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

% **Date of decision: 23.04.2026**

+ O.M.P. (COMM) 501/2024 & I.A. 46321/2024

BRIJ MOHAN BAJAJ AND ORS.Petitioners

Through: Ms. Megha Saxena, Ms.
Rashmi Kaushik & Ms. Shreya
Bhatnagar, Advs with P-4 in
person.

versus

M S PRIME PROPERTY REALTYRespondent

Through: Mr. Sachin Sain, Adv. with R-
partner in person.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

AVNEESH JHINGAN, J. (ORAL)

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 29.07.2024.

2. The brief facts are that the petitioners were the owners of the property bearing Plot No. 97, Block-C, Chander Nagar, Janak Puri, New Delhi-110058. The Collaboration Agreement dated 10.05.2019 (hereinafter referred to as 'CA') was executed between the parties to the *lis*. The respondent was required to demolish the existing building and re-construct a new one and in return on payment of Rs. 3.55 crores was to get the first, second, and third floors with roof rights. The petitioners apart from consideration were entitled to fully



furnished upper ground floor with 1/4th share of the stilt floor. As per Clause 15 of the CA, an advance payment of Rs. 35 lacs was to be made by the respondent. The details of the payments to be made is tabulated below:

Total sale proceeds (Owners share) -	Rs.355 Lacs
Initial rental advance	Rs. 3 Lacs
Contract binding advance to be paid after Signing of collaboration agreement	Rs. 35 Lacs
After casting of roof of UGF	Rs. 35 Lacs
Balance rental amount	Rs. 2 Lacs
After casting roof of 1st floor	Rs. 35 Lacs
After casting roof of 2nd floor	Rs. 35 Lacs
At the time of registry of 2nd, 1st, and 3rd floors with roof rights	Rs.210 Lacs (Rs.175 Lacs + Rs.35 Lacs)

2.1 Clause 2 of the CA stipulates that the work was to be completed within twenty months from the execution of the CA. The construction was not completed and a notice dated 04.09.2022 was issued by the petitioners for termination of the CA. Clause 17 of the CA provided for dispute resolution through arbitration and the proceedings were initiated at the instance of the respondent. This Court vide order dated 12.10.2022 appointed an arbitrator.

2.2 The following issues were framed by the arbitrator:

- i. Whether the Claimant is entitled to the declaration that the termination of the Collaboration Agreement by the Respondent on 04.09.2022 was illegal? OPC



- ii. Whether the Claimant is entitled to further time for construction i.e. a period of 17 months 11 days? OPC
- iii. In the alternative, whether the Claimant is entitled to a sum of Rs.3,28,40,567/- as claimed? OPC
- iv. Whether the Claimant is entitled to interest and if so, at what rate and for which period? OPC
- v. Whether the Respondents are entitled to the return of the sanctioned plans (B-1 and B-2) of property C-97, Chander Nagar, Janakpuri and other documents provided by them to the Claimant? OPR
- vi. Relief.

2.3 All the issues except issue no. iii were rejected.

2.4 The heads of amount quantified in issue no. iii and their outcome is as under:

(i)	Recovery of the cost of construction amounting to	Rs.48,08,659	Rejected, respondent not entitled to any payment in absence of proof.
(ii)	Towards rents paid for the residence of the Respondent No. 3 and the office space taken on rent and electricity payments made by the Claimant	Rs.27,81,000	Rejected, since payments towards rent was a contractual obligation and cannot be refunded. Taking of rent for Respondent's own personal use cannot be assigned to the Appellant and no sum can be reimbursed in this regard.
(iii)	Money spend of salaries of consultants etc.	Rs.35,88,743	Claimant not entitled to recovery of expenses.



(iv)	Advance payments made to the Respondents	Rs.50,00,000	Allowed to the extent of Rs.35 Lakh, holding there is no provision of forfeiture of amount paid in advance Rejected claim for Rs.15 Lakh as there is no proof of the Respondent making payment in cash to the Appellant No. 3
(v)	Loss of profits on account of illegal termination of the Collaboration Agreement	Rs.1,66,62,165	Rejected (having concluded the cancellation of Collaboration Agreement being valid)
	TOTAL	Rs.3,28,40,567	

2.5 Further, the petitioners were directed to bear fifty percent of the expenses of the Delhi International Arbitration Centre (DIAC) under whose aegis the arbitration was conducted. The challenge in this petition is only to the refund of Rs. 35 lacs of advance payment received by the petitioners.

3. Learned counsel for the petitioners vehemently argues that the direction to refund Rs. 35 lacs is perverse as the arbitrator ignored the relevant piece of evidence i.e. the letter dated 14.03.2021 whereby the respondent sought an extension of twelve to fifteen months for completion of construction and upon failure volunteered that the amount of Rs. 35 lacs already paid be forfeited. Reliance is placed upon the decisions of the Supreme Court in **PSA Sical Terminal**



Private Limited v. Board of Trustees of V. O. Chidambranar Port Trust Tuticorin and Ors., (2023) 15 SCC 781 and **State of Rajasthan & Anr. v. Ferrpo Concrete Construction Private Limited**, (2009) 12 SCC 1 to buttress the contention that an award passed ignoring the relevant evidence is vitiated by perversity.

3.1 The submission is that no reasons have been recorded for awarding Rs. 35 lacs to the respondent and the award is violative of Section 31(3) of the Act.

4. *Per contra*, the scope of interference under Section 34 of the Act is limited. The submission is that there cannot be any re-appreciation of the evidence. It is submitted that no case is made out to bring the matter within the ambit of Section 34 of the Act. The impugned award is defended by stating that the arbitrator after due consideration of the facts and the evidence has passed a reasoned award. Reliance is placed upon the decision of the Supreme Court in **Associate Builders v. Delhi Development Authority**, (2015) 3 SCC 49 to support the contention that the scope of interference under Section 34 of the Act is limited.

5. Heard learned counsel for the parties at length. Perused the relevant record with their able assistance. No submission other than those noted above has been made.

6. Clause 2 of the CA provided that the construction shall be completed within twenty months of the execution of the CA. It is an admitted position that the work was not completed within the stipulated time. During the arbitration it was proved that the



respondent in violation of the terms of the CA without completion of the building and without paying the consideration amount had sold two flats for which the purchaser invoked arbitration. The arbitrator took into consideration the pandemic situation yet held that the delay in completion of the project was attributable to the respondent and the termination of the CA was upheld. This finding has not been challenged and has attained finality. The monetary claims of the respondent for recovery of costs of construction, payment towards rent, money spent on salary of consultant and loss of profit for illegal termination were also rejected.

7. The pin-pointed issue remained was that as per the respondent an advance of Rs. 50 lacs was paid to the petitioners, the break-up whereof was Rs. 35 lacs by banking transaction and Rs. 15 lacs in cash. The respondent failed to prove that payment of Rs. 15 lacs in cash was made and consequently the claim for Rs. 35 lacs was considered.

8. The arbitrator for allowing the claim relied upon the fact that there was no clause in the CA for forfeiture of the advance payment made to the petitioners in the eventuality of failure to complete the construction at the site.

9. The contention of the learned counsel for the petitioners that relevant evidence was not considered deserves acceptance. A communication dated 14.03.2021 issued by the respondent was on record and is attached as Document No. 12 with this petition. In the said communication the respondent sought twelve to fifteen months'



time from the date of approval of sanction and stated that in case of default in commitment of the construction as per the time schedule, the CA be terminated and the petitioners be permitted to forfeit the advance of Rs. 35 lacs.

10. The arbitrator while deciding the other claims had taken Document No. 12 into consideration but had ignored it while deciding the issue in controversy, wherein the same was of utmost relevance. The decisions of the Supreme Court relied upon by the learned counsel for the petitioners in **PSA Sical Terminal Private Limited** (supra) and **Ferro Concrete** (supra) lend support to the contention that non-consideration of relevant evidence vitiates the award on the ground of patent illegality. It would be apposite to quote the relevant paragraphs from the judgment of the Supreme Court in **PSA Sical Terminal Private Limited** (supra):

“39. In *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213], this Court after considering various judgments including the judgment in *Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] observed thus : (*Ssangyong case [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213]*, SCC pp. 169-71, paras 34-42)

41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], while no longer being a ground for challenge under “public policy of India”, would



certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.

41. A decision which is perverse, though would not be a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. However, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality.

42. To understand the test of perversity, it will also be appropriate to refer to paras 31 and 32 from the judgment of this Court in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , which read thus : (SCC pp. 75-76)

31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision,



such decision would necessarily be perverse.

32. A good working test of perversity is contained in two judgments. In *Excise and Taxation Officer-cum Assessing Authority v. Gopi Nath & Sons* [Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons, 1992 Supp (2) SCC 312] , it was held : (SCC p. 317, para 7)

7. ... It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law.'

In *Kuldeep Singh v. Commr. of Police* [Kuldeep Singh v. Commr. of Police, (1999) 2 SCC 10 : 1999 SCC (L&S) 429] , it was held : (SCC p. 14, para 10)

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."

(Emphasis Supplied)

11. The Supreme Court in **Gayatri Balasamy v. ISG Novasoft Technologies Ltd.**, (2025) 7 SCC 1 held that while an arbitral award cannot be modified under Section 34 of the Act, a severable part of the award may be set aside. The relevant paragraphs are quoted below:



“32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an award from arbitrable ones. This serves a two fold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of kompetenz-kompetenz- that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the “valid” part(s) of the award while setting aside the “invalid” ones. [The “validity” and “invalidity”, as used here, does not refer to legal validity or merits examination, but validity in terms of the proviso to Section 34(2)(a)(iv) of the 1996 Act.] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the “invalid” portion of an arbitral award from the “valid” portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of omne majus continet in se minus—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.”

(Emphasis Supplied)

12. Taking into account the facts of the present case, setting aside



the amount of Rs. 35 lacs awarded to the respondent is severable and neither affects the other issues nor has an intricate connection. Consequently, the impugned award to the extent of awarding Rs. 35 lacs to the respondent is set aside. The petition is allowed. Pending application stands disposed of.

AVNEESH JHINGAN, J

APRIL 23, 2026

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Reportable:- **Yes**