



2025:DHC:7430



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment pronounced on: 28.08.2025+ O.M.P. (COMM) 280/2020

DDA

.....Petitioner

Through: Ms. Beenashaw Soni, ASC, DDA
along with Ms. Ann Joseph and Ms.
Mansi Jain, Advocates.

versus

M/S MALIK CONSTRUCTIONS

..... Respondent

Through: Mr. Akshu Jain, Mr. S. K. Jain, Ms.
Stuti Jain and Ms. Vishwa Bharti,
Advocates.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition assails an arbitral award dated 30.12.2013. The said arbitral award was rendered in context of an agreement bearing No. 34/EE/WD-15/DDA/211-12, executed between the parties for the works of "relaying/ rehabilitation of Flat No. 55, 146, 194, 184, 351, 376, 312 & 399 Sector 13, Pocket A Dwarka" (hereinafter referred as "*the project*").
2. The contract (for the aforesaid project) was awarded to the respondent/claimant, M/s Malik Constructions, by the petitioner *vide* Letter No. F15(95)/WD-15/DDA/11-12/1337 dated 20.10.2011. The stipulated date of commencement of work was 30.10.2011, and the scheduled date of completion of the work was 29.02.2012. Subsequently, the agreement bearing No. 34/EE/WD-15/DDA/211-12 was executed between the parties.



3. It is the case of the petitioner that the respondent executed the work at an extremely slow pace and raised only one Running Account (R/A) bill amounting to Rs. 6,13,984/- against the total awarded tender value of Rs. 25,72,137/-. It is submitted that the aforementioned bill was partly paid on 24.04.2012 and that a sum of Rs. 2,72,214/- was lawfully withheld in accordance with clause 1(a) of the agreement.

4. The petitioner submitted that after the payment of R/A bill, no work was performed by the respondent/claimant. Consequently, the contract was rescinded *vide* office letter No. F15(95)WD15/DDA/11-12/508 dated 25.05.2012 and the work was ultimately completed through other agencies.

5. Subsequently, the respondent/claimant invoked the arbitration under clause 25 of the agreement by issuing a legal notice dated 10.09.2012. Consequently, a sole arbitrator was appointed by the petitioner. *Vide* impugned award dated 30.12.2013, the learned Sole Arbitrator partly allowed the claims of the respondent/claimant.

THE IMPUGNED ARBITRAL AWARD

6. Before the arbitral tribunal, the respondent/claimant contended that the agreement had already expired on 29.02.2012, and since no formal extension had been granted, the work done thereafter was executed on a quantum merit basis and not under the contractual framework. Therefore, the purported termination and related actions, including the forfeiture of earnest money and performance guarantees, were arbitrary and illegal. In view of the disputes, the respondent/claimant raised ten claims before the learned Sole Arbitrator.

7. The petitioner (respondent in the arbitration proceedings) contended



that despite the urgent nature of the works awarded under the project, the respondent/claimant after receiving the 1st RA bill, despite repeated reminders, failed to complete the work. Therefore, the decision of rescinding the work was justified and undertaken in accordance with the relevant clause/s of the agreement.

8. The learned Sole Arbitrator rendered a finding of fact that the termination of the agreement by the petitioner was illegal and against the terms of the agreement. It was held that the time was not the essence of the contract. In the aforesaid conspectus, the arbitral tribunal held that the respondent/claimant was entitled to refund of earnest money, performance guarantee and the amount withheld by the petitioner while making the payment towards the 1st RA bill (Claim Nos. 1 to 4)¹.

9. In regard to Claim No. 5², the arbitral tribunal observed that the petitioner had submitted a final bill, *vide* letter No. 1008 dated 15.07.2013, acknowledging an outstanding amount of ₹11,514/- for work executed by the respondent/claimant, but yet not paid. However, on account of the respondent/claimant's failure to produce conclusive evidence for any amount beyond the aforementioned, the learned Sole Arbitrator awarded Rs.11,514/- under this claim against the claimed amount of Rs.9,63,000/-.

10. Further, under Claim No.9³ the arbitral tribunal awarded simple interest in favour of respondent/claimant at the rate of 9% per annum –

¹ "Claim No.1 – The claimants claim that the determination of the contract by the DDA is illegal and arbitrary.; Claim No.2 - "The claimants claim a sum of Rs.61,398/- on account of refund of earnest money.; Claim No.3 – "The claimants claim a sum of Rs.1,28,670/- on account of refund of performance guarantee; Claim No.4 – "The claimants claim a sum of Rs.2,72,214/- on account of refund of withheld amount"

² "The claimants claim a sum of Rs.9,63,000/- on account of work executed but not paid by the department."

³ "The claimants claim interest, pre-suit, pendente lite & future @18% per annum from its due date."



- a. On the awarded sums under Claims Nos. 4 and 5, from the date of invocation of arbitration i.e., 10.09.2012 until payment or decree, whichever is earlier.
 - b. On the awarded sums under Claims Nos. 2 and 3, from the date of encashment of earnest money/performance guarantee or 10.09.2012 (whichever is later) until payment or decree, whichever is earlier.
11. The learned Sole Arbitrator dismissed Claim Nos. 6, 7 and 8⁴ of the respondent/claimant and no amount was awarded thereunder. It was observed that the respondent/claimant failed to provide any cogent evidence to support the aforementioned claims. Further, Claim No. 10⁵ was also dismissed and both the parties were ordered to bear their own cost/s of arbitration.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. The primary contention on behalf of the petitioner is that as the agreement was duly rescinded by the petitioner in terms of the provisions of the contract, the learned Sole Arbitrator has wrongly awarded certain amounts in respect of Claim nos. 1 to 5 and 9 to the respondent/claimant.

13. It is contended that the forfeiture of earnest money and the performance guarantee and the partial withholding of amount paid towards 1st R/A Bill was justified in view of the breach of the contract on the part of the respondent/claimant.

⁴ Claim No. 6 – “The claimants claim a sum of Rs.2,18,200 on account of hire charges of plant & machinery; Claim No. 7 – The claimants claim a sum of Rs.2,50,000/- on account of overhead expenses/salary paid to the staff; Claim No. 8 – The claimants claim a sum of Rs.2,50,000/- on account of loss of profit/profitability.”

⁵ “the claimants claim for cost of proceedings.”



14. In the circumstances, it is submitted that since the impugned award wrongly awards certain amounts to the respondent/claimant, the same be set aside.

ANALYSIS AND CONCLUSION

15. A perusal of the award reveals that the learned Sole Arbitrator has rendered a finding to the effect that the stipulated date of completion of the work was 29.02.2012. It was noticed thereafter that no fresh date of completion of the work was fixed even though the respondent continued to perform/execute the work beyond 29.02.2012. After taking note of the factual conspectus, it was held that the termination of the contract by the petitioner was illegal.

16. As a consequence of the aforesaid finding, the petitioner has been held entitled to:-

- i. Refund of earnest money to the tune of Rs. 61,398/-.
- ii. Refund of performance bank guarantee amounting to the tune of Rs. 1,28,670/-
- iii. Refund of Rs.2,72,214/-, withheld from the payment of first R/A bill.

17. Claim No.5, as mentioned above, was substantially rejected and only a sum of Rs. 11,514/- was awarded to the respondent. Claim Nos. 6, 7 & 8 were wholly rejected by the learned Sole Arbitrator.

18. Further, the learned Sole Arbitrator awarded 9% interest on the awarded sums under Claim Nos. 4 and 5 and on the awarded sums under Claim Nos. 2 and 3.

19. It is evident that the findings/observations in the impugned award are



based on appreciation of the factual conspectus. Further, the learned Sole Arbitrator judiciously examined the claims raised by the respondent/claimant and most of the claims were rejected except the claims pertaining to refund of earnest money, performance guarantee and the amount withheld by the petitioner.

20. In these circumstances, this Court is unable to find any patent illegality or any other infirmity in the award so as to warrant interference under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter “A&C Act”).

21. The legal position is well settled that the scrutiny in exercise of jurisdiction under Section 34 of the A&C Act is not akin to that of Appellate Court. The scope of interference with the Arbitral Award is extremely circumscribed and unless the view taken by the arbitrator is so perverse that it cannot be characterised as a possible view, it is impermissible to interfere with the arbitral award.

22. The legal position in this regard has been restated and reiterated in catena of decisions⁶ and recently in the judgment of the Supreme Court in **OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited and Another** 2024 SCC OnLine SC 2600. The relevant observations in **OPG Power Generation Private Limited** (supra) reads as under –

“60. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality

⁶ *Dyna Technologies Private Limited v. Crompton Greaves Limited* (2019) 20 SCC 1; *South East Asia Marine Engg. & Constructions Ltd. v. Oil India Ltd.* (2020) 5 SCC 164; *Steel Authority of India Ltd. v. Gupta Brothers Steel Tubes Ltd.* (2009) 10 SCC 63.



appearing on the face of the award. The proviso to subsection (2-A) 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. In *Saw Pipes (supra)*, while dealing with the phrase “public policy of India” as used in Section 34, this court took the view that the concept of public policy connotes some matter which concerns public good and public interest. If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature, it cannot be held that award is against public policy.

61. In *Associate Builders (supra)*, this Court held that an award would be patently illegal, if it is contrary to: (a) substantive provisions of law of India; (b) provisions of the 1996 Act; and (c) terms of the contract. The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) of the 1996 Act.

Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.

62. In **Ssangyong** (*supra*) this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that “patent illegality appearing on the face of the award” refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within “the fundamental policy of Indian law”, namely, the contravention of a statute not linked to “public policy” or “public interest”, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award.

63. Perversity as a ground for setting aside an arbitral award was recognized in **Western Geco** (*supra*). Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

64. In **Associate Builders** (*supra*) certain tests were laid down to determine whether a decision of an arbitral tribunal could be considered perverse. In this context, it was observed that where: (i) a finding is based on no evidence; or (ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse. However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator



is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

65. In **Ssangyong** (supra), which dealt with the legal position post 2015 amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence in as much as such decision is not based on evidence led by the parties, and therefore, would also have to be characterized as perverse.

66. The tests laid down in **Associate Builders** (supra) to determine perversity were followed in **Ssyanyong** (supra) and later approved by a three-Judge Bench of this Court in **Patel Engineering Limited v. North Eastern Electric Power Corporation Limited**.

67. In a recent three-Judge Bench decision of this Court in **Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.** 2024 INSC 292, the ground of patent illegality/perversity was delineated in the following terms:

“40. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; Or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of patent illegality. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice.”

68. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the



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**1996 Act.**

69. In *Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43]*, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.”

(emphasis supplied)

23. In the circumstances, this Court finds no merit in the present petition, the same is consequently dismissed.

SACHIN DATTA, J**AUGUST 28, 2025/uk/sv/sl**