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

% **Date of decision: 16.09.2026**

\# **CNR No. DLHC011554132018**

\+ FAO(OS) (COMM) 144/2018 CM APPL. 35812/2022 CM APPL. 52757/2024

SOUTH DELHI MUNCIPAL CORPORATION .....Appellant

Through: Mr. Vikas Chopra, Standing Counsel, MCD with Mr. Neeraj Kumar, Adv.

versus

MSV INTERNATIONAL INC .....Respondent

Through: Mr. Rajesh Yadav, Sr. Adv., with Mr. Rohit Goel and Mr. Dhananjay Mehlawat, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

AVNEESH JHINGAN, J. (ORAL)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') is directed against the order dated 13.04.2018 rejecting the petition under Section 34 of the Act filed by the appellant.

2. The brief facts are that the parties to the *lis* entered into an agreement dated 20.11.2006, pursuant thereto the respondent was awarded the work of 'Consultancy Services for Preparation of Master Plan, Feasibility Study, RFP and Pilot Plan Implementation of Dairy Farm Waste Management (DFWM) for Delhi'. The work was to be completed within nine months

from the date of commencement of the work. The time for completion was extended and the work was completed within the extended period.

2.1 On 27.01.2011, the appellant issued a show case notice (for short 'SCN') to the respondent. On 28.01.2011, the respondent submitted the final report in terms of the work order.

2.2 The appellant proceeded to terminate the agreement *vide* notice dated 29.04.2011 and blacklisted the respondent. The dispute between the parties was referred to arbitration and the proceedings culminated in the award dated 12.12.2017 wherein the arbitrator held that the respondent had completed the work within the extended period and was entitled to the balance amount due for the work done. The stand of the appellant that consequent to termination of the agreement, the entire amount received by the respondent was liable to be refunded was rejected. The counter claim filed by the respondent was held to be time barred. The petition filed under Section 34 of the Act by the appellant was dismissed. Hence, the present appeal.

3. Learned counsel for the appellant contends that the termination of agreement was neither considered during arbitration nor in the proceedings under Section 34 of the Act. It is contended that the delay in submission of the final report resulted in scrapping of the project and the respondent was not entitled to any payment more so, when the agreement itself was terminated.

4. Learned counsel for the respondent emphasizes on the limited scope of interference under Section 37 of the Act. It is argued that the factual findings recorded by the arbitrator to the effect that the final report was submitted on 28.01.2011 i.e. within the extended period and that there were

no objections or dissatisfaction raised by the appellant against the final report are not under challenge. It is submitted that a plausible view taken by the arbitrator calls for no interference under Section 37 of the Act.

5. The arbitrator considered that the report dated 27.01.2011 was submitted with the covering letter dated 28.01.2011 and this report was produced in evidence in the arbitral proceedings. It was taken into account that in the affidavit of admission/denial the receipt of the report was not specifically denied by the appellant. It was pleaded "not admitted due to letter not found in MCD record." In absence of a specific denial of receipt of the report and the pleadings being restricted only to the non-availability of the covering letter in the MCD record, it was rightly concluded that the submission of the report is not in dispute. The conclusion is fortified by the fact that the appellant did not put any question to the witness CW-1 i.e. the respondent *vis-a-vis* the submission of the report. These findings were upheld in the petition under Section 34 of the Act.

6. The contention of the counsel for the appellant that the project was scrapped due to delay in submission of final report by the respondent cannot be accepted in absence of evidence adduced by the appellant to substantiate the case set up.

7. Another aspect to consider is that as per the appellant the project was scrapped on 26.08.2010 but at the same time the period for completion of work was extended till 31.01.2011 by letter dated 05.01.2011. The contradiction in the conduct and stand taken is writ large.

8. The defense set up by the appellant in the arbitral proceedings that the balance payment due for the work done was not payable and rather the respondent was liable to refund the payment received as the project was

scrapped, lacks merit. The appellant failed to point out the clause in the agreement whereunder the appellant in the eventuality of the project being scrapped was entitled to the refund of the payment already made. No such clause has been brought to the notice of this Court either.

9. The learned Single Judge held that it was neither the case set up by the appellant nor proved that an actual loss was suffered by the appellant due to the extension of period for completion of work.

10. The challenge in the present appeal is confined only to entitlement of the respondent to the balance amount due for the work done. The issue decided by the arbitrator in favour of the respondent that the work was completed within the extended period, remains unchallenged having not been pressed during the course of arguments. In such circumstances, the foundation for claiming the balance amount due by the respondent that the work was completed within the extended period remains intact. Consequently, the balance payment awarded by the arbitrator and upheld by the learned Single Judge does not warrant interference.

11. The contention that the termination of the agreement was not considered while passing the award or rejecting the petition under Section 34 of the Act, is misconceived. The factum of termination finds mention in the award as well as the judgment of the learned Single Judge. After considering this fact it was concluded that the work was completed within the extended period and thus, the respondent was entitled to the balance amount due for the work done. No basis has been made out at any stage by the appellant that consequent to termination the payment for the work done is liable to be refunded. The termination has no material effect on the conclusions arrived at by the arbitrator.

12. The fact remains undisputed that despite issuing SCN alleging delay in submitting the report, the report was submitted and the appellant raised no objection or expressed any dissatisfaction *vis-a-vis* the report submitted. It would be apposite to mention that clause 6.4(d) of the General Conditions of Contract (for short 'GCC') stipulates that the payment is to be released on submission of the final report and after the satisfaction of the employer on the report. Clause 6.4(d) of the GCC provides that the work and final report shall be deemed to have been completed and accepted after ninety days of the receipt unless the employer raises any specific objection within the period prescribed thereunder. The clause 6.4(d) is reproduced below:

> "6.4 Mode of Billing and Payment
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> Billings and payments in respect of the Services shall be made as follows:
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> ***
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> (d) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultants and approved as satisfactory by the Employer. The Services shall be deemed completed and finally accepted by the Employer and the final report and final statement shall be deemed approved by the Employer as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Employer unless the Employer, within such ninety (90)- day period, gives written notice to the Consultants specifying in detail deficiencies in the Services, the final report to final statement. The consultants shall thereupon promptly make any necessary corrections, and upon completion of such corrections, the foregoing process shall be repeated. Any amount which the Employer has paid or caused to be paid in accordance with this Clause in excess of the amounts actually payable in accordance with the provisions of this Contract shall be reimbursed by the Consultants to the Employer within

thirty (30) days after receipt by the Consultants of notice thereof. Any such claim by the Employer for reimbursement must be made within twelve (12) calendar months after receipt by the Employer of a final report and a final statement approved by the Employer in accordance with the above."

13. In view of the above discussion no case is made out for interference under Section 37 of the Act. The appeal is dismissed.

14. Pending applications stand disposed of.

15. The money deposited pursuant to the order dated 18.07.2018 be released to the respondent.

AVNEESH JHINGAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 16, 2026/msh
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Reportable: **Yes**