



2025:DHC:5306-DB



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

Date of decision: 02.07.2025

+ **FAO(OS) 57/2023 & CM APPL. 22981/2023, CM APPL. 22982/2023**

ALCON BUILDERS AND ENGINEER PVT LTD

.....Appellant

**Through: Mr. Yash S. Vijay and Mr.
Shikhar Aggarwal, Advs.**

versus

UNION OF INDIA & ANR.

.....Respondents

**Through: Ms. Bhavi Garg, Adv. for Mr.
Subhash Tanwar, CGSC, Mr.
Rajdev Kumar, and
Mr. Naveen, Advs. and
Mr. Deepak Tanwar, GP for
UOI**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act'), challenging the Judgment and Order dated 17.01.2023 (hereinafter referred to as 'Impugned Order') passed by the learned Single Judge of this Court in O.M.P. No. 146/2008 titled ***Union of India & Anr. v. Alcon Builders and Engineer Pvt. Ltd***, partially setting aside the Arbitral Award dated 09.08.2007 passed by the learned Sole Arbitrator. The learned



Sole Arbitrator had passed the above Award while adjudicating the disputes that had arisen between the parties under Contract No.S&T/178-Sig/PS/32/42 dated 07.12.1994 for the work of Indoor Signaling Work in connection with Yard remodeling at Ghaziabad (25 Km) electrified area.

2. The Arbitral Award had allowed the claims of the appellant while dismissing the counter claims of the respondent, with the following directions:

“35 I make the award as follows:-

I That the respondent shall pay to the claimant Rs.5,89,808/- (Rupees five lac, eighty-nine thousand eight hundred and eight).

II That the respondent shall pay Rs.4 lac (Rupees four lac) as costs of these proceedings to the claimant.

III That the respondent shall pay to the claimant aforesaid amounts on or before 1st November, 2007 failing which the respondent shall pay interest @ 12% per annum from 1st August, 2007 till the payment on the unpaid amount.

IV That the respondent shall return the bank guarantees to the claimant.”

3. Aggrieved of the same, the respondents challenged the Arbitral Award before the learned Single Judge in form of the above application under Section 34 of the A&C Act.

4. The learned Single Judge by the Impugned Order has set aside the Arbitral Award insofar as it grants the *pendente lite* interest. The appellant does not challenge the said finding of the learned Single Judge.

5. The learned Single Judge has also set aside the award of the



cost in favour of the appellant, by observing that the appellant had claimed the cost of only Rs.1,00,000/- and further the learned Arbitrator has given no break up, quantification, reason or rationale for award of costs of Rs.4,00,000/- in favour of the appellant.

6. We quote from the findings of the learned Single Judge as under:

“28. Insofar as the award of arbitral costs is concerned, apart from the fact that the respondent had claimed costs only of Rs.1 lac, the fact that the learned Arbitrator offers no break-up, quantification, reason or rationale for award of costs of Rs.4 lacs against the petitioners cannot be ignored. It is clear from a bare reading of pre-amendment section 31(8) of the A&C Act, that even under that provision, costs are meant to be ‘reasonable costs’ relating to fee and expenses of arbitrator and witnesses; legal fee and expenses; administration fee of institution supervising the arbitration and any other expenses incurred in connection with the arbitration proceedings and the arbitral award. Absent any heads under which costs have been quantified or awarded, and absent any reasoning therefor, the award of costs of Rs.4 lacs must be held to be arbitrary. It may be observed here that the mandate contained in section 31(3), that an arbitral award shall state the reasons on which it is based, must pervade all and every aspect of the award, including award of costs. Awarding costs by a stroke of the pen, without stating reasons therefor, would fly in the face of section 31(3), apart from being opposed to well accepted canons of fairness and justice.

29. On this point, the argument made on behalf of respondent, that the learned Arbitrator has awarded costs based on the number of hearings; or that the petitioners’



default in depositing its share of Rs.1,16,000/- of the arbitrator's fee impelled the learned Arbitrator to award costs, also does not address the complete lack of quantification of costs awarded against the petitioners.

30. Accordingly, in the opinion of this court, the award of costs in the sum of Rs.4 lacs is arbitrary, unreasoned and therefore untenable in law."

7. The learned counsel for the appellant submits that in terms of the pre-amended Section 31(8) of the A&C Act, the Arbitrator had been vested with the discretion to award cost as also to quantify the same.

8. He submits that, in the present case, the quantification of cost by the learned Arbitrator could not be said to be unreasonable, inasmuch as the Arbitrator had fixed the fee of arbitration as Rs.2,20,000/- for each of the parties. The appellant apart from paying its own share of cost, had also paid Rs.1,16,000/- towards the share of the cost of the respondent. In addition thereto, there were also other expenses that the appellant had incurred in prosecuting the arbitration as also the defending the counter claim.

9. He submits that after the filing of the Statement of the Claim, the respondent had also filed a Counter Claim, because of which the arbitration proceedings had continued over a long period of time spanning from 2003 to 2007, which also justifies the costs imposed. He submits that, therefore, the learned Single Judge has erred in interfering with the Arbitral Award on the aspect of cost.

10. On the other hand, the learned counsel for the respondent



reiterates that no reasons had been provided by the learned Arbitrator in awarding the cost of Rs.4,00,000/-. She submits that reasons are to be provided in the Award, as is also mandated under Section 31(3) of the A&C Act.

11. She further reiterates that the appellant had claimed only Rs.1,00,000/- as cost and, therefore, there was no justification for the learned Arbitrator to have awarded cost of Rs.4,00,000/- in favour of the appellant.

12. We have considered the submissions made by the learned counsels for the parties.

13. In terms of the pre-amended Section 31(8) of the A&C Act, the costs of arbitration are to be fixed by the Arbitral Tribunal. The Arbitral Tribunal is to specify the party entitled to cost, the party who shall pay the cost, the amount of the cost or method of determining that amount, and the manner in which the cost shall be paid. Such cost should be reasonable and keep in view the fee and expense of the arbitrators and the witnesses, legal fees and expenses, any administration fee of the institution supervising the arbitration, and any other expenses incurred in connection with the arbitral proceedings and the award.

14. We quote the pre-amended Section 31(8) of the A&C Act as under:

*“(8) Unless otherwise agreed by the parties,—
(a) the costs of an arbitration shall be fixed by the arbitral tribunal;
(b) the arbitral tribunal shall specify—
(i) the party entitled to costs,*



- (ii) the party who shall pay the costs,*
- (iii) the amount of costs or method of determining that amount, and*
- (iv) the manner in which the costs shall be paid.*

Explanation.— For the purpose of clause (a), “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators and witnesses,*
- (ii) legal fees and expenses,*
- (iii) any administration fees of the institution supervising the arbitration, and*
- (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.”*

15. In the present case, though the learned Sole Arbitrator had not given any reasons which persuaded him to award the cost of Rs.4,00,000/- in favour of the appellant, the reasons were in built in the Arbitral Award itself. The claim of the appellant had been allowed for an amount of Rs.3,68,630/-, while the counter claim of the respondents had been rejected. The cost of the arbitration was Rs.2,20,000/- for each of the parties. The appellant, apart from paying its own share of arbitral fee, had also paid Rs.1,16,000/- for the share of the respondents. The arbitral proceedings had continued from 2003 to 2007.

16. Given these facts, in our view, the learned Single Judge has erred in interfering with the Impugned Award while demanding further reasons from the learned Arbitrator for the award of the cost and the quantification thereof in favour of the appellant.

17. We, accordingly, set aside the Impugned Order of the learned Single Judge in so far as it, in turn, sets aside the Arbitral Award on



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the aspect of award of costs in favour of the appellant and against the respondents. The Arbitral Award to that extent shall stand revived.

18. The learned counsel for the appellant submits that the appellant had recovered the awarded amount in an execution proceeding, however, post the passing of the Impugned Order, the respondents have re-recovered the excess amount from the appellant along with interest.

19. We are afraid that we cannot make a comment on the same in the present appeal. The same will have to be agitated by the appellant in appropriate proceedings and in accordance with the law.

20. The appeal along with the pending applications is disposed of in the above terms.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 2, 2025/ns/ik

[Click here to check corrigendum, if any](#)