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

Date of decision: 13th JANUARY, 2026

IN THE MATTER OF:

\+ **O.M.P. (COMM) 458/2023**

INDIAN OIL CORPORATION LTD .....Petitioner

Through: Mr. Abhinav Vashisht, Sr. Adv., Mr. Sakya Singha Chaudhary, Ms. Astha Sharma, Ms. Astha Sehgal and Mr. Aditya Pratap Singh, Advs.

versus

SUZLON ENERGY LTD .....Respondent

Through: Mr. Shashank Garg, Sr. Adv., Mr Aman Gupta, Mr Anup Kashyap, Ms. Nishtha Jain and Mr. Divyam Kandhari, Advs.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

I.A. 8971/2024

1. The present application under Order VI Rule 17 of Code of Civil Procedure, 1908 has been filed on behalf of the Petitioner seeking amendment of the prayer clauses of the present Petition being O.M.P. (COMM) 458/2023 filed under Section 34 of the Arbitration and Conciliation Act, 1996 **["A&C Act"]** challenging the Award dated 25.02.2023 [**'Impugned Award'**], as corrected vide Order dated 10.07.2023, passed by the learned Arbitral Tribunal.

2. The prayers, as originally sought by the Petitioner in the Petition read as under:

> *"a. Set aside partially the impugned Award dated 25.02.2023 passed by the Ld. Arbitral Tribunal*

comprising of Justice Madan B. Lokur (Retd.), Justice Badar Durrez Ahmed (Retd.), and Justice Pradeep Nandrajog (Retd.) in the matter titled as 'Suzlon Energy Limited v. Indian Oil Corporation Limited' to the limited extent of Issue no. 2, read with Issue no. 7, Issue no. 5, and the contents of para 135 of the Award as challenged by way of this Petition; and

b. pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. By way of the present application filed under Order VI Rule 17 of the CPC, the Petitioner seeks the following amendment to the prayer clauses:

"a. Set aside partially the impugned Award dated 25.02.2023 passed by the Ld. Arbitral Tribunal comprising of Justice Madan B. Lokur (Retd.), Justice Badar Durrez Ahmed (Retd.), and Justice Pradeep Nandrajog (Retd.) in the matter titled as 'Suzlon Energy Limited v. Indian Oil Corporation Limited' to the limited extent of Issue No. 1, Issue No. 2, read with Issue No. 7, Issue No. 5 and the contents of para 135 of the Award as challenged by way of this Petition; and

b. pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

4. A perusal of the prayers as originally sought by the Petitioner indicates that the Petitioner had limited its challenge only to the determination of Issue no. 2, read with Issue no. 7, Issue no. 5, and the contents of para 135 of the Impugned Award. Now, by way of the amendment, the Petitioner also seeks to challenge Issue no.1.

5. To appreciate the rival contentions of the parties, it is necessary to extract the issues framed as points of determination by the learned Arbitral

Tribunal *vide* Order dated 05.05.2021, which reads as under:

> *"1. Whether the Claimant is entitled to payment ofRs.8,43,45,000/- on account of pending milestone payments?*
>
> *2. Whether the Claimant is entitled to payment of Rs.31,28,47,606/- on account of refund of security deposit/release of bank guarantees?*
>
> *3. Whether the Claimant is entitled to payment of Rs.9,46,78,686/-(that is, Rs.4,63,09,069/- and Rs.4,83,69,617/- with respect to Kaladungar and Bhopalgarh, respectively) on account of services rendered during the paid Operation & Maintenance Services (OMS) period (including statutory charges and scheduling and forecasting charges)?*
>
> *4. Whether the Claimant is entitled to payment of Rs.1,21,32,894/- on account of loss of interest at 11.25% due to delay in release of the advance payment for the project for Kaladungar and Bhopalgarh?*
>
> *5. Whether the Claimant is entitled to payment ofRs.1,93,04,549/- on account of loss of interest at 11.25% due to delay in releasing the milestone payments till 31st October, 2020?*
>
> *6. Whether the Claimant is entitled to payment of Rs.80,58,131/- on account of loss of interest at 11.25% due to delay in the OMS payment till 31st October, 2020?*
>
> *7. Whether the Claimant is entitled to payment of Rs. 1,10,83,990/- on account of costs incurred for Performance Bank Guarantee extensions from time to time?*
>
> *8. Whether the Respondent is entitled to payment of Rs.3,44,09,00,000/- on account of its claim towards the*

Power Purchase Agreement (PPA) till 31st March, 2019 thereby defaulting on the deviation request commitment of meeting the Project IRR (Internal Rate of Return)?

9. Whether the Respondent is entitled to payment of Rs.64,37,439.26/- (that is, Rs.39,633.84/- for Bhopalgarh and Rs.63,97,805.42/- for Kaladungar) on account of default in the operational parameters of the Project, specifically, of compensation recovery towards reactive power drawal and internal transmission losses towards price discount recoveries on account of O&M performance, in line with Clause 3.7 of the Contract?

10. Whether or not the Claimant had any legal obligation to ensure the extension of the PPA with Jodhpur Vidyut Vitran Nigam Limited?

11. Whether the Deviation Request Form dated 21st July, 2016 as unilaterally signed/ approved by the Respondent, with additional conditions, is binding on Claimant?

12. Whether the Claimant is required to ensure the continued running and sale of power from the Project for earning the Internal Rate of Return (IRR) committed by it in the Deviation Request Form dated 21st July, 2016 based on which the Respondent approved and agreed to proceed under the APPC+REC (Average Power Procurement Cost + Renewable Energy Certificate) route?

13. Whether the representation made by the Claimant to the Respondent about the achievable IRR under the APPC+REC mode and the conditions for approval of deviation, is binding and enforceable?

14. Interest

15. Relief.

16. Costs."

6. As far as the determination of Issue No.1 is concerned, the learned Arbitral Tribunal has directed the Petitioner to pay a sum of Rs.8,43,45,000.00/- to the Respondent. The Summary of claims allowed by the learned Arbitral Tribunal is being reproduced as under:

3. The various Claims and Counter Claims as allowed by the majority, vide Award dated 25.02.2023 are as follows:

CLAIMS ALLOWED		
1.	Claim No. 1 for Pending Outstanding milestone payments	INR. 8,43,45,000.00
2.	Claim No. 2: Release of four (4) Performance Bank Guarantees for a total sum of Rs. 31,28,47,606/-	Allowed
3.	Claim No. 3: Towards Claim for unpaid O&M Charges for the Operation & Maintenance Services rendered during the period	INR. 9,46,78,686.00 (INR. 4,63,09,069.00 for Kaladungar and INR. 4,83,69,617.00 for Bhopalgarh)
4.	Claim No. 4: Simple interest @11.25% P.A. for delay in making milestone payments	Allowed
5.	Claim No. 7: Reimbursement of updated amount towards costs/bank charges for keeping the Bank Guarantees alive beyond the dates on which they ought to be released by the Respondent	INR. 2,27,33,648.00

4. The Claims/Counter Claims allowed by me in the Minority Award are as follows:

CLAIMS ALLOWED		
1.	Claim No. 1 for Pending Outstanding milestone payments	INR. 8,43,45,000.00
2.	Claim No. 2: Release of four (4) Performance Bank Guarantees for a total sum of Rs. 31,28,47,606/-	Allowed
3.	Claim No. 3: Towards Claim for unpaid O&M Charges for the Operation & Maintenance Services rendered during the period	INR. 9,46,78,686.00 (INR. 4,63,09,069.00 for Kaladungar and INR. 4,83,69,617.00 for Bhopalgarh)
4.	Claim No. 4: Simple interest @11.25% P.A. for delay in making milestone payments	Allowed
5.	Claim No. 5: Simple interest @11.25% P.A.	Allowed
	for delay in making O&M Payments	
6.	Claim No. 7: Reimbursement of updated amount towards costs/bank charges for keeping the Bank Guarantees alive beyond the dates on which they ought to be released by the Respondent	INR. 2,27,33,648.00
7.	Claim of Cost of Arbitration	Allowed a sum of INR. 2,87,16,634.00

7. The Impugned Award passed by the learned Arbitral Tribunal has been challenged by the Petitioner under Section 34 of the A&C Act,

however, challenge is limited only to the determination of Issue no. 2, read with Issue No. 7, Issue No. 5, and the contents of Paragraph 135 of the Impugned Award. The Petitioner has not challenged the determination of Issue No.1 in the Petition, as originally framed.

8. Learned Senior Counsel appearing for the Petitioner states that failure to challenge the Issue No.1 was merely due to an inadvertence. He further states that Petitioner under Clauses 8.14.1.0 and 10.20.0.0 of the General Conditions of Contract, the Petitioner is entitled to deduct monies from any dues of the Respondent for the satisfaction of its claims. He states that necessary facts and grounds for challenging the determination of Issue No.1 has been stated in the Petition, however, inadvertently the prayer to set aside the same has been omitted from the prayer clause.

9. Learned Senior Counsel for the Petitioner lays specific emphasis on the Order dated 23.02.2025 passed by this Court, wherein at the time of issuing notice this Court has recorded that the challenge in the Petition is specifically against the findings of the learned Arbitral Tribunal on Claim Nos. 1, 2, 3, 5 and 7 which, therefore, indicates that the body of the petition does contain a challenge to Issue no.1. He also draws attention of this Court to various portions of the pleadings and grounds wherein Issue no.1 is challenged by the Petitioner.

10. *Per contra*, learned Senior Counsel appearing for the Respondent draws attention of this Court to Section 34(3) of the A&C Act to submit that the time period to challenge an award is circumscribed and an award can be challenged within 90 days from the date on which the party challenging the award receives the Arbitral Award or within 90 days from the date of the Order disposing of an application filed under Section 33 of the A&C Act. A

further grace period of 30 days is granted by way of the proviso to Section 34(3) if the Court is satisfied with the reasons as to why the award could not be challenged within 90 days. Even then, the Court can condone the delay only up to the maximum of 30 days. He, therefore, states that the present Application is an attempt to revive the challenge to Issue No.1, which is not maintainable since maximum period to challenge the said issue has come to an end and the same is now time barred.

11. Heard learned Senior Counsels appearing for the Parties and perused the material on record.

12. The law regarding amendment of pleadings is now well settled. The Apex Court, way back, in L.J. Leach & Co. Ltd vs. Jardine Skinner & Co., **AIR 1957 SC 357**, held that Courts must be lenient in considering an application of amendment and the only exception being law of limitation. Paragraph No.16 of the said Judgment reads as under:

> ***"16.*** *It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice. In Charan Das v. Amir Khan [(1920) 47 IA 255] the Privy Council observed:*
>
> > *"That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are out-weighed by the special circumstances of the case."*

Vide also Kisan Das v. Rachappa [(1909) ILR 33 Bombay 644].”

13. Following the aforesaid Judgment of L.J. Leach & Co. Ltd (supra), the Apex Court in T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board, **(2004) 3 SCC 392**, has observed as under:

> ***“2.*** *Shri T.L.V. Iyer, learned Senior Counsel appearing for the appellant, urged that the view taken by the High Court in rejecting the amendment of the appellant was erroneous. The law as regards permitting amendment to the plaint, is well settled. In L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357 : 1957 SCR 438] it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it.*
>
> ***3.*** *It is not disputed that the appellate court has a coextensive power of the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law.”*

14. After considering the law on the aforesaid point, the Apex Court in LIC v. Sanjeev Builders (P) Ltd., **(2022) 16 SCC 1** has observed as under:

> ***“71****. Our final conclusions may be summed up thus:*
>
> ***71.1.*** *Order 2 Rule 2CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2*

Rule 2CPC is, thus, misconceived and hence negatived.

71.2. *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17CPC.*

71.3*. The prayer for amendment is to be allowed:*

71.3.1*. If the amendment is required for effective and proper adjudication of the controversy between the parties.*

71.3.2. *To avoid multiplicity of proceedings, provided*

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and

(c) ***the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).***

71.4. *A prayer for amendment is generally required to be allowed unless:*

71.4.1*.* ***By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.***

71.4.2*. The amendment changes the nature of the suit.*

***71.4.3**. The prayer for amendment is mala fide, or*

***71.4.4.** By the amendment, the other side loses a valid defence.*

***71.5**. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

***71.6**. Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

***71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation**.*

***71.8**. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

***71.9.** Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

***71.10.** Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already*

pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. *Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi [Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897] .)"*

(emphasis supplied)

15. The law, therefore, that has now been crystallized by the Apex Court is that if the amendment has the effect of reviving a claim which is barred by limitation, the same cannot be permitted. Moreover, the power of amendment cannot be exercised when it has the effect to take away the right of the contesting party, as a legal right is accrued in favour of the contesting party other side by lapse of time.

16. Learned Senior Counsel for the Petitioner has laid emphasis on the Judgment passed by the Apex Court in State of Maharashtra v. Hindustan Construction Co. Ltd., **(2010) 4 SCC 518,** wherein the Apex Court was considering a question of amendment in a petition under Section 34 of the A&C Act. However, in the opinion of this Court, the said Judgment would not apply to the facts of the present case, as the amendment which was

sought to be made in that case was only to the grounds and not the prayers, by introducing a challenge to an issue which had not been originally challenged. In the present case, however, the Petitioner seeks to amend the prayer clause by introducing a challenge to that portion of the Impugned Award by which the Petitioner has been directed to pay a sum of Rs.8,43,45,000.00/- to the Respondent under Issue no.1 which was not challenged in the petition originally filed.

17. Section 34(3) of the A&C Act states the period within which a challenge to the Award can be made and the same is being reproduced as under:

> ***"34(3)*** *An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:*
>
> *Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."*

18. Section 36 of the A&C Act reads as under:

> ***"36. Enforcement.—****(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*
>
> *(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the*

filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

Provided further that where the Court is satisfied that a Prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016).”

19. The law regarding the narrow confines within which the Court may condone delay under Section 34(3) has been laid down by the Apex Court in H.P. v. Himachal Techno Engineers, **(2010) 12 SCC 210**, wherein it has held as under:-

> ***"5.*** *Having regard to the proviso to Section 34(3) of the Act, the provisions of Section 5 of the Limitation Act, 1963 will not apply in regard to petitions under Section 34 of the Act. While Section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of Section 34 of the Act places a limit on the period of condonable delay by using the words "may entertain the application within a further period of thirty days, but not thereafter". Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned.*
>
> ***Re : Question (ii)***
>
> ***14.*** *The High Court has held that "three months" mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A "month" does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty-one days. If the month is February, the period will be twenty-nine days or twenty-eight days depending upon whether it is a leap year or not.*
>
> ***15.*** *Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-*

> *section (3) uses the words "three months" while prescribing the period of limitation and the proviso uses the words "thirty days" while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as "three months" and "one month" respectively or by describing the periods as "ninety days" and "thirty days" respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month."*

20. In addition, the Apex Court in P. Radha Bai v. P. Ashok Kumar, **(2019) 13 SCC 445**, has held that beyond the period of 90 days and a further period of 30 days, an award cannot be challenged and therefore the same can be enforced under Section 36 of the A&C Act. Paragraph No.32.5 of the said Judgment reads as under:

> ***"32.5.*** *Once the time-limit or extended time-limit for challenging the arbitral award expires, the period for enforcing the award under Section 36 of the Arbitration Act commences. This is evident from the phrase "where the time for making an application to set aside the arbitral award under Section 34 has expired". ["**36. Enforcement**.—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."(emphasis supplied)] There is an integral nexus between the period prescribed under Section 34(3) to challenge the award and the commencement of the enforcement period under Section 36 to execute the award."*

21. What flows from above is that if the amendment as sought by the Petitioner is allowed, it would mean that the challenge to the findings under Issue no.1 existed from the date of the original filing of the Petition itself. Moreover, allowing this amendment would deprive the Respondent from filing an execution petition regarding Issue no.1 as the challenge to Rs.8,43,45,000/- under Issue No.1 is now barred by limitation and as such, the award is capable of being executed. As stated earlier, an amendment which has the effect of depriving the right of another party which has come into existence after the period of limitation has expired, cannot be permitted under Order VI Rule 17 of CPC.

22. In view of the above, this Court is not inclined to permit the amendment as sought by the Petitioner by way of the present application.

23. Resultantly, the application is dismissed.

O.M.P. (COMM) 458/2023

24. Subject to the orders of Hon'ble the Judge In-charge, list the present matter on 27.01.2026 along with O.M.P. (COMM) 491/2023 & O.M.P. (I) (COMM) 190/2023 before the Roster Bench.

SUBRAMONIUM PRASAD, J

JANUARY 13, 2026
S. Zakir