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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 12th October, 2026

CNR No. DLHC011036552025

+ **FAO(OS) (COMM) 210/2025, CM APPL. 80375/2025 (delay in filing)
& CM APPL. 80376/2025 (delay in re-filing)**

ASAHI INDIA GLASS PVT LTD.**.....Appellant**

Through: **Mr. Neeraj Yadav, Mr. Digvijay
Yadav, Mr. Aman Tiwari & Ms. Aditi
Sharma, Advs.**

versus**ADVANTAGE INDIA LOGISTICS PVT. LTD. Respondent**

Through: **Mr. Arjun Singh Bawa, Mr. Siddhartha
& Mr. Puneet Dhawan, Advs.**

CORAM:**HON'BLE MR. JUSTICE DINESH MEHTA****HON'BLE DR. JUSTICE ADITI CHOUDHARY****J U D G M E N T****DINESH MEHTA, J.(ORAL)**

1. The present appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '*the Act of 1996* ') is directed against the order dated 04.08.2025 (as modified by order dated 13.08.2025) passed by the learned Single Judge in O.M.P. (COMM) 462/2022 whereby application under Section 34 of the Act of 1996 filed by the appellant was rejected.

2. Shorn of unnecessary details, the facts germane to the present appeal are that the appellant is a glass and window solutions company manufacturing automotive safety glasses, float glass, and other glass products whereas the respondent is engaged in the business of transport and logistics services.



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3. The appellant availed services of the respondent for transporting its products and entered into agreements dated 11.04.2017 (Roorkee, Uttarakhand) and agreement dated 25.04.2017 (Taloja, Maharashtra) (hereinafter referred to as the “agreements”), for tenures of about 3 years commencing from 11.04.2017 to 31.03.2020 and 25.04.2017 to 24.04.2020 respectively for transportation of its goods. Clause 12 of these agreements provided for dispute resolution by way of arbitration.

4. By way of e-mail dated 12.09.2018, the appellant terminated the contract awarded to the respondent, whereupon the respondent invoked arbitration in terms of clause 12 of the agreements.

5. On 25.01.2021, a sole arbitrator was appointed by this Court under Section 11 of the Act of 1996.

6. The respondent/claimant filed its Statement of Claim, *inter alia* claiming a sum of Rs.2,60,61,183/- owing to investment made in machinery, vehicles, and delivery equipment and expenditure incurred on manpower for executing the agreements in question.

7. Apart from the above claim of Rs.2,60,61,183/-, another amount of Rs.28,90,156/- was claimed for outstanding dues. The appellant (respondent before the Arbitrator) disputed the liability and took a plea that the claimant is not entitled to anything and contended that the contract was rightly terminated. After going through the record and evidence led by both the parties, the learned Arbitrator passed the award dated 23.06.2022 in the following terms:

“1. The claimant shall be entitled to Rs.7,96,491/- under Issue No. 1.

2. The claimant shall be entitled to Rs.14,32,785/- under Issue No. 3.



3. *The claimant shall be entitled to proportionate costs of arbitration.*
4. *The claimant shall be entitled to interest @8% on Rs.7,96,491/- from the date of filing of the claim petition till the pronouncement of the Award.*
5. *The entire award amount shall be paid to the claimant within 30 days, failing which it shall entail interest @ 8% per annum from the date of Award till its realization.”*
8. Against the aforesaid award (dated 23.06.2022) passed by the sole arbitrator, the appellant filed an application under Section 34 of the Act of 1996 challenging the entire award. While arguing, the application under Section 34 of the Act of 1961 was, however, confined to Issue Nos. 2 and 3, as can be seen from paragraph no.9 of the judgment dated 04.08.2025 rendered by the learned Single Judge under Section 34 of the Act of 1996.
9. Mr. Neeraj Yadav, learned counsel for the appellant, argued that the sole arbitrator had committed an apparent error of law in directing the amount of Rs.14,32,785/- to be paid by way of the impugned award. He argued that while holding that the termination was not illegal, the Arbitrator could not have awarded damages for non-service of 30 days' notice. While maintaining that the contract was rightfully terminated, he argued that even if the finding of the arbitrator is taken to be correct, there was no pleading or claim by the claimant *qua* the loss of profit, under which head the amount has been awarded by the sole arbitrator.
10. He took the Court through the entire claim petition filed by the claimant and submitted that the entire claim of the claimant was for loss of cost of investment and there was no pleading or evidence led towards loss of profit and therefore, the award containing stipulation of 30 days' profit under Issue



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Nos. 2 and 3, is completely contrary to facts and law as these issues do not even relate to such aspect.

11. Learned counsel for the appellant further argued that while doing so, the arbitrator has reckoned profit of 12.02% without there being any evidence, and while doing so, he has relied upon an e-mail written by the claimant's accountant to learned counsel for the claimant, which was placed on record by the counsel, that too after the evidence was over and when the matter was being heard finally.

12. He submitted that this aspect/point was brought to the notice of the Court while arguing the application for setting aside, but such substantial argument could not persuade the learned Single Judge to set aside the award, though the same fell squarely within the scope of Section 34 of the Act of 1996. He prayed that the appeal be allowed and judgment of the learned Single Judge so also the award passed by the arbitrator dated 23.06.2022, be set aside to the extent of award of Rs.14,32,785/- and interest thereupon.

13. During course of argument, learned counsel for the appellant also argued that even after termination of the contract on 12.09.2018, the respondent/claimant had continued to perform the contract, as is evident from the bill summary, which includes bills raised for the months of October, November, and December 2018.

14. Mr. Arjun Singh Bawa, learned counsel for the respondent, *per contra*, submitted that argument advanced by the appellant, on the first blush appears to be attractive, but if the facts of the case in their entirety are examined, it transpires that the Arbitrator has committed no error of law. By way of paragraph 4.4 of the claim petition, the claimant had claimed loss due to wrongful termination of the contract, for the entire period of the contract on



the ground that had the contract not been terminated by the appellant, it would have earned so much of the amount, which plea of the claimant did not find favour with the arbitrator.

15. He further submitted that having held that the appellant had erred in not giving 30 days' notice before terminating the contract, the arbitrator confined the claimant's claim to 30 days. And rather than giving the claim for the entire contract period, the Arbitrator awarded the amount only for a period of 30 days, and for doing so, the learned arbitrator has calculated average monthly turnover of the claimant as Rs.1,17,44,138.17/- and adopted profit figure of 12%.

16. He added that true it is, that there was no evidence led by the claimant so far as rate of profit is concerned but in light of the judgment of Hon'ble the Supreme Court in the case of **A.T. Brij Paul Singh and Ors. v. State of Gujarat (1984) 4 SCC 59**, the arbitrator was justified in taking a reasonable rate of profit. And in order to arrive at a reasonable figure, the counsel for the claimant had produced before the arbitrator, profit earned by the claimant during different years, and out of which a rate of profit which deemed appropriate to the arbitrator has been taken.

17. Learned counsel for the respondent argued that in such matters, if the sole arbitrator has adopted a reasonable and moderate rate of profit (12%), no interference is warranted that too when this Court is considering an appeal under Section 37 of the Act of 1996.

18. Heard learned counsel for the parties.

19. The short question involved in the present case is as to whether the learned Single Judge was justified in rejecting the application filed by the appellant under Section 34 of the Act of 1996.



20. We are of the view that the learned Single Judge was fully justified, given the limited scope of Section 34 of the Act of 1996. The reason are not far to seek.

21. So far as appellant's argument noted in paragraph no.12 is concerned, we are of the view that the e-mail dated 12.09.2018 terminating the contract, itself contained a stipulation that the respondent will have to clear all the pending orders. That apart, the fact that after termination of the contract, the respondent/claimant has issued invoices does not *ipso facto* mean that it had continued to work. Because, invoices can be raised for any prior period, including for the work which has been executed for the period prior to the date of termination.

22. The argument of learned counsel for the appellant that the claim petition, as filed by the claimant, does not contain any pleading or claim so far as loss of profit is concerned, on first look, appears appealing, but when the claim petition as a whole is considered in the background of the explanation given by learned counsel for the respondent, the approach adopted by the sole arbitrator turns out to be perfectly justified. True it is, that the claimant had asked for damages/loss on account of wrongful termination which according to it, was for the remaining period of the contract after the termination (12.09.2018). The sole arbitrator did not agree with such contention and held that the termination of the contract was not proper, as the same could have been done only after service of a notice of 30 days. However, for this venial breach rather than restoring the contract, the Arbitrator confined the claimant's claim for the notice period – 30 days.

23. As a matter of fact, the claim of the claimant has been confined to a period of one month rather than for the remaining period (13.09.2018 to



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31.03.2020 and 13.09.2018 to 24.04.2020). According to us, the appellant's argument that the sole arbitrator has awarded an amount which was not claimed by the claimant is attractive but the same has no substance in the eyes of law.

24. It is noteworthy that the arbitrator has taken a figure of Rs.1,17,44,138.17/- as average monthly turnover of the claimant, which is based on evidence led by the claimant and what is not based on the evidence is the rate of profit (12.02%), which according to us cannot be said to be arbitrary in any manner. The rate of profit in any case is an estimate or a guesswork, which an arbitrator may reasonably reckon, based on the facts and circumstances of the case, depending upon the nature of business and contract.

25. Neither the Court deciding an application under Section 34 of the Act 1996 nor can we, sitting in appeal against such order, alter or interfere in the rate of profit so reckoned by the arbitrator unless the same is shockingly high.

26. We neither find any merit or substance in the appeal nor do we find any ground warranting our interference under Section 37 of the Act of 1996. The appeal being devoid of merits is dismissed. All pending applications are also disposed of.

(DINESH MEHTA)
JUDGE

ADITI CHOUDHARY
(JUDGE)

OCTOBER 12, 2026
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