



2026:DHC:5167-DB



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

***Reserved on: 9 March 2026
Pronounced on: 01 July 2026***

+ **FAO(OS) (COMM) 200/2025**

**FLAT OWNERS ASSOCIATION OF MEDIA
MAGESTIC TOWER**

.....Appellant

**Through: Ms. Purnima Maheshwari and
Mr. Mukul Aryan, Advs.**

versus

ARUN KUMAR BHOWMIK

.....Respondent

**Through: Mr. Ankur Mahindro, Mr.
Rohan Taneja, Mr. Mohit Dagar, Mr.
Raghav Kalra and Ms. Radhika Agarwal,
Advs.**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

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**JUDGMENT
01.07.2026**

C. HARI SHANKAR, J.

A. The *lis*

1. This appeal, under Section 37 of the Arbitration and Conciliation Act, 1996¹, assails judgment dated 17 November 2025 passed by a learned Single Judge of this Court in OMP (Comm) 255/2025 under Section 34 of the 1996 Act. By the impugned judgment, the learned Single Judge has set aside an arbitral award

¹ "the 1996 Act" hereinafter



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dated 31 May 2025 passed by a learned Sole Arbitrator in arbitral proceedings between the appellant and the respondent. The appellant was the claimant before the learned Arbitrator and the respondent, as the proprietor of M/s Amtech Engineers, was the respondent.

2. Claims were raised by the appellant and counter-claims were raised by the respondent before the learned Arbitrator. The total amount claimed by the appellant in its claim was ₹ 2,78,38,172/- and the amount claimed by the respondent in its counter-claim was ₹ 8,52,22,235/-.

3. The arbitral award allowed the appellant's claim to the extent of ₹ 2 crores and the respondent's counter-claim to the extent of ₹ 1 crore.

4. The appellant did not challenge the arbitral award. However, the respondent approached this Court, by means of OMP (Comm) 255/2025, under Section 34 of the 1996 Act.

5. By the impugned judgment, the learned Single Judge has set aside the arbitral award in totality on the ground that it is unreasoned.

6. The appellant has approached this Court, under Section 37 of the 1996 Act, challenging the judgment of the learned Single Judge.

B. The Issue

7. The findings of the learned Arbitrator are contained under



heading XIII of the arbitral award, titled “Issue wise findings of the Arbitral Tribunal”, which merits reproduction, *in extenso*, thus:

“a. Whether the work was assigned was delayed/not completed by the Respondent within time as per the Agreement dated 9.1.2018?

Finding of Tribunal: Yes, the work assigned to Respondent including the extra work was delayed and not completed by the Respondent in terms of the Agreement dt.9.1.2018 and additional and extra work assigned later on and certain works were left incomplete. The issue is thus decided in favour of the Claimant.

b. Whether the work done suffered from deficiencies i.e. completed/left/rectification not done, etc.?

Finding of Tribunal: Yes, the work performed by the Respondent was not up to the mark and as specified and the verification reports placed on record proves that. The issue is accordingly decided in favour of the Claimant.

c. Whether the Claimant is entitled to penalty of Rs.2,78,38,172/-, or any amount, if so, at what rate and what period?

Finding of the Tribunal: No. The Claimant is not entitled to recover the whole of the amount claimed of Rs.2,78,38,172/- which is mainly on account of penalty clause in the Agreement and for the delay caused in the execution of the works, because Petitioner Society also has contributed to some extent to the delay in the work by changing the drawings and specifications of the work during the execution of the work and the Respondent alone cannot be blamed for the delay in the work, but the Respondent is largely responsible for the said delay and deficiencies in the work done. The Petitioner society is therefore held entitled to the overall compensation of Rs.2,00,00,000/- (Rs. Two Crores) on ad-hoc and fair estimation basis on account of delay in the execution of the works and the defects and deficiencies in the work executed by the Respondent and damages for some works left incomplete by the Respondent.

d. Whether the Claimant is entitled to interest @12% from the date of filing of claim i.e.18.10.2021 till payment?

Finding of the Tribunal: The rate of interest of 12% claimed by the Petitioner Society is on higher side. The same is reduced to 6% p.a. simple interest payable from the date of Award till the actual payment. The rate of interest of 6% will be applicable to both sides



on their respective partial reliefs granted by this Tribunal. The issue is accordingly partly decided in favour of the Claimant.

e. Whether the Respondent has no cause of action to file the present counter claim after audit reports made with due participation of the Respondent and no claim raised therein?

Finding of the Tribunal: No. The Respondent is entitled to raise a Counter Claim and has raised the same, which has been considered by this Tribunal and the issue wise findings are given below. This issue is accordingly decided against the Claimant.

f. Whether the instant contract is Item Rate Tender or Lump sum Contract?

Finding of the Tribunal: The Tribunal has held above that the Contract dt.9.1.2018 between the parties was actually a Lump Sum Contract and not an item rate contract even though the Agreement described it to be so and the Respondent has claimed it to be so. This is established by the conduct of the parties and the evidence placed on the record of this Tribunal. The Issue is decided against the Respondent accordingly.

g. Whether the breach of contract has been committed by the Claimant?

Finding of the Tribunal: The breach of contract has not been committed by the Petitioner Claimant Society, but it has not paid the Running Bills of the Respondent Contractor to the extent of work done by him and more particularly the extra work assigned to him which was not covered by the original Agreement dt. 9.1.2018. The Issue is decided accordingly.”

h. Whether the delay/prolongation of the Contract is attributable to the Claimant?

Finding of the Tribunal: Partly Yes. The Claimant Society did not approve the drawings and Committee concerned did not clarify the doubts and issues raised by the Contractor nor the verification of work was carried out with due promptitude, which delayed the execution of the work and nonpayment of the Running Bills after due verification was not done in time, which perhaps compelled the Respondent Contractor to leave the work incomplete, but the entire responsibility of non-completion of the work cannot be laid upon the Petitioner Society, and it was essentially the contractual obligation of the Respondent Contractor to complete the same.



Some delay was caused by the reasons beyond the control of the parties like restrictions of Covid-19 period etc. The Issue is decided accordingly.

i. Whether the Respondent/counter claimant is entitled to get pre-suit, *pendent lite* and future interest @18% p.a.?

Finding of the Tribunal: The Respondent is also entitled to simple interest @ 6% p.a. payable from the date of Award till the actual payment and not at 18% p.a. as claimed, on the amount found due to be payable to him. The Issue is decided accordingly.

j. Whether the Respondent/counter claimant is entitled to the relief claimed in the counter claim?

Finding by the Tribunal: The Respondent Contractor is found entitled to receive the sum of **Rs.1,00,00,000/- (Rs. One Crore)** only on lump sum basis on a fair and reasonable basis, from the petitioner society, for the works executed by him and the Bills not paid by the Claimant Society so far and not the entire amount claimed by him after the 11th Running Bill already paid by the Petitioner Claimant Society.

The Rest of the Counter Claims made by the Respondent like Escalation of costs during execution of work, Idling charges of labour and machinery, watch and ward charges during extended period of work, loss of profit, refund of earnest money, extra payment for high rise structure work etc. are liable to be dismissed as they were not proved at all by the Respondent with any evidence, what to say, by the cogent evidence.

Costs of Litigation / Arbitration In view of the divided success of both the parties, both the parties are directed to bear their respective legal costs for this arbitration.”

8. A reading of the above findings of the learned Arbitrator indicate that ₹ 2 crores has been awarded in favour of the appellant and against the respondent primarily on the ground that the respondent had failed to complete the contractual and additional work within the time provided in that regard, and that there were deficiencies in the work executed by the respondent. ₹ 1 crore has been awarded to the respondent against work executed by the respondent, which had



remained unpaid by the appellant. However, all other counter-claims of the respondent, relating to escalation, idling charges, watch and ward charges, loss and profit, refund of earnest money and extra payment for high rise structures, were dismissed on the ground of want of evidence.

9. The learned Single Judge has set aside the arbitral award on the ground that it does not discuss the applicable evidence and is unreasoned.

10. Inasmuch as the respondent alone is aggrieved by the impugned award, we are required to examine as to whether there was any evidence led by the respondent (i) to rebut the claims of the appellant regarding delay in completion of the assigned and additional work and deficiencies in the work executed by the respondent and (ii) in support of the counter-claims of the respondent which the learned Arbitrator has rejected.

C. Facts

11. In 2005-06, AJS Builders commenced work on a project known as Media Majestic Tower Project. By 2008-09, work on the project had been completed till the 10th floor.

12. At this stage, AJS Builders had availed a loan of ₹ 4 crores from the Punjab National Bank Housing Finance Ltd². On AJS Builders defaulting in liquidating the loan, the PNBFHL initiated proceedings

² “PNBFHL” hereinafter



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against it under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002³. In the said proceedings, by order dated 7 December 2022, the learned Debt Recovery Tribunal granted possession of the project to the appellant. Thereafter, a Memorandum of Understanding along with a General Power of Attorney was executed, authorising the appellant to register the properties forming subject matter of the project in favour of the respective flat owners and hand over possession.

13. The dispute which was referred to arbitration relates to the remaining uncompleted part of the Media Majestic Tower Project.

14. Initially, in 2012, M/s Shivam Project was contracted to complete the project. However, owing to want of funds, Shivam Project abandoned the contract. Thereafter, M/s Asian Projects commenced the work, but also had to discontinue the project owing to the unfortunate demise of its proprietor. The respondent was thereafter contracted to complete the work, under an agreement dated 9 January 2018.

15. Disputes arose between the parties under the said agreement.

16. It is not necessary, given the nature of the present controversy, to refer to the pre-arbitral proceedings. Suffice it to state that, following the issuance of the requisite Section 21 notice, the dispute was referred to the Indian Council of Arbitration which appointed the learned Sole Arbitrator, who has rendered the arbitral award forming

³ "SARFAESI Act" hereinafter



subject matter of the controversy, to arbitrate on the disputes.

17. The details of the claims and counter-claims may be provided, thus.

18. The claims raised by the appellant were based on an audit verification report of M/s Adhikari Consultants which, according to the appellant, indicated that there were discrepancies in the work undertaken by the respondent. Additionally, the delay in completion of the work by the respondent rendered the respondent liable to pay penalty in terms of Clause 3 of the Agreement dated 9 January 2018. The worksheet of the claims raised by the claimant was thus provided with the statement of claim:

1	(a) Average of the two recommendations made by verifying team/ auditor for the final bill submitted by Amtech Engineers	₹ 37782230/-
	(b) Delay penalty 52% for delay of 104 weeks upto submission of final bill no work is complete Penalty amount	₹ 19646760/-
	(c) Net payable to Amtech	₹ 18135470/-
	(d) Payments made to Amtech Engineers as per summary given to them on 01.09.2019	₹ 41499852/- (Excluding GST paid on bills)
	(e) (Directly received from flat buyer of 201)	₹ 1625000/-
	Total Received By Amtech	₹ 43124852/-
	(f) Excess payment made to Amtech 43124852/- + 18135470/-	₹ 24989382/-
2.	Interest @ 12 % P.A. from 06.01.2021 to 18.10.2021	₹ 28,49,790/-
	Total Claim Amount	₹ 2,78,38,172/-

19. Insofar as the counter claims of the respondent are concerned,



the award of the learned Arbitrator provides the following abstract thereof:

S. No.	Description	Amount (₹)
1.	Counter Claims towards escalation in construction cost due to market inflation for the work executed during the contract period and during the prolongation period of contract on the basis of 10CC as per C.P.W.D method of contract as the breach of contract was committed by the Claimant.	24,68,827/-
2.	Counter Claim on account of balance payment for the work executed for Civil and Electrical works under the contract i/c additional work, extra work, and extra involvements etc. but not paid/ short paid in quantities/rate and also made illegal deductions/reductions in the bill by the Claimant.	2,88,30,924/-
3.	Counter Claim against security/watch & ward during the prolongation of contract period (Reason of hindrances not attributable to the Respondent). beyond stipulated date of completion as the breach of contract committed by the Claimant.	21,58,000/-
4.	Counter Claim towards on-site over heads due to damages/compensations on account of overheads, staff establishments, cost for T&P and machinery due to prolongation of contract (Reason of hindrances not attributable to the Respondent) caused by the Claimant and breach of contract committed by them.	43,61,980/-
5.	Counter Claim on account of Non utilization of fund/loss of productivity/loss of profit due to delay in work for various hindrance (Reason of hindrances not attributable to the Respondent) in work as the breach of contract committed by the Claimant.	1,50,00,000/-
6.	Counter Claims on account of refund of Earnest Money plus interest @18% amounting to Rs 16,23,781/- deposited at the time of submission of tender and kept as Security Deposit by the Claimant for effective prolongation of contract i.e. 502 days.	6,23,781/-
7.	Counter Claim due to delay in payment of R/A Bills and Final Bill from the due date till the date of 18.10.2021 (date from which the Claimant submitted their Claim to ICA as per contract agreement clause.	1,51,25,892/-
8.	Counter Claim on account of extra payment to worker employed on high rise structure i.e. on or above 30 feet height even for one hour in a day, for the work executed under Extra Item/Substitute	16,52,831/-



	Item/Deviated items.	
9.	Counter Claim on account of Goodwill and manpower & machinery remained idle at site during the period of various hindrances as the breach of contract committed by the Claimant.	60,00,000/-
10.	Counter Claim on account of Non-payment of deviation, extra & substitute items on prevailing market rate at the time of execution.	10,00,000/-
11.	Respondent Counter Claim pre-suit pendent lite and future interest @18%.	50,00,000/-
12.	Counter Claim towards cost of arbitration proceedings as per actual as the breach of contract committed by the Claimant.	30,00,000/-
	Total Counter Claim Amount	8,52,22,235/-

20. Stand of the respondent with respect to the claims of the appellant and the counter claims of the respondent:

20.1 Re: Claims of the appellant

I. Re: Delay

20.1.1 The respondent contended, with respect to the appellant's allegation that there had been delay on the respondent's part in completion of the work, as under:

- (i) Delay was attributable to the time taken by the appellant in deciding upon the additional work which the respondent was required to undertake, outside the BOQ, and deviations in quantity beyond the scope of the agreement. Extra time was required for executing such additional work. Reliance was placed, in this context, on the answers provided by CW-1 Vinod Kumar Goel, Secretary/Authorized Representative of the



appellant, to Q. 14, 15 and 38 posed to him and the response of Arun Bhowmik testifying as RW-1, to Q. 48, 49, 50 and 51 posed to him in cross examination. Additionally, reliance was placed on material contained in the affidavit in evidence filed by RW-2 Vinod Gunsai, Architect. This material, it was submitted, indicated that various extra works had been given to the respondent. Additionally, the respondent placed on record a list of the extra and deviated items which were undertaken by the respondent during the subsistence of the work at the behest of the appellant. The respondent also placed material on record to indicate that at least 261 days were required for completion of the total work, including the extra work contracted by the appellant.

(ii) The work undertaken by the previous contractor was substandard. This was not known to the respondent at the time of entering into the agreement. The respondent was required to undertake extra work within 10 days of commencement. For this, the respondent had to rectify, dismantle and recast the damage column. The respondent relied on the affidavit in evidence of RW-2 as well as the response of RW-2 to Q. 5 posed to him in cross-examination, to contend that this was one of the primary reasons for failure to complete the work in a timely fashion. Reliance was also placed on Clause 10 of the agreement which provided that, if delay in execution of the work was attributable to neglect of the appellant, time for completion would be extended.



(iii) The execution of the work was also delayed on account of failure on the part of the appellant to release payments in time. It was admitted by CW-1, in his cross-examination, that interest was paid by the appellant on delayed payment. To substantiate this contention, the respondent relied on e-mails dated 22 June 2020, 24 June 2020, 20 July 2020, 23 June 2020, 21 August 2020, 22 August 2020 and a noting of 7 September 2020. It was further contended that the appellant's stand that payments were not required to be released until RA Bills were raised was contrary to Clause 17(c) of the agreement. The respondent contended that the bills had been raised by it strictly in terms of the agreed arrangement as recorded in letter dated 11 November 2017.

(iv) Part of the work was allotted by the appellant to another agency, which also hampered progress and caused delay in execution.

(v) Delay in execution of the work was also attributed to some extent to the COVID-19 pandemic.

II. Re: Allegation of deficiencies in the work undertaken by the respondent

20.1.2 In response to the appellant's contention that the work undertaken by the respondent was deficient in various aspects, the respondent submitted thus:



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(i) No complaint was ever received from the appellant regarding the quality of construction undertaken by the respondent.

(ii) No formal quality test was undertaken by the appellant to verify the quality of construction.

(iii) The allegation of deficiencies was based on an audit report. It was contended that the audit report was unreliable for a variety of reasons. In the first place, the agreement did not envisage audit by any third party, as was acknowledged by CW-1 in his answer to Q. 54 in cross-examination. Besides, the auditors were on the pay rolls of the appellant, as acknowledged by CW-1 in his response to Q. 66 in cross-examination. There was also a difference of as much as ₹ 1 crore in the report of the two auditors.

(iv) The Work Experience Certificate dated 1 August 2019, which was provided by the appellant and signed by its authorized representative CW-1 clearly stated that the delay was occasioned on account of delay in approval of the decision by the appellant. All other parameters were found satisfactory.

20.2 Re. Counter claims raised by the respondent

I. Re. Counter claim 1 – escalation in construction cost due to inflation



20.2.1 The respondent claimed ₹ 24,68,827/- towards escalation in construction cost owing to market inflation. Reliance was placed, by the respondent, on Clause 14 of the agreement which explicitly contemplated such escalation and allowed for revision of agreed rates if market conditions changed by more than 10%. In working out the escalation, the respondent submitted that it had applied the formula envisaged in Clause 10CC of the General Clauses of Contract of the Central Public Works Department. Delay in execution of the work had been occasioned owing to breaches and hindrances committed by the appellant. As such, the respondent submitted that it was entitled to additional payment on account of escalation.

II. Re: Counter claim 3 – claim relating to watch and ward services provided during extended period of work

20.2.2 The respondent submitted that, under the agreement, it was responsible to provide watch and ward services for the stipulated period of nine months within which the contract was to be completed. The detailed computation of the actual expenses incurred during the said period was provided by the respondent. As there was no requirement, in the agreement, for providing watch and ward services for extended periods of work, this constituted an extra item which was claimed by the respondent in counter claim 3.

III. Re: Counter claim 5 – for loss of profit and productivity during extended period of work

20.2.3 The respondent contended that, owing to the extension in the period of work at the request of the appellant, the manpower and



machinery of the respondent could not be employed elsewhere resulting in loss of profit suffered by the respondent. Reliance was placed, in this context, on the response of RW-1 to Q. 20 posed to him in cross-examination. ₹ 1.5 crores was claimed on this ground.

IV. Re: Counter claim 7 – interest for delay in release of payment against the RA Bills and Final Bill from the due date till the date of the Section 21 notice

20.2.4 For this claim, the respondent relied on Clause 17(c) of the agreement which required payment of submitted bills to be made within 7 to 10 days with mandatory penal interest at the rate of 15% per annum in the case of delay beyond the said period. It was pointed out that the respondent had addressed emails to the appellant on 22 June 2020, 23 June 2020, 24 June 2020, 20 July 2020, 21 August 2020, 22 August 2020 and 5 October 2020 followed by a legal notice dated 7 September 2020 for timely release of payment, to no avail. The fact that payments could not be released within the stipulated time was in fact acknowledged by the appellant, for which purpose, the respondent relied on the minutes of the Executive Committee held on 5 July 2020 and 11 July 2020.

V. Re: Counter claim 8 – extra payment to workers employed on high rise structures above 30 feet

20.2.5 The respondent submitted that the extra work which the appellant required the respondent to undertake involved deployment of workers at heights of over 30 feet. As per notification dated 19 January 2017 of the Ministry of Labour and Employment, workers



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employed at such heights were required to be paid 20% extra wages. An amount of ₹ 16,52,831/- was claimed under this head.

VI. Re: Counter claim 9 –idling of manpower and machinery during extended time.

20.2.6 During the period for which the performance of the contract was extended at the instance of the appellant, the respondent had to incur expenses towards labour etc. Referring the emails dated 22 June 2020, 24 June 2020 and 22 August 2020, addressed by the respondent to the appellant in this regard, a claim was raised for labour and machinery which remained idle during the extended period.

D. The Arbitral Award

21. Observations and Conclusions of the learned Arbitrator

Having thus set out the various contentions advanced by the respondent to dispute the appellant's claim and in support of the counter claims raised by it, it becomes necessary, at this juncture, to refer to the "Observations and Conclusion of the Tribunal" as contained in the arbitral award, which commenced with the following observations on the aspect of whether the contract was an item-wise contract or a lumpsum contract.

"1. The Arbitration Tribunal is of the considered view that the Contract/Agreement dt. 9.1.2018 is not in fact, an item rate based contract, as claimed by the Respondent, though BOQ rates were mentioned in the Agreement, but de facto and de jure, it was a lump sum contract, as contended by the Petitioner Claimant, for the various repair and renovation work assigned to the Respondent by the Petitioner Society for being undertaken on the Building



Majestic Tower in question. The very fact that consolidated Running Bills were raised by the Respondent Amtech Engineers and were paid by the Petitioner claimant, after due scrutiny, up to 11th RA Bill shows and establishes that the mode of execution of the contract made it a Lump sum Contract with the description of the Work given in the Contract.

2. The Arbitration Tribunal has reached this conclusion relying upon the conduct of the parties, mails and Running Bills placed on record, as also the cross-examination statement of CW-1 Dr. VK Goel and the following case laws about interpretation of clauses of the Contract and actual working and cases of multiple contracts disputes referable to one arbitration, because the very basis of uniformity of the entire economic transaction and not the number or individual clauses of the separate arguments. They emphasize the need to go to the real intention of the parties and not only by the terms and tenor of the contract.

The relevant part of the cross-examination of CW-1 is quoted below:

Q. 20	In this RA Bill, an extra item has been mentioned i.e. strengthening of the column at 9 th Floor, dismantling of RCC, dismantling of brick work and repair of plaster. The same has been charged and has been paid by the Claimant Society. Is this correct?
Ans.	Yes. All RA Bills were paid by the Society on Ad-hoc basis and no finality can be attached to such payments.
Q. 21	What was the procedure prescribed for, in the contract, raising of the bills process of payment of bills raised by the contractor?
Ans.	The procedure is prescribed in clause 17 of the contract.
Q. 22	Is it correct that if there was a delay in payment of the bills beyond the seven days of submissions of the bills then interest @ 15% PA was payable by the Society to the contractor?
Ans.	As per clause 17 (c) of the contract, if the delay is more then seven- ten days and further that the bills are accepted by the Society, only then the question of interest could arise. Vol: The bills were to be submitted after every 15 days of the work and the same was not complied with by the Contractor.
Q. 23	Did the Claimant Society ever pay interest to the Contractor on the delayed payments of the RA Bills?
Ans.	Yes.



	Vol: The contractor agreed to reduce the interest to 12% as such occasion to pay interest arose only once and approximately a sum of Rs. 12 Lakhs was paid towards such interest.
Q. 24	Can you tell me when and on what occasion did the Respondent agree to receive a reduced rate of interest of 12%?
Ans.	It was in the annual general meeting of the society held on 29.09.2019 where Mr. Arun Kumar Bhaumik was present.

The following clause 8 of the Agreement dt.9.1.2018 itself shows that it was not an item rate based contract, where the parties have agreed for re-execution of the defective work done. The same is quoted below:

"8. The Contractor agrees to re-execute any work which does not conform to the drawings and specifications, warrants the work performed, and agrees to remedy and defects resulting, from faulty materials or workmanship which shall become evident during a period of 6 months after completion and successful handover of the work."

22. Thereafter, the learned Arbitrator, for no clearly discernible reason, refers to the judgment of the High Court of Calcutta in *Johnson Control Hitachi Air Conditioning India Ltd v. Shapoorji Pallonji & Co. P. Ltd*⁴, Lord Hoffman's opinion in *Premium Nafta Products Ltd. v Fili Shipping Co. Ltd.*⁵, the judgment of the Supreme Court in *Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc.*⁶ and the judgments of the High Court of Calcutta in *Mohd Malik Chauhan v. Tata Steel Utilities and Infrastructure Services Ltd*⁷. and *Godrej & Boyce Mfg. Co. Ltd. v. Shapoorji Pallonji & Co. P. Ltd.*⁸.

⁴ MANU/WB/0938/2025

⁵ MANU/UKHL/0067/2007

⁶ (2013) 1 SCC 641

⁷ No such judgement could be found. The extract in the award appears to be from *Johnson Controls Hitachi Air Conditioning India Ltd. v. Shapoorji Pallonji And Company Pvt Ltd.*, MANU/WB/0938/2025



23. Somewhat strangely, after the reference to the judgment of the High Court of Calcutta in *Mohd Malik Chauhan*, there is again an extract from the statement of Lord Hoffman with no context.

24. We agree with the learned Single Judge, in the impugned judgment, that the reference to the aforesaid decisions which basically deal with consolidation of arbitral proceedings, does not seem to have any connection with the dispute at hand. Indeed, the arbitral award, too, does not indicate why reference has been made to these decisions.

25. Thereafter, the observations and conclusions of the learned Arbitrator conclude with the following three paragraphs:

“4. That the Respondent was definitely called upon the undertake some extra works and he did execute the same at the instruction and the directions of the petitioner society and thus under such additional contract or extension of the original contract as was proved by various emails, verification reports and Running Bills produced by the Contractor, the contractor was entitled to additional payment for the same, even though the original Agreement did not specify such additional and the extra work assigned to him.

5. That the Respondent Contractor did not complete the assigned work either as per the terms of the original contract nor the additional work assigned to him and the quality of work was not upto the mark, specially the 10th floor columns in the Building and left several works incomplete like connecting sewerage lines, electrical installations etc. and which caused a breach of contract on his part and caused inconvenience to the petitioner society and its members.

6. That both the sides have proved their respective case with the help of evidence led by them oral as well as the documentary evidence, and are entitled to partial relief, but all the claims and the entire extent of the respective claims made by them in the Claim petition and the Counter Claim, have not been proved and some of



the claims, especially in the various Counter Claims of the Respondent, some claims made by the Respondent are frivolous and unfounded and therefore both the parties are entitled to only the partial relief on their respective Claims, on an estimated basis on a fair and reasonable estimation in the present arbitration proceedings, which are being discussed below issue wise.”

26. This is followed by the “Issue-wise Finding” of the learned Arbitrator, which already stands reproduced in para 7 *supra*.

E. The Impugned Judgment

27. The learned Single Judge holds, in the impugned judgment, that the arbitral award is completely unreasoned, save and except with respect to the finding that the contract was a lump-sum contract – which finding, too, as per the impugned judgment, was incorrect on facts and in law. The learned Single Judge has observed that Clause 16 of the Agreement specifically envisaged payment by the respondent to the appellant as per finally agreed item rates:

“16. Amtech Engineers represented by Mr. Arun Kumar Bhowmik will undertake the work of balance construction at MMT as per the item rates finally agreed for the common civil works/Electrical & Plumbing including elevators for working in Common Areas only. Interiors of flats are not governed and covered in this Contract. The contractor will give the further rates for the work not covered in this estimate, as may be demanded.”

Additionally, notes the learned Single Judge, CW-2, in his answer to Q.8 posed to him in cross-examination, in which it was specifically queried as to whether the contract was for payment on item rates, responded in the affirmative. The learned Single Judge notes that the learned Arbitrator has overlooked these vital pieces of evidence while



arriving at the finding that the contract was not an item rate contract. Non-consideration of material evidence, as per the impugned judgment, renders the arbitral award bad on the ground of publicity, as held by the Supreme Court in *Associate Builders v. DDA*⁹.

28. Apart from this, notes the learned Single Judge, there is no reasoning in support of any of the other findings of the learned Arbitrator. Para 6 of the arbitral award, as the learned Single Judge notes, contains omnibus observations to the effect that all the claims and counter-claims had not been proved, some were frivolous and unfounded and that the parties were entitled to partial relief. Specifics of the claims and counter-claims to which this paragraph refers, are not to be found in the arbitral award.

29. With respect to the findings of the learned Arbitrator on the individual issues, the learned Single Judge holds thus:

“25. A perusal of the analysis of the findings of the first issue shows that it is bereft of any details as to identifying which documents, which site reports, or which depositions justify the finding of delay. The Award does not clearly indicate what constituted the extra work said to be delayed, or which portion of the work remained incomplete.

26. A perusal of findings upon issue 2 shows that while concluding that the work performed by the petitioner suffered from deficiencies, the Award under Issue 2 offers only the bare assertion that “verification reports placed on record proves that,” without analysing what those reports contain, whether they were proved, or whether they were challenged in cross-examination. The Sole Arbitrator also does not mention what “was not upto the mark” means.

⁹ (2015) 3 SCC 49



27. With respect to findings of Issues 3 and 4, the determination of compensation of Rs. 2 crore is made “on an ad-hoc and fair estimation basis,” again without any formula, or evidence for supporting the arbitrary figure adopted by the Sole Arbitrator. Similarly, for interest it is simply stated that the interest is on the higher side and therefore it needs to be reduced without any reference to the law.

28. The contention of learned counsel for the respondent that guesswork is also a valid way of ascertaining the figure and reliance on **Cobra Instalaciones**¹⁰ and related cases is misplaced as rough and ready estimate method can only be available in facts of a particular case when exact loss cannot be ascertained. The relevant finding of **Cobra Instalaciones** (Supra) read as under:

“32.2 ... It is when such circumstances are present in a given case, that the court could proceed based on “guesswork” with regard to the quantum of compensation to be allowed to the aggrieved party. The following observations made in the Construction and Design Services case being apposite are set forth hereafter:

“15. Once it is held that even in absence of specific evidence, the respondent could be held to have suffered loss on account of breach of contract, and it is entitled to compensation to the extent of loss suffered, it is for the appellant to show that stipulated damages are by way of penalty. In a given case, when highest limit is stipulated instead of a fixed sum, in absence of evidence of loss, part of it can be held to be reasonable, compensation and the remaining by way of penalty. The party complaining of breach can certainly be allowed reasonable compensation out of the said amount if not the entire amount. If the entire amount stipulated is genuine pre-estimate of loss, the actual loss need not be proved. Burden to prove that no loss was likely to be suffered is on party committing breach, as already observed.

17. Applying the above principle to the present case, it could certainly be presumed that delay in executing the work resulted in loss for which the respondent was entitled to reasonable

¹⁰ **Cobra Instalaciones Y Servicios, SA v. Haryana Vidyut Prasaran Nigam Ltd**, 2024 SCC OnLine Del 2755



compensation. Evidence of precise amount of loss may not be possible but in absence of any evidence by the party committing breach that no loss was suffered by the party complaining of breach, the Court has to proceed on guess work as to the quantum of compensation to be allowed in the given circumstances. Since the respondent also could have led evidence to show the extent of higher amount paid for the work got done or produce any other specific material but it did not do so, we are of the view that it will be fair to award half of the amount claimed as reasonable compensation.”

29. The case of *Cobra Instalaciones (Supra)* does not sanction arbitrary quantification of damages in every case. On the contrary, the judgment carefully confines the use of such estimation to a narrow category of cases namely where a contract stipulates a sum by way of liquidated damages or prescribes a maximum limit for damages, and where the Court finds that the stipulated amount is partly penal.

30. In the present case, the Sole Arbitrator has not held that the evidence was insufficient to arrive at a loss figure or that liquidated damages clause being Clause 3 of the Agreement is partly penal. Instead, it has rejected the contractual figure outrightly and substituted it with an ad-hoc number of its own invention. This constitutes an impermissible rewriting of the contract and falls within the scope of interference under Section 34 of the Act.

31. While deciding whether the delay or prolongation of the Contract was attributable to the claimant/respondent, under Issue 8 it is clear that the findings recorded under this head are themselves premised on assumptions rather than concrete evidence.

32. The observations that “the Claimant Society did not approve the drawings,” or that “the Committee did not clarify the doubts and issues raised by the Contractor,” or that “verification of work was not carried out with due promptitude,” and that “non-payment of Running Bills in time perhaps compelled the Contractor to leave the work incomplete,” clearly indicate that the conclusions are speculative. The use of expressions such as “*perhaps*” further demonstrates that the findings are not based on proven facts.

33. Likewise, in relation to the counterclaims, while the Sole Arbitrator summarily grants Rs. 1 crore “on a fair and reasonable basis,” it expressly dismisses the remaining counterclaims on the ground of “no evidence,” without explaining which evidence was



lacking, how the burden of proof was discharged or not discharged, or how the contradictory finding that many extra works were in fact executed was reconciled with this conclusion.

34. Thus, a reading of the issue-wise findings shows that the Sole Arbitrator has delivered conclusions without reasons, inasmuch as there is no discussion of how the evidence supports each finding, which clauses are applicable, no application of law to the facts, and no rational basis disclosed for the amounts awarded, rendering the Award unreasoned and contrary to the requirements of Section 31(3) of the Act as explained and reinforced by the Hon'ble Supreme Court in *Dyna Technologies*¹¹ and reiterated in the *OPG*¹².

F. Our view

30. We entirely agree.

31. We find the view of the learned Single Judge, that the arbitral award is vitiated both on the ground of vagueness as well as complete want of application of mind to the various contentions advanced before the Tribunal, to be justified both on facts as well as in law. Additionally, the award is unreasoned and all the counter claims of the respondent have been rejected with an umbrella observation that there was no evidence in support thereof.

32. The Supreme Court has held that the requirement of providing reasons for the conclusion arrived at by the learned arbitrator is fundamental to any valid arbitral award. Additionally, the arbitrator is required to address the various contentions advanced before her, or him, failing which the award is liable to be set aside even on this

¹¹ *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1

¹² *OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.*, (2025) 2 SCC 417



ground. Reliance may be placed on the following paragraphs from the judgments of the Supreme Court in *Dyna Technologies, OPG Power Generation, Som Datt Builders Ltd. v. State of Kerala*¹³ and *I-Pay Clearing Services (P) Ltd. v. ICICI Bank Ltd.*¹⁴

From *Dyna Technologies*

“35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.”

From *OPG Power Generation*

73. In a recent three-Judge Bench decision of this Court in *DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd.*¹⁵, the ground of patent illegality/perversity was delineated in the following terms:

¹³ (2009) 10 SCC 259

¹⁴ (2022) 3 SCC 121

¹⁵ (2024) 6 SCC 357



“39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of “patent illegality”. An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice.”

78. As to the form of a reasoned award, in Russell on Arbitration (24th Edn., p. 304) it is stated thus:

“6.032. No particular form is required for a reasoned award although ‘the giving of clearly expressed reasons responsive to the issues as they were debated before the arbitrators reduces the scope for the making of unmeritorious challenges’. When giving a reasoned award the Tribunal need only set out what, on its view of the evidence, did or did not happen and explain succinctly why, in the light of what happened, the Tribunal has reached its decision, and state what that decision is. In order to avoid being vulnerable to challenge, the Tribunal's reasons must deal with all the issues that were put to it. It should set out its findings of fact and its reasoning so as to enable the parties to understand them and state why particular points were decisive. It should also indicate the Tribunal's findings and reasoning on issues argued before it but not considered decisive, so as to enable the parties and the court to consider the position with respect to appeal on all the issues before the Tribunal. When dealing with controversial matters, it is helpful for the Tribunal to set out not only its view of what occurred, but also to make it clear that it has considered any alternative version and has rejected it. Even if several reasons lead to the same result, the Tribunal should still set them out. That said, so long as the relevant issues are addressed there is no need to deal with every possible argument or to explain why the Tribunal attached more weight to some evidence than to other evidence. The Tribunal is not expected to recite at great length communications exchanged or submissions made by the parties. Nor is it required to set out each step by which it reached its conclusion or to deal with each and every point made by the parties. It is sufficient that the Tribunal



should explain what its findings are and the evidential route by which it reached its conclusions.”

From *Som Datt Builders*

“25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give. Howsoever brief these may be, reasons must be indicated in the award as that would reflect the thought process leading to a particular conclusion. To satisfy the requirement of Section 31(3), the reasons must be stated by the Arbitral Tribunal upon which the award is based; want of reasons would make such award legally flawed.”

From *I-Pay Clearing Services*

“41. Under the guise of additional reasons and filling up the gaps in the reasoning, no award can be remitted to the arbitrator, where there are no findings on the contentious issues in the award. If there are no findings on the contentious issues in the award or if any findings are recorded ignoring the material evidence on record, the same are acceptable grounds for setting aside the award itself. Under the guise of either additional reasons or filling up the gaps in the reasoning, the power conferred on the Court cannot be relegated to the arbitrator. In absence of any finding on contentious issue, no amount of reasons can cure the defect in the award.

42. A harmonious reading of Sections 31, 34(1), 34(2-A) and 34(4) of the Arbitration and Conciliation Act, 1996, make it clear that in appropriate cases, on the request made by a party, Court can give an opportunity to the arbitrator to resume the arbitral proceedings for giving reasons or to fill up the gaps in the reasoning in support of a finding, which is already rendered in the award. But at the same time, when it prima facie appears that there is a patent illegality in the award itself, by not recording a finding on a contentious issue, in such cases, Court may not accede to the request of a party for giving an opportunity to the Arbitral Tribunal to resume the arbitral proceedings.”



33. We are of the opinion that the arbitral award passed by the learned Arbitrator was liable to be set aside as violating the principles contained in the aforesaid decisions. It is entirely bereft of reasons, relies on judgments which have nothing to do with the controversy at hand, thereby reflecting non-application of mind, and does not address any of the contentions advanced by learned Counsel for the respondent either by way of contest to the claims of the appellant or while pressing its counter claims.

34. Section 31(3)¹⁶ of the 1996 Act requires every arbitral award to contain the reasons for the findings returned therein.

35. We have not deemed it necessary to enter into the rival contentions of learned Counsel before us. Suffice it to state that learned Counsel for the appellant was unable to satisfy us that the arbitral award contains reasons as required by Section 31(3) of the 1996 Act.

36. If an arbitral award contains reasons, the extent to which the Court, under Section 34 of the 1996 Act, would second-guess or examine the justifiability thereof may be considerably circumscribed, confined within the peripheries of Section 34 of the Act as interpreted by the Supreme Court in a wide plethora of decisions. However, an arbitral award without reasons, or relying on material which is extraneous to the issue at hand, and which does not address any of the contentions advanced by the parties, is not merely perverse; it is no

¹⁶ (3) The arbitral award shall state the reasons upon which it is based, unless—
(a) the parties have agreed that no reasons are to be given; or
(b) the award is an arbitral award on agreed terms under Section 30.



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award in the eyes of law, as it breaches Section 31(3).

37. We, therefore, find no reason to interfere with the impugned judgment of the learned Single Judge which is upheld in its entirety.

38. The appeal is dismissed.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JULY 01, 2026