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

% **Judgment reserved on: 14.08.2026**
Judgment pronounced on: 19.08.2026

CNR No. DLHC011315482018

+ O.M.P. (COMM) 268/2018
ARKA BRITTON SERVICES PRIVATE LTD. .....Petitioner

Through: Mr. Abhik Kumar & Mr. Dipak Girdhar, Advs.

versus

CNH INDUSTRIAL (INDIA) PRIVATE LTD. .....Respondent

Through: Mr. Yamandeep Kumar & Ms. Samiksha Goel, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. The present petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') challenging the arbitral award dated 14.02.2018 (for brevity 'the impugned award').

2. Brief facts are that the petitioner is a service provider, rendering outsourced manpower and related services to the respondent since year 2011. The respondent is engaged in the business of manufacture and sale of tractors, other agriculture implements and machinery.

2.1 On 21.03.2014, the parties to the *lis* entered into two contracts, namely WC/REV/146/14 (for short '146') for salary of outsource services and WC/REV/147/14 (for short '147') for reimbursement of outsource service expenses (collectively referred to as the 'contracts'). As per clause 2 of both contracts, the duration of the contract was

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from 01.04.2014 to 31.03.2015, extendable on mutually agreed terms in writing. Clause 11 of contract 146 and Clause 9 of contract 147 provided for termination/cession where under the contract could be terminated by either party by giving thirty days written notice and if not extended it would deemed to have expired after expiry of three months.

2.2 The contract was set to expire on 31.03.2015 and *vide* e-mail dated 16.03.2015, the respondent called upon the petitioner to submit the proposal for the year 2015-16. Negotiations for execution of fresh contracts continued during March-April, 2015. The respondent by an email dated 05.05.2015 communicated the decision that both the contracts are terminated.

2.3 The petitioner alleging that the termination is abrupt and illegal, invoked arbitration by issuing notice dated 01.09.2015 as per clause 15 of both contracts. The respondent appointed the sole arbitrator *vide* letter dated 11.09.2015.

2.4 Before the arbitrator, the petitioner raised thirteen claims aggregating to Rs.5,48,04,402/-. The respondent raised a counter claim of Rs.27,79,818/-. The arbitrator vide impugned award concluded that the contract did not automatically expire on 31.03.2015 and stood extended by three months i.e., upto 30.06.2015. The termination letter dated 05.05.2015 was held to be in breach of the terms of the contract. The arbitrator awarded a sum of Rs.11,21,810/- to the petitioner and a sum of Rs.27,40,066/- to the respondent. After adjustments a net sum of Rs.16,18,256/- was awarded in favour of the

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respondent along with interest @ 12% per annum from the date of award till the realization. Aggrieved of the award this petition is filed.

3. Learned counsel for the petitioner contends that the appointment of the arbitrator is in violation of Section 12(5) of the Act as amended vide Arbitration and Conciliation (Amendment) Act, 2015 (for short '2015 Amendment Act').

3.1 It is argued that the arbitrator failed to appreciate that the claims towards salary and telephone/travel expenses pertained to reimbursement for the period of April, 2015 to June, 2015. The material on record was not properly appreciated, particularly that there was no evidence adduced to establish that the employees were paid through other agencies. The argument is that the findings recorded are based on conjectures and surmises.

3.2 The contention is that the arbitrator erred in concluding that the claims for recruitment cost and loss of credibility were non-arbitrable and do not arise from the contract.

3.3 Lastly, the submission is that it was wrongly concluded that the petitioner suffered no loss of business whereas the petitioner was acting as ancillary to the respondent and had the employees not left, the petitioner could have entered into other contractual engagements.

4. *Per contra* the impugned award is well reasoned and calls for no interference. Reliance is placed upon ***Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd.,*** (2022) 1 SCC 131 to argue that a plausible view is taken in the impugned award and calls

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for no interference. The decision of the Supreme Court in ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd***., (2019) 20 SCC 1 is pressed into service to argue that the interference is warranted under Section 34 of the Act only in case of perversity or a patent illegality and not for existence of another possible view.

4.1 The contention that the appointment of the arbitrator was in violation of Section 12(5) of the Act is controverted stating that the arbitrator was appointed on 16.09.2015 and the amended provision is not applicable.

5. Heard the learned counsel for the parties and perused the relevant record with their able assistance.

6. The issue whether the amended Section 12(5) of the Act added by the 2015 Amendment Act shall apply to the arbitration proceedings commenced prior to amendment even though the award is delivered after the amendment is no longer *res integra.* The Division Bench of this court in ***DV Anand v. Hindustan Petroleum Corporation Ltd,.*** 2026 SCC OnLine Del 4903 after considering the decision in ***Ellora Paper Mills Limited v. The State of Madhya Pradesh,*** (2022) SCC OnLine SC 8 and relying upon the earlier Division Bench decision of this court in ***Kamal Kumar v. Municipal Corporation of Delhi,*** 2023 SCC OnLine Del 6515 held that where the arbitral proceedings had commenced prior to the insertion of Section 12(5) of the Act, the amended provision shall not apply. The relevant paras read as under:

> "62. On the other hand, the Hon'ble Supreme Court in *Board of Control for Cricket in India* (supra) and

Rajasthan Small Industries Corporation Ltd (supra), clearly proceeded on the principle that where arbitral proceedings had already commenced before insertion of Section 12(5), the amended provisions would not apply by virtue of Section 26 of the 2015 Amendment Act.

63. We may also note that a Division Bench of this Court in *Kamal Kumar v. Municipal Corporation of Delhi* 2023 SCC OnLine Del 6515 dealt with a similar situation where arbitral proceedings had commenced prior to the amendment though the award itself was rendered subsequently. Relying upon *Rajasthan Small Industries Corporation Ltd* (supra), the challenge to the competence of the arbitrator was rejected, holding that the 2015 Amendment Act would not invalidate proceedings which had validly commenced before the amendment came into force.

64. Thus, the legal position with respect to the jurisdiction of the arbitrator being clear, we now proceed to examine the facts of the present case."

7. The arbitrator at the first instance considered the date when the contracts expired. It was held that the contracts was not expressly terminated and stood extended by three months i.e. up to 30.06.2015. The relevant portion is quoted below:-

"19. In view of the above discussions I hold:

(i) That in view of the terms of the contracts in question the contracts did not automatically expire on 31.03.2015.

(ii) That the contracts having not been expressly terminated, the terms (periods) thereof stood extended by three months i.e. upto 30.06.2015.

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(iii) That the closure of the contracts by communication dated 05.05.2015 and given effect to from 01.04.2015 is in breach of the terms of the two contracts and is invalid and ineffective.

Issues 1, 1a and 1b are answered accordingly."

This issue is not in dispute in the present petition.

8. The petitioner claimed salary of the employees from April to June, 2015 and reimbursement of travel/telephone expenses incurred by the employees. The arbitrator proceeded under Section 73 of the Contract Act, 1872 (for short 'the Contract Act') for dealing with the claim of damages for breach of contract. It was decided that the petitioner successfully established breach of contractual terms by the respondent. Finding of fact was recorded that the petitioner had suffered no corresponding loss as the salary and telephone/travel expenses were paid by the respondent to the employees and no liability remained on the petitioner on this account. To similar effects were findings with regard to service tax and education cess. The damages for loss suffered by the petitioner due to non-receipt of remuneration @8% of the salary component to be paid to the employees for April to June, 2015 was quantified and granted.

9. It would be relevant to quote the following decisions of the Supreme Court dealing with the principles governing award of damages under section 73 of the Contract Act:-

9.1 The Supreme Court in ***Kailash Nath Associates v. DDA,*** (2015) 4 SCC 136 held:

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"43.1. Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.4. The section applies whether a person is a plaintiff or a defendant in a suit.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded."

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9.2 The Supreme Court in ***State of Rajasthan v. Ferro Concrete Construction (P) Ltd.***, (2009) 12 SCC 1 held:

> "55.While the quantum of evidence required to accept a claim may be a matter within the exclusive jurisdiction of the arbitrator to decide, if there was no evidence at all and if the arbitrator makes an award of the amount claimed in the claim statement, merely on the basis of the claim statement without anything more, it has to be held that the award on that account would be invalid. Suffice it to say that the entire award under this head is wholly illegal and beyond the jurisdiction of the arbitrator, and wholly unsustainable."

10. From the above decision, the picture emerges is of the twin conditions required to be fulfilled for awarding liquidated damages under Section 73 of the Contract Act. First, breach of the contractual conditions and second, the actual loss or damage suffered or the proof that it is not possible to prove the actual damage suffered. In the case in hand, the actual loss suffered was not proved by the petitioner rather the finding recorded is that the salary and telephone/travel expenses were not borne by the petitioner, as a natural consequence the claim was rightly rejected.

11. The contention of learned counsel for the petitioner that it was not proved that the respondent had actually paid the salary and telephone/travel expenses to the employee is misconceived. The petitioner had to prove the loss suffered due to breach of contract by the respondent and the petitioner failed to discharge the onus.

12. The challenge to the rejection of the claims on account of loss

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of recruitment fee, damage for loss of creditability and loss of business lacks merit in view of the undisputed findings recorded by the arbitrator. It is recorded that there was no pleading of claims made in the statement of claim and clauses of both the contracts had no mention of recruitment fee. The arbitrator rightly held that the claims did not arise from the contract and were non-arbitrable. It was concluded that the contractual arrangement operated on 'collect and pay' basis whereby the respondent had to at the first instance pay the estimated salary and telephone/travel expenses and the petitioner had to disburse the dues to the employees. After the payment of salary, telephone/travel expenses by respondent to the employees there was no monetary loss to the petitioner more so, when the 8% remuneration/mark-up had already been granted to the petitioner. No evidence was led by the petitioner to prove the loss suffered for making a claim of damages of rupees one crore. There was no pleading in the statement of claim for damage of loss of business. The affidavit filed by the witness of the petitioner stated that the petitioner had no other client and hence there was no issue of loss occasioned by termination of the contracts.

13. The proceedings under Section 34 of the Act are not akin to the first appeal. There cannot be re-appreciation of evidence; plausible view calls for no interference; every factual or legal error cannot be a ground for challenge. The interference is to be made only on the grounds available in Section 34 of the Act. Reference is made to the following decisions:

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13.1 In ***Prakash Atlanta (JV) v. National Highways Authority of India,*** 2026 INSC 76 it was held as under:-

> "59. (vi) If an arbitral tribunal's view is found to be a possible and plausible one, it cannot be substituted merely because an alternate view is possible. Construction and interpretation of a contract and its terms is a matter for the arbitral tribunal to determine. Unless the same is found to be one that no fair-minded or reasonable person would arrive at, it cannot be interfered with. If there are two plausible interpretations of the terms of a contract, then no fault can be found if the arbitrator accepts one such interpretation as against the other. To be in conflict with the public policy of India, the award must contravene the fundamental policy of Indian law, which makes it narrower in its application."

13.2 In ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO),*** 2025 INSC 1457 held as under:-

> "28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of

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findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited[14], this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

13.3 In ***Consolidated Construction Consortium Limited Vs. Software Technology Parks of India,*** (2025) 7 SCC 757 it was held as under:

> "46. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in Sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged Under Section 34 of the Act. The court exercising powers Under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings Under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the

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<u>substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement</u>."

13.4 In The Supreme Court in ***Sepco Electric Power Construction Corporation Vs. GMR Kamalanga Energy Ltd.,*** 2025 INSC 1171 held:

> "97……..<u>Therefore, it appears that even if the arbitrator's legal or factual reasoning is faulty, the courts ought to ideally refrain from interfering with an award until an error of law is evident from the award itself or in a document that forms an integral component thereof.</u>"
>
> *(emphasis supplied)*

14. The impugned award suffers from no legal or factual error much less perversity or patent illegality and is not against the public policy. No case is made out for interference under Section 34 of the Act. The impugned award is upheld.

15. The petition is dismissed.

AVNEESH JHINGAN, J

AUGUST 19, 2026
Ch

Reportable: Yes

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