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

% ***Judgment reserved on:19.01.2026***

Judgment pronounced on: 05.02.2026

Judgement uploaded on: 05.02.2026

\+ FAO (COMM) 132/2024

M/S DUSTERS TOTAL SOLUTIONS SERVICES PVT. LTD

.....Appellant

Through: Mr. Anupam Kishore Sinha, Mr. Pradeep K. Tiwari, Mr. Apoorv Jha, Mr. Sahitya Srivastava, Advs.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES, NEW DELHI

.....Respondent

Through: Mr. Satya Ranjan Swain, Panel Counsel with Mr. Kautilya Birat, Mr. Ankush Kapoor, Mr. Vishwadeep, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'A&C Act'], the Appellant (Petitioner before the District Judge) assails the correctness of the order dated 25.01.2024 [hereinafter referred to as 'Impugned Order'], whereby the District Judge dismissed the petition filed by the Appellant under Section 34 of the

A&C Act and upheld the Arbitral Award dated 24.04.2023 [hereinafter referred to as 'Award'], passed by the learned Arbitrator.

2. Herein, the Appellant contends that the District Judge, while passing the Impugned Order, failed to appreciate the patent illegality apparent on the face of the Award, and, in the absence of any pleading or proof of loss by the Respondent, erroneously upheld the encashment of 50% of the Performance Security by the Respondent.

3. Accordingly, the core issue that falls for consideration before this Court is whether the findings of the Arbitrator are based on no evidence and are, therefore, perverse, thereby rendering the Award vitiated by patent illegality.

4. For sake of clarity, consistency and the ease of reference, the parties in the present appeal shall be referred to in accordance with their respective status before the District Judge.

FACTUAL MATRIX

5. Before adverting to the issues arising for consideration, it would be apposite to briefly notice the relevant facts.

6. The Petitioner is a service provider engaged, *inter alia*, in the business of providing facility management services comprising skilled, semi-skilled and unskilled manpower to various organisations on All India basis. Its services include sanitation, housekeeping, gardening, technical services and payroll management.

7. The Respondent is one of the premier medical and healthcare institutions in the country. On 17.07.2020, the Respondent issued a

Tender Enquiry Document for award of a Parallel Rate Contract, zone-wise (Zone-I & Zone-II), for outsourcing sanitation services and glass façade cleaning on a two-year contractual basis.

8. The Petitioner successfully bid for the said tender and, on 23.04.2021, was awarded the work for Zone-II, *vide* Letter of Acceptance [hereinafter referred to as 'LOA']. In terms thereof, the Petitioner was required, *inter alia*, to- (i) commence services with effect from 01.05.2021; and (ii) furnish a Performance Bank Guarantee equivalent to 10% of the total contract value for two years for Zone-II, amounting to Rs.3,18,26,136/- valid for a period of two years and four months. The Petitioner furnished a Performance Bank Guarantee dated 15.05.2021 for an amount of Rs.95,47,841/- issued by Yes Bank Limited, valid up to 03.09.2023.

9. Pursuant to the LOA, although deployment of employees commenced on 01.05.2021, the parties formally executed a Parallel Rate Contract for outsourcing of sanitation services and glass façade cleaning on 09.06.2021.

10. During the initial phase of deployment of staff in May 2021, the Petitioner deployed 419 persons across four locations within a period of seven days, in order to ensure that the Respondent did not face any disruption, in providing medical services during the COVID-19 pandemic. Subsequently, certain allegations pertaining to non-furnishing of documents and short payment of wages were raised by the Respondent, through various communications. The Petitioner responded to the said allegations for the months of May, June and July 2021, indicating that either there was no non-compliance or that any

alleged non-compliance had already been rectified, to the satisfaction of the Respondent.

11. On 05.02.2022, the Respondent again wrote a letter to the Petitioner alleging discrepancies between the salaries disbursed to employees for the months of May, June and July 2021 and the amounts reflected in the corresponding pay slips. It further stated that the Petitioner had failed to provide the transaction details of salary payments made to the deployed employees for the said period.

12. The Petitioner clarified that the discrepancies arose due to a technical system error, which was promptly rectified, and that the differential amounts had already been paid to the concerned employees under acknowledgements on 03.12.2021. Further, at the specific request of the Respondent, on 18.01.2022, the Petitioner refunded a deduction of Rs.20/- per month made towards welfare contribution to the employees. By its detailed reply dated 09.02.2022, the Petitioner furnished explanations and supporting clarifications.

13. After the issuance of Petitioner's reply dated 09.02.2022, the Respondent continued to receive the services under the contract without any complaint and made the monthly payments due to the Petitioner under the Contract as late as 24.05.2022. However, the Respondent abruptly issued the Letter dated 26.05.2022 [hereinafter referred to as 'Impugned Letter'], bearing the subject, "cancellation of Rate Contract of the M/s Dusters Total Solutions Services Pvt. Ltd. w.e.f. 01.06.2022 and Debarment of M/s dusters Total Solutions Services Pvt. Ltd. for two years thereof on the ground that the Petitioner has failed to deliver the subject services in compliance to

Agreement clause no.8, and has also made short payment of wages to its employees, which constitutes as a fraudulent practice. By the said letter, the Respondent also sought to invoke the performance Security/Bank Guarantee amounting to Rs.95,47,841/-. On the ground that the Petitioner failed to provide the documentary evidence justifying the release of salaries for the months of may 2021 to July 2021

14. Aggrieved thereby, the Petitioner filed a petition under Section 9 of the A&C Act, seeking a stay of the Impugned Letter, wherein the High Court *vide* order dated 31.05.2022, granted an *ad interim* stay on the Impugned Letter. Thereafter, an Arbitrator was duly appointed.

15. Upon completion of the Arbitral proceedings, the Arbitrator passed an Award dated 24.04.2023, setting aside the Impugned letter, to the extent that it debars/blacklists the Respondent for two-year, it was found that the said debarment is disproportional, on account of the limited period of deficiency and mitigating circumstances. Additionally, the Arbitrator also partially upheld the forfeiture of the Performance Bank Guarantee issued on 15.05.2021, since the Respondent has not fully complied with the contractual obligations, and short-payments during the initial contract period stood established. However, while applying the principle of proportionality, was observed that although breach in the form of short-payment was established, the contract was almost fully performed, and the loss was quantified and limited. Accordingly, to avoid unjust enrichment, encashment was limited to 50% of the Performance Security, i.e., Rs.47,73,920/-, linked to the quantified and possible deficiencies rather than the entire guarantee amount.

16. The Award was challenged by the Petitioner under Section 34 of the A&C Act, before the District Judge, wherein, the District Judge dismissed the said petition on the following grounds:

16.1 There was no specific pleading regarding any loss suffered by the Respondent as a result of the Petitioner's breaches, even assuming such breaches to have occurred. Consequently, there was no evidence on record to establish that the Respondent had suffered any loss on account of the Petitioner's alleged breaches.

16.2 Although considerable emphasis was placed on the finding of the Arbitrator concerning the quantum of short payment, it was the Petitioner who was in possession of the best evidence in that regard. The Petitioner, having failed to rectify, substantiate, or prove compliance on record, could not be permitted to take advantage of its own default by contending that the findings were based on "no evidence". The District Judge noted that the inability of the Arbitrator to quantify the shortfall was a direct consequence of the Petitioner's failure to place relevant material on record.

16.3 The District Judge further observed that the Award did not suffer from any patent illegality going to the root of the matter so as to warrant the Award to be set aside. The reasoning of the Arbitrator was found to be logical, reasoned, and based upon consideration of all relevant material and documentary evidence placed on record prior to the passing of the Award.

17. In light of these findings, the District Judge dismissed the Petition under Section 34 of the A&C Act.

18. Aggrieved by the dismissal of the Section 34 petition, the present Appeal has been preferred by the Appellant.

CONTENTION OF THE APPELLANTS

19. The learned counsel for the Appellants advanced the following submissions:

19.1 It is contended that the Impugned Order is arbitrary and has been passed without due application of mind. The findings and conclusions therein are wholly unreasoned and unsupported by any cogent or discernible rationale.

19.2 It is further contended that the District Judge failed to appreciate that the direction to invoke/encash the Bank Guarantee, as contained in the Award, is, in conflict with the Fundamental Policy of the Indian Law. The Award is in violation of Sections 73 and 74 of the Indian Contract Act, 1872 [hereinafter referred to as 'ICA'], and is contrary to the settled line of judicial precedents, including ***Kailash Nath Associates v Delhi Development Authority & Anr***[1]**,**wherein it was held that compensation can be awarded only for damage or loss actually suffered.

19.3 The District Judge also erred in upholding the Award despite the fact that the Sole Arbitrator adjudicated upon matters not referred to him, namely, the alleged issue of short payment in respect of the remaining three centres, which was never placed before the Arbitrator. Consequently, the District Judge proceeded on conjectures and surmises, thereby committing a palpable jurisdictional error.

[1] (2015) 4 SCC 136

19.4 It is contended that the District Judge failed to appreciate that the findings of the Arbitrator regarding termination of the contract and encashment of the Bank Guarantee are patently illegal, being based on neither pleadings nor evidence. The Award proceeds on an alleged short payment in respect of three divisions other than JPNATC, even though no such short payment was ever pleaded or alleged by the Respondent. Despite this, the Arbitrator, *suo motu*, permitted encashment of 50% of the Performance Security without any pleading or prayer to that effect, which is impermissible in law.

19.5 Further, no basis or calculation whatsoever has been provided for awarding 50% of the Performance Security, as there is no determination or computation of any alleged shortfall. Reliance is placed on ***Bachhaj Nahar v. Nilima Mandal***[2]**,** wherein the Supreme Court held that a case not specifically pleaded cannot be considered unless the pleadings, in substance, contain the necessary averments and an issue has been framed thereon.

19.6 It is also contended that in the absence of any pleadings/evidence establishing loss suffered by the Respondent, the Sole Arbitrator's direction permitting encashment of Bank Guarantee amounting to granting a windfall to the Respondent, based purely on conjectures and surmises. Reliance placed on ***Associate Builders v DDA*** [3]**.**

19.7 The District Judge failed to appreciate that the Arbitrator overlooked the fundamental terms of the Contract and acted in

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[2]

[3] (2015) 3 SCC 49

manifest disregard of statutory provisions, including the Contract Labour (Regulation & Abolition) Act, 1970 [hereinafter referred to as '1970 Act']. Clause 6.20 of the Contract provides a specific contractual mechanism in cases of short payment of wages. Under the said clause, the Respondent was required, in the first instance, to make payment to the employees of the Petitioner and thereafter recover the same by deducting it from the security deposit. The contract does not contemplate immediate termination for such alleged breaches. This clear contractual scheme was completely ignored by the Sole Arbitrator.

19.8 Assuming, *arguendo*, that any losses were suffered by the Respondent due to the alleged breaches by the Appellant, particularly of such magnitude as to justify the drastic action of termination, the Respondent ought to have filed a counter-claim. This is especially so when the encashment of the Performance Security stood stayed by an order of the High Court. The absence of any counter-claim demonstrates that the Impugned Letter is *mala fide*, baseless, and mischievous, and that there was no genuine ground for termination of the contract.

19.9 It is submitted that the Respondent's pleadings are mutually contradictory, particularly in paragraphs Z and KK of the Statement of Defence. On the one hand, the Respondent alleges an outstanding amount of approximately Rs. 20 lakhs, without furnishing any documentary proof or underlying calculation. On the other hand, it is alleged that the Petitioner failed to provide documentary evidence regarding irregularities in salary payments for the months of May 2021 to July 2021, without specifying the nature of the documents

allegedly required. In the absence of such documentary material, the Respondent could not have computed any alleged shortfall in the first place. These contradictions were ignored by both the Arbitrator and the District Judge.

19.10 It is contended that permitting encashment of 50% of the Performance Security results in unjust enrichment of the Respondent and confers a windfall gain upon the Respondent, which is impermissible under section 73 of the ICA.

19.11 The Appellant also placed reliance on ***All India Medicos v All India Institute of Medical Sciences***[4]**,** wherein it was held that forfeiture of performance guarantee/security must bear a nexus with the actual loss suffered. Further, reliance is placed on ***Indian Oil Corporation Ltd v Fiberfill Engineers***[5]**,** wherein it was held that an Arbitral Tribunal cannot award damages in the absence of any averment or proof that loss has been suffered.

19.12 With regards to the scope and contours of Section 34 and 37 of the A&C Act, reliance is placed on the following judgements namely (i) ***Delhi Airport Metro Express (P) Ltd v DMRC***[6]; (ii) ***Associate Builders v DDA***[7]; (iii) ***Jaiprakash Associates v NHPC***[8]; (iv) ***Morgan Securities & Credits Pvt. Ltd v Samuel Display Systems Ltd;*** (v) ***Unibros v All India Radio***[9]**.** These judgements collectively establish that interference under Section 34 (and consequently under Section 37) is warranted where- (a) the Award suffers from patent illegality

[4] 2024 SCC OnLine Del 6858
[5]
[6] (2022) 1SCC 131
[7] (2015) 3 SCC 49
[8] 2023 SCC OnLine Del 3295
[9] 2023 SCC OnLine SC 1366

going to the root of the matter including violation of Section 73 and 74 of the ICA; and (b) the Award is perverse, being based on no evidence whatsoever.

CONTENTION OF THE RESPONDENT

20. *Per contra*, the learned counsel representing the Respondent advanced the following submissions:

20.1 The Respondent contends that Section 37 of the A&C Act confers only a limited right of appeal and that the scope of judicial review thereunder is far narrower than that of a regular civil appeal. It is submitted that, while exercising jurisdiction under Section 37, the Court cannot re-examine the merits of the decision rendered by the Arbitral Tribunal or re-appreciate the evidence on record. The remedy under Section 37 of the A&C Act is available only in respect of specific orders, including certain interlocutory orders of the Arbitral Tribunal such as those relating to interim measures, temporary injunctions, or preservation of status quo.

20.2 It is further contended that it is not the case of the Petitioner that there was lack of fairness, existence of bias or violation of the principles of natural justice resulting in prejudice. On the contrary, the Petitioner has completely failed to demonstrate that the Award is in conflict with the public policy of India. Consequently, it does not fall within the limited grounds of interference under Section 37 of the A&C Act, which aims to minimise Court's intervention.

20.3 In furtherance thereof, it is submitted that the Petitioner is, in effect, seeking modification of the Award dated 25.01.2024, which is

impermissible in law. It is a settled position that the Court, while exercising jurisdiction under Section 34 or 37 of the A&C Act, may either uphold the Award or set it aside, but has no power to modify or rewrite the Award.

20.4 The Respondent further submits that the Petitioner has failed to segregate or sever the distinct findings contained in the award. It is a settled law that unless the findings in an Award are severable, even a limited or partial challenge to the Award is impermissible.

20.5 Without prejudice to the above and even assuming that the Respondent were to traverse into the merits of the matter, it is submitted that the Petitioner has offered no explanation in its reply to IA No.2 with respect to the serious deficiencies pointed out. Despite multiple queries raised by the Respondent, the Petitioner failed to place any material on record to establish that salaries had in fact been paid to the employees for the relevant months. It is further submitted that the Petitioner deliberately withheld bank statements for as long as possible. As recorded in paragraph 88 of the Award, on not one but two occasions, the Petitioner claimed to have enclosed relevant bank statements with its correspondence, whereas, in fact, no such enclosures were provided.

20.6 It is also contended that the Petitioner has wrongly averred that the Arbitrator and District Judge imagined fraudulent practices in respect of the other three centres. On the contrary, it is the specific case of the Respondent that fraudulent practices were adopted across all centres, a fact clearly recorded and highlighted in the Respondent's letter dated 05.02.2022.

20.7 Lastly, the Respondent submits that both the impugned award/order are well-reasoned, based on proper appreciation of the material on record, and do not suffer from any illegality, perversity, or infirmity warranting interference by this Court.

ANALYSIS AND FINDINGS

21. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record. At the outset, it is apposite to reiterate that the scope of Appellate interference under Section 37 of the A& C Act is not akin to the normal appellate jurisdiction vested in the civil courts owing to the limited scope of interference of the courts with Arbitral proceedings or award which is confined to the grounds set out in Section 34 of the A&C Act and that the powers of an Appellate court are not beyond the scope of interference under Section 34 of the A&C Act and is extremely circumscribed.

22. In the above backdrop, the submissions advanced by the parties are now taken up for consideration *seriatim*.

23. From a perusal of the Award passed by the Arbitrator, it becomes evident that the Petitioner was granted contract for outsourcing sanitation services and glass facade cleaning at Zone –II of AIIMS, comprising of four centres namely- (i) Dr. Jai Prakash Narayan Apex Trauma Centre (JPNATC), (ii) Burn and Plastic Surgery, (iii) NDDTC, Ghaziabad; (iv) CRHSP Ballabhgarh, PHC, Chhainsa, PHC Dayalpur.

24. As per Section 21(4) of the 1970 Act, it is the responsibility of the Respondent who has awarded the outsourcing contract to ensure that proper wages are paid to the workers, failing which the Respondent will be liable. Sub-Section 4 of Section 21 of the 1970 Act is extracted as under:-

> *"(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either the deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."*

25. It was noticed by the Respondent that the Petitioner had indulged in short payment of wages, particularly in respect of discrepancy in payment of wages to 200 workers employed at JPNATC, between the amount mentioned in the pay slips and actual wages paid. Sufficient opportunities were granted to the Petitioner to demonstrate that no issue of short payment had occurred. Bank statements were requisitioned from the Petitioner but were never furnished. On one occasion, the Petitioner claimed to have annexed the bank statements, which were, in fact, not enclosed. Ultimately, the Arbitrator concluded that upon being confronted with the issue of short payment, the Petitioner paid a sum of Rs.10 lakhs against a total short payment of Rs.32,99,583/-. Consequently, the Arbitrator held that the termination of contract was legal and valid and in accordance with Clause 6.20 of the contract.

26. The first submission of learned counsel representing the Petitioner is, with regard to non-application of mind, which is not substantiated. The Arbitrator has gone into the details of evidence

produced by both the parties in detail and, upon critical appraisal, arrived at a reasoned conclusion. The District Judge considering the limited scope of Section 34 of the A&C Act has examined the matter in detail.

27. It is a settled position of law that re-appreciation of evidence or re-examination of the merits of the dispute is impermissible in proceedings under Section 37 of the A&C Act, unless the Award suffers from defects falling within the statutorily recognised ground such as patent illegality, perversity, or conflict with the fundamental policy of Indian Law.

28. Significantly, the Petitioner does not allege any procedural impropriety in the conduct of the Arbitral proceedings. It is not the Petitioner's case that the Award is vitiated by violation of the principles of natural justice, bias, lack of fairness, denial of opportunity. The challenge is essentially confined to the substantive correctness of the findings, particularly in relation to- (i) the alleged short payment of wages; (ii) the termination of the contract; and (iii) the encashment of 50% of the Performance Security.

29. The principal plank of the Petitioner's argument is that the Award, and consequently the Impugned Order, are vitiated by patent illegality inasmuch as the Arbitrator upheld encashment of the Performance Security without any pleadings, proof, or quantification of loss on the part of the Respondent, thereby violating Sections 73 and 74 of the ICA. This contention lacks substance. It is further contended that the Arbitrator travelled beyond the pleadings by considering alleged short payments at centres other than JPNATC,

despite there being no such allegation by the Respondent. This issue was never taken up in the objections under Section 34, a copy whereof is annexed.

30. This is not a case falling under Section 73 of the ICA, as the Respondent has not claimed compensation for loss or damages. This case squarely falls within Section 74 of the ICA, wherein compensation for breach of contract is stipulated. The contract names a specific sum. The Arbitrator, after considering all aspects, come to the conclusion that encashment of 50% of amount of Performance Security/Bank Guarantee was reasonable and sufficient. Thus, compliance of Section 74 of the ICA stands satisfied.

31. With regard to arguments noticed in paragraphs 19.3, 19.4, 19.5 and 19.6, also lacks merits because after taking note of the evidence produced, and upon examining, the sample evidence produced by the parties, the arbitrator came to the conclusion that there was a short fall in payment of wages to the workers by the Respondent. This conclusion was reached after proper appreciation of evidence. The Respondent was able to substantiate that despite repeated opportunities, the Petitioner indulged in unfair labour practice, by failing to pay wages, in accordance with the contract, thereby exposing the Respondent to statutory liability under Section 21(4) of 1970 Act. Thus, the Arbitrator has not adjudicated upon any matter which was not referred to him. The Arbitrator adjudicated strictly within the reference, which included- (i) the legality and correctness of AIIMS terminating the contract, (ii) blacklisting of the Petitioner from participating any procurement process at AIIMS for the period of two years, (iii) innovation of Bank Guarantee amount of Rs.

95,47,841/-. Thus, the Arbitrator has not travelled beyond the reference made to him.

32. The more substantial issue pertains to the permissibility of encashment of 50% of the Performance Bank Guarantee. The Petitioner is correct in asserting that, under Section 73 and Section 74 of the ICA, compensation must bear a reasonable nexus to the loss suffered, and that forfeiture cannot result in unjust enrichment. The judgements relied upon by the Petitioner including ***Kailash Nath Associates*** (***supra),*** reiterate this settled legal principle. However, it is equally well-settled that where the contract provides for forfeiture of security upon breach, the Arbitrator is empowered to examine whether such forfeiture is justified in the facts of the case.

33. In the present case, the Arbitrator, having returned a finding of breach by the Petitioner in relation to statutory wage obligations, did not permit full encashment of the Performance Security but restricted the same to 50%. This conscious limitation reflects a calibrated and proportionate exercise of discretion rather than an arbitrary or mechanical forfeiture. The Arbitrator's approach demonstrates an attempt to balance contractual consequences with the nature and gravity of the breaches established on record.

34. The absence of a precise mathematical quantification of loss, though a relevant consideration, does not, by itself, render the Award vulnerable to interference. The Arbitrator appears to have treated the partial encashment not strictly as liquidated damages, but as a contractual consequence flowing from established breaches affecting statutory compliance and public interest, particularly the obligation of

timely and lawful payment of wages to deployed manpower. This assumes added significance in the context of services rendered to a premier public healthcare institution during the COVID-19 period.

35. As already noticed, this is not a case of unjust enrichment of the Respondent, in fact, it is in the nature of penalty which was levied by the Respondent in accordance with Clause 6.20 of the Contract. The Arbitrator, after considering the evidence on record, reduced the encashment of Performance Security/ Bank Guarantee by 50% and returned a finding that such invocation to that extent was appropriate, reasonable, and justified.

36. Viewed thus, the decision to permit encashment of 50% of the Performance Bank guarantee cannot be said to be wholly devoid of basis, nor can it be characterised as arbitrary, perverse, or resulting in unjust enrichment. The finding represents a plausible and reasoned view taken by the Arbitrator within the bounds of the contractual framework and the evidence on record.

37. In the present case, the record reflects that the issue of short payment of wages for the months of May, June and July 2021 constituted the core of the Respondent's grievance. Multiple communications were addressed to the Petitioner seeking details of salary disbursement along with supporting bank statements. The Arbitrator has specifically recorded that, despite repeated opportunities, the Petitioner failed to place on record complete bank statements evidencing salary payments, and, on more than one occasion, claimed to have enclosed documents which were, in fact,

not enclosed. The Respondent's communications and pleadings clearly alleged systemic irregularities in salary disbursement practices.

38. The sufficiency or specificity of pleadings is matters squarely within the province of the Arbitrator. The Arbitrator drew an adverse inference against the Petitioner on the ground that the best evidence relating to salary disbursement was within the exclusive knowledge and possession of the Petitioner. Such an inference, in the factual matrix of the present case, cannot be characterised as arbitrary, unfounded or based on no material whatsoever. The conclusion arrived at by the Arbitrator thus represents a realm of a plausible view based on the material available on record. Merely because an alternative view may also have been possible does not render the findings perverse or susceptible to interference under Section 37 of the A&C Act.

39. The submission noticed in paragraph 19.7 is sought to be raised for the first time in the present Appeal and did not form part of the objections under Section 34 of the A&C Act. It would, therefore, be inappropriate to examine the said contention for the first time at the appellate stage. Moreover, the argument is based upon a presumption contrary to Section 21(4) of the 1970 Act, which casts liability upon the Respondent for any short payment of wages to the workers. Consequently, the Respondent was not required to pay the workers at the first instance and only thereafter terminate the contract or invoke the bank guarantee. Similarly, argument noticed in paragraph 19.8 lacks substance because the claim of the AIIMS is not predicated upon loss suffered by it but is in the nature of a contractual penalty.

40. Similarly, 19.9 is based upon re-appreciation of evidence which is not permissible under Section 37 of the A&C Act.

41. The Court is conscious of the settled legal position that an Arbitral award which is based on no evidence, or which ignores vital and material evidence, may fall within the limited ground of perversity and patent illegality, warranting interference even under Section 34 of the A&C Act, and, by extension, under Section 37 of the A&C Act. However, perversity must be of such a nature that no reasonable person, acting judicially and having due regard to the material on record, could have arrived at the impugned conclusion.

42. Furthermore, the judgements relied upon by the Petitioner, including ***Indian Oil Corporation Ltd (supra); Delhi Airport Metro express (P) Ltd (supra); Associate Builders (supra); Jaiprakash Associates (Supra); Morgan Securities (Supra),*** are similarly misplaced and none of it advanced the Appellant's case. On the contrary, the principles enunciated therein unequivocally reaffirm the narrow and circumscribed scope of interference under Section 34 & 37 of the A&C Act, and fortify the Respondent's submission that neither the Award nor the Impugned Order calls for interference.

43. The Petitioner's submissions, though articulated with considerable emphasis, essentially seek a re-appreciation of evidence and a re-evaluation of factual findings, inviting this Court to substitute its own conclusions for those arrived at by the Arbitrator and affirmed by the District Judge. Such an exercise is impermissible and squarely proscribed under Section 37 of the A& C Act.

44. The power under the said provision cannot be exercised in a casual or cavalier manner. The scope of interference is confined to examining whether the Award suffers from patent illegality, or any other statutorily recognised ground warranting judicial intervention. The scope is thus extremely limited, and this court is not supposed to travel beyond the aforesaid parameters to assess whether the award is good or bad on merits.

45. Significantly, the District Judge, while exercising jurisdiction under Section 34 of the A&C Act, examined the Award within the permissible parameters and returned a finding that the conclusions drawn by the Arbitrator were reasoned, founded on material on record, and did not disclose any patent illegality going to the root of the matter. This Court finds no perversity or jurisdictional infirmity in the approach adopted by the District Judge so as to warrant interference under Section 37 of the A& C Act.

46. The reliance placed by the Appellant on ***All India Medicos*** *(Supra)* is misplaced and clearly distinguishable. The decision therein was rendered in peculiar factual matrix of that case, where forfeiture of performance security was set aside on a categorical finding that no breach was attributable to the contractor. The forfeiture in that case was held to be wholly arbitrary and entirely divorced from the contractual scheme. The ratio of the said judgement, therefore, cannot be mechanically transplanted to the present facts, which rests on a different factual foundation and does not disclose circumstances warranting similar interference.

47. As regards the contention that the Court cannot modify a contract, it is noted that neither the Arbitrator nor the District Judge has rewritten the contract or granted any relief alien to the contractual framework. The partial encashment of the Performance Security was a conscious determination and cannot construe as a modification of the contract in the Appellate sense.

48. In view of the aforesaid discussion, this Court is of the considered opinion that the Award and the Impugned Order do not suffer from perversity, patent illegality, or violation of the fundamental policy of Indian law so as to warrant interference under Section 37 of the A&C Act.

CONCLUSION

49. Having carefully considered the submissions advanced on behalf of the parties, this Court finds no merit in the present Appeal.

50. In the present case, the findings returned are founded on the contractual framework, contemporaneous correspondence between the parties, and the failure of the Appellant to produce the best evidence admittedly within its possession. The District Judge, while exercising jurisdiction under Section 34 of the A&C Act, has meticulously examined the challenge within the narrow confines of the statute.

51. Therefore, upon a cumulative consideration of the facts, the Arbitral record, and the settled principles governing interference under Section 37 of the A&C Act, this Court is of the considered opinion that the Award dated 24.04.2023, and the Impugned Order dated

25.02.2024 do not suffer from any illegality, perversity or jurisdictional error warranting interference.

52. Hence, having found no merit, the present appeal, stands dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

FEBRUARY 05, 2026
Sp/ra