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

Date of Decision: 14th July, 2025

+ **FAO (COMM) 174/2025, CM APPLs. 41001/2025 & 41002/2025**
NEW DELHI MUNICIPAL COUNCILAppellant

Through: Ms. Sakshi Popli, ASC with Mr. Divya
Prakash Pande and Mr. Ravi Krishna
C., Advocates.

versus

RAJ BUILDERSRespondent

Through: Appearance not given.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant-New Delhi Municipal Corporation (*hereinafter* 'NDMC') under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (*hereinafter* 'the Act') challenging the impugned judgment dated 2nd April, 2025 by which the Appellant's petition under Section 34 of the Act has been dismissed.
3. The brief background of this case is that the Appellant-NDMC had awarded the contract to the Respondent-M/s Raj Builders for the construction of 17 flats along with certain amenities at Palike Nilay R.K. Puram Marg SH. The contract was awarded *vide* letter No. (EE/BM-I)/1604-14/D and was valued at Rs. 34,51,081/-. Upon the Respondent's failure to perform the work as per the terms of the contract and within the stipulated period, the Appellant



had levied liquidated damages. The same was not challenged, however, disputes arose at the time of payment to the Respondent, which led to the arbitration clause being invoked, and a sole arbitrator was appointed.

4. Pursuant to the arbitration proceeding, the award dated 29th September, 2019, was passed by the Id. Arbitrator in favour of the Respondent while rejecting the Petitioner's counter claim. *Vide* the said award dated 29th September, 2019 the Id. Arbitrator had granted the following relief in favour of the Respondent:-

“(i) Against Claim no.1 of the respondent, The Ld. Sole Arbitrator has allowed claim of Rs. 3,45,108/- with interest @ 12% per annum from 22.12.2012 till the date of payment.

(ii) Against claim no.3, Ld. Sole Arbitrator allowed the claim to the extent of Rs. 2,04,000/- as damages on account of payment of salary to the Graduate Engineer during the extended contractual period without interest.

(iii) Against claim no.4, the Ld. Sole Arbitrator allowed the claim of the respondent to the extent of Rs. 1,27,700/- from 22.11.2012 with interest @ 12% per annum till realization as the profit due to the losses suffered by the respondent in respect of work not allowed to be done by the respondent.

(iv) Against the claim no.6, the Ld. Sole Arbitrator allowed cost of Arbitration proceedings to the extent of Rs. 1,00,000/- in favour of the respondent.

(v) The Ld. Sole Arbitrator also rejected the Counter claims of the petitioner in the impugned Award dated 20.09.2019.”

5. One of the primary grounds on which the learned Arbitrator passed the award was the failure of the Appellant-NDMC, to make the site available for execution of the work, as per the terms of the contract. Aggrieved by the said award, the Appellant filed a petition under Section 34 of the Arbitration and



Conciliation Act, 1996 (*hereinafter 'the Act'*), before the learned District Judge (Commercial-1), Patiala House Courts, New Delhi, in **OMP (COMM) No. 242 of 2019**.

6. Ld. District Judge, upon hearing the parties, *vide* the impugned order dated 2nd April, 2025 held that the arbitral award does not warrant interference under Section 34 of the Act on the grounds that the arbitral award was well reasoned and there was nothing on record to show that said award was against the terms of the agreement or the public policy. The present appeal has been filed challenging the said order dated 2nd April, 2025.

7. Today, the only point which is being pressed in this appeal is whether at the time of granting extension of time, the NDMC could have charged the compensation/withheld the said compensation from the amounts payable to the contractor, in terms of the contract.

8. No other issue is being pressed.

9. Insofar as the said issue of withholding of certain amounts is concerned, NDMC relies upon Clause 2 of the Agreement to argue that it is fully empowered to demand compensation for extension of time. Clause 2 reads as under:

“Clause 2

Compensation for delay

If the contractor fails to maintain the required progress in terms of clause 5 or to complete the work and clear the site on or before the contract or extended date of completion, he shall, without prejudice to any other right or remedy available under the law to the NDMC on account of such breach, pay as agreed compensation the amount calculated at the rates stipulated below as the Chief Engineer (whose decision in writing shall be final and binding) may decide on



the amount of tendered value of the work for every completed day/month (as applicable) that the progress remains. below that specified in Clause 5 or that the work remains incomplete.

This will also apply to items or group of items for which a separate period of completion has been specified.

Compensation for delay of work @ 1.5% per month of delay to be computed on per day basis

Provided always that the total amount of compensation for delay to be paid under this condition shall not exceed 10% of the Tendered Value of work or to the Tendered Value of the item or group of items of work, which a separate period of completion is originally given. The amount of compensation may be adjusted or set-off against any sum payable to the contractor under this or any other contract with the NDMC. In case, the contractor does not achieve a particular milestone mentioned in schedule -A or the rescheduled milestone (s) in terms of clause 5.4, the amount shown against that milestone shall be withheld, to be adjusted against the compensation levied at the final grant of extension of time. Withholding of this amount on failure to achieve a milestone shall be automatic without any notice to the contractor. However, if the contractor catches up with the progress of work on the subsequent milestone (s), the withheld amount shall be released. In case the contractor fails to make up for the delay in subsequent milestone(s), amount mentioned against each milestone missed subsequently also shall be withheld. However, no interest, whatsoever, shall be payable on such withheld amount.”

10. A perusal of the above clause would reveal that there can be no doubt that the NDMC is fully empowered under the contract to demand compensation or retain amounts, when extension is granted. The discretion to grant an extension is vested with the Chief Engineer, NDMC. However, in the



present case, as set-out in the impugned judgment itself, the Arbitrator came to the conclusion that the levying of compensation was not justified as the delay was due to the late handing over of the site by the NDMC, and not due to the Contractor's fault. This issue is a completely factual issue and does not in any manner impinge, in general, upon the power of the NDMC to levy compensation. The observation of the Id. Single Judge, as captured in Paragraph 30 of the impugned judgment, reads as under:

“30. In this regard, Ld. Sole Arbitrator observed that Clause 2 of the Contract speaks about the essence of the time line as mentioned in the contract or in the extended time and as per Clause 2 of the Contract, if the contractor fails to maintain the required progress in terms of clause 5 or to complete the work in the extended time, the NDMC would be entitled for compensation for such breach. The Ld. Sole Arbitrator has also noted that the main cause of delay as recorded by the officials of the petitioner in Ex. C4-A, is non availability of the site to the contractor to complete the work and the petitioner allowed the contractor to continue with the job even after the expiry of the stipulated period and it was done without raising any objection and observed that under the circumstances, it cannot be said that the respondent was at fault for not completing the work in the extended time and therefore, it was not justified on the part of the petitioner to levy compensation while granting EOT. Though the petitioner has averred that the respondent did not submit the request for EOT in prescribed performa in spite of the request made for that purpose however, as has been noted by the Ld. Sole Arbitrator that the respondent has placed on record the letter dated 15.12.2011 addressed to E.E. with the request to issue EOT performa and noting below the said letter confirms that the department of the petitioner had issued the performa on 16.12.2011 and found that EOT was sanctioned by the petitioner but there was no



mention that filled in perform was not submitted by the contractor and it caused the levy of compensation and with or without the filled in performa, the petitioner has allowed EOT and thus, there was no occasion for the petitioner to levy the compensation while permitting EOT after more than two and half year of the recording of completion of the contractual work and found that levy of compensation of Rs. 3,45,108/- is not justified.”

11. A perusal of the above would reveal that the Id. Arbitrator came to the conclusion primarily based on the fact that there was a delay in handing over the site, and it was only in view thereof that the contractor was allowed to continue with the job after expiry of the stipulated period. Under such circumstances, the withholding of the amount of Rs. 3,45,108/- was held to be not justified.

12. That being said, the Supreme Court, *vide* a number of decisions, has repeatedly reiterated the need for minimal interference in Arbitral awards, especially in an appeal under Section 37 of the Act. The Supreme Court in ***Larsen Air Conditioning and Refrigeration Company vs Union of India*** (Civil Appeal No(s). 3798 of 2023)

The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality i.e. that “illegality must go to the root of the matter and cannot be of a trivial nature”; and that the Tribunal “must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground” The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it



has been upheld, or substantially upheld under Section 34.”

13. Similarly, the Supreme Court in the case of **Konkan Railway Corporation Limited vs Chenab Bridge Project Undertaking** [2023 INSC 742] also reiterated the principle that a merit-based review of an arbitral award involving reappraisal of factual findings is impermissible. The relevant portion of the said judgment is extracted below:

*“14. At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in **MMTC Ltd. Vs. Vedanta Ltd.**, is akin to the jurisdiction of the Court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.*

*15. Therefore, 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. In **Dyna Technologies Private Limited v. Crompton Greaves Limited** (2019) 20 SCC 1, this Court held:*

"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in



its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

14. In view of the above decisions and the fact that the challenge in the present appeal relates to a factual question, the Court is of the opinion that the impugned award or the impugned judgment does not warrant interference.

15. In this view of the matter, the appeal and pending applications are dismissed and disposed of.

**PRATHIBA M. SINGH
JUDGE**

**RAJNEESH KUMAR GUPTA
JUDGE**

JULY 14, 2025/MR/Ar.