



2025:DHC:9230-DB



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

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Judgment reserved on: 09.10.2025

Judgment pronounced on: 17.10.2025

+ RFA (COMM) 132/2024

M/S B S ENVIRO N INFRACON PRIVATE LIMITED

.....Appellant

Through: Mr. Robin George, Mr. Yogesh
Bhatt, Advs.

versus

VIJ CONTRACTS PVT. LTD.

.....Respondent

Through: Mr. L. K. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. The issue that arises for consideration in the present Appeal is whether the learned Trial Court was right in concluding that the document dated 26.09.2019 (Ex. PW1/D2 /Annexure-A9) recorded a full and final settlement, in respect of the claims that had accrued up to that date, and whether, on the evidence on record, any interference with the findings of the Trial Court can be warranted.

2. The present Appeal filed under Section 96 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] read with Section 13 of the Commercial Courts Act, 2015 assails the correctness of the judgment and decree dated 03.01.2024 [hereinafter referred to as "Impugned Judgment"] passed by the Trial Court, whereby the suit



2025:DHC:9230-DB



instituted by the Appellant for recovery of Rs.50,41,835/- (along with interest and costs) was dismissed.

FACTUAL MATRIX

3. The salient facts, as pleaded by the parties and recorded by the Trial Court, may be briefly stated. The Appellant is a company engaged in supply, installation, testing and commissioning of Sewage Treatment Plants [hereinafter referred to as “STP”], which had subcontracted certain works from the Respondent. The Respondent is the principal contractor awarded the work of supply, installation, testing and commissioning of an 800 KLD STP at Haryana Vishwakarma Skill University, Dudhola, Palwal by IRCON Infrastructure and Services Ltd. (IISL). The dispute arises from alleged non-payment by the Respondent for materials supplied and services rendered by the Appellant under the subcontract agreement.

4. On 01.03.2019, the Respondent issued a Letter of Intent [hereinafter referred to as “LOI”] to the Appellant for the above-stated work for a contract value of Rs.1,15,00,000/- plus GST. The Bill of Quantity [hereinafter referred to as “BOQ”] annexed to the LOI provided for staged payments – Rs.10,00,000/- (advance) as per BOQ, 85% on supply/delivery of material (within 10 days of receipt), 10% on installation and 5% on testing & commissioning. Clause 7 of the LOI provided for retention money (10% of running bills, subject to a maximum of 5% of contract value) refundable after the Defect Liability Period (36 months after completion). Payments were to be made on a back-to-back basis, as IRCON was the principal releasing



2025:DHC:9230-DB



funds to the Respondent for onward disbursement to the Appellant.

5. The Appellant raised Tax Invoices Nos.236, 237 and 238 dated 27.03.2019 for materials aggregating to Rs.1,00,22,272/- [Ex. PW1/4 Colly /Annexure A5 (Colly)]. The Appellant asserted that it supplied the materials to the site (receipts recorded on 29.03.2019 and 31.03.2019), submitted requisite shop/plot/P&ID drawings and test reports, and appointed supervisory staff. It alleged that the Respondent failed to complete civil works or provide space/clearance for installation, thereby preventing completion of installation/testing components and the raising of further invoices.

6. As recorded in Paragraph No.2.4 of the Impugned Judgment, the total contract value under the LOI was Rs.1,15,00,000/- plus GST, i.e., Rs.1,28,80,000/-. Out of this, the Respondent had paid Rs.78,38,165/-, leaving a balance of Rs.50,41,835/- claimed by the Appellant.

7. The Respondent, in its written statement, recorded that the Appellant was a registered Micro, Small and Medium Enterprise (MSME) under the MSMED Act and that the Appellant had invoked MSME (Samadhaan) proceedings on 10.07.2019 in respect of the billed invoices, claiming Rs.45,42,272/- for Invoice Nos.236, 237 and 238. Following the Samadhaan Notice, and on the intervention of IRCON officials, a meeting was held on 26.09.2019 attended by representatives of IRCON, the Respondent and the Appellant. A document dated 26.09.2019 (Ex. PW1/D2 /Annexure-A9) was signed by both parties, recording invoice totals, security and performance



2025:DHC:9230-DB



bank guarantee (PBG) retentions, TDS, amounts already paid, and a computed net balance of Rs.14,68,165/- (after adjustments), with the express note: “MSME notice to be withdrawn by BS Enviro before any further payment.” Thereafter, the Respondent issued two cheques of Rs.7,00,000/- and Rs.7,68,165/-, which were encashed by the Appellant. The Appellant, through its counsel, also sent a Notice dated 07.12.2020, calling upon the Respondent to clear the outstanding amount, to which the Respondent replied by a communication dated 04.01.2021, which the Appellant described as vague.

8. Despite the above, the Appellant did not withdraw the MSME notice and pursued relief before the MSME forum. An arbitral reference was instituted, and the claim under MSME was ultimately dismissed *vide* award dated 20.10.2022 on maintainability grounds. Thereafter, the Appellant filed CS(COMM) No.11/2022 seeking recovery of Rs.50,41,835/- comprising Rs.21,84,107/- as the billed balance and Rs.28,57,728/- towards alleged unbilled contractual balance, together with interest and costs. Upon consideration of the pleadings, documents and evidence, the Trial Court held that the document dated 26.09.2019 recorded a full and final settlement/novation of all claims up to that date and, that the Appellant had accepted payment accordingly. Consequently, the suit was dismissed. The Appellant has challenged that conclusion in the present Appeal.

CONTENTIONS OF THE APPELLANT

9. Learned counsel for the Appellant contended that the Trial



2025:DHC:9230-DB



Court erred in holding that the document dated 26.09.2019 constituted a full and final settlement or novation of the claims. It is submitted that the said document merely recorded the particulars of payments then made, and that the payment of Rs.14,68,165/- recorded therein was not in discharge of all claims but was made, on account, to keep the contract alive and to recommence the work. It is contended that the learned Trial Court erred in reading into the document words that are not there, and in treating it as recording an accord or novation.

10. It is submitted that the Respondent's own reply dated 04.01.2021 (Ex. PW1/10 /Annexure A13) to the notice dated 07.12.2020 described the payment of Rs.14,68,165/- as having been made "to keep the contract alive", which belies the plea of full and final settlement. The Appellant asserts that the 26.09.2019 meeting was convened only to resolve immediate cash flow issues to facilitate recommencement of the work, and that the condition regarding withdrawal of the MSME notice was merely procedural and not indicative of discharge of the entire contract.

11. Learned counsel further submitted that the Trial Court failed to adjudicate the Appellant's alternative and independent claim towards the "unbilled contract value" of Rs.28,57,728/-. It is urged that the work awarded under the LOI was one composite and indivisible contract covering supply, installation, testing and commissioning, and that once the Appellant had supplied the entire plant and equipment, it had substantially performed its part of the contract. On the admitted failure of the Respondent to complete the civil work and hand over the site for installation, the Appellant was prevented from further



2025:DHC:9230-DB



performance and was entitled to recover the balance contract value in terms of Sections 37 and 38 of the Indian Contract Act, 1872 [hereinafter referred to as IC Act].

12. It is also contended that the learned Trial Court failed to appreciate that under Clause 7 of the LOI, the retention amount was to be released after the completion of the Defect Liability Period (DLP) or upon furnishing of a Bank Guarantee, and that in view of the Respondent's breach, the Appellant was entitled to payment of the retained sums of Rs.7,04,718/- (security deposit), Rs.6,09,637/- (PBG equivalent) and Rs.2,23,720/- (TDS). The finding that the Appellant had novated the contract by signing Ex. PW1/D2, it is submitted, is wholly erroneous and unsupported by any evidence on record.

13. Additionally, the Appellant submits that once the breach by the Respondent was established, it was entitled to claim damages for the non-performance of the installation and commissioning obligations. The Appellant also asserts that only 80% of the invoiced amount was raised against the material supplied, whereas 85% was contractually due on supply. Therefore, the Appellant contends it was entitled to the balance 5% of the contract value as well.

CONTENTIONS OF THE RESPONDENT

14. *Per contra*, learned counsel for the Respondent contended that the Trial Court rightly concluded that the document dated 26.09.2019 recorded an accord and satisfaction, or a novation, in respect of all claims that had accrued up to that date. It is submitted that the contemporaneous note recorded the total invoiced amount, security



2025:DHC:9230-DB



deposit and PBG retentions, TDS, amounts already paid, and the net balance of Rs.14,68,165/-, which was subsequently paid by two cheques. The Respondent asserts that the Appellant's acceptance of the said payment amounted to accord and satisfaction, discharging all claims that had accrued till that date.

15. It is submitted that the Appellant's contention that the payment was made only to "keep the contract alive" or to recommence work is contrary to the evidence on record. PW1 (Shr. Alok Kumar Singh) of the Appellant admitted the meeting and the execution of Ex. PW1/D2, and the document itself bears signatures of the Appellant's Director, confirming acknowledgment of the balance payment and the conditions attached thereto. The Respondent emphasizes that the document recorded the understanding between the parties, including the condition that further payment would be made only upon withdrawal of the MSME notice.

16. Learned counsel further submitted that the Trial Court correctly observed that the Appellant did not withdraw the MSME notice and subsequently pursued the claim before the MSME Arbitral Tribunal, which was dismissed on maintainability grounds. The Respondent contends that this reinforces that the claims were barred as per the accord reached between the parties under Ex. PW1/D2.

17. Regarding the alleged "unbilled contract value" of Rs.28,57,728/-, it is submitted that no independent claim or evidence was led by the Appellant to substantiate entitlement to the same. It was contended that the Appellant's claim for the balance contract



2025:DHC:9230-DB



value and retention sums is misconceived, as the execution of Ex. PW1/D2 recorded a novation/settlement in terms of Section 62 of the IC Act thereby discharging all claims accrued till 26.09.2019.

18. With respect to the retention amounts and the DLP, it is submitted that these were conditional upon submission of equivalent PBG and completion of DLP obligations. The Appellant did not provide evidence showing entitlement to release of such amounts independently of the accord. The Trial Court rightly held that in absence of pleading or evidence, the Appellant's claims could not be sustained.

19. Learned counsel contended that the Appellant was also not entitled to any additional 5% of the contract value claimed on account of supply, as Ex. PW1/D2 covered the entire claims for supplies made till 26.09.2019 and was voluntarily accepted by the Appellant. Any attempt to claim beyond this amount would amount to re-opening a settled dispute, which is impermissible under the principles of accord and satisfaction, novation, and Section 63 of the IC Act.

ANALYSIS & FINDINGS

20. This Court has considered the submissions advanced by learned counsel for the parties and perused the material on record. The primary issue for consideration is whether the Trial Court erred in holding that the document dated 26.09.2019 constituted a full and final settlement or accord/novation of the claims accrued up to that date.



2025:DHC:9230-DB



21. At the outset, it is necessary to examine the document dated 26.09.2019 (Ex. PW1/D2 /Annexure-A9) in the context of the contractual relationship between the parties and the claims asserted in the present Appeal. On a plain reading, the document records the total invoiced amount, retention/security deposits, PBG obligations, TDS, amounts already paid, and a net balance of Rs.14,68,165/-. It is signed by Sh. Manish Kumar Singh, Director of the Appellant, and Sh. Rajesh Vij, Managing Director/Authorized Representative of the Respondent, which clearly evidences that the Appellant was aware of, and expressly acknowledged, the computations and payments recorded therein.

22. It is undisputed that subsequent to the 26.09.2019 meeting, the Respondent issued two cheques for Rs.7,00,000/- and Rs.7,68,165/- to the Appellant, which were encashed. PW1 of the Appellant admitted the encashment of these cheques, confirming receipt of the sum set out in Ex. PW1/D2. This fact clearly demonstrates acceptance of the balance payment as per the document. The Appellant's witness admitted the signature on Ex. PW1/D2, though attempted to downplay its effect by asserting that the settlement was not "full and final."

23. Learned counsel for the Appellant contended that the payment of Rs.14,68,165/- recorded in Ex. PW1/D2 was made merely "to keep the contract alive" and to facilitate recommencement of work, and that the condition regarding withdrawal of the MSME notice was procedural, not indicative of full and final settlement. While the Appellant's reply dated 04.01.2021 (Ex. PW1/10 /Annexure A13) described the payment in similar terms, the evidence on record does



2025:DHC:9230-DB



not support the proposition that the Appellant reserved the right to claim the remaining balance of Rs.21,84,107/- or the unbilled contractual sum of Rs.28,57,728/-. The Appellant's argument that the payment was made merely "to keep the contract alive" is therefore inconsistent with the documentary evidence.

24. On careful scrutiny, Ex. PW1/D2 contains a clear computation of amounts already paid and a net balance payable. The document stipulates that the MSME notice should be withdrawn before any further payment, which constitutes a clear condition precedent. The Appellant's failure to withdraw the MSME notice, despite receipt of the payment, indicates an inconsistency with its claimed position that the payment was "on account" only. The Trial Court rightly observed that, in law, acceptance of the balance payment as per Ex. PW1/D2, together with its encashment, constitutes accord and satisfaction in respect of claims accrued up to 26.09.2019. Further, informal statements made during cross-examination that the payment was "not intended as full and final settlement" cannot override the effect of the contemporaneously executed document, which bears signatures of both parties and clearly records the amounts due, payments made, and conditional terms.

25. The legal position regarding novation and accord and satisfaction is well settled. It would be apposite to refer to Sections 62 & 63 of the IC Act which read as under:

62. Effect of novation, rescission, and alteration of contract.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.

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2025:DHC:9230-DB



63. *Promisee may dispense with or remit performance of promisee.— Every promisee may dispense with or remit, wholly or in part, the performance of the promisee made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.*

Section 62 of the IC Act, provides that if the parties agree to substitute a new contract for an existing one, the original contract need not be performed. Section 63 of the IC Act recognizes that a promisee may accept any satisfaction he deems fit in discharge of an obligation. In the present case, Ex. PW1/D2 embodies a clear accord between the parties: the Respondent tendered payment of Rs.14,68,165/-, and the Appellant accepted it. The contemporaneous record of the meeting and the payment constitutes both accord and satisfaction and a novation of claims accrued until 26.09.2019. The Trial Court correctly applied this principle, noting that once the lesser sum was voluntarily accepted, it would be inequitable for the Appellant to claim additional amounts on the same invoices.

26. The Trial Court further relied on the judgment in ***Central Bank of India vs V. Guruviah Naidu & Sons (Leather) Pvt. Ltd.***¹, which held that once a compromise agreement is admitted and not controverted, it supersedes prior claims, and the creditor cannot insist on the balance. This principle squarely applies to the present facts, where the Appellant had accepted payment of Rs.14,68,165/- and voluntarily encashed the cheques, thereby confirming discharge of the claims accrued until 26.09.2019.

27. The Appellant further contended that the Trial Court failed to consider its entitlement to the unbilled contract value of

¹ 1991 SCC Online Mad 311



2025:DHC:9230-DB



Rs.28,57,728/-, arguing that the work under the LOI constituted a composite and indivisible contract for supply, installation, testing, and commissioning of the STP. It was submitted that having substantially performed its obligations in supplying the plant and equipment, the Appellant was prevented from completing installation due to the Respondent's failure to complete civil works, and was therefore, entitled to the balance contract value under Sections 37 and 38 of the IC Act.

28. Upon examining the record, it is evident that the Trial Court carefully considered these submissions. The Trial Court observed, and rightly so, that the Appellant had admittedly only effected the supply of material and had not undertaken or completed the installation, testing, or commissioning component of the contract. The Appellant's own witness conceded that no work at site had been performed after supply. The Appellant thus cannot claim that the contract was substantially performed when the very essence of the work, i.e., installation and commissioning, remained un-performed.

29. Further, Ex. PW1/D2, executed on 26.09.2019, was a negotiated and signed document reflecting mutual agreement on the amounts due up to that date, including clear terms on conditional releases, security deposits, PBGs, and the MSME notice. The Appellant has neither pleaded nor led evidence to demonstrate that the unbilled contract value could be separately claimed independent of the settlement recorded in Ex. PW1/D2. Mere assertion of a composite contract, without evidence of actual performance or enforceable entitlement to the unbilled sums, does not suffice to challenge the



2025:DHC:9230-DB



findings of the Trial Court.

30. Regarding retention amounts under Clause 7 of the LOI, the Trial Court correctly noted that release of the security deposit (Rs.7,04,718/-), PBG-related amount (Rs.6,09,637/-), and TDS (Rs.2,23,720/-) was subject to the completion of the DLP or submission of equivalent guarantees. The Appellant's argument that these sums became immediately payable due to the Respondent's breach is not substantiated by the evidence; the record demonstrates that installation and commissioning could not proceed because of incomplete civil works, and the conditional releases had not matured as per the contract. Consequently, the Trial Court's finding that the Appellant had no further claim beyond the balance payment recorded in Ex. PW1/D2 is supported by evidence and contemporaneous documents. There is no material on record warranting interference with the findings of the Trial Court.

31. The Appellant also contended that it was entitled to 85% of the contract value on supply, but had raised invoices only for 80%, thereby claiming the balance 5% (Rs.5,01,114/- approximately) in addition to the amounts already paid. The Trial Court considered this contention and noted that the payments recorded in Ex. PW1/D2 (Rs.14,68,165/-) included the sums due on the supply portion, and that the Appellant had voluntarily accepted the cheques issued by the Respondent. There was no evidence to suggest that the 5% shortfall was deliberately withheld or that it represented a separate entitlement independent of the agreed settlement.



2025:DHC:9230-DB



32. Insofar as the claim for damages for non-performance or delay in installation and commissioning is concerned, the Trial Court rightly noted that the Appellant did not plead a specific claim for damages in its plaint beyond the amounts covered under invoices and unbilled contract value. The evidence on record shows that the partial payment and the terms recorded in Ex. PW1/D2 were intended to maintain contractual relations and facilitate continuation of work, conditional upon site readiness and withdrawal of the MSME notice. There is no evidence to indicate that the Respondent acted in bad faith or deliberately obstructed performance to trigger a claim for damages.

33. The Trial Court also correctly observed that mere supply of equipment, without completing installation, cannot be equated with completion or substantial performance of the contract. The Appellant, having admittedly stopped work after supply and having signed Ex. PW1/D2 acknowledging receipt of Rs.14,68,165/- in settlement of accounts up to that date, cannot now reopen those settled figures. The plea that the settlement was “procedural” is an afterthought contrary to both the wording of the document and the Appellant’s conduct.

34. The principles of accord and satisfaction embodied in Section 63 of the IC Act squarely applies. Where a creditor accepts a lesser sum in satisfaction of a claim, it is inequitable to subsequently insist on the balance of the claim. The Appellant, having accepted Rs.14,68,165/- as full settlement of the accrued claims, and having admittedly performed only part of its contractual obligation, cannot now reopen the issue to claim further sums.



2025:DHC:9230-DB



35. In view of the above, no interference with the findings of the Trial Court is warranted. The Trial Court correctly concluded that the suit was not maintainable and rightly dismissed the same.

36. Accordingly, the present Appeal is dismissed, and the judgment and decree dated 03.01.2024 passed by the Trial Court are affirmed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 17, 2025

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