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

\# **CNR No. DLHC011557572017**

\+ O.M.P. (COMM) 168/2017

DELHI DEVELOPMENT AUTHORITY .....Petitioner

Through: Mr. Vaibhav Agnihotri, ASC with Mr. Vidit Pratap Singh, Mr. Ankit Singh and Mrs. Suruchi Khandelwal, Advocates.

versus

M/S SIMPLEX INFRASTRUCTURE LTD .....Respondent

Through: Mr. Rajesh Markanda, Advocate.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 14.08.2026

1. The present petition has been filed by the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996[1] challenging the arbitral award dated 14.10.2008 passed by the learned Sole Arbitrator, Mr. N.L. Singh.

2. The dispute arises out of a contract for the design and construction of a Road Over Bridge (ROB) at the level crossing on the Delhi–Rewari railway line, including a half-trumpet interchange at the intersection of Pankha Road and Station Road. The letter of award was issued on 15.05.2002 with the stipulated date of completion 24.11.2003, whereas the actual date of completion was 24.11.2005.

3. The dispute arose because the project, which was required to be completed by 24.11.2003, was actually completed on 24.11.2005,

[1] "Act" hereinafter

resulting in a delay of about two years.

4. The present matter is a classic case of disputes relating to delayed projects. The Respondent contends that the delay was caused largely by hindrances attributable to petitioner and as a consequence, because of the prolonged execution period, the respondent claimed additional amounts whereas Petitioner disputes its liability for these amounts, which ultimately led to the claims being referred to arbitration.

5. Claim No. 1, which was related to additional and extra works, the arbitrator awarded Rs.26,83,385/- against a total claim of Rs.97,37,791/-. The amounts awarded included compensation for reconstruction of the labour colony, execution of additional pile lengths, increase in the size of pile caps, protection of a Jal Board manhole and expenditure arising from non-utilisation of certain tested materials.

6. Under Claim No. 2, the Respondent claimed Rs.2,53,42,734/- towards expenditure incurred on maintaining manpower, machinery and other resources during the extended period of the contract. The Arbitrator concluded that the two-year delay in completion of the work was not attributable to the respondent but mainly to the petitioner, because delays arose from late approval of drawings, and non-availability and delayed handing over of sites, shifting of utilities, and other hindrances that were substantially admitted in the petitioner' own Hindrance Register and EOT records.

7. Using the Hudson Formula, the learned Sole Arbitrator awarded Rs.1,79,01,487/- under claim no.2.

8. Consequent upon the finding regarding prolongation, the arbitrator awarded the full amounts claimed under Claim No. 3, which is Rs.8,08,192/- towards additional expenditure incurred in renewing bank guarantees and insurance policies during the extended period, and under Claim No. 4, which amounted to Rs.12,45,370/- towards land rent recovered during the extended stay at the site.

9. Under Claim No. 10, relating to increase in the price of steel during the extended period, the contractor claimed approximately Rs. 2.05 crore. After considering the material concerning the increase in steel prices and the purchase documents placed on record, the arbitrator awarded Rs.1,44,93,703/-.

10. Under Claim No. 13, relating to escalation in the prices of other construction materials such as cement, POL, sand, admixtures, aggregates and allied materials during the extended period, the Respondent claimed Rs.63,75,521.70/-. The arbitrator applied an escalation assessment and awarded Rs.39,90,015/-.

11. Under Additional Claim No. 16.3, the Respondent sought reimbursement of Rs.17,77,264/- deducted towards labour cess. The Respondent contended that the cess liability was imposed after submission of its tender and had therefore not been factored into the bid. The arbitrator accepted the claim and awarded the entire amount of Rs.17,77,264/-.

12. The learned Sole Arbitrator also awarded interest at 12% per annum. In respect of most claims, interest was awarded from a date

corresponding to six months after completion of the work, whereas interest on Claim No. 2 was awarded from the date of the award.

13. Briefly put, the award proceeded on the findings that several items executed by the Respondent were compensable as additional works, and that material portions of the contractual delay were attributable to circumstances for which the petitioner was responsible. The learned sole arbitrator, however, did not allow all claims in full and reduced the amounts claimed under several heads.

14. The Petitioner has challenged the Award and the interpretation of the contracts by learned sole arbitrator, wherein the delay was made attributable to petitioner and the claims of the Respondents were allowed to some extent.

15. Needless to state, the scope of judicial review under Section 34 of the Act is narrow and well settled. The Court does not sit as an Appellate Court over an arbitral record and cannot reappreciate evidence merely because other view may be possible.

16. In various decisions, the Supreme Court has reiterated that an arbitral award is not liable to be interfered with merely because the Court may prefer a different interpretation of the contract or a different appreciation of the evidence.

17. Where the view taken by the Arbitrator is a plausible and reasonably possible view based on the material before the Tribunal, it is well settled that the Court must ordinarily defer to such view. Interference is warranted only where the award falls under the limited

grounds prescribed under Section 34 of the Act, including patent illegality, perversity or conflict with the public policy of India as applicable to the present proceedings.

18. The claims raised in the present petition must therefore be examined within these limited parameters.

19. The Petitioner has challenged a set of sub-claims forming part of Claim No.1 as well as Claim Nos.2, 3, 4, 10, 13, 14 and additional Claim No.16.3.

20. As far as this Claim No.1, sub-claim No.1. (reconstruction of labour colony) is concerned, the Petitioner submits that under Clause 4.18 and 7.36.3 of the contract, the responsibility for providing land for labour accommodation rested exclusively with the respondent.

21. It is contended that the labour huts were constructed on MCD green belt line without prior approval of MCD and the Petitioner cannot be held responsible for subsequent demolition carried out by the MCD.

22. The Respondent on the other hand submits that the huts were constructed on land identified by the officers of the petitioner and that the construction was permitted or at least accepted by the concerned officer. It is also submitted that petitioner subsequently secured permission in respect of the said land.

23. The Arbitrator held that the Petitioner were responsible for the loss caused by demolition of the labour huts. Although the petitioner

argued that the contractor had constructed the huts without their permission, the Arbitrator rejected this defence as an afterthought, because the Respondent had informed the respondents in advance about the construction, the respondents' officers were present at the site, and no objection was raised until after the huts were demolished by MCD.

24. The learned sole Arbitrator therefore found the claim for reconstruction expenses justified. As per the learned arbitrator, since the respondents had also not disputed the expenditure details when originally submitted, those expenses were accepted, subject to deduction of the salvage value of materials recovered from the demolished huts. Thus, after adjusting the salvage value, the learned Arbitrator awarded Rs.1,45,000/- to the respondent.

25. According to this court, the finding is essentially factual and is based on the material considered by the Arbitrator. The Arbitrator relied on the Respondent's letter dated 20.06.2002 informing the Petitioner about construction of the labour huts, and thus in the absence of any contemporaneous objection, coupled with the presence of the Petitioner's officers at site, and the later permission to reconstruct the huts at the same place, the arbitrator awarded the claim to Respondent.

26. The inference of tacit approval was at least a possible factual view. The Petitioner has been unable demonstrate that the finding is perverse, unsupported by evidence or otherwise vitiated by patent illegality. Accordingly, no ground for interference under Section 34 of the Act is made out.

27. As far as sub-claims No.5 and 6, which are about additional pile length and increase in pile cap size, the learned counsel for the Petitioner relied upon Clause 7.36.1 and 7.8 and contends that the contract was a lump sum design and construct contract. According to the Petitioner, the GAD drawings were indicative and the contractor was required to absorb any valuation in pile length or pile cap dimension without additional financial implications.

28. On the contrary, the Respondent submits that additional piling and modification of the design became necessary on the ground of underground utilities which were not reflected in the available drawings. The revised drawings were thereafter approved by the Petitioner's consultant. It is further submitted that the calculations supporting the additional work remained unremitted before the Arbitrator.

29. The learned Sole Arbitrator, being a technical expert, examined the manner in which the work was executed and found that the additional work had been carried out in accordance with the approved revised drawings.

30. The question whether additional work was necessitated by enforcing site condition and whether such work fell within or outside the original contractual scope, involved an appreciation of the technical material and contractual provisions. The Arbitrator's assessment on these matters cannot be displaced merely because the Petitioner seeks to advance another interpretation of the contract.

31. The view taken by the Arbitrator is a plausible view on the material before him. No perversity or patent illegality has been demonstrated. These awards therefore warrant no interference.

32. As far as Claim 1.11 regarding protection of manhole on Jal Board's sit is concerned, the Petitioner contends that under Clause 6.4 and 7.36.1, the Respondent was required to inspect the site and modify its design and planning wherever necessary, to protect existing services without claiming additional payments.

33. For this the Respondent submits that the manhole was located within the alignment of the RE wall and had not been disclosed in the tender drawings. The protection work was therefore additional work necessitated during execution.

34. The learned Arbitrator considered the technical necessity of the work and allowed the claim on the basis of an independent rate analysis.

35. The finding is based on technical evidence and material before the Tribunal. The Petitioner has not shown that the finding is perverse or that the arbitral award is beyond the contractual framework. The learned arbitrator actually considered the relevant contractual provisions and expressly held that they did not cover an undisclosed manhole requiring special protection. The tribunal held that the Respondent had notified the Petitioner and submitted drawings for such protection, which work was in fact carried out and not denied.

36. Even if another interpretation of the clauses relied upon are taken,

the award would ordinarily not warrant interference as learned counsel for the Petitioner has not pointed out that the Tribunal completely ignored an express contractual prohibition covering even such undisclosed manhole protection work. Needless to state, the view of arbitrator is possible and therefore cannot be interfered with.

37. Claim 1.20 is about testing charges for material tested and found suitable, the Petitioner relied upon Clause 7.30.3 and contends that cost of all sampling and testing was to be borne by the Respondent

38. The Respondent submits that M-40 design mix was tested in terms of the contractual requirements but the Petitioner subsequently did not permit its use. The learned Arbitrator awarded reimbursement on the basis that the testing expenditure had been incurred as required but the benefit of the test was lost because the material was not permitted to be used pursuant to Petitioner's direction. Therefore, it cannot be said that the learned arbitrator ignored any contractual provision. The finding is made in the circumstances, that M-40 design mix was not required at the site only.

39. Therefore, the finding is basically a factual determination based on the circumstances that testing was undertaken. Accordingly, no perversity or patent illegality has been established. The award under this head is also therefore upheld.

40. Now coming to Claim No.2, which is about expenditure on maintaining resources during the period of over-stay, the Petitioner contends that the delay was attributable to the Respondent in efficient

planning, in adequate deployment of labour and use of old machinery. It relied upon Clause 7.36.2 and 6.4.1(iii) and Annexure 4 of the statement of defence to submit that no monetary compensation was payable for delay arising from shifting of services or obtaining third-party permissions and that the contractual remedies in such circumstances were limited to extension of time.

41. The Petitioner further submits that Petitioner has levied compensation of Rs.44,754/- under Clause 2 which was accepted by the contractor.

42. Learned Counsel for the Respondent however relied upon Petitioner's own hindrance register and the recommendation concerning EOT II, according to the Respondent these contemporaneous records establish that the delay was caused *inter alia* by non-availability of permissions from difference authority, delayed approval of GAD drawings by Petitioner, delayed execution of railway spans and belated sifting of utility lines.

43. The Respondent also relies upon audited vouchers and charted accountant certificates to establish the expenditure actually incurred during the extended period and submits that the lost was accessed on principals underlying the Hudson Formulae.

44. The learned Arbitrator considered the contemporaneous records including the hindrance register and the extension of time approvals and concluded that DDA had failed to provide clear and unhindered site access within the stipulated period resulting in prolongation of contract.

45. The principal that an employer responsible for prolongation of a contract may be liable for the resulting loss is well recognised in ***Associate Builders v. Delhi Development Authority***[2]. The hon'ble Supreme Court recognised that contractual provisions restricting monetary claims for delay does not necessarily bar a claim for damages arising from the employers' own approach.

46. In the present case, the Arbitrator conclusion was based upon contemporaneous records and the evidence before the Tribunal.

47. The assessment of the loan awarded involved a technical and factual evaluation. The Petitioner could not establish that the conclusion is perverse and based on merits.

48. The award in the Claim No. 2, therefore, does not warrant and service under Section 34 of the Act.

<u>Now, Claim No. 3, 4, 10, 13 and 14 renewal of Bank Guarantees / insurance and land</u>

49. The Petitioner submits that under Clause 7.4.3, 7.4.4 and 7.31.1, the Respondent was required to maintain the Bank Guarantees and insurance policies throughout the extended period at its own cost.

50. It is also submitted that the land rent for labour camps during the period of road stay was recoverable under Clause 4.18.

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[2] **(2015) 3 SCC 49**

51. The submission of the Respondent against this was that the two years prolongation was attributable to Petitioner's breaches

52. These claims are consequential upon the findings recorded under Claim No. 2, as once the learned Arbitrator concluded that the prolongation was attributable to Petitioner, the additional expenditure necessarily incurred in maintaining contractual securities, insurance, labour and arrangements during the extended period was not capable of being awarded as consequential loss.

53. The findings of the learned Arbitrator are neither perverse nor contrary to the contractual claim, no ground for interference is therefore made out.

Claim No. 10 & 13 (about increase in steel and construction material prices)

54. The Petitioner submits that Clause 10 CC which provide for escalation was expressly deleted by Corrigendum No. 3. It is, therefore, contended that in the absence of an escalation Clause the Arbitrator could not have awarded compensation for the increase in the market price of steal and other construction materials.

55. The Respondent submits that there was an unprecedent increase in the price of steal stated to be as high as 70%, as well as substantial increase in the costs of basic construction material during the two years period of prolongation.

56. Reliance is placed upon ***P.M Paul v. Union of India***[3] to contend that additional cost incurred during a period of prolongation attributable to the employer may be recoverable as damages even in the absence of an escalation Clause.

57. The learned Arbitration confined in the award that the price increase is attributable to the extended period of the contract. The mere deletion of the escalation Clause does not by itself exclude liability from damages resulting from an employer's breach where such breach causes prolongation of the contract and demonstrable additional expenditure.

58. The learned Arbitrator conclusion based upon the material before him and confined to the period of prolongation constitute a plausible view, the Petitioner could not establish patent illegality or perversity while entering interference under Section 34.

<u>Additional Claim No. 16.3 (reduction on account of labour cess)</u>

59. The Petitioner contends that labour cess became recoverable w.e.f. 10.01.2002, pursuant to the NCT, Delhi notification dated 16.08.2005 and the Clause 38 of the Contract provides that the quoted rates were inclusive of all taxes.

60. The Respondent submits that its bid was submitted on 26.11.2001, before the relevant notification and the operationalisation of the labour.

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[3] **AIR 1989 SC 1034**

61. It is therefore, contended that the subsequently introduced statutory levy could not have been factored into the tendered rates.

62. The learned Arbitrator accepted the Respondents' contention and held that a statutory levy introduced after submission of the bid, could not reasonably have been incorporated into the rates quoted by the Respondent

63. The fact that the bid was submitted on 26.11.2001 prior to the relevant statutory change, support the learned Arbitrator's conclusion. At the very least, the view adopted by the learned Arbitrator is a plausible view based on the contractual and statutory provisions.

64. The Petitioner could not establish that the finding is perverse or suffers from patent illegality.

65. Thud, the award under this claim also warrants no interference.

<u>Claim No. 14 (for interest)</u>

66. The Petitioner submits that the contract contains no provision for payment of interest @ 12% per annum awarded by the learned Arbitrator is unacceptable.

67. For this, the submission of the Respondent was that the Arbitral Tribunal poses statutory authority under Section 31(7) of the Act to award interest subject to the terms of the contract.

68. Clearly, Section 31.7 confers upon the Arbitral Tribunal, the power to award interest in accordance with the statutory framework, unless the agreement between the parties specially excludes or restricts such power.

69. In the present case, the Arbitrator awarded interest @ 12% per annum commencing six months after actual completion.

70. The award of interest in the present circumstances considered by the Arbitrator cannot be said to be so unreasonable or excessive as to warrant interference under Section 34.

71. The award of interest is accordingly upheld.

72. The Court has considered the grounds placed by the Petitioner against each of the impugned heads of the award.

73. The principal challenge is in substance and invitation to this Court to reappreciate the contractual provisions, the contemporaneous records and the evidence considered by the learned Arbitrator.

74. Such re-appreciation is outside the limited scope of jurisdiction under Section 34 of the Act. The Arbitrator has considered the contractual clauses, correspondence hindrance registers, extension of time records and other material placed before him.

75. The conclusions reached are supported by the material available

on record and represent views that are reasonably possible on the facts and contractual framework.

76. Merely because another interpretation of the contract or another assessment of the evidence specially does not permit a ground for setting aside the award.

77. The learned Sole Arbitrator was a technical officer who has rendered a reasoned award after considering technical provisions contemporaneous correspondence, hindrance register and the evidence placed before the Tribunal.

78. The Petitioner could not establish that the impugned award suffers from patent illegality, perversity, violation of public policy or another other ground recognised under Section 34.

79. No jurisdiction error or fundamental infirmity has been demonstrated.

80. Consequently, no ground for interference to the arbitral award dated 14.10.2008 is made.

81. The Petition under Section 34 is accordingly dismissed along with all pending application.

OM PRAKASH SHUKLA, J

AUGUST 14, 2026/pa/at