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

Date of decision: 20th FEBRUARY, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 381/2024 & I.A. 38567/2024**

DELHI METRO RAIL CORPORATION LTD.Petitioner

Through: Mr. Tarun Johri, Mr. Ankur Gupta
and Mr. Vishwajeet Tyagi,
Advocates.

versus

HCC SAMSUNG JVRespondent

Through: Mr. Dayan Krishnan, Senior
Advocate with Mr. Nitin Bhatia, Mr.
Deepank Singhal, Ms. Simran Rao,
Mr. Shridhar, Ms. Yugandhara Pawar
Jha, Ms. Yasha Goyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has filed this petition under Section 34 of the Arbitration & Conciliation Act, 1996 challenging an Award dated 23.02.2024 passed in favour of the Respondent, specifically with respect to Claim No.1, 2, 3 & 6 whereby the Respondent was awarded a sum of Rs.60,28,15,579/-.
2. The brief facts giving rise to the present petition are as follows:-
 - i. On 30.08.2012, notice inviting tender was issued by the Petitioner for design, construction of tunnels from Ch. (-) 830.912 near Janakpuri West underground station to Palam underground metro station (excluding Ch. (+) 4591.630) by shield TBM; Janakpuri



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West, Dabri Mor and Dashrath Puri underground metro stations by cut and cover method and works in connection with interchange facilities between existing elevated metro stations and proposed underground metro station at Janakpuri West on Janakpuri West-Kalindi Kunj corridor under the Delhi MRTS project Phase III.

- ii. The Respondent submitted its bid for the said tender on 23.11.2012 and emerged as the successful bidder. A Letter of Acceptance dated 07.02.2013 was issued in favour of the Respondent for a value of Rs. 8,65,98,00,000/-.
- iii. The Petitioner and Respondent entered into a Contract Agreement dated 28.02.2013, according to which the work commenced from 18.02.2013 and the stipulated date of completion was 39 months, i.e., by 17.05.2016.
- iv. The project could not be completed within the stipulated time and multiple Extension of Time (EoT) was granted by the Petitioner herein to the Respondent for completion of the project.
- v. On 30.07.2018, the Respondent herein submitted a claim for compensation on account of variations under the contract as well as delay in completion of the contract. The same was rejected by the Petitioner vide letter dated 22.03.2018.
- vi. Disputes arose between the parties and efforts to resolve the disputes through mutual negotiations failed.
- vii. Respondent herein invoked arbitration clause under the agreement dated 07.09.2019 whereafter the Arbitral Tribunal was constituted on 24.09.2020.



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viii. The majority award with respect to Claim No.1, 2, 3 and 6 was awarded in favour of the Respondent and the Petitioner's counter claims were rejected. Record indicates that the dissenting opinion was passed on 28.02.2024 whereafter an application under Section 33 of the Arbitration & Conciliation Act was filed by the Petitioner herein. The same was dismissed on 03.06.2024 whereafter the present petition was filed on 31.08.2024.

3. Before advertng to the arguments by both sides it would be imperative to bring out a list of dates for the case.

23.02.2024	Date of Award and receipt of award by Petitioner
22.03.2024	Date of filing of Application under Section 33 of the Arbitration & Conciliation Act.
03.06.2024	Date of dismissal of Section 33 Application by the Arbitral Tribunal
31.08.2024	Petition under Section 34 of the Arbitration & Conciliation Act filed by the Petitioner,

4. A preliminary issue regarding limitation has been raised by the learned Senior Counsel for the Respondent. Learned Senior Counsel submits that the application under Section 33 filed by the Petitioner was in the nature of a review. It is contended by the Respondent, that even though the Petitioner may purport that they sought correction of computational and typographical errors in the Award, the application was actually a comprehensive review of the award on merits. It is contended that Section 33 forbids such a review. The said application was dismissed by the Arbitral Tribunal *vide* Order dated 03.06.2024. It is stated that when the petition under Section 33 is filed as a review petition then that party is not entitled to



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claim the time taken from the filing of the petition under Section 33 till its disposal for challenging the award under Section 34 of the Arbitration & Conciliation Act.

5. Per contra, learned Counsel for the Petitioner states that the application under Section 33 of the Arbitration & Conciliation Act is not a mere review of the award. The learned Counsel for the Petitioner submits that the said application had been filed for a very limited purpose, that limited purpose being correction of factual errors made by the Arbitral Tribunal. It is stated by the learned Counsel for the Petitioner that the application under Section 33 of the Arbitration & Conciliation Act was bonafide and *terminus quo* for calculating the limitation for challenging the award under Section 34 of the Arbitration & Conciliation Act would begin from the date of disposal of the application, i.e., 03.06.2024

6. Therefore in light of the aforementioned facts the moot question of law which emerges for the consideration of this Court in the present case is whether the *terminus quo* would start from the date of disposal of Section 33 application or from the date of the receipt of a signed copy of the arbitral award.

7. Section 33 and 34(3) of the Arbitration & Conciliation Act are being reproduced, which reads as under :-

"33. Correction and interpretation of award; additional award.—(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other



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errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.



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34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

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3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

(emphasis supplied)

8. A perusal of Section 34(3) of the Arbitration & Conciliation Act shows that the time limit to challenge an Award can be summarized as under:

(i) An application for setting aside the award can be filed within 3 months from the date of receipt of the award. The application can also be filed within 30 days after the period of three months with an application for condonation of delay but not thereafter. Meaning thereby, a grace period of 30 days is given over and above the 3 months' period, provided that sufficient reasons are given as to why the application was not filed within a period of 3 months.

(ii) In case, an application is filed under Section 33 of the Arbitration &



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Conciliation Act, then the 3 months for filing an application for setting aside the award will start on the date on which the application under Section 33 is disposed of by the Tribunal.

9. In case of Gyan Prakash Arya v. Titan Industries Ltd., (2023) 1 SCC 153, the Hon'ble Supreme Court dealt with a situation wherein the Respondent had moved an application under Section 33 of the Arbitration & Conciliation Act seeking an increment in the valuation of gold, based on the prevailing market value, that the Petitioner was required to pay to the Respondent pursuant to passage of the award. The Hon'ble Supreme Court while setting aside the order of the Arbitral Tribunal in the Section 33 application, noted as under:-

*"13. The original award was passed considering the claim made by the claimant as per its original claim and as per the statement of the claim made and therefore subsequently allowing the application under Section 33 of the 1996 Act to modify the original award in exercise of powers under Section 33 of the 1996 Act is not sustainable. **Only in a case of arithmetical and/or clerical error, the award can be modified and such errors only can be corrected.** In the present case, it cannot be said that there was any arithmetical and/or clerical error in the original award passed by the learned arbitrator. **What was claimed by the original claimant in the statement of claim was awarded. Therefore, the order passed by the learned arbitrator on an application filed under Section 33 of the 1996 Act and thereafter modifying the original award cannot be sustained. The order passed by the learned arbitrator in the application under Section 33 of the 1996 Act is beyond the scope and ambit of Section 33 of the 1996 Act. Therefore, both, the City Civil Court as well as the High Court have committed a grave error in dismissing the arbitration suit/appeal***



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under Sections 34 and 37 of the 1996 Act respectively. The modified award passed by the learned arbitrator allowing the application under Section 33 of the 1996 Act cannot be sustained and the same deserves to be quashed and set aside."

(emphasis supplied)

10. In State of Arunachal Pradesh v. Damani Constructions, (2007) 10 SCC 742, the Hon'ble Supreme Court has clearly elucidated the legal principles governing the applicability and scope of Section 33 of the Arbitration & Conciliation Act and that time available to challenge the award if the petition under Section 33 of the Arbitration & Conciliation Act is a review camouflaged as an application under Section 33 of the Arbitration & Conciliation Act. The relevant portion of the said judgment reads as under:-

"8. Firstly, the letter had been designed not strictly under Section 33 of the Act because under Section 33 of the Act a party can seek certain correction in computation of errors, or clerical or typographical errors or any other errors of a similar nature occurring in the award with notice to the other party or if agreed between the parties, a party may request the Arbitral Tribunal to give an interpretation of a specific point or part of the award. This application which was moved by the appellant does not come within any of the criteria falling under Section 33(1) of the Act. It was designed as if the appellant was seeking review of the award. Since the Tribunal had no power of review on merit, therefore, the application moved by the appellant was wholly misconceived. Secondly, it was prayed whether the payment was to be made directly to the respondent or through the court or that the respondent might be asked to furnish bank guarantee from a nationalised



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bank as it was an interim award, till final verdict was awaited. Both these prayers in this case were not within the scope of Section 33. **Neither review was maintainable nor the prayer which had been made in the application had anything to do with Section 33 of the Act.** The prayer was with regard to the mode of payment. When this application does not come within the purview of Section 33 of the Act, the application was totally misconceived and accordingly the arbitrator by communication dated 10-4-2004 replied to the following effect:

“However, for your benefit I may mention here that as per the scheme of the Act of 1996, the issues/claims that have been adjudicated by the interim award dated 12-10-2003 are final and the same issues cannot be gone into once again at the time of passing the final award.”

9. Therefore, the reply given by the arbitrator does not give any fresh cause of action to the appellant so as to move an application under Section 34(3) of the Act. In fact, when the award dated 12-10-2003 was passed the only option with the appellant was either to have moved an application under Section 34 within three months as required under sub-section (3) of Section 34 or within the extended period of another 30 days. But instead of that a totally misconceived application was filed and there too the prayer was for review and with regard to mode of payment. **The question of review was totally misconceived as there is no such provision in the Act for review of the award by the arbitrator and the clarification sought for as to the mode of payment is not contemplated under Section 33 of the Act. Therefore, in this background, the application was totally misconceived and the reply sent by the arbitrator does not entitle the appellant a fresh cause of action so as to file an application under Section**



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34(3) of the Act, taking it as the starting point of limitation from the date of reply given by the arbitrator i.e. 10-4-2004."

(emphasis supplied)

11. In Vidhur Bhardwaj v. Horizon Crest India Real Estate, **2022 SCC OnLine Del 3829**, a Coordinate Bench of this Court categorically noted that an incompetent application under Section 33 of the Arbitration & Conciliation Act would not extend the period of limitation. The relevant excerpts are as follows:-

"40. Having stated above, it is also obvious that filing of an application under Section 33 of the A&C Act, which is wholly incompetent and cannot by any stretch of imagination be considered as a request under Section 33 of the A&C Act, would not extend the period of limitation to file the petition under Section 34 of the A&C Act.

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43. It is also relevant to note that the appellant had sent the letter much after the stipulated period for filing an application under Section 33 of the A&C Act had expired. It is clear from the decision of the Supreme Court that in cases, where any application is filed, which is wholly incompetent, misconceived and there is no doubt that it does not fall within the scope of Section 33 of the A&C Act; the decision on the same would not extend the period of limitation and the Court would disregard the said application.

44. In D.M. Jawhar Merican v. Engineers India Ltd. (supra), the Division Bench of this Court considered a case where the objector had filed an application seeking enhancement of the compensation awarded by the arbitrator. The Court found that the said



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application was clearly in the nature of seeking a review and amounted to re-assertion of the claim for higher amount of damages.

45. If a party harbours a bona fide belief that there is an apparent inadvertent error in the arbitral award, which requires correction, the application filed by the party under Section 33 of the A&C Act must necessarily be construed as such, notwithstanding the fate of the said application. It is possible that on a detailed examination of the contents of the application, an arbitral tribunal or a court may find that the relief sought cannot be granted under Section 33 of the A&C Act. The arbitral tribunal may find that what is claimed to be an inadvertent error is not so. But that does not mean that the limitation would run from the date of the receipt of the award and not from the date on which an application under Section 33 of the A&C Act is decided. As noted hereinbefore, the period of limitation for filing a petition under Section 34 of the A&C Act runs from the date of the decision under Section 33 of the A&C Act not only for the said applicant but for all other parties to the arbitration as well. It would lead to uncertainty if all parties are required to second guess the outcome of an application under Section 33 of the A&C Act for calculating the period within which they may file the petition under Section 34 of the A&C Act.”

12. The legislative intent behind Section 33 of the Arbitration & Conciliation Act was to permit rectification of typographical and computational mistakes and nothing more. The Judgment of the Apex Court in Damani Constructions (supra) and Vidhur Bhardwaj (supra) has in no uncertain terms held that if the application under Section 33 of the Arbitration & Conciliation Act is purely an application for review, then the person seeking to challenge the award cannot avail of the time taken



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between the filing of the application under Section 33 of the Arbitration & Conciliation Act and the date of disposal for calculating the period to challenge the award.

13. The Arbitration and Conciliation Act, 1996 has been enacted keeping in mind expeditious, efficacious and speedy disposal of disputes through an alternative mode of dispute resolution with minimum intervention of the Courts. It cannot be denied that the foremost purpose of enacting the Arbitration and Conciliation Act, 1996, was the facilitation of speedy, fair, and inexpensive resolution of disputes through arbitration, thereby curtailing the supervisory intervention of the Courts. The legislative scheme of Section 33 is clear, unambiguous, and precise. It should only be confined to the rectification of mere clerical, typographical, or computational errors. Section 34 on the other hand mandates that any application for setting aside an arbitral award be strictly confined within the stipulated limitation period, commencing from the date of receipt of the award or, in the case of a bona fide application under Section 33, from the date of disposal of such an application. The purpose behind enactment of the Arbitration & Conciliation Act was to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration. Furthermore, the Act aims to minimise the supervisory role of courts in the arbitral process. Section 33 of the Arbitration & Conciliation Act cannot be allowed to be used as a tool to prolong limitation under Section 34.

14. A perusal of the material on record indicates that the Petitioner in its Section 33 application has questioned the very basis of Tribunal's reasoning and methodology adopted by the Tribunal for arriving at their reasoning.

15. While dealing with the application of the Petitioner under Section 33



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the Arbitral Tribunal has held as under:-

“14. Though the Respondent has claimed that it is moving the Application under Section 33(1)(a) of the of the Arbitration and Conciliation Act, 1996 to correct typographical errors in the award, it is seen that the grievances of the Respondent in the application goes far beyond and seek to question the merits of the findings in the award. The grievances of the Respondent can be summarized into the following points

- i. Wrong methodology has been used by the Arbitral Tribunal to quantify the amounts found due to the Claimant*
- ii. There is an incorrect understanding of the material on the record by the Arbitral Tribunal*
- iii. The Arbitral Tribunal has failed to account for certain aspects that would have benefited the Respondent*
- iv. The Arbitral Tribunal has incorporated elements in the quantification that it should not have done*
- v. The Arbitral Tribunal has awarded Claims in the absence of evidence.*

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18. A reading of the Application shows that the grievances sought to be raised by the Respondent actually challenge the findings of the Arbitral Tribunal on the merits and effectively amount to asking for a review of the findings in the arbitral award. The Respondent is in effect seeking a modification of the award. Aside from the fact that the Claimant has stated that the alleged errors in the award as alleged by the Respondent do not exist, it is important to note at the preliminary stage itself that these allegations cannot be considered by the Arbitral Tribunal in the limited jurisdiction under Section 33(1)(a) of the Arbitration and Conciliation Act, 1996.



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The Respondent has even filed a fresh Annexure with the said Application containing certain calculations and has even requested for site-visit at this stage i.e. after entirely adjudicating the dispute(s) between the parties and passing the final award. This is nothing but an attempt to reargue the matter on the merits and to seek a modification of the findings in the award. Therefore, in the light of the clear wordings of Section 33(1)(a) of the Arbitration and Conciliation Act, 1996 and judgements on the point, the grievances raised by the Respondent fall outside the scope of the provision that has been invoked by it. The Application filed by the Respondent is thus not maintainable under Section 33(1)(a) of the Arbitration and Conciliation Act, 1996. Hence, there is no merit in the Application and the same is dismissed. ”

(emphasis supplied)

16. The Apex Court in Damani Constructions (supra) has held that only when an application under Section 33 meets the threshold laid out in Section 33(1) would the *terminus quo* under Section 34(3) apply. Merely because an application is styled as one under Section 33 of the Act, the objector would not be entitled to the extension of limitation under Section 34 of the Act.

17. When an application is outside the scope of Section 33, limitation under Section 34(3) must be interpreted in a conservative manner and in consonance with the aims and objectives of the Arbitration & Conciliation Act. Applying the dictums of the cases discussed above to the facts of the present case, this Court is of the view that Section 33 cannot be allowed to be used as a stratagem for prolonging limitation under Section 34, as it would undermine legislative intention and be against the spirit of the Arbitration & Conciliation Act.

18. A review of the Award is unequivocally proscribed by the Act. Such



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an approach subverts the purpose of Section 33, rendering the application ineligible for the benefit of an extended limitation period under Section 34(3). The unequivocal mandate of the Arbitration & Conciliation Act is to effectuate a streamlined, self-contained dispute resolution mechanism that affords minimal recourse to protracted review.

19. Permitting time taken in disposal of application under Section 33 which are in the nature of a review in all cases will create a situation where such applications are used by vexatious parties to delay in challenging an award which will defeat the spirit with which the Arbitration & Conciliation Act was enacted.

20. Therefore, given that the *terminus a quo* for the application was the date of receipt of the award (i.e. 23.02.2024) and the date of filing the present petition is 31.08.2024, the present petition is barred by limitation and is, therefore, dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 20, 2025

hsk/vr