



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

% *Judgment reserved on :06/04/2022*
Judgment pronounced on :31/05/2022

+ **FAO (OS) (C) No. 82/22**

SMS Water Grace BMW Pvt. Ltd.

STP, Nilothe,
Delhi-110041

..... Appellant

Through : Mr. Darpan Wadhwa, Sr. Adv.
with Mr. Ninad Dogra and Amer
Vaid, Advs.

Versus

Govt. of NCT of Delhi Directorate of Health

Through Director
Swasthya Sewa Nidhishalya Bhawan,
F-37, Karkardooma, Delhi-110032

..... Respondent

Through : Mr. Avishkar Singhvi, ASC with
Mr. Anuj Aggarwal, Mr. Nipun
Katyal and Mr. Naved Ahmed,
Advs.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE POONAM A. BAMBA

[Physical Hearing/Hybrid Hearing (as per request)]

POONAM A. BAMBA, J.:

1.0 Present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 ('**Arbitration Act**' in short) read with section 13 of the Commercial Courts Act, 2015 ('**the Act**' in short) has been preferred by the appellant praying for setting aside of the **judgment of the Ld. Single Judge, dated 13.12.2021** in O.M.P. (COMM) no. 537 of 2020 ("**impugned judgment**" in short). Vide impugned judgment, the Ld. Single Judge dismissed the appellant's

petition u/s. 34 of the Arbitration Act while **declining to interfere**
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with the award dated 18.03.2020 ('Impugned Award' in short)
rendered by the Arbitral Tribunal constituted of a sole arbitrator.



2.0 Ld. Single Judge has given the factual background of the matter in detail in paras 5 to 24 of the impugned judgment. Hence, reference here is made briefly to the facts relevant for disposal of this appeal, which are as under :

- i. the Directorate of Health Services, Government of NCT of Delhi, the respondent herein invited tenders for establishment of Centralised Treatment Facility ('CTF' in short) for treatment of bio-medical waste generated from private hospitals/public nursing homes, diagnostic centres, laboratories/blood banks, medical/ISM colleges, as a joint venture, on Build Operate Transfer ('BOT' in short) basis for a period of ten years. It was supposed to be a joint venture, the respondent Government of NCT of Delhi was to provide land to the selected party/agency for establishing the CTF, (transferring the site on such terms and conditions as may be approved by the Delhi Development Authority/Municipal Corporation of Delhi); and the selected tenderer was obliged to incur all capital expenditure for establishing the CTF as well as for its operation and maintenance;
- ii. the tender documents provided that the selected tenderer would transport and treat the bio-medical waste generated in Hospitals and Dispensaries under the Government of NCT of Delhi, free of cost;



- iii. *sans* other details, suffice it to mention that the petitione
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tendered for the project and was successful. An agreement
was entered into between the appellant and the respondent
on **21.07.2006** (**'Agreement'** in short), whereby the
appellant undertook to install/operate and maintain the
centralized facility at Gazipur, Delhi for processing bio-
medical waste generated from private hospitals/nursing
homes, diagnostic centres/ laboratories/blood banks,
medical/ISM colleges;
- iv. in terms of Clause 12 of the Agreement, the appellant agreed
to pay a sum of Rs.4,32,000/- per month as monthly charges
to the respondent from the date of commencement of the
facility till the date of handing over of the site back to the
respondent;
- v. the respondent in terms of Agreement, delivered possession
of the land at Gazipur to the appellant on 07.08.2006, for
establishment of CTF. However, as the Delhi Pollution
Control Committee (**'DPCC'** in short) declined to grant the
consent to establish CTF at the given site at Gazipur, finding
it not fit, a new site/land measuring 1/2 acre - approximately
2000 sq. mt. at Nilothi was allotted to the appellant in lieu of
the Gazipur site. Accordingly the parties entered into an
addendum Agreement dated 04.11.2009;
- vi. DPCC on 21.04.2010 granted consent to establish CTF at the
aforesaid site at Nilothi. Accordingly, the CTF was
established;



- vii. a dispute had arisen between the parties regarding the charges pertaining to the earlier period and also the period of contract in view of delay in consent by DPCC; and the same was taken to the sole arbitrator (the '**First Arbitral Tribunal**', in short). The First Arbitral Tribunal, vide award dated 11.09.2015, *inter alia*, held that the contract period of 10 years would commence w.e.f. 21.04.2010, the date from which the consent to establish CTF was granted by DPCC. The said Award was not challenged by either of the parties;
- viii. subsequently, the appellant herein claimed that in terms of Clause 10 of the Agreement, it was obliged to transport and treat bio-medical waste from all Health Care Establishments identified by the respondent free of cost, only to the extent of 1000 kgs/day and not beyond that. The appellant also claimed that during the term of Agreement, certain *Mohalla Clinics*, which were not in existence at the material time, also came to be established at local level and the appellant was also required to collect, transport and treat bio-medical waste from such clinics, resulting in aggregate quantity of bio-medical waste collected daily (from various health care establishments including *Mohalla Clinics*) exceeded even three times the quantity of 1000 kgs, as envisaged in Clause 10 of the Agreement;
- ix. the appellant further claimed that in view of the above, it was entitled to be paid for treatment/disposal of excess quantity of the bio-medical waste. Accordingly, the appellant raised a demand of Rs.4,30,83,116/- for the period

01.06.2015 to 31.03.2018. It also raised a claim of Rs.11,39,994/- for bio-medical waste from *Mohalla Clinics*, claiming that it was not obliged to collect, transport and treat waste from such clinics, free of cost;



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- x. on 13.06.2018, the appellant issued to the respondent, a notice demanding a sum of Rs.4,42,23,110/- along with interest @ 18% *per annum*. It further called upon the respondent to refer the disputes to arbitration in the event of non-acceptance of its claim;
- xi. the respondent vide its communication dated 08.08.2018 conveyed to the appellant that its claim was untenable as in terms of the Office Memorandum dated 15.05.2015, issued by DPCC, the appellant was required to 'collect, transport, treat and dispose of, free of cost, entire bio-medical waste of 'Delhi Government Health Care Establishments' including the *Aam Aadmi Mohalla Clinics*; and conveyed that there was no requirement of reference of dispute to the arbitration;
- xii. consequently, the appellant herein filed a petition under section 11 Arbitration Act for appointment of arbitrator. Vide order dated 14.03.2019, this court constituted the Arbitral Tribunal to adjudicate the dispute between the parties. The appellant filed its claim and the respondent also made a counter-claim;
- xiii. the Arbitral Tribunal after considering Clause 10 of the Agreement, Tender documents and also the evidence led by the parties, **concluded that there was no maximum limit**

fixed for collection and treatment of the bio-medical

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waste from the Health Care Establishments as identified by the respondents. The Arbitral Tribunal reasoned that the contract between the parties was premised on the respondent providing the land for setting up CTF; and in consideration, the appellant had agreed to pay an amount of Rs.4,32,000/- and further to collect and treat bio-medical waste from all Health Care Establishments under the Govt. of NCT of Delhi, free of charges. The **Arbitral Tribunal finding no merit, rejected the claim of the appellant as well as the counter-claim of the respondent**, vide impugned Award dated 18.03.2020;

- xiv. against the aforesaid Award dated 18.03.2020/impugned Award, the appellant filed a **petition under section 34 of the Arbitration Act**, bearing no. O.M.P. (COMM) No. 537 of 2020. The said petition **was dismissed by the Ld. Single Judge** vide impugned judgment dated 13.12.2021 **finding no fault in interpretation of Clause 10 of the Agreement by the Arbitral Tribunal** or commission of any jurisdictional error by the Arbitral Tribunal.

2.1 It is the above judgment, which is under challenge in the present appeal.

3.0 The appellant has challenged the impugned judgment *inter alia* on the grounds that :

- i. the Ld. Single Judge erroneously refused to interfere with the Award and erred in agreeing with the interpretation of

Clause 10 read with the tender dated 07.11.2005 by the Sol

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Arbitrator, holding that there was no upper limit on the collection of bio-medical waste from the health care centres of the respondent. This is despite holding that the terms of Clause 10 of the Agreement are ambiguous;

- ii. the Ld. Single Judge accepted the aforesaid interpretation of Clause 10 ignoring the respondent's reply dated 08.08.2018 whereby it accepted that the original understanding between the parties at the time of execution of the Agreement was that scope of the appellant's work was limited to collection/disposal of bio-medical waste equivalent to about 1000 kgs/day only;
- iii. the Ld. Single Judge and the Ld. Sole Arbitrator failed to appreciate properly, the term 'about/or approximate' and incorrectly held that there was no upper limit on collection of bio-medical wastes from the health care centres of respondent. Such an interpretation is perverse and alters, the very nature of the Agreement between the parties by unreasonably increasing the scope of the appellant's obligations and adversely affecting its commercial interests;
- iv. the Ld. Single Judge and Ld. Arbitrator failed to appreciate that the respondent never disputed its liability to make payment towards charges of bio-medical waste treatment in excess of 1000 kgs, when such invoices were raised by the appellant; and that only later during arbitration proceedings, the respondent illegally denied its responsibility;



- v. the Ld. Single Judge failed to appreciate that the Ld. Sol Arbitrator passed the impugned Award erroneously relying upon DPCC's Office Memorandum dated 15.05.2015 to suggest that the same had altered Clause 10 of the Agreement;
- vi. the Ld. Single Judge gravely erred in recording that the issue of collection of bio-medical waste over 1000 kg was not raised by the appellant at the time of signing of the Agreement, in as much as this issue of bio-medical waste weighing over 1000 kgs per day occurred for the first time in June 2015. Therefore, such an issue could not have been raised earlier;
- vii. the Ld. Single Judge as well as the Ld. Sole Arbitrator failed to appreciate that the *mohalla clinics* came into existence after almost 8 years of the execution of the Agreement between the parties and 5 years of the operation of the Facility and were not originally accounted for in the Agreement. Further, more than 1000 Mohalla Clinics have been set up between 2015 and 2020. Therefore, the same have a substantial bearing on the scope of work under the Agreement;
- viii. the Ld. Single Judge erred in arriving at his conclusion relying upon the earlier Award dated 11.09.2015, passed in a previous Arbitration between the parties, which involved disputes completely different from the disputes in the present instance;

ix. the Ld. Single Judge and Ld. Sole Arbitrator failed to appreciate that in view of the above additional obligations were arbitrarily imposed upon the appellant;



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x. the Ld. Single Judge also gravely erred in dismissing the contentions of the appellant simply on the ground that the Arbitral Tribunal is the final authority for interpreting the contract and the impugned award cannot be interfered with merely because a different interpretation is possible.

4.0 Sh. Anuj Aggarwal, **Ld. counsel for the respondent**, on the other hand, argued that this appeal is liable to be dismissed as it lacks any merit. It was argued that there was no confusion as to the nature of work and evidently the appellant was required to transport, treat and dispose of all bio-medical waste from all the Health Care Establishments of Govt. of NCT of Delhi; and the *Mohalla Clinics* being part of Health Care Establishments of Govt. of NCT of Delhi are squarely covered under Clause 10 of the Agreement. It was further argued that the appellant having agreed to treat all such bio-medical waste cannot now plead that it's obligation to collect/treat/dispose of bio-medical waste was limited to a maximum of 1000 kgs per day, in terms of Clause 10; and it cannot claim charges for disposal of any such waste in excess of 1000 kgs per day generated by the said establishments.

4.1 Ld. counsel for the respondent also argued that as per the appellant, the bio-medical waste crossed 1000 kgs in the year 2015 but the claim in this respect was made only in the year 2017. Rather, even while submitting the monthly reports for the period 01.01.2017 to

31.12.2017, no such claim was raised. In view of the same, it is apparent that the said Clause was correctly understood by the appellant.



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4.2 Mr. Anuj Aggarwal, Ld. counsel for the respondent further argued that the Ld. Single Judge appreciated all the contentions of the appellant as raised before this court; Ld. Single Judge after considering the Tender documents, the Agreement, other attending facts and circumstances and also considering the evaluation of evidence led by the parties before Arbitral Tribunal, rightly concluded that the appellant's interpretation of Clause 10 of the Agreement cannot be accepted.

4.3 Sh. Anuj Aggarwal also argued that the Ld. Single Judge rightly observed that the Award can be interfered only in case of patent illegality or the same being in conflict with the public policy; and rightly refused to interfere with the Award in the present case as none of the said grounds are made out. The appellant's petition was rightly dismissed.

5.0 We have heard the submissions made by both the sides and have perused the record carefully.

6.0 As is evident from the above, the *lis* in present appeal revolves around interpretation of the Clause 10 of the Agreement in the context of the quantum of bio-medical waste (from Health Care Establishments identified by the Govt. of NCT of Delhi), the appellant was obliged to collect/treat/dispose of, free of charge. The Arbitral Tribunal as well as the Ld. Single Judge have arrived at a concurrent finding about the interpretation of Clause 10 of the Agreement, to the

effect that the said Clause does not in any manner limit the appellant's obligation to 1000 kgs/day, as contended. The appellant has challenged these findings in the present appeal under Section 37(1)(c) of the Arbitration Act.



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7.0 Before proceeding further, let the reference be made to the relevant provisions of law i.e. Sections 34 & 37, which read as under :

“34 Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the

parties cannot derogate, or, failing such agreement, was not in accordance with this Part, or



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(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1. — For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, —

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or*
- (ii) it is in contravention with the fundamental policy of Indian law; or*
- (iii) it is in conflict with the most basic notions of morality or justice].*

[Explanation 2. — For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[2(A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.



(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and if so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

“37. Appealable orders.— (1) [Notwithstanding anything contained in any other law for the time being in force, **an appeal**] **shall lie from the following orders** (and from no others) to the Court authorised by law to hear appeals **from original decrees of the Court passing the order, namely:—**

(a) refusing to refer the parties to arbitration under section 8;

(a) granting or refusing to grant any measure under section 9;

(c) **setting aside or refusing to set aside an arbitral award under section 34.]**

(2) An appeal shall also lie to a Court from an order of the arbitral tribunal.—

(a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

7.1 From the plain reading of the above provisions of law, it is clear that the scope of interference with the Arbitral Award is very narrow and is limited to arbitral award being in contravention with the fundamental policy of Indian law; or it being in conflict with the most basic notions of morality or justice; or suffers from patent illegality apparent on the face of the record. In this regard, reference with benefit may also be made to the recent judgment of the Hon’ble Supreme Court in **MMTC vs.**

Vedanta, (2019) 4 SCC 163 wherein, while examining the scope of

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interference with an Arbitral Award in India under Sections 34 & 37 of the Arbitration Act, the Hon'ble Supreme Court in paras 10, 11, 12, 13 & 14 of the judgment observed as under :

*“10. Before proceeding further, we find it necessary to briefly revisit the existing position of law with respect to **the scope of interference with an arbitral award in India**,**Such interference may be undertaken in terms of Section 34 or Section 37 of the Arbitration and Conciliation Act, 1996** (for short, “the 1996 Act”). While the former deals with challenges to an arbitral award itself, the latter, inter alia, deals with appeals against an order made under Section 34 setting aside or refusing to set aside an arbitral award.*

*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 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*



13. It is relevant to note that after the 2015 amendments to Section 34, the above position stands somewhat modified. Pursuant to the insertion of Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub section (2A) has been inserted in Section 34, which provides that in case of domestic arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

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.”

7.2 Thus evidently, it is a settled position of law that the scope of interference with arbitral award by the courts under Sections 34 & 37 of the Arbitration Act is very limited; courts cannot travel beyond the restrictions laid down under Section 34 of the Arbitration Act. The scope of interference under Section 37 is restricted to the situations where the findings of the Arbitrator or the court are blatantly arbitrary or perverse or patently illegal or are in conflict with the public policy of India. It has been made clear by catena of judgments as also referred to in **MMTC’s case** (supra) that an arbitral award cannot be

interfered with merely because there is another view possible in the facts. Hon'ble Supreme Court has reiterated that an Award shall not be set aside merely by re-appreciating the evidence. It has categorically laid down that the court cannot undertake an independent assessment of the merits of the Award; and that Section 34 of the Arbitration Act provides for interference primarily where there is a patent illegality appearing on the face of the Award. And also that, Court must limit its interference to ascertain that the exercise of power by the court under Section 34 of the Arbitration Act has not exceeded the scope of the said provision.



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8.0 Let the matter be now examined in the light of above settled position of law. To appreciate the rival contentions of the parties, reference may be made to the Tender document, the Agreement between the parties, and other attending facts and circumstances, which would reflect the essence of the Agreement and intention of the parties. As already noted above, the Govt. of NCT of Delhi invited tender for establishment of CTF on a joint venture basis, for collection/ treatment/disposal of bio-medical waste generated by smaller units like Nursing Homes and Clinics, which were unable to make their own arrangements.

8.1 The relevant portion of the notice dated 07.11.2005 inviting tenders reads as under :

***“DIRECTORATE OF HEALTH SERVICES GOVERNMENT OF
NATIONAL CAPITAL TERRITORY OF DELHI: SWASTHYA SEWA
NIDESHALAYA BHAWAN : F-17, KARKARDOOMA:
DELHI-110032 (PH.22304362)***

APPLICATION NO.1/DHS/BMW/2005

DATED:07.11.2005



A. Introduction :

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Government of India has notified Bio-Medical Waste (Management & Handling) Rules 1998. Under these rules, all Health Care Institutions are required to handle Bio-Medical Waste in a specified manner. Delhi is generating approximately 6500 metric tons of waste out of which 65 tons are Bio-Medical Waste. The Government Hospitals and major Private Hospitals have their own arrangement due to high cost involved in treatment facilities, require some alternative modalities. **Keeping in view the difficulties faced by smaller Nursing Homes/Clinics/Blood Banks/Diagnostic Laboratories etc., Government is taking initiatives to establish Centralized Treatment Facilities for Bio-Medical Waste (CTF for BMW).** The Government of National Capital Territory of Delhi (Government of National Capital Territory) has acquired land (for establishment of Centralized Treatment Facilities for Bio-Medical Waste) 1000 sq. Meters at Gazipur, Delhi near Land Fill Site.

The Government of National capital Territory of Delhi has planned to utilize the above site for establishing CTF for BMW as a joint venture with the Private Sector/NGO etc. On BOT basis to be identified and selected through a transparent process. **For this venture, Government of National Capital Territory of Delhi shall only provide infrastructural support to the selected Party/Agency in terms of transfer of the above site on such terms and conditions as shall be approved by the Delhi Development Authority/Municipal Corporation of Delhi. Neither any additional capital expenditure for the establishment of the facility nor any recurring revenue expenditure for operation and maintenance of the facility will be forthcoming from the Government of National Capital Territory of Delhi in this regard. Given the above conditions, the Party for the joint venture shall be selected who is able to offer the services to the Hospital/Nursing Homes/Clinics etc. at the most reasonable rates conforming to all the required statutory conditions. As land will be provided by the Government of National Capital Territory of Delhi, therefore Biomedical Waste generated in Hospitals and Dispensaries under Government of National Capital Territory of Delhi (where onsite treatment facilities are not available) will be transported and treated free of cost by the entrepreneur.**

.....

B. The scope of work :-

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1. *Submissions of a detailed project report with project estimates after techno-economic evaluation of various options. The project report should clearly spell out the obligations of the Party and the Government of National Capital Territory of Delhi.*
2. *The Party will engage their own engineers to set up the Centralized facilities proposed at Gazipur, Delhi & submit detail technical specifications of the each equipment, which is to be installed by the Contracting Party at Gazipur, Delhi.*
3. *Obtain required clearance from various statutory bodies like CPCB, DPCC, DDA, DVB, MCD and DJB etc.*
4. *Setting up of Centralized (A State of the Art Technology) Waste treatment facilities (consisting of Incinerator, Autoclave/Hydroclave/Microwave with Shredder/other Non-Burn Technology with Effluent Treatment Plant) in accordance to CPCB Guidelines from their own funds.*
5. ***To collect and transport Bio-Medical Waste from the Private Hospitals/Nursing Homes/Diagnostic Centres/Laboratories/Blood Banks/Medical/ISM Colleges to the Centralized Treatment facilities at Gazipur in a vehicle as per specifications approved by DPCC).***
.....”

8.1.1 From the above it is evident that the Tender document/notice inviting tenders dated 07.11.2005, clearly specified that only that entrepreneur shall be selected for joint venture, who is able to offer free of cost, the services of collection/transportation and treatment of bio-medical waste generated by the Hospitals/Dispensaries/Nursing Homes/Clinics etc. under the Govt. of NCT of Delhi, in lieu of the land for establishment of CTF provided by the Government/the respondent. It also made

clear that the Government/the respondent herein shall not be providing either any recurring revenue expenditure for operation and maintenance of the facility.

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8.2 The appellant herein tendered for the aforesaid project, evidently after going through the scope of work and other terms and conditions of the aforesaid document. The appellant's tender/offer was accepted by the respondent and it was awarded the contract. Accordingly, the appellant entered into the Agreement dated 21.07.2006 with Govt. of NCT of Delhi. Reference here is made to the relevant portion of the Agreement, which reads as under :

“AGREEMENT

*This Agreement made on this 21st day of July 2006 BETWEEN the President of India acting through **Director Health Services, Govt of National Capital Territory of Delhi** (herein after called the “Government” AND (M/s **SMSL-Water Grace Products-JV**).....”*

*Whereas the Director Health Services, Government of National Capital Territory of Delhi invited tenders on **7th November 2005** for installation of centralized facility at Gazipur, Delhi for **treatment of biomedical waste generated from health care institutions** (Government/private hospital dispensaries/nursing homes/clinics/blood banks/laboratories etc. or by whatever name they are known) at Government approved rates, And **whereas the Contractor submitted its offer** through tender for the said work.*

And whereas, the government accepted the tendered offer

*.....
And whereas the government, has agreed to award the aforesaid contract to the contractor on the terms and conditions hereafter appearing*

Now, this Agreement witnesses as follows:



1.
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2. *That the Contractor shall treat the Bio-Medical Waste generating by health care establishments (nursing homes/hospital and other private health care establishments) on payment basis*
3.
4. *The **government** shall allow to use the land measuring about 1000 sq meters (One thousand square meters) **on as a is where is** basis for the aforesaid purpose to the “Contractor” (M/s SMSL – Water Grace Products – JV) for installation of Centralized Treatment Facility at GAZHIPUR, Delhi..... **After expiry/cancellation of the contract the contractor shall surrender/hand over the possession of the land to the Government or***
5.
6. *The Contractor shall install/operate and maintain the centralized facility consisting of Keeping in view the demand of private hospitals/nursing homes, the capacity of the Biomedical Waste Treatment Facility should approximately Ten (10) tons per day. The contractor shall also purchase vehicles as per specifications approved by Delhi Pollution Control Committee (DPCC) or guidelines issued by any statutory authority for transportation of biomedical waste from health care institutions to the centralized facility and for disposal of treated waste by his own means.*
7.
8. *The contractor shall furnish to the Govt. an authorization from the prescribed authority/DPCC given under the rules for undertaking all activities.*
9. *The contractor will obtain permission from all statutory bodies at its own risk/cost like Central Pollution Control Board (CPCB).....*
10. ***The contractor shall collect, transport, treat and dispose of all Bio- medical waste (about 1000 kg/day) from all health care establishments (all hospitals, dispensaries, Medical colleges) identified by the government of National Capital Territory of Delhi, free of charge during the contract period.***
11.

12. Contractor shall pay Rs.4,32,000/- (Rupees Four Lakh Thirty Two Thousand Only) per month as monthly charges to the government of National Capital Territory of Delhi from the date of commencement of the facility.....
.....”



8.2.1 It is apparent from the bare perusal of Clause 10 of the Agreement, as extracted in para 8.2 above, the appellant was required to collect/transport, treat and dispose of **all** bio-medical waste free of cost, from **all** the Health Care Establishments **as identified by the Government**. Admittedly, the *Mohalla Clinics* (though came to be established later), were also identified by the Government for the purpose. The appellant was thus under an obligation to collect/transport/treat and dispose of the bio-medical waste free of cost, even from the *Mohalla Clinics*.

9.0 The appellant has argued that Clause 10 of the Agreement capped the quantum of bio-medical waste to be collected, treated and disposed of free of cost by it for health care establishments of Delhi Government, to “about 1000 kg/day”. On the other hand, Ld. counsel for the respondent contested the same and argued that the appellant clearly understood that it was required to collect/treat/dispose of all bio-medical waste generated by all health care establishment so identified by the Govt. of NCT of Delhi. He also argued that the same is also clear from the fact that the appellant did not express any reservation concerning the Office Memorandum dated 15.05.2015, which was issued by DPCC pursuant to a meeting of the Advisory Committee under the Chairmanship of the Special Secretary (Health & Family Welfare), Govt. of NCT of Delhi, held on 11.05.2015, which was duly attended by the representative of the appellant. Ld. Counsel



9.1 It is a settled position of law that while interpreting any term of the contract, intention of the parties has to be taken into account. Such intention can be ascertained from the language used in the contract, the object of the contract, conduct of the parties and other surrounding facts and circumstances.

9.2 Thus, the term/Clause 10 of the Agreement between the parties in the instant case has to be interpreted in the light of Tender document, other terms and conditions of the agreement, evidence which has come on record, conduct of the parties and other attendant facts and circumstances. Undisputedly, the Tender document as extracted above in para 8.1 supra, clearly describes the objective of setting up of such CTF and scope of work. The Tender document invited bids for setting up of CTF as a joint venture, explicitly mentioning that the respondent would provide the land for the same, in consideration of which, the tenderor/appellant shall collect, treat, dispose of all bio-medical waste generated from all the health care establishments identified by Govt. of NCT of Delhi, free of cost. The appellant had applied for the Tender after due consideration and its bid was accepted.

9.3 In this respect, reference is also made to Clause (c) of the Office Memorandum of DPCC dated 15.05.2015, which reads as under :

*“As per their agreements with the Directorate of Health Services, Govt. of NCT of Delhi, M/s SMS Water Grace Pvt. Ltd. & M/s Biotic Waste Solution Pvt. Ltd. **shall continue to collect, transport, treat and disposed of the entire BioMedical Waste (BMW) free of cost of Delhi Government Health Case Establishments in their respective districts;**”*



9.3.1 It is the appellant's own case that *Mohalla Clinics* came to be established in the year 2015. From the above Office Memorandum, dated 15.05.2015 it is clear that it was resolved that the appellant shall continue to collect etc. free of cost, bio-medical waste from the health care establishments of the Govt. of NCT of Delhi. Same clearly shows that the appellant was to continue to collect/dispose of etc. bio-medical waste from *Mohalla Clinics* also.

9.4 Ld. counsel for the respondent further argued that the fact that the appellant duly understood that under the Agreement/Clause 10, it was required to collect/transport/treat/dispose of all the bio-medical waste from all the health care establishments, is also clear from the fact that prior to 2017, the appellant never raised any claim for excess bio-medical waste treated by it, though, as per the appellant, the bio-medical waste crossed 1000 kg/day in the year 2015. Same is not in dispute and is also borne out from the record. It is seen that the appellant's witness CW1 deposed before the Arbitral Tribunal that the appellant had been lifting bio-medical waste in excess of 1000 kg/day since 2015; and that the appellant had not raised any invoice till 14.09.2017. Before this court, Ld. Counsel for the appellant only argued that the appellant had been orally requesting the respondent for payment for bio-medical waste collected beyond 1000 kg/day.

9.5 It may be mentioned at the cost of repetition that the scope of interference by this court under section 37 Arbitration Act is very limited. This court may interfere only when the arbitral award/judgment of Ld. Single Judge upholding the same, suffers from patent illegality on the face of it. This court cannot interfere with the

award if the view taken by the Arbitral Tribunal/Ld. Single Judge is possible view based on facts. Interference may be called only where the findings of the arbitrator/Ld. Single Judge are arbitrary, capricious, perverse or are patently illegal.



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9.6 In view of the above facts and circumstances, we do not find that interpretation of Clause 10 of the Agreement by the Ld. Arbitrator, which was not interfered by Ld. Single Judge, , suffers from any perversity or patent illegality on the face of record.

10.0 As the appellant has failed to demonstrate any perversity or patent illegality in the findings recorded by Ld. Arbitrator in impugned Award dated 18.03.2020 and by Ld. Single Judge in the impugned judgment dated 13.12.2021, the same do not warrant any interference.

11.0 Appeal is accordingly dismissed.

(POONAM A. BAMBA)
JUDGE

(RAJIV SHAKDHER)
JUDGE

MAY 31st, 2022/manju

Click here to check corrigendum, if any