



2026:DHC:1490-DB



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

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Judgment reserved on: 12.02.2026

Judgment pronounced on: 20.02.2026

Judgment uploaded on: 20.02.2026

+ **FAO (COMM) 185/2024 & CM APPL. 54337/2024
DEEPAK BUILDERS AND ENGINEERS LIMITED**

.....Appellant

Through: Mr. Varun Chugh & Mr.
Mayank Kaushik, Advs.

versus

M/S ENGINEERING PROJECTS (INDIA) LTD

.....Respondent

Through: Mr. Debarshi Bhadra, Adv.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal under Section 37¹ of the Arbitration and Conciliation Act, 1996², the Appellant assails the correctness of the judgment dated 16.05.2024 [hereinafter referred to as 'Impugned Order'], passed in ARBTN-248/18, whereby the learned District Judge allowed the Petition filed by the Respondent under Section 34³ of the A&C Act [hereinafter referred to as 'Section 34 Petition'] and set aside the Arbitral Award dated 13.07.2018 [hereinafter referred to as 'the Award'] passed by the learned Sole

¹ Section 37

² A&C Act

³ Section 34



Arbitrator.

2. The learned District Judge, by way of the Impugned Order, has held that the Award suffers from patent illegality on account of the claims being barred by limitation under the Limitation Act, 1963⁴.

3. Accordingly, the principal issue which arises for consideration before this Court is whether the learned District Judge was justified in interfering with the Award under Section 34 on the ground of limitation, particularly in the absence of a timely objection before the learned Arbitrator.

FACTUAL MATRIX

4. In order to appreciate the controversy involved in the present Appeal, the relevant facts, in brief, are required to be noticed.

5. The Respondent invited tenders for civil and internal electrical work for planning, designing, and construction of a Zonal Office Building for Punjab National Bank at Ludhiana, Punjab [hereinafter referred to as 'work']. On 12.01.2006, EPIL issued a letter of award bearing LOI No. NRO/CON/494-TEC/0245 for construction, to the Appellant.

6. It is the case of the Appellant that the work stood completed in all respects on 30.06.2008, however, the date of completion of the work as per the agreement was 11.04.2007. On 08.09.2008, the Appellant raised its final bill for an amount of Rs.25,72,035.87/-,

⁴ Limitation Act



payable within 6 months. In the said bill, it was noted that the gross amount was subject to statutory deductions against taxes, cess, etc.

7. On 07.11.2008, the Respondent released a sum of Rs.4,98,849/- to the Appellant while withholding an amount of Rs.20,73,187/- on account of alleged service tax, labour cess, security deposit and other deductions.

8. Subsequently, correspondence ensued between the parties with regard to the deductions so made. The Respondent addressed a letter dated 04.02.2009 to the Labour Commissioner, Punjab, seeking clarification regarding the applicability of labour cess for construction completed before 11.11.2008. In response, the Labour Commissioner, *vide* communication dated 19.02.2009, clarified that the State Government has not taken a decision on levying labour cess on projects completed before 11.11.2008.

9. In the context of the Impugned Order assailed before this Court, the correspondence dated 07.03.2009, 03.08.2009 and 07.07.2011 is relevant. *Vide* letter dated 07.03.2009, the Respondent stated that the final bill dated 08.09.2008 had been certified and paid, subject to certain deductions towards labour cess, service tax and commissioning charges, and that 50% of the retention money had been released. The claim for interest was denied, and the issue of labour cess was stated to be under consideration with Punjab National Bank.

10. By letter dated 03.08.2009, the Respondent stated that the building had not yet been handed over to Punjab National Bank and, therefore, the Appellant's assertion of completion in all respects was



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disputed. It was further stated that tax-related issues were under consideration and that the claim of full payment due was not acceptable under the contract. Subsequently, *vide* letter dated 07.07.2011, the Respondent reiterated that payment of Rs.34,98,849/- had been released on 07.11.2008 and maintained that no further amount or interest was payable under the contract.

11. In the meantime, on 26.09.2009, the Appellant sought release of Rs.20,00,000/- against the final bill along with 50% of the retention money and interest @ 18%. The Respondent informed that 50% of the retention money had already been released and that no delay interest was payable. The defect liability period expired on 30.06.2009 in terms of Clause 12 of the Purchase Order and Clause 35 of the General Conditions of Contract ('GCC'). Subsequently, on 29.04.2011, a demand-cum-show cause notice was issued by the Commissioner of Central Excise and Service Tax, Ludhiana, Punjab, raising a demand of service tax in respect of the work.

12. Pursuant thereto, in the year 2015, the Appellant asked for recovery of money from the Respondent and thereafter sent a legal notice and approached the High Court of Punjab and Haryana for the appointment of Arbitrator. *Vide* order dated 29.07.2016, the Appellant had obtained an *ex parte* order for the appointment of Arbitrator without serving EPIL, and the said arbitration proceedings were also conducted and concluded on 01.12.2016 in the absence of the Respondent.



13. Further, *vide* order dated 28.04.2017, the High Court of Punjab and Haryana set aside the aforesaid *ex parte* arbitral award dated 01.12.2016 and appointed Mr. Vinod Jain as the sole Arbitrator.

14. The learned sole Arbitrator, after considering the material placed on record, passed the Award dated 13.07.2018, allowing the claims of the Appellant and awarding a sum of Rs.39,01,041/- along with interest and costs.

15. Aggrieved by the Award, the Respondent filed the Section 34 Petition. The learned District Judge, *vide* the Impugned Order, allowed the said Petition and set aside the Award primarily on the ground that the claims were barred by limitation.

16. Aggrieved by the same, the present Appeal has been preferred.

CONTENTIONS OF THE PARTIES

17. Heard learned Counsel for the parties at length and, with their able assistance, perused the paperbook.

18. Learned counsel for the Appellant, assailing the Impugned Order, advanced the following submissions:

- i. The Respondent did not raise any plea of limitation at the stage of appointment of the Arbitrator under Section 11⁵ of the A&C Act, nor did it invoke Section 16⁶ of the A&C Act before

⁵ Section 11

⁶ Section 16



the learned Arbitrator. The objection, therefore, stood waived in terms of Section 4⁷ of the A&C Act.

ii. The learned Sole Arbitrator, being the final arbiter of facts and law within the arbitral domain, had considered the issue of deductions and the correspondence exchanged between the parties, and the finding rendered on limitation could not have been substituted by the Court under Section 34.

iii. The Impugned Order is contrary to settled jurisprudence of the Supreme Court that limitation is a mixed question of fact and law and, unless the finding is perverse or patently illegal, the same is not open to interference under Section 34.

19. *Per contra*, learned counsel for the Respondent supported the Impugned Order and contended as follows:

i. The cause of action arose in the year 2008 when the final bill was submitted and part payment was made, and therefore, the invocation of arbitration beyond three years was *ex facie* barred by limitation.

ii. Since limitation goes to the root of the matter, the Court was justified in setting aside the Award under Section 34.

20. No other submissions have been advanced on behalf of the parties.

⁷ Section 4



ANALYSIS & FINDINGS

21. This Court has analysed the submissions advanced by the learned Counsel for the parties.

22. It would be apposite to set out herein the scrutiny permissible by this Court in exercise of its powers under Section 37. It is now well-settled that the appellate jurisdiction of the Court under Section 37 is to be exercised with due restraint, ensuring that it does not traverse beyond the statutory confines delineated under Section 34. The Supreme Court in the judgment of *MMTC Ltd. v. Vedanta Ltd.*⁸ contemplated upon the limited and supervisory nature of an appeal under Section 37 and has observed that:

*“14. As far as interference with an order made Under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference Under Section 37 cannot travel beyond the restrictions laid down Under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court Under Section 34 has not exceeded the scope of the provision. **Thus, it is evident that in case an arbitral award has been confirmed by the court Under Section 34 and by the court in an appeal Under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.**”*

(Emphasis supplied)

23. Similar observations have been made by the Supreme Court in *Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills*⁹, which reads as follows:

*“20. **In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act.**”*

⁸ (2019) 4 SCC 163.

⁹ 2024 SCC OnLine SC 2632.



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 of law to consider the matter in dispute before the arbitral tribunal on merits so as 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 superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, 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.

(Emphasis supplied)

24. Further, a three-judge Bench of the Supreme Court in *UHL Power Co. Limited v. State of Himachal Pradesh*¹⁰ held the following:

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings Under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts Under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal Under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.

(Emphasis supplied)

¹⁰ (2022) 4 SCC 116.



25. Learned Counsel for the Respondents has placed his reliance upon the judgment rendered by the two-judge Bench of the Supreme Court in *McDermott International* (*supra*), where the Court has taken a similar view. The relevant extracts of the same are extracted hereunder:

*“52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. **Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc.** The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, **the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court’s jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.***

*112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See *Pure Helium India (P) Ltd. v. ONGC* [(2003) 8 SCC 593] and *D.D. Sharma v. Union of India* [(2004) 5 SCC 325] .)*

113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.

*114. The above principles have been reiterated in *Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors* [(2004) 2 SCC 663] , *Union of India v. Banwari Lal & Sons (P) Ltd.* [(2004) 5 SCC 304] , *Continental Construction**



Ltd. v. State of U.P. [(2003) 8 SCC 4] and State of U.P. v. Allied Constructions [(2003) 7 SCC 396] .”

(Emphasis supplied)

26. The Courts have adopted the same consistent view in a catena of decisions, a few of which may be adverted to, namely, *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.*¹¹; *ONGC Ltd. Western Geco International Ltd.*¹²; *Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.*¹³; *Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India*¹⁴; *Ssangyong Engg. & Construction Co. Ltd. v. NHAI*¹⁵; and, *NHAI v. M. Hakeem*¹⁶.

27. Thus, it is a well-embedded principle in arbitration jurisprudence that the scope of interference under Section 37 is even narrower than that contemplated under Section 34. The appellate court, while examining an order passed under Section 34, does not sit in substantive review of the arbitral award, nor does it reassess or re-appreciate the evidence underlying the Arbitrator’s findings. Thus, the enquiry under Section 37 is confined to testing whether the court below has acted within the statutory boundaries prescribed under Section 34, and whether its decision suffers from patent illegality, perversity, or a jurisdictional infirmity warranting correction.

28. Consistent with this framework, the Supreme Court has repeatedly underscored that an appeal under Section 37 is supervisory and not corrective in the ordinary appellate sense. The appellate court

¹¹ (2019) 11 SCC 465.

¹² (2014) 9 SCC 263.

¹³ (2007) 8 SCC 466.

¹⁴ (2003) 4 SCC 172.

¹⁵ (2019) 15 SCC 131.

¹⁶ (2021) 9 SCC 1.



is not empowered to expand the permissible grounds of challenge, revisit factual determinations, or substitute its own view for that of either the Arbitral Tribunal or the Section 34 Court. Its remit is limited to ascertaining whether the lower court has applied the correct legal standards and whether its interference with, or refusal to interfere with, the award aligns with the restrictive contours of Section 34.

29. Having delineated the contours of the jurisdiction exercisable under Section 37, we now proceed to examine whether the learned District Judge, while exercising powers under Section 34, acted within the statutory confines in setting aside the Award on the ground that the claims were barred by limitation.

30. Section 43 of the A&C Act makes the Limitation Act applicable to arbitrations as it applies to proceedings before courts. The mandate is unequivocal: arbitral claims must be brought within the prescribed period of limitation, failing which they are legally non-maintainable. Further, Article 18 of the Limitation Act prescribes a period of three years for filing an application/suit for recovery for the price of work done by the Plaintiff for the Defendant at his request, where no time has been fixed for payment, the period of limitation commences from the date when the work is done.

31. At this juncture, it is also apposite to note that the limitation is not a mere technical defence. It is founded on public policy. It ensures certainty in commercial dealings and prevents resurrection of stale claims. An arbitral tribunal, therefore, cannot ignore statutory



limitation; nor can parties, by consent or inaction, confer jurisdiction upon a tribunal to adjudicate claims that are *ex facie* time-barred.

32. It is equally well settled that limitation is ordinarily a mixed question of fact and law. Where the determination of limitation depends upon disputed factual issues or appreciation of evidence, the arbitrator's view, if plausible, would not warrant interference. However, where the relevant dates are admitted and the bar of limitation is evident on the face of the record, the matter assumes a jurisdictional character.

33. Moreover, an award granting relief on claims that are demonstrably barred by limitation would suffer from patent illegality within the meaning of Section 34(2A) of the A&C Act. In such circumstances, the Court under Section 34 is justified in setting aside the award, not by reappreciating evidence, but by enforcing a statutory bar.

34. The submission of the Appellant that the limitation stood waived as it was not pressed under Section 16 or at the Section 11 stage does not merit acceptance. At this stage, reference to Section 4 is pertinent and the same is reproduced hereunder:

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

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

(b) any requirement under the arbitration agreement,

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



35. In this regard, it is important to note that the plea of limitation is a substantive defence grounded in statute. Section 4 applies to derogable procedural requirements; it cannot be invoked to override a statutory limitation.

36. Further, the stage of appointment of an arbitrator under Section 11 is not determinative of limitation unless the claim is *ex facie* dead. Even otherwise, failure to conclusively establish limitation at that stage does not prevent the Court under Section 34 from examining whether the award disregards a clear statutory prohibition.

37. Thus, the settled position that emerges is:

- i. Limitation applies with full vigour to arbitral claims;
- ii. A claim *ex facie* barred cannot be sustained; and
- iii. An award ignoring limitation is vulnerable under Section 34.

38. The controversy in the present matter turns substantially on the accrual of cause of action and identification of the relevant starting point for limitation.

39. On the admitted factual matrix, the cause of action for recovery of the amount arose on 30.06.2008, as the work stood completed as per the Appellant on 30.06.2008. However, upon release of partial payment on 07.11.2008 and simultaneous withholding of the remaining amount, the entitlement of the Appellant to claim the unpaid balance crystallised as per Section 19 of the Limitation Act.



Thus, the cause of action accrued on 07.11.2008. The limitation period began to run for taking steps to recover the balance amount by invoking arbitration and the same lapsed on 06.11.2011. Thereafter, there was no written acknowledgment of the debt on the part of the Respondent, which may have extended the period of limitation, whereas the Appellant invoked arbitration in the year 2015.

40. The learned District Judge, in the Impugned Order, has analysed three crucial dates emerging from the record, which also find reference in Paragraph Nos.9 and 10 of the factual matrix narrated hereinabove.

41. The first relevant date is 07.03.2009. The tenor of the letter dated 07.03.2009 is significant. It was not a provisional or tentative communication. It conveyed the Respondent's position that payment had been made in accordance with its understanding of the contract and that further claims, including interest, were not acceptable. This constituted a clear intimation of dispute.

42. The second relevant date is 03.08.2009. In this letter, the Respondent disputed the Appellant's assertion that the building had been completed in all respects and categorically stated that the claim of full payment due was not acceptable under the contract. It reiterated that tax-related issues were under consideration and declined the Appellant's demand. This communication further crystallised the dispute. The Respondent's refusal to accede to the demand was unequivocal. The cause of action, therefore, stood firmly established at least by this date.



43. The third crucial date is 07.07.2011. By this letter, the Respondent once again reiterated that payment of Rs.34,98,849/- had been released on 07.11.2008 and maintained that no further amount or interest was payable under the contract.

44. The learned District Judge has treated these three dates as material in determining limitation, which was also not correct because from the date of the last partial payment, the period of limitation will begin to run continuously as provided in Section 9 of the Limitation Act. The invocation of arbitration in 2015 was, therefore, beyond the statutory period.

45. The Appellant has sought to contend that the dispute continued to remain alive owing to correspondence relating to labour cess and service tax, and that the cause of action ought to be reckoned from the demand notice issued by the Commissioner of Central Excise and Service Tax in April 2011. We find no merit in this submission. The contractual dispute between the parties regarding payment had crystallised much earlier. The subsequent tax proceedings did not create a fresh cause of action for recovery under the contract. At best, they may have furnished an additional circumstance, but they could not extend limitation once the claim had already been unequivocally denied.

46. It is a settled principle that mere exchange of correspondence, pendency of representations, or discussions between the parties does not arrest the running of time. For limitation to stand extended under Section 18 of the Limitation Act, there must be a clear and



unambiguous acknowledgment of liability made in writing before expiry of the prescribed period. In the present case, no such acknowledgment of subsisting liability was made within three years from the accrual of cause of action on 07.11.2008. In the absence of a valid acknowledgment, the statutory period could not be enlarged. To hold otherwise would render the law of limitation nugatory.

47. It may be noted that the learned Arbitrator, while allowing the claim, did not advert to these dates in a manner consistent with the statutory mandate. The Award does not disclose any legally sustainable reasoning for extending limitation beyond the period prescribed by statute.

48. The learned District Judge, on the other hand, examined the admitted correspondence and recorded a categorical finding that the claims were *ex facie* barred. The finding is based on undisputed documentary material and involves a straightforward application of statutory prescription. It cannot be characterised as a reappraisal of evidence or a substitution of view on merits.

49. The Appellant has further argued that limitation being a mixed question of fact and law, the Arbitrator's view ought not to have been disturbed. This submission overlooks that where the dates are admitted and the denial is explicit, the computation of limitation becomes a matter of legal application, not factual appreciation.

50. It is also urged that the Respondent did not press the plea under Section 16 before the Arbitrator. As already discussed, limitation cannot be waived by omission. Moreover, the correspondence forming



the basis of limitation was part of the arbitral record itself. The statutory bar is apparent on the face of the Award.

51. The Impugned Order reflects that the learned District Judge confined himself to examining whether the Award contravened the statutory limitation. There is no re-evaluation of contractual interpretation or quantum. The interference is squarely within the narrow window contemplated under Section 34.

52. Furthermore, in exercise of jurisdiction under Section 37, this Court cannot expand the scope of scrutiny. The question before us is not whether the Arbitrator's approach was plausible, but whether the Section 34 Court exceeded its mandate. Upon careful consideration, we find that it did not.

CONCLUSION

53. In light of the foregoing discussion, this Court is of the considered view that the learned District Judge has not transgressed the jurisdiction vested under Section 34. The Impugned Order reflects that the Court below examined the Award within the limited parameters prescribed by law and recorded a finding that the claims were *ex facie* barred by limitation.

54. The issue of limitation, going to the root of the maintainability of the claims, was considered by the learned District Judge on the basis of the admitted dates and the correspondence on record. The conclusion arrived at cannot be said to be perverse, patently illegal, or



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in excess of jurisdiction so as to warrant interference under Section 37.

55. As noticed hereinabove, the appellate power under Section 37 is even more circumscribed than the jurisdiction under Section 34. This Court does not sit in appeal over the decision of the Section 34 Court to re-assess the merits of the controversy. No ground has been made out to demonstrate that the learned District Judge acted contrary to the settled principles governing interference with arbitral awards.

56. Consequently, this Court finds no merit in the present Appeal. The Impugned Order warrants no interference.

57. The Appeal is, accordingly, dismissed. Pending applications, if any, stand disposed of.

58. There shall be no order as to costs.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

FEBRUARY 20, 2026

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