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निदेशक (प्रणाली) दि.वि.प्रा
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दिनांक 30/9/2026

दिल्लीविकासप्राधिकरण
DELHI DEVELOPMENT AUTHORITY
ई.एम. सचिवालय
E. M's SECRETARIAT

No. EM2(3)2026/SZ/224/DDA/822

Dated: 30.9.26

MINUTES OF THE 955th MEETING OF ASB HELD ON 29.09.2026

955th Meeting of Arbitration Scrutiny Board (ASB) under the chairmanship of FM/DDA was held **29.09.2026** at **11.30 A.M.** in the chamber of FM, DDA to deliberate the judgement dated 14.08.2026 of Hon'ble High Court of Delhi in OMP (COMM) 168/2017 in the matter of **Delhi Development Authority Vs Simplex Infrastructures Ltd** with respect to following work: -

N.O. W : C/o flyover by DDA under Lot-II (Grp-I), ROB on Delhi-Rewari railway Line.
SH: ROB on Delhi Rewari Rly. Line level crossing on Pankha Road i/c half Trumpet at intersection of Pankha Road and Station Road.
Agency : M/s Simplex Infrastructures Ltd.
Agmt .No. : 1/EE/FD-1/DDA/2002-03.

The instant case has been submitted by CE(South) vide e-file computer no. 116948.

The meeting was attended by the following ASB members:

1. Shri P. Praveen Siddharth	FM, DDA	Chairman
2. Shri Kamal Singh Meena	CE(South)	Executive Member
3. Shri Sanjay Kumar Khare	CE(HQ)/DDA	Member
4. Shri Manohar Lal	Addl. CLA/DDA	Member
5. Shri Amit Singh	Dir. (Works)	Member, Secretary

Other attendees:

1. Sh. Rupendra Ashok, SE/SCC-I
2. Sh. Yatendar Kumar, EE/PD-II
3. Sh. Prashant Kumar, E.O.-I to EM

The case was presented by Sh. Kamal Singh Meena, CE(South).

HISTORY OF THE CASE: -

The cited work was awarded to M/s Simplex Infrastructures Ltd. on **30.05.2002** at a tendered value of Rs. 17,90,14,865/- (Lump-sum contract) with a stipulated completion date of **29.11.2003**. However, the work was actually completed on **24.11.2005**. This resulted in an approximate two-year delay. Extension of Time (EOT) was granted with a compensation levy of **Rs. 44,754/-**.

In this case, there were 44 nos. of claims and sub claims including additional claims referred to the arbitrator amounting to Rs.7,30,10,951/- (no DDA counter-claims) out of which 17 claims and sub claims amounting to **Rs.4,28,99,416/- plus interest**

@ 12% had been awarded in favor of the claimant by the Sole Arbitrator, Mr. N.L. Singh on 14.10.2008.

The arbitral award dated 14.10.2008 was placed for examination before Arbitration Scrutiny Board (ASB) in its 238th meeting held under the chairmanship of FM/DDA on 10.11.2008.

The ASB, concurring with the recommendations of P.M. Flyover, had recommended to accept the award against sub claim no.2,3,4,16 & 18 (amounting to Rs. 9,23,614) and also, NIL awards against sub claim no.7 to 10,12 to 15,17,19,21 to 27 of claim no.1 and claim no.5 to 9, 11,12,16.1,16.2, 15 and to challenge rest of the award (amounting to Rs.4,19,75,802).

Accordingly, DDA had challenged the major awarded heads under Section 34 of the Act. The matter was pending before the Hon'ble High Court of Delhi since 2017 bearing OMP (COMM) 168/2017.

High Court Judgment (14.08.2026): Hon'ble Mr. Justice Om Prakash Shukla dismissed DDA's Section 34 petition in its entirety. The Court ruled that the scope of judicial review is narrow, and that the Arbitrator's findings were plausible factual/technical views.

Legal Opinion (08.09.2026): Mr. Vaibhav Agnihotri, Panel Lawyer, DDA issued an opinion via e-mail dated 08.09.2026 advising that a Section 37 appeal is fully sustainable due to patent illegalities where the contract terms were rewritten.

Opinion of Panel Lawyer:

"The Petition is liable to be challenged under Section 37 of A&C Act, on the following grounds:

- i. *The Judgment of the Ld Single Judge failed to consider the grounds raised by the Department in the Petition.*
- ii. *Amongst others, it was specific ground of DDA that the Arbitrator has failed to consider a material defence of the DDA that delay was caused on account of the Contractor. DDA had filed several letters reflecting the slow working, inadequate men and material. The Ld Single Judge while recording the reference to the said Annexure in passing only, has entirely failed to deal with the said submission of the DDA.*
- iii. *Erroneous application of Associate Builders (supra) to override an express contractual bar on delay compensation (Claim No. 2 and consequential Claims 3, 4, 10 & 13)*
 - a. *Clauses 7.36.2 and 6.4.1(iii) of the contract, and Annexure 4 of the Statement of Defense expressly bar monetary compensation for delay arising from shifting of services or third-party permissions, confining the remedy to extension of time (EOT) alone, which was duly granted by DDA. If these clauses constitute an express and specific bar - as opposed to a general clause merely regulating the EOT mechanism - the Arbitrator's invocation of Associate Builders (supra) to award prolongation costs under the Hudson Formula may amount to rewriting the contract, which is impermissible even applying a deferential standard (Associate Builders itself; National Highways Authority of India v. ITD Cementation, 2023; SAIL v. Gupta Brothers Steel Tubes, (2009) 10 SCC 63).*
 - b. *The impugned judgement (paras 40-48) fails to consider that the impugned Award is not in conformity with Clause 7.36.2/6.4.1(iii) to test whether it is*

- a bar of the kind Associate Builders itself distinguishes; it proceeds directly to the deferential "plausible view" standard without first testing whether the Arbitrator's construction of the exclusion clause was, on its own terms, a possible one, or whether it impermissibly nullified an express contractual term - which is precisely the patent-illegality inquiry Section 34(2A) requires. This can be framed as a failure of the Section 34 Court to exercise the (narrow) jurisdiction it did have, and is accordingly a valid Section 37 ground.
- c. Since Claims 3, 4, 10 and 13 are, on the judgment's own reasoning (paras 52, 54-58), purely consequential upon the Claim No. 2 finding of DDA-attributable prolongation, this Claim 2 succeeds, it would also unravel the awards under these connected heads.
 - iv. Award of price escalation despite express deletion of the escalation clause (Claim Nos. 10 & 13).
 - a. Clause 10CC, which alone provided for price escalation, was admittedly and expressly deleted by Corrigendum No. 3 (para 54). The judgment upholds an escalation award of over Rs. 1.84 crore in the aggregate by treating the deletion as not "by itself" excluding damages for a delay attributable to the employer, relying on *P.M. Paul v. Union of India*, AIR 1989 SC 1034 (paras 56-58).
 - b. It is arguable that *P.M. Paul* (supra) addresses recovery of damages for breach in the absence of any escalation clause, and does not directly authorize resurrecting a price-escalation mechanism that the parties expressly negotiated out of the contract by a formal corrigendum. Treating a deliberately deleted commercial term as available in substance, merely re-labelled as "damages," is capable of being characterized as conduct that goes beyond the contract and hence patently illegal on the face of the award (*ONGC v. Saw Pipes*, (2003) 5 SCC 705; *ONGC v. Western GECO*, (2014) 9 SCC 263), rather than a mere alternative interpretation.
 - v. Interest awarded without contractual foundation and from an unjustified date (Claim No. 14).
 - a. The contract is stated to contain no provision for interest; the Arbitrator relied on General power under Section 31(7) of the Act (paras 66-70). While Section 31(7) does confer such power "unless otherwise agreed by the parties," DDA's position is that certain clauses (unspecified in the judgment) operate as an implied or express bar. The judgment's treatment of this issue (paras 68-71) is summary and does not identify which contractual clauses, if any, were considered and rejected as a bar; this creates a gap that may be worth raising, though on the face of the record disclosed in the judgment, this ground is comparatively weaker than Grounds 1 and 2, since Section 31(7) creates a statutory default in the arbitrator's favour absent a clear contractual exclusion, and courts are traditionally reluctant to interfere with quantum/rate of pendente lite or post-award interest absent patent unreasonableness.
 - vi. Sub-claims resting on findings the judgment itself treats as "factual" without testing them against patent illegality (Claim 1, sub-claims 1, 5, 6; Claims 1.11 and 1.20)
 - a. For each of these sub-claims (labour colony reconstruction, additional piling/pile caps, manhole protection, and testing charges), the judgment repeatedly characterizes the Arbitrator's findings as "essentially factual" or "technical" and declines interference on that basis alone (paras 25-26, 31, 35-36, 39). While correct as a general proposition, an appeal may usefully

test whether, for at least one or two of these sub-claims, the Arbitrator's finding is not merely a different "view" but is unsupported by any evidence on record (e.g., absence of documentary proof of DDA's officers' presence/consent for the labor colony, or absence of proof that the manhole was in fact undisclosed in the tender drawings), which would take the finding out of the protected zone of "plausible view" and into the zone of a perverse finding under Section 34(2A) (Delhi Airport Metro Express DMRC, (2022) 1 SCC 131 on the meaning of perversity).

b. This ground is comparatively the weakest of the four, being factintensive and requiring a granular re-examination of the arbitral record; it should only be pressed on specific, identifiable evidentiary gaps rather than as a general submission, given the double-deference bar under Section 37.

vii. General/procedural ground - non-engagement with specific contractual clauses relied upon

a. Across several paragraphs (e.g., paras 31, 36, 58), the judgment records that "no perversity or patent illegality has been demonstrated" without setting out, clause by clause, why the specific contractual bar/limitation urged by DDA was inapplicable. A conclusory rejection of a specific contractual argument, without reasons, can itself be assailed as a failure by the Section 34 Court to properly discharge its (narrow) function, particularly where DDA's principal case was that the Arbitrator ignored an express, unambiguous contractual bar (cf. requirement of reasoned orders under Section 34 read with the general principle that a court's own order must show application of mind to the specific plea raised).

In view of the same, the Judgement dated 14.08.2026 can be challenged under Section 37 of the Arbitration and Conciliation Act, 1996 qua the Claims subject to the final view being taken by the Department.

Furthermore, the limitation to challenge the Impugned Judgement under Section 37 is 60 days from 14.08.2026 (extendable by a further 30 days for sufficient cause), i.e., ordinarily up to on or about 13.10.2026".

Recommendation of Legal Department/CLA:

"After gone through the judgment and opinion of Panel Lawyer I am of the view that the judgment should be challenged under section 37 of the Arbitration and Conciliation Act, 1996.

As provided by P/L that the Hon'ble court failed to consider the grounds raised by the department. It was specific ground of DDA that delay was caused on account of the contractor, but Court did not consider the contention of DDA. DDA had filed several letters reflecting the slow working, inadequate men and material, but court has entirely failed to deal with the said submission of the DDA. The interest awarded without contractual foundation. the contract is stated to contain no provision for interest."

Recommendations of EE/PD-II/South Zone:

The claim-wise recommendations of concerned EE i.e. EE/PD-II/South are provided as per table below :-

Claim No.	Description of claim	Claim Amount	Awarded Amount	Section 34 Judgment Treatment	Comment of EE
Claim No. 1.1	Reconstruction of labor colony dismantled by MCD	Rs. 2,05,610	Rs. 1,45,000	Upheld.	In full agreement with the legal opinion dated 08.09.2026 of the Panel Lawyer. The Arbitrator's finding is patently perverse as it lacks any documentary evidence or proof of DDA officers' explicit consent/presence regarding the labor colony. The Ld. Single Judge erred by shielding this under a general 'factual view' without testing it against the benchmark of absolute lack of evidence. Hence, it is recommended to challenge under Section 37.
Claim No. 1.5	Extra length of pile executed	Rs. 10,83,148	Rs. 6,02,183	Upheld.	Concurs with the Panel Lawyer's legal opinion. The Ld. Single Judge summarily dismissed DDA's objections by categorizing the matter as purely 'technical/factual'. The Section 34 Court failed to exercise its jurisdiction to test whether this technical finding suffered from severe evidentiary gaps. Recommended to be challenged under Section 37.
Claim No. 1.6	Extra expenditure due to increase in pile cap size	Rs. 13,87,719	Rs. 8,39,559	Upheld.	In agreement with the Panel Lawyer's legal opinion. The award involves a technical finding that was accepted by the Ld. Single Judge without addressing whether it was backed by any real evidence on record. Recommended for challenge under Section 37.
Claim No. 1.11	Protection of Jal Board manhole	Rs. 2,53,032	Rs. 1,51,429	Upheld.	Agrees with the opinion of the Panel Lawyer. The Arbitrator's finding is patently illegal and perverse as the contractor failed to produce any documentary proof showing that the manhole was undisclosed in the tender drawings. The Ld. Single Judge failed to test this complete absence of evidence. Recommended for challenge under Section 37.
Claim No. 1.20	Cost of tested materials not allowed for use	Rs. 43,200	Rs. 21,600	Upheld.	Concurs with the legal assessment of the Panel Lawyer. The award suffers from patent illegality due to lack of proper evidentiary support. The claim must be challenged under Section 37.

Claim No. 2	Prolongation resources/manpower maintenance cost	Rs. 2,53,42,734	Rs. 1,79,01,487	Upheld.	In agreement with the Panel Lawyer's opinion. The Arbitrator committed a patent illegality by completely rewriting the contract and ignoring express, mandatory exclusionary clause 6.4.1 which explicitly bar monetary compensation for delays and limit the contractor's remedy to an Extension of Time (EOT) alone. A challenge under Section 37 is recommended.
Claim No. 3	Renewal of Bank Guarantees & Insurance policies	Rs. 8,08,192	Rs. 8,08,192	Upheld.	In full agreement with the Panel Lawyer's legal opinion. This claim is strictly consequential to the prolongation findings under Claim No. 2. Recommended for challenge under Section 37.
Claim No. 4	Reimbursement of land rent deducted from RA bills	Rs. 12,45,370	Rs. 12,45,370	Upheld.	Concurs with the Panel Lawyer's assessment. This is a purely consequential head flowing directly from the prolongation liability decided under Claim No. 2. Recommended for challenge under Section 37.
Claim No. 10	Price hike/escalation of Steel	Rs. 2,05,93,801	Rs. 1,44,93,703	Upheld.	Fully in agreement with the Panel Lawyer's expert opinion. Price escalation was awarded in blatant violation of the contract terms, given that Clause 10CC was explicitly deleted by the parties via Corrigendum No. 3. Furthermore, this is entirely consequential to the disputed Claim No. 2. Recommended for challenge under Section 37.
Claim No. 13	Price hike/escalation of other materials	Rs. 63,75,521	Rs. 39,90,015	Upheld.	Concurs with the legal opinion of the Panel Lawyer. Similar to Claim 10, the Arbitrator acted patently outside the contract terms by awarding material escalation despite the definitive deletion of Clause 10CC via Corrigendum No. 3. It is also tied directly to the unsustainable prolongation findings of Claim 2. Recommended for challenge.
Claim No. 16.3	Reimbursement of statutory Labour Cess deduction	Rs. 17,77,264	Rs. 17,77,264	Upheld.	Agrees with the opinion of the Panel Lawyer. Recommended for challenge under Section 37.
Claim No. 14	Pre-suit, pendente lite, & future interest @ 12% p.a. / 18% p.a. / 12% p.a.	—	—	Upheld.	Concurs with the Panel Lawyer's assessment. Challenging the interest components under Section 37 is recommended.

Recommendation of SE/SCC-1/SZ:

I agree with the recommendation of Mr. Vaibhav Agnihotri (Panel Lawyer, DDA) which confirms that the case is highly sustainable for patent contractual illegalities & **recommended** to challenge the arbitral award under **Section 37 of the Arbitration & Conciliation Act, 1996.**

Recommendation of Chief Engineer (South):

The judgment should be challenged under section 37 of the Arbitration and Conciliation Act, 1996.

RECOMMENDATIONS OF ASB:

The ASB has considered the opinion of Panel Lawyer, Legal Department and recommendation of Chief Engineer (South) to challenge the judgement/order dated 14.08.2026 as the Ld. Judge overlooked the grounds and material evidences presented by the department. After careful deliberation, the ASB has recommended to file an appeal against the Hon'ble High Court's judgment dated 14.08.2026 in OMP (COMM) 168/2017 under Section 37 of the Arbitration & Conciliation Act.

As per revised delegation of power issued vide no. EM1(10)2018/Del. Of Power/DDA/260 dated 29.01.2019 by CE (HQ) DDA, Hon'ble Chairman DDA/ Lt. Governor Delhi is the Competent Authority to accept / challenge the claims in r/o award amount more than Rs.500 Lakhs in consultation, after due scrutiny by Arbitration Scrutiny Board headed by FM, DDA.

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Addl. CLA
Member

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1. EM/DDA for kind information.
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Yoshi
1.10.26

DDA Sh Vishwas

ADJ
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Director(Works), DDA