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

% ***Judgment reserved on: 24.02.2026***
Judgment pronounced on: 19.05.2026
Judgment uploaded on: 19.05.2026

\+ FAO(OS) (COMM) 212/2024 & CM APPL. 54328/2024

IRCON INTERNATIONAL LIMITED .....Appellant
Through: Mr. Suman Doval & Mr. Lakshay Chaudhary, Advs.

versus

M/S. TANTIA CONSTRUCTION LIMITED .....Respondent
Through: Mr. Sanjoy Bhaumik, Adv.

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 filed under Section 37 of the Arbitration and Conciliation Act, 1996[1] [hereinafter referred to as 'A&C Act'], the Appellant assails the correctness of the judgment dated 24.07.2024 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Single Judge in OMP (COMM) 277/2021. The said petition had been instituted under Section 34 [hereinafter referred to as 'Section 34 Petition'] of the A&C Act[2], assailing the arbitral award dated 23.01.2020 [hereinafter referred to as 'the Award'] rendered by the learned Sole Arbitrator [hereinafter referred to as 'the Arbitrator']. By the Impugned Judgment, the learned Single Judge declined interference and upheld the Award.

[1] Section 37
[2] Section 34

2. The present Appeal is confined to Claim No.6 of the Award as admitted by the learned Counsel representing the Appellant in the Order dated 17.09.2024 of this Court. The Appellant submits that the computation undertaken by the Arbitrator in respect of the said claim suffers from patent illegality inasmuch as an amount relatable to mobilization advance, which, according to the Appellant, stood recovered/adjusted, has not been duly accounted for, thereby resulting in an alleged excess award in favour of the Respondent. It is contended that the learned Single Judge erred in declining interference under Section 34 despite the aforesaid infirmity.

3. Since the present proceedings arise under Section 37 against an order refusing to set aside the Award, the scope of interference is necessarily limited. The question that arises for consideration is whether the learned Single Judge committed any error in declining to interfere with the Award under Section 34, particularly when the Appellant alleges that the amount awarded under Claim No.6 fails to account for adjustment of mobilization advance, thereby resulting in an excess payment in favour of the Respondent.

FACTUAL MATRIX:

4. Before examining the rival submissions advanced on behalf of the parties, it would be appropriate to briefly notice the factual background giving rise to the present Appeal.

5. The dispute between the parties arises out of a Contract Agreement dated 07.12.2012 executed between the Appellant and the Respondent for the execution of certain works. Differences having arisen in relation to the execution of the contract and the financial

claims emanating therefrom, the dispute was referred to arbitration in terms of the arbitration clause contained in the Contract Agreement.

6. Pursuant thereto, the Arbitrator, Sh. Harpal Singh (Chief Engineer, Headquarters, Northern Railways) was appointed to adjudicate the disputes between the parties. The Respondent herein, being the claimant before the Arbitrator, preferred its Statement of Claims dated 11.05.2016, raising multiple claims against the Appellant. The Appellant filed its Statement of Defence dated 03.10.2016, contesting the claims. The parties thereafter filed their respective written submissions and led material in support of their respective cases.

7. Upon consideration of the pleadings, material on record and submissions advanced on behalf of the parties, the Arbitrator rendered the Award dated 23.01.2020, adjudicating the claims of the Respondent and awarding a sum of Rs.4,80,37,967/- in its favour. The Appellant, disputing the correctness of the computation, contended that the Award granted an amount in excess of what was due and, consequently, released only a partial sum of Rs.3,80,59,951/- to the Respondent.

8. Pertinently, it is recorded by the learned Single Judge in the Impugned Judgment that the plea of adjustment of an amount of Rs.93,01,410/-, sought to be urged in the Section 34 Petition by the Appellant, had not been raised before the Arbitrator in the Statement of Defence.

9. Since the present Appeal is confined to Claim No.6 of the Award, the justification of the said claim as provided in the Statement

of Claim, the reasoning adopted by the Arbitrator while allowing the claim, and the outcome thereof are noticed hereinbelow for ready reference:

> *"Claim 6: Payment of illegally en-cashed Performance Bank Guarantee*
>
> *The Claimant would like to state that a Performance Bank Guarantee was provided to the Respondent as per condition of the Contract, which was encashed by the Respondent. The contract could not be performed due various reasons not attributial to the Claimant for with time extension without imposition of Liquidated damages was granted by the Respondent form time to time. Even the reciprocal promises of giving possession of site to the Claimant by the Respondent could not be complied by the Respondent even on the date of termination and even today. So question of non-performance by the claimant is baseless and encashment of Performance Bank Guarantee is a unilateral decision of the respondent which is challengeable. Learned Arbitrator is prayed to adjudicate the matter."*
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> ***
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> *"CLAIM NO. 6*
>
> ***REASONS FOR AWARD:-*** *As deliberated in above paras, the termination of the contract was wrongful, illegal and arbitrary due to the occurrence of earthquake in Nepal which also led to declaration of National Emergency, severely affected the citizens. Tender categorically stipulates that in the event of occurrence of a force majeure event, neither party shall be entitled to terminate the contract in respect of non-performance or delay in performance. Hence, claim amount of Rs.1,90,86,595/- is reasonable and payable."*
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> ***

Claim No.	Nature of Claim	Findings of the Tribunal
6	Claim relating to encashment/recovery under the Performance Bank Guarantee ('PBG')	Rs.1,90,86,595/- Amount awarded in favour of the Respondent, rejecting the Appellant's justification for such encashment

10. It is relevant to note that under the Award, the Arbitrator also dealt with Claim No.7, which pertained to mobilization advance and its recovery/adjustment. The Arbitrator recorded that the mobilization advance extended by the Appellant stood secured and was subject to

recoveries effected during the execution of the works, including through running account bills as well as encashment of the PBG. The reasons of the Arbitrator for awarding Claim No.7 are reproduced hereinbelow for ready reference:

> *"CLAIM NO.7*
>
> ***REASONS FOR AWARD:-*** *The Bank Guarantee amounting to Rs.1,09,95,254/- was lying with the Respondent out of which an amount of Rs.1,00,89.966/- was recovered by the Respondent from the IPCs/RA-Bills during execution of work upto RA-16 and the interest thereon was also recovered.*
>
> *The balance to be recovered by the Respondent was only Rs.9,06,104/- plus interest Rs./-, totalling Rs./-. However, the Respondent has encashed the entire amount of Mobilization Advance Bank Guarantee of Rs.1,09,95,254/- and thus, an amount of Rs.99,81,401/- is liable to be refunded to the Claimant.*
>
> *Thus, Claimant is entitled to the refund of Rs.99,81,317/- on this account as per claim."*

11. Subsequent to the Award, the Appellant filed an application under Section 33 of the A&C Act[3] seeking modification/rectification of the Award on the ground of alleged computational errors. By way of a supplementary award dated 20.08.2020, certain modifications came to be made. However, the said supplementary award was assailed in OMP (COMM) 593/2020 and, by judgment dated 13.04.2021, the same was set aside.

12. Aggrieved by the Award dated 23.01.2020, the Appellant instituted the Section 34 Petition being OMP (COMM) 277/2021 before this Court, *inter alia*, seeking modification of the Award in respect of certain claims, including Claim Nos.6 and 12. The Respondent filed its reply thereto, opposing the challenge.

[3] Section 33

13. The learned Single Judge, *vide* the Impugned Judgment dated 24.07.2024, declined to interfere with the Award and dismissed the Section 34 Petition, *inter alia*, holding that:

i. The findings returned by the Arbitrator on Claim No.6 were based on a plausible interpretation of the contractual provisions, including the applicability of the *force majeure* clause, and did not suffer from perversity or arbitrariness warranting interference under Section 34.

ii. The challenge was confined to quantum and not to the underlying liability.

iii. The Arbitrator had proceeded on the basis that the termination of the contract by the Appellant was wrongful, and consequently, invocation of the PBG was impermissible; these findings, including those relating to *force majeure*, were not under challenge.

iv. The plea of adjustment of an amount of Rs.93,01,410/-, now sought to be urged by the Appellant, had not been raised before the Arbitrator in the statement of defence, and could not be permitted to be raised for the first time in proceedings under Section 34.

v. Permitting the Appellant to rely upon contentions raised in the Section 33 proceedings would amount to circumventing the effect of the judgment dated 13.04.2021, which was impermissible in law.

14. Aggrieved by the dismissal of the Section 34 Petition, the Appellant has preferred the present Appeal under Section 37. During the course of proceedings, the Appellant has confined the challenge only to Claim No.6 of the Award.

15. It is in this backdrop that, *vide* order dated 17.09.2024, this Court directed the Respondent to file an affidavit clarifying whether the mobilization advance extended by the Appellant had been duly adjusted. The relevant extract of the said order is reproduced hereinbelow for ready reference:

> *"**ORDER Dated 17.09.2024***
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> .....
>
> *6. According to the appellant, there were two (02) "computational errors" in the impugned award concerning Claim No.6 and Claim No. 12.*
>
> ***7. We may note that at the very outset, Mr. Suman Doval, learned counsel, who appears on behalf of the appellant, on the instructions, says that the appeal is restricted only to Claim No.6***
>
> *7.1 The statement of Mr. Doval is taken on record.*
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> ……
>
> *11. We may note that Claim No.6 concerns wrongful encashment of performance of bank guarantee.*
>
> *11.1 The record discloses that qua this claim, the respondent has been awarded Rs.1,90,86,595/-.*
>
> *12. According to the appellant, since the mobilization advance was adjusted, the amount awarded under Claim No.6 should have been frozen at Rs.97,85,184/-.*
>
> *12.1 Towards mobilization advance, the adjustment that the appellant claimed was that of Rs.93,01,410/-.*
>
> *13. To be noted, the learned Single Judge refrained from interfering with the award in view of the law laid down by the Supreme Court in Project Director, NHAI v. M. Hakeem & Anr. (2021) 9 SCC 1.*
>
> ***14. The respondent, up until this stage, has not answered as to whether mobilization advance, which was extended by the appellant, was adjusted against the final bill.***
>
> ***14.1 We would like the respondent to file an affidavit in this behalf.***

15. The moot question that will arise for consideration, perhaps, if the appellant is right would be: Can the respondent receive more than what is due to it?

....."

(Emphasis Supplied)

16. Pursuant thereto, an affidavit has been filed on behalf of the Respondent stating, *inter alia*, that the mobilization advance stood fully recovered/adjusted, including through encashment of the PBG as well as recoveries effected during the execution of the works, and that the Award had been computed after taking the same into account.

17. In the aforesaid backdrop, we proceed to notice the submissions advanced on behalf of the parties.

CONTENTIONS OF THE PARTIES:

18. Heard learned Counsel for the parties at length and, with their able assistance, perused the material placed on record.

19. Learned Counsel representing the Appellant, while contending that the amount awarded under Claim No.6 has not been correspondingly reduced, resulting in duplication and permitting the Respondent to receive more than what is due, has submitted as under:

i. A perusal of the Award would show that the Arbitrator has failed to account for an amount of Rs.93,01,410/-, which had already been recovered/adjusted by the Appellant towards mobilization advance, thereby resulting in an inflated award.

ii. The findings recorded by the Arbitrator under Claim No.7 demonstrate that recoveries towards mobilization advance

had already been effected, including through running account bills and encashment of the PBG.

iii. The Respondent, even in its affidavit filed pursuant to the order dated 17.09.2024, has failed to clearly demonstrate that the said amount stands duly accounted for in the computation of the Award.

20. *Per contra*, learned Counsel for the Respondent has made the following submissions:

i. The scope of interference under Section 37 is extremely limited and does not permit re-appreciation of evidence.

ii. The challenge raised by the Appellant is confined to quantum, and the findings of the Arbitrator on liability, including wrongful termination and applicability of *force majeure*, have attained finality.

iii. The plea of adjustment of Rs.93,01,410/- was never raised before the Arbitrator and cannot be permitted to be urged for the first time in proceedings under Section 34 or in the present Appeal.

iv. The Appellant had sought to raise the said plea in proceedings under Section 33. However, the supplementary award passed thereon has been set aside by this Court by judgment dated 13.04.2021, which has attained finality.

v. The mobilization advance stood duly adjusted and accounted for, as is evident from the Award, including the

findings under Claim No.7, as well as from the affidavit filed by the Respondent.

21. Learned Counsel for the parties have not made any other submissions.

ANALYSIS AND FINDINGS:

22. This Court has considered the submissions advanced by learned Counsel for the parties.

23. At the outset, it would be apposite to delineate the scope of interference in an Appeal under Section 37. It is well-settled that the jurisdiction of the appellate court under Section 37 is circumscribed and does not extend beyond the parameters laid down under Section 34.

24. The Supreme Court in ***MMTC Ltd. v. Vedanta Ltd.***[4] has held that while exercising jurisdiction under Section 37, the Court cannot undertake an independent assessment of the merits of the arbitral award and is only required to examine whether the court exercising jurisdiction under Section 34 has acted within the confines of the provision.

25. Similarly, in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[5], it has been held that the appellate court, while exercising powers under Section 37, does not sit in Appeal over the arbitral award and cannot re-appreciate the evidence. The scope of interference is confined to examining whether the court under Section

[4] (2019) 4 SCC 163
[5] 2024 SCC OnLine SC 2632

34 has either exceeded its jurisdiction or failed to exercise jurisdiction vested in it.

26. Further, a three-judge Bench of the Hon'ble Supreme Court in ***UHL Power Co. Limited v. State of Himachal Pradesh***[6] has reiterated that the jurisdiction under Section 37 is even more circumscribed than that under Section 34, and the appellate court must exercise restraint and cannot substitute its own view for that of the Tribunal.

27. The principle that the Court does not sit in Appeal over the findings of the Tribunal has also been emphasized in ***McDermott International Inc. v. Burn Standard Co. Ltd. & Ors.***[7], wherein it has been observed that the role of the Court is supervisory in nature and intervention is warranted only in limited circumstances such as patent illegality, violation of natural justice, or jurisdictional error.

28. The Courts have adopted the same consistent view in a catena of decisions, a few of which may be adverted to, namely, ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.***[8]; ***ONGC Ltd. Western Geco International Ltd.***[9]; ***Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.***[10]; ***Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India***[11]; ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[12]; and, ***NHAI v. M. Hakeem***[13].

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[6] (2022) 4 SCC 116
[7] (2006) 11 SCC 181
[8] (2019) 11 SCC 465
[9] (2014) 9 SCC 263
[10] (2007) 8 SCC 466
[11] (2003) 4 SCC 172
[12] (2019) 15 SCC 131
[13] (2021) 9 SCC 1

29. Thus, it is well-settled that an Appeal under Section 37 is not an avenue for re-appreciation of evidence or re-evaluation of factual findings. The enquiry is limited to examining whether the learned Court under Section 34 has applied the correct legal principles and whether the Award suffers from any infirmity falling within the limited grounds of interference recognized under the A&C Act.

30. Tested on the aforesaid principles, the contentions advanced on behalf of the Appellant are required to be examined.

31. The limited grievance of the Appellant is that while awarding a sum of Rs.1,90,86,595/- under Claim No.6, the Arbitrator failed to account for an amount of Rs.93,01,410/- which, according to the Appellant, stood recovered/adjusted towards mobilization advance, thereby resulting in an excess award in favour of the Respondent.

32. At the outset, it is required to be noted that Claim No.6 pertains to the encashment of the PBG and the entitlement of the Respondent to refund thereof. The Arbitrator has returned a finding that the termination of the contract by the Appellant was wrongful, illegal and arbitrary, and that the circumstances constituted a *force majeure* event within the meaning of the contract. On this basis, it has been held that the invocation and encashment of the PBG was impermissible, thereby entitling the Respondent to reimbursement of the amount recovered.

33. The aforesaid findings on liability, including the applicability of the force *majeure clause* and the illegality of invocation of the PBG, have not been assailed by the Appellant. As noticed in the Impugned Judgment, the challenge is confined only to the quantum of the

amount awarded and not to the underlying liability. In the absence of any challenge to these foundational findings, the entitlement of the Respondent to refund under Claim No.6 stands concluded.

34. The principal contention advanced by the Appellant rests on the alleged non-consideration of the adjustment of a sum of Rs.93,01,410/-. The reliance placed on the findings returned under Claim No.7, however, is misplaced and does not advance the Appellant's case.

35. Claim No.7 pertains to the grant and recovery/adjustment of mobilization advance, whereas Claim No.6 concerns the legality of invocation and encashment of the PBG. The two claims operate in distinct and independent spheres and have been adjudicated by the Arbitrator on their own merits. The findings rendered under Claim No.7, therefore, cannot be read in a manner so as to dilute or unsettle the determination under Claim No.6, save to the limited extent of verifying whether the aspect of adjustment has, in fact, been duly accounted for.

36. At the same time, the findings under Claim No.7 assume relevance to the limited extent of examining the Appellant's contention regarding alleged non-adjustment. A perusal of the Award shows that the Arbitrator has taken into account the recoveries effected towards mobilization advance, including encashment of the PBG as well as recoveries made during execution of the works through running account bills.

37. This position stands further clarified by the affidavit filed by the Respondent pursuant to the order dated 17.09.2024, wherein it has

been specifically stated that against the mobilization advance, a Bank Guarantee of Rs.1,09,95,254/- was furnished and encashed, and in addition thereto, a sum of Rs.1,00,89,066/- was recovered during the course of execution of the works upto the 16th RA Bill. It has further been affirmed that the awarded amount has been computed after adjusting the entire mobilization advance along with interest, as reflected in the Award, particularly under Claim No.7.

38. In view of the aforesaid, the apprehension expressed by the Appellant, namely, that the Respondent is receiving more than what is due on account of non-adjustment of mobilization advance, does not merit acceptance. The material on record, including the Award read with the affidavit of the Respondent, indicates that the aspect of recovery/adjustment of mobilization advance was duly taken into consideration by the Arbitrator.

39. The submission of the Appellant that the aforesaid does not conclusively establish the adjustment, in essence, invites this Court to undertake a re-examination of the computation and reconciliation of accounts between the parties. Such an exercise is clearly beyond the scope of interference under Sections 34 and 37, which does not permit a fresh factual determination on matters not raised or adjudicated in the arbitral proceedings.

40. In the absence of any cogent material on record to demonstrate that the Award is vitiated by patent illegality on account of duplication or non-adjustment, the contention advanced by the Appellant cannot be sustained. The plea, in essence, rests on a speculative apprehension rather than any demonstrable error apparent on the face of the Award,

and therefore does not meet the threshold warranting interference under the limited jurisdiction of Sections 34 and 37.

41. In view of the foregoing discussion, this Court has examined the computational objection as raised by the Appellant and has found no merit in the same. Once the said contention stands negated on the basis of the material available on record, it is not necessary for this Court to enter upon the larger question as to whether a fresh factual plea, not urged before the learned Arbitrator, can be permitted to be raised for the first time in proceedings under Sections 34 or 37.

CONCLUSION:

42. This Court is, therefore, of the considered view that no case of patent illegality, perversity, or jurisdictional error has been made out so as to warrant interference with the Award or the Impugned Judgment. The reasoning adopted by the learned Single Judge is in consonance agrees with the settled principles governing the scope of interference under Section 34 and calls for no interference.

43. The present Appeal is accordingly dismissed. The pending application stands closed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MAY 19, 2026
s.godara/shah