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

% ***Judgment reserved on: 27.01.2026***

Judgment pronounced on: 16.02.2026

Judgment uploaded on: 16.02.2026

\+ FAO(OS) (COMM) 246/2023

M/S MILLENIUM REALTECH PVT. LTD. .....Appellant

Through: Mr. Jugal Bagga, Mr. Sumit Kaushik, Mr. Charanjit Khatana & Mr. Chet Ram Kaushik, Advs .

versus

M/S OPAQUE INFRASTRUCTURE PVT. LTD. .....Respondent

Through: Mr. Harish Malhotra Senior Advocate with Mr. Rajender Agarwal and Mr. Anoop Kumar, Advs.

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. The present Appeal has been filed assailing the correctness of the judgment dated 14.08.2023 [hereinafter referred to as 'Impugned Judgment'], passed by the learned Single Judge [hereinafter referred to as 'LSJ'], through which the petition filed by the Appellant (Respondent before the Arbitral Tribunal) under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'Act of 1996'], challenging the Arbitral Award dated 20.11.2020 [hereinafter referred to as 'Impugned Award'], was dismissed.

2. For the sake of clarity, consistency and ease of reference, the parties in the present appeal shall be referred to in accordance with their respective status before the learned Sole Arbitrator [hereinafter referred to as 'LSA'].

FACTUAL BACKGROUND:

3. In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noticed.

4. The present proceedings trace its genesis to the Collaboration Agreement dated 07.11.2011 [hereinafter referred to as 'Agreement'], with respect to a land admeasuring 1148 sq. yds. situated in Ishwar Nagar, Mathura Road, New Delhi [hereinafter referred to as 'subject property']. Admittedly, the Respondent (Appellant before this Court) is the owner of the subject property, and approached the Claimant (Respondent before this Court), who is in the business of promotion, development and construction of real estate, to engage it in the development and construction of the subject property.

5. Under the Agreement, the Claimant was to bear the entire cost of construction and, in addition, pay a total consideration of Rs. 5.20 crores to the Respondent in stages; Rs. 25 lakhs payable at the time of execution, with additional Rs. 25 lakhs payable within 30 days of execution, Rs. 1.50 crores payable upon the Respondent obtaining sanction of building plans from the competent authority (to be done within 60 days), and the balance Rs. 3.20 crores were to be paid in four equal instalments within 120 days of intimation of sanction of the building plans. In accordance with the terms of the Agreement, the

responsibility to set out the building sanction was to be undertaken by the Respondent within 60 days from the date of signing of the Agreement.

6. Further, the Agreement contemplated execution of a registered Special Power of Attorney by the Respondent in favour of the Claimant upon sanction of building plans and receipt of Rs. 2 crores, with a right reserved to the Claimant to rescind the Agreement in case of default and repossess the property along with refund of the amounts received.

7. As per the case set out by the Claimant before the LSA, after payment of Rs. 50 lakhs in terms of the Agreement, the Respondent failed to take timely steps to obtain sanction of the building plans and also failed to intimate the Claimant about such sanction, compelling it to address a communication dated 07.03.2013 enquiring about the sanction and requesting supply of the original Agreement. It is the case Claimant's case that, for the first time on 22.03.2014, the Respondent required the Claimant to furnish credentials evidencing its ability to execute the project, while simultaneously returning a photocopy of a cheque for Rs. 50 lakhs purporting to refund the advance.

8. The Respondent, on the other hand, asserted that it had terminated the Agreement by notice dated 22.03.2014 on account of the Claimant's failure to furnish documents showing its experience and financial capacity. It was also set out that the cheque of Rs. 50 lakhs issued in favour of the Claimant was deliberately not encashed.

It was further the case of the Respondent that the amount of Rs. 50 lakhs were thereafter deposited with the Registrar General of this Court pursuant to an order passed in proceedings between the parties, however it was ultimately withdrawn by the Claimant.

9. It was also pleaded that the Agreement, being unregistered and having been signed by two directors without a Board resolution amidst inter se disputes among the directors, which had led to proceedings before the Company Law Board and an order restraining creation of third-party interests or execution of collaboration agreements without consent of all directors, was unenforceable in law.

10. Following the disagreements, the Claimant sent another letter dated 02.07.2014 to the Respondent, reiterating its readiness and willingness to perform its obligations under the Agreement, along with a request for supply of building sanction plans, alternatively, the Claimant invoked the arbitration clause of the Agreement. In response to the said letter, the Respondent, by reply dated 14.07.2014, stated that the sum of Rs. 50 lakhs stood returned pursuant to an arrangement with one Mr. Taskeen Hussain Siddique, former director of the Claimant, who also returned the original Agreement and as such no occasion for appointment of an arbitrator survived. The Claimant thereupon filed a petition under Section 9 of the Act of 1996, in which interim orders were passed. Subsequently, a petition under Section 11(6) of the Act of 1996 came to be filed, and LSA was appointed to adjudicate the disputes.

11. The Claimant, before the LSA, sought specific performance of

the Agreement and, in the alternative, monetary compensation representing the difference between the value of the subject property at the time of the Agreement and at the time of the award, together with refund of Rs. 50 lakhs with interest. The Respondent resisted the claim, *inter alia*, contending that specific performance is a discretionary relief and was barred under Sections 14(b) and (d) of the Specific Relief Act, 1963 [hereinafter referred to as 'Act of 2963']; that the Agreement had been validly terminated by notice dated 22.03.2014 on account of the failure of the Complaint to furnish the requisite credentials; that the amount of Rs. 50 lakhs had been duly returned, and that the unregistered Agreement was unenforceable in law.

12. Pertinent to note that during the arbitral proceedings, on 18.09.2017, the LSA recorded that counsel for both parties stated that the matter stood fully and finally settled. Additionally, it was noted that the Respondent in its documents also filed a copy of sanction letter dated 24.01.2013 issued by the South Delhi Municipal Corporation (SDMC) in respect of the subject property on the basis of their application dated 26.06.2012, however, the same only came to be disclosed during the course of arbitration, and no intimation with respect to the said approval was made to the Claimant. In view of the continuing disputes amongst the Respondent's directors and its inability to produce a valid Board resolution authorising the settlement, the LSA declined to pass a consent award and directed the parties to lead evidence. It is to note that none of the Respondent's directors thereafter challenged the recording of the settlement.

Nevertheless, in the absence of a duly authorised resolution, the arbitral proceedings continued on merits.

13. By the award dated 20.11.2020, the LSA, upon consideration of the terms of the Agreement, the conduct of the parties, including the settlement recorded on 18.09.2017, and the evidence on record, declined the relief of specific performance on the ground that the Agreement contemplated performance of a continuous nature not amenable to supervision. At the same time, the LSA held that the Agreement was a concluded, valid and enforceable collaboration agreement and was not compulsorily registrable under Section 17(2)(v) of the Registration Act, 1908.

14. The LSA rejected the Respondent's defences relating to alleged non-supply of financial and experience-related documents, an alleged prior settlement with Mr. Siddiqui, and the alleged return of the original Agreement along with payment of sum of Rs. 50 lakhs. Having regard to the aforesaid, the LSA awarded damages in favour of the Claimant in the sum of Rs. 1.65 crores, *inter alia,* having regard to the conduct of the parties and the amount of settlement recorded on 18.09.2017, along with interest @12% per annum on the awarded sum from 30.12.2017, the date on which the last payment was to be made by the Respondent in terms of the aforesaid settlement. Additionally, a further post-award interest @12% per annum on the total sum of Award were also granted, from the date of the Impugned Award till the date of its recovery. Further, the Claimant was also held entitled to recover the amount of Rs. 22 lakhs towards the cost of litigation and expenses from the Respondent.

15. Aggrieved by the award dated 20.11.2020, the Respondent instituted a petition under Section 34 of the Act of 1996 before this Court, challenging, *inter alia*, the refusal of specific performance, the findings on readiness and willingness, the rejection of its defences on termination and refund, and the award and quantification of damages in favour of the Claimant. However, the said petition was dismissed by way of the Impugned Judgment.

16. Accordingly, dissatisfied by the findings rendered by the LSJ in the Impugned Judgment, the Respondent by way this Appeal has sought the indulgence of this Court in examining the correctness of the findings thereof.

CONTENTIONS OF THE PARTIES:

17. Learned counsel for the Appellant (Respondent before the Arbitral Tribunal), while controverting the findings of the Impugned Judgment, has made the following submissions:

17.1. It has been argued that the LSJ failed to appreciate that the Claimant has failed to lead any cogent evidence to establish its continuous readiness and willingness to perform its obligations under the Agreement, as mandatorily required under Section 16(c) of the Act of 1963.

17.2 It has been argued that the LSJ failed to take into consideration that continuous readiness and willingness is a condition precedent for the grant of relief of specific performance, and the absence thereof disentitles a party to such relief. Reliance in this regard was placed on

the decision of the Supreme Court in ***N.P. Thirungnanam v Dr. R. Jagan Mohan Rao & Ors***[1]**.**

17.3 It has been further argued that the LSJ failed to take into the categorical admission made by the Director of the Claimant during his cross examination, wherein he stated that the Claimant is willing to comply with the terms of the Agreement only subject to the revision of all prices. As per the learned counsel, the same clearly evinced the Claimant's lack of intention to perform the Agreement as executed and demonstrated an absence of the requisite readiness and willingness in law.

17.4 Learned counsel also submitted that even while upholding the award of damages, the LSJ failed to notice that the LSA had overlooked the express stipulation contained in Clause (v)(d) of the Agreement, which contemplated imposition of penalty for delay solely upon the Claimant. It was argued that the Agreement did not envisage any penalty or damages being levied upon the Respondent and therefore, the award of damages against the Respondent was contrary to the contractual framework.

17.5 Lastly, it is argued that the LSJ failed to take note of the fact that the LSA did not even frame any specific issue with respect to the Claimant's readiness and willingness, which was a fundamental and determinative issue for adjudication of the dispute, particularly in the context of the claim for specific performance. The absence of such an issue, it was argued, vitiated the arbitral findings as well as the

[1] (1995) 5 SCC 115

Impugned Judgment.

18. *Per contra*, learned senior counsel for the Respondent/Claimant has made the following submissions:

18.1 It has been argued that the LSJ has rightly upheld the Impugned Award, and no ground is made out for interference by this Court, especially in exercise of its limited appellate jurisdiction under Section 37 of the Act of 1996.

18.2 It has further been argued that the Respondent is estopped from raising any dispute with regard to the readiness and willingness of the Claimant to perform the Agreement at this stage. Reliance in this regard has been placed on the unequivocal statement made by the learned counsel for the Respondent before the LSA, which reads as under:

> *(iii) Mr. Jugal Bagga, learned counsel for the Respondent at the outset argued, that the Respondent has no objection if the award for, specific performance of the Collaboration Agreement/MoU) dated 07.11.2011 is passed and the Respondent is directed to get the date for completion of the construction on the plot in question extended from the concerned Municipal authorities. This was opposed by Mr. B.R. Sharma, Advocate for Mr. S.K. Mittal, the director of the Respondent.*

Relying on the aforesaid, it has been argued that the Respondent did not dispute the readiness and willingness of the Claimant to perform its contractual obligations.

ANALYSIS:

19. This Court has heard the learned counsel for the parties at considerable length and has also undertaken a thorough and comprehensive examination of the entire appeal record, including the

Impugned Judgment by the LSJ and the Impugned Award passed by the LSA.

20. The core issue that falls for the consideration of this Court is whether, within the narrow confines of interference permissible under Sections 34 and 37 of the Act of 1996, the Respondent has made out any ground to set aside the Impugned Award dated 20.11.2020, as upheld by the Impugned Judgment of the LSJ, in so far as the Award *(i)* declines the relief of specific performance of the Collaboration Agreement dated 07.11.2011, and *(ii)* holds the termination of the Agreement by the Respondent to be illegal and consequently grants the Claimant damages in the sum of Rs. 1.65 crores along with interest.

21. At the outset, it is pertinent to highlight that this Court, while sitting in an appeal under Section 37 of the Act of 1996, is conscious about the limited scope of interference that can be exercised in such proceedings. An appeal under Section 37 of the Act of 1996, is narrow in its compass and is confined to examining the legality of findings rendered by the Court exercising jurisdiction under Section 34 of the Act of 1996. The appellate jurisdiction under Section 37 of the Act of 1996 is *akin* to, and cannot travel beyond, the restrictions imposed upon the Court under Section 34 of the Act of 1996; it does not confer a general appellate power to reassess the merits of the Impugned Award.

22. Both Sections 34 and 37 of the Act of 1996 are structured to ensure minimal judicial interference with the Arbitral Awards, in

order to preserve the time-efficient and expeditious nature of arbitration as an alternative dispute resolution mechanism. Consequently, the Court is precluded from re-appreciating evidence, re-assessing factual findings, or sitting in appeal over the Arbitrator's interpretation of the contract, so long as the view adopted by the Arbitrator is a plausible one founded on the material available on record. Interference is permissible only on the limited grounds statutorily enumerated in Section 34 of the Act of 1996, including where the award is in conflict with the public policy of India or is vitiated by patent illegality going to the root of the matter, and even then, re-appreciation of evidence is expressly impermissible.

23. The Supreme Court has consistently affirmed that a Court under Section 34 of the Act of 1996 does not sit in appeal over an Arbitral Award, and that an appellate court under Section 37 of the Act of 1996 has an even more circumscribed jurisdiction, being confined to testing whether the Court acting under Section 34 of the Act of 1996 has kept its findings within the bounds of the limited statutory power vested in it. Consequently, this Court, in the present appeal under Section 37 of the Act of 1996, cannot undertake an independent reassessment of the merits of the dispute, nor can it substitute its own view for that of the Arbitrator, merely because another view is possible.

24. The Supreme Court in the judgment of ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[2], contemplated upon the limited and supervisory nature of an appeal under Section 37 and has

[2] 2024 SCC OnLine SC 2632

observed that:

> *"11. Section 37 of the Act provides for a forum of appeal inter-alia against the order setting aside or refusing to set aside an arbitral award under Section 34 of the Act. The scope of appeal is naturally akin to and limited to the grounds enumerated under Section 34 of the Act.*
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> *12. It is pertinent to note that an arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the courts. It is also well settled that even if two views are possible there is no scope for the court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail.*
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> *13. In paragraph 11 of* ***Bharat Coking Coal Ltd. v. L.K. Ahuja****, it has been observed as under:*
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> > *"11. There are limitations upon the scope of interference in awards passed by an arbitrator. When the arbitrator has applied his mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the arbitrator would prevail. So long as an award made by an arbitrator can be said to be one by a reasonable person no interference is called for. However, in cases where an arbitrator exceeds the terms of the agreement or passes an award in the absence of any evidence, which is apparent on the face of the award, the same could be set aside."*
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> *14. It is equally well settled that the appellate power under Section 37 of the Act is not akin to the normal appellate jurisdiction vested in the civil courts for the reason that the scope of interference of the courts with arbitral proceedings or award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner.*
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> *15. In* ***Dyna Technology Private Limited v. Crompton Greaves Limited****, the court observed as under:*
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> > *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility*

> *of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated. 25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."*

16. It is seen that the scope of interference in an appeal under Section 37 of the Act is restricted and subject to the same grounds on which an award can be challenged under Section 34 of the Act. In other words, the powers under Section 37 vested in the court of appeal are not beyond the scope of interference provided under Section 34 of the Act.

17. In paragraph 14 of ***MMTC Limited v. Vedanta Limited****, it has been held as under:*

> *"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."*

18. Recently a three-Judge Bench in ***Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking*** *referring to* ***MMTC Limited*** *(supra) held that the scope of jurisdiction under Section 34 and Section 37 of the Act is not like a normal appellate jurisdiction and the courts should not interfere with the arbitral award lightly in a casual and a cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle the courts to reverse the findings of the arbitral tribunal.*

CONCLUSION:

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. 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.

21. It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement."

(emphasis supplied)

25. It is in this backdrop that we now proceed to examine the arguments advanced by the Respondent in the present Appeal, thereby questioning the evaluation of readiness and willingness by the LSA, and his assessment of damages.

26. It has been argued by the learned counsel for the Respondent that the LSA failed to frame issues with respect to the readiness and willingness of the Claimant to perform its obligations. However, a holistic reading of the Impugned Award, particularly the segment styled as "*CONCLUSION (I)–(VII)*", makes it evident that the prayers

and claims articulated in the statement of claim were themselves treated as the central questions for determination.

27. The Impugned Judgment correctly records that the LSA, in substance, addressed whether specific performance of the Agreement dated 07.11.2011 ought to be granted (*Conclusion I*); whether the Agreement attracted compulsory registration under Section 17(2)(v) of the Registration Act, 1908 (*Conclusion II*); whether the Agreement constituted a concluded and enforceable contract (*Conclusion III*); whether the termination *vide* letter dated 22.03.2014 was legal and justified (*Conclusions IV and V*); and whether, in consequence, the Claimant was entitled to damages and interest, and in what quantum (*Conclusion VI*).

28. A reference is also to be made to the prayers of the Claimant through which, it sought for specific performance, for a declaration as to the validity and enforceability of the Agreement, and, *in the alternative*, for damages with interest. The said prayer thus stood adopted as the real issues in controversy and was answered through reasoned conclusions. In these circumstances, the mere absence of a separately numbered "issue" on readiness and willingness or on damages cannot be elevated to a violation of natural justice or to a ground seeking interference under Section 34 of the Act of 1996, so long as the underlying controversies were factually and legally addressed with reasons, which they indisputably were.

29. Turning now to the effect of rejection of specific performance on the entitlement to damages, the LSA declined the discretionary relief

of specific performance after a close scrutiny of the contractual terms, the nature and duration of the construction obligations, and the necessity of continuous supervision over quality, materials, timelines and allied aspects. Taking the aforesaid into consideration, it was concluded that the Agreement fell within the class of contracts involving performance of continuous duties which a court or tribunal cannot effectively supervise, as contemplated by Section 14 (c) of the Act of 1963.

30. Notably, the aforesaid conclusion was not reached *in vacuo* by the LSA, on the contrary while reaching to such conclusion, he took into account the pleadings of both parties, their conduct including the settlement recorded on 18.09.2017, and the nature of the obligations under the Agreement, which envisaged construction of a multi-storey project over 18 months with ongoing design, quality and construction supervision. The LSJ rightly held that this was, at the very least, a plausible view on the application of Section 14 of the Act of 1963 to the facts and the contract and hence lay beyond the narrow zone of interference under Section 34 of the Act of 1996.

31. It is pertinent to highlight that once specific performance was declined, the residual inquiry, as correctly recognised by both the LSA and LSJ, was whether either party had committed breach of the contract and, if so, whether the innocent party was entitled to monetary compensation. The Impugned Award, as accurately summarised in the Impugned Judgment, records clear findings that the Agreement was a concluded and enforceable collaboration agreement; and the plea of the Agreement being pending for want of financial or

experience documents along with an alleged settlement with a former director by return of the original Agreement and Rs. 50 lakhs were unsupported by cogent evidence as such stood rejected; and that the termination vide letter dated 22.03.2014 was illegal and unsustainable in law, entitling the Claimant to recover damages for the losses suffered.

32. In this regard, a reference is also made to the discussion of the LSA in the Impugned Award with respect to the wrongful and illegal termination of the Agreement on account of the Respondent, thereby acting in violation of the agreed terms of the Agreement, which is set out hereinafter. Undisputedly, the parties entered into the Agreement on 07.11.2011, after which the Respondent failed to perform its obligations stipulated under Clause (v)(c) of the Agreement, which required the Respondent to apply and attain the building sanction plan within a period of 60 days from the date of signing of the Agreement. Relying upon the SDMC letter dated 24.01.2013, sanctioning the building plans, it was noted that the said letter was given in response to the application of the Respondent on 29.06.2012. In the view of the turn of events as mentioned, it is evident that the Respondent applied for the building sanction after a substantial delay of approximately 175 days, much beyond the prescribed period.

33. It also bears importance to note that the Respondent failed to prove the effective steps which were taken by it to set out the building plan approved after entering into the Agreement on receipt of Rs. 50 Lakhs. As already noted, in accordance with the Agreement, the first step was to be taken by the Respondent to set out the building sanction

plan approved, however, the Respondent miserably failed to lead cogent evidence substantially proving its *bona fide* in attaining the building plans after a substantial delay.

34. These findings squarely attract the general remedial rule in Sections 73 and 74 of the Indian Contract Act, 1872, under which a party who suffers loss by reason of the other's breach is entitled to compensation for the loss naturally arising in the usual course of things from such breach, subject to any contractual stipulation. The LSJ has expressly endorsed this approach, noting that there is neither any legal nor any contractual bar to the grant of monetary compensation once the owner's (Respondent's) breach stood established. The contention of the Respondent that the LSA, having refused specific performance, was thereafter precluded from awarding damages is not only contrary to the basic remedial structure of contract law, but, more significantly, amounts to an attack on the merits of the arbitral determination and not on any recognised ground under Section 34(2) or 34(2A) of the Act of 1996. Within the settled jurisprudence on Sections 34 and 37 of the Act of 1996, such an argument is plainly inadmissible.

35. The contractual argument based on Clause (v)(d) of the Agreement is also devoid of merit. The Respondent invoked the said clause to contend that the Agreement envisaged a penalty or forfeiture only against the builder (Claimant) in the event of delayed payments and imposed no reciprocal liability on the owner to pay damages, thereby rendering the award of damages contrary to the bargain. This submission was advanced before the LSJ, who noted the contention

that the Agreement did not contemplate any penalty or damages payable by the owner, and that Clause (v)(d) of the Agreement stipulated only a penalty upon the builder. However, the LSJ rejected this "contractual bar" theory, holding that the Agreement, when properly read, contained no prohibition against damages being awarded in favour of the Claimant once the owner's breach was found, and that the contrary reading propounded by the Respondent rested on a convoluted and strained construction of the clause.

36. Whether Clause (v)(d) of the Agreement operates as a one-sided stipulated consequence or is but one facet of a broader risk-allocation within the collaboration framework is quintessentially a matter of contractual interpretation, committed primarily to the Arbitral Tribunal. As repeatedly emphasised by the Supreme Court, construction of contractual terms is a subject matter of adjudication by the Arbitrator, and a court exercising jurisdiction under Sections 34 and 37 of the Act of 1996, cannot supplant a reasonably possible view with what it may regard as a more attractive interpretation. In the absence of any demonstration that the LSA's view was perverse, irrational, or wholly unmoored from the text and scheme of the Agreement, the challenge founded upon Clause (v)(d) of the Agreement cannot succeed in an appeal filed under Section 37 of the Act of 1996.

37. With respect to readiness and willingness and the effect of the parties' conduct and the subsequent settlement, the Respondent has contended that the Claimant failed to establish continuous readiness and willingness within the meaning of Section 16(c) of the Act of

1963, and that there was a categorical admission in cross-examination, in answer to Question 17, suggesting that the Claimant was willing to perform only subject to price revision. These very points were urged before the LSJ, who expressly noticed the reliance on the said cross-examination. Nevertheless, it was held that the LSA's conclusions on specific performance and liability were not founded on a truncated reading of one answer in cross-examination, but on a composite evaluation of the pleadings of both parties, their conduct, especially the settlement recorded on 18.09.2017 and the nature and structure of the Agreement. Further it was held that, a selective emphasis on an isolated answer in cross-examination, cannot dislodge a reasoned conclusion derived from the entire factual conspectus.

38. The LSA had, in particular, recorded that during the arbitral proceedings the Respondent settled the matter and agreed to pay Rs. 1.65 crores towards full and final settlement, with the directors of the Claimant-company individually assenting to those terms on oath, although they subsequently failed to procure a Board resolution.

39. Further, the Claimant has drawn attention to the statement made by the Respondent's counsel before the LSA that the owner had no objection to an award of specific performance and would secure requisite extensions of time from the municipal authorities. This conduct, read with the settlement terms and the directors' sworn statements, substantially undermines the Respondent's present contention that the Claimant was not ready and willing. As such both the LSA and the LSJ were entitled to regard the Respondent's own conduct and its positions at the time of arbitration proceedings as

highly material to the equities governing specific performance and to the assessment of damages. Such evaluation is inherently fact-intensive and falls squarely within the forbidden territory of factual re-appreciation, which a court under Section 37 of the Act of 1996 cannot traverse.

40. As to the basis and quantum of damages, and the role played by the 18.09.2017 settlement, the Impugned Award, as summarised in the Impugned Judgment, makes it clear that after holding the termination illegal and the Agreement to be concluded and enforceable, the LSA turned to the Claimant's alternative claim for damages. He recorded that on 18.09.2017 the parties had informed him that the disputes stood fully and finally settled; that the directors of the owner-company confirmed the settlement terms on oath; and that a consent award could not be passed solely because the owner failed to place on record a Board resolution authorising the compromise, owing to *inter se* disputes among its directors.

41. Thereafter, the LSA treated the agreed figure of Rs. 1.65 crores as the best available evidence for quantifying the Claimant's loss, noting that both sides had contemporaneously accepted that figure as a fair monetary resolution of the fallout of the Agreement and its breach. Proceeding on this basis, the LSA awarded Rs. 1.65 crores with pre-award interest at 12% per annum from 30.12.2017 (the outer date stipulated for payment under the settlement) till the date of the award, and post-award interest at the same rate till realisation. The Impugned Judgment further notes that even during the arbitral proceedings neither party disputed the quantum of damages or the rate

of interest that had been agreed in the settlement, thereby reinforcing the LSA's reliance on the figure as embodying the parties' own assessment of fair compensation.

42. In doctrinal terms, Section 30 of the Act of 1996 expressly empowers an arbitral tribunal to encourage settlement of the dispute and, where the parties settle, to record the settlement in the form of an award on agreed terms. However, the making of such an award is predicated on the existence of valid authority and compliance with any internal authorisation requirements, particularly in the case of companies, much in the same way as Order XXIII Rule 3 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] insists that a lawful compromise must be in writing and signed or otherwise validly assented to by authorised persons before a court can pass a compromise decree.

43. In the present case, the LSA quite correctly declined to pass a consent award under Section 30 of the Act of 1996 once it transpired that the owner-company could not produce a Board resolution, notwithstanding its directors having individually affirmed the settlement and its counsel having recorded the compromise. This approach is consonant with the cautionary requirements analogous to those embodied in Order XXIII Rule 3 of the CPC. At the same time, neither Order XXIII Rule 3 of the CPC nor any provision of the Act of 1963 forbids an adjudicatory forum from treating an unperfected or formally defective settlement as a piece of evidence reflecting the parties' own contemporaneous valuation of their respective rights and liabilities.

44. In the present case, the LSA did no more than adopt this evidentiary use, he refused to confer the status of a consent award on the 18.09.2017 settlement for want of proper corporate authority but treated the mutually agreed sum of Rs.1.65 crores, coupled with the absence of any subsequent dispute as to quantum, as the best indicator of reasonable compensation for the wrongful termination. The legality of this approach lies squarely within the domain of appreciation of evidence; it does not offend any statutory or contractual prohibition and hence cannot be impugned under Sections 34 or 37 of the Act of 1996.

45. Therefore, on an overall conspectus, no ground of patent illegality or conflict with public policy, as understood in Section 34(2) and (2A) of the Act of 1996 is made out. The Respondent's challenge, both before the LSJ and in this appeal, is ultimately founded upon, an invitation to re-weigh the evidence regarding readiness and willingness, with undue emphasis on a single cross-examination answer; a plea for a different construction of Clause (v)(d) of the Agreement and of the contractual allocation of risk; and a grievance about the absence of a separately formulated issue on readiness and willingness.

46. The aforesaid grounds invoked for seeking interference of this Court, even if taken at their highest, go only to the merits of the Impugned Award without delineating any excess or failure of jurisdiction by the LSA. Additionally, such contentions do not disclose any breach of *audi alteram partem* or of the principles of natural justice; hence, do not reveal any patent illegality going to the

root of the matter in the sense elucidated by the Supreme Court, as opposed to a mere error of law or fact.

47. Both the Impugned Award and the Impugned Judgment contain reasoned findings on each substantial question, specific performance, the nature and enforceability of the Agreement, the legality of termination, and the entitlement and quantum of damages, grounded in the pleadings, correspondences including the letters dated 22.03.2014 and 14.07.2014, the parties' conduct, and the settlement recorded on 18.09.2017, and informed by the correct tests governing interference with Arbitral Awards under Sections 34 and 37 of the Act of 1996.

48. The submissions advanced on behalf of the Respondent, when examined in entirety, essentially seek a re-appreciation of evidence and reconsideration of factual and contractual findings returned by the LSA. Such an exercise is clearly impermissible within the limited scope of appellate scrutiny under Section 37 of the Act of 1996, particularly when both the LSA and the LSJ have concurrently rejected the claims after due consideration.

49. In these circumstances, this Court is of the considered view that the Impugned Award does not suffer from perversity, patent illegality, or violation of the fundamental policy of Indian law. The approach adopted by the LSA is neither arbitrary nor unreasonable, and the LSJ has rightly declined to interfere with the same.

50. Hence, no interference, is called, for keeping in view the limited scope of interference against the Impugned Award and the concurrent

findings recorded by the LSA and affirmed by the LSJ.

CONCLUSION:

51. In view of the foregoing discussion and findings, this Court finds no infirmity in the Arbitral Award dated 20.11.2020 or in the Impugned Judgment passed by the learned Single Judge. The Appellant has failed to demonstrate any ground warranting interference by this Court in exercise of its appellate jurisdiction under Section 37 of the Act of 1996.

52. The present Appeal, being devoid of merit, is accordingly dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

FEBRUARY 16, 2026
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