



2026:DHC:2208



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

Date of decision: 11th MARCH, 2026

IN THE MATTER OF:

+ **O.M.P. (COMM) 53/2026 & I.A. 2281/2026, I.A. 2282/2026**

ASHIMA INFRASTRUCTURE PVT LTDPetitioner

Through: Mr. Manoj Kumar Sahu, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATIONRespondent

Through:

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "the Act"*) challenging the Arbitral Award dated 28.02.2025 passed by the learned Sole Arbitrator in the arbitration proceedings between "North Delhi Municipal Corporation v. Ashima Infrastructure Pvt Ltd.
2. By way of the Impugned Award, the learned Sole Arbitrator awarded a sum of Rs. 12,01,34,424/-, along with *pendente lite* and future interest as well as costs of arbitration in favour of the Respondent/NDMC.
3. Brief facts as borne out from the records of the present petition are stated as under:
 - i. The Petitioner herein is a private limited company engaged in the business of advertisement, publicity, outdoor publicity, etc. The Petitioner approached the Respondent/NDMC, seeking permission to



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display advertisements at specified parking sites on 18.07.2012. The Respondent/NDMC accepted the Petitioner's application on 19.10.2012 and called upon the Petitioner to submit a written consent, furnish security deposit, advance license fee and advertisement tax.

- ii. On 30.10.2012, the Respondent/NDMC executed a Licence Agreement as well as a No Objection Certificate No. 962 (*hereinafter referred to as "NOC"*), thereby granting permission for displaying advertisements in a total area of 8890 square feet at sites including Kamla Nagar, Ajmeri Gate and Arya Samaj Road. Pursuant to this, the Petitioner deposited Rs. 26,67,000/- towards security and a further sum of Rs.8,89,000/- as advance Monthly License Fees (*hereinafter referred to as "MLF"*).
- iii. On 27.11.2012 another Licence Agreement No.2 as well as a NOC No. 1613 were executed by the Respondent/NDMC, thereby granting permission for displaying advertisements in an area of 9525 square feet at sites including Videocon Tower, Kalra Hospital and Netaji Subash Place. Again, pursuant to this, the Petitioner furnished a sum of Rs. 28,57,500/- towards security deposit.
- iv. Between December, 2012 and January, 2013 the Petitioner by way of several correspondences informed the Respondent/NDMC that it was unable to carry out its operations on account of interference by the Public Works Department (*hereinafter referred to as "PWD"*).
- v. Having come to know of the interference, the Respondent/NDMC wrote to the Engineer-in-Chief of the PWD enquiring them regarding such obstructions being caused under the claim that the roads were transferred from the Municipal Corporation to the PWD. Be that as it



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may, material on record indicates that on 10.03.2013 the Petitioner was successful in erecting media structures at the specified areas.

- vi. It is stated that even though the Petitioner was able to commence its operations of displaying advertisements, hindrances continued to be faced by the Petitioner on part of the PWD. It is the case of the Petitioner that in ignorance of such circumstances that were beyond the Petitioner's control, the Respondent/NDMC demanded payment of full MLF, even for those sites that were non-operational. Faced with this, the Petitioner was constrained to surrender several flag signs.
- vii. Later on 16.01.2014, the Respondent/NDMC came to execute another Licence Agreement No.3 along with NOC No. 4782, thereby granting permission to the Petitioner for displaying advertisements at sites including Patel Nagar and Old Rajender Nagar.
- viii. It is stated in a Writ Petition bearing W.P. (C) No. 6439/2013, this Court *vide* Order dated 25.02.2014, directed a joint survey between the Municipal Corporation of Delhi (*hereinafter referred to as "MCD"*), PWD as well as the Petitioner herein, in order to identify the sites where media/advertisements could be legally installed. It was further directed that if media structures are within the authorized zone, the PWD would not interfere. Despite these directions, it is stated that the Respondent/NDMC failed to execute this joint survey, leading to continued obstacles being faced by the Petitioner as well as the disputes regarding billing.
- ix. Thereafter, it transpired that notwithstanding the Order dated 25.02.2014 passed by this Court and the pending joint survey, several



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flag signs of the Petitioner were objected to and even removed by the PWD as well as the Delhi Metro Rail Corporation, yet again forcing the Petitioner to surrender such of these sites. Despite of this, the Respondent/NDMC continued to raise demands for the entire amount across all three NOCs.

- x. On 08.07.2014, after several requests of the Petitioner, the Respondent/NDMC agreed to adjust the security deposits and charge fee only for the operational media, however, it is the case of the Petitioner that no such adjustments were reflected in the actual bills.
- xi. In a complete contrast to its decision to adjust amounts, the Respondent/NDMC pending the joint survey as ordered by this Court, cancelled 11 sites on 26.08.2014. Faced with this, the Petitioner approached this Court by way of a Suit bearing CS(OS) No. 2823/2014. In the said Suit, this Court *vide* Order 16.09.2014 restrained the Respondent/NDMC from taking any coercive action against the Petitioner.
- xii. Overlooking the stay Order dated 16.09.2014, the Respondent/NDMC upheld its previous cancellation of 11 sites which was carried out on 26.08.2014. The Petitioner brought this action of the Respondent/NDMC to the knowledge of this Court in CS(OS) No. 2823/2014. *Vide* Order dated 15.05.2015, this Court stayed the order of the Respondent/NDMC upholding its previous cancellation and held the same to be untenable and ignorant of the five year contractual term between the parties.
- xiii. Again, despite the stay order, certain officials of the Respondent/NDMC on 16.07.2015 illegally removed the media



installations at 18 parking sites. Due to this, the Petitioner *vide* Letter dated 25.07.2015 informed the Respondent/NDMC that on account of the illegal removal of the media installations, it will no longer pay the MLF for such affected sites and will adjust the costs of confiscated structures against the outstanding dues.

- xiv. On 13.04.2016, the Respondent/NDMC demanded a sum of Rs. 1.2 crores against NOC No. 962, Rs. 1.64 crores against NOC No. 1613 and Rs. 50.93 lakh against NOC No. 4782. In response to this, the Petitioner informed the Respondent/NDMC that the calculations in the demand letter revealed a unilateral 10% fee enhancement which was nowhere provided for in the contractual terms agreed upon between the parties.
- xv. Respondent/NDMC on 15.06.2016 cancelled all 37 sites for which the Licence Agreements were executed and demanded a sum of Rs. 3.61 crores from the Petitioner. Aggrieved by this action of the Respondent/NDMC, the Petitioner filed a Suit bearing CS (COMM) No. 1413/2016 challenging the cancellation of the 37 sites as well as contending that the demands raised by the Respondent/NDMC ignored the sites surrendered by the Petitioner.
- xvi. The abovementioned commercial suit filed by the Petitioner was later on withdrawn on 04.04.2016, as both parties consented to have their disputes adjudicated through arbitration. Accordingly, this Court appointed a Sole Arbitrator to adjudicate upon the disputes between the parties.
- xvii. Material on record indicates that in the arbitration proceedings that were being held under the Delhi International Arbitration Centre



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(hereinafter referred to as “DIAC”), the Petitioner failed to file its statement of claims (hereinafter referred to as “SOC”) which led to the file being closed by the DIAC as the mandate of the Arbitral Tribunal also came to be expired by the efflux of time.

xviii. Thereafter, the arbitration proceedings were restored by the DIAC after the Respondent/NDMC prayed before this Court for the same. The DIAC informed the Respondent/NDMC that it could step into the shoes as the claimant and proceed to file its statement of claims. The Respondent/NDMC filed its SOC on 04.01.2022 under which a total amount of Rs. 12,01,34,424/- was claimed. The description of the claims of the Respondent/NDMC in its SOC are stated as under:

- a. Amount due on account of unpaid Monthly License Fees (MLF) (Rs. 4,91,64,529/-).
- b. Interest @ 2% per month on MLF due and payable up to 30.11.2021 (Rs. 7,09,69,895/-).
- c. Future interest @2% per month on a sum of Rs. 12,01,24,424/- from the date of filing till realization.
- d. Legal costs and cost of Arbitration.

4. It is borne out from the record that the Petitioner herein was proceeded *ex-parte* by the learned Sole Arbitrator, as there was no appearance on behalf of the Petitioner, despite valid service being effected through registered post on the directors of the Petitioner’s company being one Mr. Himanshu and Mr. Sanjay Jain. Rather, the service upon these two persons *via* speed post was returned with the mark “refused”. In addition to service *via* registered post, it is noted that service *via* WhatsApp was also effected.



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5. On the basis of the material on record, the learned Sole Arbitrator held that the Petitioner herein was liable to pay the MLF from 10.03.2013 for the sites mentioned in NOC Nos. 962 and 1613. The learned Sole Arbitrator also made a preliminary observation as to the rate of interest, and was of the opinion that since the agreement between the parties provided for a rate of interest of 24% per annum, the same would only be applicable to the claims. Lastly, before adjudicating upon the claims of the Respondent/NDMC, the learned Sole Arbitrator also observed that as against NOC No. 4782 the three month period which is a pre-requisite for the commencement of liability to pay the MLF, would begin from 16.04.2004 only.

6. Adjudicating upon the Claim No.1 of the Respondent/NDMC, the learned Sole Arbitrator held that the Petitioner was liable to pay MLF for NOC Nos. 962 and 1613 from 10.03.2013, when it received an encumbrance free site. With regards to NOC No. 4782, the Petitioner was liable to pay MLF from 16.04.2014. While noting that a security deposit of Rs. 64,84,500/- was made by the Petitioner for all three NOCs, the same was liable to be forfeited and adjusted due to the failure of the Petitioner to make the payment. Therefore, the learned Sole Arbitrator directed that the said sum of Rs. 64,84,500/- would be deducted from the total claim amount in Claim No.1; thereby awarding a sum of Rs. 4,00,62,199/- in favour of the Respondent/NDMC.

7. As far as Claim No.2 is concerned which is regarding the interest on the outstanding due of MLF, the learned Sole Arbitrator awarded a sum of Rs. 7,09,26,623/- in favour of the Respondent/NDMC.

8. Lastly, as against the Claim No.3 regarding future interest, the learned



Sole Arbitrator allowed *pendente lite* and future interest at the rate of 14% per annum on the principal amounts. In addition, the learned Sole Arbitrator also awarded the entire amount of Arbitral fee being Rs. 3,00,000/- in favour of the Respondent/NDMC.

9. It is the foregoing observations of the learned Sole Arbitrator as well as the Award of claims in favour of the Respondent/NDMC that are under challenge in the present petition.

10. Alleging that the Impugned Award is patently illegal, violates the principle of natural justice and is in conflict with the fundamental policy of Indian law, the learned Counsel appearing for the Petitioner submits as under:

- i. The Impugned Award is liable to be set aside under Section 34 (2)(a)(iii) of the Act as the Petitioner was “otherwise unable to present his case”. It is submitted that the learned Sole Arbitrator proceeded *ex-parte* solely based on a refusal of service by a spouse at a residential address, thereby failing to ensure effective service on the corporate entity, i.e., the Petitioner herein. Reliance in this regard is placed on the judgments of the Apex Court in Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI), (2019) 15 SCC 131 and Oil & Natural Gas Corporation Ltd v. Saw Pipes Ltd, (2003) 5 SCC 705.
- ii. Despite the Respondent/NDMC itself having produced documents which specified the actual area in which media installations could be carried out by the Petitioner, the learned Sole Arbitrator went ahead and held the Petitioner liable for paying MLF for the full areas. While relying on the judgment of the Apex Court in National Highways



Authority of India v. P. Nagaraju, (2022) 15 SCC 1, learned Counsel for the Petitioner submits that the Impugned Award is liable to be set aside as it is “based on no evidence” and also “ignores vital evidence”.

- iii. The learned Sole Arbitrator overlooked the fact that the Respondent/NDMC despite clear directions by this Court failed to carry out the joint survey and also violated the stay order and illegally removed the media displays installed by the Petitioner.
- iv. While ignoring the non-compliant conduct of the Respondent/NDMC, the learned Sole Arbitrator holds the Petitioner liable towards the payment of the entire license fee, thereby resulting in unjust enrichment of the Respondent/NDMC. Reliance in this regard is placed on the judgment of the Apex Court in *ONGC v. Western Geco* (supra).

11. Heard the learned Counsel for the Petitioner and perused the material on record.

12. The primary issue which arises for consideration before this Court is as to whether the Impugned Award warrants interference in the light of the same being passed *ex-parte* against the Petitioner. For adjudication on this issue, a few facts that are noted in the Impugned Award are required to be appreciated.

13. A reading of the Impugned Award indicates that after the learned Sole Arbitrator was appointed by a Co-ordinate Bench of this Court *vide* Order dated 04.04.2018, initially it was the Petitioner itself who failed to file its SOC despite being called upon to do so by the DIAC. This led to the DIAC to close the file in the matter on 17.07.2018. Thereafter, *vide* e-mail dated



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16.11.2022, the DIAC informed the parties that the mandate of the Arbitral Tribunal had expired, the matter was closed and advised the parties to take appropriate steps for seeking extension of the mandate of the Arbitral Tribunal.

14. No immediate steps were taken by either party. Thereafter, it was the Respondent/NDMC that moved an application being I.A. No. 14236/2021 seeking the restoration of CS (COMM) No. 1413/2016. However, when the said application came to be dismissed, the Respondent/NDMC approached the DIAC. On 02.02.2024, the Deputy Counsel DIAC sought consent declaration from the learned Sole Arbitrator, which was given on 06.02.2024 and the preliminary hearing was fixed on 21.02.2024.

15. It is pertinent to note that a notice for preliminary hearing was directed to be issued to the Petitioner, returnable on 21.02.2024 at 02:30 PM. As per the tracking report which was made available to the learned Sole Arbitrator, the notice was duly served on the Petitioner on 14.02.2024. Despite this, none was present on behalf of the Petitioner on the date of the preliminary hearing. Be that as it may, the learned Sole Arbitrator in the interest of justice granted one more opportunity of four weeks to the Petitioner to file its reply. In particular, the learned Sole Arbitrator directed that a notice along with the SOC and copy of arbitral proceedings be served upon the Petitioner by speed-post, e-mail id as well as *Dasti*, returnable on 06.04.2024.

16. As per the memo filed by the Respondent/NDMC, steps were taken to serve the notice upon the Petitioner at the known address being 7-B, Basement, Sanjay Nagar, Gulabi Bagh, Near NKS Hospital, Delhi – 110007. However, since the said premises was found locked and the whereabouts of



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the addressee could not be ascertained, the notice was pasted at the entrance wall of the premises. Additionally, notice was also served to the last known e-mail address of the Petitioner.

17. The learned Sole Arbitrator specifically notes that even though the Respondent/NDMC had done service on the Petitioner by affixation, it was felt that the Respondent/NDMC must make further efforts to ascertain the whereabouts of the Petitioner, and without doing so proceeding *ex-parte* may not serve the ends of justice. As such, the Counsel representing the Respondent/NDMC before the learned Sole Arbitrator submitted that further such steps could be taken including those to ascertain the current address of the Petitioner. Alternatively, the Respondent/NDMC also suggested that steps could be taken for considering an application for substituted service by publication.

18. On 16.05.2024, Section Officer of the Respondent/NDMC submitted before the learned Sole Arbitrator that after making efforts they were able to trace the addresses of the Directors of the Petitioner Company, being one Mr. Himanshu and Mr. Sanjay Jain. Accordingly, the learned Sole Arbitrator directed that notices be issued to both the Directors at the addresses discovered by the Respondent/NDMC, returnable on 08.07.2024.

19. Steps were taken by the Respondent/NDMC to serve notices upon Mr. Himanshu and Mr. Sanjay Jain, and an affidavit of service was filed to this effect. As per the affidavit of service, it was noted that service of notices upon both the Directors was done through speed-post. It also came to light that the Section Officer of the Respondent/NDMC personally attempted to deliver *Dasti* notice to Mr. Himanshu at his residential address, however, the same was refused by Mr. Himanshu's wife.



20. Despite all these steps, none appeared on behalf of the Petitioner on 08.07.2024. Considering all the foregoing circumstances, the learned Sole Arbitrator eventually concluded that the Petitioner stands duly served, rather the Petitioner's Directors were evading and refusing service. It is only after a lapse of more than five months that the learned Sole Arbitrator deemed it appropriate to continue the proceedings in the absence of the Petitioner.

21. At this juncture, this Court deems it appropriate to refer to Section 25 of the Act. Section 25 of the Act is reproduced as under:

“25. Default of a party. — Unless otherwise agreed by the parties, where, without showing sufficient cause,—

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant 3 [and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited].

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.”

22. As per Section 23(a) of the Act, the arbitral tribunal is entitled to terminate the proceedings when the claimant fails to communicate his statement of claim in accordance with Section 23(1) of the Act. As per Section 25(b) of the Act, where the Respondent fails to communicate his



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statement of defence in accordance with Section 23(1) of the Act, the arbitral tribunal shall continue the proceedings without treating that failure as an admission of the allegations levelled by the claimant. Lastly, under Section 25(c) of the Act, if a party fails to appear in a hearing or produce documentary evidence, it is open to the Arbitral Tribunal to pass an award on the evidence before it.

23. Section 25 lays down very clearly the consequences of the failure on part of either party, in order to ensure effectiveness of the parties' agreement or settlement of the disputes through arbitration. In particular, Section 25(c) of the Act which is most relevant to the present case, clearly prescribes that the arbitral tribunal is not precluded from proceeding with the hearing, and if the parties are given sufficient notice in advance, but failed to respond to it, the arbitral tribunal could is empowered to proceed with the hearing to pass the award.

24. The facts of the present case reveal that sufficient opportunity was afforded to the Petitioner for appearing before the learned Sole Arbitrator after service. However, more than five months elapsed after the preliminary hearing and yet no communication came through on part of the Petitioner. What is more interesting is that no application for setting aside the decision of the learned Sole Arbitrator to proceed *ex-parte* was ever preferred by the Petitioner. These events do in fact indicate that the Petitioner was somewhere determined not to appear before the learned Sole Arbitrator or even give explanations for their non-appearance. Rather, even in the present petition, the Petitioner has not given any explanation as to why there was no appearance on its behalf before the learned Sole Arbitrator.

25. In these view of the circumstances, this Court finds it difficult to



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agree with the objections of the Petitioner against the Impugned Award which has been passed in light of Section 25(c) of the Act and on the basis of the material produced before it. Moreover, this Court is also conscious of the well settled position that the Arbitral Tribunal is the master of evidence and the findings of fact which are arrived at by the Arbitral Tribunal on the basis of the evidence on record are not to be scrutinized as if the Court was sitting in appeal [Ref: Maharashtra State Electricity Distribution Company Limited v. Datar Switchgear Limited and Others, (2018) 3 SCC 133].

26. Accordingly, this Court finds no merit in the contention of the Petitioner that the Impugned Award suffers from patent illegality, is in violation of public policy or violates the fundamental policy of Indian law solely on account that the same was passed *ex-parte* against the Petitioner.

27. The other contentions of the Petitioner regarding ignorance of vital evidence and unjust enrichment being caused to the Respondent/NDMC, are also liable to be rejected as in the opinion of this Court, the Impugned Award is well reasoned, takes into account all the evidence before it and the views taken by the learned Sole Arbitrator do not shock the conscience of this Court.

28. The Petition is accordingly dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 11, 2026

Prateek/AP