



AWARD

हिमाचल प्रदेश HIMACHAL PRADESH Before

460475

S K BEHL

SOLE ARBITRATOR

In the matter of Arbitration between

1. Sh. Chanderjeet Singh – Claimant

V/S

2. Bharat Sanchar Nigam Ltd —Respondent

(Through Executive Engineer (C)

BSNL Civil Division, Dharamshala, H.P.

Name of Work: Construction of Govt. High School Building (Section- I) under RAMSA at TRIPAL, Distt. Kangra (H.P.)

Agreement No. 11/EE/BSNL/CD/DMA/2014-15

WHEREAS, the Chief Engineer (C), BSNL H.P. Civil, South Zone, Shimla vide No. W-6 (604) CE (C-S) HP/BSNL/SML/948 dt. 06-02-2020 appointed the u/sd as 'Sole Arbitrator' under the agreement under between parties, to determine the dispute(s) as stated in the said letter & counter claim of Respondents against the claimant, if any, subject to their admissibility under clause 25 of the agreement.

S.K BEHL (SOLE ARBITRATOR)

Page 1

WHEREAS, 6 (Six) no. claims/disputes referred by competent authority for adjudication vide letter no. referred above dt 06-02-2020 & one number counter claim for adjudication.

AND WHEREAS, statement of facts on claims was filed by claimant on 24-07-2020 with annexure C-1 to C-70 along with Power of attorney to Smt. Avnidha Gupta, Advocate dt 23-02-2020. However, CE (C) vide letter no. W-6(604) CE (C-S)/HP/BSNL/SML/1124, dt. 06-07-2020 has referred claim no. 7 which was not submitted in original statement of claims, enclosing Claimant letter No. NU 17.06.2020. The Claimant has submitted statement of claims vide email dt. 24.07.202 which was received on 02.08.2020.

The Respondent EE (C) BSNL, Dharamshala has submitted reply to statement of claims on 11-11-2020 along with Annex. R-1 to R-39. The Claimant has submitted Rejoinder/replication on 30.10.2021 along with Annexure C-71.

The Respondent also clarified vide even letter No. 134 dt. 11.08.2021 enclosing Annexure R-40 to R-44.

AND WHEREAS, 4 hearings were held on 20-07-2021, 06-08-2021, 07-08-2021, 24-03-2022 & minutes were issued on 30-07-2021, 20-03-2022 & 23-05-2022 respectively. Both Claimant & Respondents were requested to get the time period of publishing award through court. Sh. Ajay Mehta, Id. District Judge, Kangra at Dharamshala allowed six months' time to pass the award on 16-09-2022 vide case CMA No. 33/2922.

The Award is made with in stipulated time as extended by Honorable Distt. Court, Dharamshala (H.P.)

Salient features of Contract are :-

Name of Work – Construction of Govt. High School Building (Section-1) Under RMSA at Tripal, Disst. Kangra (H.P.)

Agreement No. : 11/EE/BSNL/CD/DMA/2014-15

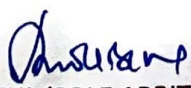

S.K BEHL (SOLE ARBITRATOR)
pg 2

Sr. No.	Description	Remarks
1	Estimated Cost of Work	Rs. 43,21,147.00
2.	Tender Amount of Work	Rs. 47,40,489.75
3	Actuala Amount of Work Done	Rs. 44,70,528.00
4.	Time Allowed	12 Months
5.	Stipulated Date of Start	03-01-2015
6.	Stipulated Date of Completion	02-01-2016
7.	Actual Date of Completion	09-10-2017
8.	Delay in completion of Work	646 Days
9.	Date of Passing of Final Bill	02-07-2018
10.	Date of releasing Payment of Final Bill	Not paid yet
11.	Date of Issue of Show Cause notice under Clause 2	22-09-2018
12.	Date of reply by Claimant	02-11-2018
13.	Date of Imposition of Compensation under Clause 2	31-05-2019
14.	Date of Invocation of Clause 25	18-12-2019
15.	Date of Appointment of Sole Arbitrator	06-02-2020

The Details of Claims/Disputes (7) & counter Claims (1) referred fr Arbitration are as below :-

Statement of Claims :

Claim No.	Description of Claims	Amount
1.	Setting aside levy of compensation under clause 2, amounting to Rs. 4,74,09/- imposed vide letter No. E-5 (205) SE/BSNL/CC-11/B7 Dt. 31-05-2019	Claim No. 1 and 4 are inter related
2.	Setting aside recovery under clause 10CA, amounting to Rs. 59,999.42	Claim no. 2 and 4 are interrelated
3	Refund of Security Deposit	1,50,539.00
4	Refund of withheld amount on account of E.O.T.	6,24,079.00
5.	Refund of Extra Amount Pending with BSNL	45,529.00
6.	Cost of Arbitration	85,610.00
7.	Damages for Prolongation of Contract (referred to Arbitrator by CE(C) on 06-07-2020	4,75,000.00


S.K. BEHL (SOLE ARBITRATOR)
Page 3

Statement of Counter Claims :

Claim No.	Description of Claims	Amount
1	Cost of Arbitration	Rs. 2,00,000.00

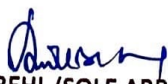
Limitations :

From the record, Annexure C-7, as submitted by claimant, JT. CE (C) BSNL, Shimla have levied the compensation under Clause 2, vide letter no. E-5(205)/SE/BSNL/CC-11/SML/137, Dt. 31-05-2019 & final bill was passed on 02-07-2018 (Annexure C-65) & it is not disputed that some amount were withheld from various Running & Final bills.

Description	Amount Withheld in Rs.	Reference
Total amount with held on account of Security Deposit	Rs. 1,50,539.00	Annexure C-69
Amount with held on account of EOT	Rs. 6,24,079.00	Annexure C-69
Refund Extra amount pending with BSNL	Rs. 45,529.00	Annexure C-69 Claim withdrawn by Claimant vide email dt 14-03-23

From the foregoing facts of the case stated above & limitations under Section 54 of limitation Act 1963, the claims of claimant are not barred by limitation.

NOW, THEREFORE, I, S.K. BEHL, Sole Arbitrator, after Having considered & applied my mind to the pleadings as recorded in minutes of meetings, documentary evidences, written submissions, made by parties, authority cited in support of their contentions & having given due consideration and thought to all the above, having reached my conclusion only after deep & careful consideration do HEREBY MAKE & PUBLISH MY AWARD AS UNDER :-


S.K BEHL (SOLE ARBITRATOR)
144

Claims no. 1 : Setting aside levy of compensation under clause 2 amounting to Rs. 4,74,079/- imposed by Jt. CE (C) Shimla vide letter no. E-5 (205) SE/BSNL/CC-II/137, dt. 31-05-2019.

Findings & Reasons:-

The stipulated date of completion of work was 02-01-2016 & actual date of completion was 09-10-2017. Therefore, total delay was of 646 days. The Jt. CE (C) Shimla granted E.O.T for 220 days delay without levy of compensation from 03-01-2016 up to & including 09-08-2016 under clause 5 of agreement & for balance period of 426 days (from 10.08.2016 up to & including 09.10.2018, levied compensation at the rate of 10% on tender amount of work shown in the agreement as per clause 2 of the agreement. The justified hindrances were based on hindrances as per records available. The show cause notice was issued by the Jt. CE (C) BSNL Circle II Shimla on 22.09.2018.

The Claimant has replied to the show-cause notice vide his letter dt. 09.11.2018 justifying 1005 days delay against total delay of 646 days as follows:

1. Delay due to ban on mining.
2. Due to Non laying of electric conduits
3. Work delayed due to non-availability of funds
4. Work held up partially due to non-fixing of Electrical fixtures/fittings + laying of wires in conducts.
5. Work delayed due to not providing fencing work of Boundary walls.
6. Work partially delayed due to delay in running bill payment.

The Claimant also mentioned that work got delayed as his financial position was not good & his father has suffered major Heart attack. Also, he mentioned that during above period, ERP system was introduced in BSNL dept., which delayed the payments made to him.

The Claimant has mentioned that


S.K BEHL (SOLE ARBITRATOR)
Pg 5

- The Joint CE (C) HP Civil circle (South) Shimla has granted EOT under clause 2 whereas for agreement – Schedule F, the designated authority is superintending Engineer (C) BSNL Civil Circle II, Shimla.
- The joint CE (C) has not applied his mind while deciding the E.O.T. under clause 2 of the Contract, instead he acted in haste and in mechanical manner and compensation has be imposed not on basis of loss suffered by respondent as no liquidated damages occurred to respondent, No proof of loss was given by Engineer-in-charge as per recommendations of respondent to Jt. CE (C).
- The Respondent has failed to perform contractual obligations on his part with regards to timely decisions & making timely interim payments of work done is more than Rs. 4 lakhs as per clause 7.

WHEREAS, the respondent in its reply to statement of claims has stated that Jt. CE (C) is designation granted to executives working in grade of superintending Engineer (C) on regular basis due to non-functional (NF) promotion issued vide order no. 3(2)/JEGM (NF)/2018/MM (BW-CPC), dated 14-08-2018 and above orders clearly stated that there will be no change in posting duties & responsibility of the executives. Also, Respondent has stated that amount of compensation is beyond the purview of arbitration as per observation made in case-law AIR 1989 SC 952 in case of Sri Vishwanath Sood V/s UOI & others & levy of compensation under clause 2 is excepted matter & outside purview of arbitration.

So, in order to proceed further, issue whether compensation under clause 2 imposed by Jt. CE (C) is an excepted mater? The claimant in his support to this have submitted that compensation under clause 2 is not an excepted matter & to support its claim, he has submitted a case law decided by Honourable supreme court titled as per M/s. J G Engineers Pvt. Ltd. v/s UOI & Anrc. Decided on 08-04-2011, whereas Vishwanath Sood v/s UOI was decided in jan 24, 1989.

The relevant portion of judgment are reproduced as under-Para 14 & 15.

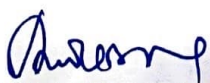


S.K BEHL (SOLE ARBITRATOR)

Page 6

14. Thus what is made final and conclusive by clauses (2) and (3) of the agreement, is not the decision of any authority on the issue whether the contractor was responsible for the delay or the department was responsible for the delay or on the question whether termination/rescission is valid or illegal. What is made final, is the decisions on consequential issues relating to quantification, if there is no dispute as to who committed breach. That is, if the contractor admits that he is in breach, or if the Arbitrator finds that the contractor is in breach by being responsible for the delay, the decision of the superintending Engineer will be final in regard to two issues. The first is the percentage (whether it should be 1% or less) of the value of the work that is to be levied as liquidated damages per day. The second is the determination of the actual excess cost in getting the work completed through an alternative agency. The decision as to who is responsible for the delay in execution and who committed breach is not made subject to any decision of the respondents or its officers, nor accepted from arbitration under any provision of the contract.

15. In fact the question whether the other party committed breach cannot be decided by the party alleging breach. A contract cannot provide that one party will be the arbiter to decide whether he committed breach or the other party committed breach. That question can only be decided by only an adjudicatory forum, that is, a court or an arbitral Tribunal. In *State of Karnataka vs. Shree Rameshwara Rice Mills* (1987 (2) SCC 160) this Court held that adjudication upon the issue relating to a breach of condition of contract and adjudication of assessing damages arising out of the breach are two different and distinct concepts and the right to assess damages arising out of a breach would not include a right to adjudicate whether the other party has committed breach. This court held : "Even assuming for argument's sake that the terms of Clause 12 afford scope for being construed as empowering the officer of the State to decide upon the question of breach as well as assess the quantum of damages, we do not think that adjudication by the other officer regarding the breach of the contract can be sustained under law because a party to the agreement cannot be an arbiter in his own cause. Interests of justice and equity require that where a party to a contract disputes the committing of any breach of conditions the adjudication should be by an independent person or body and not by the other party to the contract. The position will, however, be different where there is no dispute or there is consensus between the contracting parties regarding the breach of conditions. In such a case the officer of the state, even though a party to the contract will be well within his rights in assessing the damages occasioned by the breach in view of the specific terms of Clause 12. We are, therefore, in


S.K BEHL (SOLE ARBITRATOR)
147

agreement with the view of the Full Bench that the powers of the State under an agreement entered into by it with a private person providing for assessment of damages for breach of conditions and recovery of the damages will stand confined.

Last Para

The High court proceeded on the erroneous assumption that when clauses (2) and (3) of the agreement made the decisions of the Superintending Engineer/Engineer-in-charge final as to the quantum of liquidated damages and quantum of extra cost in getting the balance work completed, the said provisions also made the decision as to the liability to pay such liquidated damages or extra cost or decision as to who committed breach final and therefore, in arbitrable; and that as a consequence, the respondents were entitled to claim the extra cost in completing the work (counterclaims 1 and 3) and levy liquidated damages (Counter Claim No. 2) and the arbitration costs (Counterclaim No. 4). Once it is held that the issues relating to who committed breach and who was responsible for delay were arbitrable, the findings of the arbitrator that the contractor was not responsible for the delay and that the termination of contract is illegal are not open to challenge. Therefore, the rejection of the counter claims of the respondents is unexceptionable and the High Court's finding that arbitrator ought not to have rejected them becomes unsustainable. The award of the Arbitrator rejecting the counter claims is therefore, upheld."

From the above case law decided by Hon'ble Supreme Court it is clear that the Levy imposed by CE (C), only the quantum of the levy imposed is final, not who committed the breach and was responsible for the delay of work. According to the above supreme Court decision that the factum of delay was either to be decided by the Court of the law or the arbitration tribunal. Hence, the Levy imposed by CE (C) is not an excepted matter.

Adjudication of the delay/Hindrances.

The detailed discussions about the various hindrances submitted by the claimant has been discussed with respondent during the hearings and the evidences submitted were discussed and evaluated in detail. Having gone through the all statements of facts, reply


S.K BEHL (SOLE ARBITRATOR)
He 8

& rejoinder along with evidences in form of Annexures submitted by Claimant and Respondents.

The Tenders were accepted by SE (C) & levy of compensation was issued by SE/Jt. CE (C) as per annexure R-1 of BSNL Co. Letter No. 3(2)/JE/GM(NF)/2018/M(BW-CPC), Dt. 14-08-2018 where promotion to the grade of Jt. (GM)/ Jt. CE (C) was conveyed on regular basis in IDA pay scales & it was mentioned by BSNL Co. vide 2 (a) of letter that there will be no change in posting/duties and responsibilities of executives etc. Therefore, the contention of Claimant that levy of compensation was levied by Jt. CE (C) instead of SE (C) is not valid. Therefore, the competent authority to give fair & reasonable extension of time is SE(C), BSNL Civil Circle II Shimla i.e. Jt. CE (C)

Claim No. 1

Setting aside the levy of compensation under Clause 2 amounting to Rs. 4,74,079/- imposed vide letter no. E-5(205) SE/BSNL/CC-II/137dt 31-05-2019.

The Claimant has asked for 1005 days delay against 646 days of actual delay vide E.O.T. Performa. The delay in completion of work was on following accounts as per E.O.T. Performa submitted by Claimant.

1. Delay on account of ban in mining imposed
2. Plastering of internal walls held up due to non- laying of electric Conduits.
3. Delay on account of non -availability of funds.
4. Final coat of painting held up due to non-fixing of Electrical fittings and fixtures.
5. Delay due to Boundary wall dispute.
6. Delay due to non-payment of bills

The delays in account of hindrances were discussed & analyzed with both claimant and respondents on 20-07-2021 & 20-03-2022 and minutes issued on 30-07-2021 & 20-03-2022.. As per agreement (Clause-7), The running bills were to be paid to the claimant within 15 working days of presentation of bills by the contractor if value of work done is more than Rs. 4 lacs or more & final bill is to be paid within six months.



S.K BEHL (SOLE ARBITRATOR)

Pc 9

Hinderances:

Hinderance No. 1 : Work held up due to ban on mining imposed by Green Tribunal (Dt. 05-08-2013) & mining department of State Govt. From 02-01-2015 to 09-10-2017 for 1012 days & claimant asked for 40% of 1012 days i.e 405 days delay on this account (Annexure C-6) in his application for E.O.T. the Claimant has submitted order of National Green Tribunal & asked for at least 201 days on this account of statement of claims vide para '26'.

The respondent has stated that there was ban on illegal mining however legal mining were in operation. Most of items requiring mining materials-Sand aggregates, in building were Completer by 21-08-2015 (R-Table 2) i.e. within 8 months from start of work, which shows there was no shortage of sand & aggregates during progress of work & progress of work not suffered due to the ban of illegal mining as stated by Claimant. The stipulated date of completion was 2-01-2016 & actual date of completion was 09-10-2017.

The Claimant has stated during meeting on 06-08-2021 that hindrance on account of ban on mining was allowed in 200 bedded boys hostel in Govt. Polytechnic, Kangra which was awarded on 25-10-2011 & completed on 25-03-2015. The national Green Tribunal, Principal Bench, N. Delhi vide has order on 05-08-2013 has banned mining activity of removing minerals from river beds in all over the country. In its observation NGT have observed that majority of persons carrying out mining activity have no license to extract sand & they have not obtained clearance from MOEF/SEIAA & license from competent authorities. The ban on mining affected the 200 bedded boys Hostel in Govt. Polytechnic, Kangra & its affect was considered in the work. There is substance in the Statement of Executive Engineer BSNL (C) that this ban for illegal mining & not for the legal mining.

The effect of ban on mining for 'Govt High School' Building during 2015-2017 (Section I) under RAMSA at Tripal, Distt. Kangra was not seen, therefore its affect was not considered. This is evident from progress of work also.



S.K BEHL (SOLE ARBITRATOR)

Pt 10

From Perusal of field records, cement register, steel register etc. supplied by Claimant along with statement of claims that brickwork in foundation, RCC work in columns in GF & 1st Floor slab were cast by 20-04-2015 by using 602 bags of cement. The brickwork & roof beams were cast on 12-05-2015 with the total use of 727 bags (68%) of cement out of 1070 bags total bags used on 12-05-2015. Further 153 cement (82% of total cement used) bags were used in July & August 2015. The 2nd bill was put up by claimant on 19-05-2015 & 3rd bill was submitted on 31-07-2015. No bill was submitted from 31-07-2015 to 12-09-2016. No cement work was done from 21-08-2015 to 10-04-2017 & only 200 bags of cement were used after 10-04-2017 to 09-10-2017. The 4th R/bill was made on 12-09-2016.

Findings:

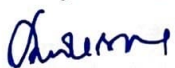
From above details, it is observed that 82% cement was used by 21-08-2015. The cement is mostly used in activities where mining materials (Sand & aggregates) are used. From Progress of work, there appears no hindrance/delay on account of ban on mining. It might have affected the illegal mining. Therefore, delay on account of ban on mining is not justified & Nil hinderance is allowed/justified.

Also, Claimant has himself admitted in his forwarding letter of EOT on 02-11-2018 ,(refer annexure C-5/1) that work was also delayed due to his financial position was not good and his father suffered major heart attack.

(2) Plastering of internal walls held up due to Non-laying of Electric Conduits

(from 10-01-2015 to 25-08-2015 for 77 days as per E.O.T. application (& from 10-03-2015 to 25-08-2017 for 77 days as per statement of claims.)

The claimant has requested for hindrance on account of delay in laying of electric Conduits from 10-01-2015 i.e. almost from Start of digging foundation. The conduits are laid in walls after casting of slab, curing of brickwork & slab, removal of Centering & shuttering. The ground floor slab was on 20-04-2015 & first floor beams were cast on 12-05-2015 & thereafter brickwork in first floor Started in July 2015. The respondent has recommended 14 days of delay on this account from 15-07-2015 to 28-07-2015. The Claimant has asked the delay before casting of slab & & brickwork which is not justifiable.


S.K BEHL (SOLE ARBITRATOR)

17/11/18

The respondent has rightly accepted 14 day delay due to non-laying of electric conduits from 15-03-2015 to 28-07-2015 and hindrances asked by claimant are not correct and exaggerated.

The delay of 14 days is found to be reasonable & acceptable as per minutes of arbitration hearing minutes dt. 30-07-2021 (held on 20-07-2021).

(3) Non-Availability of Funds

The claimant has asked for hindrances from 26-05-2015 to 31-10-2015 (159 days) on this account.

The respondents has intimated that Rs. 30 lakh funds were available on 16-02-2015 & additional Rs. 25 lakhs were allocated on 25.08.2015 (Ref. Annexure R-10 & R-11) The funds were available before submissions of 1st R/Bill & later payments were not delayed on this account, 2nd R/Bill (Rs. 17,59,646/-) & 3rd RA Bill for Rs. 23,75,592/- on dt. 03-09-2015. There was no delay on account of non-availability of funds.

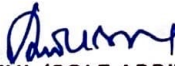
Finding :- from, Above, it is clear that funds were available with BSNL & there is no delay on this account. [However, delay in making payments of R/Bills is discussed in point No. 6, separately]

Hinderances 4 & 5.

- a) Final Coat of Painting held up due to non-fixing of electric fittings from 05-08-2017 to 05-10-2017 (62 days).
- b) Fencing work delayed due to Boundary dispute from 02-09-2017 to 05-10-2017 (for 34 days)

(The period of hindrance No. (5) is overlapping with hindrance No. (4).

For hindrance No. 4, the respondent intimated that electrical contractor has fixed electrical fixtures & fittings on 15-09-2017 actual delay was from 30-08-2017 to 15-09-2017 ie. 17 days as per hindrance register. However Claimant has claimed delay from 05-08-2017 to 15-09-2017 i.e. 17 days as per hindrance register. However


S.K BEHL (SOLE ARBITRATOR)

1712

Claimant has claimed delay from 05-08-2017 to 15-10-2017. (The actual date of completion was 09-10-2017). Therefore, respondent has justified the delay from 03-08-2017 to 15-09-2017. The claimant could not produce any contrary evidence on the matter during the hearing on 20-07-2021.

Finding

I find that 17 days hindrance from 30-08-2017 to 15-09-2017 is justifiable.

Hindrance No. 5 of EOT regarding Boundary Dispute

The claimant has asked for hindrance from 02-09-2017 to 05-10-2017 i.e., 34 days. The respondents has justified 20 days as there is 14 days overlap in hindrance No. 4, As per hindrance register, local patwari visited the site and resolved the dispute on 05-10-2017. Therefore, I find that hindrance of 20 days from 02-09-2017 to 05-10-2017 considering 14 days overlapping with hindrance no. 4, is justifiable as per arbitration hearing minutes dt 20-07-2021. The claimant could not produce any contrary evidence on the matter.

Finding :

I find that 20 days hindrance as justified from 02-09-2017 to 05-10-2017

(6) Delay in making payment of R/Bills

The claimant has asked for 169 days hindrance for the period on account of work delayed due to not making payments as per agreement.

The claimant has submitted Annexure C-9 to C-14 in his statement of claims & Respondent has stated vide letter no. 3(144)/EE/BSNL/CD/DMA/134 dt 11-08-2021 that no such letters were received by respondent. The Claimant stated during hearing that Asst. office Suptd. i.e. Ashwani Kumar has received the letters & Respondent asked the Claimant to share receipts of these letters and Respondent has stated that these letters are after thought & fabricated at claimant level & misleading the tribunal and substantiating by providing Annexure R-40 & R-41. The Claimant has also not produced any evidences of receipts of C-9 to C-14 by BSNL.

However, during detail discussion with both Claimant & Respondent, following facts came to notice during arbitration hearing on 20-07-2021 (minutes issued on 30-07-2021)


S.K BEHL (SOLE ARBITRATOR)

a) First R/Bill was presented by claimant on 23-02-2015 & related EPF Challans were given on 04-03-2015 (Annex R 20) & bill date is considered as on 04-03-2015. Payment was made on 31-03-2015 (R-19). The bill was to be paid within 15 working days of presentation of bill + holidays. The bill was to be paid on (04-03-2015) + 15 days + 5 holidays. = 24.03.2012 whereas Ist bill was actually paid on 31-03-2015 with a delay 7 days. The gross value of bill was Rs. 6,86,552/-.

b) The second bill of Rs. 10,99,006/- was submitted on 19-05-2015 & EPF Challan was submitted on 26-05-2015. The payment was made on 03-09-2015 (R-2). The due date of payment is Considered as (26-05-2015) + 15 days + 2 days holidays = 12-06-2015 i.e there was delay of 82 days which is justified & accepted by respondent.

c) The 3rd bill of Rs. 6,51,072/- was submitted by Claimant on 31-07-2015 (R-22) & payment was made on 07-11-2018 with delay of 76 days.

The due date of bill is considered as (31-7-2015) + 15 days + 4 Holidays = 22-08-2015. The delay in making payment is 76 days.

d) Bill No. 4 The Claimant has submitted 4th bill of Rs. 6,99,045/- on 12-09-2016 & payment was made on 19-10-2016. The due date of payment was (12-09-2016) + 15 days + 3 holidays = 30-09-2016. The delay in making payment was 18 days.

e) Bill No. 5 The claimant has submitted the bill on 03-06-2017 and was paid on 21-06-2017 & due date was 22-06-2017. There was no delay.

Finding-Thus, there was delay of 7+82+76+18 days = **183 days** delay on account of delay in payment of bills against 169 days claimed by claimant.

From the above details following justified delays have occurred.

Sr. No.	Delay	Justified Period
1	Delay due to ban on mining	Nil
2.	Plastering of internal walls held up due to non laying of electric conduits	14 days
3.	Non availability of Funds	Nil

4.	Final coat of painting held up due to non fixing of electric fittings	17 days
5.	Fencing work delayed due to Boundary dispute	20 days
6.	Delay in making Running bill payments	183 days

There was delay of 165 days in payments of bills within Contract Period of 12 Months.

Thus there was delay of 234 days against total delay of 646 days asked by claimant. The unjustified period of delay is $646-234=412$ days.

As per Clause 2 of the agreement, the Compensation for Delay of work @ 2% per month of Delay is to be computed on Daily basis for works having stipulated time of completion more than Six months. Provided always that total amount of compensation for the Delay to be paid under this condition shall not exceed 10% of Tendered Value. Therefore, the action of Jt. CE (C) in levying 10% compensation for delay of 412 days (more than six months) is justifiable as per agreement.

(There was 165 days delay in Contract period meaning thereby that time was not essence of contract)

Claim No. 2-Setting aside recovery under 10 CA amounting to Rs 59,995/42P

The clause 10 CA as per agreement is to compensate any increase/ decrease In market rates of Cement & Steel for works with time duration of 12 Months based on increase/decrease as per All India Whole Sale Index for Cement & Steel. If there is increase, payment has to be made to contractor and if there is decrease, recovery has to be made.

The final bill was passed on 2-7-2018 & EOT was decided by competent authority on 31-05-2019. The statement of recovery under Clause 10CA amounting to Rs 59,995.42P was made on 7-08-2019. The recovery of Rs 59995.42P is as per Clause 10 CA of Agreement.

Award – Therefore, I award Nil amount against this claim

Claim No. 3 Refund of Security Deposit amounting to Rs 1,50,539/-


S.K BEHL (SOLE ARBITRATOR)

07/15

The deposit of Rs 1,50,539/- was withheld towards Security Deposit (Ref. Annexure C-69), and respondent has stated (Annex. R44) that amount of Rs 90,005.00 has been paid to Claimant on 28-01-2021.

Therefore, I, award Full amount against this claim.(It may be ensured that Rs 90,005/- is duly paid to Claimant along with balance unpaid amount, if any, with 9.5% Simple Interest per annum, from the due date of release of Security Deposit)

Claim No. 4: Refund of Withheld amount on account of EOT amounting to Rs 6,24,079/-

The amount withheld against EOT was Rs 6,24,079/- and amount of Rs 4,74,079/- is recovered as levy of compensation & Rs 59,995.42 P recovered as per Clause 10 CA, balance amount of Rs 59995.42 P has been paid to claimant on 28-01-2021 Annex. R-44.

There is no amount now withheld towards EOT. The respondent is liable to pay interest on Rs 90,005/- from the date of recovery till 28-01-2021.

Award: Therefore, I, award 9% interest on Rs 90,005/- from the date of recovery till 28-01-2021.

Claim No. 5- Refund of amount pending with BSNL amounting to Rs 45,529/-

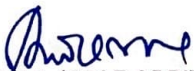
The Claimant has withdrawn the claim no. 5, for refund of Extra amount pending with BSNL amounting to Rs 45,529/- vide email to undersigned, Dated 14-03-2023.

Award : Therefore, I, award Nil amount against this claim

Claim No. 6 – Cost of Arbitration

The claimant has asked for Rs. 85610/- as cost of Arbitration of Rs 35610/- + Litigation charges of Rs. 50,000/-

There was delay by Respondent side towards payment of R/bills to claimant & other delays. Also there was delay by claimant after 3rd Bill (22-08-2015 to 10-04-2017) without any justifiable reasons. Therefore, both claimant & Respondents shall bear the cost of arbitration equally


S.K BEHL (SOLE ARBITRATOR)

Pt 14

Therefore, I award 'Nil' amount against this claim. (Claim is with- drawn by Claimant)

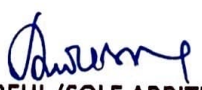
Claim No. 7 Damages for prolongations of contract Rs. 4,75,000/-

The Claimant has intimated that due to default in discharging contractual obligation of not making interim payment/Running bill payments on time as discussed in claim No. 1, the Claimant has suffered the pecuniary damages which needs to be compensated. The claimant has suffered loss due to prolongation of contract due to site overhead charges shuttering, T& P, hiring charges, chowkidar and wastage of materials & other related factors.

As discussed under claim No. 1, the justified hindrances were worked out for 234 days on account of delay in payments & other hindrances which were attributable to respondents and Respondents have failed to discharge the contractual obligations to make the interim payments as per Clause 7 of agreement.

Although, the Claimant has not submitted the proof of Loss but it can't be denied that the claimant might have actually suffered financial loss due to failure on the part of Respondent and on account of making extra expenditure on minimum establishment cost ,watch & ward, Rental for staff and T&P, and transportation for visiting site and increase in labor and material and other over-head charges. In instant case I take the support of Hon'ble Supreme Court Judgement in Civil Appeal no. 10531 of 2014 between Associate Builders V/s Delhi Development Authority. In this Judgement ,Hon'ble Supreme Court have allowed the damages on account of cost of Establishment, shuttering and tools and plant etc. due to prolongation of contract by DDA.

Also claimant has intimated that delay may be adjudicated for the determination of damages. Also, Claimant has prayed that "As per Section 73 of Indian Contract Act", when a Contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damages caused to him thereby, which naturally arose in the usual course of things from such breach of it. Such compensation is not to be given for nay remote and indirect loss of damage sustained by reasons of the breach". It further states that "When an obligation resembling those created by contract has been incurred and has not been discharge, it


S.K BEHL (SOLE ARBITRATOR)

Page 17

is entitled to receive the same compensation from the party in default, as if such person has contracted to discharge it and had broken his contract.

There is delay of 234 days attributable to respondent due to delay in payment of bills etc. Therefore, claimant is entitled for damages & requires to be compensated for period of 234 days.

In order to compute the compensation payable to the claimant due to increase in overheads, cost of establishment, rental, T& P etc, I take the help of Hudson's formula which has been widely accepted in construction contracts for calculation of compensation, office overheads etc. in building & engineering contracts, Hudson formula is stated as under : -

Compensation = Contract Overheads & profits X Contract sum X Period of Delay

Contract Period

As per practice & trends, building contracting firms, Contract overheads are assessed as 10 % of work done during the period. I consider the average income/Contract overheads & profit percentage of the claimant firm in the instant case as 9 % for determining the losses due to prolongation of contract

Compensation as per Hudson's Formula= $9/100 \times 47,40,789/365 \times 234 = \text{Rs } 2,73,537/-$

Award : Therefore, in view of above, I award Rs.2,73,537/- as reasonable amount towards damages in favor of claimant to be paid by Respondent along with future simple interest @ 9.50 % after 90 days from the date of award.

Counter claims by Respondent

There was delay by Respondent side towards payment of R/bills to claimant & other delays. Also, there was delay by claimant after 3rd Bill (22-08-2015 to 10-04-2017) without any justifiable reasons. Therefore, both claimant & Respondents shall bear the cost of arbitration equally

Therefore, I award 'Nil' amount against this claim.


S.K BEHL (SOLE ARBITRATOR)

Ry .18

**THIS AWARD IS MADE & PUBLISHED BY ME ON THIS DAY 15th March,
2023 (Fifteen March , Two Thousand Twenty Three)**

Signature 15/3/2023

SK BEHL

Sole Arbitrator

#923, ATS Golf Meadows Prelude,

Barwala Road, Derabassi, SAS Nagar, PB

Email-behlsk@gmail.com, Mob. 9417000084

No. SKB/CE(C-S)/HP/BSNL/SML/2

d
Dt 15-03-2023

Copy to:- (By Regd.Post /Email)

- 1 The Chief Engineer(C), BSNL Civil HP Zone[SOUTH],Sector-II New Shimla, -171009
- 2 The Executive Engineer(C), BSNL Civil Division, Dharamshala,H.P
- 3 Sh Charanjeet Singh ,Govt. Contractor, V&PO, Palampur Road, Ghurkari ,Distt Kangra, HP through Advocate Smt Avnidha Gupta

Signature 15/3/23

S.K BEHL (SOLE ARBITRATOR)

Pg 19

S K BEHL
SOLE ARBITRATOR

In the matter of Arbitration between

1. Sh Chanderjeet Singh – Claimant

V/S

2. Bharat Sanchar Nigam Ltd ---Respondent

(Through Executive Engineer (C)

BSNL Civil Division, Dharamshala, H.P.

Name of Work: Construction of Govt. High School Building (Section- I) under RAMSA at TRIPAL, Distt. Kangra (H.P.)

Agreement No. 11/EE/BSNL/CD/DMA/2014-15

Date of award 15.03.2023.

In pursuance to the power conferred under section 33(3) of Arbitration and conciliation Act as amended up to date, I S. K BEHL, Sole Arbitrator hereby makes the following corrections in the award published on 15.03.2023.

a) Claim no 1. Page 15 “ (There was 165 days delay in contract period meaning thereby that time was not essence of contract.)”

May be read as

There was 165 days delay in contract period on the part of respondent meaning thereby that time was not essence of contract.

b) Claim no 3 page 16

Respondent has stated (Annexure R 44) that amount of Rs 90,005/- has been paid to claimant on 28.01.2021.

“Therefore, I award Full amount against tis claim-----due date of release of Security Deposit”

The above lines stand deleted and read as under

Therefore, I award Full Amount against this Claim with 9% Simple Interest per annum from due date of release of Security Deposit.

Signature
13/4

hpi

c) Claim no 4, page 16-- 2nd para

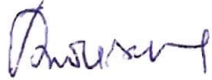
There is no amount now withheld towards EOT. Respondent is liable to pay interest on Rs 90,005/- from the date of recovery till 28.02.2021.

Award: Therefore, I award 9% interest on the Rs 90,005/- from the date of recovery to till 28.01.2021.

The above lines stand deleted and read as

Respondent has stated (Annexure R 44) that amount of Rs 90,005/- has been paid to claimant on 28.01.2021, therefore, there is no amount now withheld towards EOT. Respondent is liable to pay interest on Rs 90,005/- from the date of recovery till 28.02.2021. (However, respondent shall ensure that the amount have been paid to the claimant.)

Award: Therefore, I award 9.00% interest on the Rs 90,005/- from the date of recovery to till 28.01.2021 or till the payment is made to the claimant.



SK BEHL

Sole Arbitrator

#923, ATS Golf Meadows Prelude,

Barwala Road, Derabassi, SAS Nagar, PB

Email-behlsk@gmail.com, Mob. 9417000084

No. SKB/CE(C-S)/HP/BSNL/SML/2

Dt 13-04-2023

Copy to:- (By Regd. Post /Email)

- 1 The Chief Engineer(C), BSNL Civil HP Zone [SOUTH], Sector-II, New Shimla, - 171009, HP
- 2 The Executive Engineer(C), BSNL Civil Division, Dharamshala, H.P
- 3 Sh Charanjeet Singh, Govt. Contractor, V&PO, Palampur Road, Ghurkari, Distt Kangra, HP through Advocate Smt. Avnidha Gupta