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

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Date of Decision: 08.09.2025+ **FAO (COMM) 250/2025**

M/S SPML INFRA LIMITED

.....Appellant

Through: Mr. Kritiman Singh, Senior Advocate
with Mr. Kaushik Chatterjee, Mr.
Sourav Dutta, Advocates

versus

MIS BHAVANI ENTERPRISES THROUGH
PROPRIETOR RAVI KUMAR RATHOD

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO, J. (ORAL)****CM APPL. 56080/2025 (condn of delay in re-filing)**

1. For the reasons stated in the application, the delay of 62 days in re-filing the appeal stands condoned.
2. The application stands disposed of.

FAO (COMM) 250/2025

3. This is an appeal filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 (**A&C Act**) challenging the order



passed by the learned District Judge (Commercial Court)-06, South East District, Saket Courts, New Delhi (learned District Judge) in OMP (COMM) No.58/2024 filed by the appellant under Section 34 of the A&C Act against the arbitral award dated 30.03.2024, whereby the learned District Judge has disposed of the petition filed by the appellant by stating as under:-

“103. The decision on claim no. 1 is clearly separable from claim no 2 and 3 since claim no. 1 has arisen out of Work Order no. 4900002780 dated 25.09.2011 whereas claim no. 2 and 3 have arisen from Work Order No.SIILMBMCIWOI 13-141001-00 (later amended) dated 10.10.2013 which are distinct and separate work orders as per own case of petitioner as well and the amounts claimed under claim no.1, 2 and 3 have been specifically mentioned by Respondent no.1.

104. Therefore, claim no.1 for an amount of Rs.19,35,634/, admittedly submitted to arbitration is separable from claim no.2 for an amount of Rs.36,77,071/- and claim no.3 for an amount of Rs.34,11,468/- those not so submitted.

105. The arbitral award dated 30.03.2024 has been passed for a composite amount of Rs.90,24,173/- with interest thereon @12% from the date of invocation of arbitration clause by Respondent no.1 by issuing notice dated 27.12.2019 till the date of the award and @ 9% from the date of award till realization. The award is partly set-aside to the extent that the petitioner was directed to make payments amounting to Rs.70,88,539/- arising from the other contracts alongwith interest thereon @12% from the date of invocation of arbitration clause by Respondent no. 1 by issuing notice dated 27.12.2019 till the date of the award and @ 9% from the date of award till realization; while upholding the arbitral award to the extent of allowing claim no.1 for an amount of



Rs.19,35,634/- interest thereon @12% from the date of invocation of arbitration clause by Respondent no. 1 by issuing notice dated 27.12.2019 till the date of the award and @ 9% from the date of award till realization.”

4. The learned District Judge has upheld the award to the extent of claim no.1, and set aside the award to the extent of claims no.2 & 3. The appeal has been filed by the appellant herein to the extent that the learned District Judge has upheld the claim no.1., whereby the learned Arbitrator awarded an amount of ₹19,35,634/- with interest thereon @ 12% per annum from the date of invocation of the arbitration clause by the respondent no.1 by issuing notice dated 27.12.2019 till the date of the award and 9% per annum from the date of the award till the realisation.

5. The submission of Mr Kirtiman Singh, learned senior counsel for the appellant primarily is that the claim no.1 was also barred by limitation and as such the learned District Judge should have followed the same conclusion as award drawn by him against the claims no.2 & 3.

6. Suffice to state, that the disputes had arisen between the parties in respect of the construction of underground sewage pipeline. The appellant was the main contractor of respondent no.2 namely, Mira Bhyander Municipal Corporation (MBMC) in Maharashtra. The appellant had appointed multiple sub contractors including the respondent no.1 herein. All the sub contractors appointed by the appellant in MBMC project had their respective scope of the works. The appellant had issued the work order dated 25.09.2011 to the respondent no.1 thereby delegating a part of its work under the MBMC project to respondent no.1.



7. As noted by the learned District Judge, Clause no.5 of the Special Conditions of the Contract provides for terms of payment wherein it was envisaged that the appellant would retain 5% of the Running Account (RA) bills eligible for payment to be released, after successful completion of work/Defect Liability Period (DLP) as defined in clause 33 of the General conditions of contract to mean 12 months from the date of commissioning of the work or as specified in the contract documents whichever is later.

8. It is conceded position that the respondent no.1/claimant had submitted its six RA bills to the appellant in respect of said work order, the last one being dated 07.06.2012. It is also conceded position that 95% of the amount of the bills have been paid by the appellant to respondent no.1. The claim of respondent no.1 was primarily with regard to the balance 5% of the six bills, which have been retained by the appellant under the work order dated 25.09.2011.

9. As is clear from the list of dates, the appellant on 09.04.2019 had terminated the contract. It is the case of the respondent that it had made request for the payment of the bills. Even after the termination of the contract, the respondent no.1 herein had made claim to the appellant for the release of the balance amount and had reiterated the same vide its letter dated 20.08.2019 also. It is also noted that the case of the appellant is that the respondent no.1 had failed to rectify the deficiencies in the project and as such it had withheld the amount. It was also the case of the appellant that it had appointed a third party namely M/s Accord Watertech Infrastructure Private Limited to complete the balance work under the project independently.



10. The conclusion drawn by the learned District Judge on the issue of limitation, as was urged by Mr Kirtiman Singh, is reproduced as under:

“87. The fact is that no issue from issue no. 1 to 9 at all delve into issue of limitation.

88. Learned Arbitrator proceeded to record that:

“It is also proved on record that respondent no. 1 has taken contradictory stand in respect of the claims of the claimant in pleadings which is contradictory to the documentary evidence which has come on record before this tribunal and, whereas their own witness RW-1 has admitted the facts which completely falsify the case set up by respondent no.1 to deny the claims of the claimant.

It has also come on record that claimant had performed the work assigned to him under Exb.CW1/1 w.e.f. 2011 to May 2012 and thereafter from 2013 to 2015, the claimant had carried out the work assigned to him by respondent no.1 & 3 (subcontractor) vide Exb.CW1/3 and Exb.CW1/4 till the year 2015. It is also an admitted fact that vide letter dated 17.01.2015 Exb.CW1/5 (as corroborated in ground 'r' in statement of defense also), respondent no.1 terminated the Sub-contract of respondent no.3 and respondent no.1 had undertaken the control of the said work orders Exb.CW1/3 and Exb.CW1/4 as well as also undertook to pay the amount/financials due to all the subcontractors from the period 2012 onwards which covered the case of the claimant also. It is also an admitted fact that pursuant to confirmation dated 30.07.2015 Exb.CW1/6 by respondent no.3 confirming outstanding payment of claimant to the tune



of Rs.56,87,071/- respondent no.1 had paid admittedly a sum of Rs.20,10,000/- to claimant for the works covered under Exb.CW1/3 and Exb.CW1/4 which fact has been admitted by respondent no.1 witness in answer to question no. 46. ”

89. The said observations deal with not only Work Order No. SIILIMBMCIWOI 13-141001-00 (later amended) dated 10.10.2013, Ex. CW-1/3 and Ex. CW-1/4. but also Work Order no. 4900002780 dated 25.09.2011, Ex. CW-1/1 for which the issue no. 10 was not framed reflecting non-applicability of mind of learned arbitrator.

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94. Letter dated 18.03.2019 does not pertain to Ex. CW-1/3 or Ex. CW-1/4, i.e. Work Order No. SIILIMBMCIWOI 13-141001-00 (later amended) dated 10.10.2013, Ex. CW-1/3 and Ex. CW-1/4. but pertains to Work Order no. 4900002780 dated 25.09.2011, i.e. Ex. CW-1/1 but learned arbitrator has referred to the Letter dated 18.03.2019 for deciding issue of limitation of Work Order No. SIILIMBMCIWOI 13-141001-00 (later amended) dated 10.10.2013 reflecting that learned arbitrator had not even perused Letter dated 18.03.2019.”

11. The conclusion of the learned District Judge is that the learned Arbitrator has dealt with the issue of limitation in respect of the work order dated 25.09.2011. It may be stated that on the other claims, the learned District Judge in paragraphs 97-99 has held as under:-

“97. When the period of limitation to claim the amount of alleged Rs.70,88,539/- under the Work Order No. SIILIMBMCIWOI 13-141001-00 (later amended) dated 10.10.2013 expired on 26.02.2019, there is no question



of applicability or even reference of judgment in 'suo moto cognizance' of Hon'ble Supreme Court.

98. In view of these observations, the findings of Learned Arbitrator are perverse and absurd in respect of deciding the alleged claims arising out of Work Order No. SIILIMBMCIWOI 13-141001-00 (later amended) dated 10.10.2013 to have been filed within limitation. The said finding is against the law of limitation as contained in The Limitation Act, 1963.

99. The perversity of the award in respect of Claim no.2 and 3 goes to the root of the matter without there being a possibility of alternative interpretation of issue of limitation.”

12. We are concerned, with claim no.1. The finding of the learned District Judge is that claim no.1 is clearly separable from claims no.2 & 3 and as such claim no.1 is within limitation. This conclusion of the learned District Judge is primarily because the appellant had not taken any objection that the learned Arbitrator lacked jurisdiction to entertain the disputes arising out the said work order. In any case, the appellant had terminated the contract only 09.04.2019 on the ground that the respondent failed to rectify the deficiencies. In fact the notice dated 08.03.2019 clearly called upon the respondent no.1 to rectify the deficiencies left unaddressed. It was also made clear in the said notice that if the defaults on the part of the respondent no.1 are not addressed within a period of 30 days, the appellant shall be constrained to terminate the work and get the balance work done by a third party at the cost and peril of the respondent no.1.

13. The work order having been terminated on 09.04.2019, surely, the respondent no.1 was within its right to invoke the arbitration clause on 27.12.2019, pursuant to which a learned Single Judge of this Court had



appointed the Arbitrator, as it is at that point of time, the disputes with regard to the 5% of the RA bills, had crystallised. This we say so, as 5% was only payable after the successful completion of the work/after expiry of the DLP and it is the case of the appellant itself that deficiencies were left unaddressed.

14. If that be so, we do not see any merit in the appeal. Suffice it to state, the scope of an appeal under Section 37 of the A & C Act is narrower than the scope of judicial review under Section 34. In fact, the Supreme Court in the case of **Somdatt Builders-NCC-NEC(JV) v. NHAI & Ors., Civil Appeal No. 2058/2012** has observed as under:

“36....As far as interference with an order made under Section 34 by the court under Section 37 is concerned, it has been held 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...”

15. It cannot be said that the conclusion of the learned District Judge is a perverse finding. There is justifiable basis for the learned District Judge to arrive at the said conclusion upholding the award to the extent of claim no.1, which is under challenge in this appeal.

16. In so far as the prayer of the appellant for allowing its counter claim is concerned, we find no such submission has been made during hearing. That apart, we also note that even before the learned District Judge, no prayer was made with regard to the counter claim. The relevant paragraph of the



impugned order reads as under:

“102. The petitioner has only prayed for setting aside the arbitral award dated 30.03.2024 but has not made any prayer for allowing its counterclaim which has been rejected by learned arbitrator in the impugned award dated 30.03.2024.”

17. In view of the above, we do not find any reason to interfere with the impugned order.

18. Accordingly, the appeal is dismissed. No costs.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 08, 2025

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