CHANDIGARH CONSTRUCTION CO. PVT. LTD. A

v.

STATE OF PUNJAB & ANR.

(Civil Appeal Nos.867-870 of 2013)

FEBRUARY 14, 2020 B

[R. BANUMATHI AND A.S. BOPANNA, JJ.]

Arbitration Act, 1940: Award by arbitrator – Claimant-contractor and opposite party entered into an agreement for construction of Sutlej Yamuna Link Canal and in that regard to carry out earth work, drainage behind lining and cement concrete lining – Estimated cost of project was Rs.31 lakhs and contract amount for the work was fixed at Rs.59.86 lakhs – Claimant raised demand for additional payment on the ground that during execution, the scope of work was considerably increased on account of various decisions by department regarding rebuilding of river banks and changes in the strata encountered during excavation due to incorrect geological data observations by department prior to inviting tender – Demand of additional payment led to arbitral dispute – Arbitrator accepted claim and passed award with 18% interest – Award presented before Sub-judge for making 'rule of court' – Opposite party filed objection that no reason was indicated for giving the award – Sub-judge accepted the objection to the extent of rejection of Claim no.1 and reduction of interest to 12% p.a. and in other respects the Award was made 'Rule of Court' – First appellate court rejected the claim in toto taking note of Clause 39 of the Contract Agreement which provided that the contractor was required to deliver in the office of the Executive Engineer every month during continuance of the work, the return showing details of extra work done with value of such work and if the details are not indicated, it shall be deemed that the contractor has waived all claims not included in such returns and will have no right to enforce any such claim not so included – In that light since the claim was ultimately found as not included in the monthly statement, the First Appellate Court held that the requirement of the conditions of the contract was not adhered to and set aside the Award of the Arbitrator – High Court also took note of Clause 39 of the contract and declined the C D E F G H

claim except claim no.1 – In the instant appeal, it was contended by appellant-claimant that Note 6 to the schedule of work which formed a part of the contract provided that extra or other items of work shall be paid at the rate worked out on the basis of relevant Punjab Common Schedule of Rates Basis Plus Sanctioned Premium at the time of tendering – The difference between the estimated cost of Rs.31 lakhs and contract amount of Rs.59.86 lakhs was the sanctioned premium which corresponded to the overall premium of 93.12% on the work for computing the rates of extra items/quantity or work done – Insofar as the remaining claims, 93.12% would become applicable – It was contended that when the contract agreement is explicit insofar as the value and the difference being the sanctioned premium and the percentage being evident at 93.12%, the decision of the Arbitrator not indicating any further reasons in the Award would not be fatal – Opposite party (State of Punjab), referred to Clause 63 of the contract which provides for reference of the disputes to arbitration – The said clause specified the requirement that all Awards shall be in writing and in case of awards amounting to Rs.1 lakh and above, such Award shall state the reason for the amount awarded – Held: The quantum of the contract amount as against the estimated cost by itself could not have formed the basis to conclude the claim as made by the claimant towards sanctioned premium – Claim No.8 related to the work carried out on Daldal land wherein the soil was marshy and extra construction material was required to complete the work – Arbitrator awarded Rs.19.15 lakhs after indicating the amount for the said work on the same basis and deducting the agreed rate – Clause 39, no doubt, prescribes a method by which the claim is to be put forth in the statement every month – The said requirement will have to be construed as being put in the agreement so as to ensure that the additional work has actually been done, the claim is put forth along with details so that baseless claim is not made at a distant point in time when it will not be possible to determine – Though the Clause also indicates that if such claim is not made, it would amount to waiver, in a circumstance where the claim is ultimately put forth in the forum where an adjudication is made and based on the material if the adjudicating authority is satisfied that the actual work had been done and the contractor being entitled to the extra amount spent by him to carry out the work in an appropriate manner, it

would not be just and proper to deny such claim only on the ground that it had not been indicated strictly in the manner as provided in the contract specially keeping in view the nature of work undertaken – When the fact remains that the Daldal land was situated in the area, work was carried out and extra material was used, the claim cannot be rejected outright adopting a technical view of the matter – However, the claim for the extra item will have to be calculated with premium at the same rate of 35.02% over and above the agreed rate and not at 93.12% – Regarding Claim No.16, no reason to interfere with the impugned orders – Further with regard to the interest sought under Claim No.18 in the absence of agreement with regard to the rate of interest, the interest as awarded by the Arbitrator was on the higher side and the First Appellate Court was justified in reducing the same to 12% p.a. – Claimant is entitled to the claim for extra items as put forth under Claim Nos. 2, 3, 8 and 12 by working out the difference of cost on the tender premium at 35.02% – On arriving at the quantum of the amount, the same shall be payable with interest at 12% p.a. in the manner as ordered by the First Appellate Court – Claim No.1 ordered by the High Court is sustained.

Partly allowing the appeals, the Court

HELD: 1. The First Appellate Court as also the High Court was correct to arrive at the conclusion that the claim as put forth by the claimant in respect of Claims No.2, 3 and 12 at the premium of 93.12% worked out only on the basis of difference of the amount between the estimated cost and the contract amount is not justified. However, in that circumstance when the Arbitrator has not assigned any reasons but had unilaterally in a cryptic fashion awarded the claim at the premium of 93.12% and when the same was disapproved as not sustainable, the appropriate course in the normal circumstance ought to have been to set aside the Award and remit the matter to the arbitrator to make a fresh consideration to determine the percentage of premium at which the claim for the extra items would be sustainable, more particularly in a circumstance where the additional work carried out was not in serious dispute but the premium for rate of payment was to be determined. The said course would be open even at this stage, but in the instant case, the claim was under the Act,

1940 in respect of agreement dated 05.12.1985 and the claim before the Arbitrator itself was of the year 1994. In that background, a perusal of the consideration as made by the First Appellate Court would indicate that it does not refer to the claim that was admissible after working out the percentage of premium that is applicable. It has only arrived at the conclusion that the working out of the premium at 93.12% in respect of the extra items on Claim Nos.2, 3 and 12 are set aside. The First Appellate Judge ought to have arrived at the conclusion of the admissible claim and in that regard a conclusion ought to have been reached instead of rejecting the claim outright since the course to remand the matter to the Arbitrator was not adopted. Instead of rejecting the entire claim as made by the claimants, premium for the extra items is to be determined at 35.02% and the claim based on the same is required to be awarded. To that extent, the calculation is to be made by the opposite party and the amount be paid to the claimant. The said calculation with the premium at 35.02% shall be made in respect of the extra items indicated under Claim Nos.2, 3 and 12. [Paras 14-16][838-C-H; 839-A-C]

2. Insofar as the Claim No.8, it relates to the work carried out on DALDAL land wherein the soil was marshy and extra construction material was required to complete the work. The Arbitrator through the impugned Award had taken note of the same and awarded the sum of Rs.19,15,143/- after indicting the amount for the said work on the same basis and deducting the agreed rate. Though the Sub-Judge had accepted the same for making it the 'Rule of Court', the First Appellate Judge on taking note of the claim had arrived at the conclusion that the Arbitrator was not justified in granting the claim. In that regard, the First Appellate Court had taken note of Clause 39 of the Contract Agreement wherein a provision was made for extra items. The second paragraph therein which provides for the manner in which the contractor is required to submit the returns of the work claimed for extra items was referred to. The said requirement indicated that the contractor shall deliver in the office of the Executive Engineer on or before the 10th day of every month during continuance of the work, the return showing details of any work claimed for extra, and such return shall also contain the

value of such work as claimed by the contractor. If the details are not indicated, the Clause indicates that it shall be deemed that the contractor has waived all claims not included in such returns and will have no right to enforce any such claim not so included. In that light since the claim was ultimately found as not included in the monthly statement, the First Appellate Court was of the opinion that the requirement of the conditions of the contract was not adhered to and, therefore, set aside the Award of the said amount by the Arbitrator and the same claim being made 'Rule of Court' by the Sub-Judge was also set aside. The High Court while adverting to this aspect of the matter has held that insofar as the amount sought under Claim No.8 the question is not whether the petitioner undertook this work but whether the petitioner raised any claim for this extra amount in terms with the contract. The High Court has also taken note of Clause 39 of the contract and has declined the claim. [Para 17][839-C-H; 840-A]

3. Clause 39 of the Contract Agreement no doubt prescribes a method by which the claim is to be put forth in the statement every month. The said requirement will have to be construed as being put in the agreement so as to ensure that the additional work has actually been done, the claim is put forth along with details so that baseless claim is not made at a distant point in time when it will not be possible to determine. Though the Clause also indicates that if such claim is not made, it would amount to waiver, in a circumstance where the claim is ultimately put forth in the forum where an adjudication is made and based on the material if the adjudicating authority is satisfied that the actual work had been done and the contractor being entitled to the extra amount spent by him to carry out the work in an appropriate manner, it would not be just and proper to deny such claim only on the ground that it had not been indicated strictly in the manner as provided in the contract specially keeping in view the nature of work undertaken. To that limited extent a perusal of the Award passed by the Arbitrator would indicate that the Arbitrator had taken into consideration the letter dated 14.11.1986 wherein the identification of soil which was agreed to. The letter dated 09.03.1987 submitting the test results identifying the strata

encountered as DALDAL is referred therein. The work having been completed during the March, 1988 was also taken note. In that circumstance when the fact remains that the DALDAL land was situated in the area, work was carried out and extra material was used, the claim cannot be rejected outright adopting a technical view of the matter. However, the claim for the extra item in that regard for the work of 1,33,181.00/- 'Cum' will have to be calculated with premium at the same rate of 35.02% over and above the agreed rate and not at 93.12% as has been taken into consideration by the Arbitrator for awarding the amount. The appropriate calculation in that regard shall however be worked out in such manner so as to award the amount under the said Claim No.8. Insofar as Claim No.16, there is no reason to interfere with the orders passed by the High Court or by the First Appellate Court. Further with regard to the interest sought under Claim No.18, in the absence of agreement with regard to the rate of interest, the interest as awarded by the Arbitrator was on the higher side and the First Appellate Court was justified in reducing the same to 12% per annum and the High Court was also justified in not interfering with the same. [Paras 18, 19][840-B-H; 841-A-B]

4. The claimant is entitled to the claim for extra items as put forth under Claim Nos. 2, 3, 8 and 12 by working out the difference of cost on the tender premium at 35.02%. On arriving at the quantum of the amount, the same shall be payable with interest at 12% per annum in the manner as ordered by the First Appellate Court. Claim No.1 ordered by the High Court is sustained. The said exercise for calculating and paying the amount to the claimants on claim Nos.1, 2, 3, 8 and 12 shall be completed by the opposite party within the period of six weeks from this date. [Para 20][841-E-F]

Indian Oil Corporation v. Indian Carbon Ltd. **(1988) 3 SCC 36 : [1988] 3 SCR 426;** *Ispat Engineering and Foundry Works, B.S. City, Bokaro v. Steel Authority of India Ltd. B.S. City Bokaro* **(2001) 6 SCC 347 : [2001] 3 SCR 1190;** *D.C.M Ltd. v. Municipal Corporation of Delhi & Anr.* **(1997) 7 SCC 123;** *M/s Naraindas R.*

Israni v. Union of India **DRJ (1993) 25;** *Raipur Development Authority & Ors. v. M/s Chokhamal Contractors & Ors.* **(1989) 2 SCC 721 : [1989] 3 SCR 144;** *Gora Lal v. Union of India* **(2003) 12 SCC 459 : [2003] 6 Suppl. SCR 1129 – referred to.**

Case Law Reference

[1988] 3 SCR 426	**referred to**	**Para 10**
[2001] 3 SCR 1190	**referred to**	**Para 10**
(1997) 7 SCC 123	**referred to**	**Para 10**
[1989] 3 SCR 144	**referred to**	**Para 11**
[2003] 6 Suppl. SCR 1	**referred to**	**Para 11**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 867-870 of 2013.

From the Judgment and Order dated 08.04.2011 of the High Court of Punjab and Haryana at Chandigarh in Civil Appeal No. 2958-2961 of 2008.

Nakul Dewan, Sr. Adv., Aditya Swarup, Ajay Marwah, Rohan Naik, Swaroopananda Mishra, Mukesh Sangwan, Advs. for the Appellant.

Ms. Uttara Babbar, Ms. Bhavana Duhoon, Manan Bansal, Advs. for the Respondents.

The Judgment of the Court was delivered by

A. S. BOPANNA, J.

1. The appellant is before this Court assailing the order dated 08.04.2011 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Revision No.2958/2008 which was disposed of along with Civil Revisions Nos. 2949, 2960 and 2961 of 2008. Through the said order the High Court allowed the Revision in part to the extent of allowing the Claim No.1 of the appellant by modifying the judgment passed by the Trial Court and the First Appellate Court, but insofar as the remaining claims the judgments passed by the First Appellate Court was affirmed. Consequently, the Award passed by the Arbitrator stood modified to that extent. The appellant, therefore, is aggrieved to the extent, the remaining claim of the appellant was rejected. In that view the consideration in the

A instant appeal pertains to the Claim Nos. 2, 3, 8, 12 and 16 as put forth and also the issue relating to the grant of interest which arose for consideration under Claim No.19.

2. For the purpose of convenience and clarity the parties would be referred to in the rank assigned to them in the arbitration proceedings. B Accordingly, the appellant herein would be referred to as the claimant, while the respondents would be referred to as the opposite party.

3. The proceedings in question arises relating to an Award passed under the Arbitration Act, 1940 ('Act 1940' for short). The claimant and the opposite party had entered into a contract agreement dated 05.02.1985 C for construction of Sutlej Yamuna Link Canal (Punjab) and in that regard to carry out the earth work, drainage behind lining and cement concrete lining of Raech RD 71.50 to 72.50 kms. The estimated cost of the project was at Rs.31 lakhs and the contract amount for the work was fixed atRs.59,86,732/-. The work concerned was to be executed in eight months.

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4. In respect of the said contract, the claimant contended that during execution, the scope of work was considerably increased on account of substantial increase of earth work, sloughing of banks, rebuilding of banks with self-draining material, various decisions by the department regarding rebuilding of banks and changes in the strata E encountered during excavation due to incorrect geological data observations by the department prior to inviting tender. In that view, the claimant had raised a demand for the additional payment which was disputed by the opposite party, which led to an arbitral dispute. Since the agreement provided for resolution of disputes by arbitration the claimant F took recourse to the same. In that background the claimant had sought for additional payment in the claim statement filed before the Arbitrator. The opposite party filed their objections disputing the claim put forth by the claimant. The learned Arbitrator on considering the rival contentions passed the Award dated 31.08.1994 and awarded the amount as claimed by the claimant to be paid by the opposite party with interest at the rate G of 18%per annum as also the future interest at 18% per annum from the date of the Award to the date of payment. As required under Act, 1940the said Award was to be made a 'Rule of Court' for which purpose the Award was presented before the Court of the Senior Sub-Judge, Ropar. The opposite party filed objections in the said proceedings and contended H that the Award passed by the Arbitrator is not sustainable as the Arbitrator

had misconducted himself by awarding the amounts which were not payable as per the contract and the learned Arbitrator had not indicated reasons for the decision. The learned Sub-Judge through the judgment and decree dated 21.10.1995 accepted the objections to the extent of rejection of Claim No.1 and reduction of interest to 12% per annum and in other respects the Award was made the 'Rule of Court'.

5. The opposite party however continued to remain aggrieved insofar as the non-interference with regard to other claims and, therefore, filed an appeal before the District Judge, Ropar in Civil Appeal No.9/3110 of 2006. The claimant preferred the cross appeal insofar as the rejection of Claim No.1 by the learned Sub-Judge and reduction of interest. The learned District Judge through judgment dated 06.11.2007 rejected the cross appeal filed by the claimant and allowed the appeal filed by the opposite party (State of Punjab) and set aside the amount awarded under Claim Nos.2, 3, 8, 12 and 16. The claimant, therefore, contending to be aggrieved preferred the Revision Petitions before the High Court. It is in the said proceedings the High Court has rejected the remaining claim except Claim No.1 as indicated above. It is in that circumstance the claimant is before this Court in this appeal.

6. Shri Nakul Dewan, learned senior advocate appearing for the claimant would contend that the First Appellate Court and the High Court were not justified in their conclusion to reject the Award passed by the learned Arbitrator. It is contended that the basis on which the Claim No.2 would arise for consideration will be the same basis for the Award of the amount under Claim Nos. 3 and 12. Even insofar as the Claim No.8 the additional amount will have to be calculated on that basis for the extra items used. In that background, it is contended that under Note 6 to the schedule of work which forms a part of the contract, it provides that extra or other items of work shall be paid at the rate worked out on the basis of relevant Punjab Common Schedule of Rates Basis Plus Sanctioned Premium at the time of tendering, which is to be worked out. In that light it is contended that the estimated cost of the present contract is at Rs.31 lakhs while the contract amount has been worked out at Rs.59,86,732/-. The difference between the estimated cost and the contract amount is the sanctioned premium which corresponds to the overall premium of 93.12% on the work for the purpose of computing the rates of extra items/quantity or work done. Insofar as the remaining claims the said 93.12% would become applicable. In that circumstance

A when the learned Arbitrator has taken note of this aspect and decided the Claim No.2, the same would be sustainable. It is contended that when the contract agreement is explicit insofar as the value and the difference being the sanctioned premium and thepercentage being evident at 93.12% the decision of the learned Arbitrator not indicating any further reasons in the Award would not be fatal. When the obvious had been concluded by the learned Arbitrator, the amount ultimately awarded is sustainable and the claim put forth by the claimant is justified.

7. Ms. Uttara Babbar, the learned counsel for the opposite party (State of Punjab), would on the other hand contend that the learned Arbitrator has not indicated any reason whatsoever to arrive at the conclusion that the claim made at 93.12% is admissible. The learned counsel would in that regard refer to Clause 63 of the contract which provides for reference of the disputes to arbitration. The said clause after referring to the manner in which the learned Arbitrator is to be appointed, has further specified the requirement that all Awards shall be in writing and in case of awards amounting to Rs.1 lakh and above, such Award shall state the reason for the amount awarded. In that circumstance it is contended that when the contract between the parties is explicit with regard to the manner in which an Award is to be passed by the learned Arbitrator, theAward passed in such manner alone would be sustainable. In that light it is contended that in the instant case the Award does not indicate the reasons while answering Claim No.2, wherein it is only stated that as per agreement the premium works out to 93.12% and has awarded the same without specifying the reasons for such conclusion. In that view it is contended thatsuch Award would not be sustainable. The learned counsel refers to the schedule of through rate items for construction, in the tender form (Annexure P2) wherein Note 6 specifies that the Punjab Common Schedule of Rates would be applicable. It is contended that as per the communication dated 05.01.1987 addressed by the Executive Engineer to the claimant, it indicates that the percentage above the departmental rates has been approved at 35.02%. In that light it is contended that the calculation towards the claim in any event could not have exceeded the same. In that view it is contended that the learned Arbitrator had not considered these aspects nor does the Award indicate his mind. On the other hand, the learned First Appellate Court and the High Court having taken note of these aspects has arrived at the conclusion which does not call for interference. With regard to the Claim No.8 relating to extra payment

for DALDAL (SWAMPYArea) the First Appellate Court and the High Court has taken into consideration that the claim had not been made within the time provided and has accordingly rejected the claim. In that view it is contended that the order passed by the High Court does not call for interference.

8. In the light of the above, a perusal of the appeal papers would indicate that there is no serious dispute between the parties with regard to the contract entered into for construction, the work performed and certain additional work having been carried out by the claimant. The issue is however as to whether the learned Arbitrator had appropriately considered the matter in its correct perspective and in that light whether the Award of the amount at the premium of 93.12% would be justified and the manner of consideration by the learned Arbitrator without assigning reasons for his Award is sustainable. In that view the issue would be as to whether the First Appellate Court as also the High Court were justified in rejecting the claim raised by the claimant.

9. While considering these aspects it is noticed that as pointed out by the learned counsel for the opposite party, Clause 63 of the contract which provides for arbitration of all disputes or differences between the parties also indicates the requirement of the Award to be as follows:

> "All awards shall, be in writing and in case of awards amounting to Rs.1 lakh and above, such awards shall state the reasons for the amount awarded."

Keeping this in view, if the Award passed in the instant case by the learned Arbitrator (Annexure P6) insofar as Claim No.2 is perused, all that the learned Arbitrator has stated is as follows:

> "As per agreement premium works out to 93.12% which is awarded."

10. The said conclusion on Claim No.2 without appropriate consideration is the basis of reckoning the premium at 93.12% in respect of the Claims No.3 and 12 as well. The learned senior advocate for the claimant while seeking to contend that the Award would still be sustainable even in that circumstance has relied on the decision of this Court in the case of ***Indian Oil Corporation vs. Indian Carbon Ltd.*** (1988) 3 SCC 36 to contend that it has been indicated therein that if the reason as to how the Arbitrator has drawn the inference is apparent the same would be sufficient. The decision in the case of ***Ispat Engineering and***

A ***Foundry Works, B.S. City, Bokaro vs. Steel Authority of India Ltd.B.S. City Bokaro***(2001) 6 SCC 347 is relied, wherein it is held that in the event, however, there are reasons, interference would still not be available unless of course, there exist a total perversity in the Award or the judgment is based on wrong proposition of law. In addition, the decision in the case of ***D.C.M Ltd. vs. Municipal Corporation of Delhi &Anr.*** (1997) 7 SCC 123 is relied upon to contend that even in case of a non-speaking Award if the Arbitrator has proceeded without overlooking any term of the contract, the same cannot be considered as an error apparent on the face of the Award. In an attempt to persuade us the learned senior counsel has with leave referred to the decision of the High Court of Delhi in the case of ***M/s Naraindas R. Israni vs. Union of India*** DRJ (1993) 25 to point out that in respect of an agreement containing a similar clause the learned Judge had held that the learned Arbitrator is not required to give detailed reasons like a Civil Court but what is expected of the Arbitrator is that he must give out the trend of his thought process and it is not necessary for the Arbitrator to give any arithmetic computation.

11. The learned advocate for the opposite party would however point outfrom the very decision in the case of ***Indian Oil Corporation Ltd.***(supra) relied upon by the learned senior counsel for the claimant that this Court in the said decision has also held that where an authority makes an order in exercise of a quasi-judicial function it must record its reasons in support of the order it makes. It was further observed that every quasi-judicial order must be supported by reasons. It is therefore contended that the bar would raise higher for a judicial order which should indicate reasons for the conclusion. The learned advocate would further refer to the decision in the case of ***Raipur Development Authority &Ors. vs. M/s Chokhamal Contractors &Ors.*** (1989) 2 SCC 721 wherein it is held that though it is well settled that an Award can neither be remitted nor set aside merely on the ground that it does not contain reasons in support of the conclusion or decision reached in it except where the arbitration agreement or the deed of submission requires itto give reasons. In that light the learned advocate would point out that in the instant case the agreement between the parties would require that the learned Arbitrator has to assign reasons for the Award and when such requirement is stipulated the Award passed without reasons would not be sustainable being contrary to the explicit requirement in the contract between the parties. The learned advocate for the opposite party has

further referred to the decision in the case of ***Gora Lal vs. Union of India*** (2003) 12 SCC 459 wherein it is held as hereunder:

> "6. A perusal of the aforesaid clause would show that the arbitrator is required to indicate a finding along with the sum awarded separately on each individual item of the dispute. While giving a finding, the arbitrator necessarily has to take into consideration the disputes, claims and counterclaims of the parties and after considering the evidence on such claims and the legal position, has to record his finding on each disputed item. In the present case what we find is that on each item the arbitrator has awarded a sum which according to us is not a finding but is merely a conclusion."

12. In the background of contentions put forth and from the legal position enunciated in the decisions relied upon, the position is clear that in the instant facts the agreement between the parties required the learned Arbitrator to pass the Award in a particular manner whereunder the reasons were required to be assigned since that was the explicit requirement under the contract. If in that background the Award impugned in the instant proceedings is taken note the learned Arbitrator has not assigned any reasons for the conclusion reached on Claim No. 2 which was also relevant for considering the Claim Nos.3 and 12 as well. If that be the position the only explanation that is sought to be put forth by the learned senior advocate for the claimant that the basis for such conclusion is the difference of the value between the estimated amount at Rs.31 lakhs and the contract amount at Rs.59,86,732/- to work out the premium would not be justified. The quantum of the contract amount as against the estimated cost by itself could not have formed the basis to conclude the claim as made by the claimant towards premium of extra items, extra items for supply and laying of self-draining materials and towards re-handling of earth work. In that regard the contention to the contrary put forth by the opposite party was that the tender form provided for that aspect under Note 6, which reads as hereunder:

> "Extra other items shall be paid for each such items of work at thorough rate worked out on the basis of relevant Punjab Common Schedule of Rates basis plus sanctioned premium (at the time of tendering), plus or minus percentage above or below worked out by the department by reference to department's estimated cost of tender."

A 13. The said provision would indicate that the rate as prescribed under the Punjab Common Schedule of Rates would be applicable. In that light it is noticed that the letter dated 05.01.1987 relied upon by the learned advocate for the opposite party which was addressed to the claimant indicates that the premium as agreed under the schedule is at 35.02%. The said contention had been urged by the opposite party in B their pleadings. In fact, as pointed out by the learned advocate for the opposite party, the First Appellate Court has taken note of this aspect and has arrived at its conclusion to disapprove the Award of premium at 93.12% for extra work.

C 14. In the above backdrop, we fully concur with the manner in which the consideration was made by the First Appellate Court as also the High Court to arrive at the conclusion that the claim as put forth by the claimant in respect of Claims No.2, 3 and 12 at the premium of 93.12% worked out only on the basis of difference of the amount between the estimated cost and the contract amount is not justified.However, in D that circumstance when the learned Arbitrator has not assigned any reasons but had unilaterally in a cryptic fashion awarded the claim at the premium of 93.12% and when the same was disapproved as not sustainable, the appropriate course in the normal circumstance ought to have been to set aside the Award and remit the matter to the learned Arbitrator to make a fresh consideration to determine the percentage of E premium at which the claim for the extra items would be sustainable, more particularly in a circumstance where the additional work carried out was not in serious dispute but the premium for rate of payment was to be determined.

F 15. The said course would be open even at this stage, but in the instant case we however take note that the claim was under the Act, 1940 in respect of an agreement dated 05.12.1985 and the claim before the Arbitrator itself was of the year 1994. In that background a perusal of the consideration as made by the First Appellate Court would indicate that it does not refer to the claim that was admissible after working out G the percentage of premium that is applicable. It has only arrived at the conclusion that the working out of the premium at 93.12% in respect of the extra items on Claim Nos.2, 3 and 12 are set aside. The learned First Appellate Judge ought to have arrived at the conclusion of the admissible claim and in that regard a conclusion ought to have been reached instead of rejecting the claim outright since the course to remand the matter to H the Arbitrator was not adopted.

16. In that background since we have referred to the communication dated 05.01.1987 which is produced at Annexure R3 with the additional documents and also on taking note of the contention urged by the opposite party regarding the premium rates to be worked out at 35.02%, we are of the opinion that instead of rejecting the entire claim as made by the claimants, premium for the extra items is to be determined at 35.02% and the claim based on the same is required to be awarded. To that extent, the calculation is to be made by the opposite party and the amount be paid to the claimant. The said calculation with the premium at 35.02% shall be made in respect of the extra items indicated under Claim Nos.2, 3 and 12.

17. Insofar as the Claim No.8, it relates to the work carried out on DALDAL land wherein the soil was marshy and extra construction material was required to complete the work. The learned Arbitrator through the impugned Award had taken note of the same and awarded the sum of Rs.19,15,143/- after indicting the amount for the said work on the same basis and deducting the agreed rate. Though the learned Sub-Judge had accepted the same for making it the 'Rule of Court', the learned First Appellate Judgeon taking note of the claim had arrived at the conclusion that the learned Arbitrator was not justified in granting the claim. In that regard, the First Appellate Court had taken note of Clause 39 of the Contract Agreement wherein a provision was made for extra items. The second paragraph therein which provides for the manner in which the contractor is required to submit the returns of the work claimed for extra items was referred to. The said requirement indicated that the contractor shall deliver in the office of the Executive Engineer on or before the 10th day of every month during continuance of the work, the return showing details of any work claimed for extra, and such return shall also contain the value of such work as claimed by the contractor. If the details are not indicated, the Clause indicates that it shall be deemed that the contractor has waived all claims not included in such returns and will have no right to enforce any such claim not so included. In that light since the claim was ultimately found as not included in the monthly statement, the First Appellate Court was of the opinion that the requirement of the conditions of the contract was not adhered to and, therefore, set aside the Award of the said amount by the learned Arbitrator and the same claim being made 'Rule of Court' by the learned Sub-Judge was also set aside. The High Court while adverting to this aspect of the matter has held that insofar as the amount sought under

A Claim No.8 the question is not whether the petitioner undertook this work but whether the petitioner raised any claim for this extra amount in terms with the contract. The High Court has also taken note of Clause 39 of the contract and has declined the claim.

18. In that background having taken note of Clause 39 of the B Contract Agreement, it cannot be considered as a statutory limitation or bar for the claim in all circumstances. The said Clause no doubt prescribes a method by which the claim is to be put forth in the statement every month. The said requirement will have to be construed as being put in the agreement so as to ensure that the additional work has actually been done, the claim is put forth along with details so that baseless claim is not C made at a distant point in time when it will not be possible to determine. Though the Clause also indicates that if such claim is not made, it would amount to waiver, in a circumstance where the claim is ultimately put forth in the forum where an adjudication is made and based on the material if the adjudicating authority is satisfied that the actual work had been D done and the contractor being entitled to the extra amount spent by him to carry out the work in an appropriate manner,it would not be just and proper to deny such claim only on the ground that it had not been indicated strictly in the manner as provided in the contract specially keeping in view the nature of work undertaken. To that limited extent a perusal of the Award passed by the learned Arbitrator would indicate that the learned E Arbitrator had taken into consideration the letter dated 14.11.1986 wherein the identification of soil which was agreed to. The letter dated 09.03.1987 submitting the test results identifying the strata encountered as DALDAL is referred therein. The work having been completed during the March, 1988 was also taken note. In that circumstance when the fact remains F that the DALDAL land wassituated in the area, work was carried out and extra material was used, the claim in our opinion cannot be rejected outright adopting a technical view of the matter. However, the claim for the extra item in that regard for the work of 1,33,181.00/- 'Cum' will have to be calculated with premium at the same rate of 35.02% over and above the agreed rate and not at 93.12% as has been taken into G consideration by the learned Arbitrator for awarding the amount. The appropriate calculation in that regard shall however be worked out in such manner so as to award the amount under the said Claim No.8.

19. Insofar as Claim No.16 we see no reason to interfere with the orders passed by the High Court or by the First Appellate Court. Further H

with regard to the interest sought under Claim No.18 we are of the opinion that in the absence of agreement with regard to the rate of interest, the interest as awarded by the learned Arbitrator was on the higher side and the First Appellate Court was justified in reducing the same to 12% per annum and the High Court was also justified in not interfering with the same.

20. As already indicated above the unreasoned award on being set aside by the First Appellate Court, the matter in a normal circumstance ought to have been remitted to the learned Arbitrator to redo the proceedings afresh in accordance with law. Such course ought to have been adopted by us as well.We had proceeded to examine the matter with regard to the validity of the claim keeping in view the time lapse and since the validity of the claim was to be taken note at the appropriate premium if not at the percentage of premium at 93.12% as determined by the learned Arbitrator. In view of our conclusion relating to the claim being sustainable to the extent as indicated by us above at the premium of 35.02%, under Claim Nos.2, 3, and 12 the calculation based on the extent and measurement of the extra items is an exercise which cannot be undertaken herein and as such the opposite party keeping in view the directions herein shall work out the actual amount payable in respect of the extent, measurement, quantity and price based on which the claim is made. In that regard we hold that the claimant is entitled to the claim for extra items as put forth under Claim Nos. 2, 3, 8 and 12 by working out the difference of cost on the tender premium at 35.02%. On arriving at the quantum of the amount, the same shall be payable with interest at 12% per annum in the manner as ordered by the First Appellate Court. The claim No.1 ordered by the High Court is sustained. The said exercise for calculating and paying the amount to the claimants on claim Nos.1,2,3,8 and 12shall be completed by the opposite party within the period of six weeks from this date. In the event of there being delay in payment beyond the said period, the same shall carry interest at the rate of 18% per annum till the date of payment.

21. In the result we pass the following:

O R D E R

(i) The order dated 06.11.2007 of First Appellate Court and the order dated 08.04.2011 by the High Court in Rev. No.2958/2008 are modified.

A (ii) It is ordered that in addition to the Claim No.1 allowed by the High Court, the claimant is also entitled to the amount under Claim Nos. 2, 3, 8 and 12, however, to be calculated at the premium of 35.02%. The same shall be calculated with interest at 12% per annum and paid in six weeks from this date failing which the same will carry interest at 18% per annum.

B (iii) The appeals are,accordingly, allowed in part with costs.

(iv) The Registry is directed to draw up the decree/award in terms of the directions contained hereinabove.

(v) Pending applications if any, shall also stand disposed of.

Devika Gujral Appeals partly allowed.