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

% ***Judgment reserved on: 23.04.2025***
Judgment pronounced on: 04.06.2025

\+ FAO(OS) (COMM) NO. 113/2022

KREATE ENERGY (I) PVT LTD. (FORMERLY MITTAL PROCESSOR) ...Appellant

Through: Mr. Ramesh Kumar and Mr. Ashutosh Prakash, Advs.

versus

MUNICIPAL CORPORATION OF DELHI ...Respondent

Through: Mr. Sunil Goel, Standing Counsel along with Ms. Dimple Aggarwal, Ms. Varsha and Mr. Himanshu Goel, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The instant appeal has been preferred under Section 37 of the **Arbitration and Conciliation Act, 1996**[1] against the **Judgement dated 15.03.2012**[2] in OMP No. 369/2010 titled as '*Municipal Corporation of Delhi vs. Mittal Processors Pvt. Ltd.*', passed by the

[1]A & C Act
[2]Impugned Judgment

Ld. Single Judge, whereby the **Arbitral Award dated 13.02.2010**[3] passed by the Ld. Arbitrator was set aside.

2. The dispute arises out of an **agreement dated 23.02.2005**[4] executed between the parties for supply of 15,77,535.50 meters of Polyester Viscose Blend Uniform cloth for the purpose of making uniforms for students of primary schools run by the **Municipal Corporation of Delhi**[5]/the Respondent herein**.**

3. Briefly, the necessary facts leading up to the institution of the present appeal are as follows:

4. On 23.12.2004, a Notice Inviting Tender was published in the newspapers by the Respondent/MCD.

5. The Appellant was awarded the contract for supply of 15,77,535.50 meters of polyester viscose blend uniform cloth for the purpose of making uniforms for students and agreement dated 23.02.2005 was executed.

6. Clause 8 of the Agreement reads as follows:

> "the samples drawn from the supplies shall be got tested by MCD from any lab decided by it and the final acceptance of the goods shall be only after the same is approved in lab testing."

7. An inspection committee constituted by the MCD lifted the samples randomly from the supplies of the Appellant and sent them to the Punjab Test House at Ludhiana, **Quality Marking Center**[6] at Ludhiana and QMC at Panipat, for testing the same in accordance

[3]Award
[4] Agreement
[5]MCD
[6]QMC

with IS:11248:1995 (1997 Amendment) specifications, as stipulated in the Agreement.

8. After the initial testing, out of the total supply received in five lots, 4,16,436 meters of cloth was distributed amongst the students of the MCD Schools. Payments of Rs.97,79,251/- for the first lot and Rs.1,50,32,886/- for the second lot were made to the Appellant.

9. Pursuant to a complaint, the **Central Bureau of Investigation**[7], in coordination with officials from the Vigilance Department of the MCD, conducted a raid on 13.02.2005 at the Respondent's stores. During the raid, they randomly collected samples from the Appellant's supplies and sent them for testing to the Textiles Committee at Mumbai, and the **Indian Institute of Technology**[8] at New Delhi. Subsequently, the MCD halted the distribution of the uniform cloth.

10. The CBI informed the Vigilance Department of the MCD that the reports received from IIT at New Delhi and Textiles Committee at Mumbai showed that the cloth samples did not meet the parameters as laid in IS:11248.

11. Due to the contradictions between the reports of testing at the Government laboratories conducted by the MCD and tests conducted by the IIT at Delhi, and the Textile Committee at Mumbai, the **Chief Vigilance Officer**[9] of the MCD proposed that the samples be tested at **Shri Ram Institute for Industrial Research**[10], Delhi.

[7] CBI
[8] IIT
[9] CVO
[10] SRIIR

12. The Board, constituted by the CVO along with officials of SRIIR, lifted samples at random from different lots of uniform cloth supplied to the Respondent.

13. The test report of the SRIIR dated 26.09.2005, showed that the cloth did not meet the parameters or the **Bureau of Indian Standards**'[11] specifications in terms of the Agreement.

14. The MCD decided to stop distribution of the cloth and further payments to the Appellant.

15. *Vide* letters dated 24.10.2005 and 20.12.2005, the Respondent asked the Appellant to lift the cloth supplied by it from their storerooms. However, the Appellant failed to do so.

16. *Vide* letter dated 22.12.2005, the MCD asked the Appellant to refund a sum of Rs.2,46,12,137/- that was paid to it, alleging that a fraud had been committed by the Appellant on them by supplying cloth material which did not conform to the BIS specifications.

17. The Appellant filed a Writ Petition before this Court being W.P.(C) 19043/2006, challenging the said action of the MCD.

18. The dispute was referred to arbitration by mutual consent of the parties *vide* Order dated 23.04.2007.

19. The Arbitral Award dated 13.02.2010 was passed in favour of the Appellant, holding that Clauses 8 and 10 of the Agreement were mandatory in nature. The testing of the cloth samples at the three Government-approved laboratories, *namely*, Punjab Test House at Ludhiana, QMC at Ludhiana and QMC at Panipat; and the results thereof, were binding on the parties. The Award held that since there

[11] BIS

was no provision in the Agreement for re-testing of the materials after the initial test, the reports of the re-testing could not be relied upon and were irrelevant and therefore could not be given precedence over the reports of the three Government-approved laboratories.

20. The Respondent challenged the Award in O.M.P. No.369/2010 under Section 34 of the A&C Act before the Ld. Single Judge of this Court, which was allowed *vide* judgment dated 15.03.2012, whereby the Award was set aside with cost of Rs. 30,000/- imposed upon the Appellant, with liberty to the Respondent to seek remedies as per law in regard to its counterclaims.

21. The Ld. Single Judge found that the cloth supplied by the Appellant did not meet the BIS specifications, particularly on critical parameters like yarn count, threads/DM, weight/mass, and blend composition. The lab tests by the Textiles Committee, IIT, Delhi, and SRIIR, Mumbai, showed that the cloth samples failed in key areas and additionally, the Appellant used single yarn instead of the required two-fold yarn, which was a clear violation of the BIS specifications. The Ld. Single Judge held that the Ld. Arbitrator erred by disregarding this evidence and concluding that the cloth met specifications, ignoring the requirement of even one failed parameter leading to rejection. The Ld. Single Judge also rejected the contention of the Appellant that the lack of complaints from the school children, who wore the supplied uniforms, could override the lab results.

22. Being aggrieved, the Appellant approached this Court.

SUBMISSIONS OF THE PARTIES:

23. During the course of arguments, the Ld. Counsel for the Appellant repeatedly argued only one point that the tests as mandated by the Agreement were that of IS:11248:1995 (with the latest amendment 1997), and the samples had already been tested prior to their supply at the three Government labs on that basis. The Ld. Counsel for the Appellant contended that the later tests, conducted by the three labs, *namely*, Textiles Committee at Mumbai, IIT at Delhi and SRIIR at Mumbai, were not as per contractual specifications and the Government labs had tested as per contractual specifications.

24. Ld. Counsel for the Appellant specifically referred to the report of SRIIR at Mumbai, which was as per IS:11248:1995 (reaffirmed 2001).

25. After the conclusion of the arguments, the Appellant was accorded liberty to file written submissions and the same were filed on 25.04.2025.

26. In the said written submissions, certain further arguments have been raised.

27. Ld. Counsel submitted that the Ld. Single Judge travelled beyond the scope of Section 34 of the A &C Act by re-appreciation of the finding of fact and evidence.

28. It was also submitted by the Appellant that the Government labs, which were stated to be inadequate, were in fact recommended by the **Directorate General of Supplies and Disposals**[12] *vide* letter dated 26.05.2003 and that, these Government labs were being used by

[12]DGS&D

the Respondent as well as other Government departments for testing purposes.

29. The Appellant further contended that, in interpreting Clause 8 of the Agreement, the Ld. Single Judge failed to appreciate that the phrase *'any lab'* must be read in harmony with Clause 7 of the Terms and Conditions. According to the Appellant, '*any lab*' refers specifically to a Government, BIS approved/recognized, National Accreditation Board for Testing and Calibration Laboratories accredited laboratory; and, the specifications mentioned in Clause 8 of the Agreement must be understood as those outlined in Clause 7 of the Terms and Conditions.

30. *Per contra*, the Respondent, while vehemently defending the Impugned Judgement, contends that this is a case where a fraud was detected by the CBI, which could not be overlooked by the MCD as a statutory municipal body. The MCD was therefore justified in refusing to accept the supplies and in sending the samples for further testing after the CBI reported that the samples did not meet the required specifications.

31. Ld. Counsel for the Respondent further contended that there is no prohibition in Clause 8 of the Agreement against the Respondent getting the samples re-tested, if the Government-approved labs were found not to be well-equipped or if the test report of another lab showed that the samples did not meet the BIS specifications.

32. Ld. Counsel for the Respondent also contended that the CBI note and the affidavit of Mr. Anil Kumar (Scientist "E", BIS) confirmed that the Government-approved labs lacked the full facilities

required for BIS-prescribed tests. Supporting documents, including the affidavit of CBI Inspector Manoj Kumar, a statement by Kuldeep Singh, and a confidential BIS report, further state that the Government labs used by the MCD were sub-standard, merely nominal in existence, staffed by the same underqualified personnel, and lacked standardized or validated testing methods.

33. The material supplied by the Appellant failed to meet the BIS specifications on several critical parameters. Specifically, tests by the Textile Committee at Mumbai, IIT at Delhi or SRIIR at Mumbai showed failures in *blend composition percentage*, *breaking load*, and *threads/ DM* (warp and weft), with most samples not conforming. Additionally, the Appellant used single yarn instead of the BIS-mandated double yarn, a fact supported by evidence of Witness No. 2, B.P. Trehan.

34. The Respondent contended that the Ld. Arbitrator ignored vital material evidence, which made the Award perverse and liable to be set aside on the ground of patent illegality. For this, reliance has been placed on the Judgement of the Hon'ble Supreme Court in ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust***[13]. The Respondent also relied on the judgement of this Court in ***Inox Air Products (P) Ltd. v. Air Liquide North India (P) Ltd.***[14] whereby it was held that failure of the Arbitral Tribunal to consider material evidence is not a curable defect and the recourse to Section 34(4) would not be permissible in such a situation.

[13]PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust, (2023) 15 SCC 781
[14]Inox Air Products (P) Ltd. v. Air Liquide North India (P) Ltd., 2023 SCC OnLine Del 1778

ANALYSIS

35. The relevant paragraphs of the impugned Judgment, which would bear consideration, are as follows:

> "***Interpretation of Clause 8 of the Contract***
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> 18. The central issue is whether the interpretation placed by the learned Arbitrator on the relevant clauses of the contract was correct as this in turn will determine whether the test reports of the three government laboratories could be discarded as unreliable in light of the subsequent test reports of the IIT Delhi, Textiles Committee Mumbai and the SRIIR New Delhi.
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> 19. The relevant clauses of the agreement read as under:
>
> "l. That M/s Mittal Processors Pvt. Ltd., G.T. Road, Sewah, Panipat (Haryana) will supply 15,77,535.50 meters of Uniform Cloth for Polyster Viscose Blend Suiting (Navy Blue Colour) **as per BIS Specifications No. IS:11248:1995 with latest amendment Nov.-1997** @ Rs.56.07 per meter nett. of worth Rs.8,84,52,415/-.
>
> 8. The second party will deliver the supply of material at Central Education Stores located at 22-B, Dev Nagar, Karol Bagh, New Delhi or any other prescribed building/store. The inspection of supplies will be carried out at the Central Education Store or any other prescribed building for storage or at the Factory site by an inspection committee constituted by the Department. **Samples drawn from the supplies shall be got tested by MCD from any lab decided by it and final acceptance of the goods shall be only after the same is approved in lab testing. The supply which is not found as per specification and visual examination will not be accepted and shall be marked suitably as rejected**.
>
> 9. The second party shall complete the supply of Uniform Cloth for Polyester Viscose Blend Suiting (Navy Blue Colour) within 60 days from the date of issue of supply order as per schedule prescribed by Director (Edn.) failing which the security amount including performance security shall be forfeited. If the second party fails to supply the material, the item will be purchased from the open market at the risk and cost of the second party.
>
> 10. Rejected material will be lifted by the second party at this own risk and cost within a period of two weeks from the date of receipt of communication from the department to the second party to this effect. If second party does not lift the

rejected material within two weeks, the second party will have to pay the rent of the store which would be decided by the Director (Edn.). If the second party fails to lift the rejected material within four weeks, the Director (Edn.) has the right to auction the material without any notice to the second party and the amount so realised will be deposited in Municipal Treasury. The second party will have no right to claim any compensation/damages in this regard.

11. **If the quality of the material does not conform to the relevant BIS specifications and matching with the approved sample, the Director (Edn.) reserves the right to cancel the balance quantity of the supply order** and withhold either full payment or part thereof from the claim submitted by the second party for the supplies already made.

13. The second party should complete the supply of Polyester Viscose Blend Suiting Cloth (Navy Blue Colour) as per BIS Specification No. IS:11248:1995 with latest amendment Nov.-1997 and as per the schedule given above at Sr.No.9, failing which penalty shall be imposed on the supplier for non commencement, slow performance or delay in completion of supply." (emphasis supplied)

20. In addition, there were separate terms and conditions specified for the supply of uniform cloth. Clause 24 of the said terms and conditions was in *pari materia* with Clause 8 of the contract agreement. Likewise, Clause 27 was identical to Clause 11 of the agreement.

21. The above clauses make it clear that the cloth had to conform to the BIS Specification No. IS:11248:1995 as amended in November 1997. A reading of Clause 8 of the contract shows that it was open to the MCD to get the samples tested "from any lab decided by it". While it is correct that the final acceptance of the goods was to be "only" after it was approved in lab testing, there is nothing in Clause 8 which indicates that the testing can be done only once. There is no prohibition in Clause 8 against MCD getting further samples tested if it was found that the labs to which the samples were initially sent were not equipped to conduct such testing or that the test report of another lab showed that the samples did not meet the BIS specifications. The fact that in subsequent NITs the MCD, for greater clarity, inserted a clause permitting it to have the re-testing done notwithstanding that the test results of the labs to which the samples were initially sent had approved the samples does not mean that under Clause 8 of the contract agreement in the present case, MCD was precluded from getting the samples re-tested. In the present case, MCD could have sent the samples for

further testing. The reading of Clause 8 by the learned Arbitrator as restricting the testing of the samples "only once" is plainly erroneous and not consistent with the essential requirement of the contract agreement that the cloth supplied must conform to the BIS specifications.

The unreliability of the test reports of the three government labs

22. What is significant in the present case is the raid conducted by the CBI on 13th April 2005 which resulted in the CBI getting the samples tested from the laboratories at IIT, New Delhi and the Textiles Committee, Mumbai. But for the CBI raid, it is possible that the MCD may not have realised that the samples did not in fact conform to the BIS specifications. Since this was the central aspect of the entire supply contract, once the CBI told the MCD that the samples did not meet the specifications, MCD could not have overlooked this subsequent development and continued to accept the remaining stocks. MCD was justified in not only immediately thereafter suspending the acceptance of supplies but later in sending the samples to SRIIR Delhi for a further testing.

23. Apart from a plainly erroneous interpretation of Clause 8 of the contract, the learned Arbitrator appears to have overlooked the overwhelming evidence brought on record to show that the earlier testing done in the three government laboratories was not at all acceptable from the point of view of the BIS standards. In other words they were not in conformity with the mandatory requirement of Clause 8 of lab testing prior of the stocks supplied. The 'lab testing' under Clause 8 obviously meant not just any lab testing but testing in a lab which was capable of performing tests on the samples to determine if they met the BIS specifications.

24. In the first place there was a self contained note of the CBI, which forms the part of the arbitral record, which stated that the government approved laboratories at Ludhiana and Panipat "do not have the complete facility for conducting the tests prescribed by the BIS". The report further stated as under:

> "The officials who had conducted the test were not properly qualified when compared to the experts in other established and reputed labs like IIT, Textiles Committee etc. Moreover, the said labs are not accredited to National Accreditation Board for Laboratories ('NABL') and are not approved by the BIS. Even the DGS&D has stopped using the services of these labs. Further, it is observed that the inspection committee of MCD had collected and forwarded samples of one meter each for testing which is stated to be insufficient as per the experts of BIS/IIT, who are of the opinion that samples of minimum 3 to 5 meters are required for

conducting all the prescribed tests. This point may be noted for further guidance. It is also advised that the services of NABL/BIS approved laboratories may be utilized for future requirements of testing.

The test reports received from IIT, Delhi and Textile Committee, Mumbai do reveal that the samples of the uniform cloth did not meet the requirement parameters for blend composition, shrinkage, washing fastness and pilling resistance. Therefore, they do not conform to the BIS specifications mentioned in the tender document."

25. Para 8 of the affidavit on behalf of MCD of Mr. Anil Kumar, Scientist "E", BIS stated as under:

"8. That the deponent was asked by his Department to inspect the three Govt. Laboratories from where the MCD had got the samples of cloth supplied by the aforesaid manufacturers tested. The deponent along with Dr. (Smt.) Vijay Malik, Scientist E, BIS, Hqr. Visited the three Govt. Laboratories viz. M/S Quality Marking Center, Panipat, Quality Marking Center, Ludhiana and Punjab Test House, Ludhiana. Upon visit of these Govt. Test Labs, it was found that these Laboratories do not have the complete facility for conducting the tests prescribed by the BIS."

26. There was another affidavit of Mr. Manoj Kumar, Inspector, CBI who stated in para Nos.7, 8 & 9 of his affidavit as under:

"7. During the inquiry, the Officers of M/s Quality Marking Center, Panipat, Quality Marking Center, Ludhiana and Punjab Test House, Ludhiana were examined and they admitted that their laboratories had no facility for conducting test for colour fastness and that they had conducted the said test by keeping the cloth samples in sun light. Sh. M.S. Saggu, Sr. Technical Officer, Quality Marking Center, Ludhiana also admitted that he had no expertise in textiles and he is specialized in metallurgy. Furthermore, his assistant Sh. Kuldeep Singh is also only matriculate with ITI. The statements of Sh. M.S. Saggu, Sr. Technical Officer, QMC, Ludhiana; Sh. Kuldeep Singh, Jr. Technical Assistant, QMC and PTH, Ludhiana and Sh. Sunder Lal Sehgal, Inspector, QMC, Panipat are annexed hereto as Annexure I, Annexure II and Annexure III respectively.

8. That CBI also got the above three Govt. Laboratories inspected by a team of Officers of BIS comprising of Dr. (Smt.) Vijay Malik, Scientist, E, BIS, Hqr. And Sh. Anil

Kumar, Scientist D Textiles, BIS, HQs. The aforesaid officers of the BIS vide their report dated 31/7/2006, specifically reported that the Quality Marking Center, Panipat, Quality Marking Center, Ludhiana and Punjab Test House, Ludhiana were not having complete facility for conducing the tests prescribed by the BIS and also that the officials who had conducted the tests were under qualified. The said report is annexed hereto as Annexure IV.

9. That during the enquiry, CBI examined Sh. A.K. Sehgal, the then Director, DGS&D, New Delhi who informed that DGS&D had also stopped using services of the above mentioned three Govt. labs for getting the samples of textiles tested, Dr. B.K. Behra, Associate Professor, Textile Technology, IIT, Delhi was also examined during the inquiry, who stated that about 3 meters of sample cloth is required for conducting all the tests prescribed by the BIS under IS:11248 and IS:11815. The statement of Sh. A.K. Sehgal and Dr. B.K. Behra are annexed hereto as Annexure V and Annexure VI respectively."

27. The statement made by Mr. Kuldeep Singh to the CBI showed that the Punjab Test House Ludhiana, the QMC Ludhiana and Panipat had the same officials and therefore in effect they were not three different labs. The confidential report submitted by the BIS to the CBI, which also forms part of the arbitral record, shows that during an uninformed visit paid to the QMC, Panipat by two BIS officers, it was revealed that the laboratory did not have complete testing facilities required for testing of the textiles "with a number of important equipments out of order". The interview of the testing personnel showed the scanty knowledge and use of methods that had neither been standardized nor validated as per Indian Standards. Likewise, a separate report was given of the assessment of the testing facilities at the QMC, Ludhiana. *Inter alia*, it was observed:

"In this laboratory, traceability of the testing personnel as to who has carried out the testing was completely missing as only one test record register was available for all the three technical staff in textile section and no one has authenticated the test record register for owning the responsibility of testing. There was no record of reference standards require for testing nor was the staff competent to carry out complete testing as per standard procedures.

A visit to QMC, Ludhiana which is housed in an old fort is a deserted place where one of the laboratory attendant named

Shri Parveen Kumar was available. He had no work and was not even having a list of equipment lying in this laboratory unattended."

28. The cross-examination of the above witnesses did little to discredit their statements. It is indeed surprising that the learned Arbitrator chose to overlook the above overwhelming evidence and hold that MCD was estopped from questioning the veracity of the test reports of the three government laboratories. This is not a question of the Court re-appreciating the evidence but of the arbitrator ignoring material evidence on record and consequently coming to a patently illegal conclusion.

The cloth failed to meet BIS Specifications

29. Turning to the BIS standards, it is seen that the permissible variations are specified in Clauses 3 & 4 which reads as under:

"3. Manufacture

3.1 Yarn
The yarn used in the manufacture of the fabric shall be made from uniform and intimate blend of 67 percent polyester with 33 percent Cotton or Viscose. Two folds of evenly spun yarn reasonably free from neps and other spinning defects shall be used for both warp and weft.

3.2 Cloth
The fabric shall be uniformly woven in plain weave and the selvedges shall be firm and straight. The fabric shall 'Heat set' and fully shrunk. Blend composition of the fabric shall conform to the requirements given in Table 1.

4. Requirements

4.1 The cloth shall conform to the requirements specified in Table 1.

4.2 The number of major flaws (defects) in the fabric shall not exceed 10 per 100 meters length. A list of major flaws (defects) is given in Annex. B (see IS:4125:1987). The allowance for providing extra length of cloth in lieu of flaws (defects) not exceeding the permissible limits may be as agreed to between the buyer and the seller."

30. The above clauses have to be read with Table 1 which *inter alia* sets out the parameters of each characteristic. What is significant is the requirement that the yarn has to be of two folds. Emphasis is placed on Weft Count, Threads/DM and Weight/Mass. It is

Annexure B that lists out the 'major flaws'. However, it is not as if the cloth in question does not have to conform to Table 1. Further, the BIS specifications do not say that if a cloth fails only one parameter, it can still be passed. On the contrary it appears that where even one parameter fails the sample may be declared as having failed the test. The 'seriousness' of a flaw is with reference to the degree of importance attached to a parameter that has failed. In the context of the present case, what appears to have weighed with the three labs to which the samples were subsequently sent are the performance against parameters like threads/DM and weight/mass.

31. Much emphasis has been made of the apparent contradictions in the test reports of the IIT Delhi, the Textiles Committee Mumbai and the SRIIR. A tabulated statement of the three reports has been placed before this Court. It was submitted by Mr. Markanda that there were variations in these reports even while in respect of blend composition, shrinkage, washing fastness and pilling resistance the samples had passed by and large. However, if one looked at the blend composition percentage in the test report of IIT, Delhi it is seen that the test failed in 7 samples. It failed in 4 samples when tested by the Textiles Committee, Mumbai. It failed in two samples when tested in SRIIR. The breaking load failed in one sample in the Textiles Committee, Mumbai. The Threads/ DM i.e. Warp and Weft passed in only one sample in IIT, Delhi, only in 2 samples in the Textiles Committee, Mumbai and entirely failed in the SRIIR.

32. A major flaw for which there was no satisfactory answer was that the Respondent supplied cloth of single yarn whereas the BIS specification clearly required two folds of evenly spun yarn to be used for both warp and weft meaning thereby that double yarn had to be used. Witness No.2, Mr. B.P. Trehan in response to a specific question answered that "the specification referred as 13 to 14 in para 7(d) of my affidavit with regard to count of yarn, warp and weft relates to single yarn". The yarn count in all the three test reports showed that the count range and the Threads per DM were not in conformity with the BIS parameters. The learned Arbitrator appears not to have discussed the above evidence at all and instead proceeded to hold that the three reports could not be relied upon. What was missed in the said discussion was that even if some of the samples failed in any of the critical parameters, even in one of the labs, that was sufficient reason for entire lot to be rejected. The fact that CBI filed a closure report in the criminal case could not by itself have concluded the issue and in any event could not have wiped out the fact that the samples in fact failed crucial BIS parameters. Again, the failure of school children, who were being supplied free uniforms, to lodge complaints about the quality of cloth could hardly be a reason for the MCD to overlook the lab test reports which

plainly showed that the cloth supplied did not meet BIS specifications.

33. The learned Arbitrator also appears to have erred in holding that MCD had failed to inform the Respondent about the rejection of the stocks. The fact that by three letters dated 24th October, 20th December and 22nd December 2005, the MCD had asked the Respondent to lift the stocks, obviously showed that the supplies had been rejected.

34. The impugned Award consequently proceeded to erroneously allow the individual claims of the Respondent, when in fact it was not entitled to any of them. Those claims were premised on the Respondent having supplied cloth in conformity with BIS specifications. It was also premised on an erroneous interpretation of Clause 8 of the contract. These are absolutely glaring defects which vitiate the entire Award. This in turn led the learned Arbitrator to allow the claims of the Respondent which clearly were inadmissible. Likewise, the learned Arbitrator erred in rejecting the counter claims of the MCD.

Conclusion

35. For the aforementioned reasons, the Court is satisfied that the impugned Award dated 13th February 2010 to the extent it allows the claims of the Respondent and rejects the counter claims of MCD suffers from a patent illegality and cannot be sustained in law. It is accordingly set aside. As regards to the counter claims of the MCD, given the scope of the consequential order that can be passed under Section 34 of the Act, it is not possible for this Court to grant any other relief. It is open to the MCD to seek appropriate remedies in relation thereto in accordance with law. The petition is allowed in the above terms with costs of Rs.30,000/- which will be paid by the Respondent to the MCD within four weeks from today."

(*Emphasis supplied*)

36. The Ld. Arbitrator had held that the subsequent tests which were carried out were not as per the terms of the Agreement and the said finding was based on the interpretation of Clause 8 of the Agreement.

37. We are, however, in agreement with the Ld. Single Judge insofar as he holds that Clause 8 of the Agreement cannot be read in a

restricted manner, such as to provide for testing only on one occasion, and that is, before the supplies were effected. If such an interpretation were to be given, Clause 11 of the Agreement would be rendered otiose. Clause 11 reads as follows:

> "11. If the quality of the material does not conform to the relevant BIS specifications and matching with the approved sample, the Director (Edn.) reserves the right to cancel the balance quantity of the supply order and withhold either full payment or part thereof from the claim submitted by the second party for the supplies already made."

38. A reading of said clause makes it evident that the Respondent could subject the material to further tests to ensure that the quality of the material supplied conformed to the relevant BIS specifications and matched with the approved standards, failing which, it was within its right to cancel the balance quantity of the supply order and withhold either the full or part payment of the supplies already made. The wording of the said Clause makes it apparent that the testing could be done even after supplies were received and based on that, pending/ further supplies could be cancelled. A conjoint reading of Clauses 8 and 11 of the Agreement would also suggest that the testing could have been carried out "*from any lab decided by it*".

39. The primary thrust of the Appellant during the oral submissions, with respect to the relevant BIS standards, seems to be hinged upon the aspect of the said specifications conforming to the 1997 Amendment.

40. While the report of the SRIIR makes a reference to the BIS standard as reaffirmed in 2001, the Appellant has neither in its pleadings nor in its submissions, written or oral, stated that the

detailed parameters as set out in each of the reports, whether by Textile Committee at Mumbai, IIT at Delhi or SRIIR at Mumbai, are not those which conformed to the 1997 Amendment.

41. It would appear that unnecessary credence is being given to the phrase "*BIS specifications (with latest amendment 1997)*", without in any manner objecting to the detailed parameters, as have been discussed in each of the reports.

42. The fact that the Appellant chooses not to assail or even advert to the said detailed parameters as set out in each of the test reports, leads us to believe that, there is, in fact, no difference in the detailed parameters as contained either in 1997 version or in the subsequent versions. In any event, the alleged discrepancy, if at all, with respect to non-adherence to the 1997 Amendment specification, is found only in the report of the SRIIR at Mumbai. The reports of the IIT at Delhi and the Textiles Committee at Mumbai remain uncontroverted in this respect.

43. The entire approach appears rather hyper-technical. There is only rote re-iteration of "*BIS specifications (with latest amendment 1997)*".

44. We are of the firm opinion that the Ld. Single Judge has rightly concluded that the original test results from the three Government labs, *namely*, Punjab Test House at Ludhiana, QMC at Ludhiana and QMC at Panipat, are completely unreliable for the reasons as stated in the impugned Judgment.

45. The Ld. Arbitrator has failed to appreciate that the material supplied was for the purpose of uniforms that were to be tailored for

students of the various Government schools, which were being run by the Respondent. The material supplied, as rightly held by the Ld. Single Judge, failed to comply with the most basic requirement, which was for the supplied cloth to conform to the requirement of two-folds of evenly spun yarn, whereas what was actually supplied was cloth of single yarn.

46. We are also of the view that failing even a single one of the parameters as laid out in the BIS specifications would be reason sufficient for the purpose of rejecting the supplies.

47. The contention of the Appellant to the effect that the Ld. Single Judge travelled beyond the scope of Section 34 of the A&C Act and re-appreciated evidence, is not tenable since, as already mentioned, the goods supplied were for the purpose of uniform for students. This also attains significance due to the fact that the children, who study in these MCD run Government schools, would be predominantly from a salaried class, with limited budgets and without the wherewithal to afford to buy more than a certain number of sets of uniform and resultantly, material that is supplied to the students for the purpose of school uniforms would have to scrupulously conform to the relevant BIS specifications.

48. We are also of the opinion that there is no re-appreciation of the evidence as, in fact, the Ld. Arbitrator in its interpretation of Clause 8 of the Agreement, has held that no further test could have been conducted on the material supplied. The interpretation was clearly not in consonance with the terms of the Agreement, and therefore, liable to be interfered with by the Ld. Single Judge in his wisdom.

49. For the aforementioned reasons, this Court is of the view that there is no infirmity in the impugned Judgment warranting interference and accordingly, the appeal is rejected.

50. The appeal, along with pending application(s), if any, stands disposed of.

51. No order as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

JUNE 04, 2025/sm/er