

Date: 24.10.2024

To,
National Stock Exchange of India Limited
Exchange Plaza, Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051
Symbol: AKASH

Dear Sir/Madam,

Sub.: Disclosure under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Pursuant to the provisions of Regulation 30 read with Schedule III of the Listing Regulations, we hereby submit that the Company is in receipt of an Order from Gujarat Public Works Contracts Disputes Arbitration Tribunal, Ahmedabad as follows:

The details of the above Order are given below:

Name of the authority(s)	Gujarat Public Works Contracts Disputes Arbitration Tribunal, Ahmedabad
Nature and details of the action(s) taken, initiated or order(s) passed	The authority has passed the order in favour of Company on 17/10/2024
Date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority.	Arbitration order dated 17/10/2024 is received by Company on 24/10/2024
Details of the violation(s)/ contravention(s) committed or alleged to be committed;	<p>The Company was awarded the contract for C.R.F. widening & strengthening of Mehsana Kherava Gozaria Road Km 0/0 to 23/075 by agreement No. B-2/33/2007-08 and estimated cost of the work was Rs. 1,95,57,398.02. The expected date of completion of work was 27/07/2008 however the actual work was completed on 05/11/2008. There was dispute in receipt of amount from the respondent namely Executive Engineer, R&B Division Patan, Opp. Rajmahal, Patan for payment of work including excess work done including interest on delayed payment. Therefore, the matter is presented to the aforementioned arbitration authority.</p> <p>Further it may please be noted that matter is admitted / pending when the company was not a listed entity.</p>
Impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible.	The arbitration award has been passed in favour of Company entitling to receive amount of Rs. 19,33,418/- together with interest @ 7% p.a. from the date of filing reference till its realization.

Ph. : +91-79-23227006
E-mail : info@akashinfra.com

Regd. Office:
2, G.F., Abhishek Building,
Sector-11, Gandhinagar-382011.

CIN - L45209GJ1999PLC036003



You are requested to take the information on your records.

Thanking You,
Yours faithfully,

FOR AKASH INFRA-PROJECTS LIMITED

Pinkal Chavda
Company Secretary & Compliance Officer

Encl: Arbitration order as stated above

Filing on	31/01/2011
Registered on	31/01/2011
Decided On	17/10/2024
Duration	13 Y 8 M 17 Day

**BEFORE THE GUJARAT PUBLIC WORKS CONTRACTS
DISPUTES ARBITRATION TRIBUNAL AT AHMEDABAD
ARBITRATION REFERENCE No. 21 of 2010.**

Ex-

Akash Infra-projects Pvt. Ltd.

A Company incorporated under
The Company Act. 1956 office atPetitioner
2, Ground floor " Abhishek:"
Opp. Hotel Haveli, Sector -11
Gandhinagar.



Versus.

1. **The State of Gujarat,**

To be served through
Chief Secretary,
New Sachivalaya,
Gandhinagar.

2. **Executive Engineer,**

R & B Division Patan,
Opp. Rajmahal,
Patan.

.....Respondents.

Appearance:-

Mr. K.G. Sukhwani

L.A. for the Petitioner.

Mr. U H Patel

L.A. for the Respondents

17/10/2024

17/10/24

Coram:-**Shri A. H. Dhamani**

Judicial Member

Shri H. R. Menat,

Technical Member

Tribunal's Judgment Judicial member Mr. A H. Dhamani & Mr. H R Menat Technical Member)

The Petitioner above named most respectfully beg to submit as under :-

1. The petitioner is a company incorporated under the Companies Act, 1956. The petitioner was awarded the contract for C.R.F. Widening & Strengthening of Mehsana Kherava Gozaria Road Km.0/0 to 23/075 by agreement No.B-2/33/2007-08 and estimated cost of the work was Rs.1,95,57,398.02. The petitioner's tender cost was Rs.1,65,07,775/-i.e. 15.59% below the estimated cost. Tenders were opened on 2002 27/07/2007 and the Acceptance Letter was issued on 24/09/2007 and the directions were given for furnishing the security deposit Within 10 days from the date of receipt of the Acceptance Letter. The petitioner stated that due to the forthcoming elections (Achar Sanhita), the Respondents was not in a position to issue the Work Order immediately after the payment of Security Deposit, therefore, the Security Deposit was furnished along with the letter dated 02/11/2007, however, the Work Order was not issued. The petitioner submits that after great persuasions the work order was issued on 28/01/2008. The petitioner submits that the stipulated period was six months. The petitioner submits that the stipulated date of completion of work was 27/07/2008. The petitioner submits that the work could not be completed within the stipulated period as there was excess in the work, due to monsoon the Respondents directed to stop the work and other breaches of the contract committed by the Respondents. The petitioner submits that ultimately the work could be completed in all respect on 05/11/2008.



[Handwritten signature]
17/10/2024

[Handwritten signature]
17/10/24

2. It is further stated by the petitioner had deposited Rs.4,89,000/- by way of S.S.N.L. Bond towards the security deposit and Performance

Bond of Rs.9,78,000/- at the time of entering into the contract. The petitioner submits that an amount of Rs.4,88,950/- had been recovered from R.A. Bills towards the security deposit as well as an amount of Rs.19,55,740/- had been recovered towards time limit deposit. The petitioner submits that the excess work was executed as per the instructions of the Respondents for which an amount of Rs.76,560/- has been retained from the final bill for getting the approval of excess work done from the competent authority. The petitioner submits that since the work is completed, entire security deposit, performance bond and time limit deposit were required to be released, however, the F.D.Rs. only were released on 21/01/2009 but the time limit deposit of Rs.17,87,638/- only has been released on 29/10/2010. The petitioner submits that interest 18% p.a. is required to be paid on Rs.19,55,740/- for the delayed period. It is further stated that as per the provisions of Clause-7(ii) the final bill was required to be paid within 150 days of completing the work, therefore, interest for the period between 04/04/2009 to 29/10/2010 is required to be paid on Rs.19,55,740/- which comes to Rs. 5,57,385.90. The petitioner submits that an amount of Rs. 17,87,638/- only has been released, thus, an amount of Rs.1,68,102/- is required to be released with interest @ 18% p.a. from 29/10/2010 till its realization. The petitioner submits that the maintenance deposit of Rs.8,30,897/- had been recovered from various Running Account Bills which has been released as per the Office Order against the Bank Guarantee of Rs.8,30,897/- which is valid upto 04/11/2011.



- 17/10/2008
- 17/10/2008
3. The petitioner submits that after the stipulated period between 17/10/2008 to 20/10/2008, 1732.02 M.T. Asphalt work was executed. The petitioner submits that thereafter remaining 809.55 mt. the work on Thermoplast side was completed by 05/11/2008. The petitioner further submits that extension has been granted without the payment of star rate difference of Rs. 16,88,756/-. The petitioner submits that interest @ 18% p.a. is required to be paid from 04/04/2009 till its realization. The petitioner has calculated the interest for the time being upto 29/10/2010 which comes to

Rs.4,81,295.46. The petitioner submits that an amount of Rs.76,560/- retained towards the excess work done is also required to be paid with interest 18% p.a. from 04/04/2009 till its realization. The petitioner has calculated the interest for the time being upto 29/10/2010 which comes to Rs.21,819.60.

4. The petitioner submits that at the time of tendering they had contemplated the overhead establishment charges @ 10% of the tendered cost for six months which comes to Rs. 19,55,739.80. The petitioner further submits that thus an amount of Rs.3,25,956.63 was considered per month towards the overhead establishment Charges. The petitioner submits that since the work was delayed for approximately three months due to the Respondents, the overhead establishment charges for extended period of three months are required to be compensated @ Rs.3,25,956.63 which comes to Rs.9,77,869.90. The petitioner submits that interest 18% p.a. is also required to be paid from 04/04/2009 till its realization. The petitioner submits that interest @ 18% p.a. required to be paid from 04/04/2009 till its realization. The petitioner has calculated the interest for the time being upto 29/10/2010 which comes to Rs.2,78,692.92.



5. The petitioner submits that the notice was served on 18/11/2010 to the respondent, however, respondents have neither complied with the requirements of the notice nor replied the said notice. Thus, the petition is filed within the prescribed period of limitation. The petitioner submits that the petition is valued at Rs.42,50,481.18 and court fee stamp of Rs.23,725/- is affixed herewith.

6. The Petitioner therefore prays:

(a) This Hon'ble Tribunal will be pleased to pass an award of Rs. 42,50,481.18 in favour of the petitioner

(b) Pleased to award any other and further reliefs as may be deemed fit under the facts and circumstances of the case.

(c) The Hon'ble Tribunal be pleased to award cost of this

17/10/2024

17/10/24

7. Written Statement of Respondent.

1) Respondent side have produced their reply vide Ex-9 in this reply they have denied almost all claims and allegations averred against them. Ld. Advocate of the respondent has stated that the contents of the claim petition unless and until specifically admitted are, false, got up and some are hereby denied. The respondent denies all allegations, contention and submissions of the claim petition individually and collectively, save and except specifically admitted hereafter in this written statement, the arbitration reference filed by the petitioner is not tenable at facts as well as at law and hence, the same deserves to be dismissed.

2) Respondent stated that the contents of Para 3 of the reference petition are not true and correct. The estimated cost of said work was Rs.1,95,57,398.02 and tender cost was Rs.1,65,07,775/- i.e. 15.59% below than the estimated cost. The government had accepted the tender vide Govt. letter. No. CRF/102007/4/25 dt. 4/9/2007 with tender cost of Rs.1,65,07,775.00 thereafter payment of security deposit. Department has issued at letter No.24/9/07 letter No. E/2/TC/1928 1.10/10/07 & Remind letter No. E/2/TC/7182 dt.30/10 /07. But he did not & pay security deposit even not reply the division officer letter. The election protocol (i.e. ACHAR SANHITA) was not operated for forth coming election during September-2007. But finally, he paid security deposit on dt.2-11-07 as under. (1) Rs. 4,89,000/-Narmada Bond dt.4/102007. Rs.9,78,000/- Performance Bond dt.1/11/2007.

3) Total Rs14,67,000/- As per the tender condition the contractor is required to pay security deposit within 10 days from date of receiving the letter, instead of timely payment of security deposit on 2-11-2011 i.e. 30 delayed in payment of security deposit. The petitioner has not stated clearly as to what contractual obligation the executive engineer fails to discharge and committed the breach of the contract. The work to be executed as per the terms and condition the agreement. Hence question of breach of contract does not arise.

4) Respondent stated that contents and averments made in para 4 of reference petition are not true and correct as per contract agreement



[Handwritten signature]
17/10/2024

[Handwritten signature]
17/10/2024

the detail put on page no.2 it says that rest of 2.5% security deposit were recovered from running bills and as per another condition recovery of account of free maintenance guarantee @05% were recovered total security deposit amounting Rs. 4,88,950/- and maintenance deposit Rs. 8,30,897/- this amount was released on 4/11/2009 against bank guarantee No. 09339913109 dt.9/9/09 of Rs.8,30,897/-having validity period up to 4/11/2011 As per agreement time limit was kept for the contract from dt. 28/1/2008 to dt. 27/7/2008 i.e. six months. Petitioner has not carried out the work as per schedule 'C' of the contract agreement. For which many notice were issued to the contractor to accelerate in progress of work. Total 8 notices served for slow progress to the petitioner and time limit was expired on dt. 27/07/2008.

- 5) In view of above statement, the petitioner had carried out work only 86.13% of contract value within the stipulated period and hence as per tender condition, penalty for slow progress of Rs. 19,55,740/- were deducted from contractor's running bills. Further being there is no provision in the tender towards interest payment so demand of agency may not consider. In addition to please refer point no.03 (payment) pg.no.07 of B-2 from of additional instructions to persons tendering where in it is clearly mentioned that

"the tender must understand clearly that the rate quoted are for completed works and include all costs due to labour, scaffolding plant, supervision service work is, power, royalties, octroi etc. and to include all extras to cover the cost of night work if and when required and no claim for additional payment beyond the price/rates quoted will be entertained the tenderer will not be entitled subsequently to make any claim on the ground of misrepresentation or on the ground that he was surprised with information given by any person".

- 6) The contents and averments made in para 5 of reference petition is not true and correct. The petitioner has not completed the work in stipulated period so the contractor had demanded for extension of time limit from dt. 28/7/08 to dt. 26/11/08 vide is later 20/6/08 with condition that he will not be demanded for any extra rate



17/10/2024

17/10/24

beyond tender provision and will not go to the court to claim for any expenses and payment. On this condition time limit was sanctioned by the Govt. from dt. 28/07/2008 to dt. 26/11/2008 with condition that star for extended period would be paid to the agency. After sanctioning time limit, payment of Rs. 19,55,740/- were released to the contractor. In view of Govt. letter difference of star rate may not be paid as such there is no provision for interest in the tender. So demand of interest also may not consider. The claims are not payable as per the provision of Terms and condition of contract agreement clause no. therefore the claim of interest should be rejected in to.

8 The proposal for excess over tender items of Rs. 76,560/- was not produced by the contractor hence, in final bill its was withheld. It can be released after sanctioning by the competent authority. As per contract agreement, contractor has to execute excess quantity than estimated quantity up to 30% with tender rate. Hence, interest up to extra quantity does not arise in view of the above, the agency could not complete the work in time even several notice were issued from division office and sub-division office level. Hence, overhead establishment charge for 3 months as demanded by the agency may not be entertained, further more in the tender agreement there is not any clause on the basis. In view of claim petition is false and have no any legal stand therefore it is required to Hon'ble tribunal to consider the above facts and cause all the claims as stated in the petition by the petitioner. And not to pass any award for this reference. In the aforesaid circumstances the claim petition of the claimant is required to be dismissed with cost.

9 In support of pleading petitioner side produced document's vide Ex-P/10 to Ex-P/56.

In support of their written statement at Ex-9 respondent have produced documents vide Ex-R/57 to Ex-R/62.

10 Petitioner and respondent have placed record before this Tribunal, after plain reading of the pleading & reply of respondent following issues were emerged for the decision of the present Arbitration Reference.

@@ ISSUES @@



17/10/2024

17/10/2024

1. Whether petitioner proves that respondents are guilty of breach of contract?
2. Whether Respondent prove that petitioner is not entitled for any claim as pleaded and petition is liable to be dismissed.?
3. Whether the petitioner is entitled for various claims as claimed in para- 7 of the claim statement amounting to Rs.42,50,481/- or any part thereof?
4. Whether petitioner is entitled for interest, if yes at what rate from which date?
5. What award?

11. Our answer to the above mentioned issues are as under.

- 1 In Affirmative.
- 2 In Negative.
- 3 Partly in Affirmative
- 4 Partly in Affirmative with interest 7% as per final order
- 5 As per final order.



Submission made by the Petitioner side :

12. Learned Senior advocate Mr. K.G. Sukhwani for the petitioner have mainly submitted & orally argued that because of the grave mistakes done by the officers of department the work was not delayed due to mistakes of petitioner

Petitioner's advocate argued before this tribunal that tender cost of the work was Rs.1,65,07,775/- i.e. which was 15.59% below the estimated cost. Tenders were opened on 2002 dated 27/07/2007 and the Acceptance Letter was issued on 24/09/2007 and the directions were given for furnishing the security deposit Within 10 days from the date of receipt of the Acceptance Letter. The petitioner submits that due to the forthcoming elections (**Achar Sanhita @ code of conduct** the Respondents was not in a position to issue the Work Order immediately after the payment of Security Deposit,

Handwritten signature and date: 17/10/2024
Handwritten signature and date: 17/10/24

therefore, the Security Deposit was furnished along with the letter dated 02/11/2007, but work order was not issued. The petitioner submits that after great persuasions the work order was issued on 28/01/2008. The petitioner submits that the stipulated period was six months. The petitioner submits that the stipulated date of completion of work was 27/07/2008. But work could not be completed within the stipulated period as there was excess in the work, due to monsoon the Respondents directed to stop the work and other breaches of the contract committed by the Respondents. The petitioner submits that ultimately the work could be completed in all respect on 05/ 11/2008 therefore breaches were done by the respondent side, petitioner was ready and willing to work as per terms and conditions of the tender. In end of the oral argument Ld. Advocate of the petitioner submitted that all claims are genuine one and therefore requested to granted in favor of the petitioner in support of this argument petitioner has put reliance on the judgement which are as under.



13 Submission made by the Respondent side

The Respondents submits that the petitioner's all claim are not tenable along with interest thereon and arbitration reference is also not maintainable at Law and averments made in these are not true and correct and same are hereby denied the respondents submits that there petitioner had not done work in stipulated period because of his own problems and reasons, it was prime duty of the petitioner that before filling of tender petitioner must have to visit the site area where he was want to work, he was full aware of the site. Respondent has denied almost all claims and respondent are not responsible for any delay or any claims the work was suffered due to rain and negligence of petitioner.

[Handwritten signature]
17/10/2024

[Handwritten signature]
17/10/24

14. The government had accepted the tender vide Govt. letter. No. CRF/102007/4/25 dt. 4/ 9/2007 with tender cost of Rs.1,65,07, 775.00 thereafter payment of security deposit. Department has issued at letter No.24/9/07 letter No. E/2/TC/1928 1.10/10/07 & Remind letter No. E/2/TC/7182 dt.30/10 /07. But he did not & pay

security deposit even not reply the division officer letter. The election protocol (i.e. ACHAR SANHITA) was not operated for forth coming election during September-2007 But finally, he paid security deposit on dt.2-11-07 as under. (1) Rs. 4,89,000/-Narmada Bond dt.4/10/2007. & Rs.9,78,000/- Performance Bond dt.1/11/2007.

15. Total Rs14,67,000/- As per the tender condition the contractor is required to pay security deposit within 10 days from date of receiving the letter, instead of timely payment of security deposit on 2-11-2011 i.e. 30 delayed in payment of security deposit. The petitioner has not stated clearly as to what contractual obligation the executive engineer fails to discharge and committed the breach of the contract. The work to be executed as per the terms and condition the agreement. Hence question of breach of contract does not arise. As per contract agreement the detail put on page no.2 it says that rest of 2.5% security deposit were recovered from running bills and as per another condition recovery of account of free maintenance guarantee @ 05% were recovered total security deposit amounting Rs. 4,88,950/- and maintenance deposit Rs. 8,30,897/- this amount was released on 4/11/2009 against bank guarantee No. 09 339913109 dt.9/9/09 of Rs.8,30,897/-having validity period up to 4/11/2011 As per agreement time limit was kept for the contract from dt. 28/1/2008 to dt. 27/7/2008 i.e. six months. Petitioner has not carried out the work as per schedule 'C' of the contract agreement. For which many notice were issued to the contractor to accelerate in progress of work. Total 8 notices served for slow progress to the petitioner and time limit was expired on dt. 27/07/2008. The petitioner had carried out work only 86.13% of contract value within the stipulated period and hence as per tender condition, penalty for slow progress of work Rs. 19,55,740/- were deducted from contractor's running bills. Further being there is no provision in the tender towards interest payment so demand of agency may not consider. In addition to please refer point no.03 (payment) pg.no.07 of B-2 from of additional instructions to persons tendering where in it is clearly mentioned that

"the tender must understand clearly that the rate quoted are for completed works and include all costs due to labour, scaffolding



17/10/2011

17/10/2011

plant, supervision service work is, power, royalties, octroi etc. and to include all extras to cover the cost of night work if and when required and no claim for additional payment beyond the price/rates quoted will be entertained the tenderer will not be entitled subsequently to make any claim on the ground of misrepresentation or on the ground that he was surprised with information given by any person”.

16. The petitioner has not completed the work in stipulated period so the contractor had demanded for extension of time limit from dt. 28/7/08 to dt. 26/11/08 vide is later 20/6/08 with condition that he will not be demanded for any extra rate beyond tender provision and will not go to the court to claim for any expenses and payment. On this condition time limit was sanctioned by the Govt. from dt. 28/07/2008 to dt. 26/11/2008 with condition that star for extended period would be paid to the agency.



17. The proposal for excess over tender items of Rs. 76,560/- was not produced by the contractor hence, in final bill its was withheld. It can be released after sanctioning by the competent authority petitioner is not entitled for star rates nor overhead establishment charge for 3 months as demanded by the agency may not be entertained, further more in the tender agreement there is not any clause on the basis.

[Handwritten signature]
17/10/2024
[Handwritten signature]
17/10/24

18. Under these circumstances respondent's department have denied almost all claims which were pleaded in the petition and given para wise reply and end of the reply stated that petitioner is not entitled for any relief or claims as prayed for in claim stated in the petition Hence all the claims put forth by the petitioner are required to be rejected including interest thereon and compensatory cost be awarded to the respondent.

19. Even otherwise the claim of the petitioner is exorbitant and inflated and so also the said claim of the petitioner denied. So far percentage of interest is concerned respondents have stated and submitted that claims of the petitioners are false, fabricated & hypothetical hence the present claims cannot be entertained, petitioner is in fault for the not executing work within the time limit therefore petitioner have no right to claim any amount ,and there is no question of paying or awarding any amount under the head of interest, it is further submitted by the respondents that claims of the petitioner are baseless and therefore it deserved to be dismissed with costs because claims of petitioner are false and frivolous therefore present respondents cannot be made liable to pay the costs of the proceedings, petitioner filed this petition against the present respondent to extract money from the respondent department therefore claim petition of the petitioner is deserved to be dismissed with costs. In short, the respondent denied the all claims of the petitioner in toto and advanced the case of the respondent as above. Respondent has argued at length on above mentioned points and submitted that claim petition of the petitioner should be reject on merits and special costs must be awarded in favor of the Respondent department



20 Issue No. 1

The issue no.1 burden to prove this issue is laying upon petitioner that whether petitioner is guilty for breach of contract? First of all, it is very necessary to decide that who is responsible for the breach of the terms and condition of contract? Petitioner or Respondent? Whether petitioner proves that work could not be completed in the stipulated period due to various breaches committed by the respondents? which are alleged in the petition? and tender work was not completed in stipulated period as per terms and conditions mentioned in the agreement? whether delay has been occurred due to fault and carelessness of the opponent or petitioner?

17/11/2024
Om
17/11/24

21. We carefully perusal of the record on hand and correspondence between the party's petitioner repeatedly informed to respondent by

writing so many letter to the respondent and number of requests were made verbally to Respondents well as in writing for the giving site for to do the work and moreover petitioner had also draw attention regarding (ACHAR SAMHITA) code of conduct of Election restriction regarding pubic work and then after monsoon was came therefore work was could not completed within stipulated period hence it seems from the record that petitioner had informed respondent well in advance about situation but there was short span with respondent, they could not have given complete site for work therefore looking to the situation of the schedule of election and work petitioner is not responsible for delayed work hence respondents were responsible for delay occurred on the part of the respondent and breaches of terms and conations of the contract were also done by the respondent therefore issue no. 1 is proved by the petitioner hence we answered issue no. 1 & 2 in affirmative.



Issue no. 2

22. Issue no.2 this issue has to prove by the respondent that whether Respondent prove that petitioner is not entitled for any claim as pleaded and petition is liable to be dismissed.? In this regard looking to the facts and circumstances of this reference petitioner had tried to work on site he never stated that he don't want to work on site on the contrary he written letter to the respondent for handing over site and respondent had instructed to the petitioner for stopped work due to code of conduct which is applicable due to election respondent unable to proves that petitioner is not entitled for any claim and his petition is liable to be dismissed on the contrary respondent is liable for breach of terms and conditions. Therefore respondent had totally failed to proves issue no. 2 hence we hold issue no. 2 in negative

[Handwritten signature]
17/10/2024

[Handwritten signature]
17/10/24

Issue no. 3

23 Issue no. 3 has to prove by the petitioner that petitioner is entitled for various claims as claimed in para- 7 of the claim statement amounting to Rs.42,50,481/- or any part of the petition? as we have already discussed in issue no.1 and issue no. 2 that petitioner is not

responsible for breaches of terms and conditions of contract but it is worthy to note that petitioner is nor entitled for all claims as alleged in the petition because each and every claims had its own value and own circumstances therefore every claims will be decide its own merits hence we hold this issue no. 3 partly in affirmative.

Issue no. 4

24. Issue no. 4 has to prove by the petitioner that petitioner is entitled for interest? if yes at what rate from which date? Looking to the facts and circumstances of this reference and we have already made discussion in issue no. 1 to 3 that petitioner is entitled for several claims and naturally petitioner is entitled for interest thereon, we will decide rate of interest and date in discussion of claims hereunder

Issue no. 5

25 In this connection issue no. 5 is for the final order therefore this issue will be decide after discussion of the claims and end of the judgment

After hearing of both the side discussion of claims as under:-

Claim No.1:-

26. Amounting to Rs.1,68,102/- on account of remaining amount for liquidated damages, which was withheld by the respondent. We have heard both the sides Ld. Advocates on merits and perusal of record available on hand, the Respondent /Department have stated that they levied liquidated damages as per clause no.2 of Tender it averred on page no.10 of Tender documents, it deducted from the various RA bills as under.

Sr. No.	Bill	Amount for Liquidated Damages
1	3 rd RA bill	Rs.3,50,000/-
2	4 th RA bill	Rs.1,50,000/-
3	5 th & final bill	Rs.14,55,740/-
Total		Rs.19,55,740/-



Handwritten signature and date:
18/10/2024
G. P. W. C. D.

The petitioner requested to the respondent for extension of time limit, at the work was not completed due to monsoon season and the work for asphalt work which was not be executed for the rainy season and requested to extend the time limit from date 28/07/2008 to date 27/11/2008, and also undertaken that, if the time limit would approved by the respondent, then petitioner would not claim any increased amount price of work, which would be beyond the Tender provision. The respondent /Govt. on dated 05/07/2010, vide Ex-P-14 on page no.AS-147, approved time limit extension from 28/07/2008 to 05/11/2008, with a condition that star rate would not be paid or applicable for these extended time limit.

27. It is stated by Ld. Advocate of respondent, that said work was 86.13% completed within time limit, only 14% work was remained, which was completed in extended period here in this case, the petitioner could not work due to, during progress of work, the monsoon came and the remaining work could not be completed as the work of asphalt could not be done in monsoon period, from June to October banned by the Govt./Respondent.

The respondent had paid, i.e. released the amount which were withheld due to time limit on dated 29/10/2010, of amounting to Rs.17,87,638/- only against to withheld amount of time limit amounting to Rs.19,55,740/- and hence, the remaining amount to Rs.1,68,102/- was pending to be released by the respondent. The petitioner had produced document vide Ex-65 on dated 01/08/2024, in support of evidence for Rs.17,87,638/- was paid by R & B Division Mehsana on account ledger of petitioner namely Akash Infra Project Pvt. Ltd. for this project work. The respondent had not produced any document regarding withheld amount of Rs.19,55,740/- which was paid to the petitioner, but in written statement, the respondent/ department have accepted that, amount Rs.19,55,740/- was paid i.e. released the withheld amount of time limit to the petitioner, therefore, looking to the facts and



17/10/2024
Amey
17/10/24

circumstances and perusal of record, the remaining pending withheld amount of liquidated damages of Rs.1,68,102/- the petitioner is entitled for remaining amount of L D amount Rs. Rs.1,68,102/- to the petitioner. Hence this claim is partly allowed and we allowed amounting Rs. **1,68,102/-** regarding claim no. 1

Claim No.2:- Amounting to Rs.76,560/- on account of excess work which was withheld by the respondent.

28. We have heard Ld. Advocates of both the sides. and perusal records available on hand, it is admitted fact that the excess amount of **Rs.76,560/-** was kept withheld in 5th and final bill, vide Ex-42, page no.AG 117 to 124. Ld. Advocate of the respondent stated that, the excess was not paid to the petitioner because approval was pending before competent authority of Govt. and hence, it was not paid to the petitioner. Therefore Looking to the record, petitioner is entitled for amounting Rs Rs.76,560/- towards excess amount. Hence this claim is partly allowed and we allowed amounting Rs. 76,560/- regarding claim no.2



Claim No.3:- Amounting to Rs.16,88,756/- on account of star rate difference.

29. So far star rate is concerned as per Tender clause no. 59A on page no.191, there is provision of star rate for asphalt Qty 349.341 MT with star rate of 21,012.98 per MT and also mentioned that, DTP was approved on month May 2007.

The petitioner had requested to respondent/Department for star rate payment as per Tender clause no.59A, Vide Ex-P/45 on dated 05/09/2009, on page no. AS 132 and 133 and also stated that, the calculation sheet regarding star rate was shown on page no.133 that calculation sheet was produced by the petitioner, so total star rate payable amount was Rs.37,58,353.89/-, while in third RA bill the star rate amounting Rs.20,69,598/- was already paid by the respondent to the petitioner and remaining star rate payment

17/10/2024
17/10/24

amount to Rs.16,88,755.899/- therefore remaining amount Rs.16,88,756/- not paid to the petitioner by the respondent /Department.

30. The Ld. Advocate of the respondent heavily denied that in extension of time limit by Govt./Respondent vide Ex-P-54 on dated 05/07/2010, on page no. AS-147, clearly mentioned that star rate can't be applicable for extension of time limit period and also stated that, on the basis of these time limit extension approval, the respondent of Govt. had released Rs.19,55,740/- which was withheld on account of time limit to the petitioner. But the Ld. Advocate of the petitioner strongly objected & argued that there was a expressed provision in tender clause no.59A, for star rate and respondent had already extended time limit from 28/07/2008 to 05/11/2008 and also stated that vide Ex- R/ 59 on page no. 161, the petitioner had requested the time limit extension from 28/07/2008 to 27/11/2008 request letter dated 20/06/2008 which was inward on dated office of the respondent on dated 21/06/2008 inward no. 3133 in this letter petitioner had also himself undertaken that the petitioner would not claim for increased of price beyond the Tender provision hence petitioner not entitled for any amount, in this regard petitioner had cited a judgment and relied upon judgment of Hon'ble Supreme Court which is as under :



2022 S C C Online SC 1606 State of Madhya Pradesh V. Sew Construction Limited in this judgement on Hon'ble Apex court has held in the para no. 21 to 25 as under .

21. A further question which remains for consideration is with respect to the letter of the Executive Engineer granting conditional permission. Shri Saurabh Mishra has submitted that while the Contractor accepts the alternate quarry, they cannot wriggle out of the condition of no escalation. We will presently deal with this submission

22. A contractual clause which provides for the finality of rates quoted by the Contractor and disallows any future claims for escalation is conclusive and binding on the parties. If the clause debarring future

Handwritten notes:
 17/11/2024
 17/11/2024

claims permits escalation subject to certain conditions, no claim is admissible if the conditions are not satisfied. However, if the conditions are satisfied, the Contractor will have a right to claim escalation. This is a contractual right. The right originates and subsists by virtue of the contract itself. It is the duty of the Court, while interpreting the contract to decipher the true and correct meaning the parties intended and enforce the rights arising out of the contract. Officers administering the contract will not have any discretion whatsoever to admit or deny escalation after the conditions specified in a contract are satisfied.

23. The Executive Engineer has in our opinion acted beyond the scope of clause 3.11(A). Under the clause, if a circumstance beyond the control of the Contractor exists and the Superintending Engineer, in charge of work grants a written order to the effect, a right to seek escalation arises. When the two conditions provided under clause 3.11 (A) were satisfied, there was no discretion left with the Executive Engineer to impose any further conditions for claiming escalation. The Executive Engineer, in our opinion, has certainly acted beyond the scope of the contract. The role of the Executive Engineer was only to forward the decision of the Superintending Engineer and enable the Contractor to raise a claim for escalation.

24. In the context of discretion, we may reiterate this principle. The rights and duties of the parties to the contract subsist or perish in terms of the contract itself. Even if a party to the contract is a governmental authority, there is no place for discretion vested in the officers administering the contract. Discretion, a principle within the province of administrative law, has no place in contractual matters unless, of course, the parties have expressly incorporated it as a part of the contract. It is the bounden duty of the court while interpreting the terms of the contracts, to reject the exercise of any such discretion that is entirely outside the realm of the contract.

25. Returning to the facts of the present case, whether the escalation is justified or not is another matter, and it is for the Arbitral Tribunal to decide the admissibility of the claim depending on the evidence on record. That will be a finding of fact, with which we are not concerned.



[Handwritten signature]
17/10/2024

[Handwritten signature]
17/10/24

For the reason stated above, we are of the opinion that the Arbitrator was justified in granting the claim for escalation as the conditions precedent for raising a plea for escalation are admittedly satisfied by the inspection report dated 31.10.2002 followed by the letter of the Superintending Engineer dated 12.11.2002.

Spirit of this judgment is that the executive engineer has acted beyond the scope of clause 3.11 (A) Under the clause, if a circumstance beyond the control of contractor exists and the Superintending Engineer, in charge of work grant written order to the effect. That means Executive Engineer has no power to alter the clause without consent of the contractor. Therefore, ratio of the cited judgment is applicable to the petitioner's case

In support of this argument petitioner have placed reliance on landmark judgment of Hon'ble Supreme Court reported in AIR 2011 Supreme Court page no. 754 R L Kalathiya V/s. State of Gujarat

In this case law Hon'ble Apex Court has held that

- (i) Merely because the contractor has issued "No Due Certificate", if there is acceptable claim, the court cannot reject the same on the ground of issuance of "No Due Certificate". (ii) Inasmuch as it is common that unless a discharge certificate is given in advance by the contractor, payment of bills are generally delayed, hence such a clause in the contract would not be an absolute bar to a contractor raising claims which are genuine at a later date even after submission of such "No-claim Certificate".
- (ii) Even after execution of full and final discharge voucher/receipt by one of the parties, if the said party able to establish that he is entitled to further amount for which he is having adequate materials, is not barred from claiming such amount merely because of acceptance of the final bill by mentioning "without prejudice" or by issuing 'No Due Certificate'. 10) In the light of the above principles, we are convinced from the materials on record that in the instant case, the appellant/plaintiff also had a genuine claim which was considered in great detail by the trial Court and supported by oral and documentary evidence. Though the High Court has not adverted to any of the factual details/claim of the plaintiff except reversing the judgment and decree of the trial Court on the principle of estoppel, we have carefully perused and



Handwritten signature and date: 17/10/2024
Handwritten signature and date: 17/10/24

considered the detailed discussion and ultimate conclusion of the trial Judge. Though we initially intend to remit the matter to the High Court for consideration in respect of merits of the claim and the judgment and decree of the trial Court,

31. Looking to the ratio of the cited case law is applicable to the petitioner's case law here in reference on hand respondent have obtained no due certificate from the petitioner, herein case on hand petitioner written a letter to the respondent department that he will not claim regarding price rise if time limit extended by the respondent. Herein reference on hand time limit was extended but looking to the facts and circumstances of the reference as per discussion made in the claim petitioner is entitled for claim amount and no due certificate is not applicable to the petitioner's reference.

As per record on hand, the payment for star rate was paid in 3rd RA bill Vide Ex-P/140 page no.AE 100, 106, 107 for asphalt Qty of 289.634 MT up to 24/06/2008, calculated amounting of Rs.23,76,975.65/- but looking to the record produced Vide Ex-P-45 on page no.AS 132 to 133, the star rate payment was paid amounting to Rs.20,69,598/- and remaining amount Rs.16,88,756/- was pending. The petitioner had requested and undertaken given to the respondent on page no. 163 letter dated 20/06/2008 that the time limit from dated 28/07/2008 to 05/11/2008, to be extended and the petitioner could not claim for extended period for increased price of work which beyond Tender provision. Here Tender clause no.59A as a expressed provision for payment star rate and which calculation, the petitioner had filled the Tender and also request for time limit extension and undertaking letter he stated that he would not claim for increased in price escalation which is beyond the Tender provision, i.e. here there is expressed provision star rate and petitioner has not undertaken which is inclusive of Tender provision for price escalation (i.e. increased in price of work)

32. Claim No.4:- Amounting to Rs.9,77,869.90/- on account of overhead establishment charges for three months.



17/10/2014
17/10/2014

Heard both sides of L.A. and perusal of available records on hand, that the 86% work was completed within time limit only 14% work was left due to Monsoon period, such asphalt work could not be done and then after petitioner had completed work and also petitioner hadn't produced in document that due to want of respondent fault the staff etc, remained idle and hence, looking to the facts and circumstances and latest judgment of Hon'ble Supreme Court **Unibros V/s All India Radio reported in 2023 Lawsuit, 1052.** looking to the ratio of the cited judgment we respectfully read this judgement this Judgment is delivered by the Hon'ble Supreme Court (dated 19/10/2023) in this judgment Hon'ble Supreme Court has held in Para No. 15 of judgment and also cited one another judgment Bharat Cooking Coal (supra) Para No. 15 is reproduced for better clarification of present award.



15. Considering the aforesaid reasons, even though little else remains to be decided, we would like to briefly address the appellant's claim of loss of profit. In Bharat Cooking Coal (supra), this Court reaffirmed the principle that a claim for such loss of profit will only be considered when supported by adequate evidence. It was observed:

24. ... It is not unusual for the contractors to claim loss of profit arising out of diminution in turnover on account of delay in the matter of completion of the work. What he should establish in such a situation is that had he received the amount due under the contract, he could have utilized the same for some other business which he could have earned profit. Unless such a plea is raised and material is available on record. In the absence of any evidence, the arbitrator could not have awarded the same."

16. To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.

19/10/2024
[Signature]
19/10/24

Therefore, as per ratio of above citation, we are of the opinion that without any support of strict evidence, tribunal cannot grant any amount on imaginary basis therefore claims cannot allow without documentary evidence. The petitioner has not proved this claim therefore he is not entitled for any amount of this claim as per above discussion we reject this claim

Calculation sheet of claims

Sr.No.	Claim No.	Amount	Remarks
1	1	Remaining amount of LD	Rs.1,68,102/-
2	2	Excess work which was withheld amount	Rs.76,560/-
3	3	star rate difference.	Rs.16,88,756/-
4	4	overhead establishment charges	Not allowed
		Total Amount	Rs.19,33,418/-



33. Issue no. 4

This issue 4 is regarding entitlement of interest. As the petitioner is entitled for the above-mentioned amount to be recovered from the respondent and it has been remained with the respondent which cannot be utilized by the petitioner and therefore the petitioner is entitled for some interest. The petitioner has prayed interest at the rate of 18 % p.a. on above all claims from due date till realization. On other side Ld. advocate U H Patel for the Respondents side has argued before this Tribunal that petitioner is not entitled for any compensation hence question of interest does not arise at all. After hearing of both the side advocates, looking to the reference filed before the Tribunal and dispute regarding compensation at that time rate of bank interest were very high simultaneously at present scenario rates of bank interest are very low hence to avoid injustice either side to petitioner or Respondent/ department & Tribunal should pass reasonable percentage of interest. This reference was filed in year 2010 this Tribunal to the conclusion that petitioner is entitled to recover the interest from the respondent at the rate of 7

Handwritten signature and date: 17/10/2024

% per annum from the date of the institution of the this Arbitration Reference , hence we answer this **issue No.5** as per the final order.

As per our whole discussion, petitioner is entitled for following compensation for following heads

ORDER

- (1) Arbitration Reference No. 21/2010 is partly allowed.
- (2) Petitioner is entitled to get amount from the respondents Rs **19,33,418/- (Nineteen lac Thirty three thousand four hundred Eighteen rupees only)** together with interest at the rate of 7 % p.a. from the date of filing Reference till its realization.
- (3) Bill of Cost be drawn accordingly by the office of the Tribunal.

Pronounced today on 17th date of month October, 2024 in the open Tribunal

Date 17/10/2024
Ahmedabad.

(Signature)
(A.H. Dhamani)

Judicial Member,
Gujarat P.W.C.D.

Arbitration Tribunal
Ahmedabad

(Signature)
(H. R. Menat)

Member Tech.
Gujarat P.W.C.D.

Arbitration Tribunal
Ahmedabad

Certified to be True Copy

(Signature)
Section Officer

GPWCD Arbitration Tribunal



(Signature)
17/10/2024

(Signature)
17/10/24

(Signature)
Seen

Seen

Alana

on behalf of
K.G. Sukhwani

Copy Applier For on... 17/10/24
Copy Prepare on... 18/10/24
Made ready for Delivery... 21/10/24
Made Delivered on... 24/10/24

[Signature]
Section Officer
Guj. Pub Works Contractors
Disputes Arbitration Tribunal
O/U Appln. No. _____
(Fis _____)
COPYING CHARGES Rs. _____ P
COMPARING CHARGES Rs. 230/- r
TOTAL _____
[Signature] 230/-
ASSISTANT
G.P.W.C.D. Arbitration Tribunal

Section Officer
G.P.W.C.D. Arbitration Tribunal