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

Date of decision: 3rd November 2025

\+ **FAO (COMM) 296/2025 & CM APPL. 66622/2025, CM APPL. 66623/2025, CM APPL. 66624/2025**

MUNICIPAL CORPORATION OF DELHI .....Appellant

Through: Ms. Tajinder Virdi, Standing Counsel for MCD

versus

P.R. THAREJA PROP GOLDY CONSTRUCTIONS COMPANY AND ANR .....Respondents

Through: Mr. Moni Cinmoy, Adv.

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT (ORAL)

ANISH DAYAL, J.

1. This appeal under s*ection 37* of Arbitration and Conciliation Act, 1996 (‘***A&C Act’***) assails the judgment dated 19th July 2025 passed by the District Judge-Commercial Courts, Central District, Tis Hazari Courts, Delhi in ***OMP (Comm) No.120/2023***, whereby petition under *section 34* of the A&C Act was dismissed. Objections under *section 34* of A&C Act were filed against impugned arbitral award dated 18th October 2022 passed in ***Arbitration Case No.13883/I-Org.-II/DHC/D-I.***

FACTUAL MATRIX

2. Appellant, Municipal Corporation of Delhi (‘***MCD’***), had awarded work order for improvement and resurfacing of *Rama Road in Karol Bagh Zone* to respondent no.1 (claimant Company) *vide* Work Order 31st May 2005.

3. The work was scheduled to commence on 10th June 2005 and the stipulated period for completion of the work was six months, i.e. by 09th December 2005. Admittedly, the work was completed on 30th November 2006, thereby registering a delay of 11 months and 21 days from the proposed day of completion.

4. Disputes arose between the parties regarding payment of the work done by respondent no.1/claimant, and this Court appointed a Sole Arbitrator *vide* order dated 21st February 2019 in ***OMP No.819/2012***. Arbitrator passed the award on 18th October 2022, directing appellant to pay an amount of approximately *Rs.15 Lakhs* with interest @ *15%* p.a. and costs of *Rs. 4,50,000/-*.

5. *Ms. Tajinder Virdi*, counsel appearing for MCD/appellant, assails the award as well as the dismissal of her objections under section 34 of the A&C Act on several grounds. *Firstly*, it is contended that the award contains incorrect findings regarding the non-production of the measurement book; *secondly*, there was misapplication of *Clause 10CC* of the General Conditions of Contract for MCD (‘***General Conditions’***) to grant escalation charges; *thirdly*, there was wrongful acceptance of unproved claims relating to idle labour; *fourthly*, the issue of limitation was incorrectly decided, the claim itself being barred by limitation; and *lastly*, despite a claim of *Rs.2,00,000/-* towards costs, the Arbitrator

awarded *Rs.4,50,000/-*.

6. The claims which were awarded by the Arbitrator in favour of respondent No.1/claimant are as under:

Claim No.	Reliefs
Claim no. 1	An amount of Rs. 5,36,606/- +Rs.40,000/- = 5,73,606/- towards the works done by the claimant/respondent no. 1
Claim no. 2	Rs.1,70,400/- towards the idle staff/establishment, tools, plant, etc.
Claim no. 3	Loss of Profit- Not pressed by the Claimant.
Claim no. 4	Claim in terms of clause 10CC of the 'Agreement'- Rs. 2,78,468/-.
Claim No. 5	Security deposit- Rs. 56,218/- along with interest @15% p.a. from the date it was paid till its realization.
Claim No. 6	Claim for work for extra items/deviated items. Rs. 5,00,000/- along with interest @15% p.a. w.e.f. 19.07.2006 awarded in favour of the claimant.
Claims no. 7 & 8	Claim of interest on delayed payment on running bills and refund of earnest money/security deposit, as well as interest on pre-suit, pendente lite and future interest. Awarded interest @ 15% p.a. till realization of the entire award amount.
Claim no. 9	Costs of arbitration. Awarded a sum of Rs. 4,50,000/- towards cost of arbitration (against the claim of Rs. 2,00,000/- by the claimant).

7. It is noted that *Mr. Sahil Aeron*, counsel for appellant in *Section 34* proceedings, restricted his objection under *section 34* of A&C Act to *Claim Nos.1,2,4* and *6* only, as recorded in *paragraph no.22* of the impugned judgment.

8. As regards *Claim no.1*, the Arbitrator held that the appellant had not produced the measurement book, which could have conclusively shown the quantities increased (extra items of work done by respondent no.1/claimant). An adverse inference was therefore drawn against appellant and entire *9%* of the tender cost was considered. The argument raised before the Court in proceedings under s*ection 34* of A&C Act was that this adverse inference for non-production of measurement book was a mistake.

9. The District Judge held that Arbitrator's observation that measurement book had not been produced may be a mistake, but it does not go to the root of the matter necessitating interference under *section 34* of A&C Act. Construction cost of *9%* was enhanced by MCD *vide* letter *Ex. C3*, and the Arbitrator had merely added the enhanced amount to the withheld amount, which cannot be faulted. The said amount was therefore added to the withheld amount, and no error could be ascribed to that reasoning.

10. As regards C*laim no.2*, the argument raised by counsel for appellant was that there was no evidence before the Arbitrator to allow the claim, since not a single document had been produced to suggest that any labourer, workman, or staff had been engaged by the respondent no.1/claimant, or that any tool, plant, or article had been left idle.

11. The District Judge, after perusing the testimonies of witnesses, noted that they have categorically stated about engagement of labour, and the same was sustained in the cross-examination by MCD. Cross-examination of **PW1** and **PW2** categorically confirmed payment of salary and engagement of labour. There was no contrary suggestion to either of them in the cross-examination.

12. The District Judge accepted the submission made by respondent no.1/claimant that the case of respondent no.1/claimant is unrebutted, and therefore, Arbitrator's award of only *20%* of the claimed amount, and not the full claim, cannot be faulted.

13. With regard to *Claim no.4*, the submission raised before the District Judge was that *Clause 10CC of* General Conditions was applicable only to work orders/agreements where work was supposed to be completed in *more than 18 months*. Since, in the present case, the work was to be completed a stipulated period of six months, *Clause 10CC* would not be applicable.

14. The District Judge noted that there could be no general presumption that in all work contracts, escalation under *Clause 10CC* would be applicable only if the duration of the contract is more than 18 months. The applicability of the clause would depend on the specific terms and conditions of the contract. The findings of the Arbitrator were not found to be incorrect or untenable. Further, the District Judge noted that the work was completed well after 18 months, and the Arbitrator had held that the delay was caused by acts of omission on the part of the MCD. MCD could not delay the work and then claim that escalation cost would not be available to the contractor.

15. As regards *Claim no.6*, the District Judge did not find any perversity in the findings of the Arbitrator, who noted that there was waterlogging at the site, which was admitted by the MCD. The District Judge noted that it is on record that respondent no.1/claimant had been directed to do additional work, beyond the contractual amount, and that the appellant had, on its own accord, enhanced the contractual value by *9%*. The District Judge noted that the appeal for extra work and compensation for the same was therefore rightly considered by the Arbitrator.

ANALYSIS

Issue of limitation

16. On the issue of limitation, respondent no.1/claimant's counsel pointed to order dated 15th September 2011 in ***Arbitration Petition 283/2010,*** where a petition under *section 11* of the A&C Act for appointment of a sole arbitrator had been allowed by this Court. This Court while considering the *section 11* application, was faced with the plea that claims were barred by limitation, and held as under:

> "*The existence of the contract and the arbitration agreement is not disputed. The only submission is that the claims are barred by limitation. I do not find any merit in this submission The petitioner has filed an additional affidavit which shows that measurements were recorded in measurement book bearing No. 158 at pages 9 to 48 on 21.04.2008. Moreover, if the works were completed in 2007, the right to receive the final payment would arise only thereafter Within two*

> *years after that, the petitioner has invoked the arbitration agreement. The proceedings stood commenced in the year 2009 itself. This petition has been preferred with three years of the date of the invocation of the arbitration agreement. Consequently, this petition is allowed*."
>
> (emphasis added)

17. Considering that this order under *section 11* of the A&C Act was not challenged in any manner, this finding by the Single Judge of this Court would stand crystallised and cannot be questioned at this stage.

18. The Arbitrator had addressed the issue of limitation as *Issue no.3* and agreed with the submission of the respondent no.1/claimant's counsel that the last part-payment made by the appellant was in the year 2010. Further, the final bill had not been prepared by the appellant as per C*lause 25* of the agreement. Moreover, it was admitted that money had been withheld by appellant. Therefore, the period of limitation would start only when the final bill was issued by appellant. Since the last part-payment was made in 2010 only, limitation would start from that year itself. As the proceedings commenced in 2009 and the work had been completed in 2007, the plea that the claim was barred by limitation was not tenable.

Claim No.1

19. While dealing with *Claim no.1*, the Arbitrator noted that the appellant's second running bill was for *Rs.6,26,107/-* out of which the respondent no.1/claimant had been paid *Rs. 5,86,107.04*, and a sum of *Rs. 40,000/-* had been withheld. Respondent no.1/claimant claimed a

sum of *Rs.10 lakhs,* including the amount unauthorizedly withheld from the bills. The contractual cost was *Rs.59,28,964/-.* Aside from the issue of non-production of measurement book, the Arbitrator came to a conclusion that *9%* of the cost of construction was enhanced *vide Ex.C-3,* which amounted to *Rs.5,33,606/-* plus *Rs.40,000/-,* which would total *Rs.5,73,606.76.* Further, the Arbitrator held that the respondent no.1/claimant will also be entitled to interest *@ 15%* per annum for delayed payment, from the date the delay started. Since this is emanating from the record and is a matter of evidence and interpretation, the District Judge has correctly dismissed the objection of the appellant regarding this claim. Arbitrator awarded only an amount of *Rs.5.73 lakhs* as opposed to claim of *Rs. 10 lakhs*.

Claim No.2

20. While dealing with *Claim no.2*, Arbitrator recorded the testimony of **PW1** that the respondent no.1/claimant was not handed-over the site on time. In his testimony, he stated he had gathered all resources at his disposal to start the work as per the agreement and deployed his men, materials and tools, however, due to certain hindrances the work could not be started. Further, he deposed that communication was made to MCD to remove these hindrances, however, they only received vague assurances. The Arbitrator categorically, in *paragraph no. 37* of the impugned award, noted that the testimony of **PW1**, remained unrebutted, unassailed and unchallenged on these points. Moreover, the Arbitrator also relied upon the testimony of **PW3**, *Mr. Jahangir*, who had deposed that he was deployed at site from 03rd June 2005 till 30th

November 2006, which also remained unchallenged. However, the Arbitrator also noted that no Books of Accounts and receipts for keeping tools at the site were produced. Accordingly, the Arbitrator awarded *only 20%* of the claim sought by respondent no.1/claimant.

21. The District Judge endorsed the same and noted that **PW1** and **PW2's** testimony stood ground in the cross-examination by MCD. The District Court opined that any party to litigation may prove their case by oral testimony or through documents and that it is not always essential to substantiate oral testimonies with documents. It is a settled law that as per *Section 59* of the Indian Evidence Act, 1872 ('***IEA***') all facts, except the content of document or electronic record, may be proved by oral evidence. Section 60 of the IEA requires that oral evidence must be direct and positive. Herein, direct evidence means that the statement goes straight to establish the main fact in issue. Therefore, the view taken by the District Judge is warranted.

22. The District Judge further observed that the Arbitrator rightly took note of submissions made by both the parties and had accordingly restricted the claim to *only 20%* of claimed amount.

23. *Clause 2* and *3* of the Agreement deals with the rights of MCD to recover liquidated damages in case of provisional extension of time. It can be seen from the cross-examination of appellant's witnesses before the Arbitrator that the appellant admitted that no penalty under *Clause 2* or *3* was ever imposed on the respondent no.1/claimant, as per their records. Hence, an inference can be drawn from the same that delay was due to MCD itself and for that reason, no recovery for damages were made by MCD.

24. These being issues of evidence appreciation and assessment, and not perverse or unconscionable, award for claim of idling of staff/establishment, tools, plant, etc. is merited.

Claim No.4

25. As regards the issue of misapplication of *Clause 10CC* of the General Conditions, it would be useful to extract the provision for ready reference:

> "*Clause 10CC*
>
> *Payment due to Increase / Decrease in Prices / Wages after Receipt of Tender for Works (Time Period more than 18 months)*
>
> *If the prices of materials (not being materials supplied or service rendered at fixed prices by the department in accordance with clause 10 & 34 thereof) and / or wages of labour required for execution of the work increase, the contractor shall accordingly be varied, subject to the condition that such compensation for escalation in prices shall be available only for the work done during the stipulated period of the contract including such period for which the contact is validly extended under the provisions of Clause 5 of the contract without any action under the clause 2 and also subject to the condition that no such compensation shall be payable for a work for which the stipulated period of completion in 18 months or less……"*
>
> (emphasis added)

26. The District Judge has considered that *Clause 10CC* of the General Conditions would not stand in the way of escalation, given that the delay had been caused on the part of the MCD. The stipulation that *Clause 10CC* applies only to works extending beyond 18 months cannot exclude its application merely because the original completion date was 6 months. Clearly, *Clause 10CC* was meant to cover situations where the contract, though for a shorter period, got ultimately extended to almost 18 months, which is the case in this matter. The work order had been issued on 31st May 2005 and was scheduled to be completed by 9th December 2005, within six months; however, it was actually completed on 30th November 2006.

27. The Arbitrator noted that the appellant had not produced the original agreement and had put a cross on *Clause 10CC* General Conditions on record, which did not bear the signature of respondent no.1/claimant. Therefore, an implication arose that it was not crossed in the presence or with the consent of the respondent no.1/claimant.

28. It is a settled principle that interpretation of terms of contract is the prerogative of the Arbitrator. In ***McDermott International Inc. v. Burn Standard Co. Ltd.*** (2006) 11 SCC 181, it was held that interpreting the terms of a contract, even when it involves legal questions, is a matter for the arbitrator to decide. Relevant paragraphs of the judgment are extracted as under:

> "*112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the*

> *arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law.*
>
> 113**.** Once, thus, it is held that the arbitrator had the jurisdiction, no further *question* shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award."
>
> (emphasis added)

29. In any case, appellant cannot take advantage of their own wrong. On bare perusal of cross-examination of appellants' witnesses adduced before the Arbitrator, it is apparent that delay was caused by MCD, therefore, their plea that MCD should not be made liable for escalation, is unmerited. Aside from that respondent no.1/claimant cannot be left uncompensated for delay of one year. Accordingly, the Court does not find any reason to interfere with this interpretation or the finding of the Arbitrator.

Claim No.6

30. As regards *Claim No.6,* the Arbitrator noted that as per *Ex.C-3* dated 19th July 2006, there was water logging at the site. The same has been admitted by MCD. Moreover, the Arbitrator noted that it has come

on record that respondent no.1/claimant was directed to do additional work beyond the contractual amount and MCD, on its own accord, enhanced the contractual value by *9%.* The District Judge upheld the same and did not find this as perverse.

31. On perusal of deposition made by appellant's witnesses before the Arbitrator, it is clear that several documents including the site order book and hindrance register with countersign of respondent/claimant were not available with them to corroborate their statement that no additional work was entrusted to the respondent no.1/claimant. Therefore, this Court finds no reason to interfere with the findings of the Arbitrator and the District Judge on this aspect, as well.

Cost

32. As regards the objection raised on costs awarded by the Arbitrator, while adjudicating *Claim No.9,* the Arbitrator noted the respondent no.1/claimant had made every effort, through various communications at different levels, to secure payment of its bills but failed to receive any positive response. Consequently, the respondent no.1/claimant had to invoke arbitration. Costs of *Rs. 4.5 lakh*s were, therefore, awarded towards expenses incurred in both rounds of arbitration. This discretion to award costs lies with the arbitrator, and there is no reason for the Court under *Section 34* or *Section 37* to interfere, since it is not a matter that shocks the conscience of the Court.

Ancillary issues

33. On the issue that the Arbitrator had no material evidence, and no specific ground was made out regarding the omission to consider

evidence which would go to the root of the matter. A generic plea was taken, *inter alia,* in *Ground Q* which cannot be given credence.

34. Moreover, scope of interference under *Section 37* is quite limited, as evident from the provision of *Section 34* itself, as well as the determination which has been made by the Supreme Court in ***Associate Builders v. Delhi Development Authority*** (2015) 3 SCC 49. The Supreme Court held that the interference under *Section 34* is limited and extremely circumscribed and is permissible only when the award is tainted by patent illegality, i.e. illegality going to the root, and not mere erroneous application of law. In ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*** (2019) 15 SCC 131, the Supreme Court narrowed the scope of "*public policy*" under *Section 34*, observing that it is confined to cases where the award is in conflict with the fundamental policy of Indian law, is patently illegal, or is in conflict with most basic notions of morality or justice. Moreover, in ***MMTC Ltd. v. Vedanta Ltd.*** (2019) 4 SCC 163, the Supreme Court reiterated that *Section 34* is not a provision for appeal, and Courts cannot reappreciate evidence or substitute their view for that of the arbitrator. Interference is permissible only on the limited grounds specified in the Act.

35. In fact, under *Section 37*, the scope of interference is even further circumscribed as articulated by the Supreme Court in ***Somdatt Builders-NCC-NEC (JV) v. NHAI*** (2025) 6 SCC 757 and ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*** (2023) 9 SCC 85.

36. In ***Somdatt Builders-NCC-NEC (JV) v. NHAI*** (2025) 6 SCC 757, the Supreme Court held that it cannot reopen the merits of a case

while hearing a *Section 37* appeal and further, cannot interpret contractual clauses. The relevant paragraphs are extracted as under:

> "*45. In MMTC Ltd. Vs. Vedanta Ltd.[(2019) 4 SCC 163], this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. As far as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision.*
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> ***
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> *48. In Reliance Infrastructure [(2024) 1 SCC 479], this Court referring to one of its earlier decisions in UHL Power Co. Ltd. v. State of H.P. [(2022) 4 SCC 116] held that scope of interference*

under Section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed."

(emphasis added)

37. Similarly, in ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*** (2023) 9 SCC 85, the Supreme Court reiterated that the scope of jurisdiction under *Section 34* and *Section 37* of the A&C Act is not akin to normal appellate jurisdiction, and interference with an arbitral award should not be done in a casual and cavalier manner. The relevant paragraph is extracted as under:

"*25. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral*

Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. ..."

(emphasis added)

38. As far as all the issues in the present case are concerned, they are part and parcel of 'evidence appreciation' by the Arbitrator and relate to the merits of the matter, which are outside the scope of interference *under Section 34* or that *under Section 37* of the A&C Act.

39. In relation to the ground, that award is in contravention of fundamental policy of Indian law*, section 34(2)(b) Explanation 2* states that "*for the avoidance of doubt the test as to whether there is contravention with the fundamental policy of Indian law shall not entail a review on the merits of the disputes*".

40. Further, in relation to the grounds that the arbitral award was vitiated by patent illegality, *section 34(2A)* and its proviso states that "*an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence*".

CONCLUSION

41. There is, therefore, no reason for this Court to interfere with the award while exercising its appellate power under *Section 37*, since the

Court under *Section 34* of A&C Act had also considered the objections and rejected them as unmerited. The powers under *section 37* are extremely limited and narrow, and there is nothing which has been presented by MCD/appellant to persuade and convince the Court that the award suffers from patent illegality or violates the fundamental policy of Indian law or conflicts with most basic notion of morality or justice.

42. Having perused the award and assessment of the objections with respect to *Claim No.1, 2, 4* and *6* under *Section 34* of A&C Act, this Court finds that the award does not suffer from any perversity, and does not shock the conscience of the Court. Claims and objections have been duly considered. Issues relating to the merits of the assessment by the Arbitrator need not be revisited by this Court in exercise of its jurisdiction under *Section 37* of A&C Act. The Arbitrator is entitled to arrive at a plausible conclusion based on the pleadings, documents, and evidence presented before him. Merely because another view could have been taken is no ground for interference under *Section 34* or *Section 37* of the A&C Act.

43. This appeal is accordingly dismissed.

44. Pending applications are rendered infructuous.

45. Order be uploaded on the website of this Court.

ANISH DAYAL
(JUDGE)

NITIN WASUDEO SAMBRE
(JUDGE)

NOVEMBER 3, 2025/sm