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

% ***Judgment reserved on: 03.02.2026***

Judgment pronounced on: 24.03.2026

Judgment uploaded on: 24.03.2026

\+ FAO(OS) (COMM) 195/2024

WADIA TECHNO ENGINEERING SERVICES LIMITED

.....Appellant

Through: Mr. Ashok Singh, Sr. Adv. along with Mr. Anirudh Sanganeria, Mr. Himanshu Raj, Ms. Pragati Singh, Mr. Rajat Joshi and Ms. Esha Garg, Advs.

versus

DIRECTOR GENERAL OF MARRIED ACCOMMODATION PROJECT & ANR .....Respondents

Through: Mr. Ripudaman Bharadwaj, CGSC along with Mr. Kushagra Kumar, Mr. Amit Kumar Rana and Ms. Pragati Trivedi, Advs.
Mr. Arnav Kumar and Ms. Manya Gupta, Advs.

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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 Appeals, filed by the Appellant under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'], assail the correctness of the common judgment dated 28.05.2024 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Single Judge in OMP(COMM) 518/2023, OMP(COMM) 526/2023 and OMP(COMM) 527/2023.

2. By way of the Impugned Judgment, the learned Single Judge

adjudicated three petitions filed under Section 34 of the Act challenging separate arbitral awards rendered in disputes arising between the parties. Insofar as OMP(COMM) 518/2023 is concerned, the learned Single Judge partly allowed the petition by setting aside the arbitral award only in respect of Claim Nos. 1 to 3 in the Vizag Case, permitting the parties to initiate fresh arbitral proceedings in respect of the said claims. In respect of the remaining claims, the petition was dismissed. The learned Single Judge, however, dismissed OMP(COMM) 526/2023 and OMP(COMM) 527/2023, relating to the Pune and Ahmednagar cases, and rejected all other claims of the Appellant, including claims arising out of risk and cost contracts, prolongation of contract, and miscellaneous claims concerning deductions and service tax/GST.

3. The principal issue which arises for consideration in the present Appeals is whether the learned Single Judge erred in affirming the findings of the learned Arbitrator in respect of the claims rejected in the Vizag, Pune, and Ahmednagar cases, particularly:

i. Claims for enhancement of consultancy fees on account of variations in project cost;

ii. Claims relating to services provided under risk and cost contracts;

iii. Claims arising out of prolongation of the contract and defect liability period; and

iv. Miscellaneous claims relating to deductions and service

tax/GST.

4. Since the issues in all three present Appeals are similar and involve the same set of parties, the same are being disposed of through this common judgment. For clarity and structured analysis, the Appeals are addressed case-wise and claim-wise, strictly following the issues as raised in the impugned awards.

FACTUAL MATRIX:

5. In order to appreciate the controversy involved in the present Appeals, it would be apposite to briefly notice the relevant factual background giving rise to the disputes between the parties.

6. The Appellant is a consultancy firm engaged in providing professional services in relation to planning, design, supervision and project management of construction projects. The Respondent, the Director General of Married Accommodation Project and its administrative authority, is responsible for execution of various infrastructure and construction projects through engagement of contractors and consultants.

7. In furtherance of certain construction projects undertaken by the Respondent, the Appellant was appointed as a Consultant under separate consultancy agreements for three different projects, namely:

i. a project at Visakhapatnam (Vizag),

ii. a project at Pune, and

iii. a project at Ahmednagar

Although these projects were geographically distinct and governed by separate consultancy agreements, the contractual framework governing the rights and obligations of the parties was substantially similar. The agreements contained provisions regarding preparation of Detailed Project Reports [‘DPRs’], tendering of contracts, supervision of works, and assistance to the Respondent in project completion, including risk and cost contracts.

8. Under the said consultancy agreements, the Appellant was entrusted with a range of professional responsibilities relating to the planning and execution of the projects. These included, *inter alia*, the preparation of the DPRs, preparation of tender documents for appointment of contractors, evaluation of bids and submission of recommendations to the Respondent, supervision of construction activities during the execution phase; and assistance to the Respondent in the finalisation of bills and completion of the project.

9. The consultancy fee payable to the Appellant under the agreements was structured as a percentage of the “Project Cost”, as defined under the respective consultancy agreements, and was payable in specified stages corresponding to the progress of the project, in accordance with Clause 1.10 of the agreements.

10. The contracts further provided that, in the event the Respondent terminated the engagement of a contractor and proceeded to complete the remaining works through a risk and cost contract, the Appellant would be required to assist the Respondent in the preparation of tender documents, evaluation of bids and recommendation of contractors for

the said risk and cost works. For such services, the Appellant was entitled to separate compensation at the rate specified in the contract.

11. The consultancy agreements also contained provisions relating to the project completion schedule, which broadly contemplated completion of the projects within a period of approximately 20-30 months, subject to the timelines for the various preliminary stages such as preparation and approval of the DPR and the tendering process.

12. However, the contracts contained a specific stipulation, set out in Note 1 to Article 24, that in the event of delay in completion of the project for reasons attributable to the execution of the works, the consultancy agreement would be deemed to stand extended without any additional financial implication, and the consultant would not be entitled to claim extra compensation merely on account of such delay.

13. Vizag Project:

13.1. Under the consultancy agreement executed between the parties, the Appellant was appointed as Consultant for a construction project to be executed at Visakhapatnam (Vizag).

13.2. In terms of the said agreement, the Appellant undertook the preparation of the DPR and other pre-construction documentation, following which the Respondent awarded the construction contract to a contractor selected through the tendering process.

13.3. During the course of execution of the project, certain disputes arose between the parties concerning the computation of consultancy

fees payable to the Appellant. The Appellant asserted that it was entitled to consultancy charges calculated in accordance with Clause 1.10 of the contract, which linked the consultancy fee to the Project Cost, including variations and deviations occurring during execution of the works.

13.4. According to the Appellant, the Respondent failed to compute and pay the consultancy charges on the correct basis and consequently withheld amounts that were legitimately due to the Appellant (Claim Nos. 1-3).

13.5. Apart from the aforesaid dispute relating to consultancy fees, the Appellant also raised claims arising out of the alleged prolongation of the project, contending that the project was completed over a substantially longer period than originally envisaged, thereby requiring the Appellant to continue rendering consultancy services for an extended duration (Claim Nos. 4 and 7).

13.6. The Appellant further raised certain ancillary claims, including claims relating to deductions allegedly made from its bills as well as claims pertaining to service tax/GST adjustments (Claim Nos. 5 & 6).

14. <u>The Pune Project:</u>

14.1. The Appellant was also engaged by the Respondent as Consultant for another construction project located at Pune, under a consultancy agreement substantially similar to the one governing the Vizag project.

14.2. During the execution of the Pune project, the contract awarded

to the original contractor came to be terminated, and the Respondent proceeded to complete the remaining works through engaging a contractor under a risk and cost contract.

14.3. The Appellant contended that the award of the risk and cost contract resulted in a substantial increase in the overall cost of the project and that, consequently, the consultancy fee payable to it ought to have been recalculated on the basis of the enhanced project cost.

14.4. The Respondent, however, disputed this contention and maintained that the consultancy fee payable to the Appellant was to be determined only with reference to the originally accepted contract value, and that the Appellant was entitled only to the separate compensation stipulated under the contract for services rendered in relation to the risk and cost tender.

14.5. Similar to the Vizag project, the Appellant also raised claims in relation to prolongation of the consultancy services, contending that the completion of the project was substantially delayed and that the Appellant had incurred additional expenditure in maintaining personnel at the project site during the extended period.

15. The Ahmednagar Project:

15.1. The third consultancy agreement between the parties pertained to a construction project at Ahmednagar, which was also governed by contractual terms substantially similar to those applicable to the Vizag and Pune projects.

15.2. As in the case of the Pune project, the contract awarded to the

original contractor for the Ahmednagar project was terminated during the course of execution, and the remaining works were subsequently completed through risk and cost contracts.

15.3. The Appellant again asserted that the increase in the cost of the project as a consequence of the risk and cost contracts entitled it to a higher consultancy fee under the contractual provisions governing computation of consultancy charges.

15.4. The Respondent disputed the said claim and contended that the consultancy fee payable to the Appellant was governed by the specific provisions of the contract dealing with risk and cost works, under which the Appellant was entitled only to a limited additional compensation calculated at the stipulated percentage of the value of the risk and cost contracts.

15.5. The Appellant also raised claims in relation to alleged prolongation of the project, contending that the duration of the project had extended far beyond the originally contemplated timeline.

16. Arbitral Proceedings- Disputes having arisen between the parties in relation to the aforesaid issues, the same were referred to arbitration in terms of the arbitration clause contained in the respective consultancy agreements.

17. The learned Arbitral Tribunal adjudicated the disputes arising out of each of the three consultancy agreements and rendered three separate arbitral awards in relation to the Vizag, Pune and Ahmednagar projects.

18. Being aggrieved by the arbitral awards, the Appellant instituted petitions under Section 34 of the Act before this Court seeking to set aside the awards. The said petitions were registered as OMP(COMM) 518/2023 – Vizag Project, OMP(COMM) 526/2023 – Pune Project and OMP(COMM) 527/2023 – Ahmednagar Project, corresponding to the three arbitral awards.

19. By the Impugned Judgment, the learned Single Judge partly allowed OMP(COMM) 518/2023 (Vizag Project) by setting aside the arbitral award only in respect of Claim Nos. 1 to 3, while dismissing the petition in respect of the remaining claims. The petitions OMP(COMM) 526/2023 and OMP(COMM) 527/2023 were dismissed in their entirety.

20. Aggrieved thereby, the Appellant has preferred the present Appeals.

CONTENTIONS OF THE PARTIES:

21. Contentions of the Appellant:

21.1. Learned counsel appearing on behalf of the Appellant assailed the Impugned Judgment passed by the learned Single Judge as well as the arbitral awards dated 17.08.2023 on several grounds. It was contended that both the Arbitral Tribunal as well as the learned Single Judge failed to correctly interpret the provisions of the Consultancy Agreements governing the relationship between the parties and thereby erroneously rejected the legitimate claims of the Appellant.

21.2. At the outset, it was submitted that the consultancy agreements

executed between the parties expressly stipulated that the consultancy fee payable to the Appellant was to be computed as a fixed percentage of the "Project Cost", as defined under Article 1.9 of the Consultancy Agreements. It was contended that the said definition of "Project Cost" was subsequently amended through amendments issued by the Respondent, whereby the project cost was to be calculated as the summation of the cost of contracts concluded with the lowest tenderers, adjusted with the cost of variations and deviations during execution of the works.

21.3. It was submitted that upon a proper interpretation of the amended definition of "Project Cost", the consultancy fee payable to the Appellant necessarily stood linked to the actual cost of the construction contracts executed for completion of the project. Consequently, any increase in the overall project cost during execution of the works would proportionately enhance the consultancy fee payable to the Appellant.

21.4. It was submitted that in the present case, the projects were initially awarded on the basis of estimated project costs. However, during the course of execution, the project costs substantially increased owing to several circumstances including delays in execution, termination of original contractors in certain projects, and award of fresh contracts for completion of the remaining works.

21.5. In this regard, it was pointed out that in the Pune/Kirkee–Lonavala project, after termination of the original contractors, fresh contracts were awarded on a "risk and cost" basis to new contractors,

resulting in a significant escalation in the overall project cost. Similarly, in the Vizag project, the construction contractor failed to complete the works within the stipulated time, resulting in a prolonged construction period and a substantial increase in the final project cost.

21.6. It was contended that despite the substantial increase in project cost in all the projects, the learned Arbitral Tribunal erroneously rejected the Appellant's claim for enhancement of consultancy fee by relying upon Clause 22(q)(iv) of the Contract Agreements. According to the Appellant, the said clause merely provided for a limited compensation of 0.10% of the value of risk and cost contracts for certain specified services, such as preparation of risk and cost tender documents, drafting of advertisements, evaluation of tenders and recommendation of contractors, and was confined only to the additional work connected with processing of such tenders.

21.7. It was submitted that the learned Arbitral Tribunal erred in construing Clause 22(q)(iv) as a limitation on the Appellant's entitlement to consultancy fee calculated on the enhanced project cost. It was contended that the overall consultancy services rendered by the Appellant under Clause 22 of the agreements were far wider in scope and included supervision of construction, project management, monitoring of execution and coordination with contractors through the Appellant's deployed engineering staff.

21.8. It was further submitted that the Appellant had discharged all responsibilities assigned under Clause 22 of the agreements throughout the extended execution period and had continued to

provide consultancy and supervisory services at the project sites far beyond the originally stipulated construction period.

21.9. It was contended that both the learned Arbitral Tribunal as well as the learned Single Judge failed to appreciate that the Appellant had in fact rendered services for a significantly extended duration as compared to the original contractual timelines. While the contracts contemplated completion of the construction phase within approximately 27–32 months, the actual execution of the projects continued for substantially longer periods owing to delays attributable to contractors and administrative decisions of the Respondent.

21.10. It was submitted that during the entire extended period, the Appellant remained contractually obliged to maintain a full complement of engineering and supervisory staff at the project sites in accordance with the staffing requirements specified in Appendix-G of the Contract Agreements, and that the Appellant had accordingly deployed the requisite project management teams at the sites throughout the execution period, incurring substantial expenditure towards salaries and operational costs of such personnel.

21.11. It was contended that despite the Appellant having rendered services for the extended duration, no additional compensation was granted either towards the increased project cost or towards escalation of staff remuneration during the prolonged execution period.

21.12. Learned counsel further submitted that the learned Arbitral Tribunal rejected the Appellant's claim for escalation during the extended period on the ground that the Appellant had failed to lead

evidence regarding deployment of staff. According to the Appellant, such reasoning was contrary to the contractual framework, since non-deployment of the required staff would have attracted recoveries and penalties under Clause 24 of the agreements. However, no such deductions were ever made by the Respondent during the course of execution of the projects.

21.13. It was therefore argued that the absence of any such deductions clearly demonstrated that the mandatory staff had in fact remained deployed at the project sites throughout the extended period, and the Tribunal erred in requiring further proof of staff deployment in the absence of any contrary evidence from the Respondent.

21.14. It was further argued that the Arbitral Tribunal failed to take into consideration Article 16 of the Contract Agreements which incorporated the principles of fairness and good faith in performance of the contract. It was submitted that under Article 16, both parties had undertaken to act in good faith and adopt reasonable measures to ensure realisation of the objectives of the contract.

21.15. According to the Appellant, the said clause recognised that it would be impractical for the contract to provide for every possible contingency that may arise during the course of execution and therefore contemplated fair adjustment between the parties in the event the contract operated unfairly to either side. It was contended that the Respondent failed to adhere to the obligations flowing from Article 16 and did not take any steps to address the financial hardship suffered by the Appellant due to the prolonged execution period and

escalation of costs.

21.16. It was also contended that both the Arbitral Tribunal as well as the learned Single Judge failed to properly consider the legal principles governing interpretation of standard form contracts. According to the Appellant, the Consultancy Agreements were drafted entirely by the Respondent and the Appellant had no opportunity to negotiate the contractual terms.

21.17. In such circumstances, it was argued that any ambiguity in the contractual clauses ought to have been interpreted in favour of the Appellant by applying the doctrine of *contra proferentem*, particularly when the Respondent, being a State instrumentality, possessed greater bargaining power.

21.18. It was contended that escalation in costs and damages arising from prolonged execution of contracts are recognised incidents in construction projects and may be awarded where delay is attributable to the employer. It was submitted that the learned Arbitral Tribunal ignored the settled legal position that damages and compensation arising out of delay may be awarded even on a reasonable estimation where the factual circumstances demonstrate financial impact on the contractor or consultant.

21.19. Apart from the errors in contractual interpretation, learned counsel also assailed the Impugned Judgment on the ground that the learned Single Judge failed to exercise the jurisdiction vested under Section 34 of the Act in its correct perspective. It was contended that the learned Arbitral Tribunal returned findings which were manifestly

erroneous and contrary to the material placed on record. However, the learned Single Judge adopted an unduly restrictive approach and declined interference without examining whether the arbitral awards suffered from patent illegality or perversity.

21.20. It was submitted that the disputes between the parties arose out of contracts relating to execution of works at Vizag, Pune and Ahmednagar, and though separate arbitral proceedings were initiated in respect of each project, the contractual structure, obligations of the parties and the nature of claims raised by the Appellant were substantially similar. According to the Appellant, the learned Arbitral Tribunal adopted an erroneous interpretation of the contractual clauses governing the rights and liabilities of the parties, which was mechanically affirmed by the learned Single Judge without adequate judicial scrutiny.

21.21. Elaborating the challenge, it was argued that the findings recorded by the learned Arbitral Tribunal suffer from patent illegality appearing on the face of the award, inasmuch as the Tribunal ignored vital evidence placed on record by the Appellant demonstrating that the Respondent had committed breaches of its contractual obligations, resulting in delays and financial losses to the Appellant.

21.22. It was further submitted that the Tribunal adopted a selective approach in appreciation of evidence by placing undue reliance upon documents produced by the Respondent while disregarding contemporaneous correspondence, site records and contractual documentation relied upon by the Appellant, thereby rendering the

findings perverse.

21.23. It was also contended that the learned Single Judge failed to appreciate that the Tribunal's interpretation of the contractual clauses governing payments, obligations of the parties and allocation of risk was contrary to the plain language of the agreements and effectively amounted to rewriting the contractual terms between the parties.

21.24. With specific reference to OMP(COMM) 518/2023, it was submitted that although the learned Single Judge set aside the arbitral award in respect of Claim Nos. 1 to 3 and permitted fresh arbitral proceedings in respect thereof, the learned Single Judge ought to have set aside the award in its entirety, since the errors vitiating Claim Nos. 1 to 3 equally affected the findings in respect of the remaining claims, including those relating to prolongation of the contract, alleged deductions from bills, and tax-related claims.

21.25. It was further contended that the findings returned by the Tribunal in relation to the said remaining claims, particularly those concerning prolongation and ancillary monetary claims, were intrinsically connected with the issues arising in Claim Nos. 1 to 3 and therefore the award could not have been sustained in part while setting aside only a limited portion thereof.

21.26. In respect of OMP(COMM) 526/2023 and OMP(COMM) 527/2023, it was submitted that the learned Single Judge erred in dismissing the petitions in their entirety without examining the fundamental infirmities in the arbitral awards.

21.27. It was lastly submitted that the Impugned Judgment reflects an overly deferential approach to the arbitral awards and does not apply the settled tests established by the Supreme Court for interference under Sections 34 and 37 of the Act. It was contended that where an arbitral award is vitiated by patent illegality, perversity or manifest misinterpretation of the contract, the courts are duty bound to intervene to prevent miscarriage of justice.

22. Contentions of the Respondent:

22.1. Learned counsel appearing on behalf of the Respondent opposed the present Appeals and supported the arbitral awards dated 17.08.2023 as well as the Impugned Judgment passed by the learned Single Judge. It was submitted that the arbitral awards are well-reasoned awards passed after due consideration of the contractual provisions, pleadings and evidence on record, and therefore do not warrant interference in proceedings under Section 37 of the Act.

22.2. At the outset, it was submitted that the Appellant had been appointed as a "Detailed Engineering and Project Management Consultant" in respect of construction of married accommodation projects undertaken by the Respondent. Under the Consultancy Agreements executed between the parties, the Appellant was required to render consultancy services during the pre-construction, construction and post-construction stages of the projects.

22.3. It was submitted that the scope of services to be rendered by the Appellant included preparation of the detailed project report, design and drawings, preparation of bill of quantities and cost estimates,

tender documentation and evaluation of bids, quality control and assurance, supervision of contractor performance, scrutiny of running and final bills, and submission of project progress reports, among other functions connected with project management.

22.4. It was further submitted that the disputes between the parties arose in relation to three separate projects located at Vizag, Pune/Kirkee-Lonavala and Ahmednagar-Deolali-Nasik. Although separate arbitral proceedings were conducted in respect of each project, the nature of the claims raised by the Appellant broadly fell into two principal categories, namely:

i. claims for enhancement of consultancy fees consequent to increase in project cost; and

ii. claims for additional compensation on account of prolongation of the contract.

22.5. It was submitted that the learned Arbitral Tribunal, upon examining the contractual provisions and the evidence placed on record, rejected the claims raised by the Appellant. The said findings were thereafter examined by the learned Single Judge under Section 34 of the Act, who found no ground to interfere with the arbitral awards, except to the limited extent of Claim Nos. 1 to 3 in OMP(COMM) 518/2023 relating to the Vizag project, which were set aside with liberty to the parties to initiate fresh arbitral proceedings.

I. Claims relating to enhancement of consultancy fees- (Pune and Ahmednagar Projects)

22.6. Insofar as the projects at Pune/Kirkee-Lonavala and Ahmednagar-Deolali-Nasik are concerned, learned counsel submitted that the Appellant sought enhancement of consultancy fees on the ground that the overall project cost increased during the course of execution after termination of the original construction contractors and engagement of new contractors on a "risk and cost" basis.

22.7. It was submitted that under Clause 1.10 of the Consultancy Agreements, the Appellant was entitled to consultancy fees calculated as a fixed percentage of the "Project Cost", as defined under Clause 1.9 of the contract. It was submitted that the increase in project cost in the said projects occurred not on account of variations or expansion of the original scope of work, but due to termination of the original contractors and award of fresh contracts for completion of the balance work on a risk and cost basis.

22.8. In this regard, reliance was placed on Clause 22(q)(iv) of the Instructions to Bidders, which specifically governs the situation where risk and cost contracts are awarded. It was submitted that the said clause expressly stipulates that in such a situation the consultant shall be compensated only for the additional services rendered in connection with preparation of risk and cost tender documents, evaluation of bids and recommendation of contractors, at the rate of 0.10% of the value of the risk and cost contracts.

22.9. Learned counsel emphasised that the clause further clarifies that

for the purpose of computing the settled consultancy fee, the amount of the original contract shall be taken into account and the amount of risk and cost contracts shall not be considered. It was therefore contended that the contractual framework itself contemplated the possibility of termination of contractors and award of risk and cost contracts, and specifically limited the compensation payable to the consultant in such circumstances.

22.10. According to the Respondent, the Appellant had already been paid the additional fee at the rate of 0.10% of the value of the risk and cost contracts for the services rendered in connection with preparation and processing of such tenders. In view of the express contractual stipulation, it was submitted that the Appellant could not claim enhancement of consultancy fees under Clause 1.10 by taking into account the value of the risk and cost contracts.

22.11. It was submitted that the learned Arbitral Tribunal rightly rejected the said claims by holding that the Tribunal, being a creature of contract, is bound to decide disputes strictly in accordance with the terms of the contract. Reliance was placed on judicial precedents to contend that Section 28(3) of the Act mandates that arbitral tribunals shall decide disputes in accordance with the terms of the contract and applicable law. It was therefore submitted that the interpretation adopted by the Tribunal was consistent with the contractual provisions and could not be interfered with in proceedings under Sections 34 or 37 of the Act.

(Vizag Project)

22.12. Learned counsel submitted that the Vizag project stood on a slightly different footing, inasmuch as the increase in project cost in that case occurred on account of increase in the value of the original construction contracts rather than due to engagement of risk and cost contractors.

22.13. It was submitted that the learned Single Judge, while exercising jurisdiction under Section 34 of the Act, took note of this distinction and accordingly set aside the arbitral award only in respect of Claim Nos. 1 to 3 relating to enhancement of consultancy fees for the Vizag project and granted liberty to the parties to pursue fresh arbitral proceedings in respect thereof. It was submitted that the Appellant has nevertheless challenged the rejection of the remaining claims relating to the Vizag project, which were rightly rejected by the learned Arbitral Tribunal as well as the learned Single Judge.

II. Claims relating to prolongation of the contract-

22.14. It was further submitted that the Appellant had raised claims in all three arbitrations seeking additional compensation on account of alleged prolongation of the contracts and the continued deployment of manpower during the extended execution period. It was submitted that the said claims were correctly rejected by the learned Arbitral Tribunal on several independent grounds.

22.15. Firstly, it was submitted that the contracts between the parties were not construction contracts but consultancy agreements, under

which the Appellant was responsible for supervising the execution of works carried out by the contractors. It was submitted that the Respondent was neither executing the construction works nor supervising the contractors, and therefore any delay in execution of the construction works by the contractors cannot be attributed to the Respondent as a client. It was further submitted that the Appellant itself had admitted in its Statement of Claim that delays in completion of the projects occurred due to poor performance of the construction contractors.

22.16. Secondly, it was submitted that the claims for prolongation costs were expressly barred by the contractual provisions governing the relationship between the parties. In particular, reliance was placed on Note 1 to Article 24 of the Consultancy Agreements, which expressly provides that in the event of delay in completion of the project for any reason whatsoever, the consultant shall not be entitled to any compensation or additional charges and the consultancy agreement shall be deemed to have been extended with "nil" financial effect.

22.17. It was also pointed out that the financial proposal submitted by the Appellant provided that the remuneration payable to the consultant shall remain firm and that no escalation whatsoever would be payable on any account except where there is an increase in the scope of work ordered by the Respondent. It was therefore submitted that the contractual terms clearly prohibited payment of any additional compensation on account of prolongation of the project.

22.18. Thirdly, it was submitted that the Appellant had failed to lead any reliable documentary evidence to substantiate the alleged expenditure incurred during the extended period. It was submitted that although the Appellant claimed reimbursement of expenses allegedly incurred towards deployment of manpower, no proof of actual payments or expenditure was placed on record.

22.19. It was submitted that the Appellant relied only upon the increase in the Consumer Price Index to estimate prolongation costs, which cannot be treated as proof of actual expenditure incurred by the consultant. It was further submitted that under Note 5 to Article 24 of the contract, the consultant was required to demobilise its team in the event that the project work was suspended or stopped for any reason.

22.20. In the present case, learned counsel submitted that the construction work had admittedly remained suspended for certain periods between termination of the original contracts and award of fresh contracts. In such circumstances, the Appellant could not claim reimbursement of manpower costs for the said period.

III. Miscellaneous claims (Vizag Project)-

22.21. Insofar as the Vizag project is concerned, it was submitted that certain additional claims were raised by the Appellant relating to alleged wrongful deductions from bills and variation in service tax and GST. It was submitted that the said claims were rightly rejected by the learned Arbitral Tribunal as well as the learned Single Judge on the ground that the Appellant failed to produce any supporting documents or bills to substantiate the alleged deductions or tax liabilities.

IV. Scope of interference under Sections 34 and 37 of the Act-

22.22. It was lastly submitted that the present Appeals are liable to be dismissed on the limited scope of interference available under Sections 34 and 37 of the Act. It was submitted that the arbitral awards in the present case represent a plausible interpretation of the contractual provisions and the evidence on record, and therefore do not suffer from any patent illegality or perversity warranting interference.

22.23. Learned counsel emphasised that the court exercising jurisdiction under Section 34 does not sit in appeal over the arbitral award and cannot reassess or re-appreciate the evidence. It was further submitted that in an appeal under Section 37 of the Act, the scope of interference is even narrower, particularly where the findings of the arbitral tribunal have been affirmed by the court exercising jurisdiction under Section 34.

22.24. Learned counsel therefore submitted that the Appellant is essentially seeking a re-appreciation of the contractual provisions and evidence on record, which is impermissible in proceedings under Section 37 of the Act.

ISSUES FOR DETERMINATION:

23. Having heard learned counsel for the parties and having perused the material placed on record, the following issues arise for consideration in the present Appeals:

I. Whether the learned Single Judge committed any error in

upholding the findings of the learned Arbitral Tribunal rejecting the Appellant's claims for enhancement of consultancy fees in respect of the Pune/Kirkee-Lonavala and Ahmednagar-Deolali-Nasik projects.

II. Whether the learned Arbitral Tribunal and the learned Single Judge erred in rejecting the Appellant's claims for prolongation costs and additional compensation for the extended duration of the projects.

III. Whether the learned Single Judge erred in upholding the rejection of the Vizag project claims other than Claim Nos. 1 to 3, thereby warranting interference under Section 37 of the Act.

IV. Whether the Impugned Judgment suffers from any jurisdictional error in the exercise of powers under Section 34 of the Arbitration and Conciliation Act, 1996, so as to warrant interference by this Court under Section 37 of the Act.

ANALYSIS AND FINDINGS:

24. This Court has carefully considered the submissions advanced on behalf of the parties and perused the material on record.

25. At the outset, it is necessary to bear in mind the limited scope of interference available to this Court while exercising appellate jurisdiction under Section 37 of the Act. It is well settled that proceedings under Section 37 do not entail a rehearing on merits. The appellate court does not sit in appeal over the findings of fact returned by the Arbitral Tribunal. Interference is warranted only where the court exercising jurisdiction under Section 34 has either ignored the well-settled parameters governing challenges to arbitral awards or

where the findings recorded suffer from patent illegality, perversity, or manifest error apparent on the face of the record.

26. The scheme of the Act clearly reflects the legislative intent to minimize judicial intervention in arbitral proceedings. An arbitral award is intended to achieve finality and is not liable to be interfered with merely because another view of the matter is possible. So long as the interpretation adopted by the learned Arbitral Tribunal is a plausible interpretation of the contract and is based on material placed before it, courts are required to exercise restraint and refrain from substituting their own interpretation in place of that adopted by the tribunal.

27. The scope of interference under Section 34 has been consistently delineated by the Supreme Court. The court examining a challenge to an arbitral award is not required to re-appreciate evidence or re-assess contractual interpretation merely because the court might have arrived at a different conclusion. Interference is justified only when the award is contrary to the fundamental policy of Indian law, is patently illegal appearing on the face of the award, or is so perverse that no reasonable person could have arrived at such a conclusion.

28. While exercising jurisdiction under Section 37, the appellate court is required to examine whether the learned Single Judge correctly applied the aforesaid principles while adjudicating the petitions under Section 34 of the Act. If the approach adopted by the court under Section 34 is consistent with the settled legal position and the findings do not disclose any manifest error, the appellate court

would ordinarily refrain from interfering with the impugned judgment.

29. Bearing in mind the aforesaid principles, the issues arising in the present Appeals are examined as follows:

ISSUE I- Claim for Enhancement of Consultancy Fees on Account of Increase in Project Cost:

30. The principal grievance raised by the Appellant relates to the rejection of its claim seeking enhancement of consultancy fees on account of the alleged increase in the cost of the projects. According to the Appellant, the consultancy fee under the Consultancy Agreements was calculated as a percentage of the "Project Cost" (Article 1.9), and therefore any escalation in the project cost during execution of the project necessarily entitled the Appellant to a corresponding increase in its consultancy fee. Article 1.9 of the Consultancy Agreement reads as under-

> *"PROJECT COST" shall mean summation of cost of contracts concluded with lowest tenderers adjusted with cost of variation/deviation during execution.*
>
> *Note:· It is expressly mentioned that project Cost shall not include cost of land and escalation, if any and percentage quoted by consultant of project cost shall not be paid on cost of land, escalation, if any."*

31. The Arbitral Tribunal, while examining this contention in detail, noted that the Consultancy Agreements defined "Project Cost" with reference to the estimated cost of the project as approved at the stage of entering into the consultancy agreement and that the consultancy fee (Article 1.10) was expressed as a fixed percentage of such project cost, payable in predetermined stages linked to the progress of consultancy services. Article 1.10 of the Consultancy

Agreement reads as under-

> *"'"CONSULTANCY CHARGES (SETTLED FEE)" shall mean the amount calculated by multiplying the percentage quoted by the consultant in his financial proposal with project cost."*

32. The Tribunal further observed that the consultancy fee was expressly stipulated as a fixed percentage of the project cost identified in the agreement and was payable in predetermined stages linked with the progress of the consultancy services. The contractual framework did not contain any provision which expressly provided for automatic revision or escalation of consultancy fees on account of subsequent increase in project cost.

33. On this basis, the Tribunal concluded that the consultancy fee payable to the Appellant was contractually fixed with reference to the project cost specified in the agreements and was not intended to vary with subsequent changes in the project cost during execution of the project.

34. The Tribunal also examined the Appellant's argument that the projects were ultimately executed on a "risk and cost" basis and that such execution resulted in a substantial increase in the overall cost of the projects. The Tribunal observed that such escalation occurred due to the manner in which the projects were eventually executed and could not be construed as altering the contractual basis on which consultancy fees had originally been agreed between the parties.

35. The learned Single Judge, while considering the challenge under Section 34 of the Act, examined the reasoning adopted by the Tribunal and found that the interpretation placed upon the contractual

provisions by the Tribunal was a plausible and reasonable interpretation. The learned Single Judge observed that the Tribunal had examined the relevant contractual clauses in detail and had provided cogent reasons for rejecting the Appellant's claim for fee escalation.

36. Accordingly, the learned Single Judge concluded that the findings of the Tribunal did not suffer from patent illegality or perversity warranting interference under Section 34 of the Act.

37. Having examined the reasoning of both the Arbitral Tribunal and the learned Single Judge, this Court finds no infirmity in the approach adopted in the Impugned Judgment. The interpretation of contractual provisions is primarily within the domain of the Arbitral Tribunal. Unless such interpretation is demonstrably unreasonable or contrary to the express terms of the contract, courts exercising jurisdiction under Sections 34 and 37 would ordinarily refrain from substituting their own view.

38. In the present case, the Tribunal has examined the contractual definition of "Project Cost" (Article 1.9), the structure of consultancy fees (Article 1.10), and the absence of any clause providing for escalation of consultancy fees. The conclusion reached by the Tribunal that the consultancy fee was not subject to revision merely because the cost of the project increased during execution cannot be said to be an interpretation that is implausible or contrary to the contract.

39. The contention of the Appellant that the Tribunal failed to

appreciate the commercial intent of the parties also does not merit acceptance. The Tribunal has expressly considered the contractual scheme and has recorded reasons as to why the claim for enhanced consultancy fees could not be sustained in the absence of a contractual provision permitting such escalation.

40. In these circumstances, this Court finds no ground to interfere with the finding of the learned Single Judge affirming the rejection of the Appellant's claim for enhancement of consultancy fees.

ISSUE II- Rejection of Appellant's claims arising out of prolongation of the projects:

41. The next set of claims urged by the Appellant relates to compensation allegedly payable on account of the prolongation of the consultancy services beyond the originally contemplated period of the projects.

42. It was contended on behalf of the Appellant that the projects were considerably delayed and that the Appellant was compelled to continue providing consultancy services for extended periods. According to the Appellant, such prolongation resulted in additional deployment of personnel, administrative expenses and operational costs, for which the Appellant was entitled to appropriate compensation.

43. The Arbitral Tribunal examined the contractual framework governing extension of time and the financial consequences thereof. In particular, the Tribunal considered the provisions contained in Article 24 of the Consultancy Agreements, including Notes 1 and 5, which

govern extensions and their financial consequences. The same is reproduced as under-

ARTICLE 24 PROJECT COMPLETION SCHEDULE

The project shall be completed within the period as indicated below:-

a)	*Go ahead for preparation of DPR*	*1 week**
b)	*Preparation and submission of DPR (final) (including up dating the deficiency of CPR*	*12 weeks*
c)	*Approval of DPR by the ONWER*	*3 weeks**
d)	*Go ahead for execution*	*1 weeks**
e)	*Preparation of tender documents and Submission of soft copy (floppy) and Twenty Five (25) hard copies thereof.*	*2 weeks*
f)	*Evaluation of quoted tender documents and Submission of recommendations*	*3 weeks*
g)	*Execution of the project*	*20-30 months Depending on Project*

Note : The periods marked with "" are approximate periods.*

Note 1:- The exact time for execution of the project will be as per contract (s) concluded with contractor (s) i.e. Builder and it shall be noted by the consultant that in case of any delay in completion of the project for whatsoever reasons, the consultant shall not be relieved of his responsibilities after the period given against execution of project and shall not be entitled for any compensation /extra charges on this account as consultant's agreement shall accordingly deemed to have been extended with "NIL" financial effect. The rates quoted in financial proposal shall be final and nothing extra on this account shall be payable to the consultant.

Note 2:- The action for advertising the works in public shall be taken by DGMAP sufficiently in advance during DPR stage so that tenders could be issued at the earliest after Approval of DPR. Therefore, draft advertisements for various works shall be submitted by the consultant well in advance of submission of DPR.

Note 3:- The remuneration for the consultancy services shall also include Rebidding, Reevaluation of contract documents, preparation of tender with revised / changed drawings and specifications during re-tendering stage. No additional payment on account of the same shall be admissible.

Note 4:- In case of non deployment of required staff even after one month of serving of the notice by the PM the rate of recovery shall be as under:

Technical Staff	*Recovery per month (Rs.)*
Resident Engineer	*40,000/-*
Civil Engineer	*24,000/-*

Electrical Engineer	*24,000/-*
Quality Assurance & Quality Control Engineer	*24,000/-*
Billing Engineer	*20,000/-*
Assistance Civil Engineer	*20,000/-*
Asst Electrical Engineer	*20,000/-*
Computer Operator	*10,000/-*

OR

Double the amount of remuneration actually paid after employment by the PM In terms of clause 4 (b) of Appendix G whichever is higher. During the period of one month for deficiency in service the recovery will be as mentioned in table above. The decision of Acceptance officer for recovery on account of deficiency/ non employment of technical staff shall be final and binding.

Note 5:- If the work is stopped or suspended for what so ever reason the consultant may demobilize the team from the site, for such period after written instruction from the PM. However the consultant shall have to mobilize his team with in 15 days of recommencement of work after such stoppage / suspension. No claim on account of such demobilization or remobilization shall be admissible.

In case of failure of the consultant, to prepare and submit the DPR within a period of twelve weeks from the date of go ahead for preparation of DPR, liquidated damage @ Rs. 10000/- per week of delay shall be recovered from the consultant.

In case of failure of the consultant, to prepare submit tender documents within a period of two weeks from the date of go ahead for execution, liquidated damage @ Rs. 5000/- per week of delay shall be recovered from the consultant.

In case of delay in evaluation of quoted tender document and recommendations within a period of three weeks from the date of receipt of tenders, liquidated damage @ Rs. 5000/· per week of delay shall be recovered from the consultant.

44. Upon an analysis of the contractual clauses, the Tribunal observed that the Consultancy Agreements contemplated the possibility of extension of the project period and specifically addressed the financial implications of such extensions. The Tribunal noted that the contractual provisions distinguished between different categories of extensions and expressly stipulated circumstances in which the extension would have "nil financial effect" (Note 1).

45. The Tribunal further noted that the relevant contractual notes clearly indicated that extensions granted for administrative or

procedural reasons, or extensions necessitated due to circumstances not attributable to the Respondent, were not intended to result in additional financial liability on the part of the Respondent. On the basis of the contractual provisions and the evidence placed on record, the Tribunal concluded that the extensions granted in the present case fell within the category of extensions which did not entail any additional financial compensation.

46. The Tribunal also examined the evidentiary basis of the Appellant's claim relating to additional deployment of staff and found that the Appellant had not produced sufficient documentary material demonstrating that additional personnel had in fact been deployed for the extended period or that identifiable additional expenditure had been incurred on account of such deployment. Such claims were largely founded upon general assertions regarding increased costs rather than contemporaneous records substantiating the actual deployment of staff or the specific financial burden allegedly incurred during the extended period.

47. The Tribunal therefore held that the Appellant had failed to establish its entitlement to compensation for prolongation either on the basis of the contractual provisions or on the basis of evidence demonstrating actual expenditure.

48. The learned Single Judge, while examining the challenge under Section 34 of the Act, considered the reasoning adopted by the Tribunal and concluded that the Tribunal had undertaken a detailed examination of the contractual provisions as well as the evidence

placed before it.

49. The learned Single Judge held that the conclusions drawn by the Tribunal were based upon an interpretation of the contract that could not be said to be either arbitrary or perverse and further observed that the Tribunal had assessed the evidentiary material and had arrived at findings of fact which could not be re-appreciated in proceedings under Section 34 of the Act.

50. Having considered the reasoning of the Tribunal and the observations recorded in the Impugned Judgment, this Court is of the view that the approach adopted by the learned Single Judge does not suffer from any infirmity warranting interference under Section 37 of the Act.

51. The Tribunal has examined the contractual clauses governing extension of the project period and has concluded that the extensions granted in the present case did not carry any financial consequences. Such an interpretation of the contractual provisions falls squarely within the domain of the Arbitral Tribunal.

52. It is equally significant that the Tribunal has also returned a factual finding that the Appellant failed to substantiate the alleged additional expenditure with adequate documentary evidence. Findings of fact recorded by an arbitral tribunal, particularly those based upon appreciation of evidence, are not liable to be interfered with in appellate proceedings unless they are demonstrably perverse.

53. In the present case, the findings recorded by the Tribunal cannot

be characterized as perverse or unsupported by the material on record. Consequently, the learned Single Judge was justified in declining to interfere with the rejection of the Appellant's claims relating to prolongation of the projects.

ISSUE III- FINDINGS IN RELATION TO VIZAG PROJECT CLAIMS:

54. A separate set of claims raised by the Appellant pertained specifically to the Vizag project. On behalf of the Appellant, it was contended that it was entitled to certain additional payments arising out of the circumstances in which the project was executed and completed.

55. The Arbitral Tribunal examined the claims pertaining to the Vizag project independently and analyzed the contractual provisions governing the obligations of the parties in relation to project execution and completion. In particular, the Tribunal considered the contractual provisions dealing with demobilisation of the consultant's personnel in situations where the work stood suspended or stopped. Note 5 appended to Article 24 of the Consultancy Agreement, as already reproduced above, specifically provides that where the work is stopped or suspended, the consultant may demobilise its team from the site upon written instructions of the Project Manager. The clause further stipulates that upon recommencement of the work, the consultant shall remobilise its team within fifteen days.

56. Significantly, the said clause expressly provides that no claim on account of such demobilisation or remobilisation shall be admissible. In view of the clear contractual stipulation barring such

claims, the Tribunal concluded that the Appellant could not seek additional compensation on account of withdrawal or redeployment of its personnel during periods when the project work remained suspended.

57. Consequently, the Tribunal concluded that the Appellant could not claim additional compensation for withdrawal or redeployment of personnel during suspension periods and accordingly rejected the claims in relation to the Vizag project.

58. The learned Single Judge, while examining the challenge under Section 34 of the Act, held that the findings recorded by the Tribunal were based upon a detailed examination of both the contractual provisions and the evidence placed on record and further observed that the Tribunal had provided cogent reasons for rejecting the claims and that the conclusions drawn could not be said to suffer from patent illegality or perversity.

59. Having considered the material placed before this Court, no ground is made out to hold that the approach adopted by the learned Single Judge suffers from any error warranting interference in appellate jurisdiction.

60. The interpretation of contractual provisions relating to demobilisation, as adopted by the Tribunal, represents a plausible interpretation of the contract. It is well settled that where the interpretation adopted by the arbitral tribunal is one of the possible views that can reasonably be taken on the basis of the contract, courts exercising jurisdiction under Sections 34 and 37 of the Act ought not

to substitute their own interpretation in place of that adopted by the tribunal.

ISSUE IV- SETTING ASIDE OF ARBITRAL AWARD TO THE LIMITED EXTENT OF CLAIM NOS.1 TO 3 IN OMP(COMM) 518/2023:

61. The next question that arises for consideration concerns the limited interference undertaken by the learned Single Judge in OMP(COMM) 518/2023, whereby the arbitral award was set aside only to the extent of Claim Nos. 1 to 3 and the parties were granted liberty to pursue fresh arbitral proceedings in respect of the said claims.

62. The learned Single Judge, while examining the arbitral award in relation to these claims, observed that the findings recorded by the Arbitral Tribunal did not adequately deal with certain aspects of the contractual framework governing the claims raised by the Appellant. In particular, the learned Single Judge noted that the reasoning contained in the arbitral award in relation to Claim Nos. 1 to 3 did not sufficiently address the contractual provisions and the material placed on record by the parties with respect to the entitlement claimed by the Appellant.

63. The learned Single Judge further observed that the arbitral award, insofar as it pertained to these claims, did not reflect a complete examination of the issues arising under the contract and therefore suffered from deficiencies in reasoning.

64. In view of these considerations, the learned Single Judge

concluded that the findings recorded in respect of Claim Nos. 1 to 3 could not be sustained in their existing form. However, instead of adjudicating the claims on merits, the learned Single Judge adopted the course of setting aside the award to the limited extent of the said claims and leaving it open to the parties to pursue fresh arbitral proceedings in accordance with law.

65. It is well settled that the court exercising jurisdiction under Section 34 of the Act does not sit in appeal over the arbitral award and is not required to undertake an adjudication on the merits of the claims. Where the court finds that the award suffers from patent illegality or that the reasoning is insufficient to sustain the conclusions reached, the court is empowered to set aside the award to the extent necessary.

66. The course adopted by the learned Single Judge in the present case reflects an exercise of such limited jurisdiction. The learned Single Judge has neither undertaken an independent adjudication of the claims nor substituted the findings of the Arbitral Tribunal with his own conclusions. Instead, the learned Single Judge has confined the interference to the limited extent considered necessary and has left the substantive adjudication of the claims to the arbitral process itself.

67. This approach is consistent with the scheme of the Act, which places primary responsibility for adjudication of contractual disputes upon arbitral tribunals rather than courts.

68. Having examined the reasoning contained in the Impugned Judgment, this Court does not find any infirmity in the approach

adopted by the learned Single Judge in setting aside the arbitral award only to the limited extent of Claim Nos. 1 to 3. The Appellant has not demonstrated that the course adopted by the learned Single Judge is contrary to the provisions of the Act or that it results in any manifest injustice to either of the parties.

69. On the contrary, the limited nature of the interference ensures that the parties retain the opportunity to have the disputed claims examined afresh in arbitral proceedings in accordance with the contractual framework governing their relationship.

70. In these circumstances, this Court is of the view that the decision of the learned Single Judge to set aside the award to the limited extent of Claim Nos. 1 to 3 in OMP(COMM) 518/2023 does not warrant interference in the present appeals.

Scope of interference under Section 37 of the Arbitration and Conciliation Act, 1996:

71. Before concluding, it is necessary to reiterate the limited scope of appellate interference available under Section 37 of the Act.

72. The appellate jurisdiction under Section 37 of the Act is narrower than the jurisdiction exercised by the court under Section 34 of the Act. An appellate court is not expected to reassess the merits of the arbitral award or undertake a fresh evaluation of the contractual provisions merely because another view of the matter may appear possible.

73. The role of the appellate court is confined to examining whether the court exercising jurisdiction under Section 34 has applied the

correct legal principles and whether the impugned judgment suffers from any manifest error warranting interference. Where the court under Section 34 has considered the arbitral award within the framework of the statutory grounds available for setting aside an award and has arrived at a reasoned conclusion, the appellate court would ordinarily refrain from disturbing such findings.

74. In the present case, the learned Single Judge has examined the arbitral awards in considerable detail and has applied the well-established principles governing interference with arbitral awards. Except to the limited extent discussed earlier, the learned Single Judge found no ground to interfere with the findings recorded by the Arbitral Tribunal.

75. Upon an independent examination of the Impugned Judgment, this Court finds that the approach adopted by the learned Single Judge is consistent with the settled principles governing challenges to arbitral awards.

76. The conclusions reached by the learned Single Judge are supported by reasons and do not disclose any manifest error of law or jurisdiction.

CONCLUSION:

77. For the reasons discussed above, this Court is of the view that the Appellant has failed to make out any case for interference with the Impugned Judgment in exercise of appellate jurisdiction under Section 37 of the Act.

78. The findings recorded by the learned Arbitral Tribunal in respect of the claims raised by the Appellant have been examined by the learned Single Judge within the limited parameters of Section 34 of the Act. No infirmity has been demonstrated which would justify interference with the conclusions reached in the Impugned Judgment.

79. The limited interference undertaken by the learned Single Judge in relation to Claim Nos. 1 to 3 in OMP(COMM) 518/2023 is also found to be in accordance with the scheme of the Act and does not call for any modification by this Court.

80. Accordingly, the present Appeals are dismissed, subject to the clarification that the parties shall remain at liberty to pursue such remedies as may be available to them in respect of Claim Nos. 1 to 3 in accordance with law.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MARCH 24, 2026
jai/pal