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

% ***Judgment reserved on: 11.12.2025***
Judgment pronounced on: 16.01.2026

\+ FAO(OS) 88/2010

SUBHASH INFRAENGINEERS PRIVATE LIMITED
.....Appellant

Through: Mr. Anil Mittal, Mr. Shaurya Mittal and Mr. Atul Chauhan, Advs.

versus

INDARPRASTHA POWER GENERATION CO LTD
.....Respondent

Through: Mr. Syed Wasim Ahmed Qadri, Senior Advocate with Mrs. Preeti Thakur, Mr. Saahil Gupta, Mr. Saeed Qadri, Mr. Umesh and Mr. Ranjan, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, instituted under Section 37(1)(c) of the **Arbitration and Conciliation Act, 1996**[1], read with Order XLIII, Rule 1 of the **Code for Civil Procedure**[2]**,** and Section 10 of the Delhi

[1] A&C Act
[2] CPC

High Court Act, 1966, challenges the **Judgement dated 12.11.2009**[3], passed by the learned Single Judge of this court in O.M.P. No. 279/1998.

2. *Vide* the Impugned Judgment, the learned Single Judge partly allowed the Respondent's petition under Section 34 of the A&C Act and modified the **Arbitral Award dated 31.08.1998**[4] , setting aside claims pertaining to:

(a) additional distance of the disposal site of the ash deposits removed from I.P. Station along Ring Road near Nizamuddin Road Bridge [*claim* 2],

(b) modifying claims awarded for Idling Costs of Machinery/ staff/ labour [*claim* 5],

(c) Loss of Profit due to the premature closure of the contract [*claim* 6] and

(d) Rate of Interest.

BRIEF FACTS:

3. The Respondent, Indraprastha Power Generation Co. Ltd. (*formerly* Delhi Vidyut Board), floated a Notice Inviting Tender on 28.07.1993 for excavation and removal of fly ash deposits from ash ponds situated along Ring Road between Bhairon Road crossing and Nizamuddin Bridge, Delhi. The tender contemplated disposal of fly ash at low-lying areas/dumping grounds within the Union Territory of Delhi, including tentative sites such as Vasant Kunj, Dhirpur/Shalimar Bagh or any other site, as directed by the Engineer-in-Charge.

4. The quantity indicated in the Notice Inviting Tender was approximately 12 lakh cubic metres of fly ash. The Appellant

[3] Impugned Judgement
[4] Arbitral Award

submitted its bid pursuant thereto.

5. The bid of the Appellant was accepted by the Respondent [Subhash Chander & Co., now Subhash Infraengineers Private Limited] and a **Letter of Intent**[5] dated 25.07.1994 was issued, awarding the work for excavation and disposal of 1.5 lakh cubic metres of fly ash at the negotiated rate of Rs. 31.70 per cubic meter. The date of commencement of work was fixed as 01.08.1994 and the stipulated period of completion was three months, ending on 31.10.1994.

6. The LOI dated 25.07.1994, which was acted upon by both parties, specified the material terms and conditions governing the contract and constituted the operative contract between the parties. In terms thereof, the Appellant was required to arrange all labour, plant, machinery, tools and equipment at its own cost for execution of the work.

7. The Appellant commenced execution of the work; however, the entire awarded quantity could not be completed within the stipulated period. Upon request, the contract period was extended by mutual agreement, and the extended period of execution was from 28.12.1994 to 07.02.1995.

8. It is an admitted position that on 16.01.1995, the work came to a standstill as the disposal site then in use had been fully exhausted and no alternative disposal site was specified by the Respondent thereafter.

9. Disputes arose between the parties in relation to, *inter alia*, the Appellant's entitlement to additional payment for transportation of fly ash beyond an assumed distance, compensation towards idling of

[5] LOI

labour, staff, plant and machinery, and loss of profitability allegedly arising from premature closure of the contract.

10. In terms of the arbitration clause contained in the contract, the disputes between the parties were duly referred to a learned sole Arbitrator. Upon considering the record and submissions advanced by both sides, the learned sole Arbitrator passed an award in favour of the Claimant/Appellant. The learned Arbitrator allowed a sum of Rs. 13,95,983.20 under Claim No. 2 towards payment for the additional distance involved in the disposal of fly ash, a sum of Rs. 7,35,500/- under Claim no. 5 towards losses suffered on account of labour, establishment, machinery, tools, and plant remaining idle, and a further sum of Rs. 12,50,000/- under Claim no. 6 towards loss of profits. The learned Arbitrator also awarded interest at the rate of 18% per annum on the awarded amounts.

11. Aggrieved thereby, the Respondent filed objections under Section 34 of the A&C Act, being O.M.P. No. 279/1998, before this Court, confining the challenge to Claim Nos. 2, 5 and 6, as well as the rate of interest awarded.

12. By the Impugned Judgement, the learned Single Judge partly allowed the petition under Section 34 of the A&C Act, and held that the contract did not stipulate any fixed site or fixed or approximate distance for disposal of fly ash and that the rates quoted were valid for all leads. Consequently, the award under Claim No. 2 was set aside.

13. The learned Single Judge further modified the award by reducing the amount granted towards loss of profitability under Claim No. 6 to Rs. 80,000/-, restricting the idling charges under Claim No. 5 to Rs. 2,50,000/-, and reducing the rate of interest from 18% per annum to 9% per annum simple.

14. The petition under Section 34 of the A&C Act was disposed of with the aforesaid modifications, leaving the parties to bear their own costs.

15. Aggrieved by the Judgment dated 12.11.2009, the present appeal under Section 37 of the A&C Act has been preferred before us.

CONTENTIONS ADVANCED BY THE APPELLANT:

16. The learned counsel for the Appellant would submit that the distance of the disposal site from the site of removal was an integral part of the contract, in as much as it formed the basis for calculation of rates for transport of fly ash over a distance of 20-23 kms, in the tender floated by the Respondent.

17. Upon altering the site of disposal to Rohini (approximately 35 kms), the learned counsel for the Appellant would submit that the Appellant was entitled to higher rates as compensation *vide* Clause No. 12 of **General Conditions of Contract**[6]. The same has been reproduced below for easy reference:

> "**CLAUSE – 12: ALTERATION IN SPECIFICATION AND DESIGNS**
>
> The Engineer-in-Charge shall have power to make any alteration and omissions from additions to or substitutions for the original specifications, drawings, designs and instructions that may appear to him to be necessary during the progress of the work and the contractor shall carry out working accordance with the instructions which may be given to him in writing, Signed by the Engineer in charge and such alterations, omissions, additions or substitutions shall not invalidate the contract and any altered additional or substituted work which the contractor may be directed to do in manner above specified as part of the work shall be carried out by the above contractor on the same conditions in all respect on which he agreed to do the main work. The time of the completion of work may be extended in the proportion that the altered, added or substituted work bears to the original contract work and the

[6] GCC

certificate of the Engineer-in-Charge shall be conclusive as to proportion the rate for such additional altered or substituted work under this clause shall be worked out in accordance with following provisions in their respective orders.

i) If the rates for the additional, altered or at substituted work are specified in the contract for the work the contractor is bound to carry out the additions, altered or substituted work as the same rates as are specified in the contract for the work.

ii) If the rates for the additions, altered or substituted work are not specifically provided in the contract for the work the rates will be derived from the rates for similar class of work as are specified in the contract for the work.

iii) If the altered, additional, or substituted work includes any work for which no rates is specified in the contract for the work or the rate for the work cannot be derived from similar class of work out of the rates derived from the 1989 CPWD schedule of rates for Delhi as it existed on the day of issue of notice inviting tender for the work, minus/plus percentage which the total tendered amount bears to estimated cost of entire work put to tender.

iv) Provided always that if the rate for a particular part or part of the item is not in the current CPWD schedule of rates of Delhi, as it existed on the date of issue of the Notice Inviting Tenders for the work, the rate for such part of parts will be determined by the Engineer-In-Charge on the basis of the prevailing market rates when the work was done.

v) If the rates for the altered, additional or substituted work cannot be determined, the manner specified in sub-clauses (i) to (iv) above, then the contractor shall within 7 days of the date of receipt of order, to carry out the work inform the Engineer:-in-Charge shall determined the rate or rates on the basis of prevailing market rate and pay the contractor accordingly. However, the Engineer-in-Charge of the rate which he intends to charge or such class or work supported by analysis of the· rate or rates claimed and the Engineer-in-Charge by notice in writing, will be at liberty to cancel his order to carry out such class or work and arrange to carry it out in such manner as he may consider adviseable. But under no circumstances the contractor shall suspend the work on the plea of non settlement of rates of items falling under the clause.

vi) Except in case of items relating to foundations provisions containing in sub-clause (i) to (v) above shall not apply to the contractor or substituted items as individually exceed the percentage set out in the tender documents referred to herein below as (deviation limit) subject to the following restrictions:

a. The deviation limit referred to above is the net effect algebrical sum of all additions and deductions ordered.
b. In no case shall the additions / deductions (arithmetical sum included in the contract shall not exceed plus / minus 50% of the value of that trade in the contract as a whole or half the deviation limit, whichever is less.
c. The value of additions of items of any individual trade already included in the contract shall not exceed 25% of the deviation limit.

NOTE: Individual trade means the trade section into which a schedule of quantities annexed to the agreement has been divided, or in the absence of any such division, the individual sections of the CPWD schedule or rates specified above such as excavation and earth work, concrete wood work and joinery etc.

The rates for any such work except the items relating to foundations which is in excess of the deviation limit shall be determined in accordance with the provisions contained in Clause 12-A."

18. The learned counsel for the Appellant would contend that the fixation and calculation of rates without regard to the actual distance involved in the transportation of ash is commercially irrational and contrary to established business practices. It would be submitted that such an approach neither reflects the economic realities of transportation costs nor accords with the true intent of the parties at the time of entering into the contract. In support of this submission, the learned counsel would place reliance on the fresh tenders floated by the Respondent during the subsistence of the contracts with the Appellant, wherein the proposed disposal sites are expressly segregated into distinct categories on the basis of distance from the point of removal, with differential rates prescribed for each category, and this clearly demonstrates the Respondent's own recognition of distance as a material and determinative factor in rate computation.

19. The learned counsel for the Appellant would further rely upon

departmental noting of the Respondent and various communications received from the Respondent during negotiation of the contract, allegedly admitting that the rate calculated was contingent upon the distance between the site of removal and disposal and that the price quoted was calculated for 23 kms only.

20. The learned counsel for the Appellant would further contend that each modification of damages granted for idle machinery and labour, and loss of profits was erroneous as the contract between the parties was for the disposal of 50% of the 12 lacs cubic meters of fly ash (6 lacs) and not just 1.5 lakh, which was only a preliminary arrangement. It would further be submitted that the contract was duly extended by the Respondent and therefore the Appellant is entitled to compensation for the delays in extensions and for the loss of profits accruing over the entire contract.

21. The learned counsel for the Appellant would emphasize the narrow and well-settled scope of judicial interference while adjudicating petitions under Section 34 of the A&C Act. It would be submitted that, given these statutory limitations, interference with the reasoned award rendered by a technical arbitrator was wholly unwarranted.

CONTENTIONS ADVANCED BY THE RESPONDENT:

22. The learned counsel for the Respondent would oppose the present appeal and submit that the award of the sole arbitrator was in violation of the clear contractual terms agreed by the parties and that the learned Single Judge correctly modified the award in exercise of powers under Section 34 of the A&C Act.

23. The learned counsel for the Respondent would further submit

that upon consideration of the entire contract and the LOI dated 25.07.1994, the rates of compensation calculable for disposal of fly ash were for '*anywhere in the UT of Delhi*'. To buttress this claim, the learned counsel would rely upon Clause 1 of the **Special Conditions of Contract**[7] laying out the scope of work as excavation of fly ash from one or more chambers of ash ponds and disposal of the same at low-lying pockets within the UT of Delhi as directed by the Engineer-in-Charge from time to time.

24. The learned Counsel for the Respondent would further rely upon Clause 4 of the SCC, which states that the rate quoted by the contractor shall be valid for all leads and lifts and that no claim whatsoever shall be entertained for change in disposal point involving different leads. It would also be submitted that Clause 5 of the SCC further clarifies that the rate quoted shall cover all leads and lifts involved in the disposing of the ash in the location as specified in the contract, i.e., the discretion of the Engineer-in-Charge.

25. It would thus be submitted by the learned counsel for the Respondent that Clauses 1, 4, and 5 of the SCC clearly establish that the contract did not envisage any limitation on the distance of the disposal site, and consequently, no additional compensation on account of disposal distance was payable to the Appellant.

26. It would further be submitted that the LOI dated 25.07.1994, being the last document in the chronological sequence, constitutes the final and binding agreement between the parties and, by application of the principle of contractual hierarchy, supersedes all prior communications and documents. It would be urged that since the interpretation adopted by the learned Arbitrator ran contrary to the

[7] SCC

clear and unambiguous contractual arrangement between the parties, the arbitral award to that extent was liable to be set aside or suitably modified and the learned Single Judge rightly did so.

27. With regard to the claims pertaining to idle machinery and labour, it would be submitted by the learned counsel for the Respondent that the Appellant was duly informed that any further renewal or extension of the contract was under consideration and any vehicles, machinery, or staff/labour kept idle during this period would be entirely at the Appellant's own risk and cost. It would thus be submitted that the decision to keep the machinery and labour idle was a purely commercial decision taken by the Appellant during the pendency of its request for extension, and the Respondent cannot be held liable for any losses allegedly suffered on that account.

ANALYSIS:

28. We have heard the learned counsel appearing for the parties at considerable length and have also undertaken a detailed, careful, and comprehensive examination of the entire record of the appeal, including the Impugned Judgment passed by the learned Single Judge and the Arbitral Award rendered by the learned Arbitrator.

29. While examining the grounds urged in the present appeal under Section 37 of the A&C Act, it is imperative to bear in mind the well-settled jurisprudence that the scope of judicial interference with arbitral proceedings is narrowly confined and strictly circumscribed. The Court does not sit as an appellate authority to re-appreciate evidence or reassess factual determinations but exercises only a limited supervisory jurisdiction. The Hon'ble Supreme Court, in

Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills[8], has succinctly summarized this legal position as follows:

> "**11.** Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.
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> **12.** It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.
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> **13.** In paragraph 11 of ***Bharat Coking Coal Ltd. v. L.K. Ahuja***, it has been observed as under:
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> > "11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."
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> **14.** It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.
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> **15.** In ***Dyna Technology Private Limited v. Crompton Greaves Limited***, the court observed as under:
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> > "24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should

[8] 2024 SCC OnLine SC 2632.

not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of ***MMTC Limited v. Vedanta Limited***, it has been held as under:

"14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed 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. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

18. Recently a three-Judge Bench in ***Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking*** referring to ***MMTC Limited (supra)*** held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere

possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.

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CONCLUSION:

20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

(emphasis supplied)

30. From the foregoing precedent, it emerges with clarity that the jurisdiction of the appellate court under Section 37 of the A&C Act is narrowly circumscribed and warrants exercise with great circumspection. The appellate court is not expected to reassess the merits of the dispute or to sit in appeal in a broad sense. Interference is

permissible only in limited and exceptional circumstances, strictly within the contours delineated by the statute and settled judicial precedent.

31. In order to facilitate a proper appreciation of the grounds urged in the present appeal, it is considered appropriate to reproduce the relevant portions of the Arbitral Award, which were subsequently modified by the learned Single Judge *vide* the Impugned Judgment. The challenge before the learned Single Judge, and now before this Court, was confined to Claim Nos. 2, 5, and 6, as also the grant of interest. The Arbitral Award, insofar as it pertains to these claims, reads as under:

> "**Claim No.2: Additional distance of the disposal site = Rs. 40,50,000/-**
> The tenders were called on 28.07.1993 and after negotiations it took one year to issue the letter of intent i.e. on 21.07.1994/25.07.1994. The tender document is a very important part of work contract and also the letter of intent/allotment or actual award of the work. The tender clearly says that the sites for disposal are Vasant Kunj, Dhirpur and Shalimar or any other site'. The meaning of this is quite clear that the site for which negotiation took place really did not any stage the work order dated 25.07.1994 envisage definite site as any other site was also part of the clause. In a contract, for transportation of material the actual distance plays most important role. The distance of this site i.e. Vasant Kunj, Dhirpur and Shalimar was about 20 kms. and this nowhere it is mentioned that the rates for 20 kms. or any other distance as the territory mentioned is very vast i.e. whole of U.T. of Delhi. The place of disposal mentioned in the tender is of great importance and it cannot be ignored. As per general condition of the contract, extra rate has to be paid as an extra item for any other site which is not at a distance of nearabout 20 kms. or so. Rohini happens to be about 35 kms. away from the I.P. station and I feel that the place Rohini is mentioned for the disposal but the rate quoted in the tender and the distance also could not be ignored.
> The site selected for disposal and the rate had to be decided as an extra item as per clause 12 of the general conditions in the tender papers. An extra lead of 35−20=15 K.M. is involved. The tender had filled in the rate during negotiations keeping in view the distance of Vasant Kunj, Dhirpur and Shalimar. At no stage during negotiation Rohini site was mentioned. Even the first letter of

intent dated 21.07.1994 Rohini was not mentioned. There was no finality in the rate and site as it was mentioned in the tender and Letter of intent as "or any site". As per Letter of intent of 25.07.1994 Rohini site was mentioned. As per tender it was not so. Even during the negotiation stage there was no mention of Rohini. Therefore I am of the view that extra payment for extra 15k.m. lead is to be patd. This should be about Rs. 15/- extra. The rate for Model Town, Vasant Kunj, Dhirpur and Shalimar will remain the same i.e. Rs. 31.70/30.70 per cubic meter but for Rohini site rate to be paid is Rs. 15/- extra, which will amount to 51,213.58 cum + 41,851.97 cubic meters = 93,065.55 cubic meters @ Rs. 15/- extra comes to Rs. 13,95,983.20.

I award Rs. 13,95.983.20 in favour of the contractor.

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Claim No.5: Loss due to labour, establishment, machinery, tools and plants made idle Rs. 75,00,000/-.

The site at Rohini was completely filled up on 16.1.1995 and this has been confirmed by the D.V.B. officials and a letter also received from the DDA not to bring any more ash in the Rohini Area. So the contractor had to wait for further instructions from the D.V.B. in the meantime decided to call for fresh tenders making clear the distance in Group-A and Group-B for 20/35 kms. lead. The tenders were received very high so D.V.B. again decided to carry on with the old contract and forced the contractor to accept the same on old rates. They also put a condition that the money which was kept for vigilance inquiry could only be released partially if the contractor start again the work at the old rates. This act of the DVB amount to very unfair practice. The DVB had retained a large amount of money for the decision of the vigilance agency. In the meantime as tenders were called by DVB again, naturally the contractor removed the trucks, bulldozer etc. and on the line stated above for claim No. 3, the claim for dismantling closed body dumpers loaders and also dismantled the closed body dumpers etc. No extra payment for dismantling is accepted by me. However I find this is a very unsound and illegal action and for talking up the work again after being idle for nearly two months or 59 days by keeping all the equipments eg. Bulldozer, Excavator and trucks etc. idle. In addition to this some labour and staff also had to sit idle. I have accounted only one bulldozer, one excavator and about 20 trucks and also labour of only permanent staff like drivers, mechanics, chowkidars and forman etc. the rental for the bulldozer etc. and salary of staff etc. will be about Rs. 12,500/- per day. There was hold up in the work at several occasions. They took considerable time in granting extension and then also there was very considerable delay. So the contractor has to be compensated for this idle machinery and establishment @ Rs. 12,500/- per day for at least 59 days amounting to Rs. 7,35,500/- and this amount is awarded to the contractor.

I award Rs. 7,35,500/- against this claim in favour of the contractor.

Claim No. 6: Loss of profit Rs. 75,00,000/-

Through this is being a long term contract, the DVB awarded only for Rs. 1.5 lac cum initially and the rest of the work was to be awarded after the contractor had completed satisfactory the first portion. The Punjab and Sind Bank and other banks certified the credit worthiness and capability of the contractor. Also he had arranged with a suitable company for converting the trucks and dumpers into closed body as per the requirement for this work. It shows that this conversion was an extra burden on the contractor. Also having converted some of these dumpers as per requirement, DVB took considerable time in granting extension and order for the next 1−1/2 lakh cum. ash to be disposed off. As luck would have it there was a newspaper report that the ash is being disposed off at unidentified places so the DVB stopped payment to the contractor. In the first three months the contractor was paid a very meager amount. As per the terms of the contract, the payment had to be made once a month and the contractor in the tender gave his condition that payment should be made twice in a month. Time limit was extended by 6 weeks i.e. upto 07.02.1995. In the meantime Rohini site was completely filled up with fly ash on 16.01.1995 and DDA stopped work on was given to the claimant thereafter. In the meantime fresh tenders were called by the DVB for the same work and therefore it took long time for the Deptt. to give any further site. So they again entered into negotiation with the contractor and forced him to continue with the work on the old rates. During all this time the equipments and manpower of the contractor remained idle. In P-56 and P-57, the contractor gave an idea of the cost of each machinery and rental per day of the same. For example, Excavator 5D Escorts was costing Rs. 17 lacs and rental per day was Rs. 7,000/-. Similarly 5 dumpers - TATA covered as per design given by the DVB were costing Rs. 35 lacs and rental per day was Rs. 10,000/-. There were many other machinery items which are given at document P-56 which remained idle, during this period. The contractor has claimed Rs. 75 lacs for this idle period. I am sure that there must be some arrangement with the machinery owners for charging on a lesser rate for the machinery stands idle. There were several hold ups.

While giving new site for the work to be done at Model Town, the DVB put a condition that the money which was kept for vigilance inquiry could be released partially if he starts the work again at the old rates. The site now decided by the DVB was Model Town which was only 20 kms. away and the rate quoted in the tender was for Dhirpur, Shalimar and Vasant Kunj. In fact the contractor was so keen to get the old payments that he went to extent of giving a discount of 2.5% for Model Town i.e. at a distance of about 20

kms. The contractor re-started the work under threat or pressure to get the old payment which were due but not paid yet as the report of vigilance enquiry was not known so far. In the meantime the contractor had dismantled and taken away the equipment on or about 20.03.1995. So under pressure and to get the remaining payment, contractor was prepared to re-start the work for disposal of the ash to Model Town which was at 20 Kms. Distance even at a discount of 2.5%. By starting the work he managed to get a payment of Rs. 8,03,066.50 on 26.05.1995. Clearly from 19.01.1995 to 20.03.1995 the contractor kept the equipment at site in the hope that DVB will continue with the work which was of the value of 6 lac cum. As per document P-56 and P-57, the rent per day was Rs. 95,000/- and staff of permanent nature was Rs. 30,000/- per month. For these sixty of fifty nine days, the contractor did suffer a loss for the idling of machinery and labour. This is too much. The cost/charges when the equipment is not used could be about 1/4th of what is claimed.

On a very conservative estimate a payment for 59 days seems to be non than justified for the high loss which the contractor must have suffered. The rates given by the contractor seems to be the market rates for hiring the specialized equipment. In my calculation, I feel that atleast one excavator one bulldozer and 20 trucks must have been kept on site which will justify the payment.

The tender for disposal of ash was for 12 lac cums. quantity. The work awarded was only 50% to this contractor. There was a clause in the tender papers that the work can be given to more than one contractor so on that score, the contractor cannot be compensated for the entire job. However, the work of more than Rs. 2−1/2 crores should have been allotted to him. Due to the mismanagement of the DVB, no site could be given after 16.01.1995. The contractor had sufficient resources and had spent sufficient money for conversion of ordinary open dumpers into closed body dumpers and procurement of other costly equipment from the market. The duration of the contract in the tender paper was two years. If the whole work was allowed to be carried out by him there would have been some what beneficial/profitable for the contractor. When the work was re-awarded for the Model Town area a new condition was inserted that the other end also i.e. where the ash had to be dumped the staff would check the number of trucks arrived at site and its capacity etc. This condition would have very much delayed the work as the Chowkidars and staff would not always be available at all times during day and night. This would have reduced the No. of trips that a truck could make in a day/night. According to the claimant, only 1/3 progress could be made. So this was a condition which was never envisaged according to the main tender papers. Because of this and other impediments/reasons that the contractor asked for appointment of an Arbitrator and payment of arrears which was not paid during the period the work

in progress. The contractor is quite justified for claiming loss of profit if the whole work was allowed to be carried out as per terms of the tender where two years time was given to complete the work. If the contractor had been allowed to complete the work by DVB by not putting hindrance like non provision of site for dumping, non payment of monthly bills which was a very important condition of the contract and also so much expenditure incurred for converting at least 20 dumpers into closed body dumpers, the investment made by the claimants would have been fruitful if the above hindrance were not put in the away. This condition of checking at the disposal site was also introduced by the DVB which was not at all provided for in the original tender papers. So all this things put a great hindrance and loss the contractor. I can compensate for some portion of the loss only otherwise the contractor should have earned at least 10% of the total cost of work of Rs. 2−1/2 crores i.e. Rs. 25,00,000/-. The work done by him was about Rs. 30 lacs only out of Rs. 2-1/2 crores at least 5% net should have been the profit to the contractor although the courts have held a reasonable profit of 10% in such cases. The contractor must be compensated for an amount of Rs. 12.50 lacs.

I award Rs. 12,50,000/- in favour of the contractor against this claim.

*****

Summary of the award given by me against various claims raised by the claimants are as under:-

CLAIM NO.	**AWARD**
Claim No. 1-a, b & c	Rs. 8,18,464.64
Claim No. 2	Rs. 13,95,983.20
Claim No. 3	Nil
Claim No. 4	Nil
Claim No. 5	Rs. 7,35,500.00
Claim No. 6	Rs. 12,50,000.00
Claim No. 7	Nil
Claim No. 8	Nil
Claim No. 9	As given below
Claim No. 10	Nil

I award that the contractor hall be entitled for 18% interest p.a. from 18.05.1995 i.e. date of completion of work by him till date of Arbitration Award.

I further award that the contractor shall also be entitled for future interest @ 18% p.a. on all amounts awarded above in accordance with Section 31 (7) (b) of the Arbitration and Conciliation Act, 1996 from the date of Arbitration award till date of payment.

The Award is signed by me in New Delhi on 31st day of August 1998."

32. A bare and holistic reading of the reasoning adopted by the

learned Arbitrator in relation to the three principal claims assailed before the learned Single Judge and now before us reveals the following broad contours of the arbitral findings:

(i). Claim No. 2: Additional Distance of Disposal Site

(a) The learned Arbitrator found that the tender envisaged the disposal of fly ash at Vasant Kunj, Dhirpur, Shalimar, or any other site, without fixing any definite disposal location. The rates negotiated between the parties were based on an approximate lead of 20 km, corresponding to the originally indicated sites.

(b) The Rohini site, situated at a distance of about 35 km, was neither disclosed during the negotiations nor mentioned in the first LOI dated 21.07.1994, and was introduced only in the subsequent LOI dated 25.07.1994, thereby materially altering the lead distance.

(c) In terms of Clause 12 of the GCC, any additional lead constituted an extra item warranting extra payment.

(d) Since an additional lead of 15 km (35-20 km) was involved for disposal at Rohini, the learned Arbitrator held that an extra rate of Rs. 15/- per cubic meter was justified.

(e) Accordingly, for a total quantity of 93,065.55 cubic meters, an additional amount of Rs. 13,95,983.20 was computed and awarded.

(ii). Claim No. 5: Loss Due to Idle Labour, Machinery, Tools and Plant

(a) The learned Arbitrator noted that the Rohini disposal site stood fully exhausted on 16.01.1995 and further dumping was prohibited by the Delhi Development Authority.

Thereafter, the Appellant was left awaiting further instructions while the Respondent contemplated the issuance of fresh tenders and consideration of extensions, during which period the Appellant's machinery and labour remained idle for approximately 59 days.

(b) As the fresh tenders received were significantly higher, the Respondent decided to continue with the old contract and compelled the Appellant to accept the same on old rates, even linking partial release of withheld payments to recommencement of work.

(c) The learned Arbitrator found the conduct of the Respondent to be unfair and unsound, though claims towards dismantling charges were disallowed.

(d) Adopting a conservative approach, the learned Arbitrator accounted only for one bulldozer, one excavator, about 20 trucks, and permanent staff such as drivers, mechanics, chowkidars, and foreman, and assessed idle charges at a reasonable rate of Rs. 12,500/- per day.

(e) Consequently, compensation for 59 days of idling was calculated at Rs. 7,35,500/-, which was awarded.

(iii). Claim No. 6: Loss of Profit

(a) The learned Arbitrator observed that the contract contemplated the disposal of 12 lakh cubic meters of fly ash over a period of two years, although only about 50% of the work was initially earmarked for the Appellant.

(b) The Appellant had made substantial investments, including the conversion of dumpers into closed-body vehicles as mandated under the contract.

(c) However, the Respondent repeatedly delayed extensions, withheld payments on account of a vigilance inquiry, and failed to allot alternate disposal sites in a timely manner.

(d) Fresh tenders were called, negotiations were reopened, and the Appellant was compelled to continue the work on old rates under pressure.

(e) Additional conditions, such as verification at disposal sites, were subsequently imposed, which hampered productivity and reduced the number of trips, while equipment and manpower remained idle for prolonged periods due to administrative lapses and non-allotment of sites.

(f) The learned Arbitrator accepted that the Appellant suffered loss of profitability owing to mismanagement by the Respondent, non-payment of monthly bills, non-provision of disposal sites, and the introduction of new and restrictive conditions not contemplated in the tender.

(g) Although the entire claim for loss of profit was not allowed, a reasonable and conservative compensation was considered justified, and having regard to the scale of the work of approximately Rs. 2.5 crores and judicial precedents on reasonable profit margins, a sum of Rs. 12,50,000/- was awarded.

33. We now turn to the Impugned Judgment, whereby the learned Single Judge, upon an exhaustive examination of the record and the contractual framework governing the parties, proceeded to partially modify the Arbitral Award. For the sake of convenience and completeness, the entire Impugned Judgment is reproduced below:

"….

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenges the Award dated 31.8.1998 passed by the sole Arbitrator. The arbitration proceedings arose on account of a contract entered into between the parties whereby the respondent was to remove fly ash deposits from certain ash ponds in the petitioner's thermal power plant for being deposited at different sites. The disputes arose on account of various issues such as whether the contractor is entitled to charges for transporting the ash beyond 20 KM. approx., whether the contractor is entitled to charges incurred by him towards idle labour; plant and machinery, loss of profitability on account of closure of the contract and so on.

2. At the outset, I may state that the counsel for the petitioner has confined his arguments with respect to the Claim Nos. 2, 5 and 6 dealt with in the Award. Claim No.2 pertains to the claim for payment for additional distance of the disposal site. Claim No.5 pertains to loss due to idle labour/staff/plant and machinery and Claim No.6 is with regard to loss of profitability arising from the pre-mature closure of the contract by the petitioner.

3. The issue which has to be addressed by the Court is with respect to the aspect as to whether for disposal of the fly ash is there is a specified site or an approximate distance to such site, as per the contract. If a specified site or an approximate distance is found in the contract, then, the Award with respect to claim No.2 of charges towards additional distance travelled for disposal of the fly ash, would be correct. However, if the contract does not provide for any specific site or any approximate distance qua the specific site, there will not arise any claim for additional distance for carriage of the fly ash.

4. Mr. Gourav Banerjee, ASG, appearing on behalf of the petitioner has in support of his arguments with respect to the issue that there is no fixed site or even a fixed approximate distance for disposal of the fly ash has taken me through the various contractual conditions in the agreement and more particularly the terms and conditions in the S.C.C. At this stage, I may refer to clause Nos. 4 and 5 of the Special Conditions of Contract. Before I do that I may note that the special conditions of the contract specifically state that whenever there is a conflict between the general conditions of contract and the special conditions, the special conditions shall prevail. Therefore, it is clear that special conditions will prevail over general conditions. Also, it would be relevant for a decision of the subsequent issue that the terms and conditions as found in the final letter of the Award, which was acted upon by the respondent, would become the final contract document between the parties. Clauses 4 and 5 of the special conditions of contract are as under:

> "4. The tentative list of sites identified by the Department for disposal of ash shall generally be indicated in the tender/letter of intent. The Department may also identify other sites for disposal of ash, during the course of

execution of work. The contractor is required to dispose off the ash at the identified sites as per direction of Engineer-in-charge. However, the contractor shall have option to identify additional sites for dumping at his own end and shall get these locations approved from the Department before commencement of work. Department reserves the right to reject any/all sites so identified by the contractor without assigning any reason. Thus, rate quoted by contractor shall be valid for all leads and lifts. The sites identified by Department shall be filled first as per priorities indicated by the Engineer-in-charge and the site identified by the contractor shall be filled afterwards. In the sites thus identified by the Department, contractors shall normally fill ash upto optimum capacity of the available dumping ground unless directed otherwise. In the event of one particular site getting full, the contractor shall commence on the next dumping ground as directed by the Engineer-in-Charge. Thus, the contractor has to dispose off/dump ash at number of locations as per exigencies of work/availability of the sites and no claim whatsoever shall be entertained for change in disposal point involving different leads."

5. The rate quoted by the contractor shall cover for all leads and lifts involved for disposing off the ash in the locations as specified in para (4) above. The rate shall also cover for all operations, such as excavating fly ash from the ash disposal area, loading/unloading and transporting the same to the point of disposal, disposing the top surface of the area after disposal. As the fly ash after excavation is to be disposed off in the low lying areas, any approach required to be made for disposal shall be the contractor liability, and no financial claim whatsoever on this account shall be entertained."

(Emphasis added)

5. A reference to the conditions 4 and 5 make it more than clear that there is no specific site on which the dumping is to take place. Not only is the list of site tentative, but, it is quite clear from the clauses that the Department may also identify other sites for disposal of ash during the course of execution of the work. There is no reference to any distance with respect to these other sites at which disposal of ash would take place during the execution of the contract. I may, at this stage, mention that the contract between the parties is for disposal of the ash within the entire Union Territory of Delhi as per clause 1. This clause is reproduced hereunder:

"1. The scope of work covers excavating fly ash from any of three or more chambers of ash ponds along Ring Road between 'Y' shape Rly. Bridge near Bhairon Road crossing and Nizamuddin bridge on river Yamuma and disposing

> off the ash by closed steel body trucks/dumpers approved by the Department at low lying pockets/dumping ground within Union Territory of Delhi as may be directed by Engineer-in-charge from time to time. The scope of work also includes levelling and dressing of fly ash at the dumping grounds."

A reading of the clause 1 shows that the scope of the work covers excavating the fly ash from one or more chambers of the ash ponds and disposing of such ash at low lying pockets/dumping ground in the Union Territory of Delhi as may be directed by the Engineer-in-charge from time to time. Therefore, a conjoint reading of clause 1, clause 4 and clause 5 makes it more than clear that not only the contract is for disposal of ash within the Union Territory of Delhi, there is no fixed site which is specified for disposal of such ash, and nor is there specified any fixed or even an approximate distance specified as the lead for the disposal of fly ash. To cap the issue, clauses 4 and 5 in so many words very clearly state that the rates quoted by the contractor shall be valid for all leads that is with respect to all distances and no claims will be entertained for change in the disposal point involving different leads.

6. Mr. Ashok Bhasin, learned senior counsel for the respondent has per contra referred to the Schedule of Quantities (SOQ) to contend that the disposal has to be at a specific site. The relevant portion of this SOQ which is relied upon by Mr. Bhasin is as under:-

> *"Note:- Tentative sites of disposal:- Vasant Kunj. Dhirpur/Shalimar Bagh or any other site." (Emphasis added)*

Mr. Bhasin has argued that these sites as stated in the SOQ would therefore confine the petitioner to direct disposal of ash by the respondent to such sites only or within leads of such sites only and not for any other leads from the place where fly ash is picked up for disposal.

7. A contract document ordinarily would have provided for the priority of the contractual documents inter se being the notice inviting tender, general conditions of contract, special conditions of contract, the letter of Award and an agreement document which is entered into between the parties. Unfortunately, in this case, the contract is silent as to priority of the documents. I hope, the petitioner will be wiser in future, however in the present, I have to interpret the different terms and conditions as appearing in the contract in a harmonious manner so that the intention of the parties becomes clear from such clauses. I note that in the relevant portion of the schedule of quantities relied upon by Mr. Bhasin that the sites which have been mentioned ends with the expression "or any other site". This itself, therefore makes it more than abundantly clear assuming any clarification was required even after clauses-1, 4 and 5 of the special conditions of contract, that, there is no fixed site or

any fixed distance for disposal of the fly ash under the contract. The disposal as already stated by me is in terms of clause 1 of the SCC was to be at any place in the Union Territory of Delhi and for any lead/distance. Accordingly, I am not agreeable to the contention which has been very strenuously contended on behalf of Mr. Bhasin on behalf of the respondent.

8. The law with respect to interference with an Award under Section 34 of the Arbitration and Conciliation Act, 1996 is very clear. Ordinarily the courts will not interfere with the Award unless the Award is against the contractual provisions or the award is illegal i.e. against the provisions of the law of the land or is so perverse that it shocks the judicial conscience. This interpretation is now well settled with respect to objections which have been filed under Section 34. Accordingly, in accordance with these parameters of law, I note that the award clearly therefore flies and is totally contradictory to the direct contractual provisions namely clauses 1, 4 and 5 of the special conditions. I am of the firm opinion that the clauses in the special conditions of contract in the facts of the present case will prevail over the schedule of quantities/SOQ because the language in the schedule of quantities itself refers to "or any other site". The same result will also flow from the harmonious construction of all the relevant clauses. Therefore, without doing any violence to the language in schedule of quantities one can safely interpret clauses 1, 4 and 5 of the special conditions of contract that as regards the disposal of fly ash there was no fixed place of disposal or any fixed distance. That being the position there cannot lie any claim on behalf of the contractor for disposal of ash beyond any assumed limit which is taken as the fixed contractual distance/lead. This Award of the Arbitrator therefore being clearly violative of the contractual provisions is liable to be set aside under Section 34. I, therefore, set aside this part of the Award.

9. This takes me to the claim No.6 with respect to the loss of profitability granted by the Award on account of pre mature closure of the contract by the petitioner. The undisputed facts with respect to this contract are that the contract was awarded vide letter of intent dated 25.7.1994 and as per which the date of commencement of the work was 1.8.1994. The contract was for a period of three months ending on 31.10.1994. It is also an undisputed fact that whereas the original notice inviting tender was for a quantity of 12 lacs cubic metres of fly ash, the letter of intent/letter of Award awarded transportation of only one and half lac cubic meters of fly ash. The contract in question could not be completed by 31.10.1994 and therefore there is an agreed amendment to this contract whereby the contract was extended from 28.12.1994 to 7.2.1995. The contract in question admittedly came to stand still on 16.1.1995 because no other sites were specified by the petitioner for taking the fly ash and the site at Rohini had in the meanwhile completely filled up on 16.1.1995. Once no site was further specified for disposal, therefore,

the respondent is entitled to loss of profitability with respect to the closure of the contract. However, the issue is to what extent should the respondent/claimant be allowed the amount of profits with respect to the balance unperformed portion of the contract. The contract in question as stated by me above was for one and half lac cubic metres of fly ash and not for 12 lacs cubic metres of fly ash. The contract came into being when the petitioner issued the letter of intent dated 25.7.1994 which contains this quantity. The parties have in fact acted on the basis of this letter dated 25.7.1984 which becomes the final contract document between the parties. I may only refer to Section 8 of the Contract Act, 1872 which specifies that the contract between the parties can also be arrived at by means of performing the various terms and conditions of the contract. In this case, it is an undisputed fact that the parties have acted and performed their respective obligations in terms of the letter of intent dated 25.7.1994. Therefore, this is the final contract document between the parties in terms of Section 8 of the Contract Act.

Now if we look at the Award of the Arbitrator what the Arbitrator has done is that the he has awarded loss of profitability for the balance portion of the work taking the balance portion of the work not out of the awarded quantity of one and half lac cubic meters but 50% out of the original quantity in the notice inviting tender of 12 lacs. This 50% clearly is erroneous and illegal. This value has been taken by the Arbitrator at Rs.2,50,000,00/-. On this amount of 2,50,000,00/-, the Arbitrator has awarded 5% as loss of profits that is Rs.12.5 lacs. This approach of the Arbitrator is clearly faulty and ex-facie illegal because the contract itself is only of one and half lacs cubic meters and not for 12 lac cubic meters. Out of this contract, of 1.5 lac cubic meters 2/3rd was performed and only 1/3rd of the contract remained. Therefore, if the issue arises of loss of profitability then loss of profitability should have been taken only with respect to 1/3rd of the contract amount. Since the contract amount for 1.5 lac cubic meters is of the value of Rs.47,00,000/-, 1/3rd of this amount would be approximately 16 lacs. Taking 5% of Rs.16 lacs, the amount of loss of profitability is approximately Rs.80,000/-. That being the position, where the Award has awarded sum of Rs.12.5 lacs, the figure of Rs.80,000/- shall stand substituted. This part of the Award is therefore set aside to the extent that under this head of loss of profitability only Rs.80,000/- is awarded as against Rs. 12.5 lacs.

10. That takes me to the objection raised by Mr. Gaurav Banerjee pertaining to claim no.5. Under this head, the Arbitrator has granted idleness due to labour, establishment, machinery, tools and plants for the period from 19.1.1995 to 20.3.1995. I have also noted that the contract in question was only extended up to 7.2.1995. Once the contract is extended only up on 7.2.1995, there cannot arise any idleness beyond 7.2.1995. Therefore, the idleness charges which have been granted have to be confined from

19.1.1995 (date as per the Award) to 7.2.1995 and not up to 20.3.1995. Under this head, the Arbitrator has awarded a sum of Rs.12,500 per day for the period of 59 days. This amount, therefore, instead of being granted for 59 days will now be only granted for 20 days i.e. from 19.01.1995 to 7.2.1995. This part of the award is also set aside and modified to the extent that instead of allowing a sum of Rs.7,35,500/-, I award Rs.2,50,000/- under this head.

11. Finally, that leaves me with regard to the issue of interest. The Arbitrator has awarded interest at the rate of 18% per annum. I may note that the Supreme Court in the line of recent judgments reported as ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others, 2005 (6) SCC 678, McDermott International Inc. v. Burn Standard Co. Ltd. and others, 2006 (11) SCC 181, Rajasthan State Road Transport Corporation v. Indag Rubber Ltd., (2006) 7 SCC 700 & Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra, 2007 (2) SCC 720 and State of Rajasthan Vs. Ferro Concrete Pvt. Ltd.*** has held that in view of the changed economic scenario and the consistent fall in the rates of interest, the courts ought to take note of the same and must necessarily reduce the interest which is granted under the Award. Accordingly, being bound by the mandate of Supreme Court, I feel in the present facts and circumstances, the interest at the rate of 9% per annum simple will serve the ends of justice. Thus wherever the interest of 18% appears in the Award the same shall be read as 9% p.a simple.

12. Ordinarily, I would have imposed costs in terms of paragraph para 37 of the judgment of the Supreme Court in ***Salem Advocate Bar Association Vs. Union of India, (2005) 6 SCC 344*** which specifies that it is high time that the court should award actual costs and not nominal costs. However, in this case, since part of the objections have been accepted and part of the Award has been sustained, I feel that in the interest of justice, considering all the facts and circumstances of the present case, will be well served if the parties are left to bear their own costs.

13. With the aforesaid observations petition under Section 34 is disposed of with the modifications with respect to claim Nos. 2, 5 and 6 and the reduced rate of interest as stated above."

34. Upon a careful and bare perusal of the reasoning adopted by the learned Single Judge in the Impugned Judgment, insofar as it relates to the three principal claims which were the subject matter of challenge before the learned Single Judge and are now under consideration before us, the conclusions may be summarised thus:

(i). Claim No. 2: Additional Distance of Disposal Site

(a) On a conjoint reading of Clauses 1, 4, and 5 of the SCC, the contract clearly contemplated that the disposal of fly ash could be anywhere within the Union Territory of Delhi.

(b) No fixed disposal site, nor any fixed or approximate lead or distance, was stipulated under the contract.

(c) The Special Conditions expressly provided that the rates quoted by the Appellant were valid for all leads and lifts and that no claim would be entertained for any change in disposal points involving different leads.

(d) Even the Schedule of Quantities, while mentioning tentative sites, used the expression "or any other site", thereby reinforcing the absence of any fixed site or distance.

(e) The Special Conditions were held to prevail over the Schedule of Quantities, and a harmonious construction of all contractual documents led to the same conclusion.

(f) The learned Arbitrator's award granting additional payment on the assumption of a fixed lead was found to be directly contrary to the contractual provisions and, since it violated the express terms of the contract, was liable to interference under Section 34 of the A&C Act.

(g) Accordingly, the award relating to Claim No. 2 was set aside in its entirety.

(ii). Claim No. 5: Loss Due to Idle Labour, Machinery, Tools and Plant

(a) The contract period, as extended by mutual agreement, remained valid only up to 07.02.1995.

(b) The learned Arbitrator had granted idleness charges for the period from 19.01.1995 to 20.03.1995, which extended beyond the agreed contractual period.

(c) Once the contract stood extended only up to 07.02.1995, no idleness could legally arise beyond that date, and accordingly, idleness charges were required to be confined strictly to the period from 19.01.1995 to 07.02.1995.

(d) While the rate of Rs. 12,500/- per day as assessed by the learned Arbitrator was not interfered with, the duration of idleness was reduced from 59 days to 20 days, i.e., up to 07.02.1995.

(e) Consequently, the award under Claim No. 5 was modified from Rs. 7,35,500/- to Rs. 2,50,000/-.

(iii). Claim No. 6: Loss of Profit

(a) The final and binding contract between the parties was the LOI dated 25.07.1994, under which only 1.5 lakh cubic meters of fly ash were awarded.

(b) Although the original tender contemplated the disposal of 12 lakh cubic meters, the parties acted upon and performed the contract strictly in terms of the LOI, and by virtue of Section 8 of the Indian Contract Act, 1872, such performance confirmed the LOI as the final contract document.

(c) The learned Arbitrator was found to have erred in calculating loss of profit by taking 50% of the original tender quantity of 12 lakh cubic meters instead of the awarded quantity.

(d) Out of the awarded quantity of 1.5 lakh cubic meters, approximately two-thirds of the work had already been performed, leaving only one-third unperformed, and loss of profit, if any, could therefore be assessed only on the unperformed portion.

(e) The correct base value for computation was approximately Rs. 16 lakhs, being one-third of the total contract value of about Rs. 47 lakhs, and applying a 5% profit margin, the permissible loss of profit worked out to approximately Rs. 80,000/-.

(f) Accordingly, the award of Rs. 12,50,000/- under this head was held to be *ex facie* unsustainable and was substituted with an award of Rs. 80,000/-.

35. From a plain and careful reading of the reasoning adopted by the learned Arbitrator, it becomes evident that the conclusions drawn, particularly in respect of the impugned claims, are largely speculative and founded on conjecture rather than on the express terms of the contract governing the parties.

36. The learned Arbitrator failed to meaningfully engage with or apply the binding provisions of the SCC and the LOI dated 25.07.1994, which constituted the operative contractual framework. Instead, while adjudicating Claim No. 2, the learned Arbitrator confined his analysis almost exclusively to Clause 12 of the GCC, divorced from the overall contractual scheme.

37. The approach adopted by the learned Arbitrator is fundamentally flawed. The SCC expressly and unequivocally stipulates that in the event of any inconsistency between the GCC and the SCC, the provisions of the SCC shall prevail. The SCC more

specifically provided the rights and obligations of the parties, including the manner of execution, scope, and operational modalities of the contract. Further, Clauses 3 and 4 of the SCC clearly emphasise the role of the LOI as the document that crystallises and defines the contractual relationship between the parties at the subsequent stage. The failure of the learned Arbitrator to accord due primacy to the SCC and to the determinative role of the LOI, despite their express superiority, strikes at the very root of the arbitral reasoning and renders the approach legally unsustainable.

38. While the learned Arbitrator, at the inception of the Arbitral Award, reproduced certain portions of the LOI, he inexplicably disregarded its binding mandate and unambiguous terms while adjudicating the substantive claims.

39. The LOI unequivocally records that the negotiated rate of Rs. 31.70 per cubic meter was agreed upon for excavation and disposal of 1,50,000 cubic meters of ash, to be executed over a defined period of three months. The LOI further clearly identified Rohini as the initial disposal site, while reserving the Respondent's right to indicate other disposal locations as exigencies of work demanded. The relevant portion of the LOI reads as follows:

> "Dear Sirs,
>
> Please refer to your tender dated 28-7-93 and subsequent letters dated 16-6-94 and 21-7-98 on the above subject. While conveying our acceptance to your offer vide letter dated 21-7-94, you were requested to confirm your acceptance to some other terms and conditions indicated in our aforesaid letter by 23-7-94 for execution of work. You have confirmed vide your letter dated 23-7-94 that you are agreeable to these terms and conditions, I am directed to inform you that you tender has been accepted for carrying out the subject work for a period of three months at your negotiated rate of Rs 31.70 per cum for evacuation of 1,50,000 cum of deposited ash from any of the ash ponds of the ash disposal area

of IP Stn. located on ring road near Nizn. road bridge. This letter of intent sets out some of the important terms and conditions of the work as agreed to by you in the above referred tender---letters.
The work is awarded to you for a period of three months initially for excavation and disposal of 1,50,000 cum. of deposited ash through closed body tricks/dumpers at Rs. 31,70 per cum. the contract is extendable for a further period of three months in the event of your performance found satisfactory during the period of this award. This however, would be at the sole discretion of the Undertaking:

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The rate indicated above is for complete item of work including toll tax, octroi, royalties, cess and other taxes and duties on the prices of the material including terminal tax if any or further levies and increases and nothing extra shall be payable to you on this account by the department:

*****

The location where the ash is to be disposed off initially has already been identified to you at Sector 24, Rohini Phase III at the land opposite DESU 66 KV. S/Stn. Other location for disposal of ash shall be indicated whenever required during the course of execution:

*****

You shall bring at your own cost all tools, tackles and other construction Materials and machinery/equipments etc. as may be required for the successful and timely completion of the work.

*****

….."

40. The learned Single Judge, while examining the challenge to the Arbitral Award in respect of Claim Nos. 2, 5, and 6, meticulously took into account all relevant contractual provisions, and more importantly, accorded due primacy to the clauses of the SCC, which expressly superseded the GCC, including Clause 12 thereof, upon which the learned Arbitrator had singularly placed reliance. This contextual and hierarchical reading of the contract is fully in consonance with settled principles of contractual interpretation.

41. The learned Single Judge further correctly appreciated that, in the absence of any contractual stipulation prescribing a fixed disposal site or a defined or approximate lead distance, no claim for additional

payment could be sustained merely on the basis of assumptions or perceived equities. The contractual terms, read as a whole, consciously vested operational flexibility in the Respondent, and such discretion could not be curtailed through arbitral interpretation unsupported by contractual text.

42. The learned Single Judge also rightly noted that even the Schedule of Quantities described the disposal sites as tentative and explicitly included the expression "*or any other site*". The SCC further clarified that disposal could be directed at any location within the Union Territory of Delhi. In the face of these express provisions, the learned Arbitrator, without identifying any contractual mandate to the contrary, adopted a self-devised methodology to allow Claim No. 2, and by extension Claims Nos. 5 and 6. Such an approach amounts to a clear transgression into the impermissible domain of rewriting the contract.

43. Insofar as Claim No. 5 is concerned, the learned Arbitrator granted idleness charges for the period from 19.01.1995 to 20.03.1995, despite the undisputed fact that the contract, even after extension, subsisted only up to 07.02.1995. We are in complete agreement with the learned Single Judge that once the contractual relationship stood concluded on 07.02.1995, no legally cognisable idleness could arise thereafter. Any decision by the Appellant to keep its resources idle beyond the express work order/ LOI or in the absence of any further work order/ LOI was a matter of its own volition, for which the Respondent cannot be held liable.

44. Similarly, we fully concur with the conclusions drawn by the learned Single Judge in relation to Claim No. 6. The learned Single Judge correctly held that the learned Arbitrator committed a manifest

error in calculating loss of profit by reckoning 50% of the original tender quantity of 12 lakh cubic meters, rather than confining the computation to the quantity actually awarded under the LOI. It was further correctly noted that approximately two-thirds of the awarded quantity of 1.5 lakh cubic meters had already been executed, leaving only one-third unperformed. Consequently, any permissible assessment of loss of profit could only relate to that unexecuted portion.

45. The learned Arbitrator failed to appreciate that both the GCC and the SCC expressly vested wide discretion in the Respondent with respect to the allotment of quantities and the designation of disposal sites. While the original tender contemplated the disposal of 12 lakh cubic meters, the parties consciously departed from the tender terms and acted upon the contract strictly in accordance with the LOI dated 25.07.1994.

46. The said LOI, read in conjunction with the series of documents executed between the parties, constituted the final, binding, and operative agreement governing their contractual relationship. In this contractual backdrop, no enforceable right accrued in favour of the Appellant to claim allotment of any particular quantity or value of work. Consequently, the observation in the Arbitral Award that "*the work of more than Rs. 2.5 crores should have been allotted*" to the Appellant is wholly arbitrary, finds no support in any contractual stipulation, and amounts to an impermissible substitution of contractual terms, thereby amounting to perversity.

47. A holistic and conjoint reading of the GCC, the SCC and the LOI clearly demonstrates that the Respondent acted in accordance with the contractual framework governing the parties. Significantly,

the Arbitral Award fails to identify any substantial or final contractual term that was either disregarded or breached by the Respondent, save for a selective reliance on one or two isolated clauses of the GCC. Such an approach, divorced from the overall contractual scheme and the governing provisions of the SCC, renders the conclusions drawn in the Award unsustainable in law.

48. The learned Arbitrator further fell into manifest error by importing considerations arising from a subsequent tender floated by the Respondent and, on that basis, effectively rewriting and modifying the contractual terms governing the Appellant and the Respondent. Such an approach is legally impermissible, as the rights and liabilities of the parties are required to be determined strictly within the four corners of the governing contract, including the LOI dated 25.07.1994 and the documents forming part thereof. Reliance on an unrelated and subsequent tender, which had no applicability to the contract between the parties, amounts to a clear misdirection in law and vitiates the arbitral reasoning.

49. Compounding the error, the learned Arbitrator erroneously treated the letter dated 21.07.1994, which was merely a pre-work order communication, as equivalent to an LOI. While there are numerous additional infirmities arising from the misapplication of clauses of the GCC and SCC, having regard to the limited jurisdiction exercised by this Court under Section 37 of the A&C Act, we refrain from embarking upon a deeper contractual reappraisal. Suffice it to state that upon examining the Impugned Judgment, which squarely falls within the scope of our appellate scrutiny, we find ourselves in unequivocal agreement with the reasoning and conclusions recorded therein and endorse the same in their entirety.

50. Insofar as the modification of interest by the learned Single Judge is concerned, no infirmity or error can be discerned. The reduction in the rate of interest was effected strictly in accordance with the settled legal position and in compliance with binding judicial precedents governing the grant and calibration of interest, prevailing at the relevant time. The learned Single Judge exercised the discretion judiciously. The determination is thus neither arbitrary nor contrary to the record, and, consequently, warrants no interference by this Court.

***CONCLUSION*:**

51. For the reasons set out above, no ground is made out by the Appellant to warrant interference with the Impugned Judgement dated 12.11.2009 passed by the learned Single Judge, which deserves affirmation.

52. The present Appeal, along with the pending application(s), if any, is disposed of in the above terms.

53. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 16, 2026/sm/kr