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

% ***Judgment reserved on: 17.02.2026***
Judgment pronounced on: 18.03.2026
Judgment uploaded on: 18.03.2026

\+ FAO(OS) (COMM) 189/2024 & CM APPL. 48495/2024
PROTO DEVELOPERS AND TECHNOLOGIES LTD
.....Appellant
Through: Mr. Ashwani Kumar Singh, Adv.

versus

M/S ANTRIKSH REALTECH PVT LTD & ANR
.....Respondent
Through: None.

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 under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the 'Act'] is directed against the judgment dated 10.05.2024 passed by the learned Single Judge in O.M.P. (COMM) 98/2024 captioned ***Proto Developers & Technologies Ltd. Vs. Antriksh Realtech Pvt. Ltd & Anr***. [hereinafter referred to as the 'Impugned Judgment'], whereby the Petition instituted by the Appellant herein under Section 34 of the Act [hereinafter referred to as 'Section 34 Petition'] assailing the Arbitral Award dated 01.07.2023 [hereinafter referred to as 'the Award'] came to be dismissed.

2. The factual matrix, to the extent required for the purposes of the present Appeal, is noticed hereafter.

FACTUAL MATRIX

3. The dispute arises out of a group housing development project proposed on land admeasuring approximately 61,500 sq. yards situated at Village Chhajarsi, Ghaziabad, owned by M/s Raksha Vigyan Karamchari Sahakari Awas Samiti Ltd., Ghaziabad [hereinafter referred to as 'the Society']. In the year 2006, the Society entered into a development arrangement for the construction, management and allotment of flats with M/s Rose Enterprises (a unit of Proto Infosys Limited), the predecessor-in-interest of the present Appellant, under which development rights in respect of the said land were conferred and possession was delivered for purposes of construction and the aforesaid allied activities. Certain steps towards development, including land filling, boundary demarcation and procurement of initial sanctions, were undertaken in pursuance thereof.

4. Thereafter, owing to financial constraints and the inability of the original developer, the Appellant herein, to mobilise adequate funds for execution of the project, the Society and the Appellant decided to induct a third-party developer.

5. On 09.02.2010, a Collaboration Agreement [hereinafter referred to as 'the Collaboration Agreement'] came to be executed between the Society, M/s. Proto Developers & Technologies Ltd. & Associates, the Appellant as the confirming party, and Respondent No. 1, Antriksh Realtech Pvt. Ltd.[hereinafter referred to as 'the subsequent

developer’], whereby Respondent No. 1 was inducted as the developer for the construction of the multi-storied group housing complex proposed to be known as “*Antriksh Sanskriti*”. The Collaboration Agreement recorded the subsisting rights created under the earlier agreement of 2006 and envisaged a composite development structure. Under the Collaboration Agreement, the Society and the Appellant together were entitled to 37.5% of the constructed and unconstructed area, while the subsequent developer was to retain 62.5% of the same, and these were called their Allocable Shares.

6. The Collaboration Agreement delineated the respective responsibilities of the parties in relation to construction, procurement and continuation of statutory sanctions, and the discharge of statutory dues payable to the Ghaziabad Development Authority [hereinafter referred to as ‘GDA’]. The subsequent developer was to undertake construction at its own cost. The Collaboration Agreement further contained stipulations governing the liability for payment of statutory charges and the consequences thereof. The said clauses in the Collaboration Agreement provided for the subsequent developer to make certain payments towards statutory dues, subject to a financial cap of Rs. 11 Crores. The interpretation and application of the provisions of the Collaboration Agreement subsequently became the principal area of controversy between the parties when disputes arose.

7. Pursuant to the Collaboration Agreement, construction activities were commenced by the subsequent developer in April 2011. The project, however, encountered impediments on account of demands raised by the GDA towards development charges, city development fee, additional FAR payments, labour cess and allied statutory levies.

2026:DHC:2261-DB

The non-payment of these dues led to revocation of permissions, and repeated sealing of the project site at different points of time.

8. The parties were at variance as to the contractual allocation of liability for the aforesaid statutory payments for sanctions and permissions. The Appellant asserted that the subsequent developer was responsible for all payments necessary for continuation of the project and for keeping the sanctions alive during the development. The subsequent developer, on the other hand, contended that in terms of the contractual stipulations governing statutory dues, its liability was limited to the capped amount of Rs. 11 crores in terms of the Collaboration Agreement and that payments made by it to the GDA beyond that limit were on behalf of the Society and the Appellant, and were liable to be reimbursed. These payments were characterised by the subsequent developer as financial assistance/help extended to the Appellant to preserve the project and secure de-sealing of the project site.

9. Disputes thus arose between the parties not only in relation to the responsibility for statutory payments and the consequences of the sealing of the project site, but also with regard to delays in construction, alleged diversion of project funds, and reciprocal claims for damages.

10. In terms of the arbitration clause contained in the Collaboration Agreement, the disputes were referred to Arbitration, and a learned Sole Arbitrator was appointed by the Delhi International Arbitration Centre (DIAC). The Appellant, in arbitral proceedings, raised monetary claims alleging breach of contractual obligations by the subsequent developer and sought damages running into Rs. 710

crores. The subsequent developer, in turn, preferred counterclaims of about Rs. 100 crores, principally seeking reimbursement of amounts stated to have been expended towards statutory dues payable to the GDA on behalf of the Appellant and the Society and towards maintenance and preservation of the project during the period when the site remained sealed.

11. By the Arbitral Award dated 01.07.2023, the learned Sole Arbitrator rejected the claims of the Appellant in their entirety and partly allowed certain counterclaims of the subsequent developer, awarding a sum of Rs.12,01,01,524/- inclusive of interest up to the date of the Award together with future interest at the rate of 9% per annum.

12. Aggrieved thereby, the Appellant instituted the Section 34 Petition bearing O.M.P. (COMM) 98/2024. By the judgment dated 10.05.2024, the learned Single Judge, upon a consideration of the contractual framework and the reasoning adopted by the learned Arbitrator, held that the interpretation placed upon the relevant clauses of the Collaboration Agreement constitutes a plausible and justifiable view, and that no ground for interference within the parameters available under Section 34 of the Act was made out. The petition was, accordingly, dismissed.

13. The present Appeal under Section 37 of the Act has been preferred against the aforesaid judgment dismissing the petition for setting aside the Arbitral Award.

14. It may be noticed that although the Respondents have not entered appearance in the present Appeal despite service, the Court is nonetheless required to examine the matter within the requirements of

Section 37 of the Act. The absence of the Respondents does not enlarge the scope of appellate scrutiny nor dilute the discipline imposed by the Act on interference with the Arbitral Award.

15. In this factual backdrop, the submissions fall for consideration.

SUBMISSIONS ON BEHALF OF THE APPELLANT

16. Learned counsel for the Appellant submits that the learned Single Judge failed to exercise jurisdiction vested under Section 34 of the Act and dismissed the Section 34 Petition on an erroneous understanding that the Court could not examine the findings of the learned Arbitrator. It is urged that the objections raised disclosed grounds of patent illegality, perversity and conflict with the fundamental policy of Indian law, which required judicial scrutiny.

17. It is contended that the judgment under Section 34 is non-speaking and does not deal with the substantial grounds urged by the Appellant, including the plea that the award is contrary to the contractual scheme, based on material not forming part of the evidence, and rendered in violation of principles of natural justice.

18. Learned counsel further submits that the counterclaims allowed by the learned Arbitrator were *ex facie* barred by limitation and that the learned Single Judge failed to examine this jurisdictional objection.

19. In particular, the challenge is laid by the Appellant to the partial allowance of Counterclaim No. 1 to the extent of Rs. 9 crores. It is contended that the learned Arbitrator treated the absence of a specific denial in the Appellant's reply to the counterclaim as sufficient to

infer that the said amount had been paid by Respondent No. 1 on behalf of the Appellant and the Society. According to the Appellant, such an inference could not have been drawn in the absence of evidence demonstrating that the payment of ₹9 crores had in fact been made.

20. The Appellant further submits that the finding is based solely on oral testimony of RW- 2 (the Accountant of the Respondent No. 1) without production of books of accounts or documentary proof, and the learned Arbitrator had drawn an adverse inference in the absence of a specific denial to the counter-claim. It is submitted that such a finding is contrary to the "no evidence" principle and could not have been sustained.

21. It is also urged that the Award proceeds on an erroneous interpretation of the Collaboration Agreement, especially with regard to the allocation of liability for statutory payments and approvals. According to the Appellant, the contractual scheme placed the responsibility for development and associated costs upon the Respondent No. 1, and the learned Arbitrator has wrongly fastened liability upon the Appellant and the learned Single Judge has erred in treating the same as a plausible view.

22. Learned counsel submits that the learned Arbitrator travelled beyond the terms of the contract, selectively applied certain clauses while disregarding others, and thereby acted in excess of jurisdiction. The Award is further assailed as being arbitrary, unreasonable and contrary to public policy, including on the ground of the rate of interest awarded on the counterclaims.

23. It is lastly submitted that the award suffers from breach of due

process inasmuch as findings have been returned on the basis of vague and extraneous material, depriving the Appellant of a fair opportunity to contest the same.

24. In view of the submissions advanced, the following questions arise for consideration in this appeal:

i. Whether the learned Single Judge has failed to exercise jurisdiction under Section 34 of the Act;

ii. Whether the finding of the Arbitral Tribunal on limitation is *ex facie* contrary to law;

iii. Whether the award suffers from absence of evidence in respect of the counter-claims; and

iv. Whether any ground of patent illegality or perversity is made out within the scope of Section 37 of the Act.

ANALYSIS AND FINDINGS

25. An Appeal under Section 37 of the Act does not entail a rehearing of the objections under Section 34, nor does it undertake a merits review of the arbitral determination. The jurisdiction of the appellate court is confined to examining whether the court exercising jurisdiction under Section 34 of the Act has remained within the well-settled parameters governing interference with an arbitral award. The appellate court does not sit in appeal over the Arbitral Award, nor does it re-appreciate the contractual construction or the evidentiary material, save to the limited extent necessary to ascertain whether the Section 34 court has countenanced a patent illegality, perversity, or a jurisdictional error.

2026:DHC:2261-DB

26. The primary question which, therefore, arises for consideration is whether the learned Single Judge, in declining to set aside the Arbitral Award, failed to exercise jurisdiction vested under Section 34 of the Act, or whether the view taken that the interpretation placed by the learned Arbitrator on the Collaboration Agreement constituted a plausible view not amenable to interference.

27. The challenge laid by the Appellant is, in substance, directed against the construction placed by the learned Arbitrator on the contractual allocation of liability for statutory payments and approvals, the evidentiary basis for the partial allowance of certain counterclaims, and the rejection of the Appellant's claims. The enquiry, however, is not whether an alternative interpretation of the contract is possible, but whether the interpretation adopted by the learned Arbitrator is one that no reasonable person could have taken, or whether the learned Single Judge, in testing the Award on the anvil of Section 34, has either applied an incorrect standard or failed to notice a patent illegality going to the root of the matter.

28. Insofar as the plea of limitation is concerned, the Appellant has urged that the counterclaims allowed by the learned Arbitrator were *ex facie* time-barred and that the learned Single Judge failed to examine this objection. A plea of limitation, where it goes to the maintainability of a claim, may in an appropriate case assume a jurisdictional character. The question is not whether this Court would independently reach a different conclusion on limitation, but whether the view taken can be sustained within the contours of Section 34 of the Act.

29. The controversy must, therefore, be tested on the touchstone of whether the learned Single Judge merely deferred to a plausible view taken by the learned Arbitrator on the construction of the contract and the material before the Tribunal, or whether the Impugned Judgment discloses a non-application of mind to grounds which, if established, would have attracted interference.

30. The Arbitral Award, as noticed by the learned Single Judge, turns primarily on the construction of the Collaboration Agreement, particularly in regard to the allocation of liability for statutory dues, permissions and approvals, and the financial consequences arising from the sealing of the project site. The learned Arbitrator drew a distinction between (i) governmental and statutory liabilities required to be discharged to keep the sanctions alive, and (ii) construction costs, and on that basis apportioned responsibility between the parties in terms of the contractual scheme, including the stipulation placing a financial cap of Rs. 11 crores on the contribution of Respondent No. 1 towards certain statutory payments for sanctions.

31. The learned Single Judge, while considering the challenge under Section 34, examined the relevant clauses relied upon by the parties and came to the conclusion that the interpretation placed by the learned Arbitrator was a possible and plausible view flowing from the contractual framework. The court expressly held that no perversity or patent illegality was made out in the said construction.

32. It is well settled that the interpretation of a contract falls primarily within the domain of the Arbitral Tribunal. Where the Tribunal adopts a view that is reasonably borne out from the terms of the agreement, the court under Section 34 does not substitute its own

interpretation merely because another view is possible. The appellate court under Section 37 is further removed from such an exercise and is concerned only with whether the court under Section 34 has applied this principle correctly.

33. The Appellant has urged that the partial allowance of Counterclaim No. 1 is based on no evidence and rests solely on oral testimony without production of accounts. The learned Single Judge has, however, recorded that the findings of the learned Arbitrator were based on the material placed before the Tribunal, and evidence analysed in light of that interpretation and that no perversity or absence of evidence was demonstrated.

34. The question before this Court is not whether the evidentiary appreciation by the learned Arbitrator is correct, but whether the learned Single Judge failed to notice a finding which is so devoid of evidentiary basis as to attract the ground of patent illegality. The Impugned Judgment indicates that the learned Single Judge was alive to this test and declined interference on the ground that the conclusions of the learned Arbitrator were supported by the record and could not be characterised as perverse.

35. The plea that the counterclaims were barred by limitation has been urged as a jurisdictional objection. The Arbitral Award records that the Statement of Claim was filed on 08.09.2019, while the Statement of Defence and Counterclaims were filed on 30.07.2020 and 05.08.2020 respectively. The Tribunal further noted that disputes had arisen regarding supply and legibility of documents accompanying the Statement of Claim, which stood resolved only after the Tribunal entered reference. By order dated 28.02.2020, the

Tribunal directed the filing of the Statement of Defence and Counterclaims within four weeks. The Counterclaims were already taken on record as noted in the order dated 07.08.2021 whereby the Tribunal had condoned the delay, relying upon the directions issued by the Supreme Court in ***In Re: Cognizance for Extension of Limitation***[1] extending limitation on account of the COVID-19 pandemic, and proceeds on that basis to hold the counterclaims to be within time. It was for the Appellant to prove how the counterclaims was filed beyond prescribed period of limitation and the Appellant failed to substantiate the same. The learned Single Judge has accepted this approach and found no patent illegality in the said determination. The application of the binding directions of the Supreme Court to the procedural timeline before the Tribunal constitutes, at the very least, a plausible view. Once the Tribunal applied the said directions of the Supreme Court while considering limitation, the counterclaims could not be regarded as *ex facie* time-barred.

36. It is well settled that limitation assumes a jurisdictional character only where a claim is *ex facie* barred by statute. Where the issue involves the appreciation of facts, computation of periods, or applicability of legally sustainable exclusions, the same falls within the domain of the arbitral tribunal. In the present case, the view taken by the Tribunal, as affirmed by the learned Single Judge, cannot be said to be *ex facie* contrary to law.

37. The contention that the counter-claim has been allowed in the absence of evidence is also without substance. The Arbitral Tribunal considered the pleadings in the counterclaim, the testimony of the

[1] Suo Motu Writ Petition (Civil) No.3 of 2020

witness of the Respondent No. 1, RW-2 and the material placed on record regarding payments towards statutory dues and has treated the counterclaim No. 1 to the extent of Rs. 9 crores as established. RW-2, in his evidence, deposed that the counterclaimant had, at the request of the Appellant and the Society, extended financial assistance aggregating to approximately Rs. 9 crores in connection with the project; and the amount remained outstanding and liable to be repaid. The Tribunal has observed that while replying to the counterclaim, the Appellant did not specifically deny receipt of Rs. 9 crores, which had been pleaded as financial assistance to the Appellant and the Society in the counterclaim by the Respondent No. 1, nor did the Appellant cross-examine the witness of the Respondent No. 1 on that aspect during evidence. Failing which, such averments remained unchallenged, and the corresponding evidentiary inference was drawn by the learned Arbitrator of the assertion being admitted.

38. The Supreme Court in ***Rajinder Pershad (Dead) by LRs. v. Darshana Devi***[2], has observed that where a party intends to dispute the correctness of a witness's statement on a crucial aspect, the witness must be confronted with that part of the testimony in cross-examination so as to afford the witness an opportunity of explanation; failing such challenge, the witness's credit cannot be impeached.

39. A party that declines to cross-examine a witness on a crucial aspect cannot subsequently contend that the said statement of the witness ought not to be relied upon. In the present case, the absence of a specific denial in the pleadings to the counterclaim and the failure to cross-examine the witness of the Respondent No.1, RW-2, on the

[2] AIR 2001 SC 3207

issue of financial assistance of Rs. 9 crores entitled the Tribunal to treat that part of the evidence as unrebutted and to draw the corresponding evidentiary inference. The learned Single Judge has recorded that no finding entirely unsupported by evidence had been demonstrated by the Appellant so as to justify the setting aside of the Award.

40. The challenge of the Appellant is thus, in essence, directed to the sufficiency and weight of the evidence, which is thus not a case of no evidence. At best, it constitutes a challenge to the sufficiency of the material considered by the Tribunal as evidence, which lies within the exclusive domain of the Arbitral Tribunal and is not open to re-appreciation under Sections 34 or 37 of the Act.

41. The Arbitral record indicates that the Tribunal considered the pleadings in the counterclaim, the oral testimony of RW-2 in support thereof, and the material placed on record regarding payments towards certain statutory dues while arriving at its conclusion.

42. It is also relevant to note that by virtue of Section 19(4) of the Act, the Arbitral Tribunal is empowered to determine the admissibility, relevance, materiality and weight of the evidence placed before it, without being strictly bound by the provisions of the Indian Evidence Act, 1872. Once the Tribunal has evaluated the pleadings, the testimonies and conduct of the parties in the course of evidence, the sufficiency or weight assigned to such material falls within the domain of the Arbitral Tribunal. The Appellant cannot, in proceedings under Sections 34 or 37 of the Act, invite the Court to undertake a re-appreciation of the evidence merely because the Tribunal drew an

inference adverse to it.

43. The allegations of breach of natural justice and reliance on extraneous material have been urged by the Appellant in general terms. The learned Single Judge has found no substance in these objections. No specific instance of denial of opportunity or reliance on material behind the back of the Appellant has been demonstrated.

44. On an overall consideration, the Impugned Judgment discloses that the learned Single Judge applied the correct test under Section 34, examined the challenge on the touchstone of patent illegality and perversity, and declined to substitute the Arbitral view with an alternative interpretation of the contract or the evidence. No jurisdictional error or misapplication of the settled principles governing interference with an Arbitral Award has been shown.

45. The contention that the Impugned Judgment is non-speaking is also without merit. The Impugned Judgment notices the contractual framework, the nature of the findings returned by the learned Arbitrator, and records the conclusion that the view taken is a plausible and justifiable one.

CONCLUSION

46. The settled position is that where the Arbitral Tribunal has adopted a view which is reasonably borne out from the material on record, and the Court exercising jurisdiction under Section 34 has tested the award on the correct parameters governing interference with Arbitral Awards, the appellate court under Section 37 would not

interfere merely because another view on the facts or contract is possible. Interference would arise only where the award or the judgment under Section 34 discloses a patent illegality, perversity, or a jurisdictional error going to the root of the matter, which has not been demonstrated in the present case.

47. In view of the foregoing discussion, this Court finds no infirmity in the approach adopted by the learned Single Judge in declining to set aside the Arbitral Award. The Impugned Judgment does not suffer from any jurisdictional error, nor does it disclose a failure to exercise jurisdiction vested under Section 34 of the Act.

48. Accordingly, the present Appeal, along with the pending application, stands dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MARCH 18, 2026
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