him, without any reference to the material or evidence on record, the learned Arbitrator came to a conclusion that the works under the agreement was completed by respondent no. 1 during the months of August-September, 2020. Such a finding is *ex facie* based on conjecture as the learned Arbitrator ought to have determined the actual date of completion of work or when the site was handed over to the appellant in terms of the agreement. The impugned judgment observes that the photographs of the site taken until August-September, 2020 clearly shows that the work was still ongoing and the same is contrary to the stand taken by the appellant/petitioner.

17. He submitted that, the learned Single Judge has also failed to consider that ongoing work is not equivalent to completion of work and that the respondent no. 1 had failed to establish that it had completed the work and sought payment of the same in terms of the final bill dated 07.08.2021.

18. He has submitted that the learned Arbitrator has erroneously observed that the working area has not been disputed by the respondent no.1. On a perusal of the impugned award as well as the appellant's Statement of Defence, would reveal that the appellant had in fact disputed the completion of work by respondent no. 1 in terms of the agreement. The said finding was upheld by the learned Single Judge and such a finding is erroneous as the same does not consider the grounds urged by the appellant. The final bill dated 07.08.2021 was also denied by the appellant in its affidavit of admission and denial and such a monetary entitlement thereunder was to be supported with evidence as in accordance with law.

19. He submitted that the learned Arbitrator has overlooked the relevant

material on record, which would have proved that the respondent no.1 had relied on various bills of different amounts and the value of work done, as per notice dated 09.07.2021 the amount was Rs.12,17,45,400/-. As per the bill shared vide email dated 21.12.2020, the final amount was Rs.12,40,13,500/- and as per bill dated 07.08.2021, the amount was Rs.13,37,98,982/-, such glaring inconsistencies ought to have led to the respondent no.1 to prove its entitlement to the amount claimed, this material has not been considered by the learned Arbitrator.

20. He submitted that from the documents filed by the respondent no. 1, it is evident that respondent no. 1 has taken an inconsistent stand regarding completion and verification of work including the quantum of work done. The respondent no. 1 had in its communication dated 04.07.2020 claimed that, it had executed the work and had called upon the appellant to verify the work done. Thereafter, the respondent no. 1 stated that its work was verified in August-September, 2020 but no proof of such verification in the intervening period was produced. In terms of the letter dated 09.07.2021, the respondent no.1 claimed that the verified value of its work was Rs.12,17,45,400/-. The material on record discloses contrary stand taken by the respondent no.1 which has been overlooked by the learned Arbitrator in the impugned award on the basis of the final bill dated 07.08.2021 wherein the amount claimed was Rs.13,37,98,982/- without verifying the actual work done and also erred in concluding that the work was completed in August-September, 2020. The amount awarded suffers from a patent illegality.

21. One of the submissions of Mr. Nigam is that the standard of proof adopted is inconsistent with the findings to the other claims. The learned

Arbitrator while deciding other claims as raised by the respondent no.1 had held that the same were liable to be rejected due to lack of evidence. However, the learned Arbitrator had failed to consider the fact that, evidence was lacking to sustain the claim for the amount due under the final bill dated 07.08.2021.

22. He submitted that, it is trite law that the burden of proof lies upon the party who wishes to claim the existence of a certain factual position and if one were to examine this case on the said principle, it would reveal that the respondent no. 1 has not established the fact that it had carried out the work against the amounts claimed in its final bill as per the drawings. Therefore, since respondent no. 1 had not discharged its burden of proof, there was no occasion for the learned Arbitrator to observe that the work was completed by respondent no. 1 and is entitled for the said claim.

23. According to him, the learned Arbitrator has only considered the lapses in the defense set up by the appellant, however, even if it were to be assumed the same, it does not *ipso facto* prove the case of the respondent no. 1. The impugned judgment is based entirely on consideration of the lapses in the defense set up by the appellant and has not considered that the burden of proof to establish that whether such proof was adequately discharged or not. He stated that this ground of challenge was specifically taken by the appellant before the learned Single Judge but the same has not been considered.

24. Mr. Nigam has placed reliance on the judgment in the case of ***Indian Oil Corporation v. Shree Ganesh Petroleum, (2022) 4 SCC 463*** to argue that the Arbitral Tribunal cannot rewrite the terms of the contract and is

bound by the same. He has also relied upon the judgment in the case of ***Navnirman Development Consultants India Private Limited v. Divisional Commissioner and President District Sports Complex Executive Committee, Pune, (2017) 8 SCC 603*** to argue that the Court while dismissing a challenge under Section 34 of the Act is duty-bound to pass a reasoned order examining the ground urged by the applicant. He also has relied on ***UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116*** in support of his arguments submitted that the Court while hearing an appeal under Section 37 of the Act must examine the correctness of the order passed within the confines of Section 34 of the Act. He also relied on the following judgments in support of his case:

i. ***International Breweries Pvt. Ltd. v. Mohan Meakin Ltd., 2023 SCC OnLine Del 7710***;

ii. ***Delhi State Industrial and Infrastructure Development Corporation Ltd. v. Bawana Infra Development Pvt. Ltd., 2023 SCC OnLine Del 8295***;

iii. ***Delhi State Industrial and Infrastructure Development Corporation Ltd. v. M/s PNC Delhi Industrial Infra Pvt. Ltd., 2024 SCC OnLine Del 2887***;

iv. ***Flowmore Ltd. v. Skipper Limited, 2023 SCC Online Del 3696***;

v. ***Five Star Construction Pvt. Ltd. v. Orchid Infrastructure Developers Pvt. Ltd., 2024 SCC OnLine Del 41***;

vi. ***Harcharan Dass Gupta v. Azad Hindi Coop Group Housing Society Ltd., 2024 SCC OnLine Del 1109***;

vii. ***Jaiprakash Hyundai Consortium v. Satluj Jal Vidyut***

Nigam Ltd., 2024 SCC OnLine Del 1237;

viii. ***M/s Bharat Sanchar Nigam Limited v. M/s EXNXT Software Private Limited, 2017 SCC OnLine Del 9564***;

ix. ***National Highway Authority of India v. Shree Jagannath Expressways Pvt. Ltd., 2022 SCC Online Del 706***; and

x. ***Smriti Debbarma v. Prabha Ranjan Debbarma and Others, 2023 SCC Online SC 9***.

SUBMISSIONS ON BEHALF OF RESPONDENTS

25. Mr. Sunil Kumar Mittal, learned counsel appearing on behalf of the respondent no.1 has at the very outset argued that the scope of an appeal under Section 37 of the Act is very limited in nature and the appeal clearly falls outside this Court under Section 37 of the Act.

26. According to him, the appellant has raised new contentions in the present appeal which were neither part of the pleadings before the learned Single Judge nor were incorporated in the Statement of Defense before the learned Arbitrator, he stated, the same cannot be raised at this belated stage to assail the impugned award. In this regard, he has placed reliance on the judgment in the case of ***Union of India v. M/s. Susaka Pvt. Ltd. & Ors., [2017] 12 SCR. 430.***

27. He submitted that even though, the appellant has taken a stand that the measurement book was not placed on record in terms of Clause 16 of the agreement, the said contention is absolutely misplaced. The agreement between the parties clearly stipulates that only the structure work was to be raised by the respondent no.1 for which the amount was payable on a lump

sum/per Sq. Ft. rate basis. Whereas, as per Clause 16 of the agreement only extra items or any variation or those items, which were tabled as per item rates, had to be paid based on the recordings of the measurement book. Clause 16 of the agreement has nothing to do with the original agreement work, which was executed on lump sum/per Sq. Ft. rates. The learned Arbitrator had only awarded the amount in terms of the agreement/work done as per the per Sq. Ft. rate.

28. On the contention that the respondent no.1 had taken a stand before the learned Arbitrator that the measurement sheets were being submitted to the Architect, however no such measurement sheets were ever produced, he submitted that, even if, it is assumed that the measurement sheets were submitted, they would have included only the additional work which was not included in the agreement per Sq. Ft. rates. The measurement sheets were part of the record, filed as Annexure C-8 to the Statement of Claims. He has also stated that the appellant neither raised any plea regarding the measurement book in its Statement of Defence nor before the learned Single Judge. Even in the present appeal, the plea referring to Clause 16 of the agreement has not been taken.

29. He submitted that the appellant vaguely argued their Statement of Defense before the learned Arbitrator that the work was abruptly abandoned by the respondent no.1 and the balance work was executed by the appellant. The only claim made by the appellant before the learned Arbitrator was that the respondent no.1 had apparently not deposited the GST which it had charged from the appellant.

30. Mr. Mittal submitted that the entire Statement of Defense was based

purely on vague statements and the appellant did not file any counter claim against the respondent no.1 which essentially translates to the fact that the appellant had not alleged any breach of agreement by respondent no.1.

31. According to him, it is an admitted case that the parties agreed that there would be no requirement of leading oral evidence before the learned Arbitrator and the matter was to be decided on the basis of the record submitted. The entire work was executed under the direct control of respondent no. 2, who was engaged by the appellant. All the relevant communications such as the final bill, completion of work and inspection/verification of works was to be carried out by the respondent no. 2. The appellant had the best available evidence in the form of records of the Architects/respondent no. 2 but they have neither submitted any record nor sought to produce the respondent no. 2 before the learned Arbitrator in support of their case.

32. He submitted that, on the perusal of the complete record, the only issue before the learned Arbitrator was whether the respondent no.1/Claimant had completed the work and if any payments were due to be paid by the appellant herein.

33. According to him, the appellant never disputed their liability to pay GST on the payments to be paid to the respondent no.1/Claimant under the agreement. This argument has been taken by the appellant for the very first time in the present appeal, which is too late in the day to raise such contention. This factum would make it abundantly clear that the appellant in fact never had any issue or difference regarding the charge of GST. In this regard, he relied on Annexures A-4 and A-9 of the paper-book wherein the

respondent no. 1 in its Statement of Claim had specifically pleaded that the final valuation also includes the applicable GST as per the relevant provisions of law. This averment, according to Mr. Mittal, was never disputed by the appellant before the learned Arbitrator or before the learned Single Judge.

34. He submitted that, the only issue challenge in the appeal is that Claim no. 1 was partially allowed by the learned Arbitrator and awarded a sum of Rs. 6,14,97,594/- towards the works executed under the agreement while the other claims were merely consequential.

35. He submitted that insofar as the issue of abandonment of work is concerned, the allegation that, in November, 2019 only partially finished work till the upper ground floor, the said allegation is without with any evidence, various messages exchanged between the parties with photographs, which formed part of the arbitral record, would show that the work has been done up to the terrace above the second floor. He has also stated that, as per the ledger of the appellant, payments have been paid by the appellant to the respondent no. 1 as late as October, 2020. So, if this argument was to be accepted then the appellant ought not to have made payments continuously even after the abandonment of work, as alleged.

36. Another argument advanced by the appellant before the learned Arbitrator was that respondent no. 1 did not serve any notice of completion of work in terms of Clause 23 of the agreement. The said contention is untrue for the reason that the same is evident from the fact that the notice of completion dated 04.07.2020 had been given to the Architect/respondent no. 2 through email on 06.07.2020. The said document was admitted to have

been received by the appellant as is evident from the pleadings/Statement of Defence. Subsequent to the said notice, the work was in fact inspected and verified by the parties and accordingly, a final bill with revised notice was sent to the respondent no. 2 vide email dated 21.12.2020. Thereafter, a legal demand notice was issued by the respondent no. 1 herein on 09.07.2021, which was served upon the appellant as well as the respondent no. 2. The respondent no. 1 had also served its final bill dated 07.08.2021 upon the appellant and the appellant was served with another legal demand notice dated 21.08.2021 for the balance payment.

37. He submitted that, the appellant was fully aware of all the communications and had known that the respondent no. 2 was regularly verifying the works with respondent no. 1. The appellant chose to remain silent and never disputed the fact that the work had been completed by the respondent no. 1. Even in the reply letter, the appellant had neither challenged the work being completed nor claimed that the work had been abandoned by the respondent no. 1 or even the fact that the appellant completed the balance of the work on its own.

38. According to Mr. Mittal, as per Clause 23 of the Agreement, the Contractor/respondent no.1 shall give notice to the Architect/respondent no.2 regarding the work having been completed and the work would then be inspected by the Architect/respondent no.2. The Architect would then issue a virtual completion certificate and pursuant to which, the contractor/respondent no.1 shall remove all its belongings from the site. It is an admitted fact that the entire work was carried out under the direct supervision of the Architects/respondent no.2. Any failure of the Architect

to issue Completion Certificate for the work cannot be construed against respondent no.1.

39. As per Mr. Mittal, the only difference in these bills was that, in all the bills the quantum of GST had varied on the account of the veracity of measurement and quantity of work and extra work and the appellant being aware of the fact that respondent no. 1 had been regularly submitting its bills, neither raised the issue that the work was not completed nor that any amount was not due or payable.

40. The only contention raised by the appellant before the learned Arbitrator as well as before the learned Single Judge was that the respondent no. 1 had received the GST amount from the appellant while the same was not deposited with the GST department. In the impugned arbitral award as well as in the impugned judgment had rightly held that the issue of whether the respondent no. 1 had deposited the GST amount or not was not to be gone into either by the learned Arbitrator or by the learned Single Judge. He stated that the findings of the learned Arbitrator are well reasoned and ought not to be interfered with.

41. He submitted that it would amount to re-appreciation of the entire factual matrix and the law and Section 37 of the Act bars the Court to reappreciate evidence. Similar is the position with the impugned judgment of the learned Single Judge and the same also ought not to be interfered with. It is his case that the appellant essentially seeks to reinterpret the clauses of the agreement regarding the GST liability and has raised the said plea for the first time in the present appeal. This issue had neither been presented nor adjudicated before the learned Arbitrator and hence, cannot be

gone into at this juncture.

42. Another issue the appellant raised is that the learned Arbitrator had shifted the burden of proof on the appellant herein instead of the respondent no. 1 and hence, is contrary to Sections 101 and 102 of the Indian Evidence Act, 1872. According to Mr. Mittal is completely misplaced and the said provisions hold no relevance inasmuch as the arbitration proceedings are concerned. In this regard, he has referred to Section 19 of the Act, which clearly provides that the Tribunal is not bound by the Indian Evidence Act, 1872 ("Evidence Act") or the Code of Civil Procedure, 1908 ("CPC").

43. Mr. Mittal stated that it is trite law that the Arbitrator alone is the authority to appreciate the quality and quantity of evidence and this Court while exercising its jurisdiction under Section 34 or 37 of the Act cannot question the findings of fact arrived at by the learned Arbitrator. He argued that given the current factual matrix, this Court ought not to exercise its jurisdiction under Section 37 of the Act and seeks dismissal of the present appeal.

REJOINDER SUBMISSIONS ON BEHALF OF THE APPELLANT

44. Mr. Nigam in his rejoinder submissions has argued that the contentions of the respondent no.1 / claimant that certain arguments had neither been raised before the learned Arbitrator nor before the learned Single Judge in the proceedings under Section 34 of the Act, are not true as the payment terms of the agreement formed an integral part of the proceedings before the learned Arbitrator. The impugned award being inconsistent with the provisions of the agreement and the award is liable to

be set aside.

45. On the aspect of the payment of GST, Mr. Nigam, stated that the respondent no.1 had not cleared the GST liability, which could also be seen from the invoices (being No.22-19/20, 23-19/20, 13-19/20 and 14-19/20) that were produced before the learned Arbitrator along with the Statement of Defence, it do clearly establish that appellant had paid GST to the respondent no.1.

46. He submitted that as per the ledger, the appellant made advance payments to the respondent no.1 for which, bills were raised at a much later stage, these invoices were not as per Sq. Ft. rate provided in the agreement, but rather invoices breaking down the amounts paid by the appellant for different materials and works. Hence, the argument that the appellant had taken a contrary stand before the learned Arbitrator, does not stand.

47. On the issue of the admissibility of the documents, Mr. Nigam submitted that the screenshots from the GST portal of the respondent no.1 was filed along with the Statement of Defence. He stated that the "*final bill no. 005 of 2021-2022*" which formed part of the pleadings before the learned Arbitrator is at complete variance with the information uploaded by the respondent no.1 on the GST portal. Such inconsistencies were inherent and had been denied by the appellant, and there was no ground for the learned Arbitrator to come to the conclusion that the working area was not disputed, in the impugned award.

48. Mr. Nigam stated that, since the screenshot from the GST Portal are public document, they ought not to be made subject to the strict rules of

CPC and the Evidence Act and the learned Arbitrator could have looked at the same. As per Mr. Nigam, the Supreme Court in a judgment in the case of ***Emkay Global Financial Services v. Gindhar Sondhi, (2018) 9 SCC 49,*** had held that in terms of Section 34(2)(a) of the Act, for the purpose of determination of the issues, information can be brought to the notice of the Court by way of affidavit filed by both the parties.

49. He submitted that the burden of proof was not appropriately met by the respondent no.1 before the learned Arbitrator. Mr. Nigam stated that, even though a stand was taken by the respondent no.1 that the measurement book in terms of Clause 16 of the agreement was only to be maintained for extra items and not for works, payable as per Sq. Ft., this distinction which is now drawn by the respondent no.1 is an artificial one, especially in terms of Clause 16 of the agreement, which only talks about (a) item rates; (b) variation; and (c) extra items. It is an admitted position that the respondent no.1 has not assailed the aforesaid findings before the learned Arbitrator and in these circumstances screenshots of certain WhatsApp message cannot override the express provisions of the agreement.

50. The last limb of Mr. Nigam's argument is that the learned Arbitrator has granted interest @ 14% per annum against the awarded amount, which is devoid of a contractual foundation and therefore, is contrary to Section 31(7) (a) of the Act and liable to be set aside. In light of the aforesaid, he seeks the prayers made in the present appeal be allowed.

<u>ANALYSIS AND CONCLUSION</u>

51. Having heard the learned counsel of the parties and perused the

record, we deem it appropriate to summarise the claims and findings of the learned Arbitrator as under:-

(1)	Claim for amounts due under the Final Bill dated 07.08.2021, which included:	The Claim was partially allowed by the Ld. Arbitrator.
1.1	Claim for work done under the Agreement	The Claimant was held entitled to a sum of Rs. 6,14,97,594 against the work done under the Agreement.
1.2	Claim for price difference for steel and cement.	The claim was rejected.
1.3	Claim for excess steel consumed	The claim was rejected
1.4	Claim towards extra work done	The claim was rejected
1.5	Claim towards other miscellaneous items and purchases	The claim was rejected
(2)	Claim for loss of profits	The claim was rejected
(3)	Claim for interest	Interest at the rate of 14% was awarded from 7.09.2021 till date of payment.
(4)	Costs	Claimant was awarded Rs.5,00,000/- plus Fee paid to the Arbitrator towards Costs

52. The submissions on behalf of the appellant can be summed up as under: -

52.1 On 09.07.2021, the respondent no.1 issued a notice to the appellant that the works under the agreement were completed in August 2020 and an amount of Rs.12,17,45,400/- has to be paid by the appellant;

52.2 On 07.08.2021, the respondent no.1 issued a final bill wherein it had claimed an amount of Rs.13,37,98,982/-;

52.3 *Vide* letter dated 20.08.2021, the appellant responded to the final bill issued by respondent no.1 to state that no amount is due and payable;

52.4 The claim has been awarded without considering the terms of the agreement and in contravention with Clause 23 of the agreement;

52.5 The respondent no.1 never issued the notice for Completion Certificate nor it received the Completion Certificate;

52.6 The grant of an amount of Rs.1,72,70,328/- as GST is contrary to the payment terms under the agreement, which provides that all statutory liabilities including the GST would be the responsibility of respondent no.1;

52.7 The respondent no.1 relied on the final bill dated 07.08.2021 and Whatsapp messages showing the status of work at the construction site, which formed the basis for the learned Arbitrator to award the amount;

52.8 It is settled law that the agreement for work done can only be awarded when a proof of measurement of work is submitted;

52.9 The final bill is not based on material on record. Similarly, the photographs of the site taken until August-September, 2020 shows that the work was still going on and as such contrary to the stand taken by the respondent no.1;

52.10 There is a difference in the measurement of work under the final bill as shared *vide* email dated 21.12.2020 and as such said inconsistencies lend credence to the appellant's submission that respondent no.1 did not complete the work under the agreement;

52.11 The standard of proof adopted is inconsistent with the findings to the other claims, which were rejected due to lack of evidence;

52.12 The learned Arbitrator cannot re-write the terms of the contract, rather he is bound by the same; and

52.13 The learned Single Judge has erred in not interfering with the impugned arbitral award under Section 34 of the Act.

53. On the other hand, the submissions on behalf of the respondents are as under: -

53.1 The scope of the interference with the judgment is very limited and this appeal does not fall within the scope of the judicial review in an appeal under Section 37 of the Act;

53.2 New contentions are sought to be introduced in the present appeal, which were neither pleaded before the learned Single Judge nor incorporated in the Statement of Defence before the learned Arbitrator;

53.3 The plea on behalf of the appellant that the measurement book was not placed on record is misplaced since the agreement between the parties stipulated that only structural work was to be raised by the respondent no.1 for which amount was payable on lump sum per

Sq. Ft. rate basis and as such, clause 16 of the Agreement has no applicability;

53.4 Though, no measurement sheets were submitted nor ever produced before the learned Arbitrator. Even if it is assumed that the measurement sheets were being submitted, they would have included only the additional work which was not included in the agreement/per Sq. Ft. rates;

53.5 The plea of the appellant that the respondent no.1 has abandoned the work has not been proved inasmuch as the appellant did not specify:

(i) at what stage and when did the respondent no.1 allegedly abandon the work;

(ii) which agency or organisation was hired to execute the remainder of the work;

(iii) what would have been the quantum of the balance work allegedly executed by the appellant on its own;

(iv) and the fact that no notice or communication was ever issued by the appellant to the respondent no.1 regarding the alleged abandonment of work;

53.6 The parties had agreed not to lead any oral evidence and the matter was decided on the basis of the record, the work had been executed under the control of respondent no.2, the appellant had the best available evidence in the form of record of Architect, but chose not to submit any record nor did the respondent no.1 seek to produce the respondent no.2 before the learned Arbitrator in support of its case.

53.7 The appellant had never disputed its liability to pay GST on the payments to be paid to the respondent no.1, which plea was taken for the first time in the present appeal, which is too late in the day to raise such a contention;

53.8 The payments were made by the appellant to the respondent no.1 as late as upto October 2020 and as such the plea of abandonment of work in November 2019 shall not arise; and

53.9 The plea of non-compliance of Clause 23 of the agreement is untrue as the same was followed by issuance of notice of completion dated 04.07.2020 which had been given to the Architect/respondent no. 2 through email on 06.07.2020. The said document was admitted to have been received by the appellant as is evident from the pleadings before the learned Arbitrator in the Statement of Defence. Subsequent to the said notice, the work was in fact inspected and verified by the parties and accordingly, a final bill with revised notice was sent to the respondent no. 2 *vide* email dated 21.12.2020;

54. Having noted the broad submissions made by the learned counsel for the parties, the issue which requires consideration is in respect of the claim allowed by the learned Arbitrator under the final bill.

55. The learned Arbitrator has divided the said claim under different points. It is only Claim no. 1.1 which forms part of the challenge in the

present appeal and the same was for work done under the original agreement, which reads as under: -

"Claim (1.1) Amount due under the final bill

26. A perusal of the final bill would show that it has five separate components being (1) towards work under the original Agreement; (2) price escalation for steel and cement, (3) excess steel consumed, (4) extra work done, and (5) Other miscellaneous items and purchases. These are taken to be separate sub-points of determination.

(1.1.1) Claim for workdone under original agreement

27. The Agreement between the parties was entered into in March, 2018. As per clause 30, the work was to be completed within 12 months of the date of signature. As per the claimant, the work was completed in August-September, 2020; while the case of the respondent no.1 is that the same was never completed and the project was abandoned by the claimant. In the statement of defence, there is. no detail as to when the work was abandoned or till what stage, the claimant had completed the work. The pleadings of the respondent no.1 remain vague. During the course of argument, Mr.Aziz submitted that the work was done till the upper ground floor level only. In the written submissions of the respondent no.1 (which has already been eschewed), it is stated that the work was abandoned in November, 2019.

28. The claimant has placed on record the screenshots of chats on whatsapp groups at Annexure C-9 and C-10. Both the respondent no.1 and the architect/respondent no.2 members the first group, i.e. Annexure C- 9, titled "TMB 113 Kundli". The contents and existence of the said screenshots stand admitted by the respondent no.1 in its affidavit of admission/denial of documents. A perusal of the said screenshots shows that the claimant was regularly giving updates regarding the work being carried out; while drawings are being shared by the respondent no.2. The chats show that the work was being carried out much *beyond November, 2019. At page 155 of the statement of claim, the chat pertains to January, 2020 wherein drawings are being sought. At page 160, photos showing progress of the work in July, 2020 have been shared. Pertinently, the photos show construction much beyond the upper ground floor level. The chats go until 21.09.2020 when drawings of the front elevation wall are being sought. This vindicates the stand taken by the claimant that work was being carried out until August-September, 2020.*

29. As regards the abandonment of the work by the claimant, the plea of the respondent no. 1 remains vague and unclear. Additionally, the respondent no. I never objected to the alleged abandonment of the work by the claimant. Admittedly, there is no communication in this regard nor any penalty was imposed.

30. As regards the delay in execution of the work, the claimant has attributed the same to the respondent no. 1. In any case, the claimant continued to work much beyond the stipulated period and was accepted by the respondent no.1. There is no clause in the Agreement making time the essence of the contract nor has it been the case of the respondent no.1. Coupled with the nature of the contract and clauses 31-33 providing for extension, it is clear that time was not the essence [see Hind Construction Contractors v. State of Maharashtra, (1979) 2 SCC 70 (Paras 7-9); and Arosan Enterprises Ltd. v. Union of India, (1999) 9 SCC 449 (Para 14)]. Even otherwise, the respondent no.1 having accepted performance after the stipulated period, the case would come under third paragraph of section 55 of the Indian Contract Act. Hence, it is not open to the respondent no.1 to raise any grievance qua the delay in completion. Till date, the respondent no. I has not imposed liquidated damages nor is there any counter claim before me.

31. The other defaults highlighted in the statement of defence have also not been established. The issue of quality was material was never raised when the work was being carried out under due intimation to the respondent no.1 and its architect (respondent no.2). Even accepting the stand of the respondent no.1 that the parties shared good relations, this may justify the absence of any *formal communication, however surely a whatsapp message would have been sent. The respondent no.1 has not been able to pinpoint any non-compliance with labour norms.*

32. The only other issue raised pertains to water coming out of the basement. Again the statement of defence is completely silent as to when the issue was faced or when it was intimated to the claimant. Paragraph N of the statement of defence only reads as under:

> *"N. That during the tenure of work when the respondent inspect the basement of the concern building found out that the foundation of the building is not made properly due which there was higher risk of demolition of building and can cause huge harm to life and property. It is pertinent to mention here that during inspection water was coming out from wall of the basement due which building is at higher risk of falling."*

33. The photos at page 41 to 45 are blurred and hardly anything can be made out of the same. The videos show large amounts of water pouring from the walls. However, it cannot even be identified that the video pertains to the subject building or for that reason, what walls are being shown. The vintage of the video is also not clear. The title of the videos suggest that the same had been made on 19.07.2022. While the whatsapp chats at page 163 of the statement of claim show that the issue had been flagged on 19.07.2021. In this regard, Mr.Dawar had rightly drawn attention to clause 19 of the Agreement; which provides for a "defects liability period" being "a period of six months from the ·date of completion or first rainy season whichever is early". The said period expired in February March, 2021 and any defect having been identified at best, in July, 2021 would be beyond the same. Even otherwise, the respondent no.1 never called upon the claimant to rectify the defect nor any proof of the work having been rectified at the end of the respondent no.1 has been placed on record. As such, the contention must be rejected.

34. Thus, I hold that the work was completed by the claimant in August September, 2020 to the satisfaction of the respondents.

The next aspect concerns the entitlement of the claimant.

35. Admittedly, payments were made in advance to the claimant and invoices were being raised subsequently. This practice stands admitted though the parties contend the same to be at the instance of the other. As such, the claimant cannot be faulted for not having raised the final bill upon completion of the work. The claimant has stated to have sent a letter dated 04.07.2020; however, during the course of arguments it was admitted that the same was sent by email and bounced. No such email has been placed on record.

36. The claimant has then placed on record an email dated 21.12.2020 at page 111 of the statement of claim sent to the architect enclosing a draft final bill (at page 126) for Rs.12,40,13,500/-. This is followed by a notice dated 09.07.2021 alleging total value of the work to be Rs.12,17,45,400/-. In this background, the final bill is stated to have been raised on 07.08.2021 for Rs.13,17,98,982/-. The covering letter itself records as under:

> *"Although, the work was completed by us in all respects August/September 2020, you kept on delaying the payments accounts. Despite several reminders, you have failed to honour your part of obligations under the agreement of timely release of our payments. We are therefore, submitting the Final Bill amounting to a sum of Rs. 13,37,98,982/- with all the relevant details. The balance payments due and payable by you to us is Rs.8,21,98,982/-. You are required to make the payment of the balance amount to us within a period of one week from the date of receipt."*

37. Considering the admitted practice of raising invoices subsequent to payments, the claimant cannot be faulted for having waited for sometime and then raised its final bill. Coming to the amount, the item rates are given at page 33 of the Agreement. The rates in the final bill remain lower to the same. The working area has also not been disputed by the respondent no.1. On comparison with the final bill sent on 21.12.2020, it is noticed that the working area for "Roof Proj. on Second Floor" *and "Mumty & Proj." has been increased in the final bill dated 07.08.2021. Adjusting for this increase, the final amount comes to Rs.9,59,46,266/-. Adding GST, it comes to Rs.11,32,16,594/-.*

38. Of the said amount, the claimant claims that only Rs.5,16,00,000/- has been paid; while the case of the respondent no.1 is that Rs.5,17,19,000/-has been paid. The receipt of the latter amount has not been denied in the rejoinder. The letter dated 09.07.2021 sent by the claimant itself also states that the amount of Rs.5.16 crores is an approximate figure. As such, I believe the version of the respondent no.1 and hold that a sum of Rs.5,17,19,000/- has already been paid. Deducting the said amount, the claimant is held entitled to a sum of Rs.6,14,97,594/- against the work done within the original scope of work.

39. It would be amiss to notice another contention of the respondent no.1 that the claimant has failed to deposit GST against the invoices raised and filed incorrect returns. Suffice it to say that the same is for the concerned department to consider and cannot to be a ground to nullify the claim of the claimant."

56. The findings of the learned Arbitrator while granting the claim of the respondent no.1 for Rs.6,14,97,594/- are the following: -

56.1 As per Clause 30, the work was to be completed within 12 months from the date of signature. The work was completed in August-September, 2020;

56.2 As per the appellant, the same was never completed and the project was abandoned by the claimant;

56.3 In the Statement of Defence, there is no detail as to when the work was abandoned or till what stage the claimant had completed the work, as the pleadings of the appellant were vague. Though in the written submissions of the appellant had stated that the work was abandoned in November, 2019;

56.4 On the reliance placed by the respondent no.1 on the screenshots of chats on Whatsapp groups (Annexure C-9 and C-10), the same have been admitted by the appellant in its affidavit of admission & denial of documents;

56.5 The screenshots showed that the respondent no.1 was regularly giving updates regarding the work being carried out; while drawings were shared by the respondent no.2. The chats show that the work was being carried out much beyond November, 2019. The photographs' showed construction was much beyond the upper ground floor level. The chats had gone on until 21.09.2020 when drawings of the front elevation wall were being sought;

56.6 No communication of the appellant has been shown on the alleged abandonment of the work by the respondent no.1;

56.7 On the water coming out of the basement, the Statement of Defence was completely silent. No intimation was given to the respondent no.1. The video showing large amount of water pouring from the walls; it cannot be identified that the video pertains to the subject building. The title of the video suggests that the same had been made on 19.07.2022, whereas the issue was allegedly flagged on 19.07.2021;

56.8 The work was completed by the claimant in August – September 2020 to the satisfaction of the appellant/ respondent.

56.9 The payments were made in advance to the respondent no.1 and invoices were being raised subsequently. As such, respondent no.1/claimant cannot be faulted for having not raised the final bill upon completion of the work;

56.10 The respondent no.1 placed on record an email dated 21.12.2020 sent to the architect enclosing a draft final bill for Rs.12,40,13,500/-. This was followed by the notice dated 09.07.2021 alleging total value of the work to be Rs.12,17,45,400/-. In the background of this, the final bill was stated to have been raised on 07.08.2021 for Rs.13,17,98,982/;

56.11 The working area has also not been disputed by the respondent no.1. On comparison with the final bill sent on 21.12.2020, it was noticed that the working area for 'Second Floor' and 'Mumty & Proj' has been increased in the final bill dated 07.08.2021. Adjusting for this increase, the final amount comes to Rs.9,59,46,266/-. Adding GST, it comes to Rs.11,32,16,594/-;

56.12 As the amount, Rs.5,16,00,000/- has been paid (through the appellant claimed only Rs.5,17,19,000/-has been paid), so deducting the said amount of Rs.5,17,19,000/-, the respondent no.1 was granted a sum of Rs.6,14,97,594/-.

57. On the aspect of GST, the case of the appellant was that the respondent no.1/claimant has failed to deposit the GST against the invoices raised. The learned Arbitrator held that, it is for the concerned department to consider and cannot be a ground to nullify the claim of the respondent no.1.

58. One of the submissions of Mr. Nigam before us was that the awarded amount of ₹ 6, 14,97,594/- also includes the GST amount of ₹ 1,72,70,328/-. The appellant has raised the contention that, for the final bill claimed in the arbitration, the respondent No.1 has not deposited the GST.

59. It is to be noted that the final bill submitted by the respondent no.1 to the appellant on 07.08.2021 was not accepted by the appellant giving rise to the disputes which was referred to the arbitration. After adjudication of the rival contentions, the amount due and payable under the final bill has been legally determined by the learned Arbitrator vide the impugned award dated 29.08.2023 as ₹11,32,16,594/- including GST. The amounts have thus been crystalized vide the impugned award. In these facts, we unable to draw any adverse inference against the respondent no.1 for the non-deposit of the GST amount determined as ₹ 1,72,70,328/-. The appellant has not paid the awarded amount of ₹ 6,14,97,594/- till date and therefore cannot raise any grievance on this account. The appellant would be entitled to seek proof of deposit of the GST component after it has paid the awarded amount. The issue whether there is any violation of GST laws by the respondent no.1 in deposit of the GST component will be decided by the statutory authorities under GST Statute. We however direct that the appellant will be entitled to seek proof of deposit of the GST component of the finally determined final bill after it has paid the awarded amount with up-to-date interest.

60. On the stand taken by the appellant that the respondent no.1 had abandoned the work and as a result, the appellant had to get the remaining work completed by a third party, the learned Single Judge held that, no evidence of such communication exchanged between the parties were noted

by the learned Arbitrator or shown to the Court to indicate either that the work was abandoned by the respondent no.1 or completed through a third party. In fact, a reference is made by the learned Single Judge on the photographs of the site taken until August – September 2020. According to the learned Single Judge, clearly depicted the work was going on and directly contradicting the appellant's stand.

According to the findings of the learned Arbitrator, the said plea was vague and unsubstantiated.

61. The aforesaid is a finding of fact, even before us, Mr. Nigam could not to show any communications sent by the appellant to the respondent no.1 highlighting that the respondent no.1 has abandoned the work or for that matter, the respondent no.1 has not restarted the work or the appellant got the work completed through third party. The pleading does not specify the date of abandoning the work (on November 2019), has not been accepted by the learned Arbitrator.

62. That apart, the pleading does not show the name of the third party through whom the balance work was completed by the appellant and the cost paid by the appellant to the said third party. In fact, no counter-claim has been made by the appellant seeking the difference of amount paid to the third party.

63. On the final bill, the learned Single Judge has held in paragraph 15 of the impugned judgment, as under:-

> *"15. The Final Bill in question delineates two components for arriving at the claimed amount, i.e., the working area and the rate applied. The rate applied specified in the Final Bill was less*

than the contractually agreed rate, which is a finding of fact rendered by the Arbitrator. Thus, the same does not warrant any adverse inference by this Court. As regards the working area, the Arbitrator has observed at Paragraph No.37 of the impugned Award that — "The working area has also not been disputed by respondent no. 1". In light of the foregoing observation, it is evident that the Petitioner (referenced as 'respondent no. 1' by the Arbitrator) did not dispute the working area in the course of the arbitration. Therefore, the Arbitrator was justified in concluding that the work claimed under the Final Bill had been completed."

64. Similarly, on the GST plea, the learned Single Judge has noted in paragraph no.16 of the impugned judgment as under:-

> *"16. Mr. Mehta has placed significant emphasis on the fact that the Final Bill was not reported to the GST authorities. While non-compliance with tax regulations may indeed represent a violation under the relevant tax laws, it is crucial to distinguish the nature of this infraction. As the Arbitrator rightly observed, this issue is separate from the current dispute and will follow its independent course within the appropriate tax regulatory framework. The primary concern of this Court in the present matter is to assess the arbitral process and the resulting award's adherence to legal and procedural standards, not to enforce tax regulations. Thus, while reporting of the Final Bill to the GST authorities is a relevant fact, it does not directly impinge upon the legitimacy of the claims."*

65. The learned Single Judge agreeing with the conclusion drawn by the learned Arbitrator has noted in paragraphs 17 & 18 of the impugned judgment, as under:-

> *"17. For adjudicating the claims presented in arbitration, the crucial question the Arbitrator needed to determine was whether the work was actually completed. Contrary to Mr. Mehta's assertions, the Court observes that the Arbitrator's conclusions were not solely based on the Final Bill. Instead, the Arbitrator*

conducted a comprehensive review of all available evidence. This included not just the Final Bill but also other substantial materials, such as admitted WhatsApp messages and the averments made in the Statement of Defence. These pieces of documentary evidence collectively supported the conclusion that the work was indeed completed by Respondent No.1. Furthermore, the Petitioner has failed to present any compelling material that effectively counters Respondent No.1's assertion of having executed the work. Without such evidence to refute the claims, the Arbitrator's reliance on the breadth of the material on record appears well founded and reasonable.

18. The totality of evidence presented on record supports the conclusion that the amount detailed in the Final Bill is indeed due and payable to Respondent No.1. The Petitioner has not successfully established its defence, and each of the grounds raised has been methodically addressed and refuted by the Arbitrator, as detailed in the above extracted Paragraphs No. 28, 29, 30, and 31. The Arbitrator's factual findings, grounded in a careful appreciation of the evidence, appear reasonable and well-justified. Consequently, these findings do not warrant any interference under Section 34 of the Act."

66. From the above, it is clear that the learned Single Judge has observed that the learned Arbitrator has straightway not accepted the final bill. The claim no. 1.1 awarded by the learned Arbitrator was on the basis of the Whatsapp message, and the averments made in the Statement of Defence, such a conclusion of the learned Arbitrator cannot be disagreed with.

67. Keeping in view the premise on which the learned Arbitrator has granted the claim of the respondent no.1, with which, the learned Single Judge has agreed and it is not a case of no evidence or the conclusion drawn by the learned Arbitrator is palpably perverse, given the scope of the interference in a petition under Section 34 of the Act, we are of the view that

no interference is called for with the impugned judgment passed by the learned Single Judge.

68. Mr. Nigam has relied upon the following judgments for the following propositions in the following manner :-

68.1 Insofar as ***Indian Oil Corporation (supra)*** is concerned, the Supreme Court held that the award ignoring the terms of contract would not be in the public interest. In the said case, the award in respect of lease rent and lease terms was in patent disregard of the terms and conditions of the lease agreement and thus, against public policy. The said judgment has no applicability in the facts of this case.

68.2 Insofar as ***International Breweries Pvt. Ltd. (supra), Bawana Infra Development Pvt. Ltd. (supra), Flowmore Limited (supra), Five Star Construction Pvt. Ltd. (supra), Harcharan Dass Gupta (supra), Jaiprakash Hyundai Consortium (supra),*** and ***M/s Exnxt Software Private Limited (supra)*** are concerned, the issue in these judgments was with regard to the award of an Arbitral Tribunal against the public policy of India and the jurisdiction of the Court of first appeal to re-examine and correct the finding of the facts. The Courts have held that the said rule has one exception where the finding is based on no evidence or the finding of fact defies logic or which is perverse or so irrational that no reasonable person would have arrived at the same conclusion. The aforesaid proposition of law has not applicability to the facts of the appellants case.

68.3 Insofar as ***Shree Jagannath Expressways Pvt. Ltd. (supra)*** is concerned, the issue was whether the impugned award is contrary to the terms of the fee notification or concession agreement. The Supreme Court held that, in the said case, the Tribunal accepted the claim without any evidence to establish the amount of loss as claimed. The Supreme Court also held that it is well settled that the Court cannot reappreciate/re-examine the evidence in proceedings under Section 34 of the Act. The said judgment does not help the case of the appellant.

68.4 Insofar as ***Navnirman Development Consultants (India) Private Limited (supra)*** is concerned, the Supreme Court held that the order which decided the *lis* between the parties should have contained the brief facts of the case, the stand of the parties impugning and defending the action, the submissions of the parties in support of their stand, legal provisions, if any, applicable to the controversy involved in the *lis*, and lastly, the brief reasons as to why the case of one party deserved acceptance or rejection.

The facts as noted from the said judgment is that, according to the Supreme Court, the High Court while dismissing the appeal did not set out even the factual controversy properly much less in detail and not dealt with any of the grounds taken by the parties in their pleadings and in that respect the matter was remanded back to the High Court to be considered afresh.

68.5 Insofar as ***UHL Power Company Limited (supra)*** is concerned, the said judgment has no applicability in the facts of the present case and is against the petitioner.

68.6 Insofar as ***Kamal*** Construction ***Co. v. Delhi Development Authority and Another, 2012 SCC OnLine Del 4972*** is concerned, the said judgment has no applicability in the facts of the present case.

68.7 Insofar as ***K. C. Skaria v. Govt. of State of Kerala and Another, 2006 SCC OnLine SC 72*** is concerned, the said judgment has no applicability in the facts of the present case.

68.8 Insofar as ***State of Rajasthan and Another v. Ferro Concrete Construction Private Limited, 2009 SCC OnLine SC 868*** is concerned, the arbitrator awarding claim equating it as proof without looking for or insisting on proof, held, is legal misconduct and error apparent on face of the award. In the said case, the issue was with regard to the moral misconduct against the Arbitrator. In the case in hand, such is not the situation. The said judgment has no applicability in the facts of the present case.

68.9 Mr. Nigam with regard to the screenshots taken by appellant of the respondent no. 1 from the GST portal is concerned, would rely upon the judgment in the case of ***Emkay Global Financial Services Limited v. Girdhar Sondhi, 2018 SCC OnLine SC 1019***. He contends that it is permissible for information that is relevant for purpose of determining issues arising under Section 34(2)(A) of the Act.

68.10 Insofar as ***Smriti Debbarma (Dead) through Legal Representative (supra)*** is concerned, the Court held that the factual background in the said case, the general principle under Section 101 of the Evidence Act is applicable. The said judgment has no applicability in the facts of the present case.

69. There is no dispute on the proposition of law as held by the Supreme Court / this Court in the judgments as relied upon by Mr.Nigam. Surely, the law as held by the Supreme Court has to be tested in the facts of each case. Surely, we can conclude that the above judgments, are clearly distinguishable on the facts, which arise for consideration in such judgments.

70. In view of our above discussion, the appeal is devoid of any merit and liable to be dismissed. We order accordingly.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 19, 2026/sr