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

% Reserved on : 07.07.2026
Pronounced on : 15.09.2026
Uploaded on : 16.09.2026

\+ **FAO 187/2019 & CM APPL. 20150/2019**

DELHI JAL BOARD .....Appellant
Through: Mr. Tushar Sannu, SC for DJB with Ms. Akansha Vidhyarthi, and Ms. Pulak Gupta, Advocates

versus

DIGVIJAY SANITATIONS .....Respondent
Through: Mr. Vivekanand, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter the "Arbitration Act"), the appellant has assailed the judgment dated 19.01.2019 passed by the learned Additional District Judge-07 (Central), *Tis Hazari* Courts, in Arbn. No. 11/2017, whereby the petition filed by the appellant under Section 34 of the Arbitration Act seeking setting aside of the arbitral award dated 29.12.2009 passed by the learned Sole Arbitrator, was dismissed.

2. Pithily put, the facts of the case are that the appellant invited tenders for the work of providing/laying/jointing internal sewer line in the *Naveen Shahdara Group of Colonies (Subhash Park Extension,*

East Subhash Park Extension, West Subhash Park, Panchsheel Garden, Dwarkapuri and Uldan Park, Mohanpuri, Panchsheel Garden Extension, West Gorakh Park and Krishna Puri). The respondent submitted its bid on 25.05.2001, which was accepted by the appellant at 13% below the estimated cost of Rs.86,69,888/-, for an awarded contract value of Rs.75,42,803/-. Work Order No. 19/2001-2002 dated 24.10.2001 was issued, and Agreement No. 18 (2001-2002) dated 28.12.2001 came to be executed between the parties. The stipulated date of commencement of work was 01.11.2001, and the stipulated period for completion was 15 months, expiring on 30.01.2003. The work, however, could not be completed within the stipulated period and came to be completed only on 26.12.2003, after a delay of nearly 11 months. Disputes arose between the parties regarding delays, non-availability of hindrance-free sites, non-payment of running bills, wrongful deductions, and claims towards losses suffered due to prolongation as well as price escalation. This led to the respondent invoking arbitration *vide* letter dated 07.04.2008. Thereupon, the competent authority *vide* office order dated 12.05.2008 appointed the learned Sole Arbitrator concerned to adjudicate the disputes.

3. Before the learned Arbitrator, the respondent preferred 6 claims. While claim no. 1(a) pertaining to refund of Rs.72,534/- and claim no. 3 pertaining to reduced profitability of Rs.6,00,000/- were rejected, the learned Arbitrator allowed the remaining claims in favour of the respondent to the following extent:

a. Under claim no. 1(b), an amount of Rs.33,354/- was awarded towards refund of the sum withheld/recovered in the 7th R.A. Bill on account of non-testing of joints of RCC pipes.

b. Under claim no. 2(a), an amount of Rs.13,23,120/- was awarded towards additional expenses and compensation for prolonged retention of supervisory staff and hire charges of Tools and Plants (T&P) for 264 days.

c. Under claim no. 2(b), an amount of Rs.2,29,008/- was awarded towards damages on account of increase in the rates of labour and materials during the prolonged period for the work executed after January 2003.

d. Under claim no. 4(a), interest @ 7.5% per annum was awarded on the delayed payment of the final bill amount of Rs.2,34,595/- from 01.01.2004 till 19.09.2007.

e. Under claim no. 4(b), interest @ 7.5% per annum was awarded on the delayed release of the security deposit amount of Rs.7,12,068/- from 26.12.2004 till 16.10.2007.

f. Under claim no. 5, the learned Arbitrator awarded interest @ 7.5% per annum on the awarded amounts under claims 1, 2, and 4 from the date of invocation of arbitration, i.e. 07.04.2008, till the date of the impugned award, i.e. 29.12.2009, with a further direction that if the total awarded amount was not paid within 90 days of receipt of the copy of the impugned award, the same would carry interest @ 7.5% per annum from the date of the impugned award till the date of payment.

g. Under claim no. 6, an amount of Rs.1,00,000/- was awarded towards costs of the arbitration proceedings.

4. Aggrieved by the impugned award, the appellant preferred objections under Section 34 of the Arbitration Act. The learned ADJ dismissed the objections *vide* the impugned judgment, holding that the findings returned by the learned Arbitrator did not suffer from any perversity or patent illegality within the parameters of Section 34(2) of the Arbitration Act.

5. Assailing the impugned judgment, learned counsel for the appellant contended that the learned Arbitrator as well as the learned ADJ failed to appreciate that time was the essence of the contract and that the delay in execution was attributable to the respondent. It was submitted that the appellant, through various letters as well as remarks in the Site Order Book, had pointed out deficiencies on the part of the respondent in executing the work. It was further contended that the claims for compensation and damages on account of prolongation and price variation were strictly barred under Clause 24 of the General Conditions of Contract and Special Condition No. 1. Learned counsel further argued that claim no. 1(b) was awarded in direct contravention of Special Condition Nos. 13 and 43, which mandated hydraulic testing of pipe joints, whereas the respondent had only carried out smoke testing. With respect to claim no. 2(a), it was submitted that the respondent had failed to maintain wage registers or labour reports under Clause 19-B of the contract, the salary vouchers placed on

record were unverified, and there was no primary evidence to justify the quantification arrived at by the learned Arbitrator. Insofar as claim no. 2(b) is concerned, it was urged that Clause 10CC was not made part of the contract and was inapplicable to works having a stipulated period of less than 18 months, and therefore, granting escalation on the analogy of Clause 10CC amounted to rewriting the contract. Lastly, it was contended that the award of interest under Claims 4(a) and 4(b) as well as *pendente lite* interest was impermissible since the respondent had failed to submit the final bill in terms of Clause 8, the contract contained no stipulation for interest, no notice under the Interest Act, 1978 was issued, and the direction amounted to awarding interest upon interest.

6. *Per contra*, learned counsel for the respondent defended the impugned judgment as well as the impugned award. He submitted that the findings on delay were arrived at on the basis of undisputed documents, primarily the Hindrance Register maintained by the appellant itself. Learned counsel pointed out that out of the 334 days of delay, the appellant's own authority had found 312 days of delay justified on account of departmental hindrances. Learned counsel submitted that Clause 24 of the General Conditions and Special Condition No. 1 only contemplated normal, phased handing over to avoid public inconvenience and did not bar claims where work was brought to a complete standstill time and again due to departmental failures. In respect of claim no. 1(b), it was urged that smoke testing was conducted on the specific written instructions of the Engineer-in-

Charge in the Site Order Book, the testing was certified by third-party inspection reports, and the appellant incurred no expenditure on further testing. As regards claim no. 2(a), the learned Arbitrator acted reasonably by excluding the 48 days falling within the stipulated period, disallowing all unskilled labour, and confining the relief strictly to deployed technical staff and bare minimum T&P at standard DSR rates. For claim no. 2(b), learned counsel submitted that the impugned award was not made under Clause 10CC, but as statutory damages under Section 73 of the Indian Contract Act, 1872 for the prolonged period, wherein the formula of Clause 10CC was merely used as an objective computation mechanism, which approach has been squarely upheld by the Division Bench of this Court in *Delhi Development Authority Vs. M/s Swastic Construction Co.*[1]. Lastly, it was submitted that the learned Arbitrator possesses wide statutory discretion under Section 31(7) of the Arbitration Act to award interest.

7. I have heard the learned counsels for the parties and perused the material placed on record.

8. At this stage, it may be apposite to reiterate the well-settled scope of interference under Section 37 of the Arbitration Act. It is trite that the jurisdiction of this Court under Section 37 of the Arbitration Act is supervisory and extremely restricted. The Court does not sit as a Court of appeal over the arbitral award, nor can it embark upon a re-assessment or re-appreciation of evidence. In *MMTC Limited Vs.*

---

[1] 2021:DHC:4409-DB

Vedanta Limited[2], the Supreme Court delineated the scope of Section 37 in the following terms:

> "*14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.*"

9. A gainful reference may also be made to *Haryana Tourism Limited Vs. Kandhari Beverages Limited*[3], wherein the Supreme Court reiterated that an arbitral award can be set aside only if it is contrary to the fundamental policy of Indian law, against basic notions of justice or morality, or patently illegal, and held the following:

> "*8. So far as the impugned judgment and order[1] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.*
>
> *9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to, (a) fundamental policy of Indian Law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration*

[2] (2019) 4 SCC 163
[3] (2022) 3 SCC 237

Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order passed by the High Court is hence not sustainable."

10. Adverting to the primary ground of challenge raised by the appellant concerning the attribution of delay and the bar under Clause 24 of the General Conditions and Special Condition No. 1, a perusal of the impugned award shows that the learned Arbitrator examined the delay events extensively. The learned Arbitrator recorded that work could not be started for 48 days from 01.11.2001 to 18.12.2001 for want of road cutting permission from the MCD; execution was stopped for 19 days in March 2002 due to Municipal elections; suspended for 30 days during October and November 2002 on account of festivals and public resistance; halted for 95 days from 26.03.2003 to 28.06.2003 due to unremoved encroachments on the alignment; and stalled from 01.09.2003 to December 2003 due to delay in shifting existing water lines fouling the sewer alignment.

11. Significantly, the learned Arbitrator arrived at these findings after examining the contemporaneous records, primarily the Hindrance Register maintained by the appellant itself, wherein the department had found 312 days of delay justified on grounds not attributable to the respondent. The learned Arbitrator, having analysed the letters exchanged between the parties in conjunction with the entries recorded in the Hindrance Register, returned the finding that the delay was attributable to acts of omission and commission on the part of the appellant. This finding cannot be said to be perverse or without

evidence.

12. Dealing with the exclusionary clauses, the learned Arbitrator construed Clause 24 of the General Conditions and Special Condition No. 1 and held as follows:

> "*… Thus the stipulations under clause 24 of general Conditions read with special condition no.1 does not apply to the facts of the case and as such cannot bar the claim for genuine compensation for these periods. Further if one goes literally by the terms of these clauses read together with the reasons for delay in handing over alignments as envisaged in the clauses are different from the actual reasons for delay. The respondent being maker and framer of the contract would/could have included and covered specifically all these reasons under those clauses. Having failed to do so, the respondent cannot be allowed to read into it what is not specifically provided for in the clauses to cover departmental casual attitude. Further it is not the case of the respondent that these delays were unavoidable and could not be removed within stipulated period by 30.1.2003 despite best efforts and due diligence. The respondent knew that encroachment was on the alignment but nothing has been shown as to what efforts were made from the award of the work till March 2003 for removal of the encroachments and if no efforts were made earlier, the reason for that are not disclosed or pleaded. The clauses read together nowhere provide for or suggest that there would/could be suspended/stopped time and again for considerable months or days due to non availability of alignments at all. If this meaning is given to the contract then not only the contract would lose its efficacy but would also render meaningless the word 'progressively'. Progressively would not mean after gaps of more than a month or so as and when available for indefinite period. Thus the bar as provided under this clause is not attracted to the facts of the case.*"

13. Seemingly, while holding that standard exclusionary clauses governing phased site delivery cannot be interpreted to permit total, intermittent cessations of work or to excuse fundamental defaults of the department, the learned Arbitrator in fact, applied the principle of *contra proferentem*. The learned Arbitrator also noted that the

appellant did not rescind the contract but granted provisional extensions without any contractual provision, thereby setting time at large. The view taken by the learned Arbitrator is a plausible and reasonable construction of the contract and was rightly affirmed by the learned ADJ.

14. In respect of claim no. 1(b) relating to the refund of Rs.33,354/-, the learned Arbitrator noted that although Special Condition Nos. 13 and 43 provided for hydraulic testing, the respondent was specifically directed by the Engineer-in-Charge *vide* Site Order Book entry dated 23.09.2002 to carry out smoke testing. Smoke testing was duly carried out and corroborated by third-party inspection reports. The appellant neither directed hydraulic testing thereafter nor incurred any expenditure in getting independent testing conducted. In the absence of any defect or expenses incurred by the department, the learned Arbitrator found the recovery to be arbitrary and unjustified. I find no infirmity in the concurrent findings upholding the refund of this amount.

15. With regard to claim no. 2(a), the learned Arbitrator awarded compensation of Rs.13,23,120/- for additional expenses incurred on supervisory staff and hire charges of tools and plants during the prolonged period. The learned Arbitrator did not accept the respondent's claim in its entirety. Out of the 334 days of delay claimed, the Arbitrator excluded 48 days that fell within the stipulated period and confined compensation strictly to 264 days. The Arbitrator specifically disallowed the claim for 16 unskilled helpers on the

ground that daily labour could be engaged as and when work was available. However, taking note that the site establishment had to be maintained, the learned Arbitrator allowed expenses for bare minimum supervisory staff (1 Engineer, 1 Supervisor, 3 *Chowkidars*, and plant operators) and essential T&P (mixers, pumps, vibrators, and tractor/loader) based on standard rates prescribed in the *Delhi* Schedule of Rates (DSR) and construction handbooks. The contention of the appellant that the quantification is arbitrary is without merit.

16. Insofar as claim no. 2(b) is concerned, the learned Arbitrator awarded Rs.2,29,008/- on account of increase in material and labour rates for the work executed after the expiry of the stipulated period. The appellant's objection that Clause 10CC was not part of the contract and that Clause 22 prohibited price enhancement is completely misplaced. The learned Arbitrator made it clear that the amount was not awarded under Clause 10CC, but as damages under Section 73 of the Indian Contract Act, 1872 for prolongation attributable to the appellant, and that the formula under Clause 10CC was merely adopted as an objective computation tool to assess the quantum of damages.

17. In this regard, reference may be made to the decision of the Coordinate Bench of this Court in ***Delhi Development Authority Vs. Swastic Construction Company***[4], wherein, while dealing with a challenge to an award granting escalation for a prolonged period, it was held that the formula under Clause 10CC can be legitimately

---

[4] 2021:DHC:2708

relied upon by an arbitrator to compute damages under Section 73 of the Indian Contract Act, 1872, even if the said clause is not specifically incorporated in the contract. The said decision was upheld in appeal by the Division Bench of this Court in *Delhi Development Authority Vs. M/s Swastic Construction Co.*[5], observing as under:

> "*25. As regards the amount of damages awarded for Claim No. 1 is concerned, the learned Arbitrator has awarded damages by relying on the formula provided under Clause 10C, 10CA and 10CC. The learned Single Judge has correctly relied on Anurodh Construction v. DDA [2005 SCC OnLine Del 867] and on DDA v. N.N. Buildcon Pvt. Ltd., [2018 (246) DLT 314] to uphold the award of damages for escalation of prolonged period based on the formula provided under clause 10CC. We see no error in the approach of the learned Arbitrator in relying on the formula for assisting in calculation of damages. The respondent has to be compensated for delays which are not attributable to the respondent. Hence, the learned single judge correctly upheld the reliance on the formula under Clause 10C, 10CA and 10CC for assessment of damages.*"

18. With respect to claim nos. 4(a) and 4(b), the learned Arbitrator awarded interest @ 7.5% per annum on the delayed payment of the final bill and security deposit. While the defect liability period ran till 26.12.2004, the final bill was paid only on 19.09.2007 and the security deposit was released on 16.10.2007. Under Clause 8 of the contract, the obligation to take measurements and prepare bills lay upon the Engineer-in-Charge even if the respondent failed to submit a bill. The learned Arbitrator acted prudently by awarding interest from 26.12.2004 till the respective dates of payment.

19. Under Section 31(7) of the Arbitration Act, the Arbitral Tribunal possesses wide statutory discretion to award interest, unless there is an

---

[5] 2021:DHC:4409-DB

express contractual bar. No such bar has been pointed out by the appellant. The contention regarding lack of notice under the Interest Act, 1978 was neither raised before the learned Arbitrator nor is it sustainable at this stage, especially when the respondent had repeatedly put the appellant on notice regarding interest on delayed payments. The rate of interest awarded, being 7.5% per annum, is just, fair, and reasonable. Similarly, the award of Rs.1,00,000/- towards arbitral costs under claim no. 6 was within the statutory competence of the learned Arbitrator.

20. In view of the above discussions, this Court finds that the findings arrived at by the learned Arbitrator constitute a plausible view of the material on record. The learned ADJ rightly dismissed the objections preferred under Section 34 of the Arbitration Act. The appellant has failed to show any illegality or perversity in the impugned order or award to warrant interference by this Court under Section 37 of the Arbitration Act.

21. Consequently, the present appeal is dismissed.

22. The pending application is also disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

SEPTEMBER 15, 2026
nb