

\$~S-30 to 50

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

+ FAO (COMM) 146/2021 & CM APPLs. 35810-811/2021

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.
versus

M/S. ANAND PRAKASH GUPTA Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ FAO (COMM) 147/2021 & CM APPLs. 35812-813/2021

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.
versus

M/S. BRIJ ENTERPRISES Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ FAO (COMM) 148/2021 & CM APPLs. 35814-815/2021

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with

Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. GARDEN INDIA Respondent

Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 149/2021 & CM APPLs. 35816-817/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. V.K. SALES CORPORATION Respondent

Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 150/2021 & CM APPLs. 35818-819/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. R.R CONSTRUCTIONS AND CO Respondent

Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 151/2021 & CM APPLs. 35820-821/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.
versus

M/S. RAJ ENTERPRISES Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 152/2021 & CM APPLs. 35822-823/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.
versus

M/S. SINGH BROTHERS Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 153/2021 & CM APPLs. 35824-825/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.
versus

M/S. GREENWAYS ENTERPRISES Respondent

Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 154/2021 & CM APPLs. 35828-829/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. UTTKARSH CONSTRUCTION COMPANY Respondent

Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 155/2021 & CM APPLs. 35830-831/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. LUCKY ENTERPRISES Respondent

Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 156/2021 & CM APPLs. 35832-833/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr. Kunal Yajani, Advocate with

Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. SUMMIT CONSTRUCTIONS Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 157/2021 & CM APPLs. 35834-835/2021**
SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. ANHAL CONSTRUCTION AND ASSOCIATES ...Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 158/2021 & CM APPLs. 35836-837/2021**
SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. A.G CONSTRUCTIONS Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 159/2021 & CM APPLs. 35838-839/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. VV ENTERPRISES Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 160/2021 & CM APPLs. 35840-841/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

SRI SAI ENTERPRISES Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 161/2021 & CM APPLs. 35842-843/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. SHREE OM TRADERS Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 162/2021 & CM APPLs. 35844-845/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.
versus

M/S. MAYUR ENTERPRISES Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 163/2021 & CM APPLs. 35846-847/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.
versus

M/S. B.R. CONSTRUCTIONS Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 164/2021 & CM APPLs. 35848-849/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant

Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. SATGURU CONSTRUCTIONS Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 165/2021 & CM APPLs. 35850-851/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. MEERA ASSOCIATES Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

+ **FAO (COMM) 166/2021 & CM APPLs. 35861-862/2021**

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Kunal Yajani, Advocate with
Mr. Kunal Mimani, Rishabh Munjal
and Mr. Shubhang Tandon, Advocates.

versus

M/S. MADAN MOHAN LAL Respondent
Through: Mr. Paritosh Budhiraja, Advocate with
Ms. Surabhi Maheshwari and Ms.
Divya Singh, Advocates.

%

Date of Decision: 08th October, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Present appeals have been filed under Section 37 of the Arbitration and Conciliation Act, 1996 by the Appellant challenging the Judgement and Orders dated 29th February, 2020 passed by the learned District Judge (Commercial Court) - 04, Central, Tis Hazari Courts, Delhi dismissing the Petitions filed by the Appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') and upholding the arbitral awards passed by the learned Sole Arbitrator, Ms. Rita Kumar, IAS (Retd.).
2. Learned counsel for the Appellant states that the learned District Judge failed to appreciate the mandate of Section 3 read with Entries 14 and 18 of the Limitation Act, 1963 which requires the dismissal of a claim filed beyond the period of limitation. He points out that the Respondents did not take any action or invoke the arbitration clauses for a period of eight years from the date the cause of actions arose. He submits that the onus to commence the arbitration proceedings within the period of limitation was entirely on the Respondents. He states that even if it is assumed that the erstwhile MCD had illegally deferred or refused to make payments, the Respondents ought to have challenged such action and sought payments within the period of limitation. In support of his submission, he relies upon the judgment in *Union*

of India and Another Vs. M/s L.K. Ahuja and Co., (1988) 3 SCC 76. The relevant portion of the said judgment is as under:-

“8. In view of the well settled principles we are of the view that it will be entirely a wrong to mix up the two aspects, namely, whether there was any valid claim for reference under Section 20 of the Act and, secondly, whether the claim to be adjudicated by the arbitrator, was barred by lapse of time. The second is a matter which the arbitrator would decide unless, however, if on admitted facts a claim is found at the time of making an order under Section 20 of the Arbitration Act, to be barred by limitation. In order to be entitled to ask for a reference under Section 20 of the Act, there must be an entitlement to money and a difference or dispute in respect of the same. It is true that on completion of the work, right to get payment would normally arise and it is also true that on settlement of the final bill, the right to get further payment gets weakened but the claim subsists and whether it does subsist, is a matter which is arbitrable. In this case the claim for reference was made within three years commencing from April 16, 1976 and the application was filed on December 13, 1976. We are, therefore, of the view that the High Court was right in this case. See in this connection the observations of this Court in Inder Singh Rekhi v. D.D.A. [(1988) 2 SCC 338]”

3. Learned Counsel for the Appellant further submits that the learned Arbitrator relied on irrelevant evidences while passing the impugned Awards. He points out that the learned Arbitrator relied upon the measurement books while allowing the claims even though the dispute between the parties was not about the measurement/quantity of the Benches but regarding the inferior quality of the Benches supplied by the Respondents and overpricing thereof. He emphasises that in some cases, the measurement book was not even available.

4. Having heard learned counsel for the Appellant, this Court is of the opinion that it is essential to outline the scope of this Court's jurisdiction under Section 37 of the Act. The Supreme Court in **MMTC Ltd. vs. Vedanta Ltd. (2019) 4 SCC 163** while discussing the scope of interference with an arbitral award has held as under:-

“11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the “fundamental policy of Indian law” would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 (CA)] reasonableness. Furthermore, “patent illegality” itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA (2015) 3 SCC 49. Also see ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705; Hindustan Zinc Ltd. v. Friends Coal Carbonisation (2006) 4 SCC 445 and McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181).

xxx

xxx

xxx

xxx

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.”

5. The issue of limitation squarely falls within the jurisdiction of the arbitrator. It is settled law that the arbitrator is the sole judge of the quality and quantity of the evidence and once it is found that the arbitrator's approach was neither arbitrary nor capricious, no interference is called for. [See: ***Associate Builders vs. Delhi Development Authority, AIR, 2015 SC 620 and McDermott International Inc. Vs. Burn Standard Co. Ltd. (2006) 11 SCC 181***].

6. Consequently, while exercising appellate jurisdiction under Section 37 of the Act, this Court has similar restrictions as prescribed under Section 34 of the Act i.e. this Court can only ascertain whether the exercise of power by the learned District Judge under Section 34 of the Act is lawful or not. Also, once an arbitral award has been confirmed in an application filed under Section 34 of the Act, the Appellate Court must be extremely cautious in disturbing concurrent findings of the fact and law as they are ordinarily not amenable to interference under Section 37 of the Act. [See: ***M/s. L.G. Electronics India (P) Ltd. v. Dinesh Kalra, 2018 SCC OnLine Del 8367***].

7. Further, it is settled law that the Appellate Court should generally not interfere unless it is apparent that the perversity of the arbitral award goes to

the root of the case, without a possibility of alternative interpretation that might sustain the award.

8. It is equally settled law that a dispute arises only when there is a claim and denial/repudiation of the claim. There can only be a dispute when a claim is asserted by one party and denied by the other party on whatever grounds.[See: *Inder Singh Rekhi v. D.D.A., (1988) 2 SCC 338*], which has been quoted with approval in *Union of India and Another Vs. M/s L.K. Ahuja and Co.* (supra)]

9. In the present cases, there has been no denial of the claims by the Appellant. There had only been a deferral of payments in the present case on the ground that the matters were under investigation by the CBI and the records were lying with CBI.

10. This Court is in agreement with the view taken by the learned Arbitrator that the cause of action to lodge the present claims also arose in the year 2011, when the Supreme Court upheld the awards dated 16th October, 2008 passed by the learned Arbitrator in favour of two similarly placed contractors. It is pertinent to mention that the agreements with the present nineteen respondents/contractors were similar standard formatted agreements as the two similarly placed contractors who had been awarded similar claims in prior arbitrations and upheld by Supreme Court. Consequently, there is no bar to the similarly placed contractors/respondents claiming the same relief.

11. In any event, this Court is of the opinion that if the respondents/contractors had invoked the Arbitration clauses prior in time, the respondents/contractors would in all probability have taken the defence that the Claim Petitions are premature as the matters are under investigation by

CBI and there has been no denial or repudiation of the claims by the appellants.

12. In addition, there had been acknowledgement of debts in the RTI replies by the Appellant. Continuing to acknowledge the debt in terms of Section 18 of the Limitation Act each year constitutes a fresh cause of action and thus a fresh period of limitation will run from each of such acknowledgments. Consequently, the plea of the Appellant that the claim petitions were barred by limitation is bereft of merits.

13. In majority of the cases measurement books were available and the learned Arbitrator had carried out verification from the said books, which contains all particulars regarding quantity of supplies, bill amount, verification of quality of supplies as per specifications. The said books also contained certificates to the effect that material supplied was satisfactory and as per specification in the work orders. In no case was any document placed before the learned Arbitrator to show that the quality of supplies by nineteen contractors/respondents were of inferior quality or overpriced.

14. Accordingly, the present appeals along with pending applications being bereft of merits are dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

OCTOBER 8, 2021/TS/rv