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

% ***Reserved on: 8th January, 2026***

Pronounced on: 9th February, 2026

\+ **FAO (COMM) 335/2025 & CM APPL. 75864/2025, CM APPL. 75865/2025, CM APPL. 75866/2025, CM APPL. 75867/2025**

1. **CHOPRA LAND DEVELOPERS PVT. LTD.**
   (STRUCK OF BY REGISTRAR OF COMPANIES)
   A-11, SHIVALIK, NEW DELHI-110017
   REPRESENTED THROUGH ITS SHARE HOLDERS
   NAMELY MS. SUDESH CHOPRA,
   MR. GAURAV CHOPRA & MR. NIKHIL CHOPRA

2. LATE OM PRAKASH CHOPRA
   S/O LATE A. N. CHOPRA
   THROUGH HIS LEGAL HEIRS

2(a) MS. SUDESH CHOPRA
   W/O LATE OM PRAKASH CHOPRA

2(b) MR. GAURAV CHOPRA
   S/O LATE OM PRAKASH CHOPRA

2(c) MR. NIKHIL CHOPRA
   S/O LATE OM PRAKASH CHOPRA
   ALL RESIDENT OF A-11,
   SHIVALIK, NEW DELHI-110017 .....**APPELLANTS**

Through: Mr. Chandra Shekhar Yadav, Mr. Arun Kumar Sinha, Mr. Astitva Srivastava, Advocates

versus

LATE JATINDER NATH
S/O SH. SOHAN LAL THROUGH HIS LEGAL HEIRS

(a) MS.GEENA SOOD
W/o LATE JATINDER NATH SOOD,
R/O G-13, GROUND FLOOR,
SAKET, NEW DELHI-110017

(b) VAISHALI SOOD
D/O LATE SH. JATINDER NATH SOOD,
R/O. G-13, GROUND FLOOR,
M. B. ROAD, SAKET, NEW DELHl-110017

(c) SH. SHARAD SOOD
S/O LATE JATINDER SOOD,
R/O. HOUSE NO. 31, GAUTAM NAGAR,
HOSHIARPUR, PUNJAB-146001 .....**RESPONDENT**

Through: *Nemo.*

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

AJAY DIGPAUL, J.

1. By way of the present appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996[1], the appellants have challenged the judgment dated 21.05.2025[2], passed by the learned District Judge

[1] Hereinafter "A&C Act"
[2] Hereinafter "impugned judgment"

(Commercial Court)-02, South, Saket Courts, Delhi[3] in OMP (Comm.) No. 7/2020.

2. The learned Commercial Court, *vide* the impugned judgment, while holding that the arbitral award dated 02.11.2019[4] passed by Justice Indermeet Kaur (Retd.)[5], does not suffer from any infirmity, illegality or perversity, nevertheless proceeded to set aside the arbitral award whereby appellant no. 2 had been fastened with liability for the obligations of appellant no. 1.

Factual Matrix

3. The dispute between the parties, namely Mr. Jatinder Nath[6] and appellant no. 1, a company engaged in the business of real estate and represented through its director, appellant no. 2, arises out of protracted litigation spanning a long period of time. During the pendency of the proceedings, both the respondent and appellant no. 2 expired, and were thereafter substituted and represented by their respective legal heirs/successors.

4. The respondent, owner of property bearing Municipal no. G-13, Malviya Nagar Extension, Saket, New Delhi, admeasuring 400 sq. yds.[7], entered into an agreement dated 16.03.1990[8], with appellant no. 1.

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[3] Hereinafter "Commercial Court"
[4] Hereinafter "arbitral award"
[5] Hereinafter "Arbitrator"
[6] Hereinafter "respondent"
[7] Hereinafter "subject property"
[8] Hereinafter "agreement"

5. The subject property had been allotted to the respondent by the Delhi Development Authority *vide* a perpetual lease dated 17.08.1981.

6. Under the said agreement, the appellants were to construct a multistoried building at its own cost, and upon completion, was to retain the basement, ground and mezzanine floors with proportionate rights in the land, while the first floor and second floor were to vest with the respondents. The construction was to be completed within the stipulated period, failing which the owner was entitled to terminate the said Agreement and retain the land and structure, subject to payment of construction cost to the appellants.

7. The building plans were sanctioned by the Municipal Corporation of Delhi on 21.05.1990 and construction was undertaken by the appellants. Disputes arose between the parties regarding alleged deviations and excess construction, leading to sealing of the premises by the municipal authorities and multiple proceedings before various fora.

8. During this period, the appellants inducted Mr. P.K. Mathur and Mr. Pramod Dang into front portions of ground floor and basement of the premises, respectively, which was objected to by the respondents, who consequently sought termination of the agreement and recovery of possession. The disputes led to invocation of arbitration before the named Arbitrator, Mr. Damodar Sharma, in August 1992, culminating in an *ex-parte* award dated 29.03.1994 in favour of appellant no. 1. In terms of this award, Mr. Damodar Sharma directed the respondents to transfer the ownership of the basement, and ground floor along with the

proportionate interest in the land underneath and, in lieu of mezzanine floor, the respondents were directed to transfer ownership of first floor to the appellants.

9. In the *interregnum*, Mr. P.K. Mathur instituted a suit seeking to restrain the respondents from dispossessing him. The said suit came to be dismissed *vide* order dated 24.01.1995. Similarly, Mr. Pramod Dang also instituted a civil suit wherein interim relief was granted in his favour. However, the said suit was subsequently dismissed in default by this Court *vide* order dated 26.04.2000.

10. Proceedings were thereafter initiated under sections 14 and 17 of the A&C Act before the learned Sr. Sub Judge, Faridabad Court to make the award dated 29.03.1994, Rule of Court, however, the award was set aside on 27.05.2010, and the appeals and review petitions arising therefrom were dismissed, with liberty granted to the parties to pursue available remedies.

11. A subsequent suit instituted by the respondents in the year 2013, seeking reliefs of declaration, possession and consequential reliefs, was filed before this Court and was thereafter transferred to learned District Judge, South-West, Dwarka Courts, Delhi. The said suit came to be dismissed *vide* order dated 02.06.2016, the Court having observed that, in view of the existence of an arbitration clause in the agreement between the parties, the suit was not maintainable. Aggrieved, the respondents preferred an appeal being RFA No. 210/2017 before this Court. *Vide* order dated 13.04.2018, this Court appointed Hon'ble Ms. Justice

Indermeet Kaur (Retd.) as the Sole Arbitrator to adjudicate all disputes, pursuant to which pleadings were completed, issues framed and evidence led.

12. The appellants contested the claims, raising pleas of completion of construction, contractual entitlement to portions of the property and limitation. By arbitral award dated 02.11.2019, the learned Arbitrator held respondents entitled to the following relief:

> *"A. Agreement dated 16.03.1990 stands cancelled. In terms of clause 14.1 the sum of Rs.5 lacs stands forfeited; the clam is entitled to ownership of the compete building. No 3rd party interest could have been created by the respondent; the third parties namely Mr. Dang and Mr. Mathur/third party who are/were in occupation of the suit property are directed to forthwith vacate the property.*
> *B. Claimant is entitled to damages @ 10 per Sq. foot w.e.f. May 2018 on 7396.67 sq. feet upto the date of pronouncement of the Award i.e. 2.11.2019 which is quantified at Rs. 1,40,538/-.*
> *C. The ownership of the complete building i.e. basement and front portion and rear portion of the ground floor be handed over by the respondent within a period of 2 months failing which the claimant would be entitled to get the Award executed.*
> *D. The amount of Rs. 1,0,538/- shall be paid by the respondents to the claimant within a period of 2 months failing which this amount shall be payable by the respondents to the claimant with interest @ 9% w.e.f. 3.1.2020 upto the date of receipt of the amount.*
> *E. Costs are awarded in favour of the claimant which include fee of the undersigned as also the legal fee and other administrative expenses which are quantified at Rs. 20 lacs."*

13. The appellants challenged the award under Section 34 of the A&C Act in OMP (Comm.) No. 7/2020. By the impugned judgment dated 21.05.2025, the learned Commercial Court upheld the award on merits,

but set it aside to the limited extent of fastening personal liability upon appellant no. 2.

14. The present appeal is filed against this impugned judgment.

Submissions by the Appellant

15. Mr. Chandra Shekhar Yadav, learned counsel for the appellants, assails the arbitral award as well as the impugned judgment on several grounds. At the outset, it is contended that both the learned Arbitrator and the learned Commercial Court failed to give effect to the express terms of the agreement dated 16.03.1990, particularly Clause 14, which stipulates that, in the event of alleged default or termination, while the respondents would retain the land and incomplete structure, the appellants would remain entitled to the cost of construction, the valuation whereof was mandatorily to be determined by the learned Arbitrator.

16. It is pointed out that the appellants invested their own funds and constructed approximately 13,711-13,843 sq. ft., the benefit whereof has been wholly enjoyed by the respondents, yet no amount towards construction cost has been determined or awarded. Reliance is placed on CPWD norms for the relevant period to indicate that the cost would be approximately ₹ 60-70 lakhs, which material, according to the appellants, was overlooked while other valuation guides were selectively relied upon.

17. Referring to Section 28(3) of the A&C Act, it is urged that an arbitral tribunal is bound to decide strictly in accordance with the terms

of the contract. However, failure to adhere to the rigours of Section 28(3) of the A&C Act, would render the award unsustainable. To buttress the contention that an award passed in contravention to any substantive law being in force is rendered invalid, reliance is placed on ***Oil and Natural Gas Corporation Ltd.(ONGC) v. Saw Pipes Ltd.***[9]**.** Thus, reliance is placed on ***Gayatri Balasmy v. ISG Novasoft Technologies Ltd.***[10]**,** to submit that the court under Section 34 of the A&C Act, can exercise the doctrine of Severability and vary or modify the award accordingly.

18. It is further contended that the omission to follow the agreed contractual mechanism, and unreasonable interpretation of the contract constitutes patent illegality and is opposed to the public policy of India. For this proposition, reliance is place on ***Associate Builders v. Delhi Development Authority***[11]**; *GVK Jaipur Expressway Pvt. Ltd. v. NHAI***[12]**; *State of Rajasthan v. Nav Bharat Construction***[13]**; *HPCL Mittal Energy Ltd. v. Arston Engineering Ltd.***[14]**,** wherein it has been held that a non-speaking award which dismisses substantial rights of the parties is liable to be set aside. Reliance is also placed on the case of ***Ramesh Kumar v. Kesho Ram***[15]**, *Gaiv Dinshaw Irani & Ors. v. Tehmtan Irani & Ors.***[16]**;** and ***Pasupuleti Venkateswarlu v. The Motor & General Traders***[17]**,** wherein the court has directed that cautious cognizance be taken of

[9] **(2003) 5 SCC 705**
[10] **2025 7 SCC 1**
[11] **(2015) 3 SCC 49**
[12] **2021 SCC Online Del 4851**
[13] **(2006) 1 SCC 86**
[14] **2018 SCC OnLine Del 7914**
[15] **1992 Supp (2) SCC 623**
[16] **(2014) 8 SCC 294**
[17] **(1975) 1SCC 770**

circumstances which have a material bearing on the rights and obligations of parties. Furthermore, the court also stated that pursuant to Section 96 of the Civil Procedure Code, 1908, the court is not precluded from taking into cognizance changing circumstances and afford the relief accordingly.

19. The findings of delay or breach is assailed as *ex facie* erroneous. It is stated that appellant no. 1 had secured an extension of time from DDA on 09.09.1991, thereby extending the contractual period up to 08.09.1993. Nevertheless, the respondents prematurely issued a notice dated 03.08.1992 seeking possession. The construction, according to the appellants, stood completed in 1991 and possession had been taken by the respondents. The rejection of the extension letter and the contrary conclusion, it is submitted, run contrary to the documentary and admitted facts.

20. Attention is also drawn to the completion of five floors by 28.11.1991, submission of statutory Forms C, D and F by the respondents acknowledging completion, and their taking over possession of the first, second and third floors on 01.09.1992. Proceedings before municipal and appellate authorities were likewise pursued in respect of the completed structure. These circumstances, it is urged, demonstrate performance of obligations and acquiescence on the part of the respondents, but were not duly appreciated.

21. The award is additionally questioned on limitation. It is submitted that without any application for condonation, an extended period was

excluded on account of earlier arbitral proceedings and substantial amendments were permitted, introducing fresh and time-barred claims and altering the nature of the dispute, which course is impermissible in law.

22. Reference is then made to Clauses 4 and 16 of the agreement to contend that the appellants were contractually entitled to ownership of the basement, ground floor and mezzanine, or proportionate equivalent area. It is submitted that despite the said stipulations, neither the agreed share in the constructed premises nor any compensation in lieu thereof has been granted. As a result, the respondents continue to retain and enjoy the entire building without bearing the corresponding construction costs, leading to unjust enrichment. It is the appellants' case that they are entitled to recovery of construction cost in respect of an area admeasuring 13,711 sq. ft. It is further contended that both the learned Arbitrator and the learned Commercial Court failed to give due effect to the aforesaid contractual provisions.

23. Lastly, reliance is placed on ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum through its Proprietor Mr. Laxman Dagdu Thite***[18]**,** to contend that impermissible construction of the contract by the Arbitrator, which ignores contractual entitlements, would be an error which vitiates the award. Circumspectly, the appellant contends that the learned Arbitrator, and the learned Commercial Court has erred by

[18] **2022 4 SCC 463**

failing to consider the contractual entitlements of the appellant, thereby warranting interference by this Court.

Analysis

24. The appellants impugn the judgment dated 21.05.2025 passed by the learned Commercial Court whereby their objections under Section 34 of the A&C Act were dismissed and the arbitral award dated 02.11.2019 was upheld.

25. The controversy essentially raises issues relating to limitation, completion of the project, the cost of construction, and the parties' subsequent contractual entitlements. The same shall be dealt with under the aforesaid heads.

Limitation

26. The appellants contend that the claims entertained by the learned Arbitrator were barred by limitation, submitting that the cause of action arose in 1992 upon issuance of notice dated 03.08.1992 seeking cancellation of the agreement and possession. It is urged that any claim for breach or rescission ought to have been instituted within three years in terms of Articles 55 and 59 of the Limitation Act, 1963 (hereinafter referred to as "Limitation Act"), and that exclusion of time under Section 43(4) of the A&C Act was unavailable, as arbitration had never validly commenced. Reliance is placed on the assertion that the first notice did

not invoke arbitration and the subsequent notice dated 20.08.1992 was not served.

27. The learned Sole Arbitrator considered the objection and recorded a categorical finding that while the notice dated 03.08.1992 was confined to termination, the subsequent notice dated 20.08.1992 expressly invoked the arbitration clause and was duly served. On that basis, it was held that arbitral proceedings validly commenced on 20.08.1992, culminating in an *ex-parte* award dated 29.03.1994, which was later set aside on 27.05.2010. The entire period having been spent in pursuit of *bona fide* litigation, i.e., institution of CS(OS) 532/2013 before this Court; suit being transferred to learned District Judge, South-West, Dwarka Courts, Delhi; and dismissal *vide* order dated 02.06.2016; RFA No. 210/2017 preferred before this Court filed on 16.02.2017, and subsequent appointment of the Arbitrator *vide* order dated 13.04.2018.

28. The period spent in the arbitral proceedings and the court proceedings arising therefrom was, therefore directed to be excluded while computing limitation for the aforesaid reasons.

29. The learned Commercial Court concurred with the aforesaid reasoning and observed that the question of limitation had been examined on the basis of the factual matrix on record, and that the finding returned by the learned Arbitrator, holding the respondents' claim to be within limitation, constituted a plausible view, not amenable to interference under Section 34 of the A&C Act. It is noticed that though the initial proceedings were initiated by the respondents before

Mr. Damodar Sharma, however, it was the appellants themselves who made an endeavor to commence proceedings under Section 14 and 17 of the 1940 A&C Act seeking to have the award crystalized in the first round of arbitration made a Rule of Court. The relevant extract from the impugned judgment reads:

> *"…13. A perusal of application under section 14-17 of Arbitration Act filed by the petitioner no. 1 before the Sr. Sub Judge, Faridabad would show that the petitioner himself stated that vide letter dt. 20.08.1992, the respondent had asked the arbitrator to enter the proceedings in terms of agreement and that the said arbitrator had issued notice on 24.08.1992 and both the parties had appeared before him on 05.09.1992. The ground of petitioners stating that period was wrongly excluded is therefore, not substantiable. Even if it is considered that the petitioners failed to prove on record the notices for appointment of arbitrator, the fact that the proceedings were initiated before the concerned arbitrator are admitted and it was the petitioners who got benefited in those proceedings. Thus it does not lie in the mouth of petitioners to say that since those proceedings were not initiated on the notice of the respondent or such notice has not been proved or the notice was not as per the provisions of A&C Act, therefore, the entire proceedings should be considered as non-existent and respondent be denied benefit of the said period for the purposes of limitation."*

30. The legal position is equally settled in ***Adavya Projects Private Limited v. Vishal Structural Private Limited & Ors.***[19]**,** the Hon'ble Supreme Court held:

> *"19. First, the notice is necessary to determine whether claims are within the period of limitation or are time-barred. Section 43(1) ACA stipulates that the Limitation Act, 1963 shall apply to arbitrations as it applies to court proceedings. Further, Section 43(2) provides that for the purpose of the Limitation Act, an*

[19] **2025 (9) SCC 686**

> *arbitration shall be deemed to have commenced on the date referred to in Section 21. Hence, the date of receipt of Section 21 notice is used to determine whether a dispute has been raised within limitation period as specified in the Schedule of Limitation Act, as held by this Court in Milkfood Ltd. v. GMC Ice Cream (P) Ltd. and State of Goa v. Praveen Enterprises*."

31. Furthermore, the principle underlying Section 43(4) of the A&C Act has also been recognized in ***Laguna Resort Pvt. Ltd. v. Concept Hospitality Pvt. Ltd.***[20], wherein it was held that exclusion of time is available to prevent prejudice on account of time spent in bona fide arbitral and court proceedings.

32. In view of the concurrent factual finding that the notice dated 20.08.1992 validly invoked arbitration and was served, commencement under Section 21 of the A&C Act stood established. Consequently, the appellants were entitled to the benefit of exclusion under Section 43(4) of the A&C Act. The objection essentially invites re-appreciation of evidence, which is impermissible in proceedings under Sections 34 and 37 of the A&C Act. No patent illegality or perversity is demonstrated. The challenge in limitation, therefore, fails.

Completion of the Project

33. The appellants assail the finding that the construction remained incomplete, contending that the documentary and statutory record establishes completion within the contractual period. Reliance is placed on Forms C and D, Appendix F, the extent of constructed area, the

[20] **2025 SCC OnLine Bom 5263**

sealing of the building by the MCD, and the fact that possession of certain floors was taken by the respondent.

34. From the perusal of the record, it is ascertained that the learned Arbitrator examined each of these documents in detail. Forms C and D were found to relate only to inspection of underground sanitary installations and not to certification of completion of the building as a whole. Appendix F, pressed into service as a completion certificate, was held to record 'part occupation', which, on its own terms, militates against the plea of full completion. The learned Arbitrator also noted the absence of any completion certificates issued by the MCD and treated the same as a material deficiency. On an overall appreciation of the record, the plea of completed construction was rejected.

35. The learned Commercial Court affirmed the said findings and additionally took note of the report of the Local Commissioner dated 27.07.2018, appointed in RFA 201/2017, which described the condition of the structure, and corroborated that the construction was not complete. It was thus held that the learned Arbitrator had correctly appreciated the documentary and physical evidence, and that the view taken was both reasonable and plausible.

36. The scope of interference with such findings is well settled. In ***Larsen Air Conditioning and Refrigeration Company v. Union of India***[21]**,** the Hon'ble Supreme Court observed:

[21] **(2023) 15 SCC 472**

> "*15. <u>The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "illegality must go to the root of the matter and cannot be of a trivial nature"; and that the Tribunal "must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground"</u> [ref : Associate Builders, SCC p.81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."*
>
> *(emphasis supplied)*

37. The findings of the learned Arbitrator, affirmed by the learned Commercial Court and supported by the Local Commissioner's report, are concurrent and founded on evidence.

38. In exercise of jurisdiction under Section 37 of the A&C Act, this Court cannot re-appreciate the evidence or substitute its own view merely because another interpretation is possible. No patent illegality or perversity is shown. The challenge on the issue of completion, therefore, fails.

<u>Cost of Construction and Subsequent Contractual Entitlements</u>

39. The appellants lastly contend that, notwithstanding termination of the agreement, Clause 14 entitled then to the cost of construction of the incomplete structure and that denial thereof results in unjust enrichment. Reliance is also placed on Section 28(3) of the A&C Act and alleged trade usage mandating reimbursement.

40. The learned Commercial Court has recorded that no such claim was substantiated before the learned Arbitrator and that no evidence whatsoever, by way of invoices, bills, accounts, or material demonstrating procurement of labour or materials, was produced to establish either the factum or quantum of expenditure. The record shows that no specific claim or counterclaim for construction cost was pressed before the learned Arbitrator.

41. In so far as Section 28(3) of the A&C Act is concerned, the legal position stands clarified by the Hon'ble Supreme Court in ***Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited & Anr.***[22]**,** wherein it was held:

> *"45. ...Here again interference would be only if something shocks the court' conscience. Further, "patent illegality" refers to three sub heads : (a) contravention of substantive law of India, which must be restricted and limited such that the illegality must go to the root of the matter and should not be of a trivial nature. Reference in this regard was made to clause (a) to Section 28(1) of the A&C Act, which states that the dispute submitted to arbitration under Part I shall be in accordance with the substantive law for the time being in force. The second sub-head would be when the arbitrator gives no reasons in the award in contravention with Section 31(3) of the A&C Act. The third sub-head deals with the contravention of Section 28(3) of the A&C Act which states that the Arbitral Tribunal shall decide all cases in accordance with the terms of the contract and shall take into account the usage of the trade applicable to the transaction. This last sub-head should be understood with a caveat that the arbitrator has the right to construe and interpret the terms of the contract in a reasonable manner. Such interpretation should not be a ground to set aside the award as the construction of the terms of the contract is finally for the arbitrator to decide. The*

[22] **(2024) 2 SCC 375**

award can only be set aside under this sub-head if the arbitrator construes the award in a way that no fair-minded or reasonable person would do."

42. Thus, cost of construction and evaluation of entitlement fall primarily within the domain of the learned Arbitrator.

43. Clause 14 of the Construction Agreement itself provides:

"14. That, the time being the essence of this agreement, the builders bind themselves to construct the entire Housing Complex duly approved with completion certificate procured from the concerned authorities, within a period of 24 months from the date of the Extension letter is issued by the DDA/permission to commence construction work. The period of 24 months shall count from such a date.

i) That in the event of builders failing to complete the construction of the Housing Complex within the said stipulated period for whatsoever reasons, the owner shall be within his rights to treat the agreement having been vitiated/cancelled/null and void. And consequently, the ownership of land as well as incomplete building shall rest with the owner only. However, the builder may claim the construction cost of the incomplete building, the valuation as may be decided by the Hon'ble Arbitrator…"

44. The learned Commercial Court has rightly observed:

"26. The clause thus says that the builder would have been entitled for cost of construction of incomplete building had it claimed the same, the word having been used 'may claim construction cost of incomplete building.' Admittedly, the petitioners at no point of time applied for cost of construction before the arbitrator. No evidence was led by the petitioners to prove the level and cost of construction. It was argued by Ld. Counsel for petitioners that the Ld. Arbitrator could have made an assessment of cost as the assessment of damages was made relying upon a book. It needs to be understood that assessing

damages/occupational charges/rent is easier than assessing the cost of construction for which the petitioners were supposed to lead positive evidence. The petitioners were supposed to prove before the arbitrator the level of construction; the cost of material used etc. Thus in view of petitioners having not claimed the cost of construction as per agreement and having not led any evidence in proof of cost of construction, no error was committed by Ld. Arbitrator in not granting the cost of construction to the petitioners. The judgments relied upon by Ld. Counsel for the petitioners do not held the petitioner as most of them were regarding interpretation of clause of agreement/contracts. In the instant matter the petitioner have not been able to prove any diversion from the contract in not granting the cost of construction to the petitioners."

45. It is settled that a party cannot seek to urge, in challenge proceedings, a claim which was neither properly pleaded nor proved before the Tribunal. In ***MSK Projects India (JV) Ltd. v State of Rajasthan & Anr.***[23]**,** the Hon'ble Supreme Court held:

"23. The Tribunal considered the relevant agreement provisions as well as the land lease deed, total package documents, minutes of pre-bid meetings and the deed authorizing collection of toll fee, etc., and proceeded with the arbitration proceedings. The State of Rajasthan had not taken the defence that it was not agreed between the parties to issue the notification barring the traffic through the markets of Bharatpur City. The only issue remained as to whether there was delay in issuance of notification and implementation thereof. In such a fact situation and considering the settled legal propositions, we are of the view that the District Judge as well as the High court fell in error considering the issue which was not taken by the State before the Tribunal during the arbitration proceedings."

[23] ***(2011) 10 SCC 573***

46. Similarly, this Court in ***Krishna Kumar & Anr. v. Shakuntala Agency Pvt. Ltd.***[24], observed:

> *"14. In any event, having participated in the arbitral proceedings and having not chosen to raise any such objection before the learned arbitrator, the petitioners cannot, in proceedings under Section 34, seek to contend that the arbitral proceedings were with respect to a plot which was different from the plot in respect to which the Section 21 notice was issued.*
>
> *xxx*
>
> *16. In any event, it is clear from the above that the submissions advanced by Mr. Dubey are essentially seeking an entire reappreciation of the disputes on facts. Section 34, quite apart from its classically limited scope, is certainly not intended to be used as tool for a litigant to desist from participating in the arbitral proceedings, despite being fully aware thereof, and thereafter, seek a second bite at the arbitral cherry.*
>
> *17. That apart, it is trite that, under Section 34, the Court cannot enter into a re-appreciation of facts. The objections that have been raised by Mr. Dubey are all aspects which the petitioners could have raised before the learned Arbitral Tribunal. ..."*

47. Further, in ***State of Rajasthan & Anr. v. Ferro Concrete Construction Private Limited***[25]**,** it was held:

> *"52. We may also refer to another aspect. A sum of Rs 12,072 per day was claimed as damages by the contractor in a tow-line calculation without any supporting evidence or document. As noticed above, the claim was on the basis that the contractor would have manufactured 15 pipes per day of the value of Rs. 1,20,000 and that the profit and overhead element out of it would have been 15% or Rs 18,000 per day. By taking the working days as 306 in a year, and deducting 20% of labour component, the loss of profit per day was calculated to be Rs 12,072 per day. There is no evidence to show that the contractor was at any point of time manufacturing 15 pipes a day of the value of Rs 8000 each or that he would have made a profit of 15% on the cost*

[24] **2024 SCC OnLine Del 5081**
[25] **(2009) 12 SCC 1**

thereof. The claim is made on the ground that it is disabled from manufacturing that many number of pipes elsewhere.

xxx

"55. While the quantum of evidence required to accept a claim may be a matter within the exclusive jurisdiction of the arbitrator to decide, if there was no evidence at all and if the arbitrator makes an award of the amount claimed in the claim statement, merely on the basis of the claim statement without anything more, it has to be held that the award on the account would be invalid. Suffice it to say that the entire award under this head is wholly illegal and beyond the jurisdiction of the arbitrator, and wholly unsustainable."

48. These principles apply with equal force here. A claim for cost of construction is a positive monetary claim, the burden squarely lies on the claimant to establish entitlement and quantum by cogent evidence. Section 28(3) of the A&C Act does not dispense with proof, nor can trade usage substitute evidentiary foundation. The Appellant has, in our opinion, erroneously relied on the case of ***ONGC v. SAW Pipes Ltd. (supra),*** to contend that the award passed herein is contrary to Section 28(3) of the A&C Act, and is thus liable to be set aside. In our opinion, there is no contravention of Section 28(3) as no effort was made by the appellant to prove the quantum of cost of construction. Since no such effort has been made, it cannot be said that the learned sole arbitrator failed to take into account the trade usage.

49. In the present case, the appellants neither advanced a proper claim nor led any material to prove the level of construction or the expenditure incurred. The distinction between proving that construction exists and proving the cost thereof is fundamental. In the absence of pleadings and

evidence, the learned Arbitrator could not have embarked upon an independent assessment. The approach of the learned Arbitrator, as affirmed by the learned Commercial Court, does not suffer from any infirmity and warrants no interference. The reliance placed by the appellants on ***Associate Builders, GVK Jaipur Expressway Pvt. Ltd., HPCL Mittal Energy Limited & IOCL (supra),*** is misconceived, as the principles enunciated therein, relating to interference with an award on the ground of patent unreasonableness or impermissible construction of contractual terms affecting the rights of the parties, have no application to the facts of the present case. Having consciously chosen to not proffer a counterclaim, and lead evidences thereto, it is now not open to the appellant to question the construction of the terms by the learned Arbitrator, especially, when the claim sought is a monetary claim, requiring proofs from the claimant.

50. Once it has been concurrently held that the project was not completed and the contract stood terminated, no further contractual entitlements survive. Any claim predicated on completion necessarily fails.

Conclusion:

51. Upon perusal of the arbitral award and the impugned order, it is evident that all objections raised by the appellant were duly considered and adjudicated by the learned Commercial Court by a detailed reasoned

order. The objections urged before this Court are merely a reiteration of those already dealt with and rejected.

52. The arbitral award dated 02.11.2019 and the judgment dated 21.05.2025 disclose a reasoned determination of the disputes, and the findings on limitation, completion of construction and contractual entitlements stand supported by evidence and have been concurrently affirmed. The challenge essentially seeks appreciation of facts and re-interpretation of the contract, which is impermissible in an appeal under Section 37 of the Arbitration and Conciliation Act. No ground for interference is made out.

53. Accordingly, the present appeal stands dismissed, along with pending application(s), if any.

54. No order as to costs.

55. The judgment be uploaded on the website forthwith.

AJAY DIGPAUL
(JUDGE)

NITIN WASUDEO SAMBRE
(JUDGE)

FEBRUARY 9, 2026/gs/sg