



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

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Reserved on: 23.07.2026

Date of decision: 05.08.2026

+ **FAO (COMM) 82/2026**

NITIN KUMAR SHARMA

.....Appellant

Through: **Mr. Bipin Kumar Prabhat, Mr. Kislaya Prabhat & Ms. Rinku Kumari, Adv.**

versus

NETAJI SUBHAS UNIVERSITY OF TECHNOLOGY (NSIT)

.....Respondent

Through: **Ms. Jyoti Dutt Sharma & Mr. Manikant, Adv. with Mr. Mukesh Garg (SSA)**

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal is preferred by the Appellant/Claimant under Section 37 of the Arbitration and Conciliation Act, 1996 ("Act") read with Section 13 of the Commercial Courts Act, 2015, against the order dated 05.12.2025 passed by the learned District Judge (Commercial Court-04), South West District, Dwarka Courts, New Delhi in OMP (Comm.) No.13/2024 whereby, the Appellant's petition under Section 34 of the Act, assailing the Arbitral Award dated 31.03.2025, is dismissed. Earlier the learned Arbitrator had rejected the claim petition filed by the Appellant/Claimant.

2. The Appellant, who is the proprietor of a construction firm, was awarded a tender by the Respondent for the construction of the Student Centre at Netaji Subhas University of Technology ("NSIT") Campus, Azad Hind



Fauj Marg, Sector-3, Dwarka, New Delhi, for a total value of Rs. 64,44,290/-, plus GST. Under the terms of the contract, the work was to commence on 26.02.2016 and was scheduled to be completed by 25.08.2016. However, the same was completed on 25.09.2018, with a delay of 761 days.

3. The Appellant contends that the delay in execution of the work was wholly attributable to the Respondent. The work could not progress in a timely manner due to the Respondent's failure to provide a hindrance-free site, delayed issuance and subsequent revisions of the construction drawings, the presence of trees and an HT cable at the site, pending electrical work being carried out by another agency, and repeated changes in the specifications and scope of the work. The Respondent, however, disputes this stance. According to the Respondent, although certain initial hindrances did exist, they were removed within a reasonable period, and the undue delay thereafter was primarily on account of the Appellant's failure to deploy sufficient manpower, technical personnel, and other resources required for timely completion of the project.

4. Consequent upon the delay, the Respondent deducted a sum of Rs.68,542/- from the Appellant's final bill towards the compensation as mentioned in the agreement. The Appellant disputed the said deduction on the ground that the delay was not attributable to him.

5. As the disputes persisted, the Appellant invoked arbitration in accordance with Clause 25 of the agreement. Before the learned Sole Arbitrator, the Appellant raised several claims, including refund of the amount deducted towards compensation. Besides the said claim, the Appellant also claimed Rs.88,404/- towards unpaid amounts relating to sewerage pipe to gully trap work and electricity charges, Rs.3,02,663/- on



account of extra/substituted work which the petitioner performed at the site which were not mentioned in the tender, Rs.11,85,000/- towards site establishment expenses, and Rs.5,44,757/- towards head office expenses. Interest at the rate of 14.75% per annum was also claimed on the aforesaid amounts. The Respondent resisted the claim and, in turn, lodged a counter claim of the amount Rs.3,10,000/-.

6. In the Award dated 31.03.2024, the learned Arbitrator found that the Appellant failed to establish that the delay in completion of the project was attributable to the Respondent. The learned Arbitrator, further held that the Appellant failed to establish its claims and was itself responsible for the delays and breaches in the timely execution of the contract, having failed to deploy the requisite technical manpower and resources. In view of these findings, all the claims preferred by the Appellant were rejected. The counter-claim of the Respondent was also rejected by the learned Arbitrator.

7. Aggrieved by the award, the Appellant challenged the same under Section 34 of the Act before the learned Commercial Court, which examined the challenge keeping in view the limited scope of interference under Section 34 of the Act. Placing reliance on the decision of the Supreme Court in **OPG Power Generation Pvt. Ltd. v. Enxio Power Cooling Solution India Pvt. Ltd., 2024 SCC OnLine SC 2600**, the Court held that the Arbitral Award was well-reasoned, based on a proper appreciation of the pleadings and evidence on record. It held that the Appellant's issues were, in substance, an attempt to seek a re-appreciation of the finding of facts returned by the learned Arbitrator, which is beyond the scope of Section 34. Accordingly, finding no ground to interfere with the Award, the learned Commercial Court dismissed



the petition. Aggrieved thereby, the Appellant preferred the present appeal under Section 37 of the Act.

8. Learned counsel for the Appellant submits that the commercial court failed to appreciate that the impugned arbitral award was liable to be set aside. Learned counsel contends that the learned Arbitrator rejected the Appellant's claims without properly considering the documentary evidence placed before him and without recording adequate reasons for accepting the Respondent's stand. Learned counsel further submits that, while exercising jurisdiction under Section 34 of the Act, the learned Commercial Court failed to examine these errors and erroneously upheld the award.

9. Learned counsel for the Appellant further submits that the Arbitrator had wrongly concluded that the respondent has provided reasonable time to the appellant for completing the project. Learned counsel further argues that the documentary evidence relied upon by the Appellant was not duly considered, thus, the findings are not sustainable. Thus, the appellant is entitled for damages for delay. He contended that the award, thus, suffers from patent illegality and is in conflict with public policy of India. On these grounds, he prays for setting aside of the award and order passed by the District Court.

10. *Per contra*, learned counsel for the Respondent supports the impugned order and the award. Counsel submits that although the learned Arbitrator has rejected the Respondent's counter-claim, the Respondent accepted the award and did not file any cross-appeal. It is further argued that the present appeal is nothing but an attempt to invite the Court to re-appreciate the evidence, an exercise which is impermissible under Sections 34 and 37 of the Act. Learned counsel also contends that the Appellant's grievance regarding



non-consideration of certain documents is without merit, as the appellant has neither specifically referred to any such documents before the learned Commercial Court nor before this Court. Without specifying the very documents alleged to have been ignored, the plea that the award suffers from patent illegality cannot be accepted.

11. We have heard the learned counsel for the parties and perused the record.

12. The principal issues that fall for consideration are whether the learned Commercial Court committed any error in declining to interfere with the arbitral award under Section 34 of the Act, and consequently whether any case for interference is made out in the present appeal under Section 37 of the Act.

13. Before addressing the rival submissions, it is necessary to note the well-settled scope of judicial scrutiny under Sections 34 and 37 of the Act. An arbitral award represents the final adjudication by the forum consciously chosen by the parties for resolution of their disputes. Consequently, the jurisdiction of the Court under Section 34 is supervisory and not appellate. The Court is not expected to undertake a fresh evaluation of the evidence, substitute its own interpretation of the contractual terms or interfere merely because another view may also be possible.

14. It is equally settled law that the scope of interference in an appeal under Section 37 of the Act is extremely narrow and is confined to find out if the power under Section 34 has been exercised in excess or there is a failure in exercise of the said power. This provision does not empower the Court to re-appreciate evidence, re-assess factual findings, or revisit the merits of the dispute, but is summary in nature. This principle has been consistently



affirmed by the Supreme Court in numerous judgments. Recently, in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills, 2024 SCC OnLine SC 2632***, the Supreme Court while analysing the judicial precedents on the subject matter held as under:

“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)

15. The Supreme Court has consistently held that an arbitral award can be interfered with only on the limited grounds enumerated in Section 34 of the



Act. Patent illegality does not encompass every erroneous finding of fact or law. Likewise, the ground of conflict with the fundamental policy of Indian law cannot be invoked as a pretext to invite the court to undertake a review on merits of the dispute. Re-appreciation of evidence, reassessment of factual findings and substitution of the Arbitrator's findings merely because another view appears preferable is plainly outside the ambit of Section 34 and Section 37 of the Act. Once the Arbitrator has considered the material placed before him and adopted a view which is reasonably possible, the Court cannot interfere merely because it might have arrived at a different conclusion. Interference would be warranted only where the findings are demonstrably based on no evidence, ignore material evidence having a direct bearing on the controversy, rely upon evidence wholly irrelevant to the issues in dispute, or are perverse, i.e., so irrational that no reasonable person could have arrived at such conclusions.

16. The principal submission advanced on behalf of the Appellant is that the learned Arbitrator erroneously attributed the delay in completion of the project upon the Appellant despite overwhelming evidence demonstrating that the Respondent itself was responsible for the delay. Learned counsel submits that the site was not made available free from hindrances; construction drawings were supplied belatedly and underwent repeated modifications; trees and an HT cable continued to obstruct execution of the work; another agency failed to complete electrical works in time; and substantial substitutions in contractual items fundamentally altered the scope of execution. It is urged that these circumstances clearly established breach on the part of the Respondent and that the learned Arbitrator ignored both documentary evidence and admissions made by the Respondent in this regard.



17. The Arbitral Award reveals that each of the submission was independently examined in detail by the learned Arbitrator. Insofar as the existence of trees at the site was concerned, the learned Arbitrator considered the contemporaneous correspondence exchanged between the parties and records a finding that excavation work had commenced notwithstanding the presence of the trees, and, the trees were removed within a few days of commencement of the work. Likewise, with respect to the construction drawings, Arbitrator found that substantial drawings were supplied at the inception of the project and that subsequent modifications were of the nature that are provided ordinarily during the course of execution, thus, not causing any delay. Similar findings are recorded regarding the alleged obstruction on account of the HT cable as well as the plea relating to execution of electrical work by another agency. After referring the evidence led by the parties, the learned Arbitrator concluded that the Appellant has failed to establish, to any material delay caused due to any act of the Respondent. Also, after examining the evidence at length, the Court did not find any perversity or such gross illegality that would fall within the scope of Section 34 of the Act. Being, thus, satisfied with the award, the Commercial Court affirmed the same.

18. Much emphasis was laid by learned counsel for the Appellant on the assertion that the Respondent itself had admitted delay to the extent of 608 days and, therefore, the learned Arbitrator could not have concluded that the Appellant was primarily responsible for the delay in execution of the contract. We are unable to accept the said submission. Careful reading of the Arbitral Award demonstrates that the learned Arbitrator did not ignore the fact that certain hindrances existed at the commencement of the project or that extensions of time had been granted by the Respondent. After considering the



entire evidence, the learned Arbitrator reached the factual conclusion that while certain initial hindrances were indeed present, they stood removed within a reasonable period and did not justify the prolonged delay of more than two years in completion of the work. The learned Arbitrator further found that after removal of the alleged hindrances, the Appellant failed to furnish any satisfactory explanation for the continued delay in execution of the remaining work. The admission regarding grant of extension or attribution of part of the delay to the Respondent, by itself, could not conclude the controversy. Extension of time granted under a construction contract or condonation of delay for contractual purposes does not necessarily establish legal liability for consequential monetary claim. Equally, the fact that certain hindrances initially existed does not inevitably lead to the conclusion that every subsequent delay stood established as being attributable to the Respondent. Though, the Appellant has urged that certain material documents were not considered by the learned arbitrator, no such documents have been placed either before the learned Commercial Court or before this Court nor has the Appellant demonstrated how the alleged omission has affected the finding recorded in the award. In these circumstances, the contentions cannot be accepted as a valid ground for interference under Sections 34 and 37 of the Act. The learned Arbitrator has appreciated the entire evidence and has ultimately recorded a finding that the appellant failed to establish the causal nexus between the alleged hindrances and the prolonged delay in completion of the work. Such appreciation of evidence lies squarely within the domain of the Arbitral Tribunal and cannot be reopened in proceedings under Sections 34 or 37 of the Act. Appellant could not prove any perversity in the finding of facts given by the learned Tribunal.



19. The submissions advanced before us do not disclose any error of jurisdiction or any illegality in the approach adopted either by the learned Arbitrator or by the learned Commercial Court. In substance, the appellant seeks fresh appreciation of the evidence, and a different conclusion on disputed questions of fact. It is a well settled law that such exercise is beyond the limited scope under Section 37 of the Act. The findings of fact recorded by an Arbitral Tribunal, particularly those based on an appreciation of evidence and interpretation of such documents, cannot be reopened merely because another view is possible. Unless the findings are shown to be unsupported by evidence or are vitiated by patent illegality or perversity within the narrow limits of Section 34 of the Act, interference is not warranted. In the present case, no such ground has been made out.

20. Hence, we find no infirmity in the approach adopted by the learned Commercial Court while exercising jurisdiction under Section 34 of the Act. The Commercial Court correctly appreciated that the issues raised by the Appellant did not disclose any ground falling within the limited parameters of Section 34. Having examined the award in the light of the law governing judicial interference with arbitral awards, the Commercial Court rightly concluded that the Appellant essentially sought re-appreciation of evidence and reconsideration of factual findings returned by the learned Arbitrator. No error, misapplication of law or failure to consider any statutory ground under Section 34 has been demonstrated before this court.

21. We are, therefore, satisfied that the Arbitral Award represents a reasonable view emerging from the evidence on record and that the learned Commercial Court rightly declined to interfere with the same. The Appellant has failed to establish either patent illegality apparent on the face of the award



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or any conflict with the fundamental policy of Indian law or the most basic notions of justice or morality.

22. The present appeal, along with all pending applications, if any, is accordingly, dismissed being devoid of merit.

**VIVEK CHAUDHARY
(JUDGE)**

**RENU BHATNAGAR
(JUDGE)**

AUGUST 05, 2026/pk/ss