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

Judgment reserved on: 23.07.2026
Judgment pronounced on: 28.10.2026

\+ **CS (OS) 361/2008**

M/S S.R. ASHOK & ASSOCIATES ....Plaintiff

Through: Mr. Akshu Jain and Ms. Stuti Jain, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

& ANR. ....Defendants

Through: Ms. Kritika Gupta, Ms. Chand Chopra, Mr. Punishk Handa, Advs.

\+ **CS (OS) 362/2008**

M/S S.R. ASHOK & ASSOCIATES ....Plaintiff

Through: Mr. Akshu Jain and Ms. Stuti Jain, Advocates

versus

DELHI DEVELOPMENT AUTHORITY

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Through: Ms. Kritika Gupta, Ms. Chand Chopra, Mr. Punishk Handa, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. The present suits have been filed under Sections 14 and 17 of the Arbitration Act, 1940 ***("the Act")*** on behalf of the plaintiff, seeking to make two Arbitral Awards dated 31.01.2008 and 28.01.2008 ***("Impugned Awards")*** passed by the Ld. Sole Arbitrator/defendant No.

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2 ***("Arbitrator")*** in the matters of arbitration between *M/s. S.R. Ashok & Associates v. Executive Engineer, D.D.A*., as Rule of the Court.

2. It is clarified that even though the plaints in the two suits in their respective prayer clauses have interchanged the dates of the Impugned Awards, the awards are substantially the same in both except for one claim and therefore, my reasoning will remain the same.

3. The defendant No. 1/DDA has filed objections under Sections 30 & 33 of the Act, against the Impugned Awards *vide* applications bearing IA No. 4749 of 2008 in CS (OS) 361/2008 in respect of Claim No. 1(4) and Additional Claim Nos. 1, 2, 3 & 4 and IA No. 4753 of 2008 in CS (OS) 362/2008 in respect of Claim No. 1(4) and Additional Claim Nos. 1, 2, 3, 4 & 6.

4. The plaintiff namely M/s. S.R. Ashok & Associates, a partnership firm, duly registered under the Partnership Act, was the claimant in both the arbitral proceedings and defendant No. 1 namely Delhi Development Authority ***("DDA")*** was the respondent in both the proceedings. The defendant No. 2 is the Arbitrator in both the arbitration proceedings.

FACTUAL BACKGROUND

CS (OS) 361/2008 *(arising out of Arbitral Award dated 31.01.2008)*

5. The defendant No. 1/DDA had issued a notice inviting tenders for execution of work for construction of Lower MIG Houses at Kondli Gharoli Complex, SH: 256 Lower MIG Houses, Group III. In response to the said notice inviting tender, the plaintiff/claimant submitted its tender, which was accepted by the concerned division of the defendant No. 1. The said tender was on the basis of Delhi Schedule of Rates, 1981.

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6. An agreement bearing No. 29/EE/HD-23/1/85-86 dated 21.10.1985 was executed with regard to the said work between the plaintiff and the defendant No. 1. As per the said Agreement, the date of commencing the work was 24.10.1985, and the scheduled date for completion of the said work was to be 23.10.1986.

7. The case of the plaintiff is that the plaintiff had made all arrangements with respect to the required labour and machinery. However, due to consequent amendments to the specifics of the construction work, lapses and delays on the part of the defendant No. 1, the date for completion of work was subsequently extended up to 20.10.1990, without levy of any compensation.

8. Thereafter, disputes and differences arose between the parties with regard to the final account due and payable to the plaintiff by the defendant No. 1, which led to the plaintiff invoking arbitration *vide* its letter dated 22.08.1995, under Clause 25 of the Agreement, for settlement of disputes.

9. Thereafter, the Engineer Member, DDA, *vide* letter bearing No. CE 28(72)EZ/JLO/Arbn./98/62 dated 24.02.2000 appointed Sh. N. K. Sharma, Superintending Engineer (Arbitration)-I as Sole Arbitrator to decide the disputes and make his award regarding the claims/disputes.

10. However, the arbitration proceedings were adjourned *sine die* by the said arbitrator *vide* letter dated 10.07.2000, as both the plaintiff and defendant No.1 did not seek enlargement of time.

CS (OS) 362/2008 ***(arising out of Arbitral Award dated 28.01.2008)***

11. The defendant No. 1/DDA had issued another notice inviting tenders for execution of work of construction of Lower MIG Houses at Kondli

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Gharoli Complex, SH: 256 Lower MIG Houses, Group IV, for which the bid of the plaintiff was accepted by the concerned division of the defendant No. 1.

12. An Agreement bearing No. 30/EE/HD-23/1/85-86 dated 21.10.1985 was executed with regard to the said work between the plaintiff and the defendant No. 1. As per the said Agreement, the date of commencing the work was 24.10.1985, and the date scheduled for completion of the said work was to be 23.10.1986. Similarly, the date for completion of this work was subsequently extended up to 19.10.1990, without levy of compensation.

13. Thereafter, disputes and differences arose between the parties with regard to the final account due and payable to the plaintiff by the defendant No. 1, which led to the plaintiff invoking arbitration *vide* their letter dated 26.07.1995, under Clause 25 of the Agreement, for settlement of disputes.

14. Thereafter, the Engineer Member, DDA, *vide* letter bearing No. CE 28(72)EZ/JLO/Arbn./98/909 dated 01.11.1999 appointed Sh. N. K. Sharma, Superintending Engineer (Arbitration)-I as Sole Arbitrator to decide the disputes and make his award regarding the claims/disputes.

15. However, the arbitration proceedings were adjourned *sine die* by the earlier arbitrator *vide* letter dated 31.03.2000 stating that both the plaintiff and defendant No. 1 did not seek enlargement of time.

COMMON FACTUAL BACKGROUND

16. The plaintiff/claimant requested the Engineer Member, DDA, *vide* letter dated 07.02.2007, to appoint an arbitrator in terms of Clause 25 of the aforesaid Agreements.

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17. Pursuant thereto, the Engineer Member, DDA, *vide* his letters bearing Nos. CE 28(72)EZ/JLO/Arbn./98/58 and CE28(72)EZ/JLO/Arbn./98/59 dated 26.02.2007 appointed Mr. S. S. Jain, Superintending Engineer, (Arbitration)-I/ defendant No. 2 as Arbitrator to determine the claims referred to the earlier arbitrator and to continue the proceedings from the stage at which it was left off.

18. The plaintiff, *vide* letter dated 18.04.2007, had taken exception to the continuance of arbitration proceedings from the stage where it was left off by the earlier Arbitrator. The Engineer Member, DDA, then issued another letter dated 23.05.2007, referring the claims as per the statement dated 18.04.2007 with the direction that these additional claims may also be arbitrated upon, if they were within the purview of Clause 25 of the Agreement.

19. The Arbitrator entered reference on 27.06.2007. The plaintiff/claimant had already filed their statement of facts/claims on 22.06.2007. Counter statement of facts was filed by the defendant No. 1/respondent on 25.09.2007 and thereafter, rejoinder was filed on 28.09.2007.

Impugned Award dated 31.01.2008 (in CS (OS) 361/2008)

20. The Arbitrator passed the said Impugned Award, awarding claims of the plaintiff/claimant to the extent of Rs. 30,91,140/-. He also awarded simple interest at 18% per annum on the amount awarded under claim Nos. 1, 2, 3 and additional Claim No. 1 with effect from 20.04.1991 and 22.08.1995, i.e. the date of invocation of Clause 25 of the Agreement. Thereafter, the said awarded amount carried simple interest at 10% per annum till the date of the award. Furthermore, simple interest at the rate of 10% per annum was awarded upon the amount awarded against

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additional claim No. 2 with effect from 22.08.1995 till the date of the award. The amount awarded against additional claim No. 3 carried simple interest at 10% with effect from 01.01.1999 till the date of award and further, the entire awarded amount carried simple interest at 8% till the date of realisation.

Impugned Award dated 28.01.2008 (in CS (OS) 362/2008)

21. The Arbitrator passed the said Impugned Award, awarding claims of the plaintiff/claimant to the extent of Rs. 31,99,664.80/-. He also awarded simple interest at 18% per annum on the amount awarded under claim Nos. 1, 2, 3 and additional Claim No. 1 with effect from 19.04.1991 till 26.07.1995, i.e. to the date of invocation of Clause 25 of the Agreement. Thereafter, the said awarded amount carried simple interest at 10% till the date of award. Furthermore, simple interest at the rate of 10% per annum upon the amount awarded under additional claim No. 2 with effect from 27.07.1995 till the date of the award. The amount awarded against additional claim No. 3 carried simple interest at 10% with effect from 01.01.1999 till the date of award and the amount awarded against additional claim No. 6 carried interest at the rate of 10% with effect from 02.09.2004 till date of the award. Also, the entire awarded amount carried simple interest at 8% till the date of realisation.

OBJECTIONS RAISED ON BEHALF OF DEFENDANT NO. 1

22. Learned counsel on behalf of the defendant No. 1 submits that the Impugned Awards are liable to be set aside in respect of claims due to error apparent on the face of the award, legal misconduct on the part of the Arbitrator, having passed Impugned Awards which are unreasoned,

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beyond the pleadings of the parties and against the public policy of India.

23. As the objections raised in both suits are, except as to Additional Claim No. 6 in CS (OS) 362/2008, substantially identical, I shall deal with them together by this common judgment.

24. For the sake of convenience, I shall set out the facts and record my findings with reference to CS (OS) 361/2008, it being clarified that the same findings and reasoning shall apply *mutatis mutandis* to CS (OS) 362/2008, save as to Additional Claim No. 6, which is dealt with separately below.

GENERAL SUBMISSIONS (IN CS(OS) 361/2008 AND CS (OS) 362/2008) ON BEHALF OF DEFENDANT NO. 1

A. Claims are time-barred

25. Ms. Kritika Gupta, learned counsel for defendant No. 1, states that the Arbitrator failed to appreciate the fact that the invocation of arbitration on 22.08.1995, more than three years after actual completion of the work on 20.10.1990, by the plaintiff/claimant and subsequent invocation of additional claims *vide* letter dated 18.04.2007 were hopelessly time-barred in terms of the Agreements. Reliance for the same is placed on *M/s Attar Singh & Brothers v. DDA 2018 SCC OnLine Del 13032* and *Bindra Builders v. DDA & Anr. 2012 SCC OnLine Del 3975.*

26. It has been contended that the Engineer Member had no authority to re-open the proceedings after a period of more than 7 years. This power to enlarge the time for making and publishing the award under Section 28 of the Act lies exclusively with the Court.

B. Waiver of claims

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27. It has been submitted on behalf of the defendant No. 1 that the plaintiff has waived off its claims, if any, with respect to the subject contract since the plaintiff had failed to raise such claims/invoke dispute within 30 days of payment of the final bill on 31.05.1995, in view of Clause 7 of the Agreements.

28. The plaintiff also did not dispute the payments made on 31.05.1995.

C. Legal misconduct by the Arbitrator

29. Learned counsel for the defendant No. 1 vehemently argues that the Impugned Awards are liable to be set aside under Section 30 of the Act as the Arbitrator had allegedly committed legal misconduct, by ignoring crucial documents and contractual stipulations. Reliance was placed on *Seth Mohanlal Hiralal v. State of MP*, *(2003) 12 SCC 144.*

Objections on merit:

30. Learned counsel for defendant No. 1 vociferously opposes the Impugned Award dated 31.01.2008 to the extent of disallowing Claim No. 1(4) and Additional Claim Nos. 1, 2, 3 & 4 and opposes the Impugned Award dated 28.01.2008 to the extent of disallowing Claim No. 1(4) and Additional Claim Nos. 1, 2, 3, 4 & 6.

CLAIM-WISE OBJECTIONS, AS SET OUT IN CS (OS) 361/2008

Claim No. 1, Sub Claim No. 4: Work done but not paid/less paid

31. It has been contended that the Arbitrator erroneously awarded a sum of Rs. 1,52,532/- in the Impugned Award for straightening and cutting of steel to the required sizes, without considering the Agreement item 3.7 which already included complete operation of cutting, straightening, bending, binding and placing in position, Central Public Works Department/CPWD specifications Volume I 1977 for this work under

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paras 5.3.1, 5.3.2 and 5.3.4 and also Clause 42 of the Agreement.

32. Furthermore, it was submitted that similar claims have been set aside by the Court in *Anant Raj Agencies v. DDA, 2005 SCC OnLine Del 425* and *Wee Aar Constructive Builders v. DDA, 2001 SCC OnLine Del 273*.

33. It is further contended that Clause 42(i) and (ii) of the Agreement specifically provide for and allow 3% wastage on account of cutting into pieces, which demonstrates that cutting and straightening of bars to the required sizes is a process already contemplated within the scope of the Agreement, and not a separate or extra item. The present claim is accordingly not maintainable.

Additional Claim No. 1: Compensation for C.S. and damages due to prolongation of the contract period

34. At the outset, it is submitted by the learned counsel for the defendant No. 1 that the Engineer Member, DDA had exceeded his/her jurisdiction by issuing letter dated 23.05.2007 by referring additional claims that were barred by limitation.

35. The learned counsel for the defendant No. 1 argues that a sum of Rs. 20,26,935/- was wrongly awarded to the plaintiff under this head by the Arbitrator since the plaintiff/claimant was responsible for slow progress of work by taking several extensions of time ***("EOTs")*** during the pendency of the contract, having also given express undertakings not to seek damages for extended period of the contract.

36. Clauses 10, 10CC, 22 and Condition No. 1 of "Specifications and conditions" are relied on by the learned counsel in support.

37. The learned counsel for the defendant No. 1 places further reliance on *M.L. Mahajan v. DDA, 1998 SCC OnLine Del 700* and *Ramnath*

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International Construction (P) Ltd. v. Union of India, (2007) 2 SCC 453.

38. It has been contended that no financial loss has been suffered by the plaintiff and the Arbitrator had arbitrarily awarded 50% of the claim amount sought under this head, travelling beyond the terms of the agreement, based on alleged letter dated 08.11.1990, exhibited as Exhibit C-17, that was never served upon the defendant No. 1.

39. It is contended that as per Section 74 of the Indian Contract Act, 1872, actual loss and evidence of mitigation of losses also, needs to be proven which was not done satisfactorily by the plaintiff.

Additional Claim Nos. 2 & 3: For watch and ward staff deployed for security of site till houses were taken over by allottees or, defendant No. 1/DDA

40. It has been contended by the learned counsel for the defendant No. 1 that the Arbitrator has wrongly awarded Rs. 7,57,423/-.

41. The plaintiff failed to show that the defendant No. 1 had at any time asked the plaintiff to engage any staff/labour, and nowhere had the Engineer-in-Charge directed the plaintiff to engage staff or do the work of allotment or handover possession of the flats to the allottees. Payment was made to the plaintiff on a monthly basis based on work actually executed.

42. The letters relied on by the plaintiff were never served upon the defendant No. 1 due to the fact that they had an incomplete address. Even account books, register of wages and salaries etc. were not produced on behalf of the plaintiff in order to corroborate the claim so made.

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43. It is submitted that no person of ordinary prudence would engage staff to the extent claimed i.e. 8 chowkidars per shift in both projects (Groups III and IV) within the same complex, amounting to 48 chowkidars in a day, and that the identical strength of staff is alleged to have been engaged across both groups, exposing the claim as fabricated and intended to defraud the defendant No. 1.

44. It is further contended that the rate of Rs. 7,700/- per month awarded for the period 21.10.1990 to 31.12.1998 was never part of the Agreement, that the circulars relied upon did not exist before 1997, and that the judgment relied upon by the plaintiff is distinguishable since the work in that case was completed after 1998, whereas the work in the present case was completed seven years prior.

Additional Claim No. 4: Present, pendente lite and future interest @ 24% per annum

45. The Arbitrator under the above-mentioned claim wrongly awarded interest at the rate of 18% per annum on the amount awarded under Claim Nos. 1, 2 and 3 and Additional Claim No. 1 w.e.f. 20.04.1991 to 22.08.1995. Thereafter, the said awarded amount carried interest of 10% per annum till the date of the award. The 10% per annum simple interest was carried upon the awarded amount against additional claim No. 2 with effect from 22.08.1995 till the date of the award. The 10% simple interest was carried upon the awarded amount against additional claim No. 3 with effect from 01.01.1999 till the date of the award. Subsequently, the awarded amount carried future interest at the rate of 8% per annum till the date of its realisation.

46. The learned counsel for the defendant No. 1 places reliance on *State of*

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Rajasthan and Anr. v. Nav Bharat Construction Co. AIR 2002 SC 258, wherein in similar circumstances the Hon'ble Supreme Court had reduced the rate of interest from 18% per annum to 6% per annum. Furthermore, it was also contended that there is no clause in the Agreement for the payment of interest.

CLAIM-WISE OBJECTIONS (AS SET OUT IN CS (OS) 362/2008)

47. The objections raised by defendant No. 1 *qua* Claim No. 1(4) and Additional Claim Nos. 1, 2, 3 and 4 are identical to those raised in CS(OS) 361/2008 and therefore, are not being reproduced separately.

Additional Claim No. 6: Refund of Rs. 1,60,151/- deposited by the plaintiff pursuant to a letter by the defendant No. 1

48. Learned counsel on behalf of the defendant No. 1 objects that the said claim was never referred by the Engineer Member, so the Arbitrator lacked jurisdiction to adjudicate and award the same. Simply because the defendant No. 1 chose to reply to the claim on merits, under protest, does not cure the defect.

49. It is further argued that the plaintiff deposited Rs. 1,41,151/- on 31.08.2004 to the defendant No. 1 without any protest, pursuant to agreeing with the same *vide* its own letter dated 07.07.2004. Therefore, the said claim is nothing but an afterthought, which is beyond the scope of reference of the Arbitrator.

Reply on behalf of the plaintiff to the objections of defendant No. 1

50. At the outset, Mr. Akshu Jain, the learned counsel on behalf of the plaintiff, submits that the objections raised on behalf of the defendant No. 1/DDA are not maintainable since the requirements of Sections 30 and 33 of the Act are not met. The defences sought to be raised by the

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defendant No. 1 against the Impugned Awards have already been adjudicated by the Arbitrator, and accordingly, the scope of interference by this Court is extremely limited.

51. It is submitted that the Arbitrator, having examined the material and evidence on record, being the best judge of its quality and sufficiency, this Court cannot reappraise such evidence or substitute its own view for that of the Arbitrator while exercising jurisdiction under Sections 30 and 33 of the Act.

52. Furthermore, it is contended that the decision of the Arbitrator on the issue of limitation is binding and cannot be re-agitated by this Court, considering the same was specifically referred to the Arbitrator. Even otherwise on merits, the claims adjudicated by the Arbitrator were within the period of limitation.

53. It is submitted on behalf of the plaintiff that the work was not completed in time due to various breaches of the Agreement committed by the defendant No. 1/DDA. The defendant No. 1 had also granted the EOT without levy of any compensation, *vide* letter dated 13.11.1990, for the same reason.

54. Subsequently, even though the work was completed by the plaintiff on 20.10.1990, only a provisional completion certificate was issued by the defendant No. 1 and no final completion certificate was issued at any point. In fact, 20.10.1990 cannot be taken as the starting point of limitation since the defendant No. 1 had thereafter granted EOT, approved various works executed by the plaintiff under extra items from 1991 to 1994 and subsequently prepared the so-called final bill only on 31.05.1995.

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55. The 28th Running Account bill/R.A. bill was issued by the defendant No. 1 on 31.05.1995 as the so-called final bill. However, from the said final bill, the DDA made a recovery of Rs. 96,563/- on account of reduction items and also withheld a sum of Rs. 20,000/- without assigning any reason.

56. Thereafter, being aggrieved by the said bill, the plaintiff/claimant had invoked arbitration under the Agreement *vide* letter dated 22.08.1995 (within 90 days from the date and payment of bill i.e. 31.05.1995).

57. Even after invocation of the arbitration clause, the defendant No. 1, in June 1997, released an amount of Rs. 80,000/-, which had been retained under Clause 42 of the Agreement towards supply of material and the same was only released after verification of steel. In August 1998, the defendant No. 1 again recovered a sum of Rs. 8,071.35/- against Extra Item No. 16, which had already been paid to the plaintiff/Contractor on 31.05.1995.

58. It is submitted on behalf of the plaintiff that it invoked arbitration by letter dated 22.08.1995, pursuant to which the Engineer Member, DDA appointed the earlier Arbitrator by letter dated 24.02.2000, and the proceedings were adjourned *sine die* on 10.07.2000. Upon Sh. S.S. Jain taking charge as Superintending Engineer (Arbitration-I), both parties were duly informed and directed to appear on 25.07.2006, when both parties appeared and jointly agreed to an enlargement of time for making and publishing the award.

59. The plaintiff, thereafter requested, by letter dated 07.02.2007, that the arbitrator be appointed by name rather than by office, pursuant to which the Engineer Member, DDA appointed Sh. S.S. Jain by name on

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26.02.2007. The defendant No. 1 subsequently filed an application dated 26.11.2007 seeking applicability of the Act and prayed that proceedings be kept in abeyance pending a mutual extension of time, and on the same date both parties jointly agreed to such enlargement.

60. It is submitted that although settled law requires a fresh notice to be issued where a matter has been adjourned *sine die*, such fresh notice was duly served on both parties upon Sh. S.S. Jain assuming charge. Reliance was placed on *Chandrakant Khaire v. Dr. Shantaram Kale, (1988) 4 SCC 577.*

61. On the plaintiff's request to appoint an arbitrator as per Clause 25 of the Agreement, Engineer Member, DDA, *vide* letter dated 26.02.2007, had done the same. The issue of limitation was specifically decided by the Arbitrator holding that the claims of the plaintiff were within limitation.

62. It is submitted that the defendant No. 1 itself took the position before the Arbitrator that the work executed by the plaintiff could not be treated as complete on 20.10.1990, since it remained the plaintiff's contractual obligation to hand over the houses to the allottees, and that obligation continued to subsist thereafter. It is submitted that this position is borne out by the allotment register produced by the defendant No. 1 itself, which shows that only 239 out of 256 flats had been handed over as of 31.12.1998**.**

63. It is submitted that the defendant No. 1, having itself taken the stand that completion of the contract was tied to handover of possession to allottees, and that process having continued well beyond 20.10.1990, cannot now be permitted to contend that limitation is to be reckoned from 20.10.1990 for the purpose of Clause 7 of the Agreement.

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Therefore, the invocation of arbitration by the plaintiff on 22.08.1995 was well within the limitation period prescribed under Clause 25.

64. It has been brought to my attention by the learned counsel for the plaintiff that Claim Nos. 2 and 3 awarding a sum of Rs. 1,00,000/- and Rs. 54,250.41/- in the Impugned Awards have not been disputed by the defendant No. 1 in its objections, exposing the inconsistency of the defendant No. 1 considering the allegation of the defendant No. 1 that the claims of the plaintiff herein are time-barred.

65. The learned counsel also refers to letters dated 13.11.1990, 17.02.1991, 15.07.1991, 15.02.1993, 22.05.1993, 15.07.1993, 15.02.1994 wherein work under certain extra items executed by the plaintiff were expressly approved by the defendant No. 1. Reliance has been placed on *P.C. Sharma & Co. v. Delhi Development Authority; 2011 SCC OnLine Del 5149* to state that wherein the plaintiff/contractor has duly notified the defendant No. 1 regarding the extra items of work and sought payment for the same, the claim is maintainable.

66. The plaintiff from time to time duly informed the defendant No. 1 that the plaintiff would be charging overhead expenses for the work executed beyond the stipulated date of completion. It is pertinent to mention here that these letters were never denied or disputed by the defendant No. 1 either contemporaneously or at any stage of the arbitral proceedings.

67. It has been pointed out that on multiple dates including 05.05.1990, 14.09.1990, 18.11.1990, 10.01.1991, 21.10.1992, 16.11.1992, 08.01.1993, 23.04.1993, 18.12.1993 and 31.05.1995, exhibited as Exhibits C-16, C-5, C-17, C-6, C-18 to C-22 & C-4, the plaintiff had

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requested the defendant No. 1 to take over possession of the site and release the payment. The said letters had clearly informed the defendant No. 1 that the watch and ward expenses incurred by the plaintiff would have to be borne by the defendant No. 1/DDA.

68. Learned counsel for the plaintiff also placed reliance on DDA Circular Nos. 509, 510 and 520 governing watch and ward charges to corroborate their claim.

69. It is further submitted on behalf of the plaintiff that the contention by the defendant No. 1 that the plaintiff had given an undertaking on 08.11.1990 is devoid of any force since no such defence was put forth by the defendant No. 1 in its counter statement of facts in the arbitral proceedings. Even assuming 08.11.1990 was written by the plaintiff, the plaintiff on the same day, i.e. 08.11.1990, protested and informed the defendant No. 1 that the undertaking was obtained under coercion and the said undertaking was withdrawn. Therefore, the arbitrator had correctly adjudicated the same.

ANALYSIS AND FINDINGS

70. I have heard the learned counsel for both the parties.

71. Before I proceed with the merits of the matter, it is pertinent to note that *vide* order dated 30.11.2007, it was recorded by the Arbitrator that the matter must proceed as per the Act.

Scope of interference under Sections 30 and 33 of the Act

72. Before dealing with the merits of the case, it is apposite to highlight the scope of interference under Sections 30 and 33 of the Act.

73. The Court can only set aside an Arbitral Award on the grounds mentioned in Section 30 of the Act and not otherwise. The scope of

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interference under Section 30 of the Act is limited, and the Court does not sit as a Court of appeal while adjudicating the objections against the Impugned Award. The Hon'ble Supreme Court in ***NTPC Ltd. v. Deconar Services (P) Ltd., (2021) 19 SCC 694*** summarized the scope of Sections 30 and 33 of the Act as under:

> *"11. Before proceeding further, it is necessary to make note of the scope of interference by courts in arbitral awards passed under the Arbitration Act, 1940. This Court has consistently held that the Court does not sit in appeal over an award passed by an arbitrator. In Kwality Mfg. Corpn. v. Central Warehousing Corpn. (2009) 5 SCC 142, this Court held as follows : (SCC pp. 146-47, para 10)*
>
> *"10. At the outset, it should be noted that the scope of interference by courts in regard to arbitral awards is limited. A court considering an application under Section 30 or 33 of the Act, does not sit in appeal over the findings and decision of the arbitrator. Nor can it reassess or reappreciate evidence or examine the sufficiency or otherwise of the evidence. The award of the arbitrator is final and the only grounds on which it can be challenged are those mentioned in Sections 30 and 33 of the Act. Therefore, on the contentions urged, the only question that arose for consideration before the High Court was, whether there was any error apparent on the face of the award and whether the arbitrator misconducted himself or the proceedings."*

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(emphasis supplied)

12. Further, it is also a settled proposition that where the arbitrator has taken a possible view, although a different view may be possible on the same evidence, the court would not interfere with the award. This Court in Arosan Enterprises Ltd. v. Union of India, held as follows : (SCC p. 475, paras 36-37)

"36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

37. The common phraseology "error apparent on the face of the record" does not itself, however, mean and imply closer scrutiny of the merits of documents and materials on record. The court as a matter of fact, cannot substitute its evaluation and come to the conclusion that the arbitrator

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had acted contrary to the bargain between the parties. If the view of the arbitrator is a possible view the award or the reasoning contained therein cannot be examined."

13. From the above pronouncements, and from a catena of other judgments of this Court, it is clear that for the objector/appellant in order to succeed in their challenge against an arbitral award, they must show that the award of the arbitrator suffered from perversity or an error of law or that the arbitrator has otherwise misconducted himself. Merely showing that there is another reasonable interpretation or possible view on the basis of the material on the record is insufficient to allow for the interference by the court [see State of U.P. v. Allied Constructions (2003) 7 SCC 396; Ravindra Kumar Gupta & Co. v. Union of India (2010) 1 SCC 409 and Oswal Woollen Mills Limited v. Oswal Agro Mills Ltd. (2018) 16 SCC 219].

(emphasis supplied)

74. With this scope in mind, I shall now deal with rival contentions with respect to preliminary objections and claims.

Plea of Limitation and Waiver

75. The defendant No. 1 has contended that the claims by the plaintiff were time-barred as initial invocation of the arbitration was more than three years after actual completion of work and further that the subsequent letter dated 18.04.2007 seeking reference of the claims was also hopelessly barred by limitation. It was further stated that the plaintiff has waived off its claims with respect to the subject contract since it

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failed to raise them within 30 days of payment of the final bill i.e. on 31.05.1995, as required under Clause 7 of the Agreement.

76. The Arbitrator held that the plaintiff's claims were within limitation, finding that arbitration had first been invoked by letter dated 22.08.1995. It was further noted by the Arbitrator that the said invocation, being within 90 days of the final bill dated 31.05.1995 as required under Clause 25 of the Agreement, was itself within limitation. The defendant No. 1's contention that the claims were barred by the 30-day timeline for raising disputes under Clause 7 was rejected, since even after the final bill was paid on 31.05.1995, certain amounts remained withheld, and payments for extra items continued to be made till as late as 1998. The Arbitrator further noted that it was only due to inaction on the part of the Engineer Member, DDA, that the earlier arbitrator came to be appointed *vide* letter dated 24.02.2000. The letter dated 07.02.2007 was not a fresh invocation but merely a continuation of the reference dated 24.02.2000. The same was pursuant to the original invocation of 22.08.1995. The defendant No. 1's contention that additional claims had been raised for the first time in 2007 was also rejected by the Arbitrator observing that all the claims eventually referred to him formed part and parcel of the invocation made on 22.08.1995.

77. The relevant portions of the Impugned Award dated 31.01.2008 read as under:-

> *"From the aforesaid, it is clear that the Claimants were agitating their grievance of the appointment of the Arbitrator in continuance of their letter dated 22.08.1995. Letter dated 07.02.2007 cannot be said to a fresh*

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invocation, at all. This is also clear from the fact that the proceedings under the reference dated 24.02.2000 was in continuance when the letter dated 07.02.2007 was written by the Claimants. Respondents have not challenged the reference dated 24.02.2000. Reference dated 24.02.2000 was pursuant to the invocation dated 22.08.1995. The Engineer Member, D.D.A.'s letter dated 23.05.2007 refers all the earlier correspondence on the issue and related therewith finally put the issue of reference at rests. This letter dated 23.05.2007 cannot be read in isolation was in continuance of letters dated 24.02.2000 and 26.02.2007. Letter/reference dated 26.02.2007 certainly referred claims as contained in Claimants' letter dated 22.08.1995. This letter dated 23.05.2007 has to be taken as the final reference. Only issue is as to whether vide letter 23.05.2007 any additional claim was also referred as inferred from the reading of the same or all the additional claims were stood raised vide letter dated 22.08.1995. Further, whether any of the claims were properly referred or not or barred by the limitation.

Letter dated 22.08.1995 is admitted by the Respondents. A bare perusal of the said letter shows that 15 claims, in total which were sought to be referred for arbitration. Claimants submitted that the claims no. 1 and 5 to 9 in their letter dated 22.08.1995 relate to work done but not paid and those claims were clubbed together under one heading Claim

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No.1 in the Statement of Facts. This fact has not been disputed by the Respondents. Further scrutiny of the letter dated 22.08.1995 and Statement of Facts shows that the Claim no.2 and additional claims no. 1 to 5 in the Statement of Facts were sought to be referred in letter dated 22.08.1995 under various heads and they are part and parcel of the letter dated 22.08.1995.

From the above discussion, it is quite clear that there was no fresh invocation of Clause - 25 of the agreement by the Claimants. Arbitration Clause was invoked vide letter dated 22.08.1995. Claimants subsequently raised the dispute on the issue of improper reference and appointment of the Arbitrator. Finally, vide letter dated 23.05.2007, I was appointed as Arbitrator to decide and adjudicate upon all the claims as referred vide letter dated 23.05.2007 including the additional claims subject of course to the limitation and other objections intact. Therefore, I can safely conclude that the Arbitrator was finally appointed vide letter dated 23.05.2007 by the Engineer Member, D.D.A in pursuance to the letter invoking the arbitration Clause - 25 of the agreement.

There is no force in the submissions of the Respondents that the claimants failed to submit list of disputed items within 30 days from the payment of the final bill and therefore, the claims deemed to have been fully waived within the meaning of Clause - 7 of the agreement. As per the Respondents,

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final bill was prepared on 31.05.1995 and list of disputed items should have been submitted within 30 days there from. On the other hand, Claimants have submitted that the said bill cannot be deemed to be a final bill as payments made subsequent to the said bill on various dates. Certain payments were withheld by the Respondents, which have not been paid till date. Clause - 7 of the agreement provides for that submission of the final bill from the contractor upon completion of work or upon furnishment of the completion certificate by the Engineer-in-charge. It further provides time limit for payment thereafter in a time-frame. It also provides that contractor shall submit a list of disputed items within thirty days from the disallowance thereof and if the contractor fails to do so he shall be deemed to have waived his claims. Thus, such claims shall be deemed to have been waived if list thereof has not been submitted within thirty days from the disallowance of the payment under the final bill and also of additional items. Clause - 25 of the agreement provides that contractor should make a demand for arbitration within 90 days from the date of receiving intimation that the bill is ready for the payment. Final bill was ready as on 31.05.1995. Payments made subsequent to the said date and the Claimants vide their letter dated 31.05.1995 exhibit C-4 raised their claims immediately after the receipt of said final bill. I cannot ignore the fact that the Respondents themselves effected recovery of the amount of

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Rs.8,071.35 in August, 1998, under the present agreement. Therefore, 31.05.1995 is not relevant for the purposes of counting 30 days for submission of list of disputed items as the same has to be reckoned from the date of receipt or disallowance of payment. In any case right to seek arbitration under Clause 25 is paramount and the said right cannot be curtailed by reading of any other provision of the agreement. Admittedly, letter dated 22.08.1995 is within 90 days from the date of the final bill. There is no writing or nothing on record to suggest that the Claimants gave any full and final settlement receipt. Claimants have raised disputes vide their letter dated 22.08.1995 and sought arbitration in respect of their claims. Therefore, it cannot be held that there was no dispute between the parties. I am of the view that the arbitration was invoked in time and was within limitation as per the Judgement of Hon'ble High Court of Delhi in Pandit Construction Company Vs. D.D.A. 2007(3) Arb. L. R. 205 (Delhi). Considering the entire facts and in the light of above discussion, I hold that the claims are within limitation as well as are not hit by the Clause - 7 of the agreement."

78. The defendant No. 1/DDA prepared the final bill only on 31.05.1995. Furthermore, no final completion certificate was issued even then by the defendant No. 1 for the work executed by the plaintiff.

79. In fact, the final bill was prepared and paid by the defendant No. 1 on 31.05.1995. The same admittedly withheld amounts to the tune of Rs.

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91,928.65/-. The same as stated by the defendant No. 1 has been recorded in the order dated 22.10.2007 of the Arbitrator.

80. The relevant order dated 22.10.2007 reads as under:

DELHI DEVELOPMENT AUTHORITY
OFFICE OF THE SUPERINTENDING ENGINEER(ARBN.)-I
7th FLOOR, VIKAS MINAR, I.P. ESTATE,
NEW DELHI-110002.

No.SE(Arbn.)-1/2007/81/ 817-19 Dated: 22/10/07

BEFORE
SHRI S. S. JAIN.
SOLE ARBITRATOR

IN THE MATTER OF ARBITRATION BETWEEN:

M/s. S.R. Ashok and Associates. Claimant(s).
Versus
Delhi Development Authority Respondent(s).
Executive Engineer, ED-12.

Name of work: C/o Lower MIG houses at Kondli Gharoli Complex.
SH: C/O 256 Lower MIG houses, Group-III.
Agreement No.29/EE/HD-23/85-86.

The case came up for hearing on 22-10-07 at 2.00 P.M. The presence of the parties is as under:

On behalf of Claimant(s)	On behalf of Respondent(s)
Present:	Present:
1.Sh. S.K. Jain, Advocate.	1.Sh. A.S. Basra, E.E,E.D-12.
	2.Sh.Hira Lal, U.D.C, E.D-12.
	3.Sh.Ashutosh Sharma, Counsel.

Both the parties are present.

The claims are discussed as under:

CLAIM NO.2:

The Claimants stated that they rely on their S.O.F. and rejoinder.

The Respondents stated that the details of amounts withheld are as under as verified from the record.

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1.	Rs.40,000/-	Admitted as withheld till day.
2.	Rs.50,000/-	Rs.30,000/- released and balance Rs.20,000/- withheld till day
3.	Rs.80,000/-	Released in June, 95.
4.	Rs.20,000/-	Admitted as withheld till day.
5.	Rs.20,000/-	Rs.8,071.35 have been adjusted against E.I. No.16 which was sanctioned by the competent authority and paid in the final bill later on the same was rejected by the competent authority, recovered and adjusted vide T.E. No.4 of Aug.,98. Hence, Rs.11,928.65 is withheld.
6.	Rs.54,262/-	Released on 7-6-95.

Total = Rs.40,000 + 20,000 + Nil + 20,000 + 11,928.65 + Nil

i.e. Rs.91,928.65 is withheld on the day.

The Claimants stated that the Respondents never intimated the Claimants regarding any recovery/adjustment against withheld amount. The final bill was paid on 31-5-05 partly and balance payment was made on 07-06-95. Hence, the recovery made in August, 98 is illegal.

81. Even otherwise, Clause 25 of the Agreement requires claims to be raised in writing within 90 days from intimation that the bill is ready. The relevant Clause 25 of the Agreement reads as under:

> *"Clause 25: "Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs drawings and instruction herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question claim, right matter or thing whatsoever, in any way arising out of or relating to the contract designs drawings, specifications, estimates, instruction, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising*

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during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person appointed by the Engineer Member Delhi Development Authority at the time of dispute. It will be no objection to any such appointment that the arbitrator is so appointed is a Delhi Development Authority employee that he had to deal with the matters to which the contract relates and that in the course of his duties as Delhi Development Authority employees he had expressed view on all or any of the matters in dispute of difference. The arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, such Engineer Member, Delhi Development Authority as aforesaid at the time of such transfer, vacation of office or liability to act shall appoint another person to act as arbitrator in accordance with the terms of the contract. Such person shall b entitled to proceed with the reference from the stage at which it was left by his predecessor it is also a term of this contract that no person other than a person appointed by such Engineer Member Delhi Development Authority as aforesaid should act as arbitrator and, if for any reason that is not possible, the matter is not to be referred to arbitration at all. In all the cases where the amount of the claim in dispute is Rs. 50,000/- (Rupees fifty thousand only) and above, the arbitrator will give reason for the award.

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Subject as aforesaid the provisions of the Arbitration Act, 1940 or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this Clause. It is the terms of the contract that the party invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in respect of each such dispute.

It is also a term of the contract that if the contractor(s) does/do not make any demand for arbitration in respect of any claim(s) in writing within 90 days of receiving the intimation from the Engineer-in-Charge that the Bill is ready for payment, the claim(s) of the contractor(s) will be deemed to have been waived and absolutely barred and the Delhi Development Authority shall be discharged and released of all liabilities under the contract in respect of those claims.

Clause 25A: The arbitrator(s) may from time to time with the consent of the parties enlarge the time for making and publishing the award.

Clause 25B: The decision of superintending Engineer regarding the quantum of reduction as well as justification thereof in respect of rates for sub-standard work, which may be decided to be accepted will be final and would not be open to arbitration."

82. The plaintiff raised its claims on 22.08.1995 seeking reference to

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arbitration and therefore, the same were within a period of 90 days from 31.05.1995. Therefore, the contention of the defendant No. 1 that the disputes/claims were not raised well within the time as specified in the Agreement has been rightly rejected by the Arbitrator.

83. Furthermore, pursuant to the initial invocation letter dated 22.08.1995, the receipt for which is not disputed by the defendant No. 1, no action was taken by Engineer Member, DDA, and the Arbitrator was only appointed in 2000. Subsequently, only *vide* letter 24.02.2000, the Engineer Member, DDA, referred the disputes raised by the plaintiff to the appointed Arbitrator.

84. It has been rightly observed by the Arbitrator that the proceedings under the reference dated 24.02.2000 were in continuance when the letter dated 07.02.2007 was written by the plaintiff/claimant. The defendant No. 1 did not challenge the reference dated 24.02.2000, which was pursuant to invocation dated 22.08.1995. Thereafter, on 10.07.2000, the Arbitrator adjourned the proceedings *sine die*.

85. The proceedings were restarted on 25.07.2006 by the successor Superintending Engineer, (Arbitration)-I, Shri S.S. Jain. *Vide* letter dated 07.02.2007, the plaintiff objected that the appointment was not in terms of Clause 25 and asked for an arbitrator to be appointed by name, which reads as under:-

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2026:DHC:9588

S. R. Ashok & Associates
B-71, SARVODAYA ENCLAVE, NEW DELHI-110 017
Ph.: 26564109, Telefax: 26564496
E-mail: msk@vsnl.com
AN ISO 9001 : 2000 COMPANY

February 7, 2007

The Engineer Member
Delhi Development Authority
Vikas Sadan
New Delhi

Subject : C/O Lower MIG Houses at Kondli Gharoli Complex
SH: C/o 256 MIG Houses in Group-III

Agreement No. 29/EE/HD 23/85/86

Reference :
1. Our letter dated 22.8.1995
2. Our letter dated 30.12.1999
3. Your Letter No. CE28(72)EZ/JLO/Arbn./98/62 Dated 24.2.2000
4. S.E.(ARBN)-I/NKS/2000/49/80-81 dt. 7.3.2000

Dear Sir,

In response to our letter dated 22.8.1995 and 30.12.1999 you have appointed the Supdtg. Engineer (Arbn)-I as Sole Arbitrator vide letter No. CE28(72)EZ/JLO/ Arbn./98/62 dated 24.2.2000 (not received by us till date) which is against the clause 25 of the Agreement. As per clause 25 of the agreement, a person by name should be appointed as Arbitrator. Therefore, the appointment of Arbitrator made by your office is against the clause 25 of the agreement.

In response to your letter dated 24.2.2000, the then Supdtg. Engineer (Arbn)-I Shri N K Sharma enter into the reference vide letter no. S.E.(ARBN)-I/NKS/2000/49/80-81 dated 7.3.2000 (not received by us till date). The Supdtg. Engineer (Arbn)-I Shri N K Sharma vide letter dated 10.7.2000 ADJOURN THE CASE SINE DIE. Thereafter, the present Supdtg. Engineer (Arbn)-I Shri S S Jain restarted the arbitration proceedings from 25.7.2006.

As the appointment of Supdtg. Engineer (Arbn)-I is not in terms of clause 25 of the Agreement, you are requested to appoint an Arbitrator in terms of clause 25 of the agreement within 15 days from the date of receipt of this letter, failing which it shall be construed as refusal on your part to appoint the Arbitrator. In that case we shall be constrained to approach the court of competent jurisdiction for appointment of Arbitrator.

Enclosed please find herewith copy of our letters dated 22.8.1995 and 30.12.1999.

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86. The aforesaid letter expressly refers to the invocation of 22.08.1995 and the appointment of 24.02.2000, and was written while that reference was subsisting. On 26.02.2007, the Engineer Member, D.D.A. appointed Shri S.S. Jain by name to continue from the stage left off. The plaintiff objected again on 18.04.2007 and raised additional claims. The same were referred by the Engineer Member, D.D.A. to the Arbitrator by letter dated 23.05.2007, without prejudice to the defendant No. 1's contention, including limitation. The said letter dated 23.05.2007 reads as under:-

NO. : CE28(72)EZ/JLO/Arbn./ 186 **DT.:** 23/5/07

Sub: In the matter of Arbitration between:
M/s. S.R. Ashok & Associates.
V/s.
D.D.A.
Name of work : C/o Lower MIG Houses at Kondli Gharoli Complex.
SH. :C/o 256 Lower MIG Houses, Group-III
AGMT. No.: 29/EE/HD -23/1/85-86

In continuation of this office Memorandum No. CE28(72)EZ/JLO/Arbn./98/62 dt. 24.2.2000 and even No. 58 dt. 26.2.07, the claims as per letter No. Nil dt. 18.4.07 of M/s. S.R. Ashok & Associates are also referred to Sh. S.S. Jain, S.E. (Arbn.)-I, DDA as per statement enclosed. These additional claims may also be arbitrated upon, if fall within the purview of Clause 25 of the agreement and the award given alongwith the award on the claims/disputes already referred and also regarding the further counter claims of the department against contractor to follow, if any. The arbitrator shall give reasons for the award..

This reference is without prejudice to the defence that may be raised by the respondents regarding the tenability of the claims on all necessary and available grounds including those of limitations.

(A.K. SARIN)
ENGINEER MEMBER ,DDA

Encl.: As above

Sh. S.S. Jain, S.E. (Arbn.)-I ,
7th Floor, Vikas Minar,
DDA, N. Delhi.

Copy to:

1. M/s. S.R. Ashok & Associates, B-71, Sarvodaya Enclave, N.D.-17 (RAD).
2. Executive Engineer, ED-12, DDA, N. Delhi

ENGINEER MEMBER, DDA

23/05/07

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Statement showing the list of Addl. Claims in r/o Work C/o Lower MIG Houses at Kondli Gharoli Complex. SH. :C/o 256 Lower MIG Houses, Group-III
AGMT. No.: 29/EE/HD -23/1/85-86
Agency: M/s. S.R. Ashok & Associates

.....

Addl. Claim No. 1:

Claimant claims a sum of Rs.48,85,000/- on account of compensation for damages due to prolongation of contract period.

Arbitrator is to decide whether the claim of the claimant is justified as per terms & conditions of the Agmt. If so, to what extent?

Addl. Claim No. 2:

Claimant claims a sum of Rs.16,47,000/- on account of watch & ward expenditure after date of completion

-do-

Addl. Claim No.3:

Claimant claims a sum of Rs. 40,500/-P.M. on account of watch & ward of houses since completed from 21st Aug., 95 till the houses are taken over by allottees/DDA.

-do-

Addl. Claim No.4:

Claimant claims for pre-suit, pendentelite & future interest @ 18% p.a.

-do-

Addl. Claim No.5:

Claimant claims a sum of Rs. 25,000/- as Costs.

-do-

Engineer Member,
DDA

87. On a perusal of these letters, the Arbitrator held that the letter dated 23.05.2007 was in continuity with those of 24.02.2000 and 26.02.2007 and was the final reference. The letter dated 07.02.2007 was not a fresh invocation, and Clause 25 was invoked only once, on 22.08.1995. Although the plaintiff raised these objections initially, both parties thereafter participated. Pleadings were completed between June and September 2007, and the matter was concluded with the consent of the parties on 30.11.2007.

88. On the preliminary objections, the Arbitrator held that the claims were within limitation. He held that Clause 7 of the Agreement did not bar the

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claims, as the 30-day period runs from receipt or disallowance of payment and not from 31.05.1995, the defendant No. 1 itself having effected a recovery in August 1998 and no full and final settlement receipt was on record. He also held that the right to seek arbitration under Clause 25 is paramount and cannot be curtailed by any other provision.

89. A conjoint reading of the letters of 22.08.1995, 24.02.2000, 07.02.2007, 26.02.2007, 18.04.2007 and 23.05.2007 supports the Arbitrator's view. The letter dated 07.02.2007 was addressed while the reference of 24.02.2000 was still subsisting, and it relied on the original invocation of 22.08.1995. Its only object was to have the arbitrator appointed by name in terms of Clause 25, and it raised no fresh dispute. The Engineer Member's letters dated 26.02.2007 and 23.05.2007 were issued in response to that request and not as a fresh reference. The defendant No. 1 never challenged the reference of 24.02.2000, and the later letters expressly preserved its defences, including limitation. The discussion above also shows that Clause 7 of the Agreement does not bar the claims, and that the invocation of 22.08.1995 was within the time prescribed by Clause 25 of the Agreement. The Arbitrator's findings on limitation are thus based on the correspondence and the terms of the Agreement.

90. Hence, no fresh reference to arbitration was invoked by the plaintiff and the reference of disputes made to the subsequent arbitrator in 2007 was simply a continuation of the initial invocation of arbitration by the plaintiff in 1995.

91. The judgement of ***M/s Attar Singh & Brothers (supra)*** relied on by the

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defendant No. 1 to contend that the claims are barred by limitation is misplaced. In that case, the work was completed by the contractor in 1985, the release of payment by the contractor was first raised in 1987, while the arbitration clause was invoked only in 1992, and the final bill was prepared only after invocation of arbitration; the Court accordingly upheld the finding of the Arbitrator that the Contractor having failed to submit the final bill within six months of completion, had no option but to raise his claims within three years of the expiry of that six-month period, and could not wait endlessly for DDA to finalise the final bill before raising them.

92. However, in the present case, the defendant No. 1 was the one that initially extended the completion date up to 20.10.1990 without levy of compensation, issued only a provisional completion certificate, even approved extra work items till 1994, and only prepared the final bill on 31.05.1995, while still admittedly withholding money from it. The rule that a contractor cannot wait endlessly for the final bill to be prepared therefore has no application where it is the defendant No. 1 itself continued to give extra works to the plaintiff and did not issue a final completion certificate. In the present case, the work was continuing and had not come to an end.

93. The judgment in ***Bindra Builders (supra)*****,** relied on by the defendant No. 1, is equally misplaced. In that case, the work was completed on 27.12.1982 and the flats were handed over by 1984. The contractor first sought payment on 06.11.1984 but never submitted a final bill. It kept writing letters in 1985, 1986 and 1990, and invoked arbitration only on 30.09.1994, making its claims for the first time in May 1996. No

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completion certificate, provisional or final, was ever issued, and the final bill was prepared by the DDA only during the arbitral proceedings. The Court held that Clause 7 places the duty to submit the final bill on the contractor, and that in the absence of the words *"whichever is later"*, time for submitting runs from the date fixed for completion even where no certificate is issued. It held that Clause 25 only determines whether the demand for arbitration is in time and does not decide whether the claims themselves are barred. As the contractor had not submitted a final bill or invoked arbitration for over ten years after completion, the Court upheld the Arbitrator's finding that the claims were time-barred.

94. The facts of the present case are distinguishable from ***Bindra Builders (supra)***. In the present case, the defendant No. 1 only issued a provisional completion certificate and no final completion certificate was ever issued. Additionally, in the present case, the defendant No. 1 itself prepared the final bill on 31.05.1995, withheld amounts from it and also awarded and approved extra items of work subsequently.

95. Reliance placed by the defendant No. 1 on ***Naresh Kumar Gupta v. MCD, 2013 SCC OnLine Del 574***, is also misplaced. In that case, the contractor never submitted a final bill, and none was ever prepared. The contractor's letters were disputed and were not found in the employer's records. Arbitration was invoked more than four years after completion, and the last payment itself fell beyond three years from the date the cause of action arose. In the present case, the defendant No. 1 itself prepared and paid the final bill on 31.05.1995 while withholding amounts from it, and the receipt of the plaintiff's letters dated

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31.05.1995 and 22.08.1995 are admitted. Arbitration was invoked within 90 days of the final bill, as required by Clause 25. Further, the Division Bench in ***Naresh Kumar Gupta (supra)*** upheld the Arbitrator's finding on limitation, holding that the interpretation of the clauses of the contract lies wholly within the domain of the Arbitrator. That principle applies equally here, where the Arbitrator has taken a plausible view that the claims are within limitation.

96. The reference subsequently made *vide* letter dated 26.02.2007 to the Arbitrator included the adjudication on limitation.

97. The relevant portion of the letter dated 26.02.2007 reads as under:

> "*….Whereas S.E. (Arbn.)-I was appointed as Sole Arbitrators vide this office letter No. CE28(72)EZ/JLO/Arbn./98/62 dt. 24.2.2000 in the above matter and whereas the aforesaid Arbitrator has adjourned the case sine die vide letter dt. 10.7.2000. Whereas S.E. (Arbn.)-1 has restarted the arbitration proceedings from 25.7.2006. Whereas the claimant vide his letter dt. 7.2.07 has requested to appoint an arbitrator by name in terms of Clause 25 of the agreement. I, A.K.Sarin, Engineer Member, DDA in exercise of the powers conferred upon me under Clause-25 of the said Agreement hereby appoint Sh. S.S. Jain, S.E. (Arbn.)-I, DDA as Sole Arbitrator to determine the claims referred to the aforesaid arbitrator in accordance with the said Clause-25 of the aforesaid agreement.*
>
> *Sh. S.S. Jain, S.E. (Arbn.)-I may continue the proceedings*

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from the stage at which the aforesaid left off. The arbitrator shall give reasons for the award.

This reference is without prejudice to the defence that may be raised by the respondents regarding the tenability of the claims on all necessary and available grounds including those of limitations."

98. Therefore, the reference made to the Arbitrator included the question of limitation. The Arbitrator's view on this issue is a plausible and reasonable view and this Court is therefore not required to interfere in the same.

99. Reliance is also placed on ***Tarapore & Co. v. Cochin Shipyard Ltd., (1984) 2 SCC 680*** wherein it has been held that when a question of law has been specifically referred to the arbitrator, then the award of the arbitrator would be binding on the parties and the courts should not interfere with the same. The relevant paragraph reads as under:-

"47. The discussion leads to the inescapable conclusion that a specific question of law touching the jurisdiction of the arbitrator was specifically referred to the arbitrator and therefore the arbitrator's decision is binding on the parties and the award cannot be set aside on the sole ground that there was an error of law apparent on the face of the award. It is also established that the claim for compensation made by the arbitrator which led to the dispute was covered by the arbitration clause. The quantum of compensation awarded by the arbitrator was never disputed nor questioned. Therefore, the High Court was clearly in error

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in reversing the decision of the trial court."

100. Keeping in view the limited scope of judicial interference with an Arbitral Award under Section 30 of the Act and that there is no error apparent on record or any perversity with respect to the Arbitrator's findings on the claims of the plaintiff being within limitation, the claims of the plaintiff were within limitation. Hence, I am not inclined to interfere with the same.

Enlargement of time under Section 28 of the Act

101. The objection *qua* limitation raised by the defendant No. 1 also extends to the re-opening of the arbitral proceedings after a period of more than 7 years and it is urged that the same is in conflict with Section 28 of the Act.

102. For reference, Section 28 of the Act reads as under:

> *"28. Power to Court only to enlarge time for making award- (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not enlarge from time to time the time for making the award.*
>
> *(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making the award, shall be void and of no effect."*

103. The above provision clearly notes that the arbitrator cannot on his own enlarge the time. However, it is clear by reading the provision that sub-section (2) indicates one exception to the above rule that the arbitrator can enlarge the time, and that is when the parties agree to such an

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enlargement. This principle is discussed by the Hon'ble Supreme Court in ***Hari Krishna Wattal v. Vaikunth Nath Pandya, (1973) 2 SCC 510*** which reads as under:

> *"11. Sub-section (2) of Section 28, however, indicates one exception to the above rule that the Arbitrator cannot enlarge the time, and that is when the parties agree to such an enlargement. The occasion for the Arbitrator to enlarge the time occurs only after he is called upon to proceed with the arbitration or he enters upon the reference. Hence, it is clear that if the parties agree to the enlargement of time after the Arbitrator has entered on the reference, the Arbitrator has the power to enlarge it in accordance with the mutual agreement or consent of the parties. That such a consent must be a post reference consent, is also clear from Section 28(2) which renders null and void a provision in the original agreement to that effect. In a sense where a provision is made in the original agreement that the Arbitrator may enlarge the time, such a provision always implies mutual consent for enlargement but such mutual consent initially expressed in the original agreement does not save the provision from being void. It is, therefore, clear that the Arbitrator gets the jurisdiction to enlarge the time for making the award only in a case where after entering on the Arbitration the parties to the arbitration agreement consent to such enlargement of time."*
>
> ***(emphasis supplied)***

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104. It is relevant to note that, in consonance with the aforesaid, Clause 25A of the Agreement states that the Arbitrator may from time to time with the consent of the parties enlarge the time for making and publishing the award.

105. In this context, the relevant order of the Arbitrator dated 26.11.2007 and the application of the parties read as under:-

DELHI DEVELOPMENT AUTHORITY
OFFICE OF THE SUPTDG. ENGINEER (ARBITRATION)-I
7th FLOOR: VIKAS MINAR: I.P. ESTATE
NEW DELHI-110002.

No.S.E.(ARBN)-I/SSJ/2007/81/922-23 Dated:- 26/11/07

BEFORE:-
SHRI S.S. JAIN
SOLE ARBITRATOR.

IN THE MATTER OF ARBITRATION BETWEEN: -

1. M/S. S.R. Ashok & Associates — Claimant(s)

Versus

2. Delhi Development Authority (Executive Engineer,ED-12) — Respondent(s)

Name of work : C/O Lower MIG houses at Kondli gharoli Complex SH: C/O 256 Lower MIG houses, Group III.
Agreement No.:- 29/EE/HD-23/1/85-86.

****

The case came up for hearing on 26-11-2007 at 2-30 P.M. The presence of the parties is as under:-

On behalf of the claimant(s)	On behalf of the Respondent(s)
Presence:1..Sh. S.K. Jain, Adv.	Presence : 1)Sh. A.S. Basra, E.E,E.D-12. 2)Ms. Sushila Thukral, Adv. proxy for Sh. Ashutosh Sharma, P/L

Both the parties present.

The Respondents filed an application dated 26-11-2007 and requested further to proceed under the Arbitration Act, 1940. Both the parties are agreed for application of the Arbitration Act, 1940 and agreed for enlargement of time limit for making and publishing the award up to 25-3-2008.

Application is disposed off.

The Claimants submitted the judgment reported as 2007(3) AI.R 428 S.C. in the matter of DHV BV V/s. Tahal Consulting Engineers Ltd. and ORS. in respect of limitation. The Claimants filed copy of D.D.A. Circular No.509, 510 and 520 issued by the Engineer Member, D.D.A. regarding the watch and ward charges after the stipulated date of completion.

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DELHI DEVELOPMENT AUTHORITY
OFFICE OF THE SUPERINTENDING ENGINEER(ARBN.)-I
7th FLOOR, VIKAS MINAR, I.P. ESTATE,
NEW DELHI-110002.

No.SE(Arbn.)-1/ Dated: 26.11.07

BEFORE
SHRI S. S. JAIN.
SOLE ARBITRATOR

IN THE MATTER OF ARBITRATION BETWEEN:

Name of work :- C/o Lower M.I.G. Houses at Kondli Gharoli Complex.

SH: C/o 256 Lower M.I.G. Houses, Group-II

Agreement No. 29/EE/HD-23/1/85-86

We both the parties jointly agreed and request the Ld. Arbitrator for enlargement of time limit for making and publishing the award in the above matter up to 25-03-2008

Jain 26/11/07
CLAIMANTS
S.K. Jain, Advocate.

26.11.07
RESPONDENTS

On the request and with the consent of both the parties, the time for making and publishing the award is further enlarged upto-25.03.2008.

26.11.07
ARBITRRATOR.

106. Furthermore, the defendant No. 1 having participated in the arbitration proceedings without objection after the appointment of a new arbitrator in 2007, even to the extent of agreeing to the enlargement of time for publishing of the arbitral award, is squarely covered by the principle of acquiescence. The Hon'ble Supreme Court in ***Prasun Roy v. Calcutta***

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Metropolitan Development Authority, (1987) 4 SCC 217 elaborated on the same, the relevant paragraph reads as under:

> *"5. Can a party be permitted to do that? In Jupiter General Insce. Co. Ltd. v. Corporation of Calcutta [AIR 1956 Cal 470, 472 : 60 Cal WN 721] P.B. Mukharji, J. as the learned Chief Justice then was observed:*
>
> *"It is necessary to state at the outset that courts do not favour this kind of contention and conduct of an applicant who participates in arbitration proceedings without protest and fully avails of the entire arbitration proceedings and then when he sees that the award has gone against him he comes forward to challenge the whole of the arbitration proceedings as without jurisdiction on the ground of a known disability of a party. That view of the court is ably stated by the editor of the 15th edn. of Russell on the Law of Arbitration at page 295 in the following terms:*
>
> *'Although a party may by reason of some disability be legally incapable of submitting matters to arbitration that fact is not one that can be raised as a ground for disputing the award by other parties to a reference who were aware of the disability. If one of the parties is incapable the objection should be taken to the submission. A party will not be permitted to lie by and join in the submission and then if it suits its purpose attack the award on that ground. The presumption in the absence of proof to the contrary will be that the party complaining was aware of the disability when*

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the submission was made'."

6. Mr Kacker submitted that this principle could be invoked only in a situation where the challenge is made only after the making of an award, and not before. We are unable to accept this differentiation. The principle is that a party shall not be allowed to blow hot and cold simultaneously. Long participation and acquiescence in the proceeding preclude such a party from contending that the proceedings were without jurisdiction.

7. Russell on Arbitration, 18th edn. page 105 [20th Edn., p. 131] explains the position as follows:

"If the parties to the reference either agree beforehand to the method of appointment, or afterwards acquiesce in the appointment made, with full knowledge of all the circumstances, they will be precluded from objecting to such appointment as invalidating subsequent proceedings. Attending and taking part in the proceedings with full knowledge of the relevant fact will amount to such acquiescence.

8. The Judicial Committee in its decision in Chowdhri Murtaza Hossein v. Mussumat Bibi Bechunnissa [LR (1875-76) 3 IA 209, 220] observed at page 220:

On the whole, therefore, Their Lordships think that the appellant, having a clear knowledge of the circumstances on which he might have founded an objection to the arbitrators proceeding to make their awards, did submit to

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the arbitration going on; that he allowed the arbitrators to deal with the case as it stood before them, taking his chance of the decision being more or less favourable to himself; and that is too late for him, after the award has been made, and on the application to file the award, to insist on this objection to the filing of the award."

Relying on the aforesaid observations this Court in N. Chellappan v. Secretary, Kerala State Electricity Board [(1975) 1 SCC 289] acted upon the principle that acquiescence defeated the right of the applicant at a later stage. In that case the facts were similar. It was held by conduct there was acquiescence. Even in a case where initial order was not passed by consent of the parties a party by participation and acquiescence can preclude future challenges.

10. Mr S.N. Kacker, learned Counsel for the respondents drew our attention to the fact that the decision in the Chowdhri Murtaza Hossein case was where the party challenged the appointment of the receiver after the award was made. He also submits that in this case the respondents herein had challenged the order of appointment of the arbitrator on 19-4-1983 and not after the arbitrator had made the award. We are unable to accept this distinction. Basically the principle of waiver and estoppel is not only applicable where the award had been made but also where a party challenges the proceedings in which he participated.

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In the facts of this case, there was no demur but something which can be called acquiescence on the part of the respondents which precludes them from challenging the participation (sic proceedings).

11. In that view of the matter, we are of the opinion that the judgment and impugned order cannot be sustained. In the premises the appeal is allowed. The order and judgment of the High Court dated 8-12-1986 are set aside. The arbitration proceedings will go on before the arbitrator appointed by order dated 19-4-1983…"

(emphasis supplied)

107. For the aforesaid reasons, it is clear that the defendant No. 1 consented, jointly with the plaintiff, to the extension of time for making and publishing the award, and acquiesced in the proceedings before the Arbitrator. Having done so, it cannot now contend that the proceedings are void for want of enlargement under Section 28 of the Act.

Objections under Section 30 *qua* the Impugned Award

108. The defendant No. 1 has raised the objection of misconduct on part of the Arbitrator, relying on the judgment ***Seth Mohanlal Hiralal v. State of MP*, *(2003) 12 SCC 144***, which states that the interference under Section 30 of the Act is not simply limited to a moral lapse but can also include a situation wherein the Arbitrator may arrive at certain finding by ignoring relevant material on record. The relevant paragraph reads as under:

"6. In K.P. Poulose v. State of Kerala [(1975) 2 SCC 236 : AIR 1975 SC 1259] it was held by this Court that

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misconduct under Section 30(a) has no connotation of moral lapse. It comprises legal misconduct which is complete if the arbitrator on the face of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring the very material documents which throw abundant light on the controversy to help a just and fair decision."

109. Courts have repeatedly held that, where the Arbitrator has passed a reasoned award, interference is warranted only in cases of total perversity or a wrong proposition of law. This has been elaborated in ***Arosan Enterprises Ltd. v. Union of India, (1999) 9 SCC 449***, which states as under:

"36. Be it noted that by reason of a long catena of cases, it is now a well-settled principle of law that reappraisal of evidence by the court is not permissible and as a matter of fact exercise of power by the court to reappraise the evidence is unknown to proceedings under Section 30 of the Arbitration Act. In the event of there being no reasons in the award, question of interference of the court would not arise at all. In the event, however, there are reasons, the interference would still be not available within the jurisdiction of the court unless of course, there exist a total perversity in the award or the judgment is based on a wrong proposition of law. In the event however two views are possible on a question of law as well, the court would not be justified in interfering with the award.

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38. It is on the basis of this well-settled proposition that the learned Single Judge came to a conclusion that the findings of the arbitrators in regard to the extension of delivery period and failure to fix the fresh date has resulted in breach of the contract on the part of the Government and the same being purely based on appreciation of the material on record by no stretch of imagination can it be termed to be an error apparent on the face of the record entitling the Court to interfere. The arbitrators have, in fact, come to a conclusion on a closer scrutiny of the evidence in the matter and reappraisal of evidence by the court is unknown to proceedings under Section 30 of the Arbitration Act. Reappreciation of evidence is not permissible and as such we are not inclined to appraise the evidence ourselves save and except what is noticed hereinbefore pertaining to the issue as time being the essence of the contract…"

(emphasis supplied)

110. A perusal of ***Arosan Enterprises (supra)*** shows that the Court does not sit in appeal over the award and cannot reappraise the evidence. Interference under Sections 30 and 33 of the Act is permissible in circumstances where the Arbitrator ignores material documents, reaches a conclusion inconsistent on the face of the award, is totally perverse, or proceeds on a wrong proposition of law. Where the award is reasoned, and two views are possible on facts or the law, the Court should not interfere merely because it could have taken a different view.

111. The defendant No. 1 does not allege bias, unfairness or denial of

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hearing. On the contrary, the defendant No. 1 has actively participated in the arbitral proceedings at every stage. A perusal of the arbitral records, especially the Impugned Award, makes it clear to me that contentions of both the parties have been properly considered and adjudicated upon by the Arbitrator, considering the express provisions of the Agreement between the parties, and the findings *qua* every claim have been arrived at with detailed reasonings.

112. I am of the view that the Arbitrator has considered all the material documents and averments of the parties at length and arrived at a conclusion which depicts no misconduct. A bare assertion that material documents were ignored, without providing proper details, cannot be regarded as misconduct.

113. The aforesaid was reaffirmed by the Hon'ble Supreme Court in ***Goa, Daman and Diu Housing Board v. Ramakant V.P. Darvotkar, (1991) 4 SCC 293,*** while adjudicating under Sections 30 and 16 of the Act. The relevant paragraphs read as under:

> *"12. Section 16 empowers the court to remit the award to the arbitrator for reconsideration only in three cases specified therein. Clause (c) of Section 16(1) provides that the award shall be remitted to the arbitrator by the court where an objection to the legality of the award is apparent on the face of it. Of course, the High Court has come to a finding that the arbitrator was guilty of misconduct for his failure to give reasons as required. There is, however, nothing to show that the arbitrator misconducted himself or the proceedings in any other manner nor there is anything*

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to show that the awards have been improperly procured. There is no allegation, far less, any finding, that the arbitrator was biased or unfair or he has not heard both the parties or he has not fairly considered the submissions of the parties in making the awards in question. In our opinion, it is evident from the four awards made by the arbitrator that the arbitrator has considered all the specific issues raised by the parties in the arbitration proceedings and came to his finding after giving cogent reasons. The above awards cannot under any circumstances be considered to be made by the arbitrator without recording any reasons for the same. Therefore, in such circumstances, it is not proper to hold that the arbitrator has misconducted himself or in the proceedings in the matter of giving the awards."

(emphasis supplied)

114. Accordingly, the Impugned Award does not suffer from any infirmity amounting to misconduct, nor can it be said to have been improperly procured or to be otherwise invalid under Section 30 of the Act. The objections raised by the defendant No. 1 have been considered and found to be without merit to that extent, without prejudice to the findings on each claim below. With this principle in mind, I now proceed to deal with the merits of the claims.

Examining the merits of the claims:-

Claim No. 1(4)

115. A total sum of Rs. 1,52,532/-, as against the claim amount of Rs.

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2,03,376/-, was awarded by the Arbitrator on account of straightening and cutting steel to the required sizes, being an extra item of work.

116. It is contended on behalf of the defendant No. 1 that the Impugned Award wrongly grants the said amount because Agreement item 3.7 already covers the complete operation of cutting, straightening, bending, binding and placing in position of the steel, in line with CPWD Specifications Vol. I (1977), paras 5.3.1, 5.3.2 and 5.3.4. It is also stated that Clause 42 (i) and (ii) allows 3% wastage for cutting into pieces, which shows that cutting and straightening are part of the contracted work and not an extra item.

117. The Arbitrator took the view that the agreement item No. 3.7(a) and 3.7(b) provided only for the reinforcement for R.C.C. work including bending, binding and placing the position complete and the same cannot be read to include cutting and straightening of steel. He held that the cost towards the same must be treated as an extra item. The view of the Arbitrator is reproduced hereinbelow:-

> *"After going through the submission made by both the parties includes oral arguments and judgements filed by the parties I find that admittedly, agreement item no. 3.7 (a) and 3.7 (b) provide for the reinforcement for R.C.C. work including bending, binding and placing in position complete. In 2003(2) Arb. L. R. 110 (Delhi) Jagat Ram Trehan & Sons Versus D.D.A. the Hon'ble High Court upheld the award for cutting and strengthening of reinforcement bars and the contention that the same was included in the contract was rejected. Same is the position*

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in the instant case. Said agreement item no. 3.7 (a) and 3.7 (b) cannot be read to have included cutting and straightening of steel. Cost towards cutting and straightening of the reinforcement bars is to be treated as an extra item. Claimants were admittedly issued 2,54,220 Kg. of steel. I allow a rate of Rs. 0.60 per kg towards cutting and straightening of said steel."

118. Objection has been raised to the awarded amount under the said claim by the defendant No. 1 by placing reliance on ***Anant Raj (supra)*** where a claim for straightening bent-up steel was set aside by following the judgement in ***Wee Aar Constructive Builders (supra)***. The relevant paragraphs read as under:-

"43. Decision in Wee Aar Constructive Builders (supra), relied upon by counsel for DDA noted decision in K.C. Chibber's case (supra). Decision in K.C. Chibber's case (supra), was distinguished on the ground that in K.C. Chibber's case (supra), petitioner had notified DDA that straightening of steel was to be treated as an extra item of work and this was not objected to by DDA.

44. In Wee Aar Constructive Builders' case (supra), learned Single Judge held that since bending, binding and placing in position steel for RCC works was included in the contract, said work necessarily required the process of straightening before cutting and, therefore, it was held that no claim for extra was maintainable on said account.

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45. Learned counsel for the respondent could not point out any evidence that contractor had written to DDA when work was on that he would be having a claim as an extra item for straightening of bent up steel bars issued in coils.

46. I, therefore, go along with the decision in Wee Aar Constructive Builders' case (supra).”

119. The judgment of ***Wee Aar Constructive Builders (supra)***, however, distinguished another judgement of ***K.C. Chhibar v. Delhi Development Authority*** on the ground that there the contractor had notified the DDA about straightening as an extra item and DDA did not object to the same. However, in ***Anant Raj (supra)***, the contractor showed no such communication. The relevant paragraph reads as under:-

“18. The two other decisions relied upon by learned counsel for the petitioner, that is, K.C. Chhibar and Anant Raj Agencies are clearly distinguishable. In both the cases, the petitioner therein had notified the DDA that the cutting of steel or the straightening of steel bars was being treated as an extra item of work. This was not objected to by the DDA. The claim of the petitioner in both the cases was upheld. In the present case, this situation did not arise. No letter or intimation was sent by the petitioner to the respondent. The claim of straightening and cutting the steel bars was made by the petitioner for the first time before the learned Arbitrator. The respondent had no occasion to react (or not to react) to the claim, prior to the arbitral proceedings.”

120. In the present case, there were clear communications by the plaintiff to

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the defendant No. 1 about the said extra item of cutting and straightening of steel. The records of these communications are available, and the same are reproduced hereinbelow:-

S. R. ASHOK & ASSOCIATES

B-71, Sarvodaya Enclave, New Delhi – 110 017
Tele No. 689 0283, 689 9197 Fax No. 91-011-371 3706

C-4

Ref. No.: SRA&A/ Dated: 31.5.1995

The Executive Engineer,
Eastern Division No. XII,
Delhi Development Authority,
Delhi.

Name of Work: C/o Lower MIG Houses at Kondli Gharoli Complex
S.H. : 256 Lower MIG Houses, Group III

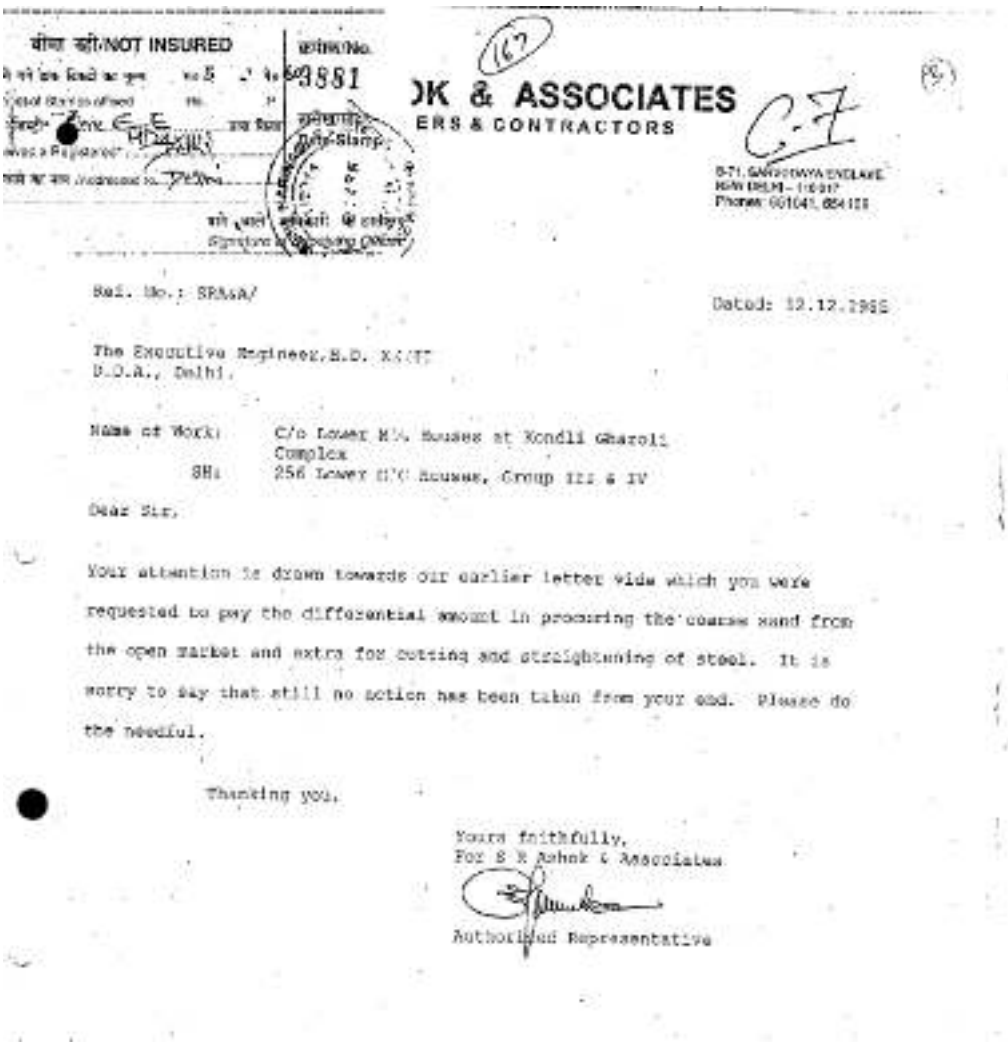
Agreement No. 29/E.E./HD-23/1/85-86

Dear Sir,

The final bill for the above work, prepared and partly paid by your office, is not the final bill as the various payments have not been included in the final bill:

1. Your office withheld the payment from our so called final bill.
2. Payment u/c 10CC.
3. Payment for supplying jamuna sand.
4. Payment for difference in coarse and sand rates procured from the open market.
5. The payment for cutting and straightening of steel.
6. The payment for making grooves in plaster
7. The payment for painting by synthetic enamel paint instead of ready mix paint.
8. Overhead expenses during the extended period amounting to Rs. 48,85,000/-
9. Watch and Ward expenses from the date of the completion of work to the date of final bill amounting to Rs. 16,47,000/-.
10. The withheld amount in the various running account bills.
11. The rebate illegally recovered from the bills.
12. The renewal of the bank guarantee charges.
13. Interest on delayed payment.

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बीमा की/NOT INSURED

...OK & ASSOCIATES
...ERS & CONTRACTORS

C-7

Ref. No.: SRA&A/ Dated: 12.12.1988

The Executive Engineer,H.D. XX(T
D.D.A., Delhi.

Name of Work: C/o Lower M/L Houses at Kondli Gharoli Complex
SH: 256 Lower I/C Houses, Group III & IV

Dear Sir,

Your attention is drawn towards our earlier letter vide which you were requested to pay the differential amount in procuring the coarse sand from the open market and extra for cutting and straightening of steel. It is sorry to say that still no action has been taken from your end. Please do the needful.

Thanking you.

Yours faithfully,
For S R Ashok & Associates

Authorised Representative

121. In view of these communications, the judgments in ***Wee Aar Constructive Builders (supra)*** and ***Anant Raj (supra)*** relied upon by the defendant No. 1 are clearly distinguishable on facts. The principle in ***K.C. Chhibar (supra)*** squarely applies, as such communications are the decisive factor in such cases, and the Arbitrator's view is consistent with it. The same view has been reaffirmed by this Court also in ***P.C. Sharma & Co. v. DDA, 2011 SCC OnLine Del 5149***, which states as under:-

> *"15. Thus, it is not in dispute that though the definition of reinforcement for RCC work is illustrative and not*

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exhaustive, in case the contractor puts the DDA to notice during the currency of the contract and DDA does not raise any objection then the amount can be recovered on this account.

(emphasis supplied)

122. While the aforesaid letters have not been adverted to in the Impugned Award, they are available on the record before the Arbitrator. The Arbitrator awarded the sum of Rs. 1,52,532/- in the Impugned Award under Claim No. 1(4), on the footing that agreement items 3.7(a) and 3.7(b) do not cover cutting and straightening of steel.

123. Furthermore, the objections of the defendant No. 1 based on Clause 42 (i) and (ii) were not raised before the Arbitrator. A party cannot be permitted to raise a new plea for the first time before the Court in proceedings under Sections 30 and 33 of the Act, as the Arbitrator had no occasion to consider it. Reliance has been placed on ***Harish Chandra & Co. v. State of U.P., (2016) 9 SCC 478*** for the same, the relevant paragraphs for which read as under:-

"29.4. Fourthly, the High Court went into the factual question by referring to Clause 26 of the agreement for holding that the arbitrator passed an award contrary to Clause 26 and thereby travelled beyond the terms of the agreement which constituted a legal misconduct on his part. This finding, in our view, is, on the face of it, untenable in law for the reason, inter alia, that this objection was neither raised before the arbitrator nor before the trial court in the manner in which it was raised for the first time in the High

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Court. In any event, in the absence of any finding recorded by the arbitrator and the trial court, such issue could not have been gone into for the first time in appeal by the High Court. That apart, it has otherwise no substance on facts for the simple reason that it being a question of fact, the same could not be examined in appeal."

(emphasis supplied)

124. Therefore, the view taken by the Arbitrator is plausible and reasonable and based on the material placed before the Arbitrator. I find no infirmity in the findings of the Arbitrator with respect to Claim No. 1(4). The objection of the defendant No. 1 to the same is accordingly rejected.

Additional Claim No. 1

125. A total sum of Rs. 20,26,935/-, as against the claim amount of Rs. 47,85,000/-, was awarded by the Arbitrator under Additional Claim No. 1, on account of compensation and damages for the prolongation of the contract period by 1453 days.

126. The learned counsel for defendant No. 1 contends that the sum of Rs. 20,26,935/- was wrongly awarded under this head, since the plaintiff itself caused the slow progress of work by taking several extensions of time and had given express undertakings not to claim damages for the extended period, relying on Clauses 10, 10CC and 22 and Condition No. 1 of the "Specifications and Conditions". It is also contended that the plaintiff suffered no financial loss and that the Arbitrator arbitrarily awarded 50% of the claim, going beyond the terms of the agreement and relying on a letter dated 08.11.1990 that was never served on defendant No. 1. It is further stated that, under Section 74 of the Indian Contract

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Act, 1872, the plaintiff had to prove actual loss and mitigation of losses, which it failed to do satisfactorily.

127. The Arbitrator noted that the work was admittedly delayed by 1453 days, and that during this period the work was being carried out by the plaintiff in full swing. He held that the undertaking recorded on the application for extension of time, if voluntary, would at most bar a claim for damages and not the recovery of actual expenses incurred, and that the salary of the site staff is not "damages". He also found force in the plaintiff's case that the undertaking was recorded under coercion, since the plaintiff had withdrawn it on 08.11.1990, the same day, by a letter dated 08.11.1990 to which the defendant No. 1 gave no reply. The Arbitrator further observed that nothing but vague averments had been placed on record to show that the plaintiff was liable for the delay, and that the absence of any penalty for the delay supported this. Since the plaintiff was bound to employ minimum staff and pay their salary during the extended period, the Arbitrator allowed 50% of the claimed salaries of Rs. 2,790/- per day for 1453 days, and awarded Rs. 20,26,935/-.

128. The objection raised by the defendant No. 1 that the plaintiff gave an express undertaking dated 08.11.1990 not to seek damages for the extended period of contract has already been dealt with by the Arbitrator. The plaintiff had immediately withdrawn such undertaking on the same day as it was given, *vide* letter dated 08.11.1990. The relevant observation of the Arbitrator reads as under:-

> *"It is quite apparent from the exhibit C-17 that on 08.11.1990, Claimants have protested and written to the*

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Respondents that the said writing was under coercion and that they keep all their rights intact towards claim of damages on account of delay. They withdrew the said writing/undertaking on the same day. However, there is no reply or rebuttal of the said letter dated 08.11.1990. Fact that the said undertaking was withdrawn immediately on the same day with allegation of coercion and that there was complete absence of response to such withdrawal and allegation of coercion is material and vital."

129. A perusal of the documents on record shows that the plaintiff/contractor had addressed multiple letters dated 17.10.1986, 15.11.1986, 17.3.1987, 31.1.1987, 9.10.1987, 19.1.1988, 12.3.1988, 27.2.1989, 04.5.1989, 3.9.1989, 5.5.1990, 14.9.1990, 8.11.1990, 10.1.1991, 20.10.1992, 16.11.1992, 8.1.1993, 23.4.1993, 18.12.1993 and 31.5.1995, exhibited as Exhibits C-9, C-10, C-11, C-2, C-12, C-13, C-8, C-3, C-14, C-15, C-16, C-5, C-17, C-6, C-18, C-19. C-20, C-21, C-22 & C-4, informing the defendant No. 1 about the overhead expenses of the work that was being executed beyond the stipulated date of contract completion. Details of salaries paid to staff and other relevant expenses were submitted by the plaintiff from a period lasting 1453 days w.e.f. 24.10.1986 to 20.10.1990. The findings of the Arbitrator with regard to the same are as under:-

"After going through the submissions made by the parties including oral arguments, relevant clauses of the agreement and various judgements submitted by the parties, I find that admittedly, work was delayed for 1453 days. Work was in

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full swing during this delayed period. Claimants were bound to employ the minimum staff and to pay salary to such staff. Apart from the vague averments and submissions nothing have been placed on record that the Claimants were liable for the delay. No penalty has been imposed upon the Claimants for delay which suggests that the claimants were not liable for the delay. Under the circumstances, in my opinion, justice would be done if half of the salary of the staff, for the delayed, as claimed by the Claimants be allowed against the entire claim of damages. Hence, I allow 50% Rs. 2,790/- per day for 1453 days."

130. On the other hand, the reliance placed by the defendant No. 1 on *ML Mahajan (supra)* and *Ram Nath International (supra)* is misplaced. Both the judgements concern the principle that an arbitrator cannot award compensation that the contract bars in express terms. The relevant paragraph in ***ML Mahajan (supra)*** reads as under:-

"18. In terms of Clause 10 of the contract no compensation is to be awarded although there is a delay in completion of the work on account of non-supply of any material or stores. The Arbitrator has awarded the aforesaid amount for breaches committed by the respondent in respect of materials, drawings and decisions which were responsible for causing delays in the performance of the contract. The aforesaid decision of the Supreme Court is binding on me and relying upon which the decision in M.L. Mahajan (supra) was delivered, with which I respectfully agree. Since

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the parties have agreed upon not to claim any compensation or damages on account of any delay in supply of all or any such materials and stores, the Arbitrator as well as this Court has to give effect to the aforesaid intention of the parties in all matters and the Arbitrator could not have given an award contrary to the aforesaid express provisions of the contract. The Arbitrator had jurisdiction only to act in accordance with the contract which is also the principle enunciated in Continental Construction Company's case (supra). In that view of the matter the award passed by the Arbitrator in respect of this claim is set aside."

131. However, unlike *ML Mahajan (supra)* and *Ram Nath International (supra)*, Clause 10 of the present Agreement is confined to delay due to non-supply of materials and stores. In the present case, the plaintiff is seeking compensation and damages due to prolongation of the contract period, i.e. salaries of employees, and the same is not covered under Clause 10 of the Agreement.

132. Furthermore, Clause 10CC of the Agreement is essentially an escalation clause that compensates for increases in the prices of the material and wages, on the condition that the same was either within the contract period or during a period validly extended under the contract, also subject to the condition that no such compensation shall be payable if the stipulated period of completion is 6 months or less. Therefore, it is clear that the Additional Claim No. 1 is not a claim for escalation. In fact, what has actually been awarded in the present case is the actual cost of salaries paid to the site staff during the extended period.

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Therefore, the amount awarded does not result in duplication under Clause 10CC of the Agreement.

133. The reliance placed by the defendant No. 1 on Condition No. 1 of the 'Specifications and Conditions' is also misplaced. The Condition bars a claim for extra payment or compensation where part of the site is unavailable, or there is an unavoidable delay in the supply of material. It does not bar the cost of keeping staff at the site during a prolongation that is not shown to be the plaintiff's fault. The Arbitrator found nothing on record to suggest that the plaintiff was liable for the delay, and the defendant No. 1 itself extended the time for completion without levying compensation

134. The Hon'ble Supreme Court in ***Northern Railway v. Sarvesh Chopra, (2002) 4 SCC 45*** highlighted the circumstances wherein even if the contractor has undertaken not to make any claim for delay in performance of the contract occasioned by an act of the employer, still a claim for compensation due to prolongation of the contract period would be entertainable. It was observed as follows:

> *"15. In our country question of delay in performance of the contract is governed by Sections 55 and 56 of the Indian Contract Act, 1872. If there is an abnormal rise in prices of material and labour, it may frustrate the contract and then the innocent party need not perform the contract. So also, if time is of the essence of the contract, failure of the employer to perform a mutual obligation would enable the contractor to avoid the contract as the contract becomes voidable at his option. Where time is "of the essence" of an obligation,*

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Chitty on Contracts (28th Edn., 1999, at p. 1106, para 22-015) states

"a failure to perform by the stipulated time will entitle the innocent party to (a) terminate performance of the contract and thereby put an end to all the primary obligations of both parties remaining unperformed; and (b) claim damages from the contract-breaker on the basis that he has committed a fundamental breach of the contract ('a breach going to the root of the contract') depriving the innocent party of the benefit of the contract ('damages for loss of the whole transaction')".

If, instead of avoiding the contract, the contractor accepts the belated performance of reciprocal obligation on the part of the employer, the innocent party i.e. the contractor, cannot claim compensation for any loss occasioned by the non-performance of the reciprocal promise by the employer at the time agreed, "unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so". Thus, it appears that under the Indian law, in spite of there being a contract between the parties whereunder the contractor has undertaken not to make any claim for delay in performance of the contract occasioned by an act of the employer, still a claim would be entertainable in one of the following situations: (i) if the contractor repudiates the contract exercising his right to do so under Section 55 of the Contract Act, (ii) the employer gives an extension of time

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either by entering into supplemental agreement or by making it clear that escalation of rates or compensation for delay would be permissible, (iii) if the contractor makes it clear that escalation of rates or compensation for delay shall have to be made by the employer and the employer accepts performance by the contractor in spite of delay and such notice by the contractor putting the employer on terms."

(emphasis supplied)

135. Further, the plaintiff put the defendant No. 1 on notice of its claim for the prolongation. By letters dated 17.10.1986 to 31.05.1995 (exhibited as Exhibits C-9, C-10, C-11, C-2, C-12, C-13, C-8, C-3, C-14, C-15, C-16, C-5, C-17, C-6, C-18, C-19, C-20, C-21. C-22 & C-4), the plaintiff repeatedly informed the defendant No. 1 of the overhead expenses being incurred beyond the stipulated date and furnished details of salaries paid. It also withdrew its undertaking on 08.11.1990, the same day it was given. The defendant No. 1 nonetheless accepted performance without protest, which brings the case within the circumstances recognised in ***Sarvesh Chopra (supra).***

136. For the said reasons, the view of the Arbitrator is both plausible and reasonable and does not warrant my interference under Sections 30 and 33 of the Act.

Additional Claims Nos. 2 & 3

137. A total sum of Rs. 7,57,423/- as against the claim amount of Rs. 33,34,450/- was awarded by the Arbitrator towards watch and ward staff deployed for the security of the completed houses till they were taken

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over by the defendant No. 1/DDA.

138. The defendant No. 1 contends that the Arbitrator wrongly awarded the aforesaid amount as the plaintiff never proved it was directed to engage staff, or produced wage records, and that the plaintiff's claimed staffing is implausible and fabricated. It also contends that the Rs. 7,700/- monthly rate was never part of the Agreement and the defendant No. 1's circulars relied on by the plaintiff postdate the work.

139. By the Impugned Award, the Arbitrator noted that, although completion of the work was recorded on 20.10.1990, the remaining flats were taken over by the defendant No. 1 only on 31.12.1998. The contention of the defendant No. 1 that the completion certificate was conditional and that the plaintiff was bound to rectify defects was rejected, as the conditions merely obliged the plaintiff to rectify defects as and when they were pointed out, and no notice for rectification was ever issued. The Arbitrator further relied on the plaintiff's correspondence requesting the defendant No. 1 to take over possession and cautioning that it would be liable for the salary of the Chowkidars, and recorded that the defendant No. 1 had neither denied receipt of the said correspondence nor disputed the employment of 24 Chowkidars. The Arbitrator also took into account the circulars of the Delhi Development Authority providing for watch and ward charges during the extended period of a contract. Accordingly, the Arbitrator allowed charges at the rate of Rs. 7,700/- per month, amounting to Rs. 4,40,183/- for the period from 21.10.1990 to 25.07.1995 under Additional Claim No. 2, and Rs. 3,17,240/- for the period from 26.07.1995 to 31.12.1998 under Additional Claim No. 3. The relevant findings of the Arbitrator read as under:-

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"Thus, no formal defect, as such, was pointed out in the said completion certificate which required rectification by the Claimants. Only an obligation was cast upon the Claimants that as and when such defects would surface, Claimants are bound to rectify the same. There is nothing on record to suggest that an eventuality arose when the Respondents required to Claimants to rectify defects under the said 16 conditions. That the completion certificate was recorded without any actual defects and therefore, it does not lies in the mouth of the Respondents that the Claimants were to actually rectify any defects. Even no notice was issued by the Respondents for rectification of defects till the flats were handed over to the allottees.

A bare perusal of letter dated 8.11.1990, Exhibit C-17, shows that the Claimants requested the Respondents to take over the possession of the site. They put the Respondents on notice that in case the possession was not taken the Respondents shall be liable for the salary of the Chowkidars with interest. Vide letter dated 20.10.1992, exhibit C-18, the Claimants have informed to the Respondents that they have employed 24 Chowkidars and if the possession is not taken the salary of such Chowkidars shall be charged from the department with interest. Same was reiterated vide letter dated 16.11.1992, exhibit C-19, letter dated 05.06.1996, exhibit C-24, letter dated 18.06.1997, exhibits C-26, Letter dated 17.06.1998 C-27 and also in some other exhibits.

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Respondents have not denied the receipt of the said letter. Fact of employing 24 Chowkidars for the said period has not been disputed by the Respondents in any of the contemporaneous document/letter.

As per the Circular no. 509 dated 02.05.1997 of the Respondents D.D.A. contractors are entitled for the watch and ward charges during the operation of extended period under the supplementary agreement for existing agreements of housing and similar projects. Circular no. 510 dated 02.05.1997 of the D.D.A. provides for the charges payable to the contractor for watch and wards in such cases of extended period. The charges payable to a contractor under the said circular is Rs.6,600/- per month for 150 or 200 S.F.S./M.I.G. category flats and Rs. 1100/- per month for every additional 50 houses. However, under the said circular the said charges are payable upon entering into a supplementary agreement…."

140. It has been categorically admitted by the defendant No. 1, during the proceedings dated 25.10.2007, stated that possession of 239 out of 256 flats remained in the plaintiff's possession until they were handed over to the allottees up to 31.12.1998, which reads as under:-

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Additional Claim No.2:

The Claimants stated that there is a typographical error in the date of completion. It be read as 31-5-1995 in place of 25-7-1995. For the rest, the Claimants rely on their Statement of Facts and Rejoinder.

The Respondents stated that they rely on their C.S.F.

Additional ClaimNo.3:

The Claimants rely on the S.O.F. and Rejoinder and further refer the possession Register of the flats shown by the Respondents. As per possession Register, possession of 239 flats out of 256 flats were handed over to the allottee up to 31-12-98. The Claimants claim is only upto 31-12-98. Hence, the same be allowed.

The Respondents stated that they rely on their C.S.F. and further stated that it is correct that 239 flats were handed over to the allottees up to 31-12-98. It was the responsibility of the Claimants to rectify the defects and to hand over the same to the allottees.

The Claimants stated that no defects were pointed out by the Respondents. The staff was engaged for watch and ward of the flats.

141. Furthermore, in the Counter Statement of Facts, the defendant No. 1 stated that possession of the flats was with the plaintiff here till the handing over of the same to the allottees. The relevant paragraphs of the same read as under:

"The claim of the claimant is outside the purview of the arbitration agreement between the parties. The completion certificate of the above work was conditionally recorded on 19.10.1990 and as per the completion certificate, it is the duty of the Claimant to rectify the defects before handing over the possession of the houses to the allottees. Thus the houses were in possession of the Claimant till the handing over the possession to the allottees. Hence nothing is payable on account of watch and ward.

The claim of the claimant is outside the purview of the

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arbitration agreement between the parties. The completion certificate of the above work was conditionally recorded on 20.10.1990 and the final bill of the claimant was paid on 31.5.1995. It is the duty of the Claimant to rectify the defects before handing over the possession of the houses to the allottees, which can be done only at the time of handing over the possession. Hence nothing is payable on account of watch and ward."

142. The Arbitrator has rightly pointed out that the defects as referred to in the aforesaid extract have not been disclosed in any way whatsoever by the defendant No. 1. Among the 16 conditions recorded by the defendant No. 1 at the time of completion, not even one was in the form of a defect. Rather, they only created an obligation on the plaintiff to rectify such defects, in case the said defects arose in the future.

143. A perusal of the documents shows that the plaintiff had made multiple requests asking the defendant No. 1 to take over possession of the site and even put the defendant No. 1 on notice that if the same is not done, defendant No. 1 would be liable to pay salary of the security stationed at the site along with interest. Details of the same were also divulged by the plaintiff *vide* letter dated 20.10.1992, exhibited as Exhibit C-18, and other subsequent letters addressed to the defendant No. 1.

144. Reliance has further been placed by the Arbitrator on the defendant No. 1/DDA's circulars bearing Nos. 509, 510 and 520, as per which contractors were entitled to watch and ward charges during the operation of the Agreement's extended period of an agreement for housing and similar construction projects.

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145. The Arbitrator has also rightly relied on ***K.R. Builders (P) Ltd. v. DDA, 2007 SCC OnLine Del 1333*** wherein in a similar factual matrix, the claim for watch and ward charges was awarded by the Court basing the same on the above referred circulars of defendant No. 1/DDA. The relevant paragraphs read as under:-

> *"109. In my considered view, the testimony does give an impression that the period for execution of the contract was initially extended without levy of penalty which would only arise if the plaintiff was not at fault, There were some defects found but the testimony shows that the defects were removed during the maintenance period. Thereafter it was the responsibility of the defendants to have looked after the site. The plaintiff claims watch and ward charges as per formula provided by the defendants themselves in Exs. P1 and P2, The only real plea raised is that the circulars do not apply as defects were not removed but DW1 himself has stated that defects were removed during maintenance period and no monies have been spent by the defendants for carrying out rectification.*
>
> *110. The plaintiff is, thus, entitled to the amount of Rs. 2,90,400/- as watch and ward charges worked out as per formula of the defendants."*

146. Therefore, the view taken by the Arbitrator is plausible and reasonable and based on the material placed before the Arbitrator, and does not warrant my interference under Sections 30 and 33 of the Act.

Additional Claim No. 4

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147. A simple interest of 18% per annum was awarded on the amount under claim Nos. 1, 2, 3 and additional claim No. 1 with effect from 20.04.1991 to 22.08.1995 (the date of invocation of Clause 25 of the agreement). Thereafter, the awarded amounts carried simple interest of 10% per annum till the date of the award. Simple interest of 10% per annum was also awarded on the amount under additional claim No. 2 from 22.08.1995 till the date of the award, and on the amount under additional claim No. 3 from 01.01.1999 till the date of the award. The awarded amount further carries future simple interest of 8% per annum till the date of realisation, as against a claim of 24% per annum for pre-suit, pendente lite and future interest.

148. The defendant No. 1 has disputed the said amount awarded as interest on account of same being excessive and in the nature of punitive interest.

149. The view of the Arbitrator is as under:-

> *"Additional Claim No. 4: Claimants claim for presuit, pendentelite and future interest @ 24% per annum.*
>
> *Claimants have claimed pre-suit, pendent elite and future interest @24% p.a. Claimants under the contract were entitled to receive final bill payment within or by six months from the date of completion of the work. Thus amount awarded under claims no.1, 2, 3 and additional claim no.1 should have been paid to the Claimants at the most by 19.04.1991. Further, the Claimants have submitted that the Respondents while effecting recoveries from the R/A Bill of the Claimants have charged interest @18% p.a. from the*

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similar work executed by the same Claimant simultaneously under the same head and during the same period. And the Claimants have paid the said interest to the Respondents. This fact has not been denied by the Respondents. Claimants have also relied and referred the Judgement of the Hon'ble Supreme Court in Bhagwati oxygen Ltd. Vs Hindustan Copper Ltd. Reported as 2005 (1) ALR608 (SC) wherein award of interest @18% p.a. has been upheld on the plea that the Employer has charged/recovered at the said rate of Interest. Considering the facts that Respondents recovered interest @ 18% p.a. from the Claimants as stated above. Hence, I am of the opinion that the Claimants are also entitled for the same rate of Interest at which was recovered from the Claimants by the Respondents from the similar work, only up to the date of invocation of Clouse 25 of agreement. Hence, I award simple interest @18% p.a. on the amount awarded under claims no.1, 2, 3 and additional claim no.1 with effect from 20.04.1991 till 22.08.1995 that is to the date of invocation of Clause 25 of the agreement. Thereafter, the said awarded amounts shall carry simple interest @10% p.a. till the date of award. I award simple interest @10% p.a. upon the amount awarded under additional claim no.2 with effect from 22.08.1995 till the date of the award. Respondents shall pay simple interest @10% p.a. with effect from 01.01.1999 till the date of award upon the awarded amount against additional claim

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no.3. The awarded amount shall carry future simple interest @8% p.a. till the date of realization."

150. In a catena of judgements, it has been stated that an arbitrator is not prohibited from granting interest under the Act. The Hon'ble Supreme Court in ***Ferro Concrete Construction (India) (P) Ltd. v. State of Rajasthan, 2025 SCC OnLine SC 708*** held as under:-

"8. The position of law on the grant of interest under the 1940 Act and the 1996 Act is well-settled. The constitution bench decisions of this Court in GC Roy (supra) and NC Budharaj recognised the arbitrator's power to grant pre-reference, pendente lite, and post-award interest on an arbitral award made under the 1940 Act unless there is a contractual bar."

(emphasis supplied)

151. A similar view has been taken by a two-judge bench of the Hon'ble Supreme Court in ***Pam Developments (P) Ltd. v. State of W.B., (2024) 10 SCC 715***, the relevant paragraph for which reads as under:-

"23. The power of the arbitrator to grant pre-reference interest, pendente lite interest, and post-award interest under Section 31(7) of the Act is fairly well-settled. The judicial determinations also highlight the difference in the position of law under the Arbitration Act, 1940. The following propositions can be summarised from a survey of these cases:

23.1. Under the Arbitration Act, 1940, there was no specific provision that empowered an arbitrator to grant interest.

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However, through judicial pronouncements, this Court has affirmed the power of the arbitrator to grant pre-reference, pendente lite, and post-award interest on the rationale that a person who has been deprived of the use of money to which he is legitimately entitled has a right to be compensated for the same. [State of Orissa v. G.C. Roy, (1992) 1 SCC 508, para 43(i). Also see State of Orissa v. N.C. Budharaj, (2001) 2 SCC 721; Union of India v. Krafters Engg. & Leasing (P) Ltd., (2011) 7 SCC 279 : (2011) 3 SCC (Civ) 533] When the agreement does not prohibit the grant of interest and a party claims interest, it is presumed that interest is an implied term of the agreement, and therefore, the arbitrator has the power to decide the same. [State of Orissa v. G.C. Roy, (1992) 1 SCC 508, paras 43 (iv) & 44]"

(emphasis supplied)

152. A perusal of the aforesaid clearly shows that view of the Arbitrator is reasonable and plausible, and does not warrant this Court's interference under Sections 30 and 33 of the Act.

Additional Claim No. 6 (as set out in CS (OS) 362/2008)

153. A total sum of Rs. 1,41,151/-, as against the claim amount of Rs. 1,60,151/-, was awarded by the Arbitrator, being the refund of the amount deposited by the plaintiff on 02.09.2004 as per direction of defendant No. 1 *vide* their letter bearing No. EE/HD.XXIII/A/I(180)2004-05/1131 dated 03.08.2004.

154. The defendant No. 1 has argued that the said claim was never referred

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by the Engineer Member, DDA, and therefore, the Arbitrator exceeded his jurisdiction. The defendant No. 1 having responded to the merits of the claim does not give authority to the arbitrator to adjudicate on the same, if it does not already exist.

155. The Arbitrator noted that the defendant No. 1 sought the recovery for the first time by its letter dated 03.08.2004, about nine years after the final bill and fifteen years after completion of the work, on the threat of blacklisting, and that the plaintiff deposited the amount under protest. The Arbitrator rejected the objection to maintainability. He held that the cause of action arose only in 2004, and the plaintiff sought arbitration of the claim by its letter dated 18.04.2007, and that the claim was duly referred through the letter dated 23.05.2007 of the Engineer Member, DDA. The same was within limitation, and directly related to the Agreement. He further noted that the defendant No. 1, despite raising the objection, filed a reply and argued the claim on merits. The Arbitrator held as under:-

> *"After going through the submissions made by the parties Including oral arguments and the documents placed on the record, I am the opinion that the Respondents inspite of raising objection that this claim was not referred by the Engineer Member, D.D.A., and Respondents filed their reply of this claim, denied and argued the claim on merits. Hence, I am of the opinion that I can adjudicate this claim.*
>
> *After going through the submissions and documents placed on record, I find that the objection of the Respondent as to maintainability of the Claim is totally unjustified.*

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Respondents have not denied that the recovery was sought to be made by them vide their letter dated 03.08.2004 for the first time. Such recovery, as per the Respondents, were sought to be effected under Clause 12 of the agreement between the parties. It is also not disputed that the, Claimants deposited the said amount of Rs. 1,41,151/- vide cheque dated 02.09.2004 Claimants stand is that they have made/deposited such payment under protest. Claimants sought arbitration of this claim through their letter dated 18.4.2007. There was no occasion for the Claimants to seek redressal of the instant grievance on earlier occasion as the cause of action in relation thereof arose for the first time only in the year 2004. I have already held that the letter dated 23.05.2007 issued by the Engineer Member, D.D.A. is to be treated as final reference for the arbitration. This claim was duly referred subject however to the limitation and objections of the Respondents. Present Claim is within the limitation; it has been referred for arbitration and admittedly directly related with the agreement between the parties. Therefore, the preliminary objection as to the maintainability of the claim of the Respondents is without any merits and decided against them."

156. With respect to jurisdiction, the Arbitrator had already held that the letter dated 23.05.2007 is the final reference, and the claim was raised by the plaintiff in its letter dated 18.04.2007, which the reference covered.

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157. On merits, the Arbitrator found that the defendant No. 1 neither pleaded nor placed on record any document to justify the recovery. The deviation statement was never produced, its date of approval was not stated, and no notice was given to the plaintiff after the final bill was paid. There was no justification for a recovery under Clause 12 more than nine years after the final bill, when the extension of time had been granted on 08.11.1990 and any variation in rates could have been accounted for in the final bill itself.

158. The defendant No. 1, by its letter dated 03.08.2004, directed the plaintiff to deposit a sum of Rs. 1,60,151/- on account of the sanction of a deviation item under Clause 12 of the Agreement, and the plaintiff deposited it on 02.09.2004 under threat and compulsion. The defendant No. 1 admitted the demand and the deposit in its Counter Statement of Facts, the relevant paragraph is reproduced hereinbelow:

> *"The claim of the claimant is outside the purview of the arbitration agreement between the parties. The Respondent rightly recovered a sum of Rs. 1,60,151/-from the Claimant on account of sanction of the deviations item as per Clause 12 of the agreement. At the time of the payment of final bill the Respondent withheld minimum amount for approval of deviation statement, which was approved after the payment of the final bill. Hence the question of the refund of the amount deposited by the Claimant does not arise."*

159. The only justification offered was that the deviation statement was approved after the final bill was paid. Once the demand and the deposit are admitted, it was for the defendant No. 1 to justify the recovery but it

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adduced no material to do so. A deposit made under threat of blacklisting is also not voluntary, and the defendant No. 1 cannot treat it as a settlement. The Arbitrator was therefore entitled to direct a refund.

160. Therefore, the view of the Arbitrator is both reasonable and plausible, and does not warrant this Court's interference under Sections 30 and 33 of the Act.

CONCLUSION

161. Therefore, I am of the view that the defendant No. 1 has failed to make out any ground under Sections 30 and 33 of the Act. The claims are held to be within limitation, and Clause 7 of the Agreement creates no bar. Arbitration was invoked once, on 22.08.1995, and the reference of 23.05.2007 was a continuation of that invocation. The defendant No. 1 consented to the enlargement of time for making and publishing the Award and participated in the proceedings, and cannot now invoke Section 28 of the Act. The defendant No. 1 has also not shown any misconduct on the part of the Arbitrator, any error apparent on the face of the Awards, or any perversity. It has failed to demonstrate that the Arbitrator allowed any claim contrary to any clause of the Agreements. The Awards are reasoned, and the findings on each claim are based on the pleadings and documents before the Arbitrator.

162. In the circumstances, I find no grounds to interfere with the Impugned Awards dated 31.01.2008 and 28.01.2008 passed by the Arbitrator. The objections of the defendant No. 1 are rejected and accordingly, I.A. Nos. 4749 of 2008 and 4753 of 2008 are dismissed.

163. Accordingly, the Awards dated 31.01.2008 and 28.01.2008 are made Rule of the Court. Decree sheets be drawn up accordingly.

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164. The suits are disposed of in the aforesaid terms with pending applications, if any.

JASMEET SINGH, J.

OCTOBER 28th, 2026/(SR)

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