



2025:DHC:4655-DB



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

% Judgment delivered on: 30.05.2025

+ **FAO(COMM) 146/2023**

QUAZAR INFRASTRUCTURE PVT. LTD.Appellant

versus

**NATIONAL AGRICULTURAL COOP. MARKETING
FEDERATION OF INDIA LTD.**Respondent

Advocates who appeared in this case:

For the Appellant : Mr Raman Kapur, Sr. Adv and Mr Varun Kapur, Advocate.

For the Respondent : Ms Gouri Karuna Mohanti and Priya Rastogi, Advocates.

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

TEJAS KARIA, J

INTRODUCTION

1. The present Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 ('Act') read with Section 13 of the Commercial Courts Act, 2015 against the impugned judgment dated 06.05.2023 ('impugned judgment') passed by the learned District Judge (Commercial)(Digital)-07, South-East, Saket Courts, Delhi ('Commercial



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Court') in O.M.P. (COMM) No. 43/2022, whereby the application filed by the Appellant under Section 34 of the Act challenging the Award dated 23.06.2022 passed by the Arbitral Tribunal (**'Award'**) was dismissed.

FACTUAL BACKGROUND

2. The dispute in the present Appeal arises from a Notice Inviting Tender (**'NIT'**) floated by the Respondent on 18.01.2017 for repairing and cleaning of exterior walls and waterproofing the terrace of its head office building located at Ashram Chowk, New Delhi. Pursuant to the said tender, the Appellant submitted a bid.

3. After negotiations, the contract was awarded for ₹31,50,000/- to the Appellant. The work commenced on 14.02.2017. The original date of completion was 14.08.2017. However, the work was actually completed on 29.11.2018. It is alleged that during the execution, it emerged that the actual wall area was 4093 square meters (**'sq. meters'**) instead of 1524 sq. meters. The Appellant sought additional payment on account of the increased area of the walls. While the Respondent made deductions in the payment on the grounds of delay in completion and incomplete work. The Appellant contended that the delay was due to various site-related hindrances, including the Respondent's failure to provide an empty water tank required for waterproofing, the increase in wall area, and execution of additional work. Subsequently, the Appellant invoked arbitration, and this Court vide order dated 25.09.2019, appointed the Sole Arbitrator to adjudicate the dispute.

4. The learned Arbitral Tribunal passed the Award rejecting the claims of the Appellant, particularly the claim for payment for the alleged additional work. The Appellant challenged the Award under Section 34 of



the Act before the learned Commercial Court contending, *inter alia*, that there was misrepresentation by the Respondent in specifying the area as 1524 sq. meters, the principle of *quantum meruit* under Section 70 of the Indian Contract Act, 1872 entitled the Appellant for payment for additional work. The Appellant contended that the Award ignored relevant correspondences and evidence including the Respondent's own letters calling upon the Appellant to complete the enlarged scope of work.

5. The learned Commercial Court dismissed the Application under Section 34 of the Act holding that the Appellant had inspected the site and had the means and opportunity to discover the actual area of the walls. Therefore, the allegation of misrepresentation or fraud was held to be not sustainable. The learned Commercial Court noted that under Section 34(2A) of the Act, mere erroneous application of law or of evidence does not warrant setting aside of the Award unless it suffers from patent illegality apparent on the face of the Award.

6. Applying the principles laid down by the Hon'ble Supreme Court in ***UHL Power Company Ltd. v. State of Himachal Pradesh***, (2022) 4 SCC 116, the learned Commercial Court observed that the arbitrator is the master of both the quantity and quality of evidence, and the Court under Section 34 of the Act does not sit in appeal. Merely because another view is possible, no fault can be found in the arbitrator's decision.

7. Thus, the application under Section 34 of the Act was dismissed holding that the award does not suffer from patent illegality. The present Appeal has been filed challenging the said impugned judgment.



SUBMISSIONS BY THE APPELLANT

8. The learned counsel for the Appellant submitted that the dispute stemmed from the misrepresentation regarding the area of work. The Award under Issue No. 2 confirms that the Appellant executed work over 4093 sq. meters. Despite this, the learned Arbitral Tribunal declined to award the corresponding payment. It was submitted that the reasoning adopted by the learned Arbitral Tribunal is self-contradictory and, hence, the Award is liable to be set aside.

9. The learned counsel submitted that the Appellant had based its bid on the area of work mentioned in the NIT, which was stated to be 1524 sq. meters. However, during execution, the actual area measured was 4093 sq. meters, nearly one and a half times more. The learned Arbitral Tribunal under Issue No. 2 recorded a finding that the work area was 4093 sq. meters, and further held under Issue Nos. 4 and 6 that the work had been completed to the satisfaction of the Respondent. It was further contended that the learned Arbitral Tribunal acknowledged that the Respondent derived benefit of the entire work completed by the Appellant, yet this aspect has not been duly considered by the learned Commercial Court in the impugned judgment.

10. It was submitted that the expression "*as per actual site*" in the NIT and the Respondent's communication dated 09.02.2018 calling upon the Appellant to finish the additional work was held to be not relevant part of the said letter, results in a perverse finding.

11. It was further submitted that the learned Arbitral Tribunal erred in holding that being a *lump sum* contract, there cannot be a revision of rate. The Appellant's grievance is that the contract contained extremely vague



provisions, and the area of the walls to work on being 4093 sq. meters as against the total area of the walls given as 1524 sq. meters is a glaring error. The learned Arbitral Tribunal's interpretation of *lump sum* as a bar to additional claims was argued to be erroneous since the NIT itself provided for work to be "*as per actual site*".

12. The learned counsel submitted that the learned Arbitral Tribunal misconstrued Section 70 of the Indian Contract Act, 1872, and failed to appreciate the decision of the Hon'ble Supreme Court in ***Food Corpn. of India v. Vikas Majdoor Kamdar Sahkari Mandli Ltd.***, (2007) 13 SCC 544, which held that the term 'extra' is used in relation to the work, which is not expressly or impliedly included in the original contract price and if a party has done additional construction for another not intending to do it gratuitously and such other has obtained benefit, the former is entitled to compensation. It was submitted that the Appellant carried out work measuring 4093 sq. meters instead of 1524 sq. meters, which was enjoyed by the Respondent and, therefore, the Appellant is entitled to the payment for the actual work done.

13. It was further submitted that the learned Arbitral Tribunal ignored the legal maxim *quantum meruit*, as embodied in Section 70 of the Contract Act, 1872 to argue that where one person lawfully does work for another, not intending to do so gratuitously, and the latter enjoys the benefit thereof, compensation must follow. Reference was made to the judgment of the Hon'ble Supreme Court in ***V.R. Subramanyam vs. B. Thayappa & Ors.***, AIR 1966 SC 1034.

14. The learned counsel for the Appellant submitted that the Appellant would be entitled to proportionate extension of time period for 4093 sq.



meters, and that the Appellant was also given additional work, which was connected with the main work. The learned Arbitral Tribunal erred in holding that the Appellant would not be entitled to extra time for the same.

15. As regards the rate of interest, it is submitted that the learned Arbitral Tribunal has awarded the rate of interest at 9% *per annum*, however the Appellant has executed work well beyond the scope of work and, therefore, would be entitled to market rate of interest at 18% *per annum*.

16. On the strength of the above submissions, it was prayed that the Appeal be allowed and the impugned judgment passed by the learned Commercial Court be set aside.

SUBMISSIONS BY THE RESPONDENT

17. The learned counsel for the Respondent has submitted that the present Appeal, filed under Section 37 of the Act is not maintainable and is liable to be dismissed, as the scope of interference under the said provision is limited.

18. The learned counsel for the Respondent submitted that the Appellant had accepted a *lump sum* contract and the contract had the stipulation to inspect the site prior to bidding. The Appellant had visited the site, and was fully aware of the area and quantity of work before submitting and signing the work contract.

19. It was submitted that the relief claimed is beyond the terms and conditions of the contract and the same cannot be entertained. It is pointed out that the Bill of Quantities ('BOQ') specified that quantities would be "*as per actual site*" and the rates would be on a "*lump sum*" basis. The NIT also expressly permitted prospective bidders to inspect the site before submitting their tenders. The Appellant, having availed this opportunity and having



signed the contract thereafter, was fully aware of the site conditions and the extent of work involved.

20. It was submitted that the Appellant raised the issue of alleged excess work only after failing to complete the work within the agreed six-month period. The said demand was raised for the first time after the expiry of the contractual period. That even in the final bill/invoice dated 05.12.2018, the Appellant had claimed only a balance amount of ₹7,26,368/-. The subsequent claim for additional amounts is thus contended to be an afterthought based on the purported execution of extra work.

21. It was submitted that pursuant to the Arbitral Award dated 23.06.2022, the Respondent has duly paid an amount of ₹7,99,991.10/- (inclusive of interest) as full and final payment to the Appellant through Cheque No. 995778 dated 16.08.2022. This payment has been accepted by the Appellant.

22. Therefore, it was submitted on behalf of the Respondent, that in light of the above submissions the present Appeal deserves to be dismissed.

ANALYSIS AND FINDINGS

23. The core issue for consideration is whether the Arbitral Award, as upheld by the learned Commercial Court, suffers from patent illegality warranting interference under Section 37 of the Act.

24. It is observed in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***, 2024 SCC OnLine SC 2632 that:

“14. It is equally settled law that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34



of the Act only and even that power cannot be exercised in a casual and a cavalier manner.

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16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.”

25. In **MMTC Ltd. v. Vedanta Ltd.**, (2019) 4 SCC 163 the Supreme Court has held that:

“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...”

26. In **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project**, (2023) 9 SCC 85 referring to **MMTC Limited** (*supra*) it has been held that:

“19....The scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the arbitral tribunal...”

27. Thus, it is a settled law that judicial intervention in challenge to arbitral awards is extremely limited and is confined strictly to the grounds provided under Section 34 of the Act. Interference is permissible only to the extent specifically provided under Section 34 of the Act. The purpose of



appellate jurisdiction under Section 37 of the Act is limited to examining whether the Court exercising jurisdiction under Section 34 of the Act has exceeded the powers granted. Further, the proceedings under Section 34 of the Act are of a summary nature and not akin to a full-scale civil suit. As such, the scope of appeal under Section 37 of the Act is even more limited. It is not sufficient that an alternative view is possible or even preferable in the opinion of the Court, while considering appeal under Section 37 of the Act. It is in this settled position; the present Appeal is to be considered.

28. The learned Commercial Court while dismissing the application under Section 34 of the Act considered the following provisions of the NIT, wherein:

- The first page of the NIT notes that
“Suggestions: Interested -Bidders may visit our office to inspect conditions of Exterior walls before submission of tender.”
- Special Conditions of the NIT further notes that-
“13. The applicant is advised to visit and examine the site of work and its surroundings and obtain for himself at his own responsibility and cost, all information that may be necessary for preparing & filling the application. The cost of visiting the site and/or obtaining any additional information shall be at applicant's own expenses.”
- The BOQ further carries the words “as per actual site” under the heading “Quantity” for the work of repairing and cleaning of exterior walls and waterproofing the terrace of the head office building of the Respondent.



- Additionally, the General Conditions of Contract in its fourth point has mentioned that-

“4. Type of Contract: It shall be a lump sum contract.”

29. The award was challenged before the learned Commercial Court on the following two issues-

“Issue No. 1- Whether or not the work contract was awarded on lump sum basis and there could be no revision of work estimate?

Issue No. 3- Whether the term in the BOQ "*quantity as per the actual site*" and the bidder to visit the site and inspect and "*lump sum basis*" preclude claimant from raising the dispute of excess area of walls?"

30. To determine the correctness of the view in the impugned judgment, it would be helpful to understand the observations of the learned Arbitral Tribunal, who after evaluating the evidence and submissions held on Issue Nos. 1 and 3 that the Appellant-Claimant was not misled by the figures in the NIT. The numbers in the table that the Appellant is relying on are stated to be approximate and upon perusal of the NIT, it is apparent that the bidders were suggested to inspect the site before submitting their bid. The Contract, including the BOQ and General Conditions, stipulated that the work was to be carried out on a "*lump sum*" basis and "*as per actual site*" conditions. In such circumstances, the learned Arbitral Tribunal found no merit in the Appellant's plea of misrepresentation.

31. The learned Arbitral Tribunal relied on ***Sharma & Associates Contractors v. Progressive Constructions Ltd.*** (2017) 5 SCC 743, to reiterate that it is not open to arbitrators to travel beyond the terms of contract. The learned Arbitral Tribunal has rejected the Claimant's reliance on Section 70 of the Contract Act, 1872 observing that the work executed



was under a binding contract entered into by qualified professionals from the Appellant entity with an opportunity to verify measurements. Accordingly, the learned Arbitral Tribunal found no merit in the claim of vagueness, misrepresentation or mistake in the contract.

32. Relying on ***Union of India v. Jindal Rail Infrastructure Ltd.***, 2022 SCC OnLine Del 1540, the learned Arbitral Tribunal emphasized that a commercial contract cannot be avoided merely because one of the parties subsequently finds it to be commercially unviable. The learned Commercial Court having considered the observations of the learned Arbitral Tribunal on the aspect of the provisions of the NIT and the Appellant's conduct found the view taken by the learned Arbitral Tribunal to be a plausible view.

33. The learned Commercial Court, after referring to Section 34(2A) of the Act and the proviso thereto, and after following the settled principles laid down by the Hon'ble Supreme Court in ***UHL Power Company Ltd. v. State of Himachal Pradesh*** (*supra*), highlighted that the power of the Court under Section 34 of the Act is restricted and that the arbitrator is the ultimate master of both the quantity and quality of evidence to be relied upon. Where two views are possible, the court cannot interfere in the plausible view taken by the arbitrator supported by reasoning.

34. In the present case, the contract having been awarded on a *lump sum* basis and the Appellant having had the opportunity to inspect the site, no concealment or fraud could be imputed to the Respondent. Accordingly, the learned Commercial Court has correctly held that the Award did not suffer from any patent illegality and declined to interfere with the same under Section 34 of the Act. There is no infirmity with the view taken in the impugned judgment.



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35. In view of the above analysis, present Appeal is devoid of merit and is, accordingly, dismissed. Pending application(s), if any, stands disposed of. No orders as to cost.

TEJAS KARIA, J

VIBHU BAKHRU, J

MAY 30, 2025

'HK'/'SMS'