$~31

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

% **Date of decision: 29.10.2026**

\# **CNR No. DLHC010157052019**

\+ FAO(OS) (COMM) 60/2019

C R SONS INFRA PROJECTS LTD .....Appellant

Through: Mr. Shekhar Gupta & Mr. Apoorav Gupta, Advs.

versus

IRCON INTERNATION LTD .....Respondent

Through: Mr. Chandan Kumar & Mr. Vikram Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE AMIT SHARMA

AVNEESH JHINGAN, J. (ORAL)

1. This appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the judgement dated 14.12.2018 whereby the objection petition under Section 34 of the Act by the respondent was partially allowed.

2. The brief facts are that the respondent-IRCON International Ltd (hereinafter referred to as 'IRCON') invited tenders for the construction of corporate office buildings at C-4, District Centre, Saket, New Delhi. The appellant- CR Sons Infra Projects Ltd (hereinafter referred to as 'CRS') was the successful bidder and was issued a Letter of Acceptance

Signature Not Verified
Signed By:CHANCHAL
Signing Date:02.11.2026
17:08:34

dated 19.07.2004. The parties executed the agreement on 17.08.2004 and provided for dispute resolution through arbitration.

2.1 Disputes arose between parties to the *lis* and arbitration was invoked at the instance of CRS. The arbitral proceedings culminated in the award dated 27.02.2018.

2.2 CRS raised eight claims, partially succeeded in two claims and was awarded cost of Rs.5.5 lakhs. The claims raised and the amounts awarded are tabulated below:-

Claim number	**Amount Claimed**	**Amount Awarded**
Claim no. 1 Work done but not paid	2,70,25,343/-	11,83,921.94/-
Claim no. 2 Damages towards delay in finalizing the drawings and fulfillment of contractual obligations on the part of IRCON	94,48,182/-	Nil
Claim no. 3 Release of retention/ security money	31,37,844/-	31,37,844/-
Claim no. 4 Reimbursement of extra expenditure incurred by IRCON on transportation of RMC at sight	28,20,312/-	Nil
Claim no. 5 Electricity and miscellaneous services used by IRCON and their other agencies	15,00,000/-	Nil
Claim no. 6 Expenditure toward idle staff, security and plant and machinery during prolong period of contract	1,57,28,568/-	Nil

Signature Not Verified
Signed By:CHANCHAL
Signing Date:02.11.2026
17:08:34

Claim no. 7 Interest over unpaid dues	2,81,78,867/-	9% simple interest p.a. w.e.f. January, 2010.
Claim no. 8 Litigation cost	20,00,000/-	Rs. 5.50 Lakhs
	Total	**Rs. 48,71,765.94**

2.3 IRCON filed the objection petition under Section 34 of the Act challenging the amount awarded under claim no.1 and the cost. The objection petition was allowed and the award to the extent of directing payment of Rs.9,28,205/- under claim no.1 and cost of Rs.5.5 lakhs was set aside. Hence, the present appeal.

3. Learned counsel for the CRS contends that the learned Single Judge exceeded the scope of Section 34 of the Act and has substituted the plausible view taken by the arbitrator. Reliance is placed upon the decision of the Supreme Court in ***Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking (2023) 9 SCC 85***.

3.1 The argument with regard to claim no.1 is that since the payment of final bill and the deductions made therein were in dispute, the arbitrator was empowered to examine the correctness of deductions made. The contention is that IRCON failed to defend the deductions during the arbitration proceedings.

3.2 The submission is that the arbitrator recorded detailed reasons for awarding cost and discretion under Section 31A of the Act was rightly exercised and calls for no interference. It is canvassed that apart from the arbitration fee, cost of approximately Rs.95,000/- was reasonable in

Signature Not Verified
Signed By:CHANCHAL
Signing Date:02.11.2026
17:08:34

the facts of the case. Reliance is placed upon the decision of the Single Judge of this Court in ***Union of India v. Om Vajrakaya Construction Company 2021:DHC:4273.***

4. *Per contra* the scope of interference under Section 37 of the Act is limited. The award under claim no.1 was vitiated by contradictions, the arbitrator found that the final bill and the deductions made by IRCON were not disputed by CSR yet examined on merits the deductions made. The setting aside of the cost awarded is justified for failure of the arbitrator to consider the factors under Section 31A(3) of the Act.

5. Heard the learned counsel for the parties and perused the record with their able assistance. Albiet, written submissions have been filed by the parties but no other contention other than those noted above was pressed.

6. It is a settled law that in appeal under Section 37 of the Act, it is to be considered that the exercise of powers under Section 34 of the Act was within the four corners of the provisions. Reference in this regard be made to the following decisions of the Supreme Court:-

6.1 In ***AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai, (2025) 5 SCC 321*** it was held:

> "**29.** The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. [*McDermott International Inc.* v. *Burn Standard Co. Ltd.*, (2006) 11 SCC 181, para 52] The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds

Signature Not Verified
Signed By:CHANCHAL
Signing Date:02.11.2026
17:08:34

specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; *Konkan Railway Corpn. Ltd.* v. *Chenab Bridge Project*, (2023) 9 SCC 85, para 25 : (2023) 4 SCC (Civ) 458.] The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope. [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; *Bombay Slum Redevelopment Corpn. (P) Ltd.* v. *Samir Narain Bhojwani*, (2024) 7 SCC 218, para 26.]"

6.2 In ***SEPCO Electric Power Construction Corpn. v. GMR Kamalanga Energy Ltd., (2026) 2 SCC 542*** it was held:

"**72.** The decision in *MMTC* [*MMTC Ltd.* v. *Vedanta Ltd.*, (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , as referenced recently by a coordinate Bench of this Court in *Reliance Infrastructure Ltd.* [*Reliance Infrastructure Ltd.* v. *State of Goa*, (2024) 1 SCC 479 : (2024) 1 SCC (Civ) 412] , unfolds in an involute manner that a court under Section 37 of the 1996 Act can only determine as to whether the court concerned under Section 34 has not travelled beyond the parameters of the scope therein. No independent evaluation is permitted on the merits of the award."

(emphasis supplied)

7. The learned Single Judge examined the findings recorded by the arbitrator in paragraph no. 203 to 206 of the award and held that the CRS did not refute the details of the final bill or the deductions made from the final bill. The CRS having failed to prove its own bill marked as Ex.CW-1/20 rather raised the claims based on the final bill prepared

Signature Not Verified
Signed By:CHANCHAL
Signing Date:02.11.2026
17:08:34

by the IRCON. The arbitrator observed that in the statement of claim there was no pleading challenging the correctness of the final bill or the deductions made thereunder. The deductions were in respect to the defects in work carried out by CRS and these defects were accepted by the CRS. In this background, it was held that the arbitrator could not have independently examined the merits of the deductions made. The arbitrator went beyond the issue in dispute, by holding that the deductions could not be made because the CRS was not asked to rectify the defects. For quantification of the amount payable and for posing challenge to the deductions made from the final bill, the CRS either had to prove Ex.CW-1/20 or specifically plead defects in the calculation of the final bill or challenge the deductions made, in absence thereof the arbitrator went beyond the scope of dispute to examine each and every deduction on its merits.

8. Reliance of learned counsel for the CRS on ***Konkan Railway Corporation Limited*** **(**supra) is of no avail. The issue involved therein was whether the Court could interfere under Section 34 of the Act for another possible view other than the one taken by the arbitrator. In the present case the arbitrator by contradicting to the findings recorded that there was no pleading challenging the final bill or the deductions made therein proceeded to consider the deductions on merits acting beyond the referred dispute.

9. Under Section 31A of the Act, the arbitrator has a discretion of awarding cost. The factors to be considered are stipulated in Section 31A(3) of the Act and are as follows:-

Signature Not Verified
Signed By:CHANCHAL
Signing Date:02.11.2026
17:08:34

"**31.A. Regime for Costs.**

***

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including-
(a) the conduct of all the parties;
(b) whether a party has succeeded partly in the case;
(c) whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings; and
(d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party."

10. The learned Single Judge rightly noted that though the provisions of the Act were reproduced but the factors to be considered for awarding cost were not gone into by the arbitrator. It was not considered that it was a case of partial success, the five out of seven claims of the CRS were found to be frivolous. The award of costs contrary to the statutory provisions called for interference within the limited scope under Section 34 of the Act and was vitiated by patent illegality.

11. The decision of the learned Single Judge of this Court in ***Union of India v. Om Vajrakaya Construction Company*** (supra) is not applicable to the facts of the present case. The issue involved in that case was whether the discretion to award cost under Section 31A of the Act is subject to the terms of the contract between the parties. It was held that the power to award cost under Section 31A of the Act is notwithstanding to the contrary provisions of the Code of Civil Procedure,1908 and to override Section 31A of the Act, the parties have to agree for it after the dispute arises.

Signature Not Verified
Signed By:CHANCHAL
Signing Date:02.11.2026
17:08:34

12. No case is made out for interference in the impugned judgement. The appeal is dismissed.

AVNEESH JHINGAN, J

AMIT SHARMA, J

OCTOBER 29, 2026
Ch

Reportable: **Yes**

Signature Not Verified
Signed By:CHANCHAL
Signing Date:02.11.2026
17:08:34