

(2017) 03 DEL CK 0213

In the Delhi High Court

Case No : 66 of 2016

DELHI TRANSPORT CORPORATION

APPELLANT

Vs

ADWEL ADVERTISING & ANR.

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

[Arbitration and Conciliation Act, 1996](#), [Section 34](#) - Application for setting aside arbitral award

Citation : (2017) 03 DEL CK 0213

Hon'ble Judges : Vibhu Bakhru

Bench : SINGLE BENCH

Advocate : Avnish Ahlawat, Ajit Warriar, Sandeep Grover.

Judgement

1. Delhi Transport Corporation (hereafter "DTC") has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter "the Act") assailing an interim award dated 10.12.2015 (hereafter "the impugned award") made by the arbitrator with respect to the disputes between the parties. The disputes between the parties relate to the licence fee payable for shelters available to Adwel Advertising (hereafter "Adwel"). According to Adwel, the number of shelters in existence were less than as advertised and allotted and, therefore, Adwel claimed that licence fee was payable only in respect of the shelters which were physically available. The arbitrator had considered the controversy between the parties and has made the arbitral award partly allowing the claims made by Adwel. DTC being aggrieved by the same has preferred the present petition.

2. Briefly stated, the relevant facts necessary to address the controversy are as under: 2.1 DTC invited tenders for display of advertisements on its Bus Queue Shelters (BQSs)/Time Keeping Booths (TKBs) in various zones of Delhi by way of a public notice dated 09.01.2001. Adwel participated in the said tender and its bid was accepted for nine zones, namely, South-II to IV, Central-II, Karol Bagh, Civil Lines-II, West-II, Shahdara (S)-I and Najafgarh-II. DTC sent separate

letters dated 01.02.2001 calling upon Adwel to deposit the requisite security deposit and advance licence fee.

2.2 Thereafter, Adwel by way of a letter dated 07.03.2001 informed DTC about certain allotted shelters/BQSSs being missing/non-existing and stated that it would deduct the licence fee in respect of the missing shelters" from the total licence fee to be paid for the shelters allotted to it. Adwel also requested for a joint survey to be carried out for identification of the missing shelters. This was followed by other letters dated 20.03.2001, 22.03.2001, 26.03.2001 and 21.04.2001 to similar effect. By way of a communication dated 23.04.2001, Adwel protested against the payment of licence fee for the shelters found missing as per the joint inspection. In addition, various letters were sent to DTC stating therein the details of deductions from the licence fee on account of non-existing shelters or duplication of billing of shelters.

2.3 By notices dated 08.06.2001, Adwel surrendered the contract awarded for Civil Lines-II. Further, Adwel also surrendered the contracts awarded for zones- West-II, Shahdara (S)-I and Najafgarh(R)-II by notices dated 07.06.2002. 2.4 In August 2001, DTC again invited bids for 11 zones. Out of the 11 zones, Adwel's bid was accepted for 4 zones- City-I, South-I, Central-I and Civil-II. Subsequently, another contract was awarded on 12.10.2001 for West-I Zone followed by award of two other contracts in December 2002 for zones - Shahdara (S)-I and West-II. 2.5 According to Adwel, the BQSSs available were less than as indicated by DTC. Adwel sent letters claiming that it would pay the licence fee after deducting the appropriate amount for the missing BQSSs.

3. In view of the disputes, Adwel filed a petition before this Court (being A.A. 100/2004). By an order dated 24.02.2006, Justice S S Chadha (Retd.) was appointed as the arbitrator to adjudicate the controversy between the parties. 3.1 Adwel raised several claims which were described in the petition as under:-

"1. Claim No.1: The respondent claimed a rebate of Rs. 56,59,572/- "on account of missing and non-existing shelters (BQS/TKBs) ."

2. Claim No. 2: No Liability in respect of DTC's demand of license fee amounting to Rs.1,13,23,924/- (One Crore Thirteen Lakhs Twenty Three Thousand Nine Hundred Twenty Four) for the period 01.01.03 onwards.

3. Claim No.3: Respondent Claimed adjustment of Security deposit of Rs.29,33,038/- (Twenty Nine Lakh Thirty Three Thousand Thirty Eight) (Rs. 28,97,400 + Rs. 35,638 against the license fee in respect of Shahdra S zone and West Zone I)

4. Claim No.4: Respondent claimed Rs.54,78,773/- on account of loss suffered due to illegal and arbitrary withholding of security amount in respect of missing and/or non-existing shelters.

5. Claim No.5: No liability and consequently cancellation of bills/demands of Rs.26,52,590/- on account of oversized display of advertisements.

6. Claim No.6: No liability and cancellation of DTC's demand for Repair & Maintenance charges to the tune of Rs.48,90,032/-.

7. Claim No.7: Refund of Rs.17,89,434/- on account of no grace period granted by DTC at the commencement of the Contract.

8. Claim No.8: No liability and consequential quashing of Demand/bills of monthly license fee raised by DTC for the alleged extended period of the Contract.

9. Claim No.9: No liability and consequently cancellation of bills/demands raised by DTC on account of interests for alleged delayed / outstanding payments.

10. Claim No.10. Refund of Rs.1,72,30,815/- being the amount realised and recovered by the Respondent towards monthly license fee in respect of BOT shelters."

3.2 DTC also filed the following counter claims before the arbitrator:-

1. Counter claim no.1 :

DTC claimed Rs.13,08,57,935/- as licence fee along with interest.

2. Counter claim no.2 :

interest at the rate of 24% per annum.

3. Counter claim no.3 : litigation expenses.

4. As indicated above, the disputes before the arbitrator essentially revolved around the question as to the number of existing BQs.

5. The main dispute before the arbitrator related to missing / nonexisting shelters. Adwel claimed that the lists of shelters annexed with the contracts were not correct and several shelters were non-existent from the inception or were damaged or had been demolished. DTC, on the other hand, contended that lists of shelters was annexed with the tender documents submitted by Adwel and, therefore, the same could not be disputed. DTC further stated that in any event certain joint inspections were also carried out and the number of shelters which were non-existent or damaged were determined.

6. The above controversy was considered by the arbitrator. The bid submitted by Adwel was not produced by Adwel but the copy of the same was produced by DTC. Adwel disputed the lists of shelters alleged to have been filed along with its bid as produced by DTC. The arbitrator held that the lists of shelters alleged to have been filed along with bid documents could not be accepted for several reasons. First of all, the lists did not bear the signatures of Adwel. Secondly, the arbitrator noted that clause 16 of the tender documents expressly provided that "C.M.D or his authorized officer will fix the actual number of BQS/TKBs offered to the contractor for display of advertisement on the commencement of the contract". Further clause 22 stipulated that the lists of shelters shall be provided to the contractor "soon after the signing of the contract".

7. Thirdly, the arbitrator found that there was no evidence on record which established that a survey was carried out by DTC before the issuance of notice inviting tenders (NITs). Further, neither the NITs nor allotment letters issued thereafter specified the lists of shelters. Fourthly, the arbitrator noted that Adwel had immediately after the contracts were entered into, raised the issue regarding missing shelters. Adwel sent a letter dated 07.03.2001 which was received by DTC on the same date. This was followed by another letter dated 20.03.2001. The arbitrator referred to various letters written by Adwel wherein the disputes regarding the actual number of shelters was raised. Fifthly, the arbitrator also noted that there was no evidence that DTC was carrying out periodic surveys to determine the number of shelters removed or demolished even though DTC had received complaints regarding missing shelters. Lastly, the arbitrator also noted that even according to the report dated 14.01.2002 submitted by DTC, (stated to be submitted pursuant to a joint inspection) as many as 68 shelters were found missing. However, Adwel had disputed the said number as according to it many more shelters were missing. The arbitrator also took note of the fact that in another report dated 25.04.2002, another 19 shelters were found to be missing.

8. The arbitrator, thereafter, proceeded to examine each claim in the context of the material available on record. The decisions of the arbitrator in respect of the separate claims as considered in the impugned award are summarised below:-
Re: Claim No.1

9. Adwel claimed rebate in licence fee for missing and/or non-existing shelters in zones-South-II to IV, Central-I, Shahdara (S)-I, Civil Line-II, Karol Bagh and Najafgarh (R)-II. The arbitrator rejected the claim for all zones (except Karol Bagh) as it was held that, most of the shelters as claimed to be missing by Adwel were either not reported as non-existent for inspection purposes or during the joint inspection conducted on 25.04.2002 were found to exist and were so recorded in the survey report. Even during the joint survey of the shelters in Najafgarh (R)-II carried out on 06.08.2002/07.08.2002, the shelters therein were not found to be missing. The survey reports were duly signed by Adwel and no objections on the issue of these shelters being "not in existence" were raised by it. However, Adwel was found to be entitled to rebate in respect of the shelter in the Karol Bagh Zone as the same was found to be missing during a joint survey conducted on 06.08.2002/07.08.2002.

9.1 With regard to rebate in licence fee in respect of 14 shelters in the "Z" category allotted to Adwel on 26.10.2002, Adwel submitted that the shelters were not suitable for putting up of advertisements as they were completed by 31.12.2002 and therefore, it had no liability for payment of licence fee for the period between 26.10.2002 to 31.12.2002. It was observed that DTC in its statement of defence did not allege that the aforesaid shelters were complete when allotted. The arbitrator noted that DTC had also failed to produce any document showing the completion date of these shelters and further observed that it had withheld the report of the inspection carried out by it in regard to

these shelters. Further, it was found that the billing of September and October 2002 revealed the demolition of six shelters in the end of August 2002 and eight shelters in September 2002 and subsequent reduction in the total number of shelters billed. In view of the same, it was held that Adwel was not liable to pay licence fee from the date of allotment till 30.12.2002.

9.2 Adwel also filed a claim for rebate in licence fee in respect of six shelters which were dismantled during the currency of the contracts and rebate was granted as it was claimed that DTC arbitrarily fixed the date of dismantling much later in point of time than the date of actual removal. On the basis of the compilation of the details of dismantled shelters with their dates of dismantling specified therein, prepared in due course of office routine, it was held that the rebate for the demolished shelters were correctly given and, hence, Adwel's claim for further rebate was rejected.

9.3 Further, Adwel raised a claim for rebate in licence fee in regard to nine dismantled shelters as it was asserted that DTC continued to raise its demand for licence fee till December 2002. The arbitrator held Adwel to be entitled to rebate with effect from 19.08.2002 and 09.08.2002 till the end of August 2002 for 2 shelters in South Zone-I as it was inferred that these shelters were demolished in August 2002 since six shelters were demolished in that month and the number of shelters billed were reduced from subsequent month.

9.4 Insofar as Adwel's claim with respect to the six shelters in South Zone-II was concerned, the same was rejected as Adwel could not establish the particulars of those shelters, particularly, as it was found that six shelters were removed by August 2002 for which rebate was duly granted instead of five shelters as claimed by Adwel. Further, Adwel's claim in respect for another three shelters in the said zone was also rejected for want of any letters of allotment or contracts establishing their allotment in favour of Adwel.

9.5 The claim for shelters in South Zone-III and IV and Shahdara(S)-I also failed as revised bills established that rebate was granted for the shelters demolished.

Re: Claim No.2

9.6 This claim also related to licence fee in respect of missing shelters in various zones. With regard to Hauz Khas Terminal in South Zone-I, it was found that a Jhanch report dated 19.07.2004 of a conductor recorded demolition of the shelter in an accident at Hauz Khas Terminal. Thus, Adwel was found entitled to rebate in licence fee for the period 19.07.2004 to 19.09.2004.

9.7 Insofar as South Zone-II was concerned, Adwel was held liable for payment of licence fee for Nanakpura No.1 (TKB) and Saidulajab Vill shelters as Adwel in its own communications to DTC conceded that these shelters were not missing. Adwel was also found liable to pay licence fee for Chattarpur Vill. WPT Dera as it failed to establish no liability for this shelter.

9.8 However, Adwel was exempted from payment of licence fee for the period

claimed for S.N. Depot no. 1, Panchsheel Club and JNU Gate as in the SN Depot records, these BQs/TKBs were mentioned to have ceased to exist with effect from 01.01.2003.

9.9 As far as TKB Dhaula Kuan was concerned, Adwel's claim was accepted as in a report by SN Depot Manager, it was conceded that rebate was given for the shelter from October 2003 to June 2004. For Dhaula Kuan No. 1, Adwel had informed DTC by letter dated 27.01.2003 that the shelter was removed with effect from 01.01.2003; such date was not contradicted by DTC. Therefore, the arbitrator held Adwel entitled to rebate for the period claimed.

9.10 In respect of shelters at Dholpur WPT Kutub, Dholpur WPT Khempur and Lado Sarai DN WPT Lado Sarai Mode, Adwel kept deducting licence fee for the entire period for which rebate was claimed without any response from DTC. Hence, Adwel's claim was accepted.

9.11 The claim for Hauz Khas Terminal was also accepted as the contracts with respect to South Zone-II did not contain any shelter allotted by the nomenclature of Hauz Khas Terminal.

9.12 Further, Adwel by its letter dated 28.06.2003 had informed DTC about the dismantling of Sarojini Nagar/Nairoji Nagar shelter on 27.06.2003. However, the report of the depot manager recorded the date of dismantling as 01.08.2003. DTC did not furnish any evidence of allotment of new shelter at any other place. As the arbitrator found it highly unlikely that Adwel could have anticipated on 28.06.2003 that demolition would take place on 01.08.2003, therefore, Adwel's claim in this regard was accepted.

9.13 In the absence of any response from DTC regarding Adwel informing the dismantling of Saidulajab WPT Sainik Farm shelter on 20.06.2004, by its letter dated 21.06.2004, Adwel was not found liable to pay licence fee for the period claimed by it.

9.14 Insofar as South Zone-III I.M. Communication was concerned, the arbitrator on the basis of an internal note of the depot manager specifying the shelter being not traceable, did not hold Adwel responsible for licence fee for the period claimed.

9.15 With regard to South Zone-IV, due to duplication of billing in respect of Aradhana Enclave WPT AIIMA-Code 754, Adwel's claim was accepted for the period 06.01.2004 to 01.07.2004.

9.16 Further, as the shelter at Safdarjung WPT AIIMS was dismantled and in the absence of any credible proof establishing the shifting of the shelter at some other location, it was held that Adwel was not liable towards payment of licence fee for the period claimed.

9.17 In view of the fact that the dismantling of all the 7 shelters at Central Zone-I were promptly and duly reported to DTC by Adwel and for the lack of any

rebuttal or evidence of departmental inspection, it was concluded that these shelters were missing from the dates asserted. Therefore, Adwel's claim was accepted.

9.18 With respect to Central Zone-II, as there was no evidence of any intimation sent to Adwel of new location of the shelters after dismantling of shelters at Central School WPT Sadiq Nagar, Adwel was found entitled to full rebate as claimed.

9.19 Further, DTC admitted the receipt of a letter dated 06.06.2013 sent by Adwel stating therein the shelter at Qutub WPT Mehrauli being missing. A copy of the joint survey report dated 18.07.2003 also mentioned the same to be missing. Therefore, Adwel was not held liable for licence fee as claimed.

9.20 The claim of Adwel towards shelters at South Campus WPT Dhaula Kuan and D Block Pocket III-IV Vasant Kunj failed as Adwel could not establish that these shelters were allotted to it.

9.21 The plea of DTC regarding shifting of the shelters from Lajpat Nagar No. II TKB and Lajpat Nagar No. III TKB to separate locations at Lajpat Nagar did not find favour with the arbitrator in the absence of any contemporaneous evidence of shifting or intimation sent to Adwel informing about the new locations. Thus, this claim was also accepted.

9.22 For the shelter at D.S. Communication (S. No. 9), Adwel was found entitled to rebate for the period 01.01.2003 to 01.07.2004 on the basis of a report of the depot manager conceding to the fact of the shelter being nonexistent. However, for the shelter at D.S. Communication (S. No. 8), Adwel was held liable to pay the difference in licence fee as Adwel was allotted the shelter in Central Zone-II but it was paying licence fee in SN Depot.

9.23 Insofar as West Zone-II was concerned, Adwel was exempted from payment of licence fee for the period 01.02.2004 to 30.06.2004 for Rose Garden WPT as the licence fee with effect from 01.02.2004 was paid under protest without any response from DTC to the same.

9.24 Adwel was also not found liable to pay licence fee for shelter at ESI Hospital WPT Raja Garden as DTC was informed about the demolition of the shelter in an accident by letter dated 22.09.2004. Moreover, in the statement of defence, DTC pleaded that rebate was granted for the same.

9.25 With regard to Timarpur WPT Wazirabad Road in Civil Lines Zone- II, Adwel was held entitled to rebate for the period 01.05.2004 to 19.09.2004 as Adwel had duly informed DTC by letter dated 16.08.2004 about the demolition of the said shelter along with photographs enclosed with the same. Adwel was also not found liable to pay licence fee for shelters at Balakram Hospital near Ring Road and Mall Road near Banarsi Das Market for the period 09.09.2004 to 19.09.2004 as it was held to be commercially unviable to sell these shelters for a duration of less than a month as the contracts therein would have ended on 19.09.2004.

9.26 Insofar as Karol Bagh Zone was concerned, the arbitrator did not hold Adwel responsible for payment of licence fee as claimed for shelters at Link Road, Shadipur Depot No. 2, West Patel Nagar, Telephone Exchange, Rajindra Place, East Patel Nagar, West Patel Nagar and Shadipur Depot No. 1 as on a joint survey, these were found to be missing.

9.27 Adwel's claim regarding shelter at Panchkuan Road WPT Link Road was also accepted as there was no corroboration of the re-building of this shelter after it was broken and further, no notice was given to Adwel of its reconstruction.

9.28 Further, a report of the depot manager recorded that shelter at Idgah Road was found to be missing on 05.05.2003 and a police report was lodged against the same. Therefore, Adwel's claim was accepted.

9.29 With respect to the shelters at Rajendra Place WPT Shadipur Depot, Rajendra Place WPT Pusa Road, Rajendra Place WPT Link Road and Telephone Exchange WPT Patel Nagar, it was found that DTC's internal documents mentioned the fact of these shelters being demolished by Delhi Metro Rail Corporation (DMRC). In view of the same, the arbitrator exempted Adwel from paying licence fee from the dates of demolition as specified in the internal documents upto 01.07.2004.

9.30 As the report of the depot manager recorded the removal of shelter at Sadhu Waswani Marg Near Petrol Pump by DMRC, Adwel was held entitled to rebate in licence fee since the date of removal as mentioned in the report upto 01.07.2004.

9.31 The claim of no liability for the shelter at DTC Colony WPT Patel Nagar failed as the report of the depot manger recorded the same to be existing. However, the claim for shelters at West Patel Nagar WPT Pusa Road, South Patel Nagar WPT Pusa Road and East Patel Nagar WPT Pusa Road was accepted since the date of their removal as mentioned in the report upto 01.07.2004.

9.32 On an inspection conducted by DTC on 25.09.2003, the shelter at Chitrugupta Road WPT Paharganj was found to be missing. Thus this claim was also accepted.

9.33 As the report of the depot manager provided that TKB Shadipur Depot did not fall in Naraina Depot and no bill was raised against the same, Adwel was exempted from payment of licence fee as claimed.

9.34 Insofar as the shelters at DCM and DTC Colony Shadipur WPT Patel Nagar were concerned, the reports of the depot manager recorded their nonexistence. Therefore, Adwel was not found liable for licence fee since the date of their removal as mentioned in the reports upto 01.07.2004.

Re: Claim No.3

9.35 Before the arbitrator, Adwel raised a claim for adjustment of security deposit of Rs. 29,33,038/- against licence fee payable in respect of Shahdara(S)-

I and West Zone-I. It was observed that clause 7(d) of the tender conditions stipulated that security deposit shall be adjusted against the licence fee payments for the last one month of the contract subject to any adjustment of the account at the time of closing of the contract. Further, clause 21 of the tender conditions provided that the contract can be terminated by way of 3 months' notice from either side.

9.36 The contract in respect of Shahdara (S)-I was terminated by Adwel by a communication dated 06.09.2004 which was received by DTC on 15.09.2004. It was held that in terms of the contract, the contract ended on the expiry of three months, that is, on 15.12.2004.

9.37 The contract in regard to West Zone-I, was found to have ended on 19.10.2004.

9.38 DTC asserted that security deposit made by Adwel with respect to the aforesaid zones were not adjusted as Adwel failed to point out the same. However, the arbitrator held that clause 7(d) of the tender conditions did not specify such adjustment being dependent on Adwel pointing it out, leading to retention of such amount as unjust enrichment on DTC's part. In view of the same, Adwel was found entitled to the adjustment of Rs. 28,97,400/- and Rs. 35,638/- against the bills raised by DTC in respect of Shahdara (S)-I and West Zone-I for the period ending 15.12.2004 and 19.10.2004, respectively. However, as the security deposit already stood adjusted, Adwel was held entitled to interest at the rate of 24% p.a. on the security deposit from the date it was due to be adjusted till the date of its adjustment.

9.39 In addition, claim for Rs. 30,00,000/- lying with DTC which was paid through Adwel's sister concern was dismissed for being beyond the scope of the arbitrator's jurisdiction.

Re: Claim No.4

9.40 Adwel filed a claim for an amount of Rs. 54,78,773/- on account of loss suffered due to arbitrary withholding of security deposit in respect of nonexisting shelters. It was the asseveration of Adwel that subsequent to allotment, it was discovered that the number of shelters actually made available in the allotted zones were less than the representations made in the tender documents by DTC and therefore, DTC had no right to retain any amount paid as security deposit in respect of missing shelters.

9.41 It was observed that the number of shelters existing since inception of the contracts, as per the revised bills issued by DTC in 2003 had to be construed as the actual number of shelters offered to Adwel on the commencement of the contracts; such number of shelters as mentioned in the allotment letters dated 01.02.2001 being taken to be fixed. In view of the same, DTC's contention as to the contracts not providing for refund of security deposit on missing shelters was rejected. Similarly, the arbitrator also did not find merit in DTC's contention that

there was no requirement to refund such security deposit as no further security deposit was demanded from Adwel for additional shelters allotted to Adwel during the currency of the contracts and the average number of shelters allotted were more or less the same as the initial allotment. Accordingly, the arbitrator accepted the claim of Adwel for restitution and awarded interest at the rate of 24% p.a. in Adwel's favour for the period for which the security deposit for the missing shelters was deposited and retained by DTC till its adjustment against licence fee.

Re: Claim No.5

9.42 Adwel claimed that bills amounting to Rs. 26,52,590/- raised by DTC for oversize display of advertisements ought to be cancelled. A meeting was held between DTC and the contractors (advertisers) including Adwel on 29.01.2004 wherein it was decided that in case of oversize advertisements on the shelters, contractor would be liable to pay extra charge at 10%. And, in case, any oversize advertisement is not reported, the same shall be charged as 20% extra licence fee. The minutes of the meeting was signed by Adwel's representative. This was followed by sending of notices dated 31.03.2004 and 17.05.2004 calling upon the advertisers to furnish information about oversize advertisements from 01.09.2002; the same was not provided by Adwel. Further meetings took place between DTC and contractors and by memo dated 28.06.2004, the decisions taken in the meetings were communicated to the contractors including Adwel.

9.43 With respect to Central Zone-I, the arbitrator found Adwel liable for an amount of ₹18,038/- for non-intimation of oversize advertisement boards as detected in a survey conducted on 19.07.2004. Similarly, on the basis of the survey report of DTC and in the absence of any documentary evidence to the contrary, the arbitrator held Adwel liable to the extent of Rs. 1,86,478/-, Rs. 2,07,658/-, Rs. 10,29,325/- and Rs. 8,26,656/- in regard to oversize advertisements in Zones-West-I, Shahdara (S)-I, City-I and Karol Bagh, respectively. However, Adwel was not found liable to pay Rs. 22,078/- with respect to another shelter in Central Zone-I as DTC failed to establish the existence of any oversize advertisement on the said shelter. Similarly, Adwel was not found liable to pay any amount for oversize advertisements on shelters in zones-Central-II and Civil Line-I.

Re: Claim No.6

9.44 Adwel submitted a claim for cancellation of an amount of Rs. 48,90,032/- demanded by DTC as repair and maintenance charges for shelters in 12 zones. It was observed that insofar as 5 zones were concerned, DTC, by letter dated 23.09.2004 informed Adwel that the zones were covered under clause 9(c) of the contracts which provided for termination of contract for not maintaining the shelters. Thus, Adwel was exempted from paying a sum of Rs. 19,26,071/- for the said zones. Likewise for the rest of the zones too, Adwel was not found responsible for payment of Rs. 29,03,963/- since the bills raised were not

accompanied by evidence as to (i) details of the shelters which have been repaired; (ii) details of the agency through which the repairs were carried out; (iii) dates on which the work was executed; and (iv) actual cost paid to the agency or NBCC for repairs. Further, DTC failed to furnish the contract awarded to NBCC for repairs and maintenance of the shelters in those zones and bills raised by NBCC for carrying out the repairs.

Re: Claim No.7

9.45 Adwel claimed a refund of ₹17,89,434/- for no grace period accorded to it at the commencement of the contracts for 9 zones as the letters of allotment dated 01.02.2001 provided a period of 7 days to comply with the tender requirements and the same was complied with on 08.02.2001; therefore, Adwel contended that demand for licence fee could not have been raised by DTC with effect from 02.02.2001, but only from 09.02.2001. The arbitrator held that the tender documents did not stipulate that 7 days' grace period would be provided and contracts shall commence after 7 days of the issue of allotment letters. In other words, the date of commencement of those contracts was 02.02.2001 and the seven days time was allotted under the contracts only for completion of the requirement of the tender conditions. In view of the above, this claim was declined.

Re: Claim No.8 and Counter Claim No.1

9.46 Adwel claimed quashing of bills amounting to Rs. 4,75,65,524/- towards licence fee for the extended period of 11 contracts, as alleged by DTC. On the other hand, DTC asserted that Adwel had not paid licence fee for the period upto the date of expiry of the contracts along with the period extended thereafter and claimed an amount of Rs. 13,08,57,035/-.

9.47 It was alleged by DTC that the contracts for zones- South-II to IV, Karol Bagh and Central-II were extended from 02.07.2004 to 31.10.2004 but Adwel did not pay licence fee for the said period. A letter dated 29.06.2004 was produced wherein Adwel stated its unwillingness to continue with the said zones by intending to remove advertisements by 01.07.2004. Adwel also furnished a letter dated 07.06.2004 of DTC inviting tenders for several zones including these 5 zones to award contracts with effect from 01.07.2004. In the absence of any letter recording Adwel's request seeking the disputed extensions or any written consent of Adwel to such extensions or any proof of advertisement boards displayed on shelters in these zones after 01.07.2004, it was concluded that DTC is not entitled to any licence fee for the said 5 zones between 02.07.2004 to 31.10.2004.

9.48 Further, Adwel was not held liable for any licence fee for the zones- Central-I, South-I, City-I, Civil Lines-II and West-I for the extended period, in the absence of any written consent of Adwel to the extensions.

9.49 Insofar as the contract for West Zone-II was concerned, DTC by letter dated

25.07.2003 extended the same till the completion of the tendering process. Tender was first called on 15.06.2004 for award of contract with effect from 01.07.2004. In view thereof, Adwel removed its advertisements from the zone by 30.06.2004. Tenders were finally invited on 28.01.2005. DTC raised its claim for licence fee for the period between 01.07.2004 to 31.10.2004. DTC argued that tendering process is completed when letter of allotment is issued and contract is executed. However, the argument did not find favour with the arbitrator as it was held that completion of tendering process meant finalization of the terms and conditions of the tender and issue of advertisements inviting tenders, as in the letter dated 25.07.2003, DTC did not extend the contract till the award of letter of allotment /contract. In the light of the same, Adwel was not found liable to pay licence fee for the aforesaid extended period.

Re: Claim No.10

9.50 Adwel claimed refund of Rs. 1,72,30,815/- paid towards licence fee for BOT (Built Operate Transfer) shelters. Adwel pleaded that the contractual conditions specified that on increase in the availability of shelters by way of allotment of newly constructed shelters, additional licence fee had to be paid on them except on BOT shelters. The arbitrator concluded that the words "except on BOT" are not in contrast with the word "increased" but with the words "newly constructed shelters". In other words, BOT shelters were not considered to be newly constructed shelters. Thus, Adwel was held liable to pay additional licence fee for BOT shelters as the parties intended the availability of shelters only on payment of licence fee.

Re: Claim No.11

9.51 Before the arbitrator, Adwel claimed quashing of DTC's demand of Rs. 34,85,647/- towards licence fee raised after the expiry of the contracts in respect of 7 zones. Such amount was computed by DTC by way of difference between the basic monthly licence fee and annual increase in regard thereto. However, the arbitrator held that the licence fee for increased number of shelters had to be calculated proportionately by dividing the total number of shelters on the amount of the monthly licence fee as initially quoted by Adwel. In view of the above, this claim was accepted.

Re: Claim Nos.9, 12 and 13

9.52 The arbitrator did not consider that these claims necessitated any declaration and, hence, were not adjudicated.

Re: Counter Claim No.2 9.53 DTC raised a claim for interest at the rate of 24% p.a. - in terms of the contracts - for delayed payment of licence fee. As per clause 8(ii) of the contracts, licence fee could be deposited late only with late fee at the rate of 24% p.a. on the unpaid amount from the due date. It was concluded that as per clause 8(ii), the term "monthly licence fee" included both licence fee and late fee at the rate of 24%p.a. thereon upto the dates of the

contractual period of the respective contracts. Thereafter, any outstanding licence fee becomes a debt due and payable which cannot carry interest as the object of payment of licence fee with late fee was to keep the contracts alive. Therefore, such unpaid licence fee would carry interest as determined. However, the arbitrator did not determine the interest at this stage.

Re: Counter Claim No.3

9.54 Issue as to costs of the proceedings was left open.

Discussion and Conclusion

10. Ms Ahlawat, learned counsel appearing for DTC contested the impugned award broadly on two grounds. First of all, she contended that the decision of the arbitrator to reject the lists of shelters/ BQs submitted by Adwel and produced by DTC, was perverse. She submitted that in terms of the tender documents, Adwel was obliged to submit the lists of BQs which it had done. Since, Adwel was disputing the existence of certain BQs, it was obliged to produce the lists submitted along with its bid documents but had failed to do so. It is in that context that DTC had produced the lists of BQs and any dispute raised regarding the same ought to have been rejected by the arbitrator. However, the arbitrator concluded that the lists produced by DTC were not the lists submitted by Adwel as the same did not bear the stamp or signatures of Adwel. She submitted that the entire approach of the arbitrator was flawed and the impugned award was liable to be set aside on this ground alone.

11. Ms Ahlawat also advanced contentions regarding each of the claims considered by the arbitrator to contend the arbitrator's findings as erroneous.

12. Insofar as the first ground is concerned, it cannot be disputed that Adwel was obliged to produce a copy of the lists of BQs submitted by it along with its bid. However, it appears that the same was not available and at any rate was not produced before the arbitrator. It was possible for the arbitrator to draw an adverse inference, however, the arbitrator considered the other material on record to return his findings. The arbitrator rejected the documents produced by DTC as it did not bear any signatures or stamp of Adwel. This court cannot review the decision of the arbitrator and supplant its view. The scope of judicial review under Section 34 of the Act is limited and unless this court finds that any of the grounds as set out in Section 34(2) of the Act are established, the impugned award cannot be interfered with.

13. In *Steel Authority of India Ltd. v. Gupta Brother Steel Tubes Ltd.*: (2009) 10 SCC 63, the Supreme Court had observed that "If the conclusion of the arbitrator is based on a possible view of the matter, the court should not interfere with the award". A similar view has been reiterated by the Supreme Court in several decisions (See: *Mcdermott International Inc. v. Burn Standard Co. Ltd and Others.*: (2006) 11 SCC 181, *Kuldip Singh v. Commissioner of Police and Others.*: (1999) 2 SCC 10 and *P.R. Shah, Shares and Stock Brokers (P) Ltd. v. B.H.H.*

Securities (P) Ltd and Others: (2012) 1 SCC 594).

14. In the present case, this court is unable to conclude that the decision of the arbitrator to reject the lists of BQSs as produced by DTC on the ground that the same did not bear the signatures of Adwel is perverse or patently illegal.

15. This court is also unable to accept that the impugned award is liable to be set aside on the ground that the arbitrator has erred in arriving at its findings. As pointed out above, an arbitral award cannot be set aside on the ground that the arbitrator's findings are erroneous. The views expressed by the arbitrator is a plausible one and no interference would be called for under Section 34 of the Act. As is apparent from the arbitrator's conclusion and reasoning, as noticed hereinbefore, the impugned award largely turned on the findings of fact returned by the arbitrator after considering the material on record. It is trite law that the arbitrator has the final word on issues of fact and unless the findings are found to be perverse or patently illegal, the same cannot be interfered with.

16. In *Associate Builders v. Delhi Development Authority*: (2015) 3 SCC 49, the Supreme Court had explained the above principle in the following words:- "It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts."

17. In view of the above, the present petition is dismissed.