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11-6-18

Gurnam Singh Sr. H. Karnal

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[Signature]

DILARAM SINGH VENDOR
COURT COMPLEX E-100



AWARD

BEFORE
S.K. BHARDWAL
SOLE ARBITRATOR

In the matter of Arbitration between

Claimant

Sr. Gurnam Singh Gill

Respondent

Bharat Sanchar Nigam Limited

(Through Executive Engineer (C) BSNL Civil Division Shimla)

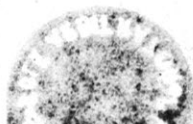
Name of Work:- Construction of Govt. Middle School Building (Section-I)

under R.M.S. at Bhagpur and Badli (H.P.)

177/BSNL/C.D/M/2010-11

Agreement No:-

WHEREAS, I, S.K. Bhardwal, was appointed as Sole Arbitrator in the case by
Chief Engineer (C) BSNL Civil Division Shimla vide letter No. W-6102





On Non-Judicial Stamp Paper of Value Rs. 500/- (Rupees Five Hundred Only) Bearing No. 5079 Dated 11.06.2018

AWARD

BEFORE
S.K. BHARDWAJ
SOLE ARBITRATOR

In the matter of Arbitration Between

Sh. Gurnam Singh Gill

Claimant

VS

Bharat Sanchar Nigam Limited

Respondent

(Through Executive Engineer (C), BSNL Civil Division Shimla)

Name of Work:- **Construction of Govt. Middle School Building (Section-I)**
under RMSA at Jhankaur and Badehar, Distt Una (HP).

Agreement No.:- **27/EE/BSNL/CD/DMA/2010-11**

WHEREAS, I, S.K. Bhardwaj, was appointed as Sole Arbitrator in the case by
Chief Engineer (C), BSNL Civil HP Zone [South] Shimla vide letter No. W-6[602]

[Signature]
30/08/2018



CE(C-S)/HP/BSNL/SML/273 Dated 19.04.2017 to decide and make award regarding the claims/disputes by the contractor , if any, as shown in the statements enclosed subject always, however, to their admissibility under clause 25 of the aforesaid Agreement.

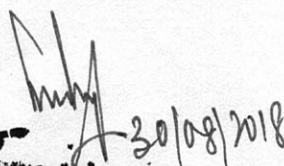
AND WHEREAS, 17 (Seventeen) Nos. claims/disputes of claimant as shown in the Statement enclosed with the letter of the Chief Engineer(C), BSNL Civil HP Zone[South] Shimla dated 19.04.2017 were referred and No (NIL) counter claim of the Respondent was referred by the competent authority for decision and making award by the arbitrator subject always, however, to their admissibility under clause 25 of the aforesaid agreement.

WHEREAS, Statement of facts was filed by Claimant on dated 10.06.2017 alongwith Exhibits and Counter Statement of Facts on the claims of the claimant was filed by the Respondent on Dated 08.12.2017 along with Exhibits.

AND WHEREAS, Replication/Rejoinder was filed by claimant on dated 19.12.2017 alongwith documents. These documents are numbered in continuation of earlier submission by claimant.

WHEREAS , Total 4 (Four) Nos. Hearings were held on H1-10.02.2018, H2-24.03.2018, H3-14.04.2018 and H4F-12.05.2018. The final hearing in the case was concluded, with the consent of both the parties on the last hearing, as recorded in the direction sheet H4F dated 12.05.2018. However, both parties were allowed to make written submission, if any, on any claim whatsoever within 30 days of last hearing dated 12.05.2018, in addition to what has already been submitted by them. Claimant was directed to submit the non-judicial stamp papers of requisite amount for publishing the award.

The Claimant has filed his final submission on dated 29.06.2018 alongwith Exhibits C-83 to C-85 & Stamp paper of value Rs. 500/- for publishing the award.




These documents are numbered in continuation of earlier submission made by the claimant.

The Respondent has not submitted any letter/document within 30 days after the notice dated 31.05.2018 as any final submission.

NOW, THEREFORE, I, S.K. Bhardwaj, Sole Arbitrator in the case, after having considered the statement of facts and rejoinder submitted by the claimant and Counter Statement of facts submitted by the respondent and after application of mind to the pleadings in the hearing meetings, documentary evidences, written submissions made by the parties, and having given due consideration and thoughts to all the above, and having reached my conclusion only after careful consideration, hereby make and publish my award as under:

Salient features of the the case :

Name of Work: **Construction of Govt. Middle School Building (Section-I) under RMSA at Jhankaur and Badehar, Distt Una (HP).**

Agreement No.: **27/EE/BSNL/CD/DMA/2010-11**

1.	Estimated Cost of work	Rs.49,83485/-
2.	Tendered Amount of work	Rs. 67,10140/-
3.	Actual amount of work done	Rs. 66,92219/52
4.	Clause 12 %age	34.65% above DSR 2007 published by CPWD.
5.	Time Allowed	09 Months
6.	Stipulated Date of Start	09.02.2011
7.	Stipulated date of completion	08.11.2011
8.	Actual date of start	i) 05.02.2011- Badehar ii) 22.03.2011- Jhankaur


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9.	Actual date of completion	28.04.2012
10	Delay in completion of work	172 Days
11	Competent Authority specified in Schedule 'F' for levying compensation under clause 2.	Chief Engineer (C) BSNL Civil HP ZONE, SHIMLA
12	Date of passing of final bill	03.09.2012
13	Date of payment of final bill	18.10.2012
14	Date of applying EOT by claimant	07.12.2012
15	EOT applied by claimant	i) 196 days for Badehar ii) 220 days for Jhankaur
16	Date of issue of show cause notice by respondent under clause 2	i) 08.01.2013 by Addl. CE CC-I Shimla.
17	Reply to show cause notice under clause 2 by claimant	10.10.2013
18	Date of levy of compensation under clause 2	i) 29.05.2013 for Rs. 6,24714/- by Addl. Chief Engineer (C), CC-I Shimla. ii) 29.03.2016 for Rs. 5,03260/- by SE(C), Civil Circle-North, Shimla.
19	Date of conciliation application	20.09.2016
20	Date of intimation of termination/failure of conciliation	25.11.2016
21	Date of invocation of clause 25 by claimant	03.12.2016
22	Total Number of claims raised by claimant	17



23	Total Amount claimed by Claimant under arbitration.	Rs. 19,37,980/- (Claim 1 to 16) plus Future Interest on all claims after invocation of clause 25 (Claim 17)
24	Date of appointment of Sole Arbitrator	19.04.2017
25	Total Number of claims referred	17
26	Total Amount of claims referred.	Rs. 19,37,980/- (Claim 1 to 16) plus Future Interest on all claims after invocation of clause 25 (Claim 17)

Limitation:

In view of the facts of the case stated as above & the limitation period of three years under section 54, 55 of limitation act 1963, the claims of the claimant are not barred by limitation.

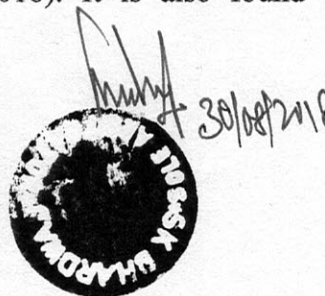
Claim No.1: Whether the Order Dated 29 .03.2016 vide which levy of Compensation of Rs. 5,03,260.00 was imposed on the Claimant under Clause-2 should be set aside on grounds on which it has been imposed ?

Rs. 5,03,260/-

Findings & Reasons:

The dispute pertains to the order of levy of compensation under clause 2 of the agreement amounting to Rs. 5,03,260/- imposed by the respondent upon the claimant for delay in the completion of the work.

On perusal of the record, it is found that , initially , the levy of compensation amounting to Rs. 6,24,714/- was imposed on the Claimant by the respondent Addl. Chief Engineer (C), CC-I Shimla vide letter No. SE/BSNL/CC/SML/68/EOT 256 dated 29.05.2013 under clause 2 of the agreement for causing delay in the completion of the work (Respondent Annexure A-8 enclosed with submission letter No.2(782-A) /EE/BSNL/CD/SML/1566 Dated 21.03.2018). It is also found that this levy of



compensation amounting to Rs. 6,24714/- under clause 2 of the agreement was imposed by the respondent Addl. Chief Engineer (C), CC-I Shimla after no reply/response from the claimant was received for the show cause notice issued to the claimant vide letter No. 19 dated 08.01.2013 for causing delay in the completion of the work. It is further found that this action dated 29.05.2013 of the Addl. Chief Engineer (C), CC-I Shimla imposing levy of compensation amounting to Rs. 6,24714/- was re-examined by the SE (C) BSNL Civil Circle-North Shimla after the receipt of the reply from the claimant dated 10.10.2013 of the show cause notice issued earlier. Accordingly, the levy of compensation amounting to Rs. 5,03260/- was imposed on the Claimant by the respondent SE (C) BSNL Civil Circle-North Shimla vide letter No. SE(C)/BSNL/CC-I/68/EOT/76 dated 29.03.2016 for causing delay in the completion of the work (Respondent Annexure A-9 enclosed with submission letter No. 2(782-A)/EE/BSNL/CD/SML/1566 Dated 21.03.2018). It has been submitted by the respondent that the penalty was levied by the SE (C) being the competent authority to do so in semi judicial capacity after due consideration of the submissions made by the claimant and in the light of the facts, circumstances & various record pertaining to the work.

However, the action of levy of compensation by the SE(C) BSNL Civil Circle -North Shimla was contested by the claimant mainly on the plea that levy of compensation imposed by the SE (C) is not legally correct as the SE (C) is not the competent authority to impose penalty under the agreement as specified in Schedule F under clause 2 of the agreement.

In order to adjudicate this dispute, it is essential to refer to clause 2 of the said agreement. The relevant extract of clause 2 in the said agreement is reproduced as under :

Quote states:

Clause 2: (Compensation for Delay)

"If the contractor fails to maintain the required progress of the work at the stages terms of clause 5 or fail to complete the work and fails to clear the site on or before contract or extended date of completion , he shall without prejudice to any other right or remedy available under the law to the BSNL on account of such breach pay as agreed compensation

13/09/2018



the amount calculated at the rates stipulated below as the authority specified in Schedule "F" may decide on the amount of tendered value of work for every completed day/month(as applicable) in which the progress remains below than the specified in clause 5 or that work remains incomplete. The decision of the aforesaid authority in writing shall be final and binding on the contractor."

Quote ends.

It is, thus, observed that as per the said agreement, the competent authority to levy compensation for delay in completion of the work is as specified in Schedule 'F' under clause 2 of the said agreement.

On perusal of Schedule 'F' under clause 2 of the said agreement, it is observed that on Page 35 of 75 of the said agreement, "Chief Engineer (C) BSNL Civil HP Zone, Shimla" is mentioned as the 'Authority for fixing compensation under clause 2'.

It is thus concluded that Chief Engineer (C) BSNL Civil HP Zone, Shimla is the competent authority to levy compensation for delay in completion of the work as specified in Schedule 'F' under clause 2 of the said agreement. Therefore, in view of the specified provisions in the agreement, the action of the SE (C) BSNL Civil Circle-North Shimla for determining delay & levy of compensation amounting to Rs. 5,03260/- on the claimant cannot be treated as final and binding on the claimant.

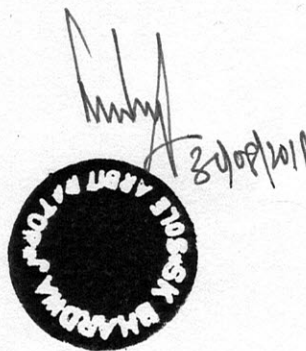
Hence claim of the Claimant is justified.

AWARD:

I set aside the order of SE (C) BSNL Civil Circle-North Shimla issued vide letter No. SE(C)/BSNL/CC-I/68/EOT/76 dated 29.03.2016 imposing levy of compensation amounting to Rs. 5,03260/- on the Claimant.

Claim No. 2: Whether the Claimant is entitled for payment on account of damage caused to claimant and compensation for loss due to wrongful conduct, act/omission in contract by BSNL?

Rs. 3,97091/-



Findings & Reasons:

Under this claim, the claimant has claimed an amount of Rs. 3,97,091/- on account of damage & compensation for loss due to the wrongful conduct, act/omission in contract by BSNL.

From the perusal of submissions of the respondent, it is observed that work under the contract was completed on 28.04.2012 against stipulated date of completion on 08.11.2011. Thus there was a delay of 172 days in the completion of the work under the agreement. The Respondent has held the claimant responsible for a delay of 92 days at Jhankaur site thereby levying compensation under clause 2 of the agreement @ 6.14% amounting to Rs. 2,06,001/- and for a delay of 133 days at Badehar site thereby levying compensation under clause 2 of the agreement @ 8.86% amounting to Rs. 2,97,259/- of tendered value on pro rata basis i.e 50% of tendered value of Rs.67,10,140/-. Thus the total levy of compensation imposed by the respondent on the claimant under clause 2 of the agreement amounted to Rs. 5,03,260/-. (Respondent Annexure A-9 enclosed with submission letter No. 2(782-A)/EE/BSNL/CD/SML/1566 Dated 21.03.2018).

However, it is found out of submissions & pleadings of the claimant during hearing that the Claimant does not agree with the respondent action of determining and attributing delay in the work on the claimant and has held the respondent responsible for the delay in the completion of works for the following reasons as mentioned in his applications for EOT case:

- i) Non-Handing Over of site
- ii) Non Laying of conduit in slab & Walls
- iii) Slow progress due to non making of payment
- iv) Non performance due to work majoure.

The claimant also does not agree with the action of the respondent for levying of compensation under clause 2 of the agreement by SE (C), being not the competent authority to impose penalty as specified in Schedule F under clause 2 of the agreement.



From the perusal of the record, it is found that the detail of the hindrances claimed by the claimant & justified by the respondent while deciding the EOT case are as under:

Site	Nature of Hindrance		Period of Hindrance	
			Claimed by Claimant	Justified by Respondent
Jhankaur	i)	Non Handing over of site	9.2.2011-31.3.2011 = 51 days	41 days
	ii)	Non Laying of conduit in slab & Walls	23.07.2011-1.9.2011 = 41 days	NIL
	iii)	Slow progress due to non making of payment	100 days Lump sum	79 days divided equally on 2 sites =39 days
	iv)	Non performance due to work majeure	28 days Lump sum	NIL
	Total		220 days	80 days
Badehar	i)	Non Laying of conduit in slab & Walls	10.5.2011-17.7.2011 =68 days	NIL
	ii)	Slow progress due to non making of payment	100 days Lump sum	Total 79 days divided equally on 2 sites =39 days
	iii)	Non performance due to work majeure	28 days Lump sum	NIL
	Total		196 days	39 days

It is thus found from the record that while processing the extension of time case, the respondent have admitted justified delay of 80 days at Jhankaur site & 39 days at Badehar site on their part.



It is also observed that while processing the EOT case, the respondent have considered the two works at Jhankaur & Badehar separately, whereas the contract between the Claimant & the respondent bind these two works under one agreement. The stipulated period of completion (9 months) under the agreement is meant for the combined two works as a whole. The hindrance on any of the work under the agreement will not only affect & extend the completion of that particular work alone, but will also affect & extend the finalisation of the agreement as a whole. The respondent have thus apparently erred in adjudicating the delay by not considering the agreement as a whole & subsequently levying compensation on the claimant considering delays on the two works separately. The justified hindrance on account of a particular reason on one particular work will extend the overall completion of the agreement irrespective of the fact that the other work might have been completed within stipulated time of 9 months. Thus the total delay under the agreement attributed towards respondent on account of justified hindrance on their part should have been 80 days and I consider the same for further reference wheresoever applicable in the instant case.

Although the claimant has not produced any material evidence for the loss actually suffered by him due to delay in the completion of the work for the hindrance attributed towards the respondent, the fact also cannot be denied here that the claimant had to incur extra expenditure on engagement of minimum establishment such as watch & ward staff on the sites, incurring expenditure on overheads and facing loss of profit etc. for this extended period of 80 days due to delay on the part of the respondent. The respondent has not been compensated for this extra expenditure under any other clause of the agreement although he is compensated with provision of payment for increase in cost of material & labour under clause 10CA of the agreement. In the instant situation, I take the support of Judgement dated 25 Nov, 2014 by Hon'ble Supreme Court Of India in the Civil Appeal No. 10531 of 2014 (Arising Out of SLP-Civil No. 14767 of 2012) between Associate Builders Vs Delhi Development Authority wherein Hon'ble Court has upheld the arbitral award of Single Judge of High Court of Delhi dismissing the DDA's objections to the award allowed by the Arbitrator on the claims of the claimant including claim as damages on



account of establishment, shuttering and tools & plants etc. due to prolongation of contract by respondent DDA.

The Claimant is thus entitled for payment on account of damages and compensation loss for the period of 80 days justified delay on the part of respondent.

In View of the above, the Claim of the claimant is justified.

In order to compute compensation payable to the claimant due to increased overheads and loss of profit on account of delay on the part of respondent, I take the help of Hudson Formula which is widely accepted in construction contracts for calculating compensation and adopts head office overhead percentage from the contract as the factor for calculating the costs irrespective of the actual head office costs of the contractor. In Hudson's Building and Engineering Contracts, Hudson Formula is stated in the following terms:

$$\text{Compensation} = \text{Contract Over Head \& Profit \%} \times \frac{\text{Contract Sum}}{\text{Contract Period}} \times \text{Period of Delay}$$

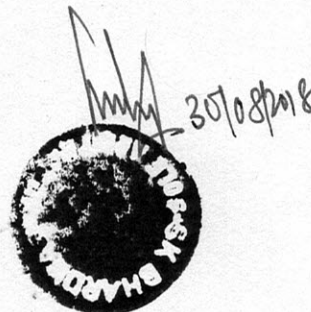
As per practices and trends, the Building Contracting firm's income/ Contract Over Head & Profit % is assessed at 6-8% of the work done during the year. I consider average income/Contract Over Head & Profit percentage of the contracting firm in the instant case as 6 % for determining compensation for the losses due to the prolonged period not attributed to the Claimant.

Compensation as per Hudson Formula

$$= \text{Over Head \& Profit \%} \times \frac{\text{Contract Sum}}{\text{Contract Period}} \times \text{Period of Delay}$$

$$= \frac{6}{100} \times \frac{6710140}{240} \times 80$$

$$= \text{Rs. } 134202.80 \text{ Rounded off to Rs. } 134203/-$$



AWARD:

I award Rs. 134203/- to be paid to the claimant by the respondent.

Claim No. 3: Whether the Claimant is entitled for payment of interest on damages as per claim 2 till date of invocation of clause 25?

Rs.2,14380/-

Findings & Reasons:

Under this claim, the Claimant has claimed payment of Rs. 2,14380/- as interest on the claimed amount of Rs. 3,97091/- as per claim 2 on account of damages caused by the respondent and compensation for loss suffered by him due to delay in completion of the work caused by the respondent.

The Respondent contended that the delay in completion of the work was attributed to the claimant only and thus neither any damages amount nor any interest there upon becomes due towards the claimant.

It is found that under award of Claim No. 2, an amount of Rs. 1,34203/- is payable to the claimant by the respondent. However, this amount is determined only after invocation of the arbitration and thus becomes effective only from the date of award only.

Award:

In view of the above findings, I award NIL amount, under this claim, to be paid to the claimant by the respondent.

Claim No. 4: Whether the Claimant is entitled for payment of withheld Security Deposit?

Rs.3,35507/-

Findings & Reasons:

Under this claim, the Claimant has claimed payment of Rs. 3,35507/- withheld by the respondent as Security Deposit.




As per the facts of the case, it is observed that respondent vide SE (C) BSNL Civil Circle-North Shimla letter No. SE(C)/BSNL/CC-I/68/EOT/76 dated 29.03.2016 imposed levy of compensation amounting to Rs. 5,03260/- on the Claimant for causing delay in the completion of the work (Respondent Annexure A-9 enclosed with submission letter No. 2(782-A)/EE/BSNL/CD/SML/1566 Dated 21.03.2018). The Respondent also called upon the Claimant to pay the said amount to BSNL within 30 days (thirty days) failing which the said amount shall be adjusted to set off against any sum payable to the Claimant under the contract or any other contract with the BSNL. It was also observed that the Claimant did not pay any amount against the said amount of levy of compensation imposed by the respondent, as a result of which the Respondent recovered the following amount from the sum payable to Claimant & lying with BSNL to realize the levy of compensation amount (Respondent Annexure A-9 Page-2 enclosed with submission letter No. 2(782-A)/EE/BSNL/CD/SML/1566 Dated 21.03.2018).

- i) Security Deposit = Rs. 3,35507/-
- ii) Withheld for EOT = Rs. 1,00000/-
- iii) Withheld for Defects = Rs. 67,753/- (Out of Rs. 100000/- Withheld for defects)

Total Recovered = Rs. 5,03260/-

It has already been adjudicated under Claim No. 1, that the action of the SE (C) BSNL Civil Circle-North Shimla for determining delay & quantum of levy of compensation amounting to Rs. 5,03260/- is not as per the terms of the agreement and thus cannot be treated as final and binding on the claimant. Accordingly, the recovery of Rs. 5,03260/- by the respondent for levy of compensation under clause 2 of the agreement has been set aside.

In view of the above, the claim of the Claimant for payment of withheld amount of Security Deposit is justified.



Award:

I award payment of Rs. 3,35507/-, which was earlier withheld by the respondent as Security Deposit and subsequently converted into recovery , to be paid to claimant by the respondent.

Claim No. 5: Whether the Claimant is entitled for payment of withheld amount in r/o EOT?

Rs. 1,00000/-

Findings & Reasons:

Under this claim, the Claimant has claimed payment of Rs. 1,00000/- withheld by the respondent in r/o Extension of Time case.

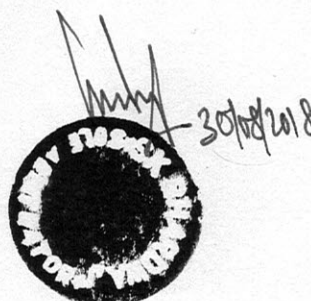
As per the facts of the case , it is observed that after the imposition of levy of compensation of Rs. 5,03260/- by SE (C) BSNL Civil Circle-North Shimla vide letter No. SE(C)/BSNL/CC-I/68/EOT/76 dated 29.03.2016, a sum of Rs. 1,00000/- which was earlier withheld by the respondent for EOT , was recovered by the respondent to realize the levy of compensation amount.

It has already been adjudicated under Claim No. 1, that the action of the SE (C) BSNL Civil Circle-North Shimla for determining delay & quantum of levy of compensation amounting to Rs. 5,03260/- is not as per the terms of the agreement and thus cannot be treated as final and binding on the claimant. Accordingly, the recovery of Rs. 5,03260/- by the respondent for levy of compensation under clause 2 of the agreement has been set aside.

In view of the above, the claim of the Claimant for payment of Rs. 1,00000/-, which was earlier withheld for EOT case & later on converted into recovery by the respondent, is justified.

Award:

I award payment of Rs. 1,00000/- , which was earlier withheld by the respondent for EOT case & subsequently converted into recovery , to be paid to claimant by the respondent.



Claim No. 6: Whether the Claimant is entitled for payment of withheld amount on a/c of EPF ?

Rs. 75651/-

Findings & Reasons:

Under this claim, the Claimant has claimed payment of Rs. 75651/- withheld by the respondent on account of EPF.

From the facts of the case, it is found that an amount of Rs. 75,651/- is withheld by the Respondent as the Claimant failed to deposit/supply the copies of the challans deposited by him (Claimant) to the EPF department as dues of the labour employed by him upto 3rd R/A bill. It is also found that the Respondent as a Principal Employer withheld the amount of Rs. 75,651/- from the bills of the Claimant to protect the due of labour. It is also found that the respondent have not deposited the withheld amount with the EPF department and the same is lying as withheld amount with the respondent.

However, the Claimant contested the action by the respondent of withholding the amount on a/c of EPF on the plea that the claimant got himself registered with the EPF department when due in August 2011, when the number of labour employed by him crossed 19 as per the EPF Act 1952. The claimant has also claimed that the relevant clause 19K of the contract does not empower the respondent to deduct any amount of the claimant on account of EPF or press the claimant for submission of challans. The claimant has also produced the No Dues Statement from the EPF department showing NIL dues pending towards the Claimant (Claimant Annexure C- 81/1, C-81/2, C-81/3 and C-81/4)

On perusal of the record, it was found that no liability is due from the claimant towards the EPF department. No complaint from labour against the claimant is also on record.

In view of the above, the claim of the Claimant is justified.



Award:

I award payment of Rs. 75,651/- withheld by the respondent on account of EPF to be paid to claimant by the respondent.

Claim No. 7: Whether the Claimant is entitled for payment of interest on the claim No. 4 till date of invocation of clause 25?

Rs. 1,81173/-

Findings & Reasons:

Under this claim, the claimant has claimed an interest amounting to Rs. 1,81173/- on claim No. 4 which pertains to an amount of Rs. 3,35260/- withheld by the respondent as security deposit and subsequently recovered by the respondent as a part of total recovery amounting to Rs. 5,03260/- against levy of compensation imposed by the respondent on the claimant for delay in completion of work .

In order to adjudicate this claim, I refer to the relevant extract of Clause 29 (Withholding and lien in respect of sum due from contractor) of the agreement which is reproduced as under:

Quote states:

Clause 29: (Withholding and lien in respect of sum due from contractor)

"Whenever any claim or claims for payment of a sum of money arises out of or under the contract or against the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the contractor and for the purposes aforesaid, the Engineer-in-Charge or the Government shall be entitled to withhold the security deposit, if any, furnished as the case may be and also have lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and have a lien to retain such claimed amount or amounts referred to above, from any sum or sums found payable or which may at any time



thereafter become payable to the contractor under the same contract or any other contract with the Engineer-in-Charge of the Government or any contracting person through the Engineer-in-Charge pending finalization of adjudication of any such claim It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above by the Engineer-in- Charge or Government will be kept withheld or retained as such, by the Engineer-in-Charge, till the claim arising out of or under the contract is determined by the arbitrator (if the contract is governed by the arbitration clause) or by the competent court, as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor.

Quote ends.

In view of the above provision in the agreement, the Claim of the Claimant is not justified.

Award:

NIL

Claim No. 8: Whether the Claimant is entitled for payment of interest on the claim No. 5 till date of invocation of clause 25?

Rs. 54,000/-

Findings & Reasons:

Under this claim, the claimant has claimed an interest amounting to Rs. 54000/- on claim No. 5 which pertains to an amount of Rs. 1,00000/- withheld by the respondent for EOT case and subsequently recovered by the respondent as a part of total recovery amounting to Rs. 5,03260/- against levy of compensation imposed by the respondent on the claimant for delay in completion of work .

In order to adjudicate this claim, I refer to the relevant extract of Clause 29 (Withholding and lien in respect of sum due from contractor) of the agreement which is reproduced as under:

[Signature]
30/8/2018


Quote states:

Clause 29: (Withholding and lien in respect of sum due from contractor)

"Whenever any claim or claims for payment of a sum of money arises out of or under the contract or against the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the contractor and for the purposes aforesaid, the Engineer-in-Charge or the Government shall be entitled to withhold the security deposit, if any, furnished as the case may be and also have lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and have a lien to retain such claimed amount or amounts referred to above, from any sum or sums found payable or which may at any time thereafter become payable to the contractor under the same contract or any other contract with the Engineer-in-Charge of the Government or any contracting person through the Engineer-in-Charge pending finalization of adjudication of any such claim It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above by the Engineer-in- Charge or Government will be kept withheld or retained as such, by the Engineer-in-Charge, till the claim arising out of or under the contract is determined by the arbitrator (if the contract is governed by the arbitration clause) or by the competent court, as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor.

Quote ends.

In view of the above provision in the agreement, the Claim of the Claimant is not justified.



Award:

NIL

Claim No. 9: Whether the Claimant is entitled for payment of interest on the claim No. 6 till date of invocation of clause 25?

Rs. 40,800/-

Findings & Reasons:

Under this claim, the claimant has claimed an interest amounting to Rs. 40,800/- on claim No. 6 which pertains to an amount of Rs. 75,651/- withheld by the respondent for non-submission of EPF challans by the claimant.

In order to adjudicate this claim, I refer to the relevant extract of Clause 29 (Withholding and lien in respect of sum due from contractor) of the agreement which is reproduced as under:

Quote states:

Clause 29: (Withholding and lien in respect of sum due from contractor)

"Whenever any claim or claims for payment of a sum of money arises out of or under the contract or against the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the contractor and for the purposes aforesaid, the Engineer-in-Charge or the Government shall be entitled to withhold the security deposit, if any, furnished as the case may be and also have lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and have a lien to retain such claimed amount or amounts referred to above, from any sum or sums found payable or which may at any time thereafter become payable to the contractor under the same contract or any other contract with the Engineer-in-Charge of the Government or any contracting person through the Engineer-in-Charge pending finalization of adjudication of any such claim It is an agreed term of the contract that the



sum of money or moneys so withheld or retained under the lien referred to above by the Engineer-in-Charge or Government will be kept withheld or retained as such, by the Engineer-in-Charge, till the claim arising out of or under the contract is determined by the arbitrator (if the contract is governed by the arbitration clause) or by the competent court, as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor".

Quote ends.

In view of the above provision in the agreement, the Claim of the Claimant is not justified.

Award:

NIL

Claim No. 10: Whether the Claimant is entitled for payment of withheld amount on a/c of defects?

Rs.1,00000/-

Findings & Reasons:

Under this claim, the Claimant has claimed payment of Rs. 1,00000/- withheld by the respondent on account of defects.

From the perusal of the record, it is found that a sum of Rs. 1,00000/- was withheld by the respondent in the final bill of the claimant on account of certain defects in the work. These defects were also pointed out in writing by the respondent to the claimant (Respondent Annexure A-5, A-6, A-7 enclosed vide submission letter No. 2(782-A)/ EE /BSNL /CD/SML/1566 Dated 21.03.2018). It is also observed that after the imposition of levy of compensation of Rs. 5,03260/- by SE (C) BSNL Civil Circle-North Shimla vide letter No. SE(C)/BSNL/CC-I/68/EOT/76 dated 29.03.2016, a sum of Rs. 67753/- out of withheld amount of Rs. 1,00000/- on account of defects was recovered by the respondent to realize the levy of compensation amount &



balance amount of Rs. 32,247/- is lying with the respondent as withheld amount (Respondent Annexure A-9 Page-2 enclosed vide submission letter No. 2(782-A)/ EE /BSNL /CD/SML/1566 Dated 21.03.2018).

It was submitted by the Claimant during submissions and oral hearings that all the defects pointed out by the respondent have been rectified. The respondent has also admitted the removal of all pointed out defects during hearing and has also confirmed in writing vide letter No. 2(782-A)/EE/BSNL /CD /SML/133 Dated 24.05.2018 that all the defects pointed out to the claimant have been rectified by the claimant.

It has already been adjudicated under Claim No. 1, that the action of the SE (C) BSNL Civil Circle-North Shimla for determining delay & quantum of levy of compensation amounting to Rs. 5,03260/- is not as per the terms of the agreement and thus cannot be treated as final and binding on the claimant. Accordingly, the recovery of Rs. 5,03260/- by the respondent for levy of compensation under clause 2 of the agreement has been set aside.

In view of the above, the claim of the Claimant is justified.

Award:

I award payment of Rs. 1,00000/- withheld by the respondent on account of defects to be paid to claimant.

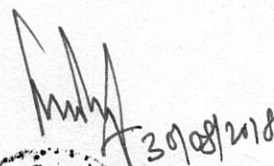
Claim No. 11: Whether the Claimant is entitled for payment of interest on the claim No. 10 till date of invoking Arbitration?

Rs. 54,000/-

Findings & Reasons:

Under this claim, the claimant has claimed an interest amounting to Rs. 54,000/- on claim No. 10 which pertains to an amount of Rs.1,00000 withheld by the respondent for defects.

In order to adjudicate this claim, I refer to the relevant extract of Clause 29 (Withholding and lien in respect of sum due from contractor) of the agreement which is reproduced as under:




Quote states:

Clause 29: (Withholding and lien in respect of sum due from contractor)

"Whenever any claim or claims for payment of a sum of money arises out of or under the contract or against the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, deposited by the contractor and for the purposes aforesaid, the Engineer-in-Charge or the Government shall be entitled to withhold the security deposit, if any, furnished as the case may be and also have lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Engineer-in-Charge or the Government shall be entitled to withhold and have a lien to retain such claimed amount or amounts referred to above, from any sum or sums found payable or which may at any time thereafter become payable to the contractor under the same contract or any other contract with the Engineer-in-Charge of the Government or any contracting person through the Engineer-in-Charge pending finalization of adjudication of any such claim It is an agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above by the Engineer-in- Charge or Government will be kept withheld or retained as such, by the Engineer-in-Charge, till the claim arising out of or under the contract is determined by the arbitrator (if the contract is governed by the arbitration clause) or by the competent court, as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor.

Quote ends.

In view of the above provision in the agreement, the Claim of the Claimant is not justified.



Award:

NIL

Claim No. 12: Whether the Claimant is entitled for payment of illegal deduction of technical representative.

Rs. 52,000/-

Findings & Reasons:

Under this claim, the claimant has claimed payment of Rs. 52,000/- deducted by the respondent for non-employment of technical representative by the claimant on the work as per the agreement.

It is observed from the facts submitted that Rs. 52,000/- has been recovered by the respondent on seven different occasions from the running bills of the claimant starting from 3rd R/A Bill onwards & upto final bill for non-employment of technical representative by the claimant on the work as per clause 36 of the agreement. It was found that the respondent had brought to the notice of the claimant through various letters addressed to the claimant regarding non-availability of the technical representative of the claimant at the sites as per the agreement (Respondent Annexure A-10, Annexure A-11 enclosed with submission letter No. 2(782-A)/EE/BSNL/CD/SML/1566 Dated 21.03.2018).

The contention of the Claimant in his submission that Sh. Bhupinder Singh Puri R/o 3123 Phase III Mohali was employed as the technical representative of the claimant as per the agreement throughout the period of the work was not supported with convincing evidence. The letter submitted by the claimant showing his employment at sites bears date as 10.10.2012 which is much after the date of completion of the work (Claimant Ann C-77). The respondent during hearing denied the receipt of such application/certificates from the claimant/technical representative either in Una Sub-division or division office record. The claimant also could not produce any receipt of submission of such application along with necessary certificates as claimed to have been submitted by Sh. Bhupinder Singh in the Una sub-division office.

In view of the above, the claim of the Claimant is not justified.



Award:

NIL

Claim No. 13: Whether the Claimant is entitled for payment of interest on the claim No. 12 till date of invoking Arbitration.

Rs. 34,320/-

Findings & Reasons:

Under this claim, the claimant has claimed an interest amounting to Rs. 34,320/- on claim No. 12 which pertains to an amount of Rs. 52,000/- deducted by the respondent for non-employment of technical representative by the claimant on the work as per the agreement.

In view of the findings in the claim No. 12 as above, wherein NIL amount has been awarded under claim No. 12, the claim of the Claimant is not justified

Award:

NIL

Claim No. 14: Whether the Claimant is entitled for Clause 10CA and 10C?

Rs. 1,29,258/-

Findings & Reasons:

Under this claim, the Claimant has claimed payment of Rs. 1,29,258/- under Clause 10CA and Clause 10C of the agreement which pertain to the compensation to be paid to the contractor in case of change in prices of cement & steel from the date of submission of the tender till the completion of the work including the justified extended period.

In this regard the relevant extract of Clause 10CA and 10C is reproduced from the agreement:

Quote states:

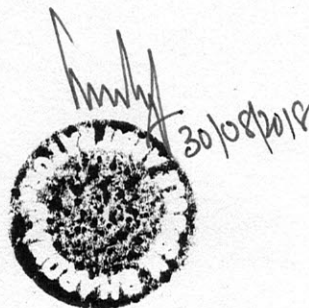
CLAUSE 10 CA: If after submission of the tender, the price of cement and/or reinforcement steel bars and or Galvanized steel (not being materials supplied

A handwritten signature is written over a circular stamp. The stamp contains the text "ARBITRATOR" and "DHANU" around a central point. To the right of the stamp, the date "30/08/2018" is handwritten.

from the Engineer-in Charge's stores in accordance with Clauses 10 thereof) increase(s) / decrease [s] beyond the price(s) prevailing at the time of the last stipulated date of receipt of tenders (including extensions, if any) for the work, then the amount of the contract shall accordingly be varied and provided further that any such variation shall be effected for stipulated period of contract including the justified period extended under clause-5 of the contract without any action under clause-2 subject to the condition that no such compensation shall be payable for a work for which the stipulated period of completion is 03 (Three) months or less. The increase/decrease in prices shall be determined by the All India Wholesale Price Indices for Cement and Steel (bars and rods) and galvanized steel [angles/channels & sections etc.] as published by Economic Advisor to Government of India, Ministry of Commerce and Industry and star price for cement and/or steel reinforcement bars and or galvanized steel as issued under authority of concerned CE(C) as valid on the last stipulated date of receipt of tender, including extension if any and for the period under consideration.....

Clause 10C: If the prices of materials (not being materials supplied or services rendered at fixed prices by the BSNL in accordance with Clauses 10 & 34 thereof) and/or wages of labour required for execution of the work increase, the contractor shall be compensated for such increase as per provisions detailed below and the amount of the contract shall accordingly be varied, subject to the condition that such compensation for escalation in prices shall be available only for the work done during the stipulated period of the contract including such period for which the contract's validity is extended under the provisions of Clause 5 of the contract without any action under Clause 2 and also subject to the condition that no such compensation shall be payable for a work for which the stipulated period of completion is 18(Eighteen) months or less.....

Quote ends.



The Claimant vide Annexure C-75, C-75/1 under Statement of Claims has submitted details justifying his claim for Rs. 72,356/- for change in prices of cement & steel after the date of submission of the tender till the actual date of completion of the work.

The Respondent vide Annexure R27-1 to R27-4 has submitted escalation statement amounting to Rs.67,543/- for change in prices of cement and steel payable to the claimant under clause 10CA from the date of submission of the tender till the stipulated date of completion only.

The claimant during final hearing agreed to accept the amount calculated by the respondent amounting to Rs. 67,543/- for change in prices of cement and steel under clause 10CA from the date of submission of the tender till the stipulated date of completion.

From the perusal of record, it is found that the period of completion under the agreement is 9 months and does not exceed 18 months even after considering the justified extended period of completion. After considering all the facts in the instant case, only clause 10CA is applicable for the stipulated period of 9 months of completion as per the agreement plus 80 days of justified period extended by the respondent.

The claim of the claimant is partially justified under clause 10CA only for the stipulated period of 9 months of completion as per the agreement plus 80 days of justified period extended by the respondent.

Award:

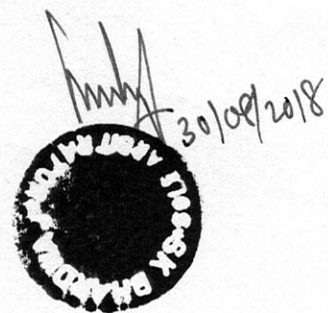
I award payment of Rs. 67,543/- to be paid to claimant by the respondent.

Claim No. 15: Whether the Claimant is entitled for payment of interest on the claim No. 14 till date of invoking Arbitration.

Rs. 69,800/-

Findings & Reasons:

Under this claim, the claimant has claimed an interest amounting to Rs. 69,800/- on claim No. 14 which pertains to claimed amount of Rs. 1,29,258/- due to change in prices of cement & steel after the date of submission of the tender.



An amount of Rs. 67,543/- has been awarded to be paid to the claimant by the respondent under claim No.14 as above. The claimant was entitled for payment of this amount under clause 10CA of the agreement for change in prices of cement & steel from the date of submission of the tender. However, the respondent failed to determine & pay this amount to the claimant till invoking of the arbitration by the claimant.

In view of the above, the Claim of the Claimant for interest is justified.

Award:

I award simple interest @ 9% p.a. on the awarded amount of Rs. 67,543/- under clause 10CA payable to the claimant by the respondent from the date of final bill till the date of invoking Arbitration by the claimant.

Claim No. 16: Whether the Claimant is entitled for payment cost of Arbitration?

Rs. 1,00000/-

Findings & Reasons:

Under this claim, the Claimant has claimed Rs. 1,00000/- for cost of Arbitration and has submitted a receipt amounting to Rs. 50,000/- paid as fee to the legal counsel. The claimant has also claimed typing & postage charges amounting approx. to Rs. 2500/-. The claimant has also claimed his share of arbitration fee paid to the Arbitrator.

In the present case, it is observed that the claimant has partly succeeded in his claims.

In view of the above, the claim of the Claimant is partially justified.

Award:

I award lump sum amount of Rs. 40000/- as cost of award to be paid to the claimant by the Respondent.

Claim No. 17: Whether the Claimant is entitled for payment of future interest on all claims @ 10% after invocation of clause 25 for Arbitration?

Rs. As accrued/-

Findings & Reasons:

As per the facts of the case and reasons as detailed above.

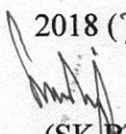
30/08/2018

Award:

Keeping in view all aspects of the arbitration case, I award a simple interest @ 9% p.a. on the total awarded amount i/c interest if any to be paid to the claimant by the respondent after 90 days of award to date of payment of awarded amount to the claimant.

The Claimant has submitted stamp papers of the value of Rs. 500/- (Rupees Five Hundred) only, but it is imperative on the part of the claimant/respondent to submit stamp papers of the balance amount, if any, as per the latest Indian Stamp Act, before taking any further action in the award. In case of non-compliance, the claimant/respondent shall be solely liable for any shortfall in payment of stamp duty under the Indian Stamp Act.

THIS AWARD IS MADE AND PUBLISHED BY ME ON THIS DAY 30th August, 2018 (Thirtieth August, Two Thousand and Eighteen).

 30/08/2018
(SK Bhardwaj)
Sole Arbitrator
1004, Sector 46-1
Chandigarh-160047
Contact No. 9417220033.
E-mail: skb.2952@gmail.com



No. SKB/Arbitration/HP/BSNL/SML/14

Dated: 30.08.2018

Forwarded to: (By Speed. Post)/(E-mail)

1. Sh. Gurnam Singh Gill- Claimant, C/o Ms. Avnidha Gupta Advocate, # 2254, Sector 68, SAS Nagar (Mohali), Punjab-160062-(In Original).
E-mail: avnidha@gmail.com
2. The Executive Engineer (C), BSNL Civil Division, Flat No. 4, Block No. 5, Sector 6, Phase-III, New Shimla-171009-Respondent.
E-mail: eebsnlsml@gmail.com
3. The Chief Engineer (C), BSNL Civil, HP Zone (South), Shimla.
E-mail: cec2hbpsnl@gmail.com





AWARD
Before
S.K. BEHL
SOLE ARBITRATOR

In the matter of Arbitration between

1. Sh. Gurnam Singh Gill

Claimant

Vs

2. Bharat Sanchar Nigam Limited

Respondent

(Through Executive Engineer(C)

BSNL Civil Division , Dharamshala (HP)

Name of work:- Construction of 6 nos. Staff quarters including development of Site at Lahar. District Hamirpur (HP).

Agreement no:- 01/EE/BSNL/CD/DMA/2010-11

WHEREAS, the Chief Engineer (C), BSNL Civil H.P. Zone (South) New Shimla, HP vide no. W-6(601) CE (C-S)/HP/BSNL/SML/590 Dt. 04-04-2016 appointed the undersigned as SOLE ARBITRATOR under the agreement between the parties, to determine the dispute (s) as stated

1


S. K. BEHL (SOLE ARBITRATOR)

in the said letter and counter claims of Respondent against the claimant, if any, subject to their admissibility under Clause 25 of the Agreement.

AND WHEREAS, 9 (Nine) nos. of claims/disputes were referred by the competent authority for adjudication vide letter No. W-6(601) CE (C-S)/HP/BSNL/SML/590 dated 4-4-2016. Initially there were no counter claims raised by respondent and Chief Engineer (C) has referred two numbers (2) counter statement of claims vide No. W-6(601) CE(C-S)/HP/BSNL/SML/161, Dt. 26-5-2018 for adjudication.

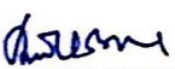
AND WHEREAS, Statement of facts on claim was filed by claimant on 26-5-2016 along with Annex. C-1 to C-59 as per numbering given on statements of facts.

AND WHEREAS, Replication/rejoinder was filed by claimant on 19-11-2016 (37 pages) along with documents which are numbered Annex. C-60 to C-137 in continuation of earlier submission by claimant.

AND WHEREAS, Seven (7) hearings were held on 12-5-17, 7-7-17, 16-9-17, 24-10-17, 28-12-17, 31-3-18 and 1-12-18. AND, minutes of hearings were issued on 12-6-17, 12-6-17, 21-10-17, 27-1-18, 9-3-18, 9-5-2018 and 20-12-2018 respectively.

The hearings was concluded with consent of both parties on 1-12-2018 as intimated by undersigned vide letter Dt. 20-12-2018. However, both parties were allowed to make written submissions on any claim, whatsoever, in addition to what has already been submitted by them. The claimant has submitted the rejoinder to reply of counter statement of claims on 19-12-18

AND WHEREAS, Arbitrator requested respondent to approach court to extend the period of award as award was not made within specified time due to many reasons attributable to both respondent & claimant.


S. K. BEHL (SOLE ARBITRATOR)

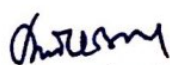
Both parties have extended the period up to 6 (Six) months & thereafter District Judge Kangra at Dharamshala (HP) has allowed application vide its order Dt. 5-11-2018 filed under section 29(5) by claimant & respondent for extending time period for six months & order was issued on 13-11-2018. Hence the award is made with in the stipulated time as extended by Honourable Distt.Court, Dharamshala (HP).

Salient features of contract are :

Name of Work:- Construction of 6 nos. Staff quarters including development of site at Lahar, District Hamirpur (HP)

Agreement no:- 01/EE/BSNL/CD/DMA/2010-11

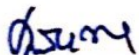
S.No.	Description	Remarks
1	Estimated cost of work	Rs 60,76,066.00
2	Tendered amount of the work	Rs 79,38,315.00
3	Actual amount of work done	Rs 6390475.00
4	Time allowed	10 months
5	Stipulated date of start	23.04.2010
6	Stipulated date of completion	22.02.2011
7	Actual date of completion	29.09.2012
8	Delay in completion of work	585 days
9	Date of passing final bill	26.04.2013
10	Date of Releasing Payment of final bill	26.09.2013
11	Date of issue of show cause under clause 2	21.04.2015
12	Date of reply by the claimant	09.05.2015
13	Date of imposition of compensation under clause 2	17.07.2015
14	Date of conciliation proceedings	06.02.2016
15	Date of failure of conciliation proceedings	16.02.2016


S. K. BEHL (SOLE ARBITRATOR)

16	Date of invocation of clause 25	22.12.2015
17	Date of appointment of sole Arbitrator	04.04.2016

The Details of Claims/disputes (9) Nine & two (2) number counter claims were referred for arbitration as below:

Claim no	Description of claims	Amount
1	Penalty imposed by CE(C), HP Civil Zone under clause 2 of the agreement on ground of breach of contract by the respondent. i.e EE(C), BSNL Civil Division Dharamshala.	6,35,036.00
2	Damages caused to the claimant due to the breach of contract by EE(C), BSNL Civil Division Dharmshala and compensating the loss, on actual basis (Modified claim)	8,07,250.00
3	Interest on the Damages as per claim 2	2,54,284.00
4	Interest made on the EOT/withheld amount and security deposited	1,54,692.00
5	Withheld EPF amount	1,56,300.00
6	Interest on the EPF withheld amount	1,31,000.00
7	Interest of the delayed payment by respondent	1,85,704.00
8	Clause 10 CA	50,000.00
9	Cost of Arbitration	50,000.00


S. K. BEHL (SOLE ARBITRATOR)

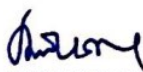
Counter claims:-

C.Claim no	Description of claims	Amount
1	Balance amount to be recovered from the claimant due to levy of compensation imposed under clause 2 of the agreement	Rs. 75,541.00
2	Recovery under Clause 10 CA	Rs. 51,700.00

Limitation:

From the record as submitted by the claimant annexure C-6 Chief Engineer (C), BSNL HP civil zone have the levied compensation under clause 2 vide letter no. 5(63)/HPTC/SML/1032 dated 17.07.2015 and the Final bill was passed on 26.04.2013 and paid on 29.06.2013. it is not disputed that that some amounts was withheld from the various Running and final bill details.

Total amount with	Amount with held in Rs	Reference
held on a/c of EPF	Rs 100,000.00	Annexure C-46
	Rs 24,000.00	Annexure C-47
	Rs 32,300.00	Annexure C-48
	Total Rs 156,300.00	
Total amount with	Rs 80,000.00	Annexure C-49
held on a/c of EOT	Rs 1,60,000.00	Annexure C-50
S.D.	Rs 3,19,524.00	Annexure C-50


S. K. BEHL (SOLE ARBITRATOR)

From the foregoing facts of the case stated above and limitation 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 the minutes of meetings, documentary evidences, written submissions made by parties, authority cited in support of their contentions and having given due consideration and thought to all the above, and having reached my conclusion only after deep & careful considerations do HEREBY MAKE & PUBLISH MY AWARD AS UNDER:-

Claims no 1: Penalty imposed by CE(C), HP Civil Zone under clause 2 of the agreement on ground of breach of contract by the respondent. i.e EE(C), BSNL Civil Division Dharamshala.

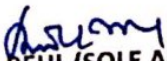
Rs 635036/-

Findings & Reasons:-

The stipulated date of completion of the work as per agreement was 22.02.2011 and which was finally completed on 26.09.2012. It is not disputed that there was delay of 585 days in the completion of the work. The CEC, BSNL, HP Zone Shimla granted EOT for 464 days delay without levy of compensation from 23-2-11 to 31-5-2012 and with levy of compensation for 121 days from 1-6-2012 up to 29-9-12 at the rate of 8% which works out Rs. 6,35,065 as per clause 2 of agreement. The hindrance register and site order books which are important records of work were kept blank by field staff without any entry. The hindrances were worked out on basis of records available.

As per the version of claimant submitted in statement of claims he was not responsible for the delay of work and have applied for EOT without levy of compensation as per the various hindrances as mentioned under in **annexure C-2**

S.no.	Description of hindrances
1	Due to non availability of complete structural


S. K. BEHL (SOLE ARBITRATOR)

	design & Drawings
2	Due to approach link road to site of work
3	Non receipt of retaining wall design
4	Due to heavy rain fall and damage to katcha road to site
5	Plastering work held up due to non layering of electric conduits.
6	Roofing work held due to electricity Supply problem.
7	Harvesting & Water shortage problem.
8	Due to heavy rain fall and damage to katcha road to site
9	Self illness due to blockage of payment
10	Mobilization period of staff and material to restart the work after the payment.
11	Non laying of electrical conduit in walls
12	Delay in making payments of bills
13	Delay in communication of the defect list

As per the version of claimant he was not responsible for the delay of work, he has written many letters annexure C-10 to C-31 in which he has mainly given stress on the one issue that respondent have breached the contract and failed to make the timely payments as per the agreement. Beside the breach of contract regarding making timely payments, claimant has challenged the levy imposed under clause 2 on many grounds which are reproduced as under.

1. *Extended period of Time was never the essence of the contract.*
2. *No notice as contemplated by section 55 of the Indian Contract act 1872, has been issued by the respondent.*


S. K. BEHL (SOLE ARBITRATOR)

- 3 *No action to withheld amount for the delay in achieving the milestones was taken under clause 5 of the contract Chief Engineer has acted without appreciation of facts of the EOT.*
- 4 *Hindrance register and site order books are total blank, the hindrances as intimated from time to time by the claimant has been recorded.*
- 5 *Respondent has breached the contract by not performing his contractual duty to make payments. It appears that the Executive Engineer-in-Charge was not having sufficient funds available at his discretion to make the timely payment to the contractor.*

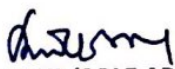
Hence, the claimant has prayed that the levy of compensation imposed by CE(C) vide **annexure C-6** may be struck down and declared null and void and respondent may be directed to pay Rs 635036.00

Whereas, the respondent in its reply to the statement of claim have submitted that the levy of compensation was imposed by CE(C) is fully justified and also the claim under the clause 2 is barred by the law being excepted matters as per Vishvanath Sood v/s UOI AIR 1989 SC 952. Beside it, the respondent has also submitted that the full opportunity was give to the claimant while deciding the EOT. Respondent have further submitted that CE(C) have taken care of the all hindrance applied by the claimant including the nonpayment of bills, the competent authority have found that out of total 585 days claimant was responsible for the delay or 121 days and have imposed the penalty of Rs 6,35,026.00 vide Annexure C-6.

So in order to proceed further, the issue whether compensation under clause 2 impose by CE(C) is an excepted matter?. The claimant in support to this have submitted that the compensation under clause 2 is not an excepted matter and to support his claim he has submitted a case law decided by Hon'ble Supreme Court titled as per **M/S.J.G. Engineers Pvt. Ltd v/s Union Of India & Anr decided on 28 Aril 2011**. Whereas the Vishawnath Sood Vs UOI was decided in Jan 24 1989.

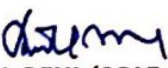
The relevant portion of the judgment are reproduced as under:-

Para 14 &15 that


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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 upon as to whether there was any breach at all. This Court held that one of the parties to an agreement cannot reserve to himself the power 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


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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 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

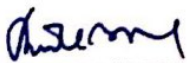
The High Court proceeded on the erroneous assumption that when clauses (2) and (3) of the agreement made the decisions of the Superintending Engineer/Engineer-in-Charge final as to the quantum of liquidated damages and quantum of extra cost in getting the balance work completed, the said provisions also 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 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 evidence submitted were discussed and

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evaluated in detail. Having gone through the all statement of facts, reply and rejoinder along with evidences in form of annexure submitted by claimant and respondent.

A) Delay regarding the making of payments.

The claimant has submitted that there was total delay 400 days of making the payments of bills by respondent. (Annexure C-2) Respondent have also admitted that due to the financial constraints there were delays in making payments to the claimant.

The detailed as been summarized as under. (Ref. Table I of E. E's Letters Dt. 31-3-18)

S.no of the Bill	Reference of Bill	Date of acceptance of bill by the claimant and passing of bill	Date of releasing payment	Net Delay as per claimant	Net delay of payment as per respondent after deduction 15 working Days. Table I EEC letter 31-3-18	Net delay as adjudicated
1	Ist R/A Bill MB454 Pg 11-12	25.07.2010 26.07.2010	09.08.2010	13* -10=3	Nil	Nil
2	2 nd R/A MB454 Pg 25-27	16.09.2010 16.09.2010	14.10.2010	26- 10=16	9	9


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3	3 rd R/A Bill MB454 Pg 25-27 Pg 28	03.11.2010 24.11.2010	20.12.2010* 27.12.2010	29- 10=19 54- 10=44	26 (1 st Installment) 33 (2 nd Installment)	26+4 =30
4	4 th R/A Bill MB454 Pg 68,69,70	20.01.2011 20.02.2011	03.03.2011	10-10=0	22	22
5	5 th R/A Bill MB454 Pg 96-97	15.03.2011 18.03.2011	25.05.2011	9-10=0	53	53
6	6 th R/A Bill MB 465 Pg 43	16.08.2011 19.08.2011	30.03.2012	226- 10=216	208	208
7	7 th R/A Bill MB 465 P-99,100	05.07.2012 09.08.2012	28.09.2012	47- 10=37	65	65
						387 Days

Note: third R/A bill was released in two installments.

The claimant has erroneously deducted only 10 days from for the making of payments from the day of passing. Whereas as per agreement annexure C-1, clause 7, 15 working days are provided for making the payment to the contractor. As per the Annexure C- 121 to C-127 which is progress report submitted by respondent to higher offices, clearly indicate the work was held up due to the non Receipt of CDL. Upon discussion, respondent have stated that CDL is cash drawing limit. The respondent have also admitted vide letter dated 31.3.18 that there was total delay of 387 days in making payment to the contractor/claimant . Hence, for 387 days, respondent is solely responsible for the delay of the work as the sufficient funds were not available with respondent.

B) Delay in communication of defect list

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In addition, the claimant has also submitted that the defect list was received by claimant on 25.07.2012 after the visit made on 24.05.2012 by Quality Control team. Hence, there was delay of communication of defect list. After going through the annexure C-59, it is clear that defect list was based on the visit made on 24.05.2012 by quality control Team and issued by respondent on dated 19.07.2012. Hence, I am of the opinion that there were fully justifications of 58 days delays on part of respondent from 24.5.2012 to 19.7.2012

C) Hindrance on Account of approach Link road to site of work (Hindrance No. 1)

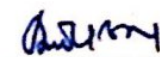
As per the record submitted by the claimant annexure C-61 which is EOT file record. There was one more agency working in the same plot for construction of T-IV and 4 T-V quarters and there is katcha link road. Due the lack of space in the compound, stacking material was difficult. Claimant have applied the hindrance from 01.05.2010 to 30.05.2010 i.e. 30 days. The respondent have given 25% of such period as justified hindrance, which comes out to be 8.0 days. I am also of the opinion that **8.0(eight) day** is justified hindrance and on the part of respondent.

d) Non receipt of retaining wall drawings (Hindrance No. 2)

Claimant have applied for hindrance of 25 days from 05.05.2010 to 30.05.2010, Since there is overlapping period of foregoing hindrance the respondent have allowed only 4 days on this account vide annexure C-61/7. The Design of the retaining wall was issued on 21.05.2010. and the three weeks time for excavation was taken and the cement was brought to the site of work on 14.06.2010. The most of construction activities were already in progress and as per record available respondent have allowed the 4 days of justified hindrance on this account, which I am also of the opinion that **4 days** are justified hindrance. This reasons for this hindrance was within the control of respondent.

E) Due to heavy rain fall and damage to the katcha link road. (Hindrance No. 3)

The claimant has applied the 65 days hindrance i.e. 50% of 107 days from 15.06.2010 to 30.09.2010. As per the record available in the EOT file submit as annexure by claimant with the statement of claim vide annexure C-61/7&8. The respondent have allowed 54 days of hindrance on this account, because the katcha link road which has lead to damage during the


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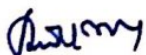
rains for aforesaid period and it was difficult for claimant to bring building material to the site of work. Even as per the cement register annexure C-55 the cement was consumed only for 58 days. In addition there was less progress of work on the account of rains for the aforesaid period. And the Chief Engineer(C) have evaluated 50% as justified hindrance on this account. and I am also of the opinion that **54 days** are the justified hindrance, which was beyond the control of claimant and respondent, owing to the aforesaid reasons.

F) Plastering work held up due to non laying of electrical conduits. (Hindrance No. 4)

The claimant has claimed 12 days of justified hindrance from 20.12.2010 to 15.01.2011. on going through documents submitted by claimant particularly **annexure C-61/8** the Chief Engineer(C) have not allowed any hindrance on this account because no proof is available on the record. In addition as per the cement register Cement Annexure C-55, 130 cement bags was consumed on account of RCC and Brick work etc. it is important to mention **annexure C-12**, which is a latter submitted by claimant requesting 3rd R/A Bill payment and he has not pointed out any hindrance on account of no laying of electrical conduits and the slab was cast on 22.1.2010 having cement consumption of 110 bags. Hence, I am of the opinion that there is no justified reason to allow justified hindrance on account of non laying of electrical conduits.

G) Roofing work hampered due to the electricity supply problem. (Hindrance No. 5)

The claimant has applied for justified hindrance of 30 days from period 15.01.2011 to 30.04.2011(105 days). As per the record annexure C-61/8 There was electricity problem in the area and voltage was low, due to which the welding of roof truss was difficult. During this period, other activities were also in progress. Chief Engineer © HP has allowed 30 days of justified hindrance which is approx. 30% of 105 days. And I am also of the opinion that due to the aforesaid reason and keeping in view of the facts and circumstances of the case, **30 days** are justified hindrance which was beyond the control of claimant and respondent.



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H) Work progress slow due to harvesting and water shortage problem. (Hindrance No. 6)

The claimant have applied for justified hindrance of 22 days from 01.05.2011 to 15.06.2011(45 days). On going though the annexure C-116 and which is progress report for the month of May 2011, Further Annexure C-117 shows that work was stopped by the claimant for said period due to the non-payment and work was restarted on 23.06.2011. Therefore, I am of the opinion that claimant is not entitled any hindrance due to the Harvesting and water problem .

I) Work progress slow due to rainfall & damages to kutchha link road to site from 15-6-2011 to 30-9-2011 (108 Days) (Hindrance No. 7)

The claimant has applied for hindrance of 65 days on this account. The chief engineer(C) has considered 35 days hindrance considering conditions of roads during rainfall which impacted the progress & considering progress reports only 50% hindrance from 23-6-11 to 30-8-2011 of 70 days is found to be justified i.e. 35 days.

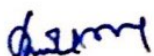
Hence 35 days hindrance is found justified which was beyond control of claimant & respondent.

J) Self Illness from 1-3-2012 to 30-5-2012 & claimant has claimed hindrance of 30 days. (Hindrance No. 8)

The chief Engineer has not found justification on this account & in my opinion, such hindrance cannot be considered as claimant technical representative (Engineer) was available at site to handle the progress. Hence no Hindrance is found justified on this account.

K) Mobilization period for the staff and material to restart the work after payment (Hindrance No. 9)

The claimant has applied justified hindrance of 11 days from 20.04.2012 to 30.04.2012. From the record submitted by the claimant particularly EOT file as annexure C-61/10 and annexure C-121 ,C0123,C-124, C-125, C-126 and C-127 which is progress reports from October 2011 to April 2012, it is evident that work was stopped due to the non receipt of CDL(cash drawing



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limit). Hence, I am of the opinion that mobilization of 10 days are quite sufficient and genuine.

Hence, **10 days** of this hindrance is attributable to respondent.

L) Non laying of electrical conduits (Hindrance No. 10)

The claimant have applied 22 days justified hindrance from 01.06.2012 to 25.07.2012.

No proof was submitted regarding the non laying of electrical conduits by the claimant. On the contrary the claimant have also submitted that the respondent has wrongly recorded the date of completion of work as 29.09.2012, to support his claim he have submitted **annexure C-25** requesting the respondent that work has been completed in April 2012.. Beside this he has also submitted that as per cement register annexure C-55 no cement was consumed. Claimant further stated as per defect list for the inspection done on 24.05.2015 Annexure C-59, clearly shows that there was no major item was pending. Whereas, Respondent have denied any wrong recording of date of completion. In view of the above facts it is important to mention that claimant has taken contradictory stand on the one hand he is claiming the completion of work in the month of April 2012 and on the other hand he is saying the work was in progress and held up due to non laying of electrical conduits. Therefore, I am of the view that there is no justification of any hindrance for the aforesaid reason. It is further observed that respondent have correctly recorded the date of completion as 29.09.2012.

From above, it is quite clear that there are many justified hindrances, out of which some are attributable to the respondent and some are beyond the control of respondent and claimant.

From the forging Para's total delay of 585 days for the completion of work has been duly adjudicated by this arbitration tribunal and summarized as follows:

S.No.	Description	Days	Responsibility of delay
A	Making payments	387.0	Attributable to respondent
B	Delay in communication of defects list	56.0	Attributable to respondent
C	Hindrance on Account of approach Link road to site of work	8.0	Beyond control of claimant and respondent

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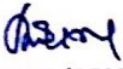

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D	Retaining wall design	4.0	Attributable to respondent
E	Due to heavy rain fall and damage to the katcha link road.	54.0	Beyond control of claimant & respondent
F	Plastering work held up due to non laying of electrical conduits.	0.0	None
G	Roofing work hampered due to the electricity supply problem.	35.0	Beyond the control of claimant & respondent.
H	work progress slow due to harvesting and water shortage problem.	0.0	None
I	Work progress slow due to rainfall & damage to Kutchha Road	35	Beyond control of claimant & respondent
J	Self Illness	0	None
K	Mobilization period for the staff and material to restart the work after payment	10.0	Attributable to respondent
L	Non laying of electrical conduits	0.0	None
	Total	589 days	

It is not disputed that the work was delayed for a period of 585 days. And upon the adjudication of delay of the work, 589 days worked out to be justified hindrances, which was beyond the control of claimant. It is also clear that out of 589 justified hindrance, respondent was responsible for delay of 457 days in the completion of work. It is further found that respondent have failed to make the timely payment as per clause 7 i.e. 15 working days after the submission/acceptance of bills.

Award: In view of the above, I set aside the order of Chief Engineer(C) BSNL HP Civil zone Shimla issued vide letter no. 5(63)/HPTC/SML/1032 dated 17.07.2015 (Annexure C-6). And allow claim no 1. in favor of claimant.

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Claim no 2. Damages caused to the claimant due to the breach of contract by EE(C), BSNL Civil Division Dharmshala and compensating the loss, on actual basis (Modified claim) **Rs 8,07250/-**

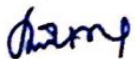
Findings & Reasons:-

The claimant have earlier submitted that claim titled as "Liquidated Damages caused to the claimant due to the breach of contract by EE(C), BSNL Civil Division Dharmshala.

The claimant have moved an application under the section 23 of the Arbitration and conciliation act.(as amended upto date). The claimant have also applied to the Chief Engineer(C) BSNL HP civil Zone on dated 14.04.2016 (Annexure C-8) and The chief engineer(C) vide letter dt.11-7-2016 has replied that the claimant to raise the modification before Arbitration tribunal. The respondent has submitted that modification is after thought by the claimant. after giving the due submissions by claimant and respondent Arbitration Tribunal have allowed the modification to the claim no 2 as represented by claimant being a typographical error.

Claimant has submitted that a breach of contract has been committed by the respondent mainly on account of not making regular and timely payments. Claimant further submitted that he has suffered loss due to the act/omission of the respondent. hence, as per Indian contract act section Compensation for breach of contract where penalty stipulated for *"When a contract has been broken, if a sum is named in the contract as the amount be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for."*

The claim no.1, has been allowed in favor of claimant, and the delay of work has been duly adjudicated and found that the there was total delay of 457 days which was attributable to the respondent and the respondent have mainly failed to discharge the contractual obligation to make the interim payments as per the clause 7 of the agreement vide Annexure C-1. The



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claimant have reminded this omission to respondent vide his many representations, Annexure-C-10 to C-31, made during the contract and extended period.

Although claimant have not submitted the proof of the loss but it can't be denied that the claimant might have actually suffered financial loss due to the failure on the part of respondent and on account of making extra expenditure on minimum establishment cost, watch and ward, Rental for staff and T&P, and transportation for visiting site and increase in the labor and material and other overhead charges. In the instant situation, I, take the support of Hon'ble Supreme court Judgment in the Civil appeal no. 10531 of 2014 between associate builders Vs Delhi Development authority. in this judgment Hon'ble Supreme Court have allowed the damages given by arbitrator on account of cost of establishment, shuttering and tools and plant etc. due to the promulgation of contract by DDA.

There is a delay of 457 days attributed to respondent and out of which major delay of 208 days in payment of 7th bill and work came to halt. The claimant intimated that they have submitted labor reports but when work stopped, no labor reports were submitted as there was no idle labor except chowkidar & supervisor etc.

The onus is also on claimant to reduce & mitigate the losses as per doctrine of mitigation of losses. Therefore, I consider only 30 days delay is just and sufficient instead of 208 days which are required to reorganize and result towards damages. Therefore, the claimant is entitled for damages & requires to be compensated for period of 285 days (457-208+30=279 days)

In order to compute the compensation payable to the claimant due to increased overheads, cost of establishment rental, T& P etc., I take the help of Hudson Formula which has been widely accepted in construction contracts for calculation of compensation, head office overhead percentage from contract as factor for calculation the cost irrespective of actual overhead office cost of contractor.

In Hudson's building & Engineering Contracts, Hudson Formula is stated as under.

$$\text{Compensation} = \frac{\text{Contract Overheads \& Profits} \times \text{Contract Sum}}{\text{Contract period}} \times \text{Period of delay}$$



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As per practice and trends, the building contracting firms income contract Overheads and profit percentage is assessed as 6% to 8% of work done during the year. I consider the average income/contract overheads and profit percentage of the claimant firm in the instant case as 6% for determining the losses due to prolongation of contract.

$$\text{Compensation as per Hudson Formula} = \frac{6}{100} \times \frac{7938315}{300} \times 279 = 4,42,958/-$$

AWARD: In view of above, I award Rs. 4,42,958/- as reasonable amount towards damages to be paid to the claimant by the respondent .

Claim no 3. Interest on damages as per claim 2.

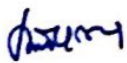
Rs 254284/-

Findings & Reasons:

The claimant has claimed payment of Rs. 2,54,284/- as interest on claimed amount as per claim no.2 on account of damages caused by the respondent and compensation for loss suffered due to delay in completion of work caused by respondent. The respondent contended that delay in the work was attributable to claimant and claimant is responsible for any loss if any, neither damage amount nor any interest becomes due towards claimant.

It is found that award under claim No. 2, an amount of Rs. 4,42,958/- is payable to claimant by the respondent. However, this amount is determined only after invocation of arbitration & thus becomes effective only after the date of award only as per clause 29 of contract.

Award: In view of above findings, I award Nil amount as interest under this claim after completion date. However, I award the simple interest @ 9% p.a. for future interest, on damages under clause 2 to be paid to claimant by respondent after 90 days of award to the date of payment of awarded amount to claimant.



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Claim No 4. Interest made on EOT with held amount and security deposit.

RS 154692/-

Findings & Reasons:

The claimant has claimed payment of Interest amounting to Rs. 1,54,692/- on Rs. 80,000/- with held for EOT from 7th Bill on 28-9-2012, Rs. 1,60,000/- with held from 8th Bill on 20-3-13 & withheld security deposit amount of Rs. 319,524/- totaling Rs. 5,59,524/- . Claimant has requested payment of interest from the date of withholding amount to date of award and along with future interest up to actual realization after the award.

As per facts of case, CEC HP Zone Shimla has imposed levy of compensation amounting to Rs. 6,35,036/- for delay in completion of work.

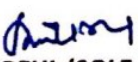
In order to adjudicate this, I refer to relevant extract of clause 29 (withholding & Lien in respect of sum due from contractor) of the agreement which is reproduced below.

Quote States:

Clause 29: (Withholding and lien in respect of sum due from contractor)

"Whenever any claim or claims for payment of a sum of money arises out of or under the contractor or against the contractor, the Engineer-in-charge or the Government shall be entitled to withhold and also have a lien to retain such sum or sums in whole or in part from the security, if any, furnished as the case may be and also have lien over the same pending finalization or adjudication of any such claim. In the event of the security being insufficient to cover the claimed amount or amounts or if no security has been taken from the contractor, the Engineer-in-charge or the Government shall be entitled to withhold and have a lien to retain such claimed amount or amount referred to above, from any sum or sums found payable to the contractor under the same contract or any other contract with the Engineer-in-charge of the Government or any contracting person through the Engineer-in-charge pending finalization of adjudication of any such claim It is agreed term of the contract that the sum of money or moneys so withheld or retained under the lien referred to above by the Engineer-in-charge or Government will be kept withheld or retained as such, by the Engineer-in-charge, till the claim

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arising out of or under the contract is determined by the arbitrator (if the contract is governed by the arbitration clause) or by the competent court, as the case may be and that the contractor will have no claim for interest or damages whatsoever on any account in respect of such withholding or retention under the lien referred to above and duly notified as such to the contractor.

In view of the above provisions in the agreement, the claim of the claimant is not justified.

Award:- I award Nil amount till date of invocation under Clause 25 & award simple interest @9% p.a. towards future interest on withheld amount towards EOT to be paid by respondent after 90 days of award to date of payment to claimant.

Claim No 5. 'Withheld EPF amount whether Claimant is entitled for payment of withheld amount on a/c of EPF

Rs. 1,56,300/-

Findings & Reasons:

It is found that amount of Rs. 1,56,300/- has been withheld by respondent on account of EPF as claimant has failed to deposit/supply copies of challan submitted to EPF Deptt. Respondent has withheld amount in 4th, 5th & 6th bills on 3-3-11, 25-3-11 & 30-3-12 respectively. Respondent as principal Employer withheld amount of Rs. 1,56,300/- from bills of claimant to protect the dues of labour. Respondent has not deposited the withheld amount with EPF deptt & same is lying as withheld amount with respondent, even after finalising the final bill on 29-6-13 of claimant. The claimant produced copies of EPF amount submission of Aug, Sept & Nov 2011 months & respondent accepted that details are available with them.

The claimant got himself registered with EPF deptt when due in Aug 2011 (Annex C-98/9) and when number of labors employed by him crossed 19 as per EPF act 1952. The claimant also represented that relevant clause 19K of contract does not empowers the respondent to deduct any amount of claimant on account of EPF. The claimant has also

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produced the NO dues statement from EPF deptt showing NIL dues pending towards claimant nor complaint is pending against him vide Annexure C-145,C-146, C-147. No liability is due from claimant towards EPF deptt. No complaint from labour is pending against claimant on record.

In view of above, claim of claimant is justified

Award:- I award payment of Rs. 1,56,300/- withheld on account of EPF to be paid to claimant by respondent.

Claim No 6. Interest on EPF withheld amount_

Rs. 1,31,000/-

Finding & Reasons

Claimant has claimed payment of interest of Rs. 1,31,000/-on with-held amount by respondent on account of EPF on claim No. 5 for non submission of EPF Challans by claimant & asked for payment of interest amount upto the date of award along with future interest upto actual realization. I refer to relevant extract of clause 29 (withholding & lien in respect of sum due from contractor) of the agreement which is produced under claim No. 4.

In view of provision of clause 29 of agreement, the claim of claimant on interest on EPF withheld amount is not justified.

AWARD:- I award Nil interest on account of withheld amount, however, I award simple interest of 9% p.a. future interest on EPF withheld amount to be paid by respondent after 90 days of award to the date of payment to the claimant.

Claim No 7. Interest on delayed payment by respondent

Rs. 1,85,704/-

Findings & Reasons

The Claimant has asked for interest on delayed payment of bills by the respondent. The respondent has denied the claim. As per clause 7 & 29 do not allow interest on late payment of running bills and on withheld amount etc. The hindrance were considered by respondent towards extension of time granted to claimant under clause 2 of agreement. The effect of



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delayed payments were considered under damages under claim No. 2 Therefore claim of interest on delayed payment is not justifiable.

Award:

In view of the above I award NIL amounts against this claim.

Claim No 8. Payment under Clause 10 CA

Rs. 50,000/-

Finding & Reasons

The claimant has withdrawn this claim during proceedings & which is confirmed by claimant vide letter Dt. 1-12-18.

Award:- I award 'NIL' amount against this claim.

Claim No 9. Cost of Arbitration

Rs. 50,000/-

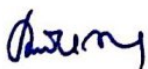
Findings & Reasons:- The Claimant has claimed Rs. 50,000/- for cost of arbitration & submitted receipt of counsel fee for Rs. 50,000/- including cost of drafting & other expenses along with future interest. The claimant has also claimed his share of arbitration fee paid to the Arbitrator.

It is observed that claimant has partly succeeded in his claims.

In view of above, the claim of claimant is partly justified

Award

I award lump sum amount of Rs. 40,000/- as cost of award to be paid to claimant by the respondent. Also, I award simple interest @9% on account of future interest to paid to claimant by respondent after 90 days of award to the date of actual payment to claimant realization.



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Counter claims by respondent

Counter Claim No. 1:- Balance amount of levy of compensation imposed by CE (C)

Rs75541

Findings & Reasons:- In view of claim no. 1, setting aside the order of CE (C) BSNL HP Civil Zone Shimla in favor of claimant, the amount yet to recovered is also not justified.

Award:- I award NIL amount against this counter claim.

Counter Claim No. 2:- Recovery under clause 10CA

Rs. 51,700/-

Reasons & findings:- The respondent has claimed escalation amount as per Annexure R-11 to be recovered from claimant as prices actually went down. The claimant has denied the calculation in statement passed on 5-4-16. The respondent has also mentioned this claim vide Annexure R-11 in reply to claim No. 8 of claimant. The statement No. 1 to 5 was prepared as per monthly wholesale price index issued by office of Economic advisor, GOI, Ministry of commerce & industry, DIPP. The claimant has not pointed out any mistake in the statements.

Award:- In view of above, I award Rs. 51,700/- to be paid by claimant to the respondent (BSNL).

**THIS AWARD IS MADE AND PUBLISHED BY ME ON THIS DAY 4TH May, 2019
(Fourth May, Two Thousand and Nineteen).**



(S.K. Behl)

Sole Arbitrator

#923, Tower 9, ATS Golf Meadows Prelude,

Barwala Road, Dera Bassi, SAS Nagar (Pb.)

E-mail: behlsk@gmail.com

Contact: 94170000849417000084

No. SKB /CE(C-S)/HP/BSNL/SML/1

dated 04.05.2019



S. K. BEHL (SOLE ARBITRATOR)

Forwarded to : (By Speed. Post)/(E-mail)

1. Sh. Gurnam Singh Gill-Claimant, C/o Ms. Anvidha Gupta Advocate, #2254, Sector 68, SAS Nagar (Mohali), Punjab-160062 – (In Original)
2. The Executive Engineer (C), BSNL Civil Division, Dharamshala (H.P.)
E-mail: eebsnldma123@gmail.com
3. The Chief Engineer (C), BSNL Civil, HP Zone (South), Shimla ,H. P.



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