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

% **Judgment reserved on: 19.05.2026**
Judgment pronounced on: 25.05.2026

\+ O.M.P. (COMM) 448/2024

NANDINI ENTERPRISING .....Petitioner

Through: Mr. Bipin Kr. Prabhat, Mr. Ashok Kr. Verma, Mr. Kislaya Prabhat & Ms. Rinku Kumari, Advs.

versus

RAJASTHAN CO OPERATIVE GROUP HOUSING SOCIETY LTD AND ANR .....Respondents

Through: Mr. Karunesh Tandon, Mr. Sarthak Mittal & Mr. Prabin Mohan, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

J U D G M E N T

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short ‘the Act’) impugning the award dated 30.05.2024.

2. The relevant facts, discerned from the record, reveal that the respondent in May 2017, invited tenders for building repairing and paint of exterior surface and rainwater harvesting pits at its premises at Plot No. 36, Sector-4, Dwarka, New Delhi vide order dated 11.05.2017 (for short 'the work order').The petitioner was the successful bidder and Letter of Award (LOA) dated 23.06.2017 was

issued for total contract value of Rs.48,00,000/-(forty-eight lakhs).The work was to be completed within six months from 01.07.2017, i.e., by 31.12.2017. It was agreed between the parties that the work was to be jointly measured and payment was to be made on the basis of joint measurement.

2.1 As on 30.12.2017, the petitioner had raised its first Running Account bill (for short 'RA bill') for Rs.9,58,591/-, which on verification and joint measurement stood reduced to Rs.7,98,320/-. Vide letter dated 24.01.2018, the respondent intimated the petitioner that the progress of work was slow on account of under-deployment of labour and called upon to expedite completion. Vide letter dated 05.02.2018, the petitioner sought extension of time for completion till 31.05.2018 but time was extended till 01.03.2018. The extended deadline was also not met. In all, the petitioner raised five RA bills aggregating to Rs.59,37,023/- against which payments of Rs.49,19,907/- (forty-nine lakhs nineteen thousand nine hundred and seven) were made on the basis of jointly measurement.

2.2 The respondent terminated the contract on 10.04.2019 and got the remaining work completed through third parties. The petitioner submitted a sixth final RA bill dated 16.04.2019 for Rs. 2,58,78,656/- (two crores fifty-eight lakhs seventy eight thousand six hundred and fifty-six). Dispute arose between the parties and the petitioner on 24.07.2020 invoked arbitration as per clause 28 of the work order. Arbitration proceedings culminated in the award dated 30.05.2024, dismissing the claims of the petitioner. Hence, the present petition.

3. Learned counsel for the respondent appearing on advance notice submits that no reply is required to be filed and the learned counsel for the parties requested to hear the matter on merits.

4. Learned counsel for the petitioner argues that the arbitrator erred in holding that the sixth final RA bill for an amount of Rs.2,58,78,656/- was improbable. It is contended that Clause 21 of the work order stipulates that quantity shown in the schedule of items is tentative and payment will be made on the basis of actual work done and joint measurement. It is submitted that despite submission of the final bill, no measurement was undertaken by the respondent. It is argued that production of bill is an evidence of the work done.

4.1 The contention is that the arbitrator wrongly concluded in respect of claim nos. 2&3 that breach of contract was attributable to the petitioner. Reliance is on the decision in ***Associate Builders v. Delhi Development Authority*** (2015) 3 SCC 49 to contend that the award was passed without considering evidence on record and thus suffers from perversity and is liable to be set aside under Section 34 of the Act.

5. *Per contra*, against the total contract value of Rs.48,00,000/- (forty-eight lakhs), the petitioner received payments aggregating to Rs.49,19,907/- (forty-nine lakhs nineteen thousand nine hundred and seven). It is submitted that respondent carried out measurements of the work done and after quantifying the work done the amount was paid. It is canvassed that the petitioner raised claim in counterblast to termination of work by the respondent.

5.1 The plea is that the arbitrator rightly rejected the claim no.1 for Rs.2,58,78,656/- and no evidence was adduced by the petitioner to show that additional work was done.

6. Before proceeding further it would be apposite to reproduce Clauses 7, 17 and 21 of the work order:-

> "**Clause 7**: Tenderer are requested to visit the society before quoting their offer. Conditional tenders will not be entertained / accepted.
>
> **Clause 17**: The name and address of the skilled/ un-skilled workers deployed should be insured and the contractor will have to submit a copy of the same to the Society. All the labourers and supervisors may have to keep Identity Cards at the site.
>
> **Clause 21**: Quantity shown in the column of the schedule of items of all sections are tentative. The payment shall be made on actual measurement's to be carried out jointly with the authorized member by the Management Committee and Project Committee."

7. The contention of the learned counsel for the petitioner that the arbitrator erred in rejecting the claim for additional work done and that the production of a bill is evidence for the work done lacks merit. Reliance on clause 21 of the work order to argue that quantities shown therein are tentative does not enhance the case of the petitioner. No evidence was produced to establish that the scope of work was varied and the petitioner executed additional work.

8. The petitioner claimed a final bill of more than two crores against a contract value of rupees forty-eight lakhs and this claim was raised after receiving an amount of more than rupees forty-nine lakhs

towards five RA bills.

9. The arbitrator recorded a factual finding that the chart of statement of claim inspired no confidence and was not supported by the record. It would be relevant to note that the petitioner claimed additional work to the tune of 627.63 sq. metres for 15 mm cement plaster on rough side of single or half brick wall. This work was specifically denied by the respondent and the defence set up was that the petitioner was supposed to cover the execution with a waterproofing compound but had not executed this work. The defence of the respondent was neither addressed to in the rejoinder nor contradicted by documents. The arbitrator after considering the facts and circumstances of the case recorded detailed findings for rejecting the claim for sixth RA bill.

10. A chart tabulating additional quantities and extra items produced before the arbitrator remains unsubstantiated. No evidence was adduced for the cost incurred towards procurement of these items, no tax invoices or bills were produced and most importantly no prior approval of the respondent or the confirmation of the work done was placed on record. The claim for additional work thus rested entirely on a self-serving chart unsupported by documentary proof.

11. The work order provided for the joint measurement of the work done. The petitioner failed to produce the joint measurement in support of the claim made. During the proceedings on a specific query by the arbitrator, the petitioner admitted that joint measurement register was not maintained. The petitioner miserably failed to prove

that the scope of work was varied or increased and the additional work was done by the petitioner. The rejection of the claim by the arbitrator suffers from no factual or legal error much less perversity.

12. The challenge that the arbitrator erred in holding that the petitioner breached the contract is noted to be rejected. The breach was attributable to the petitioner is a factual finding recorded by the arbitrator and it is a well settled law that the award cannot be interfered with for every legal or factual error unless it is vitiated by perversity.

13. It was considered that the clause 7 of the work order stipulated a visit to the society by the bidder before quoting the offers and that conditional tenders will not be accepted. Though there was no stipulated minimum number of labour to be deployed but the work awarded was to be completed within 180 days. The issue of non-deployment of sufficient labour was highlighted by the respondent vide letters dated 02.11.2017 and 24.01.2018. It was further highlighted that since 26.12.2017 no civil labour was provided and earlier to that only one and two individuals were engaged. The grievance was re-agitated by the respondent on 14.03.2018. The arbitrator provided an opportunity to the petitioner for proving day-to-day deployment of the labour but the petitioner failed to do so and took a stand that the data was with the respondent. The arbitrator noted that the labour was deployed by the petitioner and it is stated that there is no record with the petitioner and data is available with the respondent.

14. The petitioner was found in breach of clause 17 of the work order, whereunder it was obligated to provide to respondent the details of insurance policy taken for skilled and unskilled labour deployed but the needful was not done.

15. The witness of the petitioner CW-1 admitted that the work was commenced in November 2017 whereas the work was allotted on 23.06.2017. The view taken by the tribunal that delay in completion of the work was attributable to the petitioner is plausible, moreover, that an inadequate number of labourers was deployed is well founded and calls for no interference.

16. No case is made out for claiming damages towards loss of overhead and profits due to prolongation of contract and deployment of machinery for completion of project.

17. The judgment of ***Associate Builders*** (supra) relied upon by the learned counsel for the petitioner on the proposition that a perverse award should be set aside under Section 34 of the Act is of no avail.

18. No case is made out for interference under Section 34 of the Act. The petition is dismissed. The award is upheld.

AVNEESH JHINGAN, J

MAY 25, 2026
'ha'/Anjali

Reportable:- **Yes**