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

% **Date of decision: 02.11.2026**

\# **CNR No. DLHC010337382023**

\+ FAO(OS) (COMM) 186/2023

M/S C.P. & ASSOCIATES PVT. LTD. .....Appellant

Through: Mr. Vivekanand & Mr. Abhishek Semwal, Advs.

versus

DELHI METRO RAIL CORPORATION LTD. .....Respondent

Through: Mr. Tarun Johri & Mr. Ankur Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. This appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') assailing the order dated 04.05.2023 (hereinafter 'the impugned order') passed by the learned Single Judge dismissing the petition under Section 34 of the Act.

Brief Facts

2. The brief facts are that the appellant, M/s C.P. & Associates Pvt. Ltd. is a private limited company engaged in the business of construction and development. The respondent, Delhi Metro Rail Corporation Ltd. (hereinafter referred to as 'DMRC') is a joint venture of the Government of India and the Government of the National Capital Territory of Delhi engaged in the development of the metro rail system in Delhi.

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2.1 DMRC invited tenders for architectural finishing works at seven elevated stations on the Inderlok-Mundka Line of Phase-II of the Delhi MRTS Project. The appellant was the successful bidder and the Letter of Acceptance (LOA) was issued on 18.07.2008. The contract was executed between the parties on 14.10.2008 for Rs.33,76,81,216.12. The work was to be completed within fourteen months from the date of the LOA.

2.2 Disputes arose between the parties regarding delay in execution of the work, measurement and settlement of the final bill. The appellant attributed the delay to the non-availability of work fronts and delay in drawings whereas DMRC attributed the delay to slow progress and inadequate deployment of resources by the appellant. DMRC issued a fourteen-day notice on 21.05.2010 and terminated the contract *vide* letter dated 04.06.2010.

2.3 On 11.05.2013, the appellant referred the claims to the engineer nominated by DMRC under clause 20 of the General Conditions of the Contract (for short 'GCC'). Upon rejection of the claims, the appellant invoked arbitration under clause 20.5 of the GCC *vide* letter dated 27.08.2013. The appellant raised thirty-two claims before the arbitral tribunal and the proceedings culminated in an award dated 28.09.2018 whereby seven claims were allowed, three were partly allowed and twenty-two claims were rejected. The claims under challenge and the amounts awarded therein are tabulated below:

Claim No.	**Amount claimed**	**Amount awarded**
Claim A	304,50,000/-	Partly allowed

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Amount not paid towards work executed against BOQ items		
Claim B Amount due towards extra items	86,24,000/-	Nil
Claim C Wrongful forfeiture of PBG	137,23,400/-	Nil
Claim H Refund of amount recovered towards housekeeping	5,00,000/-	Nil
Claim M Refund of amount recovered for negative item	24,36,600/-	Nil
Claim O Refund of liquidated damages (LD) recovered for third and fourth EOT	40,45,000/-	Nil
Claim R Compensation for idle labour and machinery	45,84,000/-	Nil
Claim U Arbitration Costs	5,00,000/-	Nil

2.4 Aggrieved by the award, the appellant filed a petition under Section 34 of the Act. *Vide* the impugned order dated 04.05.2023, the learned Single Judge dismissed the petition. Hence, the present appeal.

Submissions of the Appellant

3. Learned counsel for the appellant contends that the learned Single Judge while referring to the limited scope of interference under Section 34 of the Act failed to consider the specific claim-wise

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objections raised against the award.

3.1 The contention is that the termination of the contract was contrary to clauses 11.4.2(b), (g) and (i) of the GCC. It is submitted that after issuance of the fourteen-day notice dated 21.05.2010, the further two-day notice stipulated under the contract was not issued before termination on 04.06.2010. The submission is that the delay was attributable to the non-availability of work fronts and delay in drawings by DMRC which formed the basis of claim R for idle labour and machinery.

3.2 It is canvassed that the forfeiture of Rs.1,37,23,365/- from the performance bank guarantee (for short 'PBG') of Rs. 3.37 crore under claim C was not justified. The submission is that DMRC neither pleaded nor proved any loss and the amounts sought to be recovered were already adjusted in the final bill and the subsequent agency executed the work at lower rates. Reliance is placed on ***Fateh Chand v. Balkishan Dass,*** 1963 SCC OnLine SC 49, ***Maula Bux v. Union of India,*** (1969) 2 SCC 554 and ***Kailash Nath Associates v. DDA***, (2015) 4 SCC 136.

3.3 The submission is that the tribunal erred in rejecting claims B-2 and B-9 for extra items on the ground that approval of the engineer was not obtained despite other extra items having been accepted and paid for without prior written approval.

3.4 The grievance is that claim B-7 for rectification of damaged false ceiling framing was wrongly rejected and the damage was caused by another agency working at the site. The submission is that

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the appellant could not be held liable for the damage under clauses 18.1(i) and (v) of the GCC.

3.5 The submission regarding claim H is that the recovery of Rs.5 lakh for housekeeping was contrary to the letter dated 16.03.2010 and clause 56 of the GCC. Further that DMRC failed to prove the expenditure incurred towards the housekeeping work.

3.6. *Qua* claim M, it is submitted that Rs.24,36,610.32 deducted from the final bill was neither included in the amount enhanced under claim A nor separately awarded under claim M. The grievance is that the amount remained unpaid.

3.7 The grievance under claim O is that LD of Rs.40.45 lakh was recovered for the third and fourth extensions of time (EOT) without DMRC pleading or proving any loss. Reliance is on ***Indian Oil Corporation Ltd. v. Lloyds Steel Industries Ltd.,*** 2007 SCC OnLine Del 1169, ***Vishal Engineers & Builders v. Indian Oil Corporation Ltd.,*** 2011 SCC OnLine Del 5124 and ***Indian Oil Corporation Ltd. v. Standard Casting Pvt. Ltd.,*** FAO (COMM) 83/2021 and FAO (COMM) 84/2021 decided on 13.11.2025.

3.8 Lastly, it is contended that the rejection of claim U for arbitration costs is contrary to Sections 31(8) and 31A of the Act. The submission is that there was no agreement between the parties after the disputes had arisen, to waive the claim for costs.

Submissions of DMRC

4. *Per contra*, the scope of interference under Section 37 of the

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Act is limited and does not permit re-appreciation of the findings of the tribunal. The submission is that this court is required to examine whether the learned Single Judge rightly exercised jurisdiction under Section 34 of the Act.

4.1 The argument is that the dispute involves technical aspects of the execution of the contract and the tribunal after considering the material on record has passed a reasoned award taking a plausible view. It is submitted that the learned Single Judge was not required to undertake a fresh examination of the technical findings or substitute the view taken by the tribunal with another view.

4.2 It is canvassed that the appellant failed to establish patent illegality in the award and the fact that the impugned order refers to the findings recorded in the award cannot be a ground for interference under Section 34 of the Act.

5. Heard the learned counsel for the parties and perused the record with their able assistance. No other contention than those noted above was pressed.

Analysis

6. The Act is a self-contained code providing an alternative mechanism for resolution of disputes. The intent of the Act is to ensure minimum judicial intervention. The first stage of judicial intervention after the passing of an arbitral award is by filing objections under Section 34 of the Act. Reference is made to the following decisions of the Supreme Court:

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6.1 In ***NHAI v. M. Hakeem,*** (2021) 9 SCC 1 it was held:

> "15. Section 34 of the Arbitration Act, 1996 occurs in Chapter VII under the title "Recourse against arbitral award". We are directly concerned with sub-sections (1) and (4) of Section 34 which are set out hereunder:
>
> > "34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
> >
> > ***
> >
> > (4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the Arbitral Tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of Arbitral Tribunal will eliminate the grounds for setting aside the arbitral award."
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> *** *** ***
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> 19. The statutory scheme under Section 34 of the Arbitration Act, 1996 is in keeping with the Uncitral Model Law and the legislative policy of minimal judicial interference in arbitral awards.

6.2 In ***Fiza Developers & Inter-Trade (P) Ltd. v. Amci (India) (P) Ltd.,*** (2009) 17 SCC 796 it was held:

> "17. The scheme and provisions of the Act disclose two significant aspects relating to courts vis-à-vis arbitration. The first is that there should be minimal interference by courts in matters relating to arbitration. Second is the sense of urgency shown with reference to arbitration matters brought to court, requiring promptness in disposal.

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21. We may therefore examine the question for consideration by bearing three factors in mind. The first is that the Act is a special enactment and Section 34 provides for a special remedy. The second is that an arbitration award can be set aside only upon one of the grounds mentioned in sub-section (2) of Section 34 exists. The third is that proceedings under Section 34 requires to be dealt with expeditiously."

(emphasis supplied)

7. The scope of interference under Section 34 is limited to the grounds stipulated therein. The court dealing with the objections has a dual duty; firstly, to restrict itself to the parameters laid down under Section 34 of the Act and secondly, to apply mind to the contentions raised and consider them within the scope of Section 34 of the Act.

8. The Supreme Court in ***HUDA v. Mehta Construction Co.***, (2022) 5 SCC 432 while dealing with the dismissal of objections under Section 34 of the Act without consideration of the specific issues raised held:

"10. The learned counsel for the respondent, however, contends that the Additional District Judge, Karnal had also dismissed the objections on merits. We have considered this contention but observe that the observation and findings recorded by the Additional District Judge are cryptic and perfunctory. The same is equally true of the reasoning given by the High Court in the impugned order [*Haryana Urban Development Authority (HUDA)* v. *Mehta Construction Co.*, 2019 SCC OnLine P&H 6257], which is full of generalisation and does not deal with specific issues and contentions raised by the appellant in the objections. In particular, the objection that the claims of the respondent were barred by limitation.

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13. We have briefly noted the provisions of the Act only to highlight that the objections under Section 34 of the Act did require consideration and in-depth examination and should not have been dismissed without proper and full application of mind with reference to the provisions of the Limitation Act and the Act."

9. From a perusal of the impugned order, it is evident that the facts were narrated, the contentions of both the parties were noted and the law with regard to the scope of limited interference under Section 34 of the Act was elaborated. However, the specific contentions raised by the appellant under Section 34 of the Act were not considered. Instead, the relevant portions of the award dealing with the respective claims were reproduced and the objections were rejected by stating that the award does not warrant interference as the adjudication was in accordance with the contract.

10. The contentions raised by the appellant having not been specifically dealt with in the impugned order there is no scope under Section 37 of the Act for this court to examine whether the decision was within the four corners of Section 34 of the Act. In the eventuality of the objections being decided for the first time in an appeal under Section 37 of the Act the parties will be deprived of one of the statutory remedies available.

11. The Supreme Court in ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani***, (2024) 7 SCC 218 while considering the power of the appellate court to remand a matter in an appeal under Section 37 of the Act held:

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> "29. There may be exceptional cases where remand in an appeal under Section 37 of the Arbitration Act may be warranted. Some of the exceptional cases can be stated by way of illustration:
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> (*a*) Summary disposal of a petition under Section 34 of the Arbitration Act is made without consideration of merits;
>
> (*b*) Without service of notice to the respondent in a petition under Section 34, interference is made with the award; and
>
> (*c*) Decision in proceedings under Section 34 is rendered when one or more contesting parties are dead, and their legal representatives have not been brought on record."
>
> (emphasis supplied)

12. In the present case, the failure to consider the specific objections raised by the appellant violates the principles of natural justice. Consequently, the impugned order is set aside and the matter is remitted to the learned Single Judge for deciding the objections under Section 34 of the Act afresh.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 2, 2026
'TL'

Reportable: **Yes**

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