SUPREME COURT OF INDIA

P. Manohar Reddy

Vs.

Maharashtra Krishna Valley Dev.Corp.

C.A.Nos. 7408-7409 of 2008

(S.B. Sinha and Cyriac Joseph JJ)

18.12.2008

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Respondent herein invited tenders for the work of excavation in canal K.M. No. 126, Kukadi Left Bank Canal, Shrigonda in the District of Ahmednagar at an estimated costs of Rs.23,26,424/- pursuant whereto appellant herein submitted its offer for a sum of Rs.21,10,233/-. The said offer being the lowest was accepted.

3. The parties hereto thereafter entered into a contact on 9.2.1988; clauses 37, 54 and 55 whereof read as under:

"37. After completion of work and prior to that payment, the contractor shall furnish to the Executive Engineer, a release of claims against the Government arising out of the contract, other than claims specifically identified, evaluated and expected from the operation of the release by the contractor."

54. Settlement of Dispute (For works costing less than Rs. 50 lakhs).

If the contractor considers any work demanded of him to be outside the requirements of the contract, or considers any drawings, record or ruling of the Executive Engineer, KIP Dn. No. VII, Shrigonda on any matter in connection with or arising out of the contract or the carrying out of work to be outside the terms of contract and hence unacceptable he shall promptly ask the Executive Engineer, in writing, for written instructions or decision. Thereupon the Executive Engineer, shall give his written instructions or decision within a period of 30 days of such request. Upon receipt of the written instructions or decision the contractor shall promptly proceed

without delay to comply with such instructions or decision.

If the Executive Engineer fails to give his decision in writing within a period of 30 days after being requested, or if the contractor is dissatisfied with the instructions or decision of the Executive Engineer, the contractor may within 30 days after receiving the instructions or decision appeal to upward authority who shall afford an opportunity to the contractor to be heard and to offer evidence in support of his appeal. If the contractor is dissatisfied with this decision, the contractor within a period of thirty days from receipt of the decision shall indicate his intention to refer the dispute to Arbitration as per clause 55 failing which the said decision shall be final and conclusive.

55. Arbitration (For works costing less than Rs. 50 lakhs)

All the disputes or differences in respect of which the decision has not been final and conclusive as per clause 54 above shall be referred for arbitration to a sole arbitrator appointed as follows.

Within 30 days of receipt of notice from the contractor or his intention to refer the dispute to arbitration the Chief Engineer (SP Irrigation Department), Pune shall send to the contractor a list of three officers of the rank of Superintending Engineers or higher, who have not been connected with the work under this contract. The contractor shall within 15 days of receipt of this list select and communicate to the Chief Engineer, the name of one officer from the list who shall then be appointed as the Sole Arbitrator. In case contractor fails to communicate this selection of name within the stipulated period, the Chief Engineer shall without delay select one officer from the list and appoint him as the sole arbitrator. If the Chief Engineer fails to send such a list within 30 days

as stipulated the contract shall send a similar list to the Chief Engineer within 15 days. The Chief Engineer shall then select one officer from the list and appoint him as the Sole Arbitrator within 15 days. If the Chief Engineers fails to do so, the contractor shall communicate to the Chief Engineer the name of one officer from the list who shall then be the sole Arbitrator. The Arbitrator shall be conducted in accordance with the provision of the Indian Arbitration Act, 1940 or any statutory modification thereof. The Arbitration shall determine the amount of costs to be awarded to either parties. Performance under the contract shall continue during the arbitration proceedings and payments due to the contractor shall not be withheld unless they are subject matter of the arbitration proceedings.

All awards shall be in writing and in case of award amounting to Rs. One lakh and above, such awards shall state the reasons for the amount awarded. Neither party is entitled to bring a claim to arbitrator if the arbitrator has not been appointed before the expiration of 30 days after defects liability period."

4. A work order was issued on the same day. The said contract was to be completed by 8.1.1989, i.e. within a period of about 11 months. Appellant failed to complete the work within the stipulated time. He applied for extension which was granted first upto 09.07.1989 and thereafter upto 30.09.1990. Within the said period the work was completed. The measurements of the work undertaken by the appellant were recorded on 26.11.1990. Final bill prepared and paid by the respondent was accepted by the appellant without any demur.

5. Inter alia, on the premise that appellant was asked to do extra items of work, it raised its claims by a letter dated 27.2.1991, which was rejected. Details of the purported extra work done by appellant, however, were not mentioned in the said letter dated 27.2.1991. It submitted another claim giving details thereof by a letter dated 10.6.1991.

6. Appellant by a letter dated 26.9.1991 purporting to invoke clause 54 of the General Conditions of Contract,issued notice to the Executive Engineer of respondent, stating:

"Whereas a number of claims were referred to you from time to time and in respect of many of them you have failed to give the decision. And whereas the work under contract was kept in progress by us in good faith and with a belief that on completion of the work you will reconsider our total case and settle our accounts with all the claims. And whereas the work has been duly completed by us, we are now in a petition (sic) of finally work out in full the sum of money due and payable to us by the department including all the claims.

Now therefore, we hereby call upon you and give you notice finally under clause 54 of the General

conditions of contract with a request to settle our accounts and give your decisions in respect of our following claims and disputes within a period of thirty days from the date of receipt of this notice by reconsidering your earlier decision in respect of claim on which you had indicated your decision earlier."

He specified 16 claims thereunder.

7. Respondent rejected the said claim by its letter dated 5.10.1991 alleging that the stipulated period therefor expired in May, 1991. The Executive Engineer of the respondent by his letter dated 29.10.1991 opined that the matter cannot be considered for arbitration, stating: "Please refer your letter under reference which was received by this office in the 1st week of October 1991. The claims raised were already denied by this Office vide letter No. 448 dtd. 29.4.91. As you have referred the matter under the provisions of clause 54 of the L.C.B. No. 18 for 87, 88, The decisions of this office are again sent herewith. It is further clarified that the matter is brought for arbitration process after expiry of 30 days from end of defect liability period. The work was completed in November-90 and the defect liability period of six months is over in May 1991, hence the matter cannot be considered for arbitration."

However, its earlier decision of rejecting the claim was repeated.

8. Treating the same to be an order rejecting his claim, appellant herein preferred an appeal thereagainst before the Superintending Engineer in terms of its letter dated 26.11.1991; pursuant whereto a meeting was held between the representatives of the parties; the minutes whereof read as under:

"Since the contractors have not submitted their claims under clause 54 of the General conditions of the contract along with documentary evidences within the stipulated period i.e. before the expiry of 30 days after defect liability period and as per clause 55 which states `Neither party is entitled to bring a claim to arbitrator if the arbitrator has not been appointed before the expiration of 30 days after defect liability period.' Defect liability period of this contract expired on 31st May 1991 and the stipulated period of 30 days expired on 30th June 1991. Hence the contractor's appeal for arbitration is hereby rejected"

9. A copy of the said minutes of the meeting was sent by the Superintending Engineer along with his letter dated 30.12.1991.

A notice, on the premise that disputes and differences arose between the parties within the meaning of clause 55 of the General Conditions of Contract, was served upon the Chief Engineer asking him to furnish the names of its three officers for appointment of sole arbitrator within 30 days from the receipt thereof. The said request was rejected by the Chief Engineer in terms of his letter dated 26.2.1992, stating:

" You have given notice under clause 54 on 26/11/91 to refer the dispute to arbitration. Thus the notice under clause 54 is given after the expiry of 30 days of defect liability period. Thus you have not submitted the claims within the stipulated time and followed the procedure as per the clause 54 of general condition for settlement of dispute. This has already been informed to you by the Superintending Engineer Kukadi canal circle, Pune-6 under his letter no. KCC/PB-1/KM 126/Claims/4129 dt. 30/12/91. Hence the question of appointing arbitrator by this office does not arise."

10. Appellant thereafter sent a list of arbitrators on 9.3.1992 followed by a notice through a lawyer. Indisputably, the said request for referring the disputes to an arbitrator was rejected by respondent.

11. Appellant filed an application under Section 8 of the Arbitration Act, 1940 (for short, "the Act") in the Court of Civil Judge (Senior Division), Ahmednagar at Ahmednagar for appointment of Arbitrator.

By reason of a judgment and order dated 9.12.1997, the Civil Judge Senior Division, Ahmednagar opining that the said application having been filed within the period as specified in Article 137 of the Limitation Act, 1963 and the cause of action therefor having arisen on 29.10.1991 on which date the appellant's claim was rejected, appointed one Shri V.M. Bedse, a retired Chief Engineer as Arbitrator with regard to the additional and extra works allegedly carried out by appellant.

The learned judge held:

"The petitioner along with Exh. 19 has produced various documents and correspondence ensued with the respondents. It is crystal clear from this correspondence that the petitioner had demanded release of claim on 27/2/91 under clause No. 37 of the contract agreement. This claim letter was received by the respondents and further query in respect of proof of claim was called for by the respondents by their letter dated 29/4/91. Accordingly, the proof was submitted by letter dated 10/6/91 and details of claim were given on 26/9/91. The petitioner also apprised about `settlement of dispute' as contemplated in clause No. 54 of the contract agreement. Therefore practically there is compliance by the petitioner as contemplated under clause No. 54 of the contract agreement. The record also reveals that the respondents on 5/10/91 i.e. after lapse of three months replied the notice

of petitioner dated 10/6/91 and first time it was agitated that the petitioner has not taken steps under clause No. 55 under defect liability and before expiration of 30 days. The clause No. 19(a) of the contract agreement is in respect of material and

workmanship and it defines the defect liability in respect of workmanship and materials and so also the defect liability period is to be counted from the certified date of completion certificate. Under clause No. 26 of the contract agreement, it is the respondents who are required to issue such certificate to the petitioner. The notices were issued by the petitioner under clause Nos. 54 and 55 of the contract but it appears from the record that the respondents did not take any steps to choose their arbitrator. On the contrary, on 9/3/92 the list of three officers was demanded and out of them sole arbitrator was chosen but the respondents have not replied the same. In this manner, the petitioner and respondents could not concur for appointment of arbitrator and the petitioner had therefore no alternative but to resort to provisions of Section 8 of the Arbitration Act. The correspondence produced on record in support of claim under Section 8 of the Arbitration Act by the petitioner is sufficient to come to the conclusion that there was dispute between petitioner and the respondents in respect of additional work and no such steps have been taken by the respondents as provided under the Contract."

12. A Civil Revision Application No. 201 of 1998 was preferred thereagainst by the respondent before the High Court, which by reason of the impugned judgment and order dated 13.4.2004 has been allowed. A Review Petition filed by appellant thereagainst has been dismissed.

13. Mr. Sundaravaradan, learned Senior Counsel appearing on behalf of appellant raised the following contentions in support of the appeal.

i. The High Court committed a serious error of law in passing the impugned judgment insofar as it failed to take into consideration that limitation for raising a claim as envisaged under clause 54 is not applicable in the instant case.

ii. In view of the fact that the claim was rejected only on 26.2.1992 by the appellate authority, the period of 30 days should be counted therefrom.

iii. While exercising its jurisdiction under Section 8 of the Act, the court was concerned only with the question as to whether there was a triable issue.

iv. Once a triable issue is found to have been raised, which was required to be referred to the arbitration, the merit of the claim cannot be gone into.

14. Ms. Aprajita Singh, learned counsel appearing on behalf of the respondent, on the other hand, would urge:

i. Clause 54 of the General Conditions of the Contract must be invoked by the contractor during the tenure thereof and not after completion of the contract and acceptance of the final bill.

ii. The final bill having been accepted without any demur, the contract came to an end, wherewith the arbitration agreement which was a part thereof also perished.

iii. Appellant having not sought for extension of time in terms of sub-Section (4) of Section 37 of the Act and in any event no sufficient cause having been made out therefor, even no extension of time could be granted.

15. Indisputably, the parties are governed by the Act. `Arbitration Agreement' has been defined in Section 2(a) of the Act to mean a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

An arbitration is a private dispute resolution mechanism agreed upon by the parties. The arbitration agreement is contained in a commercial document; it must be interpreted having regard to the language used in it. A bare perusal of clauses 37, 54 and 55 of the General Conditions of Contract clearly shows that the arbitration agreement entered into by and between the parties is not of wide amplitude. In a case where arbitration clause is of wide amplitude, the same may cover also the claims arising during the tenure of contract or thereafter, provided the arbitration clause subsists.

16. Clause 37 imposes an obligation upon the contractor to furnish to the Executive Engineer a release of claims against the Government arising out of the contract other than the claims specifically identified, evaluated and expected from the operation of the release by the Contractor only after completion of the work and prior to payment thereof.

There is nothing on record to show that any claim in relation to extra or additional work had been raised by the contractor prior to 27.2.1991 although final measurement had been recorded on 26.11.1990 and the bill has been paid in full and final satisfaction on 4.12.1990. Clauses 54 and 55 of the arbitration agreement must be read together.

17. Indisputably, the contract has been entered into for works costing less than Rs. 50 lakhs and, thus, clause 54 would be attracted in the instant case. In terms of the said provision, the contractor has to raise a demand with the Executive Engineer if any work is demanded from him, which he considers to be outside the requirements of the contract. The word `consider' is of some significance, it means "to think over; to regard as or deem to be." (See Advanced Law Lexicon,3rd Edition, 2005).

18. If a work has to be carried out outside the terms of the contract and is unacceptable, he is required to promptly approach the Executive Engineer in writing for obtaining his written instruction or decision in that behalf. The Executive Engineer is obligated to give his written instructions or decision within a period of 30 days of making such request. Once such instruction or decision is received, the contractor is required to comply therewith. Only in a case where the Executive Engineer fails and/or neglects to give a decision or issue instruction, the contractor may within a period of 30 days thereafter prefer an appeal to the appellate authority. The appellate authority is required to provide an opportunity of hearing to the contractor. It is only when the contractor is dissatisfied with the decision of the appellate

authority, he may indicate his intention to refer the dispute to Arbitration in terms of clause 55 within a period of 30 days from the date of receipt of the said decision, failing which, the same would be final.

19. The arbitration clause, thus, could be invoked only in a case where the decision has not become final and conclusive as per clause 54.

20. A plain reading of the aforementioned provisions clearly shows that clause 54 does not envisage raising of a claim in respect of extra or additional work after the completion of contract.

21. The jurisdiction of the civil court under Section 8 of the Act or under Section 20 thereof can be invoked if the disputes and differences arising between the parties was the one to which the arbitration agreement applied.

22. The contractual clause provides for a limitation for the purpose of raising a claim having regard to the provisions of Section 28 of the Indian Contract Act. It is no doubt true that the period of limitation as prescribed under Article 137 of the Limitation Act would be applicable, but it is well settled that a clause providing for limitation so as to enable a party to lodge his claim with the other side is not invalid.

In The Vulcan Insurance Co. Ltd. vs. Maharaj Singh and anr. Reported in AIR 1976 SC 287, the arbitration clause read as under:

"18. If any difference arises as to the amount of any loss or damage such difference shall independently of all other questions be referred to the decision of an Arbitrator, to be appointed in writing by the parties in difference, or, if they cannot agree upon a single Arbitrator to the decision of two disinterested persons as Arbitrators.... ... . And it is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or Umpire of the amount of the loss or damage if disputed shall be first obtained.

19. In no case whatever shall the company be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration."

Referring to the well known decision of Scott vs. Avery, (1856) 25 LJ Ex 308 = 5 HLC 811, and noticing different views expressed by different courts, it was held:

"22. The two lines of cases clearly bear out the two distinct situations in law. A clause like the one in Scott v. Avery bars any action or suit if commenced for determination of a dispute covered by the arbitration clause. But if on the other hand a dispute cropped up at the very outset which cannot be referred to arbitration as being not covered by the clause, then the Scott v. Avery clause is rendered inoperative and cannot be pleaded as a bar to the maintainability of the legal action or suit for determination of the dispute which was outside the arbitration clause."

Whether such a clause comes within the purview of the arbitration clause, vis-`-vis Article 137 of the Limitation Act, it was held:

"...It has been repeatedly held that such a clause is not hit by Section 28 of the Contract Act and is valid; vide-The Baroda Spinning and Weaving Co. Ltd. v. The Satyar narayan Marine and Fire Insurance Co. Ltd. ILR 38 Bom 344 : AIR 1914 Bom 225 (2); Dawood Tar Mahomed Bros. v. Queensland Insurance Co. Ltd. AIR 1949 Cal 390 and The Ruby General Insurance Co. Ltd. v. The Bharat Bank Ltd. AIR 1950 (East) Punj 352. Clause 19 has not prescribed a period of 12 months for the filing of an application under Section 20 of the Act. There was no limitation prescribed for the filing of such an application under the Indian limitation Act, 1908 or the limitation Act, 1963. Article 181 of the former did not govern such an application. The period of three years prescribed in Article 137 of the Act of 1963 may be applicable to an application under Section 20."

Whether the difference which arose between the parties was the one to which the arbitration clause applied and whether the application under Section 20 of the Act could be dismissed, this Court opined:

"24. But in this case on a careful consideration of the matter we have come to the definite conclusion that the difference which arose between the parties on the company's repudiation of the claim made by respondent No. 1 was not one to which the arbitration clause applied and hence the arbitration agreement could not be filed and no arbitrator could be appointed under Section 20 of the Act. Respondent No. 1 was ill-advised to commence an action under Section 20 instead of instituting a suit within three months of the date of repudiation to establish the company's liability." (See also A.B.C. Laminart Pvt. Ltd. vs. A.P. Agencies, Salem [AIR 1989 SC 1239)

23. It is not a case where an application under Section 8 could not be filed within a period of 3 years. It is a case where a determination was necessary as regards invocation of the disputes settlement processes. For resolution of the dispute, a claim must be made in terms of the provisions of the contract for the purpose of giving effect to the arbitration clause; the application thereof being limited in nature.

24. Mr. Sundaravaradan has taken us through a large number of decisions to contend that the purported `accord and satisfaction' on the part of the contractor might not itself be a sufficient ground to reject a prayer for making a reference under the Arbitration Act.

Such a question came up for consideration before this Court in Damodar Valley Corporation vs. K.K. Kar [(1974) 1 SCC 141], wherein this Court noticing the decision of Heyman v. Darwins Ltd. (1942) 1 All ER 337, stated the law thus:

"Again, an admittedly binding contract containing a general arbitration clause may stipulate that in certain events the contract shall come to an end. If a question arises whether the contract has for any such reason come to an end I can see no reason why the arbitrator should not decide that question. It is clear, too, that the parties to a contract may agree to bring it to an end to all intents and purposes and to treat it as if it had never existed. In such a case, if there be an arbitration clause in the contract, it perishes with the contract. If the parties substitute a new contract for the contract which they have abrogated the arbitration clause in the abrogated contract cannot be invoked for the determination of questions under the new agreement. All this is more or less elementary."

It was furthermore held:

"Similarly the question whether there has been a settlement of all the claims arising in connection with the contract also postulates the existence of the contract. The principle laid down by Sarkar. J., in Kishorilal Gupta Bros's case [1960] 1 S.C.R. 493 that accord and satisfaction does not put an end to the arbitration clause was not dissented to by the majority. On the other hand proposition (6) seems to lend weight to the views of Sarkar, J. In these circumstances, the question whether the termination was valid or not and whether damages are recoverable for such wrongful termination does not affect the arbitration clause, or the right of the respondent to invoke it for appointment of an arbitrator." {See also S.C. Konda Reddy vs. Union of India & anr. [AIR 1982 KARNATAKA 50)}

25. We are, however, in this case faced with a different situation. The contention of respondent is not that there has been a breach of contract and the contract still subsists. Its contention is that in terms of the contract the claim for extra work or additional work should have been raised during the tenure of the contract itself and not after it came to an end and payment received in full and final satisfaction.

26. An arbitration clause, as is well known, is a part of the contract. It being a collateral term need not, in all situations, perish with coming to an end of the contract. It may survive. This concept of separability of the arbitration clause is now widely accepted. In line with this thinking, the UNCITRAL Model Law on International Commercial Arbitration incorporates the doctrine of separability in Article 16(1). The Indian law - The Arbitration and Conciliation Act, 1996, which is based on the UNCITRAL Model Law, also explicitly adopts this approach in Article 16 (1)(b), which reads as under:-

"16. Competence of arbitral tribunal to rule on its jurisdictional. - (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, -

(a) An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause." (Emphasis supplied).

Modern laws on arbitration confirm the concept. The United States Supreme Court in the recent judgment in Buckeye Check Cashing, Inc. v. Cardegna (546 US 460) acknowledged that the

separability rule permits a court "to enforce an arbitration agreement in a contract that the arbitrator later finds to be void." The Court, referring to its earlier judgments in Prima Paint Corp. v. Flood & Conklin Mfg. Co., (388 U. S. 395), and Southland Corp. v. Keating, (465 U. S. 1), inter alia, held :-

"Prima Paint and Southland answer the question presented here by establishing three propositions. First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract."

But this must be distinguished from the situation where the claim itself was to be raised during the subsistence of a contract so as to invoke the arbitration agreement would not apply.

M/s Bharat Heavy Electricals Limited, Ranipur vs. M/s Amar Nath Bhan Prakash (1982) 1 SCC 625, whereupon reliance has been placed by Mr. Sundaravaradan is not applicable as it was held therein that the question whether there was discharge of the contract by accord and satisfaction or not, is itself arbitrable.

The said question need not detain us having been considered by this Court in Bharat Coking Coal Ltd. vs. Annapurna Construction [(2003) 8 SCC 154] holding:

"14. The question is as to whether the claim of the contractor is de hors the rules or not was a matter which fell for consideration before the arbitrator. He was bound to consider the same. The jurisdiction of the arbitrator in such a matter must be held to be confined to the four-corners of the contract. He could not have ignored an important clause in the agreement; although it may be open to the arbitrator to arrive at a finding on the materials on records that the claimant's claim for additional work was otherwise justified."

27. In Chairman and MD, NTPC Ltd. vs. Reshmi Constructions, Builders & Contractors [(2004) 2 SCC 663], this Court held:

"18. Normally, an accord and satisfaction by itself would not affect the arbitration clause but if the dispute is that the contract itself does not subsist, the question of invoking the arbitration clause may not arise. But in the event it be held that the contract survives, recourse to the arbitration clause may be taken. [See Union of India v. Kishorilal Gupta (AIR 1959 SC 1362) and Naihati Jute Mills Ltd. v. Khyaliram Jagannath (AIR 1968 SC 522)." It was furthermore opined

"28. Further, necessitas non habet legem is an age-old maxim which means necessity knows no law. A person may sometimes have to succumb to the pressure of the other party to the bargain who is in a stronger position.

29. We may, however, hasten to add that such a case has to be made out and proved before the Arbitrator for obtaining an award.

30. At this stage, the Court, however, will only be concerned with the question whether trial issues have been raised which are required to be determined by the Arbitrators."

28. We, however, as noticed hereinbefore, are concerned with a different fact situation. As arbitration clause could not be invoked having regard to the limited application of clauses 37, 54 and 55 of the General Conditions of the Contract, we are of the opinion that the trial court was not correct in directing appointment of an arbitrator.

29. We may notice that in Wild Life Institute of India, Dehradun vs. Vijay Kumar Garg [(1997) 10 SCC 528], a Division Bench of this Court held as under:

"It is also necessary to refer to the arbitration clause under the contract which clearly provides that if the contractor does not make any demand for arbitration in respect of any claim in writing within 90 days of receiving the intimation from the appellants that the bill is ready for payment, the claim of the contractor will be deemed to have been waived and absolutely barred and the appellants shall be discharged and released of all liabilities under the contract in respect of these claims. The liability, therefore, of the appellants cease if no claim of the contractor is received within 90 days of receipt by the contractor of an intimation that the bill is ready for payment. This clause operates to discharge the liability of the appellants on expiry of 90 days as set out therein and is not merely a clause providing a period of limitation. In the present case, the contractor has not made any claim within 90 days of even receipt of the amount under the final bill. The dispute has been raised for the first time by the contractor 10 months after the receipt of the amount under the final bill."

30. The High Court has relied upon a decision of this Court in M/s K. Ramaiah and Company Vs. Chairman & Managing Director, National Thermal Power Corpn. [1994 Supp. (3) SCC 126]. We need not deal therewith in details as the effect thereof has been considered by us in Bharat Coking Coal Ltd. vs. Annapurna Construction (supra).

31. It is also not a case where sub-section (4) of Section 37 of the Act could be invoked. Appellant

did not invoke Section 37(4) of the Act. No reason has been assigned as to why the said discretion of the court should be invoked particularly when the claim has been raised only after completion of the work.

32. For the reasons aforementioned, we, albeit for different reasons, affirm the judgment of the High Court. The appeals are, accordingly, dismissed. In the facts and circumstances of the case there shall be no order as to costs.

We may clarify that nothing stated herein shall affect the merit of the appellant's claim to invoke the jurisdiction before any other forum for enforcing the same.