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

% Date of decision: 25.11.2026

\# **CNR No. DLHC010471942024**

\+ FAO (COMM) 152/2024 & CM APPL. 44534/2024

UNION OF INDIA .....Appellant

Through: Mr. Sanjay Kumar Aggarwal & Mr. Vikram Aggarwal, Advs.

versus

SATISH KUMAR MITTAL .....Respondent

Through: Mr. Ankkit Guptha, Mr. N.D. Pandey & Ms. Aakanksha Gupta, Advs.

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

AVNEESH JHINGAN, J. (ORAL)

1. This appeal is filed against the judgement dated 15.03.2024 passed by the Commercial Court, South-East District, Saket Courts (hereinafter referred to as 'Commercial Court') whereby the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') challenging the arbitral award dated 28.02.2019 was dismissed.

2. The brief facts are that the parties entered into a contract agreement no. CEWAC/PAL-29/2012-13WE/PM/S-22/2013-14 for 'Addition/Alteration to storm drain along with perimeter wall at AF Station, Faridabad'. The contract valued at Rs.41,59,417.64 was

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awarded to the respondent *vide* letter dated 04.06.2012. The stipulated period for completion of the work was six months. The work commenced on 20.06.2012 and was to be completed by 19.12.2012.

2.1 The extensions of time were granted thrice up to 30.09.2015. Disputes arose over rectification of defects, removal of excavated material, execution of additional work, payment of the final bill, timely handover of sites, delays in approval of deviation orders, finalization of star rates and release of payments.

2.2 The work was completed on 15.09.2015 and a completion certificate was issued by the appellant *vide* letter dated 21.09.2015. The respondent submitted the final bill *vide* letter dated 11.01.2016 alleged to be signed under protest on 06.06.2017.

2.3 The arbitration was invoked at the instance of the respondent. The arbitrator was initially appointed on 14.08.2014 but upon superannuation resigned on 29.02.2016. Thereafter a sole arbitrator was appointed on 29.06.2016 and entered upon the reference on 26.07.2016.

2.4 The respondent raised ten claims amounting to Rs.55,78,525/-, while the appellant preferred two counterclaims amounting to Rs.4,30,160/-. The arbitral proceedings culminated in the award dated 28.02.2019. The arbitrator partly allowed the claims of the respondent and awarded a total sum of Rs.8,00,516/- along with interest @9% per annum. The counterclaims preferred by the appellant were rejected in entirety.

2.5 Aggrieved by the award, the appellant preferred a petition under

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Section 34 of the Act. The Commercial Court *vide* judgment dated 15.03.2024 dismissed the petition. Hence, the present appeal.

3. Learned counsel for the appellant argues that for quantifying the amount awarded in Claim no. 2 the arbitrator erred in relying upon the rates mentioned under Item 13 of Schedule A Part I of the contract for assessing the value of old steel posts/ old expanded metal. It is contended that Item 13 of Schedule A Part I of the contract provides measurement on per-meter basis and not in kilograms(Kg).

4. *Per contra*, the award and the impugned judgment is defended stating that the scope of interference under Section 37 of the Act is limited and a plausible and well-reasoned view does not call for interference.

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

6. The only issue under challenge relates to the quantification of Claim no.2 as the respondent could not retrieve the demolition material described under Item nos. 13 and 14 of Schedule A Part I of the contract since the material was not made available at the site.

7. Before proceeding further, it would be fruitful to reproduce Item no. 13 and 14 of Schedule A Part I of the contract: -

“

Srl. No.	Description of Item of Work	Drg No. or ref to List of	Unit	No. of unit required	Rate Per Unit (in words & figure both)	Total Amount	Period of competition of individual item (s) after date of commencement of work as per WO No 1	Remarks

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		Drgs						
13.	Dismantling posts or strut (wood, steel or RCC) any section, including taking out embedded portion and making good disturbed ground and removing of site complete all as specified and directed.		RM	200	Rs. 3/- (Rupees three only)	Rs. 600/-		
14.	Dismantling expanded metal, any thickness or mesh of any weight fixed with steel or wood fillet complete all as specified and directed		Sq m	660	Rs.2.50/- (Rupees Two & Paise fifty only)	Rs.1650 /-		

"

8. Item no.13 deals with the removal of posts and struts and Item no.14 deals with the removal of expanded metal. As per Item nos. 13 and 14 the contractor was required to remove old posts or structure made of wood, steel or concrete including the portions fixed underground and old expanded metal sheets or mesh fixed to wooden or steel frames respectively and clear the removed material from the site.

9. The Commercial Court upheld the award of Rs.1,76,100/- under Claim no.2. It was noted that the work was carried out in a restricted

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area and the respondent could not have removed the demolished material without obtaining the requisite authorisation from the appellant. The issue of gate pass was raised but despite repeated directions, the appellant failed to issue gate passes. The respondent pleaded pilferage of items and the arbitrator during site visit on 02.02.2015 noted that a portion of wall where the material was stored was broken.

10. The Claim no.2 was not quantified on the rates prescribed under Item nos.13 and 14 of Schedule A Part I. The items were referred to only to identify the source of the material namely, old steel posts/structs retrieved from demolition under Item 13 and old expanded metal retrieved from work under Item 14. The Schedule of Credit provided recovery rates of Rs.2.25 per Kg for old steel posts/structs and Rs.2.47 for expanded metal. The scrap value was taken at Rs.30 per kg being 50% of the voucher rate of Rs.60 per kg. After deducting the applicable recovery rates, the arbitrator calculated Rs.92,188.55 for old steel posts/struts and Rs.83,911.99 for expanded metal, totalling Rs.1,76,100.

11. The Claim no.2 was accepted and a concurrent finding in the award and impugned judgment under Section 34 of the Act was recorded that the work carried out was in a restricted area, the respondent was not in a position to remove any item without the permission of the appellant. Despite instructions to issue gate passes for removal of the material the needful was not done by the appellant. The respondent was entitled to make a claim for the old steel retrieved

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from demolition carried out as per the contract. The amount awarded was quantified on the basis of the scrap value of the material, after deducting the applicable recovery rates.

12. The law is well settled that the proceedings under Section 34 and 37 of the Act are not akin to regular appeal. The court cannot sit in appeal to re-appreciate the evidence for another possible view. Reference is to the following judgments of the Supreme Court:

12.1 In ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills, 2024 SCC OnLine SC 2632***it was held:

> "**16.** It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond thescope of interference provided under Section 34 of the Act.
>
> **21.** It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

12.2 ***In Larsen Air Conditioning & Refrigeration Co. v. Union of India, (2023) 15 SCC 472***it was held:

> "**15.** The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that "*illegality must go to the root of the matter and cannot be of a trivial nature*";

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> and that the Tribunal "*must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground*" [ref : *Associate Builders* [*Associate Builders* v. *DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , SCC p. 81, para 42]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34."
>
> (*emphasis supplied*)

13. The view taken is plausible, suffers from no factual or legal error much less perversity.

14. The appeal is dismissed.

15. Pending application stands disposed of.

16. Needless to say, the respondent shall be entitled to consequential reliefs.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 25, 2026
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Reportable: **Yes**

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