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

Date of Decision: 06.11.2019

+ **FAO(OS) (COMM) 304/2019**

**DELHI STATE INDUSTRIAL & INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD** Appellant

Through: Ms. Anusuya Salwan,
Ms.Nikita Salwan & Mr. Ayush
Srivastava, Advs.

versus

IVRCL -TANTIA (JV) G-1 & ORS Respondents

Through: Mr. Sanjoy Bhaumik &
Mr.Vipul Agrawal, Advs. for
R-1.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

G.S.SISTANI, J. (ORAL)

This is an appeal under Section 37 of the Arbitration & Conciliation Act, 1996. The appellant is aggrieved by the decision dated 23.07.2019 rendered by a learned Single Judge of this court, by which objections to arbitral award dated 17.08.2012 have been dismissed. The only issue which arose for consideration before the learned Single Judge was with respect to the deductions made by the appellant herein from the final bill submitted by the respondents.

2. The learned Sole Arbitrator allowed this claim of the respondents only on the ground that the appellant had failed to prove a Central Road Research Institute (CRRI) Report cited by the appellant ; and consequently holding that the defects claimed in the work carried-out by the respondents could not justify the deductions so made.

3. Ms. Salwan, learned counsel for the appellant submits that once deductions were made and accepted, it was really for the respondents to lead evidence against the report. She further contends that the parties had made a statement before the Arbitrator that they would not lead evidence ; and accordingly, no evidence was led and it was not that the appellant had failed to prove the report.

4. Mr. Sanjoy Bhaumik, learned counsel for respondent No. 1 on the other hand submits that there is no infirmity in the award or in the order passed by the learned Single Judge which would require interference in the present proceedings. He submits that the scope of interference in an appeal under Section 37 is even narrower than interference under Section 34. Reliance is placed on the case titled ***Union of India vs. Chenab Construction Company*** reported as 2019 SCC OnLine Del 10515, relevant paras of which are extracted below:

“36. It is well settled that findings of fact, as well, as of law, by the Arbitral Tribunal are ordinarily not amenable to interference either under Sections 34 or Section 37 of the Act. The scope of interference is only where the finding of the tribunal is either contrary to the terms of the contract between the parties, or, ex facie, perverse, that interference, by this Court, is absolutely necessary. The Tribunal is the final arbiter on facts as well as in law, and even errors, factual or legal, which stop short of perversity, do not merit interference under Sections 34 or 37 of the Act. While entertaining appeals under

Section 37 of the Act, the Court is not actually sitting as a Court of appeal over the award of the Arbitral Tribunal and therefore, the Court would not re-appreciate or re-assess the evidence.

37. In the case of MTNL v. Fujitsu India Private Limited, reported at 2015 (2) ARB LR 332 (Delhi), in paragraph 17 and 19, the division bench held as under:

“17. The law is settled that where the Arbitrator has assessed the material and evidence placed before him in detail, the court while considering the objections under Section 34 of the said Act does not sit as a court of appeal and is not expected to re-appreciate the entire evidence and reassess the case of the parties. The jurisdiction under section 34 is not appellate in nature and an award passed by an Arbitrator cannot be set aside on the ground that it was erroneous. It is not open to the court to interfere with the award merely because in the opinion of the court, another view is possible. The duty of the court in these circumstances is to see whether the view taken by the Arbitrator is a plausible view on the facts, pleadings and evidence before the Arbitrator. Even if on the assessment of material, the court while considering the objections under section 34 is of the view that there are two views possible and the Arbitral Tribunal has taken one of the possible views which could have been taken on the material before it, the court would be reluctant to interfere. The court is not to substitute its view with the view of the Arbitrator if the view taken by the Arbitrator is reasonable and plausible Jhang Cooperative Group Housing Society v. P.T. Munshi Ram & Associates Private limited, 2013 SCC OnLine Del 1886 : 202 (2013) DLT 218.

19. The extent of judicial scrutiny under section 34 of the Act is limited and scope of interference is narrow. Under section 37, the extent of judicial scrutiny and scope of interference is further narrower. An appeal under section 37 is like a second appeal, the first appeal being to the court by way of objections under section 34. Where there are concurrent findings of facts and law, first by the Arbitral Tribunal which

are then confirmed by the court while dealing with objections under section 34, in an appeal under section 37, the Appellate Court would be very cautious and reluctant to interfere in the findings returned in the award by the Arbitral Tribunal and confirmed by the court under section 34.

38. *In the case of NHAI v. BSC RBM PATI JV, FAO (OS) (COMM) 107/2017, this court in paragraph 10 read as follows:—*

10. ... “41. It is apparent, therefore, that, while interference by court, with arbitral awards, is limited and circumscribed, an award which is patently illegal, on account of it being injudicious, contrary to the law settled by the Supreme Court, or vitiated by an apparently untenable interpretation of the terms of the contract, requires to be eviscerated. In view thereof, the decision of the Id. Single Judge that reasoning of the arbitral award in this regard was based on no material and was contrary to the contract, cannot be said to be deserving of any interference at our hands under Section 37 of the Act. In a pronouncement reported at 2015 SCC OnLine Del 7437, MTNL v. Fujitsu India Pvt. Ltd. (FA O(OS) No. 63/2015), the Division Bench of this court has held that “an appeal under Section 37 is like a second appeal, the first appeal being to the court by way of objections under Section 34”. Being in the nature of a second appeal, this court would be hesitant to interfere, with the decision of the learned Single Judge, unless it is shown to be palpably erroneous on facts or in law, or manifestly perverse.”

5. We have heard learned counsel for the parties.
6. The learned Single Judge has taken into consideration that the respondents herein had admitted the receipt of the CRR Report but had denied its contents before the Arbitrator. Learned counsel for the appellant has in fact contended that the report was not even filed at the stage of admission/denial of documents but was filed later. In these

circumstances it cannot be contended that there was any admission or acceptance of the report by the respondents.

7. The Single Judge has also taken note of the fact that in his order dated 24.11.2009 the Arbitrator had granted an opportunity to the parties to consider whether they would want to lead evidence to prove documents, including leading any oral evidence ; however, the appellant did not avail such opportunity.

8. In this view of the matter, we find no infirmity in the reasoning of the Arbitrator or of the learned Single Judge, since in the absence of the CRR Report having been proved, no benefit can accrue to the appellant based on that report.

9. Reliance is also placed on Section 19 of the Act to submit that the parties to arbitration proceedings are allowed to decide their own procedure. This argument however is without any force having regard to the fact that the report had been denied by the respondents and the Arbitrator had granted to the parties an opportunity to lead evidence, which was not availed of by the appellant.

10. Therefore, there is no ground is made-out for interference in the present matter and the same is dismissed.

G.S.SISTANI, J.

ANUP JAIRAM BHAMBHANI, J.

NOVEMBER 06, 2019/uj