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

\+ FAO(OS) (COMM) 210/2022

DELHI JAL BOARD .....Appellant

Through: Mr. Sanjay Jain Sr. Adv. and Mr. Tushar Sanu, SC for DJB with Mr. Nishank Tripathi, Ms. Harshita Sukhija, Ms. Rishika Agrawal and Ms. Priya Tyagi, Advs.

versus

MS MOHINI ELECTRICALS LTD .....Respondent

Through: Mr. Ankit Handa and Mr. Darpan Sachdeva, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 09.03.2026

C. HARI SHANKAR, J.

CM APPL. 13851/2026

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

CM APPL. 13850/2026

3. For the reasons stated therein, the delay of 2 days in filing the review petition is condoned.

4. The application stands disposed of.

REVIEW PET. 101/2026

5. We have heard Mr. Ankit Handa, learned Counsel for the review petitioner at a considerable length.

6. Mr. Sanjay Jain, learned Senior Counsel appearing for the original appellant/respondent in the review petition, initially advanced a preliminary objection as to the maintainability of this review petition. He submits that an order under Section 37 of the Arbitration and Conciliation Act, 1996[1], is not amenable to review under Order XLVII of the CPC. He has placed reliance on the judgement of the Supreme Court in ***Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Ltd.***[2].

7. Mr. Handa, appearing for the review petitioner has, *per contra*, drawn our attention to a decision of a Division Bench of this Court in ***DDA v. Swastic Construction Company***[3]**.** In that case, against an order passed under Section 37 of the 1996 Act, the DDA preferred an SLP to the Supreme Court, which disposed of the SLP in the following terms, on 2 November 2022:

> "One of the grounds on which she assails the judgment and order impugned is that the point urged before the High Court for exclusion of certain claims on being excepted matters have not been dealt with in the said judgment. The present petition arises out of an arbitral award, which was sustained by the Court in a Section 34 proceeding under the Arbitration and Conciliation Act, 1996. Appeal against the order repelling challenge to the award was also dismissed, against this petition has been filed. In our view if that is the case, proper course for the petitioner would be to apply before the High Court with that plea.

[1] "the 1996 Act" hereinafter
[2] **(2005) 13 SCC 777**
[3] **298 (2023) DLT 272 (DB)**

> We, accordingly, dismiss the present petition for special leave to appeal giving liberty to the petitioner to approach the High Court on the point as we have indicated above.
>
> Needless to add, in the event, the petitioner's argument on that count is not accepted by the High Court, the petitioner may further approach this Court, if so advised.
>
> Pending application(s), if any, shall stand disposed of."

8. Though Mr. Jain submits that afore-extracted order of the Supreme Court in the ***Swastic Construction*** does not lay down any principle of law to the effect that a review petition would lie against an order passed under Section 37, we are not inclined to reject the present review petition on that ground, especially as Mr. Jain has not been able to draw our attention to any decision directly holding that no review petition would lie against an order passed under Section 37 of the 1996 Act.

9. We cannot be oblivious to the fact that in ***Swastic Construction***, the order passed by the High Court was an order passed under Section 37 of the 1996 Act. DDA challenged the order in an SLP before the Supreme Court. One of the grounds urged by DDA was that a contention advanced before the Court had not been considered. The Supreme Court clearly holds, in its order dated 2 November 2022 extracted *supra* that, if that was case, "proper course for the petitioner would be *to apply before the High Court* with that plea". Following this, the Supreme Court granted liberty to DDA to approach the High Court.

10. The only means by which DDA could have approached the High Court was by a way of review petition. Clearly, therefore, though the Supreme Court may not have specifically referred to the remedy of review, the liberty that was granted to DDA in that case was to approach the High Court by a way of a review petition.

11. The Supreme Court having granted such liberty in the ***Swastic Construction,*** and the review petition filed by DDA thereafter having being entertained on merits, we are not inclined to dismiss the present review petition filed by the respondent in the appeal on the ground of maintainability.

12. We have, therefore, heard Mr. Handa at length.

13. Mr. Handa has advanced three contentions to demonstrate what, according to him, constitutes errors apparent on the face of the record of our judgment dated 12 January 2026, meriting review.

14. The first contention of Mr. Handa is that this Court, apropos Claim 13 which was under consideration, has, while holding that financing charges were not payable on the said claim, set aside the award in respect of the claim in its entirety. He has drawn our attention, in this context, to para 154 of our judgment under review which reads as thus:

> "154. The grant of financing charges, therefore, cannot be sustained and is liable to be set aside."

15. We are of the view that Mr. Handa is reading para 154 of the

judgment under review in isolation. When one reads para 154 in conjunction with paras 155 and 156, the position which emerges is under:

> "154. *The grant of financing charges, therefore, cannot be sustained* and is liable to be set aside.
>
> 155. In view of the foregoing discussion, the portion of the award *insofar as it relates to claim 12A and financing charges* is held to be unsustainable and is accordingly set aside.
>
> 156. *Save and except the above interference, the remaining findings and directions contained in the award are found to be lawful, reasoned and within the jurisdiction of the learned Arbitral Tribunal, and therefore call for no interference*."
>
> (Emphasis supplied)

16. Clearly, therefore, the judgment under review has held that financing charges could not be granted and has, therefore, set aside the award insofar as it relates to Claim 12A and financing charges to be unsustainable. We have upheld the remaining findings and directions contained in the award. We, therefore, do not understand our judgment in the manner in which Mr. Handa understands it. This ground of review, therefore, fails.

17. Mr. Handa's second contention is with respect to Claim 12A. He has drawn our attention to paras 97 to 99 of the judgment under review, which hold thus, apropos Claim 12A:

> "97. The learned Arbitral Tribunal attached significant weight to the Chartered Accountant's certificate. Hence, we deem it relevant to reproduce the Chartered Accountant certificates relied on by the learned arbitrator:
>
> "TO WHOMSOEVER IT MAY CONCERN

> This is to certify that M/s Mohini Electricals Ltd., WZ-263, Railway Road, Srinagar, Delhi-110034 discharged their tax liability with respect to DVAT as well as Service Tax as per its applicability during the Financial Year period 2004-05 to 2012-13 víz. 12.5% under DVAT for the entire corresponding period & Service Tax 12.24% w.e.f. 18/04/2006 to 10/05/2007, 12.36% w.e.f. 11/05/2007 to 23/02/2009 and 10.3% w.e.f. 24/02/2009 to 31/03/2012 including the payments pertaining to Delhi Jal Board works of Contract of UGR & BPS at various location in Trans-Yamuna Area. It is further confirmed that M/s Mohini Electricals Ltd. has declared the entire receipts of payments for the Project.
>
> For V.D. BISHAMBHU & CO.
> CHARTERED ACCOUNTANTS
>
> (F.C.A. V.D. BISHAMBHU)
> (PROP.)
> M.No. F-004303
> Place: New Delhi
> Date: 31.03.2016"

98. Upon scrutiny, it is evident that the certificates attached in Annexure 1D and 2B only certify payment of taxes and receipts of amounts. They neither certify, authenticate, audit, nor verify the expenditure allegedly incurred during the period of prolongation, which forms the very basis of claim 12A.

99. It is thus evident that there is no material before the learned Arbitrator to show that the Chartered Accountant even certified or examined the underlying books of accounts, vouchers, muster rolls, utilization statements or any contemporaneous documents in support of Annexure 12A. Annexure 12A appears to be nothing more than a self-prepared statement of the contractor, unsupported by any independent verification. Self-serving documents, unsupported by corroborative proof, cannot be treated as evidence of actual expenditure. Reliance on such material renders the impugned award unsupported by evidence and squarely places it within the category of a finding based on "no evidence"."

18. Mr. Handa submits that this Court has erroneously held that the chartered accountant had not certified or examined underlined books

of accounts, vouchers, master rules, utilization statements of contemporaneous documents in respect of Annexure 12A.

19. To support this submission, Mr. Handa endeavoured to draw us into the evidence which was before the arbitral tribunal, referring us to individual documents which bear the stamp of the chartered accountant, to make out a case that there was certification and examination by the chartered accountant of the underlined books of accounts and other relevant documents.

20. A re-examination of the evidence, and re-appraisal of the issue of whether the Chartered Accountant examined the relevant books, is an intricate exercise which, we doubt, could even been undertaken in a Section 34 proceeding, much less in a review petition against an order passed under Section 37 of the 1996 Act. This does not, therefore, constitute, in our view, a permissible ground for review.

21. The third ground urged by Mr. Handa is with respect to para 140 of the judgment under review, with respect to financing charges. The para reads thus:

> "140. Therefore, award of financing charges provided under clauses 14.7 and 14.8 apply only to amounts actually admitted or certified in accordance with the Contract by the appellant and not to the disputed/ revised claims on which liability was affixed on the appellant at the later stage by the learned Arbitrator in exercise of its power provided under clause 20.6. The absence of certification is fatal to any claim for financing charges. Any broader interpretation would expose the Employer to financing charges revised, unverified or disputed claims later affixed on the appellant, a consequence clearly not contemplated by the parties at the time of contract."

22. Mr. Handa's contention is that, in para 140, the Court has proceeded without considering Clauses 20.1 and 20.6 of the agreements between the parties.

23. The submission is not correct as Clause 20.6 has specifically been noticed in para 140.

24. Nonetheless, we queried of Mr. Handa as to the provision under which financing charges are payable to the party. He admits that financing charges are payable only under Clause 14.8 of the contract.

25. In that view of the matter, at the highest, the case of the review petitioner is only that this Court has not appreciated the clauses of the contract correctly.

26. We are not inclined to re-examine this aspect as such a contention cannot be advanced in a review petition.

27. We, therefore, do not find that any case for review of our judgment is made out.

28. The review petition is accordingly dismissed in *limine*.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

MARCH 9, 2026*/ss*