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First Party : ZENITH CONSTRUCTIONS
Second Party : VC KU KURUKSHETRA
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BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF
HON'BLE MR. JUSTICE RAKESH KUMAR GARG (RETD.)
AS SOLE ARBITRATOR.

Date of Award: 08.05.2026

In the matter of dispute between:

M/s Zenith Constructions through its proprietor Mr. Kuldeep Kumar, #30, Sector 13,
 Urban Estate, Kurukshetra (Haryana) – 136118.

....Claimant

Versus

1. Vice Chancellor, Kurukshetra University, Kurukshetra (Haryana)
2. Executive Engineer, Construction Branch, Kurukshetra University, Kurukshetra (Haryana) – 1361189.

....Respondents

Statutory Alert:

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Argued by: Mr. Anil Aggarwal, Advocate
for the claimant.

Mr. Ravinder Singh Virdi, Advocate
for the respondents.

AWARD

In Arbitration proceedings in a dispute arising out of letter of allotment No.6299 dated 19.02.2004 and formal agreement dated 29.06.2004 between the parties.

Brief Facts leading to the present dispute:

1. The respondents floated a tender dated 2nd January 2004 for construction of a building for University Institute of Engineering and Technology including other services such as Public Health, Electrical etc. at Kurukshetra University Kurukshetra. The claimant participated in the tender and also deposited earnest money of Rs.12,60,000/-. The bid of the claimant was accepted by the respondents at an approximate cost of Rs.6,72,68,533/- and Allotment Letter dated 19.02.2004 was issued in his favour. The time limit for completion of this work was 12 months from the date of issuance of the allotment letter. It is a matter of record that formal agreement was also executed between the parties on 29.06.2004.
2. According to the claimant, construction activity was started immediately deploying its engineers, workers and other employees. It is further averred that machinery and other

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equipment was also deployed. According to the claimant, the execution of the work was delayed for the reasons solely and exclusively attributable to the respondents, as respondents breached various conditions of the agreement, yet the claimant completed the work on 18.08.2007 as per the completion certificate.

3. According to the claimant he was not paid his legal dues for the executed work. The claimant invoked arbitration clause. Since, respondents failed to appoint the Arbitrator in terms of the arbitration clause of the agreement, claimant invoked the jurisdiction of the Hon'ble High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996. The Hon'ble High Court vide its order dated 23.09.2024 appointed the undersigned as a Sole Arbitrator to adjudicate the claims/disputes arising between the parties under Allotment Letter 19.02.2004 and formal agreement dated 29.06.2004.
4. In pursuance of the aforesaid order, parties appeared before the undersigned and further proceedings were initiated. Parties have completed the pleadings within the timeline as provided under Section 23(4) of the Arbitration and Conciliation Act, 1996. It is relevant to notice that respondents-University moved an application under Section 16 of the Arbitration and Conciliation Act, 1996 seeking termination of the arbitration proceedings being non-maintainable on the ground that the claimant has failed to make a pre-deposit as per Clause 25-A(7) of the contract

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agreement. The aforesaid application was dismissed vide an order dated 08.07.2025.

5. The parties have also filed admissions/denials of the documents attached with their respective pleadings by way of their affidavits. With the help of counsel for the parties, the issues were also framed for consideration of the Tribunal vide Order dated 20.08.2025. Both the parties led evidence. Thereafter counsel for the parties addressed arguments and the award was reserved. Claimant also provided requisite stamp-paper for writing the award, which is being pronounced today in the presence of the parties. It is relevant to mention that another hearing took place at the residence of the Arbitrator for seeking some clarifications from the parties with regard to the calculations submitted by them. During the course of hearing counsel for the claimant submitted fresh calculations for his pending claims which were taken on record. After discussion with the counsel opposite and the document as marked as Ex. Court Document No.1.

Case of the Claimant:

6. As per the pleadings, the claimant is an established contractor since 1985 as Class-I contractor and is enlisted with the State Government and is eligible for undertaking construction contracts. The respondents floated a tender dated 02.01.2004 for construction of building (Three storeyed) for University Institute of Engineering and Technology, including Civil, Public Health and Electrical Services at Kurukshetra

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University, Kurukshetra. The claimant participated in the tender and also deposited an earnest money of Rs.12,60,000/-. The bid of the claimant was accepted at the cost of Rs.6,72,68,533/- (approximately) which included all items of Civil, Public Health and Electrical services except NS Items @ (HSR + CP - 9.05%) as per others terms and conditions stated in the allotment letter (Annexure C-2), issued in favour of the claimant. As per the allotment letter, the construction was to be completed within 12 months from the date of issuance of allotment letter dated 19.02.2004.

7. According to the claimant, on allotment of work, he immediately deployed its engineers, workers and other employees, machineries and equipment's and all other required construction materials at the construction site. It is the further case of claimant that despite hurdles, obstacles and delays caused on the part of the respondents in the execution of the work, the claimant on its part carried out the construction work with speed and completed the work on 18.08.2007 within the extended time period. It is the further case of the claimant that though running bills of the claimant (i.e. 1st running bill to 15th running bill) were prepared, verified and paid by the respondents, yet the final bill was neither prepared nor paid by the respondents. As per the pleadings of the claimant, the delay in completion of construction work was solely and exclusively attributable to the respondents and for this reason the respondents had granted extension of time

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limit from time to time and the construction work could be completed on 18.08.2007 within the extended time period. The respondents also issued certificate on 23.10.2007(Annexure C-7) certifying therein that the construction has been duly completed in the month of August 2007 and that the performance of the contractor remained satisfactory for the execution of the work. According to the claimant, respondents also released a part of the security amount of the claimant on 28.01.2008(Annexure C-8) duly acknowledging the fact that work stands completed on 18.08.2007 which was defect free and nothing was due from the contractor and final bill is in plus.

8. According to the claimant, it was the responsibility of the respondent to keep and maintain measurement books and make proper and complete entries therein, of all items used and work done by the claimant from time to time. It was further responsibility of the respondents to prepare the final bill and make payment thereof to the claimant within 90 days of completion of the work. Since the work was completed on 18.08.2007, the final bill was to be prepared and paid to the claimant on or before 16.11.2007. However, the respondents have failed to make payment till date. According to the claimant, despite numerous letters, emails and verbal requests to the respondents for release of claimant's all legitimate dues, neither the final bill has been processed nor any payment has been made.

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9. Another grievance raised by the claimant is with regard to release of security deposit to which he is entitled to after the successful completion of work. According to the claimant security amount was to be refunded along with cumulative interest thereupon and the claimant approached respondent several times but it adopted a casual approach and have not released the full amount till date. Claimant has relied upon Clause 1 of the Agreement according to which the security deposit was to be repaid on completion of the work with interest which may from time to time accrue on such deposit of security.
10. The claimant has also pleaded various facts due to which the delay occurred in completion of construction work and the reasons for this were solely and exclusively attributable to the respondents. According to the claimant the construction work was to be completed within 12 months from the issuance of allotment letter dated 19.02.2024 and the claimant deployed its men and machinery to complete the work within the given time limit. However, due to several factors attributable solely and exclusively to the respondents such as, an inordinate delay caused in preparation of formal agreement, delay in supply of cement and steel, change in the design, drawings and specifications of the building and material from time to time, location of the architect engaged by the respondents at Delhi etc., the construction could be completed with a huge delay of 30 months. The claimant in pith and substance has

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elaborated the following reasons for delay in execution of the work as under:

- i. The respondents were required to prepare draft of the agreement immediately after the issuance of Allotment letter dated 19.02.2024 whereas they took more than four months in preparing the draft agreement, which was prepared and executed on 29.06.2024 (Annexure C-5).
- ii. The respondents were required to supply cement and steel bars of various diameters for construction of the building but in spite of repeated request letters and reminders, regular and adequate quality of cement and steel bars were not made available to the claimant in time, which caused unnecessary delay and hinderance in the execution of the work. According to the claimant despite repeated requests and reminders dated 28.04.2004, 18.06.2004, 22.06.2004, 29.06.2004, 11.10.2004, 04.11.2004, 06.04.2005 regular and adequate quantity of cement and steel bars were not made available to the claimant in time which caused unnecessary delays.
- iii. The respondents also failed to provide adequate water to the claimant consistent with the requirement of the work which was also a hurdle in achieving good progress of the work. It is the case of

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the claimant that vide Letter dated 27.01.2005 (Annexure C-9) it was pointed out to the respondents authorities that due to insufficient supply of cement and steel bars and inadequate supply of water from the University tap installed at the site the progress of work has been hindered.

- iv. The respondents amended the drawing of the building section and lecture hall in May 2005. The consideration and approval of these amendments in drawings and designs caused much delay in completion of work. The claimant had to wait for this period till considerations and approvals. It is the further case of the claimant that the Director UIET Kurukshetra University, Kurukshetra was unable to supply the layout of work-shop and other labs, etc., due to which the work could not be completed in time. It is the case of the claimant that despite a letter dated 13.09.2005 addressed to the architect requesting him to supply the details of drawings of work, he failed to supply the detail which resulted in causing delay in the completion of the work. Respondents also requested to the Director UIET KUK to supply the layout plans of the work-shop and other labs but in response there to the Director UIET supplied the layout plan of work-shop only and failed to supply the layout plan of

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labs. A joint meeting of the Director UIET, the Executive Engineer Works, the Contractor, architect and other Officers of the respondents was held on 07.12.2025 in which a number of changes/modifications were suggested in the construction of building.

- v. The claimant vide letter dated 27.02.2006 (Annexure C-25) again informed the respondent that the progress of the construction work was suffering due to shortage of steel bars, drawings for additional stairs, internal layout for various labs and non-finalization of scheme for flooring, the non-providing of design of foundation for installation of machinery in the workshop and the drawings for additional electrical points in labs and on working counters.
- vi. Suffice is to say that claimant has explained the reasons causing delay attributable to the respondents in paragraph 16 (from sub-para i. to XXXVIII). In the aforesaid para of the statement of claims, the claimant has also given the details of the extension of time granted to him for completion of the work by the respondents and has explained that every time while granting extension of time, the respondents have found that reasons given by the claimant for extension of time were genuine. Thus,

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claimant has made an effort to prove that the reasons causing the delay were beyond his control and it was the respondents who were responsible for the delay in completion of the work.

11. It is the further case of the claimant that vide letter dated 11.12.2010 (Annexure C-45) he invoked the arbitration clause and requested the respondent No.2 to refer the dispute to arbitration. On his failure to do so the claimant was forced to approach the Hon'ble High Court under Section 11(6) of the Arbitration Act on 10.12.2013 vide Dairy No.1105820 and it appears that the said application was never listed for hearing because of objections raised by the registry and failure of the counsel to do the needful.
12. It is the further case of the claimant that he continued to approach the respondents, who assured that final bill would be prepared soon and his due payments will be made. It is the case of the claimant that respondent never declined to pay the due amount of the claimant and in fact vide letter dated 26.01.2021 (Annexure C-46) was asked to submit the NS rate for some of the items used in construction of the building. Respondent No.2 also vide his letter dated 18.05.2021 asked the claimant to submit the NS rates immediately. The claimant submitted the NS rates of items vide his letter dated 22.05.2021 (Annexure C-47). Since no payment was made, the claimant vide his letter dated 16.11.2021 (Annexure C-50) submitted his claims to respondent No.2 as per his remedy

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under Clause 25(A) of the Agreement. Claimant was further forced to invoke the Arbitration Clause under the Contract Agreement of final settlement of dispute and thus wrote letter dated 14.03.2022 (Annexure C-51) to the Vice Chancellor KUK and requested him to refer the matter to Arbitration. Statement of claim was also sent alongwith this letter. Claimant also made a complaint dated 13.12.2023 (Annexure C-52) to the Hon'ble Prime Minister of India. In response to the aforesaid complaint respondent No.2 sent a reply dated 29.01.2024 (Annexure C-53) stating that case is still pending for inquiry and further action on the claimant's request will be taken after finalization of the said inquiry. Thus, claimant approach the Hon'ble High Court, which appointed the Arbitrator vide Order dated 23.09.2024 and thereafter claimant has submitted the following claims:

- a) **Claim No.1: Pending payment of final bill for Rs.96,71,986/-.** It has been stated that respondents remained unfair to the claimant and failed to apply the correct rates in true spirit of the contract, during and after the completion of the project. It is the case of the claimant that on completion of the project work on 18.08.2007 the respondents were obliged to prepare the final bill and make payment of the legitimate dues of the claimant. Despite claimant ran pillar to post for the last

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17 years but all in vain. According to the claimant, the respondents were liable to pay the final bill as per Annexure C-55 which has not been paid, till date.

- b) **Claim No.2: Pending payment of excess recovery regarding cement amounting to Rs.1,04,619/-.** It has been submitted that respondents have wrongly recovered the aforesaid amount which is unfair and unjustified. The cement received from the University store was consumed in execution of work at site within the agreed terms of the contract and there is no tenable ground to recover the aforesaid amount from the bill.
- c) **Claim No.3: Recovery of amount deducted from the running bill under the head of Electricity Charges for an amount of Rs.1,35,000/-.** The electricity connection at the site was for the purpose of labour huts and operation of water pump. The monthly bill was to be raised by the respondent from the office of SDO (Electrical), which was not provided to the claimant on regular basis, neither the claimant was ever informed in this regard. The respondents have taken undue benefit by charging hefty penalty at the rate of 5%

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compounding on the monthly basis and recovered an amount of Rs.2,29,076/-from the tenth running bill (which included approximately Rs.1,35,000/- as penalty amount) which is illegal.

d) Claim No.4: claim amount of Rs.2,33,72,395/- towards refund of balance amount of Security alongwith interest.

According to the claimant the security deposit deducted from the running bills of the claimant was supposed to be refunded along with interest on completion of the construction work. The amount is still due and has been wrongly denied. According to the claimant the respondent was required to refund the full security amount deducted from the running bills within 90 days from the date of completion of work. However, respondents still deducted the amount of Rs.68,123/- from the 15th running bill which is yet to be refunded. Besides this in terms of Clause 1 of the agreement the respondent was contractually bound to keep the security amount in the form of bank deposit and refund the security amount along with the accrued interest.

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e) **Claim No.5: Cost escalation with effect from 28.02.2005 to 18.08.2007 for a sum of Rs.1,07,62,965/-.** It has been prayed that there was an inordinate delay of 30 months in completion of work due to the fault on the part of the employer and has caused the claimant to bear much higher prices on account of labour cost, material cost, fuel cost and other higher cost on allied expenses for which contractor is not responsible at all. It has been further submitted that during this period there was huge inflammatory conditions in India which clearly manifest the increased cost of labour on the basis of the inflation in the market and therefore the claimant was entitled to said claim. Claimant has submitted that there was a delay of 30 months from the intended date of completion i.e. 18.02.2005 up to actual date of completion i.e. 18.08.2007. Claimant has relied upon Office Order of the Kurukshetra University with regard to payment of daily wages (Annexure C-59), Haryana Gazette Notifications dated 24.07.2003, 21.02.2006 and 05.11.2007 (Annexure C-60, C-61& C-62), whereby some amendments were made in the daily wage

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rates and HSR Premium. Claimant has also relied upon the cost inflation index notified under the Income Tax Act 1961 on the basis of financial year 1981-1982 for 5 financial years i.e. 2003-2004 up to 2007-2008.

f) **Claim No.6: Compensation and damages for Rs.49,82,796/- on account of prolongation of contract.** It is submitted that there occurred a delay of about 30 months in execution of the above work which is attributable to the respondents. The delay has resulted into loss of over heads and profit on account of idle labour and less productivity from machinery and equipment adversely affecting profit earning capacity of the claimant in other ventures, as the claimant remained stuck for longer period in the contract in question, without any corresponding increase in the monetary benefit and without being free to move elsewhere to earn the profit in this profession.

g) **Claim No.7: Interest on delayed payments up to the date of award.** It has been submitted that Claimant has been denied his due payments for a long period and thus he is entitled to interest as claimed. Claimant has

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placed on record calculations of interest Claim under this claim vide Annexure C-63 wherein claimant has sought an award in his favour for a sum of Rs.7,26,93,682/- under claim Nos. 1 to 3, claim Nos. 5 to 7. Claimant has also claimed a sum of Rs.68,23,745/- towards interest under claim No.4. The claimant has calculated the interest amount @ 16% per annum with cumulative effect. Claimant is also seeking pendente lite interest @ 16% per annum on the due amount.

h) Claim No.8: Payment of interest from the date of Award till the actual date of payment. As per Claimant, he has been denied his due payments for a long period and thus he is entitled to interest as claimed. Claimant is seeking interest as per the provision of Section 31(7) (b) of the Arbitration and Conciliation Act, 1996 for the post award period on the total sum awarded including interest, till the date of actual payment.

i) Claim No.9: Payment of Litigation Charges.

It has been submitted that claimant has been dragged to unnecessary litigation and therefore and he is entitled to his litigation costs. Claimant has also submitted

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the calculations under this claim for a total sum of Rs.14,44,128/- which include administrative charges and sitting charges paid to Chandigarh Arbitration Centre, Chandigarh and the fee paid the Arbitrator. Claimant has also claim counsel fee paid to Shri Anil Aggarwal Advocate and miscellaneous expenses including travelling and typing etc.

Thus, the claimant has sought an award in his favour for a total sum of all the claims as raised above along with interest pendente lite and future interest till the date of realization.

Defence of the Respondents:

13. The respondents have contested the claim petition by filing statement of defence. While filing the statement of defence, the respondents have also raised a counter-claim for a sum of Rs.91,19,814/-. In the counter-claim, it has been stated that respondents are entitled to recovery of an amount of Rs.27,23,919/- which has been paid in excess. The claimant has also sought a counter-claim for a sum of Rs.52,90,746/- as interest on the aforesaid amount till the date of filing of the counter-claim. Respondents have also sought interest pendente lite and future interest on the aforesaid amount of counter-claim. Respondents have also claimed an amount of Rs.11,05,149/- towards costs of arbitration fee.

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14. The respondents have also contested the claim petition raising an objection under Section 16 of the Act read with Clause 25(A)(7) of the contract Agreement to say that the claim petition is not maintainable for non-deposit of the requisite amount as per the aforesaid Clause of the Agreement which is pre-requisite for invoking the Arbitration Clause. A further objection has been taken stating that the claims are beyond limitation as work was completed on 18.08.2007 and also when the claimant invoked arbitration proceedings on 11.12.2010 but did not proceed further to pursue the same and now after more than 12 years the claims have been raised which are hopelessly time barred. Respondents have also taken objection stating that the claimant has failed to mitigated losses and in view of Section 73 of the Indian Contract Act now cannot seek compensation for self-inflicted financial damages. Another legal objection has been taken stating that the claimant accepted time extensions without raising any objection or making any claim for damages for the delay in completion of work which was alleged to be attributed to the respondents. According to the respondents, claimant has given an undertaking that University will not be responsible for any extra financial burden due to escalation of prices of material and labour while seeking extension of time vide Annexure C-34.

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15. The respondents have further denied the claims raised by the claimant by relying upon the following Clauses of the Contract Agreement:

Clause 4 of Schedule of Additional Conditions:

No claim shall be entertained on account of increase in price of labour and material due to any cause whatsoever.

Clause 18(2) Schedule of Additional Conditions:

The recovery from contractor for the material consumed in excess or in short of the original requirements as per specifications herein stipulated or otherwise fixed by the Engineer-in-charge, other than the variation to be regulated by the preceding clause, shall be dealt with as under:

A: For Excess consumption of the material:

- i.** Upto 5%: No action is required
- ii.** Above 5%: If actual consumption exceeds theoretical consumption by more than 5% recovery shall be made for the excessive consumption of material beyond initial 5% at double the rate at which it is agreed to be supply to the contractor.

Clause 20 of Schedule of Additional Conditions:

No claim of any kind whatsoever shall be entertained for any and all the losses of damages to the contractor due to the completion of work getting

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delayed due to the failure or delay on the part of the University under the terms and conditions of the contract.

Clause 30 of Schedule of Additional Conditions:

In case of delay in supply of Cement, Steel or any other material agreed to be supplied by the department as per details in the NIT or failure to supply the required quantity in time for execution of the work, the contractor shall not be paid any compensation from any or resultant effects or losses.

Clause 1,2,5,5A,7, 8& 22 of the Conditions of Contract:

Clause 2: The time allowed for carrying out the work as entered in the under shall be strictly observed by the contractor and shall be reckoned from the date of which the order to commence work is given to the contractor. The work shall throughout the stipulate period of the contract be proceeded with all due diligence (time being deemed to be of the essence of the contract on the part of the Contractor) and the contractor shall pay as compensation an amount equal to one percent, which the Executive Engineer may levy on the amount equal to one percent, which the whole work

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as show by the tender for every day that the work remains un-commenced or unfinished after the proper dates. And further to ensure good progress during the execution of the work, the contractor shall be bound, in all cases in which the time allowed for any work exceeds one month to complete one-fourth of the whole of the work before one-fourth of the whole time allowed under the contract has elapsed: one-half of the work before one half and such time as elapsed, three-fourths of the before three-fourths of such time has elapsed. In the event of the contractor failing to comply with this condition he shall be liable to pay as compensation as amount equal to one percent which the Engineer-in-charge may levy, on the said estimated cost of the whole work for every day that the due quantity of work remains incomplete. Provided always that the entire amount of compensation to be paid under the provisions of this clause shall not exceed ten per cent on the estimated cost of the work as shown in the under. The Vice-Chancellor may on reference from the contractor reduce the amount of compensation and his decision in writing shall be final.

Clause 5: If the contractor shall desire an extension of the time for completion of the work on the grounds

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of his having been unavoidably hindered in its execution or any other ground, he shall apply in writing to the Engineer-in-charge within 30 days, of the date of the Engineer-in-charge shall, if in his opinion (which shall be final) reasonable ground be shown therefore, authorize. Such extension of time, if any, as may, in his opinion, be necessary or proper.

Clause 5A: The contractor shall deliver in the office of the Engineer-in-Charge on or before the 10th days of every month during the continuance of the work covered by this contract, a return showing details of any work as claimed for as extra, and such returns shall also contain the value of such work as claimed by the contractor which value shall be based upon the rates and prices mentioned in the contract or in the schedule of rates in force in the *District for the time being. The contractor shall include in such monthly return particulars of all claims of whatever kind and however arising, which at the date thereof he has or may claim to have against the Engineer-in-charge under or in respect of or in any manner arising out of the execution of work, and the contractors shall be deemed to have waived all claims not included in such return and will have no

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right to enforce any such claims not so included, whatsoever be the circumstances.

Clause 7: No payments shall be made for works, estimated to cost less than rupees one thousand, till after the whole of the works shall have been completed and a certificate of completion give. But in the case of works estimated to cost more than rupees one thousand, the contractor shall on submitting the bill therefore be entitled to receive a monthly payment proportionate to the part thereof then approved and passed by the Engineer-in-Charge, whose certificate of such approval and passing of the sum so payable shall be final and conclusive against the contractor. But all such intermediate payments shall be regarded as payment by way of advance against the final payment only and not as payments for work actually done and completed, and shall not preclude the requiring of bad, unsound and imperfect or unskillful work to be removed and taken away and reconstructed or recreated, or be considered as an admission of the due performance of the contract, or any part thereof in any respect, or the accruing of any claim nor shall it conclude, determine or affect in any way the powers of the Engineer-in-Charge under these conditions or any of them as to final

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settlement and adjustment of the accounts or otherwise, or in any other way vary or affect the contract. The final bill shall be submitted by the contractor within one month of the date fixed for completion of the work otherwise the Engineer-in-Charge's certificate of the measurement and of the total amount payable for the work accordingly shall be final and binding on all parties.

Clause 8: A bill shall be submitted by the contractor each month on or before the date fixed by the Engineer-in-charge for all work executed in the previous months, and the Engineer-in-charge shall take or cause to be taken the requisite measurement for the purpose of having the same verified, and the claim, as far as admissible, adjusted, is possible before the expiry of ten days from the presentation of the bill. If the contractor does not submit the bill within the time fixed as aforesaid, the Engineer-in-Charge may depute as subordinate to measure up the said work in the presence of the contractor, whose counter-signature to the measurement list will be sufficient warrant; and the Engineer-in-Charge may prepare a bill from such list which shall be binding on the contractor in all respects.

Clause 22: All sums payable by way of compensation under any of these conditions shall be

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considered as reasonable compensation to be applied to the use of university without reference to the actual loss or damage sustained, and whether or not any damage shall have been sustained.

16. Apart from the preliminary and legal objections as mentioned above, respondents have further contested the claims on the ground that there was a delay of 1276 days in completing the work owing to the poor management and planning and deployment of scarce resources and poor quality of construction material used by the claimant. The respondents have relied upon Annexures R-1 to R-8 also, in support of its case. It has been also stated that rates of some items were corrected as per actual material brought and used at site and further the cost of work was revised to Rs.6,62,95,541/- due to increase/decrease in quantity owing to change in construction design and increase in quantity of steel reinforcement and other design changes. A further defence has been taken that the security of the claimant was released during the contractual period while the work was in progress as per the details as Annexure R-3, according to which the claimant has also been paid in excess an amount of Rs.27,23,919/-. It has been further stated that the security amount of claimant was released to the claimant during the contractual period to mitigate his financial sufferings and it was done beyond the contractual Clause which state that the security was to be released only after defect liability period.

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The respondents have specifically stated that claimant has not submitted any running/monthly bill or final bill. The respondents have further stated that though the respondents could have imposed the levy of compensation @10% of the tendered cost amounting to Rs.67,26,853/-as per clause 2 of the agreement,however, keeping in view the various aspects of unseen hindrance which were beyond the control of both the parties and further change in value of work and the undertaking given by the claimant, the respondents arrived at the decision of time extension in the interest of completion of work at the cost of public exchequerand decided not to impose liquidated damages as aforesaid.

17. The respondents have also submitted the claim wise reply denying any liability upon them as under:

Claim No.1: While denying the said claim it has been submitted that the claimant failed to provide the mandatory documentation required under the contract. The claimant failed to submit the NS item rates, corresponding vouchers, and duly certified measurement records all of which are pre-requisite for the preparation of the final bill under Clause 16 of the Explanatory Notes of the Tender document. The claimant has concealed the explanatory notes. Despite numerous reminders claimant did not comply with his obligations. Thus, non-preparation of the final bill is a direct result of the claimant's own default and the respondents bear no liability for the delay or for any alleged pending payment. It has been

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further stated that the demand raised by the claimant is speculative and lacks any supporting evidence. It has been denied that there were any reasons attributable to the respondents causing delay. Claim of the claimant has also been denied on the ground of limitation. It has been further stated that in fact an excess payment was made to the claimant as per Annexures R-2 and R-3 and which is a compelling reason for the claimant's failure to submit the final bill. In the end it has been prayed that the Claim No.1 be rejected in its entirety with costs.

Claim No.2: The respondents have denied any wrongful recovery of Rs.1,04,619/- from the claimant's bills. The said amount was lawfully recovered in accordance with Clause 18 of the Conditions of Contract which expressly holds the contractor accountable for any loss or excess consumption or materials issued by the University. The claimant has failed to provide any credible evidence to prove that the cement in question was used in strict accordance with the prescribed norms. The contractor having received material from the department was under an obligation to use the same efficiently and within the allowed norms. Any excess over such norms indicate waste and justifies the recovery made. The plea of limitation has also been raised to deny the said claim.

Claim No.3: The respondents have denied that the recovery of Rs.1,35,000/- towards electricity charges was unjustified. It has been stated that the recovery was made in accordance

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with the University rules. Respondents have relied upon Clause 21 of the Explanatory Notes in the Tender document which states that "water and electricity will be arranged by the University and the recovery of the same will be done at prevailing rates on the total cost of the work done." This Clause is an integral part of the contract and leaves no doubt regarding claimant liability to bear electricity charges it has also been stated that the charges were calculated based on actual consumption. Plea of limitation has also been taken by the respondents and a prayer has been made to reject the claim.

Claim No.4: The respondents have denied that an amount of Rs.2,33,72,395/- is due to the claimant as security deposit and accrued interest. The security deposit was deducted in accordance with the condition of contract. The claimant has failed to provide any evidence to substantiate to claim for accrued interest to the security deposit. A specific stand has been taken that the respondents have already been refunded whole of the security amount even before completion of the work, just keeping in view the factum of delay in execution of the work and financial difficulties suffered by the claimant. It has been further stated that the whole of the security amount including deducted amount from the running bills was refunded to the claimant along with the payment of 14th running bill and only a sum of Rs.68,123/- remains pending which was deducted at the time of verification and payment of

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15th running bill. It has been further submitted that claimant is not entitled to any interest on the security. It has been stated that under Clause 1 of the Agreement there is no automatic accrual of interest on the security deposits. A specific plea has been taken that University has not earned any interest on the security deposits.

Claim No.5: The claim has been denied on the ground that the agreement does not provide for any cost escalation due to delays. Moreover, the claim for cost escalation is based on the assumption that the delay in the project was solely attributable to the respondents which is incorrect. According to the respondent the delay in the project was by various factors, including the claimant's failure to manage its resources effectively and efficiently. A further defence has been taken that the work was allotted on a fixed-rate basis and there was no Escalation Clause that allows for revision of rates due to inflation or any other economic factor. The claimant was well aware of this fact when entering into the Contract. Plea of limitation has also been taken to deny the aforesaid claim. Respondents have relied upon Clause 4 of the Additional Conditions to contend that no claim on account of increase in price of labour/material was permissible.

Claim No.6: The respondents have denied that any compensation was payable to the claimant for prolongation of the contract. It has been stated that the claim is not supported by any contractual provision. Moreover, the delay in the

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project was caused by various factors including claimant's failure to manage its resources. Plea of limitation has also been taken to deny the aforesaid claim to deny the claim. Reference has been to Clause 20 the Additional Conditions to contend that any claim for losses/damages to the contractor due to prolongation of the completion of work can be entertained.

Claim No.7: Under Claim No. 7 the respondents have denied that any interest was payable on delayed payments. The claim is based on the assumption that the delay in payments was solely attributable to the respondents which is incorrect. In fact the delay was caused by the claimant's own actions. Plea of limitation has also been taken to deny the aforesaid claim.

Claim No.8: Respondents have denied that any future interest was payable to the claimant under this claim.

Claim No.9: Respondents have denied that any litigation charges were payable to the claimant under this claim.

Counter Claim:

Respondents have also raised a counter claim of Rs.27,23,919/- on the ground that an excess payment has been made to the claimant, whereas claimant has denied the same and in fact is claiming more amount due to him have also sought a sum of Rs.52,90,746/- towards interest on the aforesaid amount @11% per annum from the due date of completion i.e. 17.08.2007 to 09.04.2025 (period 6445 days) + interest pendente lite + future interest @11% per annum.

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Respondents have also raised a counter claim for a sum of Rs.11,05,149/- towards litigation and other expenses such as Arbitrator's fee etc.

Rejoinder:

Claimant has also filed a rejoinder cum reply to the counter claim denying the averments made by the respondents in the statement of defence/counter claim and has reiterated the averments made in the statement of claim, however it is pertinent to mention here that claimant has also placed on record revised calculations of the amounts claimed under various heads of the claim petition including the pre-reference interest (i.e. up to the date of filing of the claim petition before the Tribunal). In the aforesaid revised summary of claims, the claimant has claimed a sum of Rs.68,23,745/- under Claim No.4 instead of an amount of Rs.2,33,72,395/- towards the refund of security amount along with interest calculated up to 31.03.2025, stating that the interest on the security deposited was wrongly calculated and the re-calculated amount of security deposit and interest up to the date of filing of statement of claim is Rs.68,23,745/-. In the aforesaid revised calculation, the claimant has also claimed an amount of Rs.7,26,93,682/- as pre-reference interest on all other claims except Claim No.4.

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Issues:

On the basis of pleadings of the parties and the submission made the following issues were framed for the consideration of the Tribunal:

- i. Whether execution of the work got delayed an account of failure of respondents to fulfill the contractual obligations? OPC.
- ii. Whether the claimant is entitled for the various claim amounts as claimed in the claim petition? OPC.
- iii. Whether the claimant is entitled for the interest on the aforesaid claim amounts for past, pendente lite and future interest, if yes, to what extent? OPC.
- iv. Whether the claimant is entitled to legal expenses towards arbitration fee etc.? OPC.
- v. Whether the claims as raised by the claimant are beyond limitation? OPR.
- vi. Whether claimant had waived it's right to claim escalation of price/damages on account of delay by accepting extensions in time? OPR.
- vii. Whether the delay of 1276 days in projection completion was due to claimant's poor planning, mismanagement, quality issues? OPR.
- viii. Whether the respondents are entitled to recover an amount of Rs.27,23,919/- along with interest from the claimant due to defective work, over-payments or other recoverable amounts? OPR.

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ix. Relief.

Evidence:

Claimant has step into witness box as CW-1 and has filed his affidavit (Exhibit CW-1/1) as examination-in-chief and has also produced information received under RTI as Exhibit CW-66. Claimant has also produced expert report as C-65, exhibited as CW-2/1. Claimant has further examined Rishab Dubey as CW-2 who has filed his affidavit in examination-in-chief as Exhibit CW-2 and has proved his report Exhibit CW-2/1. In his affidavit CW-1 claimant has reiterated the facts as narrated in the statement of claims in support of his claim. Whereas CW-2 has proved his report Exhibit CW-2/1 to prove the impact of inadequate water supply in prolongation in the execution of the work. On the other-hand Shri Pankaj Sharma Executive Engineer has step into witness box as RW-1 and has filed his affidavit in support of the case of the respondent as RW-1/1. All the witness were cross-examined by the counsel opposite at length.

Discussion and findings:

18. Counsel for the claimant, has vehemently argued that on allotment of work, he immediately deployed its engineers, workers and other employees, machineries and equipment's and all other required construction materials at the construction site and despite hurdles, obstacles and delays caused on the part of the respondents in the execution of the work, the claimant on its part carried out the construction

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work with speed and completed the work on 18.08.2007 within the extended time period. According to counsel for the claimant that though running bills of the claimant (i.e. 1st running bill to 15th running bill) were prepared, verified and paid by the respondents, yet the final bill was neither prepared nor paid by the respondents. It has been further argued that the delay in completion of construction work was solely and exclusively attributable to the respondents and for this reason the respondents had granted extension of time limit from time to time and the construction work could be completed on 18.08.2007 within the extended time period. The respondents also issued certificate on 23.10.2007 (Annexure C-7) certifying therein that the construction has been duly completed in the month of August 2007 and that the performance of the contractor remained satisfactory for the execution of the work. According to the claimant, respondents also released a part of the security amount of the claimant on 28.01.2008 (Annexure C-8) duly acknowledging the fact that work stands completed on 18.08.2007 which was defect free and nothing was due from the contractor and final bill is in plus.

19. It has been further argued on behalf of the claimant that it was the responsibility of the respondent to keep and maintain measurement books and make proper and complete entries therein, of all items used and work done by the claimant from time to time. It was further responsibility of the respondents to prepare the final bill and make payment thereof to the

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claimant within 90 days of completion of the work. Since the work was completed on 18.08.2007, the final bill was to be prepared and paid to the claimant on or before 16.11.2007. However, the respondents have failed to make payment till date. According to the claimant, despite numerous letters, emails and verbal requests to the respondents for release of claimant's all legitimate dues, neither the final bill has been processed nor any payment has been made.

20. Another grievance raised by the claimant is with regard to release of security deposit to which he is entitled to after the successful completion of work. According to the claimant security amount was to be refunded along with cumulative interest thereupon and the claimant approached respondent several times but it adopted a casual approach and have not released the full amount till date. Claimant has relied upon Clause 1 of the Agreement according to which the security deposit was to be repaid on completion of the work with interest which may from time to time accrue on such deposit of security.

The claimant has also pleaded various facts due to which the delay occurred in completion of construction work and the reasons for this were solely and exclusively attributable to the respondents. According to the claimant the construction work was to be completed within 12 months from the issuance of allotment letter dated 19.02.2024 and the claimant deployed its men and machinery to complete the work within the given

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time limit. However, due to several factors attributable solely and exclusively to the respondents such as, an inordinate delay caused in preparation of formal agreement, delay in supply of cement and steel, change in the design, drawings and specifications of the building and material from time to time, location of the architect engaged by the respondents at Delhi etc., the construction could be completed with a huge delay of 30 months. Counsel for the claimant has reiterated the averments made in the claim petition and has prayed that all the claims as raised be allowed.

On the other hand, respondents have contested the statement of claims raising preliminary objections and challenging the maintainability of the arbitration proceedings and the legitimacy of the claims raised. It has been submitted that there is no subsisting dispute since the cause of action arose on 18.8.2007 on completion of work and the claimant has now raised the claims in the Year 2024. Moreover, the statement of claims is based on incorrect assumptions, mis-interpretation of the contract and exaggerated claims. It is the further case of the respondents that the claimant has failed to adhere to the terms and conditions of the Agreement and the delay in completion of project was attributable to the claimant's inefficiency and failure to manage resources effectively. Respondents raised further objections under Section 16 of the Act with regard to the maintainability of the claim petition for non-compliance of mandatory pre-condition

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stipulated under Clause 25 (A) (7) of the Agreement (i.e. non-deposit of 7.5% of the claim amount). A specific defence of the claims being time barred was also taken. It was also stated that claimant failed to mitigate his losses and the alleged loss was self-inflicted. A further objection was also taken to the effect that claimant accepted the extension of time without protest and thus waived his right to seek damages and that claims were full of contradictions undermining the credibility of claims. Respondents have also raised counter claims stating that claimant has been paid in excess and the said amount is liable to be recovered along with interest. The respondents have also relied upon various Clauses of the Agreement to deny the claims raised by the claimant. However, respondents have also taken objection to the effect that claimant never submitted any RA bill/monthly bill as per Clause 5A or Clause 8 of the Agreement. Neither he submitted the final bill and in fact he knew that he was paid in excess an amount of Rs.27,23,919/- (Annexure R-3). It has been specifically denied that there was any delay in providing cement and steel to the claimant. In-sufficiency of the funds and scarcity of water on the part of the respondent was also denied. The respondents have denied all the alleged reasons for causing delay as mentioned by the claimant in the statement of claims.

In view of the objections raised, before we proceed further, at this stage it is necessary to decide Issue No.1, Issue No.5&

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Issue No.7 as these issues go to the very root of the dispute between the parties.

ISSUE NO.5

The respondents have specifically submitted that the present case is a dead wood as there is no subsisting dispute. Since the cause of action arose on 18.08.2007, on completion of the work, and further on 11.12.2010 when the claimant had invoked the Arbitration Clause, though without complying the mandatory condition of depositing the requisite amount (i.e. deposit of 7.5% of the claimed amount as per Clause 25 (A)(7)) as per the terms and conditions of the agreement seeking reference to the arbitrator who was ultimately appointed in the year 2024. According to the respondent instead of acting within 3-year limitation period as applicable to contract claims, the claimant has waited until 2024 to file the statement of claims i.e. after a lapse of 12 years and even if the cause of action is continuing, the delay is excessive and not legally permissible.

It is a matter of record that respondents filed an application under Section 16 of the Arbitration and Conciliation Act, 1996 read with Clause 25 (A) (7) of the Agreement to dismiss the claim petition on the ground of non-deposit of the mandatory fee for seeking reference to the Arbitrator and the said application was dismissed by the Arbitrator vide an Order dated 08.07.2025. It may also be seen that claimant is seeking his due payments on the ground that after completion of the

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work the respondents were under legal obligation to prepare, verify and pay the balance amount. A specific stand has been taken by the claimant that no final bill was prepared by the respondents till the invoking of the arbitration by filing a petition under Section 11 (6) of the Act. Though, respondents have placed on record a copy of the final bill Annexure R-2, however, at page 78 of the SOD it has been mentioned that the measurements were made by Shri Rajesh Monga SDO on 31.03.2024 and are recorded at page of measurement book 1618/156-157. Admittedly the said bill Annexure R-2 neither bears the signature of the claimant nor of the SDO and Executive Engineer of the respondent-University. Not only this the Executive Engineer of the respondent-University has also placed on record another copy of Annexure R-2 (modified) along with his affidavit (Exhibit RW 1/1) while appearing as RW-1. At page 23 of the said annexure, it has been mentioned that the final bill was C&B by SDO Shri B.S. Dahia on after incorporating final electrical bill and loss due to inferior quality of work etc. which was incorporated in the MBs by Shri Om Parkash JE on 31.03.2024 and recorded on page of MB 793 and page 199. Admittedly, even the said modified alleged bill has not been signed by any Officer of the respondent. The claimant also sought information under RTI (Exhibit CW-66) with regard to preparation of final bill and as per information received, there is no final bill on the file. Even the respondents have admitted vide Annexure C-53 that final action with

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regard to his complaint to the Hon'ble Prime Minister of India vide Annexure C-52, shall be taken only after finalization of the investigation in a related matter against an employee. All these facts duly establish that respondents have not prepared the final bill till today. It could not be disputed before the Tribunal that limitation of 3 years in the case of the claimant shall start from the date of preparation and payment of final bill which is yet to be prepared. In view of the discussion above the objection of the respondent that claims raised by the claimant are time barred is rejected and Issue No.5 is held against the respondent and in favour of the claimant.

Issue No.1 & Issue No.7

Now the next important question which arises before the Arbitrator is whether the completion of the work was delayed for the reasons wholly attributable to the respondents or the delay of 1276 days in project completion was due to claimants poor planning and quality issues.

Counsel for the claimant has vehemently argued that delay in completion of construction work occurred for the reasons solely and exclusively attributable to be respondents. Counsel for the claimant has refer to Para 16 of the statement of claims along with the documents as attached with the statement of claims and mentioned in the said paragraph, to support his arguments. It is the claim of the claimant that work was allotted on 29.02.2004 whereas the agreement between the parties was executed after a lapse for four months i.e. on

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29.06.2004(AnnexureC-5) which hampered the construction work unnecessarily and causing delay. A further grievance has been raised that the respondents were required to supply Cement and Steel for construction of the building but in spite of repeated request letters and reminder, regular quantity of cement and steel bar were not available in time which caused unnecessarily and hindrance in the execution of work. A further argument has been raised on behalf of the claimant stating that the water supply which was from a half inch tap was inadequate, which caused a major hindrance in the execution of the work and prolonged the period of construction due to less productivity. It is the further case of the claimant that respondents amended the drawings of the building section and lecture hall and a considerable delay was caused for approval of these amendments causing delay in completion of work. Moreover, the University was unable to supply the layout of workshop and other labs due to which the work could not be completed in time. Even the Architect of the respondent was approached for supply the necessary drawings, however, he also failed to supply the details of the drawings and thereafter a joint meeting of the Director UIET, Executive Engineer (Works), The Contractor, The Architect and other Officers, was held on 07.12.2005 taking decisions and further ensuring early action by everyone for the completion of the work. According to the claimant since the work could not be completed up to the intended date of completion i.e.

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18.02.2005 various extensions of time were granted to the claimant vide Annexures C-10, C-15, C-26, C-31, C-33, C-35, C-39 and C-41 up to 18.08.2007 (the date on which work was completed). It is the contention of the claimant that a perusal of the aforesaid documents would show that while granting extension of time, every time it has been certified by the respondent authorities that the reason mentioned by the claimant for extension of time were genuine which amounts to admission on the part of the respondents that the delay in execution of work was caused for the reasons attributable to the respondents.

On the other hand, learned counsel for the respondent has vehemently contested the arguments as raised and has submitted that the arguments has been raised on incorrect assumptions and interpretations of the documents. It has been submitted that the formal execution of the agreement on 19.06.2004 after a gap of four months from the date of allotment of work on 19.02.2004 has no effect on the progress of the work. It is a matter of record that with the allotment of work the period for completion of work had started. Not only this the allotment letter Annexure C-2 had provided all the necessary details for the start of the work and there was no impediment in the way of the claimant and execution of the agreement was merely a formality to complete the departmental procedure and legalities. The allotment letter also stipulates that with the issuance of this letter agreement

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stands concluded. It has been further argued that extension of time was granted to the claimant without imposing any liquidated damages in the public interest and in the interest of completion of work. The learned counsel of the respondents has further argued that there is nothing on record to show that the delay in the completion of work has been caused due to non-supply of cement and steel and non-approval/change of drawings. It has been also denied that water supply given to the claimant was not sufficient. Thus, it has been argued that the issue No.1 be decided against the claimant.

As per the averment made in the claim petition, the claimant on allotment of work on 19.02.2004 immediately deployed his men and machinery at site so that work could be completed within the time frame as per the contract. However, respondents from the very beginning failed to perform their part of contractual obligations resulting into causing delay in completion of the work, which despite many hurdles and hindrances was completed on 18.08.2007 i.e. after a delay of 30 months. The claimant in Para No.16 of the claim petition has elaborated the main reasons/hindrances attributable to the respondents, which caused prolongation of the completion of the work. Claimant has elaborated all the details in Para 16 (i) to Para 16 (xxxviii). Suffice, is to say that in the aforesaid paras of the statement of claims, claimant has explained the reasons causing delay attributable to the respondents as aforesaid. It is also relevant to mention that while seeking

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extension of time, claimant brought to the notice of the respondents, the hindrances as noticed above and the claimant was granted extension of time vide Annexures C-10, C-15, C-26, C-31, C-33, C-35, C-39 C-41. It is again a matter of record that while granting extension of time it was found by the respondent authorities that reasons given by the claimant seeking extension are genuine. The claimant has also placed on record his requests/representations made to the respondent authorities for grant of extension of time, wherein, the reasons given by the claimant are the same as noticed above. Claimant has placed on record all those documents including extensions as Annexure C-9 to C-42 and all these documents have been admitted by the respondent in their affidavit of admissions and denials, though contents of some documents have been denied but it is established that claimant was granted extension of time without finding any fault on his part. The claimant has also given the details of the extension of time granted to him for completion of the work by the respondents and has explained that every time while granting extension of time, the respondents have found that reasons given by the claimant for extension of time were genuine. Thus, claimant has successfully proved that the reasons causing the delay were beyond his control and it was the respondents who were responsible for the delay in completion of the work. Though, an effort has been made on behalf of the respondent stating that grant of extension of time

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will not automatically imply that respondents were at fault, as extension of time was granted to the claimant in the interest of public work and cannot be held against them, however, it is a matter of record that even the reasons mentioned by the claimant while seeking extensions clearly raise finger against the respondents for causing the delay.

It is a matter of record that all the documents placed on record by the claimant have been admitted by the respondents though contents of some of the documents have been denied. It is not in dispute that claimant was granted various extension of times for completion of work and his requests were found to be genuine. It's again a fact that the respondent never imposed any fine or liquidated damages upon the claimant for causing delay in completion of the project work and the extension of time were granted purely to facilitate work completion. Even the official noting attached with the claim petition have been taken by the claimant from the respondents under the Right to Information Act. These documents clearly prove the fact that there was a delay in procuring as well as supplying the steel and cement in time. Not only this it is an admitted fact that respondents changed drawings midway and also took a considerable time in taking a final decision and approving the same. In the reply not even, a whisper has been raised against the claimant indicating any fault on his part to delay the work.

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Though, argument have also been raised with regard to scarcity of water, however, in any of the correspondence the respondents have nowhere accepted the fact that sufficient water was not being supplied. In fact, the claimant was provided a running water tap by the University as per the rules and it was for the claimant to manage his work and resources effectively. Thus, the said ground is not available to the claimant. Neither it can be said that there was any insufficiency of the funds. Except raising a ground no other documents have been placed on record to substantiate the said ground. The claimant has further raised a ground stating that the allotment letter was issued on 19.02.2004 (Annexure C-2) whereas the agreement was executed on 29.06.2004 (Annexure C-5) and the said delay has caused a hindrance in execution of the work. The said ground is also of no help to the claimant as execution of the agreement was just a formal acceptance of the tender allotted to the claimant vide Annexure C-2. It is not in dispute that all the terms and conditions have also been mentioned in the allotment letter itself, it has been mentioned that with the issuance of the allotment letter the agreement between the parties stands concluded.

In any case, from the documents attached with the pleadings it can be easily found and held that there was a delay in completion of work which was caused for the reasons

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attributable to the respondents and there was nothing attributable to the claimant.

In the written statement, a defence has been taken that the delay of 1276 days in completion of the work has been caused due to claimant's poor-planning, mismanagement and quality issues. However, except the bald statement made in the written statement there is not an iota of evidence to substantiate the said defence taken. It has been established on record that no fault can be found with the claimant for causing delay in completion of the work and he was granted extensions of time considering the reasons for extension of time as genuine. The various running bills paid by the respondents were duly verified and certified that work has been executed as per Government specifications. Even, the alleged final bill placed on record by the respondent has endorsed that work has been done by the claimant as per specifications and there is no defect.

Thus, the objection raised by the respondent under Issue No.1& 7 are without any merit and the same are decided against the respondents and held in favour of the claimant.

Issue No.6

At this stage it is important to notice that respondents have raised an objection to the effect that claimant has waived its right to claim escalation of prices/damages on account of delay by accepting extensions in time and the following issue was framed on the basis of pleadings of a parties.

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Whether claimant had waived its right to claim escalation of price/damages on account of delay by accepting extensions in time. OPR

As noticed in the foregoing paragraph claimant has sought escalation of prices as well as damages on account of prolongation of the contract due to delay caused by the reasons attributable to the respondent. A specific defence has been taken by the respondent to deny the aforesaid claims stating that the conduct of the claimant during the execution of the project demonstrates a clear waiver of any right to seek damages for delays, as claimant repeatedly accepted time extension without raising any objection or making any contemporaneous claims for damages as in case the respondents were solely responsible for the delay, the claimant should have either refused extension or terminated the contract instead of execution of further work. The fact that the claimant proceeded with the work without protest for 30 additional months suggests tacit acceptance of the situation. Having acquiesced to the extension claimant cannot know claim damages/price escalation for delays. Respondents have also relied upon the undertakings given by the claimant to the effect that University will not be responsible for any extra financial burden due to price escalation of material and labour.

It is undisputed that even the respondents have granted extensions of time in the interest of public work and in case

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claimant had terminated the contract, the public exchequer could have suffered. Moreover, the extensions were granted by the respondent keeping in view that reasons given by the claimant for extension were genuine and the execution of the work was delayed due to the non-performance of the contractual obligations by the respondent. Again, it is undisputed that in case claimant was at fault that the respondents could have imposed penalty to the extent of 10% of the total estimated cost of the work allotted. The very fact that respondents never initiated such action speaks volume about the genuineness of the reasons for delay in execution of the work and in view thereof the objection raised by the respondent is liable to be rejected. Whether, claimant is entitled to any escalation in prices or damages for the delay will be seen at an appropriate stage. Thus, Issue No.6 is decided against respondent.

Issue No.2 & Issue No.8

Issue No.2 has been framed in respect of the claims raised by the claimant, whereas, Issue No.8 has been framed on the basis of counter claims raised by the respondents. All the claims and counter claims which are covered under these two Issues are being discussed under each head of the claim/counter claim.

Claim No.1 & Counter Claims:

The claimant is seeking an award for a sum of Rs.96,71,986/- (Annexure C-55) towards balance payment allegedly payable to

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him for the execution of the work. According to the claimant on completion of the work on 18.08.2007 the respondents were liable to prepare and verify the final bill and pay the balance amount to the claimant after deducting the amounts already paid to him under various running bills. It is the case of the claimant that the respondents never prepared the final bill and remained unfair to apply the rates of various items in true spirit of the contract. Claimant many times requested the respondent to verify and make the payment of his legitimate dues but all in vain. According to the claimant he is entitled to the amount as per Annexure C-55 along with interest at the rate of 16% per annum with cumulative effect from the date the amount became due till the date of passing the award.

On the other hand, respondents have denied that any amount is payable to the claimant. It has been submitted that the final bill was not prepared solely due to claimant's failure to provide the mandatory documentation required under the contract, specifically the claimant failed to submit the NS items rates and corresponding vouchers and duly certified measurement records. According to the respondents the aforesaid pre-requisites were to be made available by the claimant as per Clause 16 of the Explanatory Notes of the Tender document. Even under Clause 5A& 8 of the agreement it was the duty of the claimant to submit the final bill. It has been also argued that the final bill submitted by the claimant is not accompanied by verified measurement books, certified

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quantities or any accounting justification that could support the amount sought by the claimant. The respondents have further taken the objection that the claim is hopelessly barred by limitation and revival of the same would violate the fairness of contractual enforcement. Respondents have also relied upon Annexures R-1, R-2 and R-3 to show that the claimant was paid in excess, a sum of Rs.27,23,919/- and for this compelling reason the claimant has not come forward to get the final bill verified. Respondents have raised a counter claim for the aforesaid amount along with interest from the date it was over-paid till its realization.

A perusal of the bill Annexure C-55 and Annexure R-1 to R-3 would show that there is almost no dispute with regard to the quantity and quality of work and the dispute is with regard to difference of rates payable for some items. The documents on record show that claimant submitted the NS items rates which were verified and submitted to the higher authorities for approval. Not only this the rates for these items as claimed by the claimant have been verified and paid even in the running account bills 1 to 15. At this stage it is also relevant to mention that admittedly respondents failed to prepare the final bill on completion of the work. Even if the claimant had not come forward to submit the final bill it was the duty of the respondents to prepare and verify the final bill and make the payment if any payable to the claimant. Admittedly, no final bill is available on the record of the respondents. The final bill

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placed on record by the respondents has been allegedly prepared in March 2024 i.e. after invocation of Arbitration Clause. It has been submitted on behalf of the respondent that the bill has been prepared on the basis of entries in the relevant MBs. Though, those MBs have been produced before the Arbitrator yet it is an admitted fact that some of the entries in the MBs have been interpolated. It has also come in evidence that some of the entries of the items rates payable to the claimant have been rejected by the concerned JE/SDO in the year 2017 to 2024 without associating or confronting the claimant, whereas, work was completed on 18.08.2007. So much so, even the final bills placed on record have not been signed by any of the authorized officer. Though, final bill as prepared by the respondents and attached with statement of defence as Annexure R-2 and Annexure R-3 are attested to be true copies. However, the original documents have not been placed on record. Not only this, respondents have placed on record a modified version of Annexure R-2 as Exhibit RW-1/1. but there is no authenticity of the said document, as the original of RW-1/1 is not on the records of the respondents. Even Annexure R-2 attached with the SOD and the final bill placed on record as modified R-2 or Exhibit RW-1/1 do not tally with each other. Even, RW-1 has admitted in his cross-examination that Exhibit RW-1/1 has been prepared on 31.03.2024 on the basis of entries made in the original MBs. However, he has also admitted that there are interpolations in

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the entries of the MBs and these cuttings and changes were made in the period between 2017-2024. Whereas the work was admittedly completed on 18.08.2007. No evidence has come to authenticate the truthfulness of these interpolated entries in the record. It is also a matter of record that some payments of item rates have been disallowed against the NIT conditions. It is a matter of record that the items rates of certain items which were duly verified and paid by the respondents through running account bills, have now been disallowed and deductions have been made. Even in the alleged final bill placed on record by the respondents as Annexure R-2 & Annexure R-3 respondents have failed to justify the deductions for a sum of Rs.21,27,882/- on account of inferior quality of work and payment of items under alleged wrong items of contract. Admittedly these deductions have been made from the payable bill of the claimant without associating the claimant and confronting in the reasons for making such deductions. In view of all these facts which could not be disputed and the documents placed on record by the respondents with regard to the payments of the claimant towards final bill/counter claim cannot be accepted. Except the bill Annexure R-2 and its modified version, respondents have not brought on record any other evidence to prove the defence taken.

At this stage at the cost of reputation it is reiterated that there is no dispute with the quantity of work executed by the

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claimant and is the same almost for each and every item. Even, most of the payments made by the respondents by applying the rates are accepted by the claimant. However, there is a dispute with regard to certain items relating to applicability of NS rates, difference of rate due to additional higher storeys @ 0.60 paisa per sqm per storey as per HSR Chapter No. 9 Note II (a) and due to difference of quantity in 1-2 items. There is a dispute of quantity of steel consumed by the claimant also. According to the claimant an actual amount of Rs.2,38,15,696/- is payable to him for a quantity of 12414.80 quintals, whereas, he has been paid a sum of Rs.2,35,23,304/-. Thus, a sum of Rs.2,92,392/- are still payable to the claimant, as respondents have not made reimbursement of a quantity of steel amounting to 152.42 quintals. However, during the course of arguments it could not be disputed by the claimant that a quantity of 14.24 quintals of steel towards wastage will also be chargeable to him. It is an admitted fact that 138.18 quintals of steel was returned to the store. Therefore, he cannot be made liable to pay for the said amount of 138.18 quintals of steel the value of which is Rs.2,56,185.72/-. Learned counsel representing the respondent could not dispute this fact. During the course of argument dispute regarding the payment of final bill has been narrowed down and according to the claimant a sum of Rs.58,84,539/- is still payable to him. Counsel for the claimant has placed on record the calculations of the pending

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payments. The same is taken on record as (Exhibit Court Document No.1) learned counsel for the respondent could not dispute the bill as raised during the course of arguments except the dispute with regard to steel quantity as aforesaid and a brick work amounting to Rs.2,26,165.36/- under item No. 11.7+11.41(1) at serial No. 20 of the respondent's bill. Counsel for the claimant could not support the aforesaid items from any document on record. Learned counsel for the claimant has explained each and every remaining item (Civil Work) for which he has claimed amounts and the respondents could not dispute the same. In view of the facts discussed above Claim No.1 raised by the claimant is allowed to the extent of an amount of Rs.58,84,539.58/- minus (Rs.2,26,165.36/- towards brick work + Rs.36,206.30) against steel quantity of 14.42 quintals consumed towards wastage). At this stage it may also be seen that admittedly a balance amount of Rs.77,709/- is payable to the claimant towards public health final bill and further a sum of Rs.98,486/- is payable towards final bill of the electrical work. Thus, claimant is also entitled to aforesaid amounts. However, the Tribunal is not inclined to consider the amounts of Rs.1,00,445/- & Rs.1,05,000/- which the claimant has demanded as wrong deductions from electrical bill and for installations of electrical panels. Thus, claimant is entitled to a total sum of Rs.57,98,363/- for all the works for which final bill has not been prepared and paid to the claimant. Undisputedly,

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claimant was issued a completion certificate on 23.10.2007 and all his payments were to be made within 3 months from the said date. Thus, it is held that claimant is entitled to the said amounts with effect from 23.01.2008 till its realization. No doubt respondents have been denied the use of the aforesaid amount legally payable to the claimant for a long period, however, it may be seem that claimant kept silent for many years and did not availed the legal remedy available to him till he invoked the arbitration. Thus, the Tribunal finds that it will be reasonable to allow interest on the aforesaid amount under Claim No.1 at the rate of 9 % per annum with effect from the date of invoking the arbitration till its realization i.e. 16.11.2021 (Annexure C-50).

Counter Claims:

It is a matter of record that all the payments of running account bills have been made after verification and certification that the work was been executed as per specifications. There is nothing on record to prove the loss of the department due to inferior quality of work. Even the payments allegedly made under wrong items have been deducted without associating the claimant and only on the basis of interpolated MBs. Even before the tribunal no other evidence has been submitted. Even according to the respondents, claimant total value of the work (including PH & Electrical) executed by the claimant comes to a sum of Rs.6,90,19,465/- and the claimant has been paid a total sum

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of Rs.6,73,15,452/-. Since, the Tribunal has already found that no amount is payable to the respondents on account of deductions made for the loss due to inferior quality of work and payment of items under wrong items of the contract to the tune of Rs.24,11,019/- and in view of the aforesaid fact of pending payment of the claimant, there is no question of making any excess payment which is recoverable from the claimant as alleged in the counter claims. Once that is so, no question arises of any interest payable to the respondents by the claimant, as there is no payable amount to the respondents. Keeping, in view these facts respondents are also not entitled to costs. Thus, counter claims 1, 2 & 3 are dismissed with costs.

Claim No.2: Recovery of an amount Rs.1,04,619/- towards alleged excess recovery of cement.

According to the claimant respondents have recovered an amount of Rs.1,04,619/- from the 15th running account bill in violation of the contractual terms which is unjustified and unfair. There is not tenable ground to recover the amount as the cement was received from University, store and has been consumed in execution of the work at site within the agreed terms of contract. In response to the aforesaid submission, it has been submitted on behalf of the respondent that the amount of Rs.104619/- has been lawfully and rightfully recovered in accordance Clause 18 of the Conditions of Contract which expressly hold the contractor accountable for

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any loss or excess consumption of materials issued by the University. It has been further submitted that upon a detailed Audit and Re-conciliation of Cement consumption it was found that the actual usage exceeded the permissible theoretical limits. However, the submission made on behalf of the respondent is liable to be rejected outrightly.

Under Clause 18(2) of Schedule of Additional Conditions as notice in the forgoing paragraphs where the actual consumption of material is short by 5% or less no action is required to be taken in a case where the work is executed on thorough rate basis and the cement so saved shall be returned to the stores. However, as per Annexure R-8 (colly) at page 203 of the SOD it is not in dispute that the total quantity of issued cement has been accounted for and no recovery was liable to be made in this regard. In view therefore the Claim No.2 is accepted and it is held that the claimant is entitle to the aforesaid amount with effect from the date the final bill was payable i.e. 16.11.2007. Claimant is also held entitle to interest at the rate of 9% per annum on this amount w.e.f. 16.11.2007 till the date of its realization.

Claim No.3: Towards recovery of amount deducted from the running bills in the name of penalty of Rs.1,35,000/- towards electricity charges.

According to the claimant the respondent provided the electricity connection at construction site. The monthly electricity bill was to be raised by the respondent from the

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office of SDO (Electrical) and provided to the claimant. However, monthly bills were not provided to the claimant on regular basis. Neither the respondents informed with regard to payment of the same and for this reason claimant could not deposit the amount towards electricity charges within the prescribed period. According to the claimant the respondents recovered an amount of Rs.2,29,076/- from the 10th running bill which included approximately an amount of Rs.1,35,000/- towards penalty at the rate of 5% on monthly cumulative basis. The claimant has challenged the aforesaid deduction towards penalty. Respondents have not a disputed the aforesaid factual position. However, it has been stated that the respondents have imposed the penalty at the rate of 5% and have deducted an amount of Rs.1,35,000/- towards penalty as per University Rules. However, no such rule of imposing 5% penalty with cumulative effect for non-payment of electricity charges has been placed on record. The respondents are admittedly bulk purchasers of electricity from the department and are liable to make the payment. There is nothing on record that respondents have ever paid any penalty on the electricity charges which were payable by the claimant. An objection has been taken stating that the claimant never objected to the deductions at the time of making payment against 10th running account bill and therefore the principle of waiver and acquiescence will apply and the claimant cannot now raise such claim. The argument raised is without any

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force as undisputedly payments against the running account bills are ad-hoc in nature and any subtraction or addition in such bills are to be finally adjusted/settled at the time of making payment against the final bill. Though the respondents have also raised the plea of limitation. However, the same has already been discussed wherein it has been held that the claim petition is within limitation. Thus, the Claim No.3 is allowed and claimant is held entitle the amount is claimed with interest with effect from 16.11.2007 till its realization at the rate of 9% per annum.

Claim No.4: For a sum of Rs.2,33,72,395/-towards the refund of Security and Interest.

According to the claimant he had initially paid a sum of Rs.12,60,000/- as EMD at the time of participation in tender which was treated as security from the date of allotment on 19.02.2004 and interest started accruing from the said date on the said amount. It is the further case of the claimant that the security amount was deducted from time to time from the running bills as per condition No.1 of the allotment letter and the said security was to be released along with interest after 90 days of certified date of completion of this work and payment of final bill. According to the claimant the intended date of completion was 19.02.2005 and there was an inordinate delay of 30 months in completion of the work due to reasons attributable to the respondent, therefore, claimant was entitled to interest on the security amount from the said

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date including the prolongation period. Claimant has relied upon Annexure C-58 (calculations) in this regard. It is again a matter of record that claimant himself has submitted a revised claim vide Annexure C- 63 under this claim for a sum of Rs.68,23,745/- stating that calculations made as per Annexure C-58 for an amount of Rs.2,33,72,395/- are not correct. At this stage it is necessary to mention that even as per the details given by the claimant himself a total sum of Rs.66,63,568/- was deducted as security up to the 14th running bill and the said amount stood refunded to the claimant up to January 2008, and only a sum of Rs.68,123/- remains pending which was deducted from the 15th running bill. It is further not in dispute that security amount of Rs.69,629/- towards the work for Public Health and a sum of Rs.1,20,010/- security towards Electrical work stood repaid to the claimant and now the dispute is only with regard to the interest claimed by the claimant for the delay in release of the aforesaid security amounts with effect from the date of intended completion till the release of security amount. The amount of interest as per calculations vide Annexure C-63 has been claimed by making calculations at the rate of 8% per annum with cumulative effect as per the bank accounting system and also supposing the date of refund with effect from 19.02.2005. At this stage it may be noticed that as per the Contractual Clause between the parties, security is to be refunded only after 90 days of the certified date of completion

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of the work and final payment. Admittedly in this case the completion certificate was issued to the claimant on 23.10.2007 Annexure C-7 and the final bill was neither prepared nor any payment was made. At this stage it is relevant to mention that major part of the security amount as deducted up to the 14th running bill was released to the claimant even before the completion of work, keeping in view his sufferings and delay in execution of the work. Even the remaining amount was released within 3 months from the date of issuance of completion certificate i.e. 23.10.2007 (Annexure C-7 certified date of completion of work) and in view there of the Tribunal is of the view that claimant is not entitled to any amount towards the security beyond Rs.68,123/- which was deducted as per rules at the time of verifying and paying the amount of 15th running bill. However, claimant is also entitled to simple interest at the aforesaid amount at 9% per annum with effect from the date of expiry of three months from the date of completion of the work i.e. 16.11.2007.

Claim No.5: Towards escalation of prices

Under claim No.5 the claimant is seeking escalation of prices for the prolonged period in execution of the work and on the other hand respondents are claiming that claimant has waived his right to claim escalation of prices on account of delay, by accepting extensions in time. Since, both the questions raised by the parties are inter-related and based upon same facts, thus, these are being decided together.

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Under this claim the claimant is seeking a sum of Rs.1,07,62,965/- on account of cost escalation for the period with effect from the stipulated intended date of completion i.e. 28.02.2005 up to actual date of completion i.e. 18.08.2007.

It has been submitted on behalf of the claimant that while preparing the bid, meticulous planning was done before finalizing the tender rates under the given set of terms and conditions and the time frame and claimant submitted competitive rates in the era of cut throat competition trusting the terms of DNIT. It has been further submitted that the cost of work bears a definite and direct relationship with the time allowed for performing a contract. In these days of inflation, with the passage of time it results in the increase of cost of work. The claimant never expected such an inordinate delay in completion of work caused due to the default on the part of the employer. Thus, under the prolongation period for execution of the work caused, the claimant had to bear much higher prices on account of labour cost, material cost, few charges and allied expenses for which the claimant was not responsible and the claimant is justified while seeking to be compensated by revising the rates keeping in view the prevailing rates at that time, as there were substantial increase in the cost of construction work. It has also been submitted that the work was to be completed on or before 18.02.2005 whereas, for the reasons wholly attributable to the

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respondents it was completed with a delay of 30 months on 18.07.2007.

Claimant has relied upon the data of cost inflation index as notified by the Income Tax Authorities and has further relied upon the revision of minimum wage rates as notified by the Deputy Commissioner of area and the Government Notification regarding cost premium percentage (Annexure C-59 to Annexure C-62) and has sought overall increase in the rates at 16% on the total cost of the project amounting to Rs.1,07,62,965/-.

On the other hand, respondents have denied the payment of any cost escalation payable to the claimant. It has been submitted that the claim is based upon the assumption that the delay in the project was solely attributable to the respondent which is incorrect. According to the respondents the delay in the project was caused due to claimant's failure to manage resources effectively, delay in the supply of materials etc. Moreover, the claim is not supported by any provision of the Contract. Respondents have further relied upon Clause 4 of the Schedule of Additional Conditions which categorically bars claim for price increase. Respondents have further relied upon Clause 20 of the Agreement which states that "No claim shall be entertained on account of an increase in the price of labour or material due to any cost whatsoever". Respondents have further relied upon Clause 16 of the Explanatory Notes (Annexure C-3) which provides that non-scheduled items shall

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be paid as per HSR + CP - rebate. Therefore, there being no provision for escalation the relief is impermissible. Respondents have also relied upon Annexure C-34 & Annexure C-38 to state that while seeking extension of time the claimant had given an undertaking that University will not be responsible for any extra financial burden due to escalation in prices or material and labour and other allied expenses. Respondents have also taken a plea that claimant has not suffered any loss due to escalation of price of material or labour or any other associated cost. Neither the claimant has placed on record any evidence to show that claimant suffered on this account. A further plea has been taken that the contract was executed on a fixed rate basis without any escalation clause. Claimant was well aware of this fact while executing the agreement and accepted a fixed-price contract. The provisions of the contract cannot be override by citing cost inflation index and the same has no applicability to be agreement and is also barred by limitation.

It could not be disputed by the learned counsel for the claimant that Clause 4 of the Schedule of Additional Conditions does not allow any claim on account of increase in prices of labour and material due to any cause whatsoever. According to the learned counsel for the respondent, the claimant cannot seek to over-ride the contractual provision on the basis of inflation index or other economic data, as the same has no applicability in view of the specific Clause in the

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agreement in this regard. However, learned counsel for the claimant has vehemently argued that under the terms of allotment, Haryana PWD Schedule of Rates 1988 as corrected up to date, are applicable for affecting the variations/increase in market prices of the material and wages. According to the learned counsel for the claimant, the increased cost premium of the Haryana Government were made applicable with effect from 01.03.2006 (Annexure C-61) similarly, an amendment was made in the premium of HSR by the Notification dated 05.11.2007 (Annexure C-62) effective from 01.01.2008 and therefore the claimant was entitled to the benefit in the cost escalation irrespective of the fact that under Clause 4 of the Additional Conditions no escalation is permissible. According to the counsel for the claimant the Clause 4 of the Additional Conditions will not be applicable beyond the original period of contract i.e. 18.02.2005 and the Government Notifications which are having the effect of law of the land shall be applicable on the relevant date. Without dilating upon the Clauses of the contract, it is sufficient to mention here that the documents Annexure C-60 and Annexure C-62 are not applicable in the present case as the notification Annexure C-60 was already in existence at the time of executing the contract. It may also be noticed that Annexure C-62 was made applicable with effect from 01.01.2008 whereas the work was completed on 18.08.2007, therefore, no benefit had accrued to the claimant under the aforesaid document.

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It is relevant to mention that under Allotment Letter Annexure C-2 the claimant was awarded the contract as under "All items of Civil, PH and Electrical except NS items @ (HSR+CP)-9.05%. Further it is not in dispute that all other items covered under HSR 1988 corrected up to date is also applicable for making payment to the contractor subject to the accepted tendered premium/abatement given by the contractor. A perusal of the Notification Annexure C-61 would show that in the items mentioned under this notification the premium rates have been revised for labour only. Thus, the document Annexure C-61 was made applicable w.e.f. 01.03.2006 during the period of delay in completion of work, but there is nothing on record to prove the fact that claimant has paid the wages and spent extra amounts on the items as notified in the said notification during this period of delay. Neither, there is any break-up of the work done after 01.03.2006 up to 18.08.2007 the period when the said notification was applicable. It is well settled that benefit of escalation can only be granted for the unexecuted amount of work and not on the work which has already been executed during the original period of contract. The claimant has claimed this amount on the total cost of the project at a flat rate of 16% per annum with cumulative effect. There can be no such formula for determining the compensation under escalation clause. Under Notification Annexure C-61 claimant can be given benefit only towards the enhanced rates of labour

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as per agreed terms and conditions of the Contract. The claimant could have provided the break-up of each and every item used during the period of delay which was affected due to inflation and the Government Notifications. Unless there is some evidence to establish the extra expenses made by the claimant. Moreover, cement and steel which is a major component (i.e. almost half of the total cost of the work) was provided by the respondents for which they have not charged any higher rate. A perusal of the notification Annexure C-61 would show that premium of HSR was raised only for the daily wage rates that to on the items attached with this notification. The claimant has nowhere identified the items of his work for which daily wage rates were raised. Thus, the aforesaid notification Annexure C-61 is also of no use to him. It may also be mentioned that while seeking extensions of time claimant has specifically submitted an undertaking that because of the extensions of time the respondent will not be financially burdened. It could not be disputed that such an agreement between the parties is binding.

Thus, in view of the discussion above no such relief of escalation in prices can be granted under this claim and the same is hereby rejected.

Claim No.6: Loss of profit

Under this claim the claimant is seeking compensation and damages to the tune of Rs.49,82,796/- on account of prolongation of contract. It has been stated that delay of 30

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months in the execution of the work occurred for the reasons wholly attributable on the part of the respondents which has resulted into loss of over-head and profit on account of idle labour and less productivity from the machinery and equipment and diluted profit earning capacity in other ventures because the claimant remained struck for longer period in the contract in question, without any corresponding increase in the monetary benefit earned and without being free to move elsewhere to earn the profit. The claimant has submitted that the plant and equipment of the claimant remained deployed for a longer period instead of the contractual period causing less productivity. The claimant has to spend on the wages of the labour for a longer period without any further benefit and also had to spent additional cost on the associated issues. Claimant has sought compensation at the rate of 10% on the unexecuted work after the intended date of completion.

On the other hand, respondents have denied that any compensation was payable to the claimant for prolongation of the contract. It has been also stated that the claim is based on the assumptions that delay in the project was solely attributable to the respondents which is incorrect. In fact, the delay was caused by various factor including the claimant failure to manage his resources effectively. Moreover, the contract does not provide for any compensation for prolongation of the contract. A further defence has been taken

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to the effect that claimant failed to mitigate his losses. It has been also stated that while accepting the running bills without any objection of prolongation or cost escalation the claimant has waived any such alleged claim. The respondents have relied upon Clause 5A of the Agreement which provides that all claims pertaining to the payment of price/escalation etc. have to be raised while submitting monthly returns and claimant admittedly did not submit such monthly returns. Respondents have also relied upon Annexure C-34 & Annexure C-38 to submit that claimant have given an undertaking not to seek any claim in price escalation or prolongation while seeking extension of time. Reliance has also been placed on Clause 30 of the Agreement.

According to the claimant he was entitled to be compensated for the loss of profit and overhead expense because the claimant remained stuck in the contract for the longer period. As due to prolongation for a period of 30 months in execution of the project the profitability of the contractor was diluted. According to the claimant the claim for losses has been made only in respect of 3rd to 15th running bill, which related to construction period done after the stipulated period. The total amount of these running bills is Rs.4,28,27,966/- and 10% of this amount i.e. Rs.49,82,796/- has been claimed as compensation. The claimant has sought this compensation on the basis of Hudson formula. According to the counsel for the claimant various clauses of the contract pressed into

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service by the respondents to defeat his claim are of no help to them, as the various clauses of the contract will not be applicable beyond the original period of contract i.e. 18.02.2005. Counsel for the claimant has further submitted that no doubt he sought extensions of time, however, it was only due to the reasons attributable to the respondents and the respondents duly accepted those reasons. Claimant has also denied that he could have mitigate its losses by terminating the contract. Has he abandoned the construction midway it would have run the risk of imposition of penalties, black-listing and loss of allotment of loss of further contract.

At this stage it is relevant to mention that claimant while seeking extensions vide Annexure C-34 and Annexure C-38 has voluntarily given in writing that he will not claim any benefit for any extra financial burden due to escalation in prices, labour and any other allied expenses. The claimant cannot wriggle out from the undertaking given by him. Not only this claimant has not supported the claim by placing on record any evidence. It is well settled that even for applying Hudson's Formula there has to be some evidence to establish the losses. The claimant has not provided actual expenditure records to support the figures claimed. The methodology used for calculating losses is imaginary and lacks any evidentiary support. It is also well-settled that loss of profit can be granted only to the extent of unexecuted work. Claimant has failed to give any details of the unexecuted work which was completed

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from the intended date of completion till the actual date of completion. Again, it is a matter of record that out of the total estimated cost of Rs.6,72,68,533/- a major portion (almost half) of expenditure was towards steel and cement which was provided by the respondent department at the contractual and same amount throughout. Therefore, it cannot be said that claimant suffered losses due to more expenditure on the material. It has already been noticed that there is no evidence that claimant suffered higher expenses towards labour. At this stage it may also be noticed that what to talk of evidence. Claimant has even failed to mention the lost opportunities of fresh tenders during the prolongation period.

At this stage it's relevant to mention that Clause 20 of the Schedule of Additional conditions which explicitly states that no claim shall be entertained on account of delays, even if attributable to the University. Not only this even Clause 30 of the agreement between the parties provide that in case of delay of supply of cement and steel or any other material agreed to be supplied by the department in the NIT or failure to supply the required quantity in time for execution of the work, the contractor shall not be paid for any compensation for any resultant effects or losses. Thus, these provisions of the agreement clearly bar the claimant from seeking any damages for the delay. Moreover, once parties have agreed to the said conditions, the claimant is not entitled to claim any

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amount under this head of loss of profit. Thus, no amount is payable to the claimant under Claim No.6.

Thus, in view of the findings on Claims 1 to 6, Issue No.2 is allowed to the extent of claims granted to the claimant. However, in view of the rejection of Counter Claims, Issue No.8 is decided against the respondents.

Claim No.7, Claim No.8 & Issue No.3

Claim of Interest on delayed payments up to the date of Award.

And

Claim of Interest on the total sum of awarded amount from the date of award till its realization.

It has been submitted on behalf of the claimant that the substantial amount of the claimant has been held back by the respondents depriving the claimant for the use of his money on its business, by making investment on other projects, from where the claimant would have earned a handsome amount as profit. The delay on the part of the respondents has caused financial losses to the claimant. Thus, the claimant is entitled to interest for the pre-reference period and pendente lite on the due amounts with effect from the due date till the date of award @ 16% per annum.

The counsel for the respondent has vehemently opposed the aforesaid prayer for grant of future interest on the amount of interest (compound interest on cumulative basis). The respondents have further submitted that no payment is due as per agreement hence no interest is admissible/payable to the claimant. The

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respondents have disputed the claim of the claimant towards payment of interest.

However, respondents have not disputed that pre reference period interest can be granted it has been found by the Tribunal.

It has been further submitted on behalf of the claimant that in terms of Section 31(7)(b) of the Arbitration and Conciliation Act 1996 the Tribunal is empowered to grant interest from the date of award on the total sum of awarded amount (i.e. principal amount + interest amount up to the date of award). Counsel for the claimant has relied upon a judgment of Hon'ble Supreme Court reported as 1999(4) SCC 327 wherein it has been held that amount of interest which may be termed as interest on damages/compensation for delayed payments would also become part of the principal sum adjudged. Counsel for the claimant has also refer to the judgments of the Hon'ble Supreme Court in the case of Executive Engineer Dhen Kanal Minor Irrigation Division Odissa v/s N.C. Budharaja cites as (2001) 2 SCC 721 and Ghaziabad Development of Authority v/s Union of India (2000) 6 SCC 113, Union of India v/s Harbans Singh Tuli 2000 (4) RCR (Civil) 365, Pam Developments Private Limited v/s State of West Bengal 2024 (10) SCC 715.

There is no dispute with the judgment of the Hon'ble Supreme Court cited at the Bar. However, it is not in dispute that the power to grant interest is upon the discretion of the arbitrator. In the facts and circumstances of the case appropriate amount of interest has already been ordered while granting appropriate relief

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under other claims. Thus, there is no need to pass any order in this regard at this stage.

Thus Claim No.7& Claim No.8 along with Issue No.3 stands disposed of accordingly.

Claim No.9 & Issue No.4

Claim of Litigation Cost

The claimant has submitted that due to the omissions and commission on the part of the respondents, the claimant has been dragged into the present arbitration, which the claimant tried to settle outside arbitration, however due to unresponsive attitude of the respondents, the same could not be settled. It has been further stated that the claimant is entitled to the expenses which were incurred relating to the fee and expenses of the Arbitrator, legal fees and expenses, administrative fee of the institution and other expenses incurred in connection with the arbitral proceedings. It is the submission of the learned counsel for the claimant that the Tribunal is empowered to award costs under Section 31-A of the Act having regard to the circumstances including conduct of the parties.

On the other hand, the respondents have made an unsuccessful effort to dispute the aforesaid contentions raised by the counsel for the claimant and has stated that the claimant is not entitled to any relief. It is clearly established on record that in spite of allotting the work and executing the contract agreement, the respondents failed to perform their part of the contractual obligations which resulted into losses to the claimant. It is not in dispute that the claimant had to incurred expenses towards

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litigation fee etc. and other expenses for the arbitration proceedings which includes arbitrator's fee as well as expenses of the Chandigarh Arbitration Centre Chandigarh. Claimant has also placed on record a Certificate of the expenses (total sum at Rs.14,44,128/-) incurred by him on the Arbitration proceedings. Thus, the claimant is held entitled to the full expenses incurred by him towards administrative and other expenses of the Chandigarh Arbitration Centre Chandigarh and the full fee of the arbitrator as well as fee of his counsel for which counsel certificate has also been attached. Thus, the claimant is held entitled to a sum of Rs.13,29,128/-under this claim. The aforesaid amount is inclusive of Lawyer's fee as well as expenses paid to the Chandigarh Arbitration Centre (respondent has paid his share of the expenses to the Centre). Claimant is not entitled to any to other expenses as claimed in the expense certificate. The aforesaid amount of costs shall be paid to the claimant within 30 days from the date of award, failing which the claimant shall be entitled to interest on the aforesaid amount @ 9% per annum. Payment of costs shall be a condition precedent for challenging the award.

Thus, Issue No.4 is decided in favour of the claimant and against the respondent as above.

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Relief: In view of the findings as noticed above Issue No.1 to 4 are decided in favour of the claimant and against the respondents by giving appropriate relief under each and every claim. Issue No.5 to 8 are decided against the respondents and counter claims are dismissed.


Justice Rakesh Kumar Garg (Rtd.)
Sole Arbitrator

Dated: 08.05.2026

(All pages signed)

The original copy of the award along with records of the Arbitrator have been handed over to the representative of the respondent. The respondent shall be responsible for producing the aforesaid record in any Court of law whenever required.


Justice Rakesh Kumar Garg (Retd.)
Sole Arbitrator