

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on: 12th December, 2022
Pronounced on: 15th February, 2023

+ FAO (COMM) 149/2022
&
CM APPLs. 43428-30/2022

MUNICIPAL CORPORATION OF DELHI Appellant
Through: Mr. Akhil Mittal, Standing Counsel
with Ms. Shreya Chopra, Advocate.

versus

M/S SWEKA POWERTECH ENGINEERS PVT. LTD. Respondent
Through: Mr. Gaurav Saria, Ms. Charul Sarin
& Mr. Harish Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present appeal under Section 13 of the Commercial Courts Act, 2015 read with Section 37 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as "Act, 1996"*) has been filed challenging the Common Order dated 24.01.2022 passed by the learned District Judge (Commercial) Central District, Tis Hazari, dismissing both the petitions under Section 34 of the Act, 1996, preferred by the appellant and the respondent herein against the Arbitral Award dated 30.01.2019.

2. The facts in brief are that, the respondent herein, M/s Sweka Powertech Engineers Pvt. Ltd. was awarded Work Order No. EE(E)-Project/SYS/2010-2011/5 dated 16.07.2010 by the appellant

herein/Municipal Corporation of Delhi for providing street light arrangement and ancillary work in different roads/streets of the Karol Bagh Zone. In pursuance to the said Work Order, the appellant entered into a contract dated 25.03.2010 with the respondent.

3. During the course of execution of work, certain disputes arose between the parties and accordingly, a Notice for settlement of disputes through arbitration in terms of the Agreement between the parties, was sent by the respondent to the appellant. However, on receiving no response from the appellant, a petition under Section 11 of the Act, 1996 was preferred which was allowed by this Court *vide* Order dated 02.04.2013 and Mr. Justice R.C. Chopra (Retd.) was appointed as the Sole Arbitrator. The Sole Arbitrator, however, recused himself on 14.03.2017.

4. Thereafter, the Commissioner, MCD appointed Professor (Er.) O.P. Gupta, VSM (Retd. Chief Engineer, MCD) as the substitute Arbitrator, who made the Award dated 30.01.2019 *vide* which the respondent's claims were partly allowed and the Counter-Claim of the appellant was dismissed. Both, the appellant as well as respondent, have challenged the Order under Section 34 of the Act, 1996.

5. To understand the grounds of challenge, it would be necessary to give a vignette of facts. The respondent, in terms of the Contract, was required to provide street light arrangement and ancillary work in different roads/streets of the Karol Bagh Zone and to complete the work within six months i.e., upto **15.01.2011**. The respondent/claimant herein filed the following six Claims before the Sole Arbitrator:

Claim No.	Description	Claim	Interest	Total	Remarks
-----------	-------------	-------	----------	-------	---------

NEUTRAL CITATION NO: 2023/DHC/001058

		Amount (Rs.)	@ 18% p.a. (Rs.)	Amount	
1.	For payment of Rs. 64,96,268/- for work done along with interest @ 18% per annum	64,96,268	69,26,267	1,34,22,535	Completion date was 06.01.2011 & payment due date was 06.07.2011. Interest is claimed upto 08.06.2017 (5 years & 337 days)
2.	The refund of the Security deducted by the respondent @ 10% from RA Bills	19,88,383	19,38,591	39,26,974	Payment due date was 06.01.2017. Interest is claimed upto 08.06.2017 (5 years & 152 days)
3.	Fee paid towards inspection	5,48,707			Claim not pressed
4.	Loss of profit on account of reduction of scope of work	7,79,539			Claim not pressed

5.	Interest @ 18% per annum pre-suit, pendent lite & future on the claim No. 1 to 4 as stated above				Interest already covered in Claim No. 1 & 2 and not pressed in Claim No. 3 & 4. Pendent elite and future interest to be calculated at appropriate time
6.	Cost of Arbitration	10,00,000		10,00,000	Interest on cost not pressed
	Final Amount	94,84,651	88,64,858	1,83,49,509	

6. The appellant filed its **Counter-Claim** for compensation/penalty for slow performance and delay in execution of the work in the sum of Rs. 63,61,942/- along with the interest @ 18% per annum, in addition to Arbitration cost of Rs. 5,00,000/-

7. The Sole Arbitrator *vide* Award dated 30.01.2019 allowed the Claim Nos. 1, 2, 5 & 6 i.e., payment of final bill; refund of security; the interest @ 9% per annum and the costs. The Claim Nos. 3 and 4 were not pressed by the claimant. The Arbitrator made the following orders:

“Order:

Considering the pleadings of both the parties, documentary evidences, on record, arguments made by learned counsels, examination/consideration of the case laws/judgements referred by both the parties and taking the totality of the circumstances into the consideration and for the reasons

aforesaid, I make the following awards:

(i) The respondent to pay to the claimant, sum of Rs.1,01,29,076/-The claimant shall also be entitled to simple interest @ 9% per annum on the said amount of Rs. 1,01,29,076/- provided the respondent fails to make the payment award within the 60 days from the date of publication of the award that is 3 011' January 2019 till the date of payment by the respondent or realization thereof by the respondent.

Counter claim of the Respondent

Counter claim no. 1 to counter claim no. 3 of the respondent have not been allowed and stands dismissed and rejected after due consideration.”

8. The Award was withheld by the Arbitral Tribunal as the Arbitrator's fee had not been paid in full. The respondent paid the fee on behalf of the Appellant in lieu of which recovery rights for a sum of Rs. 3,07,728/- were granted to the respondent as reimbursement of the balance Arbitrator's fees paid by the respondent/claimant on behalf of the appellant. However, the reimbursement of the aforementioned sum has been overlooked while computing the total award amount. The learned District Judge corrected this error apparent on the face of record.

9. The Arbitral Award in favour of respondent was challenged by the appellant in O.M.P.(COMM.) 52/2019 and dismissal of Counter-Claim by the respondent in O.M.P. (COMM.) 49/2019 under Section 34 of the Act, 1996 before the District Court, Central District, Tis Hazari. However, both the petitions under Section 34 of the Act, 1996 were dismissed by a Common Order dated 24.01.2022 by the District Judge (Commercial Court), Central District, Tis Hazari Courts.

10. Aggrieved by the said dismissal of the objection petitions, the present appeal has been filed on behalf of the appellant.

11. The **main ground of challenge** by the appellant is that the Project related to the Common Wealth Games which was to be completed within the time-bound manner. The date of completion admittedly was 24.01.2011, but the respondent herein failed to complete the work with due diligence before the date of completion, resulting in loss/damages to the appellant. The respondent completed only 41.57% of the total work. The payment of Rs. 1,98,81,884/- was made by the appellant for the work actually executed, which is not disputed by the respondent.

12. **It is asserted by the appellant** that the respondent falsely claimed Rs. 64,96,268/- for payment of the work done, which was not correct. The calculation adds up to Rs. 57,07,735/- even when considered as per the Department's spread sheet and chart on the basis of which the respondent had made his amended claim of Rs.63,97,310/-. The Claim No.1 as awarded is also perverse being based on internal noting which was denied in admission and denial and which was not admissible in law as held by Supreme court in Sethi Auto Service Station and Anr. vs. Delhi Development Authority and Ors. (2009) 1 SCC 180. It is further asserted that though there were recommendations in several noting about payment to the respondent, but no final official communication was addressed or received from the respondent accepting his Claim. The internal notings do not constitute an order/decision binding on the appellant. The Note of P.S. to Chairperson, Standing Committee relied upon by the respondent does not constitute a decision/order so as to bind the appellant to make the payments. Moreover, there were three riders spelt in the Note as a condition for making payment i.e. (i) Obtain Vigilance recommendation, (ii) take proper approval from the Administrative Authority and (iii) send

the case for Concurrence to Finance. These three riders have not been fulfilled and the Chairperson of the Standing Committee had no statutory powers for directing the payment to the Contractor. The Sanction of Corporation/ Standing Committee is a must under Section 71 of the DMC Act in case exercise of any power results in expenditure. As per conjoint reading of Sections 201, 202 and 203 of DMC Act, every Contract is to be made by the Commissioner and every Contract involving expenditure above Rs. 10,00,000/- has to be approved in advance in writing by the House and as per Section 203 any Contract not made in accordance with such provision is not binding on the Corporation. The mere notings in the file do not amount to any final decision of the Corporation.

13. It is further stated that the internal Noting initiated by the Executive Engineer submitted for making payment to the tune of 41.57% of the contractual amount i.e., Rs. 2,62,79,794/- after full completion of the work of this value. It was for the respondent to have proved that they have completed the work of full value which it has failed to do. In the Nothing it was mentioned: *“Work completed 37.86% of the contractual amount”*. This was a general assessment, and the payments were to be made on the basis of actual measurement and contractual rates. 37.86% of the contractual amount comes to Rs.2,40,86,312/-, whereas the recommendation has been made for payment of Rs. 2,62.79794/-. Moreover, the Noting pointed out deficiencies on the part of respondent which has been suppressed. The incomplete work was of no use as not a single street was illuminated. The payments were to be made only when each item was completed fully as it was item rate based contract.

14. It is further submitted that there was CBI enquiry and the records of

the respondent were seized on 28.10.2010 and the Directors of respondent Company were arrested. The learned Special Judge, CBI ordered the release of the records *vide* Order dated 19.11.2013. The payment could not be made earlier owing to seizure of records by CBI. The appellant was not at fault and, therefore, it could not have been burdened with payment of interest. The contract permitted the Corporation to withhold the payment, if any, on account of any enquiry by any Agency including CTE, CVC, CBI etc.

15. The appellant has further assailed the finding in the impugned Order under Section 34 of the Act, 1996 being in contravention of the evidence as well as the records of the case for arriving at the conclusions which are wrong. The time was the essence of the Agreement. Since, the work was not completed on time and for the purpose mentioned, the Work Order became worthless and the entire purpose and objective of the Work Order was lost since the work was completed by the respondent beyond the time stipulated under the Contract. The Court, however, wrongly considered the response of the respondent to conclude that the work in question was not related to Common Wealth Games by observing that though the date of start of work was 25.07.2010 but the date of completion was 15.01.2011 which was much after the closing of Common Wealth Games.

16. The appellant had raised the contention that as per the terms of the Contract, it was at liberty to get the work checked through Internal and External audit or through any other Agency during the execution of work and even after finalization of work. If any recovery was found to be due on account of over payment or otherwise then the appellant was at liberty

to recover the said amount from the dues of the claimant, failing which recovery from some other Work was to be made. However, these contentions of the appellant have been totally ignored. It has not been taken into consideration that as per Clause 7 of the Work Order dated 16.07.2010, the expenditure for the work was limited/restricted to Rs. 6,36,19,420/- and nothing extra was payable above the contractual cost. Moreover, the respondent had been informed by the appellant vide letter dated 12.11.2010 that in the absence of any additional work, final measurement of the site be got conducted and the Project may be closed. Moreover, *vide* the Communication dated 18.11.2010 the work was foreclosed of which there is a reference in the letter of the respondent dated 12.11.2010. However, these aspects have also not been considered.

17. The appellant was compelled by the slow speed and delay in completion to cancel/determine the Contract by exercising its powers under Clauses 3 and 4 of the Contract in order to avoid wastage of public money. Clause 12 permitted the appellant to omit a part of the work for any other reason. Clause 14 empowered the appellant to cancel the Contract in full or part, if the Contractor made default in proceeding with the work with due diligence or committed default in complying with terms and condition of the Contract or failed to complete the items of work on or before the date of completion. It further provided that in such an event, the MCD may recover the loss or damage suffered or to be suffered on account of any money due to the Contractor on any account.

18. The appellant made payment of Rs. 1,98,81,884/- to the respondent against the work which was actually executed and was admitted by the respondent. It is not entitled to any other extra payment beyond the

amount which has already been paid.

19. Furthermore, the respondent never made any grievance about Clauses 12, 13 and 14 which prohibits the respondent from making any claim on account of work reduction. The claims made in this regard are an afterthought. For this reliance has been placed on Bharat Coking Coal Limited vs. L.K. Ahuja (2004) 5 SCC 109, wherein the claim for loss of profit was rejected by the Apex Court on the ground that it was incumbent upon the Contractor to prove that had the Contractor received the amount due under the Contract, he would have utilized the same for some other business and would have earned profit.

20. The **Claim No. 2** was for Security and the respondent had demanded Rs. 19,88,3827/- which has been allowed merely on the saying of the respondent and basing the decision on completely irrelevant considerations without looking into the MB and other documents and the evidence of the Executive Engineer Mr. Roop Chand who had informed that as per the MB the security amount that was deducted was only Rs. 5,00,000/-.

21. The Clause 45 of the Contract specifically provided that security deposit shall not be refunded till the Contractor produces Clearance Certificate from the Labour Officer. No such Certificate has been produced by the respondent till date and it was not entitled to refund of the security amount. Moreover, the security amount could have been refunded only after successful and satisfactory completion of defect liability period.

22. The respondent in its Claim No.3 (though not pressed) arbitrarily demanded Rs. 5,48,707/- towards the alleged fee paid towards inspections.

This claim was completely untenable. The appellant was within its right to get the testing done from IIT. Clause 10A of the Contract clearly provided that the cost of testing and inspection shall be paid by the respondent. The respondent had got the testing done from other Institute at its own risk and cost and was naturally to be borne by the respondent and has been rightly rejected by the learned Arbitrator.

23. **Claim No.5** was for *pendente lite* interest which was claimed @ 18% per annum. The Arbitrator has granted interest @ 9% per annum which is calculated as Rs. 12,42,780/-. However, the records of this case were seized by CBI, hence no amount is payable on account of interest.

24. It is further argued that the interest has been wrongly awarded as no Notice as envisaged under the Interest Act, 1976 was ever given by the respondent and thus, no interest was payable. The appellant carried out its obligatory function of public utility works as envisaged in Section 42 of DMC Act, 1957. It is not a commercial activity and the interest @ 9% awarded under Section 34 of CPC is excessive.

25. As per **Claim No.6** the Arbitration cost in the sum of Rs.10,00,000/- was claimed. The Arbitrator has awarded Rs. 5,00,000/- plus Rs. 3,07,728/- against the appellant which is exorbitant and unreasonable.

26. It is claimed that the respondent has unnecessarily and unreasonably forced the appellant to face the arbitration proceedings and is liable to compensate the appellant for the cost incurred in relation thereto which includes Arbitrator's fee, legal expenses, Advocate's fee, miscellaneous expenses etc., which were tentatively assessed at Rs. 5,00,000/-. Further, the written arguments filed by the MCD have not

been considered by the learned Arbitrator. The order of the learned District Judge upholding the Award is patently illegal, perverse and irrational on the face of it. It is therefore, liable to be set aside.

27. **The respondents in their reply** to the Appeal under Section 37 have asserted that the decision of the learned District Judge is well reasoned and each issue as raised by the appellant, has been duly examined. It is claimed that the learned District Judge has rightly observed that the project was not initiated on account of Common Wealth Games 2010. He had referred to the record to conclude that since the date of completion was 15.01.2011 while the Common Wealth Games ended on 14.10.2010, the Project was not linked to Common Wealth Games. The plea has been rightly rejected by the learned District Judge.

28. It is further stated that no alternate calculations in respect of amended Claim No.1 for execution of work was submitted by the appellant. The claim in the sum of Rs. 63,97,910/- against Rs. 64,96,268/- as claimed by the respondent, has been rightly allowed.

29. In respect of Claim No. 2, the deduction of security deposit of Rs.19,88,387/- was never denied by the appellant before the learned Arbitrator. The only objection taken was non-production of Clearance Certificate from Labour Officer. There is no alternate calculation proved before the learned Arbitrator. The plea that only Rs. 5,00,000/- was deducted as Security Deposit has therefore, been rightly rejected by the learned District Judge on the basis of the arbitral records.

30. Claim Nos. 3 and 4, the fee paid towards the Inspection as well as loss of profit on account of reduction in Scope of Work, was not pressed and were given up by the respondent itself before the Arbitrator. There is

no challenge therefore, under Section 34 to the rejection/withdrawal of claim Nos. 3 and 4.

31. The **Claim No. 5** pertained to interest which has been granted reasonably as the learned Arbitrator has given a reasoning that the parties were responsible for the prolonged proceedings over three years before the learned Arbitrator. The interest has been granted for only Rs.12,42,780/- as against Rs.77,05,666/- claimed by the respondent. The claim of the respondent for interest @ 18% has been rejected by the learned Arbitrator.

32. The **appellant had filed a counter-claim** for compensation/penalty for slow performance and delay but the challenge to the same under Section 34 has been rightly dismissed as no Notice or communication was ever issued to the respondent during the period of Contract. The time period being the essence of Contract and final measurement of the work that was completed by the respondent, was carried out by the appellant on or before 15.01.2011 i.e., the date of completion of the work originally provided by the appellant.

33. It is further submitted that the jurisdiction under Section 37 of the Act to consider the challenge to the Order under Section 34 of the Arbitration & Conciliation act, 1996 is fairly narrow and is circumscribed as was observed by the Apex Court in UHL Power Company Limited vs. State of Himachal Pradesh (2022) 4 SCC 116. The limited scope available under Section 34 of the Act to interfere with an Award in case of domestic Arbitration has been summarized by the Three Judge Bench of the Supreme Court in the case of State of Chatisgarh & Anr. vs. SAL Udyog Pvt. Ltd. (2022) 2 SCC 275.

34. It is claimed that there is no merit in the present appeal which is liable to be dismissed.

35. **Submissions heard.**

36. The Appellant has challenged the Claim Nos. 1, 2, 5, 6 in the Common Order dated 24.01.2022 under Section 34 of the Act, 1996 in the Award on the ground of patent illegality. The scope of a challenge under Section 34 and Section 37 of the Act, 1996 is limited to the grounds stipulated in Section 34 as held in MMTC Limited v. Vedanta Ltd., (2019) 4 SCC 163. The comprehensive judicial literature on the scope of interference on the ground of Public Policy under Section 34 was postulated in Associate Builders vs. DDA, (2015) 3 SCC 49. The Apex Court placed reliance on the judgment of ONGC v. Saw Pipes, 2003 (5) SCC 705 to determine the contours of Public Policy wherein an award can be set aside if it is violative of 'The fundamental policy of Indian law', 'The interest of India', 'Justice or morality' or leads to a 'Patent Illegality'. For an award to be in line with the 'The fundamental policy of Indian law', the Tribunal should adopt a judicial approach which implies that the award must be fair, reasonable and objective. These grounds require an Arbitral Tribunal to deliver a reasoned award which is substantiated by evidence.

37. It was further held in Associate Builders (supra) that, when a decision is made to set aside an award on the basis of "public policy", the term "justice" simply refers to an award that shocks the conscience of the court. A court cannot possibly include what it determines to be unfair, given the circumstances of a case, by replacing the Arbitrator's decision with what it sees as "just".

38. The ground of “*patent illegality*” is applied when there is a contravention of the substantive law of India, the Arbitration Act or the rules applicable to the substance of the dispute. In Hindustan Zinc Limited vs Friends Coal Carbonisation, (2006) 4 SCC 445, The Apex Court referred to the principles laid down in Saw Pipes (supra) and clarified that it is open to the court to consider whether an award is against the specific terms of contract, and if so, interfere with it on the ground that it is patently illegal and opposed to the public policy of India. The Supreme Court in SAL Udyog (supra) as well, held that an award in blatant disregard of the express terms of the agreement suffers from patent illegality, but a reference was also made to Associate Builders (supra) wherein it was observed that the term “*patent illegality*” does not apply to every legal mistake made by the arbitral tribunal. A mere difference of opinion in interpreting the contract or the applicable law could not be classified as patent illegality. Furthermore, the term “*patent illegality*” does not apply to legal violations that are unrelated to matters of public policy or interest.

39. In the light of the limited scope of interference under Section 34 and 37 of the Act, the challenge raised by the appellant in the present case may be considered.

Claim No.1: Award being based on no Evidence.

40. The learned Arbitrator had awarded a sum of Rs. 1,01,29,076/- to the respondent. The main challenge raised by the appellant both in Section 34 of the Act, 1996 as well as in the present proceedings is that the reliance has been placed on the internal Notings which are only recommendatory and cannot be considered as a final assessment of the

amount payable to the respondent, for which reliance had been placed on the case of Sethi Auto (supra).

41. The learned Arbitrator as well as the learned District Judge in the Order under Section 34 of the Act, 1996 has rightly appreciated the Notings relied upon by the respondent by observing that they were not recommendatory but contained factual data on the basis of which the calculation of the claim amount was made. The judgement of Sethi Auto (supra) was thus not applicable to the facts under consideration. There was an admission about the amount of work completed, which was taken as basis for calculation of the claim amount. The conclusions for allowing the Claim No. 1, were based on appreciation of evidence and reasoning has been duly given for while arriving at the claim amount.

42. In the case of National Highway Authority of India vs. M. Hakim (2021) 9 SCC 1 it had been observed by the Three Judge Bench of the Apex Court that interference with the conclusions of fact and law is not permissible in either Section 34 or Section 37 of the Act, 1996. Only when the determination is ex-facie, perverse or in conflict with the provisions of the Contract, can the Court's interference be justified. Likewise, the Supreme Court in Anglo-American Metallurgical Coal vs. MMTC Limited (2021) 3 SCC 308 had observed that the Court is not permitted either under Section 34 or 37 of the Act to independently evaluate the merits of the Award, but must confine its authority to the parameters permitted under the Statute. Extreme caution must be observed by the Court and it should be hesitant to disrupt the concurrent conclusions arrived at in the Arbitral Award which is validated by the Court under Section 34 of the Act.

43. The claim No.1 is supported by reasons based on appreciation of the evidence, and does not merit any interference under Section 37 of the Act.

Claim No. 2: Refund of Security Amount of Rs.19,88,382/-.

44. The appellant has challenged the amount of Rs.19,88,382/- awarded to the respondent as Security by claiming that only Rs.5 lakhs had been deducted by the respondent. Again, the findings of the learned Arbitrator are duly supported by the reasons. The appellant has challenged the refund of Security amount on the ground that the Clearance Certificate from the Labour Officer had not been submitted and the refund could have been allowed only on completion of the work during the defects liability period.

45. The learned Arbitrator had observed that the final measurements were done by the Officers of the respondent on 06.01.2011 i.e., the date of completion as stipulated in the Work Order, who confirmed that 41.57% of the work as mentioned in the letter of Foreclosure, had not been completed. The Defects Liability Period had also come to an end. In respect of the Clearance Certificate from the Labour Officer, the learned Arbitrator had observed that the second Running Bill was released in June, 2011 and no complaint was ever raised in regard to violation of labour norms. In essence, the claimant had cleared this requirement due to efflux of time.

46. The learned Arbitrator has duly supported grant of refund of Security amount with sufficient reasons which are not amenable to reappraisal under Section 34 or 37 of the Act, 1996.

47. In Dyna Technologies Pvt. Ltd. vs. M/s Crompton Greaves Ltd.

(2019) 20 SCC 1, the Apex court had observed that Section 34 has a different methodology and it cannot be considered as a typical Appellate jurisdiction. Section 34 demands respect to the finality of the arbitral ruling and the party autonomy in having chosen to get their issues resolved through alternate forum of arbitration which would be thwarted if the courts were to accept the challenge to the arbitral rulings on factual issues in a regular manner. The claim being supported by reasons, does not call for any interference.

Claim No. 5: *Pendente Lite* Interest.

48. The learned Arbitrator while granting interest @ 9% has given his reasoning by referring to Section 19 of the Act, 1996 which provides as under:

“19. Determination of rules of procedure. (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).

(2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.

(3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.

(4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence”

49. The Apex Court in Delhi Airport Metro Express Pvt. Ltd. vs. Delhi Metro Rail Corporation (2022) Live Law (SC) 452 has explained that the Arbitral Tribunal holds the discretion to award interest to the parties

unless the Agreement contains a clause that covers the issue of interest.

50. There is nothing on record to spell out any perversity or patent illegality in regard to grant of interest @ 9% per annum as awarded by the learned Arbitrator and there is no ground for its challenge.

Claim No.6: Cost of Arbitration.

51. An objection has been taken by the appellant to the grant of Rs. 5,00,000/- and Rs. 3,07,728/- as cost on the ground that it is exorbitant. In M/s L.G. Electronic India Pvt. Ltd. vs. Dinesh Kalra FAO (OS) (COMM) 86/2016 it was held that it is not conceivable to re-examine the facts to arrive at a different decision in the absence of any valid permissible ground under Section 34(2) of the Act, 1996.

52. It may thus be concluded that no grounds for interference under Section 37 of the Act, 1996 have been made out. In fact, the challenge to the findings of the learned Arbitrator are essentially based on reappreciation of evidence which is beyond the scope of Section 37 of the Act.

53. The appeal is, therefore, without merit and the same is hereby dismissed.

54. The pending applications are also dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

FEBRUARY 15, 2023/S.Sharma/va