



2026:DHC:1762-DB



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

% Judgment Reserved on: 04.02.2026
Judgment pronounced on: 27.02.2026
Judgment uploaded on: As per digital signature~

+ **FAO (COMM) 38/2026, CM APPL. 7629/2026, CM APPL. 7630/2026, CM APPL. 7631/2026, CM APPL. 7632/2026**

Delhi Development Authority Appellant

Versus

Kalwa Respondent

Advocates who appeared in this case

For the Appellant : Mr. Sanjay Vashishtha, Mr. Siddhartha Goswami, Mr. Aditya Sachdeva and Ms Geetanjali Reddy, Advocates

For the Respondent : Mr. Sunil Dutt Dixit and Ms Gauri Dixit, Advocates

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

VINOD KUMAR, J.

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') is directed against a judgment dated 31.10.2025 passed by the learned District Judge-02, Central District, Tis Hazari, Delhi (in short 'District Judge') in ARBTN A.(Comm.)No.33/2019, vide which he



dismissed the objections under Section 34 of the Act filed by the appellant-DDA under Section 34 of the Act challenging the Award dated 20.05.2014 adjudicated by the sole Arbitrator. For the sake of convenience, the appellant would also be referred to as 'DDA' and respondent would also be referred to as 'Claimant'.

DISPUTE

2. The respondent is engaged in the business of running parking sites at various places in NCT of Delhi. In a parking tender process for Truck Parking site at Majnu ka Tila, Timarpur, Delhi (*hereinafter referred to as 'the parking site'*), the appellant-DDA declared the respondent as the highest bidder and consequently issued an allotment letter bearing No. F.99/11/2010/LPC/Parking/699 dated 26.03.2010 at a monthly license fee of Rs.5,11,000/- for a contract period of three years and directed the respondent to comply with the terms and conditions in the aforesaid allotment letter. The respondent had already deposited two months' license fee as 'earnest money' at the time of submitting tender. He communicated his acceptance vide letter dated 29.03.2010 and also deposited advance license fee of three months i.e. Rs.15,33,000/- adjustable only against the last three months of the contract period as per the terms of the allotment letter. The abovementioned acceptance letter is reproduced as below:



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*“To,
Dated 29.03.2010
The Assistant Director,
Delhi Development Authority,
Vikas Sadan, INA,
Delhi.
Subject:-Truck Parking Site Majnu Ka Tila.
Reference:- Your letter no: F 99(11)
2010/LPC/Parking/699
Dated 26.03.2010.*

*Sir,
With thanks, I am in receipt of your said letter no: F 99(11)2010/LPC/Parking/699 dated 26.03.2010 whereby you have called upon to fulfill the following requirements. Please find enclosed the following documents as required by you in your above acceptance letter as under:-
1. Three months license fee of Rs. 15,33,000/- vide challan no 6149 dt: 27.03.2010 deposited in SBI, Vikas Sadan, New Delhi.
2. Acceptance of Terms and Conditions on Non-Judicial stamp paper of Rs.10/- duly attested by Notary Public bearing no: 33 AA 567730.
3. License deed on a non judicial stamp paper of Rs.100/- duly attested by Notary Public for three years bearing no: K 808327.
4. Four specimen signature duly attested by Gazetted officer.
5. Four passport size photograph attested by Gazetted officer.
6. P/C of election I-Card duly attested by Gazetted Officer.*

Sir, after visiting at parking site, I observed that there is no in and out gate provided at the parking site for smooth and proper exist and entrance of tine vehicles besides the parking site is not been categorically demarcated and fenced. No boundary wall constructed covering the parking area and because of above reasons the safety of vehicles parked in the parking area are at high risk and is an open invitation for the anti-social elements who could easily steal the vehicle, belongings etc. from the parking zone.

It is further observed that the substantial area of the parking are encroached by local shop keepers, Rehri walas, hawkers who are operating illegally from the parking sites besides that there is permanent sort of



fixtures installed by food vendors, motor mechanics, repairing works, mistries etc. also covered substantial portion of the parking area: In addition to above, the peoples residing in vicinity also occupied by the parking site and using the parking site unauthorizedly and illegally without payment for their vehicles and in this way, approximately more than 40% area of the parking site are under illegal and unlawful coverage by the unauthorized persons. I put my bid for the parking site keeping in view that the size of the area described to me could easily utilized for parking above 700 and more truck vehicles but in the present scenario, the available space is not more than 400-450 vehicles.

In view of the above facts, I humbly request you to get the entire area vacated from the unauthorized and illegal occupancy and provide me 100% area allotted and advertised for parking purposes, so that I could use the 100% area of the parking site.

You're prompt action would be highly appreciated.

Yours sincerely

Kawla

Parking Contractor”

3. The respondent in its aforementioned acceptance letter requested for removal of all the unauthorised occupancy/ encroachments and other hurdles and for construction of boundary wall and providing lights and handing over 100% possession of the parking site. The case of the respondent is that vide above reproduced letter, he had apprised DDA about the fact that the parking site could only hold 400-450 trucks, whereas as per the description provided to him, the parking site could be easily utilised for 700 and more trucks. The respondent claims that the parking site was handed over to the respondent on 05.04.2010 with the verbal assurance from the officials of DDA of removing unauthorised and illegal occupancy so also carrying out necessary repairs, light facility, raising boundary walls etc.



4. Aggrieved by the non-action of DDA in removing of encroachments etc., the respondent approached Vice Chairman of DDA via letter dated 30.04.2010 and for the first time requested appointment of Arbitrator in terms of the Agreement for adjudication of dispute. Acknowledging the request of the respondent, the appellant-DDA reverted via letter dated 01.05.2010, which is reproduced as below:

*“OFFICE OF THE EXECUTIVE ENGINEER
NORTHERN DIVISION NO.III/DDA OPP: REM DEPT.
GTB NAGAR; DELHI, 9*

F. 7 (10) AE (P) / ND-3/DDA/540

DT.1/5/2010

*To
Shri Kalwa
Parking Contractor,
808, Karma Bangash
Chandani Mehal
Darya Ganj, Delhi*

*Sub; Allotment of Parking at Truck Parking, Tiram Pur
Ref: No: Nil dated 6.4.2010*

Dear

With reference to your letter dt.4.4.2010, the parawise reply is as under:-

As per parking area made by Delhi metro Corporation and handed over to DDA. As per drawing only one No. gate has been shown for entry and out. As per drawing there is no, gate has been shown for entry and out. As par drawing there is no space for out gate. So it is not possible regarding boundary wall, the parking and could not be covered with boundary wall because there are lot of shop on both sides adjoining parking area and vehiclas can take tum easily you have taken the parking tenders so safety of vehiclas falls under you.

Regarding encroachment of parking area it has been seen and found that there is no any encroachment in the parking area. Some Khomcha people comes in the



morning and goes in the evening. You observed that the people residing in vicinity also occupied by the parking site but it has been found that their vehicles are in the service lane and you are also parking the vehicles in this s/L area.

The A.E. concerned inspected the site and it has been found that about 400 nos. vehicles were parked in the parking area No.1 to and other parking No.9, 10, and 11 were vacant and it has also been found that you are using the vacant land of DDA on parking in future DDA land may not be used as parking.

*Before your previous parking contractor has not raised any observations neither he has forced any problems. However safety of vehicles and to provide the security man for watch and ward falls under your jurisdiction so DDA will not be responsible for any theft. **However, the tender for C/o boundary wall and gate has been called and work will start shortly.***

*Sd/-
(Executive Engineer
ND-3/DDA)*

5. The respondent again wrote letters dated 05.05.2010 and 07.05.2010 reiterating his grievances alleging that he was suffering a loss of Rs.12000/- per day due to appellant-DDA's failure to take remedial steps.

6. Meanwhile appellant-DDA invited fresh tender by means of advertisement dated 27.02.2011 in respect of the parking site in the mid of tenure with the respondent. Consequently, the respondent moved to the High Court by filing a petition (O.M.P. No. 235/2011) under Section 9 of the Act seeking interim relief to prevent DDA from fresh allotment to third party. Vide order dated 28.03.2011, learned Single Judge of this Court passed an interim order directing postponement of the proposed auction of



the parking site. Subsequently, by order dated 21.09.2011, the learned Single Judge extended the said interim protection and directed that the stay shall continue during the pendency of the arbitral proceedings or until 04.04.2013, whichever event occurred earlier so long as Claimant-Kalwa complied with court direction of payment of monthly fee.

APPOINTMENT OF ARBITRATOR

7. The respondent preferred a petition (Arbitration Petition No.80/2011) under Section 11 of the Act praying for appointment of Arbitrator. A coordinate Bench of this court vide order dated 09.08.2011 directed the following:

“Strictly speaking, the respondent is correct in contending that a petition under Section 11 would not be maintainable in these circumstances, as the arbitration agreement contains a named arbitrator. However, the matter does not rest there. The petitioner invoked the arbitration agreement as early as in May 2010 by addressing a notice to the Vice Chairman, DDA, who is the named arbitrator. Despite the said notice, the arbitrator has failed to enter upon reference. It is a clear case where the arbitrator has failed to lect without undue delay, as sufficient time has gone by. Accordingly, the mandate of the learned arbitrator stands terminated.

The present petition ought to have been styled as one under Section 14 and 15 of the Act. However, in the facts and circumstances of the case, I am inclined to treat the present petition as one filed under Section 14 and 15 of the Act. It is clear that disputes have indeed arisen between the parties which are live and are to be resolved through arbitration.

In view of the aforesaid facts and circumstances, I allow the petition and appoint Mr. A.P.S. Gambhir, Advocate (Mobile No.9999983935) as the sole arbitrator to adjudicate all the claims and counter claims of the parties. The fee of the learned arbitrator shall be paid in accordance with the schedule of fee prescribed under the



*rules of the Delhi High Court Arbitration Centre.
Petition stands disposed”*

In view of his order, the arbitration proceedings with the appointed arbitrator commenced.

STATEMENT OF CLAIM

8. On the basis of facts already narrated, the respondent-claimant raised the following claims before the Arbitrator:

A.	Refund of license fee paid in excess from 05.04.2010 to till date @ 40% as the area is not operational and lying under encroachments and obstructions etc.	Rs.38,01,840/-
B.	Compensation towards operational loss @ Rs.12,000/- per day	Rs.61,56,000/-
C.	Reimbursement of expenses incurred by the claimant on creation of infrastructure for running the parking site for the agreed period of three years	Rs.1,00,000/-
D.	Compensation for the mental torture/agonny and physical harassment suffered by the claimant due to the inaction of the respondent on his bonafide requests.	Rs.1,00,000/-
E.	Litigation expenses incurred and to be incurred	Rs.1,00,000/-
F.	Refund of Security deposit amount and advance amount towards license fee lying in deposit	Rs.10,22,000/-
G.	<i>Pendente lite</i> and future interest @ 18% per annum on the claimed amount from the date of filing of the arbitration petition till the realization of the claim	-



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	TOTAL	Rs.1,12,79,840/-
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STATEMENT OF DEFENCE

9. The DDA, in its Statement of Defence, averred that possession of the site had been handed over to the claimant–Kalwa on 05.04.2010 on an ‘as is where is’ basis as per Clause 17 of the agreement. It was thus contended that the claimant–Kalwa was presumed to be aware of the condition of the parking site for trucks as per the said clause. It was stated that once possession was handed over to the Claimant–Kalwa, no cause or dispute survived for appointment of an arbitrator under Clause 24 of the agreement.

10. The DDA denied that its letter dated 01.05.2010 amounted to any admission of problems at the parking site and asserted, on the contrary, that there was no encroachment on the site, which was lying vacant. It was further contended that it was the responsibility of the claimant–Kalwa to check and safeguard against the menace of theft before commencement of business and that the DDA could not be held liable for the same.

ARBITRAL PROCEEDINGS AND THE AWARD

11. The Arbitrator after considering the pleadings of the parties framed the following issues:

“Whether the claimant is entitled to:



- (i) *Refund of excess license fee being Rs.38,01,840/-;*
- (ii) *Compensation towards operational loss being Rs.61,56,000/-;*
- (iii) *Reimbursement of expenses incurred on creation of infrastructure by the claimants being Rs.1,00,000/-;*
- (iv) *Compensation for mental torture/agonny and physical harassment suffered by the claimant being Rs. 1,00,000/-;*
- (v) *Litigation expenses incurred by the claimant being Rs.1,00,000/-;*
- (vi) *Refund of security deposit being Rs.10,22,000/-;*
- (vii) *Pendente-lite and future interest @18% on the aforesaid claim;*
- (viii) *Relief.”*

12. The parties led their respective evidences before the Arbitrator. After hearing the parties, the Arbitrator concluded that photographic evidence showed the true circumstances of the property site. Exhibit CW-1/19 (which contained 159 photographs of the situation at the parking site) and testimonies of the witnesses proved the case of the Claimant regarding encroachments on the site. Additionally, a conjoint reading of the letters dated 01.05.2010 and 03.05.2010 proved that the DDA was convinced that there were encroachments on the parking site and had also promised to construct boundary wall and a gate at parking site for the proper utilisation of the area of the parking site. The learned Sole Arbitrator, upon appreciation of the pleadings and evidence on record, held that owing to substantial encroachment upon the parking site, the claimant was unable to utilize the full capacity of the parking area. It was accordingly held that the claimant was entitled to a proportionate refund of licence fee. The Arbitrator determined that licence fee had been



paid for a period of 18 months, i.e., from 05.04.2010 to 05.10.2011, amounting to Rs. 95,04,600/- and awarded 40 percent thereof, i.e., Rs. 38,01,840/-. The claim towards operational loss was also partly allowed, awarding a sum of Rs. 32,88,000/-. Additionally, the Arbitrator awarded litigation expenses of Rs.60,000/- and directed refund of the security deposit of Rs.10,22,000/-. The awarded amounts were directed to carry *pendente lite* and future interest at 9 percent per annum from the date of filing of the claim petition until realization.

13. The arbitrator also delved into the issue of interpretation of 'as is where is' clause, as encapsulated in clause 17 of the agreement. It would be apposite to reproduce his opinion as under:

“Though the learned counsel for the respondent emphasised that the site was allotted on ‘as is where is’ basis and also cited the judgments (supra) in favour of his submissions. But the judgments cited by the learned counsel for the respondent are distinguishable on facts. First of all, the claimant was only a licensee with very limited right to slow the parking of vehicles while in the judgment cited, the respondent therein was a lessee of the land having wider rights. Since, as a lessee could approach different govt. departments for redressal of his grievances like provisions for parking, lights, water, sewage, roads etc. Moreover, parking, lights, water, sewage, road etc. are additional facilities for the plot of the respondent while the plot itself is intact. In the present case, the biggest problem faced by the licensee (claimant) was that the parking site allotted to him was not intact. Even if, additional facilities were not provided was not a question of much consequence in the present case. Moreover, the respondent-DDA in the present case had promised to construct a boundary wall and a gate and had also promised to remove the encroachment as the conjoint



reading of its letters dated 01.05.2010 and 03.05.2010 (Exhibit CW-1/8 & CW1/43) reveals. Therefore, the judgment cited by the learned counsel for respondent do not serve the desired purpose.”

14. The Arbitrator awarded the following relief as under:

(i)	Refund of Licence fee paid in excess	Rs. 38,01,840/-
(ii)	Compensation for Operation Loss	Rs. 32,88,000/-
(iii)	Litigation Expense	Rs. 60,000/-
(iv)	Refund of Security Deposit Amount	Rs. 10,22,000/-
	Total:	Rs. 81,71,840/-

The Arbitrator also awarded *pendente lite* and future interest at the rate of 9 percent per annum on the aforesaid awarded amount from the date of filing arbitration petition i.e. 03.11.2011 till realization of the said amount.

IMPUGNED JUDGMENT

15. The DDA challenged the said award before learned District Judge by filing objections under Section 34 of the Act. While first dealing with the scope of Section 34 of the act, the learned District Judge reiterated the settled position of law that courts are not permitted to re-appreciate evidence or review arbitral award on merits as the scope of judicial interference is



narrow and confined to the grounds as illustrated in section 34(2) and 34(2A), which include jurisdictional errors, violation of public policy, patent illegality apparent on the face of the award, or perversity of such nature as to shock the conscience of the Court. It was further opined that errors of fact, the existence of alternative or possible interpretations, or mere dissatisfaction with the reasoning adopted by the arbitral tribunal do not constitute valid grounds for interference under Section 34 of the Act.

16. On the issue of encroachment, the court found that there were substantial encroachments upon the parking site. Learned District Judge agreed with the Arbitrator on the issue of encroachment and noted that the Respondent-Kalwa had also placed photographs of the parking site on record. A letter dated 01.05.2010 by the appellant DDA was taken as admission of encroachment and of promise by DDA that work for construction of the wall would commence shortly. The Court noted that the Appellant-DDA did not lead any evidence before the arbitrator to rebut these facts. Consequently, the arbitrator's findings were held to be based on evidence, which could not be characterised as perverse or arbitrary.

17. However, learned District Judge was quite cryptic while dealing with the issue of 'as is where is' clause. Relevant portion of impugned judgment is reproduced as under:

“37. Not only this, but it has also been contended that the Ld. Arbitrator effectively changed the terms of the



Contract while interpreting it and ordered the refund of 60% of the license fees on the grounds of operation loss and granted compensation for loss of business. The respondent was under an obligation to accept the parking site on an ‘as is where it is’ basis”, then so the Ld. Arbitrator should have not given any compensation to the respondent for alleged loss or encroachment.
.....”

18. After noting the submissions of ‘as is where is’ as raised by DDA, learned District Judge, instead of dealing it, read the judgment of *Associated Builders vs. DDA (2015) 3 SCC 49* to emphasize that the arbitrator is the sole judge of the quantity and quality of evidence. Once it is shown that the arbitrator has considered the material on record and adopted a reasoned view, the Court cannot interfere merely because another view is possible. Accordingly, the petition under Section 34 was dismissed and the arbitral award was upheld in its entirety.

ANALYSIS OF SUBMISSIONS OF PARTIES IN THIS APPEAL UNDER SECTION 37

19. Aggrieved by the impugned award and the impugned judgment, DDA preferred this appeal under Section 37 of the Act. The primary submission of the Learned counsel for appellant-DDA is that the license was admittedly granted on ‘as is where is basis’. Clause 17 of the Agreement expressly mentions the obligation of the respondent-claimant to have inspected the site and satisfied himself as to all prevailing conditions prior to submission of the bid.



20. The learned counsel for appellant-DDA further contended that neither the Notice Inviting Tender (NIT) nor the Agreement specified any minimum parking capacity or number of vehicles. The respondent-claimant's assertion that the site ought to accommodate approximately 700 vehicles was wholly unilateral and unsupported by any contractual representation. While assailing the impugned award, the learned counsel for the respondent argued that while raising the objections of encroachment, the respondent-claimant still accepted the allotment via acceptance letter dated 29.03.2010. Moreover, he deposited the requisite amounts, executed the Agreement, and took physical possession of the site on 05.04.2010.

21. The learned counsel for the appellant-DDA submitted that having done so after inspection and with full knowledge of the site conditions, the respondent-claimant cannot raise any claim on the ground of encroachment or capacity of the parking site.

22. Learned Counsel for the appellant argued that the term 'as is where is' means the status of the plot in respect of condition and amenities of the plot and that the issues of encroachment and boundary wall, single door entry were not part of terms of the contract. It was argued that when the respondent had accepted and taken the possession of the site, it would not matter in what condition the parking site lay.



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23. Per contra, it is argued by the learned Counsel for the respondent that had the respondent got complete vacant plot, he had no right to complain about condition of such a plot and therefore any claim of respondent for encroachment, boundary and lack of amenities like road, water, street light etc. would have been barred under Clause 17. But here the situation is that DDA did not deliver completely vacant plot. This is the reason that while accepting the terms and conditions, the respondent raised the issue of encroachment with DDA vide letter dated 29.03.2020. It is submitted that infact it was orally assured that DDA would remove such encroachments and raise boundary wall and open up one more gate so that the respondent is able to use the parking site efficiently.

24. It is further argued by learned Counsel for respondent that Sh. Naresh Maheshwari, employee-Manager of the company, in his evidence as CW2, has testified to this effect in para 6 of his evidence affidavit before the Arbitrator where that the claimant had accepted possession of parking site on verbal assurance of officials to remove unauthorised and illegal occupation at parking site. It is submitted that this version is corroborated by letter dated 01.05.2020 of DDA addressed to respondent, which reflects that DDA owed a responsibility to remove encroachments and raise boundary walls. Therefore, it is submitted that clause 17 'as is where is' basis means that the status of plot after removing the encroachment. Accordingly the



learned Counsel for the respondent supported the impugned award and the view of the Arbitrator on this issue.

25. We have considered the rival submissions. The only issue which required our consideration is as to whether the view of the Arbitrator and the learned District Judge on 'as is where is' clause 17 is perverse and suffers from patent illegality.

26. The Supreme Court of India had the opportunity to consider 'as is where is basis' clause in the judgment of **K.C. Ninan vs Kerela State Electricity Board**, MANU/SC/0604/2023, while observing that:

"138. Thus, the implication of the expression 'as is where is' or 'as is what is basis' or 'as is where is, whatever there is and without recourse basis' is not limited to the physical condition of the property, but extends to the condition of the title of the property and the extent and state of whatever claims, rights and dues affect the property, unless stated otherwise in the contract. The implication of the expression is that every intending bidder is put on notice that the seller does not undertake any responsibility to procure permission in respect of the property offered for sale or any liability for the payment of dues, like water/service charges, electricity dues for power connection and taxes of the local authorities, among others.

xxxxxxx

141. To conclude, all prospective auction purchasers are put on notice of the liability to pay the pending dues when an appropriate 'as is where is' clause is incorporated in the auction sale agreement. It is for the intending auction purchaser to satisfy themselves in all respects about circumstances such as title, encumbrances and pending statutory dues in respect of the property they propose to



purchase. In a public auction sale, auction purchasers have the opportunity to inspect the premises and ascertain the facilities available, including whether electricity is supplied to the premises. Information about the disconnection of power is easily discoverable with due diligence, which puts a prudent auction purchaser on a reasonable enquiry about the reasons for the disconnection. When electricity supply to a premises has been disconnected, it would be impossible for the purchaser to assert that they were oblivious of the existence of outstanding electricity dues.

142. In terms of the legal doctrine of caveat emptor, it becomes the duty of the buyer to exercise due diligence. A seller is not under an obligation to disclose patent defects of which a buyer has actual or constructive notice in terms of Section 3 of the Transfer of Property Act, 1882. However, in terms of Section 55(1)(a), in the absence of a contract to the contrary, the seller is under an obligation to disclose material defects in the property or in the seller's title thereto of which he is aware and which a buyer could not with ordinary care discover for himself.

143. While examining the effect of an 'as is where is' clause, the facts and circumstances of each case individually, along with the terminology of the clauses governing the auction sales must be taken into consideration, to arrive at an equitable decision."

27. The spirit of the above judgment is that when a tender process is initiated, the contractor has the opportunity to inspect the condition of the land/property and only after inspecting it, they are required to make a bid.

28. We would also like to refer to a judgment of this Court in **S.K. Pandey Vs. MCD and Ors**, MANU/DE/0143/2012, wherein a similar dispute was under consideration. The Parking



site was allotted to the tenderer on 'as is where is' basis by MCD. The tenderer alleged that there was 60 percent encroachment on the total area of parking space allotted to him. It was held that:

“15. The parking site in question in commercial site and the petitioner accepted the terms and conditions of the letter of offer. The terms and conditions of the contract agreement stipulated that the parking site has been given an “As is where is basis”. Thus, no dispute can be raised by the petitioner with regard to any loss or damage as the other was accepted by the petitioner with open eyes”

29. Now let us apply the ratio of the aforesaid judgments to the facts of this case. For this purpose, we deem it necessary to reproduce Clause 17 of the Agreement executed between the parties as under:

“The parking site is being tendered on "As is where is Basis". It is presumed that the intending tenderer has inspected the parking site and familiarized himself/herself with the prevailing conditions in all respect before submitting the tender. No claim/dispute above condition/capacity of the parking site shall be entertained by DDA. The tenderer cannot put any condition with his/her tender.”

30. This clause itself makes it clear that the intending tenderer had not only the duty of inspecting the site but **also familiarizing himself/herself with prevailing conditions in all respects.** In this respect we would like to refer to the evidence of CW1 tendered as below:

*“Question: There is a condition in the license deed 1(vii), which states that when you file a tender, before that you need to inspect that area and then on that basis quote your bid. So did you do that and inspect the site?
Answer: Yes, I filed the tender only after the inspection of the site.*



Question: There is another condition in the licence deed which is condition no.18 stating that the sites are given in 'as is where is basis', it will be handed over in the exact position, were you aware of such a condition?

Answer: Yes. I was aware of the terms and conditions."

31. We are fully cognizant of the fact that the courts cannot appreciate or re-appreciate the evidence. But when the question of patent illegality and perversity has been raised, the courts are fully entitled to look into such evidence, of course, without interpreting and analysing the same. The aforesaid portion of evidence is enough to show that before tendering the bid, the respondent was very much aware of encroachments on the parking site.

32. If the view of the Arbitrator on the 'as is where is' clause, which has already been reproduced, is accepted, it would be highly prejudicial to those persons who refrained themselves from raising the bid on seeing the encroachments on the site. The evidence of respondent to the effect that he was assured by some officials of DDA and that they would remove the encroachments cannot be accepted as there is nothing in the contract to that effect. In the matters of tenders, no oral assurance can be read into unless it is specifically mentioned in the contract. Such exercise would seriously and adversely affect the interest of the contractors who refrained from bidding in the view of existing condition of the parking site. Had they known of any such assurance, they could also have considered the option of raising a



bid. Such assurance would actually result in change in terms and conditions of the contract.

33. Such change of conditions of tender, after its acceptance, is in conflict with public policy of law because it would adversely prejudice the rights of those who would have made a bid, had some assurance of removal of encroachments been in their knowledge. Therefore, the interpretation of 'as is where is' clause by the Arbitrator is absolutely perverse and suffers from patent illegality. Accordingly, the award of refund of excess license fee and compensation on account of operation loss against Claims 'A' and 'B' respectively, which is based upon patently illegal interpretation of 'as is where is' clause, is hereby set aside.

34. The Arbitrator has directed refund of security deposit amounting to Rs.10,22,000/- against Claim 'F'. Though the grant of security deposit has also been challenged, but during arguments nothing was brought to the notice of this court showing that the respondent was not entitled to its refund. Hence, this part of Award is upheld.

35. The appellant has challenged the grant of interest on the ground that it was awarded without reference to contractual stipulations or governing principles. Perusal of the statement of claims shows that respondent made Claim 'G' for *pendente lite* and future interest at the rate of 18 percent per annum from the date of filing of arbitration petition i.e. 03.11.2011 till the realisation. We find that Arbitrator has awarded reasonable



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interest at the rate of 9 percent from the date of filing of arbitration petition till realisation. We are of the opinion that there is no patent illegality or perversity in the same, though such interest has to be awarded only on the award of security deposit amount of Rs.10,22,000/- and the litigation fee of Rs.60,000/- which has now been upheld by this court as above. The issue of grant of litigation fee as awarded by the Arbitrator against Claim 'E' remains unchallenged. We also find no infirmity in the same being reasonable.

36. Consequently, we hold that the respondent is only entitled to claim of security deposit of Rs.10,22,000/- as well as litigation expenses amounting to Rs.60,000/- along with interest at the rate of 9 percent per annum from 03.11.2011 till realisation.

37. Accordingly, we set aside the impugned award and impugned judgment to the extent as discussed above.

38. Appeal is accordingly partly allowed.

39. Pending applications stand disposed of.

VINOD KUMAR, J

DINESH MEHTA, J

FEBRUARY 27, 2026

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