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

% ***Judgment Reserved on: 04.12.2025***
Judgment pronounced on:11.12.2025

\+ FAO 475/2013 and CM APPL. 20058/2013

DDA .....Appellant

Through: Ms. Chand Chopra and Ms. Anshika Prakash, Advocates for Mr. Sanjay Katyal, Standing Counsel.

versus

M/S HARJINDER BROTHERS .....Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This is an appeal under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 (the Act), filed by the petitioner/DDA in CS 95/2023 on the file of the learned Additional District Judge-12, Central District, Delhi aggrieved by the order dated 13.08.2013, whereby the application filed by them under Section 34 of the Act was dismissed.

2. The parties herein shall be referred to in the same rank as they are arrayed in the claim before the Arbitrator.

3. Initially, the claimant filed a suit for recovery of an amount of ₹5,00,000/- against the respondent/ defendant/ Delhi Development Authority (the DDA). In the plaint, it was alleged thus:- The claimant a registered partnership Firm duly registered under the Indian Partnership Act, 1932, is a registered contractor with the DDA. The DDA invited sealed item rate tenders for construction of 103 dwelling units in Pocket-3, Sector-9, Dwarka, New Delhi. As the rates offered by the claimant was the lowest amongst all the tenderers, the same was accepted by the DDA. An agreement no. EE/WD-6/AC/94-95 was executed between the parties on 25.08.1994. As per the agreement, the date for starting of the work was 02.09.1994. The time allotted for completion of the work was 18 months. The stipulated date of completion of work was 01.03.1996 and the actual date of completion of work was 16.05.1997. Thereafter, certain disputes arose with regard to the contract for which a suit for recovery, that is, suit number 1008 of 2001 was filed before the before this court.

3.1 Pursuant thereto, a fresh dispute arose with regard to the supplementary agreement executed between the parties after the completion of the original agreement. It was alleged that the claimant had completed the work in all aspects and that the date of completion of work had also been recorded as 16.05.1997. All the works except a few items remained to be completed. The remaining items of work were to be completed when the flats were actually allotted or possession handed over to the allottees. It was in this connection a supplementary agreement came to be executed between the parties on 31.03.2000. When the supplementary agreement was executed, the DDA had with them sufficient amount against the original agreement and also against the watch and ward charges payable to the claimant in accordance with circular no. 520 dated 30.03.1999, which had also been made part of the supplementary agreement.

3.2 There were a few items of work proposed to be executed at the time of handing over of the possession of the flats, which

were detailed in the supplementary agreement. In addition, the plaintiff was assigned with the work of watch and ward, for which it was agreed that they would be paid ₹ 6,600/- per month. Initially, the supplementary agreement was valid for a period of 12 months, that is, till 30.03.2001. By the said date, the DDA failed to hand over possession of the flats to the allottees. Hence, the DDA wanted the period of the agreement be extended to which the claimant had no objection. Accordingly, the supplementary agreement was extended as desired by the DDA.

3.3 Approximately, 45 dwelling units had been allotted to different allottees. As the allottees were not taking possession of the flats in time and as the remaining works to be completed as per the supplementary agreement involved use of costly materials, the DDA desired those items of work to be completed only at the time of actual allotment and also that watch and ward be kept till the actual allotment took place. Hence, the claimant was bound to engage watch and ward in order to protect the materials that had

been installed inside the flats.

3.4 Though the works as specified in the schedule of the supplementary agreement were carried out as per the instructions of the DDA, payments were not made for the work executed or for the watch and ward maintained by the claimant in terms of supplementary agreement. In terms of the original agreement, a sum of ₹ 1,55,829/- was with the DDA as security deposit. This amount fell due and it was required to be released. As per the supplementary agreement, the claimant was required to furnish a security deposit of ₹ 1,50,000/-. It was agreed that the bank guarantee of ₹ 1,55,829/- given as per the original agreement and in the possession of the DDA, would be treated as the security deposit for the supplementary agreement. Thus, the bank guarantee given for the original agreement was retained by the DDA to which the claimant never objected. However, without any notice to the claimant a letter dated 03.09.2002 was addressed to the Senior Manager, Punjab and Sindh Bank, New Delhi by the DDA for

encashment of the bank guarantee, dated 22.12.1995, amounting to ₹ 1,55,829/-. The letter was also endorsed to the claimant. The letter contained no reason as to why the bank guarantee was required to be encashed by the DDA. The DDA was supposed to specify the amount of bank guarantee that was required for any loss or damages caused or suffered due to action or inaction of the claimant. However, nothing was communicated to the claimant. Before the claimant could approach the Court, the DDA got the bank guarantee encashed.

3.5 The DDA has still not paid the huge amount payable to the claimant as per the supplementary agreement, though notice under Section 53 B of the Delhi Development Act, 1957 has been served on the former. The DDA had no right to encash the bank guarantee. On the other hand, they were liable to clear the huge amount due to claimant. Hence, the suit seeking a decree for an amount of ₹ 5 lakhs along with interest and costs from the DDA.

4. The DDA filed written statement disputing the allegations

in the plaint. It was contended thus:- The claimant did not complete the work in all aspects. The completion certificate issued by the Engineer-in-charge dated 16.05.1997 was subject to completion of remaining items of work, such as final coat of white washing, painting, etc., including fixing and providing glass panes, fixing of fittings, fixtures etc. as well as rectification of defects which were certified by the Superintending Engineer concerned. The allegation that certain items of work had not been completed as desired by the DDA is incorrect and false. The claimant was free to execute the works that remained and also to rectify the defects that were pointed out and thereafter, could have handed over the flats to the DDA. However, they failed to complete the construction and hence an amount of ₹ 2,66,000/- was withheld in the final bill which was accepted by the claimant also. The supplementary agreement executed between the parties was in accordance with circular no. 520 dated 30.03.1999 issued by the Office of the Engineer member-DDA, which also formed part of

the supplementary agreement. As per the circular, the contractors were to continue to provide for watch and ward during the period; the contractors entering into supplementary agreement for the same including finishing items, fixing of fittings etc. were required to be executed at the time of handing over the possession of the flats; the charges would be payable with effect from the date when all liabilities/obligations of the main agreement including defect liability period has been fulfilled and duly certified by the Engineer-in-charge and accepted by the next higher authority. In addition, the contractor would be liable to make good any loss or damage to the work already executed and to be executed under the supplementary agreement for which no extra charges was liable to be paid to them. It is clear from condition no. 3 of the circular, that the charges of watch and ward would be payable only when all the liabilities/obligations of the main agreement had been fulfilled and such fulfilment was duly certified by the Engineer-in-charge. However, the claimant never fulfilled the same and hence such

charges were neither due nor payable to them. A sum of ₹1,84,800 had been inadvertently paid to the claimant by the DDA for watch and ward services under the supplementary agreement and therefore, the DDA was entitled to recover/adjust the said amount wrongly paid to the claimant.

4.1 The allegation that the claimant had been instructed by the DDA to keep the finishing work pending till the flats were actually allotted was denied. According to the DDA, it was the claimant who had failed to execute and complete all the works agreed as per the initial agreement. The supplementary agreement contained no terms for making any payment to the contractor. The DDA had never stopped the claimant from executing the works completely. The DDA had never requested the claimant to provide watch and ward services after recording of completion certificate, that is, on 16.05.1997 till entering into the supplementary agreement on 31.03.2000. The DDA never desired the claimant to do watch and ward for the period from 16.05.1997 to 31.03.2000.

Therefore, the claimant cannot claim charges for watch and ward for the said period. It was because the claimant had not completed the works within the agreed time, amounts had been withheld in the final bill and as such payment for the work which was not executed under the main agreement cannot be given.

4.2 An amount of ₹1,55,829/- in the form of bank guarantee in the possession of the DDA as security deposit against the main/original agreement, was adjusted/converted and kept as security deposit for the supplementary agreement. Clause 29 of the main agreement enables the DDA to adjust or withhold any amounts that were wrongly paid to the claimant. Hence, on the strength of Clause 29, the bank guarantee of ₹ 1,55,829/- was encashed by the DDA as it had made a wrong payment of ₹ 1,84,000 to the claimant. No illegality has been committed by the DDA in encashing the bank guarantee. Hence, it was contended that the claimant was not entitled to any reliefs prayed for in the plaint.

5. During the course of the trial of the case, both the parties submitted that on account of the technical nature of the case, the matter be referred for arbitration. The request was allowed. Pursuant to the same, when the matter came up before the arbitrator, the plaint was treated as the statement of claim and the written statement of the DDA as counter to the same. Before the arbitrator both the parties agreed to rely on the affidavits of their respective witnesses and that cross examination was not required.

6. The arbitrator after considering the materials on record and after hearing both sides passed an Award dated 09.08.2011 in favour of the claimant. The said Award was challenged under Section 34 of the Act by the DDA. The District Court by the impugned order dismissed the application under Section 34 of the Act. Aggrieved, the DDA has come up in appeal.

7. It was submitted by the learned counsel for the DDA that the findings of the Section 34 court are erroneous, perverse and not supported by the materials on record. The work as per the first

agreement was not completed by the contractor within the stipulated time which necessitated the execution of the supplementary agreement dated 31.03.2000. The completion certificate dated 16.05.1997 was only a conditional certificate, which was issued subject to the removal of defects by the contractor. However, all the defects remained unattended for the period from 16.05.1997 till 31.03.2000.

7.1 It was further pointed out that under clause 29 of the original agreement, the DDA had the right to recover any over-payment made. Further, circular no. 520 dated 30.03.1999 which has been incorporated in the supplementary agreement mandated that watch and ward charges was payable only after all the liabilities under the main agreement including the curing of defects had been completed or fulfilled by the contractor and certified by the Engineer concerned. The supplementary agreement has clarified that the watch and ward charges was the responsibility of the contractor till the allotment of all flats to the

allotees.

7.2 Further, the claimant never produced any material(s) to show proof of actual expenditure on watch and ward charges and therefore, no amount under the said head was payable. However, the arbitrator on a misappreciation of the materials on record regarding watch and ward charges, held that the DDA had gone wrong in encashing the bank guarantee. Likewise, the District Court while adjudicating the application under Section 34 also went wrong in appreciating the materials on record and has erroneously confirmed the Award of the arbitrator, which requires to be interfered with by this court. According to the learned counsel, an amount of ₹ 1,84,800/- had been inadvertently paid to the claimant and it was for recovery of the said amount, the bank guarantee had been encashed.

8. There was no representation on behalf of the claimant at the time of hearing.

9. Heard the learned counsel for the appellant/DDA.

10. It is settled law that the scope of enquiry in an appeal under Section 37 of the Act is quite limited. The Apex Court in **Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills 2024 SCC OnLine SC 2632**, held that the scope of intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority under law to consider the matter in dispute before the arbitral tribunal on merits to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction

vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that of superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered with unless a case for interference as set out in Section 34 is made out. It cannot be disturbed only for the reason that, instead of the view taken by the arbitral tribunal, the other view, which is also a possible view, is a better view according to the appellate court.

11. The learned counsel for the DDA relied upon Section 34(2)(b)(ii) of the Act to justify the appeal. As per the said provision, an arbitral award is liable to be set aside if it is in conflict with the public policy of India. Explanation 1 to this sub-section says that an award is in conflict with the public policy of India, only if, (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or (ii) it is in contravention of the fundamental policy of Indian

law; or (iii) it is in conflict with the most basic notions of morality or justice. Explanation 2 states that for the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

12. The aforesaid explanations to Section 34 (2)(b)(ii) of the Act came into the statute book with effect from 23.10.2015 only. Therefore, the same cannot apply to the case on hand. It is the provision that existed earlier, which would be applicable. The earlier explanation reads –

"*without prejudice to the generality of sub-clause (ii), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India, if the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81*."

13. In **ONGC vs. Western GECO International Limited, (2014) 9 SCC 263**, fundamental policy was interpreted as:-

"Fundamental policy of Indian law" includes three juristic principles – **first,** the duty to adopt a judicial approach requiring fairness, reasonableness and absence of arbitrariness; **second** compliance with principles of natural justice, particularly proper application of mind which must appear from the reasons recorded; **third** the wednesbury principle that a decision cannot be perverse or so irrational that no reasonable person would reach it. If the arbitrator fails to draw an inference which ought to have been drawn, or draw an untenable inference resulting in miscarriage of justice, the award violates the fundamental policy of Indian law.

13.1 In **Hindustan Zinc Ltd. vs Friends Coal Carbonisation (2006) 4 SSC 445**, it was held that an award which is contrary to the substantive provisions of law or against the terms of the contract is patently illegal and can be interfered with under Section 34 (2) of the Act as being opposed to the public policy of India.

13.2 In **Associate Builders vs DDA, (2015) 3 SCC 49**, the scope of public policy under Section 34 (2)(b)(ii) was explained as

the merits of an arbitral Award can be examined only when the Award is in conflict with public policy of India, and even then only within narrow judicially recognised limits. The Section 34 court cannot act as a first appellate court on facts. A violation occurs only when – (a) the award ignores binding statutes or judicial precedence, (b) there is lack of judicial approach, (c) natural justice is violated, (d) findings are perverse, such as being based on no evidence, ignoring vital evidence, or considering irrelevant material. An award can be set aside for being contrary to justice or morality only if it shocks the conscience of the court. It was held that justice for public policy does not mean what the court personally considers fair, but only situations that shock judicial conscience. Patent illegality will have to go to the root of the matter; involve contravention of substantive law, contravention of the Act, or/and contravention of the terms of the contract. However, if the arbitrator adopts a possible and reasonable construction of the contract, the court cannot substitute its own

interpretation.

14. Having thus reminded myself of the law on the point, I proceed to consider the case on hand. It was submitted by the learner counsel for the DDA that the challenge in this appeal is confined to claims (a) and (d) as raised by the claimant before the arbitrator. Claim (a) is regarding the encashment of the bank guarantee and claim (d) is relating to the charges towards watch and ward. The arbitrator from the materials on record found that the work had been completed by 16.05.1997 as was evident from the completion certificate and that an amount of ₹1,84,800/- was in fact paid to the claimant as watch and ward charges. The arbitrator, on an examination of the registers concerned, found that there was delay in taking over possession of the flats by the DDA. That being the position, the claimant was bound to keep the property safe and secure till possession was taken over by the DDA. Further, relying on Section 70 of the Indian Contract Act, 1872, it was found that charges incurred by the claimant towards watch and

ward charges was not a gratuitous act done by the claimant and therefore, they were eligible for the legitimate charges incurred by them towards the said head.

14.1 Regarding the encashment of bank guarantee, the arbitrator found that the same had been encashed without any notice to the claimant and without showing that any loss had been caused to the DDA by the action or inaction of the claimant.

15. An interesting aspect that needs to be noticed before I go into the merits of the case is that the DDA has produced neither the original agreement nor the supplementary agreement along with the appeal, though certain other documents like the claim application, the counter, rejoinder etc. have been produced. The said agreements though referred to by the arbitrator in the Award is not seen admitted in evidence or marked by either side as part of their evidence.

16. When the attention of the learned counsel was drawn to the absence of both the agreements on record, it was submitted that

the entire TCR needs to be called for and perused by this Court. The Section concerned of this Court dealing with the records informs that the entire TCR is before the Court. I have perused the entire TCR. But both the agreements are not seen. However, neither the execution of the agreements nor its clauses are disputed by either side. Therefore, in the absence of the agreements before me, I shall refer to and rely on the clauses referred to in the Award by the arbitrator.

17. Circular no. 509 dated 02.05.1997, part of the supplementary agreement reads thus:-

> *"…….*
>
> *In supersession of the detailed guidelines issued earlier on the subject vide Circular No, 474 circulated vide No. EM.1 (10)95/19517 dated 8.11.1995, the following new guidelines have been approved by the WAB.*
>
> *1. In all future NITs based on PWD-7 or PWD-8 for housing and similar projects, DDA will specifically introduce a provision relating to drawing up of Supplementary Agreement for the execution of following types of finishing items during the process of handing over*

of the flats /built up spaces to the perspective allottees.

i. final cot [sic] of white wash / distemper, painting and water proofing cement paint etc.

ii. final floor grinding

iii. providing and fixing glass panes

iv. providing and fixing glass panes

v. providing and fixing of sanitary fittings and fixtures

vi. fixing of door/window shutters including fittings and fixtures

vii. Etc. etc.

2. In all future NITs of housing and similar projects, the following two independent schedules of items would be included :

a. Schedule-A : It would contain all those items or those parts of items which are to be executed under the Main Agreement b.

b. Schedule-B: It would contain all those items or those parts of items which may be executed under the Supplementary Agreement for the type finishing items as detailed of para-1 above.

Schedule B: it would also include, an independent item for watch and ward to be paid during the currency of the Supplementary Agreement.

3. All future NITs of housing and similar projects would also be so framed as to indicate separately the time of

completion, earnest money / security etc. for schedule A as well as schedule 8 of the items of the work.

4. The base date for working out of escalation under clause-10 CC for Schedule B to be executed under Supplementary Agreement shall be the same as for the Schedule A Operation of Clause 10 CC will, however, be otherwise covered by the relevant provisions of the main agreement.

5. An additional clause 6 (c) would be added to the standard contract formats PWD-7 or future NITs as per the enclosed modified draft PWD-8 in all (Annexure-1).

6. The Supplementary Agreement would be drawn min future contracts per the enclosed modified draft for the Supplementary Agreement (Annexure II) once all the obligations under main agreement (in respect of Schedule A) are fulfilled by the agency.

7. The final bill to the two agreements i.e. the Main Agreement as well as the Supplementary Agreement shall be dealt with and finalised independently in accordance with the relevant provisions of the two agreements contained herein.

8 For the existing agreements of housing and similar projects wherein, for drawing up provisions Supplementary Agreement do not exist, possibility of drawing up the Supplementary Agreement with respect to contractors as per

these modified standing instructions shall be explored. The time period for execution of work under Schedule B shall be initially for one year (or less as per merits of the case) to be suitably extended from time to time with mutual consent of both the parties. The contractors would be entitled for the payment of watch and ward / service charges etc. during thr operation of the Supplementary Agreement in respect of the existing contracts also as per the pre-decided rates to be worked out on the basis of the norms / guidelines separately issued on the subject vide circular No. 510 dated 2.5.1997.

These instructions shall be implemented with immediate effect.

…….."

17.1. Pursuant to the aforesaid circular guidelines were issued which reads thus:-

"……..

Subject: Guidelines for operation of supplementary agreement in respect of Watch & Ward/Service Charges Clause.

According to the instructions issued vide Circular no. 509 dated 2.5.97 regarding operation of Supplementary Agreement, contractors are required to be paid for watch and ward / service charges etc. for the operation of Clause -2(j), contained therein. For drawing up Supplementary

Agreement, in respect of running contracts, in order to maintain uniformity in the operation of this clause, following guidelines are issued to be followed judiciously by the Tender Accepting Authority (Chief Engineer will be the final Authority even, where, the tenders were accepted with the prior approval of WAB):-

1. On an average for and upto a Housing Pocket of 150 SFS/MIG Houses or 200 LIG/EWS Houses, a payment of Rs. 6600/- per month may be considered reasonable.

2. For every additional, 50 houses or so, additional payment of Rs. 1100/- per month may be considered reasonable.

3. Nothing extra will be permitted for T&P and sundries required for watch and ward operation.

The above guidelines are for normal locations and for the general guidance. For exceptionally, small pockets or small buildings, the Tender Accepting Authority shall take a judicious view of the totality of the circumstances in deciding the above charges. Similarly, for the pockets located in areas vulnerable to unscrupulous activities, extra cost may be suitably permitted on judicious basis."

(Emphasis Supplied)

17.2 Circular no. 509 was modified on 30.03.1999, which reads thus:-

"SUB: CLARIFICATION TO EM'S INSTRUCTIONS ISSUED UNDER CIRCULAR NO. 509 & 510 DT. 02.05.1997.

Certain clarifications have been sought to Standing Instructions no. 509 dated 02.05.1997 in respect of applicability of the payment of watch ward charges for the intervening period i.e, from the date of closure of the main agreement till the signing of the Supplementary Agreement by the contractors in respect of old contracts wherein condition of the Supplementary Agreement, does not form part of the contract. The matter has both examined in detail and it has been decided that watch & ward charges are payable for the Intervening period subject to the following:

1 The contractors have been continuing to provide watch & ward services during the said period.

2. The contractors are entering into the Supplementary Agreement for the same including finishing items, fixing of fittings etc. required to be executed at the time of handing-over ever of the possession of the flats.

3. The charges would be payable w.e.f. the date when all liabilities/obligations of the main agreement including Defect Liability period, had been fulfilled and duly certified by the Engineer- in-charge and accepted by the next higher authority.

4 In addition, the contractors shall be liable to make good any loss or damage to the work already executed and to be executed under the Supplementary Agreement for which nothing extra shall be payable to the Contractors.

5. Adherence to the other guidelines as contained in Circular 509 dt. 02.05.97 and 510 dt. 02.05.97."

(Emphasis Supplied)

17.3 The Completion Certificate reads thus:-

" COMPLETION CERTIFICATE

I have inspected the work of Const. of additional DU's (25 MIG + 30 LIG + 48 HIG) four storeyed houses in Pocket-3 sector-19 Dwarka, the contract value of which is Rs.1,47,41,623/- vide agreement No. 3/EE/WD-6/94-95/DDA today i.e. 16/8/99. As a result of this inspection, & my previous inspections, I find that the work has been carried out generally to the specifications, and has been completed satisfactorily. There are no noticeable defects except for the following:

1- The panel door shutters provided in wet areas are checked and it is observed that the sizes of bottom rail, top rail and styles etc, are not as per Specifications.

2- G.I. clamps provided in G.I. stacks are not provided at distances specified in the specification. The brackets for washroom, cistern are not fixed in CC blocks. Also the hold-fast for sanitary stacks and rain water pipes not fixed in the

CC blocks.

3- The grinding of mosaic floors observed very poor, as the chips are not visible in the Floors. The glass strips are also not visible.

4- Quality of putty provided for fixing the glass panes observed cracked and found missing in many windows which shows that the quality of putty is not good.

5- Brackets provided for wash basins & cisterns also observed to be below specifications.

6- Locking arrangement in wire gauze shutters in kitchen not provided."

(Emphasis Supplied)

18. Admittedly, Circular number 509 dated 02.05.1997 is part of the supplementary agreement. The arbitrator is seen to have perused and inspected the registers concerned and found that there was inordinate delay in allotment of flats by the DDA. Even after the issuance of the Completion Certificate, admittedly the flats were not taken over by the DDA. There is no case for the DDA that they took over the flats. On the other hand, they only contend that the claimant could have handed over possession of the completed flats. As long as possession was not taken over by the

DDA, it was the responsibility of the claimant to keep the flats safe and secure, for which they are certainly entitled to watch and ward charges. In addition, an amount of ₹1,84,800/- is seen to have been given under this head, though the DDA claims that it was paid inadvertently.

19. Further, the bank guarantee was encashed by the DDA on the ground that over payment had been made by them. But clause 29 of the agreement, on which the DDA relies on itself, says that an audit has to be conducted to ascertain the amounts due. The relevant portion of clause 29 is seen extracted in the Award, which reads thus:-

> *"Delhi Development Authority shall have right to cause an audit and technical examination of works and the final bills of the contractor including all supporting vouchers, abstract etc. to be made after payment of the final bill and if as result of such audit and technical examination any sum is found to have been over paid in respect of any work done by the contractor under the contract or any work claimed by him to have been done by him under the contract and found not to have been executed, the*

contractor shall be liable to refund the amount of over payment and it shall be lawful for Delhi Development Authority to recover the same from him in the manner legally prescribed in sub clause (1) of this clause or in any other manner permissible ……"

20. Admittedly, no audit was conducted by the DDA. In the light of the aforesaid Clause and the Circulars referred to hereinabove, the arbitrator has not committed any infirmity or illegality in arriving at his conclusions. I do not find any perversity or illegality in the findings of the arbitrator. Therefore, the Section 34 court has rightly confirmed the findings of the arbitrator.

21. In these circumstances, I find no infirmity in the impugned order calling for an interference by this Court.

22. The appeal *sans* merit is thus dismissed. Application(s), if any pending, shall stand closed.

CHANDRASEKHARAN SUDHA
(JUDGE)

DECEMBER 11, 2025/Rs/Er