



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 28.04.2025

+ **FAO(OS) (COMM) 269/2023 CM APPL. 63447/2023**

**BHARAT SANCHAR NIGAM LTD** .....Appellant

versus

**VIHAAN NETWORKS LTD** .....Respondent

**Advocates who appeared in these cases**

For the Appellant : Mr Dinesh Agnani, Sr Advocate with  
Ms Leena Tuteja, Advocate.

For the Respondent : Mr Rajeev Nayyar, Sr Advocate with Mr  
Omar Ahmed, Mr Abhishek Singh, Mr  
Saad Shervani, Mr J Amal Joshy, Ms  
Aayushi Mishra, Mr K V Vibhu Prasad,  
Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE VIBHU BAKHRU**  
**HON'BLE MR. JUSTICE TEJAS KARIA**

**JUDGMENT**

**TEJAS KARIA, J**

1. The Appellant has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (**'the Act'**), being aggrieved by the



judgment dated 03.10.2023 passed in OMP (COMM.) No. 405/2023 by the learned Single Judge of this Court (**‘impugned judgment’**).

2. The impugned judgment has dismissed a petition under Section 34 of the Act and upheld the award dated 16.06.2023 whereby the learned Sole Arbitrator has awarded ₹33.69 plus ₹9.83 crores alongwith interest in favour of the Respondent herein.

3. The learned Single Judge, by way of impugned judgment, has held that in view of substantial evidence and observations made by the learned Tribunal, there is no ground to interfere with the award under Section 34 of the Act.

#### **FACTUAL BACKGROUND:**

4. The present dispute arises out of the invitation for bid *vide* Notice Inviting E-Tender (**‘NIT’**) dated 13.04.2016 in respect of survey, planning, supply, installation, testing, commissioning, integration with existing core network and Operation & Maintenance for five years of 2G GSM BSS Network in uncovered villages of Arunachal Pradesh and Karbi Anglong and Dima Haso, districts of Assam alongwith radio V-SAT backhaul. The said bid was invited by Appellant pursuant to calling upon by Universal Services Obligation Fund (**‘USOF’**), Department of Telecommunication, Government of India, in 2014.

5. Pursuant to the NIT, the Respondent as the bidder carried out pre-bid testing and technical evaluation of its equipment during the period from 17.10.2016 to 24.03.2017.

6. On 25.04.2017, the Respondent was found to be a successful L1 bidder and, thereafter, Respondent entered into price negotiations and agreed to grant discount of 11% on the quoted price of all OPEX Items.



7. As the villages of Arunachal Pradesh, where the work was to be done were some of the remotest villages of the country with no connectivity and with poor road network, the terrain was one of the toughest to execute the project. Further, the area of this village was nearing China border and was hit by insurgency. Hence, Respondent undertook pre-planning and preparation during the course of finalization of the bid.

8. On 01.03.2018, the Appellant directed the Respondent to initiate all preparatory actions and to give unequivocal and unconditional acceptance for field test with live traffic ('FTL') for three months. In response, the Respondent on 15.03.2018 accepted the additional field test requirement and sought the issuance of the Advance Purchase Order ('APO').

9. On 21.03.2018, APO was issued by the Appellant which was unconditionally accepted by the Respondent. The Respondent also submitted Performance Bank Guarantee ('PBG').

10. Upon allocation of sites, the Respondent started deployment of resources in the target area and performed all project related works as per the requirements of the tender and testing mandate of the Appellant. However, the Appellant did not issue the advance purchase order and ultimately withdrew the APO on 10.02.2020, after a delay of about four years. The Respondent claimed the loss and damages suffered due to withdrawal of APO by invoking arbitration under clause 36 of the APO. It is the case of the Appellant that on 11.09.2019, USOF informed the Appellant that DCC (Digital Communication Commission) had decided to float a fresh tender on the 4G technology and accordingly, USOF on 04.12.2019, terminated the agreement signed between USOF and the Appellant w.e.f. 11.09.2019. In view of the termination of the agreement between USOF and BSNL, under which the tender was floated, and the



Respondent was found to be L1, the APO placed upon the Respondent had to be withdrawn and the PBG for ₹29.73 crores was returned to the Respondent. The learned Arbitral Tribunal passed the award on 16.06.2023 holding that there was no enforceable contract between the parties and withdrawal of the APO by the Appellant cannot be said to be arbitrary. Accordingly, the learned Arbitral Tribunal rejected all the claims of the Respondent except Claim No. III (A) and III (B) wherein an amount of ₹33.69 crores and ₹9.83 crores respectively had been awarded alongwith interest @10% per annum from the date of invocation of arbitration till the date of payment.

11. The Appellant being aggrieved by the award preferred a petition under Section 34 of the Act which was dismissed on the date of admission after hearing the Appellant as well as Respondent who appeared on caveat, by way of the impugned judgment, thereby confirming the award. Being aggrieved by the impugned judgment, the Appellant has preferred the present appeal.

### **SUBMISSIONS ON BEHALF OF THE APPELLANT**

12. Mr. Dinesh Agnani, the learned Senior Counsel appearing for the Appellant has submitted that the learned Single Judge failed to consider that the award of ₹43.52 crores towards Claim No. III (A) for reimbursement of salary and Claim No. III (B) for reimbursement of cost for purchases for carrying out testing was wholly perverse and contrary to the settled law and provisions of contract and thus, in the teeth of public policy.

13. The learned Senior Counsel for the Appellant has submitted that despite the award observing that there was no enforceable contract that came into existence between the parties and the APO was only an intention of the



Appellant to have a contract with the Respondent; the award of ₹43.52 crores alongwith interest @10% per annum was patently illegal.

14. It was further submitted that the award of claims for reimbursement of the salary and cost is contrary to the terms of the tender, especially clause 26 of the General Instructions to Bidders (GIB) which permitted the Appellant to reject any bid at any time prior to the award of contract without assigning any reason whatsoever and without incurring any liability to the effected bidder. Despite this, bar on liability under the contract, the award has without dealing with the said clause, awarded Claim III (A) and III (B).

15. The learned Senior Counsel for the Appellant has further submitted that the impugned judgment has wrongly upheld the award relying on the doctrine of '*Quantum Meruit*' based on the provisions of Section 70 of the Indian Contract Act, 1872 ('**Contract Act**') to observe that the Respondent was entitled to reimbursement of the cost incurred in payment of salary and the amount incurred in carrying out field testing. It was submitted that the award based on *quantum meruit* was entirely perverse and illegal as the FTL cannot be said to be '*work*' under the NIT and there was no work carried out for setting up of 2G GSM BSS Network by the Respondent. The field test with live traffic was a requirement raised by USOF in its letter dated 11.10.2017 which was communicated to the Respondent much prior to the issuance of the APO and the Respondent had agreed to carry out the said FTL without any reservation. Although the award rejected the claim towards the cost incurred for carrying out the field test, the claim towards the cost incurred by the Respondent for payment of salary and other purchases was allowed based on the principle of *quantum meruit* which is patently illegal. The learned Senior Counsel for the Appellant has submitted that the impugned judgment has not appreciated that



the distinction between field test with live traffic and expenditure incurred in this regard was perverse and contrary to the records. As the field test with live traffic was to be carried out by all the bidders to demonstrate the quality of equipment and network system, the Respondent had expressed its willingness to do so without any financial ramifications and only, thereafter, the APO was issued. Further, the field test with live traffic even though carried out after the issuance of APO, would not amount to '*work*' under the contemplated contract when the same was undertaken by the Respondent to demonstrate the efficiency of its own equipment and quality of services to be provided by it. The impugned judgment did not consider that the award relies upon the case laws wherein the doctrine of *quantum meruit* was applied in respect of transactions which were related to the main work for which the parties had intended to enter into a contract, but for some reason could not enter into the same. The same principle is not applicable in the facts of the present case as the field test with live traffic was voluntarily carried out by the Respondent to ascertain the coverage and quality of the service and equipment which were to be rolled out upon issuance of the advance purchase order. Hence, the principle of quantum meruit under Section 70 of the Contract Act would not be applicable, even though, there was no legally enforceable contract.

16. The learned Senior Counsel for the Appellant has submitted that the principle under Section 70 of the Contract Act is not applicable as the Respondent has not done anything for the Appellant as the Respondent voluntarily and with all due knowledge agreed to carry out field test with live traffic for three months to satisfy the quality and coverage of equipment and service, without any financial compensation and that the Appellant has not enjoyed any benefit out of the said field test carried out by the Respondent.



17. Further, it was submitted that the award was based on unverified and unauthentic material/evidence and the awarded amount is highly exorbitant and amounts to unjust enrichment of the Respondent at the cost of public exchequer. Hence, the award deserved to be set aside under Section 34 of the Act.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

18. Mr. Rajeev Nayyar, learned Senior Counsel alongwith Mr. Omar Ahmed, learned counsel for the Respondent has submitted that the impugned judgment does not require any interference as the Appellant has failed to demonstrate any ground to set aside the impugned judgment and the award, in view of limited scope under Sections 34 and 37 of the Act to interfere with the arbitration award.

19. It was further submitted that on the basis of evidence and material on record, specifically Appellant's own letter, the award granted Claim III (A) and III (B) as the Respondent had carried out work in pursuance to specific instructions given by the Appellant. The impugned judgment dismissing the petition under Section 34 of the Act rightly observed that the award was passed after copiously considering the voluminous correspondence exchange between the parties and after appreciation of the material and evidence on record. Hence, it was not an impossible or even implausible view nor it can be said to be based on no evidence.

20. The Appellant's own correspondence with USOF shows that the Appellant had accepted and admitted the work done by the Respondent. The Respondent relied upon the following correspondence on record:



Sr No.	Page No. as per Court File	Particulars
1.	Pg. 1073-1074 – Para 1(b) and 1(c)(iii) of Letter	Letter bearing no. MOB-46/USOF/NE Tender/Financial Evaluation/2017-18/44 dated 26.10.2017 issued by BSNL to Administrator, USOF
2.	Pg.1126-1127 – Para 1 of Letter	Letter bearing no. MOB-46/NE Project/USOF Testing//2018-19/43 dated 10.10.2018 issued by BSNL to Administrator, USOF
3.	Pg.1142-1143 – Para 1(b) and 2 of Letter	Letter bearing no. MOB-46/NE Project/General/2018-19/52 dated 24.05.2019 issued by BSNL to Administrator, USOF
4.	Pg.1145 – Point (b)	Letter bearing no. MOB-46/NE Project/General/2018-19/61 dated 25.10.2019 issued by BSNL to Administrator, USOF
5.	Pg. 1148 – Para 3 and Para 4 of Letter	Letter bearing no. MOB-46/NE Project/General/2018-19/75 dated 29.01.2020 issued by BSNL to Administrator, USOF





21. The above correspondence shows that the Appellant had acknowledged and communicated to USOF that although the field testing was not envisaged under the Tender, the same had been completed by the Respondent at the instance of USOF. Further, the Appellant had communicated to USOF that Respondent had done significant work against the preparation and also that Appellant had issued APO to the Respondent which had been unconditionally accepted by Respondent making it a legal contract to enforce. The Appellant had also informed USOF that the Respondent had incurred the liability of total amount of about ₹225 to ₹250 crores against the project. Accordingly, the Appellant had recommended to USOF to roll out 2G mobile services in Arunachal Pradesh and two districts of Assam as per the tender finalized with the approval of Telecom Commission. The Appellant also apprised USOF that Respondent had already installed five sites in far flung uncovered areas of Arunachal Pradesh in May, 2018 and sites have been operational with thousand subscriber availing voice and data services. The Appellant further sought an unequivocal undertaking from USOF that all claims and legal charges will be borne by USOF since Appellant was acting in its capacity as an implementing agency. The Appellant had further communicated to USOF that the Appellant had incurred substantial expenditure and considerable commitment and liability had been created by the vendors for the project.

22. In view of the above stand taken by the Appellant, it was submitted on behalf of the Respondent that the work undertaken by the Respondent was pursuant to the APO and the Appellant had benefited from the expenditure incurred by the Respondent. Accordingly, the Respondent was entitled to be compensated towards the loss and damages suffered by the Respondent for withdrawal of the APO after a considerable delay of four years.



23. Hence, it was submitted that the present appeal ought to be dismissed as the impugned judgment has carefully considered all the submissions made by the Appellant and does not require any interference by this Court under Section 37 of the Act.

24. The learned Senior Counsel for the Respondent has relied upon the following cases of the Hon'ble Supreme Court on the limited scope of interference in an appeal under Section 37 of the Act:

- a) *MMTC Ltd v. Vedanta Ltd* (2019) 4 SCC 16
- b) *K. Sugumar v. Hindustan Petroleum* (2020) 12 SCC 539
- c) *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking* 2023 INSC 742

### **ANALYSIS AND FINDINGS:**

25. It is settled position of law that the scope of Appeal under Section 37 of the Act is very limited and this Court cannot undertake independent assessment of the evidence and merits of the award. The jurisdiction of this Court under Section 37 of the Act is circumscribed to the extent of only ascertaining whether the exercise of power under Section 34 of the Act has been to the extent of the scope of provision. The appeal under Section 37 of the Act cannot travel beyond the restrictions laid down under Section 34 of the Act. If the view taken in the award after consideration of the evidence and material placed on record is a possible and a reasonable view, the petition under Section 34 of the Act ought to be dismissed. In such a case, the appeal under Section 37 of the Act cannot re-appreciate the evidence to come to a contrary finding as the appeal is against the order passed under Section 34 of the Act and not against the award passed by the learned Arbitral Tribunal.



26. It is well settled that the Court ought not to interfere with the arbitration award only because there is a possibility of an alternative view on facts or interpretation of contract. If the award has taken a plausible view, and the petition under Section 34 of the Act has been dismissed, the appeal under Section 37 of the Act should not interfere with the award and the order under Section 34 of the Act. The above law has been settled in the decisions of the Hon'ble Supreme Court in the case of *Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking* 2023 INSC 742 relied upon by the Respondent.

27. In the instant case, the award has rejected all the claims sought by the Respondent except the Claim No. III (A) and III (B) towards reimbursement of salary and reimbursement of cost incurred for purchases towards equipment and raw materials. The award has found that in absence of a concluded contract in existence, the Respondent had undertaken some work in order to roll out the project to expedite the same once advance purchase order is issued as directed by the Appellant. Hence, the Respondent cannot be denied the reimbursement of the said expenditure on the plea that the Respondent did all the work or spent money voluntarily at its own risk. The award also holds that the Appellant cannot take the plea that the said expenditure was not for the benefit of the Appellant. Accordingly, the principle of *quantum meruit* was applicable and as regards the quantification of the claim, the award has taken into consideration the evidence showing the expenditure incurred by the Respondent by filing documents showing deployment of staff which included appointment/transfer letters, their salary slips, and proof of payment amongst other similar documents. Accordingly, the award has allowed 25% of the amount claimed by the Respondent amounting to ₹33.69 crores has been found reasonable.



Similarly, the Arbitral Tribunal has also awarded the amount spent for purchase of raw materials and for the same, the learned Arbitral Tribunal considered invoices, vouchers, goods receipt notes, payment advice, custom clearance documents which were proved in absence of any specific denial of these purchases by the Appellant and no specific questions were put to CW1 in the cross-examination. Accordingly, only 50% of the cost incurred by the Respondent was awarded amounting to ₹9.83 crores.

28. In any event, the document relied upon by Mr. Rajeev Nayyar, the learned Senior Counsel and Mr. Omar Ahmad, learned counsel for the Respondent shows that the amount incurred by the Respondent was as per the direction of the Appellant and the stand taken by the Appellant before USOF clearly shows that the Appellant had acknowledged the expenditure incurred by the Respondent.

29. The impugned judgment has dealt with the contentions of the Appellant that the work carried out by the Respondent pursuant to the APO was at the behest of and on specific instructions of the Appellant was not borne out by the arbitral record and that the award granted reimbursement of the expenditure stated to be incurred by the Respondent despite finding that no concluded contract had come into existence between the parties. The impugned judgment has examined the law laid down by the Hon'ble Apex Court on the scope of Section 34 of the Act and come to the conclusion that finding of the fact rendered in the award that the work was carried out by the Respondent pursuant to the APO issued by the Appellant was at the behest of and on the specific instructions of the Appellant cannot be interfered with since the said finding has been rendered based on an appreciation of the material and evidence on record. The impugned judgment has held that the view taken in the award is neither an



impossible nor even an implausible view, nor can it be said to be based on no evidence.

30. The impugned judgment has correctly held that the Respondent was entitled to the reimbursement of expenses incurred by it notwithstanding the absence of the concluded contract pursuant to Section 70 of the Contract Act which incorporates the doctrine of *quantum meruit* as the said view taken in the award is not liable to be interfered with under Section 34 of the Act. The impugned judgment has also examined the law on the aspect of *quantum meruit* as discussed in the award and concluded that the view taken in the award is plausible and based on the application of law laid down in the judgment referred to in the award. In addition, the impugned judgment has also relied upon the decision of this Court in the matter of *M.C.D. v. Ravi Kumar* (2017) SCC OnLine Del 11902 on the aspect of compensation under Section 70 of the Contract Act. In view of the same, the impugned judgment has correctly observed that the reliance upon Section 70 of the Contract Act to assess the amount to be awarded for the work performed by the Respondent cannot be faulted with.

31. As regards, the quantum of the amount awarded being excessive and/or without basis in the impugned judgment has rightly rejected the submission of the Appellant as the award has only allowed 25% of the amount claimed towards the claim for reimbursement of salary. Similarly, the award has only allowed 50% of the cost incurred by the Respondent towards purchases, advances, and other amounts incurred by the Respondent in connection with the work.

32. In view of the same, the impugned judgment has rightly come to the conclusion that no ground was made out to interfere with the award under



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Section 34 of the Act. Accordingly, there is no infirmity with the impugned judgment and the appeal deserves to be dismissed.

33. Accordingly, the appeal is hereby dismissed alongwith all pending applications. No order as to cost.

**TEJAS KARIA, J**

**VIBHU BAKHRU, J**

**APRIL 28, 2025/ 'A'**