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

Date of decision: 11th September, 2025

+ **FAO (COMM) 264/2025 & CM APPL. 57328/2025, CM APPL. 57329/2025, CM APPL. 57330/2025**

UNION OF INDIA

.....Appellant

Through: Mr. Ashish K. Dixit, CGSC along
with Mr. Shivam Tiwari, Mr.
Umar Hashmi, Mr. Mayank
Upadhyay, Advocates.

versus

R S CONSTRUCTION AND ANR

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT (ORAL)

ANISH DAYAL, J.

1. This appeal assails the judgment dated 28th May 2025 passed by District Judge (Commercial Court-01), Patiala House Courts, New Delhi in O.M.P.(Comm) no.177/2019. By the impugned judgment, the District Judge dismissed appellant's objection under Section 34 of the Arbitration & Conciliation Act, 1996 ('*A&C Act*'), and confirmed the arbitral award dated 30th May 2019 rendered by the Sole Arbitrator. Before the Sole Arbitrator, respondent (claimant therein) alleged contractual breaches in respect of public works contract for "*improvement to level crossing, including the road repair and construction of boundary wall, between No-TPZ under ADEN/SMQL*".

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FAO (COMM) 264/2025

Page 1 of 23



2. Appellant/ Ministry of Railways, Northern Railways, New Delhi had awarded a contract on 24th May 2011 to respondent no.1 for carrying out the aforesaid public works contract to be completed within a period of six months, i.e. on or before 23rd November 2011.

3. Respondent no.1 alleged in the statement of claim that work could not be completed as neither the worksite was handed over nor were requisite instructions given for execution of the work. On the contrary, appellant contended that the delay was due to respondent no. 1's own fault and negligence, namely the shortage of skilled labour and the non-availability of goods and materials. Accordingly, they sought an extension of time to complete the work. Three extensions were sought *vide* letters dated 13th January 2012, 15th June 2012, and 9th March 2013. The first extension was sought on account of heavy rain, the second due to a shortage of skilled labour and non-availability of goods and materials, and the third because of heavy rain and a ban on mining.

4. The first extension was granted on 22nd February 2012 till 31st May 2012 with a token penalty of Rs.5,000/-, second extension was granted on 26th June 2012 for completion of work till 31st October 2012 and the third extension was granted for completion of work up till 30th June 2013 under *Clause 17(b)* of the General Conditions of Contract ('GCC'). Appellant submitted that even after expiry of extended period to complete the work, appellant provided sufficient opportunities to respondent no.1 to complete the remaining work but they failed to avail the same and thus, respondent no.1 has no right to claim refund/release



of earnest money and performance guarantee/security deposit from appellant, which has been rightly forfeited by appellant. Besides, appellant had paid the entire consideration for quantum of work executed by respondent No.1.

5. Appellant, observing persistent delays and unsatisfactory progress at the work site, issued repeated communications *inter alia* letters dated 08th February 2012, 26th February 2012, 09th May 2012, 05th July 2012 and 11th February 2014 directing respondent no.1 to deploy sufficient labour and resources to expedite the work.

6. Respondent no. 1's contention was that the appellant had failed to hand over the work site in a timely manner and had not issued instructions through contemporaneous communications. However, despite being granted three extensions solely to enable completion of the public works contract, respondent no. 1 repeatedly failed to adhere to the timelines, thereby exhibiting an unwillingness to complete the work. The demand raised by respondent no. 1 on 30th December 2013 for clearance of dues under the contract was therefore premature. By letter dated 21st January 2014, the appellant again called upon respondent no. 1 to complete the work and, without taking any immediate coercive steps, afforded another opportunity to rectify the situation. This was followed by a further notice dated 11th March 2014, granting a final opportunity to complete the remaining work, failing which the appellant would initiate proceedings to recover damages for breach of contract.



7. Despite this, respondent no.1 issued an invocation letter dated 21st April 2014 under *Clause 64* GCC seeking payment towards the claims, and in the alternative, to constitute an Arbitral Tribunal. Appellant, thereafter, rescinded the contract by notice dated 12th May 2014 *w.e.f.* 30th June 2013 being the last extended date of completion of work.

8. On 1st August 2014, respondent no. 1 filed an application under Section 11 of the A&C Act before this Court seeking appointment of an arbitrator. This application was allowed by order dated 11th March 2015, referring the dispute for adjudication to the Delhi International Arbitration Centre (*DIAC*). A sole arbitrator was appointed, proceedings were registered, statement of claim, counter-statement, and rejoinder along with the list of documents were filed, and the matter was argued.

9. The Sole Arbitrator by award dated 30th May 2019 allowed all the claims raised by respondent no.1 in entirety and awarded an interest @ 12% per annum. This was challenged by appellant before the District Judge and the matter was argued, but finally rejected.

10. Appellant's counsel pleads that the impugned Arbitral Award is not sustainable in law, as it was passed in contravention of the fundamental policy of Indian law and is in conflict with the basic principles of morality, justice, and statutory provisions. Appellant asserts the appeal on, *inter alia* the following grounds:

- (i) *Firstly*, the Arbitral Tribunal granted monetary relief that was specifically barred by Clause 17(b) of the GCC, thereby



rewriting the parties' bargain in contravention of Section 28(3) of the A&C Act.

- (ii) *Secondly*, relying on **ONGC v. Saw Pipes Ltd. (2003) 5 SCC 705** and **Ssangyong Engineering & Construction Co. v. NHAI (2019) 15 SCC 131**, it was submitted that the award contravened mandatory provisions of the A&C Act *inter alia* Sections 24, 28, and 31 and disregarded the contractual framework, which is against the “public policy of India.”
- (iii) *Thirdly*, the award was contrary to the express provisions of the contract and, therefore, violated the fundamental policy of Indian law.
- (iv) *Fourthly*, the Arbitral Tribunal failed to adjudicate the preliminary objection raised in the appellant's written statement. While the respondent (claimant therein) invoked Section 11 of the A&C Act for a sum of ₹10,80,859/-, it subsequently inflated the demand to ₹14,95,859/- an increase of ₹4.5–5 lakh without amendment, notice, or leave of the Court.
- (v) *Fifthly*, once respondent no. 1 had accepted three extensions, all claims for idle charges, overhead, loss of profit, or compensation for delay stood contractually extinguished.
- (vi) *Sixthly*, the award of interest @ 12% on all heads, without analyzing the contractual provisions or proof of actual loss, violated Section 31(3) of the A&C Act.



- (vii) *Seventhly*, respondent no. 1 (claimant therein) failed to substantiate or quantify its claims with supporting bills, engineer's certifications, or site measurements.
- (viii) *Eighthly*, by allowing extra-contractual heads of claim that were never referred to arbitration, the award infringes Section 34(2)(a)(iv) of the A&C Act.

The Impugned Judgment

11. The learned District Judge after noting the assertions of appellant in support of objections under Section 34 A&C Act noted that there was no reply filed to Section 34 petition by the respondent no.1 and the matter was fixed for final arguments.

12. The District Judge noted the limited scope in Section 34 and that the Arbitrator was final judge of evidence on the file, thus it was not open for the Section 34 Court to sit in appeal over the conclusion of the Arbitrator. Reference was made to decisions in *Associate Builders v Delhi Development Authority*, (2015) 3 SCC 49 and *Ssangyong Engineering & Construction Co Ltd. v. National Highway Authority of India*, 2019 SCC OnLine SC 677 to highlight that interference was permissible only when the findings of the Arbitrator are arbitrary, capricious or perverse or when conscience of the Court is shocked, or when illegality is not trivial but goes to the root of the matter, and the Arbitrator was ultimately the master of quantity and quality of the evidence when drawing the arbitral award. The District Judge reiterated that it was outside the scope of Section 34 to re-appreciate evidence. The



arbitral award demonstrated that the Arbitrator had examined all relevant aspects and remained within the four corners of the contract; therefore, there was no question of arbitrariness.

13. The District Judge further observed that the appellant led no evidence before the Arbitrator and failed to discharge the onus of proof, as is apparent from the record, despite opportunities having been granted. Since the appellant failed to discharge the initial burden of proof, the onus could not shift to the respondent no.1 in terms of *Section 104 of the Indian Evidence Act*. The District Judge held that the Arbitrator had addressed all issues raised by parties in support of their claims and objections, and that there was nothing perverse in the Arbitrator's findings, which in any case, represented a plausible view.

14. As regards claim of interest, the District Judge noted appellant's contention, that as per *Clauses 16(3) and 64.5* of the GCC there was a complete bar on the Arbitral Tribunal to award interest and no interest could be payable. However, in view of *Section 31(7)* of the A&C Act, the Arbitrator was competent to award interest, as also under *Section 3* of the Interest Act, 1978.

Analysis

15. We have heard counsel for appellant and also perused the pleadings and documents on record. Pursuant to a full appraisal of the matter, we do not find any reason to interfere in the impugned judgment or the award passed by the Sole Arbitrator. The District Judge has



rightly dismissed appellant's objection under Section 34 of the A&C Act on the arbitral award.

16. Appellant's grievance with the award is that despite extensions having been granted to respondent no.1 allegedly due to respondent no.1's persistent defaults, respondent no.1's claim had been allowed and granted. A perusal of the arbitral award, particularly from *paragraph 26* onwards, shows that the Arbitrator has gone through the evidence produced by the parties and noted that pursuant to the invocation letter dated 21st April 2014, appellant had hurriedly issued letter dated 12th May 2014 terminating the contract.

17. The Sole Arbitrator notes that appellant had failed to prove issues in its favour and had not filed its evidence affidavit. Even as far as appellant's counter-claim for Rs. 1,00,000/- was concerned, there was no document to support the same and no notice was ever sent to respondent no.1 in this regard.

18. It was noted by the Arbitrator that performance guarantee was submitted on 27th June 2011 but the appellant delayed execution of the agreement dated July 2011 by 25 days. Respondent no.1 completed work for more than 48% of the contract and for the balance, repeatedly requested both orally and in writing for giving site for execution of *item no.7* and no decision or instruction was issued in this regard. Execution of *item no.7* was linked to *item nos.2 and 8* constituting 45% value of the agreement.



19. Despite requests of respondent no.1 *vide* letter dated 08th September 2012 and 03rd October 2012, appellant did not arrange the site of work for execution of *item no.7* and none of the letters were replied to. It was noted that respondent no.1 had issued letters dated 01st April 2013 and 30th August 2013 requesting appellant to close the contract on administrative grounds and thereafter issued letter dated 30th December 2013 for releasing their payment. Appellant, however, asked respondent no.1 to complete the work *vide* letter dated 21st January 2014. *Vide* letter dated 17th February 2014, respondent no.1 again requested for closure of contract and release of dues and thereafter was constrained to invoke arbitration. It was only pursuant to the invocation of arbitration that appellant issued letter dated 12th May 2014 for rescission of the contract w.e.f. 30th June 2013.

20. The Arbitrator further notes that the respondent no.1 remained at site on 23rd May 2014 when final joint measurements were to be done but nobody from the Railway's came forward. On the basis of communications exchanged between the parties and appellant having not filed its evidence affidavit, the Arbitrator awarded claims in favour of respondent no.1 along with interest @ 12% per annum.

21. As far as all these issues are concerned, they are part and parcel of 'evidence appreciation' by the Arbitrator and relate to the merits of the matter, which as rightly noted in the impugned judgment to be outside the scope of interference under Section 34 of the A&C Act.



22. In relation to the ground, that award is in contravention of fundamental policy of Indian law, Section 34(2)(b) Explanation 2 states that *“for the avoidance of doubt the test as to whether there is contravention with the fundamental policy of Indian law shall not entail a review on the merits of the disputes”*.

23. Further, in relation to the grounds that the arbitral award was vitiated by patent illegality, Section 34(2A) and its proviso states that *"an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence"*.

24. Counsel for appellant has put forth four principal submissions in relation to slotting their matter under fundamental policy of Indian Law and patent illegality:

(i) *Firstly*, it is stated that the Arbitral Tribunal should not have awarded interest since per *Clause 64.5* of the GCC, power to award interest has not been given to the Arbitrator.

(ii) *Secondly*, once respondent no.1 had accepted three extensions subject to token penalty then under *Clause 17(b)* of the GCC, all claims of idle charges, overhead loss of profit or compensation of delay stood contractually extinguished.

(iii) *Thirdly*, whether respondent no. 1 was entitled to raise a claim approximately ₹4.15 lakhs higher than the amount mentioned in its Section 11 application before the Court, and whether such a claim could



not be referred to arbitration on the ground that it does not constitute a claim notified under *Clause 64(1)(ii)*?

(iv) *Fourthly*, the claim raised by respondent no.1 was not an ‘*excepted claim*’ and cannot be submitted to Arbitrator, per of the GCC.

25. The Court is cognizant of the limited scope of inquiry in an appeal filed under Sections 37 of the A&C Act. In this regard, reference may be made *inter alia* to the following decisions:

- a. The Supreme Court in ***Somdatt Builders-NCC-NEC (JV) v. NHAI***, (2025) 6 SCC 757, held that the Court cannot reopen the merits of a case while hearing a Section 37 appeal and further, cannot interpret contractual clauses. The relevant paragraphs are extracted as under:

“45. In MMTC Ltd. Vs. Vedanta Ltd. [(2019) 4 SCC 163], this Court held that as far as Section 34 is concerned, the position is well settled that the court does not sit in appeal over an arbitral award and may interfere on merits only on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. Even then, the interference would not entail a review on the merits of the dispute but would be limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse or when the conscience of the court is shocked or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. 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.

48. In Reliance Infrastructure [(2024) 1 SCC 479], this Court referring to one of its earlier decisions in UHL Power Co. Ltd. v. State of H.P. [(2022) 4 SCC 116] held that scope of interference under Section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting aside or refusing to set aside an arbitral award, is all the more circumscribed”.

(emphasis added)

- b. Similarly, in **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project**, (2023) 9 SCC 85, the Supreme Court reiterated that the scope of jurisdiction under Section 34 and Section 37 of the A&C Act, is not akin to normal appellate jurisdiction and interference with an arbitral award should not be done in a casual and cavalier manner. The relevant paragraph is extracted as under:



“25. The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise. While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. ...”

(emphasis added)

A. Whether Arbitrator was correct in awarding interest?

26. Learned counsel for appellant contends that, under *Clause 16(3)* of the GCC, no interest is payable on the Earnest Money or the Security Deposit furnished by the contractor. Further, *Clause 64.5* of the GCC expressly limits the power of the Arbitral Tribunal to award interest. *Clause 64.5* of the GCC is extracted as under:

“64.5 Where the arbitral award is for the payment of money, no interest shall be payable on whole or any



part of the money for any period till date on which the award is made.”

27. Respondent no.1/claimant’s statement of claim nevertheless included, as *Claim No. 7*, a demand for interest at 18% per annum, which among others encompassed interest on refund of the Earnest Money and the Performance Guarantee/Security Deposit mentioned in *Claim No. 1*. Notably, appellant/respondent therein did not raise any objection based on *Clauses 16(3) or 64.5* of the GCC at the stage of filing its defence/counter-claim.

28. Furthermore, in *paragraph 26* of the Arbitral Award it has been noted that appellant/respondent therein did not lead any evidence in support of its case. Since appellant/respondent therein failed to raise the aforesaid defence and lead evidence thereto, the Sole Arbitrator was constrained to conclude that appellant/respondent therein had failed to prove the issues its favour.

29. An appeal under Section 34 of the A& C Act was filed against the Arbitral Award by appellant before the District Judge (Commercial Court-01) Patiala House Court, New Delhi. It was in Section 34 proceedings that the plea that interest cannot be awarded by the Arbitral Award was raised for the first time, failing to raise the same before the Sole Arbitrator. The learned District Judge correctly held that the scope of interference under Section 34 is narrow: *“the court cannot re-appreciate evidence or re-interpret contractual terms and may set aside*



an award only where an error apparent on the face of the record renders it unsustainable". Reliance was rightly placed on *Associate Builders v. Delhi Development Authority*, (2015) 3 SCC 49, and *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India*, 2019 SCC OnLine SC 677.

30. The District Judge further observed that, under *Section 31(7)* of the A&C Act and *Section 3* of the Interest Act, 1978, an Arbitral Tribunal is empowered to award interest at a rate consistent with prevailing banking practice, and that the Sole Arbitrator had properly exercised this discretion.

31. The appellant's belated argument that *Clauses 16(3) and 64.5* barred the award of interest overlooks the limited scope of scrutiny under *Sections 34 and 37* of the A&C Act. Entertaining such a ground would necessarily require a re-appreciation of the evidence and a fresh interpretation of contractual terms, which is impermissible at this stage. In absence of any arbitrariness, perversity, or patent illegality, the court cannot set aside the award or substitute its own view for that of the Arbitrator.

32. As appellant has failed to raise the ground at the appropriate stage, i.e. before the Sole Arbitrator and lead evidence to prove his case, it cannot raise grounds which they previously failed to raise before the Sole Arbitrator under *Section 34 A&C Act*.



33. This position is further reinforced by the principle of waiver, which finds statutory recognition in *Section 4* of the A&C Act. The said provision is extracted as under:

“4. Waiver of right to object.—A party who knows that—

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.”

This section clearly provides that when any requirement under the arbitration agreement was not complied with, and the parties proceed with the arbitration without raising objection to such non-compliance without undue delay can be said to have waived his right to so object.

34. Particular emphasis must be placed on the phrase “*without undue delay*.” In the present case, the appellant did not object to the award of interest before the Arbitral Tribunal. Instead, the objection was raised for the first time in proceedings under Section 34.

35. Reliance can be placed on the case of ***Union of India v. Susaka (P) Ltd.***, (2018) 2 SCC 182. In that case, the appellant did not raise the plea that the contract between the parties barred the tribunal from



awarding interest, either during the proceedings before the Single Judge at the stage of making a reference to the Arbitral Tribunal or in their reply before the Arbitral Tribunal. The plea was raised for the first time in Section 34 proceedings before the Single Judge. Specific reliance can be placed on *paragraphs 25, 26, and 27* of the judgment, which are extracted below for ease of reference:

“25. In the light of the aforementioned factual scenario emerging from the record of the case, we cannot grant any indulgence to the appellant (Union of India) to raise such plea for the first time here. In our view, it is a clear case of waiver or/and abandonment of a plea at the initial stage itself.

26. Everyone has a right to waive and to agree to waive the advantage of a law made solely for the benefit and protection of the individual in his private capacity, which may be dispensed with without infringing any public right or public policy. Cuilibet licet renuntiare juri pro se introducto. (See Maxwell on The Interpretation of Statutes, 12th Edn. at p. 328)

27. If a plea is available, whether on facts or law, it has to be raised by the party at an appropriate stage in accordance with law. If not raised or/and given up with consent, the party would be precluded from raising such plea at a later stage of the proceedings on the principle of waiver. If permitted to raise, it causes prejudice to other party. In our opinion, this principle applies to this case.”

(emphasis supplied)

B. Whether under clause 17(b) all claims of idle charges, overhead loss of profit or compensation for delay, stood contractually extinguished?



36. Appellant contends that respondent no.1 had accepted three extensions of time, and that by virtue of *Clause 17(b)* of the GCC, all claims towards idle charges, overheads, loss of profit, or compensation for delay stood contractually extinguished. *Clause 17(b)* specifically empowers appellant to grant extensions of time and upon acceptance of such extensions, the contractor shall not be entitled to claim damages or compensation on account of delay.

37. However, this plea was never raised before the Sole Arbitrator at the stage of filing the statement of defence/counter-claim. In fact, as noted by the Arbitrator, the appellant failed to lead any evidence in support of its case. The plea was also not raised before the District Judge in Section 34 proceedings and has surfaced for the first time in the present appeal under Section 37.

38. The position of law is settled that the scrutiny under Sections 34 and 37 of the A&C Act is narrow. Entertaining a plea of contractual extinguishment at this stage would necessarily involve a fresh interpretation of *Clause 17(b)* and a re-appreciation of evidence, which is impermissible. (See *Associate Builders v. DDA (supra)*; *Ssangyong Engineering & Construction Co. Ltd. v. NHAI (supra)*).

39. Moreover, under *Section 4* of the A&C Act, a party who is aware of non-compliance with any requirement under the arbitration agreement, but proceeds with arbitration without objection, is deemed to have waived its right to object. By failing to rely on *Clause 17(b)* before the



Arbitrator and thereafter in Section 34 proceedings, the appellant must be taken to have waived this defence.

40. The principle of waiver, as elaborated *in Union of India v. Susaka (P) Ltd. (supra)*, squarely applies here as well. Just as in that case, where the plea of contractual bar on awarding interest was first raised at the Section 34 stage and held to be untenable, appellant in the present case is precluded from belatedly invoking *Clause 17(b)*.

C. Whether respondent no. 1 could raise a claim approximately ₹4.15 lakhs higher than that stated in its Section 11 application, and whether such claim could have been referred to arbitration in the absence of it being a claim notified as per Clause 64(1)(ii)?

41. Appellant, to buttress his submission that only claim notified in terms of *Clause 64(1)(ii)* can be referred to arbitration, relied on the decision of this Court in *International Building & Furnishing Co Pvt. Ltd. v Indian Oil Corporation Limited* 1995 (32) DRJ (DB) and *China Petroleum Pipeline Bureau v. Indian Oil Corporation limited*, 2020 SCC OnLine Del 122. Reliance so placed, however, is misplaced. The aforesaid decisions were rendered in the context of contracts which specifically contained provisions pertaining to ‘notified claims.’ In contradistinction, the contract governing the present dispute does not contain any such stipulation, and therefore, the said decisions are not applicable to the facts of the present case.

42. Clause 64 of the GCC is reproduced as under:



“.... 64(1)(ii)— The demand for arbitration shall specify the matter which are in question or subject to the dispute or difference as also the amount of claim itemwise. Only such dispute(s) or difference (s) in respect of which the demand has been made together with counter claims or set off shall be referred to arbitration and other matters shall not be included in the reference.”

43. A careful reading of *Clause 64(1)(ii)* shows that the focus has been on the specification of the items or heads of claim, with the amount of each claim being a secondary, descriptive element. The provision requires the amounts to be stated “*itemwise*” to ensure clarity in the arbitration reference, but it does not prohibit adjustments or revisions to the amounts claimed under the same items. Accordingly, so long as the items themselves remain the same, any modification to the corresponding amounts is fully consistent with the clause and does not invalidate the arbitration demand.

44. In the present case, it is undisputed that there has been no alteration to the items of claim themselves. The only modification relates to the amounts claimed under the respective items. Such a variation does not alter the identity of the items of claim and therefore does not fall foul of the requirements of *Clause 64(1)(ii)*. Therefore, the demand for arbitration, even with the revised claim amounts, remains fully compliant with *Clause 64(1)(ii)*, and the arbitration proceedings are not contrary to the contractual framework envisaged under the GCC.



45. It is also pertinent to note that the appellant, in its preliminary submissions before the Sole Arbitrator, made an incorrect statement in *paragraph 2*, wherein the appellant contended that the order dated 11th March 2015, by which the Sole Arbitrator was appointed, limited the Arbitrator's authority to adjudicate the alleged claims/suit only to the extent of the amount mentioned in the petition and not beyond that.

46. Upon perusal of the said order dated 11th March 2015, it is evident that the Court, while exercising its jurisdiction under Section 11 A&C Act, did not impose any such restriction on the powers of the Sole Arbitrator. The order clearly does not contain any expression limiting the arbitral jurisdiction "*only to the extent of the amount mentioned in the petition and not more than that*" (as stated by appellant in their preliminary submissions). Accordingly, the submission advanced by the appellant is factually incorrect and legally untenable, and the same is hereby rejected.

47. Notwithstanding the appellant's contention that the learned Sole Arbitrator overlooked its preliminary submissions, the said contention, for the reasons stated hereinabove, is devoid of merit and does not render the arbitral award or the impugned judgment, infirm in any manner.

D. Whether the claims of respondent no.1 fall within excepted matters and cannot be referred to arbitration?

48. Appellant raised before the Arbitral Tribunal a preliminary objection to the maintainability of claims of respondent no. 1 on the



ground that such claims fall within the category of “*excepted matters*” and are, therefore, not arbitrable. This issue of maintainability was specifically raised in *paragraph 3* of the preliminary objections contained in appellant’s statement of counterclaim before the Arbitrator. The relevant paragraph is reproduced below for ease of reference:

“ 3. That the claim/s of the claimant fall under *excepted matter*. Hence the same is not maintainable before the Hon’ble Court”

49. However, this bald averment made by appellant was neither substantiated through pleadings nor supported by any argument before the Arbitral Tribunal. The same deficiency persisted before the Court in the proceedings under Section 34 of the A&C Act.

50. *Clause 63* of the GCC deals with *excepted matters* and expressly enumerates *Clauses 8(a), 18, 22(5), 39, 43(2), 45(a), 55, 55-A(5), 57, 57-A, 61(1), 62(1), and 62(2)* as falling within the category of *excepted matters* and hence excluded from the purview of arbitration. Although, appellant asserted that the claims fall within *excepted matters*, it failed to identify any specific clause in support of this contention. Upon examining the clauses enumerated under *Clause 63*, it is apparent that the only provision which could arguably be invoked by appellant is *Clause 62*, which pertains to ‘*determination of contract*’.

51. However, the claims of respondent no. 1 emanate from *Clause 36* of the GCC, which pertains to ‘*suspension of work*’ for a period



exceeding three months, whereupon the contract for the balance work is treated as closed. *Clause 62*, by contrast, governs determination of contract, an event which occurred subsequent to the invocation of arbitration in respect of the claims under *Clause 36*.

52. Accordingly, the plea raised by appellant is found to be devoid of merit, as it remains unsubstantiated and is, in any event, unsustainable on merits.

53. In the aforesaid background, this Court finds no ground to interfere with the impugned judgment of the learned District Judge, which does not suffer from any infirmity, and has been correctly rendered, within the limited scope of Section 34 of the Act. Accordingly, the present appeal stands dismissed in the aforesaid terms.

54. Pending applications, if any, are rendered infructuous.

55. A copy of this judgment be uploaded on the website of this Court forthwith.

**ANISH DAYAL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

SEPTEMBER 11, 2025/mk/rk/zb